CHAPTER 1

INTELLECTUAL PROPERTY: A CONCEPTUAL ANALYSIS

1.1. RUDIMENTS OF INTELLECTUAL PROPERTY

Intellectual Property broadly refers to the creations of human ingenuity. It denotes products of mind and intellect which has the capability of commercial exploitation. IP relates to knowledge and information which can be incorporated in tangible objects and can be commercially exploited by giving a right of usage on the holder of the right over such property.

Intellectual property covers many disparate areas.\(^9\) ‘Intellectual property rights’ is a collective term used for independent IP rights — inventions, original creative works, industrial designs, symbols, names, images, geographical indications etc., — which can be collectively used for protecting different aspects of an inventive work. It serves as a useful umbrella for a variety of different rights and related matters.\(^10\) The law of intellectual property deals with legal rights associated with innovative or creative efforts. It covers all rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Intellectual property confers certain kinds of exclusive rights to intellectual capital.

There is no intellectual property in mere ideas, facts, events or discoveries. What is protected is the particular expression of the idea if it falls under a legally recognized branch of IPR. The creation of human mind and products of human labour, under the system of

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IPR, are considered and protected as property, provided the creators satisfy certain statutory criteria.

1. 2. NATURE OF INTELLECTUAL PROPERTY

1. 2. 1. Intangible Rights over Tangible Property

The major feature that distinguishes IP from other forms of property is its intangibility. As per Lionel Bently and Brad Sherman, while there are a number of important differences between the various forms of IP, one factor that they share in common is that they establish property protection over intangible things such as ideas, invention, signs and information while there is a close relationship between intangible property and the tangible object in which they are embodied.\textsuperscript{11} Intellectual property law does not address the tangible, material object in which the creation of the mind has been embodied. Intellectual property relates to the capacity of a man to produce a new thing and present that thing so produced before public to use. There is no property as such in the thing so produced but in the skill, judgment and labour of the mind which is incorporated in the product. It creates more abstract property interests in the tangible. IPR is conferred for the embodiment of ideas in a particular work of authorship invention, symbol, design and so on. The abstract ideas remain free from intellectual property rights. IPRs are distinct and separate from property rights in tangible goods.

Thus, intellectual property of whatever species is in the nature of intangible incorporate property. It is intangible property in the tangible objects. This type of property cannot be seen but can be felt by senses. IPRs basically give rise to a form of intangible

property which commands a material value that can also be higher than the value of a tangible asset or property. It allows the creators or owners to have the benefits from their works when these are exploited commercially.

1. 2. 2. Chose in Action

In the legal sense, IP is a property which can be owned and dealt with. Most forms of IP are ‘chose in action’ rights that are enforced only by legal action as opposed to possessory rights. Many of the rights of ownership common to real and personal property are common to IP also. IP is a property right and hence can be inherited, bought, gifted, sold, licensed, assigned or mortgaged. Legal systems in all nations attribute incidents of property such as ownership, enjoyment, transferability and transmissibility to IPR. Under the respective municipal laws, IPR can be protected and enforced. It can very well be protected against piracy and infringement by others. The holder of the owner of IPR has a form of property which he can use as he likes, subject to certain conditions, and he can take legal action against the trespassers and can obtain damages just as the owner of real property can do.

1. 2. 3. Rights and Duties

IP gives rise not only to property rights but duties also. The owner of IP has right to do certain acts in respect of his work/product. He has the exclusive right to produce the work, make copies of the work, market the work etc. He also has the negative right to exclude third parties from exercising his statutory rights. In this sense, law of IPR, guarantees exclusive right to the owner to the exclusion of all others. The correlative duty

is a duty owed by all others not to infringe the right. The right resulting from the operation of IP law gives the owner of that right a corresponding privilege to exploit the work. The persons other than the owner of IP do not have this privilege.\(^\text{13}\)

1.2.4. Co-Existence of Various Rights

Different kinds of IPR can co-exist in relation to a particular work. For example, an invention can be patented and a drawing of the invention can be copyrighted. A design can be protected under the Designs Act and the design can also be incorporated in a Trademark.

