



Geographical Indications

A Case Study



Intellectual Property Attorneys





Foreword

Geographical Indications (GIs) are a form of intellectual property rights (IPRs) recognized under the World Trade Organisation's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). While every country has products that can be protected as GIs, the importance of GIs as a form of intellectual property came to the forefront only with the need to fulfil the obligations to provide for legal means to protect these rights under the TRIPS agreement by nations. India too enacted its GI statute, the Geographical Indications of Goods (Registration & Protection) Act, 1999, which was notified into effect in 2003. The statute has completed 20 years and over 650 GIs are currently registered under this act.

GIs have the potential to powerfully alter and elevate the socio-economic conditions of communities that produce goods that can be tagged with GIs. It is thus important for any student of IPR as well as stakeholders of GIs to fully understand the working of this statute to be able to practically apply the same to enable the protection of GIs. This booklet is an attempt to provide the required information and clarity towards this purpose.

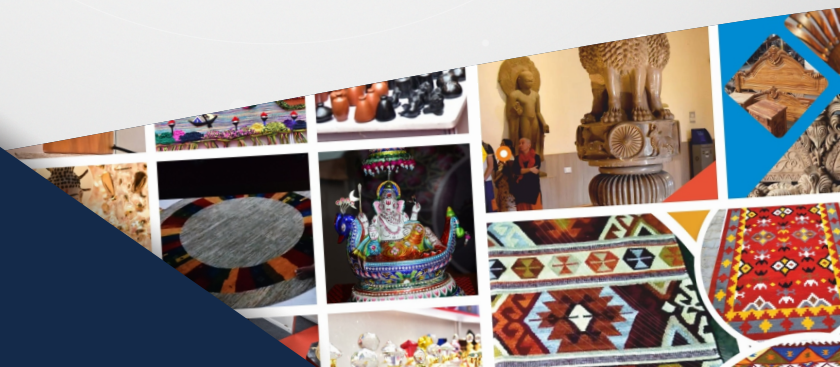




Table of contents

- What are GIs? How are they different from trademarks?
- What tools can be used to protect GIs?
- How are GIs protected in India?
- What is the examination process?
- Who can oppose an application? What are the grounds of opposition?
- What are the rights conferred by GI Registration in India?
- What remedies are available for infringement and passing off of GIs?
- What are the gaps in the GI Act that needs an amendment?
- Some practical tips for GI protection



A Note on Protection of Geographical Indications

PREFACE

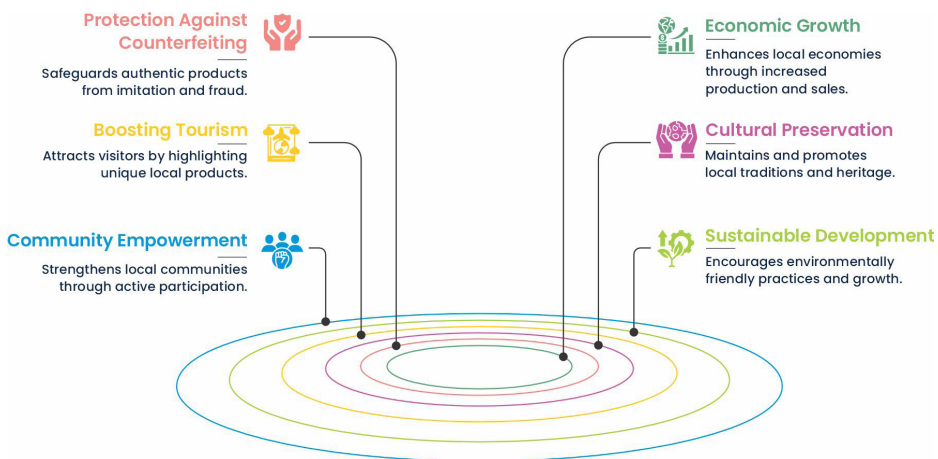
Geographical Indications (GIs) are a form of intellectual property rights (IPRs) recognized under the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

While every country has products that can be protected as GIs, the importance of GIs as a form of intellectual property came to the forefront only with the need to fulfil the obligations to provide for legal means to protect these rights under the TRIPS agreement by nations. India enacted its GI statute, the Geographical Indications of Goods (Registration & Protection) Act, 1999, (the GI Act) which was notified into effect in 2003.

