

## Protection of Geographical Indication in India



Law

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### ABSTRACT

*Certain goods, whether naturally found, agriculturally cultivated or manufactured in a particular territory of a Country or a region or locality have specific characteristics with regard to taste, aroma or quality. These goods are marketed on the basis of their appellation of origin or geographical indication. Paris perfume, Scotch whisky, Russian vodka, French Champagne, Basmati Rice, Darjeeling tea, Swiss chocolates, Nagpur orange, Kashmiri Apple, Bikaner Bhujjiya, Benaras silk are some of the examples where goods have acquired a special importance on account of their association with the indication of source. This paper has analyzed the scope of geographical indications and illustrates the relevance and importance that can be derived from its protection and has also analysed how the Basmati controversy was an eye opener and India enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999.*

### INTRODUCTION:

Protection of Geographical Indication (GI) has, over the years, emerged as one of the most contentious IPR issues in the realm of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). TRIPS defines GI as any indication that identifies a product as originating from a particular place, where a given quality, reputation or other characteristics of the product are essentially attributable to its geographical origin. The Geographical Indications of Goods (Registration and Protection) Act, 1999 protect the GI's in India. Registration of GI is not compulsory in India. If registered, it will afford better legal protection to facilitate an action for infringement.

### Historical development

The term 'geographical indication' (GI) is a relatively new concept introduced by the TRIPS Agreement (WTO1994). Prior to the TRIPS agreement of the Uruguay round which concluded in 1994, there were mainly three international conventions dealing with protection of IGOs, i.e. the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). While the Paris Convention and the Madrid Agreement dealt with 'indications of source', the Lisbon Agreement focused on protection of 'appellations of origin'. In terms of providing global protection to these IGOs, however, these multinational treaties offered limited scope as these conventions were ratified only by few Countries. Hence, signing of the TRIPS Agreement, which brought GI to the fore in multilateral negotiations; by more than 150 member countries was an important step forward for the international protection of IGOs. The agreement provided the 'minimum' standards of protection for GIs (along with all other IPRs) backed by an enforcement mechanism.

### Definition of GI:

Geographical Indication (GI) is defined as any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin.

The World Intellectual Property Organization (WIPO) states that GIs are 'a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.'

### Functions of Geographical Indications:

Geographical indications perform a variety of economic and other functions, which may depend on how producers use geographical indications and consumers view them.

i) **Origin function:** Designations operate as indicators of origin from which the products come or are in some other way

connected.

ii) **Quality Functions:** Designations symbolise qualities which certain products have or which consumers associate them with and guarantee that they measure up to expectation.

iii) **Investment or advertising function;** that investment is a value which deserves protection as such, even when there is no abuse arising from misrepresentations either about origin or quality.

iv) **Culture protecting function:** Designations protect culture by preserving traditional productions methods, habits of consumption and cultural identity.

### INDIA AND GEOGRAPHICAL INDICATIONS ACT:

In India, the legal system for GI protection has very recently been developed. The Geographical Indications of Goods (Registration and Protection) Act was enacted in 1999 and has come into force in September 2003 before this Act; there was no separate legislation for GIs specifically. A survey of decided cases reveals that Indian courts have maintained the action of passing off to protect GIs. *Scotch Whisky Association v. Pravara Sahakar Karkhana Ltd.*<sup>1</sup>, is a leading case on this subject. The Bombay High Court held that the Plaintiff had sufficient interest to prevent passing off of Indian Whisky manufactured by the defendant and to prevent damage to reputation and goodwill of Scotch whisky. The case therefore merited interim injunction. The Indian judiciary has consistently extended the legal protection to GIs even in the absence of any legislation in force at that point of time.

This Act seeks to provide for registration and better protection of geographical indications relating to goods. This would protect the interest of producers, manufacturers and thereby consumer from being deceived by the falsity of geographical origin to economic prosperity of the producer of such goods and promote goods bearing geographical indications in export market. GI Act is to be administered by the Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications.

### BENEFITS OF REGISTRATION IN INDIA:

Confers legal protection to geographical indications in India.

It prevents unauthorized use of a registered geographical Indication by others.

It boosted exports of Indian geographical indications by providing legal protection.

It promotes economic prosperity of producers.

It enables seeking legal protection in other WTO member countries.

