

Issues and Challenges to Geographical Indications in the Era of E-Commerce

Nittu

Research Scholar, PU, Chandigarh

Abstract: *Geographical Indications (GIs) are distinctive signs that identify a product as originating from a specific place, where a given quality, reputation, or other characteristic is essentially attributable to its geographic origin. Examples include Champagne from France, Darjeeling tea from India, and Parma ham from Italy. With the rapid growth of e-commerce, GI products are increasingly being marketed and sold online. However, the digital environment poses various challenges and issues that require careful attention. E-Commerce and GI Products: E-commerce platforms have revolutionized the way GI products are marketed and accessed globally. The internet allows producers from rural areas to reach global markets, increasing their visibility and customer base. However, this digital expansion also brings significant issues, including risks related to authenticity, counterfeiting, and jurisdictional enforcement. Thus, this paper will analyse the issues and challenges that come in the path of exploring and marketing products with GI. The researcher used doctrinal research and referred primary and secondary resources to find the solution of this emerging issue.*

Keywords: *Geographical Indications, E-Commerce, Protection, Violations.*

1. Introduction

A Geographical Indication (GI) is a sign used on products that have a specific geographical origin and possess qualities, a reputation, or characteristics that are inherently linked to that location. These indications help consumers recognize the authenticity and quality of products, providing a

competitive advantage to producers from that area. Some well-known examples of GIs include:

- Champagne (France): A sparkling wine produced exclusively in the Champagne region.
- Darjeeling Tea (India): A type of tea grown in the Darjeeling district of West Bengal.
- Parmigiano Reggiano (Italy): A type of cheese produced in specific regions of Italy.¹

To understand the concept of GI in a better manner, it is necessary to understand the difference between GI and its relative terms which are as follow:

a. *Appellation of Origin*

An Appellation of Origin is a specific type of GI that requires that all production steps, from raw material sourcing to final production, occur within a defined geographical area. The term is closely associated with wine and agricultural products.²

b. *Collective Trademarks*

A Collective Trademark is a sign used by members of an association to identify the origin, material, or other common characteristics of their goods or services. While similar to GIs, collective trademarks focus on collective ownership rather than geographical origin.³

c. *Traditional Knowledge*

Traditional Knowledge refers to the know-how, skills, and practices developed over generations within a community, often linked to agriculture, medicine, or craftsmanship. GIs are often connected

¹ Dr. Jyoti Rattan, Geographical Indications Law, 456 (Bharat Law House, Delhi, 1st edn., 2021)

² Delphine Marie-Vivien, Laurence Berard et. al., "Are French Geographical Indications Losing Their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France" (2015) available at: https://www.researchgate.net/publication/276119438_Are_French_Geographical_Indications_Losing_Their_Soul_Analyzing_Recent_Developments_in_the_Governance_of_the_Link_to_the_Origin_in_France (Visited on 5th June. 2024)

³ Dr. Dwijen Rangnekar, "Geographical Indications A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits", *ICTSD* (June 2003).

to traditional knowledge since they protect products rooted in the cultural heritage of specific regions.⁴

d. Certification Marks

A Certification Mark is a sign used to certify that products or services meet a specific standard, including geographical origin. Unlike GIs, certification marks can be used by anyone meeting the specified criteria, even if they are not from the geographical region.⁵

e. Terroir

Terroir refers to the combination of environmental factors, such as climate, soil, and topography, that gives a product its unique characteristics. This term is often used in the context of wine and cheese, where the qualities are deeply linked to their place of origin.⁶

f. Indications of Source

Indications of Source refer to any expression or sign indicating that a product originates from a particular country, region, or locality. This term is broader than GIs and does not necessarily imply a link between product quality and geographical origin.⁷

2. Key Characteristics of Geographical Indications: Link to Place of Origin

The quality, reputation, or characteristics of the product are directly related to its geographical origin. It has the following key features:

- **Collective Right:** GIs are generally collective rights that benefit all producers in the designated area, provided they adhere to the specified standards.
- **Economic Significance:** GIs can enhance market value by distinguishing products and protecting against imitation or misuse.⁸

3. Types of Geographical Indications

Geographical Indication is also further categorised as following:

- **Protected Designation of Origin (PDO):** The most stringent category, where every aspect of the production, processing, and preparation takes place in the specific geographical area.

