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# Geographical Indications and Culinary Contests: Analysing the Claims of Bengal vs. Odisha Rasgulla/Rasagola and the PISCO Struggle in South America

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## ABSTRACT

*This paper examines the controversies and competing claims surrounding Geographical Indications (GIs), focusing on two specific cases: the battle between West Bengal and Odisha over the origin of Rasgulla, a popular Indian sweet, and the ongoing tensions between two South American countries namely Chile and Peru, over an alcoholic beverage called PISCO. The authors argue that the disputes over GIs extend beyond economic value and delve into cultural and historical interests. They explore the complexities of obtaining a GI tag for Rasgulla, analysing the conflicting claims, and discussing the distinction between a recipe and a GI to come to the conclusion on whether Rasgulla as a dish should be awarded a GI tag at the first place. The paper also highlights the need for clear guidelines to differentiate between unique food products and generic recipes, drawing insights from the European concept of "Traditional Specialities Guaranteed" (TSG). To draw a similar analogy, the authors also take in account the dispute between Chile and Peru regarding PISCO which is an alcoholic beverage and dwell into many other contesting GI claims around the world. In the end, it is concluded that the controversies surrounding GIs are driven by cultural passion rather than serving the interests of manufacturers.*

**Keywords:** *Geographical Indications, Intellectual Property Rights, Contesting Claims, Rasgulla, PISCO, India, South America.*

## I. INTRODUCTION

The legal framework in the domain comprising Geographical Indications (GIs) is highly disorganized and has been the same since decades.<sup>3</sup> Article 22.1 of the TRIPS agreement, defines Geographical Indications as indications that identify a product as originating from a member's territory, a specific region, or a locality within that territory, where the product's

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<sup>3</sup> Dev Gangjee, Relocating the Law of Geographical Indication (Cambridge Intellectual Property and Information Law, Cambridge University Press 1 2012)

quality, reputation, or other characteristics are essentially linked to its geographical origin.<sup>4</sup>

Various prominent designations aimed at protecting goods associated with specific geographic areas exist, such as Indication of Source (IS), Appellation of Origin (AO), the French Appellation d'origine Contrôlée (AOC), Protected Geographical Indication (PGI), the EU's Protected Designation of Origin (PDO) and the World Intellectual Property Organization's (WIPO) efforts to establish Geographical Indications (GI), and lastly, the TRIPS agreement. The multiplicity of regulations in this field often leads to contesting and competing GI claims. For instance, the WIPO's Lisbon Agreement of 1958 introduced a system of Appellation of Origin (AO) where the characteristics of a product must be tied to the environment, local customs, or knowledge rooted in a specific geographical area.<sup>5</sup> On the other hand, the Treaty on Intellectual Property Rights (TRIPS), enacted in 1995 following the Uruguay Round of Negotiations, was the first to formally recognize Geographical Indications. Article 22.1 of TRIPS allows countries to register their products associated not only with specific geographic regions but also with their reputation. While it is worth noting that the Lisbon Agreement has only been ratified by 35 countries to date, in contrast to the 164 member countries of the World Trade Organization (WTO). This creates an overlapping system of jurisdictions, leading to confusion and disputes. To address this issue, the WTO Secretariat suggests using the neutral term "Indications of Geographical Origin" (IGOs) as a common and unifying concept.<sup>6</sup> IGO refers to a category of signs that indicate the geographical origin of a product, a concept that has been discussed in the realm of intellectual property.<sup>7</sup>

However, the conceptual and institutional ambiguity surrounding IGOs, as well as their actual or potential value, contribute to controversies. The lack of clarity and consensus regarding the nature and functioning of IGOs can lead to debates and disagreements. Additionally, the perceived value of IGOs, in terms of their benefits and impact on various issues, can also generate controversies.<sup>8</sup>

The disputes surrounding Geographical Indications are not solely concerned with the economic value of goods, but also stem from broader cultural and historical interests. These shared ideas and beliefs, combined with the vagueness and ambiguity of the system, give rise to numerous conflicting claims regarding Geographical Indications. In this paper, the authors aim to analyse two such claims. The first claim examines the dispute between West Bengal and Odisha over

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<sup>4</sup> Agreement On Trade-Related Aspects of Intellectual Property Rights, 1995

<sup>5</sup> Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

the Rasgulla/Rasagola, delving into the story unfolding in India. Subsequently, the authors explore the protracted struggle over 'PISCO' in South America, a spirit that has strained the relationship between the two countries. Although these disputes may initially appear to have different origins, similarities can be found in their shared objective of protecting the cultural heritage of the contesting parties.

