



IP BULLETIN

Vol. IV Issue 2, JULY-DEC., 2023, Pg. 60-81



GEOGRAPHICAL INDICATION: PROTECTOR OF INDIA'S RICH CULTURAL HERITAGE

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ABSTRACT

India is a nation of extraordinary cultural diversity, with a variety of traditions, crafts, and cuisine that have evolved over thousands of years in various parts of the Indian subcontinent. This richness in culture and heritage is not just a source of pride for the nation but also a tribute to the intersection between location and tradition. Geographical Indicators (GIs), a component of Intellectual Property Rights (IPR), emerge as a vital way to conserve this Cultural heritage by tying products to their distinctive locations of origin. GIs are place-based labels used to distinguish products that draw their features, characteristics, and reputation from their geographical location. They are a symbol of the complex relationship between a region's particular natural elements, cultural behaviors, and the products they yield. In India, GIs are more than just a legal instrument; they are the keepers of the nation's diverse heritage which has been preserved and passed on through generations. The Indian subcontinent carries an extensive range of GIs that reverberate internationally, from the beautiful craftsmanship of Banaras silk and Kosa silk to the fragrance of Darjeeling tea and the complex artistry of Jaipur's blue ceramics to Madhubani paintings of Bihar. Beyond its economic value, these GIs illustrate centuries-old traditions, skills handed down, and indigenous knowledge systems that have lasted through time. With this paper we want to showcase the importance of GI's in India, its importance, its application and how it is important to protect India's centuries-old cultural legacy in international trade. We begin by defining GI, its significance, and its history before moving on to discuss its applicability in India, what constitutes GI, relevant case law, GI from a national and international viewpoint, and contemporary GI-related issues in India.

Keywords: Culture, Heritage, Geographical Indicator, Protection, Intellectual Property Rights

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INTRODUCTION

India's cultural diversity is rooted in its history and geography. Over the years, the nation has been the home of a wide variety of cultures and religions, and each had a distinctive impact on Indian civilization. The variety of art forms in India is among the most visible features of its cultural diversity. India is home to an extensive variety of creative traditions, including the classical dances of Kathakali and Bharatanatyam and the folk art of Madhubani and Warli, each of these art forms tells a story of the unique culture and traditions of its region. These art forms are not just aesthetic expressions; they are also repositories of knowledge and history. These artistic expressions give an in-depth look into the diverse and rich history of India while also reflecting different cultures of India.

Depending on the context and type of usage, Copyright and industrial property are two of the main subcategories of intellectual property rights. Industrial property rights are used to evaluate a person's legal authority over things that are relevant to business and industry. 'Geographical Indications'³ comes under this category. 'Geographical indications (hence referred to as GIs) represent distinctive signs applied to identify items with a specific geographic origin and qualities that are distinctly connected to the geographical area from which they arrive.'⁴ GIs are particularly important in India, where many traditional art forms are produced using traditional methods and materials. For example, Chanderi sarees are a type of handwoven silk and cotton fabric that originate from the town of Chanderi in Madhya Pradesh.⁵ The sarees are known for their fine texture, intricate designs, and gold and silver zari work. Similarly, Bastar Dhokra is a form of metal casting that uses the lost-wax technique to create intricate sculptures of animals, deities, and tribal motifs, the art form is practiced by the indigenous tribes of Bastar in Chhattisgarh, who use locally available materials such as beeswax, clay, and alloys of brass, bronze, nickel, and zinc.⁶ These two are only a couple of the many GIs that may be registered under the Geographical Indications for the Identification of Goods (Registration and Protection) Act, 1999.

GI indicates that there is a close relationship between a good's characteristics and the location

³ Part III, Article 22(1) of TRIPS Agreement 1994; Articles 1 (2) and 10 of the Paris Convention 1979 for the Protection of Industrial Property; Section 2(e), Geographical Indications of Goods (Registration and Protection) Act 1999

⁴ https://www.wipo.int/geo_indications/en/ (Last visited Oct. 08, 2023)

⁵ Precious Rongmei, *This town in Madhya Pradesh has a GI-tag and numerous historical gems*, Times of India, (Oct. 02, 2023 at 03:20 PM), <https://timesofindia.indiatimes.com/travel/destinations/this-town-in-madhya-pradesh-has-a-gi-tag-and-numerous-historical-gems/articleshow/99853883.cms>

⁶ IBEF. "Bastar Dhokra Craft." IBEF Experience India, 2023. <https://www.ibef.org/experience-india/products/bastar-dhokra-craft> Accessed October 2, 2023.

of its production, meaning that the product inherits its attributes from that location. The link ought to inform consumers of certain significant details regarding the goods and its original production location. GI tagged products are goods that reflect the culture and nature of specific regions. They are sought-after and precious in the global market, where people pay extra for their quality and authenticity. But they also risk fakes and fraud by greedy traders who want to benefit from their reputation. This can harm both the makers and the users of GI tagged products, as they can face quality loss, market decline, and trust erosion. So, it is vital to regulate and verify the quality of GI tagged products, to ensure they comply with the GI standards. GI tag is a quality guardian, as it helps to spot and certify the real products, protect them from violation and exploitation, and make them aware and valued by the people. By registering these GIs, India aims to preserve the cultural heritage, promote the economic development, and protect the consumer rights of these unique products.

