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GEOGRAPHICAL INDICATIONS AND THEIR PROTECTION IN INDIA

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ABSTRACT

Geographical Indications (GIs) are essential tools for protecting products that are deeply connected to specific regions, embodying their unique qualities, reputation, and traditional knowledge. In India, the Geographical Indications of Goods (Registration and Protection) Act, 1999, provides the legal foundation for GI protection, aimed at preserving regional heritage and supporting local economies. The article presents an analysis of international GI protection, focusing on the World Trade Organization's TRIPS Agreement. It delves into the nuances of GI enforcement and the challenges posed by it. Through the examination of landmark judicial cases, such as disputes over Basmati Rice and Scotch Whisky, the article discusses the evolving interpretation of GI rights and the complexities involved in their protection.

The article underscores the pivotal role GIs play in fostering economic growth, particularly in rural areas, by providing market exclusivity and enhancing product value. Moreover, it examines how GIs contribute to cultural preservation by safeguarding indigenous practices and skills.

Finally, the article offers recommendations for strengthening the GI protection system in India, including the need for greater awareness among producers, enhanced enforcement mechanisms, and improved international cooperation. The conclusion reaffirms the vital role of GIs in promoting regional products, protecting local producers, and sustaining cultural heritage, while acknowledging the need for continuous legal and policy adaptation in response to emerging challenges.

KEY WORDS

Geographical Indications (GIs), Intellectual Property Rights, GI Protection in India, TRIPS Agreement, Traditional Knowledge Protection, GI Registration, Cultural Preservation, Basmati Rice Case, Darjeeling Tea, etc.

INTRODUCTION –

The whole world in its present form is driven by the innovation, which no doubt has changed a Gramophone Record to an I-Pod, an abacus to a computer, a penny mail to E-Mail, TV Antenna to Dish TV, Bank to an ATM machine, bullock carts to BMW's and so on. All these innovations are the creation of human mind constituting the intellectual property. India has many products and services both natural and manmade which have been produced for many years and these products are known for their characteristics and are associated with specific geographical location. A Geographical Indication (GI) of origin is essentially a place name that identifies the geographic source of a good and states a distinctive quality, reputation, or other characteristic of the good that is essentially attributable to that geographic source. Names such as "Darjeeling", "Basmati", 'Champagne', etc. are examples of some such well known GIs that are associated throughout the world with products of a certain nature and quality.¹

Geographical indications (GIs) have become a key intellectual property rights (IPRs) concern in the Indian environment in recent years. The word generally refers to the product's specific geographic origin in a certain location or locality, and GIs are formed to distinguish items that have unique features due to environmental variables, processing methods, or manufacturing expertise. Geographical Indications (GIs) are signs indicating a product comes from a particular region and has particular features, a good reputation, or other traits that are essentially attributed to that origin. As of May 2023, the country had 478 GI tags, with Tamil Nadu, Maharashtra, Karnataka, Kerala, and Uttar Pradesh having the most.²

India, known for its diverse culture, is the birthplace of many arts and crafts that have been developed through many centuries. Nine new products from different Indian states, including Gamosa from Assam, Tandur Redgram from Telangana, Apricot from Ladakh, and Alibag

¹ R.P.Das, G.K.Deshmukh & Sanskrity Joseph, Protection of Geographical Indications: A Necessity,– Journal of Pt. Ravishankar Shukla University; Part – A, Vol. 8-15

² Promotion of Geographical Indications (GIs) in India, IBEF, <https://www.ibef.org/blogs/promotion-of-geographical-indications-gis-in-india> (last seen on 12/09/2024)

White Onion from Maharashtra, have been added to the collection of GIs. With this, there are 432 GI Tags in India overall. Darjeeling tea was the first product in India to be designated as a geographical indicator. DPIIT has conducted several initiatives in conjunction with other stakeholders in which exclusive GI goods highlighted Indian tradition, culture, and entrepreneurial activity under a unified umbrella. Furthermore, by fostering the development of multicultural societies across the nation, such activities would not only encourage the exchange of a variety of goods between the states but will also help create a more vibrant cultural society in the future. The government recently approved spending of US\$ 8.42 million (Rs. 75 crore) over three years for the promotion of GIs at awareness initiatives.³

CONCEPT OF GEOGRAPHICAL INDICATION –

A geographical indication is a sign used on products that has a specific geographic origin and includes the qualities or reputation of that origin. A geographical indication is given mainly to agricultural, natural, manufactured, handicraft arising from a certain geographical area. Geographical indications (G.I.) are one of the forms of IPR which identifies a good as originating in the respective territory of the country, or a region or locality in that particular territory, where a given quality, reputation or other characteristic related to good is essentially attributable to its geographical origin.⁴

It performs three functions:

- First, they identify the goods as to the origin of a particular region or locality;
- Secondly, they suggest to consumers that goods come from a region where a given quality, reputation, or other characteristics of the goods are essentially attributed to their geographic origin;
- Third, they promote the goods of producers of a particular region. They suggest the consumer that the goods come from this area where a given quality, reputation or other characteristics of goods are essentially attributable to the geographic region.

³ Promotion of Geographical Indications (GIs) in India, IBEF, <https://www.ibef.org/blogs/promotion-of-geographical-indications-gis-in-india> (last seen on 12/09/2024)

⁴ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 10/09/2024)

DEFINITION OF GEOGRAPHICAL INDICATION BY WIPO: -

According to WIPO, GI is a signature that indicates the authenticity of the products originated from a specific region or manufactured by a particular community. The WIPO defines GI as, *"a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."*⁵

ELEMENTS OF GI

1. Goods, originating in a particular territory, region, or locality: -

Origin of goods is one of the vital elements in determining GI. But to identify the origin, proper delimitation of the region is necessary considering the specific nature of the product. Delimitation means dividing a particular area into appropriate administrative zones. It will help to identify that the concerned geographical area is situated in a specific zone or region. For example, Aranmula Kannadi. Aranmula is a region in the Pathanamthitta district. The Kannadi (Mirror) is made in the region called Aranmula. Hence it is called Aranmula Kannadi, increasing the importance of the area called Aranmula.

