The Indian Journal for Research in Law and Management

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

ROOTED IN PLACE

The Geographical Indications Act, 1999 and India's Legal Defence of Collective Heritage

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Most intellectual property frameworks rest on the premise that creativity is individual, discrete, and outdated. Patents reward the single inventor who files first; copyrights protect the solitary author; and trademarks belong to the enterprise whose investment built the brand. This framework works rather well for inventions that emerge from laboratories and companies that grow from marketing budgets. It begins to buckle, however, when confronted with a different kind of value, the kind that is not invented so much as inherited, accumulated layer by layer over generations of farming, weaving, and craft-making in a specific stretch of land.

Darjeeling tea was not invented. No single farmer woke up one morning and applied a fresh method to otherwise ordinary leaves. Its character with the specific muscatel note, that pale gold in the cup, is the cumulative output of high-altitude soil, a particular monsoon rhythm, and a body of cultivation knowledge that exists nowhere else on the planet. The same could be said for Kanjivaram silk, Pashmina shawls, Nagpur oranges, or the intricate thread-work of Chikankari embroidery from Lucknow. These are place-bound products, and the law had to be redesigned to protect them on their own terms.

The *Geographical Indications of Goods (Registration and Protection) Act, 1999*[1] is India's answer to that redesign problem. It does not ask who owns Basmati rice. It asks where

[1]Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48 of 1999, India Code (1999), brought into force w.e.f. Sept. 15, 2003 [hereinafter GI Act], Sec. 2(1)(e).

Basmati rice comes from, and establishes an entire enforcement architecture around that question. More than a registration statute, the Act embodies a coherent philosophy that community heritage is a legal asset deserving the same protection that patent law extends to corporate laboratories and that it must remain permanently insulated from the logic of private sale.

I. THE PHILOSOPHY OF COMMUNAL OWNERSHIP: WHY IT CHANGES EVERYTHING

A geographical indication is, at its core, a guarantee of origin.[2] It tells a buyer that the quality, reputation, or defining characteristic attached to a product traces back to a defined geographic boundary, not to a label printed on a box by a clever marketing team. For agricultural goods, the connection to place is intuitive; its soil, climate, and elevation categorically shape the end product in ways that cannot be replicated elsewhere. The Act builds on this intuition, but it goes further for manufactured and handicraft goods, insisting that at least one significant stage of production, processing, or preparation must actually occur within the designated territory.[3] A Kashmiri shawl woven from Kashmiri pashm using the traditional kani technique qualifies; a machine-stitched imitation produced in a factory two states away, however similar it appears on a shelf, does not.

What makes the Indian statute genuinely distinctive, however, is not the origin test itself, most GI protection schemes around the world share that feature in some form, but its treatment of what happens to the right once it is registered. Section 24 of the Act categorically bars the assignment, licensing, or transmission of a registered geographical indication in any form.[4] A producers' cooperative cannot sign away the Darjeeling name to a foreign company the way a company might license out its trademark. The right travels with the geography rather than with whoever happens to be holding the registration certificate at a given moment.[5] It is that single design choice, more than anything else in the statute, that permanently closes the door on a corporate buyout of regional reputation.

This non-transferability is the Act's most radical departure from mainstream intellectual property doctrine. What it means in practice is that the community of Darjeeling tea growers,

[2]GI Act, supra note 1, Sec. 2(1)(e).

[3]Id. Sec. 2(1)(e) (proviso for manufactured and handicraft goods).

[4]Id. Sec. 24.

[5]Id. Sec. 23.

however fractured or commercially pressured they may become, cannot be collectively bought out of their own indication. The weavers of Pochampally cannot individually exit and transfer their rights to a distant distributor who sees value in the brand but not in the craft. The Act guarantees that the communal monopoly remains permanently communal, not a temporary arrangement pending the arrival of a sufficiently generous offer.[6]

The philosophical underscoring of this provision is worth dwelling on. Most IP law treats rights as commodities, as assets to be bought, sold, and leveraged. The GI framework treats its core right as something closer to a constitutional entitlement of regional communities, one that the market cannot reach, because its value is inseparable from the place and the people who make it. In an era when intangible assets routinely migrate from the jurisdiction that created them to wherever corporate structures offer the most favourable conditions, this is a genuinely unusual commitment.

