

Assessment of Food-related Geographical Indications in India

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The paper assesses the applications filed for Geographical Indication (GI henceforth) tag in India in the classes 29 to 34 which for the purpose of this paper are referred to as ‘food-related applications’. It explores The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act henceforth) of the Indian Constitution synchronically as it stands now and suggests widening the scope of several terms like ‘reputation’ and ‘geographical’ which are decisive in granting GI status to a product. The author carefully maneuvers an unexplored territory of legal theories supporting Intellectual Property Rights and propounding that the theories support the rights of individuals and that ‘intellect’ is purely a human and not a geographical virtue. Thus, the right to Geographical Indication needs a new perspective with an intent that maximum products receive due protection with a streamlined and smooth process. The author also suggests adopting the nuances of the process of obtaining the GI from the European Commission in a culturally-sensitive manner. Towards the end, the author has briefly touched upon the role cultural and food anthropologists can play in bridging the gap between legal processes and its beneficiaries and has also talked about the potential topics for further research.

Keywords: Intellectual Property Rights, Geographical Indication, India, Food Anthropologists, European Union

Food has always been linked with identity in its sociological and anthropological constructs. 'We are what we eat' is a phrase used both colloquially and academically to prove an identifiable relationship between food and its consumer. Mintz and DuBois identified seven broader themes in the field of Anthropology of Food and 'Food and Identity' was one of them.¹ However, it is worth noticing that food is not only related to an individual, it is an identification mark of an ethnic community and the geography from where it originates in its natural or manufactured form. Messer stated that food was studied as semiotic pointing towards any ethnic identity and social class.² Abbots and Lavis argued that food played a significant role in the social life of diasporas and strengthened their sense of belonging to a place.³ They mentioned that anthropological analysis established a dichotomous relationship between the places those the migrants came from and where they migrated to. Furthermore, Holtzman viewed food as a rich area for the preservation of historical identities and the discovery of memories.⁴ However, the identity of food is mostly talked about in terms of its consumers, the relationship of food with its place of origin remains an association that is less explored anthropologically. On the other hand,

there exist Intellectual Property Rights (IPR henceforth) like GI which protect the geographical linkages of food products with their place of origin. The paper addresses this blind spot that in the absence of theories sufficiently supporting identity of food with its place of origin, the legal process of obtaining the GI in Indian context needs an anthropological perspective to widen the scope of the GI Act.

The paper deals with codified set of principles and tries to look at them from an anthropological point of view as this will provide enough flexibility to see each application from a different outlook- the outlook of the end user. The paper does suggest adopting from European Commission, the process of granting GI and other rights pertaining to their food products but at that the same time suggests taking into consideration the cultural beliefs of the Indian population. The paper also briefly discusses the role of anthropologists in facilitating the drafting of GI applications with high quality research. This research limits itself to only four categories of applications and is not generally applicable to all the classes. This fact remains as a limitation of this research.

Theoretical Background

There are 5 theories or “analytical constructs” as Fisher stated which primarily support the IPR in general.⁵ The first among these is Utilitarian Theory

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which is purely based on economic principles of maximizing social benefit. This theory works towards achieving Benthamite ideal of “the greatest good for the greatest number”.⁶ In the context of Intellectual Property (IP henceforth) laws, the focus is on how to strike a balance between the social costs and benefits associated with giving legal effect to IP laws and rules.⁷ In simple terms, the optimal balance needs to be between the power of exclusive rights to stimulate the creation of inventions and works of art and the partially offsetting tendency of such rights to curtail widespread public enjoyment of those creations.⁵

Second theory which backs IPR is the theory of natural rights. It suggests that a person who labors upon resources that are either unowned or “held in common” has a natural property right to the fruits of his or her efforts – and that the state has a duty to respect and enforce that natural right.⁵ Fundamentally stating, this theory is based on John Locke’s concept that any owner possesses a natural right over the things that he/she produces with his/her own labor and efforts. As per this theory, ownership arises from the labor and innovation of person creating it. Locke believed that “individuals are entitled to control the fruits of their own labor. In his perspective, a person, who cultivates crops by using his own labour or creates a new invention by putting his efforts, naturally obtains property rights,” merely by the virtue of adding his own labor.⁸ The natural rights theory of IP, thus, reflects that an individual naturally acquires ownership of the work that one creates because he/she added his/her own labor in the form of intellect in it.

