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GEOGRAPHICAL INDICATIONS AND INDIGENOUS COMMUNITIES: COLLECTIVE RIGHTS, CULTURAL IDENTITY AND EQUITABLE BENEFIT-SHARING IN INDIA AND NEW ZEALAND

Adv. Vidhu Srivastava*

I. ABSTRACT

Geographical indications (GIs) identify goods whose quality, reputation or other characteristic is essentially attributable to their geographical origin. GI protection can sustain rural livelihoods, preserve traditional production practices and promote regional identity, but it does not by itself secure the collective rights of Indigenous communities, whose products often embody customary knowledge, cultural values and intergenerational relationships with land. This paper critically examines the relationship between GIs, Indigenous collective rights, cultural identity and equitable benefit-sharing in India and New Zealand. For India, it analyses the Geographical Indications of Goods (Registration and Protection) Act, 1999 and Tea Board, India v ITC Limited, in which GI rights were confined to goods and the claim failed for limitation. It treats Divya Pharmacy v Union of India separately, as a Biological Diversity Act decision on benefit-sharing, and assesses how the Biological Diversity (Amendment) Act, 2023 and the 2024 Rules have since altered the framework on which it rested. For New Zealand, it examines the Geographical Indications Registration Act 2006 as amended in 2024, the Māori-offence refusal grounds and Māori advisory committees in the trade mark, patent and plant variety statutes, the concepts of mātauranga Māori, taonga and kaitiakitanga, and the Waitangi Tribunal's Wai 262 report, Ko Aotearoa Tēnei. It also considers the India–New Zealand Free Trade Agreement of 2026. The paper finds that GI registration protects reputation but guarantees neither community participation, nor control over cultural representation, nor a fair share of economic returns. It recommends consultation requirements in GI registry practice for applications involving Scheduled Tribe

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communities, an advisory mechanism modelled on New Zealand's Māori Advisory Committee, alignment with section 3(1)(k) of the Forest Rights Act, 2006 and the amended biodiversity framework, and reporting duties for GI proprietors on licensing and fee income.

II. KEYWORDS

Geographical Indications; Indigenous Rights; Traditional Knowledge; Benefit-Sharing; Māori.

III. INTRODUCTION

A. Background of the Study

Traditionally the scope of intellectual property (IP) law is limited to recognised, identifiable representations of human creative endeavour, commercial innovation and distinctive signs. Geographical Indications (GIs) fall somewhere between these two extremes as they link the geographical area to the product's identity. A product can gain a reputation due to a local environment, special production techniques, knowledge and practices passed on from generation to generation. A GI can therefore convey more than just a product's geographic origin: it can convey a community's shared history of product production and a community's connection with its environment[1].

Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) defines geographical indications as indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is 'essentially attributable' to its geographical origin. Section 2(1)(e) of India's Geographical Indications of Goods (Registration and Protection) Act, 1999 adopts the same standard.[2] This definition

[1] J Ghosh, 'Geographical Indication (GI) as a Tool for Sustainable Society: A Policy Analysis of India' (2024) 8 Journal of Intellectual Property Studies 12.

[2] Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299 (TRIPS), art 22(1); Geographical Indications of Goods (Registration and Protection) Act 1999 (India) (GI Act), s 2(1)(e).

acknowledges the economic importance of geographical reputation and offers a foundation for protecting geographical names against misuse.

For Indigenous people, the meaning of products of the land is not always just about differentiation in the market. Traditional food products, textiles, medicinal preparations, agricultural varieties, handicrafts and other customary associated items could be linked with traditional practices, local ecological knowledge, spiritual beliefs and collective identity[3]. The value of their contribution can be determined by the ongoing involvement of communities retaining the necessary skills and knowledge. These can lead to conflicts over the control of their names, representations and economic benefits, or to opportunities of local development.

One of the main challenges is the contrast between safeguarding the product's geographical reputation and the community's overall cultural values. Under the general provisions of GI law, the link between a product and its geographical origin and the circumstances under which a protected indication can be used is governed by the law. Indigenous collective rights can extend far beyond the traditional boundaries of intellectual property, and include rights to control the representation of traditional knowledge (TK), safeguard culturally important symbols and be involved in decision making processes regarding the management of customary resources and the allocation of benefits from the commercial use of TK.

They are especially significant in India and New Zealand. India's Geographical Indications of Goods (Registration and Protection) Act 1999 is a statutory GI system in India. New Zealand has its own GI registration regime and Māori cultural interests are also protected under the trade mark regime, Treaty principles, court decisions and institutional mechanisms. The two jurisdictions offer a useful point of comparison as they

[3] E Polymenopoulou, 'Indigenous Cultural Heritage and Artistic Expressions: "Localizing" Intellectual Property Rights and UNESCO Claims' (2017) 6 Canadian Journal of Human Rights 87.

both engage in geographical reputation and Indigenous cultural interests in varying ways, using different legal mechanisms.

B. Statement of the Research Problem

The key issue is whether established GI regimes are sufficiently robust to safeguard Indigenous communities as collective "custodians" of culturally important products and knowledge. Registration does not necessarily create the rightful customary authority, a mechanism for participation of affected communities in governance, nor a mechanism for distribution of economic benefit.

The issue becomes more complex if a geographical name is utilized in a product other than the one for which it was protected, if traditional knowledge is integral to the value of a product, or if commercial demand for a product leads to the standardisation of traditional knowledge. A legal system can effectively defend a product's market reputation and can offer inadequate protection for the cultural integrity of the community.

In turn, the paper examines the connection between GI registration and broader collective rights, specifically the legal recognition, participation, cultural protection, benefit-sharing and enforcement in India and New Zealand.

C. Research Objectives

The aim of this paper is to:

1. To examine the legal framework of geographical indications in India and New Zealand.
2. To analyse the relationship between GIs, Indigenous collective rights and cultural identity.
3. To assess whether each framework provides effective mechanisms for community participation and equitable benefit-sharing beyond registration.
4. To evaluate the lessons that New Zealand's protection of Māori cultural interests offers for India's GI framework.

5. To recommend legal and institutional reforms that better align GI protection with the interests of Indigenous communities.

D. Research Questions

1. First, how well is GI law safeguarding collective cultural and economic rights of Indigenous peoples?
2. Second, are there any substantive opportunities for participation and equitable benefit sharing in both the Indian and New Zealand frameworks, other than product registration?
3. Third, what are the lessons for India from New Zealand's policy on Māori cultural interests, without ignoring the differences between the two jurisdictions?

E. Research Methodology and Scope

The paper will use doctrinal and comparative legal research methods. Primary materials consist of legislation, judicial decisions, international legal instruments / institutional reports. Secondary materials are scholarly publications such as books and journal articles or legal commentary on GIs, Indigenous rights and traditional knowledge.

The analysis is done thematically and comparatively. India and New Zealand are discussed in separate chapters and the approaches of both countries are compared on a basis of common indicators, namely, legal recognition, community involvement, cultural integrity, economic benefits, and enforcement. This study does not attempt to quantify actual community income and the real effect of individual registrations by empirical fieldwork. Rather, it analyzes the legal framework, and suggests where there is a need for additional data to assess the effectiveness of the legal framework in practice.

The law is stated as on 1 November 2026, and citations follow OSCOLA (4th edition). New Zealand is selected as the comparator because it combines a statutory GI registration system with Treaty-based recognition of Indigenous rights and dedicated Māori advisory mechanisms in its intellectual property statutes, whereas India relies on a statutory GI

regime alongside separate biodiversity and forest-rights legislation. *Tea Board* and *Divya Pharmacy* are selected as the leading reported Indian decisions on, respectively, the scope of GI rights and statutory benefit-sharing; the New Zealand sources comprise the governing statutes, the leading Treaty decisions of the Court of Appeal and the Wai 262 report. Finally, the term 'Indigenous' is contested in India, where the Constitution recognises Scheduled Tribes rather than Indigenous peoples; the paper uses it to denote tribal and forest-dwelling communities holding customary knowledge, without resolving that debate.

