

Preserving the Cultural Heritage: The Significance of Protecting Basmati Rice as a GI Product for Pakistan and India in International Trade

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Abstract

Basmati rice has historical, cultural, and economic significance for Pakistan and India due to its distinct long-grain quality, flavor, and aroma. It holds a colossal value in international trade, and because of its uniqueness, it is globally recognized as a Geographical Indication (GI) product. It is geographically exclusive to both Pakistan and India. Unfortunately, Basmati rice in Pakistan was registered in 2021 as the primary laws for protecting GIs in the state were enacted in 2020. Furthermore, with the growth of international trade, enforcement of regulations to protect GIs is also becoming increasingly complex, especially in the case of valuable agricultural products. This paper, therefore, investigates and compares the international instruments and the legal frameworks of Pakistan, India and the European Union (EU) concerning the conservation of GIs, especially when it comes to the preservation of Basmati rice. This paper also analyzes the cultural and economic importance of Basmati rice for both Pakistan and India by highlighting the need to protect this valuable commodity as a shared heritage. The objective of this paper is to accentuate the significance of safeguarding Basmati rice as a GI product in the context of international trade. This study was carried out using a descriptive and mixed research technique. The study also recommends possible improvements in the existing legal frameworks available for the preservation of GIs after examining international instruments. It concludes by highlighting the need to enhance the preservation of Basmati

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rice as a GI product, ensuring its continuous recognition and worth in international trade.

Keywords: Geographical Indications, International Trade Law, Basmati, Pakistan, India, European Union, Intellectual Property, International Instruments.

1. Introduction

In this modern era, protecting indigenous goods in the international trade system has become increasingly significant. For this purpose, the laws pertaining to the protection of GIs have played a vital role. A Geographical Indication (GI) is a sort of Intellectual Property (IP) that identifies an exclusive good that derives from a particular territory of a state or from a specific locality or region within that territory in light of its distinct characteristics, quality, or reputation particularly associated with its geographical origin. There are numerous GIs related to food and agricultural products. The main characteristic of GI products is that a certain level of product quality is associated with, or dependent on the temperament of the environment of the geographical area in which the production transpires. For example, local knowledge of the people, climate, soil composition, etc.¹

There are different international multilateral laws, treaties, and agreements at hand for protecting GIs in global trade by reason of which countries secure their exclusive products associated with a specific geographical origin. Basmati rice is one of many GI products and is famous for its specific aroma, taste, quality, and long grain. These particular qualities are linked with Basmati rice because of a unique combination of climate, soil, and water, in addition to the inherent genetics pertinent to

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

these features.² The extent of the farming zone of Basmati rice is restricted due to the requirements of particular agro-climatic conditions.³ Basmati rice is only geographically exclusive to these specific areas of Pakistan and India, and both countries have registered it as a GI product as per their respective GI laws. Both countries are also fighting a legal battle with each other in the European Commission (EC) for exclusive Protected Geographical Indication (PGI) status for their specific varieties of Basmati rice with the aim of increasing exports in the European and international markets. It is consumed as an essential food across the globe, and preserving this shared heritage as a GI product is indispensable for Pakistan and India in international trade because of its economic, cultural, and historical importance.

2. Basmati Rice

It is a long-grain premium rice. The aroma feature of Basmati rice in both cooked and raw form and the unique shape of the grain, which on cooking doubles in length while its width remains intact, are the reasons for its high value.⁴ Basmati Rice, as per the reports, is a good source of carbohydrates and has specific eating qualities. For example, when compared to other rice varieties, Basmati rice has a low glycaemic index.⁵ Generally, Basmati rice (*Oryza sativa race Indica*) is analyzed by three primary determinants, namely aroma, taste, and appearance.⁶ For centuries, it has been

² E. A. Siddiq, L. R. Vemireddy and J. Nagaraju, "Basmati Rices: Genetics, Breeding and Trade," *Agricultural Research* 1, no. 1 (January 19, 2012): 26, <https://doi.org/10.1007/s40003-011-0011-5>.

³ Subhash Chander Ahuja, Uma Ahuja, and Siddharth Ahuja, "History and Folklore of Basmati Rice," *Wheat and Barley Research* 11, no. 3 (December 31, 2019): 206-207, <https://doi.org/10.25174/2249-4065/2019/95207>.

⁴ J. Burns, M. McQuillan, and M. Woolfe, *Survey on Basmati Rice. Food Standards Agency Report 47.04* (United Kingdom: Food Standards Agency, March 2004), 29.

⁵ Ibid.

⁶ R.K. Singh et al., "Breeding Aromatic Rice for High Yield, Improved Aroma and Grain Quality," in *Aromatic Rices*, eds., R.K. Singh, U.S. Singh and G.S. Khush, Aromatic Rices (Oxford: IBH Publishing, 2000).

traditionally cultivated in the Southern and Northwestern parts of South Asia. Under humid, warm, and valley-like conditions, Basmati rice produces the finest quality of grains and also grows best.⁷ It is a highly valued commodity due to its nutrient profile. This aromatic rice variety is packed with different fibers, minerals, vitamins, and proteins with a minimum amount of fat, which makes it a perfect healthy meal. It contains essential minerals and vitamins like zinc, copper, potassium, calcium, magnesium, B1, B6, K, and E.⁸ Low arsenic levels are found in Basmati rice which is cultivated in Pakistan and India as compared to the other varieties of rice. As arsenic is a type of heavy metal, it increases the risk of heart problems, diabetes, and other health issues. It has various health benefits such as the management of diabetes, the regulation of blood pressure, the promotion of digestion, the keeping of the heart healthy, weight management, and the aversion of the risk of cancer.⁹ Basmati rice is consumed as an essential food by the inhabitants of the South Asian subcontinent and their indigenous communes in the EU particularly in the UK. It is becoming an essential cuisine for the entire EU to a great extent.¹⁰

In retail and wholesale markets, Basmati rice is considered to be high-priced in comparison with non-Basmati rice. This premium price boosts the competition between the domestic and trade markets and also draws the attention of a number of players. Basmati rice seems to be a good nominee for a geographical indication on the basis of its best globally

⁷ R.K. Singh et al., "Small and Medium Grained Aromatic Rices of India," in *Aromatic Rices*, eds., R.K. Singh, U.S. SINGH and G.S. Khush, (Oxford: IBH Publishing, 2000).

⁸ Sonika and Vijay Kumar Kaushik, "Basmati Rice: Quality Traits and Nutritional Content," *Just Agriculture* 1, no.11 (July 2021): 4, <https://justagriculture.in/files/newsletter/2021/july/006.%20Basmati%20Rice%20Quality%20Traits%20and%20Nutritional%20Content.pdf>.

⁹ Ibid, 5.

¹⁰ Georges Giraud, "Range and Limit of Geographical Indication Scheme: The Case of Basmati Rice from Punjab, Pakistan," *International Food and Agribusiness Management Review* 11, no. 1 (February 15, 2008): 52, <https://doi.org/10.22004/ag.econ.53628>.

accepted aromatic quality and deep-rooted cultural identity in the subcontinent.¹¹

2.1 Meaning of the Word 'Basmati'

It is an exclusive gift to the Indian subcontinent by nature. The word "Basmati" is composed of two syllables, i.e., "Bas" and "Mati". The term "bas" emanates from the *Prakrit* word "vas" and it has the Sanskrit root, "yasay", meaning aroma. Whereas "mati" means sense.¹² Basmati rice is also known as the "Queen of Fragrance".¹³

2.2 History of Basmati Rice

The history of the cultivation of Basmati rice dates back to 1000s of years. As per the historical documents, it was primarily harvested in China in 7000 BC. For centuries, it was only known and found in Asia but later tourists and travelers introduced it internationally. Basmati rice was brought to the Indian subcontinent by Alexander the Great. In the 700s, it was moved to Spain by the Muslim conquerors. On the basis of historical evidence, Basmati rice has been grown since 1500-1000 BC in the Indian subcontinent. Some evidence also shows that it has been grown in this region for almost 8000 years. The earliest samples of Basmati rice date back to 2500 BC and were found in Mohanjodaro in Pakistan. For centuries, it has been grown in India, Pakistan, Bangladesh, etc. Basmati rice is mentioned in the existing antique epic Punjabi poem of the eighteenth century known as *Heer Ranjha*, which was authored by Waris Shah.¹⁴

Basmati rice is a highly valued commodity consumed as a staple food globally. It has different varieties with unique characteristics. Basmati

¹¹ Ibid.

