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# LEGAL OPUS

Issue 14 | December 2021

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## Introduction:

The Indian BIT model was preceded by the The draft model BIT Law Commission of very detailed contain on the part of India to protect the interest model is different approach in its attempt to secure investment treaty to profile that India with "Make in India" call India "a global market and Indian investor the economy) hinge turn, requires institution supported by BIT on this background, need on matters such as that been sore points for

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## A Brief Overview on Geographical Indications in India

Smt. Shubhalakshmi P.\*

### Introduction

India is the land of varieties and it has different geographical structures, culture, language, scripts, food habits, dresses, practices and natural features. At the same time, people invent new things and develop different and unique products and also produce and identify something special and unique for their own geographical area. Such things can be protected and they have right over it.

The Trade Related Aspects of Intellectual Property (TRIP's) Agreement of World Trade Organisation, provides for protection of Geographical Indications and it emerged as one of the most prominent IPR protections.<sup>1</sup> There are certain products which are typical to a geographical region. But names of GI need not be the name of place town, or region, etc, it may be symbolic names like Basmati, which is the name of a particular variety of rice noticed with fragrance produced in India.<sup>2</sup>

### Meaning and Nature

Geographical indication is such a property which is special for a particular geographical area and the protection of Geographical Indication is also very much necessary as they have uniqueness connected to a particular region. Geographical Indication is also one of the important Intellectual Properties like Trade Mark, Patent, Copyright etc and it needs protection from infringement. Whenever people find something special in some other place, they will be attracted and try to copy them or to create some replica. But, even if they do so, Geographical Indication will never match exactly because it is special and unique for that particular region or locality. At the same time, name or brand also not to be copied as it is protected under Intellectual Property Law.

Geographical Indication means indication which identifies goods as originating in a particular geographical area and having a given quality, reputation or other characteristics which are attributable to their geographical origin.<sup>3</sup> They can have

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<sup>1</sup> A. Chandrasekaran, Intellectual Property Law, (Chennai: C Sitaraman and Co. Pvt Ltd. Law Book Publishers, 2018), p.330.

<sup>2</sup> Dr. Sudhir Ravindran and Ms. Arya Mathew, The Protection of Geographical Indication in India, available at <https://www.altacit.com/resources/gi/the-protection-of-geographical-indication-in-india/>, last visited on 20<sup>th</sup> January 2021.

<sup>3</sup> M M S Karki, Intellectual Property Rights-Basic Concepts, (Atlantic Publishers & Distributors Pvt Ltd, 2009, New Delhi), p.208.



references to agricultural produce, natural products or products manufactured produced. Geographical Indications are attributable to the place of origin, environment and its basic or inherent natural and human factors.<sup>4</sup>

World Intellectual Property Organisation (WIPO) defines Geographical Indication as "it is 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".<sup>5</sup> Geographical Indication is primarily granted to agricultural, natural manufactured, handicraft goods originating from a definite geographical territory.

A Geographical Indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.<sup>7</sup>

Under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property, Geographical Indications are covered as an element of Intellectual Property Rights.<sup>8</sup>

They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement,<sup>9</sup> which was a part of the Agreements concluding the Uruguay Round of GATT-1994 negotiations. The Paris Convention for the Protection of Industrial Property 1883, Madrid Agreement 1891, Lisbon Agreement 1958 are also providing for protection of Geographical Indications.<sup>10</sup>

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999<sup>11</sup> which has come into force on 15th September 2003.

### Historical perspective

When we look in to historical perspective of providing protection to the Geographical Indications, we are not receiving any evidence for legal protection given for them. But GI had earned global recognition and reputation even in ancient and medieval

- <sup>4</sup> Hemant Kumar H S, "Protection of Geographical Indications in India", Dr. Sreenivasulu N S. (Ed.) Intellectual Property Rights, (New Delhi: Regal Publications, 2007), p.190.
- <sup>5</sup> Ajay Kumar Singh, "Protection of Geographical Indications (GI's) in India: A Legal Study", Dr. P. K. Pandey, (Ed.), Intellectual Property Law, (New Delhi: APH Publishing Corporation 2012), p.215.
- <sup>6</sup> Dr. M. K. Bhandari, Law Relating to Intellectual Property Rights, 5<sup>th</sup> ed, (Allahabad: Central Law Publications, 2019), p.270.
- <sup>7</sup> S. K. Singh, Intellectual Property Rights Laws, 1<sup>st</sup> ed, (Allahabad: Central Law Agency, 2009), p. 325.
- <sup>8</sup> Article by World Intellectual Property Organisation, Geographical Indications, available at [https://frontcover.google.co.in/books/about/Geographical\\_Indications.html?id=5XdiDwAAQBAJ&printsec=source-kp\\_read\\_button&redir\\_esc=y](https://frontcover.google.co.in/books/about/Geographical_Indications.html?id=5XdiDwAAQBAJ&printsec=source-kp_read_button&redir_esc=y), accessed on 20<sup>th</sup> September 2020.
- <sup>9</sup> D. P. Mittal, Taxmann's Trade Marks: passing off and Geographical Indications of Goods - Law and Procedure, (New Delhi: Taxmann's Allied Services Pvt Ltd, 2002), p. 1.275.
- <sup>10</sup> H. S. Gopalakrishnan and T. G. Agitha, Principles of Intellectual Property, 2<sup>nd</sup> ed, (Lucknow: Eastern Book Company, 2014), p.558.
- <sup>11</sup> Supra Note 4 at p.196.



