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## Legal implications of geographical indications in India

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### Abstract

Within the framework of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the protection of Geographical Indication (GI) has been one of the most controversial IPR (Intellectual Property Rights) problems over time. According to TRIPS, a geographical indicator (GI) is any label that designates a product as being from a certain location, when a product's reputation, quality, or other attributes are primarily linked to its origin. Additionally, a geographical indication (GI) grants a town, province, or nation the only right to use a term for a product that uniquely identifies that region and its particular features. India's GIs are safeguarded under the Geographical Indications of Goods (Registration and Protection) Act, 1999. In India, GI registration is not required. Should it be registered, it will provide enhanced legal protection to enable the filing of an infringement lawsuit.

**Keywords:** Geographical indications, trips agreement, intellectual property rights (IPR), cultural preservation, technological integration

### 1. Introduction

Geographical indications (GIs) are a form of intellectual property rights that identify a good as originating from a specific geographical area, where a particular quality, reputation, or other characteristic of the product is essentially attributable to its geographical origin. Essentially, a GI serves as a certification that the product possesses certain qualities or enjoys a certain reputation due to its geographical origin. GIs can apply to a wide variety of products, including agricultural products, foodstuffs, wine, handicrafts, and industrial products. The link between the product and its specific place of origin is what gives the product its unique and valuable characteristics. In the context of GIs, the geographical area can be a town, region, or even a country. The reputation, characteristics, or qualities of the product must be essentially due to the geographical origin. This link between the product and its origin distinguishes GIs from trademarks, which often serve to identify the source of a product but may not necessarily be linked to a specific geographical area <sup>[1]</sup>.

GIs are important because they help promote and protect products with unique qualities that are tied to their geographical origin. By preventing unauthorized use of the geographical indication, GIs can help maintain the reputation and quality of the products, as well as support the local economies and cultures associated with the geographical areas. In the Indian context, the Geographical Indications of Goods (Registration and Protection) Act, 1999, provides for the registration and better protection of geographical indications relating to goods. This legal framework aims to ensure that products originating from a particular geographical region are protected from unauthorized use and imitation, thereby safeguarding the interests of producers and consumers alike. Geographical indications (GIs) play a crucial role in protecting unique products and promoting the economic and cultural interests of producers associated with specific geographical regions.

### 2. The importance of GIs in this regard can be understood through several key aspects

- 1. Quality Assurance:** GIs serve as a certification of the quality, reputation, and distinct characteristics of products originating from specific regions. This helps consumers in identifying and choosing products known for their specific attributes, which are often closely linked to the natural and human factors of the region.
- 2. Economic Development:** GIs contribute to the economic development of specific regions by supporting local producers and communities. By providing legal protection against misuse and imitation, GIs help maintain the market value of products, thereby

<sup>1</sup> Geographical Indications and International Trade: A Strategic Framework for Economic and Social Development" by Carlos M. Correa. p. 45

enabling producers to earn a fair return for their unique goods. This, in turn, can stimulate local economies and employment opportunities <sup>[2]</sup>.

3. **Cultural Preservation:** Many products with geographical indications are deeply rooted in the cultural heritage and traditions of their places of origin. Protecting these products through GIs helps safeguard traditional knowledge, techniques, and practices that have been passed down through generations. This preservation of cultural identity and heritage is essential for maintaining the diversity of global cultural expressions.
4. **Consumer Confidence and Safety:** GIs provide consumers with assurance regarding the authenticity and specific qualities of products. By establishing a direct link between the product and its geographical origin, GIs help prevent consumer deception and support consumer confidence in the products they purchase.
5. **Sustainable Development:** GIs often promote sustainable agricultural and production practices. Many products with GIs are tied to specific geographical conditions, such as soil types, climate, or traditional farming methods. Protecting these products encourages the preservation of local ecosystems and sustainable agricultural practices <sup>[3]</sup>.
6. **Market Differentiation:** GIs create a unique market identity for products from specific regions, helping them stand out in an increasingly competitive marketplace. This differentiation can lead to increased market access and enhanced opportunities for producers to capitalize on the distinctiveness of their products.

In India, GIs have been instrumental in protecting and promoting products such as Darjeeling tea, Kanchipuram silk sarees, Alphonso mangoes, and many others, thereby contributing to the preservation of traditional knowledge, the empowerment of local communities, and the sustainable development of rural areas.