There are many similarities and differences between various rights that make up IP. For instance, there are common grounds between patents and industrial designs; copyright and neighboring rights, trademark and geographical indication and so on. Some intellectual property rights are positive rights while others are negative.

1.2.5. Statutory Requirements

IPRs are statutory rights governed in accordance with the provisions of corresponding legislations. To put it differently, intellectual properties are creations of statutes. The protection to the right holder is given to ideas, technical solutions or other information that have been expressed in a legally admissible form and that are, in some cases, subject to registration procedures. Further, subject to the relevant statutory provisions, registration of the work is mandatory in relation to some kinds of IPR as in the case of patents and industrial designs while in relation to some other kinds of IPR, registration is optional as in the case of trademarks, copyrights and geographical indications. In respect of certain IPRs, the moment the work is completed, protection

\(^{13}\) Ibid.
automatically springs into, as in the case of copyrights. By continuous use also, IPR can be claimed as in the case of trademarks.

To acquire certain IP rights some other formalities have to be fulfilled. For example, deposit of microorganism is a condition precedent for a patent in respect of microorganism. Similarly, enabling disclosure of an invention is a must for obtaining a patent. Granting of IPR is strictly subject to all statutory conditions and pre-requisites.

As the IPR is conferred by the state, it can be revoked by the state under very special circumstances even if it has been sold or licensed or marketed in the meantime. In this sense, there is no guarantee for an IPR once it is granted; it can be challenged or revoked at any time on several grounds including national security or under the provisions of relevant statutory laws of the land.

1.2.6. Territoriality

Intellectual property laws are first and foremost territorial in nature and apply only within the particular jurisdiction. Though, TRIPS agreement sets the minimum standard to be adopted by all countries in their respective municipal laws, IP laws are not harmoniously unified around the world. There is no universal law on IPRs. Creators and inventors of various kinds of IP need to secure and enforce their IPR in respective jurisdictions as per the respective national laws. The scope of such protection depends on the respective national legislation. The registration procedures, protection, duration, and enforcement of different IPR are primarily governed by the municipal laws. The various international instruments on IP including, Paris Convention, Bern Convention and TRIPS

14 Supra note 1 at 14.
provide for the national treatment by which the inventors and creators will be given protection in foreign countries.

1. 2. 7. Exhaustion of Rights

Intellectual property rights are generally subject to the principle of exhaustion. This doctrine was first formulated in *Consten and Grunding v. Commission*. Exhaustion basically means that after the first sale by the right holder or by his exhaustion authorization, his right comes to an end and he is not entitled to stop further movement of goods. Thus, once an IP right holder has sold a physical product to which its IPRs are attached, he cannot prohibit the subsequent resale of that product. The right is exhausted by the first consensual marketing. A third party may, after legitimately purchasing these goods, sell them in any of the country-markets. The owner or any one deriving title from him cannot prevent sale of such goods, as the exclusive right to sell goods is ‘exhausted’ by the first sale. Thus he loses all his control over the goods on his first sale and the rights therein are not infringed by further circulation of the product. The principle permits the goods to move through the stream of commerce unhindered by multiple claims to IPRs. This doctrine is based on the concept of free movement of goods put into circulation by the consent or authority of right holder. The exclusive right to sell goods cannot be exercised twice in respect of the same goods. The right of restricting further movements is exhausted because the right holder has already earned his part, by the act of putting the goods for first sale in the market.

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15 This principle of national treatment denotes giving others the same treatment as one’s own nationals. Signatories must treat foreign nationals of other signatory countries as their own citizens in matters of IPRs.

16 (1966) ECR 299.

