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GEOGRAPHICAL INDICATION: AN OVERVIEW

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ABSTRACT

This paper focuses on the development of the Geographical Indications through the International conventions with special focus on the statutes in India and the leading case laws regarding Geographical Indication in India.

Keywords - *Geographical indications, territory, goods, sources.*

I. INTRODUCTION-

A Geographical indication (GI) means any sign used on items that have a geographical starting point and have characteristics or are renowned because of that birthplace. To work as a GI, a sign must distinguish an item as beginning in each spot or by origin. Moreover, the characteristics and qualities of the item ought to be, basically because of the birthplace. Since the characteristics rely upon the Geographical spot of creation, there is an unmistakable connection between the item and its unique spot of creation. A geographical sign right empowers the individuals who reserve the privilege to utilize the sign and prevent the use by a third party or to forestall its utilization by an outsider who does not adjust to the relevant principles.

In any case, an ensured geographical sign does not empower the holder to keep somebody from making an item utilizing indistinguishable methods from those set out in the norms for that sign. Assurance for a geological sign is typically gotten by obtaining a directly over the sign that establishes the sign.

The option to utilize an ensured geographical sign has a place with makers in the geological territory characterized, who consent to the states of creation for the item.

Securing a geographical sign empowers the individuals who reserve the privilege to utilize the sign to take measures against other people who use it without consent and advantage from its fame. A geographical sign's notoriety is a significant, valuable, and intangible resource. If not secured, it could be utilized without limitation and its worth start decreasing and eventually loss of value.

Geographical indications are used to identify the birthplace or origin of goods, whether it may be field grown items or self-manufactured goods, those items and goods attribute from the geographic root or birthplace. The individual who satisfies or meets the guidelines can protect his rights and utilizes the privileges.

II. HISTORICAL BACKGROUND-

The necessity of geographical indication was for the very first time realised by France. It was the first country to afford protection to geographical indication through a legal instrument known as the French *appellation d'origine contrôlée* (AOC). This legislation was based on the concept of protection of origin that was born out of the crisis that rocked the French wine trade in the early 20th century. The concept also emerged with a law in 1919 which provided that established geographical indications as collective intellectual property and granted legal recognitions to unions for the protection of appellations of origin.

1) INTERNATIONAL CONVENTIONS

Although there were no legal recognitions, geographical indications had earned global recognition even from the medieval and colonial periods. There are many examples to illustrate this; Christopher Columbus to sail all the way from Europe to India for the Indian spices. Scotch Whisky, Arabian horses, Dhaka muslin, Kashmiri Carpets, Chinese clay pots, Indian rubber, Damask tablecloth etc. are a few names which are the age-old examples of globally renowned products representing the fame of certain regions. It can be presumed that the expression ‘appellations of origin’ is the precursor of the expression ‘geographical indication’. The legal concept of geographical indications as a form of Intellectual property can be traced from the Paris Convention for the Protection of Industrial Property, 1883

A. WIPO administered treaties providing general standards of protection-

a) The Paris Convention for the Protection of Industrial Property,1883:

The first international legal convention which granted protection for indications of geographical origin on goods was the Paris convention which was concluded in the year 1883. Thereafter, it was revised at Brussels in 1900, Washington in 1911, The Hague in 1925, London in 1934, Lisbon in 1958 and Stockholm in 1967. The need for convention arose out of certain countries to protect their industrial and intellectual property beyond their national territories. It is concerned with all forms of industrial and intellectual property and not specifically geographical indications.