The legal framework for geographical indications (GIs) in India is primarily governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. This comprehensive legislation outlines the procedures for the registration and protection of GIs, aiming to safeguard the interests of producers and consumers associated with specific geographical indications.

### 3. The overview of the key components of the legal framework for GIs in India

1. **Geographical Indications of Goods (Registration and Protection) Act, 1999:** The Act provides for the registration and protection of GIs relating to goods. It defines geographical indication, establishes the Geographical Indications Registry, and sets out the rights conferred by the registration of a geographical indication <sup>[4]</sup>.
2. **Definition and Criteria for Registration:** The Act defines a geographical indication as an indication that

identifies goods as originating from a specific geographical area, where a particular quality, reputation, or other characteristic of the goods is essentially attributable to their geographical origin. To be eligible for registration, a geographical indication must meet certain criteria, including being distinctive to the concerned goods, being capable of distinguishing the goods, and being indicative of their geographical origin <sup>[5]</sup>.

3. **Application Procedure:** The Act outlines the procedure for the filing of applications for the registration of geographical indications. It specifies the required contents of the application, including details about the applicant, the geographical indication, the goods, and evidence of the association of the goods with the geographical area.
4. **Examination and Registration Process:** Upon receipt of an application, the Geographical Indications Registry examines the application to ensure compliance with the statutory requirements. If the application meets the criteria, the geographical indication is registered, and the details are entered into the Register of Geographical Indications.
5. **Rights Conferred by Registration:** The Act confers certain rights on the registered proprietor of a geographical indication, including the exclusive right to the use of the geographical indication in relation to the goods, the right to take legal action against unauthorized use, and the right to authorize others to use the geographical indication.
6. **Protection and Enforcement:** The Act provides for the protection and enforcement of registered geographical indications. It sets out civil and criminal remedies for infringement, establishes the jurisdiction of courts, and outlines the powers of the Registrar of Geographical Indications in the administration and enforcement of the Act.
7. **International Perspective:** The Act also addresses the protection of foreign geographical indications in India and India's obligations under international treaties and agreements related to GIs. The legal framework for geographical indications in India aims to promote the economic and social development of producers associated with specific geographical areas while protecting the interests of consumers. It provides a robust mechanism for the registration, protection, and enforcement of GIs, contributing to the preservation of traditional knowledge, cultural heritage, and the promotion of high-quality, distinctive products from different regions of the country. The concept of geographical indications (GIs) and the legal protection of GIs in India have a significant historical context. The protection of GIs in India has evolved over time through legislative developments and international agreements <sup>[6]</sup>.

### 4. Here's a brief history of geographical indications in India

1. **Pre-independence Era:** The roots of GIs in India can

<sup>2</sup> Ibid

<sup>3</sup> "Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific" edited by Irene Calboli and Srividhya Ragavan. P. 245

<sup>4</sup> "Geographical Indications in India: An Overview" by Shweta Bhanot, published in the Indian Journal of Law and Technology.

<sup>5</sup> Universal Law Publishing Geographical Indications of Goods (Registration and Protection) Act, 1999 Along with Rules, 2002 Universal Law Publishing - An imprint of LexisNexis, 2016

<sup>6</sup> "Geographical Indications and Environmental Protection: A Global Review of National Laws and Case Law" by Charles Gielen. p 234.

be traced back to ancient times when specific products from different regions gained recognition for their unique qualities and characteristics. Traditional products such as Darjeeling tea, Pashmina shawls, and various handicrafts had already established their reputation based on their geographical origin.

2. **Post-independence Period:** After India gained independence, there was a growing recognition of the need to protect and promote products with unique geographical origins. Efforts were made to safeguard traditional products from specific regions and prevent unauthorized use or imitation<sup>7</sup>.
3. **TRIPS Agreement and International Recognition:** The legal framework for GIs in India gained significant momentum with the signing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO). The TRIPS Agreement recognized the importance of GIs and provided a framework for the protection of geographical indications at the international level.
4. **The Geographical Indications of Goods (Registration and Protection) Act, 1999:** In 1999, India enacted the Geographical Indications of Goods (Registration and Protection) Act to provide a formal legal framework for the registration and protection of GIs. This legislation aimed to recognize the link between product qualities and their geographical origin, and to establish a mechanism for the registration and protection of GIs in India.
5. **Development and Expansion:** Over the years, the legal framework for GIs in India has continued to evolve, with an increasing number of products being recognized and registered as geographical indications. Various stakeholders, including producers, industry bodies, and government agencies, have contributed to the development and expansion of GIs in India<sup>8</sup>.
6. **International Recognition and Bilateral Agreements:** India has actively pursued the protection of its own GIs at the international level and has also recognized and protected GIs from other countries. Bilateral agreements and trade negotiations have played a significant role in facilitating the recognition and protection of GIs from India in foreign markets, as well as the protection of foreign GIs in India.