Exhaustion may be either domestic exhaustion or international exhaustion. Under domestic exhaustion, once the goods have been put on the domestic market by the right holder or by third party with his consent, his right is exhausted in the domestic territory. Domestic exhaustion is generally provided for in almost all countries. In international exhaustion when the goods are put into the market, by the right holders or with his consent in any country, the rights are exhausted for other national jurisdictions as well. As per the doctrine, the owner of an IPR who consents to the marketing of his products in one member state cannot use that right to prevent the importation of the products into another member state.\textsuperscript{18} The characteristic of non-exhaustion by consumption is an important feature of intellectual property.

1.2.8. Dynamism

IPR is in the process of constant development. As technology in all fields of human activities is developing exponentially, the field of IP is also expanding correspondingly. As per the requirement of scientific and technological progress, new items are getting added to the ambit of IPRs by extending and expanding the scope of its protection. Bio patents, software copyright, plant variety protections are to name a few to denote the contemporary developments in the field of IPR. Technological advancements and social evolutions necessitate constant reevaluation of IPR system. Developments in the technology era, especially in the field of information technology and biotechnology call for regular review of IPRs. The intellectual property system is dynamic and characterized by its ability to evolve and adapt to the demands of time. The importance of intellectual property and its

dynamism are well established and reflected at all levels including statutory, administrative and judicial.

1. 2. 9. International Character

A number of international conventions, treaties and agreements have been settled for the purpose of harmonizing and regularizing the principle of reciprocity in the field of IP. Paris Convention for the Protection of Industrial Property, 1883 and Berne Convention for the Protection of Literary and Artistic Works, 1886 established an international regime for the protection of IPRs in their respective fields. Globalization of trade and commerce brought about by World Trade Organization (WTO) has given an added significance in the international character to intellectual property. Globalization necessitated harmonization of industrial laws. Accordingly, the term ‘intellectual property’ has now acquired a degree of international acceptance. Now, IP can travel effortlessly from one country to another. Before the existence of any international convention, it was difficult to obtain protection in many countries due to diversity in national laws. The international character of intellectual property is standardized with the conclusion of the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) by laying down minimum standard of protection for IP on the basis that adequate and effective protection must be given in such a way that enforcement of IP in member countries does not create barriers in legitimate trade. Rather it facilitates international trade in IP.

1. 2. 10. Subject matter of Intellectual Property Protection

Eligibility for intellectual property protection depends solely on the subject matter of protection. Intellectual property rights are available only to those items which are specifically identified and recognized by the law as the subject matter of protection. Even
though an item may muster the minimum requirements stipulated by law still it is possible to deny protection if it is expressly excluded from the subject matter entitled for protection.\textsuperscript{19} No technological advances \textit{per se} entitle an item’s entry into IPR regime. The law must recognize it as a subject matter eligible for IPR. For example, software\textsuperscript{20} and biotechnology inventions\textsuperscript{21} became eligible for IPRs only after their specific recognition and inclusion in the relevant statutes.

\section*{1.3. RATIONALE FOR PROTECTION}

\subsection*{1.3.1. Goal-Based Theories and Right-Based Theories}

The justifications for the grant of intellectual property rights can broadly be classified into two main schools of thought: (i) goal-based theories and (ii) right-based theories. The right-based theories are known as natural rights theories while the goal based theories are placed on consequentialist arguments. The juxtaposition of the individual’s needs against the society’s needs and making it the basis of granting rights forms the core of goal-based theories for the grant of rights. The expression ‘goal-based’ refers to whether rights for something ought to be granted or not and to whom they are to be granted, and this is decided on the basis of what needs to be furthered in the interests of society. Utilitarianism is the main paradigm on which such a goal-based/consequentialist argumentation is based.