2. Quality: -

Quality is one of the main attractions of goods having a GI tag. The quality of goods is mainly due to two things i.e. natural quality and quality attributable to the method of manufacturing. Natural quality mainly due to the physical and chemical properties of raw materials, temperature, and climate of that particular region, soil, landscape, etc. In the case of agricultural products, quality depends on the soil, harvesting methods, seeding, and packaging of the finished products. For example, the prominent Palakkadan matta is popular because of its unique taste, which is cultivated in the district of Palakkad Kerala. This rice is cultivated in the dense black cotton soil. The soil contains clay and silt, which gives a natural flavor to the rice. Quality attributable to the method of manufacturing includes the quality of raw materials and the method of manufacturing. The actual presentation of the product is also due to the quality

3. Reputation: -

Reputation of the goods is related to the historical origin of the goods. Every good having GI tag has some history. It will help to distinguish it from other forms of product. While registering for GI tag, the applicants must show the proof of origin, i.e., the history related to the product.

⁵ Geographical Indications, What is a geographical indication? World Intellectual Property Organization (WIPO), https://www.wipo.int/geo_indications/en/ (last seen on 08/09/2024)

FUNCTIONS OF GI

GI's primary purpose is to protect the goods registered under GI from a socio-economic perspective.

- It will help identify the fake products, getting manufactured/produced and sold in the market, and take legal action against them.
- It will also improve the economic status of the producers of the products with original proof of origin.
- From the consumer's perspective, identifying the authentic product will be easy for them, which will improve the consumers buying decisions.
- Further, GI also helps to protect the culture by preserving the traditional methods of production. It thus provides a natural and regional identity to the products.

BENEFITS OF GEOGRAPHICAL INDICATIONS:

The organizations or companies who register their geographical indications enjoy various advantages from the registration, including:

1. Registered geographical indications have the exclusive right to access or use G.I. products during the business.
2. Authorized users enjoy the right to sue for infringement.
3. It provides legal protection to geographical signs in India.
4. Prevents unauthorized use of registered geographical indications by others.
5. It provides legal protection to Indian geographical signals which in turn promotes exports.
6. It promotes the economic prosperity of producers of goods produced in a geographical area.
7. A registered owner can also approach for legal protection in other WTO member countries.
8. It provides legal protection to the respective goods in domestic as well as in international markets.⁶

IMPORTANCE OF GIS IN SUPPORTING RURAL ECONOMIES IN INDIA

Certain communities around the world are well-known for their distinctive products, on which their livelihoods are highly reliant. These speciality products are frequently associated with

⁶ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 10/09/2024)

cultural and regional identity, and they highlight a long history of craftsmanship, community, and civilization. GI tags enable manufacturers to distinguish their products and sell them as authentic, enabling future generations of artisans, chefs, and other professionals to maintain their traditional practices.

- **Rural Inclusivity**

The GI-labelled traditional products not only symbolise the local character via the harmonisation of natural resources and cultural methods but also provoke a sense of nostalgia. These products give residents a sense of belonging and are an appealing tool for tourists looking to learn about local identities in rural areas.

- **Positive externality**

Professionals are additionally shielded by GI labelling against industrial practices and competitive pricing. The tags contribute to the creation of a legacy and the mobilisation of local revenues by earning premium brand prices and increasing exports. Furthermore, GI-tagged products contribute to local job development, which may help to reduce rural-urban migration, sustain livelihoods, and enhance living standards for people. These items also have the potential to generate positive externalities by increasing income and employment possibilities along the supply chain.⁷

WHAT IS A GI TAG

A Geographical Indication (GI) tag is a form of intellectual property, a certification given to certain goods or products from a particular area or state, or country that is unique to a particular geographical region. India, as a member of the [World Trade Organization \(WTO\)](#), enacted the [Geographical Indications of Goods \(Registration and Protection\) Act, 1999](#) from 15th September 2003.

Like all Intellectual Property Rights, a Geographical Indication is a non-physical asset that composes a legal claim to future benefits through the special rights and privileges attached to it. The GI products are generally agricultural or natural or manufactured items like handicrafts etc. It is an indication or symbol to identify a particular product.

Geographical Indications are an integral part of the development which advances economic interests. These tags are a tool to protect the ownership rights on natural resources and

⁷ Promotion of Geographical Indications (GIs) in India, IBEF, <https://www.ibef.org/blogs/promotion-of-geographical-indications-gis-in-india> (last seen on 12/09/2024)

manufactured goods. GI's cannot be sold, rented, transferred as they are collectively owned by the state. Products having GI tags prevent unauthorized use of products and upgrade financial gain to the producers by exporting the products.⁸

GEOGRAPHICAL INDICATION AS AN INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights are rights that are offered to persons who create novel ideas and knowledge. Intellectual property rights include Patents, trademarks, copyright, trade secrets, and geographical indications. Patent, trademark, trade secret, etc., all are linked to new ideas and discoveries with respect to a particular person or organization. On the other hand, the geographical indication is an intellectual property that is often linked to old knowledge and processes. Thus, Geographical Indication is an exception in intellectual property rights. Geographical indications generally involve processing methods that have been inherited from generations. The technique used in the product might be very old.

geographical indication is provided to only those who have authentic knowledge about the product and also due to certain natural factors in the case of agricultural products, for, e.g., Sohrai Khovala painting and Ratnagiri Alphonso mangoes, respectively. A geographical indication is a tool that can be used to protect for preserving traditional practices of the community as well as natural resources to an extent. The majority of GI is granted to agricultural products, so in this way, it will help to protect the sustainable agricultural practices.⁹

Also, GI helps to prevent unauthorized use of products by other parties. GI can also help in gaining some financial benefit as it gives the stamp of authenticity to the products, and people generally tend to buy authentic products. Thus, GI not only protects the products manufactured or processed but also protects the knowledge and technical know-how of the community. It is clear that from the provisions of the TRIPS agreement, GI is an Intellectual property.