DEFINITION AND CONCEPT OF GEOGRAPHICAL INDICATORS

The complexity of GIs stems from the fact that they integrate a variety of economic and legal principles, including those pertaining to consumer protection, intellectual property rights, and unfair competition. Additionally, due to the worldwide extent of GIs, they can be protected in various countries. There is no one widely recognized definition of geographical signs because of their nature and broader geography of protection, therefore enables room for interpretations. Some of the definitions used regularly in India Are-

Geographical Indication means “a sign which identify an article as starting in the territory of a member, or a region or locality located within that territory, where a given quality, reputation, or other characteristic of the good is essentially attributed to its geographical origin” in Part II, subsection three of Article 22(1) of the World Trade Organization’s (WTO) 1995 Settlement on Trade- Related aspects of Intellectual Property Rights, also known as the TRIPS Agreement.⁷

Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act 1999 defines geographical indications as “geographical indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are

⁷ Trade-Related Aspects of Intellectual Property Rights, 1994, art. 22.

manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”⁸

As defined by the World Intellectual Property Organization (WIPO), geographic indicator is “a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.”⁹

GI tag provides confirmation of the product’s country of manufacturing or origin. The value tag works as an identifier for the consumers that are buying genuine products that have the unique qualities associated with that region. It also enables the manufacturer to cultivate brand recognition and reputation for their products, which in turn helps them command a higher price due to their quality and traditional means of production.

A GI tag has several functions in alongside performing as an identifier, namely the following:

- I) gives a hint about the goods’ quality: A GI tag indicates that the specified goods have distinctive features due to their origin and that these characteristics set them against other goods in the exact same category.
- II) Culture protecting function: GI guarantees that communities get paid fairly for their products while preserving the traditional methods of producing commodities that were developed by them. This ensures that certain production techniques don’t become extinct in this day and age.
- III) Export growth is stimulating the economy, and this is made possible by GI tags, which boost export growth. An item with a GI tag is of a specific standard, has a good reputation, and was manufactured using conventional manufacturing methods.
- IV) Provides Legal protection:

Only producers in the geographical region associated with the GI can use the GI tag on their products. This prevents unauthorized producers from using the GI tag to mislead consumers and benefit from the reputation of the GI-protected product. Producers who have registered a GI have exclusive rights to use the GI tag on their products. This means that other producers cannot use the GI tag on their products without permission from the registered proprietor.

⁸ The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999), s. Section 2(e)

⁹ WIPO. Geographical indications: What do they specify? (Last visited Oct. 8, 2023)

Producers who have registered a GI have exclusive rights to use the GI tag and can sue anyone who violates their GI rights. This covers producers who create items with false GI tags, producers who create things that aren't real, and producers that mislead consumers regarding the nation of origin of their products.

The following prerequisites must be satisfied for a sign to be considered as a geographic indication:

- The Symbol must be related to the Good.
- The products must come from a specific geographical territory; and
- The items being sold must display a company's logo, a reputation, or additional characteristics symptomatic of their origin.

Geographical indications (GIs) are based on two separate notions that are connected with the origin and quality of the merchandise. These two ideas can be separated according to the following:

1. Protected Appellation of Origin

An appellation of origin (AO) is an identifier that protects the reputation and name of a product from a specific area. For example, Darjeeling tea is an AO, which signifies that tea that is grown and produced in the Darjeeling region of India can only be identified as Darjeeling tea.

2. Indication of source

Indications of source are a type of GI that simply indicates the geographical origin of a product. They do not necessarily connote any special qualities or reputation. For example, the phrase “Made in France” is an indication of source that can be used on any product that is manufactured in France.

BACKGROUND

As defined in article 27 of the UDHR “Everyone has the right to freely participate in the cultural life of the community, to share scientific advances and its benefits, and to get credit for their own work. This article firmly incorporates cultural rights as human rights for all.”¹⁰

¹⁰ United Nations General Assembly. “Universal Declaration of Human Rights.” Resolution 217 A (III), December 10, 1948. (Accessed on October 4, 2023). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

After achieving independence in 1947, India decided to maintain a closed economy for a number of years. This was brought on by historical aspects including the requirement to defend indigenous industry from foreign competition. But in order to boost economic growth, India embraced globalization in 1991. GI was created to preserve the identity, diversity, and heritage of traditionally made products, and improve their economic and social value for the makers and the country. It also aims to prevent the imitation and fraud of these products by unscrupulous traders who want to take advantage of their popularity and goodwill. The origins of Geographical Indications (GI) may be found in the 19th century, when certain nations, like France, began to defend the trade names and trademarks of food items associated with certain regions. Later, in 1919, France established the notion of “appellation of origin” to control the standard of cheeses and wines from particular areas.¹¹

The term geographical indication gained international attention in 1994 when it was recognized as intellectual property in the WTO TRIPS Agreement. Since then, many countries have adopted laws and regulations to safeguard and promote their GI products. India, for example passed the Geographical Indications of Goods (Registration and Protection) Rules 2002 as well as the Geographical Indications of Goods (Registration and Protection) Act 1999, which came into force on September 15, 2003.

GEOGRAPHICAL INDICATION AS AN INTELLECTUAL PROPERTY

People who develop new knowledge and ideas are given the right to intellectual property. Intellectual property includes things like patents, trademarks, copyright, trade secrets, and geographical indications. All these terms—patent, trademark, trade secret, etc.—are connected to fresh concepts and discoveries regarding a specific person or business. Typically, geographical identifiers comprise processing techniques that have been handed down through the centuries. The method employed in the item can be very dated. Why do intellectual property rights include geographical indication? The answer to the problem is that, with regard to agricultural goods, such as Sohrai Khorar paintings and Ratnagiri Alphonso mangoes, respectively, the geographical indicator is only given to individuals who have genuine knowledge about the product. A geographical indication is a tool that can be employed to some extent to safeguard and preserve both community traditions and natural resources. However, the geographical indicator is a form of intellectual property that is frequently associated with

¹¹ World Intellectual Property Organization. (n.d.). Summary of the Paris Convention for the Protection of Industrial Property. Retrieved October 2, 2023, from https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

outdated ideas and procedures.

