



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

AN OVERVIEW OF GEOGRAPHICAL INDICATIONS FOR INDIAN GOODS

AUTHORED BY - RASHI MAKHIJA

ABSTRACT

This article will highlight the concept of Geographical Indications relating to goods, where the products owe their characteristics to that particular area with the aim to sustain the reputation of such products commercially. It will also underline the history of GI in India as well the benefits. This paper will emphasize on how Indian producers can apply for the registration of Geographical Indications in India and what reliefs are available to them when any other person uses the registered or unregistered Geographical Indications. This article is also accompanied by few Indian case laws.

INTRODUCTION

India being one of the world's ancient surviving civilisations, observes a varied perception of land and history. During 15th century, the famous Indian Silk and Spices attracted many tourists including Christopher Columbus, Vasco Da Gama, and various other Englishmen who were searching to trade. After salt, the largest business in the world among spices is still Black Pepper. This black gold was so expensive in ancient times that it was used in exchange of other goods in trade. When a trader named, Vasco Da Gama travelled from Portugal to India in 15th century, he quietly took Black Peppers in exchange of Jewellery. That is why in 16th century, after knowing the value of this black gold, the Englishmen captured Indian Pepper Trade.

The making of Indian handicrafts and silk were also globally renowned which represented the fame of our country due to which India enjoyed 25% share of global trade in textiles before India's deindustrialisation by East India Company. This began during early 18th century when the entire cotton textile industry was consumed by the Britain's Industrial Revolution. The advent of the British decimated the Indian silk and cotton manufacturing industries which started when British colonial traders took power and stopped paying for textiles. Since time immemorial, India wished

for a law which prohibits any third person to use such products which has a good reputation due to its place of origin.

Many products during medieval period like muslin from Dhaka, clay pot from China or rubber from India have achieved reputation and fame due to its place of origin as it is still play a vital role of conserving cultural identities. But the western concept of Intellectual Property Rights of creating restrictive monopoly is quite different from Indian belief where *vidya* (knowledge) has always in public domain. Over the centuries, old traditions were replaced to new ones as we entered the globalized world where goods and services began to circular around the world.

So if a product which is specific to that locality or region; those names which are associated with a particular geographical area, or products which came out of a geographical area due to its distinctive characteristics is set to be described as a form of Intellectual Property under the title “Geographical Indications” as it gives recognition to the producers who produces specific authentic products as a brand that come out of a particular area for example Malabar Pepper, Kanchipuram Silk, Kangra Tea, Phulkari, Nagpur Orange, Banarasi Saree, etc.

Therefore, the legal concept of Geographical Indications as form of Intellectual Property is quintessential in the modern day world.

DEFINITION OF GEOGRAPHICAL INDICATIONS (GI) OF GOODS

The term “Geographical Indications” has two words where “Geographical” means “*relating to the geography of a particular area or place*”¹ and “Indications” means “*a logo, name or a symbol geographical or figurative representation or any combination of them conveying and suggesting the geographical origin of goods to which it applies*”.² So, it is a name or sign which also represents the place, locality or country where the goods are produced. The distinct characteristics or qualities of producing the goods through traditional methods or artisanal factors becomes famous that any reference which is attributable to its place of origin becomes so famous that our mind reminds of

¹Geographical, Cambridge Dictionary, Retrieved from <https://dictionary.cambridge.org/dictionary/english/geographical>

²The Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 2(1) (g).

that good originated in that specific geographical area. Therefore, a name, logo or a symbol will be considered as GI, if the goods are linked with a specific region which further gives reputation to that particular goods originating from that area, place or locality. For example Kashmiri Pashmina is made from high quality wool produced by the Himalayan Goats.

Geographical Indications as a form of an Intellectual Property is defined under Article 22 (1) of TRIPS Agreement 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*”³

Geographical Indications is protected through various approaches which are different due to different cultural, historical and traditional conditions of various countries, which are as follows:

1. *Sui generis* (a special kind) systems which is a special form of protection regime outside the known framework;
2. Using collective and certification marks;
3. Methods focusing on business practices including administrative product approval scheme.