II. FROM PATENT BATTLES ABROAD TO LEGISLATION AT HOME

India did not arrive at the 1999 Act through abstract policy deliberation. This law wasn't born in a vacuum; it was forged during the brutal intellectual property wars of the '80s and '90s. For decades, traditional Indian products with centuries of history were quietly being patented and claimed by foreign corporations, a trend that was both commercially damaging and, frankly, legally absurd.

The turmeric episode came first. The University of Mississippi Medical Centre obtained a United States patent in 1995 covering the use of turmeric for wound healing, a therapeutic application documented in Indian medical literature going back centuries.[7] India's Council of Scientific and Industrial Research successfully challenged the patent, which was cancelled after re-examination, but the episode consumed years of legal effort and resources that should never have been necessary in the first place. The neem controversy ran even longer, where a European patent granted to W.R. Grace & Company over a pesticidal extract of neem was revoked in opposition proceedings only in 2000, following a decade-long campaign by Indian researchers and environmental groups, with the final appeal dismissed as late as 2005.[8]

[6] Id. Sec. 11.

[7] U.S. Patent No. 5,401,504 (filed Mar. 28, 1995); claims cancelled by the USPTO in 1997 following reexamination requested by the Council of Scientific and Industrial Research (India).

[8] European Patent No. 0436257 (granted 1994 to W.R. Grace & Co. and the U.S. Dep't of Agriculture); revoked in opposition proceedings before the European Patent Office, 2000; appeal dismissed, 2005.

Basmati rice attracted its own controversy when RiceTec Incorporated secured American patent protection over rice lines derived from grain that farmers in Punjab and Haryana had been cultivating for generations, most of those claims were eventually cancelled, but not before India had mounted an extensive diplomatic and legal campaign before the USPTO.[9]

These episodes exposed a structural vulnerability that went beyond any single product. India was a founding member of the World Trade Organisation and was bound by the TRIPS Agreement, which under Articles 22 through 24 obliged member states to establish legal mechanisms preventing the use of any indication likely to mislead the public as to the geographical origin of goods.[10] TRIPS may provide the blueprint, but it leaves the construction of the actual legal machinery to individual nations. The real facilitator, though, is the deeply ingrained spirit of reciprocity in international IP, a country virtually never has to lift a finger to protect a foreign geographical indication if its home country hasn't bothered to shield it under domestic law first.[11] Without its own GI legislation, India had limited standing to demand that trading partners respect its agricultural and artisanal heritage. The 1999 Act closed this gap by creating the legal infrastructure India needed to shift from reactive foreign litigation to a proper international enforcement mechanism, a remarkable shift from playing defence to setting the terms of the game!

III. THE REGISTRATION ARCHITECTURE: HOW THE SYSTEM ACTUALLY WORKS

Administration of the Act falls squarely on the Controller General of Patents, Designs, and Trade Marks. Affixed at the central registry in Chennai, this office anchors both roles, with the Controller General also acting as the Registrar of Geographical Indications.[12] The Register is organised into two parts, a structure that reflects the dual nature of the interests the Act seeks to capture. Part A records the core technical description of the indication, its definition, geographic boundaries, production standards, and the characteristics that make it distinctive. Part B defines the inner circle of authorised users, a distinct group of producers

[9]U.S. Patent No. 5,663,484 (granted to RiceTec, Inc., 1997); most claims cancelled on reexamination by the USPTO in 2001 following representations by the Government of India.

[10]Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

[11]TRIPS Agreement, supra note 11, art. 1.1.

