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Authored By: Dr. Promil Diwan, Assistant Professor, School of Law,
Maharaja Agrasen University, Baddi Solan,
Email Id: prmlodiwan@gmail.com.***



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I. INTRODUCTION:

*“In wake of globalization, it is utmost important to behead in innovations and creativeness to compete the stiff competitions in technology and trade. India is well recognised for its intellectual skills in the fields of software engineering, missile technology, Moon or Jupiter mission, and other technological areas. However, India lags in generation of IPR assets in terms of registered patents, industrial design, trademarks, etc. In a recent report by the US Chamber of Commerce, India stood at 29th position amongst 30 countries in IP index around the globe. It is a very alarming condition for policy makers as well as for the nation. The development of any society directly depends on IPR and its policy framework. Lack of IP awareness resulted in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country. Thus, there is a dire need for dissemination of IPR information to boost indigenous inventions and developments in the field of research and technology. In foregoing section of this paper an effort is made to highlight various intellectual property rights in context to India with their related corresponding Legislative regulations”.*¹

II. INTELLECTUAL PROPERTY RIGHTS AND THEIR CLASSIFICATION:

The term Intellectual property is related to the human brain applied for creativity and invention. Various efforts in terms of inputs of manpower, time, energy, skill, money, etc are required to invent or create something new. The ultimate idea by which invention or creation took place is an intangible property of the person, who took pains for the invention or creation. Therefore, as per law, legal rights or monopoly rights are given to creators or innovators to harvest the economic benefits on their invention or creation. Intellectual property rights (IPR) are territorial rights by which an owner can sell, buy or license

¹ Lalit Jajpura, Bhupinder Singh and Rajkishore Nayak, *An Introduction to Intellectual Property Rights and their Importance in Indian Context*, 22Journal of Intellectual Property Rights 32, 32-33,(2017).

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Intellectual Property (IP) like physical property. Although one must register IPR at legal authority in some presentable or tangible form to claim their benefits. Each type of IPR gives special rights to its inventor and or creator to sustain and harvest economic benefits which further motivates skill and societal developments.

Based on type of invention and creation of human mind and their applications the intellectual property rights are classified as follows:²

- *Patents,*
- *Trademarks,*
- *Industrial designs,*
- *Layout design of semiconductor integrated circuit,*
- *Geographic indications of source,*
- *Copyright and related rights (literary and artistic works, musical work, artistic works, photographic work, motion pictures, computer programmes and performing arts and broadcasting work).*

III. BASIC CONCEPT IN IPR³:

- *Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property.*
- *Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.*

²*Id at 33*

³ Sagar Kishore Salve & Varsha Kishore Salve, *Intellectual Property Rights*, 5, World Journal of Pharmacy and Pharmaceutical Science, 2529, 2529-30 (2016)

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- *Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period.*
- *Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.*

IV. OBJECTIVES OF IPR⁴:

- *Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form.*
- *The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property.*
- *The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property.*
- *Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration, or enforcement of IP rights must be pursued or obtained separately in each territory of interest.*

V. HISTORICAL PERSPECTIVE OF INTELLECTUAL PROPERTY RIGHTS: INTERNATIONAL AND NATIONAL LEVEL:

The most punctual records identifying with Intellectual Property goes back to the sixth century BCE, from Sybaris in Ancient Greece. It conceded a yearlong selectiveness for dough punchers to make their culinary creation. So, to speak, the ascent of Intellectual

⁴*Ibid*

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Property began from the ascending of bread. Conceding restrictive rights is a culture our cutting-edge society was naturally introduced to. Nonetheless, realizing that it has existed for centuries advises us of our valuation of individual abilities. Albeit the old Greeks thought about their creations as blessings from the divine beings, perceiving the human piece of the development cycle demonstrates that we are very much like our far-off precursors. Be that as it may, the similarity of our qualities to old perspectives would stop for quite a while with the ascent of the Roman Empire. Religion went to the front, thus the individualistic view on creatorship took a backstep and stayed there since. At around 480 CE, Emperor Zeno toppled the entire idea of sole ownership of aesthetic and horticultural produce. The Church dealt with the whole Empire. All things considered, as the centuries progressed, strict impact over society melted away as humanism reappeared through antiquated writings. This development, which from various perspectives is detectable to Aristotelian and Platonic perspectives prepared for the Enlightenment. During this time of human appreciation, the principal truly unmistakable cycle of Intellectual Property showed up.⁵

