



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Evolution of GI from Protecting Origins to IP

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*Received* 20 August 2023; *Accepted* 11 September 2023; *Published* 15 September 2023

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*This article examines the journey of Geographical Indications (GI) – how they've evolved from simply identifying product origin to preserving traditional knowledge associated with the product in the form of Intellectual Property (IP) and influencing economies. The article also takes a closer look at the unique approaches adopted by different countries under the concept of sui generis, to safeguard GIs. It provides insights into how GIs operate within today's legal landscape and anticipates challenges that lie ahead. Furthermore, it examines how GIs successfully tackle the complexities of a global marketplace while making an impact at the local level. It traces GI's remarkable journey, beginning with international agreements and culminating in its integration with technological innovations. The role of blockchain technology in revolutionizing GI protection by ensuring transparency in registration. This is where the past harmonizes with the future and the significance of authenticity remains paramount. GIs serve as a bridge between consumer demand for authenticity and traditional knowledge, with India's complex GI protection process serving as a case study.*

**Keywords:** *geographical indication, trips, cultural appropriation, blockchain technology.*

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### INTRODUCTION

Geographical Indications are the guardians of origin, the gatekeepers of tradition and the champions of quality. GIs are intellectual property that help to identify the origin of a product

from a specific region, place or country that has a quality, reputation or other geographical characteristic attached to it which are essential to attribute to its geographical indication. For example, Champagne is used to indicate a special kind of sparkling wine that originates in the Champagne region of France. Swizz watch, Feta cheese, Champagne, Pisco, Darjeeling tea, Basmati rice, UK scotch and Parma ham are some other well-known GI around the world. Along with the place of origin, the GI signifies the recognised quality associated with the product from that location which influences consumer purchasing decisions. The link between the geographical origin and the product is profound. This connection is built on a legacy of expertise, local resources and a commitment to upholding a certain standard.

In the global village, GIs are very impactful and transcend borders and cultures. They are more than symbols of authenticity; they are the life force of local economies, sustaining traditional communities in preserving their rich heritage. GIs are the threads that weave together the tapestry of our diverse planet. The story of GIs is not just of protection; it's also a tale of innovation. In the age of technology, where authenticity can be difficult to track, GIs are embracing blockchain, a cutting-edge solution that promises to revolutionize their safeguarding. It's a journey that spans centuries, continents and cutting-edge technology—a journey where tradition meets innovation and quality meets transparency.

## **LEGAL FRAMEWORK FOR GI**

GI acquired global relevance and legal protection as an Intellectual Property through the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. Prior to the formulation of TRIPS, the administration of GI protection was administered by agreements, treaties and conventions such as The Lisbon Agreement which facilitates international protection of an appellation of origin through a registration procedure with WIPO's International Bureau<sup>1</sup> and The Madrid System which helps in protecting GI in several countries as collective and certificate marks.

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<sup>1</sup> *World Intellectual Property Indicators 2017* (WIPO 2017)

The TRIPS Agreement establishes a minimum standard for the protection of GI which members of the World Trade Organization (WTO) are required to comply with and make laws regulating GI in accordance with such standard.. The primary focus of this agreement is the prevention of unfair and unauthorized use of GI. However, it doesn't delve into the nuances of traditional knowledge preservation or cultural heritage. This lack of cultural specificity can result in a disconnect between GI protection and its broader cultural context. Moreover, the TRIPS Agreement leaves some room for interpretation by member countries, which can lead to variations in the level of GI protection and enforcement across jurisdictions. This can create challenges for producers who want to export their GI-protected products to different countries with varying levels of GI recognition.

International organizations like the WTO and the World Intellectual Property Organization (WIPO) have worked to further define and promote the concept of GI by creating awareness and emphasising the importance of a legal framework for protecting GI to the countries affiliated with WTO.

### **SUI GENERIS AND GI PROTECTION MECHANISMS IN DIFFERENT NATIONS**

The concept of Sui generis in the context of GI signifies a unique and specialised system of protection for certain types of products with a specific geographical origin and qualities, reputation and characteristics that are attributable to that origin. Various international agreements and treaties have acknowledged the concept of Sui generis.

So, to protect GIs, some countries have established unique laws and regulations that are tailored to the specific characteristics of these indicators. Following are examples of a '*sui generis*' approach adopted by various countries in intellectual property to create a distinct system for protecting GI. To protect the essence of GI all nations are allowed to recognize their concepts and own set of rules to ensure they receive appropriate legal protection, given their unique nature.

