

**Protection of Geographical Indications in International
Trade Law: An Analytical Study of Geographical
Indications (Registration and Protection) Act, 2020**



Submitted by

Raja Muhammad Wadeed Tabassum

Reg. No. 242 – FSL/LLMITL/S20

Supervised by

Dr. Fakhar Mahmood Makhdoom

Assistant Professor of Law, FSL, IIUI

Department of Law

Faculty of Shari'ah & Law

International Islamic University, Islamabad

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Submitted in partial fulfillment of the requirements for the degree of LLM with specialization in International Trade Law at the faculty of Shari'ah and Law, International Islamic University, Islamabad.

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APPROVAL SHEET

It is certified that the thesis submitted by Raja Muhammad Wadeed Tabassum, Registration No.242-FSL/LMITL/S20, titled “Protection of Geographical Indications in International Trade Law: An analytical study of Geographical Indications (Registration And Protection) Act, 2020”, as partial fulfilment for the award of degree of LLM International Trade Law, is up to the requirement in its scope and quality for award of the degree.

LLM Viva Voce Committee:

Supervisor

Dr. Fakhar Mahmood Makhdoom
Assistant Professor of Law
Faculty of Shari’ah & Law
International Islamic University

Signature: _____

Internal Examiner

Abdur Rauf Khatana
Assistant Professor of Law
Faculty of Shari’ah & Law
International Islamic University

Signature: _____

External Examiner

Misbah ul Mustafa
Advocate Supreme Court of Pakistan

Signature: _____

ABSTRACT

The geography of different regions of the world differs from one another and this unique geographical origin gives the region some distinctive attributes in terms of environment, biodiversity, traditions etc. Resultantly, the products are also impacted due to the geography of a region and several factors relating to environment and its biodiversity gives unique characteristics and reputation to its products. Moreover, traditional knowledge also has a solid impact on manufacturing of products. These products having specific qualities and reputation due the geographical origin are allocated signs which are known as geographical indications (GIs). This study focuses on protection of these geographical indications under International Trade Law and their impact on the economy of a country. Developing countries like Pakistan, which are rich in diversity, culture, values and identities, can largely benefit from the geographical indications. Some example of GIs in Pakistan include Pink Salt, Basmati rice, Chinioti woodwork, Sindhri mangoes, Kamalia khadar among many others. This study will also focus towards the factors due to which Pakistan was unable to enact a *sui generis* legislation for GIs until the year 2020, whereas its neighboring country India which share the same history and traditions was able to pass its *sui generis* legislation by the year 1999. The Geographical Indication (Registration and Protection) Act, 2020 of Pakistan vis-à-vis other countries like European Union and India will be discussed along with a roadmap towards the enactment of *sui generis* legislation in Pakistan. In the end, some recommendations will also be incorporated to improve the status of GIs within and outside the country.

DEDICATION

This is dedicated to my loving family, whose untiring support has been indispensable throughout my academic journey. To my beloved wife and my parents who have always supported and encouraged me at every step of the way. Your belief in me has been a constant source of inspiration for which I am forever grateful.

I would also like to express my deepest gratitude to my dedicated supervisor, Sir Dr. Fakhar Makhdoom Mehmood, whose guidance, expertise, and unwavering commitment to my success have played a pivotal role in shaping this research. Your mentorship and insightful feedback have been instrumental in my growth as a researcher.

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DECLARATION

I hereby declare that this thesis is the product of my own original research work. I also declare that no part of this work has been presented or published elsewhere nor has this been presented or submitted in any other Academic Institute. Wherever contributions of others have been involved, every effort has been made to indicate this clearly, with due reference to the literature, and acknowledgment of collaborative research and discussions.

Raja Muhammad Wadeed Tabassum

242-FSL/LLMITL/S20

TABLE OF CONTENTS

Approval sheet	iii
Abstract	iv
Dedication	v
Acknowledgments.....	vi
Declaration	vii
List of abbreviations	xii
Thesis statement.....	1
Introduction.....	1
Aims and objectives	3
Literature review	4
Research questions.....	5
Research methodology.....	5
Chapter 1	7
Geographical Indications – An overview	7
1.1 Introduction.....	7
1.2 General understanding on GIs	11
1.3 Importance of GIs	15
1.4 Impact of GIs on goods upon registration.....	19
1.4.1 Product uniqueness for better market access and producer premium exploitation	22
1.4.2 Sustainable rural economic development	24
1.4.3 Preservation of traditional knowledge	26
1.4.4 Protecting biodiversity and using natural resources sustainably	27

1.5	Delayed enactment of GI laws in Pakistan	29
1.5.1	India enacting <i>sui generis</i> legislation before Pakistan.....	30
Chapter 2		33
Geographical Indications in European Union.....		33
2.1	Historical background.....	33
2.2	Legislation in European Union	38
2.2.1	<i>Sui generis regime</i> of European Union.....	38
2.2.2	First European legislation for agricultural and food products	40
2.2.3	Regulation (EU) No 509/2006.....	41
2.3	International cases.....	41
2.3.1	Scotch Whisky Association vs. Michael Klotz	41
2.3.2	ORNUA Co-operative Limited, formerly The Irish Dairy Board Co-operative Limited vs. Tindale & Stanton Ltd España SL	43
2.4	Impact of GI in European Union:	44
Chapter 3		52
Geographical Indications in Pakistan		52
3.1	Introduction.....	52
3.2	Legislation process in Pakistan	56
3.2.1	Trademark Ordinance, 2001	56
3.2.2	Geographical Indications (Registration and Protection) Act, 2020	57
3.2.2.1	Overview of Geographical Indications (Registration and Protection) Act, 2020....	59
3.2.2.2	Salient features of Geographical Indications (Registration and Protection) Act, 2020:.....	60
3.3	Case studies.....	66

3.3.1	Basmati rice	66
3.3.1.1	Studies conducted for rice qualities	68
3.3.1.2	India – US dispute over Basmati rice	70
3.3.1.3	Legal battle on Basmati rice between India and Pakistan.....	74
3.3.1.4	Indian attempt to register Basmati in Australia.....	76
	<u> </u> Certification marks in Australia	76
	<u> </u> APEDA’s application for Basmati.....	76
	<u> </u> Survey evidence for ‘Basmati’	77
	<u> </u> Decision.....	77
3.3.2	Pink salt.....	78
3.3.2.1	Introduction	78
3.3.2.2	Expected impact of registering Pink salt	80
3.4	Economic potential of GIs in Pakistan.....	84
3.4.1	Recent efforts from Pakistan in GI sector	85
Chapter 4		88
Comparative analysis of Pakistan’s and European Union’s legislation on Geographical Indications		88
4.1	European Union’s legislation on GI	88
4.1.1	Introduction to Regulation (EU) No. 1151/2012:.....	88
4.1.2	Registration under EU laws:.....	91
4.2	Pakistan’s legislation on Geographical Indications:	95
4.2.1	Road to enactment of Geographical Indications (Registration and Protection) Act, 2020:	96
4.3	Analysis of Pakistan and EU GI laws:.....	99

4.3.1	With regard to the definition of Geographical Indications:	99
4.3.2	With regard to registrability and Generic Indications:	103
4.3.3	With regard to protection under sui generis laws:	107
Chapter 5		110
Conclusion and Recommendations		110
5.1	Conclusion	110
5.2	Recommendations.....	114
Bibliography		119

LIST OF ABBREVIATIONS

AOC	-	Appellation d'Origine Contrôlée
APEDA	-	Indian Agricultural and Processed food products Export Development Authority
CDA	-	Canonical Discriminant Analysis
CJEU	-	Court of Justice of the European Union
DA	-	Discriminant Analysis
DDA	-	Doha Development Agenda
DO	-	Designations of Origin
DOC	-	Denominazione d'Origine Controllata
EC	-	European Commission
EEC	-	European Economic Community
EU	-	European Union
GDP	-	Gross Domestic Product
GI	-	Geographical Indications
ICP-HRMS	-	Inductively Coupled Plasma Mass Spectrometry
ICP-MS	-	Inductively Coupled Plasma High-Resolution Mass Spectrometry

IGO	-	Intergovernmental Organization
IGP	-	Indo-Gangetic Plains
IRMS	-	Isotope Ratio Mass Spectrometry
MDG	-	Millennium Development Goals
OLP	-	Origin Labelled Products
OPLS-DA	-	Orthogonal Projections to Latent Structures Discriminant Analysis
PDO	-	Protected Designation of Origin
PGI	-	Protected Geographical Indication
PIPRA	-	Pakistan Intellectual Property Rights Association
PMDC	-	Pakistan Minerals Development Corporation
QSR	-	Quality Schemes Regulation
TDAP	-	Trade Development Authority of Pakistan
TRIPS	-	Trade-Related Intellectual Property Agreement
TSG	-	Traditional Specialty Guaranteed
USPTO	-	United States Patent and Trademark Office
WTO	-	World Trade Organization

THESIS STATEMENT

Pakistan's law on protection of Geographical Indications is compatible with obligations of the TRIPS (Trade-Related Aspects of IP Rights) Agreement, 1994 but it still needs several practical measures to realize the objective of the protections of Geographical Indications (Registration and Protection) Act, 2020.

INTRODUCTION

A geographical indicator (hereinafter GI) is a label given to products that are recognized as originating from a certain location and possessing traits or a reputation exclusive to that location. For a product to function as a GI, it must bear a sign designating its exclusive source. Moreover, the nation of origin of the product should be the primary source of its qualities, traits, or reputation.¹ Because the qualities rely on the geographic region of production, there is a clear link between the product and its original place of manufacture. Notable instances of this include Boseong green tea, Darjeeling tea², Havana cigars³, Bordeaux wine, and Scotch whisky.

The 'binding' legal protections were introduced for geographical indications by the World Trade Organization (WTO) in 1995.⁴ India enacted its first *sui generis* legal framework on geographical indications through Geographical Indications of Goods (Registration and Protection) Act, 1999 while Pakistan introduced laws relating to GIs in March, 2020 through Geographical

¹"Geographical Indications," WIPO, accessed February 2, 2021, https://www.wipo.int/geo_indications/en

² SC Srivastava, "Protecting the geographical indication for Darjeeling tea," *Managing the challenges of WTO participation: case study* 16 (2006). <http://www.wto.org>

³ Suratno Budi, "Protection of geographical indications," *IP Management Review* 2, (2004): 87–93. <https://ci.nii.ac.jp/naid/40006844888/>

⁴ Jayashree Watal, *Intellectual property rights in the WTO and developing countries* (London: Kluwer Law International, 2001), Springer.

Indications (Registration and Protection) Act, 2020. The European Union is providing protection to foreign and domestic since TRIPS agreement 1994.

The Article 22 of TRIPS defines GIs as indications that identify a good as “originating in the territory of a member (country) or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”.⁵

The name of country, area, or locale used to identify a product as coming from that location is known as a geographical indicator.⁶ The product's qualities and attributes stem solely or primarily from its physical surroundings,⁷ encompassing both natural and human factors.⁸ Given the close relationship between the qualities of an item, particularly one derived from agriculture, and the physical attributes of the production area, a geographical indication is seen as an important symbol of IP. These attributes include of the terrain, weather, and specific agricultural or manufacturing methods.⁹

Steep import tariffs protect the comparatively inefficient agricultural sectors of many emerging industrializing nations. The elimination of these tariffs often occurs through a series of gradual reductions, as required by the WTO and several national and multilateral free trade agreements (FTAs). From the standpoint of classical trade theory, free trade in agricultural

⁵ “Uruguay round agreement: TRIPS Part II – standards concerning the availability, scope and use of intellectual property rights,” WTO, last accessed January 8, 2021, www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm

⁶ Botha L, “Multilateral issues relating to geographical indications,” last modified 2004 at <http://www.tralac.org>

⁷ Höpferger M, “International protection of geographical indications – the present situation and prospects for future developments Symposium on the International Protection of Geographical Indication” WIPO, Geneva: 11– 17

⁸ Escudero S, “International protection of geographical indications and developing countries South Centre,” Working Paper 10

⁹ Timothy E. Josling, “What’s in a name? The economics, law and politics of geographical indications for foods and beverages Paper presented to the Institute for International Integration Studies,” *Institute for International Studies Trinity College*, no. 109 (2006): 33.

products should increase global economic wellbeing; yet, farmers in protected markets have good incentive to oppose the removal of import restrictions. However, there are situations in which taking certain tactical measures might lessen or even eliminate the effects of trade liberalization. In this study, we contend that "geographical indication" location marketing presents a viable option. In particular, under tariff removal, agricultural sub-sectors that face import threats may be able to reorganize themselves as producers of specialty outputs.

A GI can significantly affect a place's economic performance and cultural legacy since it maintains the identity of indigenous items.¹⁰ The legal and administrative features of the product certification process have received much of the attention in recent empirical study, despite the growing significance of geographical indication for regional development.¹¹ It is remarkable, given the significance of this subject, that there isn't much research on how GIs affect the stimulation or revival of area economies. Through analysis of the GI laws of Pakistan and the European Union (EU), this study aims to address the effects and implications of GIs using the example of "Basmati" rice and determine whether Pakistani laws are capable of protecting the goods and products in its geographical regions.

AIMS AND OBJECTIVES

To compare the legislation on Geographical Indications in Pakistan, its neighbor India, which paid heed towards this uprising trend a lot earlier than Pakistan and developed the laws two decades ago and also comparing it with developed countries i.e., European Union whose

¹⁰ ORIGIN (Organization for an International Geographical Indications Network) 2005 The future of geographical indications Position paper of the European Chapter of Origin (<http://www.origin-gi.com/index.php>)

¹¹ Dwijen Rangnekar, "The socio-economics of geographical indications: a review of empirical evidence from Europe," *United Nations Conference on Trade and Development- International Center for Trade and Sustainable Development*, no. 8 (May 2004): 40.

legislature was mindful enough to focus on this area well before it was highlighted in the TRIPS, as the idea of Geographical Indications was initiated by the legislature of European Union.

This research will tend to discover the shortcomings in legislation related to GIs in Pakistan and analyze the problems faced in implementation of said laws in the country and the possible consequences which may arise by neglecting this field of law.

Therefore, the aims and objectives of this thesis are:

1. To compare the Geographical Indications Laws of Pakistan and European Union.
2. To identify and highlight the shortcomings in the recently made legislation in the country and propose probable solution(s).
3. To discuss the inefficiency of present system in safeguarding the goods and products in the territorial jurisdiction of Pakistan.
4. To address the aspects enabling the vendors or manufacturers/producers to take advantage of such laws.
5. To identify the factors hindering the implementation of such laws in the country.

LITERATURE REVIEW

As the legislation related to the Geographical Indications is a recent topic in Pakistan, the Geographical Indications (Registration and Protection) Act was passed by the legislative bodies in the year 2020, hence only a few scholarly works exist on the GIs discussing the legal point of view. Most of the scholarly works related to GIs in Pakistan discuss the financial impact of *geographical indications* and in these studies the researchers have discussed its effect on the country's economy. In this context, no research has been done which directly deals with my topic i.e., the legal aspects

of the *geographical indications* in Pakistan. This is the modern and emerging concept in the field of IP which can have a great impact on the International Trade.

The literature review includes the different articles and research work of scholars which have done on the topic related to other countries in question. Literature review also includes the views of scholars, lawyers and analysts from different books, articles, journals, newspapers and research papers.

RESEARCH QUESTIONS

1. What exactly is *Geographical Indications* and how can it affect the economy of a developing country like Pakistan on one hand and developed countries like the European Union?
2. What are the constraints in the practical implementation of the Geographical Indications (Registration and Protection) Act, 2020 in the country?
3. Are there any shortcomings in the Act in question, keeping in view the scenario of the country? If so, what is the proposed solution(s)/ recommendation(s) to improve the applicability of such laws?
4. To find out the possible factors that led the legislative bodies to address this particular field of law and how our neighboring country like India was so much ahead of us in addressing the same issue?

RESEARCH METHODOLOGY

A comparative and analytical approach shall be adopted for the research work. Firstly, I intent to discuss what Geographical Indication actually is and what is its importance/ impact in the

International Trade. Some case laws on the subject from across the world shall be discussed to analyze the implementation of GIs across the world. Then a comparative analysis of laws shall be done with the developed countries i.e., EU, in order to explore deficiencies in the current legal framework in Pakistan and look for its probable solution and also to look for a way as how to implement such laws in Pakistan efficiently and effectively.

Primary sources such as books and secondary sources such as journals, law magazines and articles will be consulted. Libraries and internet will also be will be consulted as a tool of research and data shall be collected from articles, dailies, research papers, policy paper journals and electronic media as well as any other new techniques and means used for research.

CHAPTER 1

GEOGRAPHICAL INDICATIONS – AN OVERVIEW

1.1 INTRODUCTION

What is Geographical Indication (hereinafter GI)? When was the term GI first coined? Where do the legal framework of GI take its force from? What rights does a GI provide? What distinguishes a trademark from a geographical indication? For what type of products can GI be used? What are the impacts of GI on the economy or otherwise? These, among many others, are the questions that first come into the mind of anyone who has developed some interest in the topic. This chapter tends to answer the questions relating to geographical indications in such a way that an enthusiast can clearly apprehend what this term is about, including its meaning, application, scope, importance and international legal framework.

The World IP Organization (hereinafter WIPO) define geographical indication as:

“A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

In order to function as a GI, a sign must identify a product as originating in a given place.”¹²

¹² “Geographical Indications,” World Intellectual Property Organization, accessed Dec 7, 2022, https://www.wipo.int/geo_indications/en/.

The product's reputation or qualities must also stem from its location of origin, in addition to its inherent qualities. Since a product's characteristics depend on its place of manufacture, there is a clear link between the product and its original production location.

The GI is not a business source but a geographical origin. It is a product from a specific territory that has a GI protected label on it and is manufactured keeping in view the local practices, which is the reason of the special character of that product. The GI can be said to be a triptych which means that it can be divided in to three segments i.e., “product – geographical origin – quality”.¹³ The connection of a GI labelled product to a specific location carries within a message about the exclusivity of the product. This exclusivity or uniqueness of the product is either due to the presence of a particular element in that specific territory from where the product originates or it may sometimes be due to the human factors that have been developed in that region over the years or sometime it can be due to the combination of both of these aspects.¹⁴

GIs have close relations with history and customs and is considered as a part of cultural heritage of a society or a region, so much so that in some cases a particular product may sometime become a symbol an area. This is mainly due to the reason that GIs are sometimes the outcome of a custom or tradition that exist in a place,¹⁵ for example, the Roquefort Cheese from France. It's one of the most well-known blue cheeses in the world and is produced from sheep's milk in Southern France. It is a GI registered product for its unique characteristics including a sharp smell,

¹³ Dwijen Rangnekar, “The Socio-Economics of GIs – A Review of Empirical Evidence from Europe,” *UNCTAD-ICTSD Project on IPRs and Sustainable Development*, no. 8 (May 2004): 24, <http://ipbio.org/pdfs/papers/a.pdf>, last accessed June 8, 2023.

¹⁴ Daniele Giovannucci, Timothy E. Josling, William A. Kerr, Bernard O'Connor, and May T. Yeung, "Guide to geographical indications: Linking products and their origins (summary)," *International Trade Centre*, (2009): 5-6, <http://www.intracen.org/publications/>, last accessed June 20, 2023.

¹⁵ Hélène Ilbert and Michel Petit, "Are geographical indications a valid property right? Global trends and challenges," *Development Policy Review* 27, no. 5 (2009): 504, <https://doi.org/10.1111/j.1467-7679.2009.00457.x>, last accessed July 20, 2023.

distinct taste, blue veins and it utilizes traditional knowledge and knowhow in various steps of its manufacturing such as feeding the sheep as per the cultural traditions and storing cheese in the natural Combalou caves located in Roquefort-sur-Soulzon.¹⁶

Products registered under the GIs can also be classified as “territorial brands”, it is due to the fact that these products are not produced because of any market demand nor they are the result of an initiative by any business entity, rather they are mostly the products that already exist in certain places due to specific type of atmosphere or soil or sometime are a result of traditional practices. Thus, these products are naturally connected to a specific area.¹⁷

From all of above discussion, there’s a question that comes into the mind of the reader as to why GIs are considered as IP. The answer to this is the similarity between the GIs and trademarks. Similar to trademarks, GIs are also signs which convey some specific information about the product. However, the GIs is not about all the products in the same category but it protects label on the product, for example, there are certain type of teas but tea from Indian West Bengal’s Darjeeling district received legal GI protection under WTO’s TRIPS Agreement in the year 2004.¹⁸

Looking at the legal status of GIs, it can be found in major international legal frameworks for protection of industrial and IP including TRIPS Agreement as well as Paris Convention for the Protection of Industrial property.

¹⁶ Yashwardhan Singh, “Protection of Traditional Knowledge Through Geographical Indications,” The IP Law Post, last modified September 12, 2020, <https://iplawpost.wordpress.com/2020/09/12/protection-of-traditional-knowledge-through-geographical-indications/>.

¹⁷ Steve Charters and Nathalie Spielmann, "Characteristics of strong territorial brands: The case of champagne," *Journal of Business Research* 67, no. 7 (July 2014): 1466, <https://doi.org/10.1016/j.jbusres.2013.07.020>, last accessed august 8, 2023.

¹⁸ Kaushik Basu, “Darjeeling Tea- A Geographical Indication (GI),” Darjeeling Tea Association, accessed Dec 11, 2022, https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_11.pdf.

In TRIPS Agreement, Section 3 pertains to Protection of GIs while Article 1(2) of Paris Convention for the Protection of Industrial Property include ‘indications of source’ as object of protection of industrial property. Court of Justice of the European Union (CJEU) has also recognized the character of GIs as type of industrial property rights.¹⁹ EU protects GIs through Regulation 1151/2012,²⁰ the application of which is limited only for the foodstuffs and agricultural products.²¹

However, on international level the scope of GIs is not only restricted to agricultural products and foodstuffs but also include any type of product that fulfills the criteria.²² Moreover, not all agricultural products and foodstuffs fall in the scope of GI and hence are not considered eligible for protection under GIs. For instance, as explained above the case of Darjeeling Tea, it is a GI protected product but not every tea is protected under GIs.

In European Union, mineral waters and spring waters are excluded from GIs but in other countries like United States, China, Republic of Serbia and many other, mineral water and spring waters²³ are given protection under GIs.

Article 5 of Regulation 1151/2012 of the European Parliament and of the Council states that GI is “a name which identifies a product, originating in a specific place, region or country and the quality, reputation or other characteristics of the product are specifically due to its geographical

¹⁹ C. Case, "108/01 Consorzio del Prosciutto diParma and Salumificio S," *Rita SpA v. Asda Stores Ltd. and Hygrade Foods Ltd* (2003), last accessed September 11, 2023.

²⁰ “Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs,” Official Journal of the European Union, last modified Nov 21, 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1151>.

²¹ “Regulation (EU) No 1151/2012,” Official Journal of the European Union.

²² “Agreement on Trade-Related Aspects of Intellectual Property Rights as amended by 2005 Protocol,” The WTO Agreements, Article 22, last modified 2005, https://www.wto.org/english/docs_e/legal_e/trips_e.htm#art3.

²³ “Geographical Indication,” Water Vrnjci, Reg. no. 28, accessed Dec 15, 2022, <https://www.zis.gov.rs/wp-content/uploads/Reg-no-28-Water-Vrnjci.pdf>.

origin”.²⁴ Keeping in view Article 5 of the regulation *ibid*, it can be said that only names are accepted for protection under GI in European Union, on the contrary, the TRIPS Agreement defines GI as “indications”, thereby “being more generous and wider enough to include words, figurative sign and even shapes”.²⁵

1.2 GENERAL UNDERSTANDING ON GIs

The term GI is becoming famous with the passage of time. It is due to its relevancy with several important aspects in the legal systems throughout the world such as intellectual policy, trade and agricultural policy.²⁶ The world has become a global village due to advancement in the field of science and technology and people throughout the world are well communicated with each other from miles away across the continents. Due to this advancement and connectivity, it is evident that political and economic interests will fuel anxiety regarding authenticity and heritage of products and hence regulatory consideration will be required.²⁷

In the international legal framework, it can be seen that GIs are treated differently. If one look at the legal framework of EU, GIs are found to be a form of IP, just as Trademarks are. In fact, GIs in European Union are considered more extensive and superior than that of Trademarks. On the other hand, looking at the legislation of the New World Countries such as USA, Canada,

²⁴ Official Journal of EU, “Regulation (EU) No 1151/2012,” Article 5(2).

