CHAPTER-I

INTRODUCTION

1.1 Intellectual Property Rights

‘Right’ means the standard of permitted action by law. A legal right is an interest recognized and protected by a rule of legal justice; an interest the violation of which is a legal wrong, done to him whose interest it is, and respect for which is a legal duty. Legal rights are correlative of legal duties and are defined as interest which the law protects by imposing corresponding duties on others. Under the law if some right has been violated than an action can be initiated against the violator. ‘Property’ designates those things commonly recognized as the entities in respect of which a person has an exclusive right. Property can be tangible and intangible. ‘Intellect’ means the creation of the skill. When all the three words attached with each other i.e., ‘Intellectual Property Rights’ are rights that pertain to creations of the human mind. Individuals, corporations, or other entities may claim them. Intellectual property rights typically give the owner of the Intellectual property the exclusive right to control use of the creation for a certain period of time. Laws governing Intellectual property rights are intended to stimulate innovation and creativity, ensure fair competition, and protect consumers.

Intellect, as a word, has its roots in Latin word, ‘intellectus’ means perception. Thus speaking etymologically, intellect is perception. It is the faculty of knowing and reasoning. It is the barometer of one's understanding of persons or things, of events and concepts; individually or collectively. It is the birthplace of ideas, rather than the idea itself. Since intellect is the reservoir of ideas, the intellectual property, so to say, becomes the property over ideas. Professor James Harris in ‘Property and Justice’ finds no difficulty in according the label ‘property’ to the result. In the first place, the law confers a trespassory claim against outsiders to stop them taking advantage of the ideas or symbols; and that is his first mark of even the most modest property. In the second place, the rights

are treated as capable of assignment, licensing, and similar dealings, and that
caries them close to our most complete forms of property.3

Intellectual property was known as Vidyaa (Vid + yaa) which means a
property which has been invented or make known, to spread with Gurukuls which
were established throughout India. The sages of these Gurukuls invented
effective and forceful weapons which they gave to their disciplines free of cost;
for instance, Lord Ram was given divine weapons by Vishwamitra. The sages
invented scriptural trusts like Upnishads which they imparted to the world for no
costs. Even in the Middle Ages, the Sanskrit poets created their works for the
development of the language itself, such as Kalidas, the Great poet, dedicated
his drama Abhigyan Shakuntalam, for the mere purpose “Saraswati Struti
Mahatee Mahityam”. The Great Hindi Poet scribed “Ramcharit Manas” for his
soul’s enjoyment and not for money or property. They did not ask for any money
or other benefit for their Great works. Vidyaa (new knowledge) was unsaleable
but transferable without any cost therefor. It was supposed to be a sin to the
knowledge. Even in modern India upto nineteenth century authors of Sanskrit
works, the Acharyas gave their manuscripts to the publishers simply for their
publication without charging any amount or retaining any copyright.4

The word ‘property’ is rich with meanings. With the passage of time it has
been variously defined and explained, but never with perfection. The Latin word
proprius is the root of the word proprietas much in the same way as the word
‘property’ in English is the noun formed from the word ‘property’ by using the
suffix-ty. So if we want to get familiar with the literal meaning of the word
‘property’ we should look at the root word ‘proprius’. In latin, the word ‘proprius’
means: one’s own, special.5 That means ones property is what one owes or what
one has as especially his.

‘Geeta’ the legendry work contains the essence of almost all dharmas of
the world, divides property into two forms: daivi (divine) and asuri (demon-like).

Persons born with divine property are fearless, simple hearted, learned in Vedas, devoid of anger or enmity towards all, truth speaking and having a sense of reverence towards God, god and guru (teachers) contrary to it, the persons born with demon-like property are marked by their sense of pride, arrogance, anger, ego, rigidity (superstitions) and also ignorance. Geeta further states that while the divine property (daivi sampada) stands for salvation, the demon-like property (asuri sampada) leads to worldly bondage.6

The term 'Intellectual Property' refers to unique, value-adding creations of the human intellect that result from the human ingenuity, creativity and inventiveness. An intellectual property right is thus a legal right, which is based on the relevant national law encompassing that particular type of intellectual property rights. Such legal rights come into existence only when the requirements of the relevant intellectual property laws are met. It is granted or registered after following the prescribed procedure under the law. Practically, all the countries over the world have a national legal system of intellectual property rights which has been created over varying periods of time during the last 150 years or so. It has enabled the grant of property-like rights over such new knowledge and creative expression of mankind, which has made it possible to harness the commercial value of the outputs of human inventiveness and creativity. This is usually done by its orderly use, exchange or sharing amongst various types of business partners in a complex network of strategic relationships that generally work harmoniously during the new product development process for creating and marketing new and improved goods and services in domestic and export markets.

Human beings are the most developed species of the animal kingdom. Behind most of the progress of the world has been men’s ingenuity has played a vital role. It is the natural birthright of a person, to the product of his or her brain and alternatively society is morally obliged to reward the persons to the extent that they have produced something useful to the society. Intellectual property is in fact a right pervading some material object. This right is

a creation of intellect basically. As such it is named as intellectual property. In fiction it is a property which is quite different from the real property or a formal property, even though it is pervading or relates to that property, e.g. copyright is a right in some real creation of manuscript of art, a manuscript of book or article, a recorded sound, etc. but such article is saleable or transferable, subject to the copyright of its author which is a property in fiction not in fact as real property is. Similarly, patent right is a right in some new invention or article created by its author or owner. The invented article has a form, it is salable or transferable but subject to the patent holder’s right only. Thus, patent right also is a financial property and not a real property.

The same is the position of design right, which exists in building having a new design or a creation of any other real property. This also subsists in the real property; it is not a property but a fictional property. Similar is the position of trademark right. A property showing the trade mark is subjected to the trademark. Nobody can copy such trade mark on his property which is saleable or transferable without the consent of the owner of the trademark. The trademark, like a design is visible of course but it is mere right and not a real property. The trademark right also is a property in fiction, created by the intellect of its maker and held by its owner. Thus, it must be noted and kept in mind unconfused that intellectual property is basically a creation of intellect or relates to intellect, it is a right pervaded in some property of real nature; as such it is only a property in fiction or a functional property and not a real property even though it is pervading some real property.7

John Locke (1632-1704) while discussing property successfully tried to base its theory on labour. According to him, the Earth and everything on it, is common to all men, yet everyman has as his property two things, namely, his person and what he has carved out of nature for him by dint of his labour and skill. He observed:-8

7. supra note 4 at 1.
“Though the earth, and all inferior creatures, are common to all men, yet everyman has a property in his own person: the labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes of the common state that nature has provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. Thus one's person, bodily labour and work of hands are exclusively one's own property; we have moved to show that in a like fashion one's intellect, intellectual labour and intellectual skill may be regarded as one's exclusive property. Hence, whatever is produced by application of one's intellect, intellectual skill is exclusively one's own and has, naturally a right over these products of his intellect viz. one has a proprietary right over these things. Such are the intangible ones; i.e., an idea, a design, an invention, an information etc.

The creations of the human mind, i.e. of the intellect, are the objects of the 'Intellectual Property'. With the globalization, the world is becoming a single market place and these intangible property rights are become increasingly valuable. Any attempts to infringe or pass-off these rights are to be severely discouraged and the owner of the intellectual property is to be given full legal protection. In today's world, when large investments are required to finance research and development in various fields, there should be a little incentive to invest in development of new products, advances to build a strong brand, or invent something new, unless and until protection of intellectual property rights is available. Intellectual Property Rights are of great importance for modern industry and commerce and in many cases, they have an important effect on the economy and on the very existence of the business entity. These comprise the right to control the use of technology and creative material, including rights in artistic, musical and literary work, and the right protect others from misusing certain marks, symbols and drawings and in distinguishing one from the other. Intellectual property rights also provide means by which an owner or an innovator can protect his innovation etc. from being imitated. It safeguard the fruits of his valuable labour and investment. Basically, an Intellectual Property Right gives a

9. Supra note 2 at 42.
remedy to its owner against those persons who want to reap the fruits of his ideas or work. There are different statutes in India which enforce the right of a person.

1.2 Present Era Belongs to Intellectual Property Rights

It is hard to imagine an economic system in which ideas do not play a central role; in this sense, at least, intellectual goods are as fundamental as any commodities. The economic characteristics of ideas set them apart from the material goods that form the focus of most economic thinking. An intellectual property right is a right over ideas or inventions etc. this may enabled one to get a proprietary right over those things which were not considered as property in earlier theories. It has been the practice in all ages to encourage people to do new things. And in this search for newness the ultimate interest has always been to make our lives more prosperous, more pleasant and, hence, more worth living. Today we live in a world where money is the main mantra. Brain is a big business. Human intellect is used to innovate. Every innovation involves effort and expense. And often, the ultimate result of research is of immense use in art and industry. It carries a commercial value, it means money. Thus, the modern man living in the materialistic world looks for the fruits of his labour. The contribution of intellectual property to industrial and economic development cannot be exaggerated nor undermined. The industrial and economic development cannot be exaggerated or undermined. The industrial development of developed countries is mainly indebted to their intellectual property protection and commercial exploitation for a limited period. Since the intellectual property is unique in the industrial and economic development of a country, it becomes inevitable to protect it. Intellectual property right's have a direct bearing and symbiosis with inventions and technology. The presumption of Intellectual property right's protection is to facilitate intellectual property protection. One of the primary functions of the intellectual property right's is to exclude the general

12. *Supra* note at 3.
13. *Id.* at 98.
community from using one’s work without the proper remuneration or written consent. Despite its underlying hints of logical idea. In the age of internet the important intellectual property right are much higher than ever.

Intellectual property rights aims to persons from deriving a commercial benefit out of an innovation made by someone else, unless the former fulfils certain conditions provided by law. W R Cornish observed:  


Intellectual property is the term used in a fashionable field. The term scarcely describes trademarks and similar devices; but it has now acquired international acceptance. An intellectual property or intellectual property right is indeed describing a fashionable description of research results and other original ideas, whether or not they fall within the ambit of what is called inventions. As a title, the term may sound rather grandiloquent. Its most serious, this is a branch of the law which provides some of the finer manifestations of human achievement.

In a generic sense every property is intellectual because it is simply not possible to think of a property without an underlying intellect. It may happen that some of human intellect and some does not. It can hardly be believed that wherever a man comes to have is related to his intellect capacity. Without such an intellectual skill nothing new can be invented. Today, possession of land, labour and capital are just not enough to succeed. Creativity and innovation are the new drivers of the world economy. The policies adopted by a country shall determine the nations wealth. A further as to how it is developing the trapped intellectual capital. A dynamic tool for wealth creation providing an incentive for individuals to create and innovate; a fertile setting for the development of intellectual assets; and a stable environment for domestic and foreign investment.

Recognition of Intellectual Property Rights was an important step in the history of human race, as the invention of the wheels or fire by the primitive man. Over the years, the human race has gradually conceded legal rights to creative minds in the work created by them.\textsuperscript{16} The Constitution of India confers powers to legislate on the Central Government and the State Governments, in list I or the Union List, matters, which fall under Intellectual or industrial property, are grouped together under entry 49, which reads:\textsuperscript{17}

\textit{Patent, inventions and designs; copyright; trademark and merchandise marks.}

Except providing an item in the Union List, the Constitution of India does not show much awareness of intellectual property rights. This may lead to certain unforeseen consequences.