- France has a dual GI protection system one at the national level and another at the EU level. In France, GI is known as Appellation d'Origine Contrôlée (AOC) and Appellation

d'Origine Protégée (AOP) to indicate that the product's characteristic and influenced by its geographical origin and specific production criteria must be met to qualify for the protection of GI.

- Italy's GI protection system, which includes 'Denominazione di Origine Protetta' (DOP) and 'Indicazione Geografica Protetta' (IGP) is a balance of tradition and innovation. Its strength lies in its flexibility and adaptability to changing market demands.
- The United States uses a certification mark system for GIs, focusing on the source of goods. Its strength is its strong legal framework for trademark protection. However, the absence of a comprehensive GI-specific law can result in inconsistent protection and the possibility of confusion with trademarks.
- The inclusion of both agricultural and non-agricultural products in the Indian GI system makes it unique. However, an effective enforcement mechanism can help to prevent its abuse.
- The EU's system of Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) offers harmonized protection, enhancing consumer trust. It promotes regional development and preserves traditional knowledge. The EU's system can be complex to navigate due to varying national interpretations. Stricter requirements might stifle innovation and the focus on territoriality may overlook products with other unique distinctive characteristics.<sup>2</sup>

This study of GI protection mechanisms reveals diverse approaches have their own distinct strengths and weaknesses. Sui generis systems provide flexibility and inclusivity but might face challenges in terms of awareness and enforcement. The EU's PDO & PGI system offers harmonisation and strong consumer recognition but can be complex and potentially restrictive. Understanding these differences can aid in the formation of effective GI protection mechanisms that balance tradition, innovation and market demands.

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<sup>2</sup> Andrea Zappalaglio et al., 'Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?' (2019) 51(1) *International Review of Intellectual Property and Competition Law* <<https://link.springer.com/article/10.1007/s40319-019-00890-1>> accessed 18 August 2023

## **IMPACT OF GIS ON LOCAL ECONOMIES AND TRADITIONAL COMMUNITIES**

The economic benefits of GIs to local economies and traditional communities are substantial. Through GI products acquire unique qualities tied to their geographical origin and traditional production methods, resulting in elevated value and higher market prices. In addition, GI protection mandates the preservation of traditional production techniques and quality standards, ensuring the transmission of local knowledge and skills and fostering the continuity of traditional practices and cultural heritage. The association of products with renowned regions increases their visibility, thereby facilitating broader domestic and international market access and expanding the consumer base for local producers. Additionally, GIs also serve as attractions for cultural tourism, drawing visitors eager for authentic experiences and generating revenue for local businesses and services.

The modern consumer examines a product before purchase and makes an informed decision based on its authenticity, traceability and quality assurance. This is where GI has the potential to meet this demand by safeguarding the identity of the product and promoting trade and commerce. When consumers choose items with GI tags or certifications, they are not just purchasing a product; they are also embracing the heritage and dedication that define that region's commercial contribution. However, the drawback to this can be the strict regulations imposed for GI protection, which can lead to stifle innovation and adaptation to changing market demands. Traditional communities may find it challenging to meet the stringent criteria for GI protection, which may limit their economic opportunities. Additionally, as seen in the Navajo Nation's conflict over the term 'Navajo' which led to concerns of cultural appropriation.

## **SAFEGUARDING TRADITIONAL KNOWLEDGE THROUGH GIS**

Products identified as GI are often the result of traditional processes and knowledge carried forward by a community in a particular region from generation to generation. Similarly, some products identified by a GI may incorporate distinctive elements of a region's traditional artistic heritage. This is true for tangible products such as handicrafts crafted using natural resources

whose qualities are derived from their origin. GI can indirectly contribute to their protection by ensuring their preservation for future generations.

For instance, the Tea Board of India has been very active in enforcing GI rights connected to Darjeeling Tea<sup>3</sup> both in India and internationally. Darjeeling word and logo have been registered as certificates, collective and other forms of marks (as per the law in the region) in the US, UK European Union, Belgium, Netherlands, Luxembourg, Germany, Austria, Spain, France, Portugal, Italy, Switzerland, Egypt, Canada, Japan, Russia and Lebanon. This enables the Tea Board to protect GI in other countries as well. The process of GI protection, outlined by India, involves multiple steps and can be time-consuming and resource-intensive. The absence of a post-GI supervising agency can lead to a lack of proper oversight, allowing competitors to exploit GIs without consequences.

However, the effectiveness of GI protection in safeguarding traditional knowledge depends on its enforcement, both domestically and internationally. Countries need robust mechanisms to prevent unauthorized use and misuse of GIs, especially in the global marketplace.

