

Transnational Geographical Indications in India: Issues and Concerns of ‘PISCO’

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Transnational GIs are those GIs ‘which originates from an area that covers regions, territory or locality of two or more countries where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin extending over those countries.’ In certain cases of transnational GIs, conflicts arise among the countries where it is produced on who should be the actual GI right holder. Such a kind of contentious GI is Pisco which is claimed by two neighbouring South American countries, Peru and Chile. The Pisco conflict reached the Indian shores and has been a major disputed area. The article focuses on the issues and concerns of transnational GIs giving special focus on Pisco and suggests ways of resolving such conflicts.

Keywords: Geographical Indications, GI, Transnational GI, Homonymous GI, Pisco, Basmati GI

Certain products have a particular quality, characteristics or a reputation as it originates from a particular territory. These special features, that is, quality, characteristics or reputation is due to the climatic factor or the expertise of the people of the area. The link between the product and its ‘place of origin’ which results in the uniqueness of the product is what is protected under the Geographical Indications (GI) Law. If we take the instance of Assam, one of the registered GIs from the state is Assam Orthodox Tea. This tea has a special flavour owing to the climatic conditions of the state. Since the Orthodox Tea comes from Assam, consumers are willing to pay a premium price for the product as they attach a particular quality to it owing to its place of origin. There can be many varieties of Orthodox Tea that comes from other tea growing regions of the world, but the GI Law assures that while marketing or selling the Orthodox tea of other regions, the producers or sellers won’t be able to use the GI tag of Assam Orthodox Tea. GI hence serves dual purpose: first, it protects consumers from deception and confusion and secondly, it assures that the producers of the GI product that other sellers who are not from their region are not able to take a free ride on their reputation.

Definition of Transnational GIs

Transnational GIs are those GIs ‘which originates from an area that covers territory, regions or locality of two or more countries where a particular quality, characteristic or reputation is essentially attributable

to its geographical origin which extends over those countries.’ It originates from an area that covers regions, territory or locality of two or more countries where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin extending over those countries. Some famous examples of Transnational GIs are Basmati Rice which is grown in the neighbouring countries of India and Pakistan and Jamdani Sarees which are produced both in India and Bangladesh.

In case of certain transnational GIs, conflicts arise amongst the nations where the GI product is produced. Usually, the conflicts centres around the origin of the product and the legitimate user of the GI. In case of Pisco also, it comes within the category of transnational GIs as Pisco is claimed to be produced by two neighbouring South American countries, namely, Peru and Chile.

Scope of Study

The article focuses on the conflicts that have arisen in India on the registration of Pisco. Pisco as a GI is claimed by two countries of South America, Peru and Chile. The Peru-Chile conflict on Pisco reached India when Peru filed for GI registration and there was opposition to the filing of ‘Pisco’ by Chile. The GI Registry tried to resolve the conflict by registering the word ‘Peruvian Pisco’ instead of ‘Pisco’ leaving room for Chile later to file for ‘Chilean Pisco’. The matter got complicated with Peru filing an appeal to IPAB aggrieved by the decision of GI Registry. The matter got further complicated when IPAB agreeing with

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Peru allowed the registration of the GI 'Pisco' without any prefix or suffix. The matter got worse with 'Chilean Pisco' registered as GI in the 2022.¹

Objectives of Study

The objective of the study is to find a solution to the conflicts that may arise in the case of Transnational GIs. The matter gets worse when the diplomatic relation between the nations involved are not smooth. The focus of the paper is to provide solutions to avoid such conflicts and suggest ways to balance out the interests of parties involved.

Issues and Concerns of Pisco in India

History of the Conflict

Both Peru and Chile were Spanish colonies. As Spanish colonies, both countries came within the same administrative jurisdiction. At that time, wine production started in these colonies. One of the drinks that was produced came to be called Pisco. Even after independence, Chile and Peru continued with the production of wine.²

According to Peru, Pisco production began in their territory. It stated that in the year 1574, the Port of Pisco was mentioned in the official map of Peru. This port eventually became a city and later became a province in 1900. They alleged that somewhere in 1936, a northern town in Chile was renamed from 'La Union' to 'PiscoElqui'. As per the allegation of Peru, it was an artificial move by the government of Chile to give a legitimate claim for Pisco.

