

The Conundrum of Protecting Basmati Rice as a Geographical Indication: A Recount of Legal Proceedings

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Received: 18th March 2025; revised: 2nd January 2026

This paper endeavours to offer a holistic account of the adventurous journey of protecting Basmati Rice as an intellectual property under the Geographical Indications (GI) regime between India and Pakistan. What started out as dyads teaming up and succeeding in protecting Basmati Rice against as western company quickly turned into a bone of contention between both India and Pakistan for various reasons. While prudence had India protecting Basmati Rice in its homeland through a designated government department, it was met with opposition not just from Pakistan but also from internal entities. However, India did succeed in extending a GI protection to Basmati Rice despite all of the oppositions. Stepping forward from its success at home turf, India, filed for protecting Basmati Rice before the European Commission (EC) as well. However, the same was yet again met with an opposition by, not one, but two separate countries transforming what until now was a dyadic issue into a triadic issue. Further, one of the two countries accelerated its endeavour to extend GI protection to Basmati Rice both at the domestic level and also before the EC. Taking into consideration all of these proceedings, this paper attempts to recount years of legal proceedings both past and current.

Keywords: Geographical Indication, Basmati Rice, India, Pakistan, APEDA, EU, European Commission

Geographical Indications (GIs), as outlined in Article 22(1) of Section 3 under Part II of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), refer to signs that signify that a product originates from a specific geographical location, where its quality, reputation, or other attributes are primarily linked to that origin. As a signatory to TRIPS, India is required to comply with Section 3 under Part II of the agreement, leading to the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act), which took effect on 15th September 2003.¹ Since the GI Act's implementation, India has registered nearly 650 GIs.² One notable registration is for Basmati rice, predominantly cultivated in northern India. The registration of GI for Basmati rice has garnered significant attention recently, and this article will explore the topic further in the following sections.

Basmati is a long-grained aromatic rice that is traditionally cultivated in the Indian subcontinent, which includes countries such as India, Pakistan, Sri Lanka, and Nepal.³ Basmati is a seasoned topic discussed in the intellectual property rights (IP or

IPR) circle from the 1990's. The Patent battle between an American corporation and the Government of India is well known.⁴ However, presently the battle is close to home for India that too, with its neighbour, Pakistan, before the European Commission as the battleground.

Basmati – Joint Defence by India and Pakistan

What started out as a joint defence for protection of Basmati from being patented by an American Corporation, RiceTec., led to the initiation of joint discussions between India and Pakistan.⁵ Both the countries, front ended by their respective bodies i.e., All India Rice Exporters Association (AIREA) and Rice Exporters Association of Pakistan (REAP) and active involvement of their respective governments, began discussions right after the conclusion of the patent battle. After years of discussion and around mid-2008, the commerce ministries of both countries were on the verge of formulating a common definition for Basmati.⁶ Agricultural & Processed Food Products Export Development Authority (APEDA) in India was given the task of defining Basmati for international consideration. However, joint discussions were halted for several reasons. One such reason was the non-agreement of both countries on

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the definition for Basmati. The other factors were that Pakistan had granted trademark (TM) registration for the word "Basmati".⁷ This TM application was opposed by India, through APEDA, before the High Court of Sindh.⁸ This was followed by the terror attack on India in 2008 that led to further strain in relationship between both India and Pakistan. All of these developments led India to initiate GI proceedings for Basmati through an application filed by APEDA before the GI Registrar in India.

Basmati – GI India Application No. 145

APEDA applied before the Indian GI registry for a registration to Basmati rice, with an application numbered as Application No. 145 (145), on November 26th 2008 under Class 30 provided for under Fourth Schedule of Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules) read with Rule 21 therein and in accordance with Section 8 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act).⁹

The application initially identified five states—Delhi, Punjab, Haryana, Uttarakhand, and Himachal Pradesh—along with parts of two additional states, Uttar Pradesh and Jammu & Kashmir, as "traditionally Basmati cultivating areas" in India.