From Darjeeling tea and Mysore Sandal Soap to Benarasi sarees to Meghalaya's Lyrnai Pottery, over 650 GIs have been registered in India as of April 2025.

GIs have the potential to powerfully alter and elevate the socio-economic conditions of communities that produce quality goods that can be tagged with GIs by providing entrepreneurial and employment opportunities, while also preserving local know-how, heritage and traditions. A GI tagged product also symbolizes authenticity, thereby increasing customer trust and market value.

Geographical Indications Benefits



It is thus important for any student of IPRs as well as stakeholders of GIs to fully understand the working of this statute to be able to practically apply the same to enable the protection of GIs. This booklet is an attempt to provide the required information and clarity towards this purpose.

1. What are GIs? How are they different from trademarks?

Section 2(1)(e) of the GI Act defines GI as under:

"It is an indication which identifies that a particular goods as originating or manufactured from a particular region where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin."

A GI is essentially a name and/or symbol used to identify a product originating from a specific geographical origin and the qualities, reputation or other characteristics of such goods is due to the place of origin. Since the qualities, reputation and other characteristics of such goods depend on the geographical place of production, there is a clear link between the product and its geographical origin. Some examples of GIs are Basmati rice from specific regions within India, Darjeeling tea from Darjeeling district of West Bengal, Scotch Whisky from Scotland, Champagne from the Champagne region in northeastern France, etc.

Although distinguishable from other forms of IPRs, GIs are often confused with trademarks. While trademarks are private monopoly rights, a GI is a collective public right. Trademarks identify the source of the product whereas GI, apart from identifying the geographical origin of a product, also indicate that the product possesses certain characteristics or qualities which are inextricably linked to the geography concerned.

It follows, therefore, that while trademark rights may be assigned, rights in a GI may not. However, it is possible that the rights to administer a GI may be transferred from one body to another, provided the succeeding body fulfills the competency criteria to administer and maintain the quality standards possessed by the GI. Further, while trademark rights can be created by mere adoption of distinctive and/or inventive words (for example, KODAK, EXXON, etc), rights in a GI are always rooted in public perception and recognition of the reputation and goodwill associated with the same and are necessarily linked to traditions and culture of the geography. In other words, while trademarks may be created and adopted overnight, GIs are recognized over a period of time.

A GI may not be used as a trademark because by using it as a trademark, a trader is attempting to acquire private monopoly rights in the GI, thereby violating the collective rights of the legitimate users of the GI. Most jurisdictions have provisions in their trademark legislations rendering terms of geographical significance ineligible to be registered as trademarks. The following table will provide conceptual clarity between a trademark and a GI:

Key Differences between Trademark & GI

A private monopoly right	.....	.....	Collective, community right
Reflects trade origin	.....	.....	Reflects geographical origin
Can be created overnight	.....	.....	Recognized over a period
Goods can be produced globally	.....	.....	Goods are always produced locally
Varying quality	.....	.....	Consistent quality
Mass production possible	.....	.....	Limited production
Mechanisation necessarily employed	.....	.....	Mostly, no mechanisation

2. What tools can be used to protect GIs?

Worldwide, whether civil law or common law jurisdiction, there are three principal forms of statutory protection adopted in practice by countries for the protection of GIs. These are by way of registration as a certification mark, as a collective mark and by way of a sui generis legislation for GIs for the product concerned.

Certification marks

Certification mark, simply put, certifies that the goods conform to certain standards that are laid down and enforced by the proprietor of the mark. In the case of a GI, a certification mark, besides certifying the qualities and characteristics of the goods in question will also certify the origin of the goods.

Generally, the proprietor does not carry on business or use the mark but merely licenses the mark for use to those who want to use it and ensures that the standards are met by all the licensees. A certification mark is used only by authorised users/ licensees and not by the proprietor. Some examples of GIs protected as certification marks are STILTON cheese and DARJEELING tea.

While a certification mark in a logo form (such as the Darjeeling or Stilton logos) being a distinctive proprietary mark easily lends itself to licensing, the words per se are not amenable to licensing because of fair use exceptions, thereby weakening the licensing backbone of the certification mark regime and making it administratively infeasible.