Therefore, a registered geographical indication prohibits any third person from unauthorized use of such Geographical Indications which conveys or suggests the geographical origin of goods by initiating infringement actions which is available in both civil and criminal ways. Passing off action is also available for unregistered GI against the infringer, but the burden of onus is on heavier side as compared to the GI which is registered. The rights relating to Geographical Indications are community rights as geographical Indications are not built by individuals but by a community of persons or organization.

The act also defines the term “goods” as “*any agricultural, natural or manufactured goods or any goods of handicrafts or of industry and includes foodstuff.*”⁴Therefore, Geographical Indications are primarily applicable to natural goods, agriculture goods, manufactured goods, clothing, wines, spirits, handlooms and handicrafts which are originated from a specific geographical area.

³Agreement on Trade - Related Aspects of Intellectual Property Rights, 1994, art. 22(1).

⁴The Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 2(1) (f).

CHARACTERISTICS OF GEOGRAPHICAL

INDICATIONS

We live in a globalized economy where goods are circulated all around the world. Thus, GI makes branding possible in the global market where the producers can promote such products commercially which preserves their local culture, traditions and historical heritage. Here are some characteristics of GI which are as follows:

1. An indication/ sign/ symbol

Geographical Indications links a product to a particular area which indicates quality, reputation and characteristics associated with the place of origin of such goods, example being the Darjeeling Tea and Lucknow Chicken.

2. Arises from specific geographical area

It originates from a definite geographical territory which conveys the characteristics of the region. For example, the tea from Assam or a *peda* of Mathura.

3. Identify agricultural, natural and manufactured goods with special characteristics

It conveys special characteristics of human efforts, culture, history, traditions or climate which are inherent due to its territory.

4. Production and manufacturing skills associated with the place of origin

It implies skills associated with the place of origin like in the case of Odisha Pattachitra wherein the traditional painting is made with charcoal and tamarind seeds on a cotton cloth.

5. Special quality and reputation

The good should have special or a unique characteristic and should not resemble any other geographical indication. Thus, it should have a special quality or reputation.

BENEFITS OF GEOGRAPHICAL INDICATIONS

It plays a vital role in protecting the interest of producers, registered proprietor or authorized user of such goods by excluding unauthorized persons from misusing the GI and also promotes traditional and cultural products commercially in the global market by strengthening the domestic market. It also protects the interest of consumers from deception. Therefore, GI is considered to be of extreme importance in India as-

1. It provides **legal protection** to geographical indications for a specific region, territory or country;
2. It **prevents unauthorized use of Registered GI** by any other persons;
3. It **symbolizes the quality of the goods**;
4. It **promotes social and economic prosperity/ wealth (in rural areas)** by generating jobs in the region as well as promoting the region as a whole;
5. It helps in **boosting tourism** especially in **developing countries**;
6. It helps in boosting **GDP rate through exports** of popular products by strengthening domestic market;
7. It **saves the Traditional Knowledge, craftsmanship and Traditional Cultural Expression/ Heritage** which are carried on from generations to generations by a community in a specific region;
8. It **preserves the environment** through commercial value.

INTERNATIONAL LEGAL FRAMEWORK OF GEOGRAPHICAL INDICATIONS

The legal framework of Geographical Indications as a form of Intellectual Property has entered India as a western concept which can be traced back to the 18th century when trademark and trade names began to appear for the protection under the Paris Convention for the Protection of Industrial Rights, 1883.

1. Paris Convention for the Protection of Industrial Property, 1883 (False Indications)

The Paris Convention was the first multilateral agreement which provided for the protection of industrial property like patent, trademark, trade names, utility models, service marks, indications

of source or appellations of origin and repression of unfair competition.⁵But the Paris Convention has not used the term “Geographical Indications”. However, it is used interchangeably with the terms “**Indications of Source**” and “**Appellations of Origin**” but both “indications of source” and “appellations of origin” are also not defined under the convention. So, in simpler sense, the “indications of source” is “an indication referring to a country or place as being the country or place of origin of a product”⁶ but “it does not imply the presence of any special quality, reputation and characteristic of the product essentially attributable to its place of origin.”⁷

The definition of “Indications of Source” is thoroughly defined in Madrid Agreement, 1891⁸ and the term “Appellations of Origin” is a special kind of GI which is thoroughly defined in Lisbon Agreement 1958 which is discussed further.⁹

The convention also prohibits “*all acts of such nature as to create confusion by any means, any false allegations in the course of trade which is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for their purpose or the quality of the goods.*”¹⁰Therefore, it directly or indirectly prohibits the use of a false indication of the source of the goods.