V.I PATENT:

The beginning of licenses can be gone back to the year 1331. On sixteenth July 1331, King Edward III of England made history by giving King's insurance through a letter's patent. It was given to a Flemish weaver of woolen garments by the name John Kemp. Kemp was permitted by the ruler to misuse his creation and direct exchange on woolen garments made by his art in England. Additionally, he likewise got the option to encourage his weaving strategy to individuals he decided to. Consequently, the security gave Kemp elite rights to work and disperse his insight and abilities. From multiple points of view, this case lies at the foundation of the current day licenses. Licenses developed from letters patent which were given by the rulers that allowed syndication over specific ventures with new procedures. This

⁵ Sony Kashyap, *History and Development of Intellectual Propert*, 3, International Journal of Education, Modern Management, Applied Science & Social Science, 193, 194 (2021)

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influence was utilized generally for fund-raising for the crown and was mishandled on most occasions. Elizabeth, I utilized this framework for an enormous scope, giving licenses in any event, for regular products like salt, starch, and so on These accursed syndications prompted a contention between the Parliament and the Crown, which was at long last gotten comfortable 1601. It was concluded that the ability to oversee licenses would be gone over to the precedent-based law courts.⁶

V.II ORIGIN IN INDIA:

The first enactment in India identifying with licenses was the Act VI of 1856. The goal was to urge innovations and to incite creators to uncover the mystery of their developments. Afterward, to give a restrictive advantage, a new enactment was presented as Act XV of 1859. In any case, in 1872, the demonstration was renamed The Patterns and Designs Protection Act. The demonstration stayed in power for a very long time with just 1 correction in the year 1883. The Indian Patents and Design Act supplanted all the past laws in India. In this demonstration, arrangements identifying with the award of mystery licenses, patent of expansion, and increment of the term of the patent from 14 years to 16 years were made. Afterward, after autonomy, different panels were made to inspect the updates in the law, and subsequently, a bill was presented in the Lok Sabha in 1965 which anyway slipped by. Even though it slipped by in 1965, in 1967, a changed bill was presented, and afterward, on the last suggestion of the board, the Patents Act, 1970 was passed which is now utilized in India.⁷

V.III COPYRIGHT:

Copyright grew comparatively as the licenses, by which certain writers and printers were given select rights to distribute books and different materials. The intention behind this was not to secure the creator's privilege yet to raise the incomes of the public authority and to

⁶*Ibid*

⁷*Id at 195*

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offer control to the public authority for controlling distributions. The Statute of Anne, which was passed in 1710, was an achievement throughout the entire existence of copyright law. It perceived that the creators ought to be essential recipients of the copyright law and perceived that such copyright thoughts ought to have a restricted span (at that point set at 28years), after which the work would pass into the public area. Comparable laws were sanctioned in the United States in 1790 and France in 1793.⁸

V.IV ORIGIN IN INDIA:

Copyright law entered in the year 1847 in India through an authorization during the system of the East India Company. Around then, the term of the copyright was for a very long time in addition to 7years posthumous. The public authority could concede an obligatory permit for distributing a book if the proprietor of the copyright, upon the passing of the writer, denied its distribution. Enrollment of Copyright was required to authorize rights under this demonstration. In 1914, the then Indian council authorized another Copyright Law under the British Raj which. was very like United Kingdom Copyright Act, 1911. Be that as it may, there were not many significant contrasts. The main one being-it presented criminal approvals for copyright encroachment under segments 7 to 12. The 1911 Act was corrected ordinarily until 1957 and in this manner, in the year 1957, the Copyright Act was instituted by autonomous India to suit the arrangements of the Berne Convention. This 1957 Act has been altered ordinarily, the most recent being in the year 2012.⁹

V.V TRADEMARK:

Brand names have been utilized since the thirteenth century in England. Dough punchers were the initial ones to exploit the brand name. In the year 1266, under the rule of King Henry III, a Trademark enactment was passed in England. Cooks in England utilized their

⁸*Ibid*

⁹*Ibid*

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very own unmistakable characteristic to recognize their items. Nonetheless, the root of the principal present-day brand name enactment is dated in the year 1857 in France, trailed by the Merchandise Act in England in 1862. The most established enlisted brand name in the UK was in the year 1876-The Bass Brewery's name which had three triangles logo for a lager.¹⁰