## **II. WHICH ONE IS THE TRUE RASGULLA: UNVEILING THE BATTLE BETWEEN BENGAL AND ODISHA**

The Indian culture is diverse and that does have an effect on the history of Geographical Indications in India. The significance of Geographical Indications (GIs) in Asia extends beyond trade and business and should be seen within the broader context of safeguarding and conserving the intellectual property associated with traditional cultures, resources, and production methods in some of the world's oldest human settlements. GIs serve as crucial tools in achieving development objectives.

Now let's examine the dispute between the Indian states of West Bengal and Odisha regarding the origin of Rasgulla and the subsequent awarding of Geographical Indication Tags. In 2017, the West Bengal State Food Processing (WSFP) and Horticulture Development Corporation Limited (HDCL) applied for a GI tag for the sweet dish Rasgulla, which was granted the tag "Banglar Rasgulla" by the GI Registry of Chennai. However, the Odisha Small Industries Corp. Ltd. contested the tag by submitting an application to the GI Registrar. The controversy arose due to a misunderstanding of the public perception regarding the GI tag for "Banglar Rasgulla." It is important to note that the GI tag obtained by West Bengal was not for all Rasgullas but specifically for a particular type.

Subsequently, the Odisha Small Industries Corporation Limited (OSIC) and Utkala Mistanna Byabasayee Samiti (Utkala Sweetmakers Business Body) obtained a certificate for "Odisha Rasgulla" from the Geographical Indication Registry, Government of India, in 2019. Ultimately, both states were able to obtain the GI tag for Rasgulla, resulting in a tie. This decision opened up discussions on various other topics and remains controversial and subject to criticism.

According to Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 a Geographical Indication refers to a unique product associated with a specific geographical region. The inclusion of "food stuff" within the definition of goods eligible for a GI tag in the GI Act is intriguing because India possesses an incredibly diverse culinary culture, and similar food items can be found throughout the country with little to no

variation.<sup>9</sup> Rasgulla is one such dish consumed by people across different states in India. Therefore, adding a prefix to the generic term "Rasgulla" undermines the purpose of the GI tag. This decision to grant GI tags to both states creates a precedent that may lead to similar claims in the future. For instance, there could be claims for different types of Idlis, Dosas, Rotis, breads, lassis etc. based on this case. Many recipes exist for the same type of dishes, and appending geographical prefixes does not contribute to confirming the dish's origin. For instance, just because the dish of Kadhi (a sweet and sour chickpea flour-based curry) could be called Haryanvi Kadhi in Haryana and Punjabi Kadhi in Punjab doesn't make much difference to its origin for the purpose of granting a GI. Similarly, the average consumer of Rasgulla does not associate it exclusively with Odisha or West Bengal. Consequently, the inclusion of "Banglar" and "Odisha" in the names does not provide any meaningful value to consumers. If the prefixes do not enhance the quality, characteristics, or reputation of Rasgulla, then what purpose do they serve? Are "Banglar Rasgulla" and "Odisha Rasgulla" genuinely unique to their respective states, or are they simply products of *different recipes* that can be prepared anywhere in the world?

### III. SO WHAT IS THE DIFFERENCE BETWEEN A RECIPE AND A GI?

What sets apart a recipe from a Geographical Indication (GI) tag is the exceptional and historically rooted origin of the food item. Only a foodstuff that originates from a specific geographical area and cannot be replicated elsewhere is eligible for a GI tag. This implies that the qualities and characteristics of a foodstuff must be distinct and can be attributed solely to a particular region. The deserving foodstuff should stand out and be recognized by the average consumer as being associated with a specific geographical area.

India, being a diverse and densely populated country, witnesses significant inter-state migration for a variety of reasons whether it be employment, marriage, or other purposes. Consequently, cultural diversity thrives, and food plays an intrinsic role in every culture, and it is very natural for recipes to be migrated when a person moves from one state to another. Recipes that can be replicated anywhere without relying on region-specific ingredients are not eligible for a GI tag. While agricultural products are inherently tied to geography and can be attributed to specific regions, food items travel with people who consume them. Failing to differentiate between a recipe and a GI tag could result in numerous claims for various recipes and food items. Such a situation would undermine the purpose of GI tags and diminish their significance in the eyes of the public. Neglecting to make this clear distinction would dilute the GI protection process and

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<sup>9</sup> The Geographical Indications of Goods (Registration & Protection) Act, 1999, s.2 (f).

perpetuate the exploitation of individuals involved in producing or cultivating goods unique to their regions.