It also states that any goods which bear a false indication of source must be subject to seizure of such goods at the request of any interested party, public prosecutor or a competent authority.¹¹

2. Madrid Agreement (Agreement for the Repression of False or Deceptive Indications of Source of Goods) 1891 (False and deceptive indication)

Both Paris and Madrid Agreement have not used the term “Geographical Indications” but Madrid Agreement has asserted the shortcomings of the Paris Convention by providing terms such as “false” and “deceptive” indications of source.

⁵Paris Convention for the Protection of Industrial Rights, 1883, art. 1(3).

⁶WIPO, “Frequently Asked Questions: Geographical Indications”, available at https://www.wipo.int/geo_indications/en/faq_geographicalindications.html.

⁷*Supra*

⁸The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods Act, 1891, art. 1(1).

⁹The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, art. 2(1).

¹⁰Paris Convention for the Protection of Industrial Rights, 1883, art. 10.

¹¹Paris Convention for the Protection of Industrial Rights, 1883, art. 9.

The term “**Indications of Source**” is defined in the agreement as “*all goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.*”¹²

According to the agreement, if a good directly or indirectly bears a false or deceptive indication of source, then those goods shall be seized, prohibited and sanctioned for the misuse by unauthorized persons.¹³

It also prohibits the use of false and deceptive representations, advertising of the product or any other form of public announcements.¹⁴

The Madrid Agreement is not part of TRIPS unlike Paris Convention.

3. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958 (definition of Appellation of Origin)

The Lisbon Agreement provides an international system of protection for the Appellations of Origin which are already protected under the national law of contracting state of this agreement. It takes the scope of protection of ‘indications of source’ and ‘appellations of origin’ beyond the protection provided under Paris and Madrid Agreement as it not only includes the prohibition of misleading use of protected appellations of origin but “*any usurpation or imitation of protected appellations of origin, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind”, “type”, “make”, “imitation” or the “like.”*”¹⁵ Therefore, it also prohibits the member countries to use those appellations which have become generic in other members countries.

¹² The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods, 1891, art. 1(1); WIPO, The Madrid Agreement for the Repression of False or Deceptive Indications of Source, 1891, available at (https://www.wipo.int/edocs/pubdocs/en/wipo_pub_261.pdf).

¹³The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods, 1891, art. 1(2); *Supra*.

¹⁴ The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods, 1891, art. 3(b).

¹⁵Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, art. 3.

This agreement has still not used the term “Geographical Indications” but it was the first agreement to define the term “Appellations of Origin”. If the GI is registered (in an international register administered by WIPO) under this Lisbon Agreement, then the appellation of origin (which is used interchangeably with Geographical Indications) is protected in other member countries which are part of this agreement.¹⁶India is not part of this agreement.

Article 2(1) of the Lisbon Agreement has defined the term ‘**Appellations of Origin**’ as “*the geographical name of a country, 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.*” Therefore, Appellations of Origin is a special kind of Geographical Indications in which the quality and characteristics of such appellations of origin should be essentially linked to geographical environment.¹⁷

4. The Draft Treaty on the Protection of Geographical Indications, 1975 (draft treaty not in force but prohibits the use of denominations, expression or sign which contains false or deceptive GI)

In 1974, the International Bureau of World Intellectual Property Organization prepared a new draft of multilateral treaty for the protection of indications of source and appellations of origin which adopted a new definition of geographical indications for the purposes of-

1. Prohibition of use of denominations, expression or signs which constitute or directly or indirectly contain false or deceptive geographical indications as to the source of the products.
2. System of international registration of Geographical Indications by fulfilling the following conditions-
 - a. The geographical indication consists of the official or usual name of the filing State or the name of a major circumscription of a State or of a denomination which serves to indicate the source of product;
 - b. The indication is declared by the filing State to be a reference to itself as the State of origin;

¹⁶Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, art. 1.

¹⁷Dr. Varun Shukla, “*Historical development of geographical indications law under International arena*” 2 International Journal of India 01-04 (2016).

- c. The indication which is used in the course of trade in relation to products originating in the State and the said State certifies such use.