²⁵ Dev Gangjee, “Protecting geographical indications as collective trademarks: the prospects and pitfalls,” *Institute of Intellectual Property, Tokyo, Japan*, (2006), http://www.iip.or.jp/e/e_summary/summary2005.html, last accessed August 22, 2023.

²⁶ Tim Josling, “The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict,” *Journal of Agricultural Economics* 57, no. 3 (Sept 2006): 337-363, <https://doi.org/10.1111/j.1477-9552.2006.00075.x>, last accessed July 2, 2023.

²⁷ Susanna Dechent and Pauline Sadler, “Geographical Indications in the Wine Industry,” *Legal Issues in Business* 12, (2010): 3-9, <http://138.25.65.110/au/journals/LegIssBus/2010/2.pdf>, last accessed September 29, 2023.

New Zealand and Australia, the GIs are treated as subcategory of trademarks.²⁸ In a simpler way, it can be said that in New World countries the trademark is considered superior, however it is completely opposite in the European legislative framework. In EU regulations, GIs include appellations of origin, and by this inclusion it not only includes the geographical designations but also include viticultural and winemaking philosophies and practices that indicate distinctive traits exclusive to specific location.²⁹

Different products can be considered for protection under geographical indication. These products can be categorized based on the factor due to which they have the uniqueness to be registered and protected under GIs. For example,

- a) Agricultural products and foodstuffs can be considered for protection under the GI due to their distinctive qualities that comes from natural factors including soil, weather or temperature etc. or even all of these included. Examples of such products include Basmati rice, West Sumatra Gambir, Delanggu rice, Darjeeling tea, Brebes Salted Egg etc.,
- b) Handicrafts and industrial products due to their distinctive features because of the special expertise of human resource which is involved in the production and manufacturing process. Some of the examples of such products include Juwana Brass Crafts, Jepara carved furniture, Swiss made watches and others.

GI rights in a region have a great potential to improve community welfare, thus they cannot be ignored or even assumed to have no direct advantages for welfare. Rather, they must be

²⁸ Roland Herrmann and Thilo Marauhn, "The Law and Economics of Geographical Indications: Introduction," *Estey Journal of International Law and Trade Policy* 10, no. 1 (2009): 12-19, <http://dx.doi.org/10.22004/ag.econ.48789>, last accessed October 2, 2023.

²⁹ Kal Raustiala, and Stephen R. Munzer, "The Global Struggle over Geographical Indications," *European Journal of International Law* 18, no. 2 (April 2007): 337–365, <https://doi.org/10.1093/ejil/chm016>, last accessed September 18, 2023.

protected and empowered to the best extent possible.³⁰ The existence of GI goods will undoubtedly enhance the region's reputation; however, GI can also aid in the preservation of the area's biological resources, traditional knowledge, and natural beauty, all of which will contribute to the development of agro-tourism. GI also encourages the emergence of other related activities like product processing. The economic activity resulting from the GI will immediately boost the economy of the geographical area once a product from that region is recognized under the GIs.³¹

The registration of GI product will not only be a positive factor for environmental sustainability because the environment because of which a product is registered will be expected to be maintained vis-à-vis the human resource in the area will also flourish, thereby creating a positive impact on the economy.³²

There are three types of quality systems introduced in the Regulation 1151/2012 of European Parliament or it can be said that there are three types of Geographical indication in European Union food legislation which are intended to clarify the characteristics of the agriculture or foodstuffs which are considered as value-adding characteristics. By using this system, it is easy to identify and communicate the reason for the registration of products.³³ These types of GIs are as follows:

³⁰ Yeti Sumiyati, Tatty Aryani Ramli and Rusli Kustiaman Iskandar, " Sociological Juridical Study on Geographical Indications as a Source of Local Original Income (PAD)," *MIMBAR: Journal of Social and Development* 24, no. 1 (2008): 87, <https://ejournal.unisba.ac.id/index.php/mimbar/article/view/256/126>, last accessed November 4, 2023.

³¹ Winda Risna Yessiningrum, "Legal Protection on Geographical Indication as A Part of Intellectual Protection Rights," *Jurnal IUS: Kajian Hukum dan Keadilan* 3, no. 7 (2015): 47, <https://media.neliti.com/media/publications/43601-ID-legal-protection-on-geographical-indication-as-a-part-of-intellectual-protection.pdf>, last accessed November 6, 2023.

³² M. Shidqon Prabowo, "Community Empowerment through Optimization of Geographic Indication (a Study on Local Products in Tambakroto Village, Sayung District, Demak Regency)," *Journal of Private and Commercial Law* 3, no. 1 (May 2019): 31, DOI: 10.15294/jg.v1i6il.17748, last accessed June 19, 2023.

³³ Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar Publishing, 2014), 512, <https://doi.org/10.4337/9781782546726>, last accessed July 22, 2023.

- Protected Designation of Origin (PDO)
- Protected Geographical Indication (PGI)
- Traditional Specialties Guaranteed (TSG)

When a product's qualities or features are primarily derived from a certain geographic location and are developed to their ultimate form in that area, the product is registered or protected under PDO. This means that every step involved in completing a particular product, from processing raw materials to packing the finished item, must start and be completed in the designated area where the product is registered or protected.

Moreover, it is upon the producer, registering the product, to satisfy the authorities that the product intended for registration/ protection is not being produced anywhere in the world or even if it is under production in some other area around the world, the product being registered is different from others because of its unique quality, taste, reputation or other characteristics. Some of the examples of PDOs include cured meats such as Tajima Gyu, Prosciutto di Parma etc., and certain cheeses such as Feta, Grana Padano, Queso Manchego etc., some fruits, olive oils, wines and vegetables.³⁴

A PGI is used for the products that have at least one stage of production—that is, preparation, production, or processing—completed in the region for which they are registered. The reason is that due to the completion of stage of production in a specific area will give that product unique quality or characteristic specifically attributed to that region. Some examples of PGIs

³⁴ Toshiko Takenaka, *Intellectual Property in Common Law and Civil Law* (Edward Elgar Publishing, 2013), <https://doi.org/10.4337/9780857934376>, last accessed April 1, 2023.

include meat such as Scotch Beef, Kobe Beef and many types of French poultry, certain bakery products and fish such as Scottish Farmed Salmon.

The third type of GI i.e., Traditional Specialties Guaranteed (TSG) is when a product is registered because of a custom pertaining to its manufacturing process or composition. However, the tradition is considered as such when it is in existence for at least 25 years. In this type of GI, the specific location is not in question. It is the tradition which gives unique quality or attributes specific characteristics to the product. An example of TSG is Jamon Serrano, which is a kind of dry-cured ham produced in Spain.³⁵

1.3 IMPORTANCE OF GIs

In their journal, published in the year 2010, Michael S. Hand and Stephen Martinez argued that the consumers who prefer local products are generally concerned about the manufacturing process of the products and also the manufacturers.³⁶ As per the journal, two elements are highlighted by the writers explaining the notion behind the local product.

First element is that the consumer seeking local products is mostly in search of direct communication with the producers, the reason of which is to maintain the minimum distance between the consumer and producers and secondly, worried about how production practices may affect social and environmental sustainability, consumers are starting to voice their support for small farms and animal welfare practices.³⁷

³⁵ Irina Pilvere and Mihails Šilovs, "Economic rationale for Protected Geographical Identification introduction for Latvian canned sprats," In *International Scientific Conference Rural Development*, (2017): 1244-1248, <http://doi.org/10.15544/RD.2017.119>, last accessed September 22, 2023.

³⁶ Michael S. Hand and Stephen W. Martinez, "Just what does local mean?," *Choices* 25, no. 1 (2010): 1-4. <https://www.jstor.org/stable/choices.25.1.02>, last accessed August 9, 2023.

³⁷ Steve Martinez et al., *Local food systems; concepts, impacts, and issues*, (Diane Publishing, 2010), <https://mpra.ub.uni-muenchen.de/id/eprint/24313>, last accessed September 18, 2023.

Upon closely monitoring the sale pattern of food products, it can be found that the purchasers of such products in agricultural markets prefer local products due to their freshness, fair price, local production, its availability in higher quality and above all the interaction with the producer.³⁸ The preference of consumers for local products can be noted by the fact that the purchasers are willing to buy the product for an extra sum of money if it is from a local origin.³⁹

The phrase "sustainably sourced food" was first used by Dowd and Burke⁴⁰ to refer to food that has been produced ethically, including both organic agriculture and other factors including animal welfare, buying regional products, and supporting small farmers. They particularly mention the following alternatives in their study: (1) food that is bought straight from the source (i.e., by using a home delivery service or by visiting agricultural and animal markets); (2) organic food; and (3) products that the consumer believes to be made locally. There is either direct consumer-producer interaction or confirmation that the food was produced in compliance with sustainable standards in each of the three aforementioned cases.⁴¹

The definition of a brand is not consistent. The notion is defined differently by different authors. The scope of the notion's definition is one illustration of this. Some people use a more limited definition of brand, which is "the combination of a name, words, symbol, or design that distinguishes the product and a firm and differentiates it from the competition."

³⁸ Craig A. Bond, Dawn Thilmany, and Jennifer Keeling Bond, "Understanding consumer interest in product and process-based attributes for fresh produce," *Agribusiness: An International Journal* 24, no. 2 (2008): 231-252. <https://doi.org/10.1002/agr.20157>, last accessed October 8, 2023.

³⁹ Charlotte Weatherell, Angela Tregear, and Johanne Allinson, "In search of the concerned consumer: UK public perceptions of food, farming and buying local," *Journal of Rural Studies* 19, no.2 (2003): 233-244, [https://doi.org/10.1016/S0743-0167\(02\)00083-9](https://doi.org/10.1016/S0743-0167(02)00083-9), last accessed August 9, 2023.

⁴⁰ Kylie Dowd, and Karena J. Burke, "The influence of ethical values and food choice motivations on intentions to purchase sustainably sourced foods," *Appetite* 69 (2013): 137-144, <https://doi.org/10.1016/j.appet.2013.05.024>, last accessed May 11, 2023.

⁴¹ Pilar Fernández-Ferrín et al., "Geographical indication food products and ethnocentric tendencies: The importance of proximity, tradition, and ethnicity," *Journal of cleaner production* 241 (2019), <https://doi.org/10.1016/j.jclepro.2019.118210>, last accessed April 9, 2023.

On the other hand, the idea might also be generally described as anything that sets one product apart from others that are comparable.⁴² This will have a word, symbol, design, brand name, or a combination of one or more of these that influences how consumers use the product and how other people perceive its value.

A brand is a guarantee of quality, reliability, and meeting the needs and expectations of the consumer. It provides details on the product's history and makes a case for why one should select it over competing goods. Stories about the process of making the goods can promote and enhance a brand (e.g. organic and eco-friendly). Such narratives, which are supported by organic and environmental certification, will allow manufacturers to capitalize on the rising demand and desire for organic and environmentally friendly products as well as the willingness of customers to give an extra sum of money to buy such goods.

Both developed and emerging nations sell their agricultural products using brands. Zespri's kiwi fruit, Chiquita bananas, Idaho potatoes, Pink Lady apples, Darjeeling tea, and Jamaica Blue Mountain coffee are some examples of renowned brands of agricultural products.

Consumers are willing to pay extra, according to studies, for unique goods that are marketed under brands. These studies, for instance, have looked at the profitability of agricultural products marketed with geographic indications or origin brands.⁴³ Additionally, research conducted for the European Commission projected that global sales value of goods with GIs

⁴² Chris Docherty, "Branding Agricultural Commodities: The development case for adding value through branding," *Topic Brief for New Business Models for Sustainable Trading Relationships project* (2012), <https://www.iied.org/sites/default/files/pdfs/migrate/16509IIED.pdf?>, last accessed July 22, 2023.

⁴³ Stephan Marette, "The collective-quality promotion in the agribusiness sector: An overview," (2005), DOI: 10.22004/ag.econ.18511, last accessed August 19, 2023.

registered in the European Union was €54.3 billion, a 12% increase from the sales value made in 2005.⁴⁴

Furthermore, there are actual instances of branded agricultural goods sold at a premium in Africa. As an illustration, consider how Namibian beef meat products are marketed under the name "Natural Reserve." The brand, which is protected as a trademark and is owned by the Meat Corporation of Namibia, the largest processor and exporter of beef in the nation, assisted in generating an additional US\$25 million annually over the price paid to equivalent farmers.⁴⁵

As agricultural producers must uphold and improve product quality to satisfy brand promises, facilitate traceability, and give customers access to the products of their choosing, brands will aid in meeting customer needs. This tool will make it easier for customers to recognize a certain agricultural product and associate it with its brand, aiding in customer retention and luring in new ones.

As a result, the competitive position will be further strengthened and producers' revenue will be stable. Rural development is positively impacted by raising farmers' incomes. It encourages farmers to preserve their surroundings and lessens poverty by preventing the rural people from migrating to metropolitan areas. Thus, branding and marketing agricultural products will be consistent with and help to achieve the objectives of many of the development programs, strategies, and plans of African nations and the African Union.⁴⁶

⁴⁴ Michael Blakeney, "Intellectual property and food labelling: Trademarks and geographical indications," In *International food law and policy*, (2016): 101-143, DOI: 10.1007/978-3-319-07542-6_5, last accessed September 18, 2023.

⁴⁵ Docherty, "Branding Agricultural Commodities," 20.

⁴⁶ Getachew Mengistie Alemu, "Strategic use of branding for competitiveness: the rationale for branding and marketing agricultural products of African countries," *Journal of Fair Trade* 1, no. 2 (2019): 6-13, DOI: 10.2307/j50020019, last accessed October 1, 2023.

1.4 IMPACT OF GIs ON GOODS UPON REGISTRATION

International observers from a wide range of disciplines agree that GIs have socioeconomic benefits, therefore the EU is not alone in highlighting these benefits.⁴⁷ GIs are much more than just IP rights because of the dynamics surrounding the GI technique and protection, which can have a variety of direct and indirect impacts. They can also serve as a signal of a product's quality and authenticity.

The primary purpose of GIs is to indicate the relationship between place of origin of the product and its other features including quality and reputation etc. Because of the asymmetry of information in the market, distinguishing indications like GIs are required. In fact, seller typically has more knowledge about product quality than buyer, who frequently is unable to verify all of a product's qualities before buying it and, in some cases, even after ingesting it.⁴⁸

Market inefficiencies in this situation result from producers' incentives to make inferior goods, especially when a single producer cannot be recognized. This allows opportunistic manufacturers to profit off of those who continue to make great investments. This affects the buyer, who is misled about the product's quality, as well as the premium manufacturers, who are subject to unfair competition from subpar products.

Similar to how a trademark helps in agro-food markets where information asymmetry is particularly prominent due to the wealth of experience and credence features, GIs help in countering the negative effects of information asymmetry. It gives manufacturers a way to identify

⁴⁷ Rangnekar, "The Socio-Economics of GIs," 30.

⁴⁸ Daniele Giovanucci, Elizabeth Barham, and Richard Pirog, "Defining and marketing "local" foods: Geographical indications for US products," *The journal of world intellectual property* 13, no. 2 (2010): 94-120, DOI: <https://doi.org/10.1111/j.1747-1796.2009.00370.x>, last accessed May 11, 2023.

quality and the reputation that has grown along with it through time. This enables customers to utilize reputation as a predictor of future quality levels in situations where product quality cannot be determined in advance.⁴⁹

Consumers that employ recurring buying habits and brand loyalty in their hunt for quality are the foundation of reputation. From the standpoint of the producer, these frequent value judgments build an intangible asset that top-notch producers continuously invest in. In situations where there is an informational asymmetry, reputation can therefore act as both a predictor and an inducer of quality.

Each participant in GI supply chain shares the reputation that the GI signals. Even if they are legally and financially independent, these participants collaborate to develop the GI reputation, which eventually becomes the group's common asset. Unlike trademarks, which just show the connection between the mark's owner and his products or services and provide no explicit guarantee of quality, GIs indicate origin and certain associated attributes. Thus, when a GI product has a strong general reputation, it becomes a valuable instrument for indicating quality.⁵⁰ GI has the power to guarantee the welfare of manufacturers by defining their reputation, push manufacturers to maintain quality, and enhance customer welfare by lowering search costs.⁵¹

These GI responsibilities are jeopardized, nevertheless, by unethical economic practices like free riding and leveraging the GI brand. First, there has been a suggestion that the communal character of the GI reputation creates a "prisoner's dilemma" that may result in a lower overall

⁴⁹ Daniele Giovanucci, "Defining and marketing "local" foods,"

⁵⁰ Jason A. Winfree, and Jill J. McCluskey, "Collective reputation and quality," *American Journal of Agricultural Economics* 87, no. 1 (2005): 206-213, <https://doi.org/10.1111/j.0002-9092.2005.00712.x>, last accessed April 19, 2023.

⁵¹ Angelo M. Zago, and Daniel Pick, "Labeling policies in food markets: Private incentives, public intervention, and welfare effects," *Journal of Agricultural and Resource Economics* 29, no.1 (2004): 150-165, <https://www.jstor.org/stable/40987237>, last accessed May 18, 2023.

quality level. This implies that other identifying marks may be more helpful in encouraging producers to uphold quality standards than geographical indications. Second, as will be discussed in more detail below, the financial significance of the GI reputation attracts misappropriation from people outside the designation who enter the market with inferior knockoffs that can damage the GI reputation.

A process known as the "institutionalization of reputation" must be implemented in concert to protect the GI reputation in order for GIs to improve producer and consumer welfare in the face of unfair business practices from both inside and outside the group.⁵² This is the legal process of recognizing the product's reputation and enshrining it in an institutional framework that grants the exclusive right to use the product to producers inside the defined territory who diligently adhere to the code of production practices. This has grown in significance in recent years as regional brands have been progressively usurped due to a greater understanding of their marketing potential, as will be detailed below.

Particularly developing nations have fallen victim to the economic piracy of the IP included in conventional goods like basmati and Rooibos. International trademark registers amply attest to the commercial viability of regional names, as evidenced by the sharp rise in registrations including these designations. These unethical business methods deceive consumers in addition to harming producers' reputations and causing them to lose money.⁵³ It is advantageous for both the

⁵² Giovanni Belletti, "Origin labelled products, reputation and heterogeneity of firms," In *67th Seminar, October 28-30, 1999, LeMans, France*, no. 241035, European Association of Agricultural Economists, 1999, DOI: 10.22004/ag.econ.241035, last accessed July 30, 2023.

⁵³ Kasturi Das, "Socioeconomic implications of protecting geographical indications in India," *Centre for WTO Studies*, (2009): 55, <https://dx.doi.org/10.2139/ssrn.1587352>, last accessed September 22, 2023.

customer and the producer for GIs to prevent usurpation by institutionalizing collective reputation.⁵⁴

1.4.1 PRODUCT UNIQUENESS FOR BETTER MARKET ACCESS AND PRODUCER PREMIUM EXPLOITATION

Business-wise, GIs provide a useful tool for differentiating products that can improve manufacturers' access to markets and enable value addition. Agricultural producers have been driven to innovate manufacturing and promotion of their goods in light of increasingly difficult marketing conditions, including a decline in commodity prices as well as greater competition on commodity markets and changing customer preferences.

GIs offer tools that make it easier to develop regionally specific niche markets. They facilitate the process of "disconnecting" the GI product from commodity markets by integrating local features, such as environmental circumstances and local expertise, into the GI product. GIs transform a region's physical attributes into a qualitative trait that consumers can recognize and appreciate in this method.⁵⁵ The product/origin relationship is likely to have a direct impact on the competitive advantage created by differentiation; the stronger the relationship, the more significant the advantage will be. The value of the differentiator, however, depends on customer recognition,

⁵⁴ Brian Ilbery, and Moya Kneafsey, "Registering regional speciality food and drink products in the United Kingdom: the case of PDOs and PGIs," *Area* 32, no. 3 (2000): 317-325, <https://doi.org/10.1111/j.1475-4762.2000.tb00144.x>, last accessed October 4, 2023.

⁵⁵ Alessandro Pacciani et al., "The role of typical products in fostering rural development and the effects of regulation (EEC) 2081/92." In *73rd seminar of the European Association of Agricultural Economists*, (2001): 1-17, https://www.researchgate.net/publication/228776258_The_role_of_typical_products_in_fostering_rural_development_and_the_effects_of_regulation_EEC_208192, last accessed November 5, 2023.

therefore a specialized marketing approach means greater production and marketing costs, including promotional fees.⁵⁶

GIs have the ability to facilitate the achievement of economies of scale that are significant enough to offset the costs associated with creating, promoting, and maintaining the unique product. This is due to their support of group production and marketing. Through a network of institutions that control participation, GIs contribute to the maintenance of the competitive advantage by keeping new competitors out of the market. According to this strategy, GIs offer a practical and durable way to distinguish origin-based goods, enhancing market access for the holders of the GI rights.

Greater sales volumes have the potential to increase producer incomes, but GIs also show a "collective process of value creation"⁵⁷ in which local resources are progressively incorporated into the finished product. Because it enhances the "immaterial component of food consumption"⁵⁸ for customers, this value addition—which is made up of various social, cultural, and economic aspects impacted by the product's country of origin—may make it possible to command a premium price.

Research has indicated that commodities that can be identified by their nation of origin are valued more highly by consumers.⁵⁹ Any premium that may arise from the value addition

⁵⁶ Edward Chamberlin, "Monopolistic competition and Pareto optimality," *Journal of Business & Economics Research* 2, no. 4 (1933): 17-28, <https://www.usf.edu/arts-sciences/departments/economics/documents/monopolistic-competition.pdf>, last accessed November 5, 2023.

⁵⁷ Dominique Barjolle, and Bertil Sylvander, "Some factors of success for origin labelled products in agri-food supply chains in Europe," (2002). <http://www.origin-food.org/pdf/partners/bs19%20fev02.Pdf>, last accessed May 12, 2023.

⁵⁸ Sophie Reviron, Erik Thevenod-Mottet, and Nadja El-Benni, "Geographical indications: creation and distribution of economic value in developing countries," *NCCR Trade Working Papers* 14 (2009), <https://www.research-collection.ethz.ch/handle/20.500.11850/573881>, last accessed June 4, 2023.

⁵⁹ Stéphan Marette, "The collective-quality promotion in the agribusiness sector: An overview," (2005), 10.22004/ag.econ.18511, last accessed June 22, 2023.

procedure overall may only be appropriated by those who are granted permission to use GI. GI premia may not go away or may potentially get worse over time as awareness of the condition increases and it becomes easier to identify.⁶⁰ Furthermore, it has been observed that by avoiding tariffs that may be applied to the commodity product, the decommodification of GIs may increase profitability.⁶¹

1.4.2 SUSTAINABLE RURAL ECONOMIC DEVELOPMENT

GIs have the potential to favor rural development dynamics by being integrated into particular areas and assisting in the valuing of certain resources.⁶² In fact, GIs honor the unique resources used to create the GI product. GIs have the potential to increase producer revenue from origin-based commodities by creating a basis for geographical specificity-based competitive advantage, which in turn reduces competition from non-differentiated products.⁶³

In addition to the main GI stakeholders, GIs have a larger territorial effect. GIs have the potential to boost local agro-tourism and employment opportunities. For instance, the Comté cheese business has seen a growth in employment, and numerous wine regions testified to the potential for GIs to have favorable effects on agro-tourism. Based on the experience of the EU, it has been observed that the potential for job creation is influenced by both the GI's laws and the labor-intensiveness of the products.⁶⁴

⁶⁰ Reviron, "Geographical Indications," 22.

⁶¹ Rachael M. Williams, "Do geographical indications promote sustainable rural development?: two UK case studies and implications for New Zealand rural development policy," (PhD diss., Lincoln University, 2007), <https://researcharchive.lincoln.ac.nz/handle/10182/585>, last accessed July 8, 2023.

⁶² Das, "Socio-Economic Implications," 49.

⁶³ Daphne Zografos, "Geographical Indications and Socio-Economic Development," *IQsensato Working Paper* no. 3, (2008), <http://dx.doi.org/10.2139/ssrn.1628534>, last accessed May 11, 2023.

⁶⁴ Williams, "Do Geographical Indications," 9.

Therefore, the ability to create jobs between PDO, which requires localization of both production and processing, and PGI, which only needs the delimitation of one of the two processes to receive protection, is likely to differ. Because of the PDO's stronger ties to the region, more local jobs will probably be produced.

