



## GEOGRAPHICAL INDICATIONS FOR FOOD PRODUCTS WITH SPECIAL REFERENCE TO INDIA

*By Apoorva Chandrachur and Shreya Chamaria  
From SVKM's NMIMS Kirit P. Mehta School of Law, Mumbai*

### ABSTRACT

Any product that links its origin to a specific geographical region and owns properties and reputation pertaining to that origin has a sign associated with them known as Geographical Indications. The Geographical Indication depends on a specific geographical location therefore there should be a direct linkage between the product and its origin. Geographical Indication regulates the food industry, wine sector, spirits drink, handicrafts, etc. Intellectual Property Rights protect Geographical Indication in accordance with Trade-Related Aspects of Intellectual Property Rights (TRIPs) by the World Trade Organisation and Geneva Convention. The food industry consists of small players and forms a major share as a contributor to the economy of a developing country. They prove to play a significant role in enhancing the profitability of the domestic and international food industry by facilitating the protection and promotion of their local resources and by increasing consumer access for quality food items connected to their origin.

The research paper throws light on the and the functioning of Geographical Indication in the Food industry in India. It evaluates various products that can get the protection of the Geographical Indication and the

difference between trademarks and geographical indications. It also provides an understanding of the effective use of Geographical Indications by examining the famous case of Basmati Rice. Also, the paper analyses the Tirupati laddu case in light of Geographical Indications. Finally, the paper provides a few recommendations that would help advance the working of Geographical Indications in the food industry.

**Keywords:** *Trademark, Registered Proprietor, Basmati Rice, Divine Intervention*

### INTRODUCTION

Intellectual properties are the labor of human intellect and which is why is called Intellectual property. As it the creation of a human mind it is an intangible right. It is a legally protected right of the owner of intellectual property and prior consent is necessary for its use by others. It is the original concept of an idea given shape to actual work. Intellectual property consists of patents, trademark, copyright, geographical indication, designs, trade secrets, etc. As said by renowned jurists with every property comes the right of its protection and security. Intellectual property possesses various dangers as it is a valuable property. Intellectual property is always prone to get pirated just like tangible property is very likely to get robbed. The Supreme Court in Gramophone Company of India Ltd. v. Birendra Bahadur has observed that intellectual properties are the brainchild of the authors, the fruits of labor, and therefore considered to be their property. The rights of intellectual property are created and protected by statutes.<sup>1</sup> The World Intellectual Property

<sup>1</sup> Dr. BL Wadehra, Law relating to intellectual property (5<sup>th</sup> edn, Universal Lexis Nexis 2018) xvi



Organisation (WIPO) and Trade-Related Aspect of Intellectual Property Rights (TRIPS) have recognized some properties as intellectual property. In India various enactments protecting Intellectual property are:

- The Geographical Indications of Goods (Registration and Protection) Act 1999.
- The Patents Act, 1970.
- The Designs Act, 2000.
- The Copyright Act, 1957.
- The Trade Marks Act, 1999.

Geographical indications as described under Article 22 of TRIPS Agreement states “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”. WIPO defines geographical indication as “a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.”<sup>2</sup> Geographical Indications are prescribed minimum level of security under the TRIPS. It requires members of the World Trade Organization to stop the use of a geographical indication that deceive the public to the geographical origin of the goods or form an act of unfair competition.<sup>3</sup>

## GEOGRAPHICAL INDICATION IN INDIA

### GEOGRAPHICAL INDICATIONS:

Geographical Indications is an instrument to protect the quality reputation and characteristic of a product originating in a particular area, region, or country. The product must essentially attribute geographical origin. Geographical indication helps the producers and manufacturers of a product to build a reputation and goodwill which will bring the premium to the product and create a difference between the products of competing producers. Examples of Geographical indications in India are Darjeeling tea, Kanjeevaram silk, Chanderi sarees, Champagne wine, etc. The producers who sell reputed goods are dragged in unfair competition as the manufacturers who sell fake products gain an advantage by selling those products in the name of reputed products at the same price.

