
GEOGRAPHICAL INDICATIONS: A STUDY ON HISTORY, LAWS AND SOCIO-ECONOMIC EFFECTS WITH A CASE STUDY OF DARJEELING TEA

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ABSTRACT

Imagine waking up early morning, wrapped up in Kashmir Pashmina, sipping Darjeeling tea, snacking on Alphonso mangoes, resting on Sankheda furniture, with your feet on the handmade Bhadohi carpet. These are world-famous Indian products known for their unique qualities and characteristics. From Swiss-made watches to Bashkir honey, thousands of products worldwide are known for their unique qualities and reputation attributed to them because of the geographical and cultural uniqueness of their place of origin. They are protected and preserved as geographical indications under Intellectual Property laws. Geographical indications are the intellectual property rights that identify a product's geographical significance and qualities. For a product to be granted a geographical indication, it must originate at a particular place, its qualities must be due to its location, and a visible relationship between the product and the place of origin must be established. Geographical indications are an important branch of Intellectual Property laws. They play a vital role in promoting a country's indigenous products in the world market. The economy of any country would gain a massive impetus by promoting trade, tourism and employment related to the products. The International attention a country receives gets a huge boost due to these unique products. It grants recognition to a country's culture and tradition among the international society. Geographical indications are among the best assets a country can own without detrimental impact on its culture, market and often the environment. India has around 370 products with geographical indications. The scope and potential of geographical indications have not been completely explored in India. With its unique cultural and geographical diversity, a country like India has immense scope in the field of geographical indications. This paper aims to explore the historical and legal perspective of the regime of intellectual property with a particular emphasis on India. Further, it dives deeper into the socio-economic effects of Geographical Indications by referring to Darjeeling tea as an example.

INTRODUCTION

Imagine waking up early morning, wrapped up in Kashmir Pashmina, sipping Darjeeling tea, snacking on Alphonso mangoes, sitting on Sankheda furniture, with your feet resting on Bhadohi carpet. These are world-famous Indian products known for their unique qualities and characteristics. From Swiss-made watches to Bashkir honey, thousands of products worldwide are known for their unique qualities and reputation attributed to them because of the geographical and cultural uniqueness of their place of origin. They are protected and preserved as geographical indications under Intellectual Property laws. The commodities that possess a specific geographical origin with unique qualities and reputation because of their origin are granted a sign to mark their importance¹. *Geographical indications* are the intellectual property rights that identify the product's geographical significance and qualities². For a product to be granted a geographical indication, it must originate at a particular place, its qualities must be due to its location, and a visible relationship between the product and the place of origin must be established³.

As per the data⁴ received by the World Intellectual Property Organisation (WIPO) in 2018, there are almost 65,900 protected and recognised Geographical indications worldwide. Classifying on a country's economic position, the highest proportion of geographical indications are registered by upper-middle-income countries, amounting to almost 43% of the total GIs, followed by the high-income and lower-middle-income countries with almost 42.3% and 14.7%, respectively. Regionally, Europe leads the world, owning 57.4% of geographical indications, with Asia (28.3%), Latin America and the Caribbean(8.4%) behind. Among countries, Germany has the highest number of geographical indications registered (15,566), followed by China (7,247), Hungary (6,683), the Czech Republic (6,285), Bulgaria (6,038), Italy (6,015) and Portugal (5,998) in the list. However, India lags far behind in the list with 330 registered geographical indications.

¹Geographical indications, What do they specify?, https://www.wipo.int/geo_indications/en/ (last visited Jun 14, 2022).

² Protecting local products with geographical indications, WIPO, [https://www.wipo.int/ip-outreach/en/ipday/2022/toptips/geo_indications.html#:~:text=Geographical%20indications%20\(GIs\)%20are%20inte](https://www.wipo.int/ip-outreach/en/ipday/2022/toptips/geo_indications.html#:~:text=Geographical%20indications%20(GIs)%20are%20inte) (last visited Jun 14, 2022).

³*Supra* note 1.

⁴ WIPO - World Intellectual Property Organization, , https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2019.pdf (last visited Jun 13, 2022).

HISTORY

Laws similar to the laws of geographical indications were present in the world even centuries ago. They were more of regional significance than international relevance. For example, as early as 1222, Yugoslavia implemented the Charter of Steven-I to govern and regulate the sale of wine⁵. Later, in the middle ages, a system of “guild marks” was used to indicate the place of origin of various commodities. Earlier, geographical indications of a product were used as trademarks to promote the location and thus the product’s quality⁶.