Later, the work on draft treaty is discontinued because in late 1970s the preparation began to revise the Paris Agreement relating to geographical indications.

5. TRIPS Agreement 1994 (first international agreement to protect Geographical Indications and to enforce its application)

Agreement on Trade- Related Aspects of Intellectual Property Rights is the first international legal agreement between all the members' states of the WTO which sets down the minimum standards for the regulation by national governments of many forms of Intellectual Property (including geographical indications) as applied to nationals of other WTO member states. It was negotiated in year 1994 at the end of the Uruguay Round of General Agreement on Trade and Tariffs (GATT) and it till date it remains the most essential international instrument on Geographical Indications. India is a member country of WTO agreement on TRIPS since 1995.

Article 22(1) of the agreement defines the term "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.*"¹⁸

The **three basic functions** on the member states by WTO relating to Geographical Indications is in **Section 3 of the TRIPS agreement**, which are follows-

1. Prevents misleading the public (**Article 22**)¹⁹

It prevents misleading the public as to the geographical indication of the good.

2. Additional or Higher Protection to certain goods- wines and spirits (**Article 23**)²⁰

It prevents the use of geographical indication by identifying wines or spirits not originating in the true place of origin of goods or where terms such as "kinds", "type", "style", or "imitation" have been used as a transaction or by expression.²¹ **Section 22(2) of the Geographical Indications Act,**

¹⁸*Id.*, art. 22(1).

¹⁹Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 22.

²⁰Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 23.

²¹Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 23(1).

1999 in compliance with the TRIPS Agreement also provide for a higher level of protection for certain goods or classes of goods which are notified in the Official Gazette by the Central Government.

It also allows for the registration of those wines and spirits which do not have the stated origin.²² Thus, **Article 23 of the agreement** is a mandatory protection irrespective of whether the consumer is misled or whether such use of indication has led to the act of unfair competition.

3. Exceptions (**Article 24**)²³

It provides with the basic level of exceptions to protect the geographical indications which member countries are free to implement in their own way than is required by TRIPS, but such prohibitions must not contradict with the provisions of TRIPS Agreement.

GEOGRAPHICAL INDICATIONS IN INDIA: FACTS

In India, the laws to protect and provide registration of Geographical Indications relating to goods are “Geographical Indications of Goods (Registration and Protection) Act, 1999” and “Geographical Indications of Goods (Registration and Protection) Rules, 2002”. India as a member of World Trade Organization enacted the Geographical Indications Act, 1999 to comply with TRIPS, which received assent of the President of India through publication in the Gazette of India on 30th December 1999 and came into force on 15th September 2003. Therefore, a GI Tag is given to the registered Geographical Indications which provides protection against the infringer from unauthorized use of famous goods.

The central government has established the Geographical Indications Registry²⁴ which is situated in Chennai and the act is administered under the Controller General of Patents, Designs and Trade Marks who is also the Registrar of Geographical Indications²⁵ relating to goods. The Registrar may classify the goods in accordance with the International classification of goods for the purposes of registration of Geographical Indications.²⁶

²²Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 23(2).

²³Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 24.

²⁴Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 5.

²⁵Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 3.

²⁶Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 8(2).

- Darjeeling Tea was the first product which was registered in India as Geographical Indication in 2004 and the first Foreign GI Tag was granted in India is Peruvian Pisco-Peru in year 2009.
- Karnataka has the highest number of GI Tags and India has the highest number of registered handicraft products which is highest in the state of Tamil Nadu.
- There are exclusively owned GI stores in India where anyone can buy the assorted mix of GI Tagged products, but the first store was GI store was established in Goa at Goa Airport.
- The official symbol for Geographical Indications in India was announced on August 1, 2018 with the title “**Invaluable Treasures of Incredible India**”.
- Any association of persons, producers, organizations or authority established by or under law can apply for the registration of geographical indication.²⁷ Any person who claims to be the producer of registered geographical indication can apply for registration as an authorized user which should be in writing and with a prescribed fee.²⁸ Therefore, a registered proprietor or authorized users have exclusive right to use registered geographical indication relating to goods.

