ISSN (O): 2584-2196

INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND EXPLORATION

Volume 3 | Issue 2

2025

Website: www.ijlae.com

Email: editor@ijlae.com

ISSN (O): 2584-2196

GEOGRAPHICAL INDICATIONS: MEANING AND THEIR SIGNIFICANCE IN INDIA

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ABSTRACT

Geographical Indications are issue of great International controversy being a form of Intellectual Property. The reason behind the great debate is the value edition which Geographical Indication gives to a particular product and it is why the GIs are considered as the most valuable profitmaking assets. Like Intellectual Property Rights the Geographical Indications also complement and safeguarding the National or International protection regime. Keeping in view the importance of Geographical Indications they have been accorded worldwide protection regarding agreement on trade particularly known as the TRIPs Agreement. Many countries like India, Singapore and the European Union have enacted delicate enactments to defend GIs. Geographical Indication is an indication which identifies certain goods such as agricultural goods, natural goods or manufactured goods 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 contribute to its geographical origin. All efforts have been made to discuss the significance and importance of Geographical Indications at the national and international level.

INTRODUCTION

The geographical indication (GI's) is a name or sign used on certain products, which corresponds to a specific geographical location or origin e.g. A town, region or country. The use of a

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geographical indication may act as a certification that the product possesses certain qualities or enjoys a certain reputation due to its geographical origin.

It was 1st recognized by TRIPS Agreement, and then only it treats as a part of intellectual property rights. At the international level TRIPS has taken initiative for protection of geographical indication. To compliance with the provision of TRIPS Agreement states passed their national laws for the protection of GI's. India was also passed legislation in the year 1999. Before the enactment of legislation in India, courts were taken initiative for the GI's protection. GI's is important for the countries to establish their economy through register of their product as a GI. Registration and Protection of GI's is helpful for the genuine producer and also no confusion for the consumer, he comes to know the origin of the product. GI's are some time confuse with Trademark, to solve this differentiate between them is necessary. In India GI registry was established for the registration of GI's. Indian GI act is a small act with big task. Under this act already various products have been registered as a GI, still some of them are in pipeline to register.

MEANING AND DEFINITIONS OF GEOGRAPHICAL INDICATIONS

Geographical indications mean any indications which define the goods as originating in the territory of a country or a region or locality in that territory, provided a given quality reputation or other characteristics of the product are attributable to its geographical origin. This means that the geographical indication has to indicate that a product of a particular origin has a certain quality or reputation or some other characteristics, which s essentially attributable to its geographical origin.

A Geographical Indication of origin is essentially a place name that identifies the geographic source of a good and signifies a distinctive quality, reputation, or other characteristic of the good that is essentially attributable to that geographic source.

The essential and constituent link between the products origin and their quality or reputation has always been the essential element on which various jurisdictions have construed GI protection. This protection typically takes the form of rights afforded to the owner to use this intellectual property right expressly forbidding others from making similar use of such property.

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A geographical indication is a sign used on goods that have a specific geographical origin. The goods possess qualities or a reputation that are due to that place of origin. Since these qualities depend on the geographic place of production,[1] a specific link exists between the products and their place of origin. Such link has to be objectively verifiable link such as soil or climate influences of the geography on the product and also created link such as reputation.

These special characteristics qualities or reputation may be due to various factors e.g. Natural factors such as raw materials, soil, regional climate, temperature, moisture etc; or the method of manufacture or preparation of the product such as traditional production methods; or other human factors such as concentration of similar businesses in the same region, specialization in the production or preparation of certain products and the maintaining of certain quality standards. GI's helps the prospective consumers are thus, told that the products to which they are affixed come from an area where a given quality, reputation or other characteristic of the product is essentially attributable to their geographic origin.

GI"s basically performs three functions:

1. They identify goods as originating in a particular territory or a region or locality in that territory;
2. They suggest to the consumers that the goods come from an area where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographic origin;
3. They promote the goods of producers of a particular area.[2]

Geographical Indications (GIs) are defined under Article 22(1) of the TRIPS Agreement[3] as "indications which identify a good as originating in the territory of a member or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin."

[1] Dr. B L Wadehra (2004), Law Relating to Patents, Trademark, Copyright, Designs and GI, p 536.
[2] Dr.J K Das (2008), *Intellectual Property Rights*, P.589.
[3] For text of the TRIPS Agreement, See www.wto.org.

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This definition draws on two established concepts: Indication of Source (IS) and Appellation of Origin (AO), which trace their formal origins to, respectively the 1893 Paris Convention[4] and 1958 Lisbon Convention on Appellations of Origin and their Registration. IS refers generally to any expression or sign used to indicate that a product originates in a country, or a specific place (Made in India), while AO refers to the geographic name of a country or locality (Champagne), which serves to designate a product originating therein, whose characteristic are exclusively or essentially due to that geographical environment.