¹² S. C. Ahuja et al., *Basmati Rice-The Scented Pearl* (1995; repr., India: Directorate of Publications CCS Haryana Agricultural University Hisar .125 OO4, 2018), 1.

¹³ Muhammad Ashfaq et al., "Basmati-Rice a Class Apart (a Review)," *Rice Research: Open Access* 03, no. 04 (2015): 1, <https://doi.org/10.4172/2375-4338.1000156>.

¹⁴ Muhammad Ashfaq et al., "Basmati-Rice a Class Apart (a Review)," *Rice Research: Open Access* 03, no. 04 (2015): 1, <https://doi.org/10.4172/2375-4338.1000156>.

rice can only be cultivated in some particular regions of the world. Therefore, it is essential to preserve this unique traditional heritage as a GI.

3. Major Basmati Rice Producing Countries

Pakistan and India are considered to be the world's chief producers of Basmati rice. Basmati rice is geographically exclusive to both countries. In other words, Pakistan and India have registered Basmati rice as a GI under their respective GI laws.

3.1 Pakistan

After cotton, the second most vital cash crop of Pakistan is rice which covers around 11% of the entire agricultural land. In the international rice trade, Pakistan's share by value is around 9.10%. In terms of foreign exchange from 2022 to 2023, rice is said to earn more than 2.5 billion US dollars, which is considered to be the highest foreign exchange. In the international market, Basmati rice, during the same period, was responsible for fetching about 1000 US dollars per ton as compared to coarse rice, which earned only 450 US dollars per ton.¹⁵

Nowadays, the Rice Research Institute Kala Shah Kaku is the first in the development of aromatic, delicious, and extra-long rice called Basmati 370. It has developed thirty-two different varieties of rice. More than 90% of the whole horticultural rice land in Punjab is covered by the rice varieties developed by this institute.¹⁶ The effect of research pertaining to rice is quite evident from a variety called Super Basmati. As a developed variety of the institute, it benefits the economy of Punjab by adding 20 to 30 billion Rupees annually.¹⁷ Basmati rice in Punjab is registered as a GI product.

¹⁵ Ayub Agricultural Research Institute, "Rice," *Ayub Agricultural Research Institute*, accessed September 1, 2023, https://aari.punjab.gov.pk/crop_varieties_rice.

¹⁶ Ibid.

¹⁷ Ibid.

There are various varieties of Basmati rice that are grown in different recognized areas of Punjab, Pakistan. Some of the most famous varieties of Basmati rice in Pakistan are Basmati-370, Basmati Pak, Basmati-198, *Shaheen* Basmati, Basmati-515, Punjab Basmati and Super Basmati-2019. The scientists of the institute have also cultivated some new and improved varieties of Basmati rice, like *Sona* Super Basmati, Vital Super Basmati, etc.

3.2 India

Globally, India holds the top position in terms of producing and exporting cereal products. During 2022-23, the exports of Indian cereals generated a revenue of 13,857.95 million USD. During the same period, 80% of the total Indian cereal exports were occupied by distinct rice varieties in terms of value. At the same time, the other cereal types represented only a 20% share of the total Indian cereal exports including wheat.¹⁸ India is the main producer of Basmati rice in the global market as the country's exports pertaining to Basmati rice amounted to 3540.40 million USD for 3948,161.03 MT during the year 2021-22.¹⁹ There are some specific states in India that produce exclusive Basmati rice varieties.²⁰ The Agricultural and Processed Food Products Export Development Authority (APEDA) has established the Basmati Export Development Foundation (BEDF) which is registered as a society under the Societies Registration Act, 1860.²¹

There are various Basmati rice varieties in India that are cultivated in distinct recognized locations of its states. Some of the most popular

¹⁸ Agricultural and Processed Food Products Export Development Authority, "Cereals," APEDA, accessed September 2, 2023, https://apeda.gov.in/apedawebsite/six_head_product/cereal.htm.

¹⁹ AgriXchange, "Basmati Rice," *agriXchange*, APEDA, accessed September 2, 2023, https://agriexchange.apeda.gov.in/product_profile/prodintro/Basmati_Rice.aspx.

²⁰ Ibid.

²¹ Agricultural and Processed Food Products Development Authority, "Basmati Export Development Foundation," APEDA, accessed September 2, 2023, https://apeda.gov.in/apedawebsite/about_apeda/bas_ex_dev_found.htm.

strains of Indian Basmati rice are Basmati-217, *Kasturi* Basmati rice, *Pusa* Basmati-1121, *Pusa* Basmati-1728, *Pusa* Basmati-1637 and *Pusa* Basmati-1718. In 2021, the scientists of the ICAR-IARI, New Delhi have also developed some newly improved cultivars of Basmati rice, such as *Pusa* Basmati-1847 and *Pusa* Basmati-1885, etc.

The use of GIs enhances the economic growth of a country as it helps in the recognition of a product in international trade, increases tourism, aids in the progress of a business, and prevents others from the unauthorized use of the product associated with a GI. Thus, preserving Basmati rice as a GI in international trade is crucial to garner economic benefits for both Pakistan and India.

4. Importance of Basmati Rice in the Global Markets

Rice is amongst the top traded cereals in the world, and the demand for it is continuously rising internationally. Around 510.25 million MT of rice was globally consumed in 2021-2022. The world's consumption of rice has grown by 87% in the past ten years. Due to the increase in global demand, rice exports have reached up to 26.5 billion US dollars in the international market.²² As per the statistics given by the Food and Agriculture Organization (FAO), the total rice produced globally in 2022 is almost 520 million MT.²³ Basmati has a particular status in rice cultivation. It has certain characteristics like delicious taste, distinct flavor, intense aroma, and extra-long thin grains that double in length when cooked, resulting in a fluffy and soft appearance. It is a unique cultivar of rice in contrast to the

²² Iqra Ilyas et al., *Exploring Potential of Rice Exports from Pakistan, 02/2022* (Karachi: TDAP-Agro & Food Division Research Wing, February 2022), https://tdap.gov.pk/wp-content/uploads/2022/08/Rice-Report_FINAL-DRAFT_compressed.pdf.

²³ Ibid.

other aromatic long-grain rice cultivars.²⁴ Basmati rice is becoming increasingly popular across consumer groups due to its superior quality, taste, and aroma.²⁵ In the international market, Basmati rice as a premium commodity makes around 1000 US dollars per ton in comparison to 450 US dollars per ton of coarse rice.²⁶

In Europe, rice varieties are mainly from the *japonica* group, which is initially associated with the medium-long to round grains that instantly become sticky upon cooking. Indigenous specialty varieties of rice are in high demand in European local markets. However, the demand for exotic specialty rice like Basmati and Jasmine along with *indica*-type grains and other organic rice, also keeps on growing in Europe with an increase in the consumption of rice by 6% per year.²⁷ Thai Jasmine rice and the Basmati rice varieties from Pakistan and India are usually consumed by ethnic Asians, but these varieties are also increasingly appreciated by the general population of America.²⁸ Hence, Basmati rice is a vital cereal crop consumed worldwide. Protecting it as a GI in international trade is necessary to maintain its quality and authenticity.

5. Basmati Rice as a Shared Exportable Commodity of Pakistan and India

Pakistan and India are the leading producers of Basmati, or the aromatic group of rice varieties.²⁹ Basmati rice is the traditional cuisine of the South

²⁴ JM Baxi Group, “Indian Basmati Rice – ‘the Scented Pearl,’” *Tidings- Issue XXXV- December 2021*, accessed September 2, 2023, 20, <https://www.jmbaxi.com/newsletter.html>.