Collective Marks

Collective marks are usually understood to be owned by an association and any member of such association may use the collective mark to indicate membership of such association which owns the mark. Some examples of collective marks used are CPA (Chartered Institute of Patent Agents), CITMA (Institute of Trademark Attorneys), etc.

Various countries of the world offer protection to GIs through the collective mark regime. Most of these countries do not have a certification mark regime or any other form of protection for geographical indications. One example of a GI registered in the UK through collective mark regime is 'SCOTLAND'S TOMATOES' by Scotland's Tomatoes Ltd in respect of 'tomato seed, tomato plants; tomatoes'.

Although collective marks are used as a means of protecting GIs by many countries, they are not an effective form of protection for GIs for the reason that they need not certify or indicate the goods to be of a certain quality, characteristics or origin.

Sui generis Forms of Protection to GIs

A third means of protection to GIs is by way of a sui generis legislation for GIs in general or for the specific product under the GI in question. Countries that have enacted special legislations for protection of GIs are India, Malaysia, Singapore, etc. Examples of legislations enacted specifically for protection of a product as a GI are the Scotch Whisky Act, 1988, for the protection of Scotch Whisky, the Harris Tweed Act, 1993, for the protection of tweed made in some parts of Scotland, the Champagne Regulations for protection of Champagne, etc.

Most of the countries that have enacted separate legislation for protection of GIs have done so after the establishment of the WTO. The basis for such a pattern may be attributed to Article 22 of the TRIPs Agreement which stipulates that members should provide 'legal means' to prevent misuse of GIs.

3. How are GIs protected in India?

In India, prior to 2003, GIs were protected through certification marks and the Passing Off, a common law remedy to prevent unauthorized use of GIs, indirectly safeguarding their reputation and quality.

In fact, Scotch Whisky Association had successfully restrained use of not only the term SCOTCH but also evocative terms and symbols such as GLEN, BEN, HIGHLAND CHIEF, etc by third parties through the passing off remedy. In **Dyer Meakin Breweries Ltd. vs. The Scotch Whisky Association** (AIR 1980 Del 125), the Delhi High Court restrained the use of "Highland Chief" with the device of a Scottish gentleman in a passing off action initiated by the Scotch Whisky Association. Similarly, in **the Scotch Whisky Association vs. Khoday Distillers** (Bombay High Court – decided on 11.04.1989), the use of "Glen Forbes" was restrained in a passing off suit filed by Scotch Whisky Association.

However, post-2003, India introduced a sui generis law- the Geographical Indications of Goods (Registration and Protection) Act, 1999, providing a specialized legal framework for GI protection. Under the GI Act, agricultural goods, manufactured goods, natural goods, handicrafts and foodstuffs are eligible for registration. Even non-geographical names like Feni, Basmati, Pashmina, etc. are also eligible for registration. Any association of persons or producers or any organization or authority established by or under any law representing the interests of the producers of the goods may apply to register a GI in India.

The application must be made in triplicate and must be accompanied by a statement of case. The documents and evidence that are required to be filed along with the application for a geographical indication under the GI law include:

- A statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality as the case may be.
- The geographical map of the territory of the country or region or locality in the country in which the goods are produced or originate or are being manufactured.
- A statement containing such particulars of the producers of the concerned goods proposed to be initially registered. The statement may contain such other particulars of the producers including a collective reference to all the producers of the goods in respect of which the application is made.
- A statement of the period during which, and the persons by whom the geographical indication has been used in respect of the goods mentioned in the application. The applicant has to submit an affidavit testifying to such user with exhibits showing the geographical indication, the definite territory of the country, region or locality in the country to which geographical indication relates.
- An affidavit as to how the applicant claim to represent the interest of the association of persons or producers or any organization or authority established by or under any law
- The standards benchmark for the use of the geographical indication or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation, or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any or other characteristic from the definite territory of the country, region or locality in the country, as the case may be.
- The particulars of the mechanism to ensure that the standards, quality, integrity and consistency or other special characteristic in respect of the goods to which the geographical indication relates which are maintained by the producers, maker or manufacturers of the goods, as the case may be
- Three certified copies of the map of the territory, region or locality showing the title, name of publisher and date of issue along with the application
- The particulars of special human skill involved or the uniqueness of the geographical environment or other inherent characteristics associated with the geographical indication to which the application relates;
- Particulars of the inspection structure, if any, to regulate the use of the geographical indication in respect of the goods for which application is made in the definite territory region or locality mentioned in the application;
- Where the geographical indication is a homonymous indication to an already registered geographical indication, the material factors differentiating the application from the registered geographical indications and particulars of

protective measures adopted by the applicant to ensure consumers of such goods are not confused or misled or confused in consequence of such registration;

