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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS THROUGH GEOGRAPHICAL INDICATION IN INDIA

AUTHORED BY - TOUSIF KHAN & NARENDRA KUMAR ROY

ABSTRACT

This article delves into the intricate framework of the Geographical Indications of Goods (Registration and Protection) Act, a cornerstone of intellectual property rights. Starting from the basics, it clarifies what geographical indications represent—unique identifiers that tie a product’s quality or reputation to a specific location. The article further explores the criteria that restrict the registration of certain markers, ensuring only authentic and location-specific products bear the prestige of a geographical indicators tag. One of the most significant aspects highlighted is the legal distinction between geographical indicators and trademarks. While both represent origin, trademarks identify a brand, while geographical indicators protect a product’s regional character and heritage. This separation is essential, preventing confusion and preserving the cultural identity associated with geographical indicators. Moving deeper into the legal landscape, the article provides a clear understanding of infringement—explaining how the act addresses both registered and unregistered geographical indicators. It illustrates the scenarios where unauthorized use of a geographical indicators may lead to legal consequences, safeguarding local producers and maintaining the integrity of regional products in the market.

The article concludes by categorizing offenses related to geographical indications and detailing the penalties established under the act. This comprehensive breakdown underscores the seriousness with which the law views geographical indicators violations, underscoring its commitment to protecting the economic and cultural significance of these indicators. With an engaging exploration of the act’s provisions, this article illuminates the dynamic relationship between law, geography, and commerce, offering an insightful read for those interested in intellectual property’s impact on regional and cultural preservation.

Keywords: Geographical Indications, Intellectual property rights, Trademark conflicts, Infringement, Registered, Unregistered, Offenses, Penalties, and Exploration of Intellectual Property.

INTRODUCTION

The enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) in India was driven by the imperative to align with international obligations stipulated in the TRIPS Agreement. This legislation was crafted to establish legal mechanisms for safeguarding geographical indications, thereby fortifying the protection accorded to such indications pertaining to goods. Within the statement of objects and reasons preceding the Act, it was underscored that without domestic protection of geographical indications at their source, reciprocal protection obligations under the TRIPS Agreement wouldn't be invoked by other nations. Such a scenario could potentially undermine the market competitiveness of goods bearing Indian geographical indications on the global stage.

MEANING AND CONCEPT

In accordance with Section 2(1)(f) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act), the term '**goods**' encompasses a wide range of products, including agricultural, natural, or manufactured items, as well as handicrafts and industrial goods, encompassing foodstuff as well. Furthermore, the term '**indication**' has been expansively defined to encompass any name, geographical indication, figurative representation, or a combination thereof that conveys or suggests the geographical origin of the goods. This inclusive interpretation ensures comprehensive coverage and protection of geographical indications within the scope of the legislation. ¹

The Geographical Indications of Goods (Registration and Protection) Act, 1999 defines '**geographical indication**' ² in the context of goods as an indication that identifies agricultural goods, natural goods, or manufactured goods as originating or being manufactured in a specific territory, region, or locality within a country. This indication signifies that the quality, reputation, or another characteristic of the goods is essentially linked to their geographical origin. Furthermore, if the goods are manufactured, at least one of the activities involved in

¹ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 2(1)(g).

² *Ibid*, S. 2(1)(e).

their production, processing, or preparation must occur within the designated territory, region, or locality. Geographical indications serve as distinctive signs used on goods, denoting their specific geographical origin and highlighting qualities, reputation, or characteristics that are inherently associated with that particular place. Notable examples of geographical indications include Tequila, Scotch, Cognac, and Roquefort cheese.³

PROHIBITION OF REGISTRATION

The Geographical Indications of Goods (Registration and Protection) Act specifies certain criteria for the prohibition of registration of geographical indications:

- a) The use of a geographical indication that could potentially deceive or cause confusion is prohibited.
- b) Registration is not allowed if the use of the geographical indication would contravene any existing law.
- c) Geographical indications containing scandalous or obscene content are ineligible for registration.
- d) Any indication that includes matters likely to offend the religious sensibilities of any group within the Indian populace is prohibited.
- e) Geographical indications that would be disentitled to protection in a court are not eligible for registration.
- f) Names or indications of goods deemed to be generic or which have lost protection in their country of origin, or have fallen out of common use, are prohibited from registration.
- g) Geographical indications that, while factually accurate regarding the origin of goods, falsely represent to consumers that the goods originate from a different territory, region, or locality, are also prohibited from registration.