The mutually beneficial connections that can be a result of the GI process are best illustrated by the possibility for agro-tourism, as local tourism may help to enhance the image of the GI product, which may then draw more tourists to the area. Furthermore, GIs are deeply linked to the local culture as well as being a business venture. By providing economic value to locally rooted goods, a GI helps the local community to retain its cultural legacy and way of life. As a result, the region's identity is strengthened, which strengthens the GI brand. These mutually reinforcing connections will probably increase the GI's positive effects on rural development. In addition to promoting investment, GIs have the potential to raise land prices inside their borders.⁶⁵

Furthermore, GIs have been seen to have a "complementary effect" on neighboring products.⁶⁶ A separate study suggests that GIs may also foster social cohesion, which fosters improved communication and cooperation.⁶⁷ The argument that GIs' "multifactorial" nature—which extends beyond market-related advantages to include favorable social and environmental externalities within the region—should be taken into account when evaluating GIs' significance for sustainable rural development is supported by all of these factors, as will be explained below.

⁶⁵ Zografos, "Geographical Indications," 10.

⁶⁶ Daniele Giovannucci et al., "Guide to Geographical Indications: Linking Products and their Origin," (2009), <https://mpira.ub.uni-muenchen.de/27955/>, last accessed July 20, 2023.

⁶⁷ Williams, "Do Geographical Indications,"

1.4.3 PRESERVATION OF TRADITIONAL KNOWLEDGE

Traditional knowledge is under attack and needs to be protected, which has drawn more attention recently and is of particular significance to developing nations. Commentators have claimed that GIs may be the only type of IP now in existence that is suited for protecting the distinctive IP component associated to traditional knowledge when contemplating how to approach its protection.⁶⁸ This recommendation is based on the distinctive qualities of GIs.

Since traditional knowledge has developed over time as the communal asset of a given civilization, the collective nature of the GI right and its unbreakable relationship with an area offer a more appropriate form of protection than the individualistic and assignable attributes of trademarks.⁶⁹

GI protection is also appropriate for the everlasting nature of traditional knowledge because it may be retained indefinitely. Integrating specific GI techniques into a set of widely recognized guidelines is another aspect of the method. This keeps anybody from being able to steal the knowledge, including any possible conventional knowledge components, encrypted in the GI product.

There are several restrictions on the application of GIs in the preservation of traditional knowledge, notwithstanding the a priori relationship between them. Most notably, GIs only safeguard the reputation of a product associated with a particular area; they do not protect

⁶⁸ Kranti Mulik and John M. Crespi, "Geographical indications and the Trade Related Intellectual Property Rights Agreement (TRIPS): A case study of basmati rice exports," *Journal of Agricultural & Food Industrial Organization* 9, no. 1 (2011), <https://doi.org/10.2202/1542-0485.1336>, last accessed July 20, 2023.

⁶⁹ Bruce A. Babcock and Roxanne Clemens, "Geographical indications and property rights: protecting value-added agricultural products participation," *MATRIC Briefing Paper 04-MBP 7*, (2004): 45, DOI: 10.22004/ag.econ.18715, last accessed April 10, 2023.

information underlying a product or production method.⁷⁰ As so, external users can still access the entire set of information. It has been seen, therefore, that the GI controls utilizing traditional knowledge that is not exclusive to the local society.

The GI also makes it possible to assign a commercial value to products linked to a specific area that are based on traditional knowledge, enabling the local communities who establish the GI to make money off of their traditional knowledge. Thus, GIs can promote the ongoing application of knowledge. As a result, GIs are better at "conserving than defending" traditional knowledge,⁷¹ but they can still be utilized in conjunction with other tactics.

1.4.4 PROTECTING BIODIVERSITY AND USING NATURAL RESOURCES SUSTAINABLY

Environmental sustainability was not the main objective of GI development, but since GIs are primarily derived from local resources, including natural resources, and are more closely associated with the local environment, environmental benefits are increasingly recognized as potential GI externalities. For instance, the incorporation of biodiversity objectives is permitted by the widely recognized code of conduct.⁷²

This may entail limiting the amount generated or recommending or outlawing the use of specific species. Given the significance of environmental factors in the product's distinctiveness and the fact that production occurs in a highly biodiverse and environmentally sensitive area, the

⁷⁰ Graham Dutfield, *Intellectual property rights trade and biodiversity*, (Routledge, 2000), <https://doi.org/10.4324/9781849776233>, last accessed June 9, 2023.

⁷¹ Cerkia Bramley, "A review of the socio-economic impact of geographical indications: considerations for the developing world." In *WIPO Worldwide Symposium on Geographical Indications* 22, (2011): 1-22. https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_9.pdf, last accessed May 11, 2023.

⁷² Jorge Larson, "Relevance of geographical indications and designations of origin for the sustainable use of genetic resources," *A Repository of Agricultural Research Outputs*, (2007): 94, <https://hdl.handle.net/10568/104073>, last accessed May 14, 2023.

Rooibos industry in South Africa is an example of an industry that specifically took biodiversity concerns into account when designing its product specification.

Locals are more likely to cherish the natural resource from which the GI product is derived and may continue to use customary resources that would have been replaced by more commercially viable species or breeds as a result of GIs.⁷³

More generally, it is envisaged that the potential of GIs to increase wages and create value will enhance the relationship between local communities and their surroundings. This is consistent with the Kuznets curve, which shows how rising economic prosperity is probably going to result in better environmental conditions.⁷⁴

Additionally, the GI product/origin relationship facilitates customer communication about traceability. Due to bad press, consumers are likely to have an unfavorable perception of GI products, which will probably encourage producers to take environmentally responsible actions for the community. Therefore, environmental factors like pollution and sustainable resource management are likely to have an effect on farmers. These environmental issues are gradually being included in the GI code of practices.

It's important to remember, though, that a GI product's popularity could increase demand and increase the pressure on local resources. Ensuring that the GI does not lead to the loss of

⁷³ T. Lybbert, H. Wilkes, and C. Barrett. "Commercializing Argan oil in southwestern Morocco: Pitfalls on the pathway to sustainable development." *Buying Biodiversity: Financing Conservation for Sustainable Development*, (2002), http://aem.cornell.edu/faculty_sites/cbb2/Papers/LBN_commercializing.pdf, last accessed June 16, 2023.

⁷⁴ David I. Stern, Michael S. Common, and Edward B. Barbier, "Economic growth and environmental degradation: the environmental Kuznets curve and sustainable development," *World development* 24, no. 7 (1996): 1151-1160, [https://doi.org/10.1016/0305-750X\(96\)00032-0](https://doi.org/10.1016/0305-750X(96)00032-0), last accessed August 9, 2023.

genetic resources⁷⁵ and preventing stress on fragile ecosystems require the establishment of sustainable production guidelines through a participatory approach.⁷⁶

1.5 DELAYED ENACTMENT OF GI LAWS IN PAKISTAN:

The IP Organization of Pakistan (IPO Pakistan) was established in the year 2005. The primary responsibilities given to the organization include the following:

- “Administer and coordinate all Government systems for protection and strengthening of IP;
- Manage all IP offices in the country;
- Create awareness about IP Rights;
- Advise Federal Government on IP Policy;
- Ensure effective enforcement of IP rights through designated IPR Enforcement Agencies (Police, FIA, and Pakistan Customs).”⁷⁷

Although the organization has been working efficiently since its establishment, however, it was more focused towards the Trademark, Patent and Copyrights etc. The GI side remained neglected for a long period of time. The first Bill relating to GI legislation in Pakistan, namely “Geographical Indications (Registration and Protection) Bill” was put forth in the country’s

⁷⁵ Valérie Boisvert, “From the conservation of genetic diversity to the promotion of quality foodstuff: Can the French model of Appellation d'Origine Contrôlée be exported?,” *CAPRI working paper*, no. 49. (2006). <http://www.capri.cgiar.org/pdf/CAPRIWP49.pdf>, last accessed July 11, 2023.

⁷⁶ David R. Downes and Sarah A. Laird, "Community registries of biodiversity-related knowledge," *UNCTAD Biotrade Initiative, Geneva* (1999), <https://www.ciel.org/wp-content/uploads/2015/03/CommunityRegistries.pdf>, last accessed August 20, 2023.

⁷⁷ “Introduction,” *Intellectual Property Organization of Pakistan*, last accessed June 2, 2023 <https://ipo.gov.pk/Introduction>.

Parliament in the year 2019,⁷⁸ fourteen years after the establishment of IPO Pakistan. The legislation pertaining to GIs in Pakistan remained in limbo for nearly two decades due to no interest shown by the then governments of the country.

Eventually, in the month of March, 2020 the first *sui generis* legislation of GIs was enacted in Pakistan. After enactment of the Act, Pakistan finally fulfilled its obligation under Article 22 of the TRIPS Agreements.⁷⁹ However, it is pertinent to mention here that India, with which it shares a lot of history and whose Independence Day is celebrated a day after than that of Pakistan, was able to enact its *sui generis* legislation on GIs in the year 1999 when it passed Geographical Indications of Goods (Registration and Protection) Act.

1.5.1 INDIA ENACTING *SUI GENERIS* LEGISLATION BEFORE PAKISTAN:

India's first legislation on GIs came in the year 1999 when its Parliament passed its first *sui generis* Act for protection of GIs in India. It was enacted by the Indian government in compliance of the TRIPS Agreement of WTO. The first GI product registered in India was Darjeeling Tea, which was registered in the year 2004.⁸⁰ It was the time when there was no sign of any GI legislation in Pakistan. By the time Pakistan enacted its *sui generis* legislation for GIs, India was able to register more than 300 products under its GI Act.

⁷⁸ Ghulam Abbas, "Government to present first Geographical Indication bill in parliament soon," *PtProfit* (blog), last modified November 03, 2019, <https://profit.pakistantoday.com.pk/2019/11/03/government-to-present-first-geographical-indication-bill-in-parliament-soon/>.

⁷⁹ Rafiah Farrukh Rashid, "Geographical Indication – A belated step forward," *Courting the Law* (blog), last modified November 03, 2023, <https://courtingthelaw.com/2020/11/09/commentary/geographical-indication-a-belated-step-forward/>.

⁸⁰ Sourcetrace, "Protecting Darjeeling Tea: The tea from the Queen of the hills," *Sourcetrace* (blog), last accessed July 1, 2023, <https://sourcetrace.com/blog/protecting-gi-darjeeling-tea/>.

One of the main reasons that India is so far ahead of Pakistan in the field of IP, and more specifically in protecting its GIs, is its focus in the field of IP. India has always remained focused on IPR Enforcement. However, a more aggressive approach towards IPR was adopted by India in the year 2016 when it announced its first National IPR policy. The government of India established Department for Promotion of Industry and International Trade (DPIIT) to lead the country towards streamlining the IP processes, increase the enforcement and create awareness among the stakeholders and general public.⁸¹

Furthermore, the IPR regime was strengthened by the Indian government by taking several steps including modernizing its IP Offices, increasing the manpower, using IT for application processes i.e. e-filing of registration applications and hearing of IP application through video conferencing etc.⁸²

Focus of Indian government towards the field of IP can be seen by analyzing its academic front. More than 20 major academic institutes in different states of the country are offering LLM (Master of Laws) in IP Laws. This is only the number of institutes offering specialization in IP in the field of law, other relevant academic programs are also being offered in different institutes across the country. On the contrary, not a single educational institution in Pakistan is offering a degree with the specialization in IP Laws, which has created a dearth of trained professional in handling matter pertaining to IP.

All of the factors referred above have greatly aided India in having highly qualified individuals for identification and protection of its GIs and other IP Rights. Additionally, a number

⁸¹ “India – Country Commercial Guide,” *International Trade Administration, Department of Commerce, USA*, last updated 2021, <https://www.trade.gov/country-commercial-guides/india-protecting-intellectual-property>.

⁸² “India – Country Commercial Guide,” *International Trade Administration, Department of Commerce, USA*.

of scholars graduating in the relevant field of law and focusing their research towards the IP is always helpful in identifying the grey areas in the legislation a country.

CHAPTER 2

GEOGRAPHICAL INDICATIONS IN EUROPEAN UNION

2.1 HISTORICAL BACKGROUND

The phrase "geographical indication" initially appeared in suggestions made by Switzerland and the European Community during the Uruguay Round of trade negotiations in the late 1980s and early 1990s. It might be easiest to think of "geographical indication" as a useful umbrella phrase for a multitude of, largely current, laws and regulations pertaining to goods that are distinguished by bearing characteristics or a reputation related to their geographic origins. In this regard, GIs have a far longer history.

The Madrid Agreement of 1891 on the Repression of False or Deceptive Indications of Source in Goods and the Lisbon Agreement of 1958 for the Protection of Appellations of Origin and their International Protection both mentioned terminology similar to indications of source and appellations of origin.⁸³

Although idea of multilateral protection of GIs was developed during the TRIPS Agreement discussions, GIs were first used as a type of IP in France to preserve French wines' reputations in consumer markets and to advance high standards in wine production.⁸⁴

⁸³ Graham Dutfield, "A legal review of geographical indications, trademarks and protection from unfair competition," *International Institute for Environment and Development*, (2011). <http://www.jstor.com/stable/resrep01380.7>, last accessed September 6, 2023.

⁸⁴ J. Thomas McCarthy and Veronica Colby Devitt, "Protection of Geographic Denominations: Domestic and International," *Trademark Rep.* 69 (1979): 199. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/thetmr69&div=27&id=&page=>, last accessed June 9, 2023.

Different early treaties provided various degrees of protection for commodities with a place of origin. Protections against the use of false or deceptive indications of source from member countries are found in the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, a convention that France drafted in 1891. The law pertaining to appellations of origin is where the term "GI" originates.

The law governing appellations of origin was first introduced in the French Law of August 1, 1905 and it was later updated in 1919 and 1935 to ensure that goods met particular technical requirements. It wasn't until 1966 that additional amendments to French law gave appellations of origin a definition, stating that they are "the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due to the geographical environment, including human factors." The Paris Convention for the Protection of Industrial Property (Paris Convention) was the first international agreement to safeguard appellations of origin by classifying infringement as unfair competition.⁸⁵

Another international agreement, the Lisbon Agreement, was created in the middle of the 20th century specifically to safeguard appellations of origin. To its 11 initial contracting nations, the Lisbon Agreement granted mutual recognition of appellations of origin. WIPO began talks on enhancing the level of protection for appellations of origin in the middle of the 1970s as a consequence of demand from European nations. The process, which duplicated similar ones taking place in the Paris Union, was abandoned in 1980.⁸⁶

⁸⁵ Bassem Awad and Marsha S. Cadogan, "CETA and the Future of Geographical Indications Protection in Canada," Centre for International Governance Innovation, 131 (2017). https://www.cigionline.org/sites/default/files/documents/Paper%20no.131_WEB_0.pdf, last accessed May 11, 2023.

⁸⁶ Bassem Awad, "History of and Rationale for the Protection of GIs," *C. Hurst and Company*, (2017), <https://www.jstor.org/stable/resrep15528.8>, last accessed May 12, 2023.

As early as the 1970s, disputes between nations over the level of protection granted to commodities with a geographic origin became apparent in discussions over appellations of origin at the WIPO and Paris Union. The idea of allowing developing nations to reserve rights in 200 product names by notifying the International Bureau of WIPO was floated during discussions on raising the level of protection for appellations of origin during the Paris Union.

Within the nations that make up the Paris Union, it was proposed that the items would be protected for 20 years. The suggested maximum number of names that developing nations could reserve was eventually lowered from 200 to 10. The Paris Union negotiations were failed; there was never an agreement on a set of regulations governing location-based goods.⁸⁷

There were unsuccessful discussions about the protection of appellations of origin in the 1990s WIPO talks during the pre-TRIPS era. The TRIPS Agreement introduced the term "geographical indication" to refer to appellations of origin and source indications. Based on the characteristics of the covered product, the TRIPS Agreement establishes a two-tiered system of protection for GIs. GIs for wine and spirits are given preference under the TRIPS Agreement and are shielded from a variety of violations in WTO members.⁸⁸

For GIs that aren't wine or spirit products, the TRIPS Agreement specifies a lower standard of protection. So, while agricultural, food-based, forestry, fishery, and handcrafted goods may be acknowledged as GIs, they are only in two situations protected from infringement. The first step for WTO members is to put policies in place to stop unfair business practices against non-wine

⁸⁷ Awad and Cadogan, "CETA and the Future of Geographical Indications Protection in Canada," 22.

⁸⁸ Lisa P. Lukose, "Rationale and Prospects of the Protection of Geographical Indication: An Inquiry," *Journal of Intellectual Property Rights* 12, (2007): 212-223, [https://nopr.niscpr.res.in/bitstream/123456789/238/1/JIPR%2012\(2\)%20\(2007\)%20212-223.pdf](https://nopr.niscpr.res.in/bitstream/123456789/238/1/JIPR%2012(2)%20(2007)%20212-223.pdf), last accessed July 19, 2023.

and spirit kinds of GIs. Second, member states should make sure that non-GI products do not inadvertently mislead the public about the region of their genuine origin by suggesting a geographic location.

There are many legal ways to protect GIs worldwide since they require a minimum level of protection for non-wine and spirit GIs. Products like Moroccan oil, which is made in Morocco from the Argan tree, Colombia's coffee, Café de Colombia, which is grown and produced in particular regions of Colombia, Greek feta cheese, and Italian Parma ham are a few examples of non-wine and spirit GIs.⁸⁹

The TRIPS Council also agreed to explore the question of extending Section 23's greater level of protection to goods other than wines and spirits. Growing support for more GI protection was spearheaded by the European Union. The EU has a complex history and culture of preserving products of origin, which contributes to its strong feelings for GIs. In addition, GIs are a crucial component of the EU's Common Agricultural Policy approach, which is considered as a tool to boost farmers' competitiveness given the need to wean the industry off of subsidies.⁹⁰

Moreover, GIs are a crucial component of the EU's Common Agricultural Policy agenda, which views them as a tool to boost farmers' competitiveness in light of the EU's commitment to abandon subsidized agriculture. The US and other nations including Japan, Canada, and Chile have resisted the EU's initiatives in WTO fora to increase GI protection vehemently. However, the Doha Round of discussions saw a shift in developing nations' attitudes towards GIs, with some of them

⁸⁹ Michael Blakeney and Getachew Mengistie Alemu, "Geographical Indications in Africa: Opportunities, Experiences and Challenges," *European Intellectual Property Review* 38, no.5 (2016): 290-306. <https://ssrn.com/abstract=3082093>, last accessed July 22, 2023.

⁹⁰ Tim Josling, "The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict," *Journal of Agricultural Economics* 57, no.3 (2006): 337-363, <https://doi.org/10.1111/j.1477-9552.2006.00075.x>, last accessed August 1, 2023.

coming out in favor of EU's proposal on extension of GI. The proposal seeks for the protections granted to GIs under Section 23 of TRIPS to be extended to other goods, including the requirement that all items be registered in the proposed international register.

A growing number of developing countries are enjoying the benefits of GI extension due to their diverse range of agro-food and handicraft items linked to their geographic origins. This has led to concerns about theft and GI extension among developing countries such as India, Pakistan, Thailand, and Kenya, especially with regard to the more well-known GIs like Basmati rice and Ceylon tea.⁹¹

Developing countries continue to differ on the importance of and strategies for safeguarding GIs. There are several factors that have influenced how emerging nations see GIs. In terms of intellectual property rights more broadly, nations' willingness to safeguard GIs depends on a number of factors, including possible economic benefits and domestic and international political pressure. The latter in particular has shown to be a major factor in determining how developing countries would act with regard to GIs, and this is evident in the greater trade discussions at the WTO.

Decisions about the legal system to be used are also influenced by the historical, economic, and legal traditions of the relevant country. Due to their close historical ties to European countries, a large number of former colonies have opted to create EU-style sui generis GI systems. For

⁹¹ G. E. Evans and Michael Blakeney, "The Protection of Geographical Indications After Doha: Quo Vadis," *Journal of International Economic Law* 9, no. 3 (2006): 575-614. <https://doi.org/10.1093/jiel/jgl016>, last accessed May 4, 2023.

example, take Mozambique, a former colonial power that chose to establish a sui generis system based on the Portuguese appellation of origin legacy.⁹²

2.2 LEGISLATION IN EUROPEAN UNION

The obvious question that arises while analyzing geographic indications is why GIs are ever thought of as IP. Due to GIs' resemblance to trade markings, the main historical justifications are connected to this. A collection of information about the product is communicated by GIs, which are also signs. However, unlike property, GIs only protect the label of the product rather than the actual thing.

The two main international legal mechanisms for the protection of intellectual and industrial property, Section 3 of the TRIPS Agreement and Article 1(2) of the Paris Convention for the Protection of Industrial Property, both cover GIs as separate categories. The CJEU has also acknowledged their status as distinct categories of industrial property rights at the level of the EU.⁹³

2.2.1 SUI GENERIS REGIME OF EUROPEAN UNION

GIs are harmonized protected in the European Union by Regulation 1151/2012, which only applies to food and agricultural products and establishes total harmonization in this area. As a result, the registration of these products falls under the exclusive jurisdiction of the European

⁹² Cerkia Bramley and Estelle Bienabe, "Developments and Considerations around the Geographical Indications in the Developing World," *Queen Mary Journal of Intellectual Property* 2, no. 1 (April 2012): 14-37, <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=f6546768518ca49eeac91b15dce55af3b91bf886>, last accessed September 4, 2023.

⁹³ C. Case, "108/01 Consorzio del Prosciutto diParma and Salumificio S," *Rita SpA v. Asda Stores Ltd. and Hygrade Foods Ltd* (2003) , last accessed September 9, 2023.

Union, shutting out the possibility of concurrent, parallel national registrations in the Member States.

The term "*sui generis*" in legalese refers to the long-standing European framework for geographical indicator regulation, which indicates that these indicators are registered and protected under a system distinct from that of trademarks. Because the focus of this chapter is on Europe, the term "products" in relation to GIs is used here broadly to refer to agricultural products and foodstuffs. On the other hand, GI protection can apply to any kind of good globally and is not just restricted to certain kinds of goods.⁹⁴

Although there has recently been a suggestion to include non-agricultural items, there is no harmonized legislation that includes GIs for industrial products or services. The procedure has been put on hold despite the convincing evidence to the contrary. However, not all agricultural and food items qualify for name protection, even in the case of these products. Mineral and spring waters are not included, and spirits, aromatized wines, and wines, with the exception of wine grapes, which are governed by Regulation 1151/2012, are all subject to different regulations.

Annex I of the Regulation lists the categories of agricultural products intended for human consumption, some types not intended for human use, and specific commodities for which registration can actually be requested. These do not include prepared “condiment sauces, soups and broths, sorbets, and ice cream”, which were all eligible for registration as Traditional Specialties Guaranteed under the previous Regulation but are not included in the Annex of the

⁹⁴ Giulia De Bosio, "The Global Struggle Between Europe and United States Over Geographical Indications in Asia. The Korean Compromise," *Universita' Degli Studi Di Milano*, (2015), <https://www.studiotorta.com/wp-content/uploads/2021/11/2016-giulia-de-bosio-the-global-struggle-between-europe-and-united-states-over-geographical-indications-in-asia-the-korean-compromise-vincitore.pdf>, last accessed July 29, 2023.

current Regulation. Following the 2012 revision, the Annex now includes leather, fur and feathers as well as chocolate and other products made with cocoa.⁹⁵

According to Article 5 of the Regulation, only names are eligible for registration, hence every other kind of sign is ineligible. The objective is that the name corresponds to an actual location associated with a product. These names can be traditional geographical (like Porto) or non-geographic (like feta) ones. Of course, they cannot be fake.⁹⁶

2.2.2 FIRST EUROPEAN LEGISLATION FOR AGRICULTURAL AND FOOD PRODUCTS

The first European law governing food and agricultural goods, including PGI and PDO, was approved in 1992. These laws were modelled after already-in-place national frameworks, including the Italian DOC (Denominazione d'Origine Controllata) and the French AOC (Appellation d'Origine Contrôlée).

The French AOC framework and the idea of terroir are closely related since terroir products are distinguished by a particular geographical origin that was formed over time via interaction with regional customs, the environment, and know-how. When implementing PDO/PGI schemes, these considerations are taken into account.⁹⁷

⁹⁵ Dwijen Rangnekar, "A slice of Parma Ham: understanding the protection of geographical indications," *Intellectual Property and Information Wealth: International Intellectual Property Law and Policy* (2007): 283-302. http://ec.europa.eu/internal_market/indprop/geo-indications/index_en.htm, last accessed April 9, 2023.