In case of application from a conventional country, the following additional particulars are also to be furnished

- Designation of the country of origin of the Geographical Indication
- Evidence as to the existing protection of Geographical Indication in its country of origin, such as the title and date of the relevant legislative or administrative provisions, the judicial decisions or the date and number of the registration, and copies, of such documentation.

4. What is the registration process?

The following is a rough outline of the procedure that would be followed after filing the GI application:

- **Examination:** The application along with the contents of the statement of case would then be examined within 2 to 3 months from the date of filing and an office action will be issued in respect thereof. A response to the objections raised in the examination report has to be filed within one month of the receipt of the office action (extendible by a month).
- **Consultative Group Committee meeting:** Upon compliance with the requisitions/ filing the response to the objections raised in the office action, the GI Registry will appoint a Consultative Group Committee meeting, consisting of experts in the relevant field concerning the subject matter of the application, wherein the applicant and or its agent would be called upon to make and present a detailed presentation on various aspects of the concerned GI application before the Committee. The Committee then reviews the presentation and poses queries and clarifications regarding the application and the related documents. If satisfied, the Committee accepts the application for publication in the GI journal. If not, a further examination report is issued taking into consideration the comments of the Committee and a response to the same has to be filed. Upon filing the response, the same is reviewed by the relevant officials of the GI Registry and the application proceeds to publication. The meeting is usually appointed within approximately 4-5 months of filing the response to the office action.
- **Publication in the geographical indications journal:** If no objections are raised and/or the objections are overcome, the application would be advertised in the GI Journal for opposition by third parties for a period of three months (*extendible by another month on request*).
- **Registration:** After the opposition period expires, the GI would proceed to registration if no oppositions were raised against it. A registered GI will be valid for 10 years and can be renewed on payment of a fee.

Based on the above, it takes approximately 10 to 12 months from the date of filing for the application to proceed to registration.

5. Who can oppose an application? What are the grounds of opposition?

Any third party can oppose a GI application under the GI Act. Any member of the public can oppose the proposed GI registration if the use of which would:

- Deceive or cause confusion; or
- Be contrary to law for the time being in force;
- Comprises or contains scandalous matter;
- Contains any matter likely to hurt the religious susceptibilities of any class or section of citizens of India;
- Be disentitled to protection in the court; or
- be determined to be generic names or indications of goods and therefore ceased to be protected in their country of origin, or which have fallen into disuse; or
- falsely represents to the persons as to its origination in another territory, region or locality.

6. What are the rights conferred by GI registration in India?

The registration of a geographical indication under the GI law provides following rights to the registered proprietor and authorised user:

- to the registered proprietor of the GI and the authorized user or users thereof the right to obtain relief in respect of infringement of the GI.
- to the authorized user thereof the exclusive right to the use of the GI in relation to the registration of goods in respect of which the geographical indication is registered.

The scope of the right can be ascertained from the provision which provides circumstances in which a registered GI is infringed. A registered GI is infringed by a person who, not being an authorized user thereof:

- uses such GI by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or
- uses any GI in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

If the Central Government by notification provides additional protection to certain goods or classes of goods then any person who is not an authorized user, uses any other GI to such goods or class or classes of goods not originating in the place indicated by such other GI or uses such other GI to such goods or class or classes of goods even indicating true origin of such goods or uses such other GI to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as "kind", "style", "imitation", or the like expression, shall infringe such registered GI. (As stated above, the Government notification on this behalf is still awaited and, therefore, this absolute level of protection is yet to be implemented.)

7. What remedies are available for infringement and passing off of GIs?

Remedies for GI violations include statutory remedy of infringement and common law remedy of passing off. The nature of remedy can be criminal, civil and administrative.