Geographical Indication is a case when intellectual property rights are not applicable.

Since agricultural items receive the majority of GI, this will aid in preserving sustainable agricultural methods. Additionally, GI aids in preventing improper product use by other parties. Since customers are more likely to purchase original products than counterfeit ones, GI can also assist in generating some financial benefit.

As a result, GI safeguards not just the goods produced or processed but also the community's knowledge and technical expertise. It is evident from the TRIPS agreement's regulations that GI is considered intellectual property.

SIGNIFICANCE OF GEOGRAPHICAL INDICATIONS (GI)

Certain countries rely on trademark laws, passing off lawsuits, unfair competition laws, and safeguarding customers' laws based on their attempts to defend their intellectual property rights.

Geographical indications (GIs) are exemptions or signs applied to products that differentiate them from competitors based on specific characteristics, usage of traditional manufacturing methods, or unique reputation derived from their location of origin. They originated in France, where they were first used as an Appellation d'origine controlée (AOC) in the early 20th century. However, the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) of 1994 allowed for the extension of the Agreement to other member nations as well, including India. According to the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into force on September 15, 2003, the Geographical Indications Registry, a body under the Department of Industrial Promotion and Internal Trade, Ministry of Commerce of India, must provide geographical indications. Any producer, whether individual, group, company or legal entity, can apply for a geographical map. The request must be sent to the authorized organization in the correct format and with the appropriate fee.

The first-ever GI tag was awarded to Darjeeling Tea in 2004,¹² since then, several additional applications and registrations have been made. Around 370 GI tags have reportedly been attached to various objects in compliance with Section 2(f) of the Geographical Identification of Commodities (Registration and Protection) Act, 1999.

¹² Government of India, "Registration Details of Geographical Indications" 1 (Ministry of Commerce, 2004)

If a product fails to fulfill the necessary requirements, the owner of the geographical indicator right has the authority to prohibit others from using the indication. Tea manufacturers, for example, are permitted to remove the label “Darjeeling” from tea that was not produced in compliance with the requirements outlined in the code of conduct for the geographical indicator or that was not cultivated in their own tea gardens. On the contrary, the holder of a protected geographical indication is not entitled to prohibit others from producing a product using techniques similar to those described in the criteria for that indication. Generally, obtaining a claim to the indication-providing sign is the first step towards obtaining GI tag protection.¹³

National and international legislation, such as those pertaining to mark certification, unfair competition, and consumer protection, safeguard GIs. By protecting them from unfair acts like copying and deception, these regulations aid in protecting GIs. Governmental protections are in place to protect GIs from unfair tactics. National laws, generally speaking. Determine if it’s still a sign or if it's just a coincidence. Specifically, a general comment on whether the word has become meaningless and has become a general phrase. The phrases that follow have addressed the three fundamental categories into which national legislation is divided.

All potential safeguards against the direct application of statutory provisions or legal precepts provided by the philosophy of law are included in the first category of nation France, protection in this manner is frequently apparent, as evidenced by The French Law of May 6, 1997. The appropriate authorities established a control mechanism, and quality control areas frequently operate. Initially solely applicable to wines and spirits, this protection was eventually expanded to cover other goods like dairy products including dairy products, butter, chicken, and plant-based foods. The protection of GIs through collective mark registration, also known as certification mark protection (“The label used as a certification mark will be evidence that the company’s products meet the specific standards required for the use of the certification mark”), is an element of the second class of defense systems. An example of this is the French “agricultural label.” This French law stipulated the criteria for the continued use of labels of origin and acknowledged their existence. Since it may be used to identify the source of goods or services, a certification mark may be somewhat appropriate for the protection of geographical indications. Indicators resulting from a decision made by a competent government authority fall under the last category of protection at the national level. The system in Singapore can be used as an example. The protection there is somewhat narrow, available

¹³ Protection of Geographical Indication and its judicial findings, LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-2405-protection-of-geographical-indication-and-itsjudicial-findings.html> (last visited Oct 11, 2023).

only to countries who are signatories to the Paris Agreement, members of the World Trade Organization (WTO), or those the Government Gazette has designated as “qualified countries”. The Geographical Indications Act of Singapore does not require GIs to be registered, and under Indian law, GIs may be protected in a similar way to trademarks. Laws have been appropriately modified in 2000 to comply with the needs.

The marketing of goods that have GI is subject to administrative permission, allowing administrative controls over how the GI is used on those commodities. The best example is wine and liquor sales, which are governed in many nations. The requisite must be satisfied for approval to be given; otherwise, GI cannot be utilized for marketing reasons. Fair trade and consumer protection are guaranteed by administrative label control programmers. Different actions, such as unfair competition, fair dealing, or the marketing of specific items in accordance with specified criteria, may be taken to uphold fair trade and consumer protection. The administrative tool also tries to stop the misrepresentation of GI on goods. If lying continues, criminal penalties may be levied.

1. National Significance

Geographical indications are built on a shared tradition that has evolved through centuries in a specific geographic location, region, or place. Because GIs encourage ongoing evaluation and the prosperity of the GI designated region, protecting GIs is actually a manner of rewarding traditions.

