

# Protection of Geographical Indication of Goods

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## ABSTRACT

The paper defines the term geographical indications, its description and limitations under various licensed agreements. It also describes the impact of geographical indication on reputation, quality and attributes of goods and products manufactured in particular country, region and area.

**Keywords:** Geographical indication, trademark, IPR, TRIPs, genericide

## 1. INTRODUCTION

Goods manufactured or processed in a particular place or area may acquire reputation and commercial value due to their unique quality essentially derived from that geographical area or place. These goods can be identified with the geographical area, and a link between the product and place can be well established. The geographical association of the area with the product may give it a unique commercial value. The geographical indication (GI) of a product acquires the status of an intangible property. This property is acknowledged as a distinct intellectual property (IP). Thus, GI is an indication identifying a good as originating in a particular country, region or locality of that country. The reputation, quality or characteristics of such goods are attributable to their geographical origin. A GI may include geographical names like Darjeeling Tea, Mysore Silk, Champagne Wines, Cuban Cigars or it may also include traditional non-geographical

names like Basmati Rice or Feta Cheese from Greece. Even such non-geographical names are considered as GIs as the products with which they are associated originate from a specific geographical area, which imparts them a unique quality.

The reputation and quality, which a GI of a good acquires is also due to the human factors, i.e., continuous and sustained efforts of individuals and associations. As a result, the GIs become part and parcel of tradition and culture of that area. Also, the commercial value and goodwill acquired by such products become an attraction for unscrupulous persons, who in no way contribute to its reputation but try to exploit it to their advantage by using these GIs for their goods. Any use of GIs for a product, which does not originate in that geographical area is unauthorised and amounts to usurpation. Such a misuse of GI is similar to passing off of a trademark. However, GIs are different from trademarks

and have many distinguishing characteristics between them. Trademark is a trader's private property, but GIs are a collective public right. Trademark denotes the source of the product whereas GIs, apart from identifying the geographical origin of the product, also indicate that the product possesses certain quality derived from that particular area. Further, trademark is assignable, but GIs cannot be assigned, but they are heritable. A trader is at liberty to choose any trademark and create new ones, while GIs are evolved over a period of time. A GI cannot be used as a trademark as it would amount to privatisation of a public right, however, a GI can be used in conjunction with a trademark. In such cases the product must originate from the concerned geographical area. Some of such trade names are Teachers' Scotch whiskey, Lindt Swiss chocolate, Kohinoor basmati rice, etc.

## **2. PROTECTION OF GI UNDER DIFFERENT INTERNATIONAL INCITEMENTS**

The term GI was used for the first time in Trade Related Intellectual Properties (TRIPs) Agreement of World Trade Organisation (WTO). Earlier, terms like 'indications of source' and 'appellation of origin' were used in many international and regional instruments to denote GIs. Indication of source designates a country or a place situated in that country from where the particular product in question originates. But such designation does not warrant any quality, character or reputation linked to the geographical origin.

Similarly, appellation of origin points out the place where the goods relative to the appellation have been manufactured. Appellation like 'Made in USA', means that the goods are manufactured in the USA and protection is available only for such geographical indication.

Paris Convention in 1883, for the protection of industrial property, was the first multilateral agreement, which provided for protection of indications of source and appellations of origin, though it does not define these terms. Article 1(2) of the Convention includes indications of source or appellations of origin as the

objects, inter alia, of industrial property protection. Further Article 1(3) provides that industrial property shall be understood in the broadest sense and shall not apply only to industry and commerce proper, but also agricultural and extractive industries and to all manufactured or natural products like wines, grain, tobacco leaf, fruit, cattle, minerals, mineral water, beer, flowers, and flour. Under Article 10 the members may seize the goods on importation if these directly or indirectly use a false indication of source of the goods or the identity of the producer. If the laws of such countries do not permit such seizure, such imports may be prohibited or goods may be seized inside the country.

Madrid Agreement in 1891 was a little improvement over Paris Convention as it specifically provides for false as well as deceptive indications of source. Under this Agreement, the use of false representation on the product itself and in advertising or in any other form of public announcement is prohibited. However, the Madrid Agreement is ineffective where false or deceptive indications are used in translation or accompanied by qualifiers such as kind, type, style, etc. Thus the use of 'Scotch style' for whiskey manufactured outside Scotland is not actionable under this agreement.

The Lisbon Agreement of 1958 provides a better protection and is the first agreement to define the term 'appellations of origin' under Article 1 of the Agreement. Once registered, an 'appellation of origin' is protected by other member countries also. Article 2 (1) of the Agreement defines appellation of origin as "the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality, and characteristics of which are exclusively or essentially due to the geographical environment, including natural, and human factors". Thus, the Agreement applies to an 'appellation of origin' only if it is a geographical name and its quality and characteristics are linked to the geographical environment.

The Lisbon Agreement is an improvement over Madrid Agreement as the protection under it is extended to include any 'usurpation'

or 'imitation', even if the true origin of the product is indicated in translated form or accompanied by terms such as kind, type, make, imitation or like. Interestingly, the use of an 'appellation of origin' on dissimilar goods may also be considered as 'usurpation of the appellation'. Thus, Cuba Tobacco, a body concerned with the protection of the name Havana in respect of a special cigar originating from the Havana successfully prevented the use of Havana on cosmetics and perfumes through an injunction obtained from a French Court.