The European government has admirably addressed this issue by introducing the concept of "Traditional Specialities Guaranteed" (TSG) alongside GIs. TSG is granted to a food item if its ingredients, production method, or processing align with traditional practices. Regulation No. 1151/2012 of the European Union deals with the protection of both GIs and TSGs, acknowledging their worth based on the credibility and trust they have earned among consumers.<sup>10</sup> This approach establishes a clear differentiation between a recipe and a GI, safeguarding traditional recipes, honouring their origins, and preserving their cultural significance without diluting the importance of GI tags.

#### **IV. THE HISTORICAL SIGNIFICANCE OF A RASGULLA AND THE COMPETING CLAIM BETWEEN WEST BENGAL AND ODISHA?**

Rasgulla, a well-known Indian dessert made from curdled milk, enjoys widespread popularity throughout the country and even in Indian restaurants abroad. This delectable treat consists of spongy, round dumplings soaked in sugary syrup. However, the sweetness associated with Rasgulla turned sour when West Bengal and Odisha became embroiled in a contentious battle over its Geographical Indication (GI) tag. Both states held contrasting beliefs regarding the origin of this beloved delicacy, with Bengalis asserting that Rasgulla originated in Bengal<sup>11</sup> while Odiyas believed it came from the revered Jagannath Temple in Puri.<sup>12</sup>

When the application to obtain a GI tag first arose, numerous claims emerged regarding the dessert's origins. Some claimed it was accidentally invented in 18th-century Bengal to please Lord Cornwallis, while Bengalis argued that it was first crafted by Nobin Chandra Das in 1868, earning him the title of the "Columbus of Rasgulla" in their eyes.<sup>13</sup> On the other hand, Odiyas maintained that Rasgulla held a sacred significance as an offering to Lord Jagannath. According to folklore, Lord Jagannath presented Rasgulla to appease the angered Goddess Laxmi. Since then, Rasgullas have been offered to Goddess Laxmi during the "Niladri Bijje," the final ritual of the Rath Yatra.<sup>14</sup> If the claim of Rasgulla's association with Lord Jagannath holds true, it

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<sup>10</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1151>.

<sup>11</sup> Geographical Indication Registry, Banglar Rasogulla, Geographical Indication No. 533.

<sup>12</sup> Geographical Indication Registry, Odisha Rasagola, Geographical Indication No. 612.

<sup>13</sup> Asit Mohanty, Rasagola: The Ritual offering of Odisha, *Odisha Review*, [http://magazines.odisha.gov.in/Oris\\_sareview/2017/April/engpdf/Rasagola.pdf](http://magazines.odisha.gov.in/Oris_sareview/2017/April/engpdf/Rasagola.pdf).

<sup>14</sup> *Ibid.*

challenges the notion of its origin in Bengal.

However realistically construed, this debate and the ensuing claims stem from the deep-rooted passion for food within these states. However, the acquisition of a GI tag does not significantly alter the value of Rasgulla for the average consumer, as its appeal remains unchanged.

## **V. CAN RASGULLAS BE GIVEN A GI TAG?**

According to the Act of Geographical Indications of Goods (Registration and Protection) 1999, a Geographical Indication (GI) is described as a designation that identifies certain goods, whether they are agricultural, natural, or manufactured, as originating or being produced in a specific country, region, or locality within that country. The crucial aspect of a GI lies in the fact that a particular quality, reputation, or other distinguishing characteristic of those goods is essentially linked to their geographical origin.<sup>15</sup>

Under the Geographical Indications of Goods (Registration and Protection) Act of 1999<sup>16</sup>, the concept of a Geographical Indication (GI) for manufactured goods entails that the production, processing, and preparation of the goods must take place in a specific region. It allows individuals, producers, organizations, or associations to submit applications on behalf of the producers to obtain a GI tag for a particular product.