1.1. Rural development

In the Indian context, Gandhian doctrine is heavily founded on Gramme Swaraj, which believes in rural development through village self-rule. However, in today's globalized economy, there is high market competition because large corporations control economic activities at large, and as a result, the cottage industry and traditional varieties of food and craft products that originated in rural areas are under threat of extinction. They require protection, and a GI tag can be very useful in providing that protection. By expanding local cash inflows and possibilities for employment, effective protectionism and distribution can directly contribute to the eradication of absolute poverty. Due to their reputation, many products manufactured in India that have traits that could possibly be explained by their origin are acceptable for the GI label. These products are from several categories, such as handicrafts, handloom, agricultural, and food stuff, and are primarily produced in rural areas; thus, trade benefits obtained through GI tags would be pro-poor and supportive of rural communities. Because the GI tag increases the value of these products, they can be marketed globally. The

popularity of a product. Recognition of GIs, on the other hand, may bring other economic activity, like tourism, crafts, and services, to the local area.¹⁴ As a result, by keeping rural farmers with their financial resources, GI certification lowers the vulnerability of the rural poor to poverty via the reputation channel and, as a result, lowers the amount of immigration from rural to urban regions. The European Union (EU) has conducted a number of studies that demonstrate the significant changes that are occurring, including the growth and expansion of geographically designated commodities and their increased economic potential after GI membership. However, without empirical research, it is impossible to evaluate and quantify the true effects of geographical indications (GI) in India.

2. International

In 1995, the “International Trade Organization Framework” replaced the International Intellectual Property Organization (WIPO) as the administrative body for intellectual property. The TRIPS Agreement of 1994 is an international treaty that defines the minimal standards for intellectual property (IP) protection in WTO nations that are members. Amongst the numerous IP rights that are protected by this are copyrights, patents, trademarks, designs for products, and proprietary information. The Agreement has significantly altered the landscape of intellectual property by promoting creative thinking and innovation, lowering trade barriers, and contributing to economic growth.

An important boost was the incorporation of intellectual property (IP) under the WTO regime, which brought IP under the purview of international trade law. As a result, nations can now resolve IP disputes through WTO dispute resolution processes. The WTO dispute settlement process has promoted the growth of a more unified international IP system and improved IP rights enforcement on a worldwide scale. The TRIPS Agreement has both positive and negative impacts. On the one hand, by providing them with robust protection for their intellectual property, it has assisted in making it simpler for people to develop new ideas and produce new goods. Additionally, technology has made it simpler for firms to conduct international trade and for nations to expand their economies. However, the Agreement can be challenging to put into effect, particularly for developing nations. It has also received criticism for

¹⁴ Megha Ojha, GEOGRAPHICAL INDICATIONS AND RURAL DEVELOPMENT IN INDIA: AN ANALYTICAL STUDY OF THE SCOPE AND CHALLENGES IN GUJARAT AND RAJASTHAN SHODHGANGA@INFLIBNET: GEOGRAPHICAL INDICATIONS AND RURAL DEVELOPMENT IN INDIA : AN ANALYTICAL STUDY OF THE SCOPE AND CHALLENGES IN GUJARAT AND RAJASTHAN (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/332101> (last visited Oct 11, 2023).

not allowing nations sufficient flexibility to safeguard their inhabitants' welfare and public health.¹⁵

Protecting Geographical Indications Before the TRIPS Agreement

1. The Convention of Paris

The Paris Agreement was absolutely the most important agreement that many countries accepted in the 20th century. The 1883 Parisian Convention was further elaborated upon by the Madrid Protocol of 1891. Following revisions in Brussels (1900), London (1911), The Netherlands (1925), London (1934), Lisbon (1958), and Stockholm (1967), it was modified in 1979. The Paris Convention, the first accord on this topic, guaranteed relatively little protection of geographical indications. There are numerous articles of the Paris Convention that deal with indications of source or trademarks of origin; article 1(2) lists "indications of source" and "appellations of origin" amongst the products regulated by industrial property.

2. The Madrid Agreement

The Madrid Agreement for the Repressed emotion of Untrue and Deceptive Indications of Source on Goods is a specialized agreement inside the Paris Union. In between being modified in Lisbon in 1958, London in 1911, The Hague in 1925, and London in 1934, the Madrid Agreement was first ratified in 1891. It has 33 signatory states as of the 5th of January 2001, and it had been expanded by the Additional Act of Gothenburg (1967). Unlike the Paris Convention, which is a worldwide treaty providing protection for. The Madrid Agreement incorporates exhaustive instructions on how to remove deceptive and bogus source information and covers an extensive number of diverse classifications of rights in industrial property nevertheless, there is no clearly request that such measures be taken; rather, the States Parties to the Agreement can recommend that the parties concerned utilize through a public prosecutor or any other competent authority. The Agreement also establishes norms for how seizures ought to take place and indicates the competent authority to enforce

¹⁵ Kritika Nagpal, INTERNATIONAL DEVELOPMENTS IN GEOGRAPHICAL INDICATIONS ISSUES AND CHALLENGES

SHODHGANGA@INFLIBNET: INTERNATIONAL DEVELOPMENTS IN GEOGRAPHICAL INDICATIONS ISSUES AND CHALLENGES (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/362750> (last visited Oct 11, 2023).

such measures.

