

## *Scienxt Journal of Law*

*Volume-2 //Issue-1//Jan-June// Year-2024 //pp. 1-9*

---

### *Issues in commercialising geographical indication goods*

**Harinishree. S**

Assistant Professor, Department of Law  
Dr. MGR Educational and Research Institute Block, Phase – II Campus, Service  
Road, Adayalampattu, Chennai, Tamil Nadu, India

*\*Corresponding Author: Harinishree. S*

---

## **1. Introduction:**

GIs have emerged as an important intellectual property rights issue in the India. The Act by itself is still in its infancy state to determine the country's performance in this field. However, with its coming into force on 15<sup>th</sup> September 2003, more than 200 Indian products<sup>1</sup> have been registered as GI. The Registration of Goods as GI under this Act per se do not fulfil the objective of this Act. There are several challenges for various actors in supply chain in realising the potential entrenched in GI. Especially in appropriate marketing and promotion of the product. They are not only resource-intensive but also challenging to execute for many stakeholders from a developing country like India. The issue further boils down to the sharing of the benefits accruing from the GI status of a product reaches the actual producers/artisans downstream in the supply chain. The protection of GI names not falling into generic domain (ie) genericide and unsuccessful debate of few members of WTO to extend a higher level of protection to all GI products and not only to wines and spirits. This paper attempts to identify key challenges confronting the country in its effort to realize such benefits.

## **2. The need for protection of geographical indication products:**

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 right-holders of the GI and also misleads consumers. Moreover, such practices may eventually hamper the goodwill and reputation associated with the GI. While registration of GI is not mandatory in India, Section 20 (1) of the GI Act states that no person "shall" be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an "unregistered" GI. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement. A consumer survey undertaken in the European Union (EU) in 1999, for instance, found that 40% of the consumers would pay a 10% premium for origin-guaranteed products (WTO, 2004). Econometric models using hedonic pricing techniques also support the willingness to pay more for GI products. All these make protection of GI very necessary.

## **3. Challenges in protection of GI products:**

### **3.1. Lack of strategies in marketing and promotion of GI products:**

The striking feature of Indian GIs is that they come in different classes of varieties like handicraft, textiles, agricultural products, food stuff and sculptures. This is in sharp contrast with the European scenario, where GIs predominantly relate to wines and spirits, or other food and agricultural products. Hence there is huge possibilities of exploitation of GI and giving good returns to backward rural communities whose entire livelihood is based on preparation or processing these GI products. Other than commercial exploitation, the products that are based on the Traditional knowledge (TK) being passed on from one generation of the artisans' community to the next, clearly reflecting India's rich heritage and culture of TK in arts and crafts of diverse genres. However the picture is not at all rosy with the rampant misuse of many Indian GIs demonstrates the urgent need for effective enforcement, the extent of misuse that has already cropped up makes the task rather difficult for instance "Darjeeling" tea. Notwithstanding the multi-pronged initiatives undertaken on the part of the Tea Board towards ensuring adequate legal shield for "Darjeeling" in India and abroad, on average around 40 million kg of tea per annum are being sold globally as "Darjeeling tea", whereas the actual production of authentic Darjeeling tea hovers around 9 million kg only. Chinese imitations of well-known "Banarasi" sarees (which has applied for GI registration now) have been flooding the Indian market over the past several years. It is learnt that master craftsmen from Varanasi (where authentic "Banarasi" sarees are produced) are being lured to China to produce these imitations with cheaper Chinese silk. In the case of "Kashmir Pashmina" (shawls) already a registered GI in India, threats come from power-loom made substitutes such as, Semi-pashmina, Silk-pashmina and various other categories of woollen shawls produced within India as well as from shawls produced in Nepal or China that are often passed off as original Pashmina in the global market, where there is a huge demand for these high-end shawls. There are few GIs in India that are renowned and known by many and there are GI which struggle to enter the foreign markets. There are still GIs which are unknown in international market but have the potential to be a huge market success if properly marketed and supported by the concerned Ministries of the state and central Governments. The brand building exercise is contingent upon how effectively we build reputation of the product linked with its place. This is the result of patience, resources investment, quality control and a well-crafted marketing strategy, to create a valuable GI.