### Duration of Protection

A Geographical Indication is registered for a period of ten years and the registration may be renewed from time to time for a period of 10 years at a time.

GIs have been used in India for a wide variety of products, such as Basmati Rice, Darjeeling Tea, Kangra Tea, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kohlapuri Chappal, etc. By registering a geographical indication in India, the rights holder can prevent unauthorized use of the registered geographical indication by others by initiating infringement action by way of a civil suit or criminal complaint. Registration of the GIs in India is not mandatory as an unregistered GI can also be enforced by initiating an action of passing off against the infringer. It is, however, advisable to register the GI as the certificate of registration is evidence of its validity and no further proof of the same is required.

### Infringement of Geographical Indications:

The remedies relating to the infringement of Geographical Indications are available under the Indian Geographical Indications of Goods (Registration and Protection) Act, 1999, falsification of a Geographical Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with fine which may not be less than INR 50,000 but may extend to INR 2, 00, 000.

### JUDICIAL TRENDS:

The Indian judiciary has played a significant role. They have entertained petitions in cases of infringement of GIs that misleads the consumer as to the place of origin or constitutes unfair competition.

#### Basmati Rice case<sup>2</sup>

India has been exporting "Basmati" rice to several countries of the world for several decades and it has acquired a unique position in the world market. US Rice Company says India don't own word "Basmati". Ever since the company, Rice Tec, based in Texas, United States, patented Basmati rice the fear of cultural piracy from the western multinationals is felt by the Indian farmers. In February 1996, the APEDA has found that Rice Tec had registered for a trademark for exporting what they called. "Texasmati" in the UK and had lodged a case against Rice Tec in an UK economic court.

The dispute was whether the protection of Basmati as a geographical indication or is a generic name? Rice Tec in its claim states that it is a generic name and therefore cannot be protected as a geographical indication. It was stated that Basmati was not a geographic indicator even in India. It was grown all over India, Pakistan and even in Thailand. The Basmati controversy was an eye opener and India enacted the Geographical Indications of Goods (Registration and Protection) Act 1999.

In *Imperial Tobacco Co. v. Registrar of Trademarks and another*,<sup>3</sup> the Calcutta High Court explained to the following concept of "geographic term" namely: *Geographical terms and words in common uses designate a locality, a country, or a section of country which cannot be monopolized as trademarks. A geographical name according to its ordinary signification is such mark inherently or otherwise incapable of registration subject to minor exceptions.*

*Pochampalli Ikat Case*<sup>4</sup> Pochampally Handloom Weavers' Co Op. Society Ltd", an autonomous society registered under the society Act 1860 and "Pochampally Handloom Tie & Dye Silk Sarees Manufactures Association" was established for production

and marketing of Pochampally Ikat. The famous Pochampally ikat tie-and-dye sari has received Intellectual Property Rights protection of GI. To protect their legal rights the plaintiffs filed a suit against defendants' for injunction restraining infringement of GI, passing off, unfair competition. the court said ' the adoption of the mark HYCO POCHAMPALLI by the defendant is blatantly dishonest and *malafide* attempt to derive unfair advantage Finally the suit was decreed in favour of plaintiff

*Tea Board, India vs. I.T.C. Limited*<sup>5</sup> Tea Board, India (registered proprietor of the GI "Darjeeling") filed a case against ITC Limited for the use of the mark 'Darjeeling' for its Lounge at the hotel in Calcutta. Calcutta High Court held that the word "Darjeeling" is not the exclusive right of the Tea Board, and is registered under the TM Act for the purpose of certification of tea as one grown in Darjeeling and decided the case in favour of the Kolkata hotel ITC Sonar and its Darjeeling Lounge.

### CONCLUSION:

GIs are a collective rights and not an individual right, the registration process offers an opportunity for community level sensitization and awareness. Infringement of GIs is an issue which is still generating controversies and the outcome of such controversies are extremely important from the point of view of a developing country like India, which has in its possession of number of world famous Geographical Indications .

In order to take advantage of this new Act, there is necessity of creating more and more awareness among producers, manufacturers and use of goods which are covered under the Act. It is hoped that with the enactment of this Act, the Indian Geographical indications will be effectively protected in the Country as well as outside.

### END NOTES:

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