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The Basmati rice war between India and Pakistan

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Abstract: The current study highlights the challenges for GI protection of trans-border products, in Basmati rice. Various international treaties, e.g., Lisbon Agreement, Paris convention, and TRIPS Agreement describe partly the protection of geographical indications (GIs) or appellations of origin. Both India and Pakistan are TRIPS member countries and claim Basmati rice as their GI and have tagged Basmati as GI in their respective territories. Europe is an expanding market for Basmati, and EU is implementing import regulations on food products based on GI reputation for high quality products. India has sought GI protection of Basmati rice in EU followed by staunch opposition by Pakistan. Current study will briefly highlight the recent developments of this GI dispute on Basmati rice between India and Pakistan in EU.

Keywords: geographical indications; basmati rice; European Union; GI act; transborder GIs

1. Introduction

About 30 % of Asians and 20 % of the world's population rely mainly on rice as a primary source of calories (Giraud & Pirzada 2009). Due to its significance, United Nations (UN) declared the year 2004 as an international year of rice (Gnanamanickam 2009). Rice exhibits a significant genetic diversity and over one hundred thousand improved cultivars are stored in germplasm banks. Various rice varieties have originated as a result of human adaptation to different agro-climatic conditions and continuous selection of quality traits. Aromatic rice varieties with excellent organoleptic properties are in demand as compared to simple rice varieties. Among these varieties, "Basmati rice" is the most popular choice (Bhattacharjee et al. 2002). It is renowned for its unique aroma, long slender grains, sweet flavor, soft texture and superior cooking characteristics (Archak et al. 2007). Basmati rice is a specialty rice native to the Pak-Indo subcontinent, known for its unique quality traits that make it highly sought after variety by consumers worldwide (Bligh 2000).

Research over the years has focused on understanding the genetic makeup of Basmati rice and the breeding behavior of its key traits that distinguish it from other types of rice. Breeding strategies, including recombination, mutation, hybridization, and molecular breeding, have been used to enhance yield, and pest and disease resistant while maintaining quality (Gizaw 2019). Due to its unique quality attributes, in the global markets, the price of basmati rice is 5 time higher as compared to simple rice (Delwiche 2016).

The name 'Basmati' is derived from two Punjabi words: 'bas' (aroma) and 'mati' (soil).¹ Lengthy slender kernels with high length breadth ratio, an exquisite aroma, sweet taste, soft and fluffy texture and delicate curvature are the distinctive features of 'Basmati' rice grown in Pakistan. Chemical compound, 2-acetyl-1-pyrroline (2AP) is mainly responsible for distinctive fragrance and flavor of 'Basmati' rice. The low glycemic index maintains integrity of cooked 'Basmati' grains. Different factors including intermediate amylose content responsible for fluffy and soft texture impart sweet taste and distinctive feel of cooked 'Basmati' rice. Trading Corporation of Pakistan (Pvt.) Limited is the competent authority notified by The Ministry of Commerce of Pakistan under Section 13(1) of the GIPRA 20, to authenticate that rice being packed/shipped for export is sourced from the geographical area and complies the requirements of the Government of Pakistan notified

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¹ Available online: <https://tdap.gov.pk/geographical-indications-basmati/> (accessed on 15 October 2024)

specifications.² Intellectual property right (IPR) protection for crop varieties has a significant effect on research and food security. Basmati has been protect-protected by patents (770 patents appear in google patents search³), trademarks and more recently by GIs due to its quality, reputation, and to counter the research and development costs. Patents and trademarks are a well-known concept in the field of IPR while GI is a relatively new concept. Geographical indications mechanism was first established in southern European nations such as France, Italy, and Spain at the beginning of the 20th century as appellation of origin. This protection was standardized at the European level in 1992. The Law on Repression of Frauds of Agricultural Products, which came into effect on August 1, 1905, was the first law in France to emphasize the importance of "terroir" over methods and allowed the administrative delimitation of the geographical region of appellation of origin. A new legislation approved on May 6, 1919, considered appellation of origin to be a communal privilege available to all local producers in case of disputes over its use. The legislation enacted on July 30, 1935, gave the authority to recognize the appellation of origin to a committee known as INAO3, governed by the Ministry of Agriculture and consisting of experts and ministry agents. Today, an appellation of origin is determined by professional evaluation-grade methods and the demarcation of a geographical location (Addor and Grazioli 2002).