Opposition provisions are generally a part of IP laws to ensure a fair and transparent process of registration as it is only just considering that a certain monopoly, for a short or a longer duration through a provision to renew the rights, will be given to the applicant through registration. Similarly, Section 14 of the GI Act provides for a mechanism for interested parties to raise objections against the registration of a GI if they believe that the necessary conditions have not been met. Oppositions are generally termed with a prefix "Top" followed by a serial number' for example "Top 11" or "Top 13" etc. Therefore, under Section 14 of the GI Act, Application 145 had several oppositions filed against it. The list of opponents is provided for below:

- (i) Top 11 – Rakesh Kumar Jain, Haryana
- (ii) Top 13 – Madhya Kshetra Basmati Rice Exporters Association from Badi Tehsil, Madhya Pradesh (MP)
- (iii) Top 14 – M/s. Narmada Cereals Pvt Ltd., MP
- (iv) Top 15 – Daawat Foods Ltd., New Delhi
- (v) Top 16 – M/s. SSA International Ltd., MP
- (vi) Top 17 – Madhya Kshetra Basmati Rice Exporters Association from Udaipura Tehsil, MP

- (vii) Top 18 – Basmati Growers Association, Lahore, Pakistan (BGA)
- (viii) Top 19 – State of MP

Considering that majority of oppositions are from the MP, all oppositions from the State of MP including that of the Government of MP and private parties are clubbed together for the sake of discussion in this paper and the opposition by BGA will be discussed separately.

Basmati – Opposition by Pakistan (Top 18) to Application No. 145

BGA is a collective incorporated as a Guarantee Company under the Pakistan Companies Ordinance, 1984. In 2010 BGA filed their opposition against Application 145. BGA, an incorporated Pakistani entity, submitted that it had locus to file the opposition as provided for under Article 24(9) of TRIPS, wherein it is provided that the states have an obligation to protect GI only if such protection is extended to the same in its country of origin. Accordingly, the Pakistan TM application No. 216742 in Class 30 granted on 20th May 2008 to the term "Basmati Rice" was quoted by BGA and stated that they have an obligation cast upon themselves to protect the said TM from infringement in other countries. However, it is to be noted that the said trademark application was opposed by several Pakistani entities, and an opposition was also filed by The Agricultural & Processed Food Products Export Development Authority (APEDA) before the Pakistan Intellectual Property Office, which was dismissed. APEDA challenged the dismissal of its opposition before the Sindh High Court in Pakistan.

Be that as it may, the main contention of BGA in its opposition to Application 145 was that Basmati was a shared heritage between India and Pakistan. BGA further submitted that the geographical region where Basmati is grown extends to and is shared between both India and Pakistan by virtue of areas covered under the Indo-Gangetic plains. BGA also provided prior documents that contained only certain areas of states with specific statistics to indicate that APEDA was wrong in mentioning the whole of a state as the geographical area where basmati is produced. BGA further stated that registration of GI to basmati in favour of APEDA would cause confusion among consumers in India and Pakistan while purchasing rice. BGA also cited a suit filed by the Trading Corporation of Pakistan Pvt. Ltd., Rice Exporters

Association of Pakistan (REAP), and BGA¹⁰ against the Government of India before the Delhi High Court in 2008¹¹ as a ground for opposition to Application 145. Additionally, BGA also stated that photoperiod sensitivity, a trait of basmati variety of rice, was absent in the variety of basmati rice mentioned in Application 145, i.e., PUSA-1 and PUSA-1121 was photoperiod insensitive, therefore, APEDA's Application 145 disqualified the authentic quality of Basmati rice.

APEDA raised several questions including the violation of statutory limitations by BGA and procedural inaccuracies in its counter to the above-mentioned opposition. APEDA filed their counterstatement under Form GI-2(B) on 16th December 2010 and the same was forwarded to BGA on 6th January 2011. Among other averments, APEDA had firstly questioned the locus standi of BGA to file the opposition. It further stated that REAP was the actual competent body and the actual stakeholder who are concerned when it comes to registration of GI to Basmati because Pakistan's own TM registry had recognised REAP as a stakeholder of Basmati in Pakistan. Further, to demonstrate that APEDA is a competent authority to file Application 145 for Basmati, APEDA cited several instances wherein they had filed oppositions all over the world to protect, preserve, and play as the 'redeemer' of Basmati in favour of India.

BGA filed their objections along with evidence in support of their opposition only on 22nd April 2011 after filing extension applications twice on 3rd March and 14th April 2011 respectively. In their objections filed on 22nd April 2011, BGA provided a brief of the Trademark proceedings before the Pakistan IP office and further denied all averments made by APEDA in its counterstatement. Thereafter, APEDA raised their objection vide letter to GI Registry dated 28th April 2011 as BGA had not submitted any evidence to all their averments thereby qualifying the same for dismissal. However, the evidence submitted by BGA was transmitted to APEDA on 29th April 2011. Further, on 25th May 2011 APEDA filed an interlocutory petition highlighting that the evidence submitted by BGA was time barred along with several factual and procedural inaccuracies such as evidence documents not being signed by competent authorities or properly and adequately notarized therein.