Overall, the history of geographical indications in India reflects a growing awareness of the economic, cultural, and social significance of products with unique geographical origins. The legal framework for GIs has evolved to provide enhanced protection and recognition for these products, contributing to the preservation of traditional knowledge, cultural heritage, and economic development in various regions of the country.

## 5. Criteria for Registration of Geographical Indications

1. **Geographical Link:** The product must originate from a specific geographical area, and it must possess qualities, reputation, or characteristics that are essentially attributable to that place of origin. There

must be a clear link between the product's quality, reputation, or other characteristics and its geographical origin.

2. **Reputation or Characteristics:** The product must have a reputation, quality, or other characteristic that is attributable to its geographical origin. This could include factors such as climate, soil, traditional production methods, or other local factors that contribute to the product's unique qualities.
3. **Distinctiveness:** The geographical indication must be distinguishable from products originating from other regions or areas. It should clearly identify the product as originating from a specific place.
4. **Public Interest:** The registration of the geographical indication should also serve the public interest, particularly by promoting the economic and social development of the producers associated with the specific geographical area.

It's important to note that these criteria are general in nature, and specific requirements for the registration of geographical indications may vary by jurisdiction. For example, the Geographical Indications of Goods (Registration and Protection) Act, 1999 in India may have its own specific criteria and procedures for the registration of geographical indications. The registration of a geographical indication (GI) typically confers several rights to the registered proprietor, which are aimed at protecting the unique identity and reputation of the goods associated with the geographical indication<sup>9</sup>.

## 6. Rights Conferred by the Registration of a Geographical Indication

1. **Exclusive Use:** The registered proprietor of a geographical indication is usually granted the exclusive right to use the geographical indication in relation to the goods for which it is registered. This means that others are generally prohibited from using the geographical indication in a manner that suggests a false geographical origin for their products.
2. **Legal Protection:** The registration provides legal protection against unauthorized use of the geographical indication by third parties. It allows the registered proprietor to take legal action against any party that infringes on the rights associated with the geographical indication.
3. **Licensing and Control:** The registered proprietor has the right to license others to use the geographical indication under agreed terms. This allows for controlled and authorized use of the geographical indication by other producers, which can help in maintaining quality standards and preserving the reputation of the goods.
4. **Enforcement:** The registered proprietor can seek legal remedies, such as injunctions, damages, and other appropriate reliefs, in case of infringement or unauthorized use of the geographical indication by others.
5. **Promotion and Marketing:** The registration of a geographical indication can facilitate the promotion and

<sup>7</sup> "Geographical Indications: The Indian Perspective" by Priya Sreekumar, published in the Journal of Intellectual Property Rights.

<sup>8</sup> "Geographical Indications in India: A Tool for Rural Development" by Prabuddha Ganguli, published in the Journal of World Intellectual Property.

<sup>9</sup> "Legal Protection for Geographical Indications in India: A Critical Analysis" by Pankaj Jain, published in the Indian Journal of Intellectual Property Law.

marketing of the goods associated with it, as it provides a recognized and protected symbol of quality and authenticity.

These rights are designed to protect the interests of the producers associated with the geographical indication and to promote the economic and social development of the specific geographical area from which the goods originate. It's important to note that the specific rights conferred by the registration of a geographical indication may be outlined in the applicable legislation or regulations governing geographical indications in a particular jurisdiction<sup>[10]</sup>.

## 7. Civil and Criminal Liabilities

In India, the protection and enforcement of Geographical Indications (GIs) are governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. The Act provides for both civil and criminal remedies for infringement, outlines the role of the Geographical Indications Registry, and has seen the development of case law and precedents related to the enforcement of GIs.

### A. Civil and Criminal Remedies for Infringement

**Civil Remedies:** The Geographical Indications Act provides for civil remedies for infringement, including injunctions to prevent unauthorized use of a registered GI, damages or an account of profits, and delivery up or destruction of infringing goods. Civil actions can be filed in the appropriate civil courts to seek these remedies.

### Criminal Remedies

The Act also includes provisions for criminal remedies, such as penalties and imprisonment for unauthorized use of a registered GI. Criminal actions can be initiated by the authorized officers or by any person authorized by the Registrar of Geographical Indications.