- **Statutory remedies** of infringement allow right holders or registered users to initiate legal action against unauthorized use of a registered GI. Remedies typically include injunctions to prevent further infringement, monetary compensation for damages, and the seizure or destruction of infringing goods.
- **Criminal remedies** play a significant role in deterring GI violations. The Act lays down criminal penalties for falsifying or falsely applying geographical indication to goods and selling goods to which false geographical indication is applied. It provides for imprisonment of not less than six months but which may extend to three years and with fine which shall not be less than Rs 50,000 but which may extend up to Rs 2,00,000. However, the right to initiate a criminal action under the Act vests with the Authorised user only and the Registered proprietor does not have any right herein.
- For unregistered GIs, the common law remedy of **passing off** provides protection. This remedy allows rights holders to take legal action when another party misrepresents its goods as being associated with the GI, causing damage to the original brand's reputation. The plaintiff must prove that the GI has established goodwill, that the defendant's actions are likely to confuse consumers, and that damage has occurred. Courts typically grant injunctions and may award damages for the harm caused.
- Lastly, **border enforcement** through customs recordation is an essential measure to prevent the import or export of infringing goods (it is applicable only to import in India). Rights holders can register their GIs with customs authorities, enabling customs officials to monitor shipments and seize goods that are suspected of violating GI rights. This proactive approach helps prevent counterfeit goods from entering the market and ensures protection at critical entry and exit points. These remedies work together to safeguard the integrity of GIs, prevent consumer deception, and support producers relying on the distinctiveness of their products' geographic origin.

Enforcement Remedies for Geographical Indications

Remedy	Offence/Scope	Relief
Statutory Remedies	Unauthorized use of a registered GI	Injunctions; damages; seizure/ destruction
Criminal Penalties	Falsely applying or selling goods with a false GI	6 months–3 years imprisonment; ₹50 K–₹2 LK fine

Passing-Off	Misrepresentation of unregistered GI causing confusion	Injunctions; damages
Border Enforcement	Importation of infringing goods	Customs detention and seizure of shipments

8. What are the gaps in the GI Act that needs an amendment?

Current GI law has certain huge gaps that would need to be addressed through amendments. Without closing these gaps, the GI eco system will not be able to hold together any kind of protection given under the statute. Some of the main gaps that need urgent addressal are:

- **Pre-registration steps to be statutorily controlled:** There is nothing under the law to ensure that the stakeholders, i.e., the producers are informed or consulted in the application process. Even if they are consulted, it may not be the entire set of producers that are consulted, but merely a fraction of these. Additionally, there are no measurable parameters under the law to examine the credentials of an applicant for representing the interests of the producers. Without getting the producers on the same page as the body filing the application, there will be no natural buy-in by the producers of the benefits of a GI registration. Nor will there be any participation or willingness by the producers to cooperate in the post registration and promotional activities of the GI. The law must be amended to make the following changes:
 - Before a GI Application is made, the producers must be brought on the same page as to the following:
 - Minimum specifications that all producers must adhere to. If not 100%, at least 75% of the producers must agree to the same.
 - The need for inspection systems for quality control – the details of such system, who will control and how it will be controlled
 - The source of finances for administering the GI including enforcement, promotions, market access, and quality management.
- **Pre-registration steps to be part of the application:** The Application must mandatorily contain the details of all the points where consensus is reached with the producers along with supporting documents. Without this, the application should not be proceeded to.
- **Missing provisions on quality control:** To reap the benefits of registration, the GI law needs to be tightened with quality control systems (QCS). These QCS can be through multiple layers of inspection systems. One must be internal to the GI body, another one can be a state body and a third one can be an independent body. The independent body must be entrusted with powers to conduct market checks. The law must be amended to stipulate these and also to have the state and independent inspection bodies to be put in place.
- **Quality control statements to be filed by GI bodies:** Every registered proprietor must be asked to file a periodic statement (preferably annual or every two years) with the GIR or some other designated body of the details of enforcement carried out.