### **CHALLENGES AND LIMITATIONS IN GI PROTECTION:**

To understand the challenges faced while filling GI, we need to understand the procedure of filing GI. Various countries have different laws and regulations regarding the filing of GI. In India, the process of filing GI is governed by the Geographical Indications of Goods (Registration and Protection) Act 1999.

**The entire process can be summarized into the following 9 steps:**

**Filing the Application** - An application is submitted along with necessary details and documents that describe the unique qualities and specifications of the goods to which it applies.

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<sup>3</sup> Dr. Sudhir Ravindran and Ms. Arya Mathew, 'The Protection of Geographical Indication in India - Case Study on 'Darjeeling Tea'' (*International Property Rights Index*, |2008) <<https://www.altacit.com/wp-content/uploads/2021/09/The-Protection-of-Geographical-Indication-in-India-Case-Study-on-Darjeeling-Tea.pdf>> accessed 16 August 2023

**Preliminary Scrutiny and Examination** - The application is reviewed for any issues and a limitation period of a month is granted to fix any discrepancies, if any.

**Issue of Show Cause Notice** - If there are any objections to the application, the applicant is notified of the same and they can remedy it by either responding to the objection or requesting a hearing of the matter.

**Advertisement** - Applications that have been accepted are then published in the Geographical Indications Journal within three months.

**Opposition to Registration** - Any person can raise objections within 3 months of publication, thereafter presenting arguments and evidence before the Registrar who may either accept or reject the application.

**Corrections and Amendments** - A final chance is given to the person filing for the GI to make corrections or amendments to the application by the Registrar.

**Registration** - In case the application is admitted, the registration date is considered to be the application filing date.

**Duration, Renewal and Restoration** - In India, the GI is valid only for 10 years, thereafter it can be renewed by payment of fees. In case not renewed, the same can be restored within a year by paying additional fees.

**Appeal to the Appellate Board** - If any person disagrees with the Registrar's decision, they can approach the Intellectual Property Appellate Board with their grievance within three months.

**Issues regarding GI Protection in India:** Section 9 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, talks about the concept of Prohibition of registration of certain geographical indications. Clause (f) clearly states, 'A geographical indication which is determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country'<sup>4</sup>. In simple

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<sup>4</sup> Geographical Indications of Goods (Registration and Protection) Act 1999

terms, it means that GIs can't be registered if they are considered common terms, making them no longer unique to a specific place.

The ambit of the word 'generic name' is quite broad as it includes the status of the name in areas where the product is used i.e. it is considered to be generic even if it's still special in India. To understand this, we can take an example of a special type of rice called 'Basmati' which is known for its aroma and flavour and it's grown in specific regions of India. If the name 'Basmati' becomes widely used for similar rice in other countries it lose its uniqueness. If India's laws consider the worldwide use of 'Basmati' in deciding if it's a generic term, then as a result, it might lose the ability to protect it as a GI, even though it's special in India.

It's necessary to protect GI rights from infringement and unauthorized use. However, there is a lack of administration both domestically and in export markets. Hence, creating an opportunity for competitors to exploit the reputation of GIs without any proper consequences.<sup>5</sup> India also lacks a Post GI supervising agency, i.e., an agency that looks after GI to prevent unauthorized use and misuse of GI.<sup>6</sup> It also misleads the consumers making them sceptical about the brand. It should also be noted that to make GI products popular globally, it takes a lot of hard work, time, money and good planning. Rural producers in India, who don't know much about marketing, have trouble making their GI products known around the world.

To summarise, the process of filing a GI in India is time-consuming and requires a substantial amount of resources, as it involves multiple steps. The nonexistence of a post-GI supervising agency can result in a failure of proper regulation, allowing competitors to exploit GIs without consequences. Furthermore, the concept of generic names and the potential loss of GI protection due to extensive utilisation can be significant barriers. This raises doubts about the balance between protecting GIs and ensuring that certain terms remain available to all producers.