F. Literature Review and Research Gap

1. Scholarship on Geographical Indications and Intellectual Property

Scholarship on geographical indications has focused on their contribution to the protection of the product's reputation, the prevention of misleading commercial practices and the protection of local producers. The literature generally refers to GIs as collective intellectual property rights because it is associated with a geographical territory, and can be exploited by several different eligible producers who meet the requirements. GIs are different from conventional trade marks, which typically indicate the trade mark owner[4].

One of the big issues that emerges in the context of GI is the connection between legal protection and economic development. Registration can help to raise consumer confidence, identify genuine products from fakes and give producers a chance to add value. However, this does not lead to increased income for all producers. Results are subject to market demand, distribution, production costs, collective organisation and enforcement of the protected indication. All of these factors highlight that the formal IP regime of GI registration is not the only form of institutional framework that can be used to regulate access to economic opportunities.

[4] A Jose and P Manchikanti, 'Protection of Geographical Indication: The Interface with Traditional Knowledge' in A Jose and P Manchikanti, *Geographical Indication Protection in India: The Evolving Paradigm* (Springer 2022) 141.

A parallel literature of research grapples with whether GI systems can fit in products that are tied to customary knowledge and practices of a community. Product specifications can contribute to quality and authenticity but they can also be used to favour certain production processes or the most powerful producers. Formal collective protection can mask inequalities among those involved in governance and preparation of specifications if they exclude smaller producers, women, holders of customary knowledge or Indigenous representatives.[5]

2. Indigenous Collective Rights and Cultural Identity

Studies in Indigenous rights have focused on the importance of collective responsibility for TK and cultural expressions. Families, communities, customs and relationships with ancestral territories can be the vehicles of transmission of knowledge. The utilisation of this can hence create issues of authority, attribution, consent and responsibility, which are not always sufficiently answered by traditional intellectual property law[6].

There is also a difference between economic exploitation and cultural harm, as noted in the literature. The commercial use of a traditional design or product name can result in income but can also cause confusion to the meaning of the designs or to the identity of the community or divulge knowledge that the community deems to be limited. The legal question is therefore not limited to whether there has been an infringement of an intellectual property right. Also, it involves who can be responsible for determining if a specific use is appropriate.

The relevance of this scholarship to GI protection is that a GI can be linked with a community's cultural identity without giving the community full legal rights over all the cultural expressions of the product. A GI can safeguard a geographical name in relation

[5] See R Chawla, 'A Taste of Tradition: Exploring Geographical Indications and Indigenous Agricultural Knowledge in Canada' (LLM thesis, University of Windsor 2023).
[6] A Madaan, 'From Roots to Riches: Geographical Indications Transforming Lives and Livelihoods in India' in *SDG Frameworks for Poverty Alleviation* (IGI Global 2026) 241.

to certain goods and traditional designs, ceremonial meanings and associated knowledge to other legal regimes.

3. Literature on India's GI Framework

The Indian GI programme has been considered to safeguard agricultural products, handicrafts, manufactured products and products with distinctive regional reputation. The Act on Geographical Indications of Goods (Registration and Protection), 1999, establishes the procedure for the registration, right holders and remedies for infringement. It acknowledges that a commercial enterprise is not the sole source of geographical reputation.

But there is some doubt about the connection between registration and the good of the community in the minds of critical people. Registered producer organisations or registered owner organisations does not necessarily indicate that all producers as a group have equal influence on decisions[7]. Nor does the recognition of an indication guarantee that the value of the product will be added to the value in the eyes of the households whose practices support the product's reputation and to the knowledge holders.

Tea Board, India v ITC Limited is important in terms of the scope of the protection of a geographical indication and the relationship between a protected product and the use of a geographical expression in relation to services. *Divya Pharmacy v Union of India*, by contrast, concerns access and benefit-sharing under the biodiversity legislation and is not a GI registration case. Together, these authorities exemplify the need for a clear distinction between product-origin protection and broader issues of commercial utilization and traditional knowledge and equitable benefits.

4. Literature on Māori Cultural Rights and New Zealand

[7] RJ Coombe and DJ Jefferson, 'Biocultural Food Heritage and Geographical Indications: Emerging Intersections between Intellectual Property and Biodiversity Protection' in *Routledge Handbook of Food and Cultural Heritage* (Routledge 2025) 269.

Research on Māori cultural interests often explores the connection between Māori customary rights and interests, their knowledge systems and the legal frameworks of New Zealand. The concepts of mātauranga Māori, taonga and kaitiakitanga can help to explain the nature of Māori cultural interests and why they are not just in the form of commercially valuable goods.

The Treaty of Waitangi has also played a key role in legal and institutional issues relating to Māori interests.[8] In *New Zealand Māori Council v Attorney-General*, the Court of Appeal, applying section 9 of the State-Owned Enterprises Act 1986, held that the principles of the Treaty required the Crown to act reasonably and in good faith towards its Treaty partner.[9] In *Attorney-General v Ngāti Apa*, the Court of Appeal held that the Māori Land Court had jurisdiction to investigate Māori customary claims to the foreshore and seabed, which the common law had not vested in the Crown.[10] Parliament responded with the Foreshore and Seabed Act 2004, later repealed and replaced by the Marine and Coastal Area (Takutai Moana) Act 2011.[11] Neither case concerned GI registration; both, however, illuminate the wider legal landscape within which Māori interests are acknowledged.

The Waitangi Tribunal's Wai 262 report, Ko Aotearoa Tēnei, is significant because it explores Māori interests in flora and fauna, cultural heritage, traditional knowledge and intellectual property.[12] Its recommendations point to the need to consider a wider range of IP categories in order to accommodate Indigenous cultural interests.

5. Critical Research Gap

[8] See generally M Mutu, 'The Treaty Claims Settlement Process in New Zealand and its Impact on Māori' (2019) 8(10) Land 152; SJ Anaya, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples: The Situation of Māori People in New Zealand' (2015) 32 Arizona Journal of International and Comparative Law 1.

[9] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA); State-Owned Enterprises Act 1986 (NZ), s 9.

[10] *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 (CA).

[11] Foreshore and Seabed Act 2004 (NZ); Marine and Coastal Area (Takutai Moana) Act 2011 (NZ), as amended.

[12] Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011).

The current legal and academic literature shows a discrepancy between the formal protection of geographical reputation and the overall protection of Indigenous collective interests. While GI law can secure the link between a product and its geographical origin, other legal and institutional mechanisms are needed to address issues of cultural authority, participation, consent and profit sharing.

This paper fills this void by outlining the statutory approach to the protection of GIs in India, and comparing this with the approach of the New Zealand GIs legislation, the nature and scope of the trade mark rights to protect GIs, the jurisprudence arising under the treaties, and the nature and scope of the cultural rights of the Māori. The comparison is not intended to mean that both jurisdictions have addressed all problems. Rather, it assesses how well each legal system recognizes interests other than commercial reputation and how each law could be improved to enhance community involvement and equitable results.

IV. CONCEPTUAL AND INTERNATIONAL LEGAL FRAMEWORK

A. Concept and Legal Nature of Geographical Indications

A geographical indication is a unique sign used to designate a product as coming from a specific geographical region, territory or locality, in which a specific quality, reputation or other characteristic is essentially attributable to its geographical origin. The GI is different than a traditional trade mark, which serves mainly to identify a commercial source, because it conveys a relationship between a product and a place. It can have a reputation due to natural factors, human skill or a mixture of these[13].

GIs have been designated by law for a number of reasons. It can help consumers identify genuine products from those that look or sound like the name or reputation. It allows producers in a geographical area to safeguard its collective reputation if they are eligible.

[13] TRIPS (n 2) art 22(1); GI Act (n 2) s 2(1)(e).

It can also help to sustain special skills and locally developed techniques. Effective governance and good enforcement of these benefits are required.

A GI is not the exclusive owner of all the cultural attributes of a product. It is protected under the relevant laws, registration and product specifications. Thus, a community can have legitimate cultural interests in a product but not in all legal representations or traditional designs or items of knowledge that it may have.

B. Indigenous Collective Rights and Cultural Identity

Collective practices, customary institutions and intergenerational transmission of knowledge are common ways in which indigenous communities preserve their knowledge. Relations between different people may take an integrated form and be developed and preserved within a process where one person's contribution cannot easily be separated from another's for agricultural techniques, knowledge of medicine, preparation of food, weaving, management of natural resources and artistic traditions.