\subsection*{1.3.2. Labour Theory}

In contrast to the utilitarian justification, right-based claims for intellectual property in general are based upon arguments of labour or the instrumentalist justification and

\textsuperscript{20} Section 2 (o) of the Copyright Act, 1957.
\textsuperscript{21} Section 2 (1) (i) read with section 3 of Indian Patents Act, 1977.
individual self-assertion. John Locke’s labour theory of property is a natural law theory which holds that property originally comes about by the exertion of labor upon natural resources. A person who labours upon resources that are held in common has a natural property right to the fruits of his efforts, and the state has a duty to respect and enforce that natural right. Persons own themselves and therefore their own labor. When a person works, that labor enters into the object. Thus, the object becomes the property of that person. Locke used his theory to make the bridge from common to private property. According to Locke, man can call his property private and thus he has exclusive use and disposal rights, by using his labor. He beautifully explains his theory in the following lines:

God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience… The labour of his body, and the work of his hands, we may say, are properly his.22

The raw material is deemed to be held in common and the labour contributes to the value of finished products. The labour theory of property holds that a person’s productive work is the basis for a property claim. People are entitled to claim what they make or create as their own.

1.3.3. Self-Development Theory

Another argument is based on the self-development justification. The self-development justification is rooted in Hegel’s idea that the legitimacy of property is inextricably linked to the existence of the free individual and the recognition of the free individual by the rest of society. According to this argument, the recognition of property

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rights is an integral part of freedom of individuals since the respect by others by not trespassing on it reflects their acceptance of him as a person.

1.3.4. Incentive Theory

Technological innovation, science and creative activity are considered as essentials for cultural, social, scientific and economic development. Inventors who make inventions and creators who create works would be unlikely to engage in creative efforts unless there is guaranteed protection for their endeavour. A free market with no intellectual property rights will offer little promise for intellectual works. Intellectual property right is, thus, the government’s attempt to encourage creative output by ensuring creators certain rights that limit or control the unauthorized use of their inventions. If there is no IP protection, the work/invention could be misappropriated by others, and there would be no incentive to undertake further works/invention. The system of IPR promotes respect for individual creators by rewarding them and preventing infringement and free riding. The existence of a patent system reduces the uncertainty that inevitably surrounds inventive activity. Intellectual property right can be defended on the basis of two incentive effects: the incentive effect to reveal the knowledge, thereby reducing the cost of acquiring it, and the incentive effect to keep the knowledge pool in its entirety.

1.3.5. Bargain Theory

IPR laws strive to reach a balance between conflicting interests to reach a justifiable compromise. It strikes a fine balance between the rights of intellectual property holders and the public at large. Underlying each type of intellectual property is a bargain between society in the form of the state and the owner of the rights. The owner of the right gets an exclusive right over the invention he has made, but outside of the policy goals that the laws
are designed to realize, there will be no protection. The public demands access to new creations/ inventions and a continuing flow of improved products at the lowest possible prices. The inventor always desires to recoup his investment and reap rewards of his efforts. However, if the owner of IP is given absolute rights to his invention/work, it would create a monopoly and he would be able to charge excessive rates for his product which would, in turn, harm the public interest. This private interest and public demand for a competitive market place need to be balanced. IPR provides an excellent balance between these competing interests by (i) protecting private interest of the inventor by giving him exclusive rights for a certain period of time, on the one hand and promoting investment on the other hand; and (ii) by providing benefits for society at large in terms of increased wealth, knowledge, and employment. Thus, not only the creators of intellectual property but the public also benefit from the protection of IP. The system thus encourages new products and processes to reach the market and bolster the trade in ideas. It provides adequate benefits and protection for the inventors/creators, the consumers and the state. The increasing rewards for inventors and other producers of intellectual capital improve the overall efficiency too.

1. 3. 6. Trade Secret Avoidance Theory

Once the period of protection expires, by the requirement of disclosure, the invention/work falls into the public domain and anyone is free to produce and sell it. Without IPRs, there would be a clear disincentive to invest in the more expensive forms of innovative research and more reliance would be placed on commercial secrecy. The

23 Supra note 2 at 6.
reliance on commercial secrecy would contribute towards the duplication of research efforts. By requiring disclosure, the IPR system facilitates the exchange of information and encourages further invention. IPR laws thus, by discouraging reliance on commercial secrecy and encouraging ‘trade secret avoidance’, aim at protecting the knowledge created through human endeavour in order to stimulate and promote further creativity.