V.VI ORIGIN IN INDIA:

India arranged the primary demonstration identified with brand names as Trademark Act, 1940 which was acquired from British Trademark Act, 1938. Further, post autonomy the Trade and Merchandise Act, 1958 was established. Different revisions were made until 30th December 1999, when the Trademark Act, 1999 was sanctioned which is as of now utilized in India. The two key requirements satisfied under this demonstration are-a) shield the proprietor from confusion and trickery of imprints by contenders. b) Secure brand name proprietor's business and exchange and generosity which is added to the brand name.¹¹

V.VII GEOGRAPHICAL INDICATIONS:

Geographical indications a part of IPR have now been firmly established and given legal recognition at international as well as National level. Madrid agreement on repression of false or deceptive indications of source on goods, 1967, this agreement provides for remedy of seizure or import prohibition of all goods bearing false or deceptive indications and Lisbon agreement for protection of appellations of origin and their registration 1979, this protects the appellation of origin of other contracting countries.¹²

V.VIII ORIGIN IN INDIA:

¹⁰*Ibid*

¹¹*Ibid*

¹² M K BHANDARI, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS, 11 (Central Law Publications, 2012)

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The legislations which deal with protection of GIs in India are the Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). India enacted its GI legislations for the country to put in place national intellectual property laws in compliance with India's obligations under TRIPS. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement. In India a GI may initially be registered for a period of ten years, and it can be renewed from time to time for further periods of ten years. Indian law has certain restrictions that a registered GI cannot be of assignment, transmission, licensing, pledge, mortgage or any such other agreement.

Geographical indication as a concept is very new in India coming into paper in 1999 and into practice on 15 September 2003 and the first registered GI was of Darjeeling tea, applied in 2003 and officially registered in Oct 2004. It is a classic example of the indication of geographical origin which helped in tremendous brand recognition of India in the International market. Worldwide Darjeeling tea is synonymous with fine quality tea with uniqueness in extraordinary flavor and colour flooring all other competitor tea variants in the globe. There was once upon a time a tremendous amount of infringement happening where both internal domestic producers as well as foreign producers used to pass-off their tea produce as Darjeeling tea for obvious commercial reasons and resulting insubstantial harm for the original Darjeeling tea growers share of revenue and market goodwill. Hence was the reason which made it. of India implement GI Act to come in practice and the tea was the first product to be taken for registration due to constant initiatives taken by the Tea Board and Darjeeling Tea Association? Hence registration of Darjeeling tea for GI was entirely an Industry driven initiative for ethical and commercial reasons and to control the passing-off infringements.¹³

¹³SuvrashisSarkar, *History and Evolution of Geographical Indication as Intellectual Property In India*, 6 International Journal of Scientific Research, 530, 531(2017)

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V.IX INDUSTRIAL DESIGN:

There are two major international instruments for protecting infringement of industrial designs. Firstly, Hauge agreement concerning the international deposit of industrial design, 1925, the basic purpose of the agreement is to facilitate the international protection of industrial design by providing a single deposit with the international bureau of WIPO so that possible infringement in other member countries may be prevented. Secondly, Locarno agreement on establishing an international classification for industrial design, 1968, the aim at bringing uniformity to the classification of industrial designs to facilitate searches for novelty and priority.¹⁴

V.X ORIGIN IN INDIA:

The need to protect new designs was felt in India as early as 18th century where in the legislation enacted the Patterns and Designs Protection Act, 1872 for the first time. The Act provided the inventors of new patterns and design in India, the exclusive privilege of making, selling and using the invention in Indian or authorizing others to do so for shorter duration of time. This Act was followed by the Inventions and Designs Act, 1888, which consolidated and amended the law relating to the protection of inventions and designs and contained a provision relating to design in a separate part. The Act of 1888 was replaced by the British Patent and Designs Act, 1907 which became the basis of the Indian Patent and Designs Act, 1911. The Patents Act of 1970 repealed the patent provisions of the 1911 Act. The Designs Act, 2000 repealed the Designs Act, 1911. The Act came into force on 11 May 2001.¹⁵