The Paris Convention does not use the term "geographical indications" specifically, but it is the first multilateral agreement which provides for the protection of "indications of source" and "appellations of origin". The convention includes 'indications of source or appellations of origin' as the objects of industrial property protection. The convention does not define the terms 'indications of source' or 'appellations of origin'.¹

Further, the convention says that 'industrial property' shall be understood in the broadest sense and shall be applicable to not only to property related to industry and commerce but also to agricultural and extractive industries and to all manufactured or natural products.²

A provision prohibiting the use of a false indication of the source was given in the original text of the Paris Convention of 1883. However, the protection was limited since the prohibition was only applicable where the false indication of the source was used in conjunction with a fictitious or non-existing trade name. The Convention makes the sanctions and provides that in case of direct or indirect use of false indication of the source of the goods or the identity of the producer whether manufacturer or merchant, Article 9 of the Paris convention should be applicable.³ It also contains a provision regarding goods bearing a false indication of source and says that they are subject to seizure upon importation into countries which are a party to the Paris convention, or within the territory of a country where the unlawful affixation of the indication of source occurred or within the territory country of importation.⁴ However, the Paris convention allows that countries party to the Paris convention whose national laws do not permit seizure on importation or inside the country

¹ Article 1(2).

² Article 1(3).

³ Article 10.

⁴ Article 9.

to replace those remedies by either a prohibition of importation or by any other domestic remedy available.⁵ Paris Convention had some limitations which were: -

1. It does not define an ‘appellation of origin’ or ‘an indication of source’.
2. It deals only with false indications and not misleading indications. Though the Paris Convention does not define what constitutes a false indication, but Article 10(2), which defines an 'Interested Party', provides an indirect definition of the same.
3. The Paris convention does not deal with genericise of an indication outside the home country.
4. In case, if a country's domestic law does not permit seizure on importation or prohibition of importation or seizure inside the country, sanctions are to be within the framework of the domestic laws.

b) Madrid Agreement for the Repression of False or Deception Indications of Source on Goods, 1891:

According to this Agreement, all goods which bear a false or deceptive indication of source, by which contracting states, or a place situated within it, is directly or indirectly indicated as the country or place of origin, the goods must be seized on the importation, or such importation must be prohibited, and other actions and sanctions must be applied in connection to such importation.

The agreement also provides for such cases and the way seizure of goods may be requested and effected. It prohibits the use regarding the sale, display or offering for sale of any goods, of all indications which can deceive the public as to the source of the goods. It is reserved to the court of each Contracting State to decide which appellations, other than regional appellations concerning the source of products of the vine, do not on basis of their generic character, comes within the scope of the agreement. The agreement does not contain provisions for the establishment of a Union, governing body, or budget. The agreement was concluded in 1891, and revised at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967. The Agreement is open to States which are a party to the Paris Convention for the Protection of Industrial Property, 1883.

⁵ Article 9(5) and 9(6).

B. WIPO administered treaties governing registration systems for obtaining protection

a) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958:

This agreement was concluded in Lisbon in 1958 and was revised in Stockholm in 1967 and again was amended in 1979. This agreement sets a relatively higher standard of protection and was relied upon as a model while drafting the provisions of TRIPS agreement on geographical indications. The Lisbon agreement was the first of international agreements to define the term ‘appellation of origin’, however, it does not use the term 'geographical indications'.

The agreement provides that once an appellation of origin is registered it is protected in the member countries.⁶ The agreement also defines 'appellations of origin' which says “the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality, and characteristics of which are exclusively or essentially due to the geographical environment, including natural and human factors.”⁷

Therefore, an appellation of origin is protected under the agreement which should necessarily be a geographical name. Further, the quality and characteristics of such an appellation of origin should be associated to the geographical environment of the country.

The agreement provides that the protection includes any usurpation or imitation, even if the true origin of the product is indicated in translated form or accompanied by terms such as kind, type, make, style, imitation or the like. The expression used here is 'usurpation' which may be interpreted to include any kind of wrongful usage.⁸

Hence, member countries must ensure that kind of usurpation or imitation including the use of qualifiers such as kind, type, style etc. as referred to in this article are prohibited under their domestic laws. Further, the use of any appellation of origin of a dissimilar good may also be considered as a usurpation of the appellation. The Lisbon agreement takes care of the shortcomings

⁶ Article 1.