The collective rights here are about interests of communities exercised and maintained in the context of their customary institutions and protection in law[14]. They can relate to involvement in decisions impacting on cultural heritage, the protection of traditional knowledge, recognition of customary authority and protection from inappropriate commercial use. The exact nature of these interests is different in each jurisdiction and cannot be assumed to be the same in all Indigenous communities.

Cultural identity is also of a non-economic nature. A product can represent collective memory, relationships with ancestral territories, social responsibilities and customary values. These traditions could be maintained through commercialisation, as it would provide income and ensure the continuation of production by the younger generations. On the other hand, commercial demand can force outsiders to use cultural symbols

[14] See A Erueti, 'Māori Rights to Freshwater: The Three Conceptual Models of Indigenous Rights' (2016) 24 Waikato Law Review 58.

without sufficient consultation, modify production practices so as to dilute cultural significance or capture the lion's share of the financial benefits.

C. International Legal Framework

1. TRIPS Agreement

The TRIPS Agreement is the principal multilateral instrument for the protection of GIs. Article 22(2) requires Members to provide the legal means for interested parties to prevent any designation or presentation of a good that misleads the public as to its geographical origin, and any use that constitutes unfair competition within the meaning of Article 10bis of the Paris Convention. Article 23 provides additional protection for GIs for wines and spirits, and Article 24 sets out negotiation commitments and exceptions.[15] The Agreement focuses on protecting IP rights in trade while acknowledging the importance of geographical reputation. It does not create a general framework of Indigenous collective ownership, nor does it require GI schemes to ensure equitable distribution of benefits to those who hold cultural knowledge.

2. Paris Convention

The Paris Convention for the Protection of Industrial Property provides the international foundation for industrial property protection. Article 1(2) includes indications of source and appellations of origin within its subject matter, Article 10 addresses false indications of source, and Article 10bis requires effective protection against unfair competition.[16] The Convention thus underpins the history of protection against misleading geographical representations. However, it is not a comprehensive solution to the spectrum of Indigenous cultural-rights issues explored in this paper.

3. Convention on Biological Diversity and Nagoya Protocol

[15] TRIPS (n 2) arts 22(2), 23 and 24; Paris Convention for the Protection of Industrial Property (adopted 20 March 1883, as revised at Stockholm 14 July 1967) 828 UNTS 305 (Paris Convention), art 10bis.
[16] Paris Convention (n 15) arts 1(2), 10 and 10bis.

Article 8(j) of the Convention on Biological Diversity (CBD) requires each Party, subject to its national legislation, to 'respect, preserve and maintain' the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Parties must promote the wider application of such knowledge 'with the approval and involvement of the holders' and 'encourage' the equitable sharing of benefits arising from its utilisation.[17] The obligation is therefore qualified by national legislation, and its benefit-sharing element is hortatory rather than mandatory. Free, prior and informed consent finds firmer expression in Articles 19 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, discussed below.

The Nagoya Protocol gives the CBD's benefit-sharing objective firmer operational content. Article 7 requires each Party, in accordance with domestic law, to take measures with the aim of ensuring that traditional knowledge associated with genetic resources is accessed with the prior and informed consent, or approval and involvement, of the indigenous and local communities concerned and on mutually agreed terms.[18] Care must be taken in determining its relevance: not all traditional products, geographical names and cultural expressions involve access to a genetic resource or fall within the Protocol.[19] Nevertheless, these instruments reflect an important principle: where biological resources and associated traditional knowledge are used commercially, the legal issue concerns not only the authenticity of a product but also how access and benefit-sharing are regulated.

The two jurisdictions stand in different positions under these instruments. India signed the Nagoya Protocol on 11 May 2011, ratified it on 9 October 2012 and implements it

[17] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD), art 8(j).
[18] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014) (Nagoya Protocol), arts 5(5), 6(2) and 7.
[19] C Lawson, F Humphries and M Rourke, 'Genetic Resources as Culture and Heritage: Repatriation and Benefit Sharing' (2023) 24(1) Melbourne Journal of International Law 27.

through the Biological Diversity Act, 2002; the Protocol entered into force on 12 October 2014.[20] New Zealand has neither signed nor ratified the Protocol, and its Government states that Cabinet has yet to decide whether to become a Party.[21] The newest relevant instrument is the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted on 24 May 2024, which requires patent applicants to disclose the country of origin of genetic resources or the Indigenous peoples or local community providing associated traditional knowledge. It enters into force three months after fifteen ratifications or accessions and had not entered into force on the date at which the law is stated.[22]

4. United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) offers a valuable normative resource. Article 11 deals with Indigenous peoples' right to practise and revitalise culture and customs. Article 19 is about consultation and collaboration in good faith to ensure that they are given their free, prior and informed consent on the adoption of any laws or regulations that could impact on their lives. Article 31 deals with the maintenance, control, protection and development of TK and cultural expression and article 32 with development priorities and projects affecting indigenous lands and resources.[23]

The Declaration does not have the same legal force as a treaty, and its legal consequences vary according to the domestic and international circumstances. It is nonetheless a useful

[20] Lok Sabha, Statement of the Minister regarding Ratification of the Nagoya Protocol <https://eparlib.nic.in/bitstream/123456789/749159/1/433.pdf> accessed 8 November 2026; Biological Diversity Act 2002 (India).
[21] Ministry of Foreign Affairs and Trade (NZ), 'Genetic Resources and Living Modified Organisms' <https://www.mfat.govt.nz/kr/environment/biodiversity-and-species-conservation/genetic-resources-and-living-modified-organisms> accessed 8 November 2026.
[22] WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (adopted 24 May 2024, not yet in force), arts 3 and 17; WIPO, 'WIPO GRATK Treaty Notification No 4: Ratification by the Republic of Peru' (8 July 2026).
[23] United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007) UN Doc A/RES/61/295, arts 11, 19, 31 and 32.

measure to determine if the governance of the GI adequately acknowledges and respects Indigenous cultural interests and participation.

D. The Limits of Conventional GI Protection

The international framework shows that GI recognition and Indigenous cultural protection overlap but remain legally separate. A registered indication may exclude unauthorised uses, but it does not give a community broad rights over TK and cultural representations.[24]

Likewise, a rising market price of a protected product does not guarantee its producers or its knowledge holders a just share of the benefits. The distribution of income is linked to the relations of producers with intermediaries, retailers, exporters and institutions for managing the indication[25].

The analysis of GI protection should thus look at the associated customary, biodiversity, trade mark, cultural-heritage and human-rights mechanisms. This holistic approach will serve as a starting point in analysing India and New Zealand.

V. INDIA'S LEGAL FRAMEWORK AND CASE LAWS

A. Development of GI Protection in India

The Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted in India to establish a legal regime to register and protect geographical indications of goods. The Act is an integral part of the Indian IP system and is in accordance with the commitments made by India in TRIPS agreement.

Indian system is important not only because of the geographical reputation of the products but also because of a variety of products such as agricultural products, textiles,

[24] G Dutfield and U Suthersanen, 'Traditional Knowledge and Genetic Resources: Observing Legal Protection through the Lens of Historical Geography and Human Rights' (2019) 58 Washburn Law Journal 399.
[25] C Meyer and K Naicker, 'Collective Intellectual Property of Indigenous Peoples and Local Communities: Exploring Power Asymmetries in the Rooibos Geographical Indication and Industry-Wide Benefit-Sharing Agreement' (2023) 52(9) Research Policy 104851.

handicrafts and manufactured articles. In many cases the product's identity is based on local knowledge and practices which is cumulative from many producers over the years[26].

The Act establishes procedures for the registration of GIs and authorised users, opposition, infringement and remedies against unauthorised use. Section 11 governs applications and their examination (section 11(5)), and sections 13 and 14 govern advertisement and opposition; sections 17 and 18 deal with registration as an authorised user and the duration and renewal of registration; and sections 21 and 22 deal with the rights conferred by registration and with infringement.[27] The Act must be read with the Geographical Indications of Goods (Registration and Protection) Rules, 2002, as amended.