1.3.7 Economic Theory

Economic future of any country primarily depends on the superior corpus of new knowledge and technological development. IPRs help in the successful marketing of know-how in the competing global market. Progress in technology is a quintessence of industrial development. IP plays a momentous role in furtherance of economic interest of a country. IPR protects the know-how involved in the invention stimulating more technological developments which in turn strengthen the economy of the country. IP accumulates foreign currency and enhances the export of the country as other countries have to procure the IP products from the country of protection. IP thus facilitates competitive advantages in industrial and commercial activity.

In modern market economies, intellectual property rights are granted with the primary aim to encourage investments or research activity in that particular area of economic endeavour, whether that is creative activities in the field of art or science, the pursuit of products of high and identifiable quality, or investment in trend-breaking industrial designs. Technological progress is an important means of attaining economic growth. For instance, patent system with the wealth of technological information is an important resource in technological development. Intellectual property protection is
intended as an instrument to promote technological innovation as well as the transfer and dissemination of technology.

Thus, the main justifications for IPRs can be summarized as follows:

- Protection of IP rights is an incentive to human creativity
- It provides necessary stimulation for new Research and Development (R & D)
- IP serves as an instrument for cultural, social, economic and technological development
- New creativity helps create sustainable and competitive businesses locally and internationally
- IP based industries contribute significantly to national economies
- IPR is a catalyst in the information technology development

1.4. CATEGORIES OF INTELLECTUAL PROPERTY

The subject matter of intellectual property is very wide. There are several different forms of rights that together make up intellectual property. IP can basically be divided into two categories, viz., industrial property and intellectual property. Traditionally, a number of IPRs were known collectively as industrial property. This mainly included patents, trademarks and designs. Now, the protection of industrial property also extends to utility models, service marks, trade names, passing off, geographical indications including indications of source or appellations of origin, and the repression of unfair competition. It can be said that the term ‘industrial property’ is a precursor of the term ‘intellectual property’. To illustrate, the very first international convention on the subject which took place in 1883 was titled as Paris Convention for the Protection of Industrial Property.
Later on, when copyright was added to the realm of industrial property, the phrase ‘intellectual property’ was begun to use to describe the entirety of rights. As per TRIPS, intellectual property comprises the following branches:

1.4.1. Copyright

Copyright law is concerned with the protection and exploitation of the expression of ideas in a tangible form. Copyright has evolved over several centuries keeping pace with changing ideas about creativity and respect for new modes and medias of communications. In the modern world, the law of copyright provides the legal framework not only for the protection of the traditional beneficiaries of copyright, the individual author, composer or artist, but also for the investment required for the creation of works by the major cultural industries, the publishing, film; broadcasting and recording industries; and the computer and software industries.

Copyright refers to a bundle of exclusive rights conferred by law on authors/creators of original works for commercially exploiting the work. It is a property right which subsists in certain specified types of creative work conferred by statute to an author. In every case, therefore, the question whether copyright subsists in a particular matter first involves the question whether the subject matter falls within one of the specific categories of works.

It subsists in ‘original’ literary, dramatic, musical and artistic works, in cinematographic films and sound recording fixed in a tangible medium. To be protected as

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25 Part II, section 1, TRIPS. The Copyright Act, 1957 regulates this area of law in India.
copyright, idea has to be expressed in an original way. Originality is usually an easy condition to satisfy. Originality means that the work exhibits independent creation and some minimal degree of creativity either in the expression of underlying facts or ideas or in the selection or arrangement of those facts. Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts, etc.

When copyright exists, it subsists from the moment of creation and vests in the author of the work. The central right which the law confers is to prevent unauthorized persons from copying a work. The ownership of a valid copyright protects the author from unauthorized use of his work, including copying, adaptation, public performance, translation, modification, etc.

