

GEOGRAPHICAL INDICATION: THE BASMATI RICE CONTROVERSY

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COMMENTARY

The Comment analyses how Geographical Indication is seen in India after the Basmati Rice controversy. It scrutinizes the impact of the same on giving protection to other GI's and the approach of India with regards to the extent of protection given to GI's in International Intellectual Property Community.

Every place in the world has some special product by which it is known to everyone such as Roquefort cheese from France, Pingu Peaches from north of Beijing, Darjeeling Tea from Darjeeling (India), Scotch from Scotland and many more. These products are protected under the Geographical Indications rules for protection of which are different for different country. The notion of geographical indication had its origin in early 19th century in Europe. Under the Article 1(2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indication is covered as an element of IPRs. The framework of geographical indication is also covered under Article 22 to 24 of the Trade Related Aspect of Intellectual Property Rights (TRIPS) Agreements which guides the member states to protect the GI's of the interested parties. India is a member of WTO and therefore bound to follow the TRIPS Agreement and protect the GI of various products. For the purpose of the same The Geographical Indication of Goods (Registration and Protection) Act, 1999 was brought into picture. This act became into force on 15th September, 2003. A geographical Indication in relation to goods, as per Geographical Indication of Goods (Registration and Protection) Act, 1999 of India means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufacturing in the territory of country, or a region or locality in that territory, where given quality, reputation or other

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characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be. A geographical indication (GI) acts as an instrument which helps the producers to differentiate their product from competing products which are there in the market and hence helps them to build a goodwill. Goods which are registered under the GI Act often fetch higher prices. As per the report of WTO (2004), 40 per cent of the consumers are willing to pay a premium of 10 per cent for goods which are origin oriented. Since then around 235 products have been registered under the GI act, most of them being agricultural and handicraft products. The concept of Geographical Indication in India was not known to everyone until it came into limelight after the Basmati Rice controversy. Basmati Rice means the one with aroma. Experts and peoples have believed that Basmati Rice has always been a production of India. Various countries such as U.S have tried to claim basmati rice as their production but failed to do so till date. RiceTec, a rice company in U.S had been selling Basmati Rice (grown in the U.S) under the trademark Texmati (American style Basmati Rice) and Kasmati (Indian style Basmati Rice) for over two decades. In 1995, a Basmati Development Fund was created to protect the Basmati Trademark but however in 1997, RiceTec was granted a U.S Patent. The government of India reacted immediately and a high level inter-ministerial group comprising of various ministries, department of commerce, agriculture, All India Rice Exporters Association (AIREA), Agricultural & Processed Food Products Export Development Authority (APEDA) were brought together. As a result, India was able to furnish published evidence to support the case and therefore the patent was held to be null and void. India's Geographical Indication battle for protecting and registration of the distinctive identity of Basmati Rice, not only had international barrier but even national barrier. India wants to give Basmati Rice the tag of Geographical Indicator (GI) and get it registered in country's Geographical Indication Registry (GIR). Nearly six years back, APEDA filed an application for registration of Basmati Rice which sought to cover states of Punjab, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu & Kashmir, Delhi and Haryana. But a plea of Madhya Pradesh was sanctioned by GIR to also include it under the GI tag. The characteristics which are looked upon while registering of GI are place of origin, method of production, uniqueness of the product, climatic conditions, geographical area of production but the most important characteristic to be kept in mind is the people's perspective i.e. whether people buying Basmati Rice have known that

it is produced in Madhya Pradesh also. As per the Madhya Pradesh government and other associations who have filled the plea claim that MP has produced about 4.5 lakh tonnes of basmati in 2009. Various evidences have been submitted by MP to prove that production of Basmati has been taking place over a long period of time. These evidences include old manuscripts, literary works, government documents, weather reports, sales reports which tend to prove that Basmati Rice was historically produced in MP. MP argued that if GI is not granted many farmer will lose their jobs which would not only affect the economy but have a detrimental effect on the interest of producers and growers. The ultimate aim of GI was to protect the interest of the producers of basmati so if GIR accepts the demand of MP it would set wrong precedent as other states may also follow asking for their inclusion too. These type of decision should be taken not on market deliberations but with the motive to saving the heritage of the country.

What if Madhya Pradesh receives the GI tag then states like Rajasthan or Tamil Nadu (who even claim that basmati rice was also produced in these states) will be in question. The decision of including MP under the GI tag of Basmati Rice is still pending in the High Court of Madras. It would be rather interesting to see the granting of GI since it would challenge the flexibility of how India interprets the TRIPS agreement i.e. will it consider every state, whosoever wants to be a part of any GI tag by merely presenting evidences for the same. The evidences are not enough, it's the perspective of the people which is built over a period of time after the use of the product that matters. In the following scenario most of the people belief that Basmati Rice is the sole production of Punjab region and few northern states.

If the judgement turns out to be in favour of Madhya Pradesh it might led to an international dispute as there won't be any sought of protection to various products and its producers thus failing the main aim of establishing the Geographical Indication Registry. The future of GI in India lies on this decision since it would not only put the forthcoming product but also the product which already have been registered in jeopardy.