B. Registration, Collective Rights and Authorised Users

The framework of applications for registration of geographical indications is contained in section 11 of the Act. An association of persons or producers, an organisation or an authority established by or under law representing the interests of the producers concerned may apply[28]. This system acknowledges that GI protection does not have to be founded on an individual inventor or business entity.

The Act also enables users to register as authorised users. This recognition is essential as it helps to identify the producers who are allowed to use the registered indication within the legal framework. Ideally, a well-functioning GI system can enhance producers' bargaining power, facilitate product differentiation and help maintain production standards.

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[26] B Ubertazzi, 'Intellectual Property Rights and Intangible Cultural Heritage' in B Ubertazzi, *Intangible Cultural Heritage, Sustainable Development and Intellectual Property: International and European Perspectives* (Springer 2022) 119.
[27] GI Act (n 2) ss 11, 13, 14, 17, 18, 21 and 22; Geographical Indications of Goods (Registration and Protection) Rules 2002 (India).
[28] GI Act (n 2) s 11(1).

However, by collective registration one does not automatically ensure equal participation in the group in question. An association can represent the producers in a geographical area but sections of the community may be underrepresented. Smaller producers may have trouble with documentations and production standards and/or registration and enforcement. Interests of indigenous knowledge holders may also not be expressed in the product specifications.

C. Cultural Identity and Community Participation

India's traditional production practices have a huge potential for the support from its GI framework. Supplementations of recognition can help perpetuate continuity in local techniques, boost the promotion of regional products and offer a legal platform to fight against misleading uses. But protection of the name of a product does not go as far as protection of the cultural knowledge related to that product.

For instance, a traditional product can rely on ecological knowledge, local varieties of seeds, traditional harvesting methods or traditional skill passed on through generations. Registration can refer to the geographical origin of the product and specify its attributes, but it does not give any indication of how decisions about all cultural knowledge related to the product should be made.

The involvement of the community should thus be addressed at several points: product identification, development of the application, specification, governance and regulation of authorised use and enforcement of rights[29]. Active engagement also requires information that is accessible and decision-making that is transparent; there should be a mechanism for less influential producers to raise concerns.

There is another related issue about sharing the benefits. Registration for GI can be a source for added value, but does not guarantee that extra income will be available for all producers or knowledge holders. Elements of ownership of processing facilities, access

[29] M Shafi, 'Geographical Indications and Sustainable Development of Handicraft Communities in Developing Countries' (2022) 25(1) Journal of World Intellectual Property 122.

to credit, control over marketing, differences in bargaining power and intermediaries may all affect distribution. All claims of fair results by a given GI must be backed up by the community's real economic experience.

D. Case Law Analysis

1. Tea Board, India v. ITC Limited

Tea Board, India v ITC Limited is relevant to the scope of protection of GIs.[30] The dispute concerned the 'Darjeeling Lounge' that ITC had operated since January 2003 in its Kolkata hotel. The Tea Board, registered proprietor of the 'Darjeeling' GI for tea and of a certification mark under the Trade and Merchandise Marks Act, 1958, sought to restrain that use, claiming that it unfairly exploited the reputation of Darjeeling tea and infringed its registered rights. Its applications for interim injunctions failed at first instance and on appeal in 2011, and in 2016 the Supreme Court remitted the suit for expeditious trial.

The Calcutta High Court dismissed the suit on 4 February 2019 on three principal grounds. First, the claim was barred by the five-year limitation in section 26(4) of the GI Act, since the suit was instituted in 2010, long after the Tea Board knew of the use. Secondly, the rights conferred by section 22 protect goods only, and the Tea Board's certification mark covered tea and not hotel or refreshment services. Thirdly, the court found no passing off or unfair competition.[31] The litigation therefore shows that GI registration confers no automatic monopoly over a geographical name: the extent of protection depends on the statutory scope of the right, the goods for which it is registered and the nature of the challenged use.

The decision is important to the present paper in two ways. First, it highlights the difficulty of enforcing geographical reputation against a challenged use outside the category of goods for which the indication is registered. Second, it demonstrates that,

[30] *Tea Board, India v ITC Ltd* (CS No 250 of 2010, Calcutta HC, 4 February 2019), MANU/WB/0277/2019. The interim stage of the proceedings, in which an injunction was refused, is reported as *Tea Board, India v ITC Ltd* 2011 (48) PTC 169 (Cal); that report does not record the final decision.
[31] *Tea Board* (n 30); GI Act (n 2) ss 22 and 26(4); Trade and Merchandise Marks Act 1958 (India).

even for an established GI, the commercial use of products could be susceptible to careful legal consideration in order to ascertain the specific products for which a remedy exists.

2. Divya Pharmacy v. Union of India

The Uttarakhand High Court's decision in *Divya Pharmacy v Union of India*, delivered by Sudhanshu Dhulia J on 21 December 2018, offers a contrasting but complementary perspective.[32] The dispute concerned a demand by the Uttarakhand Biodiversity Board for fair and equitable benefit-sharing under the Biological Diversity Act, 2002. Reading the Act purposively and in the light of the Nagoya Protocol, the court held that Indian entities, and not only foreign ones, must share benefits with local and indigenous communities. It is not a GI registration dispute.

The decision is relevant because of the discussion on the relationship between commercial use of biological resources and the legal obligations for benefit-sharing. Traditional knowledge can have value in the development and marketing of a product, especially if it relates to knowledge around plants, their properties and their use that is held by local communities.

The case shows that there are other legal instruments besides intellectual property registration relevant to the commercial use of traditional resources. A GI may be protected through a separate question of access to biological resources and/or an applicable benefit-sharing obligation may be regulated by biodiversity law.

The distinction is important because it is the different interests that are addressed. The process of registration as a GI does not, of its own, mean compliance with biodiversity legislation or that the interests of knowledge holding communities have been engaged. On the other hand, the benefits sharing requirements under the law on biodiversity do not automatically guarantee the same level of protection as a registered GI.

[32] *Divya Pharmacy v Union of India* 2018 SCC OnLine Utt 1035 (Uttarakhand HC, WP (M/S) No 3437 of 2016, 21 December 2018); Biological Diversity Act 2002 (India), ss 2(g), 7 and 21.

The decision must now be read with the Biological Diversity (Amendment) Act, 2023, in force from 1 April 2024, and the Biological Diversity Rules, 2024, notified on 22 October 2024.[33] Indian entities now generally give prior intimation to the State Biodiversity Board, while codified traditional knowledge, cultivated medicinal plants and registered AYUSH practitioners are exempted; commentators note that benefit-sharing with local communities is now channelled through determinations of the National Biodiversity Authority. The amendment therefore narrows the field in which *Divya Pharmacy*'s purposive reasoning operates and arguably reduces direct community participation, which reinforces this paper's argument that statutory recognition does not of itself secure community control.

E. Indigenous Communities, Forest Rights and Benefit-Sharing Practice in India

The Constitution of India does not use the term 'Indigenous peoples'. It recognises Scheduled Tribes, specified by presidential order under Article 342, and although India voted for UNDRIP, it regards its entire population at independence, and their successors, as indigenous.[34] In this paper, Indian 'Indigenous communities' therefore denotes Scheduled Tribes and other forest-dwelling communities whose customary knowledge contributes to a product's identity.

The most direct statutory recognition of such knowledge lies in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, section 3(1)(k) of which recognises a 'community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity'.[35] In *Orissa Mining Corporation Ltd v Ministry of Environment and Forest*, the Supreme Court held that the Gram Sabha has a role in safeguarding the customary and religious rights of Scheduled Tribes and other

[33] Biological Diversity (Amendment) Act 2023 (India), in force 1 April 2024; Biological Diversity Rules 2024 (India), notified 22 October 2024; Biological Diversity (Access to Biological Resources and Knowledge Associated thereto and Fair and Equitable Sharing of Benefits) Regulations 2025 (India).
[34] Constitution of India, arts 342 and 366(25); UNGA Verbatim Record (13 September 2007) UN Doc A/61/PV.108 (explanation of vote by India).
[35] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (India), s 3(1)(k).

traditional forest dwellers under that Act, and directed the Gram Sabhas to decide whether bauxite mining in the Niyamgiri Hills would affect those rights.[36] The decision does not concern IP, but it offers a model of community decision-making that GI governance currently lacks.