#### **4. Pressure to extend the geographical boundaries and the resultant brand dilution:**

There is a tendency to extend the boundaries of the original geographical area in which the identity was granted. For instance, pressure exists to extend the geographical region in Allahabad for the famous 'Apple-coloured guava', variety Allahabad surkha, originated a chance seedling in the Abubakarpur, Allahabad. After the geographical indication tag, the seeding was spotted in the village Sulemsarai, villages of Chail, Muratganj, Newada, Manjhanpur blocks of Allahabad District. The producers of guava in the neighbourhood of Abubakarpur may want to be annexed to the original guava producing region to get benefit from the recognised geographical identity. Technically it may be very hard to draw a line and claim geography-based advantage in producing a particular quality product on one side of the line and not the other. However, limiting the region associated with a geographical indication is the only way that producers will be able to minimise proliferation of producers and the consequent danger of dilution of brand value associated with GI.

#### **5. Unsuccessful debate of extension of protection to products other than wine and spirits:**

At Doha India wanted to extend protection under 'geographical indication' (GI) beyond wine and spirit, to other products. A number of countries wanted to negotiate extending this higher level of protection to other products as they see a higher level of protection as a way to improve marketing their products by differentiating them more effectively from their competitors and they object to other countries "usurping" their terms by having a free ride over the reputation of a well-established GI of other countries.<sup>[5]</sup> This is considered as a clash between the old world and new world. New world countries opposed the idea of extending higher protection to all products other than wines and spirits. In Uruguay round of talks, the most contentious issues was negotiations on GI. The European Union has always been at the forefront of the demand for strong GI protection. The rationale for such protection was best given by Pascal Lamy, the then European Trade Commissioner: 'they reinforce the economic fabric in farming communities through the presence of additional industries; they are a wealth multiplier, a collective right that belongs to communities; it guarantees that the use of a name will remain attached to a region and to the community that saw its birth; they encourage a more balanced distribution of added value between producers and distributors, and between countries

of the North and the South, on the other; they stimulate quality and consequently strengthen competitiveness; and they contribute to the identity of the heritage of countries and regions.’ Unsuccessful attempts have been made by some states to increase protection granted to wines and spirits to other food and agricultural products. India has accorded a higher. Under TRIPS Member states are free to extend the protection under Article 23 (given to wines and spirits) to other products also under their national laws. Countries like the US did not adopt any separate System, but preferred to use trademark laws for GI Protection as well. The reason those countries oppose higher level protection is firstly, they claim that by expanding the scope of protection, several names which have become generic will be claimed as being valid GIs. This is based on wrong assumption that many products with GI names have become generic. Secondly, GI protection through FTAs and other Agreements between countries might create consumer confusion in the market, because companies might be obliged to change the names Under which they currently market their products. They feared decrease in competition and production. This criticism is valid only for short time. The instance is boom in the Australian wine industry. After signing the bilateral agreement with European Union in 1994, Australia stopped using the names of French places for its wine like Burgundy, Chablis to describe their names and started using their own regional names like Coonawarra and Barossa, and stressing grape varieties like Chardonnay and Shiraz, the Australians have built the world's most dynamic wine industry. This is against the expectations of opponents of stronger GI protection. They argue that the protection extended to GI products is sufficient and there is no need for extension of such protection to higher level. The case at point is Darjeeling Tea which is famous for its distinctive flavour and taste. It has carved its niche in the international market. India faces a serious competition from other countries like Kenya, Srilanka and China. These countries pass off their Goods as Darjeeling tea. There is a possibility that due to the misuse of name of ‘Darjeeling Tea’ by others would bring down the market for it as the consumers are not guaranteed that they are using original Darjeeling Tea from India. This would also bring down the reputation that GI generally holds in the mind of the users. In order to prevent the misuse of ‘Darjeeling’ and the logo, the Tea Board has since 1998 hired the services of Compu mark, a World-Wide Watch agency. Compu mark is required to monitor and report to the Tea Board all cases of unauthorized use and attempted registration. For example, Bulgari, Switzerland agreed to withdraw the legend ‘Darjeeling Tea fragrance for men’ pursuant to legal notice and negotiations by the Tea Board. If Darjeeling tea were accorded a higher level of protection as required for wines and spirits under Article 23(1) of TRIPS,

member states have a mandate to accord protection irrespective of whether the consumers are misled or whether use of such indications constitutes an act of unfair competition.

