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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **INDIA'S HISTORICAL PRESERVATION OF GEOGRAPHICAL INDICATION**

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## **ABSTRACT:**

The protection of geographical indications involves a lengthy process, spanning from the 1883 Paris Convention on Intellectual Property to the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. We will have a clearer idea of the legal theory and protection of geographical indications if we are aware of the development of GI. Conflicts within the geographical region itself are one of the main problems with regard to legal protection for the geographical indicator. Therefore, GI has undergone numerous revisions, just like every other component of IPR. There are no widely recognized protocols for GI in spite of numerous changes. The TRIPS agreement's general principles, which apply to all other intellectual property rights, also apply to geographical indications. These principles primarily include the Most Favored Nation clause and national treatment.

## **NATIONAL TREATMENT**

Regarding the guarantee of protected innovation, Article 3 of the TRIPS Agreement provides guidelines on national treatment, requiring individuals to treat the citizens of other members with the same respect as they do their citizens. Another similar arrangement states that the TRIPS Agreement's national treatment norm depends on the Paris Convention's exemptions (Article 3 of the TRIPS Agreement). Additionally, the arrangement references the Berne and Rome Conventions' exemptions.

## **MOST-FAVORED NATION TREATMENT**

"Any advantage, favor, privilege, or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members with regard to the protection of intellectual property," states Article 4 of the TRIPS Agreement.



## **HISTORICAL EVOLUTION OF GEOGRAPHICAL INDICATION**

Right from the medieval period, when there was no proper legal protection for trade, products based out of geographical regions were famous. People from Europe and other parts of the world wanted to acquire those products because of their regional characteristics, such as spices from India and tea from China<sup>1</sup>. Initially, GI was protected by the respective regional rulers and the laws prescribed by them. Some rules with respect to GI can be traced back to the 14th and 15th centuries in European countries like England and France. Later in the 20th century, proper formation of rules of GI was framed. France was the only country in the 20th century to enact a comprehensive system for the protection of GI. A major part of this system's influence is in the drafting of both national and international treaties. Before the 20th century, only three multilateral agreements were addressed for the protection of geographical signs by the World Intellectual Property Organization (WIPO). The two different parameters that WIPO set for identifying the GI were “the Indication of Source” and “Appellation of Origin<sup>2</sup>.”

## **PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY 1883**

The Paris Convention of 1883 was the first diplomatic conference held for the protection of industrial property rights; it was signed by 11 states and went into effect on July 7, 1884. Later, Great Britain, Tunisia, and Ecuador had also signed the convention, bringing the total number of member states to 14. Later, in the 20th century, especially after World War II, many states ratified this convention, which was later revised in Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), and Stockholm (1967)<sup>3</sup>. As previously mentioned, there were no common rules regarding industrial property rights until the middle of the 19th century<sup>4</sup>.

## **THE PARIS CONVENTION'S GOALS**

The main goal of the Paris Convention was to give each member state a fundamental right known as the right to national treatment, which ensures that each contracting state must provide its citizens with the same protections as it provides its own citizens, or that all member states

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<sup>1</sup> Dr. Varun Shukla, Historical development of geographical indication law under international arena, International Journal of Law, 1, 1 2016.

<sup>2</sup> Dev Gangjee, Relocating the Law of Geographical Indications, 21 (2012)

<sup>3</sup> Id

<sup>4</sup> World Intellectual Property Organization (WIPO) Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979), WIPO Lex



should be treated equally.

The establishment of a fundamental right, commonly referred to as the right of priority, is another goal of the Paris Convention. According to Article 4, if an applicant wants to register industrial property in any of the convention's member states, they must do so in all of the member states within a given time frame, which is typically six months to a year. The convention also grants patents, trademarks, and industrial designs the right of priority.

Common rules in the field of substantive laws are defined by the third objective under Art. 4bis of the convention. These common rules protect the rights and obligations of natural persons and legal entities and allow member states to enact laws that comply with them, meaning that the common rules also allow member states to enact new rules.

### **THE MADRID AGREEMENT (AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE OF GOODS, 1891)**

The Madrid Agreement for the Repression of False or Deceptive Indication of Source of Goods was enacted in 1891. In the diplomatic Paris Conference, it did not provide any provision for the prevention of the use of false indication<sup>5</sup>. The signatory nations put forward the need for a more all-inclusive form of regulation for the misuse of intellectual property. Due to this requirement, the International Bureau of Spanish Administration's proposal for the Madrid Agreement was submitted at the Madrid Revision Conference of the Paris Convention<sup>6</sup>. Later it was revised at Washington (1911), The Hague (1925), London (1934), and Lisbon (1958)<sup>7</sup>. The agreement also sets rules on how the seizures should occur and who will be the competent authority to handle and approve the same. The main difference between false and deceptive is that deceptive refers to the actual name of where the product originates; for example, consider Darjeeling tea. The Madrid Agreement extends protection to these deceptive indications of source along with the false indications. The Madrid Agreement does not add any further protection to the Paris Convention and also does not protect generic appellations<sup>8</sup>. Therefore,