Thereafter, on 28th July 2011, APEDA filed evidence in support of its application. APEDA in its

evidence highlighted that it had not only acknowledged Pakistan as a co-producer of Basmati rice but also stated that the document of such acknowledgement was filed before Pakistan IP registry in the opposition filed by APEDA to TM registration of "Basmati". APEDA also stated that in a Letter Agreement between India, Pakistan and the European Union (EU) relating to supply of Basmati to EU, APEDA had also admitted Pakistan as a co-producer of Basmati Rice. APEDA further stated that BGA is only an association of growers and does not include millers, traders and exporters thereby establishing flawed locus of BGA to file their opposition. It was also stated that even though Basmati rice is a shared heritage between India and Pakistan, India alone has been instrumental throughout history to protect the sanctity of Basmati around the world. Finally, and among other grounds, APEDA also highlighted the fact that it was wrong interpretation that each variety has to be given GI protection and insisted that GI protection is extended to products that establish historical, scientific and popular recognition and also belong to a specific geographical location.

Both APEDA and BGA were heard on 17th December 2012 and were instructed to file their written arguments by 4th January 2013. Meanwhile, the Assistant Registrar of GI passed an order on the interlocutory application filed by APEDA on 31st December 2013. The Order recognized the semblance of GI Act with that of the Trademarks Act, 1999, and thereafter cited two decisions, one of Delhi¹² and other of Madras¹³ High Courts respectively. Both the decisions interpreted provisions of Trademarks Act, 1999, and collectively it was interpreted that Registrar cannot extend timelines prescribed and provided for under special act and non-filing of evidence affidavit with such timelines would render the opposition to be treated as abandoned. Therefore, the Assistant Registrar vide Order dated 31st December 2013 held that due to several procedural inadequacies, the opposition filed by BGA is to be treated as abandoned under Rule 44(2) of the GI Rules.

BGA appealed the above Order dated 31st December 2013 before the Intellectual Property Appellate Board (IPAB), Chennai. The IPAB vide Order dated 5th February 2016 upheld the Order of Assistant Registrar dated 31st December 2013, thereby holding that the opposition filed by BGA to

Application 145 stands abandoned. BGA hasn't further appealed the said Order dated 5th February 2016 to the Madras High Court and therefore the opposition filed by BGA has reached finality by way of the said Order.

Basmati – Madhya Pradesh Enmeshed!

As mentioned earlier, several players from the State of MP including the Government of MP filed their opposition, a total of six (6) oppositions, to Application 145. Their main contention was that State of MP, particularly districts such as Morena, Bhind, Gwalior, Shoopur, Datia, Shivpuri, Guna, Vidisha, Raisen, Sehore, Hoshangabad, Jabalpur, Narshinghpur being geographical areas where Basmati Rice is cultivated should also form part of Application 145. The opponents relied heavily on the data published by the Directorate of Rice Development, Patna, wherein it was stated that *"it is clear that some of the states like Madhya Pradesh, Rajasthan, Bihar are having Basmati cultivation, and the said areas are left uncovered in the GI application No. 145. The documents and evidence filed by the respondent/applicant shows the importance, special characters of Basmati but not the actual area of cultivation. Applicant has therefore failed to satisfy the fundamental requirement of clear, specific, and reasoned demarcation of Basmati-cultivation areas. There is no proper demarcation of cultivation area in the GI application. From the above evidence it was found that the areas mentioned in the oppositions are having Basmati cultivation and need to be included in the GI application."*

Considering the above, the Assistant Registrar vide Order dated 31st December 2013 directed APEDA to amend its application so as to include areas of MP as geographical area of cultivation of Basmati Rice. In so far as this part of the Order dated 31st December 2013 was concerned, APEDA appealed the same before the IPAB.¹⁴ The IPAB held that the Assistant Registrar had overlooked and brushed aside the evidence adduced by APEDA to the above-mentioned 6 oppositions to include parts of State of MP in Application 145. The evidence in question was an affidavit of a plant breeding and genetic expert, Dr. K.V. Prabhu, wherein he had stated *"it is most likely that in the State of Madhya Pradesh which cultivates a large number of short and medium grain aromatic rice varieties, such varieties are mistakenly referred to as 'Basmati' because of their aroma."* Therefore, the IPAB vide Order dated 5th February 2016, set

aside the Order of the Assistant Registrar dated 31st December 2013 in so far as the inclusion of parts of State of MP in Application 145 and directed the GI Registry to reconsider such inclusion only after following Principles of Natural Justice.

The IPAB, through the Order dated 5th February 2016 also directed the GI Registry to grant a GI tag for Basmati Rice to APEDA and issue a certificate thereof recognizing 7 northern States of India as the geographical area where Basmati rice is grown.

