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AMENDMENT OF GEOGRAPHICAL INDICATIONS: A COMPARATIVE STUDY OF INDIA AND THE EU.

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Abstract:

Geographical Indications (GIs) are essential for safeguarding cultural heritage, economic value, and the authenticity of products linked to specific areas. As market needs, environmental changes, and administrative conditions evolve, some registered GIs in the EU have been altered or amended to include or exclude new areas into the territory associated with the GI. This is justified if the amendment application satisfies the standards set under the Council Regulation (EC) No 510/2006 (Article 9) and Regulation (EU) No 1151/2012 (Article 53). Whereas, the Indian GI Act allows amendment only if such an amendment does not alter the 'substantial identity' of the GI. The discretion to accept or reject the amendment is given to the registrar. In this paper, an effort is made to analyse that such amendments go against the main objective of the geographical indications Act in the Indian scenario. The aim of the paper is to analyse the challenges arising from such amendments.

Keywords: Geographical Indications, PDO/PGI, Amendment Processes, Stakeholder Engagement, Culture, Traditional heritage.

1. Introduction:

1.1. Background and Significance

Geographical Indications (GIs) are a form of intellectual property that protect products with unique qualities linked to their geographical origins. To grasp the aim of protecting these indications, we need to observe how different legal frameworks and international agreements define GIs. The World Trade Organization (WTO) outlines GIs in Article 22(1) of the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as indications that identify a product as originating from a member's territory or a specific area within it, where its quality, reputation, or other traits are significantly related to that origin.¹

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

In India, the Geographical Indications Act of 1999 defines a geographical indication as one that identifies goods, whether agricultural, natural, or manufactured, originating from a country, region, or locality, emphasizing that the quality or reputation is inherently linked to its geographical origin. If the goods are manufactured, at least one step of their creation, processing, or preparation must occur in the specified territory². In the EU, GIs encompass both Protected Geographical Indications (PGI) and Protected Designations of Origin (PDO), which safeguard the names of products from specific regions adhering to traditional production methods.³

PDO and PGI products highlight the best in European food production, shaped by unique human and environmental factors from specific regions. To ensure their quality and authenticity, the European Union has set strict regulations. These protect consumers and help producers clearly identify and promote their products while guarding against misuse. These designations act as European indicators of quality tied to regional origins or traditional methods.⁴ For example, wines that qualify must meet specific technical standards and pass a formal tasting. There are three main European Union schemes for protecting these special products, protected designation of origin (PDO), protected geographical indication (PGI), and traditional specialties guaranteed (TSG).

These schemes are based on the EU Regulation No 1151/2012, which outlines quality standards for agricultural products. This regulation not only applies within the EU but is also being extended to non-EU countries through bilateral agreements.⁵ It ensures that only products truly sourced from a region can bear its name. The aim is to protect the reputation of regional foods, support rural economies, help producers earn better prices for their authentic products, and prevent consumer deception with inferior quality items.

Examples like Champagne, Darjeeling tea, and Parmigiano Reggiano cheese demonstrate how these geographical indications safeguard cultural heritage, support local economies, and guarantee authenticity. These labels represent far more than trademarks; they reflect centuries of tradition, environmental influences, and craft skills. However, with challenges such as climate change, globalization, and changing consumer tastes, the current frameworks for

² Section 2(e), Geographical Indications Act, 1999

³ (EU) no. 1151/2012 (article 5)

⁴ Id.

⁵ Id.

geographical indications may need to evolve. Adjustments, like expanding regions, updating production methods, or modifying administrative processes, are allowed in the EU for these designations to remain relevant while preserving the core values of the products. Balancing adaptation and preservation are crucial for modern governance of these geographical indications, requiring careful consideration of legal, social, and economic factors.⁶

This paper aims to explore two important questions related to Geographical Indications (GIs). The first question is about the possibility of modifying the geographical area of a registered GI to include additional regions while keeping its original identity intact. The second question focuses on whether such modifications can be carried out without jeopardizing the core identity of the GI. To answer these questions, the paper will analyse case studies from the European Union (EU) as well as relevant international legal frameworks.

2. Legal framework governing geographical indications:

In terms of legal frameworks that govern GI amendments, there are different international instruments that

- **TRIPS,**

At the international level, the TRIPS Agreement established by the World Trade Organization in 1994 offers foundational protections for GIs. In Article 22(1) of the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as indications that identify a product as originating from a member's territory or a specific area within it, where its quality, reputation, or other traits are significantly related to that origin.⁷

- **The Lisbon Agreement,**

The Lisbon Agreement under Article 2.1, defines 'geographical indication' as the geographical name of the country, a region or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.⁸

⁶ Andrea Marescotti et al., Are Protected Geographical Indications Evolving Due to Environmentally Related Justifications? An Analysis of Amendments in the Fruit and Vegetable Sector in the European Union, 12 (9), Sustainability (2020).

⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

⁸ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, adopted May 20, 2015.

- **India,**

On a national level, India's Geographical Indications of Goods Act, 1999 reflects a focus on cultural values. Section 2(e) of the Geographical Indications Act of 1999 defines a geographical indication as one that identifies goods, whether agricultural, natural, or manufactured, originating from a country, region, or locality, emphasizing that the quality or reputation is inherently linked to its geographical origin. If the goods are manufactured, at least one step of their creation, processing, or preparation must occur in the specified territory. Its Section 29 allows for alterations so long as they do not "substantially affect the identity" of the GI, which gives registrars some leeway in deciding whether to approve amendments⁹. However, this ambiguity can lead to varying interpretations that complicate the process.

- **The European Union,**

In contrast, the EU's Regulation (EU) No 1151/2012¹⁰ provides a more organized approach to amendments for PDOs and PGIs. This regulation requires that applicants present historical, environmental, or socio-economic reasons to justify their requests for changes. The EU system focuses on adapting to market demands, as demonstrated by cases such as Berenjena de Almagro, where growing consumer interest prompted geographical expansions.¹¹ The involvement of stakeholders in the amendment process also differs between these regions. In the EU, procedures necessitate consultations with producer groups, fostering collaborative decision-making. On the other hand, India's amendment process is primarily led by registrars.

The analysis of how different legal frameworks lead to a singular meaning, i.e., geographical indications are granted to protect the products link to the region. This is the core objective a geographical indication. If we had to alter this core or the substantial identity, it would lead significantly change the meaning of that particular GI and its connection with the consumer.

3. Case Studies: Amendments in Practice

3.1 European Union PDO/PGI Modifications.

The EU's PDO/PGI system provides valuable insights into how designations can be amended. For example, Cítricos Valencianos expanded its production area due to climate changes that

⁹ Geographical Indications Act, 1999.

¹⁰ EU Regulation (EU) No 1151/2012.

¹¹ See Supra note 6.

made new regions suitable for growing citrus. On the other hand, Berenjena de Almagro, a Spanish eggplant, increased its protected zone to fulfil growing market needs. In contrast, some products, like Roquefort cheese, reduced their boundaries to ensure they maintain their authenticity, restricting production to traditional caves in southern France. Administrative changes, such as renaming towns mentioned in the specifications of Prosciutto di Parma, show how the system adapts to regulatory updates.¹²

a. Cítricos Valencianos PGI:

It is a prime example of how geographical indications can adjust to environmental shifts by altering their production areas. In 2013, the geographical zone for Cítricos Valencianos was expanded to include more municipalities in the provinces of Castellón, Valencia, and Alicante in Spain. This change was made because climate change created suitable ecosystems in these areas that could produce citrus using the same methods and maintaining the same quality. This case shows a proactive stance on keeping geographical indications relevant as conditions change. By changing the PGI boundaries, Cítricos Valencianos ensures that the designation accurately reflects the product's true origin, thus preserving its authenticity and market value. The amendment process involved a thorough evaluation of the new areas to ensure that their conditions and cultivation practices met the existing PGI standards. This careful assessment helps maintain the quality and features associated with Cítricos Valencianos citrus fruits, ensuring consumers receive products that meet their expectations. Overall, the case of Cítricos Valencianos illustrates how geographical indications can change boundary definitions to adapt to environmental shifts while protecting the products' integrity and reputation.¹³

b. Berenjena de Almagro PGI

It is a traditional Spanish eggplant recognized for its unique processing and distinct flavour. It comes from the Bolaños de Calatrava region in Ciudad Real, Castilla-La Mancha, and covers an indigenous variety cultivated and processed by small, family-owned farms. The production follows traditional methods, with seedbeds sown in February and young plants transplanted in May into well-prepared small plots, usually

¹² Andrea Marescotti et al., Are Protected Geographical Indications Evolving Due to Environmentally Related Justifications? An Analysis of Amendments in the Fruit and Vegetable Sector in the European Union, 12 (9), Sustainability (2020).

¹³ Xinzhe Song 'Scrutinizing the Expanding Scope of Geographical Indication Protection: A Critical Analysis of the Justifications for the Anti-Evocation Measures', World Trade Review, 23(1), pp. 20–46, (2023).

less than one hectare. Each plot is densely planted with about 25,000 plants.¹⁴

The Berenjena de Almagro has a long history, dating back centuries and even mentioned in Cervantes' Don Quixote. It represents local culinary traditions and skilled craftsmanship. Growing Market Demand and the Need for Expansion Recently, there has been increasing interest in authentic, traditionally made foods, both in Spain and internationally. This has led to a rise in demand for Berenjena de Almagro PGI.

