

INTRODUCTION TO GEOGRAPHICAL INDICATION

In a knowledge-based economy, there is no doubt that an understanding of IPRs is indispensable to informed policy-making in all areas of human development. Geographical indications is an emerging field of intellectual property. Every region has its claim to fame and it has to be protected.

Every region has its claim to fame. Christopher Columbus sailed from Europe to chart out a new route to capture the wealth of rich Indian spices. English breeders imported Arabian horses to sire Derby winners. China silk, Dhaka Muslin, Venetian Glass were all much sought after treasures. Each reputation was carefully built up and painstakingly maintained by the masters of that region, combining the best of nature and man, traditionally handed over from one generation to the next for centuries. Gradually, a specific link between the goods and place of production evolved, resulting in growth of geographical indications.

In December 1999, the Parliament passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Act would be administered by the Controller General of Patents, Designs and Trade Marks - who is the Registrar of Geographical Indications. The Geographical Indications Registry would be located at Chennai.

Geographical Indication

- It is an indication
- It originates from a definite geographical territory
- It is used to identify agricultural, natural or manufactured goods
- The manufactured goods should be produced or processed or prepared in that territory
- It should have a special quality or reputation or other characteristics.

Possible Indian Geographical Indications

- Basmati Rice
- Darjeeling Tea
- Kanchipuram Silk Saree
- Alphanso Mango
- Nagpur Orange
- Kolhapuri Chappal
- Bikaneri Bhujia
- Agra Petha

TRADEMARK AND GEOGRAPHICAL INDICATION

A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark. A geographical indication tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities.

GEOGRAPHICAL INDICATIONS ACT IN INDIA

An effective protection for GIs was of considerable importance for a country like India, which was richly endowed with natural and agricultural products and which already had in its possession renowned geographical names such as 'Darjeeling' (tea), 'Alphanso' (mango), 'Basmati' (rice), etc. There was no separate legislation on GIs until the enactment of 'The Geographical Indications of Goods (Registration and Protection) Act, 1999' (henceforth the GI Act).

The tea from Kenya, Sri Lanka, have often been passed off around the world as 'Darjeeling tea', which originally denotes the fine aromatic produce of the high-altitude areas of North-Bengal, from where it derives the name. Corporations in France and the US have been producing rice based on 'Basmati' varieties in those countries, and registering trademarks that refer to 'Basmati', thereby seeking to gain from this renowned geographical name. The US-patent on 'Basmati Rice Lines and Grains' granted to Texas based Rice Tec Inc, which triggered a lot of controversy in the recent past, is a glaring example of wrongful exploitation of a renowned GI from India. There are other instances of this kind. It is in such a scenario, that the GI Act was enacted as part of the exercise in the country to set in place national intellectual property laws in compliance with India's obligations under the TRIPS Agreement. Under this Act, which has come into force with effect from 15th September 2003, the Central Government has established the 'Geographical Indications Registry' with all India jurisdictions at Chennai, where the right holders can register their respective GIs. After a GI is registered any person claiming to be the producer of the good designated by the registered GI can file an application for registration as an authorized user. The GI Act is to be administered by the Controller General of Patents, Designs and Trade Marks—who is the Registrar of Geographical Indications.

VALIDITY FOR GEOGRAPHICAL INDICATIONS IN INDIA

The Registration of a Geographical Indication is for a period of ten years. Renewal is possible for further periods of 10 years each. If a registered geographical indication is not renewed, it is liable to be removed from the register.

AUTHORISED USER

- A producer of goods can apply for registration as an authorised user
- It must be in respect of a registered geographical indication
- He should apply in writing in the prescribed form alongwith prescribed fee.