WHAT IS A “GENERIC” GEOGRAPHICAL INDICATION?

In the context of geographical indications, generic terms are names which, although they denote

⁸Significance of Geographical Indication Tags in India, blogiplayers, <https://blog.iplayers.in/significance-of-geographical-indication-tags-in-india/>, (last seen on 12/09/2024)

⁹ Mas Rahmah, The Protection of Agricultural Products under Geographical Indication: An Alternative tool for Agricultural Development in Indonesia, 22.J.Intellec. Prop. Rights. 90, 91(2017) 18Alberto Francisco Ribeiro de Almeida, key differences between trademarks and geo

the place from where a product originates, have become the term customary for such a product. An example of a GI that has become a generic term is Camembert for cheese. This name can now be used to designate any camembert-type cheese. The transformation of a geographical indication into a generic term may occur in different countries and at different times. This may lead to situations where a specific indication is considered to constitute a geographical indication in some countries, whereas the same indication may be regarded as a generic term in other countries.¹⁰

GEOGRAPHICAL INDICATORS IN INDIA

Products with a geographic indication (GI) are those whose qualities or reputation are attributable to their particular geographical origin and have a specific geographical origin. [Geographical Indications](#) of Goods (Registration and Protection) Act, 1999 protects GI products in India. Darjeeling tea, Alphonso mangoes, and Banarasi silk are a few examples of GI products in India. Geographical Indications (GI) for Products are a sort of intellectual property rights (IPR) that normally corresponds to a country's geographical indications. A name like this conveys a sense of excellence and originality, primarily because of its origins in a particular place, area, or country.

WHY GI NEED PROTECTION

When certain product or place names are protected in one country but are in free and common use in another, dispute invariably arise. Popular products such as Basmati rice, Feta cheese and Port wine are among those that face this issue – they are protected at home but not necessarily abroad. In such cases, some countries can claim that these products have attained generic status in the marketplace and do not therefore belong exclusively to a specific geographic location or group of producers. One result is that the name “Feta” while it is protected in its home territory, the EU, as a special Greek cheese, it can however be sold freely in the United States market from a variety of different non-Greek origins ranging from Denmark to Wisconsin. It is thus possible for the originators of the product to lose the rights to defend their name, product or process in other countries if it is not registered and consistently defended there. In fact, global debate on this very subject has reached something of an impasse, so far hindering the achievement of a stronger international agreement or a common registry for GIs.¹¹

¹⁰ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 10/09/2024)

¹¹Deepika Tiwari, Need for Protection of Geographical Indications: Registration Status in India, Globus an International Journal of Management & IT, Vol 7 / No1 / 2015 ISSN: 0975-721X

Without strong and enforced property rights, GIs can lose their association with a geographic area in the minds of consumers. Not only do competitors outside the geographic area imitate products and then fraudulently sell them as authentic, even producers within the geographic area sometimes offer products (in some cases sub-standard) that can erode the quality association in the minds of consumers. This can be the case with Port, for example in markets where the GI has not been given legal protection. In these markets, Port is often associated merely with a style of fortified wine rather than the Oporto area of Portugal to which the GI "Port" is attached. One of the worst fates to befall a GI is for it to become a common generic name in some markets. England's cheese from Cheddar and Yemen's Mocha coffee are good examples of where association with the original geographic location has been universally lost. Other examples are Indian ink, Chinaware, Worcestershire sauce, Kiwi fruit, Gouda and Swiss cheeses. For a GI to be successful, the enforcement of legal protection is absolute necessity, and this requires resources.

Furthermore, once a name becomes generic, any attempt to reclaim it by seeking the recognition of legal GI, a process called 'claw back', likely to be strongly resisted, given the vested interests of firms that routinely use such terms in their marketing to sell feta, china, cheddar, kiwi, etc. A measure of consumer utility could be argued for immigrants to have the right to use their ancestral names and worlds when they emigrate. Some of the international tension that currently exists regarding GI pertains to what product 'claw backs' can apply. Both the European and the United States courts recently upheld protection in front of usurpers using the names "Darjeeling" because of its clear association and ongoing protection efforts by the Original owner (Tea Board of India). Similarly, though the designation of the "Swiss is not protected for cheese in many countries, several countries, including the United States, protect it for chocolate, in part because of the ongoing protection efforts of the Swiss themselves. By contrast, when a name has not been actively defended or has become somewhat dissociated with a special location, courts are less likely to uphold its protection. The first step on the path to legal protection is usually taken in the country of origin. If there is not a sufficiently strong local rationale to warrant protection, it is difficult to secure in other countries. In some cases, the reasons put forward for protection may be special measurable properties and characteristics or combinations relating to elements of the soil, water altitude, temperatures, and even the amount of luminosity which are relatively unique to the geographic area and lead to the unique qualities of a product.

Among the first registered GIs in India are such well-registered names as: Darjeeling tea, Chanderi saree, Kotpad Handloom fabric, Kancheepuram silk. Mysore Agarbathi, Mysore silk, Kullu shawl; Kangra tea, Coog Orange, Mysore betel leaf; Nanjanagud banana; Mysore rosewood inlay, Kasuti embroidery, and Mysore traditional paintings. Many other well-known GIs are recognized in India, yet remain unregistered. Others, such as Malabar pepper, Monossoned Malabar for coffee, Allepey Green cardamom, Assam Tea and Kashmir Pashmina are going through the registration process. Interestingly, some famous GIs such as Alphonso mangoes are still not in the pipeline, whereas applications were being processed in 2007 for some lesser-known GIs (Laxam Bhog, Himsagar, Fazil mangoes). Achieving the necessary agreements, particularly for GIs that have considerable economic potential such as Alphonso mangos, can be a lengthy process. Basmati rice, perhaps due to the unique challenge surrounding a potential common GI between India and Pakistan, is also not registered.