2. GI Acts of India and Pakistan

Both India and Pakistan are common law countries. India through sui generis legislation on GI, drafted Act No. 48 of 1999 known as Geographical Indications of Goods (Registration and Protection) Act, 1999 which was assented by Indian Parliament on 30th December 1999 and came into effect on 15 September 2003. Section 2 (e) of this act defines "GI in relation to goods as an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be". India registered Basmati as a GI under the provisions this act in India on 15th February 2016. Ministry of Agriculture India notified on 18th September 2017 that "seed production of all varieties of Basmati rice notified under Section 5 of the Seeds Act, 1966 was limited to the GI registered rice growing areas of Haryana, Punjab, Delhi, parts of Uttar Pradesh and State of Jammu and Kashmir". The Agricultural and Processed Food Products Export Development Authority (APEDA), Indian statutory authority working under the Ministry of Commerce and Industry, will represent the interests of Indian companies and individuals involved in the growing, processing and exporting of basmati rice.

In Pakistan, 1976 Seed Act details a mechanism to control and regulate the quality of seeds of crop varieties including Basmati rice. Seed varieties are registered by the Federal Seed Certification and Registration Department (FSC & RD) under the Ministry of Food, Agriculture, and Livestock (MINFAL). Basmati Rice Varieties such as BAS370 and BAS385 are registered under the Seed Act (Ismail 2006). In Pakistan, GIs were registered as collective or certification marks according to the Trade Marks Ordinance, 2001, which was indifferent to the terrier factor (Ali 2014). Basmati rice was protected as a collective trademark under the Trade Marks Ordinance 2001 (section 82). The Basmati variety must have at least one parent from a historical land race, and must have traditionally been grown in the aforementioned Punjabi regions. The claimed varieties included Basmati 370, Basmati Pak (Kernel), Basmati 198, Basmati 385, Super Basmati, Basmati 2000, and Shaheen Basmati. The Basmati Growers Association (BGA) was the trademark owner, dedicated to preserving and promoting the Basmati legacy. BGA used to grant permission, issues certificates, and oversees the use of the Basmati collective mark. Membership is limited to farmers with at least five years of Basmati cultivation experience. Only approved parties with the necessary resources and expertise can use the Basmati collective mark. Basmati trademark however was registered under application number 179196 in Class 30 dated July 20, 2002 in an individual's name (Hanif 2020).

Pakistani Basmati has been sold by Indian expatriates based in Dubai and London in consumer packs labelled as of Indian origin at much higher prices (Khan 2007). There was domestic pressure to formulate a GI Law in Pakistan. International treaties like Paris Convention for the Protection of Industrial Property 18834, Madrid Agreement for the Repression of False or Deceptive Indications (1891)⁵, Madrid Agreement concerning the International Registration of Marks (1891)⁶, The Stresa Convention of 1951⁷, Lisbon Agreement for the Protection of Appellations of Origin and their Registration (1958)⁸ and TRIPS stress GI protection. Pakistan being TRIPS member had to comply its obligations under Article 22 of TRIPS of making a GI law. Geographical Indications (Registration and Protection) Act, 2020 (No. XVIII of 2020) commonly known as GIRPA'20, enacted on 31st March 2020 repealed Clause (xix) of section 2 of the Trade Marks Ordinance, 2001 (XIX of 2001). According to Article 29 of the TRIPS Agreement, a country is not obliged to register a GI which is not protected in its country of origin. Basmati rice was notified as a GIs of Pakistan under section 11(2) of the Geographical Indications (Registration & Protection) Act, 2020 on 8th December, 2020 and registered in name of Trade Development Authority of Pakistan (TDAP) on 21st January 2021 under GIPRA 20 which will serve both as registrant & certification body.