VI. LEGISLATIVE PERSPECTIVE RELATED TO INTELLECTUAL PROPERTY RIGHTS IN INDIA:

¹⁴*Supra Note 12 at 12*

¹⁵SuvrashisSarkar,*History and Evolution of Industrial Designs in India*, 5, International Global Journal for Research Analysis,265 (2016)

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VI.I LAWS ON COPYRIGHT IN INDIA:

Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works (*including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium*), dramatic, musical, and artistic work, cinematographic films, and sound recording. Since the statute of Anne, 1710 saw it as sole liberty of printing and publishing the meaning of copyright has been broadened to accommodate latest trends.¹⁶ Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films, and sound recording. For example, books and computer programs are protected under the literary work. Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc. Copyright protection is conferred on all Original literary, artistic, musical, or dramatic, cinematography, and sound recording works. Original means, that the work has not been copied from any other source. Copyright protection commences the moment a work is created, and its registration is optional. However, it is always advisable to obtain registration for better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.¹⁷

¹⁶ J P MISHRA, AN INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS, 114 (Central Law Publications, 2012)

¹⁷ Copy Right Law in India, Available at: <https://www.legalserviceindia.com/article/I195-Copyright-Law-in-India.html>, (last visited on 21 March 2023).

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The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

Economic rights of the author and Moral Rights of the author.

(A) Economic Rights:¹⁸

The copyright subsists in original literary, dramatic, musical, and artistic works, cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless of whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work, and to make any adaptation of the work. In the case of cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic, or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

¹⁸*Ibid*

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(B) Moral Rights:¹⁹

Section 57 of the Act defines the two basics 'moral rights' of an author. These are: Right of paternity, and right of integrity. The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honour or reputation. The proviso to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer program to which section 52 (1)(aa) applies (i.e. reverse engineering of the same). It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by section 57(1), other than the right to claim authorship of the work.

VII. LAWS ON PATENT IN INDIA:

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

The history of Patent law in India starts from 1911 when the Indian Patents and Designs Act, 1911 was enacted.²⁰

- *The Patents Act, 1970 is the legislation that till date governs patents in India. It first came into force in 1972.*

¹⁹*Ibid*

²⁰ Patent Laws in India, Available at: [https://byjus.com/free-ias-prep/indian-patents-act/#:~:text=Under%20this%20law%2C%20patent%20rights,are%20capable%20of%20industrial%20application,\(last visited on 20-3-23\)](https://byjus.com/free-ias-prep/indian-patents-act/#:~:text=Under%20this%20law%2C%20patent%20rights,are%20capable%20of%20industrial%20application,(last%20visited%20on%2020-3-23))

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- *The Office of the Controller General of Patents, Designs and Trademarks or CGPDTM is the body responsible for the Indian Patent Act.*
- *The Patent Office has its headquarters in Kolkata (Calcutta) and has branches in New Delhi, Chennai, and Mumbai. The office of the CGPDTM is based in Mumbai. Nagpur hosts the office of the Patent Information System and the National Institute for Intellectual Property Management.*
- *The Controller General supervises the Act's administration and offers advice to the government on related matters.*
- *The Patents Act has been repeatedly amended in 1999, 2002, 2005, 2006, respectively. These amendments were required to make the Patents Act TRIPS compliant. TRIPS stands for Trade-Related Aspects of Intellectual Property Rights.*
- *The major amendment in the Patent Act was in 2005, when product patents were extended to all fields of technology like food, drugs, chemicals, and microorganisms. The Rules under Patent Act were also amended in 2012, 2013, 2014.²¹*

VII.I PATENT LAW AMENDMENT ACT 2005:

Salient features of the Patents (Amendment) Act 2005 related to product patents:

1. *Extension of product patent protection to products in sectors of drugs, foods and chemical.*
2. *Term for protection of product patent shall be for 20 years.*
3. *Introduction of a provision for enabling grant of compulsory license for export of medicines to countries which have insufficient or no manufacturing capacity; provided such importing country has either granted a compulsory license for import or by notification or otherwise allowed importation of the patented pharmaceutical products from India (in accordance with the Doha Declaration on TRIPS and Public Health)*

²¹Ibid

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4. *Section 3 (d) regarding patentability.*²²

VIII.I EFFECTS OF PATENT AMENDMENT ACT 2005:

1. *Due to the new patent regime, increased prices of products were a major hindrance during the time. However, the government has taken initiative-taking measures to ensure low prices for essential drugs and has used compulsory licensing as a tool to keep exorbitant prices under check.*
2. *The amendment intended to make Indian drug and pharmaceutical industries competitive at par with multinational companies.*
3. *Despite initial reservations, Indian pharmaceutical companies manufacturing generic drugs have flourished in the last decade.*
4. *Also, MNCs have opened Research and Development Centres in India.*²³

IX. LAWS ON TRADEMARK IN INDIA:

A trademark includes a name, word, or sign that differentiates goods from the goods of other enterprises. Marketing of goods or services by the procedure becomes much easier with a trademark because recognition of product with the trademark is assured and easier. The owner can prevent the use of his mark or sign by another competitor. Trademark is a marketing tool which increases financing of the business. A trademark is not always a brand, but the brand is always a trademark. Sometimes there is a confusion between trademark and brand. The brand name can be simply a symbol or logo, but the trademark is a distinguishing sign or indicator in a business organization as it has a wider implication than brands. People are more influenced by the distinctive trademark that reflects the quality of the product. A trademark can be a logo, picture mark or a slogan.²⁴ Before 1940 there was no law on trademarks in India. A number of problems of infringement of registered and unregistered

²²*Ibid*

²³ *Ibid*

²⁴ Trade Mark in India, Available at: <https://www.legalserviceindia.com/legal/article-8611-trademark-law-in-india.html>, (last visited on 20-3-23)

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trademark arose which were resolved under Section 54 of the Specific Relief Act, 1877 and registration was adjudicated under the Indian Registration Act, 1908. Overcome these difficulties, the Indian Trademark law was enforced in 1940. After the enforcement of the trademark law, demand for protection of trademarks increased as there was major growth in trade and commerce. The Trademark law was replaced with the Trademark and Merchandise Act, 1958. It provides better protection of trademark and prevents misuse or fraudulent use of marks on merchandise. The Act provides registration of the trademark so that the owner of the trademark may get a legal right for its exclusive use.²⁵ This previous Act got replaced with the Trademark Act, 1999 by the government of India by complying it with TRIPS (Trade-related aspects of intellectual property rights) obligation recommended by the World Trade Organization. The aim of the Trademark Act is to grant protection to the users of trademark and direct the conditions on the property and provide legal remedies for the implementation of trademark rights. The Act gives the police the power to arrest in cases of infringement of the trademark. The Act gives a complete definition for the term infringement which is frequently used. In Trademark Act, it provides punishments and penalties for the offenders. It also increases the time duration of registration and registration of a non-traditional trademark.²⁶

X. LAWS ON GEOGRAPHICAL INDICATION IN INDIA:

The term geographical indication was used for the first time in international Intellectual Property laws in the TRIPS Agreement of the WTO, which came into force in 1995. Geographical indications are defined in Article 22(1) of the TRIPS Agreement, as “indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin. “To cover up such situations it became

²⁵ *Ibid*

²⁶ *Ibid*

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necessary to have a comprehensive legislation for registration and for providing adequate protection to geographical indications and accordingly the Parliament has passed a legislation, namely, the Geographical Indication of Goods (Registration and Protection) Act, 1999. The legislation is administered through the Geographical Indication Registry under the overall charge of the Controller General of Patents, Designs and Trademarks.²⁷

The salient features of this legislation are as under:

- ❖ *Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user", etc.*
- ❖ *Provision for the maintenance of a Register of Geographical Indications in two parts- Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.*
- ❖ *Registration of geographical indications of goods in specified classes.*
- ❖ *Prohibition of registration of certain geographical indications.*
- ❖ *Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.*
- ❖ *Compulsory advertisement of all accepted geographical indication applications and for inviting objections.*
- ❖ *Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.*
- ❖ *Provisions for higher level of protection for notified goods.*
- ❖ *Prohibition of assignment etc. of a geographical indication as it is public property.*
- ❖ *Prohibition of registration of geographical indication as a trademark.*

²⁷Supra Note 13

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- ❖ *Appeal against the Registrar's decision would be to the Intellectual Property Board established under the Trademark legislation. Ÿ Provision relating to offences and penalties.*
- ❖ *Provision detailing the effects of registration and the rights conferred by registration.*
- ❖ *Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.²⁸*