Nevertheless, many are aware that GI registration alone will be insufficient and that these sectors need other complementary forms of development. In agriculture, GIs are perceived as one means to resuscitate traditional 'heirloom' varieties, such as Coorg Oranges, that had suffered declining interest. In compliance with the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), India implemented the law on geographical indications in 2003. Since due to effective implementation of GI Act 1999, there have been sharp boost in applications for registration of for famous geographical indications, including Darjeeling tea, Mysore silk and Pochampalli Ikat textiles. However, the overseas applicants are conspicuous by their absence. There may be some lingering questions that make the foreign associations hesitant to register in India. However, as one of the fastest-growing economies, it is imperative that the statutory rights be secured in India at the very outset, irrespective of their economic exploitation within this jurisdiction. Intellectual property owners are well aware of the fact that, when the rights are not statutorily protected, the fear of a geographical indication becoming diluted could become a reality. And in India, the registration procedure for a geographical indication is relatively easy but lack of awareness and local institutional capacity would be a major challenged faced by producers wishing through GI registration to protect their product.

PROTECTION OF GIs

Geographical Indications (GIs) are protected under national legislation and international treaties in many nations. GI protection can take various forms, depending on the legal structure of each country. The protection of geographical names and signs of origin attempts to prevent

the unauthorised use of geographical names or signs of origin on items that do not originate in the designated region and do not fulfil the appropriate requirements or qualities. The World Intellectual Property Organisation (WIPO) provided this definition in 2018, emphasising that the markers of a product's origin are, in reality, the GIs. The name "Geographical Indication" (GI) derives from the Paris Convention for the Protection of Industrial Property, which was signed in 1883 in Paris, France. The terms 'appellation of origin' and 'indications of source' were used and later defined in the Lisbon and Madrid Agreements. Geographic indicators are protected as an aspect of IPRs under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property.

However, the growing relevance of GIs may be linked to the World Trade Organisation (WTO)-led Agreement on Trade Related Aspects of Intellectual Property Rights ('TRIPS'), which went into effect in 1995. The TRIPS agreement establishes basic standards of protection for GIs and requires WTO member countries to develop legal mechanisms for GI protection. TRIPS formally recognised and regulated minimum protection standards for geographical indications. GIs are covered under Articles 22 to 24 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was included in the final accords of the Uruguay Round of GATT talks.¹²

LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDIA

With the beginning of WTO and with the emergence of the global trade market, it was inevitable, but to have a common set of rules for GI. This was, to an extent, achieved in the TRIPs agreement 1995. The TRIPs agreement enhance the scope of protection of GI under Article 22 and 23, which includes protection against the misleading of public and protection against unfair competition. The TRIPs also specify enforcement procedures, remedies, and dispute resolution among its members. Thus, the agreement on the TRIPs became an international legal agreement between all the members of the WTO. India became a member of GATT on July 8th, 1948, and subsequently also became a member of WTO in 1995. Thus India is also bound to include the TRIPs provisions while making laws. To comply with the TRIPs provisions, India enacted the Geographical Indication of Goods (Registration and Protection) Act, 1999, to protect geographical indications in India. Given the enormous commercial implications of GIs, the legal protection of this IPR evidently plays a significant

¹² Promotion of Geographical Indications (GIs) in India, IBEF, <https://www.ibef.org/blogs/promotion-of-geographical-indications-gis-in-india> (last seen on 12/09/2024)

role in commercial relations both at the national as well as at the international level. Without such protection, GIs run the risk of being wrongfully used by unscrupulous businessmen and companies. Because they can misappropriate the benefits emanating from the goodwill and reputation associated with such GIs, by way of misleading the consumers. Such unfair business practices not only result in huge loss of revenue for the genuine right-holders of the GIs concerned but can also hamper the goodwill and reputation associated with those indications over the longer run.¹³

INDIAN LAW FOR GI:

India has put in place a Sui Generis system of legislation for GI security as well as GI protection in particular. “Sui Generis” can be termed as of its own kind and which involves laws which are recognized nationally. The laws relating to the preservation of GIs in India are the “Geographical Indications (Registration and Protection) Act, 1999” (G.I. Act), and the “Geographical Indications (Registration and Protection of Goods) Rules, 2002 (G.I. Rules). India enacted its GI law for the country to enforce national intellectual property laws in compliance with India’s obligations under TRIPS. Under the GI Act, under the GI Act, since 15 September 2003, the Central Government has established a Geographical Indication Registry in Chennai, with the jurisdiction of Pan India, where rights holders can register their GI.

LAWS CONCERNING GEOGRAPHICAL INDICATIONS (GI) AND GI TAGS

The [TRIPS Agreement](#) prescribes minimum standards for the protection of GI that all WTO members must provide. [Part II Section 3](#) of the TRIPS provides the standards concerning the availability, scope, and use of GI.

[Article 22](#) of TRIPS deals with the protection of GI. The provision has been enumerated below:

- (i) GIs are indications that identify a good as originating in the territory of a member country where a given reputation or characteristic of the good is attributable to its geographical origin.
- (ii) The member countries should provide legal means for the prevention of -
 - Using or presenting the good to mislead the public from the geographic origin of the good,
 - Any such use of that good that constitutes an act of unfair competition within the meaning of Article 10 of the [Paris Convention \(1967\)](#).

¹³Das Kasturi, Geographical Indications in Jeopardy, India Together, <http://www.indiatogether.org/2004/apr/eco-tradeGIs.htm> (last seen on 08/09/2024)

(iii)The member country shall permit the legislation to refuse or invalidate a trademark for the GI concerning the goods not originating in the territory included, if the use of that good by the member country may mislead the public from the true place of origin.¹⁴

[Article 23](#) of TRIPS provides additional protection for the GI for wines and spirits. Along with this, there are certain treaties administered by the WIPO which deal partly or completely with the protection of GI such as the Paris Convention, [Lisbon Agreement](#), [Madrid Agreement](#), and the [Protocol for the Madrid Agreement](#), etc.