Now, let us delve into the question of whether Rasgulla can be associated with a specific place. The perspective of an average consumer would likely yield a negative response. When consuming a Rasgulla, consumers do not associate it with any particular state because it is a widely beloved dish across India. Rasgulla is not exclusively manufactured in Bengal, Odisha, or any other state, thus lacking a clear geographical attribution. Despite Odisha presenting compelling evidence of Rasgulla's origin in the Jagannath Temple, public perception remains largely unaffected. On the other hand, Bengal has put forth convincing claims regarding the popularization of Rasgulla by the renowned sweet brand/chain KC Das. However, neither of these claims possesses sufficient strength to assign Rasgulla to a specific state. In fact, Rasgulla is comparable to other Indian sweets that include but are not limited to Jalebis, Malpua, Gulab Jamun, Rabri etc. These sweet delicacies are enjoyed by every Indian, without being regarded as exclusive dishes associated with a particular state. They are quintessentially Indian.

Consequently, Rasgulla can be considered a generic sweet dish that lacks a definitive geographical region to which it can be attributed. Therefore, granting Rasgulla a Geographical

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<sup>15</sup> The Geographical Indications of Goods (Registration & Protection) Act, 1999, s.2 (e).

<sup>16</sup> Ibid.

Indication tag would be inappropriate.

## **VI. CAN ODISHA'S PAHALA RASGULLAS AND BENGAL'S BANGLAR RASGULLAS QUALIFY AS A GI THEN? – IS ADDING A PREFIX THE SOLUTION?**

The Rasgullas originating from Odisha possess distinct characteristics that set them apart from the commonly consumed Rasgullas. These Odisha Rasgullas exhibit a brown coloration and have a relatively short shelf life due to the unique sugar syrup used in their preparation. This particular variety of Rasgulla has gained fame in Pahala, a specific location within Odisha. Due to their limited shelf life, these Rasgullas are typically enjoyed by people at the shops located in Pahala itself. If there exists a reputation that firmly establishes the uniqueness of this Rasgulla variety to Pahala, then it would qualify for a Geographical Indication (GI) tag. However, if it is merely another recipe for Rasgulla that can be replicated anywhere in the world, it would not meet the criteria for obtaining the GI status. Similarly, the Banglar Rasgulla does not possess any distinctive attributes that differentiate it from Rasgullas available in other regions of India. In accordance with Section 9 (f) of the Geographical Indications Act<sup>17</sup>, a Geographical Indication (GI) tag cannot be acquired if the product in question is deemed to be generic. The West Bengal State Food Processing and Horticulture Development Corporation Limited, in its application to obtain a GI, referred to Banglar Rasgulla rather than simply Rasgulla. In their application, they described it as a sweet, syrupy delicacy found throughout India.<sup>18</sup> This statement clearly indicates that Rasgulla is not limited to Bengal alone. Furthermore, the applicant did not make any claims to establish that Banglar Rasgulla differs from the regular Rasgulla variety.

The concept of Geographical Indication (GI) serves as a distinctive mark for goods, setting them apart by virtue of their unique characteristics and the specific place they can be attributed to. Examining Europe's approach discussed in the previous section of this paper to GI protection reveals a clear connection between a product's defining traits and its origin. GI aims to safeguard the value of goods that are inherently linked to particular regions, preventing the unfair appropriation of geographical references by others. The primary objectives of GI are to foster economic development, safeguard region-specific products, and promote fairness within the market. Therefore, goods that have become generic in nature cannot be registered as GIs since it contradicts the fundamental purpose of the GI system.

Obtaining a GI provides goods with increased credibility and value in the eyes of consumers.

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<sup>17</sup> Ibid at 9 (f).

<sup>18</sup> Geographical Indication Registry, Banglar Rasogulla, Geographical Indication No. 533, Dated:18.09.2015.



However, if generic goods were to be granted the GI tag, their significance would diminish, as consumers would no longer attribute any special recognition to them. Labelling all sweet, round, white dumpling like Rasgullas as Banglar Rasgulla would be unjust, considering that they are beloved and consumed throughout India. The livelihoods of many individuals depend on the production of this confectionery and granting it a GI tag would directly impact their lives.

On the other hand, there are no distinct characteristics that set Bengal's Rasgullas apart from Rasgullas found elsewhere. Additionally, the purpose of GI protection is to safeguard local manufacturers. If an average consumer cannot differentiate a Rasgulla made in Bengal from one made elsewhere, it raises the question of who exactly the GI protection serves to benefit.