Patent is justified as they encourage research and innovation by offering incentives to develop commercially viable product or processes. The system also enables disclosure of inventions to the general public instead of it remaining a trade secret. In case of countries like India where there is a large pool of traditional knowledge, patent protection gives us a competitive advantage, where lack of patent protection allows other countries to acquire monopolist rights vis-à-vis our indigenous knowledge’s. Besides traditional knowledge, strong patenting through several sectors such as Information Technology, electronics, etc. is a way to wealth creation for the entire country. It is a myth that patent protection covers only major technological breakthroughs. The argument of information dissemination through the patent process is imperative to lessen the knowledge and information gap between the developed and developing world.\textsuperscript{18} According to Salmond,\textsuperscript{19}

\textit{The creations of an artist’s skill or of a photographer’s labour are his exclusive property. The object of this right is not the material thing produced, but the form impressed upon it by the maker. The}


\textsuperscript{17} P. M. Bakshi, \textit{The Constitution of India} (2004) at 364.

\textsuperscript{18} Supra note 15 at 3.

picture, in the concrete sense of the material paint and canvas, belongs to him who purchases it; but the picture in the abstract sense of the artistic from made visible by that paint and canvas, belongs to him who made it. The former is material property, the latter is immaterial.

In modern times the inventor of a new process obtains from the State, by way of recompense for the benefit he has conferred upon society, and in order to encourage others to follow his example, not only an exclusive privilege of using the new process for a fixed term of years, but also the right of letting or selling his privilege to another. Such an indulgence is called a patent right; and a very similar favour, known as copyright, is granted to the authors of books, and to painters, engravers, and sculptors, in the productions of their genius. Intellectual property law is now an integral part of economic life all over the world. It protects use of ideas and information's that are of commercial value.

Trade mark is a visual symbol (word, letter, numeral, name, signature, device, label, symbol) identifying goods or services of one person from those of others, and capable of graphic representation. Trade Marks play a highly complex role in market driven economies, operating in the context of rapid integration of world economy. Through advertisement and other strategies, large market shares are captured by a few brands leading to concentration of market power in a few hands. If care is not exercised, a developing country may find itself flooded with foreign brands, unaccompanied by any flow of technology and building up of national capabilities. Of course, indigenous brands are exposed to severe and unequal competition in which they have to prove themselves.

Geographical Indication is a relatively new but important instrument in intellectual property protection. The TRIPS Agreement defines geographical indications as: Indications which identify a good as originating in the territory of a member of the WTO, 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. Presently, the TRIPS agreement specifically mentions protection to wines and spirits. A law for the protection of intellectual property in

India based on geographical indications is necessary because, unless such protection is available in the country of origin, other nations are under no obligation to afford such protection to it under TRIPS.

When consumers decide to buy an article choosing from an array of competing goods they are influenced in their choice not only by the utility aspect of the goods but also significantly by the aesthetic aspect, the visual appeal of the article. Design imparts the visual appeal to an object and it serves to differentiate it from other products in the same category. An industrial design is the ornamental or aesthetic aspect of an article. It may consist of three-dimensional features such as shape or surface or two-dimensional features such as patterns, line or colours (or their combination). If the article is not mass-produced or the design cannot be applied on a useful article, the design would fall under artistic works and more appropriately form the subject matter of copyright. Some designs may qualify for protection as trade mark. Engineering designs may be sufficiently innovative, but they will have to seek protection through patent since they are not regarded as industrial designs.

1.3 Intellectual Property Rights as Human Right Issue

Human rights have existed ever since the advent of man and woman. They have been in evidence ever since the quest for equality began, a quest that transcended race and religion. Indeed, human rights are intricately linked to the evolution of human society. The sages of ancient India realized the import of human rights. Hence, the Rig Veda says, "May the members of our society have similar goals. May our hearts be full of love for each other, and may we be united in one thought. May the individual efforts be put together to achieve our common goal."21 In a sense, this is the core of the Universal Declaration of Human Rights.

Traditionally, intellectual property regimes sought to balance the rights of creators with the interests of the public to have access to artistic works and technology products. The very existence of intellectual property rights was originally justified on the grounds that incentives and rewards to artists and inventors result in benefits to society. The drafters of the Universal Declaration of

Human Rights and International Covenant on Economic, Social and Cultural Rights decided to recognize the intellectual property claims of authors, creators, and inventors as a human right. The first was the moral right of an author to control alteration and other misuses of the creation. The second was the right of authors and creators to remuneration for their labour. The text of Article 15 of the International Covenant on Economic, Social and Cultural Rights closely resembles Article 27 of the Universal Declaration of Human Rights. Article 15 of the International Covenant on Economic, Social and Cultural Rights states that, the States Parties to the present Covenant recognize the right of everyone to take part in cultural life; to enjoy the benefits of scientific progress and its applications; to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Article 27 of the Universal Declaration of Human Rights (UDHR), states that 'everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. Both these Articles provide the protection of the intellectual rights of a person.

Intellectual property law was developed on a national basis, with considerable diversity in the nature and stringency of protections. As international commerce increased during the nineteenth century, however, States became interested in developing some forms of international collaboration and harmonization. At first, countries concluded a series of bilateral agreements, but this was cumbersome and often ineffective. The next step was the formulation of two major agreements that provided international standards, these were the Paris Convention of 1883 for industrial property (patents and trademarks) and the Berne Convention of 1886 for the protection of literary and artistic works (copyright or author's rights), both of which were subsequently revised several times. Recognition of the claims of authors, creators, and inventors to moral and

---

22. India is also Member State from 10 July, 1979, as quoted from http://www.unhchr.ch/pdf/report.pdf site visited on 16 Feb., 2009.
24. Ibid.
26. Discussed in detail in Chapter - II.
27. Ibid.
material benefit from their intellectual contributions is central to conceptualizing intellectual property as a human right and also serves as the major premise of intellectual property regimes.

Intellectual property regimes seek to balance the moral and economic rights of creators and inventors with the wider interests and needs of the society. Historically, governments in developed countries have sought to promote creativity, the dissemination of ideas, development of inventions, and scientific progress by providing limited protection to creators and inventors. A major justification for intellectual property rights is that incentives and rewards should be given to creator(s)/inventor(s) which ultimately benefit the society as a whole.

Just as raw materials and labour were key resources in the first industrial revolution, intellectual property is a central asset in information or knowledge based economy. In the new global economy of ideas, ownership, control, and access to creative works and scientific knowledge have considerable economic import, giving rise to fierce competition over intellectual and creative works, or what one analyst describes as the ‘knowledge wars.’ The manner in which creative works, cultural heritage, and scientific knowledge are turned into property has significant human-rights implications.

A human-rights orientation acknowledges that intellectual products have an intrinsic value as an expression of human dignity and creativity. The human rights principle that “all peoples have the right to self-determination" mandates a right of choice for members of society to be able to discuss, assess, and have a role in determining major scientific and technological developments. In this sense, intellectual property can truly be the part of human right issue.

1.4 Origin and Development of Intellectual Property Rights

The origin and development of the different modes of intellectual property is different, as few are the new concept but some are old one. Broadly, the origin and development of intellectual property can be divided into the following headings:-

1. Origin and Development of Patent,

The reign of Tudor Kings\textsuperscript{32} witnessed the utmost abuse of this prerogative which reached probably its climax when Queen Elizabeth I granted monopoly right of ‘making and trading in playing cards’. For sometime, the people probably out of a sense of reverence and loyalty to the Crown, kept silent but the playing cards issue was certainly too much of an abuse of the royal prerogative. This was challenged in the last year of Elizabeth I\textsuperscript{st} reign in \textit{Darcy v. Allein}\textsuperscript{33} and was argued and decided a year after her reign was over i.e. during the first year of James I, the Court held the grant of patent was restrictive of trade and industry and was therefore invalid. The court determined that the Queen's grant of a monopoly was invalid, for several reasons:

\begin{itemize}
  \item[i)] Such monopolies prevent persons, who may be skilled in a trade from practising their trade, and therefore promote idleness.
  \item[ii)] Grant of a monopoly damages not only tradesman in that field, but everyone who wants to use the product, because the monopolist will raise the price, but will have no incentive to maintain the quality of the goods sold.
  \item[iii)] The Queen intended to permit this monopoly for the public good, but she must have been deceived because such a monopoly can only be used for the private gain of the monopolist.
  \item[iv)] It would set a dangerous precedent to allow a trade to be monopolized – particularly because the person being granted the monopoly in this case knew nothing about making cards himself, and where there was no law that permitted the creation of such a monopoly.
\end{itemize}

This was in the year 1602, eight years thence, King James I, in the year 1610, made his famous declaration expressing the will of the Crown not to grant monopolies in general but reserved its to entertain suits from its subject, and to reward them in ‘projects of new invention so they be not contrary to the law, nor

\textsuperscript{31} Supra note 2 at 98-99.
\textsuperscript{32} There were five crowned Tudor kings and queens and they are among the most well-known figures in Royal history. Henry VII, his son Henry VIII and his three children Edward VI, Mary I and Elizabeth I ruled for 118 eventful years, as quoted from http://www.woodlands-junior.kent.sch.uk site visited on 25 March 2008.
2. Origin and Development of Copyright,
3. Origin and Development of Trademark,
4. Origin and Development of Geographical Indication of Goods,
5. Origin and Development of Design.

1.4-1 Origin and Development of Patent

The history of intellectual property can be traced back to the Ancient days of monopoly in the Byzantine Empire. In Ancient Greece in the Seventh Century B.C. granted monopoly to cooks for one year to exploit their new recipes. But a few centuries later Emperor Zeno in Rome rejected the concept of monopoly. Emperor Zeno in a proclamation in 480 AD ordered that no one should exercise monopoly upon any garment or fish or any kind of thing. By 1432 the Senate of Venice enacted a statute providing exclusive privileges to those inventing any machine or process to speed up silk making. This protection was soon extended to other devices. Any new idea thus introduced, started obtaining protection.\(^{29}\)

The earliest of the legislation for the protection of intellectual property rights was in the area of Patents. In 1474 the first Ordinance in patents was voted by the Venetian Senate. Thus it can be seen that the patent system has evolved over 500 years.\(^{30}\) Patent is a statutory right, which is provided to the owner for a fixed period of time, to exclude other persons from manufacturing, using, selling a patented product or utilize the patented process or method. According to Section 2(m) of the Patents Act, 1970, “Patent” means a patent for any invention granted under this Act.