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<sup>5</sup> Kasturi Das, 'Prospects and Challenges of Geographical Indications in India' (2010) 13(2) The Journal of World Intellectual Property <<https://doi.org/10.1111/j.1747-1796.2009.00363.x>> accessed 18 August 2023

<sup>6</sup> Shilpi Kumari, 'Geographical Indications Laws in India: Challenges and Issues - Intellectual Property - India' (Mondaq, 23 March 2021) <<https://www.mondaq.com/india/trademark/1048832/geographical-indications-laws-in-india-challenges-and-issues>> accessed 16 August 2023



## GLOBAL CHALLENGES

At a global level, developing countries face a different set of challenges. Developed countries possess valuable intellectual properties and seek to safeguard their interests through IPR conventions, resulting in tensions with developing countries, which are often accused of IP piracy. In the global scenario, trade liberalization through Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs) poses a threat to GI protection. The attempt to protect genetic resources through patents has limitations, such as the relatively short protection period (up to 20 years). However, these issues can be solved by extending GI protection through negotiations in trade agreements and upgrading national GI protection to include genetic resources protection.

## CULTURAL APPROPRIATION AND GIS

In simple terms, cultural appropriation means replicating elements from one culture in another culture without understanding their importance and significance. In the case of GIs, cultural appropriation takes place when elements or products closely linked to a specific geographical region and its cultural heritage are exploited without proper protection.

Cultural appropriation can lead to misrepresentation, occurring when products are reproduced without following their original cultural practices.<sup>7</sup>

Secondly, it can cause a loss of cultural significance. This takes place when products are mass-produced in a place outside the original geographical origin, resulting in the loss of unique features of specific cultural practices and the loss of the authentic heritage it represents.

Thirdly, it causes significant economic loss to authentic producers as entities sell the product by impersonating authentic producers and earning a profit, leaving the authentic producers with nothing much in their hands.

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<sup>7</sup> Tomer Broude, 'Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26(4) University of Pennsylvania Journal of International Law <<https://scholarship.law.upenn.edu/jil/vol26/iss4/2/>> accessed 18 August 2023

These issues can be remedied by implementing strategies that emphasize legal protection, community involvement, education and international collaboration, enabling countries to safeguard their cultural heritage and, in turn, contribute to the sustainable prevention of cultural identity and heritage. Cultural appropriation with regard to GIs emphasizes the need for cultural sensitivity and respect when using geographical names and traditional practices. Cases like the use of 'Navajo' without proper permission stress the importance of legal safeguards to protect against cultural appropriation.

## TECHNOLOGY AND GIS

The rise of the digital era and technological advancements has transformed the field of trade and commerce, highlighting both opportunities and challenges regarding the protection of GIs and cultural heritage. Blockchain technology is an example of one such technological advancement. Recently, blockchain technology has gained a lot of attention concerning cryptocurrency. However, it can also be profitable in the protection of GIs. Blockchain technology is a decentralized, digital ledger that records transactions in a secure and transparent manner. It is immutable, meaning that once a transaction is recorded, it cannot be altered or deleted. Hence, making it an ideal instrument for tracking the movement of goods through a supply chain.<sup>8</sup>

Blockchain technology can be used to create a digital GI registry. This registry would make it possible to keep track of the movement of GI products through the supply chain, ensuring that they are authentic in nature. At present, the EU and US both have different systems governing the protection of GIs, but both systems protect GIs as intellectual property and provide protection to align with the TRIPS definition and protection for GIs. Introducing blockchain technology would create a secure and transparent system for recording and tracking the movement of products through the supply chain, thus guaranteeing the authenticity of the product's origin and cultural heritage. Since it's difficult to manipulate the block in the blockchain by forging data, it's immune to counterfeiting GIs. Blockchain technology offers

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<sup>8</sup>What Is Blockchain Technology (IBM) <<https://www.ibm.com/topics/blockchain>> accessed 16 August 2023.

adequate solutions for GI protection by supplying transparency and traceability in the supply chain. However, its enforcement requires significant investments in infrastructure and education for producers and regulators,<sup>9</sup> The possible advantages of blockchain, such as preventing counterfeiting and ensuring the authenticity of GIs, should be weighed against the costs and complexities of adoption.

## CONCLUSION

Geographical Indications are a bridge between cultural heritage and intellectual property, protecting local knowledge and preserving traditional practices. The legal framework for the protection of GI has evolved globally, with various systems offering distinct advantages and challenges. While GIs boost local economies and promote authentic experiences for consumers, challenges like genericization and cultural appropriation persist. Utilizing technology like blockchain can enhance GI protection and traceability, ensuring the authenticity of products and reinforcing the connection between origin, cultural heritage and quality. The continuous evolution of GI protection mechanisms must consider the delicate balance between tradition, innovation and the diverse demands of the global market.

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<sup>9</sup> 'Geographical Indications and Blockchain' (TRST01, 26 November 2021) <<https://trst01.com/geographical-indications-and-blockchain/>> accessed 16 August 2023