PRODUCER IN RELATION TO A GEOGRAPHICAL INDICATION

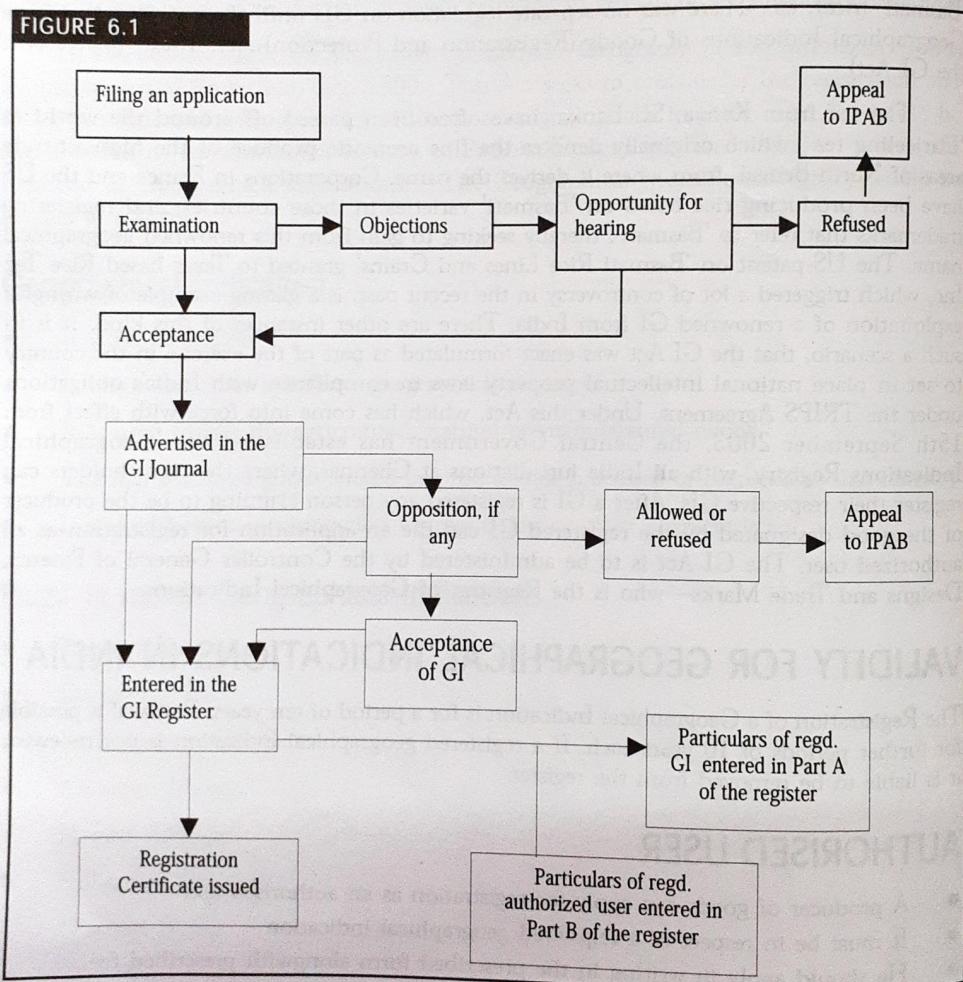
The persons dealing with three categories of goods are covered under the term producer:

- Agricultural goods includes the production, processing, trading or dealing
- Natural, goods includes exploiting, trading or dealing
- Handicrafts or industrial goods includes making, manufacturing, trading or dealing.

FILING AND GRANT OF GEOGRAPHICAL INDICATIONS IN INDIA

Various stages of filing and grant of Geographical Indications are explained in the figure

FIGURE 6.1



The registration process involves following steps:

1. Filing of Application

The association of persons or procedures or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.

- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- The statement has to show how the GI serves to designate the goods as originating from the concerned territory having a special quality, reputation or other characteristic.
- Details of the special characteristics and how those standards are maintained.
- Three certified copies of the map of the region to which the GI relates.
- Details of special human skills involved or uniqueness of the geographical environment or the inherent characteristics to which the application relates.
- Details of the inspection structure, if any, to regulate the use of the GI in the territory to which it relates.

The address of the Geographical Indication Registry is:

Geographical Indications Registry
Intellectual Property Office Building,
Industrial Estate, G.S.T. Road,
Guindy, Chennai – 600 032

Phone: 044-22321992, 93, 96

Fax: 044-22321991

E-mail: girindia@vsnl.net

Website: www.girindia.in

2. Preliminary Scrutiny and Examination

- The examiner will scrutinize the application for any deficiencies
- The applicant should within one month of the communication in this regard, remedy the same.
- A consultative group of experts well versed on the subject assesses the content of statement of case.
- They will ascertain the correctness of particulars furnished.
- Thereafter, an examination report would be issued.

Show Cause Notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application, if it is accepted in error after giving an opportunity of being heard.

Pu lication in the Geographical Indications Journal

- Every application, within three months of acceptance, shall be published in the Geographical Indications Journal.

5. Opposition to Registration

- Any person can file a Notice of Opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the journal.
- The Registrar shall serve a copy of the notice on the applicant.
- Within two months, the applicant shall send a copy of the counter-statement.
- If he does not do this, he shall be deemed to have abandoned his application. Where the counter-statement has been filed, the Registrar shall serve a copy on the person giving the Notice of Opposition.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.
- The date of hearing will be fixed thereafter.

Registration

- Where an application for a GI has been accepted, The Registrar shall register the geographical indication. If registered, the date of filing of the application shall be deemed to be the date of registration.
- The Registrar shall issue to the applicant a certificate with the seal of the Geographical Indications Registry.

Renewal

- A registered GI will be valid for 10 years and can be renewed on payment of renewal fee

Additional Protection to Notified Goods

Additional protection for notified goods is provided in the Act.