The principal Indian benefit-sharing precedent for traditional knowledge is the Kani–TBGRI arrangement. Scientists at the Tropical Botanic Garden and Research Institute developed the herbal formulation Jeevani from knowledge shared by members of the Kani tribe of Kerala and in 1995 licensed it to the Arya Vaidya Pharmacy for a fee of ₹10 lakh and a royalty of 2 per cent of ex-factory sales, half of which was to reach the community through the Kerala Kani Samudaya Kshema Trust, formed in 1997.[37] The arrangement has since been criticised for crediting and consulting too narrow a section of the community, and the trust fell into neglect after the licence lapsed.[38] It shows both the possibility of community benefit-sharing and the importance of representative consultation.

Registry practice supplies a tribal GI example. 'Araku Valley Arabica Coffee', grown largely by tribal farmers in the Eastern Ghats of Andhra Pradesh and Odisha, was registered in 2019 on the application of the Coffee Board, a statutory body, and its registered authorised users include Coffee Board units and TRIFED, an agency of the Ministry of Tribal Affairs; an earlier application by the Girijan Cooperative Corporation for 'GCC Araku Valley Coffee' was refused.[39] The registration thus rests with public

[36] *Orissa Mining Corporation Ltd v Ministry of Environment and Forest* (2013) 6 SCC 476.
[37] 'Benefit Sharing Model Experimented by Tropical Botanic Garden and Research Institute (TBGRI)' (Convention on Biological Diversity) <https://www.cbd.int/financial/bensharing/india-tbgri.pdf> accessed 8 November 2026; TP Ijinu and others, 'Access and Benefit Sharing in Indigenous Knowledge Stewardship and Sustainable Development' in *Biodiversity Conservation through Access and Benefit Sharing (ABS): Himalayas and Indian Sub-Continent* (Springer 2023) 163.
[38] A Elizabeth, 'Remembering Kuttimathan Kani, the Forest Elder who Gave a Wonder Herb to the World but Died in Poverty' *Down To Earth* (New Delhi, 26 August 2025).
[39] Geographical Indications Registry, 'Araku Valley Arabica Coffee' (Application No 607, Certificate No 334, 1 March 2019) and 'GCC Araku Valley Coffee' (Application No 547, refused) <https://search.ipindia.gov.in/GIRPublicSearch/> accessed 8 November 2026.

bodies acting for tribal growers rather than with a body constituted by the growers themselves, illustrating the representation gap identified in section 4.2.

VI. NEW ZEALAND'S LEGAL FRAMEWORK AND MĀORI RIGHTS

A. Māori Indigenous Communities and Cultural Identity

The approach to geographical indications (GIs) in New Zealand needs to be considered within the wider framework of rights of Māori, cultural identity and traditional knowledge and customary relationships with land and natural resources. Māori communities have unique knowledge systems and cultural practices that are the result of over many generations of engagement with the natural world, with ancestral lands and with community institutions[40]. The relationships add to the identity and reputation of a number of traditional products, crafts and cultural expressions. Therefore, to ensure protection of Māori interests, a way of thinking should be developed beyond the traditional paradigm of commercial ownership and consider the collective, cultural and intergenerational nature of Māori heritage.

A GI protects a product's geographical origin where its quality, reputation or other characteristic is essentially attributable to that origin. The cultural value of a product can be more than just its geographical name or commercial reputation, however. A traditional product can be traditional knowledge, traditional concepts of responsibility, community identity and traditional production methods. Once these products are brought to commercial markets, issues about who can authorize their use, how the cultural knowledge should be portrayed, and whether the benefits accruing from the commercialization of these products can be equitably shared emerge. In the Māori world, these issues are of particular significance as cultural knowledge and resources can be

[40] CJ Magallanes, 'Māori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment' (2015) 21 Widener Law Review 273; D Menzies and J Ruru, 'Indigenous Peoples' Right to Landscape in Aotearoa New Zealand' in S Egoz, J Makhzoumi and G Pungetti (eds), *The Right to Landscape: Contesting Landscape and Human Rights* (Routledge 2016) 169.

appreciated and understood through customary ties, and not only individual property rights.

B. Mātauranga Māori: Traditional Knowledge and Cultural Continuity

The term 'Mātauranga Māori' is used to describe Māori knowledge systems broadly, which include knowledge, values, practices and understandings created and passed on from generation to generation. It can be knowledge of plants, animals, agriculture, ecological relationships, traditional medicine, craftsmanship[41], artistic expression and the natural environment. This knowledge is not merely a compilation of technical information. It can also represent the values, experiences, spiritual beliefs and personal obligations to the community and environment.

Part of the importance of mātauranga Māori is that it is a collective and intergenerational thing. Specific families, communities, customary authorities or recognised knowledge holders are able to maintain knowledge. Transmission may occur through teaching and demonstration, and by listening, watching, and participating in cultural events[42]. The commercial use of traditional knowledge may thus give rise to questions regarding authority, attribution, confidentiality and cultural appropriation.

Conventional IP law may not always be sufficient to address these concerns.[43] IP rights are typically governed by specific categories, conditions for eligibility and duration of protection. Traditional knowledge, on the other hand, may have been a product of collective effort, over an extended period, and may not be attributed to a specific inventor. It can also continue to be significant in a cultural context for a longer period than traditional intellectual property rights.

If a product's distinctive characteristics or reputation depend on traditional knowledge, mātauranga Māori is relevant to the context of geographical indications. Preserving the

[41] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12).
[42] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12).
[43] See A Bhaduri, 'Communities as Inventors: Rethinking Positive Protection of Traditional Knowledge through Patents' (2023) 26(3) Journal of World Intellectual Property 414.

geographical name can contribute to the market identity of the product, but does not necessarily dictate which members of the community can use the associated knowledge or how they should be involved in commercial decisions. To protect a product, the product's relationship to the knowledge systems that enable it must be taken care of.

C. Taonga: Treasured Cultural Resources

The notion of taonga is important in the understanding of Māori cultural identity. In general, it means anything that is treasured or valued, ranging from material to immaterial cultural interests. It cannot be limited to objects with a known commercial value and has a meaning that varies according to the context. Taonga can be cultural knowledge, language, cultural expression, important natural resources etc. of Māori heritage[44].

The significance of taonga is related to collective identity and historical continuity and cultural responsibilities. Culturally significant resource may be valued due to connection to ancestors, community traditions or customary practices. Its importance can thus be considerable despite the fact that it may result in little or no direct economic benefit.

The understanding is relevant for geographical indications. A product can have a reputation as a result of the traditional knowledge, customs or associations of a particular Māori community with a particular territory. When commercial entities use the name and/or cultural expressions of the product without giving the right consideration to these relationships, the damage that can be caused could not only be economic. It can include representations or inaccurate cultural uses and/or dilutes community control over their heritage.

The importance of taonga, then, points to the fact that geographical indications cannot be seen as the only means to market differentiation. While GI protection is useful in maintaining the reputation of the product, not all the cultural elements related to the

[44] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12); K Ruckstuhl and others, 'Safeguarding Indigenous Biocultural Resources in a Global Context: A Case Study of Taramea' (2023) 19(4) AlterNative: An International Journal of Indigenous Peoples 771.

product are protected. Other legal and institutional protections might be required for the recognition of broader Māori interests.

D. Kaitiakitanga: Guardianship and Responsibility

Kaitiakitanga is a general term for guardianship, stewardship and responsibilities of valued resources and the environment. It demonstrates awareness of relationships with the natural environment and responsibilities for caring, preserving and passing on. For Māori cultural heritage, this suggests a need to use traditional knowledge and resources with an understanding of the responsibility.

Kaitiakitanga is especially relevant in situations where natural resources, local ecosystems or traditional knowledge and understanding of sustainable production methods are involved in traditional products[45]. A potential conflict with commercial demand may arise both on the side of a community maintaining these practices, and on the side of commercial demand for greater production or changes to customary practices or exploitation of resources beyond sustainable levels. Commercial success can thus put pressure on the balance between short-term economic opportunities and long-term cultural and environmental obligations.