- **Protected Geographical Indication (PGI):** In this category, at least one of the production stages (such as processing or preparation) must occur in the specified area.

- **Traditional Specialty Guaranteed (TSG):** Although not a GI in the strictest sense, TSG certifies traditional products with specific characteristics, without necessarily linking them to a geographical location.⁹

4. Historical Evolution of Geographical Indications

The concept of geographical indications dates back centuries. Historically, communities have always recognized the value of regional products. For example, Roman and medieval European artisans often took pride in the quality of goods produced in their local areas.

In the 19th century, the concept began to formalize. The French term "appellation d'origine contrôlée" (AOC), established in 1935, was one of the first systematic efforts to regulate and protect geographical indications. This system aimed to ensure the quality and authenticity of French wines and other agricultural products.¹⁰

The international legal framework for GI protection was significantly advanced by the World Trade Organization (WTO) through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which came into effect in 1995. This agreement established standards for protecting geographical indications across member countries, emphasizing the need for protection to prevent unfair competition and ensure product quality.

Since the establishment of TRIPS, many countries have developed their own GI systems or enhanced existing ones to protect local products and ensure that they cannot be misrepresented or copied

⁴ Rajeesh B.L and others, "Geographical Indication as a Tool for Protecting Traditional Knowledge", 3 pen Acclaims (2018)

⁵ *Supra* note 3

⁶ *Ibid.*

⁷ *Supra* note 2

⁸ Meenu Paul, *Intellectual Property Laws*, 289 (Allahabad Law Agency, Delhi, 2014)

⁹ VK Ahuja, *Law Relating to Intellectual Property Rights*, 314 (LexisNexis, 2017)

¹⁰ Mangala Hirwade and Anil W. Hirwade, "Geographical Indications: Indian scenario", *JOUR* (2006).

unfairly. The European Union, for instance, has extensive GI schemes covering a wide range of products from cheeses to agricultural goods.

Overall, geographical indications play a crucial role in preserving cultural heritage and ensuring that consumers can trust the origin and quality of products.

5. Legal Framework of Geographical Indications and E-Commerce in India

In India, the legal framework governing Geographical Indications (GIs) and e-commerce consists of distinct laws, policies, and regulations tailored to protect traditional products' origin and manage online business transactions. Here's an overview of the key laws governing GIs and e-commerce in India:

i. *The Geographical Indications of Goods (Registration and Protection) Act, 1999*

This Act provides for the registration and protection of GIs relating to goods in India. It is designed to ensure that products with a specific geographical origin and qualities attributable to that region are protected from misuse and unauthorized use. The key provisions are:

- **Definition-** The Act defines a GI as an indication that identifies goods as originating from a particular area where the quality, reputation, or other characteristics are linked to its geographical origin.
- **Registration Process -** The Act outlines the procedure for registering a GI. It includes filing an application, examination, publication for opposition, and issuance of a registration certificate.
- **Duration of Protection -** A registered GI is protected for 10 years, which can be renewed indefinitely for additional 10-year periods.
- **Authorized Users -** Only producers, associations of producers, or organizations connected with the GI can apply for registration. Once registered, only authorized users can use the GI label.
- **Infringement and Penalties -** The Act prohibits unauthorized use of a registered GI. Violators can face civil and criminal penalties, including imprisonment and fines.

ii. *The Geographical Indications of Goods (Registration and Protection) Rules, 2002*