Under the British system the King or Queen who occupied the thrown enjoyed a position next only to God, the Almighty. To its subjects the Crown was the fountain-head of justice, the preserver of their rights and the protector of their interests. For doing these things the Crown had got immense power and prerogatives. One of such prerogatives the Crown had was to grant letters patent to a person who came forth with something new and beneficial for its subjects. The person could be a subject of the Crown or an alien; and the thing could be either his own invention or somebody else’s which he had brought on the British

\(^{30}\) Ms Bishwanath Parsad Radhey Shyam v. M/s Hindustan Metal Industries, AIR 1982 SC 1444 at 1447.
mischievous to the State, by raising prices of commodities at home, or hurt of trade, or otherwise inconvenient. The longstanding crusade against royal prerogative to grant patents—or rather the misuse of it—lasted throughout the reign of James I and resulted in the passage of the Statute of Monopolies in 1624 during the reign of Charles I who succeeded James I. In England as early as the Statute of Anne of 1710 the booksellers produced a right to prevent others from making copies of an author’s book. The right was given upon publication to the author or his successor in title—almost always the publishers. The Statute of Anne gave rights against the copying of published works but only for the work published from 1710 on, these were a period of 14 years from publication, and if than the author still living, it was extended to further 14 years. The second period a late addition in the drafting is one indication that the author’s own interests were a real element, rather than just a pretext, in this statutory copyright.

The Acts of Parliament passed in the years 1883 and 1907 are based mainly on the foundations prepared by the provisions of the Statute of Monopolies. Both these Acts adopt the same definition of an invention which has been by the statute of Monopolies. The patents were issued under the Great Seal of England. Since keeper of this Great Seal of England happened to be the Lord Chancellor, he issued the letters patent granted by the Crown. The source of authority of a letters patent was this Great Seal command attached to it because ‘all the King’s subjects were bound to take note of the King’s great seal.’ This practice was in vogue till the coming into operation of the Act of 1883 (viz. Patent, Designs and Trade Marks Act, 1883). The Act 1899 which was succeeded by the Act of 1907 and further amended by the Act of 1919 provides that “every patent may be made in the prescribed manner of the most important changes that took place over the course of the nineteenth century was that patents changed from being a creature of royal prerogative to become a

34. The Act of Monopolies sanctions a monopoly for fourteen years, and of these a very considerable number were granted by Charles I, patents for new processes being particularly numerous. Privileges the crown did not particularly concern itself after passing the Statute of Monopolies. Price, The English Patents of Monopoly, Oxford University Press (1947) [site visited on 25 March 2008].
35. Supra note 2 at 99-100.
36. Supra note 3 at 48.
creature of bureaucracy. The shift from Crown to administration was reinforced with the passage of 1977 Patents Act that saw Britain enter into the European Patent Convention (EPC).  

*Indian Scenario for the Development of Patents*

In Ancient India a concept like patent is almost unheard. The rishis who meditated to attain the knowledge of highest possible order did sometimes create new things or old or existing things or existing things through methods. But all this was done, as is gathered from old texts, to meet the exigencies. There was neither a claim from the inventor to get a monopoly right against the society at large nor did the king grant one. The underlying fact is that the seers who invented new things or processes were devoted to the cause of humanity and had no idea to exploit this invention commercially. All that the inventor could or did get or, to be honest to him, all that he desired was an appreciation from the king. Many rishis did not have even that much of a desire. However, the kings in those times being regarded as the representative of God on earth, they would often reward the inventor with jewels and gems, property and servants etc. or, the king could honour the inventor by granting him a title which in the opinion of the king and his advisors, befitted the achievement of the inventor. But that was all; there was neither a demand from the inventor nor an effort from the king to grant any monopolistic right in favour of the inventor. During the Moughal period, too, the practice of encouraging the inventors of ideas or works or procedures was confined to the royal patronage to these inventors to excel more and more in their respective fields. While some were granted a wazifa (scholarship) for the purpose, others were given a permanent seat in the Council of Ministers or advisors of the king and were thus brought under royal employment.  

But things suddenly took a new turn with the advent of British in India with the turn of seventeenth century. As India got more and more influenced by the British thoughts, culture, system of laws and administration, the things once styled as Western and, hence, contrary to Indian culture were no more regarded as such. The British too, with an eye on making India a part of British empire,
tried their best for about three and half centuries to give her a Western look, particularly one that suited the British. The patent system in India emerged when India was a colony of British and therefore the British used their own system as a drawing account while drafting the Indian Patent Act. The first Act,\textsuperscript{40} for the protection of inventions in India was, on protection of inventions, was based on the British Patent Law of 1852. Certain exclusive privileges were granted to the inventors of new manufacture for a period of fourteen years. The Act was modified in 1859, in which patent monopolies called exclusive privileges i.e., making, selling, and using inventions in India and authorizing others to do so for fourteen years from the date of the filing specification. In the year 1872, the Patent and Designs Protection Act was enacted, and in the year 1883 the Protection of Inventions Act was enacted. In the year 1888 both the Act were consolidated as the Inventions and Designs Act.

Thus, the British rulers enacted the Indian Patents and Designs Act, 1911 which, according to them, aimed at protecting the interests of inventors in India. When India got independence from the British rule, a need was felt to devise a patent law in order to meet the challenges brought about by research and development in various field of human activity.\textsuperscript{41} In 1911 the Indian Patent and Design Act was came into force. After independence the national government decided to change the colonial Patent Act as amended in 1911.

The need for the comprehensive Law is to ensure more effectively that patent rights are not worked to the detriment of the consumer or to the prejudice of the trade. The industrial development of the country was felt as early as in the year 1948 and in that year the Government appointed the Patents Enquiry Committee to review the working of the patents law in India. The Committee submitted its final report in 1950. The Patent Bill, 1953, based largely on the United Kingdom Patent Act, 1949 and incorporating some of the recommendations of the Committee was introduced in the Lok Sabha on 7\textsuperscript{th}

\textsuperscript{40} Act No. VI of 1856.
\textsuperscript{41} Supra note 2 at 104.
December 1953. The Bill, however, lapsed on the dissolution of the First Lok Sabha.42

In 1957, the Government of India appointed Justice N. Rajagopala Ayyanagar to examine afresh and review the Patents Law in India and advise the Government on changes necessary. The Judge submitted a comprehensive Report on Patents Law Revision in September, 1959. The learned Judge dealt with all possible aspects of the problem arising in developing countries regarding patents, particularly 'preponderance of foreigners among the applicants for the patent rights. He quoted with approval Michel:-43

Patent play the role of the pike in the carp pool; they prevent stagnation and stimulate progress. Industrialists are forced to forge ahead to improve their machines and processes for the further reason that each one fears that if he does nothing other will do something and exclude him from the field for a considerable number of years. This result produced by the patent system is sound because it requires, as nothing else would require that industry go forward; it gives primarily the true justification for patent protection.

The Patents Bill, 1965, based mainly on the recommendations contained in his detailed report and incorporating a few more changes in the light of further examination made particularly with reference to patents for food, drugs and medicines, was introduced in the Lok Sabha on 21st September, 1965. The Bill was referred on 25th November, 1965 to a Joint Committee of Parliament. The Joint Committee, after considering the matter, adopted a number of Amendments to the Bill. The Report of the Joint Committee with the Amended Bill was presented to the Lok Sabha on 1st November, 1966. The Patent Bill, 1965, as reported by the Joint Committee was formally moved in the Lok Sabha on 5th December, 1966, but could not be proceeded with for want of time and eventually lapsed with the dissolution of the Third Lok Sabha on 3rd March, 1967.

The study made by two committees headed by Justice Bakshi Tek Chand and Justice N. Rajagopala Ayyanagar led to the emergence of the new Patent Act i.e., the Patent Act (Act 39 of 1970) came into force on 20th April, 1972 which was later amended in the year 1974, 1985, 1999, 2002. The Patents Amendment Bill, 2004 contains comprehensive provisions to amend and consolidate the existing law and also contains amendments or recommendations by the Joint Committee referred to above. The notes on clauses explain the provisions of the Bill, wherever necessary. List of Amended Acts:-

i) The Repealing and Amending Act, 1974 (56 of 1974),
iv) The Patent (Amendment) Act 2002,

In India presently the Patents Act, 1970 which is lastly amended in the year 2005 so as to make the patent law compatible with the international standards prescribes the standards and norms so as to acquire and enforce the patents.

1.4-2 Origin and Development of Copyright

Earlier copyright actually provided most authors with nothing more than an immediate pay-off: only the grandest could demand a royalty or something like. John Milton at least commanded £5 for the editions of Paradise Lost, each limited in number. Two centuries later, Thomas Hardy would get £40 for his first success, Under the Greenwood Tree. Indeed, widescale payment by royalty had largely to wait until a new form of mass exploitation emerged in the music industry with the gramophone and the radio. This, out of necessity, gave rice to collecting societies of composers and lyricists, which charged for the public performance of songs and other compositions and paid out to individual members for each use of there works.

46. Supra note 3 at 43.
In the fifteenth century, the earliest history of printing in England starts when William Caxton introduced the art of printing. An early statute of Richard III in 1483 A.D., informs copier, encouraged the printing of books and permitted their importation, but this statute was repealed fifty years later on protectionist ground i.e. to protect the printers and book binders in England who had prayed to the king to protect their interest as king’s natural subjects. And when these printers grew in number in England it became the prerogative of the King to grant licenses to the printers.

The origin of Copyright itself is to protect the commercial interests of the publishers. After printing was invented, a printer or publishing entrepreneur entered the risk of investing on printing creative ideas. These entrepreneurs were considered to be the forefathers of present publishers. They were first to propose to acquire the exclusive copyrights over such ideas and printable creativity. The stationers were first supported from the Crown. In 1534 they secured protection against the import of foreign books and in 1556, the Queen gave power to the stationer through a charter, to destroy the books printed in contravention of statute or proclamation. Thus a licensing system was introduced. In 1556, Philip and Mary granted what was termed as the original character of the stationers company. In order to ensure that the spread of reformed version of Christianity be prevented at any cost. The King acting through Star Chamber, issued decrees in 1556 and 1585, a proclamation in 1623 to enforce the latter decree; and another decree in 1637. The decree of 1556 prohibited the printing contrary to any ordinance or statute, the decree of 1585 made licensing of every book compulsory. Despite these stringent measures taken by the Crown there had been no opposition from the Parliament; but in 1640 the Parliament abolished the Star Chamber, and declared the decrees issued and sanctions imposed

48. F. E. Skone, Copinger and Skone James on the Law of Copyright (1948) at 5.
49. Supra note 2 at 53.
51. The Star Chamber was a court of civil and criminal jurisdiction primarily concerned with offences affecting Crown interests, noted for summary and arbitrary procedure, and was abolished in 1640 A. D. by the British Parliament.
hithertofore as illegal. It was issued an ordinance where it was provided that unless a book was first licensed it would not be printed. This was the early development of the copyright.

