

FOOD WARS: ANALYSING THE GI DISPUTES IN FOOD AND CULINARY REALM

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ABSTRACT

Food and cuisine form an essential part of the cultural fabric of any society and is intricately linked with daily social life of the populace of a country. Due to the cultural significance and economic contribution of the food industry, countries will want to distinguish its products from the other homogenous varieties available in the market. Geographical Indication, a type of IPR protecting the communities, is often used to distinguish products based on their place of origin and qualities attributable to those products. Many agricultural as well as manufactured & processed products in the realm of food have been granted protection under the GI tag around the globe, but the disputes have subsisted between the nation states. This is because the framework governing Geographical Indication is complex and ambiguous with different countries following a different system for indication of geographical origin. This paper shall discuss various GI disputes within the culinary realm including Feta dispute between Greece and other EU countries, Pisco conflict between Peru and Chile as well as intra-country disputes like Miso in Japan and Rasgulla in India and discuss the economic and cultural significance of the same.

Keywords: Cuisine, Geographical Indication, cultural significance, homogenous products, Inter-country & intra-country disputes

I. INTRODUCTION

Geographical Indication (GI) is a subset of intellectual property rights that is used to designate the products or goods originating from a particular geographical territory and has some features that are attributable to that region. The GI tag facilitates in differentiating the goods from those being sold in the market at the same price point with similar features but not the same quality. This distinction gives a competitive edge to the producers over others in the market. The concept of Geographical Indication has been inculcated through sui generis system as well as other regulations such as consumer protection laws which govern the trading guidelines.

The aim of this type of IPR is to recognize the indigenous goods originating from a

specific territory within the country. Food and cuisine are an essential component of any country's cultural reservoir and there have been efforts at both private level and by the government to derive economic benefit from the same. Most developed and developing countries aim to distinguish their food from the homogenized products available elsewhere by establishing the quality for their goods⁶¹⁵. France was one of the first countries to strive for protection for local agriculture products back in 20th century, followed by Spain's attempt to protect the wines from La Rioja regions⁶¹⁶. As

⁶¹⁵ Marcello De Rosa, *The role of Geographical Indication in supporting food safety: A not taken for granted Nexus*, 4 Italian Journal of Food Safety 186 (2015).

⁶¹⁶ Endang PURWANINGSIH et al., *Legal protection towards traditional food based on Mark and Geographic Indication Law*, 9 Journal of Advanced Research in Law and Economics 242-248 (2018).

of date, France has the highest number of registered GIs.

The traditional culinary, especially from the developing countries faces stiff competition due to the changing consumer demands and extensive amount spent on marketing by the western and developed countries in comparison to their developing counterparts. GIs in food and cuisine is not merely an economic issue, but also touches upon the broader cultural and historical issues of the country. This necessitates that distinction based on region of origin and de-commodify the products in the form of Geographical Indication.

II. INTERNATIONAL REGIME

The legal framework governing the geographical indication has been disorganised for decades. The initial iteration of this subset was Indication of Source⁶¹⁷ which did not signify quality and only referenced to the place of geographical origins of the goods. Lisbon Agreement⁶¹⁸ for the first time introduced the system of Appellation of Origin which required the goods bearing the mark to have some quality or characteristics that is related to the environment or cultural knowledge rooted in that geographical area.

Trade- Related Aspects of Intellectual Property Rights (TRIPS) Agreement defines 'Indications of geographical origin' as a tag that identifies the good to be originated from a specific locality or territory of the Member States and having some characteristic, quality or reputation that can be attributed to the area of origin⁶¹⁹. This agreement has been ratified by the 166 members of the WTO (World Trade Organisation), as compared to the Lisbon

Agreement which has been signed by only 39 countries. However, there stills exists an overlapping system wherein countries like France still using *appellations d'origine controle* (AOCs) to certify its wines, cheeses and other agricultural products, Protected Designation of Origin in European Union, or US granting the GI protection as a subset under the trademark legislation leading to confusion and disputes.

The WTO Secretariat has suggested the use of term "Indications of Geographical Origin" (IGOs) to refer to all the aforementioned characteristics which signify the geographical origin of a product in a bid to remove ambiguity⁶²⁰. However, the debates and controversies have remained due to lack of consensus regarding the nature and functioning of these IGOs.