## **VII. THE WAY AHEAD**

The controversy surrounding the origin of Rasgullas between Bengal and Odisha has had little impact on the perception of the average consumer who enjoys the sweet treat without associating it with a specific state. Despite the competing claims, the GI tag awarded to Rasgulla does not significantly enhance its credibility. The confusion created by media reporting has left many unaware that neither Bengal nor Odisha received the GI tag for Rasgulla as a whole, but rather for specific varieties that are difficult to distinguish from others. In the authors' opinion, the interpretation of the GI law in this case has been flawed.

Instead of solely focusing on certification, the priority should be to protect and support the manufacturers involved in Rasgulla production, improving their socio-economic conditions. Amending the provisions of the GI Act to differentiate between recipes and products associated with specific regions is necessary. Drawing inspiration from the concept of Traditional Speciality Guaranteed (TSG), Indian lawmakers should consider enacting separate legislation for traditional recipes. This approach would ensure the credibility of GI tags while acknowledging the origins of these recipes.

Granting the GI tag to Rasgullas from two states without clear distinguishing factors paves the way for future similar claims. Continuation of such practices would diminish the value of the GI tag and potentially exploit local producers. To maintain the integrity of GI tags, the Registry must make more informed decisions that prioritize the interests of the producers and set a precedent for conscious decision-making.

## **VIII. WHAT IS HAPPENING IN AMERICA? PERU VS. CHILE'S 'PISCO'**

In this part, an attempt is made to analyse an international dispute regarding the registration of geographical indications. The competing claims between the South American countries of Chile

and Peru over a specific type of brandy known as 'Pisco' are examined. 'Pisco' is a grape-based spirit produced in the semi-dry regions of southern Peru and central Chile.<sup>19</sup> The authors explore how this ongoing controversy goes beyond a mere question of ownership or intellectual property rights, delving into deeper historical and cultural significance. The assertion of 'pisco' being the national drink of both countries carries profound nationalist sentiments attached to the issue. Therefore, in order to comprehend the underlying roots of this dispute, it becomes essential to trace the historical trajectories between these two nations.

### **(A) What exactly is 'PISCO'?**

The rivalry surrounding the traditional spirit of Pisco has ignited fervent nationalist sentiments like no other issue. The origins of Pisco can be traced back to the era of Spanish colonization, encompassing territories that now belong to Chile and Peru. As a consequence of Spain's prohibition on exported wines that posed a threat to its domestic industry, the grapes initially intended for general consumption were repurposed for the production of Pisco.<sup>20</sup> Both Peru and Chile subsequently named regions after this cherished libation. Today's Pisco is the culmination of factors such as the natural environment for production, grape varieties, distillation techniques, aging duration, and the type of oak used in the barrel. The classic Pisco cocktail recipe entails combining the spirit with egg white, ice, lime juice, and sugar syrup, served in a glass rimmed with sugar<sup>21</sup>.

Between 2000 and 2009, both Peru and Chile experienced notable growth in the production and import of Pisco, a traditional alcoholic beverage. Peru witnessed a significant increase in production, with exports mainly directed to the United States and Chile. In contrast, Chile had a much larger production capacity, thanks to its favourable business environment for agricultural exports. The Free Trade Agreement between Chile and the United States further boosted Chile's Pisco exports, making it the top exporter to the US market. Peru followed suit by adopting more open trading policies and signing a Trade Promotion Agreement with the United States in 2009, subsequently surpassing Chile as the primary Pisco exporter to the US. Despite these developments, Pisco remains a niche drink primarily popular within South America, with limited demand outside the region.

Notwithstanding their shared heritage, significant differences persist between Peru and Chile. While Chile ranks among the "immaculate" countries in terms of corruption, Peru falls toward

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<sup>19</sup> Jerry T. Mitchell and William C. Terry, *Contesting Pisco: Chile, Peru, And the Politics of Trade*, *Geographical Review*, (2011) 101 (4).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

the lower end of the Corruption Index.<sup>22</sup> Moreover, issues such as civil unrest and unfair business practices have led to concerns regarding the authenticity of the drink. In response, the Peruvian government has implemented various policies to reform these conditions. The establishment of a public-private partnership entity called the National Commission on Pisco aims to promote and protect the product.<sup>23</sup> Through extensive public campaigns and advertisements, Peru strives to popularize and monopolize the term "Pisco," urging consumers to exclusively choose "Peruvian Pisco."<sup>24</sup>

The battle for ownership and reputation of this beloved spirit continues to unfold, shaped by historical, cultural, and economic factors. Understanding the intricacies of this ongoing dispute sheds light on the complex world of Pisco and its significance to both Peru and Chile.