PROCESS FOR REGISTRATION OF GEOGRAPHICAL INDICATIONS IN INDIA

Registration of Geographical Indications gives exclusive rights to use in respect of geographical indication, prohibits any third persons from misusing or deceiving consumers and also to promote the popular famous products bearing the GI tag in the Indian as well as in the global markets. The eight-step guide to register the geographical indications before the Registrar of Geographical Indications under the act as follows:

1. Filing Application

Section 11 of the Act provides for the filing of single application where any association of persons, producers, organizations or authority established by law can represent the interest of the producers of the goods with the affidavit before the appropriate office of Geographical Indications Registry as to how the claim of the applicant represent their respective interests.

²⁷Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 2(1)(n).

²⁸Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 2(1) (b).

The applicant must file the application stating the details of Geographical Indication with the prescribed fee and also must assert in writing to the Controller about the class of goods to which the geographical indication may apply. The producer in the applicant should describe the special features, reputation or characteristics of such GI and how those standards are maintained.

The applicant must also have three certified copies of GI (GI-9) related to field map which shall be examined by the Registrar of the Geographical Indications. The applicant must include the description of the inspection structure if there is an area regulating the use of Geographical Indications.

2. Preliminary scrutiny and examination

The application will be checked by the examiner for any deficiencies. Therefore, the applicant is required to remove the deficiency or to take measures within one month from the date of receipt of the communication.

3. Show cause notice

If the Registrar is not satisfied with the application due to a defect in the application, he shall raise objections and applicant must reply within two months or may be given opportunity to be heard where the decision will be duly communicated.

If the applicant wishes to appeal before the Intellectual Property Rights Appellate Board (IPAB), he can file the same within one month from the date of receipt of such order.

4. Publication in Journal of Geographical Indication (Section 13 of the Act)

If the application is accepted by the GI Registrar then the application within three months of acceptance, shall be published in the Journal of Geographical Indications.

5. Opposition (Section 14 of the Act)

After the advertisement, any person can raise an objection or oppose the GI application, published in the journal, within three months from the date of publication in the Journal or from the date of advertisement/ re-advertisement of application, which can be extended upto one month if the objector has sufficient cause to it.

The Registrar of GI will provide a copy of notice to the applicant and within two months, the applicant has to file or send the reply/ counter statement to the GI Registrar. If the applicant does not file the reply within the specified period of time, then the GI Registrar believes that the applicant has abandoned the application.

Where the reply/ counter statement have been filed, the GI Registrar will consider the reply and will serve of copy fixing the date of hearing. Therefore, both the parties i.e. the applicants and the objectors, will lead their evidence through affidavits and supporting documents. After this, a hearing will be fixed and the matter will be decided by the GI Registrar to approve or refuse the GI.

6. Registration of Application (Section 16 of the Act)

Where an application of Geographical Indication has been accepted, the Registrar will register the GI and issue the certificate to the applicant which will be valid for ten years from the date of application.

7. Refusal decision by GI Registrar

If the GI Registrar refuses to grant registration of application, the Registrar justifies the reason or grounds as to why it was refused. However, the applicant can appeal to IPAB (Intellectual Property Appellate Board) within three months against the refusal decision by GI Registrar.

8. Renewal

A registered Geographical Indication needs to be renewed every ten years.

DURATION OF GEOGRAPHICAL INDICATIONS **IN INDIA**

A registered GI is protected for duration of ten years from the date of filing which is renewable for every ten years as long as it is still in use.²⁹

²⁹Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 18.

PROHIBITIONS ON GEOGRAPHICAL INDICATIONS

The following Geographical Indications relating to goods are prohibited or which cannot be registered-

1. The use of GI is **likely to deceive or cause confusion in public domain** or when the person uses a **similar/ identical GI**;³⁰
2. The use of GI is **contrary to any law**;³¹
3. Which contains any **scandalous or obscene matter**;³²
4. When it may **hurt religious feeling of any person**;³³
5. The use of Geographical Indication would otherwise be **disentitled** to protection in a court;³⁴
6. Which are determined to be **generic names** (a name which has become so common);³⁵
7. Which **falsely represent** to the persons that the goods originated in a other territory, region or locality.³⁶

INFRINGEMENT AND PASSING OFF

The act states that any geographical indication whether registered or not can be initiated before the district court³⁷ where both civil and criminal reliefs are provided to the registered proprietor/ user.

