

# The Law of Geographical Indications as a tool for Economic Development: An application in the Case of Awadhi Cuisine of Uttar Pradesh, India

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Introduction

Unlike other intellectual property laws, the law relating to geographical indications provides incentive to collective traditional knowledge of indigenous communities of a specific geographical origin and such protection leads to economic benefit to the group of people engaged in the production of the goods and in the process, to the entire region from which the protected goods originate. The law of geographical indications is a very effective policy tool for development of backward regions. The present paper seeks to scrutinise the possibility of protection of the famous cuisine of Awadh region of Uttar Pradesh State in India under the Geographical Indications (GI) Act. It is envisaged that protection of the cuisine under the GI Act will enable better economic value to the region and improve the value of the culinary products on both the domestic and international front.

## I. Geographical indications as a policy tool for economic development and conservation of traditional knowledge

World over, the geographical indications are being increasingly considered as part of a wider policy measure aimed at the protecting and rewarding of traditional knowledge. The geographical indications are considered the best way to protect and incentivise traditional knowledge of communities due to the following unique features inherent in the GI system:<sup>1</sup>

(i) The knowledge remains in public domain<sup>2</sup>—As no individual person or organisation has exclusive property rights over the knowledge in the protected geographical indication, the knowledge remains in the public domain.

(ii) Rights are potentially held in perpetuity<sup>3</sup>—The protected geographical indication remains so as long as the good-place-quality link is maintained and the indication is not rendered generic.

(iii) The scope of protection is consistent with cultural and traditional rights<sup>4</sup>—Geographical indications is a collective right that is open to all producers in the region that observe the specified codes and produce in the demarcated geographical region. Also, the good-place link underlying GI protection automatically prohibits the transfer of indication to the producers outside the region. II. Protection for geographical indications<sup>5</sup>— International and Indian law The treaty of Lisbon for the Protection of Appellations of Origin and their International Registration, concluded in 1958, was aimed at providing for the protection of appellations of origin, that is, the “geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors”. The Lisbon Agreement, concluded in 1958, was revised in Stockholm in 1967, and was amended in 1979. The Agreement is open to States party to the Paris Convention for the Protection of Industrial Property (1883). Instruments of ratification or accession must be deposited with the Director General of WIPO. The Lisbon Agreement created a Union, which has an Assembly. Every State member of the Union which has adhered to at least the administrative and final clauses of the Stockholm Act is a member of the Assembly.<sup>2</sup> As of 2010, there are 26 signatories of the Lisbon Agreement.<sup>3</sup>

Under the WTO framework, Articles 22 and 23 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) deal with the obligations of the signatory nations regarding geographical indications. While Article 22 deals with the general standard of protection, Article 23 provides additional protection for wines and spirits. Article 23 has been especially negotiated by the European Union countries as geographical indications to protect their economic interests in wines and spirits as most of the well known global wines and alcoholic beverages like Scotch (Scotland), Bordeaux Wine (France), Cognac (France), Burgundy (France), etc. are of European geographical origin and named after their respective cities/towns/regions of origin. Moreover, there is a sense of prestige, pride and heritage attached to these wines and spirits in the respective countries from which these wines come from and the motivation behind seeking protection for this traditional knowledge and its origin extends beyond the normal economic logic.

In India, the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into force from 15-9-2003, is the statute that provides protection for geographical registrations in the country. This Act fulfils India’s obligations under the TRIPS Agreement regarding geographical agreements. The Act includes foodstuffs as goods<sup>4</sup> and defines “geographical indication” in Section 2(1)(e) as:

2. (1)(e) “geographical indication”, in relation to goods, means 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.