The Lisbon Agreement also has certain limitations. The agreement does not protect non-geographical names, which have acquired secondary meaning as GIs. Secondly, the Agreement does not include 'appellation of origin', which possesses merely certain reputation, but does not possess certain qualities and characteristics essentially linked to the geographical region. Thirdly, international protection is accorded under Article 1 of the Agreement only if the GI is protected in the country of origin 'as such', i.e., as an 'appellation of origin'.

### 3. TRIP AGREEMENT

TRIPs is the first international agreement, which uses the term GIs and provides inter alia a specific protection. Article 22.1 of the Agreement defines GIs 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 geographical origin". This definition of GIs is much wider than the 'appellation of origin' under Lisbon Agreement, as it is not limited to geographical names. It includes non-geographical names like basmati, Feta, Alphonso, Tajmahal or Eiffel tower. These traditional names have acquired geographical links through usage over the years.

The product to which GI relates possesses a certain quality, reputation, or other characteristics, which are essentially attributable to its geographical origin. Further, TRIPs Agreement covers GIs possessing a mere

reputation. For example, Sheffield Cutlery, Stilton Cheese, Swiss Watches, and Swiss Knives are all associated with their respective regions, but do not derive their quality or characteristics from their geographical area, i.e., are not attributable to the geographical area.

TRIPs definition of GIs does not include services but the member countries are free to extend such protection to services also. Thus, the traditional Aurvedic massages and medical services available in some parts of India like Kerala and Karnataka may be covered, as an extension of GIs to such services and will not be prohibited under TRIPs Agreement

### 4. IMPLICATIONS OF GI FOR DEVELOPING COUNTRIES

Protection of GIs is useful for both developed and developing countries. As these GIs develop over the years and acquire certain reputation, quality and characteristics associated with the geographical area of place, they become part of tradition and society, which employ such traditional methods, practices and know-how to produce these goods. Protection of GIs of goods would act as a boon to the people who have developed that knowledge system. Many traditional methods and practices are associated with specific regions and are identified by their geographical origin.

The reputation, which such knowledge possesses, attracted unscrupulous elements who tried to acquire private monopoly right by obtaining patents in foreign countries. Patenting of medicinal uses of turmeric, antifungal properties of Neem, basmati rice, are the examples of such acts of bio piracy. Protection of GIs of such products could be one of the effective means of protection of the traditional knowledge. Thus, the economic advantages, which accrue from such protection, would act as a fillip to the economic development of such traditional indigenous communities.

The Intellectual Property Rights (IPR) Commission in its report published in 2002, has stated that surveys of the existing protection of traditional knowledge and folklore show that GIs are used to protect traditional products

as liquors, sauces and teas in Venezuela and Vietnam. The protection provided by GIs is in its perpetuity. In India also, there is great scope for such protection of traditional knowledge through the protection of GIs.

India has enacted the GIs of Goods (Registration and Prohibition) Act, 1999. The Act came into force with effect from September 15, 2003. The Act has been enacted in fulfillment of the obligations under TRIPs Agreement to which India is a signatory. The purpose of the Act is to exclude unauthorised persons from misusing GIs and to protect the consumers against deception by passing of goods not related to any geographical area as those of such area with view to gain wrongful advantage and profits. Under the Act, the protection has been granted through registration with the Registrar of GIs. The registration of GIs is valid for ten years and can be successively renewed for further ten years.

Registration of GIs is done in two parts. Part A relates particulars of the proprietor of GIs. Part B contains particulars about authorised users of GIs. Only these two categories of persons shall have exclusive right to use the GIs in relation to the goods in respect of which the GI has been registered. The rights to GIs are not transferable in any manner such as licensing, pledge, mortgage or sale. Any unauthorised use of GI with a view to mislead the consumers will amount to infringement of GIs. The Act also provides remedies against any infringement by way of injunction and damages. Thus, the legislation appears to be quite comprehensive, but since it is in its nascent stages it is too early to make any prediction about its effectiveness and adequacy.

#### **Contributor**

**Dr C. Rajashekhar** obtained his LLB and LLM from the Mysore University. He received his PhD on 'A Critical Study of Humanisation of Prisons in India' from the Karnataka University. Dr Rajashekhar received 1st rank in LLM, and was awarded Lalana Narayan Gold Medal and Pramesh Chandra Guru Prize. He has 20 years of teaching experience of Postgraduate classes. Dr Rajashekhar has written one book on 'Social Revolution under the Indian Constitution' and edited another on 'Indian Judiciary: An Audit'. He has guided five students for PhD and is guiding another six for PhD in Law.

## **6. CONCLUSION**

In India, there is a greater need to create awareness among the general public about advantages that ensue from proper identification and registration of GIs. Goods marketed under GIs are known for their high quality, and demand for them in the market is guaranteed. There was 40 per cent increase in the profit after 'Mysore Silk' registered as a GI. Same is true for 'Darjeeling Tea' which is sold at a premium even in India. Ultimately, it is the producers who will be benefited. There is an urgent need to identify goods, which can be protected under the GIs Act, otherwise there is a danger of many such GIs becoming generic (the process is known as genericide). Once that happens, communities will lose their exclusive right over GIs as Sherry manufacturers in the UK lost the exclusive right to use the term 'Sherry' which became a generic term due to laches and acquiescence. In India, Kolhapur footwear has met the same fate.

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