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THE EVOLVING LANDSCAPE OF GEOGRAPHICAL INDICATIONS: APPELLATIONS OF ORIGIN AND INDICATIONS OF SOURCE

~Tarun Kumar Srivastava

The contemporary statutory framework of the Indian legal system recognises the geographical indication as a source of intellectual property, which has undergone a profound transformation over the period of time. After the adoption of globalisation, there was an increase in trade and commerce between different international entities. At the crossover of international trade, regional economic development, and consumer protection laws lies the statutory and structural framework of geographical indications (GIs). The evolution from mere acknowledgement to being identified as substantive designations of origin reflects continuous efforts to recognise the legal protection of GIs. The appellation of origin and indication of source are part of the GI of a local community and define substantive legal protection that requires a nexus between geography and the product.

The historical development of international protection of regional products emerged in the Paris Convention for the Protection of Industrial Property, which was held in 1883. Under this framework, the concept of 'indication of source' emerged for the first time, as it was established as a negative right which was to prevent unfair competition and false commercial representations. An indication of source functions as an indication of the origin of a product, such as from a specific country, region or place, e.g. Darjeeling tea, Assam tea, etc. The main distinction is that the indication of source does not presuppose that a product possesses any distinct physical, chemical, or any other distinct features, which is unique in nature. The legal protection of indication of source was exhausted once the concept of GI further emerged, which served as an instrument against any fraudulent practices rather than a regime creating a geographical value.

Many countries recognised the limitations of indication of source, as they offered no special protection for products with distinct features due to particular geography, particular

manufacturing procedures, etc. The European jurisdiction, primarily France, through its *appellation d'Origine Contrôlée* (AOC) system, developed a more rigorous concept of 'appellation of origin'. The concept was codified by the Agreement of Lisbon for the protection of AO and its registration. An AO denotes a special and specific type of GI. To qualify, a product's unique quality or characteristics must be because of or essentially due to the geographical environment, encompassing both intrinsic natural factors, such as microclimate, soil composition, and altitude, and human factors, such as traditional, decentralised manufacturing techniques. Furthermore, under the classical Lisbon framework, every phase of production, processing, and preparation must occur strictly within the demarcated geographical boundaries, leaving no room for outsourced stages of manufacturing.

The fragmentation between the common-law approach (which historically relied on certification trademarks and passing-off torts) and the civil-law approach (which favoured *sui generis* public registration for regional origins) prompted the international community to forge a comprehensive standard during the conference at Uruguay. The parties signed the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and introduced the harmonised term "Geographical Indication" under Article 22.1.

While broader in scope than an Appellation of Origin, a GI requires that a product's quality, manufacturing process, or features are directly associated with the topography of the said product, such as Darjeeling tea, Assam tea, etc. TRIPS created a dual-tier protection standard: a baseline protection under Article 22 against misleading business practices and unfair competition, and an elevated, absolute protection under Article 23 reserved exclusively for wines and spirits, shielding them against unauthorised use even where the real origin is noted through the "kind," "type," or "imitation" of the product.

The difference between the more protected wines and protection for agriculture and craftsmen led to the dialogue in developmental economics. Countries like India enacted the concept of *sui generis* to protect regional products and their manufacturers. The GI Act prevented the exploitation of the product and its manufacturers and cancelled the concept of the dual-tier system, which protects the rights of communal manufacturers against any exploitation.

The world regime, adopted in the Geneva Act of the Lisbon Agreement on AO and GI in 2015, was a significant milestone that transformed the traditional understanding of the Lisbon System in parallel with the GI and AO system. Intergovernmental organizations such as the European Union, etc., accept the philosophy behind the treaty and have established a flexible registration

framework, where the Geneva Act also reduces the gap between conventional civil law and the evolving practice of trade and commerce. The current world market seeks cultural genuineness, traditional knowledge, and supply chains; the current evolution of these concepts tries to bind the regional identity, which helps to bind and protect the value-generating conventional and communal trade practices in the current international intellectual property commerce.