These provisions ensure that only genuine and appropriate geographical indications are eligible for registration, maintaining integrity and preventing misuse within the framework of the Act.⁴ Generic names or indications pertaining to goods refer to names that, despite originating from a specific place or region of production, have transcended their original meaning. Over time,

³ World Intellectual Property Organization: Geographical Indications, available at: https://www.wipo.int/geo_indications/en/ (last visited on 31st March, 2024).

⁴ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 9 - *Prohibition of registration of certain geographical indications*.

these names have evolved into commonly used terms to denote the general kind, nature, type, or characteristic of the goods in question, rather than indicating a specific geographic origin.

In the case of the *Federal Republic of Germany v. Commission of European Communities*⁵ (Feta cheese), the question arose as to whether the term “**Feta**” could be registered as a designation of origin, considering its longstanding use in various Member States apart from Greece. The European Commission argued that the criteria necessary to establish the generic status of the name “Feta” had not been satisfied, indicating that the name had not become generic.

Intervening governments contended that the term “feta” originated from Italian and simply means “slice,” and it is commonly used in several countries in the Balkans and the Middle East to refer to a type of brined cheese. They argued that Feta cheese does not derive its quality and characteristics solely from a specific geographical environment and is not associated with any particular geographical area. As a result, they advocated for “Feta” to be recognized as a traditional non-geographical name.

The court referenced a convention between Austria and Greece, which reserved the use of the name “Feta” exclusively for Greek products in Austria. This convention, along with national legislation in various countries, suggested that the name “Feta” was not considered generic. Based on the evidence presented, the court concluded that consumers in Greece perceive “Feta” as having a geographical rather than a generic connotation. Furthermore, in other Member States, Feta cheese is often marketed with references to Greek cultural traditions and civilization, leading consumers to associate it with the Hellenic Republic, regardless of its actual production location. Consequently, the court ruled that the term “Feta” is not generic.

In *(John) Walker and Sons Ltd. v. Henry Ost and Co. Ltd.*⁶ (*Scotch whisky case*), the case primarily concerned blended whisky, the court held that the entitlement to the goodwill associated with the term “Scotch whisky” wasn’t limited to traders dealing specifically with whisky blended in Scotland. Instead, it extended to suppliers of blended whisky globally, provided that their product's ingredients exclusively consisted of whiskies distilled in Scotland.

⁵ *Federal Republic of Germany v. Commission of European Communities*, 2006 ETMR 16.

⁶ *(John) Walker and Sons Ltd. v. Henry Ost and Co. Ltd.*, (1970) 1 WLR 917; (1970) 2 All ER 106.

The court emphasized the significance of a descriptive name that carries geographical connotations, particularly if the product has gained public recognition under that name, distinguishing it from similar products. It ruled that the law should protect the goodwill associated with such a name against deceptive use by competitors if it denotes a product with ingredients sourced from a particular locality. However, this protection should be forfeited if the product's ingredients, regardless of how narrowly defined, are not restricted in terms of their geographical origin.

In a related matter, the trademark application for “Champagne and Rose” for games was dismissed by OHIM.⁷ The Office for Harmonization in the Internal Market (OHIM) determined that the senior right associated with “Champagne” recognized as a protected geographical indication under French Law, bore similarity to the trade mark application under consideration. Moreover, the judges noted the exceptional prominence of the senior trademark, a characteristic seldom encountered. They emphasized that “Champagne” held a distinguished position denoting exclusivity, thus raising concerns about potential dilution and weakening of the distinctive nature of the protected indication of origin.

