

# A Study of Geographical Indications

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***Abstract**—This paper elucidates the concept of Geographical Indication and the reason of the grant of such protection. As GI comes within the ambit of Intellectual Property, it has broadly been laid down in the various international treaties which have formed the basis for the domestic laws in the member countries. These treaties have been discussed in the paper. The protection granted in India and the remedies available to GI owners have also been talked about before two of the important cases pertaining to GIs in India have been discussed. The paper concludes with laying down the importance of the protection of GIs.*

***Index Terms**—Intellectual property, geographical indication, TRIPS, appellation of origin.*

## I INTRODUCTION

There is an existence of goods that are associated with a particular geographical location. This attribution is often because of the climatic conditions of the region such as soil, temperature, moisture, etc., which enables the production of such goods or some traditions which are followed in that particular region which involves the manufacturing of certain goods. Other factors such as concentration of similar businesses in the region or specialization of the technique of production of the goods can also lead the product to gain the status of a GI. The registration of a product as a GI does not bar the product from being produced by anyone else. The restriction lies in the fact that the product cannot be advertised with the name of the registered GI. Such advertising would amount to infringement of a GI. The GI must be such that it acknowledges the special feature of the product which enables the customer to understand the speciality and make the purchase accordingly. For instance, soil that is found in a particular region may result in a tomato that tastes distinct.

GIs are crucial as being indicative of not only the source but also the quality of a particular product or process. The need for the protection of GIs has been recognized widely all over the world and laws have been put in place in order to implement the protection.

## II THE REASON FOR PROTECTION

Intellectual property is safeguarded by numerous ways such as trademarks and patents. IP protection ensures reward by way of the right to exclusive use to those who have put their efforts into developing of something that is the subject matter of IP protection. The reason for the protection of GIs is similar and prevent free riding and deception as regards

to the protected GI. GI has led to a lot of products into being granted special recognition in the market. These products, despite their value could have been lost in the market had they not been protected by way of GI.

GI also protects the consumers. “Consumers must first perceive that the original GI refers to a certain geographical area. Geographical denominations that have become generic or synonymous with the product are not deemed to mislead the public. For example, Parmesan cheese has become a generic term in the United States that refers to cheese grated on pasta. US consumers do not relate the cheese to its geographical origin in Parma, Italy.”<sup>1</sup>

Indications might sometimes be actually true but misleading at the same time. If two places exist having the same name and only one of the places has a GI in its name, then the use of the GI for products originating in the other area would be deemed to be misleading. “The wine producing Rioja regions in Spain and Argentina are an excellent example. Wine from the Rioja region in Spain has acquired a strong positive reputation, while wine from the Rioja region in Argentina does not have the same status. The TRIPS Agreement allows both countries to use the same geographical name, although they must agree on how producers are to distinguish between the two products. On the other hand, the term Chablis, has been used in the United States to refer to a rather inferior wine and could be seen as de-valuing white Burgundy wine from the region of Chablis in France.”<sup>2</sup>

In a market that does not differentiate between the qualities of the goods, the producers will not be encouraged to add value to their products in any way. The manufacturers then would not invest their money and efforts in order to increase the quality of their products as it would not bear any fruits and thus product innovation would come to a halt. “The reputation theory logically builds on this basic hypothesis. It argues that a producer has the incentive to invest in the promotion of his or her products’ reputation only if the same can be effectively conveyed to the consumer. A regime seeking to protect geographical indications would therefore seek to bridge the asymmetry of information between the producer and his or her consumers thereby allowing him or her to invest to a maximum into improving the quality and, indirectly, the reputation of the goods.”<sup>3</sup>

GI protection also contributes in environment conservation through sustainable practices. Concept of registration of GI and authentication of authorized users helps to promote conservation and sustainable use of protected products. At the same time, it also helps in the preservation of the traditional practices of manufacturing and the knowledge and the people entrusted with that knowledge. Sale of deceptive products is minimized by way of GI protection.

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<sup>1</sup> Discussion Paper on Geographical Indications, INTERNATIONAL FOOD AND AGRICULTURAL TRADE POLICY COUNCIL available at <<https://pdfs.semanticscholar.org/b0e8/c9bb3f1c363ea19d35f3528517b19bd2d216.pdf>>.

<sup>2</sup> Id.

<sup>3</sup> Pradyut Jena and Ulrike Grote, Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector, INSTITUTE FOR ENVIRONMENTAL ECONOMICS AND WORLD TRADE

### III GLOBAL POSITION

Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement for the Repression of False or Deceptive Indications of Sources on Goods (1891) and the Lisbon Agreement for Appellations of Origin (1958) are the three main treaties that form the basis of the GI protection and provide with the definition of GI as followed by the various countries of the world granting GI protection. The definition of GI in each of these treaties was different due to the fact that the objective and the parties in each of these treaties were different. TRIPS integrated all these definitions to form one single definition and the term ‘Indications of Geographical origin’ was created by the WTO secretariat in order to do away with any confusion that might arise due to the different legal definitions and concepts given by these treaties.