It was this ordinance which introduced the concept of ownership of the author in his works statutorily for the first time because prior to it the only ownership which the author could have was one permitted under the common law. In so doing there also came a statutory recognition of the fact that there existed a property in the work of author which could not be used without the owner’s (real author’s) prior permission. This was followed by another ordinance in the year 1649 and an Act thirteen years thence. The Act which was called the Licensing Act declared as unlawful the printing of a book unless, prior to being printed, it has been granted a license to this effect and registered with the stationer’s company.52

This Act, which was continued by a number of Acts of Parliament subsequently enacted, ultimately expired in May, 1679, much to the dismay of the Stationer’s Company,53 which, under the statute, had now no protection to their copyright. In a desperate move the stationers, who have been rightly termed as forefathers of the modern publisher54 issued an ordinance in 1681 binding on the members of their Company. This was aimed at emphasizing their right which the stationers though they had by virtue of common law which existed even in absence of Parliamentary protection they enjoyed till 1679. The ordinance narrated how prior to it the registration with Stationer’s Company had provided the registration with a reputation, a proprietary right in the book in point and subsequently the sole right of printing such book. This move was further indicated by another ordinance issued by the company in 1694 which provided for imposition of penalty at the rate of twelve pence per copy should somebody

52. Supra note 2 at 53-54.
53. The Worshipful Company of Stationers and Newspaper Makers (better known as the Stationers’ Company) is one of the Livery Companies of the City of London. The Stationers’ Company was founded in 1403; it received a Royal Charter in 1557. It held a monopoly over the publishing industry and was officially responsible for setting and enforcing copyright regulations until the passage of the Statute of Anne in 1709, http://en.wikipedia.org site visited on 25 March, ...
infringe the copyright of one who had got it by virtue of its registration with the Stationer’s Company.\textsuperscript{55}

The idea of copyright protection only began to emerge with the invention of printing, which made it possible for literary works to be duplicated by the mechanical processes instead of being copied by hand. This led to the appearance of a new trade that of printers and booksellers in England called “Stationers”. By the end of Seventeenth Century the system of privileges i.e., the grant of monopoly right by the Crown was more and more criticized and the voice of authors ascertaining their rights began increasingly to be heard, and this led in England in 1709 to what is acknowledge to be the first Copyright Statute – “The Statute of Anne”.\textsuperscript{56}

All attempts directing at getting another License Act passed, resulted in failure. In 1709, prayers were made to Parliament by interested parties indicating that there had been, for quite long time no statute or ordinance to protect the copyright of stationers and the instance of violations had acquired such an alarming protection that no authority but the Parliament could set the things right. The results came in response to these prayers in 1709 has the privilege to be regarded as the first Copyright Act in the history of copy right in Britain. This is known as the Statute of Anne, 1710 because it becomes effective from April 10, 1710. The interpretation of the provisions of Anne’s statute by the House of Lords in \textit{Donaldson v. Becket},\textsuperscript{57} in 1774 rang alarm bells in University circles. The House of Lords observed that “the effect of the statute was to extinguish the common law copyright in published works, through leaving the common law copyright in unpublished works unaffected.”

On the request of the universities, there passed an Act of Parliament to protect their copyright in perpetuity over all copies either given to or required by them whether before the passing of the Act of 1710 or in future. Similarly, another Act enacted the period of copyright for twenty-eight years or in case the author

\begin{flushright}
\textsuperscript{55} Supra note 2 at 54.
\textsuperscript{57} Supra note 48.
\end{flushright}
survived this period, for the rest of his life. The Parliament also passed Copyright Act in 1734 and 1766 where the terms of copyright was firstly fourteen years and later extended to twenty-eight years. Likewise, the Act of 1798 and 1814 were passed to protect copyright in human sculptures for a period of fourteen years with another fourteen years in case the author survived the first term had still the copyright with him. Copyright of the composers, playwrights and others in the field of drama were protected by Dramatic Copyright Act of 1833 and lectures in public by Lectures Copyright Act, 1835.

After a long debate that ran from 1837 to 1842 between two scholars of opposing viewpoint, came what was termed as literary Copyright Act, 1842, T. B. Macaulay viewed copyright as “a tax on readers for the purpose of giving a bounty to authors” and hence opposed the proposal of Mr. Serjeant Talfourd to extend the copyright to life of author plus sixty years. A great leap forward was taken in 1885 when Britain participated at Berne Convention on copyright. This Convention to which Britain was a party was further modified in Berlin in 1908 requiring Britain to amend her copyright laws to bring it inline with other nations so as to facilitate Copyright protection to foreigners revised by the Revised Convention. A committee appointed in Britain for the purpose in 1909 gave its recommendations favouring compliance of Revised Convention. The Bill drafted for the purpose, failed in 1910 but was passed with some amendment, in 1911 by the Parliament. Having received the royal sanction on Dec. 11, 1911, it came into force on July 1, 1912. The Act of 1911 was replaced by the Copyright Act, 1956 on the basis of a study by a review committee in 1952, known as Gregory Committee. The Withford Committee in 1977 further received the Act of 1956 and suggested a general revision of the Act. This finally culminated into what we now know as the Copyright, Design and Patent Act, 1988.

Indian Scenario for the Development of Copyright

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a
living thus, the question of Copyright never arose. The importance of the copyright was recognized only after the invention of the printing press which enabled the reproduction of books in large quantity practicable. In India the first Legislation of its kind, the Indian Copyright Act was passed in the year, 1914 which was mainly based on The Copyright Act, 1911 (of United Kingdom).

Upto the Moughal period there was no concept of copyright in India, it was the arrival of the British on the Indian soil that the concept of copyright was brought here. The English law is regarded to have been introduced with the setting up of corporations headed by Mayors in Presidency towns on the model of London Corporation. The Mayor’s Court followed the laws of England despite there being no provision in the Act in clear terms. This Court administered the copyright law of England in respect of those matters where a copyright could exist. The Charter of 1753 left this situation unaltered.

Supreme Court established under the Charter of 1774 was purely English Court because there has been made an express provision of appeals to the Privy Council from its decisions under conditions specified in the Charter itself. This Court thus followed laws of England (including the copyright). Laws made by the Governor-General in Council had to undergo the scrutiny of the supreme Court which had to evaluate it on the criteria of whether it was in accordance with laws and customs of England. Thus, the legislative power of Governor-General in Council was confined to make rules which were ‘not to be repugnant to the laws of England.’ When the Literary Copyright Act, 1842 was passed by the British Parliament bringing about many a change in the law of copyright, it was also made applicable in British Colonies besides Britain herself. Thus this Act which provided the protection of copyright in books published on British soil, automatically got an extension to the British India. However, it was worth noting that the period of about one hundred years- from mid eighteenth to mid nineteenth century- that preceded the passage of Literary Copyright Act, 1842 had no codified law for the copyright protection in India except the common law principle of "justice, equity and good conscience" which the courts in the
administration of East India Company were supposed to allow. The Act of 1842 also provides the protection to the dramatic and musical work.

For the enforcement of copyright in the areas under the administration of East India Company as also for promoting the endeavors of knowledge and learning in these areas the Governor-General in Council, on December 18, 1847 passed the Copyright Act, 1847 which provided for the protection of copyright in works which had been published in the areas under company administration for the first time since the passage of British Act of 1842, i.e., the Literary Copyright Act, 1842.

The Indian Copyright Act, 1847 defined copyright and provided for:-

i) the endurance of copyright;
ii) the enforcement of infringement of copyright by actions in courts; and
iii) the registration of copyright, assignment of copyright etc.

The aftermath of the Berlin Convention where Britain was a party which ultimately led to the passage of Imperial Copyright Act, 1911 which become effective from 1st July, 1912 in Britain. The Government of India first tried to take into confidence the local governments in the territories under Company rule so as to modify the Imperial Act of 1911 to bring it in tune with the Indian requirements. The British Act was enforced in India by a proclamation of Governor-General in Council on 31 Oct., 1912. After sometime the government received the views of its local governments and it prepared a draft bill which ultimately becomes the Indian Copyright Act, 1914.

The existing law relating to copyright's contained in the Copyright Act, 1911 of the United Kingdom as modified by the Indian Copyright Act, 1914. Apart from the fact that the United Kingdom Act does not fit with the changed Constitutional status of India, it is necessary to enact an independent self-contained law on the subject of copyright in the light of growing public consciousness of the rights and obligations of the author in the light of the experience gained in the working of the existing law during the last forty years. New and advanced means of communications like broadcasting, litho-

62. Ibid.
photography, etc., also call for certain amendments in the existing laws. Adequate provision has also to be made for fulfillment of International Obligations in the field copyright which India might accept. A complete revision of law of copyright, therefore, seemed inevitable and the Copyright Bill 1957 attempts such revision.\textsuperscript{63} In preparing this Bill, the British Copyright Report, 1952, the suggestions of various ministries of the Government of India, the State Governments, the Universities and certain interested industries and associations who were invited to send their comment on the subject had taken into consideration.

The Copyright Bill, 1957 has been passed by both the houses of the Parliament which received the assents of the President on 4\textsuperscript{th} June, 1957. It came into force on the 21\textsuperscript{st} January 1958 as The Copyright Act, 1957 (14 of 1957) which has been amended time and again by the Copyright Amendment Act, 1983 (23 of 1983), The Copyright Amendment Act, 1984, The Copyright Amendment Act, 1992, The Copyright Amendment Act, 1994 which has provided protection to all original literary, dramatic, musical and artist work, cinematography films and sound recordings. It also brought sectors such as satellite broadcasting, computer software and digital technology under the Indian copyright protection. Major development in the area of Copyright Act, 1957 is to make it fully compatible with the provision of the TRIPS Agreement called the Copyright Amendment Act, 1999; this Amendment was signed by the President of India on 30\textsuperscript{th} Dec., 1999 and came into force on 15\textsuperscript{th} Jan., 2000. The other important development during 1999 was the issuance of the International Copyright Order, 1999 which extends the provisions of the Copyright Act to the nationals of the World Trade Origination.

Not only the Copyright Act but the Right to Information Act, 2005 also protect the creative work of the author. Section 9\textsuperscript{64} authorizes the Central Public Information Officer or a State Public Information Officer, as the case may be, to reject the application or request which violates the right of the author or infringes the right of the copyright holder. Under various provisions of this Act information

\begin{footnotesize}
\begin{enumerate}
\item Right to Information Act, 2005.
\end{enumerate}
\end{footnotesize}
can be sought from the Authorities but section 9 of the Right to Information Act, 2005 protects the infringement of copyright work.

1.4-3 Origin and Development of Trademark

The use of trade mark as to identify manufacture was also in practice in Ancient times. This continued in Medieval times. During that time marks designating ownership were important devices. They were not trade mark but proprietary marks. They enable authorities and especially guild monopoly. Traders and trade groups deployed marks of various kinds to distinguish their product e.g. hallmarks of goldsmith and silversmith and marks of Sheffield cutters and distinct. Concept of trade marks is an old one since it was in use even in olden times. The World Intellectual Property Organisation in its hand book on intellectual property law and its use mentions this fact. 65

As long as 3000 years ago, Indian craftsmen used to engrave their signatures on their artistic creations before sending them to Iran. Manufacturers from China sold goods bearing their marks in the Mediterranean area over 2000 years ago and at one time about a thousand different Roman Potter marks were in use....