Aggrieved by the above Order of IPAB dated 5th February 2016, the State of MP and the Madhya Kshetra Basmati Growers Association (MKBGA) filed two separate Writ Petitions before the Madras High Court on 15th February 2016 and on 11th March 2016 with W.P. No. 5798/2016 and W.P. No. 9564/2016 respectively. The Madras High Court vide Order dated 17th February 2016 granted an interim stay and directed APEDA that until a decision is arrived at in the W.P. No. 5798/2016, APEDA will not take any precipitative action against the Basmati produce from the State of MP.

Thereafter, on 15th March 2018, the Registrar held that the opponents (Top 13 to 17 and 19) only produced documentary evidence on areas of cultivation of a special variety of rice with distinct characteristics but failed to show cultivation of Basmati rice in traditional growing areas. It was further held that there was no proper demarcation of cultivation area in the GI application filed by the opponents. Therefore, the oppositions were rejected. Aggrieved by this Order dated 15th March 2018, the State of MP and MKBGA appealed before the Madras High Court through two separate Writ Petitions i.e., W.P. No. 6857/2018 and W.P. No. 7030/2018. Both of these writ petitions are pending consideration before the Madras High Court as on date.

Citing the interim stay granted by the Madras High Court dated 17th February 2016, the MP Basmati Rice Exporters Association approached the Export Inspection Agency (EIA) & Export Inspection Council of India (EIC) for the grant of Authenticity Certificate to export Basmati Rice from India to EU. For context, the Export Inspection Councils/Export Inspecting Agencies (EIC/EIAs) are appointed by the Government of India to issue Certificates of Authenticity for exports from India to EU countries to be in accordance with EC regulations so as to enable reduced import duty benefits. However, when the said request of the MP Basmati Rice Exporters

Association was rejected by the EIA and EIC, the MP Basmati Rice Exporters Association filed a Writ Petition before the Madhya Pradesh High Court (W.P. No. 10371/2019). The MP High Court vide Order dated 30th May 2019, referring to the interim stay granted by the Madras High Court dated 17th February 2016 and also a letter by the MP Government dated 2nd March 2017, directed the EIA to grant 'provisional Authenticity Certificate' to facilitate export of Basmati rice grown in MP. The same was further reiterated by the MP High Court in W.P. No. 10371/2019 vide Order dated 20th November 2019.

The Madras High Court vide Common Order dated 27th February 2020¹⁵ disposed of W.P. No. 5798/2016 and W.P. No. 9564/2016. The said Common Order held that *“at the same time, we have to observe that the petitioners have an alternative and efficacious remedy available by filing an application to the Registrar of Trademark under Section 27 of the Act seeking to cancel or vary the GI Certificate issued to APEDA. It is a statutory remedy, which the petitioners ought to have availed instead of pursuing with the present writ petitions. Therefore, we are of the view that the contentions raised on behalf of the second respondent/APEDA relating to maintainability of these writ petitions are well founded.”* The parties were directed to rise all pending submissions in the W.P. No. 6857/2018 and W.P. No. 7030/2018.

Aggrieved by the Madras High Court Order dated 27th February 2020, the MKBGA filed a Special Leave Petition before the Supreme Court of India (SC) SLP(C) No. 8529/2020 (XII). The Supreme Court vide Order dated 2nd September 2021¹⁶ set aside the Order of the Madras High Court dated 27th February 2020 and held that, *“However, the High Court in the impugned order observed that the petitioners did not have any grievance relating to the over-inclusion of areas in the other states forming part of the GI application. On such finding, the High Court permitted the petitioners to raise all grounds in the pending writ petitions, i.e., Writ Petition Nos. 6857 of 2018 and 7030 of 2018. The said writ petitions pertain to the validity of the order passed by the Assistant Registrar rejecting the contention of the petitioners for inclusion of 13 districts in the State of Madhya Pradesh for the purposes of the Basmati GI. The petitioners cannot raise the dispute pertaining to over-inclusion of areas in the other states in those pending writ petitions.”* Thereafter, the SC stated that

the interim order dated 17th February 2016 will be operational until further disposal of W.P. No. 5798/2016 and W.P. No. 9564/2016 and remanded the matter back to the Madras High Court. Both these Writ Petition are pending before the Madras High Court as on date.

Given the above, the issue of inclusion of regions of the State of MP in Application 145 remains inconclusive at the moment.

GI Act for Foreign Applicants and Territories Outside India

A quick detour before we persuade our discussion on Basmati Rice to provide an account that Indian GI Act, 1999, provides for registration of products that originate outside the territorial limits of India and also to foreign nationals.