### B. Role of the Geographical Indications Registry

The Geographical Indications Registry, established under the Geographical Indications Act, plays a crucial role in the registration, administration, and protection of GIs in India. The Registry is responsible for maintaining the register of GIs, processing applications for registration, and providing a platform for the protection and enforcement of GIs<sup>[11]</sup>.

## 8. Case Law and Precedents

Over the years, there have been several cases in India related to the enforcement of geographical indications. Courts have adjudicated matters involving the misuse or unauthorized use of GIs, leading to the development of case law and precedents that have shaped the enforcement landscape for GIs in the country. These cases have provided insights into the interpretation and application of the Geographical Indications Act, the determination of infringement, the grant of reliefs, and the protection of the rights of GI producers and stakeholders.

### Banganapalle Mango Case

"King of Fruits" refers to Banganapalle mangoes that were

given a G.I. badge in 2017. The phrase "Banglapple Mango from Andhra Pradesh" is shown around a dazzling yellow fruit in the government-fixed emblem, which also incorporates pictures of a man and a lady among farmers. Anybody wishing to sell or manufacture anything must now apply to be the first authorised user, and this requires a No Objection Certificate (NOC) from the Commissioner of the Department of Horticulture, Government of Andhra Pradesh's Horticulture Development Agency. Numerous sages, like "*Beneshan, Banahan, Benishan, Chapati, Safeda, Banganapalli, Banginapalli, Banganapalle, etc.*," are also familiar with the fruit. The fruit's ability to keep its quality for three months in cold storage is its greatest draw. "The prominent feature of Banganapalle mangoes is that they have very light spots on their skin, stones are diagonal in shape, and have very thin seeds, which have sparse and soft fibres," according to documents presented to the Registry. The government also designated the Nandyal Mandal in Banganapalle, Penam, and Telangana, as well as the districts of Khammam, Mahbubnagar, Rangareddy, Medak, and Adilabad, as the original core of Kurnool district. An affidavit submitted in 2011 by Rani Kumudini, the Andhra Pradesh Commissioner at the time, said that around 7,68,250 households were engaged in the Banganapalle mango industry. In Andhra Pradesh, an estimated 24.35 lakh metric tonnes of mangoes were cultivated annually; of them, about 5,500 tonnes were shipped each year to the United States, the United Kingdom, Japan, and the Gulf nations<sup>[12]</sup>.

### Rasogolla Case

G.I. was registered as Ras Banglar Rasogola by the West Bengal State Food Processing and Horticulture Development Corporation Limited in November 2017. The rumoured conflict between Bengal and Odisha over who would claim the renowned dessert was said to have been won by Bengal. When objections to G.I. registration were filed and it was claimed that this well-known dessert originated in the Jagannath temple in Puri, Odisha, the legal struggle for G.I. registration began. In February 2018, a request was made to have the G.I. status registration cancelled. Following notification from the G.I. Registry in July that Odisha had registered G.I. under the name "Odisha Rasgola," many reports were made public. Odisha persevered throughout the race and emerged victorious. It is crucial to remember that the term "all Rasogola" or "Rasgola" is not registered with the G.I. registry. Two prefixes, "Banglar" and "Odisha," have been added especially for the G.I. tag. In other words, "rasogola" is a broad phrase that anybody can use in their profession or industry. Therefore, neither of the states has a legal monopoly on the term "Rasogola" or "Rasola." As a result, you may freely offer candies to any trader under the name Rasgulla, Rasgola, or any other synonym. The legislation prohibits anybody other than authorised users from using the terms "Odisha rasgola" and "Benglar rosogola"<sup>[13, 14]</sup>.

<sup>10</sup> "Geographical Indications: The Indian Perspective" by Priya Sreekumar, published in the Journal of Intellectual Property Rights.