The third theory on which IP is considered to be based on is Personhood Theory propounded by famous thinkers like Immanuel Kant and Georg Hegel. Personhood theory of IPR states that a person incorporates some part of his own personality in the creation while applying labor to produce some work. An “individual’s personality growth is inherent” and thus constitutes an integral part of the creative works.⁹ The right to “protect the development of personality extends to material things” as well.¹⁰

Another theory supporting IP laws is the fairness theory which is based on the premise that the law ought to give authors what they deserve, which means hard work needs to be rewarded and authors should remain in control of the result of their labours.¹¹

Last of all is the culture theory which contends that law should cultivate a just and attractive culture. This

theory presumes to encourage works for the betterment of humankind rather than limiting the scope to those works for which there is a current demand. Fischer states that this approach is similar to utilitarianism in its teleological orientation, but dissimilar in its willingness to deploy visions of a desirable society richer than the conceptions of “social welfare” deployed by utilitarians.⁵

Apart from these five constructs, Panesar talks about Occupation Theory of Private Property.¹² The essence of this theory lies in the fact that “all material resources are given to mankind in common, such material resources become the private property of individuals through the consent of or agreement with the rest of mankind.” But the question this theory asks is when did the first occupation take place? The question is supported by several arguments like the first occupation happens with the help of a clear indication that the possessor has taken control of the occupation. However, obtaining GI is more about recognition and less about possession or occupation. Moreover, the theory talks about belongingness of a property to individuals but is silent about belongingness to a place or geography.

The theories above support the rights of individuals and rightly so as intellect is entirely a human virtue and not a characteristic property of a place or a geography. For exactly this reason, the theories are less fitting or are not suitable enough to support a GI as an IPR. Although, the process to obtain GI takes into consideration the human efforts or human factor while filing the application (saying this in context of food-related applications in India), the emphasis or the core requirement lies in proving the geographical origin. Also, in case of natural products originating from a particular geographical location, human factor remains negligible and thus ‘intellect’ also has little role to play to secure a right. Since, the nature of the right is to seek protection, GIs seem similar to other IPRs. However, the theories supporting IPRs, as discussed above, speak for individuals and not for geographies. As a wishful thinking had it been the ‘Theory of Placehood’ instead of ‘Theory of Personhood’, stating that place imparts some elements of its identity to its produce, this paper would have never come into being. Thus, in this paper, I propose to widen the definition of GI as an IPR which, as it stands, is considered as an IPR for the sake of protection of products. This understanding of GI has significantly impacted the process of obtaining GIs in

India and considering that all applications have a fair chance to be adjudged abiding by the cultural theory that law should cultivate just and attractive culture, with the help of food-related applications in India, I attempt to put forward a new perspective - looking at GIs from a new lens and widening the scope of its definition. This can prove to be an effective measure to protect maximum products as it will streamline the process of obtaining the right.

In the absence of an appropriate theory for GIs, the history and process of obtaining GIs becomes its existing literature and the same is discussed in the following section.

Historical and Legal Background

The importance of IP was first perceived in the Paris Convention for the Protection of Industrial Property (1883)¹³ and the Berne Convention for the Protection of Literary and Artistic Works (1886).¹⁴ Both these conventions come under the purview of the World Intellectual Property Organization¹⁵ (WIPO). GIs fall under the category of Industrial Property Rights. However, the current system of protecting GI is set in Article 22 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994¹⁶ (TRIPS henceforth). This agreement requires participant nations to accommodate the assurance everything being equal, where the commitment is for individuals to give the 'legitimate methods for invested individuals' to make sure about the security of their GIs. As India is a TRIPS signatory, under the obligation of Article 22.2 of the TRIPS, which calls for all members of the World Trade Organization to provide "legal means" for protecting GI, India established a system for the recognition of GIs in 1999. The principal document came to be known as The Geographical Indications of Goods (Registration and Protection) Act of 1999 (GI Act 1999) published in the Gazette of India.¹⁷ The government passed certain rules to implement the GI Act known as The Geographical Indications of Goods (Registration and Protection) Rules, 2002 (the GI Rules henceforth) in March 2002. Both the GI Act and the GI Rules took effect from 15th September 2003.¹⁸ There were no specific laws in India dealing with GIs prior to passing of the GI Act. The GI Act defines the Geographical Indication, states the process for the registration; explicates the concept of registered proprietor and authorized users, and imposes both civil and criminal penalties for infringement of registered GIs. As of November 2023,

the status of GIs in India with registered tag is at 504 out of which 180 are food and drinks related, which means they fall in the categories between 29-33.