### INDIA AND GEOGRAPHICAL INDICATIONS ACT, 1999:

Goods once registered are protected under the Geographical Indication act. The Geographical Indication status to a product acts as an indicator in the market restricting competitors to use that product and fetching premium to the producers of the differentiated product.<sup>4</sup> Geographical Indication had become important for a country like India having rich natural and agricultural resources. In the year 1999, the Geographical Indications (Registration and

<sup>2</sup> World Intellectual Property Organization, ‘Geographical Indications An Introduction’ (2018) <[http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo\\_pub\\_952.pdf](http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf)> accessed on 3<sup>rd</sup> January 2020

<sup>3</sup> Suresh C Srivastava, “Geographical Indications under TRIPS Agreement and Legal Framework in

India: Part I” (2004) ILI <<http://www.niscair.res.in/sciencecommunication/researchjournals/rejour/jipr/Fulltextsearch/2004/January%202004/JIPR-vol%209-January%202004-pp%209-23.htm>> last accessed on January 1, 2020

<sup>4</sup> ibid



Protection) Act, 1999 was enacted. The Geographical Indications of Goods (Registration and Protection) Act defines 'geographical indication' as 'an indication which identifies such 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 characteristics of such goods is essentially attributable to its geographical origin and in the 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'.<sup>5</sup>

#### WHAT CAN BE PROTECTED UNDER GEOGRAPHICAL INDICATIONS ACT, 1999?

Section 2(1) (f)<sup>6</sup> defines the term "goods". The section states goods include foodstuff, handicraft products, or any natural, agricultural, or manufactured goods<sup>7</sup>. Section 2(1)(g)<sup>8</sup> defines indication as 'any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.' The Indian legislation also extends the protection to manufactured goods, although most Geographical Indications' are granted for agricultural products for characteristics owed to the place of origin, having an impact of soil and climate.<sup>9</sup>

#### DISTINCTION BETWEEN TRADEMARK AND GEOGRAPHICAL

**INDICATION:** The functions of Geographical Indication are different from that of Trademark. A trademark is an intellectual property owned by enterprises to distinguish their goods from their competitors producing relatable products and services. On the other hand, a geographical indication is not owned by an enterprise, it is a common heritage of a group or association of people in a geographical area where products comprise of exclusive characteristics and reputation and which may be utilized by manufacturers engaged in their production.

#### GEOGRAPHICAL INDICATION FOR FOOD PRODUCTS

The Darjeeling tea has often faced violation of passing off from tea produced in Kenya and Sri Lanka, the Darjeeling tea has in past been circulated in the name of Kenyan tea or Sri Lankan tea unless it got a Geographical Indication because of its fine aromatic flavor which is only cultivated in the hilly areas of North-Bengal. Even developed countries like the United States and France for decades have been producing rice in their native countries and getting it registered as a trademark based on 'Basmati' to fetch premium from its famous geographical name. The most well-known exploitation of Basmati rice which is a renowned Geographical Indication in India can be traced by when the United States patented 'Basmati Rice Lines and Grains' which was given to Rice Tec Inc, this event has made a lot of controversies.<sup>10</sup>

<sup>5</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999 No.48 of 1999, § 2(1)(e)

<sup>6</sup> *Supra* note 5 at § 2(1)(f)

<sup>7</sup> *Ibid*

<sup>8</sup> *Supra* note 5 at § 2(1)(g)

<sup>9</sup> Dr BL Wadehra, Law relating to Intellectual Property, 5<sup>th</sup> edn, Universal Lexis Nexis 2018 459

<sup>10</sup> Dr (Smt) Mangala Hirwade, Dr Anil W. Hirwade, 'Geographical indications: Indian scenario' [2006] 1, 4