It is to be noted that Section 1(2) of the GI Act states that it applies to the whole of India. The GI Act also provides for procedure of registration, under Section 11(4)¹⁷, for an application wherein the territory to which the GI relates to is not situated in India. It also provides that such applications may be filed before the GI registry within whose territorial limits the address for service is located in India. It is to be noted that such address for service may be the address of the attorney through who the applicant files such an application or the address of the Embassy or Ambassador of such foreign country. The GI Act also provides for special provision for applications from citizens of Convention Countries¹⁸ under Section 84 followed by the provision of reciprocity under Section 85. Rule 24 of the GI Rules 2002 provides that a convention application must include a certificate by the registry of the GI office of the Convention Country to be filed along with the specification.

Therefore, it is clear that the above provisions of the GI Act are two folds, one, that GI registration in India can be applied for and obtained to regions that are outside the territory of India as long as there exists an address of service within India, and two, foreign nationals may apply for GI registration in India provided such applicant has obtained GI registration within their country of origin, and also that India works on the basis of reciprocity to its applications to a foreign GI registry. Currently, several such applications have been filed before the GI registry in India and few of them include the following:

- Application No. 43 for Peruvian Pisco (an alcoholic beverage)

- Application No. 146 for Napa Valley (Wine)
- Application No. 151 for Scotch Whisky (Whisky)
- Application No. 164 for Prosciutto di Parma (Dry cured ham)

Accordingly, it needs to be understood that very similar to any other IP laws, GI also enjoys similar treatment around the world such as national, foreign and international registration. However, the same is subject to respective laws, rules and regulations thereof and the same is to be adhered to when initiating the process of such registration. Similarly, India may also apply to recognize and protect its IP, more specifically GI in this context, around the world; And India did apply for registration and protection of Basmati Rice before the EU.

Basmati – APEDAs Palmy and Jaunt to EU

India, through APEDA, has repeatedly emphasized that Basmati rice represents a shared heritage between India and Pakistan. This was evident in the EU's agreements with both nations,¹⁹ and in APEDA's submissions to the Board of Appeal of the EU Intellectual Property Office (EUIPO) regarding a trademark dispute over the term "Sir Basmati Rice."²⁰ However, due to various factors, including ongoing diplomatic tensions between India and Pakistan, India submitted an application to the European Commission (EC) on 18th July 2018, to register Basmati as a Geographical Indication (GI) under Regulation 1151/2012, based on its existing GI registration.²¹ The motivation behind India seeking GI protection in the European Union (EU) stems from the fact that a significant portion of Indian Basmati rice exports are directed toward Iran, Saudi Arabia, and other Middle Eastern countries.²² Since 2017, exports to the EU have declined due to India's inability to comply with stricter EU pesticide regulations.²³ Recognizing the potential economic and socio-economic benefits of GI registration, India, like many other countries, is attracted by the prospects of obtaining a fair price and boosting its exports in the European market.

It is to be noted at this juncture that one of the formal requirements as per the EU Regulations on GI, Regulation 510/2006²⁴ for agricultural products and food stuffs²⁵ (EU GI Regulation OR EC GI Regulation) for a non-EU country to apply for GI registration is that such an application by a non-EU country must produce proof that the name/product applied for is protected within the country of origin.²⁶ India had rightly enacted its GI Act, 1999 that came

into force in 2003. Therefore, India had a legitimate locus to apply for an EC GI registration.

India's EC GI application stated around 33 varieties as being recognized and notified under the Indian Seeds Act 1966 and that Basmati is grown in about 7 states in the country. It is also stated in the application that Basmati is grown '*in a particular geographical region of the Indian sub-continent. In India, this region is...*' to establish that India is not the only country that grows basmati rice in the region.²⁷ This application was published in the Official Journal of the European Union on 11th September 2020. On 5th October 2020, Pakistan had announced that it would file its objections with the EC against India's EC GI Application.²⁸ As per the EC GI Regulation, once an EC GI application is published any individual or a group with a legitimate interest may file their opposition within six (6) months from the date of such publication;²⁹ therefore, India's EC GI application was open for opposition until 10th December 2020. On 7th December 2020, Pakistan, through Rice Exporters Association of Pakistan (REAP), filed its opposition to India's EC GI application for Basmati Rice.