Definitions of GI

TRIPS agreement defines GI as "indications which identify a good as originating in the territory of a member, 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".¹⁹ WIPO, on the other hand, defines Geographical Indications and Appellations of Origin as signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.²⁰

In Indian context, the definition of GI is provided under Section 2(e) of the GI Act. The term 'geographical indication'

"in relation to goods, means an indication which identifies the goods as agricultural goods, natural goods, and manufactured goods that are originated or manufactured in the territory of a country or in any region in particular. The main attributes like quality, reputation, and characteristics of such goods are related to geographical origin in case of agricultural goods, and in case of manufactured goods attributes like production, processing, or preparation of the goods in a particular territory, region or locality will be considered" where

"goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

(g) "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;

(h) "name" includes any abbreviation of a name; [The Geographical Indications of Goods (Registration and Protection) Act, 1999].

Food-Related GI Applications in India: Issues, Suggestions and Take away from the European Union (EU henceforth)

The title of this paper mentions that this is an assessment of food-related GI applications in India and it is time that the term 'food-related' in the context of this paper is defined.

The GI Act refers to a classification of goods which are classified into 33 categories out of which the last five, class 29 to class 33 refer to edible goods, edible manufactured products, agricultural goods, dairy and poultry.²¹ In this paper, applications made under these categories are analyzed and are referred to as ‘food-related’ GI applications. What follows next is the identification of issues and scope of improvement in the process of applying and obtaining a GI tag. The methodology adopted in this paper is to study the drafts and legal proceedings of each of the applications filed in the classes between 29 to 33 until November 2023 irrespective of their status as granted, under process, abandoned or rejected. The issues as findings that were encountered in the analysis of these application drafts are discussed one by one in the sections that follow. A new approach for the categorization of food related applications is also proposed in one of the findings.

Overlapping Categories

The food-related products ranging from class 29-34 are categorized based on certain themes but have several overlapping elements. Class 29 is about meat, poultry, fish, milk and milk products. Class 30 is categorized for cocoa, confectionery, sugar, rice, condiments, Class 31 consists of agriculture, horticulture and forestry products. Class 32 deals with beers and other non-alcoholic drinks. Class 33 and 34 deal with Alcoholic beverages (except beers) and tobacco, smoker’s article respectively. An exact classification from the official document²¹ is quoted below:

“Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats;

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice;

Class 31: Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt;

Class 32: Beers, mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages;

Class 33: Alcoholic beverages (except beers);

Class 34: Tobacco, smokers’ articles, matches.”

The ambiguity in the classification of goods is clearly visible as several products of Class 30 can be a part of Agricultural products in Class 31. Class 31 also has a categorization as ‘grains not covered in other classes’ when grains can be easily covered in one class or under agricultural products. Similarly, honey and mustard in Class 30 can also be considered as a horticulture and agricultural product in Class 31 respectively. Beer is in the category of non-alcoholic drinks despite the fact that a category exists for alcoholic beverages. By observing the categories, it can be implied that products manufactured are a part of Class 29, be it animal produce, dairy or oils. Class 30 and 31 don’t have a common thread binding all the products mentioned, Class 32 is non-alcoholic beverages including beer. Class 33 and 34 are specific about their categorization.

As per Section 3 of the GI Act, an application can be filed in more than one category, however, the fee is charged separately for each category. It says “A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.” It is a fact worth appreciating that the GI Act provides enough flexibility to the applicant to apply to multiple categories at once. The GI Act also clearly states that in case of overlapping of classes, The Registrar of Geographical Indications takes the final decision. However, this paper is about presenting the side of the end-user or the applicant. Clear categorization can ease the complication for an end-user keeping in mind that the GIs in India are required to be filed by cooperatives or societies and several applications come from rural areas, especially for agricultural products, any level of clarity given to an end user at the very first step of filing the application can encourage the applicant to apply at ease.

An unambiguous categorization without removing any products mentioned in the existing classes can be as follows:

Natural

Meat/Dairy/Poultry

Meat, fish, poultry and game; eggs; milk; live animals

Non-meat

Coffee; tea; Agricultural, horticultural and forestry products and grains; fresh fruits and vegetables;

seeds, natural plants and flowers, tobacco, honey, mustard, spice

Manufactured

Alcoholic

All alcoholic drinks (including beer)

Non-alcoholic

Mineral and aerated waters; and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages,

Meat/Dairy/Poultry

Meat extracts; preserved;

Non-meat

Dried and cooked fruits and vegetables, jellies; jams; fruit sauces; edible oils and fats; flour and preparations made from cereals, bread, pastry and confectionery, ices; treacle; spice-mix, vinegar.