As is clear from the above observation of the WIPO, the trade marks were used primarily to indicate ownership of goods. However, with the tremendous growth of trade and commerce the trade marks have acquired some other meaning as well. A trade mark, besides, denoting the origin of goods, also now informs the consumer of the quality of goods supplied under it and, therefore, plays an important role in the decision making of the purchaser. Quality goods available to the customer under a particular trade mark also work as a confidence building measure for the customer in that he becomes assured of the quality of goods bearing that particular trade mark which, consequently, becomes his obvious choice for that particular kind of good with which the said trade mark is attached. The industrial revolution made the use of trade mark more important, as the international trade and commerce registered a tremendous growth. With the turn of twentieth century trade marks got recognition as intellectual property

65. Supra note 2 at 186.
since by time they had come to be looked upon as a valuable asset in the industrial and commercial world. In the present scenario the value of the trade mark is much higher than it has ever been.

Trademark is intended to protect companies investment in the “goodwill” they have development in their name or mark and protect consumer from confusion. Around 2000 B.C. Egyptians branded livestock in the earliest found proof of existence of trade mark. In 600 B.C. the Babylonian merchants placed signs outside their shops to designate activities and distinguish their goods from other merchants. In 300 B.C. the Roman merchants used symbols to specify the manufacturer or seller of products such as pottery. In Medieval Ages, sword and Armour bore marks of their manufacturers so as to trace their origin. Between 1200-1600 abbeys and monasteries across Europe begin attaching brands to beers and liquors they produce as a guarantee of origin and quality. The first trademark to be registered in U.K. was in 1876. In the earliest times traders applied marks to their good to indicate ownership.

Before the statute on the trade marks came into effect, only the common law protection was available to a trade mark. If one's trade mark was misrepresented by another trader the former could bring an action for deceit against the latter at Common Law Courts. Later when the Court of Chancery (the Equity Court) came into being, it “used the action for ‘passing off’ to protect a trader who had developed a reputation or goodwill through use of a particular sign or symbol.”

To prove his case of deceit or passing off against the defendant, the plaintiff has to go through the rituals of proof every time. To circumvent these difficulties the traders raised their demand for more effective and easily available protection for their trade marks. A select Committee of the House of Commons appointed in 1862 with a view to make proposals ‘recommended favorably as regards merchandise marks’ but ‘they did not endorse the proposal urged upon

66. Ibid.
them for the establishment of a Register of Trade Marks and the creation of Trade mark rights by registration. This demand was met by the Trade Marks Registration Act, 1875. Subsequent to the passage of Trade Mark Registration Act, 1875 a demand was made to the Bombay Chamber of Commerce and Mill Owners’ Association for introducing a Bill in the Bombay Legislative Council on the lines of the English Act. The subject was one of those administered by the Central Government and, therefore, the Central Government circulated for public opinion a draft of Trade Marks Bill, 1879 which, however, could not see the light of the day owing to vehement attack on it from the people of trade and commerce who thought it might adversely affect their prospects in their field. In 1889 came the Merchandise Marks Act.

In United Kingdom until the enactment of Trade Marks Act, 1905 the term “trade mark” could find a definition in the statute. Even the amended version of Trade Mark Act, 1919 divided the Register in two parts viz. Part A and Part B. The owners of valuable trademarks were not satisfied even with these improvements which had aimed at giving statutory shape to the common law rights of trade mark owners. Therefore they demanded a greater monopoly right than what was achievable by the Act of 1919. This resulted in an amendment of the Act in 1937 and, soon thereafter, enactment of the Trade Mark Act, 1938. The act, however, left untouched the common law rights of action regarding passing off and actions by unregistered owners. Following the Mathys Departmental Committee’s recommendations in 1974 “to admit service marks on the register of trademarks, the same was implemented a decade later” the basic changes have been introduced into the United Kingdom law by the Trade Marks Act, 1994.

**Indian Scenario for the Development of Trade Marks**

Trade mark has been defined as any signs, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertaking. Such distinguishing marks constitute protectable subject matter under the provisions of the TRIPS Agreement. The agreement provides

---

69. Supra note 2 at 178-179.
70. Section 2 of the Trade Marks Act, 1938 (U.K).
71. Supra note 54.
that initial registration and each renewal or registration shall be for a term of not less than seven years and the registration shall be renewable indefinitely.\textsuperscript{72} India too has adopted the same concept and it will be renewed indefinitely.

The need to have legislation on the point was felt by the trading public in the twentieth century, more so after the First World War had come to an end. A resolution to this effect was also made by the Industrial and Commercial Congress in 1927 which succeeded in building up a pressure on the Central Government which again circulated a draft proposal for the Trade Marks Bill in 1937. In the words of T. R. Srinivasa Iyengar:\textsuperscript{73}

\begin{quote}
The opinion were referred to Mr. R. K. Nehru for consideration and report. He accordingly submitted his report with the draft of a proposed Bill. These were again circulated for opinion and ultimately on 19\textsuperscript{th} September, 1939, Sir A. Ramaswamy Mudaliar, then Executive Councillor of the Government of India for Commerce and Industry, moved a Trade Marks Bill which was referred to a Select Committee. The Bill was passed by both Houses and received the assent of the Governor-General on 11\textsuperscript{th} Mach, 1940.
\end{quote}

Although the efforts to get a statute on Trade Marks had started soon after the passage in England of the Trade Marks Registration Act, 1875, it was not until the year 1940 that the Indian traders got a statutory law on the point:\textsuperscript{74}

\begin{quote}
Priority to 1940 there was no statutory law relating to Trade Marks in India and the law which was applicable to the subject was based on common law which was substantially the same as that applied in England before passing of the first Registration Act in 1875.
\end{quote}

The Act of 1940 introduced the system of registration of Trade Marks and thus provided a protection for the rights of owner of registered trade mark. It was later replaced by Trade and Merchandise Marks Act, 1958. The Trade and Merchandise Marks Act, 1958 for the first time codified the Law relating to trade

\begin{footnotes}
\item[73] Supra note 54 at 4-5.
\item[74] Supra note 2 at 180.
\end{footnotes}
mark and provided for the registration of the trade marks already in use and even those proposed to be used. Since 1958 it has been amended several times. In view of the development in trading and commercial practice, increasing globalization of trade and industry, the need to encourage investment flows and transfer of technology and the need to simplify and harmonize trade mark management system, it has been considered by the Parliament that it is necessary to bring out a comprehensive Legislation on the subject. Accordingly the Trade Marks Act, 1999 was passed to replace the Act of 1958.

The most significant development in the trademark law is the Trademark Act, 1999; the Act came into force on the 15th September, 2003. This will enable service marks and collective marks to be protected under the law in addition to the improved protection for the well-known marks. The object of the Trade Mark Act, 1999 is to provide for the registration, better protection of Trade Mark for the goods or services; and the prevention of the use of fraudulent marks on the goods and service. However, in the light of globalization of trade and commerce; as well as the developments in trading and commercial practices, it felt that some comprehensive legislation be brought on the subject. As a result the Trade Marks Act, 1999 was passed which besides providing for registration of trade marks for goods, also provides for registration of trade marks for services.

1.4-4 The Origin and Development of Geographical Indication of Goods

Intellectual property rules and the concept of protection for geographical Indication have been around for many years prior to the TRIPS Agreement. The first geographical indication legislation was developed in 1824 by France. In 1919, ‘appellation of origin’ legislation was passed by the French to expand the protection to regulate the quality of wines and cheeses in a particular region. At the same time other European countries began to follow the French example, many Europeans were immigrating to the United States. These Europeans often brought vine cuttings from their homeland and named their wine, now growing in the United States, after the region in Europe from

76. Supra note 2 at 180.
which it had originated. While Geographical Indications for wine had become protected in France and other European countries, the same Geographical Indications became generic names in the United States and Australia for types of wine.\textsuperscript{77}

The term 'geographical indication' is of relatively a recent origin as compare to other intellectual property rights. Earlier such protections could be availed of, if at all, under the law of the countries concerned by talking recourse to other related provisions in their respective laws. The Paris Convention for the protection of industrial property uses the term "indications of source and appellation of origin" but it does not mention the term 'geographical indication.' The term 'geographical indication' started to be used in connection with trade and commerce only with the beginning of the 20\textsuperscript{th} century. The TRIPS agreement is the first truly global agreement which talks of geographical indications categorically along with other intellectual properties. The Madrid Agreement for the repression of false and Deceptive Indications of Source on Goods (in short Madrid Agreement) and the Lisbon agreement for the protection of Appellation of Origin and their International Registration (Lisbon agreement) are other efforts which were made before the all encompassing TRIPs agreement.\textsuperscript{78}

In consonance with the TRIPS obligations, the Geographical Indications Act, 1999, came into effect on 15\textsuperscript{th} Sep., 2003 in India. The Act has strengthened the protection of Geographical Indications in India which was eagerly awaited. Before the advent of the TRIPS Agreement there were no multinational or multilateral agreements, which dealt with the protection of Geographical Indications. There were, of course International Treaties, like Paris Convention, Lisbon Agreement, which aimed at protecting Geographical Indications. However, the protection under these Treaties was limited and there were a restricted number of signatory countries, it did not prevent worldwide infringement of various Geographical Indications. Though the inclusion of Geographical


\textsuperscript{78} Supra note 2 at 212-213.
Indications in the TRIPS Agreement was marred by controversy, it heralded its entry in Intellectual Property Law.\textsuperscript{79}

The new Act that has been passed will effectively protect various Industrial and Agricultural resources existing in India, some of the examples involved are Basmati Rice, Alfanso mangoes, Nagpur oranges, Kanchipuram Saris, Darjeeling tea, Pashmina shawls, Agra ka Petha, Bikaneri Bhujia, Malabar Peppers, Khadi and many more. The Act is also significant because the TRIPS Agreement provides that if the Geographical Indication is not protected in its Country of Origin then it will not be protected in the International arena. The Registration of the Geographical Indication confers the right of exclusive use coupled with the right to obtain relief in respect to infringement. Any association of persons, producers, organization or authority established by or under the law can apply for the registration of the geographical Indications and if there application is successful than there name is entered in the Register as registered Proprietors. A producer of goods can apply for registration as an authorized user. The registration of an authorized user is valid for a period of 10 years and thereafter it can be renewed for a further period of another ten years. If there is a lapse in renewing the registration it will be removed from the Register. The Registration of Geographical Indications is not compulsory but it affords better legal protection to facilitate an action for infringement. The Act prohibits licensing, transmission assignment or pledge in respect of any Geographical Indication. An action for infringement as well as passing off can be brought under the Act. Infringement includes unfair competition.\textsuperscript{80}

Geographical indications from developing and least developed countries are mostly agricultural products like rice, tea, coffee, honey, wines, oil, dairy products, etc. the empowerment aspect of geographical indications stems from the fact that producers of geographical indications are given a right to exclude other from using the name. Such exclusion eventually leads an aura of uniqueness to the product concerned, thereby enhancing its premium. The premiums attached to these goods enable the producers to commercially and

\textsuperscript{79.} Supra note 10.  
\textsuperscript{80.} Ibid.
economically take advantages of the product. Developed nations around the world have created the infrastructure by which their intellectual property is safeguarded very well. In order to remain competitive and to prevent the loss of its own properties, India must build similarly strong systems and after the TRIPS Agreement the Indian Parliament has enacted the Geographical Indications Act, 1999 for the acquisition and enforcement of the geographical indications.

