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# Basmati Rice and Geographical Indications: Options for Pakistan

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## **Executive Summary**

### **Issue**

Pakistani exports can considerably be hampered if Geographical Indication ('GI') of the Basmati is accorded to India in the European market. What are potential options for Pakistan?

### **Recommendations**

- For compliance with international obligations such as the EU, a national catalogue of GI must be established.
- Pakistan must also actively fight legal battles in any country India files GI application even if Pakistan has less market share as that country can work as a potential market for Pakistani Basmati in case of any shortage of Indian rice.
- In future, the role of the South Asian Association for Regional Cooperation (SAARC) shall be vital for resolving disputes among GIs.
- Any homonymous consideration of GI might be unsuccessful because it shall mislead the public. Therefore, Pakistan needs to highlight in the public and private diplomacy in the EU that India and Pakistan were involved in the joint application of GI and shared cooperation in the past.
- Pakistan needs to actively engage other countries such as Nepal and Bangladesh based on the mutual interest of restricting India from claiming GI for those products which are generally considered the common heritage of the Indian Subcontinent.

## **Overview**

In the last ten years, India and Pakistan have been in a tug of war for the Geographical Indication ('GI') of Basmati rice. GI is very similar to trademarks as it relates to the quality and characteristics that can be only attributable to a specific region. World Intellectual Property Organization ('WIPO') notes: "To function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics, or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production."<sup>1</sup> Protected Geographical Indication (PGI) further requires that "at least one stage of production, processing, or preparation of the item covered by the GI takes place in the designated region."<sup>2</sup> India claims that qualities that distinguish Basmati from other species of rice are due to the land of origin of Basmati which is in India. However, Pakistan contends that Basmati does not originate only from India and is a product which is common to both India and Pakistan. In 2016, the Agricultural and Processed Food Products Export Development Authority (APEDA) of India filed for the domestic GI status of Basmati. In 2018, India filed for PGI status before the EU's Council on Quality Schemes for Agricultural and Foodstuffs. However, in the application, India did not claim that it is the only country to produce Basmati. Under Regulation (EU) No. 1151/2012 of the European Parliament, Pakistan filed an opposition to the GI claim citing reasons that both countries produce Basmati.<sup>3</sup>

## **Analysis**

### **I) Impact of the EU Decision and GI**

If a product is protected under GI, it allows the country which has GI to 'use the indication to prevent its use by a third party whose product does not conform to the applicable standards.'<sup>4</sup> For instance, the producers of *Darjeeling Tea* can exclude the use of the tea which does not originate exactly from their tea gardens. However, PGI does allow someone else to make the product with the same standard for that indication.<sup>5</sup> PGI does not require that every part of the process of processing and

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<sup>1</sup> Adam Phillips, 'India and Pakistan Dispute Right to Claim Basmati Rice in EU', *AEONLAW* July 14<sup>th</sup>, 2021.

<sup>2</sup> *Ibid.*

<sup>3</sup> Siddhant Biswakarma, 'Who Owns Basmati Rice? India and Pakistan Battle for GI Rights' *IPWatchDoG* July 16<sup>th</sup>, 2021

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

production occur in a particular region. Such a requirement is mostly for the title of the 'Protected Designation of Origin' <sup>6</sup> When a PGI is given to a particular product, the prices of that product soar especially as observed with PGI status. Pakistan exports heavily to the European Union ('EU') due to zero tariffs on our products such as Basmati. Pakistan's exports have doubled in the last three years from 120,000 metric tons to 300,000 metric tons. In comparison, Indian exports are shrinking due to the strict standards of the European Union on the use of pesticides. If India is provided the GI for Basmati, there is a chance that Pakistan can incur heavy losses in terms of exports to the EU as the brand of Basmati shall increase the market share of Indian Basmati in the EU. <sup>7</sup> The imposition of GI on Basmati from the EU shall also provide precedence for other markets that are increasingly following the trends in the EU such as the United Kingdom.<sup>8</sup>

## **II Stance of Third Parties**

The stance of third parties on Indian machination to occupy GI can help Pakistan to build a case internationally for protecting GI of Basmati. Recently, Australia denied the GI tag for Indian Basmati. Some commentators claim it is due to the intense lobbying efforts of Pakistan.<sup>9</sup> However, Pakistan did not even contest the case in Australia and the rejection of the Indian application was Australia's own decision with the Australian decision citing that the Indian case did not establish that Basmati rice is only grown in India. <sup>10</sup>

The issue of India solely owning the GI of Basmati is not an issue exclusive to Pakistan. Nepal also has applied with the EU opposing India's move to solely occupy the GI of Basmati. In the application of Nepal, it is very clear that the Basmati has a unique heritage with Nepal. Since antiquity, Nepalese farmers have used rice for festivals, medicine, and home use. In Nepalese culture especially in the *Terai* belt, Basmati has a special place and even the term Basmati is a popular terminology in Nepal with the word meaning possessing aromatic quality. Many women were named Basmati in Nepalese culture and the folklore and songs of Nepal referred to Basmati.