The duration of registration for the geographical indication is ten years which can be repeatedly renewed for another ten years upon application in the prescribed manner by the proprietor. Similar provisions apply for authorised users.<sup>5</sup>

Since the coming into force of the Geographical Indications Act in India, there have been a slew of registrations of geographical indications, mostly in the area of textiles and handicrafts. The rich culinary heritage of India has so far been under-represented in the geographical indications registry. In fact, out of the 120 odd geographical indications registered in India till March 2010, only two, the Dharwad Pedha and the Tirupathi Laddu are from the foodstuffs category, while eighty are from the handicrafts category, thirty one from the agricultural category, and seven are from the manufactured category including the Peruvian Pisco which is the only foreign geographical indication registered in India.<sup>6</sup>

The rich culinary heritage of India has been till now neglected as far as its promotion through the geographical indications method is concerned. The case for promotion of the rich Indian culinary heritage through geographical indications is very strong as geographical indications registration has many inherent advantages including legal protection of the geographical indication within India as well as possibility of protection in all the 160 WTO member countries who are also signatories to the TRIPS agreement. Also, like the wines and spirits are strengths of Europe when it comes to marketing and exporting their cultural heritage, it can be argued that the strength of India lies in our rich culinary heritage that is not only popular in developed nations abroad but in countries like the United Kingdom, has attained the status of a nationally preferred cuisine. The foodstuffs of India are more easily recognisable abroad and promoting their registration and marketing would help in establishing Brand India in the dynamic and lucrative global cooked, processed, and ready-to-eat markets.

Apart from this, the geographical indications protection will help in economic development of regions in India in a much more integrated and comprehensive manner and, would also boost the confidence of the people of that region in their own cultural and culinary heritage which will result in increased self-confidence and esteem, which are the intangible factors that aid in further growth of a region.

III. The State of Uttar Pradesh Economic and GI Profile: A case for Awadhi cuisine Uttar Pradesh is the most populous State in India. With over 170 million people, the population of Uttar Pradesh constitutes 16% of the total population of India. The GDP of Uttar Pradesh is only 6% of the total GDP of India and the growth rate of the State has been below the national average since 19607. As per latest data on the geographical indications registered in the geographical indications registry, there are four geographical indications registered from the State of Uttar Pradesh viz. Allahabad Surkha, Banaras Brocades and Sarees, Mango Malihabadi Dussehri, and Lucknow Chikan Craft. Of these four, Malihabadi Dussehri and Lucknow Chikan Craft belong to the Awadh region of Uttar Pradesh that forms the major chunk of the modern Central Uttar Pradesh including the capital city of Lucknow.<sup>8</sup>

Geographical indications can especially be used for the development of the regions which though have a rich heritage but are economically backward. Uttar Pradesh, for instance, is one of the most economically backward States in India but has a rich cultural heritage in which cuisine forms a major part. The Awadh region of Uttar Pradesh, comprising of the capital district of Lucknow, along with the current districts of Barabanki, Gonda, Balrampur, Rae Bareli, Hardoi, Sitapur, Faizabad, Lakhimpur, Unnao, Pratapgarh, Sultanpur, Ambedkar Nagar, Bahraich and Shravasti, has had a rich past. The imperial gazetteer of India of 1909 traces the origin of the political unity of the region to the ancient kingdom of Kosala of King Dasaratha.<sup>9</sup>

The Awadh region is also the home of a unique Indo-Persian culture that developed during the reign of the Shi'ite Muslim rulers of Awadh region in the 18th and 19th centuries who established their capital at the city of Lucknow which is also the current capital of the State of Uttar Pradesh. The region of Awadh, being a part of the Great Indo-Gangetic Plain has always been a centre of culture, spirituality, religion and scholarship of the Indian civilisation, with the ancient cities of Ayodhya, Allahabad (Prayag), Shravasti and forests of Sitapur District (Naimisharanya) being historical landmarks of the Hindu mythology. And this infusion of Persian with Indian aesthetics resulted in a culture so unique and composite in character that few matching examples may be found, if any, in the rest of the world. It is a culture that is composite and yet very Indian and its emphasis on etiquette and refinement in every aspect of human endeavour is famous not only in India but throughout the world. The splendour of the Royal Court of Awadh at Lucknow and the extravagance of the Nawabs of Awadh are well documented in history by generations of travellers, writers, historians, romanticists, diplomats and treasure hunters right up to this day.<sup>10,11,12</sup>

Nawab Jafar Mir Abdullah, considered by many as the face of Nawabi Lucknow and the refinement and culture of Lucknow in the world and a regularly invited expert in matters of Lucknowi culture in the print and electronic media, was interviewed by this author on 28-12-2009 and he gave many insights in the uniqueness of Awadhi culture and cuisine as will be discussed from time to time in this article. He informed this author that the way of salutation of Lucknow, a secular Aadaab, has been included by the UNESCO in their list of the intangible heritage of the world. As Ebrahim Alkazi has noted:<sup>13</sup>

Lucknow and Awadh (also known as Oudh), were names that conjured up, in the European imagination of the 18th and early 19th centuries, fantasies of oriental splendour and opulence. Few courts had attracted such vast numbers of merchants, travellers, artists, scholars and military adventurers from distant regions. They sought patronage and fame, and they yearned to luxuriate in the exotic lifestyle of the east.