²⁵ *Ibid*, 21.

²⁶ Syed Sultan Ali, “Rice Research Institute, Kala Shah Kaku,” *REAP Journal* (September 2022): 17, https://reap.com.pk/uploads/downloads_area/REAP%20Journal%202022.pdf.

²⁷ Global Rice Science Partnership (GRISP), *Rice Almanac: Source Book for One of the Most Important Economic Activities on Earth*, 4th Edition (Philippines: IRRI, 2013), 103.

²⁸ *Ibid*, 98.

²⁹ *Ibid*, 10.

Asian subcontinent. It has a history of cultivation as the farmers from these countries in the subcontinent have a lot of experience in producing decent lines of Basmati rice.³⁰ Due to the improved methods of cultivation and favorable weather conditions in the major rice-producing countries of the subcontinent, Basmati rice from these countries can meet the international consumer demands today. Pakistan and India have certain policies to aid the indigenous exporters and production of Basmati rice.³¹ Basmati rice is a premium quality, high-grade product that is valued for its specific aroma. Being the largest producers of Basmati rice, Pakistan and India together have a huge share of global Basmati rice exports. Internationally, India is the chief exporter of Basmati rice, while Pakistan is the second major producer of Basmati rice. A major portion of Basmati rice in Pakistan is domestically consumed despite the increase in its global demand.³² Middle Eastern countries are the top importers of Basmati rice, as it is considered to be a famous staple food. KSA, UAE, Iran, and Iraq are considered to be the major markets of Basmati rice.³³

In the global market, Pakistan's Basmati rice variety is famous for its premium quality and high grade, particularly in the Middle East and the EU. The non-Basmati variety of rice holds the major portion of Pakistan's total rice exports, but the rate of Basmati rice is twofold higher than that of the non-Basmati rice. During FY18 to FY22, the proceeds from the exports of Basmati rice in Pakistan stood at 0.7 million MT, while in FY22 alone, the recorded exports of Basmati rice in Pakistan were around 0.8mln MT.³⁴

³⁰ Camila Nguyen, "Basmati Rice Exporters: How to Pick the Right One?," *K-Agriculture (blog)*, accessed September 4, 2023, <https://k-agriculture.com/basmati-rice-exporters/>.

³¹ Ibid.

³² Saniya Tauseef and Ayesha Wajih, *Rice Sector Study* (Lahore: PACRA, October 2022), 16, https://www.pacra.com/sector_research/Rice%20Sector%20-%20PACRA%20Research%20-%20Oct'22-1_1666978573.pdf.

³³ Ibid, 8.

³⁴ Ibid, 14.

The largest consumer markets for Pakistan's Basmati rice are the Middle Eastern countries in which UAE has the largest share of around 26% of the total Basmati rice exports, followed by KSA with 12% share, Oman with 8% share, and Kenya with 6% share.³⁵ Meanwhile, India fetched 4.8 billion dollars³⁶ from the export of around 4.5 million MT of Basmati rice in 2022. USA, UAE, KSA, Iraq, Iran, and Yemen were among the primary buyers of Indian Basmati rice.³⁷

Basmati rice holds significant cultural and economic value for Pakistan and India. As the primary producers, these countries co-own Basmati rice as a GI product. Consequently, protecting it in international markets is essential by all possible means.

6. International Instruments for the Protection of Geographical Indications

The first attempts to protect GIs globally began when the multilateral accords were negotiated at the end of the nineteenth century.³⁸

6.1 Paris Convention for the Protection of Industrial Property (Paris Convention-1883)

This treaty was the first multilateral treaty which was adopted on 20th March 1883 in Paris. It was the first accord to include Appellations of

³⁵ Ibid, 15.

³⁶ PTI, "Government Decides Not to Allow Basmati Rice Exports below \$1,200 per Tonne," *BQ Prime* powered by Bloomberg, August 27, 2023, <https://www.bqprime.com/economy-finance/government-decides-not-to-allow-basmati-rice-exports-below-1200-pe-tonne>.

³⁷ Rajendra Jadhav, "India Basmati Rice Exporters Get Requests for Early Shipments," *Reuters*, July 31, 2023, sec. Commodities, <https://www.reuters.com/markets/commodities/india-basmati-rice-exporters-get-requests-early-shipments-2023-07-31/>.

³⁸ Luisa Menapace, "Geographical Indications and Quality Promotion in Food and Agricultural Markets: Domestic and International Issues" (PhD Dissertation, Iowa State University, 2010), 8, <https://doi.org/10.31274/etd-180810-1271>.

Origin (AO) and Indication of Source. These two terms were incorporated under Article 1(2).³⁹ This article provides:

The protection of industrial property is concerned with patents, utility models, industrial designs, trademarks, service marks, trade names, and indications of source or appellations of origin, and the repression of unfair competition.⁴⁰

One of the key objectives of the convention is to safeguard against deceptive indications and unfair competition. The provisions in the convention are divided into three major parts: national treatment, right of priority, and common rules.⁴¹ This treaty, therefore, provided the basis for the formulation of international instruments pertaining to the conservation of GIs.

6.2 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement-1891)

This instrument was signed on 14th April 1891 in Madrid, Spain. The primary aim of this instrument is to prohibit the commodification of those goods that bear false or deceptive indications pertaining to their source. It prevents the use with regards to the display, offering or sale of any goods, of all indications in the nature of publicity that have the potential to deceive the masses regarding the source of the goods. The provision of the agreement also applies to invoices, advertisements, signs, business papers or letters, or any other commercial communication with the potential of

³⁹ The World Intellectual Property Organization and the Egyptian Association for the Protection of Industrial Property, *WIPO/AEPPI International Symposium on Intellectual Property Protection in the 21st Century: Challenges and Opportunities for Developing Countries* (Cairo: WIPO, 2003).

⁴⁰ Ibid.

⁴¹ World Intellectual Property Organization, "Summary of the Paris Convention for the Protection of Industrial Property (1883)," *WIPO*, accessed November 21, 2024, https://www.wipo.int/treaties/en/ip/paris/summary_paris.html.

deceiving the public as to the source of goods.⁴² This treaty also paved the way for the development in the preservation of GIs, especially when it comes to the protection of Basmati rice, as it prohibits or prevents the use of false or deceptive indications of source on goods.

6.3 Lisbon Agreement for the Protection of Appellations of Origin (Lisbon Agreement-1958)

The Lisbon Agreement was signed on 31st October 1958 in Lisbon, Portugal. The Lisbon System provided by this agreement is a cost-efficient and practical resolve for the global registration of AOs and GIs.⁴³ Article 2(1) elucidates an AO as:

The geographical denomination of a locality, region, or country which serves to depute a product deriving therein and the features or qualities of which are essentially and exclusively due to the geographical environment inclusive of human and natural factors.⁴⁴

This interpretation of AO in the agreement paved the way for the preservation of GIs as it provides protection against imitation and misleading practices. It is also vital for the preservation of Basmati rice as a GI, as it ensures the authenticity, quality, and traceability of the product. Major Basmati rice-producing countries can enjoy more robust legal protection for their Basmati rice brands in the international markets.

⁴² LegaCarta, “Madrid Agreement for Repression of False or Deceptive Indications of Source on Goods,” *International Trade Centre (ITC)*, accessed November 21, 2024, <https://legacarta.intracen.org/instrument/820493-madrid-agreement-repression-false-deceptive-indications-source-goods/>.

⁴³ World Intellectual Property Organization, “Lisbon – The International System of Appellations of Origin and Geographical Indications,” *WIPO*, accessed November 21, 2024, <https://www.wipo.int/lisbon/en/#:~:text=Sound%20international%20protection,internationally%20registered%20AOs%20and%20GIs.>

⁴⁴ Geneva, Switzerland, World Intellectual Property Organization (WIPO), *Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration 1958*, art. 2(1).