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<sup>6</sup> SIDDHANT BISWAKARMA, 'Who Owns Basmati Rice? India and Pakistan Battle for GI Rights' *IPWatchDoG* July 16<sup>th</sup>, 2021

<sup>7</sup> Carole Dieterich, 'The Basmati rice war between India and Pakistan', *LemondFrance* February 26, 2024

<sup>8</sup> 'PGI Status' Meat Promotion Wales < <https://meatpromotion.wales/en/about/what-we-do/pgi-certification/pgi-status>> accessed 1<sup>st</sup> May 2024

<sup>9</sup> Dipanjan Roy Chaudhury, 'Australia's decision to deny GI tag to Basmati rice could be the result of Pakistani lobbying' *Economic Times*, April 21, 2023

<sup>10</sup> Ghulam Abbas, 'Australia rejects India's request seeking GI tag for basmati rice' *Profit* March 10, 2023

It is registered by Nepalese authorities as rice attributable to Nepal and has sufficient scientific evidence as proof.<sup>11</sup>

Concerning other products, Bangladesh also has protested the Indian decision to register Jamdani, the Falzi mango, and *Nakshikanta* as GI. This forced Bangladesh to adopt GI legislation in 2013.<sup>12</sup>

### **III Problems with Pakistani case in the EU**

Considerable loopholes are present in Pakistan's case in the EU. Pakistan has extended the GI tag from 14 to 48 districts in Pakistan which shall be difficult to prove in the EU. Similarly, Pakistan has also mentioned that Khyber Pakhtunkhwa is a growing region although that region is a "non-contiguous" area. Moreover, even Azad Kashmir is mentioned as a growing region. Areas such as Bahawalpur, Rahimyar Khan which are close to the Thar desert are mentioned although this shall expose the 'lack of environmental determinism in the GI application'.

In 1998, the UK government initiated DNA testing for the purity of Basmati rice. It was discovered that the Tarori and Karnaal were a common heritage of both India and Pakistan. This is useful evidence for Pakistan. However, Pakistan lacks further scientific knowledge and language which is essential for building an extremely robust case adding to the previous UK examination.

### **IV Shared Corporation in Past**

India and Pakistan worked together to file a petition when the US Patent Office issued patents in 1997 for the three new strains of rice. The US Rice Federation argued that Basmati is a generic term referred to as aromatic rice. After an intense fight, the US Patent Office barred the agricultural company from using the term 'basmati' and allowed the term as 'Texmati'. It was because of a campaign targeted to preserve Basmati as an origin of the Subcontinent as well as the encyclopaedic evidence presented under the auspices of the Indian Agricultural and Processed Food Products Export Development Authority.<sup>13</sup> Moreover, Pakistan has mostly supported India concerning the GI tag for Basmati and the endeavours to protect the GI of

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<sup>11</sup> Pratyush Nath Upreti, 'The Battle for Geographical Indication Protection of Basmati Rice: A View from Nepal' IIC (2023) 54:710–731

<sup>12</sup> Ibid

<sup>13</sup> Amir Muhammad, 'Pakistan: The Consequences of a Change in the EC Rice Regime', WTO Case Study 35

Basmati were mostly collaboration. Pakistan supported India's recognition of PUSA 1 as Basmati which was 60% of Indian exports. <sup>14</sup>

## **V International Law and GI**

The Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') defines GI as 'indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.'<sup>15</sup> In part II, section 3, article 22.1 of the TRIPS Agreement states that "Geographical indications are, for this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".<sup>16</sup>

This definition requires that geographical factors such as climate and soil or human factors such as ancient manufacturing techniques allow that particular product to be registered. <sup>17</sup> The high focus on the sanctity of the origin of the goods allow TRIPS to prohibit the misleading use of GIs. There are some inherent issues with the GI as it does allow free riding provided there is no misleading. A producer can use the GI for a product as long as the true origin of a product is mentioned. In a way, a producer can use the geographical indication Geneva on a clock face and can use the true origin on the back of the clock. The misleading test is also quite different in different jurisdictions and is subject to interpretation with wide leeway to the domestic courts.<sup>18</sup>

## **VI Homonymous Application**

Homonymous protection of GIs refers to the "geographical names which are spelt and pronounced alike, but which designate the geographical origin of products stemming from different countries." This protection allows the GI to co-exist in two countries especially if the consumers are not misled. EU regulations also allow the

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<sup>14</sup> Sayantani Biswas, 'Lok Sabha Elections 2024: BRS chief K Chandrashekhara Rao banned from campaigning for 48 hours over poll code violation' *Mint* May 1, 2024

<sup>15</sup> *Ibid* (n.11)