The rationale behind separating milk and milk products is that milk products require human efforts to be manufactured. Similarly, *Ghee* (clarified milk fat) can be both in non-meat and dairy categories but more specifically belongs to dairy category. I have excluded smokers' articles and matches from the categorization as they are not foodstuffs. Lastly, foodstuffs for animals can be in natural or manufactured category depending on the composition. Spices and spice mixes are separated as natural and manufactured categories keeping human effort in mind. Some products like yeast, malt, baking powder are not added to any categories but they can fall into natural or manufactured non-meat categories depending upon their composition. Also, in some cultures, beer or wine is culturally not considered alcoholic and is a part of the meal and they may have reservations about registering it in alcoholic categories but this categorization is purely based on the natural origin or manufactured processes and constituent element. A precise categorization

smoothens the process in terms of finding the origins. A new category 'Naturally Occurring Alcoholic Beverage' is also proposed for products like toddy or palm wine. They have not been added to the categorization above as it simply presents a restructured classification of the products that already existed in the list. The following Fig. 1, however, includes this category:

Section 8 (2) of the GI Act specifies that The Registrar shall classify the goods in accordance with the international classification of goods for the purposes of registration of geographical indications. With reference to the international classification, the categorization that the EU follows was referred to. The reason behind choosing EU was that maximum of the food-related foreign GIs in India are filed by the European nations.

The first step to file a GI in EU is to fill an application form. There are only 3 categories of forms: form for food and agricultural products, form for wine products and form for spirit drinks.²² There are 23 subsections in food category with absolutely no overlapping and 45 exclusive subsections in spirit drinks. These are the only 3 categories a GI can be filed in the EU *via* 3 separate forms clearly labelled. The process in the EU has completely done away with the need for meat-based, alcohol-based or natural and manufactured based categorization, however, the same categorization may not be the best fit for India as Indians are culturally and religiously sensitive towards alcohol and meat consumption as compared to the EU, the learning from EU at this stage could only be limited to adopting unambiguous classification. Despite already having a well-defined process, the EU further aims to shorten and simplify the registration procedure resulting in a single GI registration procedure for EU and non-EU applicants.²² It can, thus, be implied that streamlining the process of application plays a role in encouraging the applicants to seek protection rights.

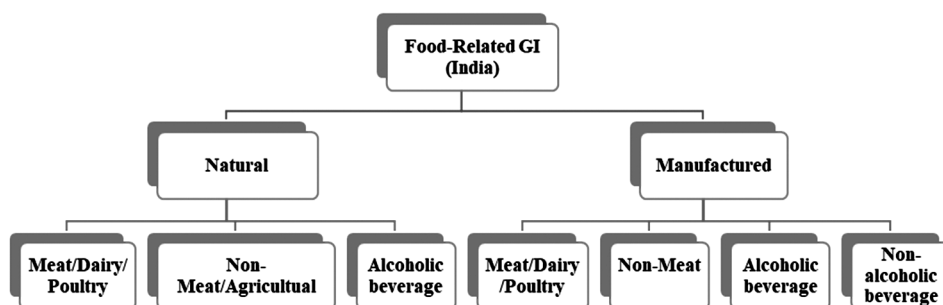


Fig.1 — Proposed categorization of GI applications

At this juncture, it is significant to realize the role cultural anthropologists can play in adopting laws. The suggestion on considering beer as alcoholic beverage and having meat and alcohol-based categorization for GIs by upholding the cultural sensitivity of Indians can be an input only from experts who study how humans perceive laws – anthropologists. Discussing anthropology of law in detail at this stage is beyond the scope of this research.

Re-Establishing the Term ‘Geographical’

Consider the case of Basmati rice. It is a long-grain aromatic rice usually grown in the foothills of Himalayas, and was at the center of many GI related battles in the past both within India and internationally. The rice is popular due to the length of its grain, soft and fluffy texture, and a distinct aroma and taste. These distinct qualities of the rice are due to agro-climatic conditions, soil and methods of harvesting. Thus, in 2016, Indian government granted a GI status to Basmati producers in the Indo-Gangetic Plains on the foothills of Himalayas. The application was filed by the Agricultural & Processed Food Products Export Development Authority (APEDA). This included 7 Indian states Punjab, Haryana, Himachal Pradesh, Uttarakhand, parts of Uttar Pradesh, and Jammu & Kashmir.²³ Later, Madhya Pradesh claimed that Basmati had been grown in Madhya Pradesh for decades now and has all the qualities of the Basmati grown in the Indo-Gangetic plain in northern India. Madhya Pradesh, which lies in central India, opposed APEDA’s claim. APEDA had to amend the GI application which now included parts of Madhya Pradesh and Rajasthan, by clearly marking the areas in a map. The new order contains the area of MP where Basmati is grown for several years now on the grounds of soil conditions and history of rice being grown there.²⁴ To delve into the legal nuances of the 370-page order is not the purpose of this paper, however, the order ensured that Basmati is no longer the rice that only grows in the foothills of Himalayas in the Indo-Gangetic plains as it was originally perceived. Furthermore, in 2020, India claimed the GI status of Basmati in the EU which was opposed by India’s neighboring country Pakistan, parts of which constitute for the Indo-Gangetic plain.²⁵