The historical roots of the current dispute over Pisco can be traced back to the War of the Pacific fought between 1879 and 1884. Following their independence from Spanish rule, Peru, Chile, and Bolivia maintained their original colonial territories and upheld **the principle of *uti possidetis juris* i.e.**, retaining one's original colonial territories and not interfering with each other's functioning. However, the exploration of resources such as nitrate and guano in the 1840s led to border disputes and eventually the war. Chile emerged victorious, acquiring new territories and resources at the expense of Peru and Bolivia. While Bolivia and Chile resolved their territorial issues, Peru still harbours bitterness.<sup>25</sup> This historical animosity is reflected in the ongoing dispute over Pisco production, which Peruvians view as their own and see as a manifestation of Chilean investment in their country.

## **IX. WHAT IS THE DISPUTE ACTUALLY ABOUT?**

During the 20th century, the tensions between two countries began to escalate as they both focused on developing their own systems for producing Pisco, a type of alcoholic beverage. Moreover, the countries established regulations pertaining to production methods and taxation in order to standardize their respective products and boost domestic consumption. Chile initiated negotiations regarding production rules in the 1930s, which were eventually resolved by 1986.<sup>26</sup> On the other hand, Peru implemented "codified rules for the use of the pisco denomination in order vent adulteration of the product and name", starting in the 1930s.<sup>27</sup> Interestingly, in 2001, Chile faced criticism from the World Trade Organization for maintaining

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

lower tax rates on Pisco compared to other spirits.

Throughout the 20th century, both countries adamantly refused to acknowledge each other's products and asserted that only their own were authentic. For instance, in 1991, Peru abolished the importation of any product labelled as "Pisco" that did not originate from Peru, through a decree issued by the Supreme Court.

From the late 1990s onward, both countries began making efforts to expand their export markets and establish better trade relationships with other nations through new trade agreements. These agreements aimed to establish bilateral ties with other countries and gain global recognition for their Pisco products under the jurisdiction of the World Trade Organization. According to the Free Trade Agreement signed between Chile and the United States, "Pisco Chileno" is recognized as a distinct product of Chile. However, other countries are allowed to use the term "pisco" as long as they clearly label it as a product from their own country. Peru can sell its Pisco in the United States as long as it is labelled as "Peruvian Pisco." Therefore, Chile's agreements do not impede Peru's Pisco, and both countries are free to sell their respective products in the international market simultaneously. Similarly, in 2010, Malaysia signed the Malaysia-Chile Free Trade Agreement, which recognized Chilean Pisco without prejudicing against the Peruvian Pisco Geographical Indication (GI).

Despite Chile's attempts at fostering harmony and coexistence, Peru has consistently sought to monopolize the claim that Pisco is solely a Peruvian drink. This can be observed in Peru's strategic accession to the Lisbon Agreement in 2005. Merely three days after ratifying the agreement, Peru notified all member countries about its exclusive claims over "Peruvian Pisco." However, nine of these countries refused to recognize Peru's exclusive denomination due to their existing trade agreements with Chile.<sup>28</sup> Furthermore, Peru has also made efforts to assert its claim in individual countries, particularly in Southeast Asian nations.

For instance, let's examine the case of India. Both countries view India as a potential emerging market for Pisco, leading to a decade-long battle to register Pisco as a geographical indication in India. In 2005, the Embassy of Peru filed a Geographical Indication (GI) application with the Geographical Indications Registry in Chennai for "Peruvian Pisco." After careful consideration and examination, the application was accepted in 2006. However, Mohan Dewan and Association De Productories De Pisco A.G from Chile opposed the application, arguing that it did not adequately represent the interests of producers. They stated that they would withdraw

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<sup>28</sup> Ibid.

their objection if the Embassy of Peru did not oppose the registration of "Chilean Pisco".<sup>29</sup> In response, the GI registry amended the mark on Peruvian Pisco in 2009 to avoid confusion for consumers, without the consent of the Embassy.<sup>30</sup> Subsequently, the Embassy filed a case with the Intellectual Property Appellate Board, which ultimately accepted Peru's claim over Pisco in 2019 due to the presence of a city named Pisco in southeastern Peru. However, Chile has once again applied for a fresh registration of "Chilean Pisco," claiming that it is a Chilean ancestral product and an integral part of the country's gastronomic heritage.<sup>31</sup>