The legislative measures taken in India in compliance under TRIPS are the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into effect on the 15th of September, 2003 along with the [Geographical Indications of Goods \(Registration and Protection\) Rules, 2002](#).

Some rather vastly [well-known](#) international GI Tags are Gruyere Cheese from Switzerland, Mexican Tequila, Roquefort Cheese from France, Georgian wines, Pinggu Peaches from China among others.

GI tags have been provided in India for many important goods such as Darjeeling Tea, Alphonso Mango, Kanchipuram Silk Saree, Basmati Rice, Kolhapuri Chappal, etc. for many of which the Government of India had to fight the legal battle for decades in the International Courts to get the tag in India.

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION), 1999

In India, the legal system for GI protection has very recently been developed. The Geographical Indications of Goods (Registration and Protection) Act was enacted in 1999 and has come into force in September 2003 (hereafter called GI Act).

The object of the Geographical Indicators Goods (Registration and Protection) Act, 1999, has three folds:

- By specific laws governing the geographical Indication of goods in the country, which can adequately protect the interests of the producers of such goods,
- To exclude unauthorized persons from misuse of geographical signals and protect consumers from fraud, and

¹⁴Significance of Geographical Indication Tags in India, blogiplayers, <https://blog.iplayers.in/significance-of-geographical-indication-tags-in-india/> , (last seen on 12/09/2024)

- Promoting Indian geographical bearing goods in the export market.¹⁵

SALIENT FEATURES OF THE ACT

The Basmati rice and Darjeeling tea controversy are the major incidents that can be quoted with respect to the passing of Geographical Indication of Goods (Registration and Protection) Act, 1999. The law provides specific rules for the registration and protection of GI. The act is administered by the Controller General of Patents, Designs, and Trademark. The Controller General is also called as the Registrar of GI. There are three main objectives of GI Act, 1999. They are -

- (i) Protection of Geographical indications of goods in the country could, in turn, protect the interest of producers of such goods;
 - (ii) Misuse of GI by unauthorized persons and also to protect consumers from misleading;
 - (iii) To bring economic prosperity to the country by promoting the GI in the trade market.
- The Indian GIGA Act provides for multilateral registrations of GI, including owners from outside India.

According to TRIPs, the quality, reputation, and other characteristics of the good should be attributable to its geographical origin. In the case of manufacturing goods, any one of the activities, i.e., production, processing, or production of goods, must occur in place of its geographical origin. GIGA also mentions natural factors like climate, topography, and even human factors like skills that are not specified in the TRIPs agreement.

REGISTRATION OF GI

While registration of GI is not mandatory in India, Section 20 (1) of the GI Act states that no person “shall” be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an “unregistered” GI. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement. The GI Registry with all India jurisdictions is located in Chennai with the Controller-General of Patents, Designs and Trade Marks is the Registrar of GIs, as per Section 3(1) of the GI Act. Section 6(1) further stipulates maintenance of a GI Register which is to be divided into two parts: Part A and Part B. The particulars relating to the registration of the GIs are incorporated in Part A, while the particulars relating to the registration of the authorized users are contained in Part B (Section 7 of the

¹⁵ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 12/09/2024)

Act).¹⁶

A GI may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar. The Registrar is required to classify the goods, as far as possible, in accordance with the international classification of goods for the purposes of registration of GI (Section 8 of the Act). A single application may be made for registration of a GI for different classes of goods and fee payable is to be in respect of each such class of goods. In India, a GI may initially be registered for a period of ten years, and it can be renewed from time to time for further periods of 10 years. Indian law place certain restrictions in that a registered GI is not a subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement.

BENEFIT OF REGISTRATION OF GI

A registered geographic sign prohibits in any way the use of a geographical insignia which indicates in the designation or representation of goods that such goods originate in a geographic area. For example, Basmati rice and Darjeeling tea are examples of G.I. from India. The connection between the goods and place becomes so much recognized that any reference to the place reminds those specific goods being produced there and vice-versa.

HOW IS A GI TAG GRANTED IN INDIA?

The Geographical Indication tag is granted as per the Geographical Indications of Goods (Registration and Protection) Act, 1999. The application for GI is open to all the producers of goods or an organization. The application must include the geographical map of the territory or region in the country where the goods are manufactured and the class of goods to which it shall apply. It should be in the prescribed [form](#) and a particular fee must be submitted with a signature.

The application will be scrutinized and examined by groups of authorities. It is compulsory to get GI registered to claim any rights in respect of such indication. A product having a GI tag prevents unauthorized use of products and upgrades financial gain to the producers by exporting the products. A GI product price increases in the international market as the exports increase. [Section 21](#) of the GI Act states that registration provides a right to file a suit for

¹⁶Dr. Rachana Raval, Geographical Indication: An Emerging Trend in Intellectual Property Rights, Vidhyayana - ISSN 2454-8596 An International Multidisciplinary Peer-Reviewed E-Journal, Volume – 8, Issue - 4, February – 2023, 5-6.

infringement. [Section 23](#) certifies that there is *prima facie* evidence of ownership and validity of GI.¹⁷

WHAT ARE THE SUBJECT MATTERS WHICH ARE NOT REGISTRABLE UNDER GEOGRAPHICAL INDICATION?

For getting registration, the indications should fall within the purview of Section 2(1) of Geographical Indication Act, 1999. When this happens, it must also meet the provisions of Section 9, which prohibits the registration of a geographical indication.