⁹⁶ Kalliopi Dani, *Community Collective Marks: Status, Scope and Rivals in the European Signs Landscape* (Nomos Verlagsgesellschaft mbH, 2014), 39, <https://www.jstor.org/stable/j.ctv941rjv.8>, last accessed May 11, 2023.

⁹⁷ Atle Wehn Hegnes, "Introducing and practicing PDO and PGI in Norway. Turning to protected quality through translations of meaning and transformations of materiality," *Anthropology of food* S7 (2012), <https://doi.org/10.4000/aof.7210>, last accessed June 30, 2023.

2.2.3 REGULATION (EU) NO 509/2006

Year 2006 saw the adoption of Regulation (EU) No. 509/2006, which created the legislative foundation for the TSG label on food and agricultural products. The most recent law governing agro-food quality certification programs, Regulation (EU) No. 1151/ 2012, came into force on January 3, 2013. EU promotes three types of quality labels for agricultural products and foodstuffs as part of its food quality policy: TSG, PGI, and PDO.⁹⁸

PDO protects food items or agricultural goods that are grown, processed, and prepared in a particular region using well-established practices. PGIs are foods or agricultural products that are closely linked to a certain area; at least one stage of their production, processing, or preparation takes place there, even when the raw ingredients for their formation may originate from another. Lastly, under TSG, there are no restrictions on the geographical origin of agricultural products or foodstuffs that are produced using traditional raw materials, traditional production techniques, or that have a traditional composition. The PDO, PGI, and TSG initiatives were created to assist consumers in making food-related decisions.⁹⁹

2.3 INTERNATIONAL CASES

2.3.1 SCOTCH WHISKY ASSOCIATION VS. MICHAEL KLOTZ

The legal dispute at hand concerns the preservation of Geographical Indications for Scotch whisky. The Scotch Whisky Association attempted to stop Michael Klotz, a German firm, from

⁹⁸ Claudia Dias and Luís Mendes, "Protected designation of origin (PDO), protected geographical indication (PGI) and traditional speciality guaranteed (TSG): A bibliometric analysis," *Food Research International* 103 (2018): 492-508. www.elsevier.com/locate/foodres, last accessed July 28, 2023.

⁹⁹ Klaus G. Grunert and Kristina Aachmann, "Consumer reactions to the use of EU quality labels on food products: A review of the literature," *Food Control* 59 (2016): 178-187, <http://dx.doi.org/10.1016/j.foodcont.2015.05.021>, last accessed June 13, 2023.

calling a whisky made in Germany "Glen Buchenbach" in this particular instance. The Scotch Whisky Association contended that because the word "Glen" is typically connected with Scotch Whisky, using it could mislead consumers into believing the product was Scotch whisky.

A preliminary verdict was rendered by the CJEU in a dispute involving the right to use the term Glen in a disagreement between the disputed sign Glen Buchenbach and the protected indicator of geographical origin Scotch Whisky. In order to preserve protected indications of geographical origin, the CJEU clarified the four protection norms in more detail.¹⁰⁰

The CJEU began by reading the phrase "any direct or indirect commercial use" and determined that the term "use" relates to the protected indication's visual appearance in the contested sign, which covers the use of the indicator in the same or a similar form. The phrases "direct" and "indirect" describe how something appears: the former refers to placing a contentious sign on a product directly (i.e., labeling it); the latter includes various uses like advertising or supporting materials.

Furthermore, the CJEU decided that when faced with an infringing sign, "evocation" refers to determining whether the typical European consumer immediately thinks of a protected indicator of geographical origin. In the end, the CJEU asserted that the context in which a contested sign is employed is irrelevant for determining whether it is intended as an evocation or a "false and misleading indication."

¹⁰⁰ Scotch Whisky Association v Michael Klotz, Case C-44/17, (Fifth Chamber, 2018), <https://doi.org/10.1017/err.2019.1>, last accessed April 19, 2023.

2.3.2 ORNUA CO-OPERATIVE LIMITED, FORMERLY THE IRISH DAIRY BOARD CO-OPERATIVE LIMITED VS. TINDALE & STANTON LTD ESPAÑA SL

The use of a national trademark in Spain that is equivalent to an EU trademark used in Ireland and the UK is at issue in the case of Ornuva Co-operative Limited vs. Tindale & Stanton Ltd España SL. Ornuva, formerly known as, The Irish Dairy Board Co-operative Ltd., filed a lawsuit against Tindale & Stanton Ltd España SL for using the KERRYMAID sign in Spain. Ornuva claimed this symbol was confusing to consumers, since it was similar to its KERRYGOLD EU trademarks.

The CJEU held that in these kinds of situations, a comprehensive evaluation of all pertinent circumstances must be conducted, and that if the EU trademark and the Spanish national trademark do not coexist peacefully, customers may become confused. The ruling also addresses the unitary character of EU trademarks and the elements that need to be taken into account when deciding whether the owner of an EU trademark has the right to forbid use of a sign in an area of the EU that isn't subject to an infringement lawsuit.¹⁰¹

The case addresses the interpretation of Article 9 of Council Regulation (EC) No. 207/2009 on the European Union trade mark, which states that in order to restrict a third party from using a sign in the course of trade, the owner of an EU trademark must establish a possibility of confusion.

The Regulation No. 207/2009 was amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of December 16th, 2015 (OJ 2015 L 341, p.21), which

¹⁰¹ Ornuva Co-operative Ltd v Tindale & Stanton Ltd España SL, Case C-93/16, (Second Chamber, 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CJ0093>, last accessed September 6, 2023.

was enacted on March 23rd, 2016. However, the court gave its judgment on the basis of Regulation No. 207/2009 due to the reason that the facts at issues in the main proceedings were of the time before the enactment of Regulation (EU) 2015/2424.

2.4 IMPACT OF GI IN EUROPEAN UNION:

GIs are given more protection in the EU, regardless of the fact that they are only allowed to be names and not any form of symbol. It is not possible to register a generic name as GI, much like under the trade mark scheme. A GI is not permitted to enter genericism after entering the register. Because of this, a GI may be revoked if does not fulfill the requirements anymore, but it cannot be done so because the public has mistakenly identified it as a genus.¹⁰²

Furthermore, a PDO or PGI is protected under Article 13 of the Regulation not only when the items are comparable but also when the name's reputation is misused, regardless of the possibility of confusion. Therefore, in the second case, even if the items are unique or if the GI is used to identify a component, it might still be protected. Even when the true provenance of an object is not being hidden, a GI must still be shielded from improper use, copying, or invocation of the name.

Furthermore, a GI needs to be shielded against "type-phrases" and name translations that imply one good is identical to another, even if the indicator is about an ingredient rather than the product itself. Furthermore, any other potentially deceptive tactics, as well as any false or misleading representations regarding the GI's origins or features, are protected. Although GIs can be viewed as a quasi-combination and elaboration of traditional trademarks with a reputation,

¹⁰² Gail E. Evans, "A comparative analysis of the protection of geographical indications in the European Union and the United States under sui generis and trademark systems," *Intellectual property in common law and civil law*, (2013): 248-299, DOI: <https://doi.org/10.4337/9780857934376.00021>, last accessed August 17, 2023.

certification marks, and collective trademarks of geographical reference, their extensive protection sets them apart from other types of marks.¹⁰³

The priority accorded to GIs over already-used trademarks that include the name is a point similar to the scope of protection. Trade mark owners have five years from the day the specification was published in the Official Journal, as per Article 15 of the Regulation, to alter their brands so as to avoid infringing on the GI. This effectively implies that proprietors must remarket their products.¹⁰⁴

On the other hand, the protection is significantly more limited for a TSG. According to Article 24.1 of the Regulation, TSG are only protected from copying, misuse, evocation, and action that could lead to consumer misinformation. Parallel to this, Member States are required to streamline any national product descriptions that are currently in use to ensure that they do not conflict with any TSGs that have been registered or are mistakenly identified as such.¹⁰⁵

While market regulation and competition law enforcement are GIs' primary goals, a substantial body of research has built upon this market utility to suggest that GIs may also support local development by advancing the commercial and economic interests of regional farmers, producers, and other supply chain stakeholders.

According to the economics of product diversification, it is said that GIs can assist producers in escaping the "commodity trap of numerous similar and undifferentiated products

¹⁰³ Lasse A. Sondergaard Christensen and Janne Britt Hansen, "A contrast with trade mark law: the permitted use of geographical indications," *Trade Marks at the Limit*, (2006), DOI: <https://doi.org/10.4337/9781847200129.00011>, last accessed October 1, 2023.

¹⁰⁴ Lasse A. Sondergaard Christensen and Janne Britt Hansen, "A contrast with trade mark law,"

¹⁰⁵ Kalliopi Dani, "Community Collective Marks: Status, Scope and Rivals in the European Signs Landscape,"

trading primarily on price" by demonstrating the precise features of a particular terroir. In response to the over-industrialization, mass manufacturing, standardization, and "placelessness" of food, as well as the lack of safety standards as demonstrated by the spread of mad cow disease, GIs have been described by some food sociologists as part of a "wider Renaissance of "alternative agro-food networks" and "quality discourse".¹⁰⁶

In this context, it has been proposed that GI producers may be able to increase their market share, gain a competitive advantage, and capitalize on product differentiation through the successful marketing of a product that emphasizes the connection between its unique origin and its unique quality, characteristic, or reputation. It is "often one of the first goals of supporting a strategy for an origin-linked product" for producers to capture price premiums.

It is further argued that as operators must cooperate and share information, the financial rewards of successful GI marketing may serve to foster social cohesion, solidarity, and trust. This is especially true in Europe, where producer-led GI collectives have a long tradition. Under the sui generis system of PDOs and PGIs, there is a requirement for the establishment of a producers' association and a code of practice during the application stage. This may encourage cooperation and group action among regional stakeholders.¹⁰⁷

Contrarily, a number of academics have noted that GI projects in poor and emerging nations are frequently spearheaded by external players like the State or development organizations.

¹⁰⁶ David Goodman, "Rural Europe redux? Reflections on alternative agro-food networks and paradigm change," *Sociologia ruralis* 44, no. 1 (2004): 3-16, <https://doi.org/10.1111/j.1467-9523.2004.00258.x>, last accessed October 9, 2023.

¹⁰⁷ E. Thevenod Mottet and D. Marie Vivien, "Legal debates surrounding geographical indications," *Labels of origin for food: local development, global recognition*, (2011): 13, DOI: <https://doi.org/10.1079/9781845933524.0013>, last accessed August 11, 2023.

Consequently, little GI-related activity exists to facilitate producer organization and GI registration at the local level as well as among local farmers.

As mentioned by Bie'nabe and Marie-Vivien, GIs can symbolize the link to the place of origin where the product's reputation is established, making them special and useful tools from the standpoint of social development. They continued by saying that this retains private concerns insofar as GIs are used by private stakeholders to identify products meant for consumers, while also accounting for public considerations made by the State and federal governments.¹⁰⁸

Although the literature suggests that GIs can be useful tools for socioeconomic development, it has been observed that there is a dearth of actual evidence, particularly from rising and developing nations. Specifically, it has been acknowledged that some context-specific factors could facilitate or impede GIs' ability to effectively promote this kind of growth. This conclusion appears to be supported by the past empirical research that has been done.

Actually, the results of conducted researches have been contradictory regarding how GIs affect economic development, demonstrating that the effects vary greatly from case to case. Economists such as Belletti and Marescotti have drawn attention to the possibility that, even in the case of successful GIs, especially in Europe, the larger processing and distribution companies that sell internationally or employ sophisticated and extended marketing channels may be the only ones able to realize the extra profits that can be generated by GIs.

¹⁰⁸ Estelle Bie'nabe and Delphine Marie Vivien, "Institutionalising GIs in Southern Countries: Lessons Learned from Basmati and Rooibos," *WORLD DEV.*, (2016):6-7, DOI: 10.1016/j.worlddev.2015.04.004, last accessed August 13, 2023.

However, it is still difficult to determine whether other factors, like the well-established reputation of specific products or the existence of private investments and subsidies in particular economic sectors, may also be at play, or whether the price premium that GI products frequently demand is solely attributable to the legal protection granted to GIs.

In the end, researchers have come to the conclusion that GI legal protection is a necessary but inadequate requirement to have the intended outcomes. According to Hughes, "the argument that significantly stronger GI protection will benefit developing countries simply mistakes the piling up of laws for the piling up of capital investment."¹⁰⁹

It appears that in order for a GI framework to have a beneficial effect on socioeconomic growth, a mix of additional enabling elements is needed. Considerable expenditures in advertising and marketing are necessary for the establishment of quality control, monitoring, and enforcement methods aimed at fostering consumer confidence in the product's quality, as well as for the evaluation of a product's image and reputation.

The "marketing of many OLPs (Origin Labelled Products) is typically one of the weakest links in the chain", says Albisu, and Zografos notes that the costs involved could be substantial for small farmers in developing countries especially considering the negative reputation of many GI products. Notably, it has also become clear that the collective action dynamics of the GI projects which connect local actors "in a lattice of interdependence", are essential components in deciding how their benefits would be distributed.

¹⁰⁹ Justin Hughes, "Champagne, feta, and bourbon: The spirited debate about geographical indications," *Hastings LJ* 58, no. 2, (2006): 299, https://repository.uchastings.edu/hastings_law_journal/vol58/iss2/3, last accessed May 4, 2023.

As stated by Barjolle and Sylvander, the success of a collective action depends on each local actor's capacity to "appropriate the collective process"; however, this capacity may be compromised by skewed supply chains, inequities in local power structures, and dominant market positions. In this context, Larson highlights the need for a group environment with strong institutional structures and governance processes, as well as a supporting institutional environment.¹¹⁰

2.4.1 GEOGRAPHICAL INDICATIONS – A EUROPEAN TREASURE

According to research released by the European Commission on April 20, 2020, the sales value of agri-food and drink goods whose names are protected by the EU as "Geographical Indications" (GIs) is €74.76 billion. Exports outside of the EU account for more than one fifth of this total. According to the report, a product with a protected name often sells for twice as much as one with a similar name but no certification.

Geographical Indications, since its adoption by European Union is considered a success by the authorities, so much so that the European Commissioner for Agriculture, Janusz Wojciechowski, said:

“European Geographical Indications reflect the wealth and diversity of products that our agricultural sector has to offer. Producers' benefits are clear. They can sell products at a higher value, to consumers looking for authentic regional products. GIs

¹¹⁰ Barbara Pick, Delphine Marie-Vivien, and Dong Bui Kim, "The use of geographical indications in Vietnam: a promising tool for socio-economic development?," (2017), https://agritrop.cirad.fr/584676/1/use_of_geographical_indications_in_vietnam_a_promising_tool_for_socioeconom ic_development.pdf, last accessed April 18, 2023.

are a key aspect of our trade agreements. By protecting products across the globe, we prevent fraudulent use of product names and we preserve the good reputation of European agri-food and drink products. Geographical Indications protect local value at global level.”

European cuisine is renowned for being high-quality, wholesome, and secure. Traditional production techniques help the EU achieve its goal of setting a new worldwide benchmark for food production sustainability. The names of particular products are protected by EU quality standards in order to highlight their distinctive qualities, which are linked to their geographic origin and the know-how that is ingrained in the region. These brand names are legally protected against plagiarism and abuse as a result of the EU's system of IP rights.¹¹¹

By the end of 2017, there were 3,207 product names registered as protected trademarks in 28 EU Member States; by the end of March 2020, there were 3,322 registered trademarks worldwide. The analysis was conducted using these 3,207 product names as its foundation. The study suggests that because of these products' exceptional quality and reputation as well as buyers' willingness to pay more for authentic goods, manufacturers profit economically from increased marketing and sales.

The study's primary conclusions are:

- Significant sales value: In 2017, the combined projected sales value of GIs and TSGs was €77.15 billion, or 7% of the estimated €1,101 billion in sales for the entire European food and beverage industry. More over half of this value was made up of wines (€39.4 billion),

¹¹¹ European Commission, "Geographical indications: A European treasure worth€ 75 billion," *Brussels*, (2020): 1, https://commission.europa.eu/index_en?wt-search=yes, last accessed April 17, 2023.

followed by food and agricultural products (€27.34 billion) and alcoholic beverages (€10.35 billion). “Of the 3,207 product names registered in 2017, 49% were for wines (including GI and TSG), agri-food items 43%, and alcoholic beverages 8%”.

- Greater premium on sales for products that are protected: The value premium rates for wines, spirits, and food and agricultural commodities were 2.85, 2.52, and 1.5, respectively, for the study-covered categories, with the average sales value being twice that of comparable products sold without certification.
- A truly European policy: Every EU member state manufacture goods whose trademarks are protected by EU law. These products serve as both commercial boosters for the nation's agri-food sector and exhibits for regional culinary customs.¹¹²
- Exports of geographical indications: 15.5% of all EU agri-food exports are made up of geographical indications. In terms of total sales value (51%) and trade outside EU (50%) the product category of wines remained the most significant. The top three international markets for EU GI products are the United States of America, China, and Singapore, which is half of the total exports of GI products.

EU had signed more than 30 international agreements by the year 2020, allowing for both the acceptance of non-EU geographic indications in the EU and the recognition of many EU GIs outside EU. European Commission claims that GIs are becoming more and more significant in trade talks between EU and other nations. Additionally, in order to promote high-quality goods in EU and internationally, the Commission invests about €50 million annually.¹¹³

¹¹² European Commission, "Geographical indications: A European treasure worth€ 75 billion," (2020): 2.

¹¹³ European Commission, "Geographical indications," (2020): 3.

CHAPTER 3

GEOGRAPHICAL INDICATIONS IN PAKISTAN

3.1 INTRODUCTION

With the inclusion of GIs in the WTO's TRIPS Agreement, they have gained more significance in terms of both, legal advancement and economic diplomacy. Its significance has multiplied for older economies and nations with substantial agricultural bases. This chapter includes the examination as to how the GI rules of the TRIPS Agreement have been implemented in Pakistan, a country whose Gross Domestic Product (GDP) is mostly based on agricultural. Regardless of the fact that Pakistan and India both have a large number of GIs, oddly, registration of GIs has always been overlooked. Therefore, deficiencies that prevented Pakistan from developing a legal system for GIs are examined.

Although GIs have long been used as IP, the growth of their legal protection system has been slower than that of trademarks and copyrights. GIs have benefited from the WTO's TRIPS Agreement, which has increased their protection and the number of countries that have implemented GIs laws in compliance with it.¹¹⁴

GIs are now acknowledged as a crucial instrument for development and the fight against poverty, in addition to assuming a central role in discussions among WTO members concerning the Doha Development Agenda's higher level of protection (Article 23 of TRIPS), the

¹¹⁴ Kal Raustiala, and Stephen R. Munzer, "The Global Struggle Over Geographic Indications," *European Journal of International Law* 18, no. 2 (2007): 337-365, DOI: <https://doi.org/10.1093/ejil/chm016>, last accessed April 1, 2023.

establishment of a multilateral registry for wines and spirits, and additional protection for products other than wines and spirits (Article 24 of TRIPS).¹¹⁵

Under WTO's Doha Development Agenda (DDA), paragraph 18, many developing countries are advocating for GIs to have further protection beyond wines and spirits. Since GIs are viewed as an instrument for development, additional negotiations on their implementation and extension were carried out on behalf of developing nations as part of the DDA.

Pakistan is one of the nations that have presented draught modalities for ministerial consideration on TRIPS-related matters, along with the European Communities, the ACP Group, the African Group, India, Switzerland, Turkey, and 14 other nations. The suggested measures encompass the expansion of the Register and the safeguarding of GIs for all products granted by Article 23 of the TRIPS Agreement.¹¹⁶

Pakistan is a developing country with a strong agricultural base; the industry contributes over 20% of the country's GDP, employs over half of the workforce, and earns 42% of its export earnings. Geographically isolated areas (GIs) can play a critical role in public policy, contributing to economic growth and ensuring the livelihood of skilled workers in handlooms, handicrafts, carpet weaving, etc. in countries like Pakistan and India, which have robust agriculture sectors, handicrafts, and traditional knowledge. It is hardly surprising that GIs are seen as an important part

¹¹⁵ Bernard O' Connor, "The Law of Geographical Indications," *Trade Mark Ordinance of Pakistan* (2001), <http://www.ipo.gov.pk/trademark/Downloads/TradeMarkOrdinance.pdf>, last accessed May 18, 2023.

¹¹⁶ World Trade Organization, "Draft Modalities for Trips Related Issues," last modified 5-July-2008, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/C/W52.pdf&Open=True>.

of efforts for rural development. Additionally, these GIs might be crucial in boosting exports and enhancing the nation's goodwill.¹¹⁷

Articles 22–25 of the TRIPS Agreement discuss GIs and lay forth the fundamental conditions for guaranteeing their protection. WTO members have flexibility in this area as the TRIPS Agreement does not mandate a certain legal framework for intellectual property protection, leaving it up to individual nations to include GI protection in their national laws.

Since WTO members were given flexibility regarding the protection of GIs, different nations have adopted a variety of strategies, leading to stronger and weaker protection with regard to trademarks. Sui generis systems, certification marks, collective markings, unfair competition and consumer protection, and passing off are a few of the strategies used. For example, a number of countries support sui generis regimes, which advocate for distinct GI laws akin to those found in the EU. Additionally, certain countries—the United States among them—protect GIs under trademark law through certification marks and collective insignia. Similar to the EU, India protects GIs through the sui generis system and has a specific statute for GIs.

Older economies usually give GIs extra protection through separate legislation, even though developing countries prefer to safeguard GIs through trademark regulation. Because of this, "countries in Europe and the former Soviet Union tend to have a stronger interest in protecting

¹¹⁷ Sarah Bowen, "Development from within? The potential for geographical indications in the global south," *The Journal of World Intellectual Property* 13, no. 2 (2010): 231-252, DOI: <https://doi.org/10.1111/j.1747-1796.2009.00361.x>, last accessed July 6, 2023.

geographical indications than do countries with more recently developed economies, such as the United States".¹¹⁸

Similar to India, Pakistan's GIs are significant, but it's crucial to consider them in the larger perspective of conserving artifacts, customs, and industrial techniques from one of the oldest human civilizations ever. Both the manufacturing sector and the culturally and traditionally rich region of Pakistan are home to a large number of GIs.

Basmati is among the most well-liked GIs produced in Pakistan. Other GIs produced in Pakistan include Chiniot woodwork, Gujarat pashmina, Sharakpur guava, Phulkari, Kinnows, Sindhri mangoes (which are indigenous to Pakistan's Sindh area), Qasoori Maithi, Pakistani Shu (windproof outerwear), Ajrak (designed cloth from Sindh), Thadal (beverage), etc.¹¹⁹

Despite having the same common law system, history, and culture as India, Pakistan required an extra twenty years to pass its own GI law. India passed and enacted the GI Act in 1999 as The Geographical Indications of Goods (Registration and Protection) Act. In contrast, Pakistan finally passed the Geographical Indications (Registration and Protection) Act, in the month of March of the year 2020.

¹¹⁸ Lee Bendekgey and Caroline H. Mead, "International protection of appellations of origin and other geographic indications," *Trademark Rep.* 82 (1992): 765, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/thetmr82&div=54&id=&page=>, last accessed June 6, 2023.

¹¹⁹ Swarnim Wagle, "Geographical Indications as Trade-related Intellectual Property: Relevance and Implications for Human Development in Asia-Pacific," *UNDP Regional Center in Colombo*, (2007): 36, http://koha.ips.lk/cgi-bin/koha/opac-detail.pl?biblionumber=45043&shelfbrowse_itemnumber=42532, last accessed July 8, 2023.

3.2 LEGISLATION PROCESS IN PAKISTAN

3.2.1 TRADEMARK ORDINANCE, 2001

In Pakistan, GIs are protected by Section 2(xix) by definition, Section 82 by collective marks, and Section 83 by certification marks under the Trade Mark Ordinance of 2001, which should be read in conjunction with paragraphs 3 of the First Schedule and 3 of the Second Schedule. According to collective markings, "a collective mark may be registered which consists of marks or indications which may serve, in trade, to distinguish the geographical origin of goods or services" as provided by the Ordinance, 2001.¹²⁰ Given that it also mentions services; this implies that this is a TRIPS Plus clause for GIs.

Furthermore, the Ordinance's Schedule 1 Section 3(2) states that "The proprietor of such a mark shall not be entitled to prohibit the use of the marks or indications in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name" in order to further support the coexistence of GIs and trademarks.¹²⁰

The Ordinance's Second Schedule is concerned with certification markings. Similar to collective markings, it states that "a certification mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services" as mentioned in the Ordinance 2001.

