



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ROLE OF GEOGRAPHICAL INDICATIONS IN PROTECTING TRADITIONAL KNOWLEDGE AND CULTURAL HERITAGE

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Introduction:

The Trade-Related Aspects of Intellectual Property Rights, also known as the TRIPS Agreement, defines geographical indications 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 characteristic of the good is essentially attributable to its geographical origin.”¹ It is a sign that is used on products with a specific geographical origin and so possess certain qualities or a reputation that are due to that origin. It is a form of intellectual property right which prevents the usage of the protected terms by unauthorised third parties, whose products do not meet the applicable standards.

The Paris Convention for the Protection of Industrial Property makes mention of false indications, and prevents any such use by way of direct or indirect use of an indication of the source of the goods or the identity of the producer, manufacturer, or merchant, that is false.²

Thus, it is a concept protected by various international agreements and also by local legislations in the ratifying states, such as the Geographical Indications of Goods (Registration and Protection) Act, 1999 in India. These legislations recognise geographical identifications as identifying marks of products, distinguishing them from facsimiles, and protect them from unauthorised and wrongful use.

Geographical indications are generally used for products relating to agriculture, foodstuffs, wine and spirit drinks, handicrafts, and industrial products. Certain examples of goods protected under geographical indications are champagne – sparkling wine originating from the designated Champagne region of France, Pochampally ikat sarees – sarees weaved with a specific ikat geometric design from the state of Telangana in India, and feta cheese – cheeses made in the designated region in Greece following the proper specifications. Thus,

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 22 (1)

² Paris Convention for the Protection of Industrial Property

geographical indications are intended to protect goods that are created through traditional knowledge and aim to preserve cultural heritage and foster economic development.

Literature Review:

The concept of geographical indications as a form of protection of intellectual property has been subject to various research articles.

In "Protection of Geographical Indication Products from Different States of India" authored by Anna Bashir, the weaknesses and challenges faced in the enforcement and protection of geographical indications in India. The paper contends that despite the existence of legal framework in India, the actual effectiveness of the protection is diminished due to the Act being "quite insignificant in terms of scope, effect and protection". The article advocates for the creation of a more widespread awareness about geographical indications in India to work towards the improvement of the current system for the benefit of the users.³

Kundan Kishore's "Geographical Indications in Horticulture: An Indian perspective" emphasised the importance of geographical indication protection particularly for horticulture in India. The paper highlighted the growth of geographical indication-tagged horticulture products in India, but noted that there was a lack of post-registration protection mechanisms available. Additionally, it mentioned that benefits of such protection were frequently attributed to the more economically powerful intermediaries rather than the actual producers, defeating the actual intention.⁴

Authors Dr. Sudhir Ravindran and Arya Mathew in "The Protection of Geographical Indication in India – Case Study on 'Darjeeling Tea'" addressed the protection of geographical indications through the lens of the TRIPS Agreement, with its impact on India in regards to Darjeeling tea. It also conducted a comparative analysis between the Agreement and the Indian Geographical Indications of Goods (Registration and Protection) Act of 1999. The case study details the long history of protecting Darjeeling Tea, which secured its GI status in India in 2004, and its costly, ongoing international enforcement efforts to combat misuse globally.⁵

³ Anna Bashir, "Protection of Geographical Indication Products from Different States of India", Journal of Intellectual Property Rights, Vol 25 (2020)

⁴ Kundan Kishore, "Geographical Indications in Horticulture: An Indian perspective", Journal of Intellectual Property Rights, Vol 23 (2018)

⁵ Dr. Sudhir Ravindran & Arya Mathew, "The Protection of Geographical Indication in India – Case Study on

Kasturi Das, in “Prospects and Challenges of Geographical Indications in India”, focused on the complex socio-economic realities that the relevant legislation must take into account. Practical challenges in implementing the protection of geographical indications are discussed at length, including but not limited to exorbitant costs and technical difficulties associated with foreign registration and enforcement. Das too places emphasis on the inequitable distribution of benefits between traders and the actual producers. The vulnerability of artisans is neither compensated for nor handled fairly.⁶

Thus, the existing literature concurs that India's existing system is undermined by significant operational deficits. Key issues include inadequate post-registration mechanisms, inequitable benefits bypassing producers, and costly enforcement challenges. Ultimately, fulfilling the regime's potential requires addressing these systemic socio-economic and enforcement gaps.