PROHIBITION OF REGISTRATION OF GEOGRAPHICAL INDICATION AS TRADE MARK

The Registrar of Trade Marks is empowered to refuse or invalidate the registration of a trademark under specific circumstances, including:

- a) If the trademark incorporates or is comprised of a geographical indication about goods or classes of goods not originating from the specified territory, region, or locality indicated by such geographical indication. This refusal is warranted if the use of such geographical indications within the trademark is likely to cause confusion or mislead individuals regarding the true origin of the goods or classes of goods concerned.
- b) If the trademark includes or constitutes a geographical indication that identifies goods or classes of goods notified in accordance with subsection (2) of Section 22 of the relevant legislation.

⁷ OHIM decision No. 949/984 of 27-1-2010.

These provisions are designed to uphold the integrity of geographical indications and prevent misleading practices within the realm of trademarks, thereby safeguarding consumer interests and preserving the accuracy of product origins.⁸

In the case of *A. Bailey & Co. Ltd. v. Clark, Son & Morland Ltd.*⁹ The judgment delivered by the House of Lords underscores the significance of geographical indications, particularly in the context of trademark registrations. The case in question pertains to the dispute over the registration of the trademark “Glastonburys” for items such as slippers, slipper-shoes, and motor overshoes.

Lord Russel of Killowen emphasized the inherently geographical nature of the term “Glastonburys” which unmistakably denotes the town of Glastonbury. Notably, within Glastonbury, there were two manufacturers—both the appellants and the respondents—producing sheepskin slippers. Glastonbury had acquired a distinguished reputation in the realm of sheepskin slipper manufacturing, owing to its renowned expertise in tanning sheepskins with the wool intact, a technique integral to the production process.

Testimony provided by the buyer for the shoe department of Frederick Gorringe, Limited, affirmed that manufacturers of slippers, not situated in Glastonbury, often highlighted the fact that their skins were tanned or finished in Glastonbury as a significant selling point. This acknowledgment of Glastonbury's reputation for superior tanning processes translated into an expectation of higher prices for products associated with the town's tanning industry.

In light of these considerations, the House of Lords concluded that the registration of the term “Glastonburys” as a trademark was unjustified. The decision rested upon the understanding that the term was inherently linked to a specific geographical location renowned for its distinctive manufacturing processes, and its registration as a trademark would have undermined the integrity and significance of geographical indications in commercial branding.

⁸ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 25 - *Prohibition of registration of geographical indication as trademark*

⁹ *A. Bailey & Co. Ltd. v. Clark, Son & Morland Ltd.*, (1938) 55 RPC 253.

PROTECTION OF CERTAIN TRADE MARKS

Under the Geographical Indications of Goods (Registration and Protection) Act, provisions are in place to safeguard the rights of individuals who have utilized a particular mark, or who have applied for or registered it in good faith under the pre-existing trademark legislation. These protections apply to instances occurring either before the enactment of the GI Act or before the submission of an application for registration.

Specifically, these provisions prevent the registration of a mark under the Trademarks Act, or its utilization as a trade mark, if it is found to be identical to or resembling a geographical indication. This legal safeguard ensures that individuals with prior legitimate claims to a mark are not unduly hindered from its use or registration, thereby striking a balance between the protection of geographical indications and the rights of existing trademark holders.¹⁰

The Geographical Indications of Goods (Registration and Protection) Act contains a provision stipulating that it shall not apply to a geographical indication concerning goods for which such indication is identical to the term commonly used in everyday language as the common name for those goods in any region of India before January 1st, 1995. This provision ensures that goods already identified by commonly used terms before the specified date are exempt from the regulations outlined in the Act, acknowledging and preserving established linguistic conventions within the country.¹¹

The Act does not impede the right of an individual to use their name or the name of their business predecessor in trade, as long as such usage does not cause confusion or mislead consumers.¹²

The limitation period for initiating legal action concerning the infringement of a geographical indication through the use or registration of a trademark is set at five years. This period commences either from the date when such use or registration is deemed to have infringed upon a geographical indication that is duly registered under the Geographical Indications of

¹⁰ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 26(1).