The rules provide the procedural framework for implementing the 1999 Act. They detail the filing of applications, opposition proceedings, and the role of the Geographical Indications Registry. Examples of Registered GIs in India: Darjeeling Tea (West Bengal) Pashmina Shawls (Kashmir) Mysore Silk (Karnataka) Basmati Rice (multiple states in North India).¹¹

iii. *Laws Governing E-Commerce in India*

E-commerce in India is regulated by a mix of laws, covering everything from digital transactions to consumer protection. The key laws and regulations include:

- *The Information Technology (IT) Act, 2000*

The IT Act serves as the foundational law for e-commerce in India, governing digital transactions, electronic contracts, cybersecurity, and penalties for cybercrimes. Key Provisions:

1. **Legal Recognition of Electronic Transactions:** The IT Act provides legal recognition to electronic records, digital signatures, and electronic contracts, facilitating the conduct of e-commerce.
2. **Cybersecurity and Data Protection:** The Act outlines the responsibilities of intermediaries (e-commerce platforms) regarding data protection and provides penalties for unauthorized access, data breaches, and cyber fraud.
3. **Intermediary Liability:** E-commerce platforms are classified as intermediaries, which gives them protection from liability for third-party content, provided they comply with due diligence and other specified conditions.

- *The Consumer Protection (E-Commerce) Rules, 2020*

These rules, framed under the Consumer Protection Act, 2019, set out specific obligations for e-commerce entities, including marketplace platforms, sellers, and logistics service providers. The key provisions are:

1. **Fair Business Practices:** E-commerce entities are required to ensure fair and transparent

¹¹ Dr. M.K.Bhandari, *Law Relating to Intellectual Property Rights* (Central Law Publications, Allahabad 2021)

business practices, including displaying product information, pricing, and refund policies clearly.¹²

2. **Consumer Grievance Redressal:** E-commerce platforms must appoint a grievance officer to address consumer complaints and disputes within a specified time frame.

3. **Liability of E-Commerce Platforms:** The rules clarify the liability of e-commerce entities in case of misleading information, counterfeit products, or non-delivery.

4. **Misleading Advertisements and Unfair Trade Practices:** The rules prevent e-commerce platforms from engaging in unfair practices like price manipulation and promoting misleading advertisements.¹³

6. Major Geographical Indications Controversies

Instances of violations of Geographical Indications (GI) in e-commerce have become increasingly common with the rise of online marketplaces. These violations often involve unauthorized use, misrepresentation, or sale of counterfeit products bearing GI tags. Below are some notable instances and examples that illustrate how GI rights are compromised in the e-commerce space:

- **Darjeeling Tea Controversy:** Darjeeling Tea, one of the first products in India to receive a GI tag, is often subject to misrepresentation in online marketplaces. Several sellers on e-commerce platforms have been found marketing tea as “Darjeeling” even though it does not originate from the Darjeeling region of West Bengal. Violation: E-commerce platforms frequently list products claiming to be “Darjeeling Tea” without meeting the specific criteria for authenticity. The Tea Board of India, which manages the GI for Darjeeling Tea, has raised concerns and taken action against such practices. However, the vast number of listings makes enforcement challenging.¹⁴

- **Pashmina Shawls Issue:** Genuine Pashmina shawls, which have a GI tag from the Kashmir region, are often counterfeited and sold on e-commerce platforms. These fake shawls are usually made of lower-quality wool or synthetic fibers and are marketed as “Kashmiri Pashmina.” Violation: Many online sellers mislead consumers by using the “Pashmina” label without adhering to the stringent standards required for authentic GI-tagged products. The proliferation of fake Pashmina shawls on platforms like Amazon, Flipkart, and others not only harms the local artisans but also diminishes the reputation of the original product.¹⁵