III. GI FRAMEWORK IN INDIA

The Geographical Indication of Goods (Regulation and Protection) Act of 1999 which came into effect in 2003 governs the GI framework at the domestic level in India. The definition for GI in the Act has been harmonised with that given in the TRIPS Agreement⁶²¹ and is applicable to agricultural, natural and manufactured goods produced within the territory of India. The definition in the Indian Act is restrictive as compared to TRIPS Agreement which only refers to goods generally. Further, the manufactured goods for which GI is applied by the producer, must have at least one activity i.e., production, processing or preparation of the goods within the such territory or region. Any association or organisation or authority under the law representing the interest of the producers of the goods can apply for registration of GI⁶²². Once the same has been granted the GI tag, it would not only provide the authorised users the exclusive right to use the tag and

⁶¹⁷ The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, April 14, 1891, 163 U.N.T.S. 828

⁶¹⁸ Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, October 31, 1958, <https://www.wipo.int/treaties/en/registration/lisbon/>

⁶¹⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Art.22.1, April 15, 1994, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

⁶²⁰ Dev Gangjee, *Relocating the Law of Geographical Indication* (1st ed. 2012).

⁶²¹ The Geographical Indications Of Goods (Registration And Protection) Act, 1999, § 2(1)(c) No.48, Acts of Parliament, 1999 (India)

⁶²² *Ibid.* §.11

obtain relief in case of infringement⁶²³, it would also prevent the same from being used as a trademark⁶²⁴.

One of the earliest endeavours to provide GI protection in India can be traced back to Darjeeling Tea in 2004. There has been a push in the recent years to provide better protection to agricultural products leading to recognition and granting GI tags to products like Basmati rice, Alphonso Mango, Manipuri Black Rice, Malabar Coffee amongst others. In addition to these agricultural products, protection has also been granted to some of the prepared food items recognized for their taste and aroma around the world like Bikaneri Bhujia, Hyderabad Haleem and Rasgulla⁶²⁵.

IV. DISPUTES OVER GI IN FOODSTUFFS

With this background of economic and cultural importance of GI tags in culinary world, this paper shall now discuss the various disputes that have arisen with respect to the same from around the globe.

A. Controversy over Hatcho Miso in Japan

Hatcho Miso is a traditional red fermented bean paste that has been grown in Japan since early 17th Century in Okazaki city of the Aichi Prefecture. Since the introduction of the *sui generis* legislation for GI, a claim for registration over “Hatcho Miso” was made by two parties, namely Hatcho Miso Coop and Aichi Miso Coop. The controversy arises due to the fact that both the parties refused to agree on the common ground as to how to define the product and claimed that the standards proposed by the other producer were not strict enough to be respectful to product's rich and varied history and cultural significance. Both producers followed different production processes

which has led to significant variances in the final products as well⁶²⁶.

These opposing claims led to the Hatcho Miso Coop filing a complaint with the Ministry of Agriculture followed by a lawsuit in the court for cancellation of the tag granted to Aichi Miso Coop. In March of 2024, the Supreme Court of Japan dismissed the suit for cancellation of the GI tag in “Hatch Miso”, after which the organisation has applied with the Ministry of Agriculture for registration as GI *Hatcho Miso brewers'* organization⁶²⁷.

The potential of the GI policy to integrate and protect the indigenous products is hampered by such “competition”, thereby making the authenticity of the product depend on norms which are uncertain and ambiguous. GI has the ability to distinguish products from the similar items available in the market with help of few distinctions, but this requires judicious social construct and narrative around the product.

B. Controversy around the name: Feta Cheese in EU

The system Protected Designation of Origin (PDO) as followed in EU is one of the strictest forms of IGO wherein name of the product must be closely related to the place where the same is being produced. The EU framework also provides for Protected Geographical Indication which is a gradation lower than PDO wherein the characteristics or the quality of the product must be linked with the region and at least one production process being taken place in the said region or locality.

A Protected Designation of Origin was granted by the EU to the ‘Feta Cheese’ as produced in Greece. The controversy arose because countries like Denmark, Germany and France were also producing their own

⁶²³ *Supra* note 8, §.21

⁶²⁴ *Ibid.* §25

⁶²⁵ Rewa Kumari & Jagbir Rehal, *Geographical Indications: A Tool for Indian Traditional Food Industry*, 6 *Journal of Progressive Agriculture* 105–108 (2015).

⁶²⁶ Kae Sekine, *The First Controversy Over GI Registration in Japan: A Case of Hatcho Miso*, in *Worldwide Perspectives on Geographical Indications* 287–298 (1 ed. 2025).