As a GI, guardianship presents a challenge to ensuring that product specifications and governance structures will help traditional methods continue without the cultural heritage becoming commercialised. It also highlights the involvement of communities in decision-making about the resources and knowledge of the products.

However, kaitiakitanga should not be considered a single, blanket legal principle to determine ownership or consent in all circumstances. Its meaning and legal consequences

[45] G Harmsworth, S Awatere and M Robb, 'Indigenous Māori Values and Perspectives to Inform Freshwater Management in Aotearoa-New Zealand' (2016) 21(4) Ecology and Society; R Joseph and others, *The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand: Possible Ways Forward* (Te Mata Hautū Taketake, University of Waikato 2018).

vary with context and with the legal regime concerned.[46] The significance of this to the present research is that it will promote a wider view of protection, not just commercial rights, but also responsibility to maintain cultural and environmental relationships as well.

E. Māori Cultural Identity and Geographical Indications

Mātauranga Māori, taonga, and kaitiakitanga are all concepts that reflect a relationship between Māori identity and knowledge, resources, customary relationships and intergenerational responsibilities[47]. These ideas are valuable in understanding the problems with existing intellectual property rights in the case of a product's reputation relying on cultural practices and collective knowledge.

New Zealand's geographical indications framework is designed to protect the geographical reputation and the Trade Marks Act 2002 includes provisions relevant to Māori cultural interests, notably section 17(1)(c) and the Māori Advisory Committee under sections 177 to 180 (discussed in section 5.3). The Treaty context and the work of the Waitangi Tribunal in their report Wai 262 – Ko Aotearoa Tēnei are also important for understanding Māori interests in TK and cultural heritage (CH). These mechanisms have different legal purposes, however, and should not be taken to provide protection to all Māori cultural interests.

The main challenge is to make sure that commercial recognition is not separated from the communities that contribute to the identity of a product through their knowledge and practices. Community engagement, the role of customary authority, the prevention of inappropriate cultural use and distribution of economic benefits are some of the considerations that should be taken into account in a culturally sensitive approach. It

[46] See M Pirini and A High, 'Dignity and Mana in the "Third Law" of Aotearoa New Zealand' (2021) 29 New Zealand Universities Law Review 623.
[47] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12).

must also acknowledge that the interests of Māori may vary, based on their own tradition, resources and institutional structures[48].

Finally, Māori cultural identity sets the bar to gauge the effectiveness of New Zealand's geographical indications regime. Mātauranga Māori affirms the significance of traditional knowledge and its passing from one generation to the next, taonga represents the cultural value of resources outside of commerce and kaitiakitanga is about guardianship and responsibility. Taken together, these three concepts show that meaningful protection goes beyond the registration of a geographical name. It must also take into account cultural integrity, community involvement and the ongoing capacity of Māori communities to sustain and pass on their culture.

F. The Geographical Indications Registration Act 2006

New Zealand's GI statute began as the Geographical Indications (Wine and Spirits) Registration Act 2006. The European Union Free Trade Agreement Legislation Amendment Act 2024 renamed it the Geographical Indications Registration Act 2006 with effect from 1 May 2024.[49] The amendments implement the New Zealand–European Union Free Trade Agreement: New Zealand now protects 1,975 EU GIs, mostly for foods and beverages, as a separate class of 'EU FTA geographical indications', supported by new enforcement measures.[50] Registration of other GIs for goods other than wines and spirits remains unavailable.

The Act contains one Māori-specific safeguard. Section 13A prohibits registration of a New Zealand or foreign GI whose use or registration would, in the Registrar's opinion, be likely to offend a significant section of the community, including Māori.[51] Section 39A,

[48] CJ Magallanes, 'Improving the Global Environmental Rule of Law by Upholding Indigenous Rights: Examples from Aotearoa New Zealand' (2018) 7(1) Global Journal of Comparative Law 61.
[49] Geographical Indications Registration Act 2006 (NZ) (NZ GI Act), s 1, as amended by the European Union Free Trade Agreement Legislation Amendment Act 2024 (NZ), s 21.
[50] Intellectual Property Office of New Zealand, 'European Union Geographical Indications and Changes to Legislation' (1 May 2024) <https://www.iponz.govt.nz/get-ip/geographical-indications/eu-geographical-indications/> accessed 8 November 2026.
[51] NZ GI Act (n 49) s 13A.

which formerly gave a role to the advisory committee appointed under the Trade Marks Act 2002, was repealed with effect from 1 May 2024.[52] The safeguard is therefore an offence-based ground of refusal. It allows the Registrar to reject a culturally offensive indication, but it confers on Māori neither control over indications connected with their taonga nor any share in the benefits of registration.

G. Statutory Machinery Protecting Māori Interests in Intellectual Property

The Trade Marks Act 2002 provides the most developed machinery. Section 17(1)(c) prohibits registration of a mark whose use or registration would be likely to offend a significant section of the community, including Māori. Sections 177 to 180 establish a Māori Advisory Committee to advise the Commissioner whether the proposed use or registration of a mark that is, or appears to be, derivative of a Māori sign, including text and imagery, is or is likely to be offensive to Māori.[53] The committee's role is advisory, and the decision remains the Commissioner's.

The Patents Act 2013 extends similar machinery to patents. Section 225 requires the Commissioner to appoint a Māori advisory committee, which under section 226 advises, on request, whether a claimed invention is derived from Māori traditional knowledge or from indigenous plants or animals and, if so, whether its commercial exploitation is likely to be contrary to Māori values; under section 227 that advice does not bind the Commissioner.[54] The Plant Variety Rights Act 2022, which largely commenced on 24 January 2023, goes further. It establishes a Māori Plant Varieties Committee (section 57) that assesses the effect of a grant on kaitiaki relationships with taonga species and may decline an application or impose conditions, and it requires breeders to disclose work with indigenous species or species of significance to Māori.[55]

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[52] NZ GI Act (n 49) s 39A, repealed on 1 May 2024 by the European Union Free Trade Agreement Legislation Amendment Act 2024 (NZ), s 65.
[53] Trade Marks Act 2002 (NZ), ss 17(1)(c) and 177–180.
[54] Patents Act 2013 (NZ), ss 3(d) and 225–227.
[55] Plant Variety Rights Act 2022 (NZ), ss 3(b), 57, 58 and 61–67; Plant Variety Rights Act 2022 Commencement Order 2022 (SL 2022/345).

H. Wai 262 and the Crown Response

The Waitangi Tribunal released Ko Aotearoa Tēnei, its report on the Wai 262 claim, in July 2011. In the IP field, it recommended a stronger Māori advisory role in the trade mark and patent systems, disclosure of Māori traditional knowledge and taonga species in patent and plant variety applications, and a register of kaitiaki interests in taonga works and mātauranga Māori administered by a new commission.[56] The Crown's first formal response came in August 2019 with Te Pae Tawhiti, which proposed a whole-of-government approach under a Ministerial Oversight Group and three ministerial groups covering taonga works, taonga species and the international protection of taonga.[57]

Implementation remains partial. The Plant Variety Rights Act 2022 gives effect to the Tribunal's plant variety recommendations, and the Patents Act 2013 created an advisory committee, although it acts only on request and the Act attaches no sanction to a failure to disclose Māori traditional knowledge. No register of kaitiaki interests or general regime for taonga works has been enacted, and the GI statute now contains no Māori advisory mechanism.[58] New Zealand's protection of Māori interests therefore rests on targeted statutory devices rather than a comprehensive regime, a point that shapes the comparison in Chapter 6.

VII. COMPARATIVE ANALYSIS: INDIA AND NEW ZEALAND

A. Comparative Legal Foundations

The interpretation of the link between a geographical indication and Indigenous collective rights is different in India and New Zealand. India has a dedicated statutory GI regime, in addition to those applicable laws. New Zealand's GI registration system

[56] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12).
[57] Te Puni Kōkiri, *Wai 262: Te Pae Tawhiti: The Role of the Crown and Māori in Making Decisions about Taonga and Mātauranga Māori: Preliminary Proposals for Crown Organisation* (August 2019).
[58] See M Caddie, *Taonga Governance and Ethical Innovation: Building a Kaitiaki-Led Access and Benefit-Sharing System for Taonga from Aotearoa New Zealand* (Kānuka Charitable Trust 2026).

interweaves with the general trade mark regime and Treaty-based principles and decision making about Māori cultural interests.