Basmati is the case of the disputed origins of one product. Isn’t it time that we need to look at the term ‘geographical’ in a new light? Is geography a region, nation, state or a province? Is it the political

boundaries that define a geography for the purpose of a crop? The GI Act is not silent on it, it states in Section 5(e) that

“any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;”

It is contended that for the purpose of GI applications, a geography should be considered as ‘terroir’ and not as political boundaries. To understand the broader meaning of the term ‘geographical’, consider another instance. The Proof of Origin in the GI application of Allahabad Surkha Guava mentions, that several guava orchards were used for research and sample collection and some of the fields fall in Kaushambi district which are not in Prayagraj (formerly Allahabad) anymore.²⁴ The guava draws its uniqueness from the water of river Ganga which flows through Prayagraj, laying emphasis on terroir and climate and not territorial boundaries. What is strongly advocated here is to widen the use of the term ‘terroir’ which conventionally has been limited to the case of wines and grapes. In case of inclusion of the state of Madhya Pradesh for the Basmati rice application, soil conditions were taken into account surpassing the political or geographical boundaries.

Terroir has been an active element taken into consideration while discussing culinary heritage and can be adopted in the mechanism of GI. Though the term terroir finds its roots in ‘terrestrial’, the Merriam-Webster dictionary defines it as “the combination of factors including soil, climate, and sunlight that gives wine grapes their distinctive character”. It is suggested to consider it beyond just grapes. Many other studies use the word ‘terroir’ in relation to endogenous development.²⁶ Casabianca describes a terroir as “a limited geographical area where, over a long period, a human community generates a distinctive set of cultural features and a body of knowledge and practices based on interaction between biophysical and human factors”.²⁷ “The combination of techniques involved in production displays originality, confers typicality on local products and leads to these products acquiring a high reputation.” A terroir is a dynamic space that keeps evolving and leads a character to its inhabitants and

flora. Hermansen describes Nordic Terroir as its landscape and the people.²⁸ Not digressing much from the topic and citing the case of Basmati again, when Madhya Pradesh opposed the claims within India, parts of India, (which are not part of the said plains if state boundaries were to be considered, most of Madhya Pradesh belongs to plateau as a geographical profile and not plains) were added to the application along with a map. Had political boundaries been the only consideration, all GI products of Uttarakhand would have been GI products of Uttar Pradesh and vice-versa if we date back to proving history as they were one state until 2000. *Jhangora* and *madua* are grown in Uttarakhand because of suitable climatic conditions. The application on *jhangora* mentions that it is an important crop of both Garhwal and Kumaon regions, both of which are regional parts of Uttarakhand in Annexure 3 titled 'Geographical Area'.²⁴ But both these applications are titled as 'Uttarakhand' *jhangora* and 'Uttarakhand' *mandua*. Filing of applications state-wise in terms of nomenclature creates an impression of linking the geographical boundaries as state boundaries. The essence of GI tag lies in protecting the rights of the product and not to maintain a tally of number of tags obtained state-wise.

Thus, it is not the boundaries of an Indian state, it is the plains where the Basmati rice can grow based on terroir which has apolitical connotations to it. Had terroir been the consideration instead of state boundaries, Madhya Pradesh wouldn't have had to file an opposition and fight a legal battle. If the rice grown in Madhya Pradesh has same characteristics as the rice known as Basmati in the Indo-Gangetic plain, it would have received the protection right at the beginning itself. As far as international boundaries are concerned, the concept of jointly granting Intangible Cultural Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to nations of shared cultures can be referred to but discussing it here is beyond the scope of this research.