APPELLATIONS OF ORIGIN ARE SAFEGUARDED BY THE LISBON AGREEMENT

The Lisbon Agreement was approved in 1958, then accompanied by amendments in Stockholm in 1967 and finally changes in 1979. This agreement sets up a correspondingly greater extent of protection, and the TRIPs geographical indications regulations were modeled after it. One of these agreements, the Lisbon Agreement, is the location where the notion of "appellations of origin" is first defined. The term "geographical indications" is not used, nevertheless. The arrangement guarantees descriptors of origin, or markers for items with special characteristics and the characteristics relating to their place of origin.¹⁶

IMPORTANCE OF GEOGRAPHICAL INDICATORS

- **“Preserving our knowledge, our culture, and our heritage”:** Every community accumulates a certain body of knowledge over a protracted period. The geographical setting and human interactions are responsible for the development of this knowledge base, which has become a significant component of their economy and heritage. The importance of a cohesive relationship between human culture, economy, and traditional knowledge is stressed by GIs. These are susceptible to misuse in a globalized culture, making the task of safeguarding knowledge and heritage crucial. It is necessary to recognize the locals who have worked hard to develop the manufacturing process or just traditional knowledge over a period of time. “The International Conference on Intellectual Property's Article 37 states that any local community's artistic and cultural assets must be protected from unfair competition and adequately compensated. Since GIs are built on shared traditions and decision-making processes, they are well suited for the safeguarding of traditional knowledge. GIs not only support the evolution of traditional knowledge but also protect and reward it”.
- **“Competition”:** Things can be replicated easily in the present electronic age. Unfair competition is a result of this copying. At the international level, these items are covered by legislation. Damages result from unfair business practices. Four different categories of damages for unfair competition have been recognized by courts. Any competitive act that violates ethical standards in business or industry is clearly

¹⁶ Rekha S Chavan, LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS: NATIONAL AND INTERNATIONAL PERSPECTIVE SHODHGANGA@INFLIBNET: LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS: NATIONAL AND INTERNATIONAL PERSPECTIVE (1970), <https://shodhganga.inflibnet.ac.in/handle/10603/14514> (last visited Oct 11, 2023).

described as unfair competition in this law. Since it is the fundamental purpose of law to encourage moral and ethical behavior in the marketplace, fair competition is essential. According to S. Ricketson, if anyone is harvesting the crop without sowing and maintaining it, it is against the principles of natural law. Fair competition is not only important for protecting the original producer and source of origin, but it is also particularly helpful in the context of evolving business practices.

- **“Foreign trade”:** International trade is largely dependent on intellectual property. Since the prosperity of the national economy is always boosted by the wise and effective application of information. In a nation like Australia, the value of intellectual property is \$30 billion and rising. The TRIPS agreement is in place on a global scale to maximize the use of intellectual property for economic success. It also features a mechanism that guarantees the eradication of unfair competition and the advancement of environmental protection. In the same way that trademarks or brand names are used to distinguish high-quality goods and build their reputation and goodwill, geographic indications (GIs) are likewise an IPR that is used to establish premium prices in foreign markets. GIs run the risk of being abused without sufficient protection. Such unethical business practices not only cause the real owners of the GIs to lose a significant amount of money, but they may also, in the long term, damage the GIs' goodwill and reputation.

CASE LAWS

1. *Tea Board of India vs. Mitsui Norin KK, Japan*

The application for "Divine Darjeeling" in Category 30 (Darjeeling tea, coffee, and chocolate produced in Darjeeling, India) was contested in this case by the country's Tea Board. Three things in particular had a significant impact on the opposition: Insofar as "Darjeeling coffee and cocoa" is concerned, Divine Darjeeling falls short because neither coffee nor cocoa are grown in the Darjeeling region. However, Darjeeling tea is recognized as a geographical designation according to international treaties, such as TRIPS, as well as ought to be protected because Japan is a TRIPS member. The one thing that requires protection is the phrase "Darjeeling," which is simply unparalleled because "divine" is a praiseworthy term. The Japan Patent Office Opposition Board approved the invalidation claim offered by the Tea Board of India since it was determined that the "Divine Darjeeling" mark did not distort or deceive customers regarding the nature of the product. The non-use cancellation process was unsuccessful because the allowed possessor was

unable to provide the required documentation showing that the mark had been used in Japan.¹⁷

2. *Basmati rice case*

Late in 1997, Ricetec Inc., an international company with its primary headquarters in Alvin, Texas, was awarded a patent from the USPTO for a revolutionary "grain" commonly referred to as "basmati." The firm and innovative "basmati" crop claimed that several varieties had been safeguarded because they possessed attributes superior to those of the original crop. On the international rice market, it has been selling numerous varieties of rice under the names "Jasmati" or "Kasmati". It was also claimed that basmati rice was bred with American basmati, often known as "Texmati," a different species, resulting in the creation of a brand-new variety of fragrant rice. A patent for the brand and granule of basmati rice has been awarded to the company by the USPTO. Later, the invention had been challenged by the Research Foundation, the Institute for Science, the Centre for Food Security, and finally the Centre for Science and Industry Research. While Thailand battled to keep its right to grow rice made from jasmine, the Indian subcontinent maintained its a long-standing basmati rice business. Around 2000, the Indian Government reviewed the proof that was available and challenged the business's copyright assertions.¹⁸

3. *Scotch Whisky Association v. Pravara Sahakari Karkhana Ltd.*

In the present matter, the respondent, Pravara Sahakari Shakar Karkhana Ltd., the manufacturer of various Indian whisky brands, which includes "blended scotch whisky" or "blended with Scotch," under the various brand names "Drum Beater" and "God Tycoon," was sued for passing off by the plaintiff Scotch Whisky Association, an organization participated under the age of the United Kingdom's Companies Act. A ruling by the Bombay High Court, the plaintiff in this case had a compelling enough argument to stop the defendant from portraying the brand of Indian Whisky in order to maintain Scotch whisky's goodwill and image. By

¹⁷ Ayush Verma, RELIEFS PROVIDED FOR VIOLATION OF GEOGRAPHICAL INDICATION IN INDIA IPLEADERS (2020), https://blog.ipleaders.in/reliefs-provided-for-violation-of-geographical-indication-in-india/#Tea_Board_of_India_vs_Mitsui_Norin_KK_Japan (last visited Oct 11, 2023).