<sup>11</sup> Universal Law Publishing Geographical Indications of Goods (Registration and Protection) Act, 1999 Along with Rules, 2002 Universal Law Publishing - An imprint of LexisNexis, 2016

<sup>12</sup> Available at: [https://www.researchgate.net/publication/277570168\\_Intellectual\\_property\\_protection\\_of\\_Banganapalle\\_Mango\\_of\\_Andhra\\_Pradesh\\_India\\_through\\_h\\_registration\\_as\\_a\\_geographical\\_indication/link/5591216b08ae15962d8c7f97/download?\\_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19](https://www.researchgate.net/publication/277570168_Intellectual_property_protection_of_Banganapalle_Mango_of_Andhra_Pradesh_India_through_h_registration_as_a_geographical_indication/link/5591216b08ae15962d8c7f97/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19) Accessed on 10.01.2024 at 02:33 PM

<sup>13</sup> Asit Ranjan Mishra, After West Bengal, Odisha gets GI tag for its version of Rasagola, Livemint, Updated: 30 Jul 2019, 01:00 PM IST,



It's important to note that the legal landscape and enforcement mechanisms related to GIs are subject to ongoing developments, and individuals and businesses seeking to protect GIs in India should stay informed about the latest legal provisions, administrative procedures, and judicial decisions. Seeking legal counsel from professionals experienced in intellectual property law in India is advisable for specific guidance on the protection and enforcement of GIs in the country.

## 9. Challenges and Future Considerations for Geographical Indications in India

- 1. Awareness and Capacity:** Limited awareness and understanding of GIs among producers, businesses, and consumers, as well as the need for enhanced capacity-building efforts to ensure effective implementation and enforcement.
- 2. Compliance and Monitoring:** Challenges related to monitoring and ensuring compliance, particularly in cases of unauthorized use or misuse of GIs, which may require improved surveillance and enforcement mechanisms.
- 3. Legal Proceedings:** Lengthy legal proceedings, lack of specialized GI tribunals, and the need for expedited resolution of GI-related disputes to effectively protect the rights of GI producers and stakeholders.

## 10. Future Prospects and Developments in the Field of Geographical Indications in India

Looking ahead, several prospects and developments are anticipated in the field of geographical indications in India, including:

- 1. Market Expansion:** Opportunities for the expansion of Indian GIs in global markets, particularly in sectors such as agriculture, food products, handicrafts, and textiles, as consumer interest in authentic and region-specific products continues to grow.
- 2. Technological Integration:** Leveraging technology, such as blockchain and digital platforms, to enhance the authentication, traceability, and protection of GIs, thereby increasing transparency and consumer confidence.
- 3. Policy Reforms:** Potential policy reforms and amendments to the legal framework to address emerging issues, accommodate evolving trade dynamics, and align with international best practices in GI protection.

Ultimately, addressing these challenges, pursuing improvements in the legal framework, and capitalizing on future prospects will be essential for strengthening the protection and promotion of geographical indications in India, contributing to the preservation of traditional knowledge, rural economies, and cultural heritage <sup>[15]</sup>.

## 11. Conclusion

Geographical indications (GIs) play a crucial role in

protecting and promoting products that derive their unique qualities and reputation from their geographical origin. GIs not only serve as valuable tools for preserving traditional knowledge, cultural heritage, and rural economies but also provide consumers with assurance regarding the authenticity, quality, and distinctiveness of products associated with specific regions. The legal framework governing geographical indications in India, as outlined in the Geographical Indications of Goods (Registration and Protection) Act, 1999 <sup>[16]</sup>, plays a pivotal role in providing recognition, protection, and enforcement mechanisms for GIs. This framework facilitates the registration of GIs, establishes provisions for the prevention of unauthorized use or misuse, and outlines avenues for civil and criminal remedies, thereby safeguarding the interests of GI producers, preserving cultural heritage, and fostering fair trade practices.

As India continues to navigate the dynamic landscape of intellectual property rights and global trade, the future of geographical indications in the country holds promise and potential. With concerted efforts to address implementation challenges, strengthen the legal framework, and enhance international cooperation, there are opportunities for Indian GIs to expand their presence in global markets, leveraging technological advancements to bolster authentication and traceability. Through these endeavours, the protection and promotion of geographical indications in India can contribute to the sustenance of traditional knowledge, economic development in rural areas, and the preservation of India's rich cultural diversity. In conclusion, the significance of geographical indications, supported by an effective legal framework, underscores their pivotal role in preserving heritage, empowering local communities, and offering consumers authentic and quality-assured products. Looking ahead, the future of geographical indications in India holds the potential for continued growth, increased global recognition, and the perpetuation of India's diverse and vibrant cultural legacy.

## 12. Author statement

All authors contributed equally to this work.

## 13. Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

## 14. Data availability

Data will be made available on request.

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<sup>15</sup> "Geographical Indications and Intellectual Property: Bridging the Gap between Innovation and the Protection of Traditional Knowledge" by Irene Calboli and Wee Loon Ng-Loy.

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