Consulting Historians and Anthropologists

The introduction of the term terroir instead of geographical is to soften the boundaries taken into consideration with the intention of obtaining protection rights for all deserving applications. The reason to make such a suggestion is that laws are codified, thus, sometimes legal perspectives offer solutions as binary answers.²⁹ While this may not be the case always, and to assess the effectiveness of

laws or judiciary is neither the purpose nor the intent of this paper, introducing an inter-disciplinary approach is. Fournier and Michelin, in the context of Mediterranean cuisine state that GI can't be only looked at in relation to contemporary economic or social problems, instead they suggest "that a more culturally based approach is required to grasp all the complexity of the problem" as food carries symbolic meanings and thus also needed to be looked at from the eyes of anthropologists and prehistorians.³⁰ They even suggest bringing on board paleoanthropologists to decide the historical factors in GI applications.³⁰

Ensuring food historians and anthropologists in research and intermingling with communities respectively can bring forward the history behind facts and can spread awareness and confidence among communities about the special product they are producing. Anthropology proves to be very useful in linking together the historical context, the treatment of food products in its technical and economic aspects, and the connected mechanisms of social and collective appropriation.³⁰ The authors are also of the opinion to take a multidisciplinary approach where the sociologists and the geographers can also take into account the place a food product carries in cultural transmission and culinary heritage along with studying it through time and space.

In the context of food-related GI applications in India, the statement of case document of the GI registered as Basmati in 2016 in India is assessed. It states that Basmati is very old rice and first finds a mention in a 1766 poem Heer- Ranjha by a Punjabi poet (the poet resided in pre-independence Punjab, which is now a part of Pakistan) Varis Shah, that Basmati (along with two other rice) was a part of the wedding preparation of the heroine (named Heer) of the poem. A stanza of the poem with its English translation is attached as an annexure (Annexure 6). The other two rice varieties, 'Musafari' and 'Begumi' have Urdu names whereas Basmati has a Hindi name meaning 'one with a fragrance' (*bas* means smell). The wedding took place in Pakistan, but one variety of rice has a Hindi name raises a question whether Heer's family could manage to procure rice from the Indo-Gangetic plains of present-day India in 1766 or before? Maybe they could, given the grandiosity of the wedding paraphernalia described in the subsequent stanzas. The concern here is that folklore and fiction is an active element of research but in case of proving hard facts, it can only be seen as supporting evidence. It has been argued elsewhere

that folklore shapes and defines cuisines in all its potential and has also defined Indian cuisine in case of undocumented historical events but citing Heer-Ranjha was insufficient in proving the origin of the rice, however, it does prove the existence of the rice around 1766.³¹ On the other hand, the author of several books on Himalayas, Ganesh Saili, writes that Basmati reached the Doon valley in the Indian Gangetic plains 200 years ago with an exiled Emir, Amir Dost Mohammed, the founder of the Barakzi dynasty of Afghanistan. He sought permission to stay in Bala Hisar near Mussoorie (in Doon Valley) in 1840 and is credited for introducing the aromatic basmati rice from Kunar in Afghanistan to the Doon Valley.^{32,33}

The articles that are cited here for this information are by the author (Ganesh Saili) himself and are from the years 2023 and 2021 respectively and the statement of the case referred to is from before 2016, however, other older books of the same author or the author himself find no mention in the statement but folklore does. Otherwise, the statement of case document referred to here is an exhaustive document that present every element from the history of rice to harvesting season and methods based on which the GI is granted to it, the intention of citing it here is to introduce the need for historians, anthropologists or other experts in the process of applying for GIs.

Widening the Scope of the Term ‘Reputation’

The term reputation is used twice in the GI Act without any special meaning associated with it. It is used in the phrase “reputation or other characteristics of which are due exclusively or essentially to the geographical environment” both the times. In the context of the GI Act, it refers to the characteristics of a product which make it worthy of obtaining a GI tag or any sort of protection right. I discuss the scope of the term ‘reputation’ with the help of an example. I am referring to an abandoned application of Agra Petha, where the applicant could not comply with the requirements stated by the GI Registry, Government of India within the prescribed time limit. After 6 years, in 2019 the GI order was passed and the application was marked as abandoned. In October 2023, a fresh application was filed by *petha* association named “Shahid Bhagat Singh Kutir Petha Association”. This time the application is accompanied with historical gazette documents, research articles by Food Technology Institutes like

NIFTEM and Ministry of Food Processing Industries (MOFPI).