⁷ Article 2(1).

⁸ Article 3.

of the Paris Convention and the Madrid Agreement. However, The Lisbon agreement has the following limitations: -

1. The name which is to be protected must be a proper geographical name. This limitation would exclude as ineligible subject matter any non-geographical name which has acquired secondary meaning as geographical indications.
2. The agreement does not cover those appellations of origin which possess merely a certain reputation, for protection under the agreement, it is necessary that certain qualities and characteristics of the product are essentially linked to the geographical region.
3. The definition of ‘appellation of origin’ would also be applicable to agricultural products or handicrafts which have a nexus, natural or human, with the geographical region in question. It may not be applicable to products of the industry because the qualitative link stipulated under the agreement between the product and the region may not be applicable to all industrial products. However, there may be products of human labour or endeavour which do not have any qualitative nexus with human skills and thus, may not be the subject matter of a Lisbon registration.
4. The member countries are obliged to protect without exception even those appellations which have become generic in other member countries.

C. Trade Related aspects of Intellectual Property Rights, 1995: -

The TRIPS agreement came into effect on 1st January 1995, is the most comprehensive multilateral agreement on intellectual property. Members of the TRIPS agreement have considerable leeway to determine the means to protect geographical indications. TRIPS agreement provides, “In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

1. The use of any means in the designation or representation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

2. Any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).”⁹

Individuals should apply brand name law in a way steady with said insurance. A Member shall, ex officio if its enactment so allows or in line with an invested individual, can't or negate the enrolment of a brand name which contains or comprises of a geological sign concerning merchandise not beginning in the domain demonstrated if utilization of the sign in the brand name for such products in that Member is of such a nature as to delude general public as to the true place of origin.¹⁰

The agreement will not influence the qualification or legitimacy of brand names applied for, enlisted or procured through use in accordance with some basic honesty and good faith, which are indistinguishable to a geographical indication, in the event that they were applied for or the rights 58 gained before the date of the utilization of the TRIPS agreement arrangements in the important Member or before the geological indication is secured or protected in its country of the region.¹¹

In situations where the past conditions are not met Members may, moreover, subject the right to challenge a brand name applied for or procured to a long-term time limit. Under the agreement, members are not obliged to perceive rights identifying geographical indications, if these are indistinguishable with a term "standard in like manner language as the normal name" for specific products or certain goods or services in those territories. The equivalent applies to the "results of the plant for which the applicable sign is indistinguishable with the standard name of a grape of an assortment" existing as of the date of section into the power of the TRIPS agreement.¹²

2) DEVELOPMENT IN INDIA

Before 1999, there was no specific law in India relating to geographical indications which could adequately protect the interests of producers. Despite being a party to the TRIPS agreement India did not enact a law on geographical indications until 1999.

⁹ Article 22(2).

¹⁰ Article 22 (3).

¹¹ Article 24(5).

¹² Article 24(6).

The judiciary was, however, active in preventing persons to take unlawful advantage of geographical indications. In the case of **Mohan Meakin Breweries Ltd. v. The Scotch Whiskey Association**¹³, the High Court of Delhi affirmed the order of the Registrar of Trademarks by which he refused to register the applicant's mark proposed to use on whiskey produced in India consisting of the words "Highland Chief" and the device of the head and shoulders of a gentleman dressed in Scottish highland costume-wearing feather bonnet and plaid and edged with tartan. A well-known symbol of Scottish origin.

In one of the other cases, **Scotch Whiskey Association v. Pravara Sahakar Karkhana**¹⁴, the Scotch Whiskey Association succeeded in restraining the defendants from selling their whiskey under the description "Blended with Scotch" along with the device of Scottish drummer wearing a kilt and tartan and the word "Drum Beater".

III. INDIAN POSITION-

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into force with effect from 15th September 2003.