Article 2 (vii) of GIPRA 20 defines GI as " GI in relation to goods includes an indication which identifies such goods as agricultural goods, natural goods or manufactured goods originating or manufactured or produced in a territory or a region or locality as determined by the country, where a given quality, reputation or other characteristics of the goods or the ingredients or components,

² Supra.

³ Available online: [https://patents.google.com/?q=\(basmati+rice\)&oq=basmati+rice](https://patents.google.com/?q=(basmati+rice)&oq=basmati+rice) (accessed on 15 October 2024)

⁴ Available online: https://www.wipo.int/treaties/en/ip/paris/summary_paris.html (accessed on 15 October 2024)

⁵ Available online: https://www.wipo.int/treaties/en/ip/madrid/summary_madrid_source.html (accessed on 15 October 2024)

⁶ Available online: https://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html (accessed on 15 October 2024)

⁷ Available online: <https://www.wipo.int/wipolex/en/treaties/details/967> (accessed on 15 October 2024)

⁸ Available online: <https://www.wipo.int/treaties/en/registration/lisbon/> (accessed on 15 October 2024)

is essentially attributable to its geographical origin and in the case of manufactured goods one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality as the case may be. For the purpose of this clause any name which is not the name of a territory or a region a locality or a country shall also be considered as a geographical indication if such name refers to or indicates origin of goods within or from a specific geographical area within that country and is used upon or in relation to particular goods originating from or with in that country or a territory or a region or locality within that country”.

The book of specifications mentions 24 varieties, 49 growing districts and 13 principal features for basmati rice. ‘Basmati’ rice is grown in Pakistan from varieties that must comply with the following cumulative requirements of having at least one traditional ‘Basmati’ rice variety/land race in the lineage tree of breeding history; and registered under Pakistan’s Seeds Act 1976. Varieties having minimum one traditional ‘Basmati’ rice variety/land race in the lineage tree of breeding history are registered as ‘Basmati’ varieties under Pakistan’s Seeds Act 1976. Hence, all registered varieties should be derived from the “mother” variety ‘Basmati 370’ or a related land race.

3. Current scenario of GI application in EU

European Union (EU) requires geographical registration of food and agriculture products to protect consumer rights and ensure food safety and quality (Gizaw 2019). GI protection to a product is accorded under a wider sphere, which includes Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialty Guaranteed (TSG). PDO means that the product has been produced, processed and prepared in a given geographical area using recognized know-how. A PGI product must be closely linked to its geographical origin in at least one of the stages of production, processing or preparation, giving the product a special character. TSG for a product does not indicate the origin of the product but highlights its traditional composition or means of production. Launched in 1993 by the EU, GI status protects and promotes named regional food products having a reputation or noted features specific to that area (Anonymous 2023).

India’s claim over basmati rice established a narrative that rice traditionally belongs to India (Upreti 2023). Being a leading economy, presence on international forums, volume of research and media campaign further established that basmati rice comes only from India. However as noted by Das (2009), *“In [a] strict legal sense, “Basmati” is yet to become a GI. Since the geographical area pertaining to “Basmati” belongs partially to India and partially to Pakistan, both countries have to arrive at a system of joint protection of this indication. However, owing to a number of political-economic reasons surrounding this commercially significant indication, in particular, and political sensitivities and of “Basmati” also indicates that [the] political boundary of a nation is not relevant for determining the geographical area pertaining to a GI”*. In fact, Basmati rice belongs to both India and Pakistan (Upreti 2023).