[12]GI Act, supra note 1, Sec. 3.

who have cleared the Registrar's bar, verifying beyond doubt that they actually deliver on the GI's strict standards.[13]

The standing requirements for applications are made deliberately restrictive, and these restrictions are philosophically coherent rather than being simply bureaucratic. An individual producer, however reputable, however significant their contribution to the regional craft, cannot file a GI application in their own name.[14] Applications must be brought by associations of producers, legal organisations, or statutory authorities representing a collective regional interest.[15] This requirement compels regional stakeholders to organise collectively before they can access the protection the law offers. The registration process itself becomes a form of community governance, requiring institutional consensus that might otherwise never emerge.

The procedural pathway mirrors the deliberativeness of other IP registration regimes. Following technical examination that frequently involves consultation with a panel of subject-matter experts, since the Registrar is not expected to be personally expert in the production standards of every regional craft, successful applications are published in the GI Journal.[16] This publication opens a formal opposition window, allowing any aggrieved party who believes the application is factually inaccurate or overreaching to challenge it before registration is confirmed. A successful registration grants an initial ten-year term, renewable indefinitely thereafter,[17] which means that the protection is in practical effect perpetual, but only on the condition of perpetual fidelity to the standards that earned the indication in the first place. A Geographical Indication is therefore never a static trophy to be won and forgotten. It is a living covenant that demands tireless guardianship over the very heritage that earned its honour.

IV. COLLISION WITH THE TRADEMARK

The collision between trademarks and geographical indications was inevitable. At their core, both are tools designed to police who gets to use a name in the marketplace. Yet, they sprout from entirely opposite roots. A trademark is a personal piece of property, easily bought and

[13] Id. Sec. 17.

[14] Id. Sec. 11.

[15] Id.

[16] Id. Sec.Sec. 13–14.

[17] Id. Sec.Sec. 18–19.

sold, reflecting the fluid equity of a single business. A GI belongs to everyone and no one, it cannot be transferred, and it exists solely to honour a region's shared heritage. To keep these two forces from tearing each other apart, Sections 25 and 26 of the Act carefully engineer a boundary, balancing them on a finely tuned legal tightrope. The default rule is clear and favours the GI. The Registrar is required to refuse the registration of any trademark that replicates or mimics a registered geographical indication if doing so would deceive or confuse the public as to the true geographic origin of the goods.[18] A corporation cannot simply trademark the word 'Darjeeling' for a tea blend sourced from Assam, thereby privatising what is legally a collective communal asset. The GI takes precedence, and the individual claim must be surrendered.

The Act simultaneously acknowledges that it did not arrive on a blank commercial slate. Trademarks already in genuine, bona fide use or already validly registered before 15 September 2003, the date the Act came into force, or before the filing date of the corresponding GI application, are grandfathered and may continue to be used.[19] This is a traditional balancing act of equity. The law intentionally refuses to play the role of a retrospective wrecking ball to established commerce. A business that had chiselled out genuine market reputation before the 1999 Act was even conceived is protected; its goodwill cannot be wiped clean.

That grandfathering protection evaporates, however, the moment bad faith enters the picture[20]. If a trader registered a trademark specifically to ride on a regional reputation that was already publicly known and commercially valuable at the time of filing, the equitable shelter dissolves. The Calcutta High Court firmly consolidated this principle in *Tea Board v. ITC Ltd.*, dismissing the Tea Board's suit and ITC was allowed to keep using the name "Darjeeling Lounge" for its luxury lounge at the ITC Sonar hotel. The High Court held that the GI Act, 1999 protects goods, whereas a lounge provides hospitality services. Because India's GI Act does not extend protection to services, there was no statutory infringement or passing-off.[21] The exception for good faith does not extend to those who were never acting in good faith; the Act declines to reward opportunism simply because it preceded formal GI

[18]GI Act, supra note 1, Sec. 26(2).

[19]Id. Sec. 25.

[20]Id. Sec. 25, proviso. The bad faith exception reflects the broader equitable principle that a party who registered a mark with knowledge of the GI's prior reputation cannot invoke the grandfathering protection.