- **Banarasi Sarees Issue:** Banarasi sarees are another product with a GI tag, known for their intricate weaving and traditional craftsmanship. However, several instances of fake or machine-made sarees being sold under the “Banarasi” label have been reported on e-commerce platforms. Violation: Sellers misrepresent machine-made sarees as authentic handwoven Banarasi sarees, which violates the GI rights. These counterfeit products are often sold at lower prices, leading to unfair competition for the actual weavers and producers in Varanasi. Enforcement has been difficult due to the anonymity provided by online platforms and the difficulty in tracking every listing.¹⁶

- **Kolhapuri Chappals Issue:** Kolhapuri chappals, traditionally handcrafted leather footwear from Maharashtra and Karnataka, received a GI tag in 2019. Despite this, several online listings feature fake Kolhapuri chappals made from synthetic materials or manufactured outside the designated geographical area. Violation: Many online sellers misuse the Kolhapuri name to sell cheaper, mass-produced versions of these chappals, which do not meet the criteria set by the GI registration. This misrepresentation affects the livelihood of traditional artisans and undermines the cultural heritage associated with Kolhapuri chappals.¹⁷

¹² S.J.P.T. Joseph, *E-Commerce : An Indian Perspective*, 179 (PHI Learning Pvt. Ltd., 6th edn., 2019)

¹³ *Ibid.*

¹⁴ Sudhir Ravindran and Arya Mathew, “The Protection of Geographical Indication in India - Case Study on ‘Darjeeling Tea’” *Intellectual Property Rights Index 2009 Report*.

¹⁵ Dwijen Rangnekar, “Geographical Indications”, 4 *ICTSD* (2003).

¹⁶ *Ibid.*

¹⁷ Niharika Sahoo Bhattacharya, *Geographical Indication Protection in India: The Evolving Paradigm*, (Springer Verlag, Singapore, 1st edn., 2022)

- **Basmati Rice Issue:** Basmati rice, a staple product from specific regions in India and Pakistan, is protected by a GI tag. However, numerous cases of mislabeled or counterfeit Basmati rice being sold on e-commerce platforms have been reported. Violation: Sellers often market long-grain rice varieties as “Basmati” even when they do not meet the quality or geographical criteria defined under the GI tag. Such practices mislead consumers and damage the market for genuine Basmati rice.¹⁸
- **Mysore Silk Issue:** Mysore Silk, a GI-tagged product known for its premium quality and heritage value, has faced counterfeit issues on e-commerce platforms. Some sellers falsely label low-quality or synthetic silk sarees as “Mysore Silk.” Violation: The online sale of fake Mysore Silk sarees damages the brand and reputation of this heritage product, while also leading to losses for the genuine producers. The misuse of the GI tag in e-commerce not only deceives consumers but also poses significant enforcement challenges for authorities.¹⁹

7. Issues and challenges

The rise of e-commerce has revolutionized global markets, transforming how businesses and consumers interact. However, as the digital economy expands, it poses significant challenges to governance and integrity (GI). This article explores the key issues related to governance and integrity in e-commerce, including regulatory challenges, cybersecurity threats, data privacy concerns, and the evolving nature of fraud and corruption. It delves into how traditional governance frameworks are being redefined to adapt to this rapidly growing sector and discusses potential solutions for maintaining integrity in digital transactions.

a) *The Rise of E-Commerce and Governance Concerns*

E-commerce has grown exponentially over the last decade, with companies like Amazon, Alibaba, and eBay leading the digital marketplace. However, with

this growth comes the challenge of governance in an increasingly borderless, decentralized marketplace. Traditional governance structures, which are typically based on local or national regulations, struggle to cope with the global nature of e-commerce. The complexity is compounded by the speed at which technology evolves, often outpacing regulatory updates. Governments and institutions must thus adapt their policies, balancing innovation with effective oversight.²⁰

b) *Regulatory Frameworks and Cross-Border Challenges*

The borderless nature of e-commerce creates difficulties in establishing coherent regulatory frameworks. Jurisdictions often differ in their laws concerning data protection, consumer rights, taxation, and trade. This inconsistency leads to regulatory arbitrage, where businesses exploit less stringent regulations in certain regions. The absence of standardized international regulations complicates the governance landscape, as entities operate across borders with varying degrees of compliance and ethical practices.