The growing demand has several effects. More farmers are starting to grow and process this traditional eggplant variety to meet consumer needs. To support this growth and ensure all high-quality, traditionally made eggplants are recognized under the PGI, regulatory bodies have reviewed and expanded the production area¹⁵. An official extension of the protected region was approved (as noted in the Official Journal L 317/2022), allowing more areas with similar traditional production methods to be included¹⁶. This move helps maintain the product's authenticity and boosts the local economy by allowing more producers to benefit from PGI status.

c. Prosciutto di Parma (Italy)

Known for its mild, sweet taste and unique curing method, Prosciutto di Parma is deeply connected to the agricultural traditions of the Parma region. Recent changes have included updating the list of municipalities within its specifications to ensure that production only occurs in areas with a recognized historical tradition. This tightening helps maintain quality and protects the product's regional reputation.¹⁷

It is important to mention that any proposed changes in production must have clear justifications. These justifications are outlined in Council Regulation (EC) No 510/2006 (Article 9) and Regulation (EU) No 1151/2012 (Article 53)¹⁸. Applicants must describe their reasons for any amendments requested. Justifications fall into five categories:

- 1. Market:** Related to marketing strategies, sales activities, consumer trends, and cost savings.
- 2. Technology/Research:** Necessary updates to leverage new technologies, equipment, and research findings.

¹⁴ Berenjena de Almagro PGI, PDO PGI Report, <https://www.qualigeo.eu/en/product/berenjena-de-almagro-pgi/>.

¹⁵ Official Journal L 317/2022, <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=OJ%3AL%3A2022%3A317%3AFULL>

¹⁶ Id.

¹⁷ Id.

¹⁸ See Supra Note 11.

3. **Policy/Legal:** Compliance with regulations from EU, national authorities, and industry organizations.
4. **Identity/Quality:** Aimed at maintaining or enhancing specific quality traits related to tradition and strengthening the link between the geographical area and the product.
5. **Environmental Sustainability and Climate Change:** Changes intended to lower environmental impact, preserve biodiversity, promote organic farming, and adapt to climate conditions.

3.2 India's GI Amendment Landscape:

India's geographical indication (GI) system has its own set of challenges and opportunities. The Geographical Indications of Goods (Registration and Protection) Act, 1999 allows for changes to a GI, as long as such changes do not significantly alter the GI's identity. The registrar can approve or deny these changes based on their discretion.¹⁹ Altering the geographical area of a registered GI is complex and involves legal considerations to protect the GI's reputation and origin. Changes to a GI's geographical area should not alter the historical ties, traditional production methods, and the product's unique qualities. Consumers typically connect specific qualities with a registered GI, so any amendments should align with their expectations and preserve the product's distinct features.

The statement of objects and reasons of the GI Act, 1999 talks about exclusion of unauthorised use which would serve to protect consumers from deception, adding to the economic prosperity of the producers. The main aim of protecting a product under geographical indication is to maintain the authentic link between the product and the region. Each region will have different conditions, tradition and history that are associated with these products. In the case of Darjeeling Tea or Ratnagiri mangoes, they are suitable to be grown only in that area. Allowing any amendments to the registered GIs that would substantially alter the character of the GI will lead to its dilution and eventually deteriorate the quality associated with it.

In India, the amendment should not alter the 'substantial character' of the GI under section 29 of the Act, 1999. To understand the meaning of the term 'substantial character' we need to understand the aim and objective underlying geographical indications. If we look at any legal

¹⁹ Section 29, Geographical Indications Act, 1999.

framework related to GI, all the definitions derive the same meaning. That is, GI tries to protect the intrinsic link between the goods and the region because of its quality, reputation and other attributes. Now, allowing any amendment to exclude, include or expand the geographical area would substantially alter the identity of the product. The Act, 1999 does not define the term 'substantial character' because it is very obvious from the aim and objective of the Act.

In the case of *Agricultural and Processed Food Products v. State of Madhya Pradesh*²⁰, the Supreme Court of India reviewed a dispute over the GI registration of Basmati rice by APEDA. Initially, APEDA's application included several states and parts of others as traditional Basmati-growing areas but excluded 13 districts from Madhya Pradesh. This exclusion led to legal challenges, with some arguing it was unfair and the designated areas were not clearly defined. After several legal battles, the Intellectual Property Appellate Board (IPAB) confirmed APEDA's registration. However, the High Court later dismissed challenges related to the over-inclusion of areas and directed those issues regarding the exclusion of Madhya Pradesh districts be resolved in pending writ petitions. The Supreme Court noted that the concern about over-inclusion was a separate issue that needed its own consideration. It sent the case back for further review without making a final ruling²¹.