## 6. The issue of genericide:

The term 'Genericide' means the process by which a brand name loses its distinctive identity as a result of being used to refer to any product or service of its *kind*<sup>2</sup>. A comparison between Article 22(2) and Article 23 of TRIPS clearly reveals that it provides for two Different levels of protection for GIs. The former provides for general standard of protection while the latter accords higher protection to wines and spirits. The lack of uniform international protection, along with inability to reach global consensus to remedy this, has placed many GIs under the threat of becoming generic. Especially, the ones produced by backward, rural communities in developing countries like India, have been vulnerable to exploitation by large commercial enterprises through patenting. The serious demerit seen in our Indian Act is the broad criteria given to determine genericide. Among the series of exceptions, Article 24.9 of TRIPS relieves members from any obligation to protect a GI which

- Is not protected in its country of origin, or,
- Ceases to be protected in that country, or,
- Has fallen into disuse in that country.

TRIPS does not explicitly mention generic. A similar provision is present in Section 9 of the Indian GI Act. This section prohibits the registration of GIs that are determined to be generic. In addition to the criteria provided by TRIPS Section 9 adds an extra criteria that to determine whether the name has become generic, to take into factors about the area of consumption of *goods*<sup>3</sup>. This is a serious blow to a country like ours since there are so many agricultural products with unique qualities and traits that are attributable to particular geographical place. The issue in point reverberated in recent Basmati controversy wherein a US company, M/s Ricetec, managed to get a patent for a new plant variety that is a cross between American long-grain rice and *Basmati* rice. To popularize this new version of *Basmati* rice, Ricetec used the trademarks 'Texmati' and 'Kasmati'. These trademarks have been in use in the US for over two decades *now*<sup>4</sup>. India disputed the patent claim, while at the same time, alleging that *Basmati* is a GI. Ricetec took the argument that *Basmati* has been used for decades in a generic way describing this variety from other sources such as American *Basmati* Basmati, Uruguyan *Basmati* and Thai *Basmati*. If the American version is able to establish itself in the international

Market through advertising, etc, Indian and Pakistani Exports of *Basmati* rice will take a serious hit. Even if India takes this matter to court; the likelihood is that Ricetec will escape liability. This is because Ricetec labels its product as ‘*American style Basmati rice*’, a practice prohibited under Article 23 (1) of TRIPS only for GIs relating to wines and spirits. The above illustration clearly shows how countries like US can by taking advantage of the discriminatory treatment under Articles 22 and 23 of TRIPS postpone GI protection to traditional agricultural products of the developing world. Ultimately, even if a system of multilateral registration is created, GI protection can be opposed by saying that the terms used to describe the product have become generic by virtue of their usage in different parts of the world for a long period. India should keep the scope of genericide as narrow as possible, i.e., it should allow its courts to determine which term is generic and which is not, based only on the situation in India (the country of origin) and not based on the status in the areas of consumption. The more areas and situations we consider, the more likely that the term is generic, especially considering the drive with which industries are attempting to exploit GIs. The directions from Feta cheese case can be taken wherein the European Court of Justice ruled that the term ‘Feta’ had not become generic, thereby restricting the use of the name ‘Feta’ to producers in the designated region of Greece. The decision was given by considering the position of Feta cheese only in the region of origin and not on the areas of consumption. The term ‘Genericide’ means the process by which a brand name loses its distinctive identity as a result of being used to refer to any product or service of its *kind*<sup>2</sup>. A comparison between Article 22(2) and Article 23 of TRIPS clearly reveals that it provides for two Different levels of protection for GIs. The former provides for general standard of protection while the latter accords higher protection to wines and spirits. The lack of uniform international protection, along with inability to reach global consensus to remedy this, has placed many GIs under the threat of becoming generic. Especially, the ones produced by backward, rural communities in developing countries like India, have been vulnerable to exploitation by large commercial enterprises through patenting. The serious demerit seen in our Indian Act is the broad criteria given to determine genericide. Among the series of exceptions, Article 24.9 of TRIPS relieves members from any obligation to protect a GI which

- Is not protected in its country of origin, or,
- Ceases to be protected in that country, or,
- Has fallen into disuse in that country.