Traditionally, two types of indications were legally recognised; the “indications of source”, which merely announces a product’s geographical origins, while the “appellations of origin”, is a much narrower principle that recognises a commodity’s place of origin only when its unique factors are also due to its specific geographical origin⁷. Later, the new term “geographical indications” were coined to incorporate both the ideas in the modern world. However, the term has been clearly defined in various international legal documents like the TRIPS Agreement and also in various statutes at the country level.

LEGAL PERSPECTIVE

Geographical indications(GI) were first recognised and granted legal protections as an Intellectual Property Right(IPR) in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) enforced by the World Trade Organization (WTO) in the year 1994⁸. It was then the term geographical indications and its principle gained international attention and popularity. Section 3 of Part II of the Agreement governs the legalities of geographical indications. Article 22.1 of it clearly defines the term as follows:

“Geographical indications are 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.”⁹The Agreement

⁵ Bernard O'Connor, *Introduction, in The law of Geographical Indications* (2007).

⁶ *Id.*

⁷ *Id.*

⁸ Daniela Benavente, *Introduction to Geographical Indications: Origin and Characteristics, in The economics of Geographical Indications* (2013).

⁹ TRIPS Agreement, art. 22.1, Apr. 15,1994.

also puts forward some basic principles upon which the laws of geographical indications are based. They are¹⁰:

- A geographical indication is a sign. It could be any sign, including words, pictorial representations, maps, and even a collection of words. However, words and collection of words are generally the most commonly used signs in geographical indications, as in the term 'Roquefort', which is used for ewe's milk cheese. Nevertheless, in comparatively rarer cases, some countries also accept graphical representations of their sign. For example, Swiss laws recognise an image of the Matterhorn, which is a famous mountain in Switzerland, as an indirect geographical indication.
- They perform a function of identification similar to that of trademarks by identifying the place of origin of the commodity.
- The Agreement provides protection to all categories of goods, including agricultural commodities, edibles, crafts and other human-made commodities. The member nations of the Agreement are free to include even services under the scope of geographical indications as per their own unique requirements.
- The geographical origin of the good as recognised by the indication could be a noun or an adjective like 'Columbia' and 'Swiss', or names of regions like 'Beaujolais' and 'Idaho' or names of smaller localities. Sometimes, even terms that are not geographic are also treated as geographical indications if they represent a specific geographical location, like the terms 'Cava', which denotes the sparkling wines from a part of Spain and 'Vinho Verde', which represents a Portuguese white wine,
- Finally, it is crucial that the qualities, reputation or any other unique characteristic of the product should be linked to its place of geographical origin to be recognised as a geographical indication and avail the protection granted to it as a geographical indication.

The Agreement does not answer the question of who owns or uses the geographical indications. The national laws of member countries thus fill this void. In some countries, a collective

¹⁰ Module IV geographical indications - world trade organization, , https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules4_e.pdf (last visited Jun 15, 2022).

organisation of the producers own the geographical indication, while in some countries, public countries own them. However, generally, it is the producers who use the benefits.

Upon being recognised as a geographical indication, every commodity is entitled to certain protections under the Agreement. These protections are specified in Article 22.2 and Article 23 of the TRIPS Agreement, which classifies the protection granted into two categories: the protection and rights conferred for geographical indications for all goods and the additional protection for geographical indications for wines and spirits¹¹.

Article 22 of the treaty outs down the protection and rights conferred for geographical indications for all goods. Under this Article, the Agreement provides protection against the use of the goods granted geographical indications in any means that indicates the place of origin of the product as a location other than the true place of origin in a manner that would mislead the public and any other use which would constitute any form of unfair competition as mentioned in Article 10 of the Paris Convention and also against its use as a trademark.

Article 23 of the Agreement grants additional or absolute protection against some categories of products. Under this provision, wine and spirit are granted additional protection against use by others and against use as a trademark. They also provide provisions for the coexistence of homonymous geographical indications for wines. Article 24 of the Agreement also lays down certain exceptions for the protection of geographical indications.

The provisions of the TRIPS agreement are to be read along with the other relevant provisions of other International Treaties that govern the regime of Intellectual Property Laws. In the case of Geographical Indications, the Paris Convention is another important International treaty that contains essential provisions regarding Geographical Indications¹². Apart from the TRIPS Agreement and the Paris Convention, other relevant treaties contain provisions on geographical indications. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods is WIPO-administered treaties provide general standards of protection of goods recognised as a geographical indication¹³. There are also several WIPO-administered treaties governing registration systems for obtaining protection like the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, the Madrid

¹¹ *Id.*

¹² *Id.*

¹³ International Treaties - Geographical Indications, International treaties - geographical indications, https://www.wipo.int/geo_indications/en/treaties.html (last visited Jun 15, 2022).

Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks which also contains provisions for the international registration of certification marks¹⁴. The intervention of the World Trade Organisation(WTO) and the World Intellectual Property Organisation has contributed to the development of the field of geographical indication. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) is a WIPO forum which provides its members a platform to discuss and decide upon international policies and legal issues regarding geographical indications and appellations of origin¹⁵.

INDIAN PERSPECTIVE

India, with its extremely heterogeneous communities, diverse cultural heritage and much more diverse topographies in each of its regions, is home to a innumerable amount of exotic goods that are unique to India. These goods include the various agricultural products cultivated in every nook of India and the world-famous Indian handicrafts produced by skilled Indian artisans. Thus, the provisions of geographical indications and their protection are of utmost importance to a country like India.

The TRIPS Agreement provides minimal protection to every good recognised as a geographical indication. Also, the Agreement's special recognition given to wine and spirit disappointed India and many other countries. This imbalance demanded additional protection for other commodities, which was incorporated into national legislation. In India, the judiciary played a crucial role in regulating this, especially when there was a void in Indian laws regarding the same¹⁶. The Basmati case acted as a trigger by revealing the necessity of domestic legislations to protect the authenticity of indigenous goods with uncompetable quality¹⁷. Thus, later, legislations such as the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act, 1999) and the Geographical Indications of Goods (Registration and Protection) Rules, 2002 were enforced to grant more legal protection to geographical indications. The three main objectives of the Geographical Indications of Goods (Registration and Protection) Act,

¹⁴ *Id.*

¹⁵ *supra* note 1.

¹⁶ Suresh C. Srivastava, *Geographical Indications and Legal Framework in India*, 38 Economic and Political Weekly 4022–4033 (2003), <https://www.jstor.org/stable/4414050> (last visited Jul 13, 2022).

¹⁷ Kundan Kishore, *Geographical Indications in horticulture: An Indian perspective*, 23 Journal of Intellectual Property Rights 159–166 (2018), <http://nopr.niscpr.res.in/handle/123456789/45825> (last visited Jun 13, 2018).

1999 are to provide specific legal provisions to govern the geographical indication of commodities in the country in a manner that would provide adequate protection to the producers of the particular product, to prevent the misuse of these goods by unauthorised users, to prevent the customers from being misled, and to promote the export of Indian goods with a geographical indication in the International market¹⁸. The Central Government issued the Geographical Indications of Goods (Registration and Protection) Rules, 2002 as per the powers conferred to it under the Section 87 of the GI Act, 1999¹⁹. On September 16, 2019 the Ministry of Commerce and Industry published a draft amendment of the Geographical Indications of Goods (Registration and Protection) Rules, 2002 which aims to improve the Intellectual Property environment in the country by introducing changes in the registration process and simplify the legal process of registration of Geographical Indications²⁰.

SOCIO-ECONOMIC EFFECTS²¹

Establishing the system of geographical indications has proved to be a great advantage to producers and consumers in India and abroad.

Reputation of products

Geographical indications play a significant role in creating an identity for the products. It helps the authorised producers to produce and supply their products in their best possible form in the absence of unfair competition from unauthorised producers in the market. It increases the popularity and reputation of the product among the consumers in the International market.

Fair market price

The unique qualities, reputation and other exotic characteristics of the product differentiate them from other similar products in the market. The price of the product largely depends on the size of the market, supply, demand, consumer perception and product quality. The tags that offer a geographical indication often provide a platform for the producers to gain maximum

¹⁸ Avanee Tewari, Geographical Indications and India Lexology (2020), <https://www.lexology.com/library/detail.aspx?g=44e538af-9084-477b-9951-a96d8c112e43> (last visited Jun 14, 2022).

¹⁹ The Geographical Indications of Goods (Registration and Protection) Act, sec. 87, 1999.

²⁰ *Id.*

²¹ *supra* note 16.

profit by utilising the market value of the product. Surveys often reveal that customers are willing to spend more on authentic products labelled by their source of origin.

Producer and consumer protection

They empower and enable the customers to discover the authenticity of the products on the basis of both their quality and place of origin. It also helps the producers gain more profit by preventing the flow of fake goods and producers to the market. Thus, the system is beneficial to both producers and customers by preventing unfair trade practices in the market.