The copyright confers both economic and moral rights on the owner. Through the exercise of economic rights, the copyrighted work can be commercially exploited. Apart from the economic rights, the author has certain moral rights including, *droit de divulgation* (right to decide whether to publish the work or not), *droit a la paternite* (right of paternity) and *droit au respect de l’oeuvre* (the right of integrity). The author has right to prevent any alteration that may damage his reputation. These rights remain with the author even after the transfer of copyright.28

Copyright also deals with the neighboring rights. Three kinds of right neighbour upon copyright protection. These are the right of performing artists in their performances, the right of producers of phonograms and the rights of broadcasting organizations in the

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28 *Supra* note 18 at 101.
radio and television programs. Neighboring rights are similar to copyright with reference to its subsistence, infringement and remedies.

Copyright confers, by the doctrine of fair use, a privilege in others, than the owner of the copyright to use the copyrighted material in a reasonable manner without his permission. By the application of the doctrine of fair use, the law of copyright balances private and public interests.

1.4. 2. Patent

The patent law recognizes the exclusive right of a patentee to gain commercial advantage out of his invention. A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions stipulated in the law. Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This exclusive right granted on the patentee is only for a limited period of time.

To qualify for patent protection, an invention must fall within the scope of patentable subject matter and must meet the three statutory requisites of novelty, inventive step and industrial application. The novelty requirement is, by and large, satisfied as long as the patent applicant was the first to invent the claimed invention. The concept of novelty jurisprudence lays down that only what is new at the time of filing of the

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32 Part II, section 5, TRIPS. The Patents Act, 1970 regulates this area of law in India.
application for a patent is patentable. Novelty can be anticipated either by prior publication or prior use. Mere discovery is not an invention. Patent is not granted for an idea or principle. To be the subject matter of a patent right, the article must be material and capable of being manufactured.\textsuperscript{34}

The requirement on industrial application suggests that the invention must be useful to the industry and it must serve some minimal human need. The condition on inventive step (non-obviousness) requirement denies patentability if the differences between the claimed invention and the relevant prior art are such that the claimed invention would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

The invention may be a product or process and its scope extends to all fields of technology.\textsuperscript{35} The inventor, in order to obtain protection, has to disclose the invention and also describe the method of performing it. The patent confers on the patentee the right to exclude others from, among other things, making, using or selling the invention.

Countries may exclude from patentability certain inventions to protect ordre public or morality or to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by such countries’ municipal laws.\textsuperscript{36}

\textsuperscript{34} In \textit{Diamond v. Chakrabarthy}, 447 U.S. 303 (1908) it was held that the touchstone of patentability is not whether an invention involves living or inanimate subject matter but whether it involves a human made invention.

\textsuperscript{35} Article 27. 1 of TRIPS.

\textsuperscript{36} See, article 27. 2 of the TRIPS Agreement and section 3 of the Indian Patent Act, 1970.
The object of patent law is to encourage scientific research, new technology and industrial progress. The patent system is premised on the reasonable assumption that the public will enjoy additional benefits when the government takes additional steps to encourage the creation, commercialization, and disclosure of new inventions. The basic argument is that the society benefits when people conceive of new inventions, develop and commercialize new products incorporating these inventions and publicly disclose information about their inventions, so that others may learn from and improve upon these inventions. Inventing something new often requires a substantial investment of intellect, time and capital. The technology disclosed serves to stimulate ideas for further invention and innovation. The economic value of patent information is that it provides industry with technological information that can be used for commercial purposes. If there is no protection, there may be a substantial incentive to take a free ride on someone else’s investment. This potential for free-riding reduces the incentive to invent something new because the inventor may be unable to recoup the investment.