On 10th December 2020, Nepal, through its Ministry of Agriculture and Livestock Development (MoALD) and the Nepal Agricultural Research Council (NARC), filed an opposition to India's application for Geographical Indication (GI) registration with the European Commission (EC). However, Nepal's opposition lacked supporting evidence, prompting the EU to set a deadline of 25th January 2021, for Nepal to submit the necessary evidence to bolster its claims. Nepal's opposition primarily asserted that Basmati rice had been cultivated in the country since the 1960s and that NARC had maintained 25 distinct variants. Additionally, it claimed that Basmati seeds were available at 46 community levels and 60 rice mills throughout Nepal, with approximately 100,000 hectares of land dedicated to Basmati cultivation in the regions of Doti, Dhanusha, and Kapilvastu. Nepal further highlighted that 'doreli basmati' and 'lalita basmati' were the major varieties grown in the country.³⁰ Three main factors account for Nepal's opposition to India's application:

- (i) Basmati is traditionally grown and consumed in Nepal.
- (ii) Since 1965, Nepal has worked closely with national and international scientists to develop various rice varieties using local basmati landraces; and

(iii) Basmati has social and cultural ties with the Nepalese communities. However, Nepal must provide adequate documented proof to EU to further their stance.

EC had accepted the opposition filed by both Pakistan and Nepal and notified India of the same. EC GI Regulation provides for consultation between related parties in case of an opposition to an EC GI Application and such consultation would last three (3) months. In the present case this consultation was to last until 6th May 2021.³¹ India however, filed for an extension of three (3) months and therefore the consultations were to now last until September 2021.³²

Since then, consultations between parties have been taking place so as to reach a settlement, however as on July 2023, the 4th round of negotiations were said to have started.³³

Basmati – Pakistan embarking on the GI wagon at home and before EU

The above-mentioned EU Regulation on GI for non-EU country also states that the country, or, an entity, that wish to oppose an EC GI application must also provide proof of GI protection in its country of origin. However, Pakistan had no independent GI law in its country until 2020. As though to give onto itself enough legitimate interest³⁴ to explain to the EC its locus standi to oppose India's EC GI application, in March 2020, Pakistan enacted the Geographical Indications (Registration and Protection) Act 2020 (Pak GI Act). The Pak GI Act provided to identify 'public bodies' to be authorized by its federal government for registration of GI to goods and services originating from Pakistan. Additionally, it is also important to note that the first GI registration in Pakistan was given to Basmati on January 21st 2021. This expedited grant of GI to Basmati in Pakistan gave it the final push to object India's claims and contest its case before the EC.

While Pakistan's opposition to India's EC GI application for Basmati was underway, on 24th August 2023, Pakistan filed its own EC GI application for Basmati (Pak EC GI application).³⁵ The Pak EC GI application was published on 30th April 2024.³⁶ It is interesting to note here that India's EC GI application was published after more than two (2) years from the date of its application while the Pak EC GI application was published within a mere 9 months

from the date of its application! Be that as it may, in its EC GI application Pakistan specified twenty-four (24) varieties of Basmati rice having been cultivated in about forty-nine (49) districts spread across five (5) provinces in Pakistan. As mentioned earlier, every EC GI application must be based on the GI registration for the product in the country of origin, similarly, it is said that the Pak GI registration for Basmati Rice specified forty-nine (49) districts as those where Basmati Rice is cultivated. It is once again interesting to note here that, Pakistan through BGA in its opposition to Application 145 filed on 29th September 2010, claimed that fourteen (14) districts in Pakistan cultivated Basmati Rice,³⁷ however, in its EC GI application Pakistan has provided for forty-nine (49) districts!

It is speculated that the reason for inflating of number of districts where Basmati Rice is cultivated in Pakistan is based on a Delhi High Court (DHC) decision in the case of *State of Madhya Pradesh v Union of India*.³⁸ The aforementioned ruling, however, concerns two Office Memoranda (OM) published by the Ministry of Agriculture, Government of India. One of the OMs describes the requirements and traits of the basmati variety of rice and adds that only the basmati variety grown in the Indo-Gangetic region that satisfies the prescribed characteristics can be classified as such; the second OM makes an order to make sure that the certification and foundation seed registration of the basmati variety does not take place outside of the geographic region specified under the GI for basmati. It should be noted that the Honourable DHC dismissed both of these OMs and left open the argument that the production of basmati seeds should only be allowed in the regions of the states that grow rice, namely Punjab, Haryana, Himachal Pradesh, Delhi, Uttarakhand, and portions of western Uttar Pradesh and Jammu and Kashmir. As a result, it is unclear in what context Pakistan hopes to defend its assertion that it has identified forty-nine (49) districts inside Pakistan, inflated from the fourteen (14) as mentioned in its opposition to Application 145, that produce Basmati Rice, especially in light of an unrelated Indian court ruling!

Howbeit, both the EC GI application of India and Pakistan are yet to reach finality and there have been speculations that India is gearing up to file an opposition to the Pak EC GI application (Table 1).