[21] Tea Board, India v. ITC Ltd., 2019 SCC OnLine Cal 3680

registration. This mirrors the enduring ratio in *Scotch Whisky Ass'n v. Pravara Sahakari Sakhar Karkhana Ltd.*, where the court stripped away commercial shields from domestic defendants who sought to exploit an established foreign geographic reputation under the guise of historic usage.[22] This is one of the more elegant settings in the statute, it honours historical commercial equity while refusing to allow the letter of that protection to become cover for deliberate exploitation.

V. ENFORCEMENT WITH ACTUAL TEETH

The substantive protections of the Act would remain aspirational without a credible enforcement architecture behind them. Parliament equipped the statute with mechanisms spanning both criminal deterrence and civil compensation, reflecting a recognition that the communities most likely to invoke these protections cannot always afford to treat infringement as a purely civil matter.

On the criminal side, Sections 39 and 40 treat the falsification and false application of a registered geographical indication as cognisable offences, meaning the police may act without first waiting on a magistrate's order.[23] The penalties are regulated to reflect the seriousness of the harm, ranging from a minimum sentence of six months' imprisonment with a fine of fifty thousand rupees, rising to three years' imprisonment and two lakh rupees for aggravated offences. The mandatory minimum is a deliberate legislative signal. False GI marking is not a technical infraction to be settled with a modest fine; it is a form of consumer fraud that strikes at the reputation and livelihood of entire regional communities.

The investigative powers are correspondingly broad. Officers at or above the rank of Deputy Superintendent of Police may conduct search and seizure operations without a warrant.[24] The Act builds in a procedural check, however, that distinguishes legitimate enforcement from commercial harassment, i.e., before conducting a warrantless search, the officer must obtain a formal technical opinion from the Registrar confirming that the goods in question genuinely infringe the registered indication. Expert institutional verification must precede enforcement action, a safeguard that prevents the machinery from being deployed as a weapon in commercial disputes dressed up as GI complaints.

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[22] Scotch Whisky Ass'n v. Pravara Sahakari Sakhar Karkhana Ltd., AIR 1992 Bom 294
[23] GI Act, supra note 1, Sec.Sec. 39–40.

[24] Id. Sec. 50(4). The precondition of the Registrar's technical opinion before a warrantless search operates as a safeguard against misuse of investigative powers for commercial harassment.

On the civil side, Section 66 provides authorised users with access to the full range of equitable and compensatory relief before a District Court, temporary or permanent injunctions restraining continued infringement, damages for proven commercial losses, and where the defendant has deliberately profited from passing off their goods as originating from the designated region, an account of profits.[25] The District Court jurisdiction is a practical choice, ensuring that these remedies are geographically accessible to the producer communities the Act is most directly designed to serve, rather than requiring every enforcement action to be mounted before a High Court in a distant city.

CONCLUDING OBSERVATIONS: THE MEASURE OF THE ACT

Over twenty years since its enactment, India's GI register has grown to encompass hundreds of regional staples, including Darjeeling tea, Mysore silk, Coorg coffee, Kondapalli toys, and Bhavnagari ganthia. The law hasn't completely stopped the exploitation of regional branding, real-world enforcement is still uneven, and local producer associations often lack equal institutional capacity. Yet, as a piece of legal engineering, the GI Act did something entirely unique. It flipped the traditional IP script, anchoring the right to a physical landscape and its people rather than a corporation, and making that right explicitly non-negotiable and non-transferable. It proved that IP law can value heritage that is slow, collective, and place-bound, not just fast, individual, and commercialised. By doing so, it provides a vital, replicable roadmap for developing nations looking to defend their own artisanal and agricultural legacies from global market exploitation.

The Act's ultimate measure of success, however, lies neither in its registration count nor in the elegance of its doctrinal architecture. It lies in whether the farmers of Darjeeling, the weavers of Kanjivaram, and the artisans of every other designated region are actually using it to defend and derive tangible value from what is, at the end of every legal analysis, simply their inheritance, one that no corporate transaction should ever be allowed to transfer away from them.[26]

[25]Id. Sec.Sec. 66–67.

[26] Vandana Shiva, Protect or Plunder? Understanding Intellectual Property Rights 45–47 (2001)