Patents are meant to correct a market failure. The market failure leads to sub-optimal levels of investment in innovative activities and arises because producers that can use an innovation without incurring research and development costs will always have a competitive advantage over firms that innovate and incur those costs. As a result, there will be no incentive to innovate. Patents reward innovators with a temporary monopoly on the intellectual property that they have created. The patent holder is required to disclose the scientific knowledge that underlies the innovation to the public in order to promote

37 Supra note 15.
38 In Raj Parkash v. Mangat Ram Chowdhry and Ors., AIR1978 Delhi1, it was observed that the grant of patent, no doubt, creates a monopoly in favor of the patentee but then law throughout the free world recognizes that an inventor must first get the benefit of his invention, even if it means creating a monopoly.
knowledge dissemination. Making the scientific information available instead of allowing it to remain proprietary has the objective of reducing information costs for other innovators.

1.4.3. Trademark

A trademark is a badge of origin. It is a distinctive sign used in connection with goods or services for identifying the source of goods and services to public, and to distinguish the goods and services from those of other entities. It establishes a link between the proprietor and the product. It portrays the nature and quality of a product. The essential function of a trademark is to indicate the origin of the goods to which it is attached or in relation to which it is used. It identifies the product, guarantees unchanged quality and helps to advertise the product. Trademark is also the objective symbol of goodwill that a business has built up.

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, is capable of constituting a trademark. It can be a name, word, phrase, logo, symbol, design, image, shape, color, personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs which can be graphically represented. The registration of a trademark can be renewable indefinitely.

39 Part II, section 2, TRIPS. The Trademarks Act, 1999 regulates this area of law in India.
The intellectual property in the trademark consists in the right of the owner to use the mark in relation to specific goods and under certain circumstance to prevent others from using it. Ownership in a trademark entails the owner with a right to exclude others from the commercial use of the mark that is likely to cause confusion with the owner’s mark as to the origin of the goods or its quality. The registered proprietor of a mark has a monopoly right to that mark. The registration of a mark confers on the registered proprietor the right to take action in case of infringement and obtain relief. Though no action could be taken for infringement of an unregistered trademark, action could be taken against any person for passing off goods or services as the goods or services of another person.

1.4.4. Industrial Design

A design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours, applied to any article in two or three dimensional form. Design protection covers the outward appearance of an article, including decoration, lines, colours, shape, texture and materials. An industrial design is that aspect of a useful article, which is ornamental or aesthetic. It may consist of three-dimensional features, such as the shape or surface texture of an article or of two-dimensional features, such as patterns, lines or color or a combination thereof. This may be applied by any industrial process or means separately or by a combined process, which in the finished article appeals to and judged

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47 Part II, section 4, TRIPS. The Designs Act, 2000 regulates this area of law in India.
solely by the eye. To be protectable, a design must be new, original and significantly distinguishable from known designs or combinations of known design features.  

Usually, design protection does not extend to designs dictated essentially by technical or functional considerations. Design does not include any mode or principle of construction, or anything which is a mere mechanical devise. Designs that are primarily literary or artistic in character are not protected under the Designs Act. Similarly, it does not include any trademark or artistic work.  

The registration of a design confers upon the registered proprietor the exclusive right to apply a design to the article in the class in which the design has been registered. The owner of a protected industrial design has the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.  

1.4.5. Geographical Indication

Geographical indications (GI) are indications which identify a good as originating in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. GI is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Basmati rice and Darjeeling tea

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50 Castrol India Ltd. v. Tide Water Oil Co. (1) Ltd., 1996 PTC (16) 202 Cal.
51 Part II, section 3, TRIPS. The Geographical Indication of Goods (Registration and Protection) Act, 1999 regulates this area of law in India.
are examples of GI from India. By virtue of their universal reputation for quality, these indications have acquired great and enviable commercial value. Certain GIs such as Malabar pepper, Aleppy cardamom, Aranmula Mirror, Aleppy coir etc. are of GIs belonging to Kerala.

The function of a GI is that it points to a specific place or region of production that determines the characteristic qualities of the product that originates from there. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the geographical place of production a specific link exists between the products and place of origin.52

1.4.6. Integrated Circuit

Integrated circuits are commonly known as ‘chips.’ Layout-design53 means a layout of transistors and other circuitry elements. It includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit. Any act of importing, selling or distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit without the authorization of the right holder is treated as design piracy.