### **GEOGRAPHICAL INDICATION FOR**

**BASMATI RICE:** For long in India, the absence of any legislation for the protection of any Geographical Indication with unawareness of its protection in other countries led to the grant of a patent of Basmati like rice Texmati and Kasmati to American Company Ricetec in the year 1997. The distinct quality of Basmati rice is its long grain aroma which is grown in northern plains of Pakistan and India. Basmati rice qualifies the definition of geographical indication defined in the TRIPS Agreement and the same is entitled to protection under the TRIPS Agreement. The outcome of granting a patent to an American company for Texmati and Kasmati would lead to unfair competition to Indian exporters of Basmati. India's focus was centered on violations made by Americans for illegally using the geographical rights of Indian and Pakistani producers of Basmati rights. The important issue is not testing the validity of patent but the exploitation made by them. Rice Tech in its reply contended that Basmati is a generic name and not a special name like Scotch Whisky is a pointless argument. It is not a generic name and shall be protected. In 2000, an application for the re-examination of patents granted to American company was filed by India after which, American company withdrew four key claims from the original twenty that it had made to get the patent. Rice Tec was also ordered to change the title of its patent from "Basmati Rice Lines and Grains" to Rice Lines Bas 867, RT 117, and RT 121. India filed an objection against Rice Tec for using the name basmati and getting

it patented though Basmati back then was not acclaimed as a 'geographical indicator' then. Till Basmati was not granted Geographical indication Rice Tec was selling its rice cultivated in the United States under the name Basmati. But after the enactment of Geographical Indication of Goods Act, 1999, Basmati was given the Geographical Indication certificate on February 16, 2016.<sup>11</sup> After successfully obtaining the Geographical Indication Certification the producers and exporters of 77 districts of 7 states comprising Punjab, Haryana, Uttar Pradesh, Delhi, Himachal Pradesh, and Jammu and Kashmir will now be enjoying absolute rights to utilize the Geographical Indication and prevent all unauthorized persons from using the same. The products with Geographical Indication tag get the benefit of premium pricing as well as legal protection to boost exports which in turn will promote the economic prosperity of the producers.<sup>12</sup> The biggest importers of Basmati Rice from India are Saudi Arabia and the United Kingdom.

### **GEOGRAPHICAL INDICATION TO TIRUPATI LADDU**

The Tirumala Tirupati Devasthanam is a temple of Lord Venkateshwara in Andhra Pradesh. It acquired the Geographical Indication protection for its prasadam (sacred food) given to the devotees to protect it from other producers making the same laddus under the same name. It is the first time where Geographical Indication protection has been granted to a religious place. In March 2008 the managing Trust filed an application for Geographical

<sup>11</sup> Mr. Justice Yatindra Singh 'Patents: The task ahead' [2005] SCC 18,27.

<sup>12</sup> Rana & Co. Advocates, 'IP Connect e- newsletter' [2006] <[http://ssrana.in/News/2016/08/India-](http://ssrana.in/News/2016/08/India-Basmati-Rice-Finally-Gets-The-GI-Tag.htm)

[Basmati-Rice-Finally-Gets-The-GI-Tag.htm](http://ssrana.in/News/2016/08/India-Basmati-Rice-Finally-Gets-The-GI-Tag.htm) S.S.> accessed on 2<sup>nd</sup> January 2020.



Indication certificate for protection of Tirupati Laddus. They contended that there has been a lot of demand for these laddus which has also given birth to black marketing of these laddus around the temple. The Temple officials had to seek Geographical Indication protection of these laddus to control the situation of producing fake laddus and selling them in the name of Tirupati laddus. The flavor of the laddu defines its distinctive characteristics which are attributable to that region. Also, the laddus are made of high-quality raw materials in proper amounts and the skill involved of the cooks in its preparation makes it valid for Geographical Indication protection. A panel of experts examined the application and declared Tirupati Laddus deserve a Geographical Indication tag. On 15<sup>th</sup> September 2009, the Tirupati laddus were registered for geographical indication and any unauthorized use or infringement would attract civil and criminal penalties. The grant of Geographical Indication to Tirupati laddus raised many controversies and arose following questions;