¹¹ *Ibid*, S. 26(2).

¹² *Ibid*, S. 26(3).

Goods (Registration and Protection) Act and becomes known to the registered proprietor or authorized user, or from the date of the trade mark's registration under the Trade Marks Act.¹³

INFRINGEMENT OF UNREGISTERED GEOGRAPHICAL INDICATION

Section 20(1) of the Act unequivocally proscribes the initiation of legal proceedings aimed at either preventing or seeking restitution for the violation of an unregistered geographical indication. Nevertheless, it is imperative to underscore that this provision does not impinge upon the entitlement to pursue legal recourse against any individual engaging in the misrepresentation of goods as belonging to another party, commonly referred to as passing off, nor does it derogate from the remedies available in such instances. Thus, while the Act affords protection to registered geographical indications, it preserves the avenue for legal redress against acts of passing off, ensuring the integrity of commercial transactions and safeguarding against deceptive practices in the marketplace.¹⁴

In *Braham v. Beachim*,¹⁵ In the case at hand, the plaintiff, holding ownership and operational control over all collieries situated in the parish of R. in Somersetshire, along with the vast majority of coal resources within said parish, conducted her business activities under the banner of “R. collieries.” This included the extraction and sale of coal under her name, prominently featuring the designation “R. collieries” on vehicles and official documentation. Conversely, the defendants, commencing operations in 1868 under the name “R. Coal Co” in the vicinity of R., established themselves as coal merchants, with distribution depots spanning various railway stations across the southern and western regions of England, vending diverse coal varieties. Notably, in 1876, they secured a lease and commenced operations at a colliery situated outside the confines of the R. parish, albeit within a geological basin akin to that of the plaintiff's parish. Coal procured from this external district, albeit distinct from the plaintiff's specific locale, gained market recognition as “R. Coal.”

Beginning in 1873, the defendants expanded their coal sales activities to G. in Surrey, utilizing a local agent for distribution. Subsequently, in 1875, they acquired the goodwill of a bankrupt retail coal dealer, C., operating in G., and publicized their enterprise in Surrey newspapers and

¹³ *Ibid*, S. 26(4).

¹⁴ *Ibid*, S. 20(2).

¹⁵ *Braham v. Beachim*, (1878) LR 7 Ch D 848.

local platforms as “The R. Colliery Proprietors and Factors, Coal and Coke Merchants (late C. & Co.),” offering a comprehensive assortment of coal directly sourced from collieries.

In adjudicating the matter, it was determined that the defendants lacked entitlement to employ the designation “R. Colliery Proprietors” unless and until they procured a colliery within the confines of the R. parish. Furthermore, any representation implying coal origination from the R. parish necessitated authorization or actual acquisition of colliery assets therein. The ruling thus underscored the necessity for accuracy and integrity in commercial representations, particularly concerning geographical origins, safeguarding against misrepresentation, and preserving the integrity of market transactions.

In *Scotch Whisky Assn. v. Golden Bottling Ltd.*¹⁶, The plaintiffs initiated legal action seeking to prohibit the defendant from marketing whisky under the brand name “Red Scot” or any nomenclature containing the term “Scot.” This contention stemmed from the fact that the Scotch Whisky Act of 1988, legislated in the United Kingdom, delineated Scotch whisky as a spirit distilled and matured in Scotland, aligning with a definition outlined in an order promulgated by governmental Ministers. However, it's noteworthy that not all whisky produced in Scotland automatically qualifies as Scotch whisky, as elucidated by the Scotch Whisky Act and associated regulatory orders.

Scotch whisky enjoys global recognition as a beverage exclusively originating from Scotland, a reputation meticulously cultivated through international advertising campaigns and consumer awareness efforts. In this context, the defendant's commercial activities involved the manufacturing and distribution of “Red Scot” whisky, a branding choice suggestive of Scottish origin, thereby potentially misleading consumers into assuming it to be Scotch whisky.