The Indian Geographical Indications of Goods (Registration and Protection) Act, 1999, explicitly establishes a system of identification, registration and protection for geographical indications relating to goods. It is mainly product-centred: the law will protect the relationship between goods and geographical origin, and provide rights and remedies associated with registration[59].

Geographical indications are also covered by the New Zealand Geographical Indications Registration Act 2006. The analysis of Māori interests, however, must take into consideration other processes such as the Trade Marks Act 2002 and Treaty related considerations. This Wai 262 inquiry also brings a policy and institutional dimension, as it considers how current legislation deals with Māori's relationship to TK and cultural resources.

1. The India–New Zealand Free Trade Agreement 2026

The two jurisdictions are now linked by a bilateral instrument. The India–New Zealand Free Trade Agreement was signed in New Delhi on 27 April 2026 and, following ratification by both Parties, entered into force on 20 October 2026.[60] Like New Zealand's other trade agreements, it contains a Treaty of Waitangi exception preserving New Zealand's ability to adopt measures it considers necessary to fulfil its obligations to Māori. Chapter 13, on Cultural, Trade, Traditional Knowledge and Economic Cooperation, commits the Parties to cooperate in preserving, protecting and promoting traditional knowledge, including AYUSH systems and Rongoā Māori, and refers to defensive mechanisms such as India's Traditional Knowledge Digital Library and New

[59] GI Act (n 2) ss 2(1)(e), 11 and 21.
[60] Free Trade Agreement between the Government of New Zealand and the Government of the Republic of India (signed 27 April 2026, entered into force 20 October 2026) (India–New Zealand FTA); Ministry of Foreign Affairs and Trade (NZ), 'New Zealand–India Free Trade Agreement' <https://www.mfat.govt.nz/indiafta> accessed 8 November 2026.

Zealand's Māori intellectual property committees.[61] On GIs, a side letter commits the Parties to review the Agreement's GI section within six months of entry into force, with a view to protecting GIs nominated by India on terms no less favourable than those accorded under the New Zealand–European Union Free Trade Agreement.[62]

The Agreement places Māori Treaty interests and India's traditional-knowledge institutions within one cooperative framework, but its traditional-knowledge commitments are cooperative rather than enforceable, and Ngā Toki Whakarururanga, a Tiriti-based Māori entity, has criticised the Crown's engagement with Māori in the negotiations.[63] It nevertheless offers an institutional channel for the exchange of practice recommended in section 7.2.[64]

2. Community Participation and Collective Interests

Collective interests in both jurisdictions bring up issues of who is representing these various producers and how the decisions over the product are taken.

India's GI registration system acknowledges producer associations and other representative organisations of suitable qualification. Authorised user registration may offer a legal option for certain producers to access the protected indication. However, it is not necessarily the case that all customary producers will have an equal voice in the decision-making structure of the governing organisation or that all knowledge holders will be involved in decision making on the product[65].

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[61] India–New Zealand FTA (n 60) ch 13, art 13.1; Ministry of Foreign Affairs and Trade (NZ), *National Interest Analysis: New Zealand–India Free Trade Agreement* (2026).

[62] India–New Zealand FTA (n 60), Side Letter on Geographical Indications, paras 1–2.

[63] Ngā Toki Whakarururanga, 'India NZ FTA a Lost Opportunity for Māori and Business, Deplorable Racism Condemned' (*Scoop*, 13 May 2026) <https://www.scoop.co.nz/stories/BU2605/S00232/india-nz-fta-a-lost-opportunity-for-maori-and-business-deplorable-racism-condemned.htm> accessed 8 November 2026.

[64] See R Kohsaka and Y Uchiyama, 'Geographical Indications and Regional Trade Agreements: Facilitating International Partnerships for Sustainable Development' in *Partnerships for the Goals* (Springer 2021) 477.

[65] GI Act (n 2) ss 11(1) and 17.

The context of New Zealand's Māori cultural-rights claims emphasises the role of the customary system and cultural significance. The participation of Māori communities can be discussed within a broader framework of treaty jurisprudence and the institutionalised engagement with Māori cultural interests. But these are not to be read as collective control of all GIs, or as mandating the same consent processes for all intellectual property decisions.

The central comparison is thus practical and not just technical. The issue is whether each system provides the affected communities with meaningful opportunities to influence decisions that impact on their cultural and economic interest. A formal structure to recognise a representative organisation can be helpful, and the effectiveness of this in practice will depend on how representation is established, how decisions are taken and how disagreements are dealt with.

3. Cultural Identity Beyond Market Value

A GI can help preserve culture by promoting the maintenance of traditional production systems and by differentiating between the true and false producers. However, a product specification is not always the best way to communicate cultural identity.

In India, a GI can be used to designate a product that is based on community-based production or traditional skills and has a reputation linked to its traditional ecological knowledge. Legal protection of its name does not automatically apply to all cultural expressions, rituals, designs or bodies of knowledge related to it.

The idea of cultural relationships, including the terms mātauranga Māori, taonga and kaitiakitanga, are important to New Zealand and can involve more than just commercial value of a product. The Wai 262 inquiry offers some context in which to consider the question of whether the existing frameworks of IP categories are sufficiently inclusive to acknowledge such relationships[66].

[66] Waitangi Tribunal, *Ko Aotearoa Tēnei* (n 12).

It is not as if there is no interest in Indigenous culture in India, nor is it as if all Māori interests in culture are automatically protected in New Zealand. Both sides have a problem with the categorization of complex community relationships. New Zealand's experience is especially relevant in relation to the need to take account of institutional responsibility and cultural authority, as well as commercial protection.

4. Equitable Benefit-Sharing

A key issue is that the benefit of a product may be created collaboratively, but the economic value of the product may be accrued inequitably.

While access to finance, processing capacity, distribution networks and bargaining power can influence the benefits of GI registration, the benefits can be a significant improvement in the market position of the producers. When the market is dominated by intermediaries, the community who provide the distinctive characteristics of the product may only reap a small part of the commercial value.

The legal framework of India should be assessed in the context of biodiversity law and other rules on access to biological resources and traditional knowledge. *Divya Pharmacy v Union of India* belongs to this wider field because it concerns benefit-sharing rather than GI registration, although the 2023 amendment has since narrowed the statutory framework on which it rested.[67]

In New Zealand, the GI framework and the general acceptance of Māori cultural interests also must be viewed independent of the income distribution. It does not follow from the application of the principles of the Treaty, and the cultural-rights processes, that every community has an equitable economic return from a registered geographical indication.

The comparison shows that legal protection and economic justice are next to but not the same. A strong framework needs to offer clear governance, roles of representative

[67] *Divya Pharmacy* (n 32); Biological Diversity (Amendment) Act 2023 (n 33).

organisations and how communities can evaluate the generation and distribution of commercial benefits.

5. Enforcement and Institutional Capacity

Enforcement is necessary to ensure that unauthorised use of protected names and consumer confidence are not undermined. However, resources, technical knowledge, and legal remedies are needed for enforcement.

In India, producer associations may encounter resource constraints, such as financial and administrative challenges, in filing infringement actions and/or conducting market surveillance. The questions raised by the Tea Board litigation are important ones that must be answered when determining the exact scope of GI rights in the specific commercial environment. There is no direct prohibition on all uses of the geographical indication where it is used with a different product or service[68].

In New Zealand enforcement of GIs is carried out under the statutory system and cultural issues might also be covered by trade mark protections or other systems of law. Having several options may help to combat the various types of misuse, but it can also complicate community legal issues.

Both systems would be strengthened by having easy-to-access guidance and information on what actions are available to producer groups and community organisations to defend legitimate rights. The key is that the policy on enforcement should differentiate between misuses of a registered GI and cultural appropriation, as the legal basis and remedy may differ.

6. Comparative Assessment

The principal similarities and differences can be summarised as follows.

[68] *Tea Board* (n 30); GI Act (n 2) ss 22 and 26(4).