IV. Cuisine of Awadh The now globally famous and feted cuisine of the Awadh region in the modern Uttar Pradesh evolved from the kitchens of the Nawabs of Awadh in the capital city of Lucknow in the 18th to 19th centuries from the Mughlai cuisine. The rakabdars (chefs) and bawarchis (cooks) of Awadh invented and propagated new methods of cooking like dum style, dhungar style, galavat, ghee durust, loab, baghar, gile hikmat, etc.<sup>14</sup>

The dishes that evolved from that period are culinary legends and have given birth to a whole genre of cuisine known as the "Awadhi cuisine". The Awadhi cuisine is a characteristic of the city of Lucknow and the Awadh region like the chikan and zardozi needleworks of which chikan is already protected as geographical indications and efforts are on to get the GI status to zardozi. The Lucknowi dishes like shaami kebabs, kakori kebabs, nimosh/namash, biryani, pasanda kebabs, etc. are well-established legendary dishes which are widely marketed for a huge premium cost in the domestic and foreign markets. In the city of Lucknow itself, there are more than a thousand outlets selling kebabs<sup>15</sup>, apart from others selling the different varieties of sweets and other dishes.

A few of these culinary products have been well documented and well known in India and abroad and many books have been written about them. At the same time, there are many legendary, lesser known and rare recipes which require a much higher level of skill which are fast vanishing from the public domain due to the lack of master craftsmen that can prepare them. A few of such recipes are now being documented afresh. Most notably, Dr. R.K. Saxena and Mrs Sangeeta Bhatnagar, in their book *Dastarkhwan-e-Awadh*<sup>16</sup>, have listed some representative dishes of the Nawabi times after a meticulous and thorough research. A further attempt is being made by Welcome Group to document the rare culinary dishes of a collection of former royal families of the Awadh region as told to this author by Nawab Jafar Mir Abdullah. Still there are some dishes like the namash or nimosh, the sweet made in winter from cream and which requires extraordinary skill to make, which have not been documented in contemporary times, yet documentation regarding mention of them in historical documents exists, and there is further scope of documenting such dishes as part of the traditional knowledge of the region and ensuring their due intellectual property protection and promotion.

V. Geographical indications registration for Awadhi cuisine products "A legal analysis The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides for the registration of a geographical indication of a product in terms of a definite territory of a country, region or locality in that territory<sup>17</sup>. Under the provisions of this Act, there is a prohibition on registration of goods which are determined to be generic names or indications of goods and are therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country<sup>18</sup> and the indications which, although literally true as to the territory, region, or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.<sup>19</sup>

The Act provides for the registration of homonymous geographical indications if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indication and the need to ensure equitable treatment of the producers of the goods concerned that the consumers of such goods shall not be confused or misled in consequence of such registration<sup>20</sup>. The applicants for registration can be any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the goods concerned<sup>21</sup>. For persons engaged in the production of the goods which have already been registered as geographical indication(s), another option is registration as an authorised user<sup>22</sup>. The conditions for registration and governing provisions regarding filing, examination, refusal and acceptance, withdrawal of acceptance, advertisement, opposition and, correction or error in an amendment of the application, are the same for authorised users as for the applicants for proprietary rights of the geographical indications.<sup>23</sup>

Regarding the criteria defined in Section 8, the geographical indication can be applied in the name of Awadhi vegetarian and non-vegetarian dishes and sweets like Lucknow biryani, Lucknow namash, Kakori kabab (Kakori being a place in the Awadh region), and such other dishes which are a speciality of the region. The generic name bar on registration is applicable only if it is proved before and accepted by the Registrar that the culinary product so to be registered is generic in nature by virtue of its use in other parts of the country so much that the scope of protection has ended for that product and hence it is not registrable. For many Awadhi culinary dishes, though it is true that they are made outside of the Awadh region and are sold at a premium, it is also true that wherever possible the hotel or restaurant selling the product attempts to bring in chefs from Lucknow or other districts of the Awadh region in order to provide an authentic culinary experience to their consumers.<sup>24, 25</sup>