The international disputes arising from the appropriation of food and beverage names by nations, as exemplified by the longstanding quarrel between Peru and Chile over Pisco, extend beyond economic and intellectual property rights contests. This dispute encompasses broader social and national pride, reflecting the significance of cultural identity for both nations. The roots of the ownership dispute can be traced back to Chile's victory in the War of the Pacific, which serves as a catalyst for the ongoing contention. However, for Peruvians, Pisco has become an integral part of their cultural heritage, evident in various media outlets and advertisements that reinforce its status as Peru's iconic product.<sup>32</sup>

The Peruvian media frequently highlights Pisco as a symbol of national pride exemplifying the strong association between Pisco and Peruvian identity, underscoring the intensity of the dispute and the desire to protect and promote their unique cultural heritage.<sup>33</sup>

The case of Peru and Chile's dispute over Pisco exemplifies how the appropriation of a food or beverage name can transcend economic considerations and become entwined with national symbols and cultural significance. The media's portrayal of Pisco as a flagship product for Peru further reinforces the notion that this dispute is not solely about market competition but rather about safeguarding cultural identity. Recognizing the complexities involved in such disputes and the deeply rooted emotions they evoke is essential when seeking resolutions that balance national pride, cultural heritage, and the principles underlying geographical indications.

#### **(A) Other competing GI claims**

There are several other competing GI claims that exist all over the world. For instance, the term

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<sup>29</sup> Sanjay Vijayakumar, Peru's application on GI tag for Pisco accepted, THE HINDU (December 30, 2018), <https://www.thehindu.com/news/national/tamil-nadu/perus-application-on-gi-tag-for-pisco-accepted/article25862108.ece>.

<sup>30</sup> Ibid.

<sup>31</sup> Shenoy Karun, Chile applies for GI tagging of its Pisco in India, TIMES OF INDIA (July 25, 2020), [https://timesofindia.indiatimes.com/business/india-business/chile-applies-for-gi-tagging-of-its-pisco-in-india/articleshow/77168710.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://timesofindia.indiatimes.com/business/india-business/chile-applies-for-gi-tagging-of-its-pisco-in-india/articleshow/77168710.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

<sup>32</sup> Supra note 17.

<sup>33</sup> Ibid.

"feta" is associated with a traditional Greek cheese made from sheep's milk or a mixture of sheep's and goat's milk. Greece has been fighting to protect the GI for feta cheese, claiming that it should only be produced in Greece according to specific traditional methods. However, other countries, such as Denmark and Germany, have also been producing similar cheeses and using the term "feta." This has led to a dispute over the exclusive use of the name and the geographical origin of feta cheese.<sup>34</sup>

Secondly, Champagne is a sparkling wine produced in the Champagne region of France. The term "Champagne" is a protected GI in the European Union, limiting its use to wines produced in that specific region. However, producers outside the region, particularly in other countries like the United States and Australia, have used the term "champagne" for their sparkling wines. This has resulted in legal battles and trade disputes over the use of the term and the protection of the Champagne GI.<sup>35</sup>

Further, in the context of India, the dispute over Navara Rice, a unique type of rice found in India, has emerged as a contentious issue between Tamil Nadu and Kerala. Navara Rice is a distinct variety within the *Oryza* group and is renowned for its medicinal properties. In 2007, the Navara Rice Farmers' Society was granted a Geographical Indication (GI) for this product, which has sparked controversy among other growers in Kerala and Tamil Nadu. Under the current arrangement, only farmers affiliated with this society are permitted to sell their rice as Navara rice. Sridhar, a representative of the Kerala-based NGO Thanal, which focuses on sustainable agriculture and works closely with farmers, argues that there is insufficient evidence regarding the historical origins of Navara rice. Additionally, he raises concerns about the granting of GI protection to seeds, as seeds have the tendency to migrate and adapt to local environments, resulting in genetic variations. Sridhar emphasizes the need for clearer guidelines and regulations in the realm of GI laws.<sup>36</sup>

The existence of overlapping regulatory systems and conflicting ownerships reveals a deficiency in the global framework for safeguarding geographical indications. In the absence of standardized regulations, a potential resolution to such disputes could be found through the concept of joint ownership, as exemplified by the case of Basmati Rice. Despite India and Pakistan's tumultuous history of wars and disputes, they collaborated in seeking joint ownership

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<sup>34</sup> DEV GANGJEE, SAY CHEESE! A SHARPER IMAGE OF GENERIC USE THROUGH THE LENS OF FETA, *EUROPEAN INTELLECTUAL PROPERTY REVIEW*, VOL. 5.