India submitted GI registration application for Basmati on 20 July 2018, in EU under the EU’s Council on Quality Schemes for Agricultural and Foodstuffs⁹ which was published in EU official journal on September 11, 2020. Oxford Dictionary definition ‘a kind of long-grain Indian rice with a delicate fragrance’, Larousse dictionary definition ‘Indian, long grain rice, very appreciated’ and the Cassell food dictionary definition of ‘a superior type of Indian white rice which is long grained and slender’ of basmati has been cited by Indian application (REF). This dossier describes geographical peculiarities, environmental factors, and all things that make Basmati “Indian” citing the famous Punjabi poem Heer Ranjha dated 1766 by the poet Varis Shah, where the first known mention of ‘Basmati’ is found. This application does not mention at all that Basmati is grown in Pakistan although Heer Ranjha lived in areas which are part of Pakistan now.

According to the SoPs, stakeholders can oppose a registration within three months after a GI application is published in EU official platform. Rice Exporters Association of Pakistan (REAP) filed a notice of opposition on 7 December 2023 and filed its own GI application on 24 August 2023 which was published for potential opposition on 23 February 2024. Pakistan’s application however was re-published on 30th April 2024 under Article 49 (5) of regulation (EU) annulling the 23 February 2024 publication under Article 50 (2) of EU regulation. Invoking Article 49(5) for Pakistan indicates that the product should be protected in the country of its origin (Mancombu 2024). Indian GI application does not indicate that basmati is grown in Pakistan, however, Pakistani application states that long-grained rice is grown in specific regions of India.

Meanwhile, Food Safety and Standards Authority of India (FSSAI) has introduced various formal regulatory (safety and quality) standards for all variants of Basmati, e.g., Brown Basmati, Milled Basmati, Parboiled Brown Basmati and Milled Parboiled Basmati for standardized genuine Basmati rice for export and domestic markets. These standards which will come into effect on 1 August 2023, state that *“Basmati is a premium quality rice and fetches a higher price than non-basmati varieties, so it is prone to various types of adulteration for economic gains [such as] undeclared blending with other non-basmati varieties. It is universally known for its long grain size, fluffy texture and unique inherent aroma and flavour. This uniqueness is a result of the agro-climatic conditions of the specific geographical areas where it is grown as well as the method of harvesting, processing and ageing. The natural fragrance is characteristic of Basmati rice both in its raw and cooked forms and must be present in both, in addition to being free from artificial colouring, polishing agents and artificial fragrances. The elongation ratio for non-parboiled rice after cooking must be no less than 1.7 but parboiled rice must be no less than 1.5, whereas the average volume expansion ratio must be more than 3.5 and the presence of other non-basmati rice varieties must be no more than 15% by mass for all types of Basmati rice.”* FSSAI did not consult Pakistan for the formulation of these standards (Neo 2023).

Justice Prathiba M. Singh of Delhi High Court in *Trading Corporation of Pakistan Pvt. Ltd. v. Union of India*¹⁰, dismissed on 28th November 2023 due to non-prosecution by the plaintiffs since 2020. Plaintiffs namely Trading Corporation of Pakistan Pvt. Ltd., Rice

⁹ Available online: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0911\(02\)&from=SL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0911(02)&from=SL) (accessed on 15 October 2024)

¹⁰ Available online: <https://indiankanoon.org/doc/88841908/> (accessed on 15 October 2024)

Exporters Association of Pakistan and Basmati Growers Association, applied for grant of permanent injunction against the Government of India, Ministry of Commerce and Industry ('GOI') to restrain the defendant from permitting exports of rice under the name 'SUPER BASMATI' and infringement of Plaintiffs' trade name, label, classification, brand or variety of 'SUPER BASMATI'. Plea also included directing the Defendant to not give effect to the Gazette Notification dated 24-05-2006 which permitted the export of evolved Basmati rice or any rice from India under the name, variety, classification or trade name of 'SUPER BASMATI' and also to restrain the defendant, their partners, servants, agents, representatives, exporters from India and all other who acted in concert with them to take legislative, regulatory or administrative action in furtherance of this Notification and from using the name 'SUPER BASMATI' in relation to export of rice from India. Said notification declared "Super Basmati" as an approved evolved Basmati rice under the Export (Quality Control and Inspection) Act, 1963, for export¹¹.