Research Methodology:

This paper employs the doctrinal method of research in order to source its information. Data has been collected from secondary sources, both from publications as well as reputable online sources.

Origin and Evolution of Geographical Indications:

France was the first country to enact legislation on geographical indications. The first and foremost legislation to recognise geographical indications was enacted in the year 1883 under the Paris Convention for the Protection of Industrial Property. This later evolved into the Appellation d'Origine Contrôlée (AOC) system, which is followed in France till today. The initiative was developed to enhance the protection and recognition, as well as regulate, the quality of wine and cheese manufactured in France.⁷

The concept of geographical indication was not new even then, as even during the medieval period and colonial times consumers would identify goods by their place of origin, as it increased the value of the product. Such examples of goods are Kashmiri carpets or Scotch

‘Darjeeling Tea’”, International Property Rights Index, 2009 Report

⁶ Kasturi Das, “Protection of Geographical Indications: An Overview of Select Issues with Particular Reference to India” (2007)

⁷ Kirti Bikram, “Article on Geographical Indications”, Manupatra Intellectual Property Reports. (2014)

whiskey. Later, in 1919, the Treaty of Versailles protected the name “Champagne” so that only sparkling wine made in the Champagne region of France could use the name. Such initiatives project how countries around the world started to protect their local or regional products legally and internationally.

Initially geographical indications were primarily used to recognise the origin of agricultural products and associate their quality from their place of production. It was further influenced by specific local factors, such as climate and soil, affecting products like potatoes from Idaho & Bordeaux wines. However, geographical indications are not limited only to agricultural produce. Products which have distinctiveness due to their quality, materials used or the place of their origin are also characterised with such indications, and products such as Swiss watches are also protected with indicative tags.

Protection of Geographical Indications in India:

In India, geographical indications are protected under the Geographical Indications of Goods (Registration and Protection) Act of 1999. This Act aimed to provide for the registration and better protection of geographical indications relating to goods. In it, geographical indications are defined as those “indications which identify 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 characteristic 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.”⁸

It also provides for the maintenance of a Register of Geographical Indications, including the particulars of the registered authorised users. It mentions certain procedures to be followed to register such indications, such as compulsory advertisement of applications to invite objections, and prohibits registration of certain geographical indications, as well as its registration as a trademark. Lawsuits initiated under this Act are bound by a 5-year limitation period, on the expiry of which the suit may be subject to dismissal.⁹

⁸ § 2(e), Geographical Indications of Goods (Registration and Protection) Act, 1999, Act No. 48 of 1999

⁹ Office of the Controller General of Patents, Designs and Trademarks & Registrar of Geographical Indications, Manual of Geographical Indications Practice and Procedure

However, prior to the above Act being established in India, such products were protected under the doctrine of passing off. The doctrine of passing off was designed in a manner to protect the reputation and goodwill of the product. Doctrine of passing is a tortious action which prevents a person from cheating the public by representing their goods or services as if it belongs to others. In simple words, the doctrine of passing off prevents a person from selling goods by pretending to be someone else. The concept of this doctrine revolves around the idea of protecting the authentic manufacturer and preventing unfair competition or cheating. The doctrine also protects unregistered marks or indications of origin from being imitated. In the English case, Perry v. Truefitt¹⁰, the doctrine of passing off evolved, and the principle laid down in this case was "*a man is not to sell his own goods under the pretence that they are the goods of another trader*". Thus, the foundation for the protection of unregistered trademarks was laid down from this case. Later, in the case of Jif Lemon¹¹, the three "classic trinity" test for passing off was established. In order to be protected under the doctrine of passing off, the plaintiff has to pass three tests. First, the plaintiff has to prove that there is reputation or goodwill that is attached to the product. Secondly, it must be proved that the misrepresentation conducted by the defendant is likely to deceive the public, and finally, the petitioner has to prove that he is likely to suffer or has suffered any damage. If the plaintiff successfully passes the "classic trinity" test, he will be eligible to claim damages.