⁶²⁷ *Ibid.*

version of feta cheese prior to the grant of PDO and had to change the nomenclature of the same to “white cheese” or similar names after registration by Greece. This grant of PDO was disputed by Denmark, UK, Germany and France who contended that Feta was a generic term which initially used to refer to the place where it was originally marketed and produced but since then has become a common name for a type of white cheese in brine irrespective of the place of origin⁶²⁸. The ECJ however, ruled that the term ‘feta’ was not generic and confirmed the registration of PDO to the cheese made in Greece while the other member states in EU trading in feta cheese has a grace period of three years to re-label and rename their products⁶²⁹. Despite this, the legal disputes have subsisted even as recently as 2022.

The latest dispute before the Court of Justice of the European Union was whether the EU’s GI rules with respect to foodstuff for complying with the product specifications are also applicable to products meant for export and not trading in domestic markets⁶³⁰. The Court while interpreting the Article 13 of the EU regulation no. 1151/2012, observed that the provision does not exclude the rules from being applied on exports. The Court reiterated that the term ‘Feta’ cheese shall only be applied to brined cheese made from sheep’s milk in Greece only. The judgement has ensured that a product bearing the EU GI tag must comply with the specifications laid down irrespective of where they are being sold.

C. Pisco dispute is South America

Pisco originated in Southern American territories under Spanish colonial rule during the prohibition enforced by the government. The public repurposed the variety of grapes

available in the domestic environment and turned them into spirits for consumption amongst the general public. Pisco has been produced by the present-day Chile and Peru for decades after the liberation as well and has immense cultural, economic and historical value for both the countries. Although both countries have shared heritage, the countries have been battling for the ownership and reputation of Pisco emphasised by the various differences between the countries⁶³¹. The dispute has historical roots in War of the Pacific of 1879 and 1884 wherein Chile emerged victorious and acquired new territories and resources at the expense of Peru and Bolivia.

During the 20th Century, both countries began developing their separate system for production of Pisco and laid own the regulations for production to standardize the products throughout the territory leading to escalation of tensions. Both countries refused to acknowledge product from the other country and claiming authenticity in their respective products only. Efforts were made in late 1990s and early 2000s to expand the trade of Pisco in foreign countries and increased exports facilitated through free trade agreements. These bilateral agreements were an attempt to gain global recognition for their products, especially as negotiated by Chile. These agreements, for example as that between Chile and USA did not prohibit other countries from using the term ‘Pisco’ as long as they mention the country of origin in the name itself and regarded “Pisco Chileno” as a distinct product. Chile entered into similar agreement with other countries as well which recognized the Chilean product without prejudice to GI to the product of other countries including Peru⁶³².

Despite these efforts to harmonize the trade and growth of Pisco originating from Chile

⁶²⁸ Defining a name’s origin: The case of feta, ip, <https://www.wipo.int/web/ip-advantage/w/stories/defining-a-name-s-origin-the-case-of-feta> (last visited Apr 28, 2025).

⁶²⁹ Federal Republic of Germany and Kingdom of Denmark v. Commission of the European Communities, CJEU, Case no. C-465/02

⁶³⁰ Commission V Denmark (PDO Feta), CJEU, Case C-159/20

⁶³¹ Bernardo Alarcón Porflidtt, *The “Pisco War”*, in *Transboundary Heritage and Intellectual Property Law* 151 (1 ed. 2022).

⁶³² *Id.*

and Peru, the dispute has still subsisted due to Peru's actions aimed at monopolization. Peru while ratifying the Lisbon Agreement, strategically acceded with respect to "Peruvian Pisco" and notified the member countries over its exclusive claim over the same. However, nine of the countries which had entered into the Trade Agreement with Chile had refused to recognize Peru's exclusive denomination⁶³³.

In EU and USA "Pisco" is treated as homonymous GI, which are "pronounced or spelled similarly but they identify the products that originates in different places and usually in different countries."⁶³⁴ Herein the existence of one GI tag would not hinder the protection of product originating in the other country, and thus, in the present case can be used by both Chile and Peru by giving additional information to distinguish the two.

In India, the Embassy of Peru filed an application for grant of GI in Peruvian Pisco with the Geographical Indications Registry in 2005 which was accepted in 2006 after examination. However, the representatives from Chile opposed the application on the ground that the same did not adequately represented the interests of the producers. In 2009, the GI registry amended the tag to "Peruvian Pisco" without the consent of Embassy of Peru. The same was challenged by the Embassy before the Intellectual Property Appellate Board. The Board accepted Peru's claim due to presence of a city called Pisco in the south-western region of Peru. Chile filed another application for registration of GI tag in "Chilean Pisco" and claimed that the product is an essential part of the Chilean ancestral heritage and has

been an important part of the culinary culture of the country⁶³⁵.