Moreover, the coexistence principle is evident in this situation as it is stated that "The proprietor of such a mark shall not be entitled to prohibit the use of the signs or indications in

¹²⁰ Muhammad Hamid Ali, "The Protection of Geographical Indications in Pakistan: Implementation of the TRIPS Agreement," *Journal of World Intellectual Property* 14, no. 6 (2011): 467-476, DOI: <https://doi.org/10.1111/j.1747-1796.2011.00427.x>, last accessed August 9, 2023.

accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name" (Trade Mark Ordinance of Pakistan, 2001).

In Schedules 1 and 2 of the 2001 Ordinance, there are also provisions “pertaining to the infringement of collective marks and certification marks”, respectively. Article 45 of the TRIPS Agreement states that "Members shall make available to the right holders the access to civil judicial procedures" with a footnote stating that "federations and associations having legal right to assert it" are also included.

The above-stated provision relates to the execution of the GI Provisions. This does definitely apply to the laws that GIs owners' associations must follow in Pakistan. While infringement and passing off procedures in Pakistan can be started at Session Courts, decisions resolved by the Registrar can be challenged in High Courts.¹²¹

3.2.2 GEOGRAPHICAL INDICATIONS (REGISTRATION AND PROTECTION) ACT, 2020

The National Assembly of Pakistan, in the year 2020, enacted a bill on geographic indications law that had been in the works for more than 18 years. Patents, copy rights, trademarks, and designs are already covered by Pakistan's IP framework. After enactment, this legislation addressed the registration of geographical indications that were already registered elsewhere, much like the rules in place for the registration of Trade Marks and Patents.

¹²¹ Muhammad Hamid Ali, "The Protection of Geographical Indications in Pakistan: Implementation of the TRIPS Agreement," *Journal of World Intellectual Property* 14, no. 6 (2011): 467-476, DOI: <https://doi.org/10.1111/j.1747-1796.2011.00427.x>, last accessed September 30, 2023.

Once it has been registered, the geographical indicator can be freely used on marketing brands while also giving the owner the ability to take legal action against any unauthorized use of the geographical indication. Anything that is covered by the definition of Article 10 bis of the Paris Convention, which deals with the protection of the same, has been listed as such infringing usage.

Surprisingly, during enactment period, the assignment of Geographical Indications was forbidden, unlike the assignment of trademarks. Geographical indicators previously had protection under the legislation governing trademarks, but the GI Bill stipulated that owners of GIs must submit new applications for registration of the same, which was difficult. One would have assumed that once the new law on GIs was passed, GIs which had already been registered would automatically be given protection under the new law, but that was not the case. The Act was passed in March 2020, just as Covid-19's impacts were beginning to manifest in Pakistan.¹²²

Because there was no GI legislation, foreign companies continue to offer goods with Pakistani origins, such as “Paul Smith's Peshawari Chappal, Moroccan Ajrak, and California Basmati, denying Pakistan the opportunity to command a premium price for its GIs in the global market. Hunza apricots, Charsadda (Peshawari) chappal, Multani halwa, Hala's Ajrak, Sargodha's kinno, Kasuri methi, Sindhri mango, Dir knives, Swat wild mushrooms, Nili-Ravi buffalo, Chaman grapes, Dera Ismail Khan dates, Turbat and Khairpur, Pashmina shawls, etc. are among the products that can be protected under Pakistan under the country's GI law”.

¹²² Jorge Larson, "Relevance of geographical indications and designations of origin for the sustainable use of genetic resources," (2007), <https://cgspace.cgiar.org/handle/10568/104073>, last accessed July 2, 2023.

Overall, the passing of a legislation on geographic indications promotes economic investment in Pakistan and also helps Pakistan meet its TRIPs responsibilities.¹²³ Member States of WTO must ensure that geographical indications are protected under Articles 22-24 of the TRIPS Agreement. As long as Pakistan does not protect its Geographical Indications within the country, it cannot obtain GI protection for its products in other countries where Geographical Indications Law applies. A wide range of products including industrial, agricultural, horticultural and other products are covered under the Geographical Indications.

3.2.2.1 OVERVIEW OF THE GI ACT, 2020

The Act, 2020 was passed in an effort to “support economic change and the development of Pakistan's least developed areas.” It provides for the registration and offer protection of goods as GIs. It comprises of 10 Chapters having 58 Sections in total.

The Act seeks to provide interested parties with legal means of preventing the use of any techniques in the designation or presentation of goods that suggest or indicate that the goods in question are the product of a specific geographic area, as well as the ability to stop any use that might be deemed unfair competition under Article 22 of TRIPS Agreement.

The term "GI" refers to any indication that identifies products as manufactured goods, agricultural products, or natural products that are produced, manufactured, or originated in a territory, region, or locality that is chosen by the nation when a specific attribute, reputation, or

¹²³ Khalid Zafar, “Geographical Indication (Registration & Protection) Act, 2020,” *Khalid Zafar and Associates* (blog), last accessed November 03, 2023, [https://khalidzafar.com/laws-of-pakistan/geographical-indication-registration-protection-act-2020/#:~:text=The%20Geographical%20Indication%20\(Registration%20and,least%20developed%20areas%20of%20Pakistan.](https://khalidzafar.com/laws-of-pakistan/geographical-indication-registration-protection-act-2020/#:~:text=The%20Geographical%20Indication%20(Registration%20and,least%20developed%20areas%20of%20Pakistan.)

feature of the products, or of the ingredients or components, can be primarily traced back to their place of origin.¹²⁴

The GI Act of 2020 states that if a name is used in connection with specific goods that originate from or are associated with a nation, territory, regional, or locality within that nation, and it indicates the origin of goods within or from a specific geographical area of that nation, then even a name that does not designate a territory, region, locality, or country may be considered a geographical indication.

Furthermore, as was already indicated, it states that any geographical indication registered under the Trade Marks Ordinance, 2001 will be immediately revoked upon the effective date of this Act, necessitating the commencement of a new registration procedure under this Act. The Act's Schedule includes a non-exhaustive proposed list of potential geographic indicators of the Islamic Republic of Pakistan for the new registration process.

3.2.2.2 SALIENT FEATURES OF THE GI ACT, 2020:

The following are the salient features of Geographical Indications Act, 2020:

- Its main goal is to provide:
 - legal safeguards for GIs in light of economic changes, the public interest, and Pakistan's least developed regions; and
 - legal ways for interested parties to stop third parties from using a label or presentation of goods that suggests or shows that the goods are from a specific

¹²⁴ Omar Abdullah, Sobia Bashir and Rafia Naz Ali, "The Potential Geographical Indications in Pakistan," *Journal of Social Sciences Review* 3, no. 1 (2023), DOI: <https://doi.org/10.54183/jssr.v3i1.154>, last accessed April 13, 2023.

location or that doing so would be an unfair competition act under the TRIPS Agreement.

- Under the legislation, GIs may be registered by “an association or group of producers, producer organization, operator with an interest in the registration, government organization or statutory body, or by any natural or legal person”.
- “Agribusiness, natural products, manufactured or produced goods from a specific territory, region, or locality that have a particular quality, reputation, or other characteristic of the goods, or ingredients or components that are primarily attributable to their geographical origin, are all covered by the definition of GI”. Moreover, actions “connected to the manufacture, processing, or preparation of the commodities inside a designated territory are covered by GIs for manufactured goods”.¹²⁵
- As a result of this Act, a GI Registry is established and IP Organization of Pakistan (IPO) has been granted the control of it. However, there is no separate office for GI Registry and tasks related to it are being overseen and managed by the Trademark Registry and its branches which were established under the Trademark Ordinance, 2001.
- For GI registration purposes, classifications of commodities defined under the international classification of goods are covered, meaning that any or all goods within a specific geographical territory may be registered.

¹²⁵ Akshaya Kishor Srivastava, "Geographical Indications in Evolving Scenario of Today's World," *Int'l JL Mgmt. & Human* 5, no. 4 (2022): 880, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijlmhs18&div=79&id=&page=>, last accessed October 14, 2023.

- It is not permitted to register a GI when a mark:
 - Would go against the legal definition of 'geographical indication' under the act;
 - would probably result in confusion or deceit;
 - is not protected or has been ceased to be protected or is no longer used in the country of origin;
 - is regarded as a generic name or an indication; or
 - is not registerable for reasons of morality or public policy.
- The Act also takes into account homonymous GIs, which are similar in spelling and pronunciation but indicate goods coming from various locations, typically separate nations. These signs ought to coexist in theory, yet this might depend on a few different factors.¹²⁶
- The Act also accounts for registering a homonymous GI with the proviso that:
 - The registrar is confident in its uniqueness compared to other homonymous GIs;
 - the associated items' manufacturers shall receive equal treatment; and
 - customers won't be misinformed or confused.
- If a foreign GI is registered in its country of origin, the same can be registered in Pakistan.

¹²⁶ Alexandra Grazioli, "The protection of geographical indications," *Bridges* 6, no. 1 (2002), <https://www.iprsonline.org/ictsd/docs/GrazioliBridgesYear6N1January2002.pdf>, last accessed October 9, 2023.

- All GIs in Pakistan will be owned exclusively by the Federal Government, which also has the authority to permit any other governmental organization, public body, local or provincial administration, government firm, or any other relevant statutory body to register a GI in its name. Additionally, registrants may permit producers and operators to access the registry and submit applications to become authorized users in order to be registered.¹²⁷
- The applications submitted for registration of GI must include the following:
 - Geographical Indication mark;
 - the category of products and geographic area covered by the GI;
 - country of origin of the product;
 - statement(s) by the producer or operator; and
 - details relating to the associated goods pertaining to its specifications, quality and attributes.
- Product requests for GI registration must be confirmed by the approved certifying organization, and the Registrar must review and approve the items before they can be registered.
- A party may register as an authorized user of a GI with the registrant's permission. The Registrar may authorize a user registration, subject to review, public announcement for opposition reasons, and fulfilment of specific requirements.¹²⁸

¹²⁷ Geographical Indications (Registration and Protection) Act, Section 11, (2020), https://na.gov.pk/uploads/documents/1588593635_938.pdf, last accessed September 9, 2023.

¹²⁸ Faisal Daudpota, "Geographical Indications Law of Pakistan—An Overview," (2020) <http://dx.doi.org/10.2139/ssrn.3609010>, last accessed May 18, 2023.

- The regulatory mechanism division will oversee and examine GI items to guarantee adherence to the book of specifications, which is an application form that details the product specifications, production norms, and certification procedure of GI goods.
- Authorized and continuing GI registrations typically expire after ten years and may be renewed.
- A GI can only be used by authorized users, as they have the exclusive right and they can also stop others from using it.
- Using a registered GI entails adhering to product specifications and using the GI on goods, packaging, advertisements, and other related documents.
- The GI certification from the Registry includes the registered name of the GI product and the National Geographical Indication logo.
- The infringements in respect of a Registered includes the following:
 - use of a mark that is confusingly similar or comparable to the registered mark, so as to deceive the customers;
 - in case the country of origin is falsely indicated; or
 - non-compliance with regard to the book of specification, which was recorded at the time of registration.¹²⁹
- The following does not include in infringement of registered GI:
 - using in good faith or to specify the intended purpose of goods;

¹²⁹ N. Lalitha and Soumya Vinayan, “Infringements in GI Protected Products: How Do We Protect the Producers and the Consumers?,” *Gujarat Institute of Development Research*, (2019), <http://gidr.ac.in/pdf/wp-256-3248.pdf>, last accessed May 4, 2023.

- using a name including that of a person or a place of business or its predecessors for which seems unlikely for the customers to get confused or otherwise it do not interfere with an existing GI; and
 - using in comparative marketing.
- The GI's holder or registrant and its authorized user shall be entitled to all appropriate remedies in an infringement lawsuit pertaining to the infringement of any other property right, including accounts, damages, injunctions, and other remedies. Moreover, the remedies and right of action against any person for passing off goods as the property of another party remain unchanged.
- The IP Tribunal is the relevant institution to file a suit for infringement of a GI or any other GI right and the same cannot be filed elsewhere.
- The IP Tribunal may hear cases brought by interested parties, producer groups, or consumers who wish to stop infringement of a registered geographical indication; but no case involving an unregistered mark may be brought to recover damages by any other group.
- Misrepresenting an unregistered GI as registered or using a GI without authorization from the GI's registrant or authorized user is prohibited and subject to fine and/or imprisonment.
- The GI rights of an authorized user cannot be transferred, assigned, pledged, mortgaged, or subject to any other arrangement akin to this one by the registered GI. But in the event of an authorized user's death, their GI right will pass to their legal heir.

- Any party with a stake in an inaccuracy or omission in the register may make an application to correct a GI registration. If an authorized user fails to abide by the relevant criteria and limits, the registrant may submit an application to change, rectify, or cancel the user's registration.¹³⁰
- The appellate authority in case of decision of the Registrar is the relevant high court with jurisdiction.

3.3 CASE STUDIES

3.3.1 BASMATI RICE

The word "basmati" describes a class of rice cultivars that are produced exclusively in the region of Punjab on both sides of the Indo-Pak border, Kashmir, and the Indo-Gangetic Plains in the Indian states of Haryana, Uttaranchal, and Western Uttar Pradesh. Because of the unique combination of climate and environment in the Himalayas, basmati rice is highly valued for its unique flavor and aroma that can't be duplicated by cultivating the grain elsewhere.

At first, Basmati was limited to landrace varieties that had been selected over several decades in the Punjab. Nevertheless, those cultivars have low yields since they are photoperiod sensitive and lodge readily because of their height. The need to create new hybrid varieties that are more productive, more tolerant of salt, resistant to disease or insects, or have longer grain lengths

¹³⁰ Seema S. Mansoor, "Salient features of Geographical Indications (Registration and Protection) Act," *Lexology*, last modified July 2020, <https://www.lexology.com/commentary/intellectual-property/pakistan/vellani-vellani/salient-features-of-geographical-indications-registration-and-protection-act>.

in order to fulfill demand has resulted in a major growth in the number of recognized Basmati types in recent years.¹³¹

Consumers adore basmati rice for its unique shape that nearly doubles in length while keeping a virtually constant breadth during cooking, as well as its unique organoleptic and cooking features, which include a distinct aroma in both raw and cooked rice. The approval of the rice exporting authorities in Pakistan and India is contingent upon the Basmati rice variety meeting a set of standards regarding its organoleptic and cooking properties.

Owing to its highly esteemed characteristics, basmati rice is purportedly sold for two to three times the price of non-Basmati rice. With rising consumer demand for premium Basmati rice, deception becomes increasingly plausible. In an attempt to increase profits, dishonest farmers or distributors may mislabel as Basmati rice unreliable rice grown outside of the Basmati region. Verifying the rice's geographic provenance is therefore essential to the Basmati rice supply chain as a whole.¹³²

'Basmati' is a customary name in terms of labelling because it is not spelt out in the law. This indicates that the broad requirement that labels not be misleading is the only safeguard for customers. The Council Regulations (EC) 1785/2003 and 1234/2007, as well as the Commission Regulation (EC) No 972/2006, must all be followed when importing basmati rice into the European Union.

¹³¹ Arif, M. Arif et al., "Differentiating Pakistani long-grain rice grown inside and outside the accepted Basmati Himalayan geographical region using a 'one-class' multi-element chemometric model," *Food Control* 123 (2021), DOI: <https://doi.org/10.1016/j.foodcont.2020.107827>, last accessed July 11, 2023.

¹³² Mark Woolfe, and Katherine Steele, "The Authenticity of Basmati Rice—A Case Study," *DNA Techniques to Verify Food Authenticity*; RSC Publishing: Cambridge, UK (2019): 207-218, DOI: <https://doi.org/10.1039/9781788016025>, last accessed July 13, 2023.

The rice regime has historically protected European rice growers and millers by placing a charge on imported brown and white rice. Trade agreements with Pakistan and India, however, allow duty-free importation of nine varieties of Basmati rice.¹³³

3.3.1.1 STUDIES CONDUCTED FOR RICE QUALITIES

Microsatellite analysis and DNA testing are two well-established methods for both qualitative and quantitative identification that can be used to determine the botanical origin of Basmati rice. Unfortunately, there are currently no accepted analytical methods for identifying the provenance of Basmati rice. It has been demonstrated that the mineral and elemental content of rice is influenced by the variety and soil in which it is grown.¹³⁴

Stable isotope analysis using isotope ratio mass spectrometry and elemental analysis using inductively coupled plasma mass spectrometry and high-resolution mass spectrometry (ICP-MS and ICP-HRMS) have often been employed in tandem for the goal of authenticating rice (IRMS). Employing ICP-MS and IRMS, 73 rice samples from the USA, Europe, and the Basmati regions of Pakistan and India were examined by Kelly et al. Nine crucial variables were discovered to allow for the highest degree of distinction between rice from different regions: ¹³C, ¹⁸O, B, Ho, Gd, Mg, Rb, Se, and W.¹³⁵

The most trustworthy indicators of the origin of the rice, according to Gonzalvez and Co.'s investigation of 153 rice samples from Spain, Japan, Brazil, and India, were cobalt, cadmium, and

¹³³ Rupali A. Lagad, Sunil K. Singh, and Vinai K. Rai, "Rare earth elements and ⁸⁷Sr/⁸⁶Sr isotopic characterization of Indian Basmati rice as potential tool for its geographical authenticity," *Food Chemistry* 217, (2017): 254-265, DOI: <https://doi.org/10.1016/j.foodchem.2016.08.094>, last accessed May 4, 2023.

¹³⁴ Alison Colyer et al., "Comparison of calibration methods for the quantification of Basmati and non-Basmati rice using microsatellite analysis," *Food Additives and Contaminants* 25, no. 10 (2008): 1192, DOI: <https://doi.org/10.1080/02652030802040141>, last accessed May 9, 2023.

¹³⁵ Simon Kelly et al., "The application of isotopic and elemental analysis to determine the geographical origin of premium long grain rice," *European Food Research and Technology* 214, (2002): 72-78, DOI: <https://doi.org/10.1007/s002170100400>, last accessed August 19, 2023.

lanthanides. Based on seven distinct variables, 90.32 percent of Thai jasmine rice samples were correctly classified by discriminant analysis (DA) into the northern, north-eastern, and central regions of the nation, according to research done by Cheajesadagul, Arnaudguilhem, Shiowatana, Siripinyanond, and Szpunar (2013). (B, Mn, Fe, Zn, Rb, Sr, and Cd). In the same investigation, DA accurately classified rice using 12 characteristics from Asia, Europe, and Thailand (B, Mg, Co, Cu, Zn, As, Rb, Sr, Mo, Cd, Cs, and Ba).¹³⁶

In a different study, Li et al. (2015) shown that 90.7 percent of the rice samples (n = 214) from different countries in Asia, Australia, Europe, India, Pakistan, North America, and Southeast Asia were accurately classified using canonical discriminant analysis (CDA). The authors determined that the following 15 variables were crucial for the discrimination: 13C, 18O, 15N, Mg, Al, K, Mn, Fe, Co, Cu, Zn, As, Se, Mo, and Cd. Lagad et al. studied the 87Sr/86Sr ratios and rare earth elements (La, Ce, Pr, Nd, Sm, Eu, Gd, Dy, Er, Yb) in Indian Basmati rice samples (n = 84), and compared the findings with data for rice samples from Thailand, Japan, China, Vietnam, Australia, and the United States. The results of the study indicate that 87Sr/86Sr ratios can be used to differentiate rice from other countries from Indian Basmati rice.¹³⁷

Chung et al. utilized stable isotope and multi element analysis to authenticate 58 rice samples from Thailand, the Philippines, China, Japan, Korea, and Cambodia. The authors stated that rice samples from Korea could be differentiated from those from all other countries using orthogonal projections to latent structures discriminant analysis (OPLS-DA), with 34S, Mn, and Mg being the most significant components.

¹³⁶ A. González, S. Armenta, and M. De La Guardia, "Geographical traceability of "Arròs de Valencia" rice grain based on mineral element composition," *Food Chemistry* 126, no. 3 (2011): 1254-1260, DOI: <https://doi.org/10.1016/j.foodchem.2010.11.032>, last accessed August 20, 2023.

¹³⁷ Rupali A. Lagad, "Rare earth elements and 87Sr/86Sr isotopic characterization....," (2017): 260.

Srinuttrakul and Permnamtip distinguished between Thai Hom Mali rice from the northern and northeastern parts of Thailand using stable isotope and elemental analysis. According to the study, discrimination was successful since stable isotope composition did not change significantly between the two regions, despite the elemental composition of Thai Hom Mali rice (As, Cd, Cu, Mo, and Sr) changing dramatically.¹³⁸

3.3.1.2 INDIA – US DISPUTE OVER BASMATI RICE

FACTS

In 1985, a Texas-based private American company called RiceTec asserted that it had bred Basmati rice with other varieties of rice to produce a new kind of aromatic rice. This new kind of rice, as claimed by RiceTec, was called Texmati or American Basmati. The United States Patent and Trademark Office (USPTO) received application from RiceTec in 1997 seeking a patent on the lines and grains of Basmati rice not long after TRIPS was introduced. In the end, RiceTec received Patent Number 5663484 on September 2nd, 1997 for its novel rice lines and the process utilized to create a new variety of rice.

The firm submitted a 20-claim patent application, the first 14 of which were based on characteristics common to rice farmed in Central America, South America, and North America. The rice cultivars used in claims 15–17 had no connection to any particular area. Claims 18–20 were based on the innovative method the business employed to create a new kind of rice.

Basmati rice in India shared the same qualities as American Basmati. As a result, in the year 2000, the Indian government through APEDA (Agricultural and Processed Food Products

¹³⁸ W. Srinuttrakul and V. Permnamtip, "Geographical origin of Thai Hom Mali rice based on elemental and stable isotopic compositions," *Journal of Physics: Conference Series*, vol. 1285, no. 1, (2019), DOI: 10.1088/17426596/1285/1/012004, last accessed April 10, 2023.

Export Development Authority in India) contested RiceTec's patent on American Basmati before the USPTO. Specifically, the objection was made to claims 15 through 17 made by RiceTec, which were connected to basmati rice and jeopardized the interests of Indian exporters of basmati rice.¹³⁹

CASE ANALYSIS - RICETEC

India previously sold basmati rice to the US and it was a staple cuisine there. One of the most important conditions for getting a patent is novelty. On the other hand, something that was already in existence cannot be called innovative. This means that the creation of a supposedly novel kind of rice that bears resemblance to Basmati rice cannot legally be granted a patent. Consequently, it was argued that the USPTO had no right to have granted RiceTec a patent in the first place.

The Indian Government went on to say that the term "Basmati" has a specific meaning and is not a general one; it refers to the aromatic long-grain rice that has been grown on the Indian Subcontinent for thousands of years. Because Basmati rice is only grown in specific parts of India, using this phrase to promote any other variety of rice would mislead consumers about its origin and harm the rice's image.

In response to the farmers' protests and the Indian government's refusal, RiceTec voluntarily gave up its rights on a number of the claims. However, the USPTO declared several other claims made by RiceTec to be dubious and issued a Re-examination certificate that voids claims 1–7, 10–14, and all of them related to Basmati rice grown in India. As a result of all of this, RiceTec was unable to market the rice varieties it created via research using the term "Basmati"

¹³⁹ Utsav Mukherjee, "A study of the basmati case (India-US basmati rice dispute): the geographical indication perspective," *National Law University Jodhpur*, (2008): 10, DOI: <http://dx.doi.org/10.2139/ssrn.1143209>, last accessed August 14, 2023.

and was left with a patent covering a limited number of claims that could not have a negative impact on Basmati rice grown in India.¹⁴⁰

The patent granted to RiceTec and its usage of the word "Basmati" have raised ethical problems among Indian farmers who have been involved in the cultivation and consumption of Basmati rice for decades. For a foreign company to profit from the decades-long labor of Indian farmers to perfect aromatic rice was both immoral and unacceptable. The Indian government was obligated to act against RiceTec's unfair advantage because Basmati rice production has been the only source of income for many impoverished farmers and is widely sold globally.

The Indian government stepped in to allow Indian farmers to profit financially from the respect and goodwill that basmati rice has gained around the world. In addition to creating confusion among consumers, environmental activist Dr. Vandana Shiva said that RiceTec's patent application amounted to a theft of the collective knowledge and cultural legacy of Indian farmers and dealers involved in the export market.