Chile on the other hand claimed that the historical evidence of Pisco being produced in Chile dates back to 1733 (during the colonisation). From then on, Pisco was the tag used for brandy (which was grape based) and was produced in the Valley of Elqui and its surroundings areas of Northern Chile.

Coming to the conflict between Peru and Chile in modern times, it seems that the Chile government wants an agreement with Peru so that both nations can use the GI tag.³ However, Peru has been adamant that the GI belongs only to Peru.

Pisco Conflict in India

The first ever foreign GI application that was filed in India was for Pisco by Peru through its Embassy in India. It was filed under class 33 'Alcoholic Beverages'. The application was filed for the GI tag 'Pisco'⁴ but the final registration that was provided by the Indian GI Registry was for 'Peruvian Pisco' due to an opposition given by Chile.⁵

Against the decision of the GI Registry, an appeal was filed in IPAB by Peru. The IPAB in a detailed discussion mentioned that Pisco originated from Peru. It also mentioned that there are 22 countries where Pisco has been given sole registration to Peru. In certain countries⁶ Peru has been given registration of Pisco with a condition that even Chile can also register Pisco as a result of to the Free Trade Agreements (FTA) signed by these countries with Chile. IPAB observed that 'the aforementioned countries gave recognition to Chile only due to the FTAs and for no other reason. FTAs according to IPAB were political arrangements having no account of the historical, geographical or cultural of Peru. Further, the IPAB agreed with Peru's claim that Chile has renamed a region called 'La Union' to 'PiscoElqui' with mala fide intention and solely to establish a link between the geography and Chilean liquor.' IPAB also 'disagreed with the argument that due to Chile's occupation of Peru, there was an extension of Pisco region geographically from Peru to Chile.' IPAB finally stated that Pisco can be registered as a GI from Peru. The liquor from Peru cannot be compared with that of Chile and the question of confusion or deception does not arise. It was also mentioned that the GI Registry was not correct in giving a decision to register 'Peruvian Pisco' instead of 'Pisco' without citing any reason. Subsequent to this decision, the GI Registry gave Peru registration to the tag 'Pisco'.

Chilean Pisco in India

Asociacion De Productores De PISCO A.G on behalf of the state of Chile applied for the GI Registration in India for 'Chilean Pisco' in June, 2020 under class 33 (alcoholic beverages). Asociacion De Productores De PISCO A.G is a Chilean association representing the interest of many Pisco manufacturing companies in Chile. As to the proof of origin, the GI application stated that 'Chilean Pisco was first documented in 1733 in an inventory of assets the Hacienda La Torre in the town of PiscoElqui, located next to the Claro River, in the Andes mountain range.⁷ In the inventory of assets of the Hacienda La Torre, accredited by the notary public of the Spanish Empire, all the possessions that were found at that moment inside this property were recorded which includes the equipment and the winemaking facilities. There were vineyards, cellars to make the wine, and copper stills carved to distil the brandy. Among other elements, "three Pisco Jars" were registered.' The original

document is archived in the National Archive of the city of Santiago, Chile, and corresponds to the Judicial Fund of La Serena. The inventory of Hacienda La Torre (1733) represents the first record of the use of the word "Pisco" to refer to grape brandy, documented in America. After this date, the custom of using this word to denominate the grape distillate was propagated, first in the Elqui Valley (Chile) and then in other parts. Thereafter "Pisco" found mention in subsequent inventories on 5th December, 1748 and 14th April, 1758.⁸

The GI application of Chilean Pisco was advertised in the GI Journal in November, 2022 and since there was no opposition to it within the stipulated time, it was deemed registered as a GI from the date of application, that is 03 June 2020 for a period of 10 years, that is, till 02 June 2030.

Pisco Conflict in other Jurisdictions and Lessons for India

USA

USA recognises Pisco from both Peru and Chile. Under the USA and Peru Trade Promotion Agreement, it recognises 'Pisco Peru' as a product unique to Peru.⁹ Hence, USA does not permit sale of any product as 'Pisco Peru' until and unless it originates from Peru and as per the rules and regulations governing Pisco in Peru.