¹⁸ Basmati Rice and patent battle : When Indigenous Knowledge is patented for profit, IPLEADERS (2020), https://blog.ipleaders.in/basmati-rice-patent-battle-indigenous-knowledge-patented-profit/#Facts_of_the_incident (last visited Oct 11, 2023).

referring to their product as blended scotch whisky when it didn't happen, the company in question misrepresented the products they were selling. At an outcome, the court instructed an interim injunction. By utilizing the phrase "Blended with Scotch," the defendant attempted to capitalize on the complainant's goodwill whilst also engaging in unfair trade and colorable imitation. Alcohol that isn't Scotch whisky cannot be advertised, rendered available for public buying, as well as or redistributed by the defendant anywhere. The decision makes it abundantly obvious that the Indian judiciary frequently offered GIs the benefit of the belief even when there was not a law in practice at the time.¹⁹

LEGAL PERSPECTIVE OF GI IN INDIA

The Section 9 of the Indian GI Act, discusses the comparative arrangement is. Enrollment in this location is restricted to GIs that have been determined to be non-specific. In a nation like India, where many of the conventional gardening goods derive their distinctive features and attributes from the particular topographical area where they are developed, the above genericide exemptions, which seems more extensive than needed, could turn out to be a real hit to manufacturers. Darjeeling's unique and complicated combination of agro climatic conditions has allowed for the development of tea there since 1835. Such tea has an undeniable, regularly occurring quality and flavor.²⁰

APEDA and the Department for Promotion of Industry and Internal Trade (DPIIT) are two organizations that promote exports of agricultural and processed food products are two governmental organizations that have been proactively promoting GI-tagged products to consumers and businesses throughout the world. Those organizations have initiated numerous initiatives to promote and advertise Indian GIs through a wide range of countries. APEDA has set up online marketplaces for GI food items with countries like the UAE, the USA, and Qatar. GI producers can sell their products directly to these markets. APEDA has also funded promotional activities for GI mangos in Belgium and Denmark. It has helped GI producers export their goods to countries like Bahrain, Italy, and the UK.²¹

DPIIT has organized the “India Geographical Indications (GI) Fair 2022” with EPCH. The fair

¹⁹ Scotch Whisky Association and another v Pravara Sahakari shakar karkhana limited on 18 July 1991 - judgment, LAWYERSERVICES, <https://lawyerservices.in/Scotch-Whisky-Association-and-Another-Versus-Pravara-Sahakari-Shakar-Karkhana-Limited-1991-07-18> (last visited Oct 11, 2023).

²⁰ Legal protection of geographical indications: International and national perspective, LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-3254-legal-protection-of-geographical-indications-international-and-national-perspective.html> (last visited Oct 11, 2023).

²¹ “Center Takes Proactive Steps to Promote the GI Tagged Products in the Global Market”, Press Information Bureau, Feb. 10, 2023, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020> (last visited on Oct. 5, 2023).

displayed the wide range of Indian GIs, such as handicrafts, textiles, cuisine, and beverages. It attracted domestic and international visitors. DPIIT also set up a special pavilion for GI products at the IITF in Delhi. DPIIT has organized various events for GI producers to network with buyers and partners, and to increase awareness and demand for their products.²² These activities help Indian GIs to grow in the global market. India's GIs reflect its rich culture and its talented artists and craftspeople. The government supports GIs to boost the economy and preserve traditional livelihoods.

The following is a list of some of the export marketing organizations in the nation that promote items with GI tags:

- Export Development Authority for Farm and Processed Food Goods
- Apparel Export Promotion Council
- Carpet Export Promotion Council
- Cashew Export Promotion Council of India
- Coffee Board
- Coir Board
- Council for Leather Exports
- Export Promotion Council for Handicrafts
- Gem and Jewellery Export Promotion Council
- Handloom Export Promotion Council
- Indian Silk Export Promotion Council
- Jute Products Development & Export Promotion Council
- Rubber Board
- Shellac and Forest Products Export Promotion Council
- Spices Board
- The Cotton Textiles Export Promotion Council
- Tea Board
- Handicrafts Business Promotion²³

ACT OF 1999 RELATING TO GEOGRAPHIC INDICATIONS OF GOODS (REGISTRATION AND PROTECTION)

²² “Center Takes Proactive Steps to Promote the GI Tagged Products in the Global Market”, Press Information Bureau, Feb. 10, 2023, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020> (last visited on Oct. 5, 2023).

²³ *Centre takes proactive steps to promote the GI tagged products in the global market*. Press Information Bureau. (n.d.). <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020>

Some Important definitions

1) Who can register as the owner of a geographical indication?

An ensemble of individuals, a manufacturer, a corporation, or a body represented by or regulated by the law can all be considered approved licensees. They must be listed as the registered proprietor for the looked-for Geographical Indication in the Geographical Indication Register.

2) What are “Goods”?

"Goods" covers all manufactured, handcrafted, natural, and agricultural goods as well as food products.

3) Who is a permitted user?

A manufacturer of goods may submit an application to become an authorized user. A registered geographical indicator must be involved.

4) Who in their right mind is a producer in respect to a geographic indication?

The term “Producer” refers to those who deal with three types of things:

- The production, processing, trading, or dealing of agricultural goods is included.
- The exploitation, exchange, or dealing of natural resources.
- Manufacturing, trading, and dealing all fall under the category of handicrafts or industrial items.