XI. LAWS ON INDUSTRIAL DESIGN IN INDIA:

Design means only the features of shape, configuration, pattern, ornamentation, or composition of lines or colours applied to any article, whether in two or three dimensional or in both forms. This may be applied by any industrial process or means whether manual, mechanical or chemical, separate or combined process, which in the finished article appeals to and judged solely by the eye, but does not include any mode or principle of construction or anything which is mere mechanical device and does not include any trade mark as defined in the Trade Marks Act or any artistic work as defined in section 2(c) of the Copyright Act, 1957. In India, under the Designs Act, 2000 and Designs Rules, 2001 as amended in 2008, the aesthetics of any product or an article are protected and registered. Design means the features of shapes, patterns, configurations, ornaments, or composition of lines or colors applied to any article whether in 2 dimensional or 3 dimensional or in both forms, by any means or industrial process, whether hand-operated, chemical, or mechanical, separate or combined, which is in the finished article address to and are attracted solely by the eye i.e., tangible in nature. However, Industrial designs do not protect the designs which are intangible in nature. The purpose of the Design Act is to protect the 'appearance of an article, hence this act does not include any mode or method or principle of making or process of an article or a product. Thus, this Act provides protection and registration rights only to the designs that are aesthetic in nature, applied to articles, and not to the designs dictated by a

²⁸*Ibid*

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functional feature.²⁹ Every application for registration of designs undergoes the Act and Rules as amended on a timely basis. Any person who desires to register a design is required to submit the following documents to the Design Wing of the Patent Office at “Intellectual Property Office”, CP-2, Sector V, Salt Lake, Kolkata, or any of the Branch Offices of the Patent Office at Delhi, Mumbai and Chennai. The applications received by the Branch Offices shall be transmitted to Patent Office, Kolkata for processing and prosecution. The applications are examined in the order in which the application is filed under Section 5 and 44 of the Design Act, 2000.³⁰

A list of the steps involved to register a Design is as follows.

- 1. The application should be duly filed in prescribed Form (Form – 1) with the prescribed fees, and details such as full name, address, nationality, article name, address of service, class number along with 4 copies of the representation of the Design of an article on durable paper of size 210 mm x 296.9 mm with a suitable margin. The photographs, drawings, computer graphics should clearly depict the features of the design from different views.*
- 2. The applicant or his authorized agent shall sign the application. For small enterprises, Form-24 and documentary evidence must be submitted along with Form-1.*
- 3. In respect of a trademark, mechanical actions, letters, numerical work a statement of new (novelty) and disclaimer (if any) shall be endorsed on a representation sheet which should be duly signed and dated.*
- 4. If there are any objections or defects noticed during the examination of the Application, they are communicated to the Applicant or to his/her Agent at the address for service. Such defects must be rectified within 6 months from the date of*

²⁹ Industrial Design, Available at: <https://blog.ipleaders.in/need-know-industrial-design/>, (last visited on 22-3-23)

³⁰ *Ibid*

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application and that can be extended on a request up to 3 months further on a request made with a fee prescribed.

- If the defects are not rectified as required by the Controller, a hearing will be provided to the applicant. After the hearing controller has the right to decide whether the application should be accepted or rejected. The controller's decision will be communicated to the applicant or his agent in writing stating the reasons for such decision.*
- If in case, an applicant is not satisfied by the controller's decision then he may appeal to the High Court and such appeal should be made within 3 months from the date of the decision of the controller.*
- If in case, the application has been neglected by the applicant and has not been completed the procedure for removal of objection or defects within the time stipulated then such application gets abandoned. Further, An application gets accepted after all the defects or objections have been rectified. Then, the application gets notified in the Patent Office journal.³¹*

XII. CONCLUSION:

Intellectual Property has been a growing field for some time now. And it is poised to grow further with the coming time as well. With the ever-growing and expanding economy, it is more important than ever for an individual to know as well as to protect his intellectual property rights. India has made several changes in its IPR regime to increase efficiency and has cut down the time required to issue patents. The culture of innovation is taking centre stage in the country. India is well poised to focus on R&D. This has been reflected in its improved ranking in Global Innovation Index over the years. Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance, and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception

³¹*Ibid*

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of India globally. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