Table 1 — Chronological timeline of key milestones of legal proceedings

DATE	EVENT
20 th July 2002	Pakistan Intellectual Property Organization (Pak-IPO) registers trademark (TM) 'Basmati' with Application No. 179196.
17 th May 2008	Filing of <i>Trading Corporation of Pakistan Pvt. Ltd. v. Govt. of India Ministry of Commerce & Industry</i> [CS(COMM) 538/2018] by Pakistan before the Delhi High Court seeking injunction against Indian exporting Basmati rice under the name 'Super Basmati'.
Mid-2008	India and Pakistan begin talks to define the term 'Basmati' to accord joint protection to Basmati Rice with APEDA assigned to do the needful.
Mid-2008	Talks between India and Pakistan regarding Basmati fails due to diplomatic tensions and also with the discovery of TM registration by Pak-IPO to the term 'Basmati'.
26 th November 2008	GI Application No. 145 is filed by APEDA before Indian GI registry.
2010	Basmati Growers Association, Pakistan, filed an opposition (Top-18) to GI Application No. 145 before Indian GI registry stating the following, among other, grounds: <ul style="list-style-type: none"> • TM granted by Pak-IPO to 'Basmati Rice' with Application No. 216742 on 20th May 2008, • Stating the <i>sub-judice</i> matter <i>Trading Corporation of Pakistan Pvt. Ltd. v. Govt. of India Ministry of Commerce & Industry</i> [CS(COMM) 538/2018]
16 th December 2010	APEDA filed counter-statement to BGA's opposition to GI Application No. 145.
6 th January 2011	APEDA's counter-statement to BGA's opposition to GI Application No. 145 was forwarded to BGA
3 rd March 2011	BGA filed extension application before the GI Registry to file their objections to APEDA's counter-statement to BGA's opposition to GI Application No. 145
14 th April 2011	BGA filed extension application before the GI Registry to file their objections to APEDA's counter-statement to BGA's opposition to GI Application No. 145
22 nd April 2011	BGA filed their objections to APEDA's counter-statement to their opposition to GI Application No. 145 along with evidence in support of their opposition therein.
28 th April 2011	APEDA raised procedural objection to BGA's initial opposition to GI Application No. 145.
29 th April 2011	GI Registry forwarded to APEDA the evidence submitted by BGA in support of their opposition.
25 th May 2011	APEDA file interlocutory petition stating that the evidence filed by BGA in support of their opposition is time-barred, lacked signatures of competent authorities and notarization.
28 th July 2011	APEDA filed evidence in support of GI Application No. 145
Between 2011 to 2012	Rice growers from State of Madhya Pradesh (MP) including Government of MP filed six (6) oppositions to GI Application No. 145
17 th December 2012	APEDA and BGA were heard before the GI Registrar.
Between 2011 to 2012	Six (6) oppositions filed by various players from the State of Madhya Pradesh and APEDA were heard before the GI Registry.
4 th January 2013	Deadline to both APEDA and BGA to file written arguments based on hearing conducted on 17 th December 2012.
31 st December 2013	GI Registry passed following Order: <ul style="list-style-type: none"> • Reject BGA opposition as abandoned, • Amend GI Application No. 145 to include areas of MP
2014	<ul style="list-style-type: none"> • BGA appealed the GI Registry Order dated 31st December 2013 before IPAB Chennai as <i>BGA v. APEDA</i> [OA/7/2014/GI/CH] • APEDA appealed the GI Registry Order dated 31st December 2013 before IPAB Chennai as <i>APEDA v. Daawat Foods</i> and others [OA/1/2014/GI/CH and M.P. Nos. 1 & 2/2014 in OA/1/2014/GI/CH]
5 th February 2016	Intellectual Property Appellate Board ordered as follows: <ul style="list-style-type: none"> • Upheld GI Registry Order dated 31st December 2013 rejecting opposition filed by BGA against GI Application 145, • Remanded back to the GI Registry to reconsider their directions to amend GI Application No. 145 to include areas of MP, • Grant GI registration to APEDA for Basmati in seven (7) northern state of India.
15 th February 2016	APEDA gets GI registration to Basmati Rice.
15 th February 2016	Madhya Kshetra Basmati Growers Association filed Writ, W.P No. 5798/2016, before Madras High Court (MHC) against IPAB Order dated 5 th February 2016.
17 th February 2016	Madras High Court granted interim stay in W.P. No. 5798/2016 directing APEDA to not proceed against Basmati growers in State of MP.
11 th March 2016	Madhya Kshetra Basmati Growers Association (MKBGA) filed Writ, W.P No. 9564/2016, before Madras High Court against IPAB Order dated 5 th February 2016.