Section 22 of the Act provides for infringement of registered geographical indications. It is infringed by any third person who not a registered proprietor or unauthorized user which is as follows:

1. To **mislead/ confuse the public at large** as to the geographical origin of such goods by using a **similar/ identical GI**.
2. To use any GI in order to gain **unfair advantage** in the course of trade.

³⁰Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(a).

³¹Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(b).

³²Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(c).

³³Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(d).

³⁴Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(e).

³⁵Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(f).

³⁶Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 9(g).

³⁷Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 66.

3. When the infringer uses the GI by **falsely representing as a registered GI** as if his product originates in such territory, region or locality in respect of which such geographical indication relates.

According to the Act, **there will be no infringement** when “*the goods in respect of which the geographical indication has been registered are unlawfully acquired by a person other than the authorized user of such GI, further dealing in those goods by such person including processing or packaging does not constitute an infringement of such GI, except where the condition of goods is impaired after they have been put in the market.*”³⁸

Section 20(1) of the Act asserts that “*no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of unregistered geographical indication.*”³⁹

The registration of Geographical Indication is not compulsory, but a registered geographical Indication provides for better protection against the unauthorized use by any third person. A registered proprietor or an authorized user can initiate infringement action against the unauthorized use of registered GI by any third person. But if the product is not registered under the act, the plaintiff can convey the establishment of the goodwill which is attached with the product by initiating passing off action before the court.⁴⁰

In the case of *Scotch Whiskey Association & Others v. Golden Bottling Ltd.*,⁴¹ the defendant was held liable and restrained from manufacturing and selling “Red Scotch” whiskey where the plaintiff argued that the word “Scot” or “Scotch” is a GI whiskey which is produced in Scotland.

CIVIL AND CRIMINAL REMEDIES

Section 67 of the act provides **civil remedies in suit for infringement and passing off**, which are as follows:

1. Injunction or stay against the unauthorized use of impugned geographical indication;
2. Permanent/ Perpetual Injunction to prevent unauthorized use of GI for indefinite period;
3. Interim/ temporary Injunction under Order 39, Rule 1 and 2 of CPC, 1908;
4. Ex-parte Injunction in the absence of the defendant;

³⁸Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 22(4).

³⁹Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 20(1).

⁴⁰Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 20(2).

⁴¹*Scotch Whiskey Association & Others v. Golden Bottling Ltd.*, 2006 (32) PTC 656 (Del).

5. Appointment of Local Commissioner by the court for sealing, search or seizure of that registered geographical indication which has been represented in respect of any goods in respect of which it is not in fact registered;⁴²
6. Damages;
7. Accounts and handling of the profits.

Section 39 to Section 44 of act provides **criminal penalty** which are as follows-

Section 39 of the act provides criminal relief to registered user against the infringer for applying false geographical indications with the imprisonment for a term which shall not be less than six months; which may extend to three years and with a fine which shall not be less than fifty thousand rupees further extendable upto two lakh rupees.

Section 40 of the act provides criminal relief to registered user against the infringer for selling goods to which false geographical indication is applied with the imprisonment for a term not less than six months extendable upto three years with a fine which shall not be less than fifty thousand extendable upto fifty thousand.

Section 41 of the act provides enhanced penalty on second or subsequent conviction with the imprisonment for a term not less than one year extendable upto three years with a fine not less than one lakh rupees extendable upto two lakh rupees.

Section 42 of the act provides penalty against the person for falsely representing a geographical indication as registered by using the words like “registered” or using other expressions, symbol or sign like “RGI” referring to registration whether expressly or impliedly with imprisonment for a term which may extend to three years or with fine or both.

Section 43 of the act provides penalty for improperly describing a place of business as connected with Geographical Indications Registry with imprisonment for a term which may extend to two years or with fine or both.

Section 44 of the act provides penalty for falsification entries in the register by falsely writing or producing the entry with imprisonment for a term which may extend to two years or with fine or both.

⁴²Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 50.