Geographical indications are valuable to producers from particular regions for the same reasons that trademarks are valuable. They are source identifiers, they identify goods are originating in particular territory or a region or locality in that territory. Geographical indications are also indicators of quality they let consumers know that the goods come from an area where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographic origin.

Lisbon Agreement [5]states thus:

"The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors".

Lisbon Agreement defines geographical indications with a number of criteria which goes beyond the definition of indication of source/origin, because the product which is identified with an appellation of origin must not only originate from a specific place but also have the quality and characteristics which are due exclusively or essentially to the geographical environment, including natural and human factors, from where the product originates.

The Indian Geographical Indications Act, 1999[6] defines " geographical indication in relation to goods, as an indication which identifies such goods as agricultural goods, natural goods or

[4] Article 10 of the Paris Convention for the Protection of Industrial Property, for text http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html.

[5] Art 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, for text http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.html.

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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 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".

In *Imperial Tobacco Co* v *Registrar, Trade marks*[7] the Calcutta High Court explained to the following concept of 'geographic term' namely:

"Geographic terms and words in common use designate a locality, a country, or a section of country which cannot be monopolized as trade marks; but a geographical name not used in geographical sense to denote place of origin, but used in an arbitrary or fanciful way to indicate origin or ownership regardless of location, may be sustained as valid trademark."

NEED FOR LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS

Given its commercial potential, legal protection of GI assumes enormous significance. Without suitable legal protection, the competitors who do not have any legitimate rights on the GI might ride free on its reputation. Such unfair business practices result in loss of revenue for the genuine rights holders of the GI and also misleads consumers. Moreover such practices may eventually hamper the goodwill and reputation associated with the GI for a longer run.[8]

LEGISLATIVE PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDIA

Prior to 1999, there was no specific legislation to regulate geographical indication. It was in the year 1999 that India in compliance with its obligation under TRIPS Agreement enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999. In 2002 passed The Geographical Indications (Protection and Registration) Rules. This act seeks to provide for registration and better protection geographical indications relating to goods. It excludes unauthorized persons from misusing geographical indications. This would protect the interest of

[6] Came into force from 15 September 2003, Sec 2(e)of The Geographical Indications(Registration and Protection) Act1999, for Act see http://ipindia.nic.in/girindia.

[7] AIR 1977 Cal 422

[8] Kasturi Das(2004), "Geographical Indications in Jeopardy",*India Together*, April, available at http://www.indiatogether.org/2004/apr/eco_tradegi's.html.

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producers, manufactures 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. Unless a geographical indication is protected in the country of origin, there is no obligation under the agreement under article 22 of the TRIPS Agreement on for other countries to extend reciprocal protection. It is in this context that the Act was enacted.[9]

Prior to this the Indian Judiciary in the absence of any legislation applied the principle of passing off to protect geographical indications. They have entertained petitions in cases of infringement of geographical indications that misleads the consumer as to the place of origin or constitute unfair competition. In such cases they have granted relief including grant of injunction restraining the defendant to use such indications.

GEOGRAPHICAL NAME – IT CAN BE USED AS TRADEMARK

This issue was raised in *Imperia Tobacco Co. of India Ltd* v *Registrar of Trade Marks Another*[10]. In this case, the imperia Tobacco Company of India Ltd applied to the Registrar of Trade Marks for Registration. The trademark for registration is a label, used as wrapper of packets of cigar rates bearing the device of snow clad hills in outline with the word 'Simla' written prominently in various panels of the label with small inscription that the content is a product of the appellant company. The Registrar rejected the application for registration. Thereupon the company filed an appeal before the Calcutta High Court. The Calcutta High Court while disallowing the appeal and held that it is violation of Trademark law.

PROCEDURE OF REGISTRATION

Under the act an application can be made for registering a geographical indication by an association of persons or producers or any organization or authority representing the interest of the producers of the concerned goods.[11]

[9] See Statement of Objects and Reasons of the Bill.
[10] AIR 1997 Cal 413.
[11] Sec 11(1) of the GI Act.

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The application must be made to the Registrar under the act, the Controller – General of Patents, Designs and Trade Marks appointed under sub-section (1) of section3 of the Trade marks Act, 1999 shall necessary be the Registrar of Geographical Indications. Every application shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country to which the geographical indications relates is situated. There shall be established registry, which shall be known as Geographical Indications Registry. The Head Office of the Geographical Indications Registry shall be at the place specified by the Central Government by notification.[12]

The application must contain:

1. A statement of how the geographical indication serves to designate the goods as originating form the concerned territory in respect of the quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors and the production or processing or preparation of which takes place in such territory or region or locality.
2. The class of goods to which the geographical indication shall apply.
3. The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured
4. The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both.
5. A statement containing such particulars of the producers of the concerned goods, if any proposed to be initially registered with the registration of the geographical indication as may be prescribed and such other particulars as may be prescribed.[13]

After the registrar accepts an application for registration and if there has been an opposition that is dismissed the geographical indication shall be registered.