Also, United States has a Free Trade Agreement with Chile. As per that Agreement, USA recognises 'Pisco Chileno' as a product unique to Chile. Hence, USA does not allow the sale of a product as 'Pisco Chileno' until it originates from Peru and as per the rules and regulations governing Pisco in Peru.¹⁰

Pisco in European Union

The European Union found itself in a conflicting situation when they realised that in 2002 Chile and European Union Association Agreement, pisco was listed as one of the PDO for spirit drinks originating from Chile. Meanwhile, in 2009, Peru applied and got registration for the GI tag Pisco. In order to find a solution to the problem, the Commission allowed coexistence of both the products. It stated that, ".....'Pisco' is a protected designation for spirit drinks originating in Chile. Therefore, it should be clarified that the protection of the geographical indication 'Pisco' for products originating in Peru does not hinder the use of such denomination for products originating in Chile."¹¹

Effect of IPAB decision and GI Registry of Chilean Pisco: Lessons Learnt

India is in the same conflicting position as was European Union as previously stated. On one hand, IPAB has stated Pisco's registration should actually go to Peru and overruled the decision of Registrar of GI which registered 'Peruvian Pisco' instead of 'Pisco'. On the other hand, recently, Chilean Pisco has been granted registration to Chile by the GI Registry.

IPAB while delivering the decision should have noted the practice around the world while dealing with this 'Pisco fight between Peru and Chile.' Most regimes in the world including European Union (which advocates for a strict/additional protection to spirits and wines)¹² have recognised rights over Pisco to both Chile and Peru. In this backdrop, the IPAB should have taken an approach which could have lessened the complexity of the situation.

Pisco in India: Concerns and Future Steps

Purpose of GI Registration: Avoid Unfair Competition or Prevent Consumer Confusion

The purpose of the GI registration is to prevent consumer confusion by facilitating the identification of a genuine product from a particular locality. It also ensures that the GI tag prevents the 'free ride on the goodwill and the reputation of the GI product.' In this backdrop, it is important to understand if GI registration is given to Pisco both from Peru and Chile, will it create consumer confusion and if either one will take a free ride on the goodwill or the reputation of the other.

Homonymous GI and Pisco

As per the definition given in WIPO, "homonymous GIs are pronounced or spelled similarly but they identify the products that originates in different places and usually in different countries. They can coexist; however, the coexistence has certain conditions such as that it should be used with certain extra information on the origin of the product so that consumers may not be confused. A GI could be refused registration on the ground that homonymous GIs exist and the use of it could be considered misleading to the consumers so far as the origin of the product is concerned."¹³

From the position taken by USA and European Union as discussed above, the treatment that is given to Pisco is that of 'Homonymous GIs.' EU clearly stated that registration of Pisco by Peru does not

hinder the use of such denomination for products originating in Chile.¹⁴ USA protects both 'Pisco Peru' and 'Chilean Pisco'.¹⁵ So, it indicates that Pisco is a name or tag that can be used both by Peru and Chile and the usage by one should not hinder the usage of the name or tag by the other. There should be a clear indication if Pisco originated from Chile or Peru.

Difference between Generic Goods and Homonymous GIs

Explanation to section 9 of the 'Geographical Indication of Good (Registration and Protection) Act, 1999' states that generic goods are those which has become the 'common name of a good and can be used as an indication of a particular nature, type or kind of goods.' Factors to determine the generic nature of the good includes the situation in the place where the name originated as well as the area where the good is consumed. A good example of generic good in India is 'Rasgulla/ Rasagola/ Rosogulla.' Two Indian states, West Bengal and Odisha were on loggerheads on who is the true GI owner of this unique Indian sweet. When West Bengal got GI Registration of 'Banglar Rasogolla', it was challenged by Odisha that 'Rasogolla' originated as an offering to Lord Jaganath in Jaganath Temple located in Puri. Hence, Odisha is the true owner of 'Rasogolla.' Subsequently, Odisha filed a GI registration of 'Odisha Rasagola' and was granted registration. It is to be noted that the GI Registry did not allow the registration of the terms 'Rasogolla or Rasagola.' What it did was register the GIs with two specific prefixes, incase of West Bengal 'Banglar' Rasogolla and in case of Odisha 'Odisha Rasagola'. It thus means that GI Registry has been careful to see that 'Rasogolla/ Rasagola' is a 'generic word' and can be used by anybodywhile pursuing their business or trade. Thus, what the GI Registry implied from its decision is that the word 'Rasogolla/ Rasagola/ Rasgulla' or any other heteronyms has become generic and giving registration to these names and creating a monopoly would be injustice to all others who have been using these names in their course of trade and business for a long term.¹⁶