Governments are now under pressure to develop international regulatory collaborations that address these disparities. Initiatives such as the World Trade Organization’s (WTO) discussions on e-commerce rules and regional agreements like the EU’s General Data Protection Regulation (GDPR) illustrate efforts to harmonize digital governance. However, achieving a universal regulatory framework remains a challenge due to conflicting national interests and varying levels of technological advancement.²¹

c) *Cybersecurity and Data Integrity*

The e-commerce sector is particularly vulnerable to cybersecurity threats. With transactions conducted online, there is a growing risk of cyberattacks, hacking, and data breaches. The integrity of data—ranging from personal information to payment details—is central to maintaining trust in the digital economy. When data is compromised, the consequences are severe, not just for consumers but

¹⁸ D.P.Mittal, *Law Relating To Trade Marks, Passing Off and Geographical Indication of Goods* (Commercial Law Publishers (India) Pvt. Ltd., New Delhi, 2022)

¹⁹ *Ibid.*

²⁰ Patel Nishidhkumar Manilal, “Geographical Indications: Pros and Cons” available at: <http://ssrn.com/abstract=1922347> (last visited on April 7, 2023 at 1040 hrs.).

²¹ *Ibid.*

also for businesses and governments. Companies that fail to protect customer data face reputational damage, legal penalties, and financial losses.

Governments and companies need to collaborate in enhancing cybersecurity measures. This includes adopting advanced encryption technologies, multi-factor authentication, and continuous monitoring of networks. At the policy level, governments must enforce stringent cybersecurity standards and provide clear guidelines for data protection. However, despite these efforts, the rapid pace of cyber threats means that both public and private sectors must remain agile in responding to new vulnerabilities.²²

d) Data Privacy Concerns and Governance

Data privacy is one of the most significant governance challenges in e-commerce. As businesses collect vast amounts of consumer data to optimize services and personalize marketing, concerns about data misuse and surveillance grow. The Cambridge Analytica scandal, where personal data was harvested without consent, highlights the risks of data exploitation in the digital era.

In response, governments have implemented data protection regulations to safeguard consumer privacy. The GDPR in Europe sets a benchmark with strict rules on data collection, processing, and storage, mandating businesses to obtain explicit consent from users. However, enforcing these regulations across borders remains difficult. In many countries, data protection laws are either outdated or poorly enforced, leading to inconsistent practices globally. Moreover, balancing data-driven business models with consumer privacy rights continues to be a major challenge.²³

e) The Evolution of Fraud and Corruption in E-Commerce

The digitalization of commerce has led to new forms of fraud and corruption. Traditional forms of corruption, such as bribery and embezzlement, have

found digital counterparts like click fraud, phishing, and online money laundering. Fraudulent schemes, such as fake websites, counterfeit goods, and identity theft, have increased significantly with the growth of e-commerce. This creates an environment where governance mechanisms must continuously evolve to counter these risks.

Digital platforms must invest in advanced fraud detection systems powered by AI and machine learning. These technologies can analyze large datasets to identify suspicious transactions in real time. Furthermore, transparency in business practices and consumer protection laws need to be reinforced to maintain trust. Governments and industry players should collaborate on initiatives like digital certification and consumer education to curb fraudulent activities.²⁴

f) Supply Chain Transparency and Ethical Governance

E-commerce relies heavily on complex supply chains that span multiple countries. The opacity of these supply chains raises governance challenges, particularly concerning ethical sourcing, labor practices, and environmental impact. Consumers are increasingly demanding transparency about where and how products are sourced. However, ensuring transparency in global supply chains is difficult due to a lack of standardized reporting, fragmented regulatory oversight, and the involvement of multiple intermediaries.