The registration of a geographical indications shall if valid, give to the registered proprietor and the authorized user or users the right to obtain relief in respect of its infringements and to the

[12] The Central Government hereby establishes the Geographical Indications Registry with all India Jurisdiction at Chennai.

[13] Sec 11(2) of the Act.

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authorized user the exclusive rights to the use of the geographical indication in relation to the goods in respect of which it is registered. For an unregistered geographical indication only an action of passing-off can be taken.[14]

The following geographical indications are prohibited from registration under the act[15]: a geographical indication

1. The use of which would be likely to deceive or cause confusion;
2. The use of which would be contrary to any law for the time being;
3. Which comprises or contains scandalous or obscene matter;
4. Which comprises or contains any matter likely to hurt the religious susceptibilities of any class or citizens of India;
5. Which would be dis entitled to protection in the court of law;
6. Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country;
7. Which although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality as the case may be, shall not be registered as a geographical indication.

The act provides that the registration of a geographical indication shall be for a period of 10 years and shall be renewed for a period of another 10 years on an application made in the prescribed manner and within the prescribed period and subject to the payment of the prescribed fees.

The act prohibits the registration of a geographical indication as a trade mark and protects a trade mark which contains or consist of a geographical indication which has been applied for or registered in good faith under the trademarks law or where such trademarks have been used in

[14] Sec 20 of the Act.
[15] Sec 9 of the Act.

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good faith before the commencement of the proposed legislation or before the date of filing of an application for registration of a geographical indication.[16]

INFRINGEMENT OF GEOGRAPHICAL INDICATIONS

A registered geographical indications is infringed by a person who, not being an authorized user thereof,(i) uses such geographical indications by any means in the designation or presentation of goods that indicates or suggests that such goods originate in some other geographical area other than the true place of origin of the goods in a manner which misleads the public, or (ii) uses any geographical indications in such manner which constitutes an act of unfair competition including passing-off in respect of registered geographical indications, or(iii) uses another geographical indications to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represent to the public that the goods originate in the region, territory or locality in respect of which such registered geographical indications relate.[17]

Registered geographical indications shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement.[18]

REMEDIES FOR INFRINGEMENT OF GEOGRAPHICAL INDICATIONS

The remedies available for protection of GI may broadly be classified into two categories (1) Criminal remedies (2) Civil Remedies

Criminal Remedies

The Act contains penal provision for violation of various provisions relating to GI as follows

1. Falsifying and falsely applying GI's to goods.[19]
2. Selling goods to which false GI's is applied.[20]
3. Falsely representing a GI as registered[21]
4. Improperly describing a place of business as connected with the GI's registry.

[16] Sec 22 of the Act.
[17] Sec 31 of the Act.
[18] Sec 24 of the Act.
[19] Sec 38 &39 of the Act.
[20] Sec 40 of the Act.
[21] Sec 42 of the Act.

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5. Falsification of entries in the register.

The punishment prescribed for the aforesaid offenses varies from six months to three years imprisonment and a fine of not less than Rupees fifty thousand but may extend to Rupees two lakh. The Act also prescribes for enhanced penalty for second or subsequent conviction. The term of imprisonment in such cases shall not be less than one year but it may extend up to three years and fine of not less than one lakh rupees which may extend up to two lakh rupees. The discretion is vested with the courts to impose a lesser punishment than the minimum punishment after recording in the judgment adequate and special reasons for awarding such lesser punishment.

Civil Remedies

The suit for infringement has to be filed in court not inferior to that of a district court having jurisdiction. In any suit for infringement of GI's the defendant pleads that registration of the GI's relating to plaintiff is invalid, the court trying the suit shall:

(i) If any proceeding for rectification of the register to the GI's relating to plaintiff or defendant are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) If no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the GI's relating to plaintiff or defendant is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.[22]

Remedies through Appellate Board

The Geographical Indication Act provides for an appeal by any person aggrieved by an order or decision of the registrar of geographical indications to the appellate board. The act provides that any person aggrieved by an order or decision of the registrar may prefer an appeal to the appellate board within 3 months from the date on which such order or decision is communicated

[22] Sec 57 & 66 of the Act.