(Contd.)

Table 1 — Chronological timeline of key milestones of legal proceedings (*Contd.*)

DATE	EVENT
15 th March 2018	GI Registry rejects all remaining oppositions filed against GI Application No. 145.
19 th and 22 nd March and 2018	Both State of MP and MKBGA filed writ petitions, W.P. No. 6857/2018 and W.P. No. 7030/2018 respectively, against the rejection of their oppositions, <i>vide</i> GI Registry's Order dated 15 th March 2018, before Madras High Court.
18 th July 2018	India filed EU GI application for Basmati rice.
16 th May 2019	In furtherance to the interim stay granted by Madras High Court in W.P. No. 5798/2016 on 15 th February 2016, the MP Basmati Rice Exporters filed writ petition, W.P. No. 10371/2019, before MP High Court. It was contended that they were denied grant of 'authenticity certificate' for export of basmati rice from MP by Export Inspection Agency and Export Inspection Council of India
30 th May and November 2019	MP High Court, in W.P. No. 10371/2019, Orders grant of 'provisional authenticity certificate' for export of basmati rice to Basmati rice exporters of MP.
March 2020	Pakistan enacts Geographical Indications (Registration and Protection) Act 2020
27 th February 2020	Madras High Court disposes of W.P. No. 5798/2016 and W.P. 9564/2016 and directed the Petitioners to make all pending submissions before W.P. No. 6857/2018 and W.P. No. 7030/2018.
7 th July 2020	State of MP appealed to the Madras High Court order dated 27 th February 2020 before the Supreme Court of India as SLP(C) No. 8529/2020.
11 th September 2020	India's EU GI application gets published.
7 th December 2020	Pakistan files opposition to India's EU GI application for Basmati rice.
10 th December 2020	Nepal files opposition to India's EU GI application for Basmati rice.
21 st January 2021	Pakistan grants GI protection to Basmati rice.
2 nd September 2021	Supreme Court of India set aside the Order dated 27 th February 2020 passed by the Madras High Court and revived the interim order dated 17 th February 2016 in W.P. No. 5798/2016 and further also revived W.P. No. 9564/2016 for further consideration.
24 th August 2023	Pakistan filed EU GI application for Basmati rice.
30 th April 2024	Pakistan's EU GI application for Basmati rice gets published.

Conclusion

It appears difficult to demonstrate that "the geographical area," as defined by Article 8 of the Regulation³⁹ is restricted only to India. However, it is clearly shown through the discussion above that India has not ventured to do so either. Article 10 read in conjunction with Articles 5(2) and 7 of the Regulation, which require the applicant to establish an appropriate linkage between the quality, reputation, and other characteristics of the GI - in this case, Basmati - and its geographical origin, is another intriguing point pertinent to the current GI Basmati Rice dispute between India and Pakistan and potential objections to it. An application under Article 49 of the Regulation is one choice for nations looking for protection for a product that spans out to several EU member states. This makes it possible for several countries, both EU and non-EU, to jointly request protection for such shared products.⁴⁰ Examples of such cross-border GI protection to products include wine between Belgium and Dutch, ham between Croatia and Slovenia, honey between Poland and Lithuania and Spirit drink between Belgium, Dutch, France, Germany and such other GIs. However, it is challenging to file a joint application in this situation since diplomatic connections between these nations are greater than those between India and Pakistan.

However, it raises an important question about the performance of non-EU Geographical Indication (GI) products in the EU market. As of September 2020, only 35 GIs from non-EU countries were registered, compared to 3,349 EU GIs, according to the e-Ambrosia database (the EU's GI Register). This disparity is largely due to the challenges faced by Asian GIs in the EU registration process, which often involves navigating existing trademark claims. Success in this regard is more achievable when producer organizations actively defend their interests, as evidenced by APEDA's involvement in trademark disputes over 'Sir Basmati Rice' in the EU. Although, one has to also note that the grant of India's EC GI application may mean sole GI status for India to Basmati Rice, which is an impossibility, considering the opposition filed by both Pakistan and Nepal. At the same time, it is also a possibility that EU may decide to grant GI protection for 'Indian Basmati', provided they find Pakistan's claim not credible. Although far-fetched, there is also the possibility that EU may even grant Protected Designation of Origin (PDO) status for either India or Pakistan and Protected Geographical Indications (PGI) status for either India or Pakistan so as to conclude the present issue of Basmati Rice between the two countries. However, the ultimate outcome will only be revealed

with time, as we must wait and observe the proceedings unfold.

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