times. Spices from India attracted many foreigners to India and they sailed and reached Indian shores by listening and experiencing the uniqueness of spices which were produced in our country. Dhaka Muslin, Arabian Horses, Kashmiri Carpets, Scotch Whisky, Chinese Muslin and clay pots, etc were well known geographically.<sup>12</sup> They were globally renowned products representing the regions.

### Way to Recognise a Sign as Geographical Indication

Every product which is grown in a particular region cannot be considered as GI. It should have some peculiar character meant for that place of origin. There are certain conditions to be fulfilled by the products to consider them as Geographical Indications. They are as follows: -

- a. Geographical Indication is to be related to a good.<sup>13</sup>
- b. Goods must originate from a definite or a particular area.<sup>14</sup>
- c. The goods must possess the qualities, reputation and relevant features those are clearly linked to the geographical area of origin of goods.<sup>15</sup>

### Importance of Geographical Indications

- a. *Promotes and boosts export*: Geographical Indication once protected will be getting its own unique tag which bestows the growers or producers with a legal security shield that motivates them to put more efforts and increase the production of goods with better-quality. As there is rise in production and quality, it enables the farmers and nation to export more.
- b. *Geographical indication contributes for economic growth*: With the protection of Geographical Indications, it results in the growth of the economic wealth of owners of Geographical Indication or producers, which further leads to the economic progress of their nation.
- c. *Prevention of misuse*: Geographical Indication provides for protection and legal right to the owners or producers to prevent anyone who does not belong to that geographical region from misusing the originality of goods. For example, if a group of farmers of a particular region, produced certain new species of plant or veggies or fruits, then their precious labour, right and reputation can be protected through Geographical Indication.<sup>16</sup>
- d. *Promotion of tourism*: Geographical Indication will spread the name and fame of goods all over the world and people can come to see and visit the place directly to experience the original structure of the product. A particular good can attract people from around the globe and personally they feel the taste, aroma, or site of it.<sup>17</sup>

<sup>12</sup> Supra Note 5 at p.212.

<sup>13</sup> N K Acharya, Text book of Intellectual Property Rights, 7<sup>th</sup>ed, (Hyderabad: Asia Law House, 2014), p.190.

<sup>14</sup> K D Raju, Intellectual Property Law, 1<sup>st</sup> ed, (New Delhi: New Era Law Publications, 2005), p. 356.

<sup>15</sup> Supra Note 7 at p. 325.

<sup>16</sup> Supra Note 7 at p. 325.

<sup>17</sup> Dr. Mangala Hirwade and Dr. Anil W. Hirwade, Geographical Indications: Indian scenario, available at [https://www.researchgate.net/publication/28805024\\_Geographical\\_indications\\_Indian\\_scenario](https://www.researchgate.net/publication/28805024_Geographical_indications_Indian_scenario) accessed on 23rd September 2020







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year 1999. The legislation is Geographical Indications of Goods (Registration and Protection) Act, 1999. The significance of this legislation are as follows: -

- a. It is a specific legislation which governs the Geographical Indication in the country and which could adequately protect the interest of producers of such goods.
- b. It also excludes unauthorized persons from misusing Geographical Indications and to protect consumers from deception.
- c. Goods bearing Indian Geographical Indication must be promoted in exportation to foreign countries.<sup>23</sup>

For example, as the Word Darjeeling Tea is registered under the Geographical Indications, the Tea Board, Registered Proprietors can prohibit any third party from using the term "Darjeeling" for tea which is grown in some other land.<sup>24</sup>

- The Geographical Indications Act of India, 1999 has certain objectives like: -
- a. Providing better legal protection to the Geographical Indications
  - b. Preventing from unauthorized use of Geographical Indications by any other person.
  - c. Protecting the consumers from problem of deception
  - d. Promotion of goods bearing Indian Geographical Indications in the export industry.<sup>25</sup>