<sup>35</sup> TIM JAY, MADELINE TAYLOR, A CASE OF CHAMPAGNE: A STUDY OF GEOGRAPHICAL INDICATIONS, *CORPORATE GOVERNANCE EJOURNAL*, VOL. 29, 1-31

<sup>36</sup> DISPUTES OVER GEOGRAPHICAL INDICATIONS, *INTEPAT IP* (FEBRUARY 26, 2020), [HTTPS://WWW.INTEPAT.COM/BLOG/DISPUTES-OVER-GEOGRAPHICAL-INDICATIONS/](https://www.intepat.com/blog/disputes-over-geographical-indications/).

of the GI for Basmati Rice.<sup>37</sup> However, considering Peru's challenging economic history and ongoing efforts in nation-building, the feasibility of such joint ownership remains highly uncertain. In Peru's case, the objective is not solely to protect an economic resource but also to preserve a national identity.

## **X. CONCLUSION**

This paper draws two key conclusions based on the analysis conducted. Firstly, it is observed that both the examined claims, namely Pisco and Rasgulla, place significant emphasis on the authenticity and uniqueness of the respective products. However, the evidence supporting these claims and establishing the true authenticity of the products is limited. This raises questions about the basis on which these claims are made and the degree to which they accurately reflect the distinctiveness of the products in question.

In both cases, Pisco and Rasgulla, it becomes apparent that there is a strong emotional component associated with the claims. These claims go beyond the realms of intellectual property rights and economic competition, and instead, they become intertwined with the cultural identity and pride of particular communities. While it is understandable that cultural heritage and identity play a vital role in shaping these claims, it is important to consider whether emotions should guide the laws governing geographical indications. Emotions, although significant in fostering a sense of belonging, might not align with the original purpose of geographical indications, which is to protect and promote products based on their unique geographical origins and specific production methods.

Granting geographical indication tags based solely on emotional factors could dilute the importance and credibility of such designations. The authority of the GI tag stems from the recognition and trust bestowed upon it by the public. If emotional factors become the primary determinant for awarding GI tags, the objective evaluation of a product's origin and characteristics might be compromised. Therefore, it is essential to maintain a balance between acknowledging cultural significance and ensuring that geographical indications remain rooted in objective criteria.

Secondly, this paper echoes the that the field of geographical indications is complex and lacks clarity. The examples discussed in this study represent only a fraction of the competing claims that exist worldwide. Geographical indications serve as valuable tools for protecting the interests of producers and manufacturers, providing them with a competitive edge based on the

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<sup>37</sup> Shilpa Kannan, India and Pakistan link to protect Basmati, BBC NEWS (February 15, 2008), <http://news.bbc.co.uk/2/hi/business/7246900.stm>.

reputation and distinctiveness associated with a particular geographical origin. Therefore, it becomes crucial to establish robust and stringent laws to govern geographical indications, ensuring fair competition and preventing misuse or misappropriation of geographical names.

Furthermore, analysing and studying these competing claims in detail can help establish better precedents and guidelines for resolving future disputes. Lawmakers should continually strive to improve and refine the laws surrounding geographical indications to address the challenges posed by evolving market dynamics and the increasing globalization of trade. Enhancing the clarity and effectiveness of geographical indication laws will not only benefit producers and consumers but also contribute to the preservation and promotion of cultural heritage and traditional knowledge associated with specific geographical regions.

In conclusion, this research underscores the need for a balanced approach in evaluating claims related to geographical indications, weighing both emotional factors and objective criteria. While emotions and cultural identity are essential aspects to consider, it is crucial to maintain the integrity and purpose of geographical indication laws. The examples highlighted in this paper illustrate the complexity of competing claims, emphasizing the importance of stringent laws and continuous efforts to improve the clarity and effectiveness of the global system governing geographical indications.

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