The Indian government was able to successfully oppose the patent that RiceTec had been awarded by the USPTO for Basmati rice lines and grains, but their problems were far from finished as they still had to deal with 40 more legal challenges in 25 other nations. India realized the need to adopt a specific law safeguarding geographical indications as a result of biopiracy problems with neem, turmeric, and basmati rice.

Resultantly, the government of India framed and enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 and changed its legal system to one that was sui

¹⁴⁰ Shantanu Guha Ray, "The stealing of basmati," *The Rediff Business Special* (1998)., <https://www.rediff.com/business/1998/mar/12rice.html>, last accessed September 1, 2023.

generis. The RiceTec case, however, also highlighted the necessity for a universally endorsed rule that will consistently safeguard geographical indications and shown how the TRIPS failed to provide equal market access.¹⁴¹

The Indian government said in the RiceTec case that Article 23 of the TRIPS should grant Basmati rice the same protection as wines and spirits. However, it was turned down since the TRIPS provisions did not support it. TRIPS does not impose any requirements on other countries, even though it does not mandate that they acknowledge the GI on traditional items of the place of origin. However, India was better equipped to prevent bio-piracy and the associated financial loss after enacting a special law.¹⁴²

The Indian government successfully appealed the decision in Brazil because it disapproved of the term "Basmati" being used as a trademark for sauces and sweets. Additionally, the trademark registrations of "Texmati" and "Jasmati" by RiceTec, as well as "Texmati" and "Kasmati" in the UK and Greece, were successfully challenged by the Indian government. The Indian government contended that because both names were similar to basmati rice, the customer might be duped.

The APEDA filed a trademark registration application in Spain to stop rice imported from nations other than India from utilizing the term "Basmati" before their types of rice. The Indian government later received the trademark registration that the Spanish government had authorized.

¹⁴¹ Md. Zafar Mahfooz Nomani and Faizanur Rahman, "Bio Piracy of Traditional Knowledge Related Geographical Indications: A Select Study of Some Indian Cases," *Manupatra Intellectual Property Reports (MIPR)* 3, no. 3 (2016): 135-152, https://www.researchgate.net/profile/Faizanur-Rahman/publication/321492837_Bio_Piracy_of_Traditional_Knowledge_Related_Geographical_Indications_A_Select_Study_of_Indian_Case/links/5a259474a6fdcc8e866b95e5/Bio-Piracy-of-Traditional-Knowledge-Related-Geographical-Indications-A-Select-Study-of-Indian-Case.pdf, last accessed September 1, 2023.

¹⁴² Kranti Mulik and John M. Crespi, "Geographical indications and the Trade Related Intellectual Property Rights Agreement (TRIPS): A case study of basmati rice exports," *Journal of Agricultural & Food Industrial Organization* 9, no. 1 (2011), DOI: <https://doi.org/10.2202/1542-0485.1336>, last accessed September 18, 2023.

In order to monitor new petitions for trademark registration for Basmati rice and other comparable rice varieties being filed by other nations, the Indian government engaged the Trademark Watch Agency.¹⁴³

3.3.1.3 LEGAL BATTLE ON BASMATI RICE BETWEEN INDIA AND PAKISTAN

In the year 2008, discussions on submitting a joint application to register basmati as GI in the EU were being carried out between Pakistan and India, however, the 2008 Mumbai terrorist attacks and India blaming Pakistan for it, put a stop to this plan. Despite this, APEDA sought for Basmati's domestic GI designation, and the Geographical Indications of Goods (Registration & Protection) Act, 1999 allowed for its approval in 2016.

In order to assert exclusive control over the product in the EU, India applied for PGI status for Basmati in July 2018 with the Council on Quality Schemes for Agricultural and Foodstuffs of the EU. Following a preliminary evaluation conducted in compliance with control processes and acceptable techniques, the application was published in the Official Journal of the European Union in September 2020.

The application filed by India stated that “Basmati is grown in various parts of India as a special long grain aromatic rice. It is raised and produced in a particular geographical region of the

¹⁴³ Kishan Bansal, “Case Study of Rice Tech (India – US Dispute) and Transformation of India from Trademark Act to Sui Generis System,” *International Journal of Law Management and Humanities* 4, no. 2, (2021): 2459, DOI: <http://doi.org/10.1732/IJLMH.26536>, last accessed October 1, 2023.

Indian subcontinent. The area is a part in northern India, below the foothills of the Himalayas forming a part of the Indo-Gangetic Plains (IGP).”¹⁴⁴

India's principal defense was that historical narratives, folklore, scientific and culinary literature, political-historical records, and other sources all attest to the origins and identity of Basmati as a "long-grain, aromatic rice" from IGP. Nevertheless, India did not claim to be the only country with the ability to cultivate Basmati in its application to the European Commission. In addition, the application fulfilled the product specification standards stated in Regulation (EU) No 1151/2012 of the European Parliament and of the Council, Article 7(1).

In accordance with Article 51 of Regulation (EU) No. 1151/2012 of the European Parliament, a country may contest after its publication in the Official Journal of the European Union, however, the time limit for contestation is within three months of the publication. The second-largest supplier of basmati, Pakistan, rejected this assertion because it would negatively impact its exports, particularly to the lucrative EU market.

In late 2020, Pakistan filed a Notice of Opposition in opposition to India's claim to the Basmati. The primary objection to basmati was that both Pakistan and India produced it, making it a shared product. Before a product can be registered on the international market, the regulations stipulate that it must first be covered by the nation's GI laws. According to the Geographical Indications (Registration and Protection) Act 2020, Basmati was given GI status on January 27,

¹⁴⁴ Siddhant Biswakarma, “Who Owns Basmati Rice? India and Pakistan Battle for GI Rights,” *IPWatchdog* (blog), last modified July 6, 2021, <https://ipwatchdog.com/2021/07/06/owns-basmati-rice-india-pakistan-battle-gi-rights/id=135213/>.

2021, according to the then Commerce Advisor of Pakistan's government, Mr. Abdul Razak Dawood. Additionally, the European Commission accepted Pakistan's Notice of Opposition.¹⁴⁵

3.3.1.4 INDIAN ATTEMPT TO REGISTER BASMATI IN AUSTRALIA

APEDA has failed in its attempt to register "Basmati" as a certified trade mark for rice in Australia. According to APEDA, the term "Basmati" refers to rice farmed in specific regions of Pakistan and India.

“CERTIFICATION MARKS” IN AUSTRALIA

Australia is a signatory to the TRIPS Agreement, which calls for the protection of GIs. Geographical indicators may be protected under Australian trade mark law as certification marks, which denote the presence of a certain, verifiable characteristic in products or services. Australia also has a distinct system in place for wine geographical indicators.

"Scotch Whisky" by the Scotch Whisky Association and "Parma" by the Consorzio del Prosciutto di Parma for pork products produced in the Italian Province of Parma using particular techniques are two certification marks that have been registered in Australia.¹⁴⁶

APEDA'S APPLICATION FOR BASMATI

There are reports that list the nutty aroma, long and slender grains, soft texture, delicate curvature, relatively low glycemic index, little to no swelling across the grain when cooked, high grain integrity during cooking, and linear kernel elongation during cooking as the unique and

¹⁴⁵ Siddhant, "Who owns Basmati rice," (2021)

¹⁴⁶ "IP Australia rejects India's trade mark application for the word 'Basmati'," *BrandWrites*, last accessed March 2023, <https://brandwrites.law/ip-australia-rejects-indias-trade-mark-application-for-the-word-basmati/>.

verifiable characteristics of Basmati rice. Numerous factors, particularly the agro-climatic conditions in the regions where this specific rice variety is produced, contribute to these qualities.

The ability to distinguish between goods and services that have been certified by the applicant (or an authorized certifier) and those that have not is one of the requirements for a certification mark under Australian law.¹⁴⁷ It was discovered during prosecution and a hearing before a Delegate of the Registrar of Trademarks that BASMATI was unable to distinguish between rice goods recognized by APEDA and uncertified rice goods because the word "rice" in normal usage refers to a certain kind of rice.

SURVEY EVIDENCE FOR ‘BASMATI’

APEDA based its decision on data from a market survey demonstrating that a sizable portion of respondents connected the term "Basmati" with rice from Pakistan and India. Evidence, however, also suggested that it was linked to rice from other nations and, more broadly, Asia.

DECISION

Even while the Delegate found that APEDA imposed strict regulations on the use of the term "Basmati" in India, the Delegate also discovered that other traders would have a valid wish to refer to rice and rice-derived goods that are not APEDA-certified as "Basmati". He said:

“At most, the evidence demonstrates that Basmati may distinguish, amongst a proportion of the Australian market, particular rice of Indian origin from rice of Indian origin that is not so certified. However, it does not demonstrate that Basmati

¹⁴⁷ “IP Australia rejects India’s trade mark application,” *BrandWrites*,

more broadly distinguishes rice certified by APEDA from rice not so certified by other traders who have an equally valid claim to use the same term”.

While the APEDA made an effort to convince the examiner that the mark had become capable of differentiating the goods through evidence of use, the delegate found that although large amounts of Basmati rice had been shipped to Australia for a considerable amount of time, it was not apparent how much of this rice had been certified by the APEDA.¹⁴⁸

Australia and EU are now negotiating for Australian farmers' rights to use labels like "feta" and "prosecco" on their food. While the EU has expressed alarm over the matter, many Australian growers "who've literally brought those products or wines and things like that from Europe from their own family history" have also expressed great anxiety, according to the then Australian Minister for Agriculture, Mr. Murray Watt. The APEDA has filed an appeal with the Australian Federal Court.¹⁴⁹

3.3.2 PINK SALT

3.3.2.1 INTRODUCTION

Rarely is salt thought to be a national puffery. However, due to the Himalayan pink salt's rise to prominence internationally, it has been the topic of parliamentary debates in Pakistan. Himalayan pink salt has gained popularity in the US for a range of applications, including culinary and spa treatments. You may even purchase items fashioned with it.

¹⁴⁸ Ref No. APEDA, "Agricultural and Processed Food Products Export Development Authority," (2014), <http://www.apeda.gov.in/apedahindi/miscellaneous/Registration.doc>, last accessed August 20, 2023.

¹⁴⁹ Ref No. APEDA, "Agricultural and Processed Food Products Export Development Authority," (2014), <http://www.apeda.gov.in/apedahindi/miscellaneous/Registration.doc>.

It may be noted that despite being popular product, the place of origin is rarely emphasized or indicated on final products, it maybe because of the reason that those final products are not sold by the country which produces majority of Pink Salt i.e. Pakistan, as its raw form was being sold to other countries at much cheaper prices. As a result, the salt was frequently sold as coming from a vague Himalayan Mountain, possibly an icy glacier. But now that it is becoming more and more popular, supporters of the salt industry have proposed laws that will brand Himalayan pink salt as Pakistani.

From steep red-brick hills rising out of marshes, salt is produced in the Punjab region of Pakistan, at Khewra. The landscape is intensely hot, and they are hundreds of kilometres from the famous snow-capped peaks of the Himalayas. The distant tendrils of the Himalayas known as the salt range hills are the remnants of a lagoon that was present 600 million years ago.

Previously a small-scale sector that received little attention, salt mining currently exports about 400,000 tons of salt annually, mostly as raw rock. A fourth of the exports were sent to India for about \$40 per ton. After the salt was physically blasted out of the mines, vehicles drove it 160 kilometres to the border. But in year 2019, the shipments gained widespread attention after it was found that the nation was sending inexpensive salt to India, who after processing it, sells it in the international market without mentioning its country of origin. The information released a viral marketing campaign.¹⁵⁰

As a result of social media campaign, different stakeholders took notice of the fact that pink salt is being exported to India on very cheap price. According to one estimate Pakistan only

¹⁵⁰ Oana C. Deselnicu et al., "A meta-analysis of geographical indication food valuation studies: What drives the premium for origin-based labels?," *Journal of Agricultural and Resource Economics* (2013): 204-219, <https://www.jstor.org/stable/23496751>, last accessed May 1, 2023.

earned about \$26 million in the fiscal year 2019-20; other officials claims it to be around \$50 million. Whatever the case may be "it was being sold for a song", as per Senator Faraz, who was of the view that with legal reforms the above-stated figures could triple. As a result, the senator advocated for legislation to restrict the sale of raw salt and encourage the production of valuable finished commodities.

Political developments have brought about additional disruption. India reduced the autonomy of the region of Kashmir that it governs on August 5, 2020. Pakistani officials worried that their own claims to the disputed territory would be undermined by India's action. The salt sector was of the opinion that it has been destroyed as a result of Pakistan's retaliatory restriction on bilateral trade with India. However, the then advisor to the Prime Minister of Pakistan, Mr. Babar referred to it as "a blessing in disguise."

Pakistani companies were "put in a hard line" by restrictions on bilateral trade between India and Pakistan, which required them to substitute the items that were going to India. Other buyers must take its place, according to Mr. Babar. He claimed that by attempting to reduce and simplify rules, the government was attempting to make things simpler for businesses.

The subcontinent's salt industry in Pakistan has not much improved since the 1870s, when the British colonial rulers started major mining.¹⁵¹

3.3.2.2 EXPECTED IMPACT OF REGISTERING PINK SALT

The Pakistan Mineral Development Corporation officials estimate that the country exports about 400,000 tons of salt every year. Pakistan's economy has significantly suffered because, prior to the GI

¹⁵¹ Oana C., "A eta-analysis," (2013)

registration, any nation could sell Himalayan pink salt under its own label. Pakistan exported commodities belonging to “commodity category 2501 (i.e., Salt) for a total of \$ 59 million in 2020”. Commodity group 2501 exports from Pakistan increased by \$10.1 million, or 20%, compared to 2019 (commodity group 2501 exports from Pakistan totaled \$49 million in 2019). The export of 2501 represented “0.268% of Pakistan's overall exports (the country's cumulative merchandise exports in 2020 came to \$ 22 billion)”.¹⁵²

GLOBAL DEMAND OF PINK SALT AND SUPPLY CHAIN:

In US dollars (2019), the total export value for HS-2501 is 2,853,783. The Netherlands was the largest salt exporter in the world in 2019, with shipments worth about 287.36 million dollars. Its 10% (2019) share of global salt exports under HS 2501. Germany exported salt to other countries for 264.86 million dollars in that year. The majority of the salt exported from the Netherlands is utilized for industrial reasons (Figure 3).

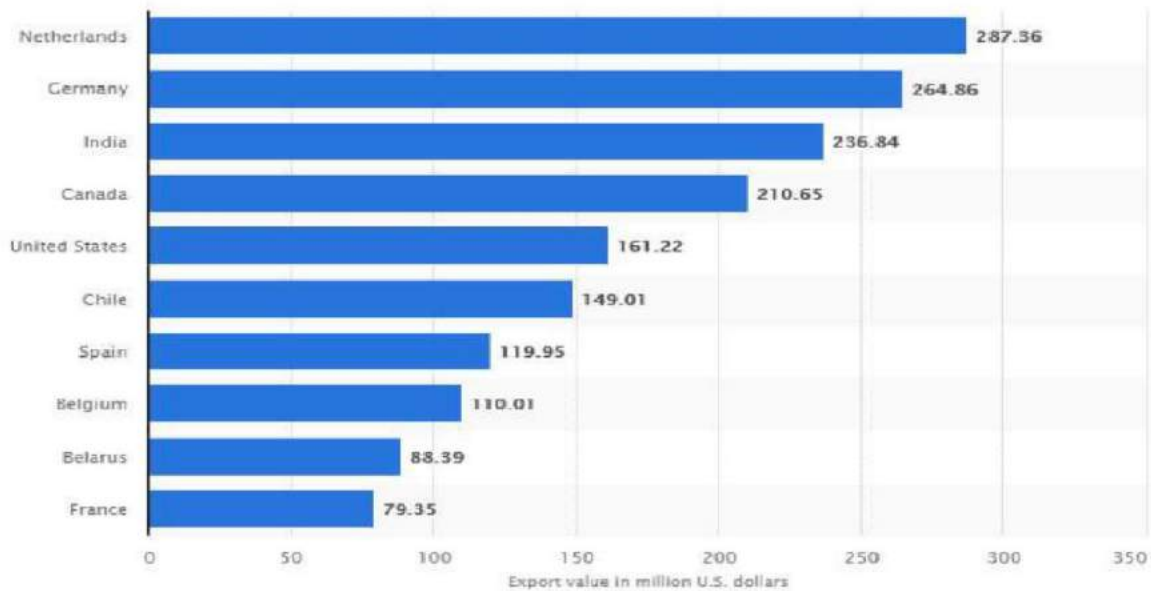


Figure 3 Global trade value of salt exports in 2019, by top exporting nation (in million U.S. dollars)

¹⁵² “Monthly Bulletin of Statistics,” *Pakistan Bureau of Statistics*, last modified May 2020, <https://www.pbs.gov.pk/publication/monthly-bulletin-statistics-may-2020>.

The study estimates that as of 2019, the average daily salt consumption for adults in China was 10.9 grams. The average adult's daily salt intake in the United States was calculated to be around 9 grams. In 2019, the market for salt on a global scale was estimated to be worth 28 billion dollars. By 2025, it is anticipated that the market will be worth over 32 billion dollars.¹⁵³

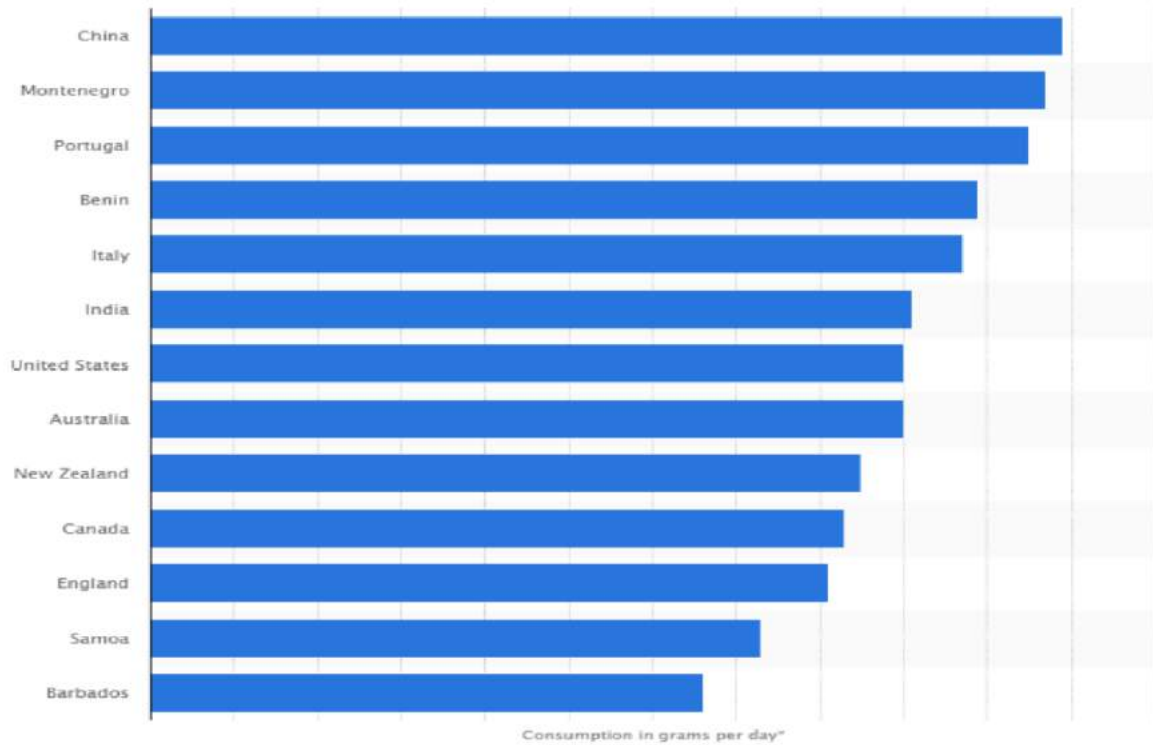


Figure 4 Consumption of salt by country per person per day worldwide (2019)

As per one Pakistani exporter, he exports a substantial salt cube packaged with a metal grater, which are called Zen cubes in USA, at a retail of US\$16 which is the same price that other Pakistani exporters are getting paid for approximately half a ton of crude salt in the wholesale market.

¹⁵³ Tayyaba Iftikhar Butt, “Salt HS (250100),” *TDAP*, 2021: 45, <https://tdap.gov.pk/wp-content/uploads/2022/03/Report-on-Salt.pdf>, last accessed May 1, 2023.

Through the sale of Himalayan Pink Salt, Pakistan can make millions of dollars. The famed Khewra mines produce a highly distinctive salt. It is advertised as one of the most costly and pure salts in the world. It is used as specialty meals all over the world because of its incredible benefits. It is used for home décor and even aerated water bath treatments.

Additionally, due to its usage in medicine, it is important in many religious practices, especially Hinduism. Pakistan sells salt to India for a very reasonable price, for instance, the Pink Salt purchased by India from Pakistan in the year 2016 accounts for 625 metric tons. It cost 2.98 rupees per kilogram. However, India sold 15.09562 metric tons of salt with its own labelling and trade name to Korea, Somalia, United States of America, United Arab Emirates, Canada and Spain.

From Pakistani Himalayan salt, India produces a wide range of other goods, then offers it for sale to the rest of the world. Israel and France both market the Himalayan Pink Salt as a product. After being supplied at a very low cost from Pakistan, the Himalayan Pink Salt is processed and packaged. It is available on Amazon for \$26.40 for 400 grams, or around Rs. 8000 per kilogram.¹⁵⁴

After registering Basmati as a GI in the year 2021, Pakistani authorities finally registered Pink Salt Rock as a GI in the year 2022, in an effort to prevent other nations from exploiting the commodity and make profits. Pakistan Commerce Ministry's officials made necessary efforts to promptly register the pink rock salt. According to the then Commerce Adviser Abdul Razak Dawood, "the registration of the GI tag for local goods will serve as a potential economic tool to promote and enhance national and international trade of Pakistan" and earn profits.

¹⁵⁴ Waqas Shah, "Pakistan can earn millions of dollars through Himalayan Pink Salt," The National Frontier, last modified March 2021, <https://thenationalfrontier.com/2021/03/23/pakistan-can-earn-millions-of-dollars-through-himalayan-pink-salt/>.

The move seeks to stop other countries from illicitly using native items from Pakistan. The advisor claims that the trademark will encourage producers to sell "Made in Pakistan" products abroad and expand their businesses. Pakistan's Commerce Ministry gathered a list of extra products for priority registration and asked the business community to recommend other products that should be registered.¹⁵⁵

3.4 GI'S ECONOMIC POTENTIAL IN PAKISTAN

Surprisingly, there are already six registered GIs of Pakistan, but the notified list of GIs includes as many as 65 products. The fact that Pakistan has only been able to register 6 GIs out of total 65 notified GIs says volumes about the importance of developing capacity in both the public and private sectors. Even though empirical data suggests that GI protection is likely to boost the rural economy for specialist agricultural products, it is comprehensible why the majority of countries, especially emerging ones, haven't registered many GIs in the EU.¹⁵⁶

Observing the GIs in Pakistan, it can be seen that there is a significant opportunity for registration both domestically and internationally. This will be beneficial for exports, cultural preservation, economic growth, and poverty reduction in many regions. For example, the European Commission (EC) asserts that, notwithstanding quality assurance, European products are marketed at higher costs once their names are protected as GIs.

Agriculture and various GIs, such as Basmati rice, Sindhi mangoes, Sumatra Mandheling coffee, Darjeeling tea, among others, play a substantial role in developing the economies of emerging nations like Pakistan. Empirical data shows that more tea and coffee produced in Darjeeling and Antigua are sold under those labels than under their actual origins. Similar to this, it is possible to claim that the most rice should

¹⁵⁵ Waqas Shah, "Pakistan can earn millions of dollars,"

¹⁵⁶ Gail E. Evans, "The Comparative Advantages of Geographical Indications and Community Trademarks for the Marketing of Agricultural Products in the European Union," *International Review of Intellectual Property and Competition Law* (2010), <http://qmro.qmul.ac.uk/xmlui/handle/123456789/2047>, last accessed April 9, 2023.

be sold under the Basmati moniker, which literally translates to "Aroma of the Land". Therefore, both domestically and internationally, GIs require equal protection.

