



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Beyond Biryani and Rasgulla: Protecting India's Culinary Heritage Through IPR Law

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The cuisine represents all history facts, religion, culture features, geography and customs of India. Each area has its local dishes that represent history of the local area with trade and movement of people, local knowledge and religion. Dishes include as Odisha Rasgulla, Bikaneri Bhujia, Tirupati Laddu and Hyderabad Biryani besides local recipes represent culture at large and act as an identity of a community that will continue to shape it in years to come. In the time of globalization and food branding, traditional recipes are open to imitation, misuse and exploitation without any recognition. Beyond this, there is the question of whether it is possible to protect culinary heritage through intellectual property law. In order to answer to this question, we need to explore the application of several branches of intellectual property law, including copyright, trademarks, patents, geographical indications and traditional knowledge protection to culinary practices.

Culinary Heritage as Protectable Cultural Property

The traditional foods and conventional intellectual creations are fundamentally distinct from each other. Most recipes and food practices are the result of community contributions rather than someone's individual innovation. However, unlike inventions or works of literature, these traditional dishes have been in evolution since the past over time through cultural exchange, local agricultural practices, and regional customs.

And this poses a fundamental challenge to the IP law because the traditional IP regimes were designed primarily to protect individual creators and inventors, whereas culinary traditions are sought as the result of community-owned knowledge. Traditional Indian foods are now being introduced into the global commercial markets, and legal protection is required, and it is not only required for economic reasons but also to preserve the cultural heritage.

Geographical Indications: The Strongest Legal Protection for Traditional Foods

The most effective legal mechanism for protecting India's culinary heritage is the Geographical Indications of Goods (Registration and Protection) Act, 1999¹. The Agreement on trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994², provides for international protection of Geographical Indications (GIs) and Geographical Indications Act, 1999, provides for their protection in India.

According to the definition given under Section 2(1)(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999³, a GI is:

“An indication that identifies the agricultural goods, the natural goods or manufactured goods as originating, or as being manufactured in, a region or locality in, a country where a particular quality, reputation or other characteristic is essentially the result of the geographical origin.”

In simple terms, a GI is a product sign or a name which associates a product with a place of origin, from which the product has a specific quality, reputation or characteristics. The protection of GIs is essentially relevant with respect to the traditional food products, as it enables the prevention of the use of names that are only applicable to specific geographic areas, and allows the economic benefits to stay within the communities where these products have been created and maintained.

There are a number of Indian food products that have been given GI protection such as:

- Hyderabadi Haleem
- Tirupati Laddu
- Dharwad Peda
- Bikaneri Bhujia
- Ratlami Sev
- Darjeeling Tea

The significance of GI protection lies in preserving authenticity while ensuring economic benefits remain connected to the originating communities.

¹ Geographical Indications of Goods (Registration and Protection) Act, No.48 of 1999, India Code (1999).

² Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

³ Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, § 2(1)(e), INDIA CODE (1999).

Judicial Recognition of Geographical Identity in Food Products

The Tea Board, the owner of the registered GI for Darjeeling Tea, contested ITC's use of the term "Darjeeling" in *Tea Board of India v. ITC Limited*⁴, demonstrating that Geographical Indications are legally enforceable rights that safeguard a product's origin and reputation. Similar to this, the Delhi High Court ruled in *Scotch Whisky Association v. Golden Bottling Ltd. (2006)*⁵ that using the term "Red Scot" for whisky amounted to passing off since it misidentified the product as Scottish Scotch Whisky. When taken as a whole, these instances show judicial acknowledgement of protecting goods whose commercial worth is inextricably related to their place of origin.

The Rasgulla Debate: When Food Meets Identity

For years, both West Bengal and Odisha raised the same issue about the history of the sweet. But for years, there were two assertions regarding the sweet in the name of West Bengal and Odisha. The GI framework did not assign an owner to the sea resources, but rather allowed for regional variation. "Banglar Rasogolla" was registered as a GI and "Odisha Rasagola" was given GI status in the year 2017 and 2019, respectively.

Authorities explained that the registrations included regional variants which may have differed in flavor, consistency, cooking styles and other cultural factors. The controversy proved how intimately food was linked to the region and the culture. It emphasized more important than that, that cultural diversity could be embraced in GI law, without the requirement for exclusive claims over traditional food products.

Protecting Traditional Knowledge Against Patent Misappropriation

Patent systems can also lead to the misappropriation of traditional culinary heritage. A classic example is the Turmeric Patent Case, officially known as *Council of Scientific and Industrial Research (CSIR) v. University of Mississippi Medical Centre*.⁶ the wound healing qualities of turmeric have been patented by the University of Mississippi Medical Centre. India's CSIR filed a case against this patent on the grounds that turmeric has a long history in the traditional Indian systems of medicine. It was a known invention, and hence its patent was revoked. A very significant precedence was set regarding traditional inventions that can never

⁴ Tea Board of India v. ITC Ltd., 2019 SCC OnLine Cal 9122 (India).

⁵ Scotch Whisky Ass'n v. Golden Bottling Ltd., 129 (2006) D.L.T. 423 (Del. H.C.)

⁶ U.S. Patent No. 5,401,504 (issued Mar. 28, 1995).

be patented based on the sole reason that they were first registered. This is despite the invention being used medically, but also extends to the preparation of traditional food.

Limits of Conventional Intellectual Property Law

The Geographical Indication Regime is the strongest system of protection, but there is very limited protection provided by this system of intellectual property to the cuisine heritage. **Under the Copyright Act 1957**⁷, protection can only be extended to the expression of a recipe, such as cookbooks, and the recipes or the method of cooking are not protected under the copyright regime. Likewise, under the **Patent Act 1970**⁸, novelty and inventive steps are necessary, which rule out the traditional recipes evolved through generations. Even the Trademark regime fails to provide protection to the traditional food heritage.

Conclusion

India's food culture is an important part of its cultural identity and collective traditional knowledge. The most effective way to protect geographical indications under the existing intellectual property regimes is to associate authenticity and reputation directly with geographical origin. Cases like *Tea Board of India v. ITC Limited*, *Scotch Whisky Association v. Golden Bottling Ltd.*, *CSIR v. University of Mississippi Medical Centre*, *India v. RiceTec Inc.* illustrate the important role of intellectual property law in preventing misappropriation of traditional food heritage. In short, the survival of India's indigenous foods is not merely a commercial issue, but one of cultural identity in an increasingly globalised world.

⁷ Copyright Act, No. 14 of 1957, INDIA CODE (1957).

⁸ Patents Act, No. 39 of 1970, INDIA CODE (1970).