6.4 Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS-1995)

It is the most extensive multilateral agreement on IP, which was signed in Marrakesh, Morocco, on 15th April 1994 and adopted on 1st January 1995. It covers five main areas, which include the provision of the guidelines for the administration of the fundamental principles and provisions of the international trading system to the international IP, setting of the minimal levels for the preservation of IP, aiding the members in identifying the suitable procedures for the implementation of Intellectual Property Rights (IPRs) in their own territories, settling of the IP related disputes between the members, and the appropriate transitional arrangements for the exercise of the provisions of the agreement.⁴⁵

This agreement is regulated by the WTO and sets minimal levels for the regulation of the distinct types of IP.⁴⁶ Generally, IP is described as an intangible property that is the result of original imagination. Commonly, rights do not encircle the idea of an intangible entity. Instead, the domination of expression of notions or physical indications is controlled by IPRs. The rights to ideas are secured by IP by protecting the rights to control the physical manifestations and production of those ideas.⁴⁷ In a broad spectrum, the rights that emerge from the intellectual activity pertaining to literary, artistic, scientific, and industrial works are referred to as IPRs. There are two main reasons why countries around the globe protect IP. Firstly, to dispense legal protection to the economic and moral rights of the creators concerning their inventions and the rights of the public accessing

⁴⁵ World Trade Organization, "Intellectual property: protection and enforcement," *WTO*, accessed November 21, 2024, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm#mfn.

⁴⁶ *Ibid.*

⁴⁷ Adam D. Moore and Kenneth Einar Himma, "Intellectual Property," *Stanford Encyclopedia of Philosophy* (2011), <https://ssrn.com/abstract=1980917>.

those inventions.⁴⁸ Secondly, to endorse fair trading, which would result in the contribution to social and economic development and foster as an intended act of the government policy, innovation, and administration of its outcomes. The rights that pertain to the loose array of legal principles that manage the utilization of different kinds of insignias and ideas are denoted as IP. These rights are given over the non-physical object of the individual who made it with a mental effort.⁴⁹ The rights protected by IP include inventions, goods, services, films, marks, designs, computer programs, artistic works, literary works, and so on. There are various distinct areas or forms of laws establishing rights that all at once create an IP. These laws include geographical indications, copyrights, patents, design rights, registered designs, trademarks, the law of confidence, right in performance and passing off, etc.⁵⁰

GIs have assumed greater significance in international trade when they were included in the TRIPS Agreement. GIs are names of regions or places utilized to specify merchandise with a unique geographic implication.⁵¹ This agreement not only defines a GI under Article 22(1) but also sets a minimum level for its preservation by the member countries of WTO under Articles 22-24 when it comes to international trade.⁵² GIs are stipulated under Article 22(1) as:

Indications which recognize a product originating from a particular territory, region, locality of a Member State and

⁴⁸ Rahul Chakraborty, "Growth of Intellectual Property Law and Trade Marks," *SSRN Electronic Journal* (2009): 2, <https://doi.org/10.2139/ssrn.1335874>.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Menapace, "Geographical indications and quality promotion," 1.

⁵² Justin Malbon, Charles L Lawson, and Mark J Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights: A Commentary* (Cheltenham: Edward Elgar, Cop, 2014).

the given reputation, quality, or other characteristic of that product is due to its geographical provenance.⁵³

The TRIPS Agreement provides proper guidelines for adequately preserving GIs around the globe. Basmati rice is one of the most famous rice varieties, which is in huge demand in international markets. It is a type of rice famous for its long, slender-grained structure, taste, and aroma. Basmati rice is geographically exclusive to Pakistan and India due to its unique quality, reputation and other characteristics. Therefore, it is also safeguarded by the provisions of the TRIPS Agreement.

6.5 The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Geneva Act 2015)

The Geneva Act was adopted on 20th May 2015. It updates and strengthens the current global registration system of preservation provided by its predecessors pertaining to names that identify the geographic provenance of goods. This Act is different from the Lisbon Agreement, 1958 because the Lisbon Agreement, 1958 was only limited to AOs, whereas this Act covers both AOs and GIs.⁵⁴ The Act defines a GI under Article 2(1)(ii) as:

Any indication protected in the Contracting State of provenance or any indication known to be connected to such area, which identifies a product as deriving in that geographical area, where a given reputation, quality or other characteristic of the product is fundamentally ascribable to its geographical provenance.⁵⁵

⁵³ Morocco, World Trade Organization (WTO), *Trade-Related Aspects of Intellectual Property Rights Agreement*, 1995, art. 22 (1).

⁵⁴ Gargi Chakrabarti, "Unanimous Approach to Protection of Geographical Indications for All: The Geneva Act," *WIPO-WTO Colloquium Papers* 12 (2021): 126, https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2021/wipo_wto_colloquium_2021_e.pdf.

⁵⁵ Geneva, World Intellectual Property Organization (WIPO), *Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015*, art. 2(1)(ii).

Thus, this act provides a broader protection than its predecessors as it extends its protection to GIs.

Globally, there are distinct ways available to safeguard GIs. These include certification marks, collective marks, sui generis law, laws regarding passing off, and unfair competition.⁵⁶ For ages, Basmati rice has been cultivated at the foothills of the Himalayas. Internationally, due to its exclusive aroma, taste, and benefits, it is an important import/export commodity. For the advantage of both consumers and producers, international instruments work hand in hand to preserve the authenticity and heritage of Basmati rice. Overall, international instruments offer legal mechanisms to preserve GIs in global trade. They facilitate economic progress, protect cultural identities, and encourage sustainable practices while safeguarding the stakes of both consumers and producers.

7. India-US Basmati Rice Dispute

Basmati rice is a traditional commodity of Pakistan and India. The issue became controversial in 1997 when a Texas-based private American company Rice Tec Inc. claimed to have constituted a novel variety of aromatic rice as American Basmati by interbreeding another variety of rice with Basmati rice. Rice Tec Inc. had branded its purported new variety as *Texmati* and *Kasmati* for gaining access in the international Basmati rice market.⁵⁷ In 1997, soon after the introduction of the TRIPS Agreement, an application was filed before the United States Patent and Trademark Office (USPTO) by Rice Tec Inc., to acquire a patent for its new Basmati rice grains and lines. Resultantly, on 2nd September 1997, Patent No. 5663484 was issued to Rice Tec Inc. on its newly developed rice grains and lines.⁵⁸

⁵⁶ Bernard O'Connor, *The Law of Geographical Indications* (England: Cameron May, International Law Publishers, 2004), 67.

⁵⁷ Utsav Mukherjee, "A Study of the Basmati Case (India-US Basmati Rice Dispute): The Geographical Indication Perspective," *SSRN Electronic Journal* (June 10, 2008), <http://dx.doi.org/10.2139/ssrn.1143209>.

⁵⁸ *Ibid.*

In the patent, the company had raised twenty claims. Claims from one to fourteen out of these twenty claims were related to the generic features of the rice produced in North, South, and Central America, and claims from fifteen to seventeen were related to those varieties of rice that were not linked to any geographical area or region. The new procedure used in the development of a novel variety of rice was mentioned in the claims from eighteen to twenty of the patent.⁵⁹ All of these twenty claims made by Rice Tec Inc. were related to the cross-bred grain development and rice varieties. Claims from fifteen to seventeen made by Rice Tec Inc. were particularly damaging to India's export market as they were associated with the specific features of Basmati rice grain.⁶⁰

In the year 2000, as the features of Basmati rice were similar to that of the American Basmati, the Indian government through APEDA had challenged the patent on American Basmati issued to Rice Tec Inc. by filing an application before the USPTO for re-examination of the patent. The government of India had particularly opposed the claims from fifteen to seventeen due to their harmfulness to the Indian Basmati rice exporters.⁶¹ The cultivation of Basmati rice has a historical socio-cultural significance even before the British rule in India, Pakistan, and Bangladesh. The grounds taken by the Indian attorney to challenge the patent were that Basmati rice is consumed as a basic food in Pakistan and India, and grains and plant varieties are already present in these countries.⁶² He also mentioned that

⁵⁹ 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): 2457, <http://doi.org/10.1732/IJLMH.26536>.