### Protection and Registration of Geographical Indications

Registration of Geographical Indications can prevent its misuse and extends protection as well. All goods of Geographical indications are not registrable. There is prohibition for registration on certain conditions like, if the use of goods deceives or creates confusion, or if its contrary to any law in force, or if its scandalous or hurts religious exposures, or if the goods not entitled for protection under Court, or if it's a generic name or indication not to be protected in the country or if the good is falsely represent the place of origin, etc.<sup>26</sup>

An application for the registration of a GI is to be made to the Registrar of Geographical Indications in the form prescribed under the Geographical Indications of Goods (Registration and Protection) Act, 1999 read with the Geographical Indications (Registration and Protection) Rules, 2002.<sup>27</sup> The Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications. The Geographical Indications Registry would be located at Chennai.

<sup>23</sup> Suresh C Srivastava, "Geographical Indications & Legal Framework in India", *Economic and Political Weekly*, Vol. 38, Issue No. 38 (Sep. 20<sup>th</sup>, 2003), available at <https://www.jstor.org/stable/4414050>, last visited on 4<sup>th</sup> Feb. 2021.

<sup>24</sup> Vinod Y Sople, *Managing Intellectual Property-The strategic Imperative*, 3<sup>rd</sup> ed, (New Delhi: PHI Learning Pvt Ltd, 2012), p. 186.

<sup>25</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999 No. 48 of 1999, Department for promotion of Industry and internal trade-Government of India, available at <https://ipindia.gov.in/act-1999.htm>, last visited on 5<sup>th</sup> December 2020.

<sup>26</sup> Supra Note 9 at p.1.296.

<sup>27</sup> Ministry of Commerce and Industry, The Geographical Indications of Goods (Registration and Protection) Rules, 2002, available at <https://ipindia.gov.in/rules-2002.htm>, last visited on 20<sup>th</sup> Feb 2021.



## Methods of Registration

The first and foremost step for the registration is to file application. There are certain ways prescribed to file application. Application must be made in triplicate and it must be signed by the applicant or his agent and must have a copy of map of case. The details on special characteristics and method of maintaining must be given. Map of the region must be there with certification and it should be in triplicate. Details of all the applicants should be given together along with address.<sup>28</sup>

After filing application, there will be preliminary scrutiny and examination of application. It is to see the deficiencies if any in the application and if any correction is required to be made, then within a month it must be communicated to the applicant by the authority or examiner of the application. There will be a group of experts to scrutinise the contents of application on a particular geographical indication. After completion of examination, report will be submitted.<sup>29</sup>

If there is any objection, Registrar will issue a show-cause notice to the applicant and give the reasons. It will be communicated to all the applicants. In such case, applicant should answer the same within two months of such notice and get ready for final hearing.

After hearing, if appeal is to be made, then one more month time will be granted to the applicants for appeal. But in any case, if the application is accepted by default or by mistake, the Registrar has every right and power to withdraw such application after providing sufficient opportunity for hearing.<sup>30</sup>

After acceptance of the application for registration, publication in the Geographical Indications journal can be made. Within three months of acceptance, it must be published. The application for registration of Geographical indication is submitted and accepted on certain conditions or on absolutely, advertisement of application should be done.<sup>31</sup>

If any opposition is there for such Geographical Indication to be registered after the publication. In such case the Registrar shall serve a copy of the notice of opposition to the applicant. The applicant shall get two months of time to respond to the same and applicant requires to send counter statement for the objections filed. If done, it is considered as objection is accepted and the application can be withdrawn. Registration can be done if the application has completed all the requirements.

<sup>28</sup> Dr. B L Wadhwa, Law Relating to Intellectual Property, 5<sup>th</sup> ed. (Haryana) 1997, p. 338.

<sup>29</sup> Shubhangi Sharma, Geographical Indications: Know more about them, (18/08/2017) at <https://blog.ipleaders.in/geographic-indication-law-in-india/>, last visited on 18/08/2017.

<sup>30</sup> Supra Note 1 at p. 338.

<sup>31</sup> Dr. Vikas Vashishthi, Bharat's Law and Practice of Intellectual Property in India, (Bharat Law House, 2007) P.1155

<sup>32</sup> Avtar Singh, Intellectual Property Law, 1st ed. (1999)



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selected for registration. After acceptance, registrar shall register the geographical indication and the date of application is considered as the date of registration. A registration certificate will also be issued by the Registrar to the applicant with the seal of the Geographical Indications Registry.<sup>33</sup>

There is also procedures and opportunity for the Renewal of registration. A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee for further 10 years.<sup>34</sup>

There is opportunity to go for an appeal to an appellate body. Without sufficient cause or reason, time barred appeal cannot be entertained by the Appellate Body.<sup>35</sup> If any decision is not acceptable, the aggrieved person can appeal to the intellectual property appellate board within three months.<sup>36</sup> The Office for the Registration of GI is in Chennai.

