

ISSUES WITH GEOGRAPHICAL INDICATION UNDER INTELLECTUAL PROPERTY LAWS

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ABSTRACT

The names and reputations of geographical areas are distinctive. Products with geographical indications (GI) are those recognised for their quality and linked to certain geographic areas. Including issues and a list of registered indications, this analysis examines the present situation of geographical indications in India. GI refers to products with traits that are related to their geographic origin and come from a certain area, nation, region, or locale. The register run by the Government of India guards against counterfeiting and keeps the balance between trademark and GI protection. Claimants can produce GI products that have been registered and apply to become authorised users. Production and processing are in line with the pertinent locale or region.

Keywords: Geographical Indication, Specific Location, The Geographical Indications Of Goods (Registration And Protection) Act, 1999, Community Rights.

INTRODUCTION

Traditional borders have lost a certain amount of their importance in the present era of globalisation as foreign players have successfully entered many different parts of the globe. Globalisation has, however, negatively impacted rural goods, which has a knock-on effect on local populations' quality of life. Rural goods are gravely threatened, and some of them risk going extinct because of a lack of information and funding. Today, local products run the risk of losing their unique character in the face of foreign competitors that frequently own globally recognized brand names. As a result, there is an urgent need for local commodities to be recognised globally. Geographical Indications (GIs) are one approach to resolving this issue.

A geographic indication, or GI for short, is a type of intellectual property used to identify goods that originate from a particular country, territory, or locality when those goods' distinguishing features, reputations, and other characteristics can be primarily attributed to

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their place of origin. By dividing apart items in the market according to their qualities and reputation, GI protects intangible economic assets. It is a mark of distinction used to identify goods that come from a certain area and have characteristics or a reputation that is associated with that origin. For a sign to be considered a GI, it must be used to indicate that a product originates in a specific location. Agriculture-related goods, meals, beverages (wine and spirits), handicrafts, and industrial goods are all frequently subject to geographic indications.

A geographical indicator (GI), according to the World Intellectual Property Organisation (WIPO), is a distinguishing symbol used to denote the veracity and origin of goods coming from a particular area or produced by a particular community. A geographical indicator is described by the WIPO as "a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."

In the context of India, it is a nation that is rich in natural resources, especially when it comes to agricultural products and other high-value goods. Rural populations in different parts of the nation have specialised knowledge and abilities for making high-quality handicrafts, jewellery, textiles, and other products that have been handed down through the years. Rural life is heavily influenced by geographic signals since they are intertwined with cultural traditions, customs, and practices. These geographical indicators signify a relationship with the land and include the use of age-old techniques, customs, and specialised expertise in the manufacture of these commodities.

India has a responsibility to protect geographical indications under its jurisdiction as a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.¹ India has passed particular legislation known as the Geographical Indications of Goods (Registration and Protection) Act, 1999², to fulfil this obligation. Protecting the interests of producers of goods with geographical indications, preventing unauthorised use of geographical indications, ensuring consumer protection from deception, and fostering the export market for goods with geographical indications are the main goals of this law.

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

²Geographical Indications of Goods Act, 1999.

RATIONALE BEHIND GEOGRAPHICAL INDICATION PROTECTION

Pascal Lamy, who was the European Trade Commissioner at the time, articulated the justification for such protection. Lamy claimed that by encouraging the development of ancillary sectors, geographical indications (GI) play a crucial role in developing the economic structure of agricultural communities. They reflect a communal right vested in communities and serve as an encouragement for increased wealth. Additionally, GI guarantees the survival of a name that is intrinsically tied to a particular area and the people that saw its origins. Additionally, GI encourages a fairer division of added value across producers, distributors, and nations in the northern and southern hemispheres. GI encourages high-quality standards, which increases competition.³

NEED FOR PROTECTION OF GEOGRAPHICAL INDICATION

Geographical indications (GI) have a significant commercial value; hence their legal protection becomes of utmost significance. Without the proper legal safeguards, competitors without legal claims to the GI may abuse its image without consequences. In addition to causing financial damages for the actual GI rights holders, these unethical commercial practices also deceive consumers. These actions also run the risk of eroding the GI's goodwill and image over time.⁴

With insufficient expertise or understanding, consumers frequently struggle to judge the quality of products in the market. Producers, on the other hand, have a thorough knowledge of the characteristics and caliber of their goods in comparison to competing goods on the market. A natural imbalance results from this information asymmetry. Some producers could take advantage of this circumstance by selling inferior products and preying on consumers' ignorance. By giving customers more information on the quality and reputation of items, GIs mitigate their disadvantages and aid in the restoration of information symmetry.⁵

³J Adithya Reddy & Siladitya Chatterjee, A Critique of the Indian Law and Approach towards Protection of Geographical Indications with Specific Reference to Genericide, JIPR Vol. 12 (6) 553,573 (2007).