When this special intellectual property is seen as a collective public right rather than a private right, its significance increases. Better GI protection and marketing could be seen as capable of directly assisting MDG-1 (reducing income poverty) through an increase in local inflow of cash earnings. However, there are no clear connections between the MDGs and the importance of GIs when the targets are evaluated locally and as a whole. because achieving other development goals, such as lowering the burden of disease and the death rate for both mothers and infants, is also linked to higher wages.¹⁵⁷

India, which shares many customs with Pakistan and has a long history, has a large number of registered GIs. Given the presence of homonymous GIs between Pakistan and India, like Basmati, Pakistan needs to learn from India's experience to expedite the registration process, and both countries need to work together to preserve homonymous GIs. By 2008, India has 61 GIs recognized for a wide range of products, including textiles, coffee, tea, horticulture, agricultural products, and handicrafts.

In regions such as the EU, where GIs are protected by comprehensive legislation and a Community Trade Marks System from outside the EU, Pakistan is also losing market share to countries like China, India, Thailand, and Colombia, which have registered their products sporadically but not yet Pakistan.¹⁵⁸

3.4.1 RECENT EFFORTS FROM PAKISTAN IN GI SECTOR

In an effort to establish them as its brands on the global market, Pakistan has accepted the GI registration of a number of agricultural and non-agricultural products. The action follows India's unsuccessful attempt to market Basmati rice as its own brand in the EU. The authorities

¹⁵⁷ Latha R. Nair and Rajendra Kumar, *Geographical Indications: a search for identity*. , LexisNexis, Butterworths., 2005.
https://books.google.com.pk/books/about/Geographical_Indications.html?id=iGixAAAACAAJ&redir_esc=y, last accessed October 5, 2023.

¹⁵⁸ Gail E. Evans, "The Comparative Advantages of Geographical Indications," (2010)

have officially started the process for GI registration of Pakistani products and 6 of them have already been registered. GI was compared to IP rights (IPRs), which are granted to the products that originate in a certain area and whose reputation or quality can be traced back to that location, by the Pakistan Commerce Division during a discussion with the cabinet.

Pakistan passed the GI Act in March 2020 to ensure that its products are registered and have sufficient protection. In this regard, the application process for GI protection of Pink Rock Salt's started on February 22, 2021 and was registered as GI on July 18, 2022, whilst the GI registration process of Basmati rice was completed on January 21, 2021.

The sui generis Act of Pakistan on GIs can also provide protection for a sizable range of other Pakistani goods. GI has the potential to be a useful economic tool for boosting and expanding both internal and international trade by bringing in premium prices and worldwide demand for Pakistan's products.¹⁵⁹

Section 11(2) of the GI Act 2020 authorizes public bodies to be designated as the federal government's authorized agents for the GI registration of Pakistani products. Pakistan's Commerce Ministry accordingly started an initiative to identify the agencies so that the relevant stakeholders can begin the registration process.

The registration bodies play a crucial role because it is up to them to create the Book of Specifications. The book is an essential tool that contains information on GI bearing products, such as their name and description, a summary of their salient characteristics, how to obtain them, a

¹⁵⁹ "Notified GIs of Pakistan," *Intellectual Property Organization of Pakistan*, last updated August 2021, https://ipo.gov.pk/gi_notifiedGIs.

definition of a geographic area (mapping), a relationship between the product and its surroundings, and evidence that the product originated in the designated geographic area.

“Chaunsa Mango”, “Sindhri Mango”, “Kinnow”, “Hunza Ruby”, “Swat Emerald”, “Kashmir Tourmaline”, “Skardu Topaz”, “Skardu Aquamarine”, “Peridot Stone”, and “Peridot Valley” are among the agricultural and nonagricultural goods that are suggested Pakistan Commerce Ministry to be registered as GI in the first phase. The Pakistan Minerals Development Corporation (PMDC) and the Trade Development Authority of Pakistan (TDAP) were chosen by the ministry to register these goods.

After receiving authorization and notification as registrants, public bodies created the Book of Specifications and submitted applications to the IPO Pakistan for registration of GI-bearing items. The Ministry of Commerce put out a motion asking for permission to register these goods as Pakistani brands. But all that was only after India tried to register Basmati rice as its GI in the European market which made the Pakistan’s bureaucracy finally move.

Under Section 11(2) of the Geographical Indications (Registration & Protection) Act, 2020, the Federal Government of Pakistan has notified 65 Geographical Indications (GIs) of Pakistan; however, only six GIs have been registered, including “Basmati”, “Hyderabad Bangles”, “Pink Rock Salt”, “Sargodha Kinnow”, “Chaunsa Mango”, and “Sindhri Mango”, the last three of which were registered on January 3, 2023.¹⁶⁰

¹⁶⁰ “Registered GIs of Pakistan,” *Intellectual Property Organization of Pakistan*, last updated 2021, https://ipo.gov.pk/gi_registeredGIsPK.

CHAPTER 4

COMPARATIVE ANALYSIS OF PAKISTAN'S AND EUROPEAN UNION'S LEGISLATION ON GEOGRAPHICAL INDICATIONS

4.1 EUROPEAN UNION'S LEGISLATION ON GI:

EU Regulation No. 1151/2012 addresses “the protection of geographical indications and designations of origin for food and agricultural products”. The goal of EU law, which includes this rule, is to protect the originality and quality of specific agricultural goods and traditional meals.¹⁶¹

4.1.1 INTRODUCTION TO REGULATION (EU) NO. 1151/2012:

The following are important details regarding Regulation (EU) No. 1151/2012 and its prior regulations:

i. SCOPE AND PURPOSE:

- The primary goal of the rule is to create legislation for the defense of GIs and designations of origin (DOs) for food and agricultural products inside the European Union.

¹⁶¹ Niculina Iudita Sampalean, Daniele Rama and Giulio Visent, "An investigation into Italian consumers' awareness, perception, knowledge of European Union quality certifications, and consumption of agri-food products carrying those certifications," *Bio-based and Applied Economics Journal* 10, no. 1, (2021): 35-49, DOI: 10.22004/ag.econ.312981, last accessed July 16, 2023.

- GIs and DOs are used to identify a product as coming from a specific location where a particular attribute – like quality, characteristic, or reputation – can be traced back to its origin.

ii. REPEAL AND CONSOLIDATION:

- Council Regulation (EC) No 510/2006 and Council Regulation (EC) No 509/2006 were repealed and replaced by Regulation (EU) No 1151/2012. The preservation of GIs and DOs for food and agricultural products was also covered by these earlier legislation.¹⁶²

iii. PRODUCT CATEGORIES:

- A wide range of product categories are covered by the rule, including foodstuffs, wines, spirits, and agricultural products. Cheeses, meats, olive oils, wines, and spirits with particular geographical indications are a few examples.¹⁶³

iv. REGISTRATION AND PROTECTION:

- A system for the registration and safeguarding of GIs and DOs is established under the legislation.
- Protection is only available for products that meet certain requirements and are made in the designated geographic area.

¹⁶² Matteo Gragnani, "The EU regulation 1151/2012 on quality schemes for agricultural products and foodstuffs," *European Food and Feed Law Review* 8, no. 6, (2013): 376-385, <https://www.jstor.org/stable/24325986>, last accessed June 1, 2023.

¹⁶³ Hazel Moir, "Geographical indications: An assessment of EU treaty demands," *Australia, the European Union, and the New Trade Agenda* (2017): 121-138, <https://library.oapen.org/bitstream/handle/20.500.12657/31269/633015.pdf?sequence=1#page=137>, last accessed June 2, 2023.

v. PDO, PGI, AND TSG:

- PDO (Protected Designation of Origin), PGI (Protected Geographical Indication), and TSG (Traditional Specialty Guaranteed) are the three categories of GI recognized by the rule. Every kind has different requirements and provides different degrees of security.¹⁶⁴

vi. QUALITY SCHEMES:

- The legislation lays up the foundation for food and agricultural product quality schemes. This includes creating policies for the quality of agricultural products and designating some products with quality labels.

vii. INFRINGEMENT AND ENFORCEMENT:

- Provisions for upholding and safeguarding the rights of registered GIs and DOs are included in the regulation. It creates safeguards against the abuse, emulation, or recall of names that are protected.

To maintain the integrity and quality of certain regional products inside the European Union, producers, consumers, and regulatory agencies must be aware of the laws pertaining to GIs and DOs.¹⁶⁵

¹⁶⁴ Claudia Dias and Luís Mendes, "Protected designation of origin (PDO)...," (2018): 500.

¹⁶⁵ Alexandra Ioana Glogovetan, et al., "Consumer perception and understanding of European Union quality schemes: A systematic literature review," *Sustainability* 14, no. 3 (2022): 1667, DOI: <https://doi.org/10.3390/su14031667>, last accessed July 20, 2023.

4.1.2 REGISTRATION UNDER EU LAWS:

EU Regulation No. 1151/2012 provides several steps for the registration of GIs. A breakdown of the registration procedure as specified under the regulation is as under for better understanding of the procedure:¹⁶⁶

i. ELIGIBILITY AND APPLICANT IDENTIFICATION:

- Finding out if the product qualifies for protection under a geographic indication is the first step. In order to register a Geographical Indication (GI), manufacturers or groups of producers must provide identification and certify that their product is clearly associated with a certain geographic region.

ii. PREPARATION OF THE APPLICATION:

- A comprehensive application is to be prepared by the applicant that must include the following information:
 - Product description: Detailed information about the characteristics and nature of the product.
 - Geographical area: The product's production region, with clearly delineated borders.
 - Proof of the connection: Records proving the connection between the product and its country of origin.¹⁶⁷

¹⁶⁶ Irina Kireeva, "How to register geographical indications in the European Community," *World Patent Information* 33, no. 1 (2011): 72-77, DOI: <https://doi.org/10.1016/j.wpi.2010.08.001>, last accessed August 11, 2023.

¹⁶⁷ Irina Kireeva, "How to register geographical indications,"

- Quality and reputation: Details indicating the product's favorable features, stellar reputation, or traits related to its place of origin.

iii. **SUBMISSION TO NATIONAL AUTHORITIES:**

- Application for registration of GI is submitted to the member state's competent authority which is the producer of the product. Every member state has its own designated competent authority which is responsible of handing GI applications.

iv. **EXAMINATION BY NATIONAL AUTHORITIES:**

- The application is then examined by the national authority to make sure it complies with Regulation (EU) No 1151/2012's requirements. This entails confirming the product's legitimacy and the correctness of the data offered.¹⁶⁸

v. **PUBLICATION AND OPPOSITION PERIOD:**

- The information is published in the European Union's Official Journal if the national authority finds the application satisfactory. With this publication, a window of opportunity is opened to interested parties to object to or offer feedback on the application.

vi. **EVALUATION BY THE EUROPEAN COMMISSION:**

- The application is sent to the European Commission by the national authority, including with any comments or objections that are received. The application is

¹⁶⁸ Annette Kur and Sam Cocks, "Nothing but a GI thing: geographical indications under EU law," *Fordham Intellectual Property Media & Entertainment Law Journal* 17 (2006): 999, <https://core.ac.uk/download/pdf/144227171.pdf>, last accessed April 15, 2023.

assessed by the Commission to make sure it satisfies the requirements for protection and conforms to EU legislation.

vii. **DECISION BY MEMBER STATES:**

- The application is reviewed by the Committee for Agricultural Products, which is made up of members from each of the member states. Member states can voice their opinions, but the European Commission is the ultimate authority who decides to whether register the product or not after consulting with the states.

viii. **PUBLICATION IN THE OFFICIAL JOURNAL:**

- Upon approval of the registration, the details of the registered GI are published in the Official Journal of the European Union including its name, location, and product specifications.¹⁶⁹

ix. **PROTECTION AND ENFORCEMENT:**

- The GI cannot be revoked, copied, or used improperly once it is registered. The member states are responsible for upholding these rights and taking legal action against any unlawful use of the protected name.

Ensuring the validity and integrity of products with GIs within EU is the goal of the comprehensive registration process.¹⁷⁰

¹⁶⁹ Stephan Marette, Roxanne Clemens, and Bruce Babcock, "Recent international and regulatory decisions about geographical indications," *Agribusiness: An International Journal* 24, no. 4 (2008): 453-472, DOI: <https://doi.org/10.1002/agr.20173>, last accessed September 15, 2023.

¹⁷⁰ Xiomara F. Quinones-Ruiz, et al., "Insights into the black box of collective efforts for the registration of Geographical Indications," *Land Use Policy* 57 (2016): 103-116, DOI: <https://doi.org/10.1016/j.landusepol.2016.05.021>, last accessed September 20, 2023.

Compared to other regions of the world, the EU has the greatest number of protected geographical areas. Although most of these are for wines and spirits, more and more are being registered for food and farming goods. Here are a few of the things, along with their particular locale and item class:¹⁷¹

1. European Union: As previously mentioned, the EU is home to the greatest number of globally acclaimed places (GIs), totaling over 6000. Of these, about 5200 are related to wines and spirits, while about 820 are dedicated to food and agricultural products.
2. United States: Approximately 910 GIs are registered in the US, with the majority being composed of about 80 different food items, 100 spirits, and 730 wines.
3. Switzerland: Switzerland is the third country on this list with about 700 registered GIs. They are further separated into thirty food items and miscellaneous products, including over 670 wines and spirits.
4. New Zealand: There are about 600 distinct registered GIs in the land of the Kiwis.
5. Australia: There are around 430 distinct registered GIs in the land of kangaroos.¹⁷²

Due to the various enrollment methods and lack of a central library, it is challenging to determine with precision the actual number of GIs in many different countries. Although many

¹⁷¹ Raphael Belmin, François Casabianca and Jean-Marc Meynard, “Contribution of transition theory to the study of geographical indications,” *Environmental innovation and societal transitions* 27 (2018): 32-47, DOI: <https://doi.org/10.1016/j.eist.2017.10.002>, last accessed August 10, 2023.

¹⁷² Raphael Belmin, “Contribution of transition theory,”

GIs are promoted internationally, the US and the EU represent the largest markets of GI registered products.¹⁷³

4.2 PAKISTAN’S LEGISLATION ON GEOGRAPHICAL INDICATIONS:

Pakistan has a great opportunity to register its GIs worldwide. According to a research Pakistan’s economy is mostly dependent on agribusiness, which accounts for about 23% of its GDP. The agriculture sector employs over 45% of the labor force in the nation, and it generates about 41% of country’s stock passage revenue. Making financial improvements involves a basic, wandering aspect for agribusiness.¹⁷⁴

As of right now, GIs may be registered in Pakistan using the GI Act, 2020 either as whole engravings or assertion stamps. Similar to how Pakistan's cultural landscape is rich, there are various GIs in the divisions of cultivation and accumulation/production. The three most notable agricultural products of Pakistan are Sindhri mangoes, Basmati rice and Kino (oranges). The pay of Pakistani GIs is significant and represents billions of dollars. Just rice swaps bring in about \$2 billion a year. Additionally, Himalayan salt is unique worldwide.¹⁷⁵

¹⁷³ E. Muça, I. Pomianek, and M. Peneva, “The Role of GI Products or Local Products in the Environment—Consumer Awareness and Preferences in Albania, Bulgaria and Poland,” *Sustainability* 14, no. 4 (2022), <https://doi.org/10.3390/su14010004>, last accessed August 11, 2023.

¹⁷⁴ Larasati Pranasari, "Legal Analysis of the Trademark Registration Gayo Coffee Mountain as a Geographical Indication Products in Indonesia," *Universitas Islam Indonesia*, (2018), <https://dspace.uui.ac.id/handle/123456789/10399>, last accessed August 11, 2023.

¹⁷⁵ P. A. Di Sabatino and Claudia Mastrantoni, "7. Tradition and modernity/place and time The island of Murano: past–present–future," *Design International Series*, (2022), <https://re.public.polimi.it/handle/11311/1218910>, last accessed August 11, 2023.

4.2.1 ROAD TO ENACTMENT OF GEOGRAPHICAL INDICATIONS (REGISTRATION AND PROTECTION) ACT, 2020:

Pakistan lacked any specific law or regulation pertaining to GIs until 2020. However, in the year 2020, the first legislation for the country concerning GIs was passed, which was a result of years of brainstorming and continuous efforts by the IP Organization of Pakistan. Pakistan was unable to register its GIs overseas unless it had first secured their registration at home. This is because the GI rule requires that a GI cannot be registered anywhere in the world unless the nation from whence it originated registers it first. Here are a few of the primary causes of Pakistan's protracted lack of a specific GI law:¹⁷⁶

LACK OF AWARENESS OF THE GI LAW AND ITS SIGNIFICANCE: In a nation such as ours, technology advanced much later. The benefits of Geographical Indication were unknown to the public. It wouldn't be incorrect to argue that most of our compatriots would still be ignorant of it in the competitive environment of today. Thus, it never remained our top priority.

DISINTEREST ON THE PART OF OUR CONCERNED AUTHORITIES AND NATIONAL LEADERS: As the title implies, it is clear that our national authorities never gave GI a high priority since they did not understand how important it was to our nation. It is a major factor in the extended absence and understanding of this GI regulation.

¹⁷⁶ Cathy Cassell, Gina Grandy, and Ann L. Cunliffe, "The SAGE handbook of qualitative business and management research methods: methods and challenges," *The SAGE Handbook of Qualitative Business and Management Research Methods*, (2017): 1-542, <https://www.torrossa.com/en/resources/an/5018775>, last accessed May 10, 2023.

ABSENCE OF TECHNOLOGICAL ADVANCES:

Another significant barrier in our nation was a lack of technology. Technology is essential for raising public awareness and assisting in the accomplishment of objectives.

Pakistan strengthened its argument by enacting the Geographical Indication Act of 2020 and notifying the Geographical Indication Rules. A social media campaign brought attention to the problem as India was on the verge of registering Himalayan salt and Basmati rice with GI tags. This Act will protect our nation's products against foreign atrocities directed towards them.

In response to India's decisive action, Pakistan responded appropriately, enabling it to defend its position in the European Union against India's deceptive allegations that it was the producer of the two products in question. Before the Indian side entered large markets like the European Union, the GI Rules were not in effect in our nation, which served as a catalyst for the national government.¹⁷⁷

In the meantime, on January 26, 2021, Pakistan successfully defeated India in a complaint brought before the European Union by revealing their deceptive assertions that Basmati was an Indian GI. The wonderful news that Pakistan's first-ever registered GI, Basmati Rice, has been registered was conveyed with fellow citizens by the Executive Director of the IPO Pakistan. There was fierce competition from across the border to get registered as a Basmati in Pakistan.¹⁷⁸

In addition to Basmati rice, Pakistan was losing millions of dollars in the battle to produce Himalayan salt, which is taken from the suburbs of Khewra Salt Mines, the second-largest salt

¹⁷⁷ Cathy Cassell, "The SAGE handbook of qualitative business and management research methods..." (2017): 400.

¹⁷⁸ Arrianna Marie Planey et al., "(Applied) geography, policy, & time: whither health and medical geography?," *Space and Polity* 26, no. 2 (2022): 115-127, DOI: <https://doi.org/10.1080/13562576.2022.2098649>, last accessed September 10, 2023.

mine in the world. Ironically, India used to re-export the 800 million pounds of Himalayan salt that Pakistan extracted in a year to the massive European Union markets under the false pretense of being their produce. The Federal Government imposed a complete ban on the cross-border export of Himalayan salt in 2021.¹⁷⁹

In order to highlight the financial significance of the GI tags, Pakistan was exporting salt to India for 40 dollars per ton, while India, on the other hand, was selling the same salt to Europe for an astounding 300 dollars per ton after processing it. A social media campaign opened the eyes of the relevant authorities, leading them to fully prohibit the export of this priceless product of ours. After being mined, Himalayan salt is delivered to processing companies, where it is further processed into nearly 200 different items, including natural salt lamps, hygienic eating salt, eating and cooking plates, geometric patterns, animal salt licks, and decorative wall tiles.¹⁸⁰

The sheer global demand for Himalayan salt has caused prices to soar, making it twenty times more expensive than regular table salt. Because it contains more minerals than regular table salt, its purported health benefits are the basis for its demand. Pakistan is extremely rich in Himalayan salt, since just 220 million tones have been dug up to date, leaving over 6.7 billion tons of salt in storage.

With the prominence gained by Himalayan salt, Pakistan Commerce Ministry expressed interest in registering the Himalayan salt as a GI. Furthermore, Pakistan's shipment of Himalayan salt to Japan hit a new high of 1,304 tons in the first quarter of this year, demonstrating the

¹⁷⁹ Yael Ram, Peter Björk, and Adi Weidenfeld, "Authenticity and place attachment of major visitor attractions," *Tourism management* 52, (2016): 110-122, DOI: <https://doi.org/10.1016/j.tourman.2015.06.010>, last accessed October 21, 2023.

¹⁸⁰ Yael Ram, "Authenticity and place attachment..,"

significance of Pakistani goods globally. According to a report from the Japanese Embassy, the price of salt in Japan is approximately 300 Rupees for every 100g.¹⁸¹

4.3 ANALYSIS OF PAKISTAN AND EU GI LAWS:

4.3.1 WITH REGARD TO THE DEFINITION OF GI:

Regarding its definition, the TRIPS Agreement is flexible, accommodating the preferences of many nations that safeguard their geographical indications through the trademark registration or sui generis systems. According to Article 22.1 of the TRIPS Agreement, GIs are indicators that designate a “good as coming from a member’s territory, or from an area or place within that territory, where a specific attribute of the good – such as its quality, reputation, or other characteristic – is primarily attributable to its geographical origin”.¹⁸²

Section 2(vii) of the GI Act, 2020 of Pakistan contains the definition of GIs. According to this definition, a “GI in relation to goods includes an indication which identifies such goods as agricultural goods, natural goods or manufactured goods originating or manufactured or produced in a territory or a region or locality as determined by the country, where a given quality, reputation or other characteristics of the goods or the ingredients or components, is essentially attributable to its geographical origin and in the case of manufactured goods one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality as the case may be. For the purpose of this clause any name which is not the name of a

¹⁸¹ Omar Abdullah, Sobia Bashir, and Rafia Naz Ali, “The Potential Geographical Indications in Pakistan,” *Journal of Social Sciences Review* 3, no.1 (2023): 335-346, DOI: <https://doi.org/10.54183/jssr.v3i1.154>, last accessed November 24, 2023.

¹⁸² Aaron C. Lang, "On the need to expand article 23 of the trips agreement," *Duke J. Comp. & Int'l L.* 16 (2006): 487, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1104&context=djcil>, last accessed July 14, 2023.

territory or a region a locality or a country shall also be considered as a geographical indication if such name refers to or indicates the origin of goods within or from a specific geographical area within that country and is used upon or in relation to particular goods originating from or with in that country or a territory or a region or locality within that country”.

“Essentially attributable”, in the definition, refers to proving a connection between the product's quality or other distinguishing features and the items' place of origin. This link, or causal relationship, "must provide an explanation of why a product is linked to one area, and not another, i.e. how far the final product is affected by the characteristics of the region in which it is produced".¹⁸³

While terroir logic plays a crucial role in legitimizing IGOs as a separate category of protected signs, it is not the primary foundation for GI registration under the trademark system when defining GIs.. "There are various ways to understand the relationship between agricultural products and foodstuffs, the goods and their origin place," claims Audier. The stronger the linkages are in terms of technology, history, culture, and society, the more the producers will try to safeguard the geographical term used to identify the product.

A trademark system's basic justification for protection differs from that of a GI protection system. Saying that "by and large, the trademark regime is indifferent to terroir factors" is reasonable. The Italian Supreme Court correctly noted that a product's reputation for GI protection is based on its attributes that originate from a specific location.¹⁸⁴ Additionally, it said that: "The

¹⁸³ Maurizio Crupi, "A Pragmatic Approach to the Link to Origin: EU PDOS and PGIS for Registration, Innovation and Trade in Origin Products," *Maastricht University*, (2002), <https://cris.maastrichtuniversity.nl/en/publications/a-pragmatic-approach-to-the-link-to-origin-eu-pdos-and-pgis-for-r>, last accessed April 14, 2023.