The Paris Convention gives the concept and definition of Appellations of origin in order to convey that the indication is not limited to the geographical origin of the product but is also indicative of the quality of that product. The Lisbon agreement states that “the geographical name designates a product, whose quality and characteristics are exclusively or essentially related to the geographical environment, including natural or human factors.”<sup>4</sup> Appellation of Origin is required to contain the name of the country of the product, its region or locality. The definition narrows the classes of goods that would be eligible for this protection.

The Agreement gives out two pertinent requirements for the protection of Appellations of origin. Firstly, the appellation needs to be protected in the home market and secondly, it has to be registered with the World Intellectual Property Organization. It cannot be used by anyone other than the proprietors and thus cannot become a generic name if the product is safeguarded in the home market.

GI protection is permitted by the TRIPS Agreement when a given quality, reputation or ‘other characteristic’ of the good is attributable to its geographical origin. The agreement does not lay a distinction between agricultural and industrial products, also not between handicrafts and manufactured goods but it does not cover any kind of services. There exist three levels of definitions, namely: Indication of source, Appellations of origin and geographical indications. Indication of source is the broadest term that does not require the product to have a certain quality, reputation or characteristic linked to its origin, on the other hand, GI is indicative of the origin in a particular place where characteristics such as quality and reputation are attributable to their geographical origin. To be considered eligible for geographical indication, any of the following three qualities must be present in the goods: 1) quality, 2) reputation or 3) ‘other characteristic’ attributable to its geographical origin. Going beyond the definitions contained in earlier agreements, reputation is a critical component of geographical indications under the TRIPS Agreement.

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<sup>4</sup> Article 2, Lisbon Agreement for Protection of Appellations of Origin and their International Registration, 1958.

#### IV POSITION IN INDIA

The legal protection of GI came into force with The Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into force in September 2003, allowing registration to the very first GI in India which was for Darjeeling Tea.

There are two reasons why a separate legislation exists for GIs. Firstly, there was felt a need for protection after Rice Tec., A US based company patented Basmati Rice in its name and tea from other countries was being passed off as Darjeeling Tea. It was realized that in order to get a global protection, it was needed to protect the GIs nationally. Secondly, India was obliged to include GIs in its Intellectual Property laws by virtue of being a signatory to the TRIPS Agreement.

“Authorities claim that this Act has two key characteristics: (i) protection of producers against counterfeiting and misleading commerce, and (ii) striking of balance between trademark and GI protection. According to this Act, once a GI is registered, any person claiming to be the producer of the good designated by the registered GI can file an application for registration as an authorized user.”<sup>5</sup>

Geographical Indication has been defined under the Act as “an indication which identifies such goods as agriculture goods, natural goods or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographic origin and in case where such goods are 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.”<sup>6</sup>

The term ‘goods’ has been defined as “any agricultural or natural product and includes food stuff.”<sup>7</sup> ‘Indication’ has been defined to include “any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.”<sup>8</sup>

#### **Section 21 confers the following rights to the proprietors upon registration of their goods as GI:**

- IV.I “To the registered proprietor and the authorized user of the GI; the right to obtain relief in respect of the infringement of geographical indications.”
- IV.II “To the authorized user; the exclusive right to the use of the geographical indication in relation to the goods in respect of which the GI is registered.”
- IV.III “The exclusive right to the use of a GI shall be subject to any condition and limitation to which the registration is subject.”
- IV.IV “Where there are two or more authorized users of GIs which are identical or nearly resemble each other, the exclusive right to use any of those GIs shall not be acquired by any one of those persons by registration; the authorized users are to have co-equal rights.”

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<sup>5</sup> Shashikant Bagade and Deven Mehta, Geographical Indications in India: Hitherto and Challenges, RESEARCH JOURNAL OF PHARMACEUTICAL, BIOLOGICAL AND CHEMICAL SCIENCES.

<sup>6</sup> Section 2(e), Geographical Indications of Goods (Registration and Protection) Act, 1999

<sup>7</sup> Section 2(f), Id.

<sup>8</sup> Section 2(g), Id.

IV.V “The rights conferred by registration shall not be assigned, transmitted, licensed, pledged or mortgaged.”<sup>9</sup>

## V REMEDIES

“If the designation or presentation of goods misleads the user by giving a false impression regarding its geographical origin then it would amount to infringement of that registered GI. It would also constitute the act of unfair competition and passing off in respect to the registered GI”<sup>10</sup>

The Act provides civil and criminal remedies for falsely dealing with GI. Imprisonment or fine or both are prescribed for falsifying and falsely applying GI,<sup>11</sup> for applying false GI,<sup>12</sup> for selling goods to which false GI is applied,<sup>13</sup> for falsely representing a GI as registered,<sup>14</sup> for improperly described a place of business as connected with the GI registry<sup>15</sup> and for falsification of entries in the register.<sup>16</sup> In case of groundless threat of legal proceedings, the Act provides for a declaration to the effect that the threats are unjustifiable and an injunction against the continuance of the threats and may recover damages for the loss sustained.<sup>17</sup> The Act exhaustively deals with concept and the procedural formalities to get protection. The rules have also been framed. This Act together with the international treaties provides a well-founded and effective protection for the GI from the hands of the unscrupulous offenders.