⁶⁰ 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 (January 25, 2011): 3, <https://doi.org/10.2202/1542-0485.1336>.

⁶¹ *Ibid.*, 4.

⁶² Bhagat Vibha S, "Intellectual Property Right - Patent: General Review," *Paripex - Indian Journal of Research* 11, no. 06 (June 2022): 29,

using the name Basmati in the patent and marketing of rice by the company is against the regulations. Furthermore, he said that because of the diverse climatic conditions, imported rice cannot be cultivated in the USA. Therefore, the USPTO issued a re-examination certificate on 29/01/2002, canceling claims 1-7, 10, and 14-20 in response to the objection filed by the Indian government. Resultantly, Rice Tec Inc. agreed to withdraw these fifteen objected claims.⁶³

Therefore, it is essential to understand the implications of this case for Pakistan and India, as it paved the way for the establishment of GI laws in these countries. This case is particularly significant for the preservation of Basmati rice as a GI in international trade.

8. Legislations in the Major Basmati Rice Producing Countries for the Protection of Geographical Indications

Internationally, Pakistan and India are the leading producers and exporters of Basmati rice. Both countries have registered Basmati rice as a GI product as per their indigenous GI laws. These laws are governed by the respective GI Acts and their associated rules within these countries.

8.1 Legislation in Pakistan

In Pakistan, the laws pertaining to GIs are administered by the Geographical Indication (Registration and Protection) Act, 2020, and the rules based on it. The GIRPA, 20, came into force on 31st March, 2020. Pakistan had enacted this act in pursuance of its treaty liabilities under article 22 of the TRIPS Agreement.⁶⁴ A GI that identifies a product deriving in Pakistan is

https://www.worldwidejournals.com/paripex/fileview/intellectual-property-right--patent-general-review_June_2022_8456385513_8603837.pdf.

⁶³ Ibid.

⁶⁴ Faisal Daudpota, "Geographical Indications Law of Pakistan – an Overview," *SSRN Electronic Journal* (2020): 1, <http://dx.doi.org/10.2139/ssrn.3609010>.

defined under the GIRPA, 20, as Pakistan Geographical Indication.⁶⁵ There are various GIs in both the producing and cultivation divisions, as Pakistan's areas are wealthy in culture. Basmati rice, *Kinnow* (Oranges), and *Sindhri* mango are some of the excellent farming outcomes in Pakistan. These potential GIs in Pakistan are worth billions of dollars. Furthermore, *Himalayan* Pink Salt is also a unique commodity that is famous around the globe.⁶⁶ There were no particular laws or rules for GIs in Pakistan like Bangladesh and India before the year 2020. The Intellectual Property Organization of Pakistan (IPO-Pakistan) has put a great effort into the construction of Pakistan's indigenous GI law. The traditional products originating from Pakistan could not be registered as GIs internationally unless or until they are registered as GIs in Pakistan first because it is mandatory to primarily register the products of origin as GIs under the law of the country before applying for international registration.⁶⁷ The GI Act is accompanied by the GI rules in Pakistan.

The aim of the GIRPA, 20, is to safeguard and promote the economic interests of consumers and producers by ensuring the proper registration of origin-based products. This act offers a legal structure for the preservation, registration, and implementation of GIs in Pakistan. The GI Act in Pakistan also provides security to the registered GIs against imitation, unauthorized use, or any other action that has the capacity to mislead the user about the provenance of the products in Pakistan. The development of the GIRPA, 20, is a significant move for protecting the cultural heritage and traditional knowledge linked with the rendering of services and production

⁶⁵ Pakistan, *Geographical Indication (Registration and Protection) Act, 2020* (GIRPA '20), sec. 2(xviii).

⁶⁶ Omar Abdullah, Sobia Bashir, and Rafia Naz Ali, "The Potential Geographical Indications in Pakistan," *Journal of Social Sciences Review* 3, no. 1 (February 25, 2023): 340, <https://doi.org/10.54183/jssr.v3i1.154>.

⁶⁷ *Ibid.*

of goods in particular areas of Pakistan.⁶⁸ This act provides for the development of a Registry for the management of the process of registering GIs and maintaining their register in Pakistan. For the hearing of appeals against the decisions of the Registry, it also stipulates the setup of the Geographical Indication Appellate Board. The objectives of the GIRPA, 20, are to protect the reputation and specific qualities of the merchandise emerging from particular areas, promote economic progress in these areas, and safeguard the GIs in Pakistan.⁶⁹

A person can initiate civil and criminal proceedings for the protection of registered GIs in Pakistan as per the GIRPA, 20. In case of an infringement of a registered GI, legal proceedings can be initiated by either an authorized person or a registrant.⁷⁰ Civil suits include injunction, damages, and accounts (for profits).⁷¹ Moreover, it is provided under the GIRPA, 20, that the legal proceedings regarding a registered GI must commence before the IP Tribunals established under the IPO Act (IPOPA, 20).⁷² In line with the GIRPA, 20, the IP Tribunal and High Court have the jurisdiction to hear the proceedings regarding the protection of GIs. As per s. 41 of the GIRPA, 20, the acts pertaining to the application of false GIs are criminalized, and the punishment for such acts is imprisonment between 6 months to 3 years or with a fine of 10 Lakh PKR.⁷³ Similarly, the acts of false representation of GIs also attract punishment of imprisonment between 3-6 months or with a fine of 5 Lakh PKR.⁷⁴

According to the Executive Director of the IPO-Pakistan, Basmati

⁶⁸ Josh and Mark International, "Intellectual Property Registration and Protection of Geographical Indications in Pakistan," *Josh and Mark International*, accessed September 9, 2023, <https://joshandmakinternational.com/what-is-pakistans-geographical-indications-registration-and-protection-act-2020/>.

⁶⁹ *Ibid.*

⁷⁰ GIRPA'20, sec. 32.

⁷¹ *Ibid.*

⁷² Pakistan, Intellectual Property Organization of Pakistan Act, 2012 (IPOPA'12).

⁷³ GIRPA'20, sec. 41.

⁷⁴ GIRPA'20, sec. 42.

rice is the first ever registered GI of Pakistan.⁷⁵ Basmati rice from Pakistan is the most sought-after kind of rice due to its aroma and long grain size. KSA, UAE, Iran, Canada, Yemen, Jordan, and Kuwait are the main importers of Basmati rice from Pakistan. Furthermore, Pakistan received a GI tag for its Basmati rice under the GIRPA, 20, in 2021, which opened the doors for the establishment of a local registry for the rice strain. This has also proven to aid in the development of an international case in the EU against India's move to register its Basmati rice as a GI commodity.⁷⁶

8.2 Legislation in India

In India, the laws regarding GIs are administered by the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the rules based on it. It came into force on 15th September 2003. Through registration, this act safeguards GIs by providing them the required protection against any sort of infringements, misuses, or imitations that pollute or harm the product's true origins. The GI Registry of India holds the authority to issue GI tags to specific products. Some of the famous GI tags in India are *Mysore silk of Karnataka*, *Darjeeling tea*, *Lucknow Chikankari crafts*, *Kota Doria of Rajasthan*, *Nagpur oranges*,⁷⁷ and Basmati rice. The Geographical Indications of Products (Registration and

⁷⁵ Abdullah, Bashir, and Ali, "The Potential Geographical Indications in Pakistan," 341.

⁷⁶ Afshan Uroos et al., *Annual Trade Report, June-July 2022- Pakistan Trade Prospective* (Karachi: Trade Development Authority of Pakistan, Ministry of Commerce, September 2022), 18, <https://tdap.gov.pk/wp-content/uploads/2022/12/Annual-trade-review-11-December-2022.pdf>.

⁷⁷ Joanna Jacob, "GI of Kota Doria & Blue Pottery of Rajasthan: An Insight into Its Regional Identification, Authenticity, Significance and Protection against Its Infringement," *Intellectualis-Geographical Indications: Realising the Goal of Community Benefits & Ownership* 5, 3rd ed. 2022-23 (2022): 34.