According to the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999, corresponding to merchandise, implies a sign which recognizes such merchandise as farming goods, normal products or fabricated products as starting, or made in the particular region of a nation, or a territory, where a given quality, notoriety or other traits of such products is basically owing to its geological inception and on the off chance that where such merchandise is made merchandise one of the exercises of either, the creation, or of handling, or planning of the products concerned happens in such region or territory.

GIs have been utilized in India for a wide assortment of items, for example, Basmati Rice, Darjeeling Tea, Alphonso Mango, Kohlapuri Chappal and so forth.

¹³ 17 (1980) DLT 466.

¹⁴ 1992 (2) Bom CR 219.

By enrolling a geographical indication in India, the rights holder can forestall unapproved utilization of the enlisted geographical signs by others while starting encroachment activity by method of a common suit or criminal grumbling. Enrolment of the GIs in India is not compulsory as an unregistered Geographical Indication can likewise be implemented by starting activity of going off against the infringer. It is, none the less, prudent to enrol the Geographical Indication as the authentication of enlistment is by all appearances proof of its legitimacy and no additional verification of the equivalent is required.

Basmati Controversy¹⁵: -

The United States Patent and Trademark office granted patent no. 5663484 to Ricetec Inc., a U.S. multinational company on 2nd September 1997 in the name of ‘Basmati’ rice. Ricetec claimed that they had a new variety having better characteristics than the original Basmati rice. Further, it had been using the trademarks ‘Texmati’, ‘Kasmati’ and ‘Jasmati’ for several years to sell its own version of Basmati rice. Therefore, the controversy was twofold: firstly, according to India the grant of patent was invalid and secondly, marketing of rice by Ricetec Inc. in the name of ‘Basmati’ which according to India was a geographical indication in India and should not be allowed.

It is known in the world that the long-grained aromatic rice variety known as Basmati is a traditional produce vastly grown in sub-Himalayan areas. One of the arguments of India was that Basmati is a geographical indication and since it is being grown in India and Pakistan for centuries no other country can allow its persons to use the indication.

As far as the grant of patent was concerned, the contention of Ricetec Inc. was that its patent covered new Basmati ‘lines and grains’ which were an improvement over the previous varieties. Referring to the use of geographical indication ‘Basmati’, Ricetec Inc. contended that it was a generic name for types of aromatic rice and not a specific variety of rice that was native to India.

‘Basmati’ is not the name of a geographical area, but the product’s reputation is linked to its region or origin. ‘Basmati’ therefore, qualifies for the protection under TRIPS agreement. After a hark work of two and a half years, India put together the data and challenged the patents of Ricetec Inc.

¹⁵ India-Us Basmati Rice Dispute.

in April 2000. The USPTO issued patents to only three strains of hybrid Basmati grain out of 20 claims, developed by the Ricetec while rejecting a more sweeping claim by the company. The three strains of Basmati to which protection was afforded, were patently and noticeably different.

As far as the use of geographical indication ‘Basmati’ by Ricetec Inc. was concerned, the Patent Office mandarins, stated that Ricetec could use the Basmati appellation because it was not a trademarked name or a geographic indicator, unlike Champagne or Port, which were specific to a region. After the protest made by India and Pakistan against the use of the name “basmati”, the USPTO disallowed the patent-holder from using the name “Basmati”.

IV. CONCLUDING REMARKS-

A GI tag is a matter of pride to both the producer and consumer as a symbol of quality and a sense of surety of originality and safety of rights to the parties involved. Intellectual property rights covering geographical indication have taken a place in India due to the original pieces of work in not just textile, art, and craft but spices, cinema etc. having their homeland in the boundary of India. Geographical indications have been a boon to people around the world especially the poor craftsmen who put in their best efforts to maintain such quality that is known and retained worldwide. A GI tag is an essential component to maintain and retain the essence and originality of a product of certain features and characteristics. India has not been left behind in legitimately taking this aspect of intellectual property right forward.