- i. The use of which would cause confusion or confusion; or
- ii. The use of which shall be contrary to the time of enactment of any law; or
- iii. Which includes or is libellous or indecent matter; or
- iv. Which is likely to involve or cause force injury at any time; Religious sensitivity of any class or class of citizens of India; or
- v. Which would otherwise be destroyed for protection in a court; or
- vi. Those determined to indicate common names or objects and, therefore, to be preserved in their country of origin or which are not in use in that country; or
- vii. However, this is actually true as the area or locality in which the goods originate but misrepresents the individuals that the goods originate in another area, region or locality as the case may be.¹⁸

RIGHTS GRANTED TO THE HOLDERS

- **Right to sue:** The exclusive rights have been granted to the person who is protected under geographical indication act and, therefore, can be inherited, gifted, sold, licensed, entrusted or mortgaged. The holder of geographical Indication has a type of property that he can use subject to certain conditions and take legal action against a person who uses his invention without his consent. Does and can receive compensation against real property.
- **The right to grant license others:** The holder has the right to transfer a license or grant license or enter into any other arrangement for consideration regarding their product. A

¹⁷Significance of Geographical Indication Tags in India, blogiplayers, <https://blog.iplayers.in/significance-of-geographical-indication-tags-in-india/> , (last seen on 12/09/2024)

¹⁸ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 12/09/2024)

license or assignment must be given in writing and registered with the Registrar of geographic indications, for it to be valid and legitimate.

- **Right to exploit:** Authorize user exclusive right to use geographic Indication with respect to geographic goods for which the geographic Indication is registered.
- **Right to get reliefs:** Registered Proprietors and authorized Users or Users have the Rights to obtain relief in relation to the violation of such geographical Indication.

WHOM TO CONSIDER AN AUTHORIZED USER?

The authorized user is:

- The manufacturer of the goods can apply for registration as an authorized user.
- It must be in relation to a registered geographical indication.
- He should apply in writing with the prescribed fee.

WHOM TO CONSIDER AS THE REGISTERED PROPRIETOR OF A GEOGRAPHICAL INDICATION?

The registered proprietors of Geographical Indications are:

- A person, manufacturer, organization or association established under law or legislation may be a registered owner.
- Their name must be entered in the Register of Geographical Indicators as there are registered owners for the Geographical Indication.

INFRINGEMENT OF REGISTERED GEOGRAPHICAL INDICATIONS

Section 22 of the GIGA prescribes law related to the infringement of registered GI. Infringement of a GI means that if a person uses any registered GI in any of the designations or presentation of the goods which indicates the origin of such goods is the geographical area other than its true place of origin, which may mislead the people or the use of GI which can act as unfair competition with respect to the registered GI.

once a product is registered as a GI, it received statutory rights and remedies against its unauthorized use. But a mere presence of the product in the GI registry would not protect it from infringement. As per section 18 of the GIGA, the indication should be renewed within the prescribed time. Those products whose registration is not renewed and their name still exist in GI registry due to any kind of delays would not be considered as a registered GI and no action

against infringement can be taken. Hence the infringement of registered GI occurs if any unauthorized user uses the registered GI for any presentation of their products indicating that the goods originated in an area other than the true place of origin of such goods which may mislead the public.

ENFORCEMENT FOR GEOGRAPHICAL INDICATIONS

The remedies accessible for the protection of GI may extensively are as follows-

Civil remedies - The holders of enlisted GI may start either infringement or passing off procedures against an infringer. The infringer can file a suit having jurisdiction in court not inferior to that of the district court. Following are the civil remedies available for the infringement of GI.

- a. Injunction
- b. Penalty
- c. Delivery of the infringing labels and indications containing products.

Criminal Remedies - Criminal remedies are more successful than common cures on the grounds that the previous can be arranged off rapidly. The pendency of a common suit doesn't legitimize the stay of a criminal continuing in which a similar inquiry is included. Since criminal procedures straightforwardly strike at the respect and societal position of an infringer, sometimes he wants a settlement out of court to spare his renown. Section VIII of the Act manages offences and punishments for such offences. The Act contains a punitive arrangement for infringements of different arrangements identifying with GI are given beneath.

- (i) Falsifying and erroneously applying geological signs to goods.
- (ii) Selling merchandise to which bogus geological signs are applied.
- (iii) Falsely speaking to a topographical sign as enrolled.
- (iv) Inappropriately portraying a position of the business as associated with the
- (v) Falsification of sections in the register.

POSITION OF GEOGRAPHICAL INDICATION (GI) TAGS IN INDIA

As we know, a Geographical Indication (GI) is a name or sign which is used on products to differentiate them from others, because they possess a certain quality, usage of any traditional methods in their production, or enjoy a reputation due to their geographical origin.

GI has dated its first usage in France in the early 20th century known as *appellation d'origine controlee* (AOC), but it has spread to various countries including India who are members of

the World Trade Organisation (WTO) by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which got concluded in 1994.

The GI tags in India are issued as per the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into force with effect from 15 September 2003, by the [Geographical Indication Registry](#) under the [Department of Industry Promotion and Internal Trade, Ministry of Commerce and Industry](#).

Any individual producer, an association of persons, any organization, or authority established by or under the law can apply to get a GI tag and the application moved in such a prospect should be written in the proper format along with a prescribed fee to the concerned authority. A GI tag is [valid](#) only for 10 years although it can be renewed from time to time for a further period of 10 years each through every subsequent renewal.

[Darjeeling Tea](#) became the first GI tag issued product in India, which was issued to it from 2004 to 2005 and since then, the number of registrations, as well as applications, has increased rapidly.

According to the Indian Government, around 370 GI tags have been assigned to various goods as per [Section 2\(f\)](#) of the Geographical Indications of Goods (Registration and Protection) Act, 1999.¹⁹

INTERNATIONAL STANCE ON GEOGRAPHICAL INDICATION

Before the coming of agreement on the Trade-related Aspects of Intellectual Property Rights, there were three International multilateral agreements which were working on the issue of protection of geographical indication, namely –

The Paris Convention

The Paris Convention represented 1883 industrial property security, which limited bogus and deceitful indications through more extensive and broad measures. It defined geographical indicators as indications of sources or appellations of origin.