It can be inferred from this case as to how the courts also uphold the core objective of the Act by not allowing over-inclusion of areas which will dilute the quality of the original GI.

But there are also cases where certain GIs are facing the challenge of climate change. The richness of the soil, rainfall, climatic conditions in certain regions are crucial in maintaining the distinctiveness of the GI. The issue emerges when climate change disrupts production in regions tied to a geographical indication (GI). While another area, possibly far away, meets or surpasses the GI's production standards. A prime example is Champagne, where discussions about relocating production have taken place. Research indicates that Kent in the UK, with its milder climate, may be suitable for producing Champagne. Several scenarios have been proposed like, adjusting the boundaries of the original region to add Kent, dividing the GI and creating separate labels for France and Kent. By keeping the current legal situation unchanged, preserving the GI only for Champagne; or fully moving the GI to Kent. Similar considerations

²⁰ WP no. 5798 and 9564, (2016).

²¹ 'Basmati' as Geographical Indication: SC directs Madras HC to reconsider petitions against over-inclusion in claimed 'traditionally basmati cultivating areas', <https://www.sconline.com/blog/post/2021/09/06/geographical-indication/>, (2021).

are relevant for other GIs as well. Thus, we must consider whether full or partial relocation is necessary to protect the GI's existence and integrity.²²

In India, the Cumbum Paneer grapes, Authoor betel leaves, Sholavandhan betel leaves and Kanniyakumari matti banana, were granted GI in the year 2023. Although, this is good for the producers and the recognition of the product, the farming community in the region fear that the production will be affected due to climate change. The farmers are of the opinion that it is challenging to maintain the authenticity of the crops if they are subjected to chemicals for more produce. Finding a solution to this would be challenging as, it should not affect the intrinsic characters of the product to which GI protection is granted.²³

So far, there have been no drastic amendments in the geographical area of a registered GI in India. In India, the focus is on cultural heritage and tradition associated with the product whereas in the EU there is a definite criterion considered before amending or altering the area of a GI.

4. CHALLENGES TO THE AMENDMENT:

1. Dilution

Dilution occurs when a GI's exclusivity and reputation diminish due to excessive geographical expansion, eroding consumer trust and market value. Expanding production zones (e.g., Berenjena de Almagro PGI's growth to meet market demand) may allow more producers to use the GI label. While economically beneficial, these risks commoditizing the product and reducing its premium status.

2. Consumer Deception

Broader boundaries might mislead consumers who associate the GI with specific qualities from the original region. For instance, adding non-traditional areas to a registered GI could confuse buyers about its true origin.

3. Gradual Distortion of the GI

Gradual distortion refers to incremental changes that cumulatively erode the GI's

²² Andrea Borghini, Nicola Piras & Beatrice Serini, Hot grapes: How to locally redesign geographical indications to address the impact of climate change, World Development Sustainability, Vol 2, (2023).

²³ C.Palanivel Rajan, GI-tagged agricultural products face challenges due to climate change, The Hindu, 2023, <https://www.thehindu.com/news/cities/Madurai/gi-tagged-agricultural-products-face-challenges-due-to-climate-change/article67594454.ece#:~:text=The%20Cumbum%20paneer%20grapes%2C%20Authoor,factors%20linked%20to%20climate%20change>. (last accessed on 07.03.2025)

original identity over time. While expansions like Cítricos Valenciano's PGI are justified by environmental shifts, they risk normalizing adaptations that disconnect the product from its historical terroir.

5. CONCLUSION:

In conclusion, any amendment or alteration allowed to a registered GI might alter the core aspect of the GI. Any quality, reputation or any attribute associated with a GI tagged product is unique to that region. By allowing amendments, we might risk dilution of the products. Allowing alterations on the basis of climate change might look justified, but it breaks the intrinsic link between the product and the region. In the EU, amendments are carried out only if they meet the standards and the roots to the geographic region is maintained. India can also adopt a similar methodology, which will ensure amendments are stringent. This will also protect the substantial character of the GI. Only amendments that justify historical, traditional and other links should be allowed. Such a standard would preserve the integrity of the GI and at the same time allow for amendments if they are justified. Locals, farmers and stakeholders should be involved and their inputs should be taken. There should be a legal framework on the lines of rethinking GI protection. Because, GI tagged varieties today face extreme demand among consumers in a globalised world and the legal framework should be equipped to face the challenges of climate change.

Therefore, protection of GIs is primarily about economic transactions but also rooted in tradition, culture and heritage. Over-inclusion or exclusion will only affect the reputation associated with the GI and disregard generations of effort behind a product protected through geographical indications.