- **Sanctions for quality violation:** If the independent inspection agency and/or the state inspection agency find that there are repeated violations of quality standards, the GI Registrar may, upon application by a third party or suo moto, cancel the GI registration.
- **Authorised user unnecessary:** Being a public register of defined characteristics of registered GIs, the GI Register can serve as a record to verify if a given product is legitimately entitled to be protected as a GI. All those who conform to the specifications listed in the register must be naturally entitled to use the GI without resorting to formal registration of themselves as authorised user. GI law around the world do not meddle with the right of use of legitimate producers by subjecting them to a procedure for registration. Even pragmatically, those products like Basmati which has millions of farmers, it would be a herculean task to get all of them registered as authorized users. Additionally, the list of authorised users keeps evolving because there will be new producers or old producers may drop out. GI Registry will need additional resources to monitor this. Currently, there is no difference to the right of those users who have not registered themselves as authorised users except in the availability of criminal remedies. This can be rectified by an amendment enabling the registered proprietor to seek the criminal remedies under the law. In fact, the GI Act should make it mandatory for the registered proprietor to manage or monitor the list of users instead of making it the responsibility of the GI Registry.
- **Criminal remedies unavailable to GI registrants:** Proprietors of GIs do not currently have any criminal remedies available under the Act. This must be urgently rectified as it is the proprietors who will have to act against such instances than the users.
- **Prohibition of assignment/ transmission etc:** The assignment or transmission of a GI is prohibited by the statute. Unlike trademarks, the proprietors of GIs do not use the GI; they only administer it. This provision can hinder a situation where an existing registered proprietor wants to undergo a transmission or a change or another body wants to take over the administration of the GI.

9. Some practical tips for GI protection

While it is important to register a GI, it is equally, if not more important to keep the protection in existence and enforce the rights against usurpers. The three stages of protection and enforcement of a GI are (i) pre-registration, (ii) registration and (iii) post registration.

Pre-registration

As India is a common law country, rights acquired through use are superior to rights acquired through registration under the Act. Prior to filing the application, some pre-registration steps need to be taken by the applicants while simultaneously protecting the rights acquired through use. Such pre-registration steps can be the following:

- Hold workshops for creating awareness among stake holders on the benefits of GI Protection and the need for consensus on the area, specification etc.;
- Form an association of all the stake holders involved in the production of the goods as per the requirements under Section 11 of the Act. It is important to note here that the association should identify all stake holders and should be representative of the interests of all stake holders involved. Such an association can be registered as a society under the Societies Registration Act, 1860 and can have its own articles and memorandum of association which would list out the objectives of such society ;
- Create a watch service for watching the trademark registers in those countries as well as in India for being notified of any attempts of misappropriation of the said GI as a trademark. It is relevant to state here that under Section 25 of the Act, a GI cannot be registered as a trademark;
- Conduct a due diligence to ensure that the GI satisfies the requirements for registration as a GI under Rule 32(6) of the Rules read with Form GI-1 such as standards and benchmarks of production, the mechanisms to ensure supply chain integrity, map of the region, particulars of the human skill involved, historical records showing proof of origin, details of inspection structure etc.
- Establish an inspection agency which would be doing market and quality inspections to ensure the supply chain integrity of the GI.

Registration

Once the background work listed under 'Pre-registration' has been completed, the applicant body could get down to the registration process. The steps involved in registration are as follows:

- Collect documents vis-à-vis historical evidence, production process, establishments of uniqueness, identification of geographical region;
- Draft the statement of case and other documents to be filed along with the GI application in consultation with the stakeholders;
- File the entire set of documents before the GI Registry, Chennai;
- Responding to the preliminary examination report and attending the Technical Committee hearings held at a venue at the discretion of the GI Registry.

Post-registration

The real task of administering the GI begins after registering the GI. Administration would involve the following steps:

- Checking the markets regularly through the inspection agency to see if there are fake;
- Ensuring correct usage of the GI, e.g., 'Basmati' and not 'basmati';

- Taking legal action against infringers who misuse or abuse the GI;
- Conducting promotional campaigns through print and electronic media and other promotional activities highlighting the GI and the implications of it for a consumer;
- Keeping the stakeholders cohesive by creating a long-term vision for the GI rather than immediate commercial gains;
- Develop ancillary industries like tourism and souvenirs in the production area so that the overall economy of the region improves with the registration of the GI.

Needless to say that all the steps involved in these three stages of pre-registration, registration and post-registration require a substantial amount of money. The applicant must, therefore, ensure to possess the necessary resources to achieve and manage these steps before venturing into protection and formal registration. A ceaseless flow of resources for carrying out all of the aforesaid activities and to keep the protection in existence is an issue that requires particular and careful consideration by the applicant. It would be helpful to look at the existing models in India and abroad for protection of GIs.