What I am arguing is that the reputation is often misunderstood as age of a product or its historical or geographical association. For this reason, an application sometimes remains abandoned because it fails to produce evidence of history or proof of origin despite having a reputation. Agra Petha maintains its unparalleled reputation since decades but is not as old to find a linkage in ancient or medieval history of India. History is nothing but a set of temporally spread facts and reputation is how humans, the consumers perceive a product and how a product is serving humans, something which can be measured in terms of likeability, its sales, consistency in maintaining quality, its uniqueness, its social impact and economic benefits. Just as reputation is not synonymous with age or historical association, it is also not synonymous with geographical boundaries. A geography can provide an identity to the foodstuff, it can also be true vice versa. Simultaneously, to ask for ‘geographical linkage’ between a manufactured good and not natural produce needs to be pondered over by the scholars and practitioners of both disciplines. I raise a question here- what is the age of history? What if a product which is produced at a place for around 100 years and has lived up to the expectation of consistency and quality and has reached a stage where its inferior counterparts are also sold under the same name and its makers try to seek protection but fail to prove a historical linkage (among other factors), the application stands abandoned to protect its rights. Isn’t it a case of *suo moto* cognizance by the government to protect its rights because there is no record of decrease in production, sale or quality of *petha* after the application stands abandoned or during all those years the application was in-process? However, during the course of writing this paper, I met a local who was born and brought up in Agra and has lived there for several years. In a casual conversation, she mentioned that there are many outlets now in Agra who have purposely misspelled the name of the original shops selling *petha* and are still doing a great business but the quality and taste is no match to the original one. To prove the relevance of my argument, I am drawing an analogy outside the scope of this paper. Taj Mahal, one of the seven wonders of world, is in Agra, thus, establishes a geographical association with the city. What if Taj Mahal were in a hypothetical city named Mixapur,

wouldn't Taj Mahal have given the same identity to Mixapur as it has given to Agra? Analogously, *petha* is manufactured in Agra, it may not have a direct link to the land, soil, air or water of Agra, however, since a substantial amount of time, (Panchhi *petha*, the most famous *petha* manufacturers, started in 1926) several manufacturers are making quality *petha* as a sweet making business.³⁴ To alleviate the problem of infringement, as a precautionary measure in 2023, Panchhi Petha has introduced a web page on their website which informs the buyer about reaching the right store and obtain the authentic products. It has now earned a name outside the city and outside India also. The reputation of the sweet lies in the fact that it is a *sattvic*, gluten free, dairy-free sweet made out of ash gourd, which is an indigenous variety of fruit in India. Since it is cooked in sugar syrup, its shelf life is substantially enhanced adding significantly to its portability. However, with time it is also available in many different infused flavours like chocolate, orange and rose which are equally preferred by buyers. From an economic point of view, The Print reports *petha* industry as an economic catalyst of the city. It also reports that there are around 1500 *petha* making units which produce 700-900 tons of *petha* every single day.³⁵

I am again looking at the EU, and their Traditional Specialty Guaranteed (TSG) scheme, which highlights the traditional aspects, such as the way the product is made or its composition, without being linked to a specific geographical area.³⁶ The name of a product being registered as a TSG protects it against falsification and misuse. It is often done to protect the production method instead of geography. When I talked about *suo-moto* cognizance of the need for protection, I did not mean that the government is oblivious to this concern. The government is successfully running an ODOP (One district, One Product) scheme where one product per district is identified to "reap the benefit of scale in terms of procurement of inputs, availing common services and marketing of products. ODOP for the scheme will provide the framework for value chain development and alignment of support infrastructure. There may be more than one cluster of ODOP products in one district"³⁴ and from Agra district, *petha* (Deputy Industrial Advisor, Government of India, 2022) is a recognized product. ODOP had already tagged the origins and if protection rights could also be one of its missions, several applications can be saved from

'proving' their reputation *via* historical or geographical linkages.

I have made a deliberate delay in mentioning the fact that certain locations on the banks of Yamuna river are ideal for the growth of ash gourd, the fruit with which *petha* is made and growing them elsewhere alters the taste of the fruit according to The Print⁴³. Agra being located on the banks of river Yamuna makes it an ideal terroir to grow ash gourd. Historically speaking, it is said to have been originated in the kitchens of Shah Jahan, the Mughal emperor, but a similar recipe is also found in the Ayurveda by the name of *Kooshmanda Rasayan*.³⁷ Agra *Petha* does have historical and geographical associations with Agra but the issue that is addressed here is that without these two connotations, Agra *petha* does have a reputation which needs to be protected.

Logo as GI

Tea Board, India has registered Assam (Orthodox) and Nilgiri (Orthodox) logos as GIs. Logos do not have 'geographical' identities, products do. The GI Act is silent about logos and describes geographical indication on goods and has a detailed definition on what goods stand for. I suggest one single mark for all GI protected products which is different from a trademark. Can all protected products be marked by an encircled 'P' in a specific colour or a 'GI protected' text mentioned on the product act as a tag is a question for further research. This tag could also act as a statutory warning for someone who tries to infringe or replicate the product.