⁴Ravindran, S. and Mathew, A. (2009) The protection of Geographical Indication in India case study on ..., Alcait. Available at: <https://www.altacit.com/wp-content/uploads/2021/09/The-Protection-of-Geographical-Indication-in-India-Case-Study-on-Darjeeling-Tea.pdf> (Accessed: 16 June 2023).

⁵Geographical indications at the crossroads of trade, development, and culture (no date) Cambridge Core. Available at: <https://www.cambridge.org/core/books/geographical-indications-at-the-crossroads-of-trade-development-and-culture/3E2DD2994578FC243041D3EEFFEC39B3> (Accessed: 16 June 2023).

INTERNATIONAL PROTECTION OF GEOGRAPHICAL INDICATION

Geographical indications (GIs) are a significant part of international law, particularly in the domain of intellectual property rights. One of the international accords that safeguard GIs is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which is governed by the World Trade Organisation (WTO).

Geographical indications (GI) are defined formally in Article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)⁶. This article defines geographical indications as indications that place a good's origin in the country where a member of the agreement resides, or in a particular area or locality therein, and where the good's quality, reputation, or another characteristic is primarily attributable to that location.

Articles 22.2⁷ and 23 of the TRIPS Agreement⁸ provide more details on the protection of GIs. All GIs must be protected by the general standards outlined in Article 22.2, which is designed to protect them from deceptive and unfair commercial practices.

A further degree of protection for GIs connected to wines and spirits is also included under Article 23 of the TRIPS Agreement. Thus, even in situations where there is little chance of deception or unfair competition, GIs for wines and spirits should be safeguarded. Additionally, Article 23 requires member nations to pass legislation that forbids the use of Geographic Indications (GIs) about wines or spirits that don't come from the designated region.

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The TRIPS Agreement's inclusion of these clauses shows how seriously the protection of geographical indications is taken, how important it is to stop unfair trade practices, and how important it is to maintain the integrity of GIs in both general and specialised settings, like those of wines and spirits.

GEOGRAPHICAL INDICATION IN THE INDIAN CONTEXT

India is required to offer protection for goods with a GI designation since it is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). India passed

⁶Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) art 22.1

⁷Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) art 22.2

⁸Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) art 23

the Geographical Indications of Goods (Registration and Protection) Act, 1999⁹ and the GI Rules to accomplish this duty, and they went into force on September 15, 2003. Numerous items have already received GI status thanks in large part to this law. Geographical Indications Registry with national jurisdiction has been established by the federal government in Chennai, where rights holders can register their GIs. The GI Act does not restrict its protection to just wines and alcoholic beverages, unlike TRIPS. The decision as to whether items should be subject to greater levels of protection is left up to the federal government.¹⁰

Geographical Indications (GIs) have become a serious issue for the protection of intellectual property rights in the Indian setting in recent years. Approximately 100 Indian items have been recognised as GIs since the Indian GI Act was passed on September 15th, 2003. However, there are several obstacles that Indian stakeholders must overcome before they can enjoy the potential advantages of GIs. The success of a GI is primarily dependent on the efficient marketing and promotion of the product, in addition to the effective enforcement of GI rights in relevant markets (both domestic and foreign). In addition to requiring significant resources, these duties provide difficulties for many stakeholders, especially those living in poor nations like India. In the absence of a suitable institutional structure being formed for this purpose, it is much more difficult to ensure that a significant portion of benefits attributable to a product's GI status reaches the actual manufacturer downstream in the supply chain. The legislative foundation for the protection of GIs in India has just lately been created.

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Section 2(e) of the Act¹¹ provides the legal definition of 'geographical indications' concerning goods as follows: "*An indication that identifies goods, such as agricultural goods, natural goods, or manufactured goods, as originating from or being manufactured in a particular territory, region, or locality within that territory. The indication must be such that the given quality, reputation, or other characteristic of the goods is essentially attributable to their geographical origin. In the case of manufactured goods, it is required that at least one of the activities involved in the production, processing, or preparation of the relevant goods takes place in the said territory, region, or locality, as the case may be.*"

⁹The Geographical Indications of Goods Act, 1999.

¹⁰Das, K. (2004) India together: Geographical Indications in jeopardy - 01 April 2004, India Together: Geographical indications in jeopardy - 01 April 2004. Available at: <https://indiatogether.org/tradegis-economy> (Accessed: 16 June 2023).