### Eligibility to Register for Geographical Indications

Only the group of persons or association of interested producers, or boards can register for Geographical Indications. They have to uphold the public interest and interest of the producers of the goods registered. No single individual can register in his name as it is the property of nation. The registered proprietor or authorised user can get the benefit of Geographical Indications.<sup>37</sup>

Recently the Government of Madhya Pradesh asked for claiming Geographical Indication tag for Basmati rice and contended the same in IP Appellate Board and in High Court of Chennai but could not get relief as Madhya Pradesh is not a place of traditional Basmati growers. Its aroma and quality will differ. Apart from Punjab, Uttarakhand, Haryana, Himachal Pradesh, Delhi, Western Uttar Pradesh and few districts of Jammu and Kashmir have GI tagging for basmati.<sup>38</sup>

### Infringement of Geographical Indications

Sec.22, of the Act speaks about the unauthorised utilisation or using the Geographical Indication for unfair competition leads to infringement.<sup>39</sup> The remedies relating to the infringement of Geographical Indications are similar to the remedies relating to the infringement of Trademark and there is penalty for the same.<sup>40</sup> Injunction, damages or account of profit, or destruction of infringed label or indication can be used to get redressed from infringement of Geographical Indications.<sup>41</sup> Similarly, under the

<sup>33</sup> Ibid at p. 121.

<sup>34</sup> Supra Note 31, at P.1157.

<sup>35</sup> Elizabeth Verkey, Intellectual Property, 1<sup>st</sup> ed, (Lucknow: Eastern Book Company, 2015), p.573.

<sup>36</sup> Supra Note 13 at p.191.

<sup>37</sup> Supra Note 24 at p.189.

<sup>38</sup> The Hindu, Madhya Pradesh should not get GI tag for basmati rice', Punjab CM writes to Prime Minister, (5<sup>th</sup> Aug 2020), available at <https://www.thehindu.com/news/national/other-states/madhyapradesh-should-not-get-gi-tag-for-basmati-rice-punjab-cm-writes-to-prime-minister/article32279435.ece>, last visited on 25<sup>th</sup> Oct 2020.

<sup>39</sup> Supra Note 28 at p.468.

<sup>40</sup> Supra Note 35 at p.583.

<sup>41</sup> Supra Note 6 at p.276.

Geographical Indications of Goods (Registration and Protection) Act, 1999. Falsification of a Geographical Indication will amount to a penalty with imprisonment for a term which may not be less than 6 months but may extend to 3 years and with a fine which may not be less than Fifty Thousand Rupees but may extend to Rupees Two Lakhs.<sup>42</sup>

### Geographical Indication Tag

GI tag is nothing but Geographical Indications tag which came into force with effect from 15th September 2003 in India. Darjeeling Tea was the first Indian product to get a Geographical Indication tag.

Nagpur well known as the Orange City which shows the relationship between the orange and the city of Nagpur and the orange grown in Nagpur got registered under Geographical Indication in the year 2014. Nendran Banana grown in Kerala and Bangalore Rose Onion of Karnataka have received Geographical Indication tags from Registry of Chennai.<sup>43</sup>

Enticing aroma and premium quality of Kashmir Saffron received GI tag which is one of the famous export items of India exported from Kashmir. Unique method of cultivation, handling manually with lot of care is involved in maintaining its aroma and quality.<sup>44</sup> A variety of rice with small size, which is grown especially in the part of West Bengal called Gobind Bhog Rice has received GI Tag for its unique features in the year 2017.<sup>45</sup> One more kind of rice which has received GI Tag recently in the year 2020 is Manipuri Black Rice which contains rich nutritious value and antioxidant qualities as well. Bhikaneri Bhujia of Rajasthan received its SGI tag in 2010. Byadgi Chilli which is a dark red coloured wrinkled tasty chilly got Geographical Indication Tag in 2011.<sup>46</sup> Even, Udipi Mattu Gulla Brinjal registered for Geographical Indication in 2011.

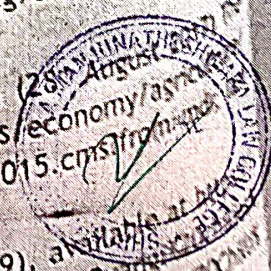
<sup>42</sup> Siddharth Dalmlia, India: Geographical Indications Law In India- Everything You Must Know (14<sup>th</sup> December 2017), available at <https://www.mondaq.com/india/trademark/655394/geographical-indications-law-in-india-everything-you-must-know>, last visited on 4<sup>th</sup> December 2020.