Central to the legal discourse was the contention that the term “Scot” or “Scotch” constitutes a geographical indication under Article 22.1 of the TRIPS Agreement, serving as a distinctive marker denoting whisky originating from Scotland. The plaintiffs, asserting themselves as holders of an unregistered geographical indication, sought judicial intervention to prevent the defendant from engaging in deceptive practices by passing off its “Red Scot” whisky as a product of Scotland.

¹⁶ *Scotch Whisky Assn. v. Golden Bottling Ltd.*, (2006) 32 PTC 656; (2006) 129 DLT 423.

Ultimately, the court ruled in Favor of the plaintiffs, issuing an injunction restraining the defendant from misrepresenting its “Red Scot” whisky as originating from Scotland. This decision underscores the significance of safeguarding geographical indications, preserving consumer trust, and upholding the integrity of regional product identities within the realm of international trade and intellectual property rights enforcement.

INFRINGEMENT OF REGISTERED GEOGRAPHICAL INDICATIONS

Section 22 of the Act delineates the provisions concerning the infringement of registered geographical indications. It stipulates that unauthorized use of a registered geographical indication by an individual constitutes infringement if such employment:

- a) Conveys, through designations or presentation of goods, a false impression regarding the origin of said goods, misleading consumers about their true geographical source.
- b) Engages in activities amounting to unfair competition, including passing off, in connection with the registered geographical indication.
- c) Utilizes another geographical indication that, while factually accurate regarding the origin of the goods, deceives consumers into believing they originate from the territory associated with the registered geographical indication.

The Act further defines acts of unfair competition as those contrary to honest practices in industrial or commercial realms. These include:

- i. Any action generating confusion with a competitor's establishment, goods, or business activities.
- ii. Dissemination of false assertions in trade, tarnishing the reputation of a competitor's establishment, goods, or business activities.
- iii. Employment of geographical indications in trade likely to mislead consumers regarding the nature, production process, characteristics, suitability for purpose, or quantity of the goods.

Additionally, akin to **Section 31** of the Trade Marks Act, ¹⁷ 1999, **Section 23** of the Geographical Indications Act, 1999, acknowledges that registration of a geographical indication serves as prima facie evidence of its validity. This provision establishes a legal presumption regarding the authenticity and legitimacy of a registered geographical indication, reinforcing the significance of registration in asserting rights and combating infringement.

¹⁷ Registration to be prima facie evidence of validity.

In essence, these statutory provisions underscore the imperative of safeguarding registered geographical indications against unauthorized use and deceptive practices, thereby upholding consumer confidence, protecting the integrity of regional product identities, and fostering fair competition in commercial endeavours.

In *Vine Products Ltd. v. Mackenzie & Co. Ltd.*¹⁸ In the ruling by Cross J, it was determined that the term “sherry” referred exclusively to fortified wine originating from the Jerez district of Spain. Consequently, producers and distributors of sherry were deemed entitled to an injunction preventing the use of this term to describe wines not originating from the specified area.

The judgment clarified that “sherry” functioned as a descriptor for a specific type of wine, but required accompanying geographical qualifiers to accurately denote its origin. Specifically, the term was deemed to signify wine produced using the solera method within the province of Jerez de la Frontera in Spain. Moreover, it was established that the rights to the goodwill associated with the term “sherry” were limited to suppliers of wine produced in that province who targeted the English market.

In essence, the decision underscored the importance of geographical indications in delineating the origins and characteristics of products, in this case, wine. By restricting the use of the term “sherry” to wines produced in the Jerez district, the ruling aimed to safeguard the integrity of regional product identities and prevent consumer confusion or deception regarding the geographical origin of the wine.

In *Tea Board, India v. ITC Ltd.*¹⁹, In a notable case before the Calcutta High Court, the issue under consideration pertained to the use of the term “Darjeeling Lounge” by the defendant to designate one of their upscale lounges, catering to a discerning clientele. The crux of the matter revolved around whether this utilization constituted infringement of the registered geographical indication associated with the word “Darjeeling” held by the plaintiff.