The appellation of origin is a special kind of geographical indication that has been mentioned under this convention but has not been defined.

¹⁹Significance of Geographical Indication Tags in India, blogiplayers, <https://blog.iplayers.in/significance-of-geographical-indication-tags-in-india/>, (last seen on 12/09/2024)

An indication of source is any expression or sign that indicates that a product or service originates in a country, origin or specific place where it has originated. For example, made in India or champagne.

The Madrid Agreement

The Madrid Agreement for the Repression of False and Deceptive Indications of Sources on Goods of 1989 expressly targeted its smothering and obstructing weakening of geographical indications into non-exclusive terms. It provided better protection for geographical indications as it prohibited misleading indications along with false indications.

The Lisbon Agreement

The Lisbon Agreement of 1958 provides a strong insurance policy intercontinental in-role mint arrangement in geographical science. It ensured appellation of origin guarantee. It offered stronger protection for appellations.

The characteristics of the above-mentioned three conventions, coupled with a few additional ones, safeguard the trade-related aspects of intellectual property rights agreements against geographical indications in the world.

JUDICIAL PRONOUNCEMENTS

Banglar Rasogolla v. Odisha Rasagola²⁰ - In November 2017, the West Bengal State Food Processing and Horticulture Development Corporation Limited registered G.I. as Ras Banglar Rasogola. It was reported that Bengal won the dormant war between Odisha and Bengal, which would own the famous dessert. The legal battle for G.I. registration started when objections to G.I. registration were lodged, and it was said that this famous dessert originated at Jagannath temple in Puri, Odisha. An application to remove the registration of G.I. status was filed on February 2018. Meanwhile, G.I. Registry in July notified that Odisha registered G.I. as „Odisha Rasgola“, after which several reports were released. Odisha did not give up in the race but won one. It is very important to note that the G.I. The registry has not registered the word all Rasogola / Rasgola „. It has prefixed two words specifically for G.I. tag, one is „Banglar“, and the other is „Odisha“. To say, that „rasogola / rasgola“ is a general term, which any person can use in his trade and business. Thus, as far as the law is concerned, neither of the two states has got a monopoly on the word „Rasogola / Rasola“. Therefore, it is free to sell sweets to anyone in the trade as Rasgulla / Rasgola or any other synonym. What is prohibited is the use of the words “Odisha rasgola” and “Benglar rosogola” by anyone other than authorized users „under

²⁰ Geographical Indication, https://www.iilsindia.com/study-material/776736_1623336946.pdf, (last seen on 12/09/2024)

the law.

In one of the landmark cases of *Tea Board of India Vs. ITC Ltd (2011)*²¹ The defendant fraudulently used the word ‘Darjeeling’ for naming one of its premises and misled the customers to believe it was the place of origin which was not true. The Court held that using this name could pose a great threat to the tea business of that place and hence the plaintiff moved an interlocutory application for granting temporary injunction for using the name.

In one of the famous cases of *Bikanerwala v. New Bikanerwala (2005)*²² the Court held that using a similar deceptive name for selling the product is an infringement of the right of the plaintiff. The defendant named the shop ‘Agarwal Bikanerwala’ and used to deal in sweets and snacks and on the other hand, the petitioner was using the word ‘Bikanerwala’ since 1981 and got registered in 1992. So, the Court restrained the defendant from selling, advertising any food material under the unique mark/name.²³

In *Comité Interprofessionnel Du Vin De Champagne v. M/s. Chinar Agro Fruit Products (2011)*²⁴ Section 22 of GI Act came into the picture where the defendant was restrained from using the word ‘Champagne’ for the non-alcoholic sparkling drink. The word ‘Champagne’ was registered by the plaintiff under the Geographical Indication (Registration and Protection) Act, 1999. The use of that word led to the infringement of the plaintiff’s right under Section 22(3).

CHALLENGES AND OPPORTUNITIES IN GI PROTECTION AND CULTURAL DEVELOPMENT

Geographical Indications (GIs) provide valuable opportunities for promoting cultural development, economic growth, and the preservation of traditional knowledge and practices. However, the effective protection and development of GIs also come with certain challenges. This section explores some of the challenges and opportunities associated with GI protection and cultural development.

- **Counterfeiting and Misuse:** One of the significant challenges in GI protection is the prevalence of counterfeiting and unauthorized use of GI indications. Counterfeit products bearing false GI labels can undermine the reputation and economic prospects of genuine

²¹ MANU/WB/0277/2019

²² 2005(30) PTC113(DEL)

²³ Significance of Geographical Indication Tags in India, blogiplayers, <https://blog.iplayers.in/significance-of-geographical-indication-tags-in-india/>, (last seen on 12/09/2024)

²⁴ 2017 SCC Del 10704

GI products. Strict enforcement mechanisms, public awareness campaigns, and effective legal frameworks are essential to combat counterfeiting.²⁵

- **Legal Frameworks and Enforcement:** Developing robust legal frameworks and enforcement mechanisms is crucial for ensuring the effective protection of GIs. Harmonizing national legislation with international standards, streamlining the registration process, and establishing specialized bodies for GI administration can strengthen the legal framework. Additionally, improving coordination between various stakeholders, such as government agencies, producers, and enforcement authorities, is essential for effective enforcement.
- **Capacity Building and Awareness:** Building awareness and enhancing the capacity of producers, communities, and relevant stakeholders are vital for maximizing the benefits of GI protection. Providing training programs, workshops, and technical assistance can empower producers to understand and implement GI regulations effectively. Increased awareness among consumers about the significance of GIs can promote the consumption of authentic products and support local economies.
- **Sustainable Development:** GIs have the potential to contribute to sustainable development by promoting environmentally friendly practices, preserving biodiversity, and supporting rural economies. However, ensuring the sustainable development of GIs requires addressing challenges such as climate change, resource management, and market fluctuations. Integrating sustainability principles into GI production and marketing practices can help overcome these challenges and enhance the long-term viability of GI initiatives.
- **Globalization and Commercialization:** While globalization provides opportunities for market expansion and increased exposure for GI products, it also poses challenges. The commercialization of GIs may lead to the commodification of cultural heritage, dilution of traditional practices, and loss of authenticity. Striking a balance between market demands and cultural integrity is crucial to maintain the unique identity and value of GI products.²⁶
- **International Protection and Market Access:** Gaining international protection for GIs and accessing global markets can be complex due to differing legal frameworks and requirements across countries. International cooperation and agreements, such as the