Preservation of traditional knowledge

The protection provided by geographical indications plays a vital role in preserving and protecting the traditional knowledge and skills of the country's indigenous communities and helps keep their customs and traditions alive. In a country like India, with its diverse cultural heritage and multitude of indigenous products and handicrafts, such a system is more than necessary. It provides the traditional cultivators and artisans with an opportunity to continue their traditional professions and earn a profitable living. For example, products like Navara rice, Kaippad rice, and Pokkali rice benefited the farmers in gaining recognition for their indigenous farming practices and helped improve their socio-economic situations.

Rural development

Rural development is a significant benefit gained by the registration of rural products as geographical indications. Since geographical indications are an indication of the product's source of origin, they provide an impetus to the social, economic and cultural development in localities, especially in rural localities.

National benefits

It adds to the country's Gross Domestic Product (GDP) by increasing its trade and exports, thus increasing its per capita income. It also enhances the country's global reputation and perception in the international arena and pushes it to a better position in the hierarchy. Competition among qualified and similar goods from other countries also improves the quality of our own goods.

CASE STUDY: THE HERITAGE OF DARJEELING TEA²²

Darjeeling tea and Basmati rice are India's two most significant geographical indications that rule international markets. Darjeeling tea is more notable for being the first geographical indication registered in India in 2004 under the Geographical Indications of Goods (Registration and Protection) Act of 1999. It is a premium quality tea cultivated in the hills of Darjeeling, a district in West Bengal. It is grown in almost 87 gardens at an elevation of up to 2,000 metres. The unique geographical, climatic and agricultural conditions, along with the characteristic soil, plantations, traditional knowledge and skilled local labour, impart the flavour, aroma, and brightness to it, thus distinguishing it from the tea grown in every other part of the world. Thus, its geographical origin grants it its most remarkable features, which are impossible to imitate.

The Tea Board of India owns the GI registration of the Darjeeling tea. It is used by its cultivators, processors, traders and other individuals who are a part of its production and marketing process. The Tea Board makes and enforces laws regarding the use of the GI.

History²³

The history of Darjeeling tea dates back to the pre-independence era. In 1828, a British officer, Captain Lloyd, visited the region and discovered its scope to be converted into a hill station. Later, in 1839, Darjeeling was transferred to Dr. A Campbell, who became the district's first superintendent. In 1841, he brought the seeds of a Chinese tea variety, *Camellia sinensis var. Sinensis* from the Kumaon hills of North India grew them near his residence in Darjeeling, which was 2134 metres above sea level. Upon watching his success, the British Government established tea nurseries in Darjeeling in 1847. The British continued to own the tea plantations

²² Quality linked to geographical origin and geographical indications: Lessons learned from six case studies in Asia, (2010), <https://www.fao.org/3/i1592e/i1592e00.pdf> (last visited Jun 15, 2022).

²³ Dr. Sudhir Ravindran & Arya Mathew, *The Protection of Geographical Indication in India – Case Study on 'Darjeeling Tea,'* International Property Rights Index (2008), https://d1wqtxts1xzle7.cloudfront.net/56556909/darjeeling_tea-with-cover-page-v2.pdf?Expires=1655473070&Signature=ZAFGSUtr4ZlOhrOHOfXKhQdLigTPr6y9B0jHxIqvrPzdT57KXs1J7HaQhK9CZzkecQ7o2myGBofbeyondFaGBY8Hvi2lqt9L~ZDNFv7F4204D2pDB0zunn~glOMJhqL3P8DPBAo6WV8NxtfXTcPuA17q7ceBFA2TtSCrv~F8LPG6Uq0AxmClpESWUrehWTv6X35ps0xHUO-ecNjuokps-QCSe4mQIcSg~-1b72RPPMGF3WGN7lgTNazUbye~~RN6lzHRTy71ZOPrURGMt4hwxORyKIbri9fdWsmJxf2ijFaoEEK~w-SWB~7kzfEj2DhnNTudfYKLY2h3wNZDM8qdVigFg__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA (last visited Jun 15, 2022).

even in Darjeeling after India gained independence. However, by the 1970's, the ownership of the tea gardens was gradually transferred to Indians.

Darjeeling tea is cultivated in 87 designated tea gardens in the hills of Darjeeling. A significant proportion of the cultivated tea is exported into International markets, with Japan, Russia, the US, the UK and the European Union being its key importers. A good number of legal provisions have been enforced to preserve the authenticity of the tea. The Indian Tea Act 1953 is important legislation enacted by the country to control and regulate tea cultivation in India. In 2000, a compulsory system of certification was added to the Indian Tea Act 1953 to ensure the authenticity and supply of Darjeeling tea. According to this system, Darjeeling tea dealers must obtain a licence agreement from the Tea Board of India with an annual license fee.