Use in 'Good Faith'

Article 22 provides uniform protection of all GI goods under the TRIPS Agreement. However, Article 23 of the TRIPS Agreement has been controversial due to its discriminatory additional protection to wines and spirits. Article 23 'prevents use of a GI for wines and spirits not originating in the place indicated

by the geographical indication in question even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like. It means that 'Champagne like wine' from USA will not be allowed to use the word 'Champagne' in whatever form but 'Basmati like rice' from USA will be allowed as the word 'like' used in the fashion denotes that it is not 'Basmati' but a rice which is similar to 'Basmati.'

Some countries raised voice against this discrimination and wanted the additional protection criteria be extended to other goods as well. However, many countries opposed this move. Countries which opposed it included the New World (USA, Australia, New Zealand) and interestingly even Chile opposed it.¹⁷ The argument was that article 22's protection was sufficient and the additional protection would create problems in 'existing legitimate marketing practices.' These countries opposed the accusation of 'usurping' and argued that when migrants move one place to the other, they carry the knowledge of traditional method of making a product with them and when they settle down, they start making those products in the traditional method in 'good faith.'

So, as per the historical facts, since Chile has been making and marketing their alcohol as Pisco for long and many people today bank on it for survival, can it be deemed to be usage in good faith?

Future Steps

It has to be kept in mind that in future, Peru could file an objection to the granting of 'Chilean Pisco' in India especially since the IPAB has already given a decision in their favour for registering the word 'Pisco' without any prefix or suffix. Incase such an objection comes from Peru, what will be India's stand? Will India allow only 'Pisco from Peru' to use the GI tag or will grant simultaneous registration to both the countries?

Many scholars believe that GI tag should be granted to both the countries as both countries have contributed to the development of the product.¹⁸ Many regimes including USA and European Union as discussed earlier have granted simultaneous registration to both the countries. Irrespective of wherever Pisco originated, both countries have ample evidences to show that the practice of manufacturing Pisco in their respective lands have been going on for many centuries. The process of making Pisco in both

these countries even predates the existence of any law on GI. This should be enough to grant registration to both countries. The decision of granting registration of 'Peruvian Pisco' was probably more logical than IPAB rejecting it. IPAB's decision has brought back the controversy and the registration of 'Chilean Pisco' by GI Registry has ignited the controversy further.

Conclusion

In such transnational GI matters, the solution ideally is mutual co-operation of both the parties. However, many a times the solution is difficult due to the strained diplomatic relation between two countries. Although Chile has come forward for mutual co-operation but Peru has always resisted due to their political past. Similarly, another case of interest relating to transnational GI is the famous 'Basmati Rice,' which, has also resulted in conflicts between India and Pakistan. In 2018, Pakistan challenged India's application file in European Union for exclusive rights over 'Basmati' citing that India is not the only producer and exporter of 'Basmati.'¹⁹ Recently in Australia also, the Australian government rejected India's application for exclusive rights on 'Basmati' citing that the rice is not grown only in India.²⁰

The same product may be produced in two different places of two different countries having geographical proximity. The geographical proximity results in homogenous environmental as well as cultural practises. 'Rasagulla,' a sought after sweet in India is claimed as GI by two different states/province of India, that is, West Bengal and Odisha. If we look at historically the erstwhile state of Bengal during the colonial rule included Odisha. Hence, in light of such historical facts, it is very difficult to trace the origin of the product. Although 'Rasagulla' is not a transnational GI matter, however, the conflict sheds light on the major disputes surrounding a GI product claimed by two different places. In such situations, it is prudent to recognise the rights of both the places. Another thing that should be emphasised is the duration of production of the product in a particular place. If for centuries, a product has been produced in a place 'X' and then a GI is granted subsequently to another place 'Y' as evidence was found that the product originated in 'Y,' it might result in huge set back to the people and the businesses of place 'X' as for the last many centuries they have been banking on the product for their survival and economy.

Hence, keeping in mind the interest of both parties, India in the case of conflict of 'Pisco' between Peru and Chile should recognise the right of both countries and should allow simultaneous GI registration.

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