ASSIGNMENT OF GEOGRAPHICAL INDICATIONS

It is not a personal property as it represents the region, place or country. So, it cannot be transferred from one person to another as it is a public cum personal property. Further it is not a subject of mortgage, assignment, licensing, or pledge.⁴³

However, in the case of death of the registered owner/ user/ proprietor, it will be transferred to his legal heirs.⁴⁴

SOME INDIAN AND INTERNATIONAL EXAMPLES OF GI TAGS

Indian examples of Registered Geographical Indications:

Darjeeling Tea, Agra Petha, Tirupati Laddus, Basmati Rice, Malabar Pepper, Merrut Scissors, Mysore Pak, Khurja Pottery, Madhubani Paintings, Chanderi Fabric, Kashmir Pashmina, Muga Silk, Nagpur Orange, Phulkari, Venkatagiri Saree, Kaipad Rice.

International examples of Registered Geographical Indications:

French Champagne, Scotch Whisky, Swiss Watches, Parmesan from Parma in Italy, Camembert Cheese, Florida Oranges, Prosciutto Di Parma, Argan Oil, Rooibos Tea, Penja Pepper.

LANDMARK CASES RELATED TO GEOGRAPHICAL INDICATIONS

1. Tea Board of India v. ITC limited⁴⁵(Case study of Darjeeling Tea)

Tea Board of India is the registered proprietor of the GI Darjeeling Tea.⁴⁶The defendant i.e. ITC used the GI in the name "Darjeeling Lounge" at the Hotel in Kolkata.

So, Tea Board of India went before the court to restrain the defendant from using the word "Darjeeling" for its lounge. The plaintiff executed his passing off right and filed the interim

⁴³Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 24.

⁴⁴*Supra*

⁴⁵*Tea Board of India v. ITC Ltd.*, C.S. Number 250 of 2010, MANU/ WB/ 0277/ 20.

⁴⁶GI Application Number 1 & 2, Application Details, Report on Darjeeling Tea, (<http://ipindiaservices.gov.in/GIRPublic/Application/Details/2>).

application for temporary injunction to prevent the defendant from using the GI Tag of Darjeeling Tea.

The plaintiff asserted that the defendant with an ill intention used the name "Darjeeling" for the maximization of profits and for the purpose of publicity and sale of goods which it sells in such lounge. And this publicity and sale of goods has led to unfair competition and dishonest trade practice which mislead the public.

The defendant i.e. ITC Ltd. asserted that there is more to Darjeeling than the tea that is grown there, and such application is not maintainable under Section 26 of the Geographical Indications Act, 1999.

The court held that-

- a. That the suit by the plaintiff is barred by the limitation under Section 26(4) as the Darjeeling Lounge started its business in year 2003 and the plaintiff filed the suit in year 2010.
- b. That the name "Darjeeling Lounge" used by the defendant is not relating to goods. The act does not provide protection against the services.
- c. That the allegations made by the plaintiff are baseless as there no unfair competition between plaintiff's GI Tag and defendant's hotel of service "Darjeeling Lounge".

Therefore, the court stated that the plaintiff has no exclusive right over the term "Darjeeling" and the case was decided in favour of the defendant as service does not come under the ambit of the Act.

2. Case study of Kashmir Pashmina; Applicant name: Tahafuz, a Registered Society under the Jammu and Kashmir Societies Act (Application number 46)⁴⁷

Kashmir Pashmina has the highest quality of soft, light and warm cashmere wool which comes from Himalayan Goats. This type of special breed of goat is available only at the high altitudes of the Himalayas in Nepal and North India.⁴⁸

⁴⁷GI Application Number 46, Application Details, Report on Kashmir Pashmina, (<http://ipindiaservices.gov.in/GIRPublic/Application/Details/46>).

⁴⁸Sanjiv Singh "Geographical Indications; A Case Study of Kashmir Pashmina (Shawls)" 1 New Man International Journal of Multidisciplinary Studies 97 (2014).

Two applications were filed in 2005 for the Registration of Kashmir Pashmina. First application was filed by the Craft Development Institute (CDI) which is established by the Ministry of Textiles, Government of India and Directorate of Handicrafts, Government of Jammu and Kashmir to register the GI in Class 24. Second application was filed by the KASHMIR HANDMADE PASHMINA PROMOTION TRUST (KHPPT) which came into existence in year 2005 with the initiative by Wildlife Trust of India (WTI) in Classes 23, 24 and 25.