<sup>16</sup> Surbhi Jain, 'Effects of the Extension of Geographical Indications: A South Asian Perspective' 16:2 Asia-Pacific Development Journal December 2009

<sup>17</sup> Surbhi Jain, 'Effects of the Extension of Geographical Indications: A South Asian Perspective' 16:2 Asia-Pacific Development Journal December 2009

<sup>18</sup> *Ibid*

homonymous protection for GIs even for agricultural products. An exception exists to this homonymous protection that there is no misleading of consumers that products come from another territory.<sup>19</sup> Therefore, for any homonymous protection, it is required that the scent and tastes are different so that there is no misleading to consumers. It is unlikely that the EU shall allow homonymous applications considering it shall be quite difficult to prove different scents and tastes between Pakistani Basmati and Indian Basmati.

## **VII Recommendations**

- For compliance with international obligations such as the EU, a national catalogue of GI must be established. This database needs to be complemented with specific data on the socio-economic and cultural values attached to those GIs as well as the entrepreneurs it supports in the country. Moreover, scientific data needs to be present alongside that catalogue for fighting any international legal disputes.<sup>20</sup> Pakistan must also actively fight legal battles in any country India files GI application even if Pakistan has less market share as that country can work as potential market for Pakistani Basmati in case of any shortage of Indian rice.
- Pakistan needs to highlight in the public and private diplomacy in the EU that India and Pakistan were involved in the joint application of GI and shared cooperation in the past. This was an indication that India did not consider Basmati as solely the GI of India. Although the Indian application did not claim the exclusive GI of Basmati, the incidental impact of granting GI to India shall be that Pakistan will not be able to claim title of Basmati for the rice which shall be detrimental to the exports.<sup>21</sup> Any homonymous application of GI might be unsuccessful because it shall mislead the public. For Pakistan, joint application shall be the most plausible route.
- In future, the role of the South Asian Association for Regional Cooperation (SAARC) shall be vital for resolving disputes among GIs. The annexure to the South Asian Free Trade Agreement (SAFTA) which provides the members

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<sup>19</sup> 'Geographical Indications and Designations of Origin', European Union, Council Regulation (EC) No 510/2006 of 20 March 2006 < <https://eur-lex.europa.eu/EN/legal-content/summary/geographical-indications-and-designations-of-origin.html>>

<sup>20</sup> Surbhi Jain, 'Effects of the Extension of Geographical Indications: A South Asian Perspective' 16:2 Asia-Pacific Development Journal December 2009

<sup>21</sup> Interview with Ms. Samar Masood, Associate Partner ABS and Co

technical support with Intellectual Property Rights, and this inevitably requires cooperation about GIs. Past cooperations such as SAARC Energy Centre in 2005; the SAARC Food Bank in 2007 and the SAARC Seed Bank in 2011 can serve as a model for discussion about GI.<sup>22</sup>

- Pakistan needs to actively engage other countries such as Nepal and Bangladesh based on the mutual interest of restricting India from claiming GI for those products which are generally considered the common heritage of the Indian Sub-continent.

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<sup>22</sup> Ibid (n.11)



## Recommendations and Action Matrix

### Legal Options for Government

Recommendations	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Capacity Building Mechanisms	An establishment of the national catalogue of GI; data of scientific and cultural evidence centre behind every GI and legal advisory capacity with every Embassy of Pakistan in which there is any litigation on GI.	A specific cell in different State policy institutes which deal with agricultural and cultural products which liaison with different ministries.	<ol style="list-style-type: none"> <li>1. Federal Ministry of Commerce</li> <li>2. Federal and Provincial Ministries of Law</li> <li>3. Ministry of National Food Security and Research</li> </ol>	<p style="text-align: center;">3 Months for consultation and research.</p> <p style="text-align: center;">6 Months for procurement and hiring</p>
Joint Application	Pakistan needs to highlight in the public and private diplomacy in the EU that India and Pakistan were involved in the joint application of GI and shared cooperation in the past. This was an indication that India did not consider Basmati as solely the GI of India	Pakistan shall have to file a case with India for a joint application. For that, EU pressure on India shall be essential.	<ol style="list-style-type: none"> <li>1. Federal Ministry of Commerce</li> <li>2. Federal and Provincial Ministries of Law</li> <li>3. Ministry of National Food Security and Research</li> <li>4. Ministry of Foreign Affairs</li> </ol>	6 months of the diplomatic campaign.
Regional Cooperation	Pakistan needs to actively engage other countries such as Nepal and Bangladesh based on the mutual interest of restricting India from claiming GI of products.	A regional mechanism at SAARC with pressure from other small countries on India to create a mechanism on regional level to deal with issues such as GI.	<ol style="list-style-type: none"> <li>1. Ministry of Foreign Affairs</li> <li>2. Federal Ministry of Commerce</li> </ol>	6 months of the diplomatic campaign.