1.4-5 The Origin and Development Designs

The findings of excavations at the sites related to the great civilizations of the world bear testimony to this developed aesthetic sense of the ancient man in various fields of human activity. Like the great bath, the statue, the jewellery and the seal (with a bull on it) found at Mohenjo-daro have enough of art and design in them to impress the modern artists and designers. The historians have found that besides the numerous dwelling houses, there were ‘spacious buildings of elaborate structure and design’ and that there was a ‘great variety in the shape and design’ of ornaments used by the people of Indus Valley civilization some of which were ‘of singular beauty.’ The use of designs in trade also seems to have been in vogue because ‘the seals were most probably used in connection with trade’ by the people who ‘traded not only with other parts of India but also with many countries of Asia.’ The designs have been at the centre of human art and craft, trade and commerce; and life and things of the ancient man the world-over. This taste for designs has increased as the man has become more and more modern.

In the United Kingdom it was the industrial revolution which made the use of designs in trade and commerce useful like never before. Earlier, the Calico Printers Acts 1787 and 1794 ‘conferred protection upon new and original patterns for linens, cotton, callico and muslin automatically’. The industrial revolution facilitated the path for mass scale production of goods through industrial manufacturing which, in term, resulted in a demand for a registered design

83. Supra note 2 at 154-155.
84. Supra note 68.
system for the interested quarters. The British Parliament passed the Copyright of Designs (Registration) Act, 1839. However, by the turn of the twentieth century it came under attack mainly due to the fact that there were a number of designs which could and would enjoy protection under patent law or the copyright law with the latter requiring no registration. The crises to the design registration system was met with by the Copyright Act of 1911 which excluded the copyright in industrially applicable designs which were registerable under the design registration system. The Copyright Act, 1956 further tried to get rid of this problem of dual registration of designs viz. as industrial designs and as artistic works, but its success too was dismal.85

Then came Designs Copyright Act, 1968 which provided monopoly right for 15 years to the owners of the industrial design. However, the unregistrable designs still enjoyed a far greater protection under copyright law which extended to the life of the designer plus 50 years thereafter. The most comprehensive attempt to do away with these anomalies in legal protection of designs was made through Copyrights, Patents and Designs Act, 1988, which in the process also revised the Registered Designs Act, 1949. The 1988 Act provides a three pronged protection in respect of designs and all of them may run simultaneously i.e., these are cumulative Design for artistic works are protected under copyright for twenty-five years, functional or unregistrable designs for upto fifteen years; and registered designs for a period upto twenty-five years, under the Copyrights, Patents and Designs Act, 1988.86

The British Government in India passed the Designs Act, 1911 much on the lines of British design law. For the remaining part of the twentieth century there could be made no progress in design law in India and thus the legal system for protection needed an overhauling very badly. The Indian Legislature passed the Designs Act, 2000 in order to provide more effective protection to registered designs and to promote design activity. The Act also aims to ensure that the

85. Supra note 2 at 155.
86. Id. at 156.
design activity is to remove ‘the impediments to the free use of available designs’.87

There are two sorts of designs, which are protected under the Designs Act, 2000. The first is in the shape of configuration or three-dimensional article. In the second, any feature of an article which appeals to the eye, like a design on a carpet, any painting or a paint on cloth. There is in fact considerable overlapping sometimes between the Copyright law and the Designs law. The duration of the rights under the Act different, as far as Copyright is concerned, the copyright is protected for a period of 60 years after the death of the author; where as the designs are protected for a maximum period of 15 years.88 The design rights may be infringed by unauthorized reproduction of the design for commercial purposes. A suitable action for infringement can be brought against the person infringing the particular design. Whether a passing off action would lie for an unregistered design is still a grey area.

1.5 Importance of Protecting Intellectual Property Rights

The fundamental assumption of our system of intellectual property rights is that social welfare is enhanced by conferring exclusive rights on those who produce or disseminate these forms of information.89 Intellectual property is integral to the process of human kind and is an indispensable element in economic development in global environment and so is essential that its utilization also assures protection of basic human values and the environment.90 Intellectual property, like any other form of conventional forms of property is an asset. Like real and personal property the intellectual property can also be brought, sold, licensed, exchanged or gratuitously given away by the owner. The owner of the intellectual property has also the right to prevent the unauthorized use or sale of the property.

The protection afforded by intellectual property laws is very important to those businesses investing in research and development in order to bring new

87. Ibid.
88. Supra note 10.
products into the marketplace. Without this barrier, innovation is like a crop in an unfenced field, free to be grazed by competitors who have made no contribution to its cultivation.\textsuperscript{91} Intellectual property is the property which has been created by the exercise of the intellectual faculty. This is the creation of intellectual activities. It refers to creation of mind such as inventions, designs for industrial articles, literary, artistic works, symbols which are ultimately used in commerce. Intellectual property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual property rights reward creativity and human endeavor which fuel the process of mankind.

The need for the protection of intellectual property is to encourage the inventors, artists and business people, to make new inventions or create new works of art and literature and make them available to the general public. It is the government’s attempt to encourage creative output by ensuring creators certain legal rights (Copyright, Patent, and Trademark etc.) that limit or control the use of their inventions by others. It is the commercial exploitation of an invention for specific period of time in consideration of the disclosure of the invention which is beneficial to the public at large. Basically, the objective behind the protection of the intellectual property rights is to encourage the research and development. It may be divided into following headings:-

1. Importance of Protecting Copyrights,
2. Importance of Protecting Patents,
3. Importance of Protecting Trade Marks,
4. Importance of Protecting Geographical Indication,
5. Importance of Protecting Designs.

1.5-1 Importance of Protecting Copyright

India has one of the most modern copyright protection laws in the world. India’s copyrights law laid down in The Indian Copyright Act, 1957 as amended by the Copyright Act, 1999, fully reflects the Berne Convention on Copyright, to

which India is a party. Additionally, India is a party to the Geneva Convention for the protection of rights of producers of phonograms and to the Universal Copyright Convention. India is an active member of the WIPO, Geneva and UNESCO. Copyright protects the expression (form) of an idea and not itself. It also cannot be used to protect the procedure, process, system, method of operation, concept principle or discovery. Copyright law is not supposed to create monopolies. Copyright subsists in the original works that are capable of being reproduced from a fixed medium. Copyright is more complex, providing economic incentives for creation as well as protecting author's creativity as embodied in a work. Copyright is the exclusive right to copy a creative work or to allow someone else to do so. It includes the sole right to publish, produce or reproduce, to perform in public, to communicate a work to the public by telecommunication, to translate a work, with some cases to rent the work.

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 program's, 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 works, cinematographic films and sound recording.

A copyright is an exclusive right exercised over the work produced by the intellectual labour of a person. Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematographic films and sound recording. In fact, it is a bundle of right including inter-alia, rights of reproduction, communication to the public, adaptation and translation of the work. Their could be a slight variation in the composition of the rights depending on the work.

Copyright ensures certain minimum safeguards of the rights of the authors over their creations, thereby protecting and rewarding their creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic

---

requirement of encouraging the same. The economic and social development of the society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, musicians, architects and producers of sound recordings, cinematography, films and computer software creates an atmosphere conducive to creativity, which includes them to create more and motivates others to create.

The hallmark of any culture is the excellence of arts and literature. In fact, the quality of creative genius of artists and authors determine the maturity and validity of any culture. Any art need healthy environment and sufficient protection. What the law offers is not the protection of the interest of the artist or the author alone enrichment of culture is of vital interest to each society and the copyright law protects this social interest. It is meant to protect the owner of the copyright against unauthorized performance of his work, there by entitling him monetary gain from his intellectual property.

The Copyright Act, 1957, has been enacted to check the piracy i.e. the infringement of rights under the Copyright Act so that the fruits of the labour put by the author or the copyright owner may be enjoyed by the deserving authors and copyright owners and not the pirates, who indulge in plagiarism and other undesirable and other illegal activities of theft of intellectual property. Copyright is a property right and throughout the world it has been regarded as a form of property working for special protection in the ultimate public interest. Copyright protects the rights of the authors i.e. the creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematography films and sound recordings. The Copyright Act, 1957, provide for the authorities like, copyright office, Registrar of copyright and copyright Board for the purpose of the registration of the copyright. Ordinarily the author is the first owner of the copyright, but Section 18 of the Copyright Act, 1957 also provides that the owner of the work may assign the copyrights wholly or partly in the favour of any other person.

97. Girish Gandhi v. Union of India, AIR 1997 Raj 78 at 84.
99. Registration of copyright is not compulsory under the Copyright Act, 1957.
The owner of the copyrights in an existing work or the prospective owner of the copyrights in a future work, may assign to any person the copyright either wholly or partly and either generally or subject to certain limitations and either for the whole term of the copyright or any part thereof. The term of copyright in published literary, dramatic, musical and artistic works subsists during the life time of the author of such work and for sixty years following the year of the death of the author. In case of the photographs, cinematographs films, work of sound recording, the copyrights subsists for sixty years following the year of publication of these works. In India copyright of works of the countries mentioned in the International Copyright Order are protected in India as if such works are Indian works. Copyright of the nationals of the countries who are members of the Berne Convention for the protection of the literary and artistic works, Universal Copyright Convention and the TRIPS agreement are protected in India through the International Copyright Order.

1.5-2 Importance of Protecting Patents

Historically, the word patent has come from the Latin phrase "litterae patents" literally means patent. Patent means open and letters patent conferring privileges, rights, ranks, or titles by sovereign bodies or rulers. They were official documents and were 'open' as they were publically announced. It is granted by the government to an inventor or inventors signify a contract. In lieu of disclosing the invention, the society allows the inventor to monopolies the commercial return for the application of the invention for 20 year.

According to Article 27(1) of the TRIPS Agreement, Patent shall be available for any invention, whether product or process, in all fields of technology, provided that they are new, involves an inventive step and are capable of industrial application.

In Monsanto Company v. Coramandal Indag Products (P) Ltd., the Apex Court has observed that to be eligible for patent, the invention must satisfy the four basic requirements:-

102. AIR 1986 SC 712 at 717.
i) The invention must be one of the types specified by the statute (i.e., The Patent Act 1970) as patentable subject matter.

ii) The invention must be novel i.e., new.

iii) The invention must be non-obvious.

iv) The invention must be useful i.e. one having industrial application.

The object of patent Law is to encourage the scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new invention of commercial utilization. The price of the grant of the monopoly is the discloser of the invention at the Patent office, which after the expiry of the fixed period of the monopoly, passes into the public domain. If the protection has not been given to the inventions than the inventors will be discouraged from doing the research and it has a negative impact on the research and development.

The protection of patent helps not only in the research and development of the creator or inventor of the work but also motivate his intellectual and commercial status. If the protection is not given to the patentee than they will be discouraged and the research which is the gist of the advancement came to a halt. It is not wrong to say that the development of a country mainly depends upon the patents law and its enforcement. Protection of patents not only attracts innovation and creativity but it also spurs economic growth of the country.