There are many families of chefs living in Lucknow city since Nawabi times who have continued their family occupations. Chefs like Master Chef Abdul Salam Quraishi<sup>26</sup> and Master Chef Imtiaz Quraishi<sup>27,28,29</sup>, are internationally recognised and established chefs of the Awadhi tradition who have displayed their culinary skills around the globe<sup>30</sup>. The point is that enough material exists and also, enough living experts exist, in order to distinguish the Awadhi cuisine from that of other parts of India. This large body of pre-existing evidence is sufficient to address the concerns of Sections 9(f), 9(g) and 10 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 dealing with generic names, misleading names and homonymous geographical indications respectively. The registration for the geographical indication for specific products can be initiated by an association of such chefs and cooks or any government authority like the Tourism Department which can claim that it represents their interest.

As geographical indications are a community right, it is better that any representative NGO(s) along with a government department apply jointly for registration of the geographical indication as in the case of geographical indication registration application for chikan embroidery handicrafts where the Directorate of Handloom and Textiles of the Government of Uttar Pradesh along with the NGOs Shilp Sadhana, NEED, and Lucknow Chikan Handicraft Association, were the applicants for the GI status. Other corporate and individual business houses can apply for registration as authorised users of the GI. As prominent hotel groups like the Taj Group, ITC Welcome Group, Ashoka Group, etc. have been promoting the Awadhi cuisine in a big way outside the Awadh region, their involvement in this project is a must if it has to take off. As authorised users of the geographical indications these corporates will not only help in building the image of the Awadh region but also will facilitate more investment in the region leading to creation of more jobs in the relatively more environmentally friendly tourism industry.

VI. Conclusion Geographical indications are an important tool in the hands of the policy-makers for economic development and growth. They also serve the purpose of increasing the visibility of the particular region in the globe and serve to enhance the self-belief of the people of that particular region which in turn propels more growth.

In India, so far the focus is largely on registration of geographical indications for handicrafts as a means of protecting traditional handicrafts and improving the living standards of associated artisans. On the other hand, culinary products, which enjoy a much greater mobility and market, both existing and potential, have been ignored and so far there is no single registered GI. India's most backward States like the State of Uttar Pradesh have a rich repository of culinary heritage which needs to be sustained. The most visible culinary heritage being of the region of Awadh which is famous around the world as a specialised genre of cuisine requiring extraordinary skill and finesse, and whose practitioners are increasingly rare to find.

Registration for the geographical indications protection for the rich culinary heritage of Awadh will not only help in the preservation of this traditional knowledge which, though high in demand, is short in terms of supply of skilled chefs, cooks and artisans throughout the globe, but also, in the process, act as a catalyst to help to lift the State of Uttar Pradesh out from the below national average growth rate that it has been burdened with since the 1960s. The inherent protection for place-good-quality in the GI system will ensure that any producer of Awadhi cuisine products who is not a resident of the Awadh region, would have to start his own establishment in the region. This will ensure that with the right Government incentives for investment, there will be a huge investment from major players in the tourism and hospitality business to establish their commercial presence in the region in order to qualify as authorised users.

Further, generations of trained rakabdars and bawarchis and other skilled professionals from the region would be able to showcase their talent across the globe in more numbers and with better remuneration and no exploitation as most of the current generation face due to their illiteracy or ill-education. This will also spur the demand for more cooks and chefs from the region (or trained and certified so in the region) skilled in the art of Awadhi cuisine and will in turn spur the economic growth and job growth in the region.

The economic benefits of such protection will not require much investment from the Government, only the most basic facilitation policies are required as the industry will then self-evolve and self-sustain itself. The economic benefits from the protection of geographical indications for Awadhi cuisine will act as a catalyst for the development of other regions of Uttar Pradesh also and will have a positive impact on the below national average growth rate of the State by incentivising and harnessing the traditional knowledge and cultural heritage for an integrated growth of Uttar Pradesh.

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