¹¹The Geographical Indications of Goods Act, 1999. s 2(e)

The Act also categorizes 'goods' to:¹²

Agricultural goods.

Natural goods.

Manufacturing goods.

Goods of handicraft

Foodstuff.

According to this provision, any agricultural products, natural products, or manufactured goods produced, manufactured, or originating from a particular region or locality within the nation can be regarded as geographical indications if the quality, reputation, and characteristics of the products are connected to their geographic origin. Additionally, the provision makes clear that names that are not the real names of a country's area or location may nonetheless qualify for protection as geographical indicators. Therefore, symbolic names like "Navara" and "Alphonso" can be eligible to be given geographical indication status.

India benefits from suitable climatic circumstances, human capabilities, and cultural practices in different states as a country with a broad variety of geographical indications (GIs) scattered over its area. A rising nation like India may see a huge increase in revenue with appropriate GI recognition and protection.

JUDICIAL RESPONSE

Since things can only be manufactured in specific locations, certain products are distinctive. For instance, Champagne is a sparkling wine made primarily from grapes cultivated in the Champagne area of France. It is manufactured using a double fermentation technique. Similar to this, high-quality Darjeeling tea is grown in the steep Darjeeling district of the Indian State of West Bengal. Due to the natural link between the qualities of these items' quality and the geographic features of the location where they are produced, they gain reputation and distinctiveness. Such products include handicrafts like sarees, cloaks, or metal objects with

¹²The Geographical Indications of Goods Act, 1999. s 2(f)

traditional artwork, in addition to agricultural products like tea, rice, wine, spices, and fruits.¹³

Such goods are frequently protected by intellectual property rights since they are made in a location with distinctive geo-climatic characteristics and traditional knowledge. Due to these distinctive qualities that significantly increase the value of the product, it is impractical to replicate similar items elsewhere. As a result, it is inappropriate for goods coming from another area to use the same geographic name. Giving exclusive rights instead than seeking proof of misrepresentation makes more sense because such use would ipso facto be misleading. To allow producers and consumers to work together to enhance quality and, in turn, the reputation of the product, a proper regulation to preserve geographical indications would attempt to address the knowledge gap between them.¹⁴

As one of India's fundamental institutions, the judiciary is extremely important. To maintain impartiality in the administration of justice, it serves as a watchdog for the rights of the people and operates apart from the executive branch. The higher judiciary in India has the widest and deepest understanding of judicial review of any democratic system in the world. The court is not only responsible for interpreting the law; it also contributes to the advancement of unique doctrines and ideas. The precedent-setting nature of the judiciary's decisions emphasises how crucial it is for them to understand the laws and their implications for society.

The establishment of a maximum number of GIs and the elimination of replication have constantly been supported by the legal response to the idea of geographical indications. It is essential to protect the geographical indicators of key locations in India that possess special significance on a worldwide scale given the diversity of Indian culture, cuisines, and lifestyle. These claims have been supported by earlier instances with Darjeeling tea and Basmati rice.

In the 1980, case of *Mohan Meakin Breweries Ltd. v. The Scotch Whisky Association*¹⁵, the trade name "Highland Chief" was associated with a substance known as "Malted Whisky." The logo included a picture of a Scottish gentleman's head and shoulders, complete with a feather hat, plaid, and tartan border. This combination gave the idea that the item linked with

¹³T.M., A. (2020) Geographical Indications in India: Major Issues and Challenges. Dissertation. the National University of Advanced Legal Studies.

¹⁴Id

¹⁵*Mohan Meakin Breweries Ltd. v. The Scotch Whisky Association* 17 (1980) DLT 466.

this logo was made in Scotland, which may have misled or confused unaware consumers in India. After reconsideration, the Delhi High Court decided against registering the applicant's mark on whisky. Similarly, in the particular case of *Scotch Whisky Association v. PravaraSahakarKarkhana Ltd.*¹⁶, the defendants used the phrase "Blended with Scotch" and engaged in unfair commerce and misleading copying to unfair profit from the plaintiff's reputation. In any nation where Scotch whisky wasn't being sold, distributed, or advertised by the defendant. This ruling demonstrates how the Indian judiciary has continuously provided GIs with legal protection, even when there was no particular legislation in place at the time. In the case of *Anton Piller v. Manufacturing Processes*¹⁷, a like circumstance emerged.