1.5-3 Importance of Protecting Trademark

In every field of human endeavour man has always tried to excel, to leave others behind and to make a mark for himself in the field. The message he wants to convey to the world has always been to the effect that the feat he has achieved is something not yet achievable by others. Every attempt is made by him to convince the world that the way he is dealing with things is better than the way applied by others; the things he is producing stand higher in terms of quality than

103. “Invention” has been defined in Section 2(j) of The Patent Act, 1970 as follows:
   “Invention” means any new and useful:
   (i) art, process, method or, manner of manufacture;
   (ii) machine, apparatus or other article;
   (iii) substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention.”

104. Supra note 30.
the things produced by others, and so on. The nineteenth century witnessed a
great revolution in the field of industries which brought the need of protecting
trade-mark in a way that seemed convincing as never before, particularly
because the chances of fraudulent use of trade-mark stood immensely increased
in the light of the advancements made in the field of trade and commerce as a
result of the said industrial revolution.\textsuperscript{105}

Marks were used in ancient times, they were in vogue in medieval period,
and they were also applied in the modern age. The purpose accompanying the
use of marks has been changing in its nature and scope all these times. Bently
and Sherman informs us that in the earliest times marks were used by traders to
indicate the ownership of goods; and by farmers to identify their livestock.
Therefore, they were the proprietary or possessory marks. In the medieval
period, there developed guilds of traders which required, that a trader should use
the marks or signs on goods to 'ensure that the goods were of satisfactory
quality,' which in turn, helped them identify the source of "unsatisfactory goods". 
Even after the demise of guilds of traders, the marks were kept in use by the
traders, in the wake of industrial revolution, for the goods manufactured by
them.\textsuperscript{106}

However, it was only with the turn of twentieth century that the marks
become recognized as intellectual property because they proved to be more
valuable than most of the assets a trader could possess. Further, some marks
may prove more attractive to the customers so much so that in some particular
instances they may have enough allurement for the customer than other
marks.\textsuperscript{107}

Trademark can be a word, slogan, design, picture, or any other symbol,
which is used to identify and distinguish goods with a view to indicate to the
consumers that they are goods manufactured or otherwise dealt in by a particular
person or particular organization as distinguished from similar goods
manufactured or dealt in by others. It may be a symbol, including a work, design,

\begin{itemize}
\item\textsuperscript{105} Supra note 2 at 176.
\item\textsuperscript{106} Supra note 68 at 655-656.
\item\textsuperscript{107} Supra note 2 at 177.
\end{itemize}
or shape of a product or container, which qualifies for legal status as a trademark, service mark or trade name. It is a peculiar distinguishing mark or device affixed by a manufacturer or a merchant on his goods. The important function of the trademark is to identify one seller’s goods from others so as to distinguish one merchant’s goods from the others. It indicates the source of origin of the goods and of particular quality as desired by the customers it helps the holder to advertise and promote in selling the goods and also provide protection to the owner of the mark by ensuring the exclusive right to use it to identify goods and services, or to authorize another to use it in return for payment. The period of the protection of the trademark varies, but a Trademark can be renewed indefinitely beyond the time limit on the payment of additional fees.

The owner of the Trademark does not have to register with his trademark for using it; hence, a trademark can be legally used even without registration. Section 27 of the Trade Marks Act, 1999 recognises the common law rights of the trade mark owner to take action against any person for passing off goods as the goods of another person as services provided by another person as the remedies thereof. It provides that no infringement action will be in respect of unregistered trademark.

However, registration of trademark gives certain additional rights which are not available to one who is an unregistered trademark owner. Registration gives the owner, the right to sue the trademark infringer (which is available to the unregistered user under the common law provisions of “passing off”). The best marks are the invented, non-descriptive distinctive words. Marks which are purely descriptive words or laudatory expressions do not form formidable trademark thus, it is advisable that in choosing a trademark, one should avoid words which are directly descriptive of the goods, common surnames or geographical names. Hence, the best trademarks are the words which are invented. Any person who is the proprietary of the trademark used or a proposed user of the trademark to be used can apply for the registration of the Trademark. The application may be made in the name of an individual, partner of a firm, a

108. Section 25 of the Trade Mark Act, 1999, Duration of registered Trade Mark after the commencement of this Act, shall be for a period of 10 years.
corporation; governmental department etc. on receipt of such application the registrar will examine the application and may get the registration in absence of any objections. The law on trade marks not only protects the rights of the owner of the mark but also it protects the rights of the consumer by providing the information as to quality, quantity and potency of the goods and articles.

1.5.4 Importance of Protecting Geographical Indication

Certain goods are known for their qualities which are in a way associated with a particular geographical region. It is a common experience that the wheat, apple, rice and several such crops have their qualities, at least to some extent, dependent on the climate and environment of the particular place where they are grown. Therefore, it may so happen that goods of the same kind coming from different reasons or, for that matter, different countries may have different levels of qualities. Over the years, such goods as are of the best quality may get special reputation in the market and among the consumers thereof. In this process of achieving distinction as regard their quality the goods also get a distinction of sorts as regards the place of their origin. Therefore, only the name of the place of origin of such goods may be taken by the consumer to be a proof of the quality of goods concerned. Such indications which hint at the quality of goods by mentioning the name of place of origin of the goods concerned have come to be known as geographical indications and, likewise, to be protected as are other intellectual properties.\(^{110}\)

Some geographical regions acquire a reputation for the quality of products over a period of time. This is mostly so for agricultural products were nature plays a major role in production, but geographical indications are not confined to such products. When a geographical indication acquires such a reputation there may be attempts by others to free ride on it. Such action harms both the producers and consumers of the products. The objective of the protection of geographical indications is to reduce or eliminate such unfair competition for the benefit of both genuine producers and consumers.\(^{111}\)

\(^{110}\) Supra note 2 at 212.

Geographical indications are valuable to producers for particular regions for the same reasons that trademarks are valuable. They not only are the identifiers of source but also indicators of quality, reputation or other characteristic of the goods is essentially attributable to their geographic origin. There is a point of distinction that a geographical indication may possess vis-à-vis other intellectual properties like trade marks, patents and designs. Since it is related with a particular geographical region and with any individual enterprise, it cannot be registered by any one commercial entity alone. Such geographical indications like ‘Champagne’, “Havana”, “Darjeeling” have acquired a high reputation and become valuable commercial assets. In such a situation their misappropriation, counterfeiting or forgery cannot be ruled out and hence there is also a need for their legal protection. If these protection are not given then the other competitor can use such indication on the goods and products which are not up to the mark of the original and hence exploit the consumer.

Geographical Indication indicates that particular goods originate from a country, region or locality and has some special characteristics, qualities or reputations, which are attributable to its place of origin. These special characteristics, qualities or reputation, may be due to various factors, e.g. natural factors such as raw materials, soil, regional climate, temperature, moisture etc; or the method of manufacture or preparation of the product such as traditional production methods; or other human factors such as concentration of similar business in the same region, specialization in the production or preparation of certain products and the maintaining of certain quality standards. The connection between the goods and place becomes so famous that any reference to the place reminds the goods being produced there and vice versa. Geographical indications are valuable property to producers from particular geographical regions. They basically perform three functions:-

i) they identify goods as originating in a particular territory, or a region or locality in that territory;

---

112. Supra note 77.
113. Supra note 2 at 212.
ii) they suggest to the consumers that the goods come from an area where a given quality, reputation or other characteristics of the goods is essentially attributable to their geographic origin;

iii) they promote the goods of producers of a particular area.

It is only after the TRIPS Agreement that the importance of the geographical indication has been realised throughout the world and legislations has been made so as to protect the same. The geographical indication law not only protects the rights of the consumer by providing the information as to quality, quantity and potency of the goods produced or manufactured. It also helps the producers to have the good value of the products from the market.

1.5-5 Importance of Protecting Designs

The value of Intellectual Property cannot be defined in monetary terms; it is an intangible asset of any corporate entity. Designs are also an important component of intellectual property rights, which are worthy of protection. "Design" indicates any aspect of the features of shape, configuration, pattern or ornament applied to any article by any industrial process, whether external or internal of the whole or part of an article. A new or novel design can be registered as per the provisions of the Designs Act and such registration gives the proprietor a copyright in the design for five years, which can be renewed for two further terms of five years each. Those who wish to purchase an article for use are influenced not only by the practical efficiency and utility of the article but also by its appearance. Many consumers look out for artistic merit and some are attracted to strange and bizarre eye-catching designs. Much thought, creativity, time and expense usually goes into devising new and innovative designs, which would increase the appeal of the product. Therefore, the object of the design registration is to see that others applying it to their goods do not deprive the originator of a profitable and innovative design of his reward. The purpose of the Designs Act, 2000 is to protect novel designs to be applied to, or governing the shape and configuration of a particular article to be manufactured and marketed commercially. It is a right to prevent the manufacture and the sale of articles of a design not substantially different from a registered design. The emphasis,
therefore, is upon the visual image conveyed by the manufactured article. The Designs Act is to preserve for the owner of the design the commercial value resulting from customers preferring the appearance of articles which have new and innovative designs reproduced upon articles on a mass scale, application being done by the industrial process or mechanical and chemical means.\textsuperscript{115}

The appeal to the eye is what lies at the core of the concept of a design. A design which has an awkward look may be of little value to the onlooker and the creator of such a design may even wish he were rather forgotten as creator. Contrary to it, the person who has applied his intellect to create a design which multiplies the attraction and beauty of the thing concerned has made a constructive utilization of his intellect for the society. A thing of beauty is a joy for ever. Therefore, one who brings this joy in our lives deserves the reward for his creation.\textsuperscript{116} Hence, there is a need to legally protect such designs so as to encourage the creativity in the field.