5) Who may utilize the registered geographical indication?

The sole right to use a geographical indicator in relation to items for which it is registered belongs to an authorized user.

6) When is it considered to have violated a registered Geographical Indication?

When an unauthorized user intentionally misleads the public about the geographic origin of products by using a geographical indication to imply or indicate that the items come from somewhere other than their actual place of origin. When a geographical indicator is used in an unfair business practice, such as passing off a registered geographical indication. When a product's origin is misrepresented to the public as being in a territory to which a registered geographical indicator refers as a result of the use of another geographical indication.

7) Can a geographical indicator that has been registered be allocated, communicated, etc.?

Additionally, there can be no swap of a geographical indicator. The general commodity referred to as a geographical indication is owned by the creators of the in question

anything. It cannot be part of a transfer, authorization, commitment, the mortgage, or other equivalent agreement. On the other hand, the right belongs to the heir when an approved user passes away.

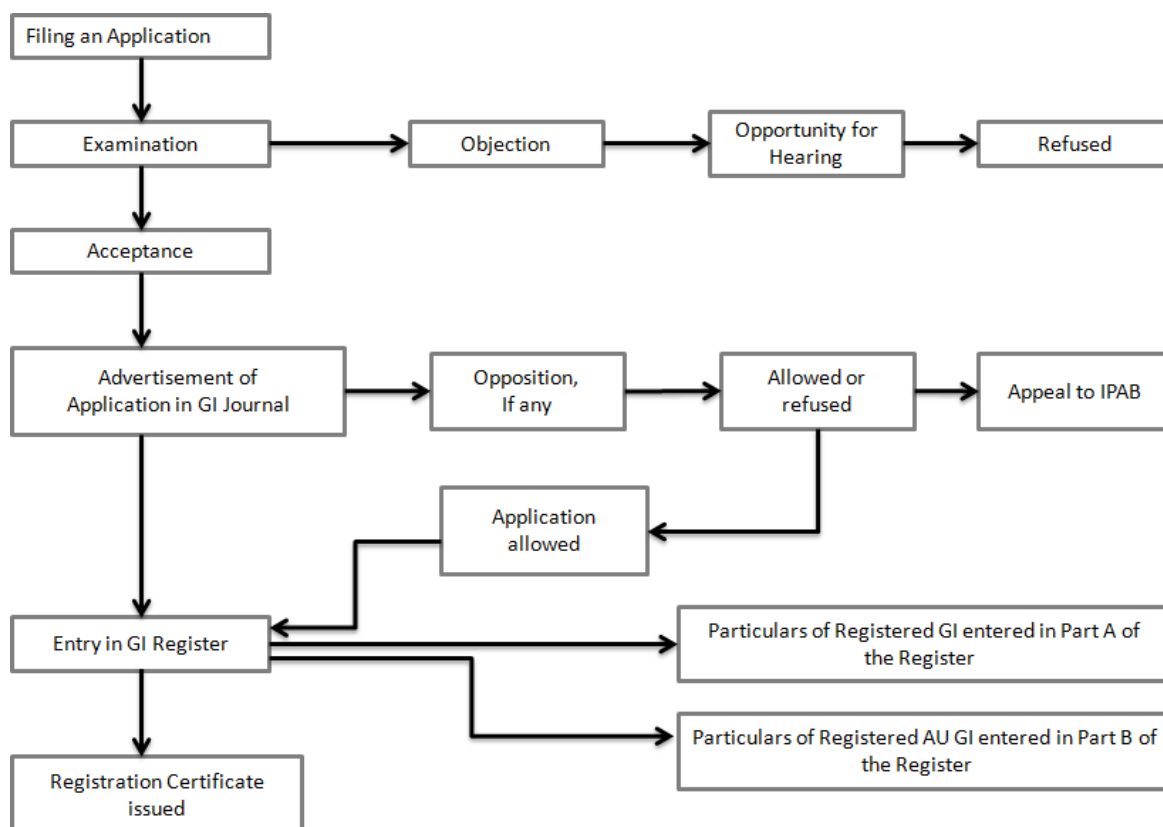


Fig: Registration Process of Geographical Indication in India²⁴

International Perspective of Geographical Indications (GI)

The World Intellectual Property Organization (WIPO), an intergovernmental organization, is the global forum for intellectual property policy, services, information, and cooperation.

The international perspective of GIs in the current time is that they are becoming increasingly important for several reasons.

1. **Economic benefits:** GI-protected products are often associated with high quality and unique characteristics, which makes them attractive to consumers in international markets. This can lead to increased exports and economic growth for producers in GI-designated regions.

For example, the GI-protected product Darjeeling tea is a major export earner for India.

²⁴ India Official IP website, available at <https://www.ipindia.gov.in/the-registration-process-gi.htm> (last visited Oct. 10, 23)

In 2021, India exported over 300 million USD worth of Darjeeling tea.

2. **Consumer awareness:** Consumers are becoming increasingly aware of the importance of origin and quality when making purchasing decisions. They are willing to pay a premium for products that are authentic and of high quality. This is creating a growing demand for GI-protected products in international markets. For example, 60% buyers are happy to pay additional for goods which are marked as having a GI, revealed in a study by the European Commission.
3. **Cultural preservation:** GIs can help to conserve Customs from the region by ensuring that traditional products and Methods of manufacturing are preserved. GI-protected products are often associated with a specific region's history and culture. This can help to promote awareness and appreciation of that culture.
For example, the GI-protected product Basmati rice is a traditional product of India. It is produced using a unique cultivation method that has been passed down from generation to generation. The GI protection for Basmati rice helps to ensure that this traditional product and production method are preserved.
4. **International cooperation:** The international community is increasingly recognizing the importance of GI protection. This is leading to a number of initiatives to promote the use of GIs and to help countries to develop and implement GI protection systems. For example, the WIPO GI Registry is a database of registered GIs from around the world. This registry helps businesses and consumers to identify GI-protected products and to learn more about GI protection.