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to him. Delay in preferring an appeal may be condoned on the ground of sufficient cause.[23]

The Act bars the jurisdiction of any court or authority to exercise any jurisdiction, powers or authority in relation to the aforesaid matters.[24]

The act provides that the registrar shall have the right to appear and be heard in the following cases

(i) In any legal proceedings before the appellate board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

(ii) In any special appeal to the board from an order of the Registrar on an application for registration of a geographical indication or authorized user-

(a) Which is not opposed and the application is either refused by the registrar or is accepted by him subject to any amendments, modification, conditions or limitations

(b) Which has been opposed and the registrar considers that his appearance is necessary in the public interest.[25]

The registrar shall also appear in any case if the Appellate Board, in lieu of appearance, in matters relating to an issue or the grounds of any decision given by him or the practice of the geographical indications registry or of other matter relevant to the same and within his knowledge. Such statement will be evidence in the proceedings.

In all proceedings before the Appellate Board the costs of the Registrar shall not be ordered to pay the costs of any parties.

The act provides that where in a suit for infringement of a registered geographical indication[26]

[23] Sec 31 of the Act
[24] Sec 32 of the Act
[25] Sec 35 of the Act
[26] Sec 58 of the Act.

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(i) The validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant

Where plaintiff questions the validity of the registration of the geographical indication relating to defendant the issue as to the validity of the registration of the geographical indication shall be determined only on an application for the rectification of the register. Such application shall be made to the Appellate Board and not to the Registrar.

STATUS OF GI REGISRATION IN INDIA

Around 30 GI's of India origin have already been registered with the GI register. These includes like Darjeeling Tea, Pochampalli Ikat Textiles, Chanderi Sarees, Kancheepuram Silk Textiles, Kashmir Pashmina Shawls, Kondapalli Toys, Mysore Agarbattis, Basmati Rice, Alphanso Mango, Nagpur Orange, Kolhapuri Chappal, Bikaneri Bhujia, Agra Petha, Malabar pepper, etc. till 2025 there are 1065 applications approved before the registry for registering as a GI.[27]

CASE LAW

***Scotch Whisky Association* v. *Golden Bottling Ltd*[28]**

The plaintiffs filed this suit for a permanent injunction restraining the defendants from dealing in any manner with whisky under the name "Red Scot" or any other name containing the word 'Scot' or any other word similar there to so that the defendant cannot pass off its whisky as scotch whisky.

Scotch whisky is worldwide known as a whisky produced in Scotland and is advertised as such. The plaintiff came to know that defendant was manufacturing and selling 'Red Scot' whisky. Since the name 'Red Scot' gives an impression that it is scotch whisky, the plaintiff sent a legal notice to the defendant on 30th September 2000 advising it not to use the word 'Scot' in its whisky. But no reply was sent from the defendant' s side. Later on the plaintiffs came to know

[27] For more information , see GI Registry web site http://ipindia.nic.in/girindia.
[28] 2006 (32) PTC 656 (Del).

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that no whisky as to this label was available in the market. But sometime in June 2003 the plaintiffs again came to know that defendants were selling whisky with the label 'Red Scot'. It is submitted by learned counsel for the plaintiffs that under the WTO-TRIPS Agreement protection is provided for geographical indications in terms of Article 22 thereof. It is submitted that the word "SCOT" or "SCOTCH" is a geographical indication within the meaning of Article 22.1 in as much as it identifies whisky produced in Scotland. The reference was also made to the *Geographical Indications of Goods(Registration and Protection) Act, 1999*. Section 20(1) of the Act prohibits any person from instituting any proceedings to prevent or to recover damages for the infringement of an unregistered geographical indication. However, this does not affect the rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. Learned counsel for the plaintiffs also drew attention to Section 67 of the Act which empowers a court, to grant either damages or account of profits. Thus under the circumstances of the given case the relief prayed for by the plaintiffs is granted and the defendants are restrained from using the word "Scot" or any other word similar thereto in the whisky manufactured and sold by the defendant. The plaintiffs are entitled to the permanent injunction prayed for and also to damages to extent of Rs. 5,00,000. The plaintiffs will also be entitled to costs of Rs 3,10,000 which they say they have incurred in this litigation.

CONCLUSION

The Indian judiciary has played a significant role particularly in the absence of any legislation to protect GI's. The Indian courts were given effect to article 22 and 23 of the TRIPS Agreement even before it came into existence. This act would go a long way to protect GI's and provide a model for other countries. Nations have to enact national laws for the protection of GI's, instead of waiting for the TRIPS to do something. TRIPS council without any further delay to work out the legal modalities necessary to eliminate the existing deficiencies in the TRIPS Agreement in the field of the protection of GI's with a view to reach a mutually agreeable solution.

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