²⁵ World Intellectual Property Organization (WIPO), Geographical Indications: A Guide to the International Framework for the Protection of Geographical Indications, https://www.wipo.int/edocs/pubdocs/en/geographical/935/wipo_pub_935.pdf (last seen on 13/09/2024)

²⁶ Janssens, E., & Huysmans, M., Territoriality and Globalization in European Geographical Indications for Food and Agricultural Products. *International Journal of Sociology of Agriculture and Food*, 22(3), 347-363.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), facilitate the protection and recognition of GIs at the international level. Exploring market access opportunities through bilateral and multilateral trade agreements can enhance the global reach and commercial success of GI products. Addressing these challenges presents opportunities for the development and promotion of GIs, as well as the preservation of cultural heritage. By adopting comprehensive strategies that include legal protection, capacity building, sustainable practices, and international collaboration, countries can harness the potential of GIs for cultural development, economic growth, and the empowerment of local communities.

POLICY RECOMMENDATIONS FOR ENHANCING THE ROLE OF GIS IN REGIONAL DEVELOPMENT

Geographical Indications (GIs) have proven to be effective tools for promoting regional development, preserving cultural heritage, and empowering local communities. To further enhance the role of GIs in regional development, the following policy recommendations can be considered:

- **Strengthen Legal Frameworks:** Governments should review and strengthen their legal frameworks for GI protection. This includes ensuring clear definitions, streamlined registration procedures, and robust enforcement mechanisms²⁷. Proactive measures should be taken to combat counterfeiting, unauthorized use, and infringement of GIs through strict penalties and regular monitoring.
- **Promote Awareness and Capacity Building:** Enhancing awareness among producers, consumers, and relevant stakeholders about the significance and benefits of GIs is essential. Governments should invest in educational programs, workshops, and campaigns to raise awareness about GIs and their impact on regional development. Capacity-building initiatives should be implemented to empower producers with the knowledge and skills required for GI production, quality control, marketing, and brand management.
- **Support Research and Development:** Governments should allocate resources for research and development initiatives aimed at improving product quality, innovation, and sustainability within the GI sector. Funding research projects that focus on

²⁷ Chatterjee, S. (2017). Legal Protection of Geographical Indications in India: An Appraisal. *Journal of Intellectual Property Rights*, 22(4), 227-234.

enhancing traditional production methods, developing new product variants, and exploring market opportunities can lead to value addition and competitiveness.²⁸

- **Foster Collaboration and Networking:** Encouraging collaboration and networking among GI producers, associations, research institutions, and relevant government agencies is crucial. Facilitating platforms for knowledge sharing, exchange of best practices, and collective marketing efforts can strengthen the GI ecosystem²⁹. Encouraging the formation of producer cooperatives or associations can help small-scale producers overcome challenges and collectively negotiate better market access and pricing.
- **Promote Sustainable Practices:** Governments should incentivize and promote sustainable practices within the GI sector. This includes supporting organic farming methods, promoting eco-friendly packaging, and implementing resource-efficient production techniques. Encouraging the use of renewable energy, reducing waste generation, and preserving biodiversity can contribute to the long-term sustainability of GI production.
- **Facilitate Market Access:** Governments should actively support GI producers in accessing domestic and international markets. This can be done by facilitating participation in trade fairs, exhibitions, and buyerseller meets, as well as providing market intelligence and export assistance³⁰. Negotiating bilateral and multilateral trade agreements that recognize and protect GIs can open up new market opportunities for GI products.
- **Foster Public-Private Partnerships:** Governments should foster collaborations between public and private entities to leverage their respective strengths for GI development. This can involve public investment in infrastructure development, marketing campaigns, and quality certification systems, while private sector involvement can bring expertise in branding, distribution, and market linkages. By implementing these policy recommendations, governments can create an enabling environment for GIs to thrive, contributing to regional development, cultural preservation, and economic growth.

²⁸ Ali, A., The Economic Impact of Geographical Indications: A Review of Literature. *Journal of World Intellectual Property*, 18(3-4), 163-174.

²⁹World Intellectual Property Organization (WIPO), Geographical Indications: A Guide to the International Framework for the Protection of Geographical Indications, https://www.wipo.int/edocs/pubdocs/en/geographical/935/wipo_pub_935.pdf (last seen on 13/09/2024)

³⁰ Chakraborty, K., & Basak, S., A Review on Economic Impact of Geographical Indication: An Indian Perspective. *Journal of Intellectual Property Rights*, 25(2), 103-111.

CONCLUSION –

Geographical Indications (GIs) have emerged as valuable tools for promoting regional development, preserving cultural heritage, and empowering local communities. Through the recognition and protection of unique products associated with specific geographical regions, GIs have facilitated economic growth, market access, and the preservation of traditional knowledge and practices.

Geographical Indications hold immense potential for promoting regional development in India. Through the protection of unique products and the preservation of traditional knowledge and practices, GIs can not only contribute to economic growth but also safeguard cultural heritage and empower local communities. By addressing the challenges and implementing the suggested policy recommendations, India can harness the full benefits of GIs, fostering sustainable and inclusive regional development for years to come.

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