GI protection provides an abundance of benefits that are however there are particular concerns which have to be resolved as well.

1. First challenge is that GI protection can be complex and expensive. This can deter some producers from registering their products as GIs.
2. The challenge is that GI protection can be difficult to enforce in some countries. This is because it can be challenging to distinguish between genuine GI-protected products and counterfeit products.

Despite these challenges, the international community is committed to promoting the use and protection of GIs. This is because GIs play an important role in promoting economic growth, consumer awareness, cultural preservation, and international cooperation.

Conflicts between GI tags and Trademarks

Disputes frequently arise when geographic indication tags and intellectual property rights, which are two distinct forms of distinguishing labels used on merchandise, are employed to protect things in the market. Conflicts about who has the sole authorization to use a unique sign might occur when multiple parties ask for permission to do the task. Systems are set up to stop problems within competing trademark ownership assertions. Similar copyrights that are used for the same products or services may persist in different nations, according to the territoriality concept. Currently, the following methods have been implemented to avoid and cope with problems related to trademarks with geographic indication tags:

On the whole, it is important to make sure that trademarks aren't descriptive or misleading. As a result, geographical indications are not protected by trademark law if their use would mislead customers about the true origin of the goods on which they are used. The rules that guard against unfair competition and passing off are designed to provide redress for unethical business practices including making false or deceptive claims while conducting business. A plaintiff must prove, among other things, that the usage of the geographical indicators is deceptive in a passing off and unfair competition lawsuit involving illegal usage of a geographical indication. The application of communal or certification marks in order for the purpose of safeguarding commodities through geographical indication is regulated under the appropriate trademark laws.. In accordance with trademark law, disputes involving opposing trademark rights are resolved according to the priority principle. Under a system of registered geographical indications or appellations of origin, geographic indications are protected as sui generis rights. Various approaches are viable based on the relevant legal context.

CONCURRENT PROBLEMS RELATED TO GI IN INDIA

1) Failure in establishing link between origin and the product

The Indian GI Act offers extensive protection for GIs but does not make a distinction between various product types. This can provide the wrong idea of the origin of various handicrafts, which are unique because of human abilities and methods rather than innate characteristics. In such circumstances, GI registration may be absurd and limit the opportunities available to artisans in the future. To distinguish between different product categories and provide craftsmen greater flexibility, the Indian GI system needs to be modernized. This would ensure that authentic GIs are protected by GI registration while protecting the interests of artisans.

2) Requirement of Precise history for GI - Registration

Documentary proof is required by the Indian GI Registry to demonstrate the connection between the product and the location. TRIPS does not mandate this, and in areas where oral history is more prevalent, it might be a challenge. As many GI producers might not be able to give historical proof of their products, it is crucial to solve this issue.

3) Geographical Challenges

For various goods, particularly agricultural and food-related goods, there are numerous disagreements over their precise place of origin. This is so that the same product can be manufactured or grown in different regions. As an illustration, numerous states make GI claims about Basmati rice. The Copyright and GI office, in contrast to other IP offices, has just one location: Chennai. Since they might have to travel far to hear testimony, producers from other states may find this challenging.

4) Involvement of state government in protecting GI

Geographical Indications (GIs) are intended for strengthening community and safeguard the interests of producers. Any group of individuals, producers, organizations or organizations representing producers' interests may submit an application for the official designation of a GI in India. This gives India's GI protection a broad range of options. The post-enforcement of GI rights and the function of inspection bodies, however, are significant responsibilities as the Indian government accomplishes. For this reason, it's crucial to make sure that government institutions and authorities continuously promote the interests of GI producers.

5) Lack of awareness

The lack of knowledge about GI Laws in India is the main social issue. Even though the Indian government passed the GI Act in 1999, many rural producers and common artisans are unaware that their skilled goods or produce are valuable enough to qualify for protection. They are ignorant of how to file for and obtain GI protection. They are much less informed in the event that someone else is abusing and deceiving their GI. They are unaware of the options they have to prevent this usage. There is a significant variation in registration status, according to subsequent analysis.

CONCLUSION

In conclusion, protecting geographic indications (GIs) has become increasingly important, largely in reaction to the decrease in trade barriers and the creation of new market support mechanisms. In order to compete with lower-priced alternatives in the global market, producers of traditional, and high-quality items with distinct regional origins must now have efficient marketing and trading instruments. This is especially important in the context of India, a nation recognized for its rich cultural past and wide range of unique and traditional goods. In India, GIs are essential to protecting these assets from copying and poor imitations as well as, more crucially, promoting their promotion and distribution on a worldwide scale. However, a number of obstacles must be overcome to guarantee the effective safety of Indian GIs. The most significant of these is the widespread ignorance about GI rights, especially in rural areas where many traditional product producers reside. In addition, there are issues with India's single centralized office handling intellectual property rights (IPR) disputes, which makes resolution of the case time-consuming, expensive, and difficult. Despite these obstacles, a growing effort is underway to support and protect Indian GIs. Governmental and non-governmental groups are jointly leading this initiative, which has received strong backing from a coalition of producers, consumers, and diverse stakeholders. They collectively serve as a testament to the growing dedication to sustaining the economic and cultural importance of India's traditional goods and guaranteeing their ongoing recognition and protection in the rapidly changing global market.