But the second application which was filed by KHPPT was not accepted as the application relating to Kashmir Pashmina was prior filed by CDI. Therefore, a settlement was arrived where CDI brought into existence a registered society in J&K under the name Tahafuz. Afterwards KHPPT became a member of Tahafuz and CDI transferred the GI Application to Tahafuz. In order to provide wider protection, it was agreed that Tahafuz will take steps to include Classes 23, 24 and 25 in that GI application for the registration of GI.

At last, on September 12, 2008 the GI Tag of Kashmir Pashmina was granted in favour of Tahafuz relating to goods specified in Classes 23, 24 and 25.

3. Case study of Basmati Rice (Application number 145)

Basmati Rice is an aromatic, premium, long grained and the costliest rice in the world which is traditionally grown in the Himalayan areas of India and Pakistan. In 1997, when India already became the member of TRIPS but did not have its own specific law for the registration and protection of the geographical indications, the United States Patent and Trademark Office granted patent to Ricetec Inc., a U.S. company which is situated at Texas for "lines and grains" in the name of "Basmati Chawal". The company claimed the new variety of hybrid rice namely Texmati, Kasmati and Jasmati have better characteristics than the original Basmati Rice which is geographical cultivated in North America.

India challenged the patents of Ricetec. Inc in the year 2000 by stating that the Basmati Rice is qualified to be protected under Article 23(1) of the TRIPS Agreement, but Basmati was not registered as GI in India at that time. Dr. Vandana Shiva had assisted this case for India as the American Company was branding Basmati Rice as any ordinary kind of hybrid rice.

4. Odisha Rasagola (Application number 612) versus Banglar Rasogolla (Application number 533)

Milk and sweets have always been a vital part of Puja in India which is considered to be auspicious. Rasogulla being the integral part of Indian deserts has a long traditional history. Rasogulla of West Bengal travelled from Odisha to Bengal when brahmin cooks who belonged to Odisha were employed by Bengali families. Odisha Rasagola is made from soft cottage cheese also known as chhena which is further cooked by caramelizing sugar syrup. This rasagola was used as an offering to Bhagwan Jagannath.

The reference of Rasagola is found in the 15th century Odia Ramayana where the author of Odia Ramayana (who was Balaram Das) used to compose and sing songs at the Puri Jagannath Temple. Thus, it is claimed that Odisha Rasagola originated prior to 15th century when these were being offered at Puri Jagannath Temple.

In case of Banglar Rasogolla, it was first conceived in year 1860s by Nobin Chandra Das at his Bagbazar Residence at Kolkata. This rasogolla is sweet, spongy and white whereas the Odisha Rasagola is very soft, light brown colour and slightly less sweet desert.

In 2017, GI for Banglar Rasogolla was granted to West Bengal (Application number 533)⁴⁹ and in 2019, GI for Odisha Rasagola was granted to Odisha.⁵⁰

In 2018, an application for the registration of GI Odisha Rasagola was filed by the Odisha Small Industries Corporation Ltd., which received GI Tag for the same by asserting the facts that Odisha Rasagola is a very soft, juicy and non-chewy in consistency which can be swallowed without teeth pressure unlike the Banglar Rasogolla which is spongy and chewy in consistency.

But the tussle between the two did not stop as in October 2019; a cancellation of application was filed against the Odisha Rasagola which is a pending adjudication. A similar rectification or cancellation of application was filed against the Banglar Rasogolla which was treated as abandoned on the technical grounds of delay. Therefore, now both have their respective GI Tags.

⁴⁹GI Application Number 533, Application Details, Report on Banglar Rasogolla, (<http://ipindiaservices.gov.in/GIRPublic/Application/Details/533>).

⁵⁰GI Application Number 612, Application Details, Report on Odisha Rasagola, (<http://ipindiaservices.gov.in/GIRPublic/Application/Details/612>).

CONCLUSION

India is a developing nation where most of the people are engaged in the manufacturing and producing such goods which are made in small households (small scale industries) in a same region which is often times difficult to organize them into organizations or association of persons. The only solution for this difficulty is to aware the people (especially in rural areas) about the GI Tags. So, those goods which are identified on the account of quality, fame and reputation attributable to their geographical origin can be registered in respect to that good which protects the name, reputation and goodwill of the producer against the unauthorized attempt to use them. Therefore, the Government of India should create awareness amongst the rural producers of any goods which preserves the cultural, traditional and historical heritage so that their product can be exported globally which will further add to the social economic wealth.