1. **Whether granting of a geographical indication for Tirupati Laddu is as per the law?** The answer to the question came out to be that the Geographical indication granted to Tirupati laddu is well within the Geographical Indication Act of 1999 and the laddus fall within the meaning of goods under section 2(1)(f)<sup>13</sup>. It also satisfies all the conditions of a Geographical Indication.
2. **Whether the grant of Geographical Indication is permissible to a single producer, i.e Tirumala Tirupati**

**Devasthanam (TTD)?** Section 2(n)<sup>14</sup> provides that a 'registered proprietor is any association of persons or producers or organization representing the interest of the producers of the community'<sup>15</sup>. The section only concerns with producers and not a single producer. Whereas, TTD is a single producer who employed cooks on a contractual basis to make laddus. Therefore, the condition prerequisite for giving Geographical Indication to an association of persons or body is not fulfilled as the collective interest of a community is not being benefited. The motive behind registering a good as a Geographical Indication is to make sure that there is uniformly in economic benefits between all the producers of a geographic area possessing identical quality and characteristics of a product. The intention is not to protect a single producer's business interest in a particular region. Therefore, according to me granting Geographical Indication to a Single wealthy spiritual institution having a monopoly is violative per se of the provisions of the Act.<sup>16</sup>

3. **Whether Tirupati Laddus lack distinctiveness?** Tirupati laddus inherently do not possess any distinctive features besides its size. The ingredients such as flour, ghee, sugar, and dry fruits are not different from any other normal laddus. Nor is the process of manufacturing them in any way different. The temple authorities claim that the laddus prepared in the temple have a series of quality checks and are made of the best raw material. All these qualities do not suffice to grant a Geographical Indication status. The TTD claims that the laddu

<sup>13</sup> *Supra* note 5

<sup>14</sup> *Supra* note 5 at § 2(n)

<sup>15</sup> *Ibid*

<sup>16</sup> Meghna Banerjee and Susanah Naushad, 'Grant of Geographical Indication Designation to Tirupati Laddu: Commercialization of faith?' [2010] SCC 108, 113.



deserves a Geographical Indication tag because there is a divine intervention of the lord in the unique taste of laddus.

4. **Whether Tirupati Laddus is a generic name?** The term Tirupati laddus were commonly used by all producers of laddus in the temple town. The Tirupati Laddus can only be distinguished from its size. And if the name Tirupati Laddus has become a generic name, the grant of Geographical Indication is fallacious.

The case of Tirupati laddu portrays how big religious institutions can create a monopoly. In granting Geographical Indication status to Tirupati Laddu, the Registry did ignore many provisions of the law and commercialized sacred prasadam which hurts the religious sentiments of the community.

#### **CONCLUSION AND RECOMMENDATIONS**

India is home to a rich cultural heritage and natural resources. Each state produces some special and distinct products which have with time gained a good reputation and goodwill. Geographical Indication is one such instrument that protects all such goods having special features originating from a region or area. The Geographical Indication (Registrations and Protection) Act was enacted in 2003 and has been granting Geographical Indication certification to many goods and products. The Central Government has the discretion to decide from a large number of products who should be given a Geographical Indication tag. The food products are divided into two parts, agricultural products, and foodstuff. The registry is successful in granting many Geographical Indication's concerning food products. Although the Geographical

Indication act has framed stringent laws on granting Geographical Indication tags to goods, the registry has failed to adhere to the sections of the act. The Registry lacked in vigilance to grant geographical indication like in the case of Tirupati laddu. A similar application was also filed by Reliance to give Jamnagar a geographical indication for petrol, diesel, and LPG. But subsequently, the application was abandoned. There is a requirement by the registry to make yardsticks for granting Geographical Indication protection.

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