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<sup>5</sup> World Intellectual Property Organization (WIPO), The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods, WIPO Lex, <https://wipolex.wipo.int/en/text/286776>

<sup>6</sup> J. Thomas Mc Carthy and Veronica Colby Deviff, Protection of Geographic Denominations: Domestic and International, Vol. 69 TMR, 199, 206 (1979)

<sup>7</sup> Summary of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891), World Intellectual Property Organization (WIPO), [https://www.wipo.int/treaties/en/ip/madrid/summary\\_madrid\\_source.html](https://www.wipo.int/treaties/en/ip/madrid/summary_madrid_source.html)

<sup>8</sup> Commission of the European Communities, Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Member

according to the Madrid Agreement, each member state may decide whether appellations have become generic, but the generic appellations cannot be used for the products of wine. It does not provide for the usage of false or deceptive indications accompanied by qualifiers such as 'kind,' 'type,' 'style,' etc. Though the Madrid Agreement is still in force, it is not a part of the TRIPS Agreement.

## **LISBON AGREEMENT FOR THE INTERNATIONAL REGISTRATION AND PROTECTION OF ORIGINAL APPELLATIONS**

The Lisbon Agreement provides for the protection of appellations of origin, that is, the "geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors" (Article 2). Such denominations are registered by the International Bureau of WIPO in Geneva upon the request of the competent authority of a Contracting State. The International Bureau keeps the International Register of Appellations of Origin and formally notifies the other Contracting States of the registrations. It also publishes them in the Lisbon system's official bulletin, Application of Origin.

A Contracting State may declare, within one year of receiving the notice of registration, that it cannot ensure the protection of a registered appellation within its territory (Article 5(3)). Such a declaration must include grounds for the refusal of protection. Contracting States may subsequently withdraw a refusal, according to a procedure foreseen under the Lisbon system. A registered appellation will be protected against usurpation or imitation, even when used in translation or accompanied by words such as "kind," "type," or the like (Article 3), and may not be deemed to have become generic in a Contracting State as long as it continues to be protected in the country of origin (Article 6)<sup>9</sup>. If a product is tagged with the GI, it can be termed as generic in any other country as long as it is protected in its country of origin. One of the main problems of the Lisbon Agreement is that international protection is granted only if the GI is protected in its country of origin, which will demean the concept of protection through the law of unfair competition. Another concern raised was regarding not mentioning any exceptions for the terms that have already become generic in some nations. Due to all these

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<sup>9</sup> World Intellectual Property Organization (WIPO), Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, WIPO Lex, <https://wipo.lex.wipo.int/en/text>

reasons, only very few states have become members of the Lisbon Agreement.

## **THE DRAFT TREATY ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS (1975)**

Under the auspices of the World Intellectual Property Organization (WIPO), which has a standing committee, further efforts have been made to improve the protection of geographical indications. The WIPO has held several symposia on the subject, introduced a draft international treaty for the protection of geographical indications, and introduced a model national law. While this draft did not develop into a final treaty, it is a link in the chain of evolution of geographical indications.

The new definition of Appellation of Origin provided under this treaty was broader than the definition provided under the Lisbon Agreement, and it did not require the signatory member countries to have domestic laws for their protection. The draft treaty established a new definition for the protection and registration of geographical indications, guaranteeing protection for both the appellation of origin and geographic indication<sup>10</sup>.

## **INTERNATIONAL PROTECTION PROBLEMS**

- ❖ Several international accords, such as the Paris Convention, the Madrid Agreement, and the Lisbon Agreement, attempt to indirectly protect geographical indicators, and several attempts have been made to do so.
- ❖ The Madrid Agreement does not provide for geographical designations, just like the Paris Convention does.
- ❖ The inability of these international accords to effectively implement the protection was another significant problem.
- ❖ The TRIPS provision went into effect at this point.

## **TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT**

One of the most important and significant milestones in the development of the protection of intellectual property rights, particularly with regard to geographical indications, was the TRIPS

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<sup>10</sup> O'Connor, O, Bernard,( 2004, January), The Law of Geographical Indications, Cameron, International Law and Policy



Agreement, which can be thought of as an updated and revised version of all the international agreements, particularly the Paris Convention. The TRIPS Agreement made provisions for the enforcement of a right, which was a major concern in the previous international agreements. The TRIPS Agreement is also known as the first multilateral agreement that deals with geographical indications, and it is considered a multilateral agreement because the member countries and their legal systems were left to handle the implementation of GI protection<sup>11</sup>.