The dispute between Peru and Chile over ownership of Pisco tag is not merely an economic or IPR issue but is a matter of promotion of cultural identity and preserving national pride.

D. Battle between Bengal and Odisha

India is a diversity rich country with different regions having their own cultures, traditions and environmental resources. Geographical Indication not only serve as a tool of economic tool of trade and business, but is also crucial for safeguarding the traditional methods and practices of the producers.

There have been various inter-state disputes in India claiming the ownership over the GI tag of traditional products, the most significant of which is dispute between Odisha and West Bengal in the Indian desert Rasgulla. Rasgulla is a popular desert made from curdled milk enjoyed in different parts of the country. The dispute arises due to the conflicting views with respect to the origin of the sweet. The claim of West Bengal was that the delicacy had originated in Bengal in nineteenth Century and had applied for GI registration in 2017, but the same was challenged by Odisha which filed a separate application for GI in Rasgullas too. Odisha's contention was that the desert originated as a sacred offering to Lord Jaganath in Jaganath Temple located in Puri⁶³⁶. Subsequently, in 2019 the GI registry granted the GI tag to the Odisha Small Industries Corporation Limited (OSIC) and Utkala Mistanna Byabasayee Samiti for "Odisha Rasgulla" as well.

The term Rasgulla or Rasgolla has not been registered and is a generic term which can be used by the businesses anywhere. What has been registered is the prefixes along with the word i.e., "Banglar Rasgulla" in case

⁶³³ Jerry T. Mitchell & William C. Terry, *Contesting pisco: Chile, Peru, and the politics of trade**, 101 *Geographical Review* 518–535 (2011).

⁶³⁴ Geographical indications – an introduction, <https://tind.wipo.int/record/44179/files/wipo-pub-952-2021-en-geographical-indications-an-introduction-2nd-%20edition.pdf> (last visited Apr 28, 2025).

⁶³⁵ Jupi Gogoi, *Transnational Geographical Indications in India: Issues and concerns of 'pisco'*, 29 *Journal of Intellectual Property Rights* 534–539 (2024).

⁶³⁶ *Id.*

of West Bengal and "Odisha Rasgulla" in case of Odisha. The implication is that the generic terms cannot be registered as it would grant monopoly to the authorised users which would be injustice to other businesses and would have adverse effects on trade in long term⁶³⁷.

E. Other disputes

Other disputes in food and culinary heritage have been centred around 'Champagne' which has been granted protection in EU. It is a variety of sparkling wine produced in the Champagne region of France. Despite this, the producers from countries like Australia and USA continued using the term 'Champagne' which has led to series of disputes. France has contended this is a clear case of infringement and dilution of the reputation of their product and the producers from other countries must come up with a different term to market their products⁶³⁸.

Further, in India as well Tamil Nadu and Kerala have had contentious relations over the ownership of a unique variety of rice Navara Rice having unique medicinal properties. A GI tag for the same was granted to Navara Rice Farmers' Society in 2007 and only farmers associated with the Society were to sell their rice under the Navara tag. The questions have been raised by the producers based in Tamil Nadu and other producers from Kerala over the insufficient evidence regarding origins of the Navara and has pointed out the need for clearer guidelines⁶³⁹.

V. Conclusion

The issues discussed above show the emphasis on authenticity and uniqueness put by the producers seeking registration of GI over their products. However, the claims made in geographical indication in food

and culinary realm do not merely involve economic competition but are also a matter of cultural and national identity. This is because food is so deeply intertwined with the daily social life of the populace of a country. While granting and balancing the GI rights of producers from different regions, consideration has to be given to the historical context, cultural importance as well as the legal requirements of the features or characteristics of the product being attributed to the geographical region.

Secondly, the legal framework with respect to Geographical Indications is ambiguous and lacks clarity and harmonization especially at the international level. The law has to be refined to set out clearer guidelines and precedents so that the law benefits not only the producers and consumers but also promotes and preserves the cultural heritage of the country from exploitation from foreign actors. This is even more essential for developing countries like India so that they can come on at par with the other developed economies.

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⁶³⁷ *Id.*

⁶³⁸ David S. Burick, "Is It Only Champagne if It Comes from Champagne? an Analysis of Transnational Geographical Indication Law in the Context of Sparkling Wine" 26 *Intellectual Property and Technology Law Journal* 1-24 (2021).

⁶³⁹ Delphine Marie-Vivien, *The Protection of Traditional Local Foods Through Geographical Indications in India*, in *Eating Traditional Food* 67-83 (1 ed. 2016).

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