Protection) Rules, 2002 are a set of rules for the preservation of GIs in India⁷⁸ and these rules are based on the GI Act, 1999.

The goal of the GI Act, 1999, is divided into three main objectives. Firstly, to preserve the stakes of the producers of products. Secondly, to stop unaccredited persons from misusing GIs and safeguard consumers from deceptive and fraudulent practices. Thirdly, to promote the products with Indian indications in the global market.⁷⁹ In India, it is not mandatory to register a GI; however, it provides certain benefits to the IP holder, like the prosperity of the producers and growth of the economy in a particular locale, prohibition of unauthorized utilization of GIs by outsiders, and assurance of its safety for the IP holder, provision of legal protection to the IP holder in the event of any infringement of a GI, and increased export of the registered goods as a result of identification and media coverage. The producer must present an application to the GI registrar in order to acquire a GI tag for his product.⁸⁰ The application must contain details like quality, process of manufacture, reputation, and other unique characteristic features pertaining to the specific product associated with a particular area. If the application is accepted, it will be advertised in the GI journal. Moreover, it will be given a GI tag in case of no opposition.⁸¹

Remedies available for the protection of GI laws in India can be civil and criminal. Criminal remedies are available to the producers under the GI Act, 1999, in cases related to offense. There is a punishment of imprisonment that ranges from 6 months to 3 years or a fine of Rs. 50

⁷⁸ Prarrthana Gopi, "Comparing India's Position on Geographical Indications with the Corresponding Laws in Japan," *Intellectualis-Geographical Indications: Realising the Goal of Community Benefits & Ownership* 5, 3rd ed. 2022-23 (2022): 33.

⁷⁹ Swaroopa Parthasarathi, "Incorporating Germany's Progressive GI Laws in India's Current Legislation: A Comparative Analysis," *Intellectualis-Geographical Indications: Realising the Goal of Community Benefits & Ownership* 5, 3rd ed. 2022-23 (2022): 50.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 50-51.

thousand to 2 lakh INR as per ss. 39 and 60 of the GI Act, 1999.⁸² Meanwhile, civil remedies in case of any infringement of the registered GIs are also available under the same GI Act in the form of damages, injunctions, and accounts of profit.⁸³ A civil suit against an infringement can be instituted in district courts.⁸⁴ The APEDA registered Basmati rice as a GI product in 2016⁸⁵ under the GI Act, 1999. Internationally, India is the prime exporter of Basmati rice. There are almost thirty-four registered Basmati rice varieties in the country as per the Seeds Act, 1966. In 2022, major export destinations for Indian Basmati rice were Iran, Iraq, KSA, UAE and Yemen.⁸⁶

Pakistan's first officially recognized GI was Basmati rice, registered in 2021. Whereas, the Darjeeling Tea was the first ever registered GI product of India, which was registered in 2004-05 and owned by the Tea Board India.⁸⁷ The GI law applies only to goods, not services. The landmark case *Tea Board India v. ITC Ltd* illustrates this fundamental principle.⁸⁸ In 2010, Tea Board India, as an Appellant, filed an application against a leading industrial house, namely ITC Ltd., which runs various top-ranking hotels across India. In Calcutta, ITC Ltd. had named a part of its popular luxury hotel, The Darjeeling Lounge, and applied for its trademark.⁸⁹ The Tea Board India came to know about this when the application was

⁸² Ibid, 51.

⁸³ India, Geographical Indications of Goods (Registration and Protection) Act, 1999, sec. 67.

⁸⁴ Geographical Indications of Goods (Registration and Protection) Act, 1999, sec. 66.

⁸⁵ Shailesh Tiwari, "Basmati Rice- Production, Cultivation & Certification," *Agriculture Wale*, May 9, 2023, <https://www.agriculturewale.com/basmati-rice/>.

⁸⁶ Ibid.

⁸⁷ VLex, "A Closer Look at Tea Board, India v. ITC Limited Dispute," *VLex*, accessed September 16, 2023, <https://vlex.com/vid/closer-look-at-tea-777711649>.

⁸⁸ Tea Board v. ITC Limited, C.S. No. 250 (2010).

⁸⁹ Anirudh Chandrashekhar, "Indian Law Relating to Geographical Indications: Making New Inroads? -A Comment on Tea Board India v. ITC Limited," *Nalsar Student Law Review* (2019): 70, <https://nslr.in/wp-content/uploads/2019/03/NSLR-Vol-7-No-4.pdf>.

published in the Trademarks Journal. The Tea Board India claimed that the utilization of the word "Darjeeling" as a trademark by ITC Ltd. is an infringement of its GI mark. The Board also claimed that it had registered the certification trademark, and the action of ITC Ltd. is a clear violation of its certification trademark, which results in the act of *passing-off* regarding unwarranted and unfair competition. It further contended that the commercial activities carried out by ITC Ltd. under the name The Darjeeling Lounge amounted to an action 'dilution' of their Darjeeling Tea brand.⁹⁰

Meanwhile, the Respondent ITC Ltd. maintained that the stipulations under the GI Act of India are only concerned with goods. According to them, The Darjeeling Lounge is only related to the provision of services. Along similar lines, it contended that the provisions regarding the protection of certification trademarks pertaining to goods under the GI Act are not applicable to services and only limited to goods.⁹¹ The major claim that was brought up by ITC Ltd. was related to the issue of time-barred. It held that the Tea Board India had been aware of the lounge in question since 2005, but they filed an application in 2010 with a delay of five years.⁹² In its judgment, the High Court of Calcutta held that the suit brought by the Tea Board India was time-barred. The Court also held that there is no infringement of any of the provisions of the GI Act of India as the lounge of the Respondent is only related to the services and not goods.⁹³ The Court also opined that the word "Darjeeling" is only used as a GI and cannot be considered a trademark. The law related to GIs is only limited to goods. The Court further held that there is no unfair competition as the

⁹⁰ Ibid, 71.

⁹¹ Ibid.

⁹² Ibid, 72.

⁹³ Rohan Dalbehera, "Case Study: Tea Board of India v. ITC Ltd. - Trademark - India," *Mondaq*, February 27, 2019, <https://www.mondaq.com/india/trademark/785150/case-study-tea-board-of-india-vs-itc-ltd>.

business of the Respondent is totally different than that of the Appellant. The Appellant had only registered the name "Darjeeling" as a certification trademark as per s. 2(e) of the Trademarks Act, 1999, which, according to the High Court, could not be considered a registered trademark. Moreover, the Court held that the allegations made by the Appellant were baseless and dismissed the suit for INR 10 lakhs.⁹⁴

Basmati rice is a famous agricultural product that is grown in Pakistan, India, Nepal, and some other countries, but it is an exclusive product of Pakistan and India because both countries have registered it as a GI product in accordance with their national GI laws. Pakistan and India are the prime world producers of Basmati rice. It has been given a GI due to its specific origin and exclusivity. It is, therefore, necessary for Pakistan and India to strengthen their indigenous laws safeguarding Basmati rice as a GI.

9. Registration of Basmati Rice as a GI Product in Pakistan and India

As Basmati rice is an agricultural product, the application for its registration as a GI product in India was filed by the APEDA on 26 /11/ 2008. The product was certified as a GI on 15/02/2016.⁹⁵ The application was filed before the GI registry of India. Meanwhile, the federal government of Pakistan designated the Trade Development Authority of Pakistan (TDAP) as the registrant of Basmati Rice in Pakistan. The TDAP with the assistance of the Rice Research Institute Kala Shah Kaku and The Rice Exporters Association of Pakistan (REAP) had filed an application to the IPO-Pakistan for the registration of Basmati rice. It was announced by the REAP that Pakistan received the GI tag for its Basmati rice on 26 January 2021.⁹⁶

⁹⁴ Ibid.