TRIPS do not explicitly mention generic. A similar provision is present in Section 9 of the Indian GI Act. This section prohibits the registration of GIs that are determined to be generic. In addition to the criteria provided by TRIPS Section 9 adds an extra criteria that to determine whether the name has become generic, to take into factors about the area of consumption of goods<sup>3</sup>. This is a serious blow to a country like ours since there are so many agricultural products with unique qualities and traits that are attributable to particular geographical place. The issue in point reverberated in recent Basmati controversy wherein a US company, M/s Ricetec, managed to get a patent for a new plant variety that is a cross between American long-grain rice and Basmati rice. To popularize this new version of Basmati rice, Ricetec used the trademarks 'Texmati' and 'Kasmati'. These trademarks have been in use in the US for over two decades now<sup>4</sup>. India disputed the patent claim, while at the same time, alleging that Basmati is a GI. Ricetec took the argument that 'Basmati' has been used for decades in a generic way describing this variety from other sources such as American Basmati, Uruguyan Basmati and Thai Basmati. If the American version is able to establish itself in the international market through advertising, etc, Indian and Pakistani Exports of Basmati rice will take a serious hit. Even if India takes this matter to court; the likelihood is that Ricetec will escape liability. This is because Ricetec labels its product as 'American style Basmati rice', a practice prohibited under Article 23 (1) of TRIPS only for GIs relating to wines and spirits. The above illustration clearly shows how countries like US can by taking advantage of the discriminatory treatment under Articles 22 and 23 of TRIPS postpone GI protection to traditional agricultural products of the developing world. Ultimately, even if a system of multilateral registration is created, GI protection can be opposed by saying that the terms used to describe the product have become generic by virtue of their usage in different parts of the world for a long period. India should keep the scope of genericide as narrow as possible, i.e., it should allow its courts to determine which term is generic and which is not, based only on the situation in India (the country of origin) and not based on the status in the areas of consumption. The more areas and situations we consider, the more likely that the term is generic, especially considering the drive with which industries are attempting to exploit GIs. The directions from Feta cheese case can be taken wherein the European Court of Justice ruled that the term 'Feta' had not become generic, thereby restricting the use of the name 'Feta' to producers in the designated region of Greece. The decision was given by considering the position of Feta cheese only in the region of origin and not on the areas of consumption.



## 7. Conclusion:

This paper has attempted to underscore key issues in commercialising the GI products. The effort that is required to maintain a GI product in international arena is humungous as the tastes and preferences of people all over the world are rapidly changing. All that is needed is sustained efforts backed by appropriate planning and adequate investments over the medium to long term.

## 8. References:

- (1) <https://www.clearias.com/geographical-indication-gi-tags-india/>
- (2) <https://www.google.com/search?q=genericide+meaning&oq=genericide+meaning&aqs=chrome..69i57j0.17859j1j8&sourceid=chrome&ie=UTF-8>
- (3) Geographical Indication of Goods Act, 1999 in explanatory notes to section 9 of the said Act. Ganguli Prabuddha, for a grain of rice, [http://www.tifr.res.in/~alumni/Alumni\\_prez\\_Basmati](http://www.tifr.res.in/~alumni/Alumni_prez_Basmati)
- (4) GI in the WTO & Doha Negotiations by Miguel Rodriguez Mendoza presented in Worldwide Symposium on GI. [www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_bei\\_07/wipo\\_geo\\_bei\\_07\\_www\\_81777.doc](http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81777.doc)