ISSUE WITH GEOGRAPHICAL INDICATION IMPLEMENTATION AND SUGGESTIONS

The major challenge to geographical Indication is that "*Nobody is stopping you from making it, they are just stopping you from naming it*". This indicates that people are permitted to produce goods that resemble those connected to the GI as long as they avoid using the exact name or indicator that would mislead consumers about the product's origin or quality. Apart from this major challenge, there are some operational challenges, such as-

1) Legal Challenges

Geographical Indications of Goods (Registration and Protection) Act, 1999, the GI Registration Act in India, was passed on September 15, 2003, with the goals of offering producers of GI goods adequate protection, safeguarding consumers from deception, and promoting GI goods in the export market. However, this act has several drawbacks that need to be addressed, as described below-

Ineffective enforcement measures: The legislation lacks efficient enforcement procedures concerning exports as well as domestic markets. This shortcoming makes it more difficult to guarantee adequate GI rights protection and stop the unauthorised use of GI indications.

Lack of a monitoring agency: Currently, India lacks a specific agency to keep an eye on the post-GI process. This absence prevents competition from taking advantage of the reputation

¹⁶*Scotch Whisky Association v. PravaraSahakarKarkhana Ltd.* AIR 1992 Bom 29.

¹⁷*Anton Piller v. Manufacturing Processes* (1976) RPC 719.

of GI products without incurring repercussions and hinders the efficient protection of GI rights.

Insufficient importance is given to inspection and monitoring: The legislation does not provide enough attention to creating a reliable inspection and monitoring system for GI protection. Due to this flaw, rivals can exploit the goodwill associated with GI products, which detracts from customer faith in the brand and misleads them. The genuine right holders end up bearing the burden of this process.

Due to the time lags necessary in several steps, such as application submission, vetting, approval, advertisement in the journal, objection (if any), and final registration, it is clear that the GI registration procedure in India is drawn out. It is disappointing for those looking to register their products under the GI system given the enormous backlog of outstanding GI registration cases in India.¹⁸

2) Economic Challenges

Regarding economic challenges, the following issues need to be addressed:

Marketing expenses: The government should use efficient marketing strategies and promotional initiatives to take full use of the economic prospects provided by GI goods. However, such activities demand a large commitment of time, perseverance, money, resources, quality control, and careful marketing techniques. Rural Indian producers may find this to be a challenging challenge since they frequently lack the expertise and resources needed to successfully traverse the complexity of global branding and marketing for GI goods.

Costs of monitoring: In the modern era of cutting-edge research and technology, infringement has emerged as a major issue that affects both manufacturers and consumers. It is essential to set up a strong post-GI enforcement and monitoring system. However, this requires significant expenses that might be exhausting, especially for rural Indian farmers who do not have the financial resources to carry out extensive monitoring operations.

¹⁸Youkta, K. and Nupur, S. (2020b) Issues and challenges of Geographical Indication in India by Kumari Youkta, Shreya Nupur, EPRA International Journal of Multidisciplinary Research (IJMR). Available at: <https://eprajournals.com/IJMR/article/3545/> (Accessed: 16 June 2023).

The Darjeeling Tea instance is a relevant illustration of the difficulty of monitoring jobs. To fight violations and safeguard the integrity of the Darjeeling Tea GI, the Tea Board of India has spent almost 9.4 million rupees on court cases and hiring foreign watchdogs.¹⁹

Therefore, to overcome these economic difficulties, it is important to carefully analyse the financial limits that producers, particularly those in rural regions, experience as well as the requirement for efficient monitoring systems to protect the rights and reputation of GI products.

3) Social Challenges

Geographical Indications (GI)-related socioeconomic issues include lack of knowledge. The Geographical Indications of Goods (Registration and Protection) Act was passed in 1999 and came into force in India in 2003, although there is still a substantial lack of information available to the public. Producers, especially those in rural regions, experience difficulty and ambiguity when it comes to important steps in the GI registration process, such as submitting applications, choosing the best sites for filing, and keeping an eye out for infringement acts. There is a low degree of individual ownership in the total number of GI registrations because there is a general lack of understanding of the rights and obligations related to GI protection.

Implementing programmes and activities that spread correct knowledge about the GI Act, its processes, and the advantages it offers are essential to addressing this societal concern. These awareness programmes have to concentrate on rural areas and make sure that farmers have access to the information and tools they need to complete the GI registration procedure. The objective is to allow producers to actively participate in GI protection and enjoy the accompanying economic and cultural advantages by raising knowledge of and understanding of GI protection.