Consecrated Goods as GI

Goods offered to deity become *prasadam* or *prasad*. Prasad is by definition geographically identified by the location of the divine place, even if the preparation is replicated elsewhere, it becomes *prasad* only by its offering to deity which is bound by the location of the temple. The uniqueness of a *prasad* not only lies in its taste or other qualities, it lies in the blessings of the deity it was offered. Tirupati laddu is one such registered GI. The registration of Tirupati Laddu met with an opposition in 2010, on the pretext that it gives a wrong message to public that *prasadam* are akin to industrial goods.²⁴ *Prasadam* neither need protection as they are the product of belief system (the Tirupati *prasadam* can be obtained from Tirupati only after being blessed by the deity), nor a geographical

linkage by the nature of their definition, their uniqueness can only be celebrated as separate category of 'Ethnic Goods', 'Ethnic Foodstuffs' or 'Sacred Goods'. Among the suggested categories, 'Ethnic Foodstuffs' has a wider scope as it can include regional food rituals like Himachali *dham*, Kashmiri *wazwan* or Onam *sadhya* which are meal-based rituals specific to a particular region and can directly impact regional tourism. However, discussing regional foodways and culinary tourism does not fall in the scope of this research, but are potential research topics independently. I suggest creation of a separate category for foodways which need to be celebrated and not protected and are geographically identified by virtue of their existence.

Conclusion

The purpose of this paper was not to adjudge the legal process, instead, it was to present an outsider's perspective, neither as a lawmaker nor as an applicant. I studied all food-related applications filed in India which either got rejected or were abandoned and found several disparities in them. For instance, in refused applications Kolhapur *chutney* and Kolhapur spice mix, the recipe and composition were not described in detail whereas, abandoned application Thayagraja *halwa* has a well-defined detailed recipe, history and proof of origin, but the application was abandoned due to lack of or inability to submit the document. A clear inconsistency is observed in the applications as irrespective of the status of the applications, is recipe even required in the application? The application has 'Uniqueness' as one of its factors, it remains the choice of applicant to mention the recipe. Inconsistencies were observed in several applications especially rejected and abandoned; thus, a new perspective was needed to bring the need for a precise application format to the fore.

Secondly, when discussing the case of Basmati Rice as GI, I emphasized on the consideration of terroir as a parameter in granting a GI tag but in case of Agra *petha*, I question taking climatic condition into account for attaining a GI status because applications need to be considered on a case-to-case basis. A manufactured product which has become synonymous to the identity of geography may have high emphasis of human factor but may not have a definite relation with the natural environment or climatic conditions in case of food related

applications. On the other hand, a natural product or crop is a direct produce of the soil and is impacted by the air and water of the place, in other words, its terroir but has little human effort. Since laws are meticulously arranged set of rules and changing them from case-to-case basis may not be a feasible exercise, a precise categorization with minimum overlapping can be the key to unambiguous processes.

Additionally, all new suggestions are prescribed with a degree of caution. I suggested the introduction of terroir instead of politically defined geographical boundaries, care should be taken to not exploit and monetize the term 'terroir products' as several states in EU have done where products which fall under the category of 'terroir products' are widely advertised as artisanal products. In fact, 'terroir products' has become a fashionable term losing the essence which originally existed.³⁰

The suggestion to widen the scope of the term 'reputation' comes from an observation that for most products in India, a GI tag is applied for after obtaining certain degree of reputation and with an aim to protect it from infringement which it is vulnerable to now because of its reputation. But the process of getting a GI requires it to prove the same 'reputation' with the help of documented evidence, only to be stuck in a loop and stay abandoned at a later stage.

Lastly, government should consider appointing anthropologists and historians and it should solely not be the duty of the applicant to seek GI tags. Since many applications are filed by rural cooperatives or societies, hiring a subject matter expert may not be feasible always. We need anthropologists for the end user to make them understand the importance of law and the necessity of protecting the rights of the product. Anthropologists, especially experts on cultural anthropology and food anthropologists are trained to understand human perception of lesser-known aspects. They can add to the quality of applications, not only in terms of better research, but also in bridging the gap between what the government has to offer and its direct beneficiaries. But as Mintz & du Bois stated that anthropology of food is an upcoming field and we have not yet taken full advantage of this discipline.¹ The suggestions from EU at several stages in the paper can be a great prospect in streamlining the process of GI application in India if they are adopted in a culturally sensitive manner. Other suggestions like adopting new categories like 'Ethnic Foodstuffs' and extending the

scope of ODOP are potential topics for further research in the field of Heritage and Tourism studies.

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