¹⁸⁴ Maurizio Crupi, "A Pragmatic Approach..,"

product derives a particular character from its place of origin, which is why protection [for designation of origin] is afforded." This feature can be objectively identified by a complex interaction between the natural and human elements that comprise its production environment. The goal is to reassure the customer about the product's origin, which is also a guarantee of quality.¹⁸⁵

A geographical indication, as defined by the Indian GI Act, is “any indication, manufactured or natural, that goods are produced, originated, or were manufactured in a country, region, or locality within that country, where a particular quality, reputation, or other characteristic of the goods is primarily attributable to its geographical origin; if the goods are manufactured, this indicates that one of the activities associated with either the production, processing, or preparation of the goods takes place in that territory, region, or locality, as the case may be”. The term “basically traceable,” which establishes a causal relationship as part of the definition, and all of the items that come within the category of approved GIs are present in this definition, which is quite similar to the TRIPS definition. Compared to the several definitions found in the EU GI Regulation, a single term provides greater stability and flexibility.¹⁸⁶

PGIs and PDOs were the two registration options available to GIs under the repealed EU Regulation 510/2006. PDO and PGI differed from one another in terms of how closely production was tied to a specific geographic area. In comparison to the requirements for GIs to be registered as PGIs, the PDO registration procedures were more onerous. PDOs require that the product originate in the designated location and that the unique geographical environment, in conjunction

¹⁸⁵ Kolleen M. Guy, "Silence and Savoir-Faire in the Marketing of Products of the Terroir," *Modern & Contemporary France* 19, no. 4 (2011): 459-475, DOI: <https://doi.org/10.1080/09639489.2011.610165>, last accessed August 14, 2023.

¹⁸⁶ Soumya Vinayan, "Geographical indications in India: Issues and challenges—An overview," *The Journal of World Intellectual Property* 20, no. 3-4 (2017): 119-132, DOI: <https://doi.org/10.1111/jwip.12076>, last accessed July 30, 2023.

with integrated natural and human factors, be the only source of its quality. However, there were lenient requirements for GIs to be registered as PGIs. For a product to be considered a PGI, it needs to be manufactured, processed, or prepared in the defined territory. Furthermore, the product's reputation, quality, or other attributes should be "attributable" in general rather than "essentially due" to that particular area.¹⁸⁷

The definition of PDO is mostly unchanged in the EU QSR. But the definition of PGI was changed to more closely resemble the TRIPS Agreement's definition of GIs. Compared to the previous EU Regulation 510/2006, the link between the product and the unique geographical origin is strengthened by Article 5(2) of the present Regulation 1151/2012.

Geographically identified goods (GI) also include goods that are identified as originating, manufactured, or natural goods that are manufactured within the borders of a country, or within a region or locality within that border, where a particular good's reputation, quality, or other attribute can be primarily traced back to its geographic origin. Compared to the definition of PGI under the previously described EU Regulations, this definition is more thorough. However, it is not as strict as the EU Regulations' definition of PDO.

Pakistan can effectively safeguard its GIs, including Basmati rice, Hunza apricots, and Sindhri mangoes, by enacting legislation that resembles the classifications of GIs provided by Indian law and the EU Regulations for PDOs. As GIs are much more than just a way to identify a product with a location or as a form of territorial IP, this will increase the revenue of its farmers. GIs are a way for social and industrial groupings to protect and differentiate their products. This

¹⁸⁷ Swarnim Wagle, "Geographical Indications as Trade-related Intellectual Property: Relevance and Implications for Human Development in Asia-Pacific: Discussion Paper," *UNDP Regional Center in Colombo*, (2007), <https://cgspace.cgiar.org/handle/10568/104073>, last accessed July 14, 2023.

is particularly true for small-scale, regional farmers and producers who may leverage them to build their brands and successfully take on big businesses.¹⁸⁸

4.3.2 WITH REGARD TO REGISTRABILITY AND GENERIC INDICATIONS:

There is no definition of genericness considerations under Pakistani law. Nonetheless, the Trademarks Ordinance's Section 73 does make mention of these circumstances. According to this, a trademark's registration can be cancelled "if it has become a common name in the trade for a product or service for which it has been registered" and "if the public is likely to be misled, particularly as to the nature, quality, or geographical origin of those goods or services, as a result of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered." GIs registered as certification marks or collective marks are subject to this disqualification. Every ten years, GIs must renew their certification or collective marks, even if the registration is processed under the Trademarks Ordinance.¹⁸⁹

The Registrar of Trademarks asserts that the Trademarks Ordinance's handling of GI renewals would be troublesome since it would lead to future litigation and legal expenditures for the GI proprietors at the time of renewal. "Generic name" is defined as the name of a geographically identified product (GI) that is associated with the location or region in which the

¹⁸⁸ Muhammad Hamid Ali, "Geographical Indications in Pakistan: The Need for Legal and Institutional Reforms and Economic Development," *Queen Mary University of London*, (2014), https://qmro.qmul.ac.uk/xmlui/bitstream/handle/123456789/8906/Ali_Muhammad_PhD_080615.pdf?sequence=1, last accessed September 6, 2023.

¹⁸⁹ Muhammad Tahir, et al., "Analyzing the trademark protection index of China and Pakistan: A comparative study," *International Journal of Law and Politics Studies* 4, no. 1 (2022): 27-31, DOI: <https://doi.org/10.32996/ijlps.2022.4.1.4>, last accessed September 14, 2023.

GI was first manufactured or marketed and has become the common name for that product within the Community (EU Regulation 510/2006, Article 3(1)).

According to EU Regulation 1511/2012, "generic" has essentially the same meaning. Regarding the matter of "common name in the trade," Pakistan has lost some potential Geographic Indications (GIs) because of inadequate protection, according to the Registrar of Trademarks. One example, he added, is "Nimko", which could have been protected as a GI but instead became a generic name.¹⁹⁰

Authorities and courts are required by Article 3(1) of the EU Regulation to take into account all pertinent factors when evaluating whether a name has become generic. They must specifically consider (a) the conditions that exist in the consuming areas and member states at the moment, and (b) any applicable laws at the national or local levels. In addition, the CJEU clarified the parameters for ascertaining a name's status in the Parmesan case.

A GI cannot become generic after it has been registered under EU sui generis rules. Unlike GIs registered under the Trademarks Ordinance, it is not subject to a ten-year renewal requirement. The EU GI Regulation states in Article 13(2) that "protected names may not become generic." This implies that while a GI under the EU Regulation may change or even disappear, the protected name's meaning and usage never disappear.¹⁹¹

Furthermore, Pakistan is not a party to any international agreement that would prevent its general intelligence from becoming obsolete. Neither the Lisbon Agreement for the Protection of

¹⁹⁰ Muhammad Tahir, et al., "Analyzing the trademark protection index of China and Pakistan: A comparative study," *International Journal of Law and Politics Studies* 4, no. 1 (2022): 27-31, DOI: <https://doi.org/10.32996/ijlps.2022.4.1.4>, last accessed October 9, 2023.

¹⁹¹ Dev Saif Gangjee, "Genericide: the death of a Geographical Indication?," *Research Handbook on Intellectual Property and Geographical Indications* 508, (2016), <https://ssrn.com/abstract=2923895>, last accessed October 14, 2023.

Appellations of Origin and their International Registration nor the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods are ratified by Pakistan.

The Madrid Agreement grants national courts the power to determine whether a product has become generic, with the exception of wine. According to Article 6 of the Lisbon Agreement, till the time AOs are protected in their nation of origin, they cannot become generic for any member of the Lisbon Union. This underscores the need of Pakistan passing legislation to safeguard its GIs. It is evident that courts in the EU have interpreted genericness narrowly based on case law.¹⁹²

In the Feta case, "the Commission reasoned that feta labelling specifically (and misleadingly) communicated a Greek origin for the product, thereby suggesting it was not used generically, because it made references to Greek images and iconography." The Commission believed that such branding may create a "real risk of consumer confusion," even though it may have only been evocative referencing. The Court appears to have agreed with this assessment. Therefore, the CJEU denied arguments that "Feta" constituted a generic term in the EU. In this instance, the Court decided that: Greece accounts for more than 85% of the annual and per capita feta consumption in the Community.

As the scientific committee pointed out, Greece is where most feta is consumed. According to the data presented to the court, most Greek consumers believe that the name "feta" has a regional rather than a generic meaning. The information presented before the Court also demonstrates that feta is frequently sold under labels honoring Greek cultural customs and civilization in member

¹⁹² WIPO, "Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration," WIPO: Geneva, Switzerland, 1958, last accessed September 22, 2023, https://www.wipo.int/export/sites/www/lisbon/en/docs/lisbon_2020_1.pdf.

states other than Greece. This suggests that, even if the feta was made in another member state, customers in those states believe the cheese is associated with the Hellenic Republic.¹⁹³

Furthermore, if the protection of Parmesan cheese is taken into account in these systems, it is easy to examine the differences in the levels of protection for GIs that are offered by a sui generis statute and a trademark registration system. In the US, where geographical names are registered under trademark law, parmesan cheese is a generic term, whereas "Parmigiano Reggiano" is a protected DO in the EU that is governed by sui generis legislation.

The registration of GIs is prohibited by Section 9(f) of the Indian GI Act “for GIs that are considered generic names or indications of goods, meaning they are no longer protected in their country of origin or have stopped being used there”. In Section 9 of the Indian GI Act, “generic names or indications are defined with two explanations”. According to the instant section, a generic good is one that ‘has lost its original meaning and has become the common name for that good ... and account shall be taken of all factors including the existing situation in the region or place in which the name originates’. Nonetheless, a GI must be renewed every ten years in accordance with Section 18 of the Indian GI Act. In a sui generis law, this appears to be a hybrid strategy.¹⁹⁴

According to the TRIPS Agreement, GIs in a nation may not be protected by other member nations if they are not protected or have ceased to be protected. Article 24.9 of TRIPS, states that

¹⁹³ Dev saif Gangjee, "Say cheese! A sharper image of generic use through the lens of Feta," *European Intellectual Property Review* 5, (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=980543, last accessed July 19, 2023.

¹⁹⁴ J. Adithya Reddy, and Siladitya Chatterjee, "A critique of the Indian Law and approach towards protection of Geographical Indications with specific reference to genericide," *Journal of Intellectual Property Rights* 12, no.6 (2007): 572, <https://nopr.niscpr.res.in/bitstream/123456789/281/1/JIPR%2012%286%29%20%282007%29%20572-580.pdf>, last accessed July 22, 2023.

a member is not required to preserve a GI that is not protected in its place of origin, that is no longer protected there, or that has been abandoned there. Here, GIs that are said to have "ceased to be protected" would be included in the group of GIs that become generic, among other things.

The EU's sui generis legislation differs from the standards used in the trademark system when determining a trademark's generic status. EU law sets a higher threshold to prevent GIs from easily becoming generic. The criteria is predicated on the consensus among consumers that a sign's "primary significance" lies in its ability to characterize a class or category of goods – a requirement that is necessary for a sign to qualify as generic in the United States. Contrary to this "majoritarian" approach, generic status is only granted "when there is in the relevant territory no significant part of the public concerned that still considers the indication as a geographical indication," as demonstrated by the EU's Feta case.

Established GIs like Kobe beef and Darjeeling tea have faced threats from generic status. When GIs are compared to the protection afforded by a trademark registration system, it is evident that a sui generis system offers superior protection against genericity, especially when considering the potential number of GIs in Pakistan.¹⁹⁵

4.3.3 WITH REGARD TO PROTECTION UNDER SUI GENERIS LAWS:

The general protection of GIs is covered by Article 13 of the QSR. As part of TRIPS plus, Article 13(1) b offers agricultural products additional protection. "Any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated

¹⁹⁵ Michael Blakeney, "Proposals for the international regulation of geographical indications," *J. World Intell. Prop.* 4 (2001): 629, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jwip4&div=42&id=&page=> , last accessed September 20, 2023.

or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar," is what Article 13(1)b states applies to registered names. It is identical to the clause found in EU Regulation 501/2006.

GIs are viewed as beneficial IPRs for developing nations because of its ability to support rural socioeconomic development, localize economic control, and allow holders of indigenous knowledge to receive financial rewards. These are the main reasons behind the several developing nations' demands at the TRIPS Council for more robust protection for goods other than wine and spirits.¹⁹⁶

For the reasons listed above, Pakistan has a large number of GIs in the food, agriculture, and handicraft industries that require extra protection. It backs the EU's position at the WTO in favor of further agricultural product protection under the TRIPS Agreement. Pakistan has requested extra protection for all products based on the wording of Paragraph 18 of the Doha Declaration, which gives the go-ahead to start talks on an extension.

In international talks at the WTO, Pakistan is a part of the "Friends of GIs" group. Interestingly, every nation that is a part of the "Friends of GIs" group – including Turkey, India, and Switzerland – has passed sui generis legislation to safeguard its own GIs. Pakistan should give its GIs more protection as it is in their best interests. Since the owner won't need to demonstrate the element of uncertainty, GI producers and farmers will be better protected from infringement.

¹⁹⁶ Vrunda Kulkarni and Viren Konde, "Pre-and post-geographical indications registration measures for handicrafts in India," *Journal of Intellectual Property Rights* 16, (2011): 463-469, <https://nopr.niscpr.res.in/bitstream/123456789/13056/1/JIPR%2016%286%29%20463-469.pdf>, last accessed October 11, 2023.

According to a senior member of PIPRA, Mr. Zulfiqar Ahmed, there has been illicit GI trading in Pakistan, where dishonest people are selling GIs like basmati unlawfully. He believed that having more protection would make it easier and less expensive for the legitimate producers to defend their legal claims in court.

Under Indian law, obtaining further protection requires a different procedure that could take longer because of the bureaucratic red tape. It would be preferable for Pakistan follow EU Regulation in order to provide its GIs with more protection than to follow its neighboring country.¹⁹⁷ However, due to lack of knowledge and awareness in private sector of Pakistan, it has been seen that the public sector is more involved in processing applications for registration of GIs.

¹⁹⁷ Muhammad Hamid Ali, "Geographical Indications in Pakistan: The Need for Legal and Institutional Reforms and Economic Development," *Queen Mary University of London*, (2014), https://qmro.qmul.ac.uk/xmlui/bitstream/handle/123456789/8906/Ali_Muhammad_PhD_080615.pdf?sequence=1, last accessed October 14, 2023.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

Pakistan is “a nation rich in identities, values, culture, and diversity”. Geographically Pakistan is located in a temperate zone and the climate of the country varies vis-à-vis its topography. Pakistan has four seasons including cool and dry winter, hot springs, rainy summer seasons and retreating monsoons. The weather generally remains hot and dry weather near the coast of lowland plains and gradually cools down as one moves towards the northern areas.

Due to this diversity in the temperature zones of the country as well as the cultural diversity, many unique products are manufactured in Pakistan. This leads to various products, natural and man-made, which are either registered GIs or have the potential to be registered as one. Examples of natural products, as discussed earlier in this research work, include Pink Salt, Basmati rice, Sharakpur guavas, Kinows, Sindhri mangoes while Chiniot woodwork, Ajrak (designed cloth from Sindh), Gujarat pashmina and Pakistani Shu (windproof outerwear) are some examples of man-made products which are result of cultural diversity.

Pakistan has the potential to grow as a better geographical state, if its products are given their due admiration. It is heartening to see that despite of so many potential GIs, yet there are only a few registered GIs of Pakistan. Reason being various impediments including the hectic process of registration as well as unawareness of the people of country towards geographical indications. If one looks at the process of already registered products, it can be clearly observed that too much time was taken in the registration of GIs.

The process of registration including the verification, form filling and other requisites take too much time and in turn demoralize the applicants from registering their products under GIs. Hence, the process for registering GIs must be simple for the applicants and more efforts should be made on the part of concerned departments, thereby lifting the load from the applicants to encourage them to register their unique products, which in turn will help in lifting the economy of the country.

The GIs can be used as a tool to revitalize the economy by giving the unique products their actual worth and value. This will also help the farmers to maintain their livelihood and allowing them to try for increased production of such goods. Pakistan exports Rice, Mangoes, Kinows and other agricultural products worth millions of dollars, which can be increased significantly once they are protected through the system of GI. The textile industry as well as sports manufacturing also has a rich scope. Sports equipment being manufactured in Sialkot, Punjab, Pakistan has some well-known audience in the international market, while the western countries also receive Pakistan made denims.

It has been noted that GIs are now being registered under the GI Act 2020 in the nation's communal marketplaces, which makes sense given that many of the regions are rich in culture and customs. The country's manufacturing and agricultural industries employ a greater number of GIs. The GIs from Pakistan engage in billion-dollar worth of lucrative trade. A report claims that Pakistan sells Mangoes and Kinows worth millions of dollars. Pakistan also has a thriving medical equipment and sports gadget industry, among other businesses. Due to the country's manufacturing and export of denim to western nations, its textile industry is also prosperous.

In terms of agriculture, rice is the most significant commodity and GIs, and rank second in importance among national staple foods, behind wheat. It provides thousands of families with a

living and is the primary source of income for most farmers. When it comes to farming in villages, rice is the third most important crop. Therefore, it is the most significant factor that might be the main driver of the nation's GDP growth. It is the source due to which rural areas get noticed vis-à-vis promoting GIs in a way that might aid in economic growth.

Even though there exists hundreds of potential GIs in the country, only 6 of them have been registered as of now. Reports state that Pakistan took a long time to register its GIs worldwide. Research indicates that there is a significant delay in getting and processing GIs for registration. Because of this, Pakistan has already lost money from simply postponing GI registration.

The registration of GIs has a number of benefits, both short- and long-term. In the short term, it will increase manufacturing and export opportunities for traders; however, in the long run, it will strengthen the economy, develop new sectors for the nation, give Pakistan's GIs a sense of national and international identity, and increase GI marketing and promotion both domestically and internationally.

To safeguard and register the registration of homonymous marks between the countries, the doors to bilateral trade with those that possess GIs will be sorted. People who owe the GIs and are willing to participate in the nation's worldwide market can have the obstacles removed and policies made for their convenience. Since other nations with similar GI holdings are profiting the most from it, Pakistan is losing its share of the global market.

Until the year 2020, Pakistan lacked a distinct legislation protecting GIs. The trademark protection system that is commonly used in Pakistan is different from the terrier factor. Pakistan compromised with the GIs by not having such a department till recently, and as a result, the nation is suffered losses in terms of losing worth and time.

In order to remove barriers to GI registration in Pakistan, people must be fully informed about the entire procedure; national and international governments should be identified and be aware of the forms, verifications, and submissions involved. As per a study, the significance of GIs in Pakistan needs to be viewed within the wider framework of safeguarding and enhancing the results for GI registration. But to demonstrate that the oldest civilization in history is also a testament to the value of a GI, consider Pakistan's Indus civilization.

The basic principle for the protection of GI states that a country cannot safeguard its GIs until it guarantees their protection domestically. A country is not allowed to register a GI that is not protected in its place of origin, in terms of Article 29 of the TRIPS Agreement. If the origin is protected, this will undoubtedly boost Pakistan's exports and bring about economic prosperity.

In addition to helping to preserve customs and culture, GI can also be a useful tool in lowering poverty in various areas and boosting local output, which will elevate that particular area's status. Furthermore, it will create more job opportunities, which will eventually lead to a decrease in poverty.

It is evident that Pakistan's public and private sectors both have inadequate institutional frameworks. The state must step up and take action immediately. As being done in India, the government of Pakistan is also trying to register GIs in its own name through the institutions like TDAP, PMDC, Agriculture and Industries Departments etc., this will help in protecting the potential GIs. It will take a while to get the private sector to get enthusiastically involved in registering GIs, however, the government has resources which need to be channeled in the right direction.

5.2 RECOMMENDATIONS

Based on the research work, there are a few recommendations that would take geographical indications in Pakistan to a better standing than it was ever before:

➤ **SPECIALIZATION IN RELEVANT FIELD OF LAW:**

Pakistan has enacted a sui generis law for GIs, however, there remains dearth of experts and lawyers who are adept in the field of IP, and more specifically in GI laws. Not a single institution offers specialization in the same field or arrange awareness programs pertaining to IP, let alone GI laws. This needs attention at each level and relevant specialization program should be started to address the issue.

➤ **TRAINING PROGRAMMES:**

To address the issue of farmers' capacity building in conjunction with all stakeholders, the Ministry of Commerce and IPO Pakistan might provide training both domestically and internationally, through organizations such as WIPO and WTO. As IPO Pakistan is dealing with the GIs and other IP Rights, a training academy may be created in the organization to enhance the knowledge of its own officers as well as other stakeholders of GIs.

➤ **AWARENESS CAMPAIGNS:**

The Indian UNCTAD program, through its Department for Promotion of Industry and Internal Trade launched various multi-media campaigns by the end of year 2022 for promotion and publicity of its GI products, attracting younger generation to have a long-lasting impact. Keeping in view the success of those campaigns, authorities in Pakistan should follow the footsteps of their neighbors by launching such campaigns in the country.

The Ministry of Commerce and IPO should host conferences and launch awareness efforts aimed at farmers and other GI stakeholders. Different multi-media campaigns targeting the younger generations must also be planned. This will attract students from various disciplines particularly law and agriculture to focus their research works towards this particular field, which in turn will see a remarkable drift towards a healthy research in improving the GIs as well as its legislation.

➤ **BECOMING MEMBER OF LISBON AGREEMENT:**

Currently there is no International Geographical Indication, however, there are two ways to register a GI in foreign countries once it is registered at the regional or national level. One way is that the Registrant, after getting a GI registered in its country of origin, has to file a separate application in foreign countries where registration of that particular GI is intended; other is to become a signatory of Lisbon Agreement (Geneva Act), 2015 under WIPO and file a single application to register GI in other member countries.

Therefore, to save the registrants from filing numerous applications in foreign countries for registering GIs in them, the concerned authorities must take steps in becoming a member of Lisbon Agreement, enabling them to register GI in a number of countries through a single application.

➤ **COLLABORATION AT INTERNATIONAL FORA:**

As explained above the two ways to register the GIs in foreign countries. As Pakistan is not yet a member of Lisbon Agreement, hence, the collaboration of the country's authorities dealing with GIs, with other countries and international organizations, needs to be improved to enhance cross-border protection of GIs. In order to stay updated

on the global best practices, the state, through its concerned offices, should participate actively in international forums related to GIs and engage in bilateral agreements with other countries having registered GIs.

➤ **COLLABORATION AT NATIONAL LEVEL:**

In a country like Pakistan, where there are a lot of GIs that are related to biodiversity and environment, hence, an active collaboration between IPO Pakistan and other relevant authorities, including Pakistan Environmental Protection Agency, is essential to protect the environment and its biodiversity. Moreover, for better environmental protection, keeping in view geographical indications, the concerned quarters at IPO Pakistan may be empowered by making necessary amendments in the GI legislation. Examples for such GIs include Basmati rice, Sindhri Mangoes, Ziarat Apples, Hunza Appricots, Sargodha Kinnow among various others.

➤ **ENFORCEMENT MECHANISM:**

The enforcement mechanisms needs to be strengthened in order to prevent unauthorized use of GIs by putting in place efficient monitoring mechanisms to identify and mitigate instances of infringement. Strong enforcement mechanism will help in increasing the reputation of GIs, thereby creating a premium product. This will require close cooperation between different departments including IPO Pakistan, TDAP, Provincial Cultural/ Agricultural Departments, Lok Virsa and PMDC (Pakistan Mineral Development Corporation) among various others.

➤ **SIMPLER REGISTRATION PROCESS:**

As GI is a relatively new concept for the stakeholders in Pakistan, given the fact that sui generis legislations on GIs was enacted in the year 2020 and no major awareness campaign related to GIs is carried out in the country. Moreover, the current registration process is a complex one for a layman to go through it. It includes submission of application on specific format, identifying class of goods and providing judicial decisions among various other requirements. It is suggested that a simpler registration procedure be implemented, to encourage stakeholders to register potential GIs.

➤ **SEPARATE REGISTRY FOR GEOGRAPHICAL INDICATIONS:**

Section 3 and 4 of GI Act, 2020 calls for the establishment of Geographical Indications Registry and appointment of Registrar Geographical Indications respectively. Provided further, the Registrar Geographical Indications was to be appointed within three hundred and sixty (360) days after the commencement of Act, which was enacted on March 31st, 2020. However, after a considerable lapse of time, neither Geographical Indications Registry is created nor its Registrar is appointed till date. Registrar of Trade Marks through Trade Mark Registry is looking after the related assignments.

Therefore, it is proposed that government should take necessary steps towards establishment of separate GI Registry and appoint Registrar of GI to make the registration process of GIs more efficient and effective.

➤ **ACCEPTING REGISTRATION APPLICATIONS ONLINE:**

For a more transparent and effective registration system, the authorities should take steps towards accepting the applications online for registering GIs and their renewal thereof, as being done in case of international trades through Pakistan Single Window

initiative. This would drastically reduce Red-Tapism, which is a problem faced by the stakeholders in most of the developing countries.

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