Simultaneously, it is in the best interests of promoting ingenuity and innovation that the ones who have got the tendency to capitalize on the intellectual labour and skill of others should be discouraged. In other words law will take to task those persons who try to get protection of law for designs new or original. Thus, the law not only protects the right of the creator of design to exploit the design industrially and commercially, but it also expresses its readiness to punish those who want to exploit this design commercially without having a legal permission of the owner. The owner may be either the creator himself or the man who commissioned the creator for creating this design or the employer under whose employment he created the design. The design, therefore, is either applied to, or is embodied in; an article to enhance its aesthetic value such as is commercially exploitable.\textsuperscript{117}

Design, simply speaking is drawings. However, when a design is applied to commercial goods by the enterprise concerned, it is termed as an industrial design. Designs, if they are not ‘evil’ ones, evoke a good response from the

\textsuperscript{115} Supra note 10.
\textsuperscript{116} Supra note 2 at 159.
\textsuperscript{117} Ibid.
viewer because the former being a beautiful piece of art, arrest the attention of the later. In other words, good designs appeal to the aesthetic sense of the onlooker. In case of industrial designs the effect is one with commercial dividends for the enterprise applying the particular design. A product accompanied with a good design, may get precedence in the eyes of the customer, compared to one without a design, or with a less attractive design.\textsuperscript{118}

Design can mould our opinion about the 'purchasability' of the products to which they are applied. It is due to nothing but the designs applied that we prefer only a particular brand of goods to the other goods of the same kind. The consumer, before he is satisfied as to the quality etc. of the product, is encountered with the magic of the design applied to the product, which ultimately reflects in his purchasing choices.\textsuperscript{119}

A design should be good to the eye and, therefore, is capable of having an influence on the liking and disliking of the customer. That is to say, the design in order to be protected as an intellectual property, must be commercially exploitable, otherwise it may remain only a good piece of art with no industrial and commercial application. An industrial design is a drawing or structure which has a potential of being commercially exploited when used on an article. Article here means commercial goods, items, services etc. In order to be registered and protected a design must be new which means it should not form part of the state of the art. Beside it should be one which does not militate against the ethical values cherished by a nation or its people. There may be a number of other restrictions depending upon social, political, economic, commercial and national interests of the peoples concerned. However, the feature of a design which is of particular significance to note is that it may be protected legally by more than one means depending upon how it is being looked at. If the novelty factor is emphasized, a design may get protection under patent law; if the focus is on it being an artistic creation it may get protection under copyright law; and if the characteristic of a design to distinguish goods or services of one enterprise from those of others is kept in mind, it may get registered under trade mark law. A

\textsuperscript{118.} \textit{Supra} note 2 at 153.
\textsuperscript{119.} \textit{Ibid.}
design may also be registered simply as an industrial design under the Act.120

1.6 Implications of Intellectual Property Rights and Challenge to WTO Regime

WIPO121 defines intellectual property122 as:-

*Literary, artistic and scientific works, performances of perform artists, phonograms and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial design, trademarks, service marks, and commercial names and designations; protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.*

Intellectual property is described as an incorporeal private property that has creativity and innovation, and market distinctiveness of certain things. Intellectual property rights are the special rights conferred for the manifestations of human mind. The World Trade Organization describes intellectual property rights as:124

> the rights given to people over the creation of their mind and creators can be given the rights to prevent others from using their inventions, designs or other creations.

The term ‘intellectual property law’ in essence encompasses a spectrum of distinct legal doctrines which includes Patent law, Copyright and Unfair Competition, Trade secrets, the right of publicity and con

---

120. Ibid.
121. World Intellectual Property Organization.
protection of ideas.\textsuperscript{125} Intellectual Property is a comprehensive expression. It covers the whole field of creativity. Every innovation, be it in art, industry or literature, falls within its ambit. Thus, we have the concepts of copyright, patents and trademarks. It has been rightly said that, patents give temporary protection to technological inventions and designs rights to the appearance of mass-produced goods; copyright gives long-lasting rights in the field of literary, artistic and musical creations; the trademarks are protected against imitation so long as they continue to be employed in trade. The basic object is to protect the applications of ideas and information that are of commercial value.\textsuperscript{126} Intellectual property right includes within itself:\textsuperscript{127}

i) The rights of the artists, painters, musicians, sculptors, photographers, and authors for copyright in their works.

ii) The rights of the computer programmers whether in source or object code for a copyright in their programmes and compilation data.

iii) The rights of performers, producers of phonogrammes (sound recording) and broadcasting organizations in respect of fixation of their programmes for a copyright in their work.

iv) The rights of the traders and their trademarks,

v) The rights of the inventor for patent in his invention.

vi) The rights of computer technologists for their layout designs of integrated circuits for patent in the work developed by them.

vii) The rights of the breeders in the bio-technology for a patent in the new plant variety grown by them.

viii) The rights of the designers for their distinctive industrial design striking to the eye.

ix) The rights of the manufacturers and producers on the geographical indications in relation to such products and produce.


\textsuperscript{126} Supra note 14.

x) The rights of the businessmen for the protection of their undisclosed information on technology and management i.e. business secrets.

xi) The rights of the creator in integrated circuits.

The aim of the intellectual patent system is to make it an engine of growth and development and cater to the needs of teeming millions around the world. It is meant to play a big role, ushering an era of relief to the poorer sections of the world-reducing poverty and hunger, improving health and education and ensuring an environment sustainability.\textsuperscript{128} The patents are one of the oldest forms of intellectual property protection and as with all forms of intellectual property, the aim of patent system is to encourage economic and technological development by rewarding intellectual creativity.

Intellectual property protection is critical to fostering innovation. Without protection of ideas, businesses would not reap the full benefits of their inventions and would focus less on research and development. According to FBI, Interpol, World Customs Organization and International Chamber of Commerce estimates, roughly 7-8\% of world trade every year is in counterfeit goods. That is the equivalent of as much as $512 billion in global lost sales. Of that amount, U.S. companies lose between $200 billion and $250 billion. Intellectual Property theft has a major impact at home, too: according to the U.S. Chamber of Commerce, overall intellectual property theft costs 750,000 U.S. jobs a year.\textsuperscript{129}

The interests of individuals who own an intellectual property are safeguarded from undue exploitation and encroachment, infringement or violation thereof. Now the authors or owners of the intellectual property are encouraged more than before in undertaking research and inventions or discoveries and pursue higher and further studies on the specialized subjects. There has become a homely encouragement in the field of invention and development in order to develop or make progress of science in the field. Gradual progress of science, technology and general development according to the achieved progress in the field so far has been made.


\textsuperscript{129} As quoted from http://www.stopfakes.gov/sf\_why.asp\#q1 site visited on 22 March 2008.
Intellectual property protection is an important determinant of economic growth. It also helps enterprises to recover the costs of their innovation expenses. The intellectual property system must be so developed that they bring in socio-economic well-being. It bears repetition to emphasis that for the purpose of socio-economic well-being it is necessary for countries to accept the challenge of constantly upgrading their national intellectual property system, both legislative and infrastructural, to increase the opportunity for transfer of first grade technology and also for developing competitiveness in the national and international market.\textsuperscript{130} Due to the protection of intellectual property rights, the society, or State or even the whole world rises to the heights of culture, status and development. The status or standards of society as a whole are being lifted by such protection. The role of inventors is being recognized and encouragement is forwarded to them for continuing researches in their respective fields in order to make further advancement in their work.

The protection of intellectual property rights has contributed more and more to the growth and development of industries of various kinds in States as well as on international levels. Sharing is essential for the progress. While trying to protect an individual's rights, mankind's interests should not be sacrificed. Today, there is talk of globalization— a borderless world. In this wide world, the work of art, science and technology lie stored in the small prison called the Personal computer. Everything is just a click away, and yet new barriers are being created\textsuperscript{131} like copyright infringement, piracy.

Intellectual property protection is the key factor for economic growth and advancement in the high technology sector. They are good for business; benefit the public at large act as catalysts for technical progress. Even if their disadvantages sometimes outweigh their advantages, by and large the developed world has the national economic strength and established legal mechanisms to overcome the problems so caused. In so far as their benefits outweigh their disadvantages, the developed world owns the wealth and

\textsuperscript{130.} Supra note 91 at 68.
\textsuperscript{131.} Supra note 14 at 506.
infrastructure to take advantage of the opportunities provided. It is likely that neither of these holds true for developing and least developed countries.

TRIPS set fairly high standards on intellectual property protection as compared to what had existed in national and international law at the time. The WTO has in place effective mechanisms for monitoring and ensuring compliance with these standards. Presently, the development in the field of intellectual property rights is because of the laws which protect the infringement of the same. The laws in the field of the intellectual property have undergone the major change in the last one decade because of the various international conventions and agreements and for that TRIPS and WTO have played an important role. As law is an instrument of social progress, with the passage of time the same should be amended so as to make them compatible with the society at large. India has amended its intellectual property laws so as to make them compatible with the international standards.

1.7 Advantages and Disadvantages of Intellectual Property Rights

The aim of the intellectual patent system is to make it an engine of growth and development and cater to the needs of teeming millions around the world. It is meant to play a big role, ushering an era of relief to the poorer sections of the world-reducing poverty and hunger, improving health and education and ensuring an environment sustainability. The patents are one of the oldest forms of intellectual property protection and as with all forms of intellectual property, the aim of patent system is to encourage economic and technological development by rewarding intellectual creativity.

The interests of individuals who own an intellectual property are safeguarded from undue exploitation and encroachment, infringement or violation thereof. Now the authors or owners of the intellectual property are encouraged more than before in undertaking research and inventions or discoveries and pursue higher and further studies on the specialized subjects. There has become a homely encouragement in the field of invention and development in order to develop or make progress of science in the field. Gradual progress of science,

132. Supra note 128.

53
technology and general development according to the achieved progress in the field so far has been made.

Due to the protection of intellectual property rights, the society, or State or even the whole world rises to the heights of culture, status and development. The status or standards of society as a whole are being lifted by such protection. The role of inventors is being recognized and encouragement is forwarded to them for continuing researches in their respective fields in order to make further advancement in their work.

Intellectual property protection is the key factor for economic growth and advancement in the high technology sector. They are good for business, benefit the public at large as catalysts for technical progress. Even if their disadvantages sometimes outweigh their advantages, by and large the developed world has the national economic strength and established legal mechanisms to overcome the problems so caused. In so far as their benefits outweigh their disadvantages, the developed world has the wealth and infrastructure to take advantage of the opportunities provided. It is likely that neither of these holds true for developing and least developed countries.

1.8 Research Hypothesis

Intellectual Property is not unknown to our country. It has been prevalent in our country since ancient times. The author, creator or investor of the intellectual property was regarded as intellectual and they did command respect in the society. Their rights were also protected to some extent, but the creation of intellectual property was not considered to be for the purpose of commerce. Intellectual property was considered to be for the benefit of humanity. With the invention of ways and means of infringement, the exploitation of creator or inventor started. To face this situation certain laws were enacted by the Britisher’s for the country. After the independence, comprehensive legislation was enacted in the Parliament to protect the intellectual property and the rights of the inventors and authors. These Indian laws appear to be insufficient in the globalization of the world market. With the coming of WTO and TRIPS, the Indian law seem to be lacking in the protection of intellectual property and the right of the holder of the intellectual property. Our Indian laws do not meet the
requirement under the international system for the protection of intellectual property and in some of the cases our intellectual property is being exploited by the advanced countries that has developed technologies in this regard. This situation has put India in the disadvantages position which required immediate attention to plug the loopholes in our Indian law's and make suitable amendments in the Intellectual Property Law's so as to take the benefit of the WTO and TRIPS regime.

Thus, the main hypothesis which rests on the presumption, that there is a lot of potential intellectual property in our country which is in need of protection in the globalized market. It is also presumed that WTO regime is also beneficial to the Indian economy, but it is not so because our law's are lagging behind.

1.9 Research Methodology

The present research work requires theoretical study of the topic. The theoretical work will deal with the literature relating to intellectual property. The study shall be conducted to know the historical background of the TRIPS its applications in the present era of WTO and TRIPS regime in relation to Trademark, Copyright and Patent. In its historical perspectives various support systems like examination of history of Indian Patent system, Trade Mark, Copyright, its legislative provisions, Government programs and policies and also the international conventions, World Intellectual Property Organisation, WTO, TRIPS, Budapest Treaty etc., affecting the national scenario. A comprehensive study shall be conducted through the libraries, websites, journals and newspapers and books. Literature review and research through accessing hard copy and electronic libraries has been the main source of collection of information and knowledge.