Apparently, Indian application fulfills the product specification requirements mentioned in Article 7(1) of the Regulation (EU) No 1151/2012 of The European Parliament and of the Council (hereinafter 'the Regulation'). Article 51 of the Regulation specifies the procedure for opposition, while Article 10 provides the grounds for opposition¹². Article 10(1) lists four grounds for opposition. Firstly, Article 10(1)(a) stipulates that the opposing party show that the conditions regarding basic eligibility conditions (under Art 5), and product specification conditions (under Art 7(1)) are not met and apparently India seems to have complied with all the specifications for PGI status. Secondly, Article 10(1)(b) seeks to determine if the proposed name conflicts with names of plant varieties and animal breeds, with homonyms and trademarks. Basmati does not conflict with the names of any of the above-mentioned categories so this ground can't be invoked. Thirdly, Article 10(1)(c) stipulates that the opposing party establish that the registration would jeopardize the products that 'have been legally on the market for at least five years preceding the date of the publication'. This is a solid ground for opposition for Pakistan as duty free import of Basmati from Pakistan is allowed into the EU according to a 2004 European Council decision¹³. India had recognized Pakistan as Basmati rice growing country in RiceTec case¹⁴. APEDA had acknowledged in 2019 before the General Court of the European Union, in the Sir Basmati case, that Basmati rice comes from India or Pakistan¹⁵. Fourthly, Article 10(1)(d) details provision of evidence on the basis of which it can be concluded that Basmati is a generic term (Jhavar 2020). Article 13 of the Regulation lays down the 'protection' that is available to PGI in the EU. It states that a PGI 'shall not become generic' and even protects the use of 'Basmati' with words such as "style", "type", "method", "as produced in", "imitation" or similar.' This means that if India gets GI protection, then Pakistan won't be allowed to sell its Basmati even with the labelling 'Pakistan Basmati' or 'Basmati produced in Pakistan' in the EU (Jhavar 2020).

Basmati is recognized since 2006 as a product of both India and Pakistan in the European rice regime and its duty-free regime. Wikipedia and Cambridge dictionary indicate basmati origin from Pakistan and India. Pakistan is partner of the repute and origin of Basmati outside India, as recognized in EU's 2004 agreement¹⁶ with India and Pakistan, APEDA's own observations in the 'Sir Basmati' trademark dispute before the CJEU¹⁷, and several scholarly works (Saxena and Surabhi 2020). Both countries fought jointly against RiceTec in USA. Hence, attesting that 'the geographical area' under Article 8 of the Regulation is restricted to India appears challenging (Saxena and Surabhi 2020).

APEDA application for a certification trademark for basmati in Australia was rejected in 2023 as Basmati rice is not grown only in India. Pakistan did not contest the India's application in Australia (Abbas 2024). During prosecution, and at a hearing before a delegate of the registrar of trade marks, basmati was found not to be capable of distinguishing rice goods certified by APEDA from uncertified rice goods based on the ordinary signification of the word being a specific variety of rice. Delegate indicated that other traders have a legitimate desire to use 'Basmati' for rice, and rice derived products that are not certified by APEDA. The decision stated "*at most, the evidence demonstrates that Basmati may distinguish, amongst a proportion of the Australian market, particular rice of Indian origin from rice of Indian origin that is not so certified. However, it does not demonstrate that Basmati more broadly distinguishes rice certified by [APEDA] from rice not so certified by other traders who have an equally valid claim to use the same term*" (Currey and Mathew 2023).