In India, registration of products with GI tags allows for the authorised users to avail of certain benefits. It confers legal protection to the product in India, prevention of unauthorised use of a registered tag, and enables them to seek legal protection in other member countries. India is home to over 600 geographical indication (GI) tagged products across various products, such as handicraft, agriculture, and food. Among the states, Uttar Pradesh is home to the most GI-tagged products at 74 products, with Tamil Nadu coming in second with 69 products.¹² As of August 2025, 659 products were pending before the office of the Geographical Indications Registry in India.¹³ Certain notable examples of products bearing the tag are – Darjeeling Tea, Basmati Rice, Banarasi Sarees, Lucknow Chikan, Pashmina Shawls, Madhubani Paintings, and Makrana Marbles.

¹⁰ Perry v Truefitt, 6 Beav. 66,49 E.R. 749

¹¹ Reckitt & Colman Ltd v Borden Inc [1990] 1 All ER 873

¹² India Brand Equity Foundation, <<https://ibef.org/giofindia>> accessed 20th October, 2025

¹³ Ministry of Commerce and Industry, Lok Sabha Questions <https://sansad.in/getFile/loksabhaquestions/annex/185/AU3900_Y2wUi0.pdf?source=pqals> accessed 20th October, 2025

Landmark Judgements relating to Geographical Indications:

Darjeeling Tea:

In Tea Board v. ITC Limited¹⁴, the Calcutta High Court's Honourable Justice Sahidullah Munshi, highlighted that the suit filed by the Tea Board was barred by limitation, as the lounge was started in January 2003. However, the suit was filed in 2010 beyond the limitation period provided u/s 26(4) of Geographical Indication which is limited for 5 years. J. Munshi went into the merits of the case and observed "it was not found that infringement has occurred under the Geographical Indications of Goods act because the defendant lounge is not related to goods." The right conferred to the plaintiff as he had registered the word "Darjeeling" is only related to tea. "Darjeeling" is not a trademark. The word Darjeeling is only used to indicate geographical indication of the place of origin of tea originated from Darjeeling. It is further stated that the law relating to geographical indication is confined only to goods. The plaintiff was not given any right in the name Darjeeling for any other goods rather than tea. It was held that the defendants lounge do not fall within the ambit of "goods" defined in Geographical Indications Act.

Basmati Rice:

The Basmati rice geographical indication case¹⁵ is another legal dispute that focused on protecting traditional agricultural products. Basmati rice, which originated from India and Pakistan is known for its aroma, long grain & texture. The dispute took place when the U.S. based company RiceTec Inc patented and trademarked different kinds of rice varieties as "Basmati", and also claimed ownership over its cultivation techniques and name. India and Pakistan both argued against this claim as "Basmati rice is a traditional product of the Indian subcontinent and cannot be monopolised by foreign countries". Following this, RiceTec withdrew most of its patent claims before the U.S. Patent and Trademark office. In the end, RiceTec was unable to claim ownership over the name "Basmati" and the principle was held that when a product's name & reputation comes through its geographical origin then it cannot be monopolised or patented by another country.

Scotch Whiskey:

In the case of Scotch Whiskey Association vs Pravara Sahakar Karkhana Ltd.¹⁶, the

¹⁴ Tea Board v. ITC Limited 2011 SCC OnLine Cal 1083

¹⁵ Agricultural and Processed Food Exports Development Authority v. Rice Tec Inc., 1997 USA

¹⁶ Scotch Whiskey Association vs Pravara Sahakar Karkhana Ltd. AIR 1992 Bom 294

High Court of Bombay declared that using terms such as “Blended Scotch Whiskey” & “Blended with Scotch” by the defendant for an Indian-made whiskey amounted to *passing off* and *misrepresentation*, as it deceived customers and made them believe that the whiskey was genuine Scotch whiskey. The court had also restrained the defendant from continuing to advertise such misleading descriptions by passing an interim injunction. This case highlighted that the foreign countries geographical indication is protected under the principle of *passing off* even in absence of a specific statute. This case also highlighted that geographical indication and goodwill was legally protected in India, even years before the parliament enacted a specific law to do so.

Modern Relevance of Geographical Indications Internationally:

It can be seen thus that geographical indications have been subject of various frameworks, both domestically and internationally. Despite this widespread recognition, the interconnectedness of the global economy has posed significant challenges in the implementation of such protections.