The defendant posited that the Geographical Indications Act, of 1999, primarily aimed at regulating goods, did not extend its purview to services, thereby absolving them of any

¹⁸ *Vine Products Ltd. v. Mackenzie & Co. Ltd.*, 1969 RPC 1: 1968 FSR 625.

¹⁹ *Tea Board, India v. ITC Ltd.*, (2011) 48 PTC 169 (Cal).

infringement liability. However, the court opined that while the focus of the Act predominantly concerns goods, certain provisions within, notably Section 22(1)(b) and Section 20(2), suggest a potential avenue for addressing instances of cross-category complaints, albeit indirectly.

Upon scrutiny, the court determined that the defendant's use of “Darjeeling” did not pertain to the designation or presentation of any tangible goods, thus precluding application of the first limb of Section 22(1) of the Act. Regarding the second limb, which pertains to acts of unfair competition including passing off, the court emphasized that not all passing off instances necessarily amount to unfair competition.

The court elucidated that the concept of passing off in the context of the Geographical Indications Act must be understood akin to its interpretation in trademark law, considering various factors such as the nature of marks, resemblance, goods and services involved, and surrounding circumstances.

Despite the significance of “Darjeeling” as a geographical indication, akin to Champagne in the context of sparkling wines from France, the court noted that exclusivity cannot be unilaterally claimed by the plaintiff solely based on registration. The defendant's usage of "Darjeeling Lounge" within their hotel establishment, catering exclusively to high-end clientele, was deemed unlikely to cause confusion or deception warranting legal intervention. Furthermore, the court dismissed claims of dilution, citing the extensive historical usage of “Darjeeling” in commercial contexts preceding the enactment of the Geographical Indications Act. Consequently, the recent registration by the plaintiff did not afford them the level of exclusivity claimed.

In conclusion, the court’s nuanced analysis underscored the need to assess each case of alleged infringement or passing off in light of specific circumstances, while recognizing the limitations of exclusivity in certain contexts, particularly where widespread historical usage exists.

OFFENCES AND PENALTIES

- a) Under Section 37 of the Act, the application of a geographical indication to goods is deemed an offense, encompassing various scenarios delineated therein. Specifically, the following categories of individuals shall be deemed to have applied a geographical indication to goods:

- b) Those who directly apply the geographical indication to the goods themselves.
- c) Individuals who affix the geographical indication to any package in which the goods are sold, displayed for sale, or held for commercial or manufacturing purposes.
- d) Persons who incorporate or attach goods, sold or intended for sale, within or to a package or other item to which a geographical indication has been affixed.
- e) Those who employ a geographical indication in a manner likely to convey the impression that the goods associated with it are designated or described by said geographical indication.
- f) Individuals who utilize a geographical indication in any sign, advertisement, invoice, catalogue, business letter, commercial document, or price list concerning the goods, and subsequently supply such goods to a party in response to a request or order made concerning the aforementioned geographical indication.

These provisions establish a comprehensive framework to address the illicit application and utilization of geographical indications, aiming to safeguard against misleading practices that could potentially undermine the integrity and authenticity of such indications in commercial transactions.²⁰

Falsification of a geographical indication transpires under the following circumstances:

- a) ***Unauthorized Creation:*** When an individual craft a geographical indication or one deceptively akin to it without the consent of the authorized user of said geographical indication.
- b) ***Genuine Geographical Indication Alteration:*** When an individual alters, adds to, effaces, or otherwise tampers with any authentic geographical indication, thereby falsifying its original form or representation.