⁹⁵ Tanya Sharma, "Basmati: Geographical Indication (GI) Tag of Delhi and Haryana," *IP Press*, September 28, 2021, <https://www.theipress.com/2021/09/28/basmati-geographical-indication-gi-tag-of-delhi-and-haryana/>.

⁹⁶ Express Tribune, "Pakistan Receives GI Tag for Basmati," *Express Tribune*, January 27, 2021, <https://tribune.com.pk/story/2281611/pakistan-receives-gi-tag-for-basmati>.

In Pakistan, Basmati rice is cultivated as a GI commodity only in the specific areas of the Punjab Province.⁹⁷ Whereas it is geographically exclusive to the specific regions in eight states of India, namely Punjab, Himachal Pradesh, Haryana, Delhi, Western Uttar Pradesh, Uttarakhand,⁹⁸ and the disputed territory of Jammu and Kashmir.

Therefore, Pakistan and India have indigenously registered their distinct Basmati rice varieties as GIs according to their respective laws. This has opened the doors for the preservation of Basmati rice in the domestic and global markets. When a product with a particular geographical provenance is registered with a GI, it receives legal protection that prevents others, including unauthorized manufacturers or users, from misusing the name or identity of that product. Furthermore, registering a product deriving from a particular location as a GI at the domestic level is a primary step in seeking international protection, validation, and recognition.

10. Regulations and Systems Utilized by the European Union for Protecting Geographical Indications

Regulation number 1152/2012 of the EU safeguards various sorts of GIs against infringement. Previously, Regulation number 510/2006 allowed the registration of products in the EU by producers from other countries. This regulation was replaced by the Regulation number 1152/2012 of the EU.⁹⁹ The Regulation in its full form is known as the Regulation (EU) No. 1152/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.¹⁰⁰

⁹⁷ Salman Khan, *India -Pakistan Battle for Biryani* (Johannesburg: Academia, June 20, 2021), https://www.academia.edu/49328072/India_Pakistan_Battle_for_Biryani.

⁹⁸ Ibid.

⁹⁹ Parthasarathi, "Incorporating Germany's Progressive GI Laws in India's Current Legislation," 51.

¹⁰⁰ EUR-Lex, "Document 32012R1151," *Europa.eu*, EUR-Lex, November 21, 2012, <https://eur-lex.europa.eu/eli/reg/2012/1151/oj>.

A *sui generis* system is utilized by the EU, which includes a central system of registry. GIs for products regarding agriculture are mainly protected in this system with the help of the Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). These two types of systems were developed by the EC in an attempt to provide extended protection.¹⁰¹ GIs acquire more robust protection by the utilization of these methods, which is similar to the protection provided by trademarks. In order to handle GIs, the European Communities Trademark Association (ECTA) has constituted a special committee due to the increase in legal issues that originate as a result of the correlation between GIs and trademarks. The ECTA's stance on the utilization of trademarks for GIs is based on the system of trademarks and the *sui generis* system.¹⁰²

GIs provide IPRs for specific products whose qualities are closely linked to their geographical area. The case of *Carl Kühne GmbH & Co. KG and Others v Jütro Konservenfabrik GmbH & Co. KG* underscores the significance of accurately identifying the geographical area associated with these products.¹⁰³ The brief facts of the case were that Jütro established a production facility and registered office in a town called Jüterbog, which was outside the geographical region of the PGI *Spreewälder Gurken*. Jütro produces pickled gherkins known as *Jütro Gurkenfäßchen* along with other things. The gherkins are distributed under the designation of *Spreewälder Art* (Spreewald style).¹⁰⁴ Kühne and Others, as the producers of gherkins, were competing with Jütro and initiated legal proceedings in the Landgericht Hamburg against Jütro in an attempt to prohibit it from

¹⁰¹ Gregory Maust, "Arguments over Geographical Indications: Spreading the Trademark System through the Korean-U.S. Free Trade Agreement," *Drake Journal of Agricultural Law* 19 (2014): 224.

¹⁰² *Ibid.*, 225.

¹⁰³ *Carl Kühne GmbH & Co. KG, Rich. Hengstenberg GmbH & Co., Ernst Nowka GmbH & Co. KG v Jütro Konservenfabrik GmbH & Co. KG*, European Court of Justice, C-269/99 (December 6, 2001).

¹⁰⁴ *Ibid.*, I - 9551.

utilizing the designation *Spreewälder Art* for its gherkins. Kühne and Others did not meet the conditions for the utilization of the designation *Spreewälder Gurken*.¹⁰⁵ They brought an action against Jütro in the Landgericht Hamburg on the grounds that as per Article 13 (l) (b) of Regulation No. 2081/92, the use of the designation *Spreewälder Art* is no longer legal since the designation *Spreewälder Gurken* is registered as a PGI. Jütro, in its defense, maintained that Regulation No. 590/1999 is invalid in so far as the designation *Spreewälder Gurken* is registered in it.¹⁰⁶ The Landgericht Hamburg, in its order for reference, held that numerous problems are arising due to the registration of the designation *Spreewälder Gurken*, which raises doubts regarding the legitimacy of the registration. Under these conditions, the Landgericht Hamburg stayed the proceedings and referred a legal question regarding the same issue to the ECJ for the preliminary judgment.¹⁰⁷ The Court of Justice, in answer to the question referred to by the Landgericht Hamburg, held that it is important to rely on the checks enforced in each member state by the qualified national institutions. If the decision is without a clear error, then the Commission can adequately register the name associated with the particular location.¹⁰⁸ In other words, even if the raw materials were produced in a distinct area, the designation *Spreewälder Gurken* could still be registered as a PGI as the appropriate authorities of Germany deemed that the product came within that particular category by nature.¹⁰⁹

Thus, various legal acts (regulations) in the EU protect GIs, depending on the sort of product in question. Protection is given to agricultural products and foodstuffs, spirits or wines, and industrial goods

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, I - 9552.

¹⁰⁸ O'Connor, *The Law of Geographical Indications*, 135.

¹⁰⁹ Ingrid Lidgard, "Geographical Indications: A Result of European Protectionism?" (Master Thesis, University of Lund, 2009), 30, <https://lup.lub.lu.se/student-papers/search/publication/1559567>.

or handicrafts. As an agricultural product, Basmati rice can be registered in the EU as a PGI by adhering to established guidelines and specifications.

11. Legal Battle Between Pakistan and India Over the Protected Geographical Indication Status for Basmati Rice in the European Union

Basmati rice is an aromatic, long, slender-grained rice that is geographically exclusive to certain areas, regions, or districts of India and Pakistan. It is eaten as a popular essential cuisine around the world. Back in 2008, both Pakistan and India decided to file a joint application for the registration of Basmati rice as a GI in the EU. Unfortunately, the plan was later dropped¹¹⁰ due to some political reasons.

In the month of July 2018, India filed an application to the European Union's Council on Quality Schemes for Agricultural Products and Foodstuffs for the PGI status of its Basmati rice without informing Pakistan.¹¹¹ Both Pakistan and India are the sole exporters of geographically exclusive Basmati rice. For years, zero tariffs have been applied by the EU on rice, which is authenticated as original Basmati by either India or Pakistan.¹¹² The application by India was published in the Official Journal of the European Union (OJEU) in September 2020. Before its publication in the journal, it was subjected to a preliminary examination by utilizing the proper methods in accordance with the control procedures.¹¹³ The main grounds taken by India in the application were that the reputation and origin of Basmati as a long-grain, aromatic rice from Indo-Gangetic Plains exists

¹¹⁰ Febin P, "Basmati Rice: The Tug of War," *Intepat*, May 9, 2023, <https://www.intepat.com/blog/basmati-rice-the-tug-of-war/>.

¹¹¹ Mahwish Hafeez, *Issue Brief on Basmati Rice: A New Tug-of-War between India and Pakistan*, (Islamabad: Institute of Strategic Studies Islamabad (ISSI), September 28, 2021), 1, https://issi.org.pk/wp-content/uploads/2021/09/IB_Mahwish_Sept_28_2021.pdf.