1.4.7. Confidential/Undisclosed Information

The law regarding undisclosed information54 protects information imparted in confidence. The law on breach on confidence lies primarily in the domain of equity and common law. An obligation of confidence may arise in contract as well. Its object is to

53 Part II, section 6, TRIPS. The Semiconductor Integrated Circuits Layout Designs Act, 2000 regulates this area of law in India.
54 Part II, section 7, TRIPS. India has not enacted any specific legislation on Undisclosed Information so far.
preserve secrets and confidences.\textsuperscript{55} Even though, it is relevant in many fields of law, it is more significant in relation to trade secrets and business information. It is concerned with information and not in form.

The information protected under this branch may be of a personal, commercial, industrial or administrative nature which is disclosed to a third party under a contract not to disclose it without the informant’s proper consent. There are four main classes of information regarded as confidential, \textit{viz.}, trade secrets, personal confidences, government information and artistic and literary confidences.\textsuperscript{56} Generally, to be protected as trade secret, the information must be (a) used in one’s business, (b) provide a competitive advantage and (c) be secret.

Trade secret law differs from the law of patents in several aspects. It is much easier to obtain in comparison with patent protection. Any information that provides a person with a competitive advantage as long as it remains secret is potentially protectable as a trade secret. One of the advantages arising from the standards required for a trade secret to exist is that unlike patents, there is no specific subject matter criterion for a trade secret. As long as the definitional elements are met virtually any subject of information can be a trade secret.\textsuperscript{57}

The rigid requirements of patentability have no application in this field. Unpatentable inventions can qualify as trade secrets, too. Trade secret law affirmatively discourages the owner from making any public disclosure because any such disclosure of

\begin{footnotes}
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\item \textit{Ibid.}
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trade secret information may result in the information losing its protectable status. The owner of a trade secret may exclude another from, among other things, acquiring the secret by improper means. Unlike the patentee, the trade secret owner has no remedy against independent discovery or reverse engineering. Trade secret protection lasts only for as long as the information remains secret and valuable. Good examples include the formula for Coca-Cola. Obtaining a patent destroys the secrecy of the information, whereas trade secret protection does not. So, if the information is particularly difficult for others to reverse-engineer, trade secret protection can be more valuable than patent protection.

Trade secret law supplements the patent system by providing an incentive to develop information that has some social value, though not enough to warrant a patent. Trade secret law departs from patent law, however, insofar as it discourages the public dissemination of information. The secrecy-enhancing character of trade secret law is nevertheless constrained to some degree by the rule permitting others to independently discover or reverse-engineer the secret.

1.4.8. Plant Variety

Plant variety protection58 is granted by a state to a breeder of a new variety. To be eligible for plant variety protection, the variety must be novel, distinct from the existing varieties and uniform and stable in its essential characteristics. A plant breeder is conferred an exclusive right to do or to license the following acts in relation to propagating material of the variety:

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58 Part II, section 5, article 27.3.b. of TRIPS. The Protection of Plant Varieties and Farmers’ Rights Act, 2001 regulates this area of law in India.
i. produce or reproduce the material

ii. condition the material for the purpose of propagation

iii. offer the material for sale

iv. sell the material

v. import the material

vi. export the material

vii. stock the material for the above purposes

Generally, countries are protecting new plant varieties through *sui generis* systems.

Hence, the system of IPRs protects some products of human mind, for varying period of time against use by others of those products in various ways. The general purpose of protection is to encourage those who may wish to create, finance or exploit such products to translate intent to act, particularly where they might otherwise not act at all, or act less often without the carrot of protection.\(^5^9\) There is no single legal entity which goes under the umbrella of IP. It covers several disparate legal systems which originated separately, cover diverse activities, operate in different ways and raise different public policy issues.