These delineations establish the parameters under which falsification of geographical indications is recognized, underscoring the importance of safeguarding the integrity and authenticity of such indications in commercial endeavours.²¹

Falsely applying a geographical indication occurs when an individual, without the consent of the authorized user of said geographical indication, applies it or utilizes any package bearing a geographical indication identical to or deceptively similar to the authorized user's geographical indication. This action is undertaken with the intent of packing, filling, or wrapping therein

²⁰ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 37. *Meaning of applying geographical indications*

²¹ *Ibid*, S. 38(1).

goods other than the genuine goods associated with the authorized user of the geographical indication.²²

In any prosecution concerning the falsification of a geographical indication or the false application of a geographical indication to goods, the onus of demonstrating the proprietor's assent shall rest upon the accused party.²³

The penalty for applying a false geographical indication entails imprisonment for a duration not less than six months, yet may extend up to three years. Additionally, a fine ranging from Rs 50,000 to Rs 2 lakhs shall be imposed.²⁴

An individual engaged in the sale of goods to which a false geographical indication has been applied shall face punishment, including imprisonment for a period not less than six months, yet extendable up to three years. Additionally, a fine ranging from Rs 50,000 to Rs 2 lakhs shall be imposed as per the severity of the offense.²⁵

The Act imposes stricter penalties for repeat offenders convicted of offenses under Section 39 and Section 40. For every subsequent conviction beyond the initial offense, the individual shall face imprisonment for a term not less than one year, yet extendable up to three years. Additionally, a fine ranging from Rs 1 lakh to Rs 2 lakhs shall be imposed.²⁶

²² *Ibid*, S. 38(2).

²³ *Ibid*, S. 38(4).

²⁴ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 39 reads:

Penalty for applying false geographical indications. — Any person who, —

(a) falsifies any geographical indication; or

(b) falsely applies to goods any geographical indication; or

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or

(d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under Section 71, a false indication of such country, place, name or address; or

(e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under Section 71; or

(f) causes any of the things abovementioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

²⁵ GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999, S. 40. *Penalty for selling goods to which false geographical indication is applied*

²⁶ *Ibid*, S. 41. *Enhanced penalty on second or subsequent conviction.*

It is prohibited for any individual to make any representation:

- a) Pertaining to a geographical indication, which is not registered as such, falsely implying that it holds registered status.
- b) Falsely asserting that a registered geographical indication is registered for goods for which it is not actually registered.
- c) Misleadingly suggesting that the registration of a geographical indication confers exclusive rights to its usage in circumstances where, due to limitations specified in the register, such registration does not indeed grant such exclusive rights.²⁷

Any individual found contravening and making such representations shall be subject to punishment, which may include imprisonment for a period extending up to three years, imposition of a fine, or both.

In instances where a person is convicted or acquitted under Section 39 or 40 on the grounds of lack of intent to defraud, the court holds the authority to order the forfeiture of all relevant goods and items to the government. Should a forfeiture be directed upon conviction, an appeal may be lodged against both the conviction and the forfeiture.

In cases where a forfeiture is ordered upon acquittal, and the goods or items subject to forfeiture hold a value exceeding Rs 50, an appeal against the forfeiture may be initiated within thirty days from the date of the direction. This appeal shall be directed to the court to which appeals lie from sentences of the court that initially directed the forfeiture.

Furthermore, in instances where a forfeiture is directed upon conviction, the court responsible for the individual's conviction may decree the disposal or destruction of any forfeited articles in a manner deemed appropriate by the court.²⁸

CONCLUSION

Geographical Indications constitute a paramount element within India's intellectual property landscape. These indicators, by acknowledging the intrinsic connection between a product's distinct characteristics and its geographical provenance, serve as a linchpin that empowers producers, safeguards consumer interests, and catalyses regional economic growth.

²⁷ *Ibid*, S. 42. *Penalty for falsely representing a geographical indication as registered.*

²⁸ *Ibid*, S. 46. *Forfeiture of goods.*

Furthermore, Geographical Indications play an indispensable role in preserving India's opulent heritage of indigenous commodities. Through the strategic promotion of Geographical Indications awareness coupled with robust enforcement mechanisms, India stands poised to fortify its stature as a preeminent global custodian in safeguarding these emblematic manifestations of geographic identity.