Prior to the creation of international organisations like the WTO, every country had its own legal system to handle geographical indications. As the global market expanded, and more countries began to move towards exporting local products, it became all but inevitable for a common process to be created. The TRIPS Agreement mandated all member states to establish both basic protection for all registered geographical indications as well as more stringent protections for wines and spirits due to the variance in their manufacture process. It also laid out enforcement procedures, remedies, and methods of dispute resolution among its members.¹⁷

However, global supply chains and e-commerce have directly resulted in a growing misuse of geographical indications in foreign markets. As seen in the Basmati rice case, a foreign corporation had severely overstepped by attempting to claim ownership of the name “Basmati” in the United States, profiting off the consumers’ ignorance.¹⁸ Where it had taken several years for India and Pakistan to successfully gain a geographical indication tag, a foreign corporation had nearly succeeded in blocking them from the market by seeking to achieve

¹⁷ Ashwathi T. M., “Geographical Indications in India: Major Issues and Challenges” The National University of Advanced Legal Studies, Kochi. (2020)

¹⁸ Id 13

exclusive rights to the term “Basmati”. Thus, legitimate producers must not only succeed in the initial registration, which is a complicated and lengthy process, but also constantly monitor global markets for infringements and be prepared to deal with the legal process, for which they are usually at a disadvantage compared to profit-seeking corporations that are well-supported in such matters.

Despite this, the importance of geographical indications must not be understated. They play a significant role in rural development and cultural heritage preservation. They are also a means of livelihood for many communities across the globe, and protection of these indications provides protection for the people benefiting from them. Less economically-strong communities are reliant on these indications, and the legal framework must reflect an equitably favourable attitude towards their welfare.

Geographical indications are also not protected equally in all countries. International agreements like the TRIPS Agreement simply forbid the infringement of these indications without detailed sanctions or procedure, leaving it to the ratifying countries to create domestic legislation to resolve such disputes. In the United States, geographical indications are considered a subsection of trademarks, and are not handled separately. They are instead categorised as certification and collective marks.¹⁹ It also allows for the use of a false geographical mark if it acquired distinctiveness before 8th December, 1993, where the TRIPS Agreement states that the above would only be permitted if it was done in good faith, and so undermines the intent of the Agreement. It also only considers such false markings to be barred by law if the consumers are aware of the region’s reputation for the goods in question. The law also only considers the infringement if the wronged party can demonstrate potential injury suffered, and show a connection between the mark and the injury.²⁰ In contrast to this, the European Union has not only created a separate system to handle issues related to geographical indication infringement, but has also created subcategories within it. These categories are – PDOs (protected designations of origin), PGIs (protected geographical indications), and GIs (geographical indications). The latter is for spirit drinks exclusively, while the others are applicable to food and wine. PDOs and PGIs mainly differentiate between the amount of raw materials from the specific area, or how much of the production process is to take place in the

¹⁹ United States Patent and Trademark Office, Geographical Indication Protection in the United States

²⁰ Farley, Christine Haight, Conflicts between U.S. Law and International Treaties Concerning Geographical Indications (2000).

region. Under their system, the names of products that have been registered as GIs are legally protected against imitation and misuse, both within the EU and in non-EU countries, as long as a specific agreement for their protection has been signed.²¹ As the birthplace of such indicative tags, the EU has made considerable efforts to work towards the proper recognition of these products. It can thus be seen that though the TRIPS Agreement has been signed by many countries, it has not been ratified in the truest sense by all of them. It is this unequal treatment that causes issues when attempting to resolve disputes across borders.

Conclusion:

Geographical indications are not just a mere issue of label of origin, they are also integral to the protection of cultural identity, traditional knowledge and the collective heritage of communities in every nation. They bridge economic development and cultural preservation, and empower local manufacturers. Indigenous goods are given a new lease of life under these protections. However, despite the significance of the existing framework, the actual protection provided is faulty and patchy. The framework of geographical indication remains impartial and uneven across countries, at the domestic and international level. Countries like India have taken progressive steps towards protection of GIs by enacting laws to protect the same, such as the Geographical Indication of Goods Act, 1999. Despite this, the uneven implementation of TRIPS Agreement across different jurisdictions continues to dilute GI protection.

However, in order to implement the protection of geographical indications in its truest sense, global harmonisation, an effective implementation mechanism, and ground level awareness is essential. The collaboration of consumers, producers and government agencies is essential to ensure GI protects the economic, cultural and traditional value of products. A uniform balanced approach can become a powerful weapon for sustainable development, fair global trade and culture continuity.

²¹ European Commission, Geographical indications and quality schemes explained <https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en > accessed on 20th October, 2025