Appeal

- Any person aggrieved by an order or decision may prefer an appeal to the Intellectual Property Appellate Board (IPAB) within three months.

10. Benefits of GI Registration in India

- Confers legal protection to geographical indications in India.
- It prevents unauthorized use of a registered Geographical Indication by others.
- It boosts exports of Indian geographical indications by providing legal Protection.
- It promotes economic prosperity of producers.
- It enables seeking legal protection in other WTO member countries.

11. Registered Geographical Indications in India

The registration of GIs in India has been depicted in the table below.

Table 1 Geographical Indications registered in India during 2.10.0 to 1.01.0

S.No.	Geographical Indications	Products	State	Date of Registration
1	Darjeeling Tea	Tea	West Bengal	29.10.04
2	Pochampally Ikat	Textile	Andhra Pradesh	31.12.04
3	Chanderi Saree	Textile	Guna, MP	28.01.05
4	Kotpad Handloom Fabric	Textile	Koraput, Orissa	02.06.05
5	Kota Doria	Textile	Kota, Rajasthan	05.07.05
6	Kancheepuram Silk	Textiles	Tamil Nadu	02.06.05
7	Bhavani Jamakkalam	Textile, carpets	Erode, Tamil Nadu	05.07.05
8	Mysore Agarbathi	Incense sticks	Mysore, Karnataka	02.06.05
9	Aranmula Kannadi	Metal Mirror	Kerala	19.09.05
10	Salem Fabric	Textiles	Tamil Nadu	19.09.05
11	Solapur Chaddar	Textiles	Maharashtra	19.09.05
12	Solapur Terry Towel	Textiles	Maharashtra	19.09.05
13	Mysore Silk	Textiles	Karnataka	28.11.05
14	Kullu Shawl	Textiles	Himachal Pradesh	12.12.05
15	Madurai Sungudi	Textiles	Tamil Nadu	12.12.05
16	Kangra Tea	Tea	Himachal Pradesh	12.12.05
17	Coorg Orange	Horticulture Product	Karnataka	30.01.06
18	Mysore Betel Leaf	Horticulture Product	Karnataka	30.01.06
19	Nanjanagud Banana	Horticulture Product	Karnataka	30.01.06
20	Mysore Sandalwood Oil	Essential Oil	Karnataka	30.01.06
21	Mysore Sandal Soap	Soap	Karnataka	30.01.06
22	Bidriware	Handicrafts	Karnataka	30.01.06

Contd...

23	Channapatna Toys & Dolls	Handicrafts	Karnataka	30.01.06
24	Coimbatore Wet Grinder	Wet Grinder	Tamil Nadu	30.01.06
25	Mysore Rosewood Inlay	Handicrafts	Karnataka	30.01.06
26	Kasuti Embroidery	Embroidery (Textiles)	Karnataka	30.01.06
27	Mysore Traditional Paintings	Paintings	Karnataka	30.01.06

PROTECTION OF GEOGRAPHICAL INDICATIONS

Indications that identify a good as originating in the territory of a member or a region or a locality in that territory, where a given quality reputation or other characteristics of the good is attributable to its geographical origin. The concept of identifying GI and protecting them is a new concept in India, perhaps in most developing countries, and has come to knowledge in these countries after they signed the TRIPS Agreement. It may be noted that properly protected GI will give protection in domestic and international market. Stipulations of TRIPS would be applicable to all the member countries. According to TRIPS, GI which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country, cannot be protected. Homonymous GI for wines will get independent protection. Each state shall determine conditions under which homonymous indications will be differentiated from each other. Principles of national treatment and fair competition are applicable. TRIPS provide for seizure of goods bearing false indications of GI. TRIPS provide for refusal or invalidation of registration of a trademark containing a GI with respect to goods not originating in the territory indicated. The Geographical Indication of Goods (Registration and Protection) Act came into being in 2000. (The Act is not implemented at the time of writing the article as the rules have not been notified.)

The term GI has been defined as "Geographical Indications", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or 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 characteristics 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.

Applicants for GI's Registration

Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

Non-Registrable Geographical Indications

Geographical indications having the following cannot be registered:

- the use of which would be likely to deceive or cause confusion or contrary to any law.
- which comprises or contains scandalous or obscene matter or any matter likely to hurt the religious susceptibility of any class or section of citizens of India.
- which would otherwise be disentitled to protection in a court; which are determined to be generic names or indications of goods.
- therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country.
- 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 in another territory, region or locality, as the case may be.

Punishment for Falsifying GI

A sentence of imprisonment for a term between six months to three years and a fine between fifty thousand rupees and two lakh rupees is provided in the Act. The court may reduce the punishment under special circumstances.

Term of GI Protection

The registration of a GI shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.