### **TRIPS and GATT**

GATT's genesis can be traced back to the monetary movements established at Bretton Woods, USA, in 1944. The Bretton Woods conference was responsible for the establishment of specific financial institutions like the World Bank. The Bretton Woods conference dealt mainly with the monetary policies and was working very closely with a new world body, which was getting established in parallel. This new world body later evolved into the United Nations. The UN Council for Economic and Social Affairs formed a committee comprised of 18 countries to draft a charter named the International Trade Organization (ITO) charter<sup>12</sup>. The primary purpose of this charter was mainly to promote the expansion of trade, production, import/export, and consumption of goods. The first draft was based on the United States proposal, which included the ITO's organizational and administrative aspects.

The second conference held in New York submitted the second version of the draft charter to the participating countries. The results of the decisions on the second draft and also on the trade and tariff negotiations, which were discussed during the conference, were combined in the final act, which included the GATT framework. Thus, GATT was finally approved, and a GATT treaty was signed on 30th October 1947, in Geneva, Europe. The members of 25 countries signed it under the protocol of provisional applications of GATT, which began on 1st January 1948<sup>13</sup>. Later, a resolution passed by the United Nations Conference on Trade and Employment, which was held in Havana for three months, saw the formation of an interim committee of the ITO<sup>14</sup>. The charter, which was adopted by the United Nations Conference and later came to be known as the Havana Charter, also provided the membership and the functions of the ITO

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<sup>11</sup> Vandana Singh, The Law of Geographical Indications, Rising above the horizon 99(2017)

<sup>12</sup> Id

<sup>13</sup> Id

<sup>14</sup> FINAL ACT OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT, United Nations document E/Conf. 2/78, Article 1, (1948)

Committee<sup>15</sup>. Unfortunately, the Havana Charter never came into force as the UN Secretary-General did not ratify it. The ratification did not happen due to one of the reasons the charter got nullified because the United States Department of State issued a policy statement indicating that the Havana Charter would not be resubmitted to Congress. The US's outspoken rejection of the ITO was perplexing, particularly because it did not meet the expectations of other members. worries that if it joins any organization, it will forfeit its economic sovereignty. international trade organizations. The WTO was a clear example of as well. However, the WTO attempts to guarantee that Congress could examine the United States' WTO membership if the dispute resolution process at the WTO didn't favor the US. Only then did the US agree to join the WTO.

The Havana The failure of the Charter made it possible to create the GATT's framework and its Secretariat. The World Trade Organization, which came into existence in 1995, additionally implemented the GATT as a temporary agreement between the nations of various nations; hence, it was mostly used to describe governments rather than citizens. Additionally, it was not a self- executing system unless there were exceptional circumstances under which the GATT's self- execution was permitted by national law. The temporary committee of the GATT Secretariat employees were employed by ITO due to the Since GATT was a contract, it was not possible to function as a legitimate employer, and the signatories to the GATT were referred to as "contracting parties" and "not members."

### **GEOGRAPHICAL SIGNS AND THE GATT**

According to Article IX (6)'s definition of GI, the GATT was presented in terms of the contractual parties' collaboration to stop the misrepresentation of a product's actual place of origin. Another obligation of the collaboration was to safeguard the unique geographic or regional name via the law of the nation where the party seeking collaboration is entering into a contract. In the event of a conflict, cooperation also notifies the relevant product names between the parties to the contract.

### **TREATIES, BILATERAL**

Under international conventions and treaties, the participating nations may reserve the right to create unique agreements between themselves for the protection of GI, to the extent that these

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<sup>15</sup> Stanley Crosskicks, International trade: the rise & fall of the Havana Charter  
<https://crossick.blogactiv.eu/international-trade-the-rise-fall-of-the-havana-charter/>

agreements do not conflict with these conventions and treaties, so in addition to these primary legal documents, there are further bilateral and regional agreements and treaties for GI protection. They are designed to shield specific GIs<sup>16</sup> from all commercial use and from the use of deceptive language. The names of nations are given absolute protection under these agreements, which stipulate that geographical indicators must be utilized in accordance with national laws. These bilateral In essence, accords the protections offered in the country of origin to the other states that have signed<sup>17</sup>.

## **CONCLUSION**

Geographical indications of goods are that part of industrial property that refers to the geographical indication referring to a country or to a place situated as the country or place of origin of that particular product. Geographical indications are the newest area of intellectual property. Every region has its claim to fame and should be given the chance to keep it protected. The GI tag provides a guarantee of quality, uniqueness, and distinctiveness that can be specifically linked to the product's origin in that particular geographic location, region, or nation. By recognizing and safeguarding these products, the producers' community is able to dedicate themselves to maintaining the exact characteristics of the product that have earned their reputation. Geographical indicators are seen as powerful weapons for safeguarding their national property rights, although some detractors view them as a trade barrier. This also enables them to jointly spend on enhancing the product's image.

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<sup>16</sup> The GIs that are listed by product group in the annexure of the respective treaties.

<sup>17</sup> <http://www.ige.ch/E/jurinfo/j104.shtm>