Businesses are now encouraged to adopt ethical governance frameworks that incorporate principles of sustainability and human rights into their operations. Technologies like blockchain are being explored for their potential to enhance supply chain transparency by providing immutable records of transactions. Yet, widespread adoption of such solutions faces hurdles, including high costs, technical challenges, and resistance from entities that benefit from opaque practices.

²² Shashikant B Bagade and Deven B Metha, "Geographical Indications in India: Hitherto and Challenges" *SRJPBCS* 1225 (2014).

²³ Chiara Bartoli, Enrico Bonetti *et. al.*, "Marketing geographical indication products in the digital age: a holistic perspective" *available* at: https://www.researchgate.net/publication/356065892_Marketing_geographical_indication_products_in_the_digital_age_a_holistic_perspective/link/6261878cb84a40ac7f0fc7/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn9uIj09 19 (Visited on 5th June. 2024)

²⁴ *Ibid.*

g) Intellectual Property Rights and Digital Governance

The proliferation of counterfeit goods on e-commerce platforms presents a significant governance issue. Protecting intellectual property (IP) in a digital environment is challenging as counterfeiters exploit the anonymity and vast reach of online marketplaces. This not only undermines legitimate businesses but also poses risks to consumer safety and trust.

Governments and e-commerce platforms must work together to develop robust mechanisms for IP protection. This includes stringent vetting of sellers, proactive monitoring of listings, and swift action against counterfeit products. Collaboration with international organizations like the World Intellectual Property Organization (WIPO) is crucial for harmonizing IP enforcement in the digital realm.²⁵

h) The Role of Corporate Governance in Ensuring Integrity

Corporate governance plays a critical role in maintaining integrity in the e-commerce sector. Companies must establish ethical guidelines that govern their operations, from product sourcing to marketing practices. Transparent reporting, responsible data management, and accountability mechanisms are essential to building consumer trust. However, corporate governance in e-commerce often faces pressure from shareholders focused on short-term profits, leading to compromises in ethical standards.

The adoption of Environmental, Social, and Governance (ESG) criteria is increasingly seen as a way to ensure long-term sustainability and integrity in e-commerce. Companies that prioritize ESG are more likely to attract ethical investors and build consumer loyalty. Additionally, integrating corporate social responsibility (CSR) into business models helps address broader societal challenges like digital inequality and environmental degradation.²⁶

As e-commerce continues to evolve, so too must governance frameworks and integrity measures. The future will likely see more collaboration between governments, businesses, and international organizations to develop global standards. Regulatory sandboxes, where businesses can test new technologies within a controlled environment, may play a role in shaping future governance models. Additionally, the rise of decentralized finance (DeFi) and Web 3.0 technologies may introduce new governance challenges that require innovative approaches.

Emerging technologies like AI, blockchain, and IoT offer potential solutions for improving transparency, enhancing cybersecurity, and enforcing compliance. However, their implementation must be carefully managed to avoid creating new ethical dilemmas or deepening existing inequalities. The challenge for policymakers will be to strike a balance between fostering innovation and ensuring that digital transactions remain secure, fair, and accountable.

8. Conclusion

The era of e-commerce presents both opportunities and challenges for governance and integrity. As businesses and consumers increasingly move online, the risks associated with data privacy, cybersecurity, fraud, and cross-border regulation intensify. Addressing these challenges requires a multi-faceted approach that involves collaboration across sectors and jurisdictions. By integrating ethical principles into corporate practices, adopting advanced technologies, and harmonizing international regulations, it is possible to build a more transparent and trustworthy digital economy. The success of e-commerce depends not only on technological advancements but also on the integrity and governance frameworks that underpin it.

²⁵ S.J.P.T. Joseph, *E-Commerce : An Indian Perspective*, (PHI Learning Pvt. Ltd., 6th edn., 2019)

²⁶ *Ibid.*