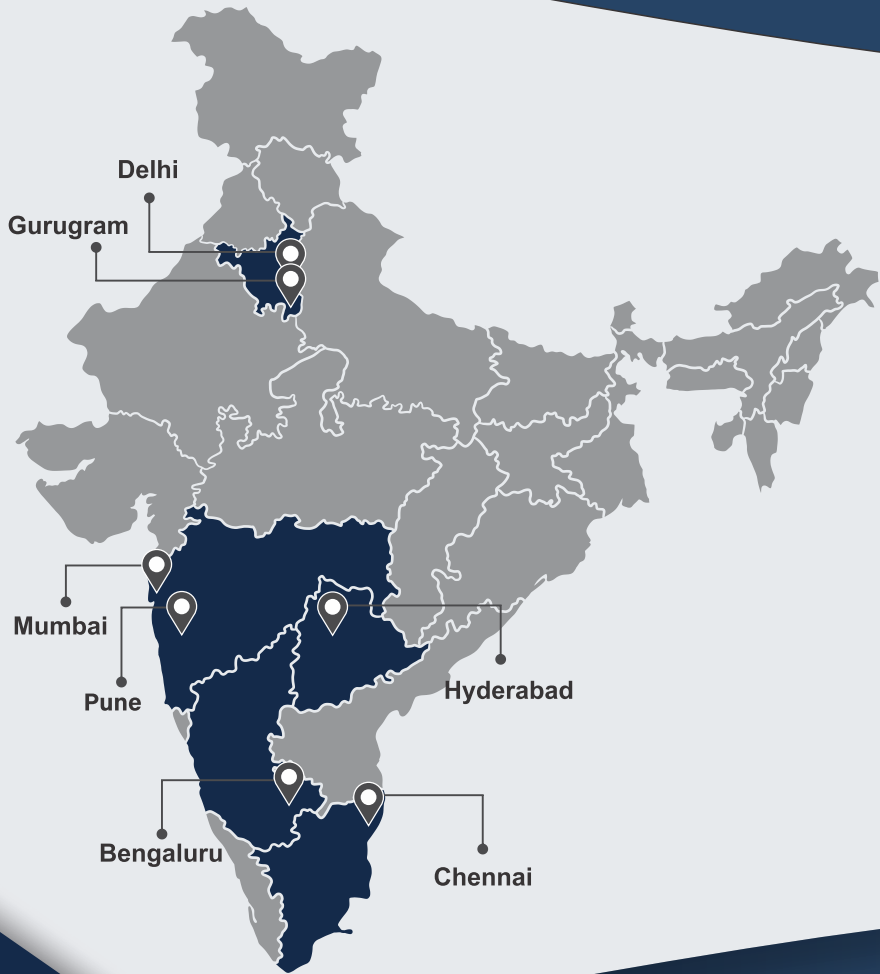
Practical Steps for Geographical Indication Protection

Pre-registration	
Action	Details
Awareness & Consensus	Hold stakeholder workshops to build agreement on area, specs and benefits of GI
Association Formation	Form a representative producers' association with clear objectives
Watch Service	Monitor trademark registers (India & abroad) for misappropriation attempts
Due Diligence	Verify GI 1 criteria: production benchmarks, region map, human skills, supply chain integrity, inspection structures
Inspection Agency Setup	Establish an independent body to conduct market/quality inspections
Registration	
Action	Details
Document Gathering	Compile historical evidence, production processes, uniqueness records and precise region definitions
Draft & File	Prepare statement of case and full Form GI 1 package; file with GI Registry
Examination Engagement	Respond to the Registrar's Report, attend Technical Committee hearings

Post registration

Action	Details
Market Monitoring	Conduct regular inspections to detect fakes or misuse via the inspection agency
Usage Enforcement	Ensure correct GI use (e.g. "Basmati" v "basmati"); pursue legal actions against infringers
Promotion & Education	Run consumer awareness and media campaigns; develop tourism/souvenirs to bolster the region
Stakeholder Cohesion	Maintain a long term vision among producers; plan ancillary industries to sustain GI value

Our Offices



Follow K&S

-  /company/kandspartners/mycompany/
-  /kandspartners
-  /@kspartners7900

To view newsletter, location addresses, profiles of professional colleagues, please visit
info@knspartners.com
www.kandspartners.com