The Tea Board of India first attempted to preserve the 'Darjeeling' brand in 1983, when the 'Darjeeling' logo was developed. Under the Indian Trade and Merchandise Marks Act 1958 (now known as the Trade Marks Act, 1999), the Tea Board received domestic protection for the Darjeeling logo as a certified trade mark. In 1986, the Tea Board was given registration in class 30. In the same year, the logo was registered as a trademark in several other countries, including the United Kingdom, the United States, Canada, Japan, Egypt, and in Germany, Austria, Spain, France, Portugal, Italy, Switzerland, and Yugoslavia, under the Madrid Agreement. Due to the lack of a specific statute dedicated solely to GIs in India at the time, the term 'Darjeeling' was additionally registered under class 30 under the Trade and Merchandise Marks Act 1958 in the name of the Tea Board in 1998. The Tea Board applied for Geographical Indication protection of 'Darjeeling' in 2003, after the Geographical Indication Act was passed in India. Darjeeling was conferred GI designation in India in 2004, making it the first application to be recognised as a GI in India.

SOCIO-ECONOMIC BENEFITS

Social and economic welfare

The cultivation and preservation of Darjeeling tea has led to improvement in the economic and social state of the natives of the region. This is mainly through the significant number of employment opportunities created by its market demand. On average, each estate hires 700 workers, most of whom are women. They are given other benefits like accommodation, subsidised rations, free medical benefits, free primary education and creche facilities for their children and other perks along with their wages. Estimates show that the estates spend almost

60-70 % of their total expenditure on workers' benefits. Besides the workers, the producers also gain economic benefits from the preserved reputation of the tea, better with its geographical indication since it protects them from unfair competition and exploitation in the domestic and international markets.

Reduces urban migration

Ever since the GI tag was conferred upon it, the estate trade has been economically sound. Darjeeling tea alone gives the producers and the workers find a good source of income in their hometown, thus reducing and even putting an end to their migration to cities in search of well-paying jobs.

Use of traditional knowledge

The traditional knowledge of the labourers highly influences the quality and standard of the tea leaves plucked and the tea prepared. The plucking of Darjeeling tea leaves is done in a method different from other regions. Traditional knowledge and practice of the natives instruct them to pluck the two-leaves and-one-bud shoots for tea production. This technique is a unique skill that has been passed over generations. The preservation of the traditional knowledge beneficial to tea production also helped the locals keep their other traditions and customs alive, thus preserving their rich cultural heritage.

Increases the scope of tourism

Darjeeling is one of the most visited tourist regions in the country. The unique Darjeeling tea also helped invite domestic and international tourists into the hill station. Darjeeling is known for three main tourist attractions: the Toy Train, which is recognised as a UNESCO World Heritage Site; the city itself, known as the Queen of the Hills, with more than 30 exciting tourist sites for visitors; and the tea gardens, encircling the town on all sides.

Infrastructural development

The Ministry of Commerce and Sector has proclaimed the tea-production zone an agri-export zone to make required advancements under the Agricultural and Processed Food Product Export Development Agency in order to satisfy the entire development demands of the Darjeeling tea industry. The infrastructure for packing and packaging will be created in the

Darjeeling tea-production zone, as well as estate roads and communications networks, and the construction of a Darjeeling Tea Park in Kolkata to promote exports as part of this initiative.

Environmental impact

On conventional estates and bio-organic or biodynamic estates, methods for producing safe, high-quality food like good farming practices and good processing practices take environmental and natural resource preservation into consideration to a great extent. With its sideways-spreading, deep-rooted structure, the Chinese tea variety grown in Darjeeling efficiently prevents soil erosion. Biodiversity has also been protected to a substantial extent by reducing chemical fertiliser and pesticide applications on traditional tea estates in conformity with sound agricultural practices, with the conversion of estates from conventional to organic production contributing much more. The number of diverse sorts and species of friendly insects, birds, and animals is continuously expanding due to organic gardening. Furthermore, more significant amounts of cow dung are required for organic manure, increasing the cattle population as more estates convert to organic cultivation.

CONCLUSION

In conclusion, the system of geographical indications is an efficient method devised to grant protection to the most sensitive products produced in different parts of the world. Though its scope has not been utilised to its full potential in India, the country's rich cultural and geographical diversity demands such a form of protection for its indigenous goods. The implementation of geographical indications also drives the socio-cultural and economic development of the locality. The case study of Darjeeling tea proves how its GI tag acted as an impetus to the development in all the spheres of society.

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