Indicator	India	New Zealand
Primary GI statute	GI Act 1999, covering goods of all classes (ss 2(1)(e), 11, 16 to 18)	Geographical Indications Registration Act 2006, renamed and extended to EU FTA GIs from 1 May 2024; other registrations limited to wines and spirits
Legal recognition	Registration for producer bodies (s 11(1)); community right to TK under Forest Rights Act 2006, s 3(1)(k)	Treaty principles (*New Zealand Māori Council v Attorney-General*); Māori-offence grounds in GI Act s 13A and Trade Marks Act s 17(1)(c)
Community involvement	Applicant associations and authorised users (ss 11, 17); no consultation requirement; Gram Sabha role recognised in *Orissa Mining* (2013)	Māori Advisory Committees (Trade Marks Act ss 177 to 180; Patents Act ss 225 to 227); Māori Plant Varieties Committee (PVR Act 2022, s 57)
Cultural integrity	Refusal of scandalous matter or matter hurting religious susceptibilities (s 9); no ground addressing cultural misappropriation	Offence-based refusal grounds only; no control right over taonga

Indicator	India	New Zealand
Economic benefits	Not secured by registration; benefit-sharing under the Biological Diversity Act 2002 as amended in 2023 (*Divya Pharmacy*, 2018); Kani–TBGRI model	No benefit-sharing in the GI or trade mark statutes; not a Party to the Nagoya Protocol
Enforcement	Infringement confined to goods (s 22) and subject to a five-year limitation (s 26(4)) (*Tea Board*, 2019)	GI enforcement strengthened in 2024; cultural misuse addressed mainly through refusal rather than infringement
Principal challenge	Connecting registered rights with inclusive governance and fair economic returns	Translating recognition of Māori interests into effective protection across separate regimes

Testing the practical effectiveness of either framework would require evidence that doctrinal analysis cannot supply, such as data on authorised-user participation, the distribution of licence and fee income, and the frequency and outcome of Māori Advisory Committee referrals.

VIII. FINDINGS, RECOMMENDATIONS AND CONCLUSION

A. Major Findings

Geographical indications offer a useful legal tool to safeguard the reputation of products originating from a certain geographic area in the first place. They can assist in preventing misleading commercial practices, facilitate recognition by producers and maintain a unique production process. Aside from this, however, the protection of a geographical

name does not imply collective ownership of all cultural knowledge connected to this product.

Second, there are questions that go beyond traditional IP protection in the area of Indigenous collective rights. When the emphasis is predominantly on product registration and commercial reputation, cultural identity, customary authority, and intergenerational knowledge and community participation can be inadequately addressed.

Third, while the India GI regime provides a framework for registering, authorising use and enforcing the GI, an equitable economic outcome cannot be deduced from the process of registration. The analysis of the case of Tea Board, India v. ITC Limited shows the significance of drawing boundaries of what is protected by a GI and the case of Divya Pharmacy v. Union of India illustrates the relevance of parallel legal mechanisms for access and benefit-sharing, although the Biological Diversity (Amendment) Act, 2023 has since narrowed the framework on which that decision rested.

Fourth, New Zealand's legal system brings together the GI legislation, Māori-offence refusal grounds, Māori advisory committees under the trade mark, patent and plant variety statutes and a more extensive body of law and practice on Māori interests. The decisions in New Zealand Māori Council v. Attorney-General and Attorney-General v. Ngāti Apa and the Wai 262 inquiry are important precedents for consideration of customary interests and cultural protection. However, these are not to be seen as signifying protection of all Māori cultural interests.

Fifth, the comparison illustrates that effective protection needs to be coordinated between intellectual property law and other legal instruments. The goals of registration, cultural protection, community involvement and equitable benefit sharing are interrelated but not synonymous. A comprehensive approach should take their differences into account, and the appropriate legal mechanisms must function together.

B. Recommendations

The following proposals respond to the third research question. Each identifies the legal vehicle, the body responsible and the element borrowed from or adapted for New Zealand.

1. Consultation and Representation in GI Registration

First, the Central Government should amend the Geographical Indications of Goods (Registration and Protection) Rules, 2002, under its rule-making power in section 87 of the Act, to require that applications relating to goods produced by Scheduled Tribe or other forest-dwelling communities state how knowledge-holders were identified, consulted and represented in preparing the application and specification. The Registrar of Geographical Indications would verify compliance during examination under section 11(5). Secondly, such applications should be accompanied by a resolution of the relevant Gram Sabha or customary institution, aligning GI practice with section 3(1)(k) of the Forest Rights Act, 2006 and the Gram Sabha's role recognised in *Orissa Mining*.[69] Both proposals adapt New Zealand's practice of assessing Indigenous interests at the examination stage, while placing the evidential burden on the applicant.

2. An Advisory Mechanism and Cultural-Offence Ground

Thirdly, the Registrar of Geographical Indications should constitute, in consultation with the Ministry of Tribal Affairs, a standing advisory committee including tribal knowledge-holders to advise on applications involving Scheduled Tribe communities. Modelled on New Zealand's Māori Advisory Committee, it would advise whether a proposed indication or specification misrepresents or offends the community concerned. Fourthly, Parliament should extend section 9 of the GI Act, which already bars matter likely to hurt religious susceptibilities, to indications likely to offend a significant section of the community, including Scheduled Tribe communities, on the model of section 13A of the

[69] GI Act (n 2) ss 9, 11(5) and 87; Forest Rights Act (n 35) s 3(1)(k); *Orissa Mining* (n 36).

New Zealand Act.[70] Unlike its New Zealand counterpart, the Indian committee should also report on whether benefit-sharing arrangements exist.

3. Benefit-Sharing and Transparency

Fifthly, where a registered GI product uses biological resources or associated traditional knowledge, the National Biodiversity Authority's benefit-sharing regulations under the amended Biological Diversity Act should expressly route a share of benefits to the Biodiversity Management Committee of the area concerned, and the GI Registry should record whether such arrangements exist. Sixthly, the GI Rules should require registered proprietors to file and publish annual statements of authorised-user numbers, licensing arrangements and fee income.

The aim is not a uniform distribution formula, which would ignore differences between products and communities, but transparency sufficient to allow producers and knowledge-holders to contest unfair practices. New Zealand offers no model here, because its GI regime contains no benefit-sharing mechanism; these proposals therefore build on India's own Kani–TBGRI experience.[71] Where a legal or normative requirement for free, prior and informed consent applies, notification or registration should never be treated as a substitute for meaningful engagement.

C. Conclusion

Geographical indications play an important role in the context of IP, trade and cultural heritage and community development. They are useful to Indigenous and local producer organizations in their ability to uphold a geographical reputation and to support traditional production processes. However, the protection of a product name does not automatically result in the protection of all cultural interests in the product.

[70] Trade Marks Act 2002 (n 53) ss 177–180; NZ GI Act (n 49) s 13A.
[71] See R Sterling and others, *Identifying Models for Benefit Sharing in Different Domains: An Exploration of Benefit Sharing across Industries* (Te Kotahi Research Institute, University of Waikato 2024).

The Indian framework offers a statutory basis for the registration and enforcement of GIs and the cases analyzed in this paper show the need to distinguish GIs from other legal interests. The New Zealand framework provides examples of the way in which GI legislation can co-exist with trade mark protection, Treaty-based decision making and the broader Māori cultural interests. These are not assumed to be things that either jurisdiction has eradicated, and that is why it is important to acknowledge that cultural appropriation is difficult, and that differential representation or unequal distribution of economic benefits exists.

The main message is that there has to be a community-based approach for effective protection. This would maintain the integrity of the geographical reputation and acknowledge cultural importance of traditional knowledge, ensure participatory governance, and encourage transparent benefit sharing. GI registration should not be considered as a standalone solution to Indigenous collective-rights issues, but rather, as an integral part of a comprehensive legal framework.

Finally, success of the protection of a GI should not be measured only in terms of the number of registered indications or the commercial success of protected products. It should also be judged on the extent to which the relevant communities can meaningfully contribute to decisions, that they can continue to practice their culture and receive equitable benefits from the commercialisation of products that rely on their knowledge and labour.

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