4) Geographical Challenges

Geographical challenges associated with the protection of Geographical Indications (GI) include the following:

Uncertainty of specific location: There are frequent questions and disagreements when determining the location of the exact origin of a certain product. The Basmati rice

¹⁹Id. At 106

controversy in India is an illustration of one such argument. Basmati rice is historically grown in several places, including Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Jammu & Kashmir, and Delhi. Conflicts have nevertheless developed since Madhya Pradesh and Pakistan have also staked claims to the GI of basmati rice. Establishing and defending the GI rights for Basmati rice is difficult because of the uncertainty surrounding the precise area of origin.

Distance from GI office: Chennai, India, is home to India's sole Geographical Indications Registry office. For manufacturers from other states who are physically far from Chennai, this is a problem. When attempting to register their products for GI, producers who are spread out across the nation have logistical challenges and additional prices. Due to practical difficulties and potential delays in processing GI applications, the geographic distance reduces the overall efficacy of GI protection.

Establishing systems that make it easier to settle disputes about the precise provenance of a product is crucial to addressing these geographic difficulties. Providing a transparent and uniform process may entail the development of precise criteria and procedures for establishing the geographical borders for GI goods. Additionally, it could be necessary to set up regional or decentralised offices of the Geographical Indications Registry to provide producers from various regions of the nation easy access, hence improving effectiveness and accessibility in the GI registration procedure.

5) Technical Challenges

Geographical Indications (GI) protection faces several technical problems, including infringement tactics. With the development of advanced equipment and techniques, it is now possible to replicate a product in such a way that it is almost impossible to tell it apart from the original. This poses a serious threat to consumers as well as authorised manufacturers of real goods. The use of such imitative methods undercuts the efforts of licenced manufacturers who have dedicated their time, money, and skill to creating and manufacturing genuine GI products. Additionally, customers run the danger of being duped into buying fake or subpar goods, which might hurt their financial situation as well as potentially affect their health.²⁰

²⁰Id. At 107

Establishing reliable systems for identifying and countering infringement methods that permit the creation and dissemination of fake GI goods is essential to addressing these technological issues. This might entail the installation of strict monitoring and enforcement measures, including the use of cutting-edge technology, forensic investigation, and tactics for the enforcement of intellectual property rights. To effectively address and mitigate the risks posed by infringement techniques and to safeguard the integrity and reputation of Geographical Indication products, cooperation between relevant stakeholders is crucial. These stakeholders include government authorities, law enforcement agencies, industry associations, and technology experts.

Apart from these, The article offers several suggestions for addressing the problems and difficulties experienced by producers and manufacturers. Geographical Indications (GI) are primarily used to prevent counterfeit goods and safeguard the interests of manufacturers, thus it's crucial to adhere strictly to the following guidelines:

1. Raise consumer awareness about GI:

Set activities in place to inform customers about the significance and purpose of GI.

Encourage knowledge of the connection between certain items and their place of origin.

2. Effective enforcement of GI laws:

The appropriate government body should guarantee that GI-related laws are strictly adhered to.

Counterfeit goods that fraudulently claim to be registered with GI should not be produced or manufactured.

3. Regulation of pricing for GI products:

Address the manufacturers' concerns about the high cost of their products.

All goods registered under GI shall have a premium price set by the government.

This policy tries to encourage farmers to continue using conventional farming practices.

4. Global marketing and promotion of GI products:

For GI products, the government should launch extensive international marketing efforts.

Market these goods under the GI brand, which is a specialised category brand.

To increase GI goods' exposure and marketability internationally, promote their distinctive features and authenticity.

These suggestions are intended to improve GI protection, raise consumer knowledge, assist producers, and promote the economic worth and distinctiveness of GI goods on a national and worldwide scale.

CONCLUSION

Geographical Indications (GI), an emerging part of intellectual property, must be given adequate protection in the field of intellectual property. Geographical barriers between countries have gotten less as a result of globalisation, which has enhanced and strengthened commercial links. However, this phenomenon has occasionally harmed locally manufactured items, leading consumers to choose branded goods over those made locally. As a result, it is imperative to sell local goods on the international market and to give them the protection they require. Protecting the interests of the local market is mostly accomplished through the use of geographical indications.²¹

Manufacturing and production methods for several products are unique to certain areas. The geographical and ecological characteristics unique to a certain area have a big impact on how these items are developed. In certain cases, these goods come to represent the character of the local area. Therefore, providing strong security against these items' unauthorised use becomes essential. Geographical Indications protect certain items from being used illegally. A geographic indication is a distinguishing mark that identifies a product's place of origin. This origin can be attributed to a variety of geographic and environmental circumstances, including human influences, natural conditions, or a combination of both, which provide the items particular attributes, a good name, and distinctive features.

²¹T.M., A (n13)