¹¹² *Ibid.*

¹¹³ Siddhant Biswakarma, "Who Owns Basmati Rice? India and Pakistan Battle for GI Rights," *IPWatchdog*, July 6, 2021, <https://ipwatchdog.com/2021/07/06/owns-basmati-rice-india-pakistan-battle-gi-rights/>.

in folklore, tradition, political-historical records, culinary and scientific literature. India did not claim in the application submitted before the EC that it is the sole nation that has the capacity to cultivate Basmati rice. Furthermore, the application filed by India was according to Article 7(1) of the Regulation (EU) No. 1151/2012 of the European Parliament and of the Council.¹¹⁴ This article is concerned with product specification criteria. It is also stipulated under Regulation No. 1151/2012 that after the claim to GI is published in the OJEU, the countries can oppose the same claim by filing an opposition within three months of its publication in the journal. In late 2020, being the second largest exporter of Basmati rice, Pakistan filed a notice of opposition against India's claim over Basmati rice.¹¹⁵

Pakistan opposed India's claim in its main grounds of opposition by mentioning that both India and Pakistan produce Basmati rice, and for this very reason, it is a shared commodity of both countries. As per the regulations of the EU, the product due for registration as a GI in the international market has to be preserved by the country's indigenous GI laws first.¹¹⁶ Both Pakistan and India have registered Basmati rice in their respective GI laws. India domestically got the GI status for its Basmati rice in 2016, while Pakistan registered its Basmati rice as a GI product in 2021. It was suggested by the EC that Pakistan and India should resolve the matter through talks, but no solution has been reached so far, and the matter is still pending resolution.¹¹⁷ Recently, India's application for exclusive rights to Basmati rice was rejected by the Government of Australia because India is not the only producer of Basmati rice. However, India filed an appeal against the decision in the Australian federal courts.¹¹⁸ Meanwhile, Pakistan

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Febin P, "Basmati Rice: The Tug of War," *Intepat*, May 9, 2023, <https://www.intepat.com/blog/basmati-rice-the-tug-of-war/>.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

is also seeking an opportunity to acquire a joint GI tag for Basmati rice.¹¹⁹ The matter of acquiring a PGI status for Basmati rice in the EU is still underway.

Hence, non-EU countries can also register their GIs in the EU by first registering their products as GIs under their national laws. Basmati rice is a cross-border GI, and registering it as a PGI in the EU will have substantial economic benefits for Pakistan and India. It will allow these countries to promote and sell their authentic Basmati rice varieties at premium prices in European and international markets.

12. Conclusion

GIs are basically IPRs that serve to protect the traditionally significant products deriving from a specific geographical area or region. It is necessary to safeguard GI products in global trade to secure the reputation of the product's provenance and prevent the unauthorized use of the same. Numerous GIs are related to food and agricultural products. The volume of food products exported to international markets has increased significantly in recent years. Consumers from all around the world are showing a keen interest in authentic traditional cuisines, especially those that are based on cultural heritage. In other words, consumers' interest in the product's identity, quality, and characteristics is increasingly growing, and they demand specific information regarding the product before making a purchase in the international markets. Basmati rice is a popular agricultural commodity that is highly demanded and consumed as a staple food across the globe. It is traditionally cultivated in the specific regions of Pakistan and India, and both countries have registered it as a GI product as per their indigenous GI laws. This paper sheds light on some of the most important

¹¹⁹ Dipanjan Roy Chaudhury, "Australia's Decision to Deny GI Tag to Basmati Rice Could Be Result of Pakistani Lobbying," *Economic Times*, April 21, 2023, <https://economictimes.indiatimes.com/news/economy/foreign-trade/australias-decision-to-deny-gi-tag-to-basmati-rice-could-be-result-of-pakistani-lobbying/articleshow/99669521.cms?from=mdr>.

issues concerning the preservation of Basmati rice as a GI in international trade.

Unfortunately, with the growth of international trade, enforcement of laws to protect GIs is also becoming increasingly complex, especially in the case of valuable agricultural crops. Therefore, this paper not only examines the international instruments pertaining to the preservation of GIs but also compares the current legal frameworks of the main Basmati rice-producing countries. Although a lot of research has been conducted on the subject of GIs, there are only a few scholarly works available that deal with the significance of preserving Basmati rice as a GI product in international trade. Furthermore, Basmati rice is a shared heritage of Pakistan and India, but most of the work in this regard is region or country-specific. Moreover, Pakistan has many products that can be considered geographically exclusive due to their specific origin, but most of them are currently unregistered, as the GI Act in the country was enacted in 2020. Similarly, in 2021, Basmati rice was registered as the first GI in Pakistan. Most of the research in this regard was done prior to the enactment of the same GI Act. Therefore, this paper comprehensively investigates these issues in the light of the most updated national and international regulatory frameworks.

The paper also discusses the significance of Basmati rice for both Pakistan and India, as well as its impact on the indigenous and international markets. Currently, Pakistan and India are in a tug of war to acquire an exclusive PGI status for Basmati rice in the EU in order to sell their specific variety of Basmati rice as an exclusive product in the European markets. Acquiring a PGI status for Basmati rice will have a considerable impact on the economic growth of a producing country and will also increase the consumers' trust in international markets. Thus, it is the need of the hour to preserve GIs in international trade, especially when it comes to the protection of Basmati rice as a GI.

12.1 Recommendations

1. Developing countries today face various problems regarding the conservation of GIs in global trade due to the complexity of trade agreements, distinct legal frameworks of countries, and disputes that arise among them. It also impacts the protection and export of Basmati rice as a GI commodity in the international markets. Therefore, it is suggested that developing countries should establish some sort of cooperation in order to protect GIs against these problems. It is also suggested that developed countries should cooperate with developing countries to adequately safeguard the international legal framework pertaining to the preservation of GIs.
2. It is recommended that Pakistan should also join the Lisbon Agreement (1958) after the enactment of the GIRPA, 20. As a result, the protection of Pakistan-based GIs will be enhanced internationally. The international system of protection and registration of AOs was established due to the provisions of the Lisbon Agreement (1958). This agreement not only protects AOs in a contracting state of origin but also automatically enables the protection of the same in the other contracting states.
3. Pakistan and India are the main producers and exporters of Basmati rice globally. Therefore, both countries should broaden the spectrum of exports of Basmati rice as a GI product by exporting it to the developing global markets, such as Central Asia and Africa, in order to boost trade and local economic development.
4. Pakistan and India are developing economies, and most of the people in these countries are related to the field of agriculture. Basmati rice is geographically exclusive to both Pakistan and India. Therefore, the governments of both countries are suggested to educate the traders and farmers about the non-tariff measures and

regulatory requirements imposed by the importing countries in order to ease the international trade of Basmati rice. The governments of both countries should also train and educate the farmers regarding Basmati rice in order to increase yields and reduce unnecessary wastage.

5. In order to establish an adequate mechanism for the preservation of Basmati rice as a GI product in Pakistan and India, it is suggested that the governments in these countries should also take all the necessary steps to expedite and educate the local consumers and producers about the significance of protecting GIs both nationally and internationally.
6. Basmati rice is a popular staple food which is consumed globally. In an attempt to boost the trade of Basmati rice in international markets as an exclusive product of origin, the major Basmati rice-producing countries should also work for the development of exclusive Basmati rice-based value-added products such as Basmati rice bran oil, puffed Basmati rice, and Basmati rice wax, etc.
7. It is suggested that governments in the major Basmati rice-producing countries should make plans and strategies to attract more investments and funds for R&D in the domestic rice sectors. This will allow the scientists to develop new strains of Basmati rice with extra-long grains, intense taste, and aroma, increased health benefits, and immunity against Basmati rice-related diseases. As far as the rice sector in Pakistan is concerned, a lot of research still needs to be carried out in order to meet international standards.
8. The matter regarding the PGI status for Basmati rice between Pakistan and India is pending before the EC. Both countries should resolve the matter through a proper dialogue as per the suggestions

of the EC. Otherwise, the matter could remain unresolved for a long period of time.