APEDA submitted certification mark application for the word basmati for "rice" in Class 30 in New Zealand on February 2019. Examiner issued objections on the application as the mark lacked sufficient distinctiveness for registration; and documents provided by ADEPA were insufficient to meet the relevant statutory requirements. APEDA filed arguments and evidence of use in support of its application, but the objections were maintained. APEDA's proposed regulation in its certification rules that only rice grown in the Indian Basmati Growing Area (BGA) region, i.e., not rice from the Pakistan BGA region, would qualify as a certified product were an issue. IPONZ issued a notice of intention to formally reject the application as APEDA as the word Basmati is purely descriptive for rice and burden of establishing acquired distinctiveness was so high that it could not be met by the evidence submitted by the applicant. The examiner also cited that Pakistan and Nepal also grow "basmati rice" to dismiss APEDA's proposed rule to

¹¹ Available online: <https://www.sconline.com/blog/post/2023/12/04/dhc-dismisses-india-pakistan-super-basmati-rice-dispute-for-non-prosecution-legal-news/> (accessed on 15 October 2024)

¹² Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1151&from=en> (accessed on 15 October 2024)

¹³ Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004D0618&from=EN> (accessed on 15 October 2024)

¹⁴ Available online: <https://www.nytimes.com/2001/08/25/business/india-us-fight-on-basmati-rice-is-mostly-settled.html> (accessed on 15 October 2024)

¹⁵ Available online: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=219750&pageIndex=0&doclang=EN&mode=lst&dr=&occ=first&part=1&cid=2551215> (accessed on 15 October 2024)

¹⁶ Available online: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0314:FIN:EN:PDF> (accessed on 15 October 2024)

¹⁷ Available online: <https://curia.europa.eu/juris/document/document.jsf?text=Basmati&docid=219750&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=4476110#ctx1> (accessed on 15 October 2024)

certify only basmati variety rice grown in India as inappropriate. On reconsideration request by APEDA, Assistant Commissioner of IPONZ maintained rejection, stating that proposed use of the certification mark basmati would not distinguish Indian basmati rice from basmati rice grown in the Pakistani region of the BGA. Accordingly, the “proposed mark simply would not perform the function required under the s 5 definition [of a certification mark]¹⁸, namely, of distinguishing the goods sold under that mark from goods not so certified” (Evans 2024, Nepal 2021). Hence Indian application was rejected in late June 2024.

A Joint Study Group was formed in 2005 to explore the reasons for joint registration, the necessary steps for GI protection of Basmati (Ramesh 2006), and the tasks both countries must undertake. However, Pakistan objected to India's introduction of Super Basmati, leading to a breakdown in the joint application process. Since then, little progress has been made, raising doubts about the GI protection of Basmati in both countries. It seems that this “only me” position by India is not favoring India. Previously me-too approach by both countries for Koh-e-Noor diamond to UK has been fruitless.

Possible outcomes of Basmati GI claims

EU can issue GI to both India and Pakistan if both countries agree to a joint GI, which will allow both to use the name but with specific quality standards and geographical restrictions. Alternatively, the EU can issue separate GIs to both countries for their respective basmati rice varieties, with different names or geographical designations. More interesting is are expected as the case progresses in the EU which will likely determine the future of the basmati rice market and the potential of both countries to protect their interests.

4. Conclusions

The GI system can play a supportive role in achieving these objectives. A comprehensive assessment of potential GIs and their impact on communities and markets is crucial. This will provide valuable insights supporting the need for legislative measures to boost rural entrepreneurship in agriculture-dependent economies like Pakistan. Establishing a system that ensures fair prices for local farmers in rural areas is essential, and GI could serve as a tool to achieve this goal. With increasing market competition and consumer demand, manufacturers must protect products like tea and coffee through the trademark system. The Basmati dispute is a complex issue with significant economic and political implications for India and Pakistan. Finally, it is the EU that will finalize the future of the basmati rice market.

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