<sup>43</sup> Sivaraman, Nendran Banana gets GI Tag, The Hindu, Puducherry, (April 1<sup>st</sup> 2015), available at <http://www.thehindu.com/news/national/nendran-banana-gets-gi-tag/article7055174.ece>, last visited on 20<sup>th</sup> January 2021.

<sup>44</sup> Sangeetha Kandavel, Kashmir saffron gets GI tag, (May 1<sup>st</sup> 2020), The Hindu, available at [www.thehindu.com/news/national/other-states/kashmir-saffron-gets-gi-tag/article31484562.ece](http://www.thehindu.com/news/national/other-states/kashmir-saffron-gets-gi-tag/article31484562.ece), last visited on 29<sup>th</sup> January 2020.

<sup>45</sup> Suthanuka Ghosal, Gobindobhog rice gets geographical indication status, Economic Times, available at <https://economictimes.indiatimes.com/news/economy/industry/gobindobhog-rice-gets-geographical-indication-status/articleshow/60261015.cms>, last visited on 4<sup>th</sup> February 2020.

<sup>46</sup> Manoj Rajan, Rastriya e-market services Private Ltd (9<sup>th</sup> September 2019), available at <https://www.rems.blog/2019/09/03/byadgi-chilli-with-geographical-indication-tag/>, last visited on 20<sup>th</sup> January 2021.



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## Darjeeling Tea -A Story

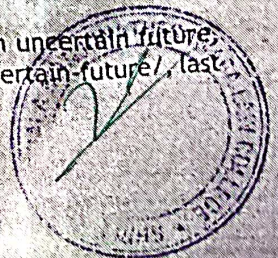
Darjeeling tea is a premium quality tea grown at the District of Darjeeling in West Bengal. It has received reputation around the world because of its aroma and taste. In the year 1828, a person from Britain called Captain Lloyd discovered that the forest hilly region of Darjeeling can be converted into a hill station.<sup>47</sup> Later in the year 1839, Dr. A. Campbell, a civil surgeon by profession, took charge as superintendent of the region, he brought the seeds of tea from hills of North India and planted the same in his Garden at Darjeeling. His tea nursery became a grand success and the British government converted the area as tea nursery in 1847. After independence also, it continued as tea garden of British people but later Indians got the ownership and export business became prominent here. Export business of Darjeeling tea was later brought under the Indian Tea Act of 1953.<sup>48</sup> So, the dealers of Darjeeling tea should have license agreement with the Tea Board of India.<sup>49</sup> In the month of September 2003, the Tea Board of India applied Darjeeling tea for GI protection and granted with GI as the first Indian product to be granted with Geographical Indications.<sup>50</sup>

## Conclusion

To conclude, we can say that, Intellectual Property is property gained by using one's own intellect. Being one of the categories of Intellectual Property, the Geographical Indication is recognised for such region which has its own speciality and one should identify them and seek protection for the same. All of us should respect the rights of others and try to invent something new with our own efforts to reap the benefit of it. Not to infringe or copy the intellectual property of others without acknowledging their efforts. In case of geographical indication, the product itself stands separate and different from other product. Still, protection must be extended for all those products unique for that particular region so that infringement can also be prevented.

\* \* \* \*

- <sup>47</sup> Dr. Sudhir Ravindran and Ms. Arya Mathew, Case study on-The Protection of Geographical Indication in India - Case Study on 'Darjeeling Tea, *International Property Rights Index*, case study report-2009 p. 60, available at <http://nbcgib.uesc.br/nit/ig/app/papers/1035442708158048.pdf>, last visited on 26<sup>th</sup> October 2020.
- <sup>48</sup> Dr. Sudhir Ravindran and Ms. Arya Mathew, Case study on-The Protection of Geographical Indication in India - Case Study on 'Darjeeling Tea, *International Property Rights Index*, case study report-2009 p. 60, available at <http://nbcgib.uesc.br/nit/ig/app/papers/1035442708158048.pdf>, last visited on 26<sup>th</sup> October 2020.
- <sup>49</sup> Asia House-Arts and Learning, Darjeeling tea the 'Champagne of Teas' faces an uncertain future, available at <https://asiahousearts.org/darjeeling-tea-champagne-teas-faces-uncertain-future/>, last visited on 3<sup>rd</sup> September 2020.
- <sup>50</sup> Supra Note 24 at p. 186.





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