## VI CASE STUDIES

### **Darjeeling Tea Case:**

The Darjeeling tea, produced in Darjeeling has a unique taste which is attributable to the method of cultivation combined with the environment and climatic conditions of Darjeeling. The Tea board of India, in the year 1983, came up with a logo in order to protect it as a GI. The logo has been registered in various countries as a collective mark and certification mark. After 2003, it has been registered as a GI. The tea board has adopted various measures to ensure that the tea exported in the name of Darjeeling is authentic. There have been many cases of attempted passing off which have been opposed and cancelled. The board has also faced issues wherein the authentic tea was mixed with the tea produced from different regions. The word ‘Darjeeling’ with respect to tea can only be used for a blend of 100% Darjeeling tea and through a prescribed standard set by the Tea council. If the tea is one of the components of a mixture of teas, then the same is required to be mentioned in the packaging in order to prevent any kind of passing off. Over the years, the Tea board has spent a considerable amount of money in order to protect the Darjeeling Tea as a GI.

### **Pochampally Ikat Case:**

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<sup>9</sup> Section 24, Id.

<sup>10</sup> Section 22, Id.

<sup>11</sup> Section 38, Id.

<sup>12</sup> Section 39, Id.

<sup>13</sup> Section 40, Id.

<sup>14</sup> Section 42, Id.

<sup>15</sup> Section 43, Id.

<sup>16</sup> Section 44, Id.

<sup>17</sup> Section 73, Id.

This was the first law suit under the GI of Goods (Registration and Protection) Act, 1999. Pochampally Ikat is a kind of fabric which is made up of cotton and silk with a 'chowka' design which means diffused diamonds. This is a traditional design attributable to Pochampally village in Warangal district of Andhra Pradesh. The GI holders of the product have exclusive rights relating to production and marketing. In 2005, some manufacturers were found to be selling their sarees under the name of 'Hyco Pochampally' which is visually and phonetically similar to the registered GI. The use of a similar word for the similar set of products was held to be a dishonest and mala fide attempt to derive unfair advantage of the registered GI by creating the impression in the minds of the public that there existed some connection between the two marks.

## VII CONCLUSION

GIs have been in existence since the late 19th Century. Then, only the concept of designation of source and Appellation of origin existed which eventually made way for Geographical Origin as we know it today. The relevance of GI increased with time and various countries had no option but to grant protection to the GIs. Today, GI is has become a crucial way of granting protection to goods attributable to the heritage and livelihood of a particular geographical location. Geographical Indications play the role of creating awareness among the people of a particular geographical location as regards to the importance of it with respect to social upliftment and rural development.

Geographical indications ensure that there exists fair competition in the market by giving recognition to the products that deserve the same by the virtue of their originality, be it because of the process of manufacturing or due to external conditions such as the climate or soil.

The GIs have also been found to fair better in the international market and help the economy of the state. Products protected by GIs have greater demand and thus have a high number of exports. According to a consumer survey conducted in the European Union, the consumers were found to be willing to pay an additional 10 % for the origin guaranteed products.

Thus, it can be said that the protection under GIs is a tremendous way to acknowledge the authentic quality of the product it has been attached to. GI protection is an emerging field of Intellectual property that has a lot of scope in the future as the manufacturers will endeavour to produce products through authentic means so that they can be granted GI protection which in turn will help in preservation of a location's rich heritage and culture.

## REFERENCES

- [1] J.-P. Colinge, *Silicon-on-Insulator Technology: Materials to VLSI*. 2013.
- [2] G.-J. Schrijen and V. van der Leest, "Comparative analysis of SRAM memories used as PUF primitives," 2013.
- [3] S. K. Gonugondla, M. Kang, and N. R. Shanbhag, "A7\_On-chip training," *IEEE J. Solid-State Circuits*, 2018.
- [4] J. Yuan and C. Svensson, "High-speed cmos circuit technique," in *High-Performance System Design: Circuits and Logic*, 1999.
- [5] S. K. Gonugondla, M. Kang, and N. R. Shanbhag, "A variation-tolerant in-memory machine learning classifier via on-chip training," *IEEE J. Solid-State Circuits*, 2018.
- [6] L. Chang et al., "Stable SRAM cell design for the 32 nm node and beyond," in *Digest of Technical Papers - Symposium on VLSI Technology*, 2005.