CHAPTER-III

PROCEDURE FOR ACQUIRING INTELLECTUAL PROPERTY RIGHTS IN INDIA UNDER VARIOUS STATUTES AND ITS COMPATIBILITY WITH INTERNATIONAL STANDARDS OR TRIPS

The natural right of the person, who has invented or created something which is useful to the society lies with the person who has invented or created. With the advancement of the science and technology it becomes easy to copy the same and to exploit the same in a big way. But if the right of the author or inventor is not protected than research and development for the advancement of intellectual skill and technology would come to halt. In India intellectual property is well-known and protected by the kings and emperors, and proper rewards have also been given to these intellectual personalities. With the industrialization, exploitation of the intellectual property became easier; hence the need arises to enact the law relating to the intellectual property law so that the proper acquisition and enforcement of the intellectual property can be done.

Different statutes dealt with different forms of intellectual property rights. There is a different procedure for the acquisition of the same as required by the law. Whereas the Indian Statute is concerned registration is not mandatory for copyrights and trademarks but it is mandatory for the acquisition of patents, geographical indications and designs. In this chapter, the procedure for acquiring intellectual property rights in India under various statutes and its compatibility with International standards has been discussed. Broadly, this chapter is divided into five parts. Part one comprising the Procedure for Acquiring Copyright under the Copyright Act, 1957, part two deals with the Procedure for Acquiring Patent under the Patents Act, 1970. The Procedure for Acquiring Trademark under the Trademarks Act, 1999 deals in the third part. Fourth part comprising the Procedure for Acquiring Geographical Indication under the Geographical Indications of Goods Act, 1999 and the last part deals with the Procedure for Acquiring Design under the Designs Act, 2000.
3.1 The Procedure for Acquiring Copyright under the Copyright Act, 1957

Copyright is concerned with protecting the work of the human intellect. The domain of copyright is the protection of literary and artistic works. These include writings, music, and works of the fine arts, such as paintings and sculptures, and technology-based works, such as, computer programs and electronic databases. Ordinarily the author is the first owner of copyright in a work. The term "author" includes:

i) In the case of a literary or dramatic work it is, the author, i.e., the person who creates the work.

ii) In the case of a musical work it is the composer.

iii) In the case of a cinematograph film it is the producer.

iv) In the case of a sound recording it is the producer.

v) In the case of a photograph it is the photographer.

vi) In the case of a computer generated work it is the person who causes the work to be created.

It is not necessary to register a work to be claimed as copyright. Acquisition of copyright is automatic and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

3.1-1 Meaning of Copyright

The term "copyright" means the exclusive right subject to the provisions of the Copyright Act, 1957 to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

a) in the case of a literary, dramatic or musical work not being a computer programme:

i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

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1. Section 2(d) of the Copyright Act, 1957.
2. Id. Section 14.
ii) to issue copies of the work to the public not being copies already in circulation;

iii) to perform the work in public, or communicate it to the public;

iv) to make any cinematograph film or sound recording in respect of the work;

v) to make any translation of the work;

vi) to make any adaptation of the work;

vii) to do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

b) in the case of a computer programme:-

i) to do any of the acts specified in clause (a);

ii) to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

c) in the case of an artistic work:-

i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

ii) to communicate the work to the public;

iii) to issue copies of the work to the public not being copies already in circulation;

iv) to include the work in any cinematograph film;

v) to make any adaptation of the work;

vi) to do in relation to any adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iii);

d) in the case of a cinematograph film:-

i) to make a copy of the film including a photograph of any image forming a part thereof;

ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

iii) to communicate the film to the public;

e) in the case of a sound recording:-
Copyright is a right, which is available for creating an original literary or dramatic or musical or artistic work. Cinematographic films including sound track and video films and recordings on discs, tapes, or other devices are covered by copyrights. Computer programs and software are covered under literary works and are protected in India under copyrights. Computer program in the Copyright Act has been defined as a set of instructions expressed in words, codes, schemes or any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result. It is obvious that algorithms, source codes and object codes are covered in this definition. In the digital era, copyright is assuming a new importance as many works transacted through networks such as databases, multimedia work, music, information etc. are presently the subject matter of copyright. The Copyright Act, 1957 has been amended in 1983, 1984, 1992, 1994 and 1999 to meet the present challenges for the violation of the copyright in India. The present law is almost in full conformity with the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights. Inspite of all these awareness on copyright in the country, piracy is believed to be wide spread.

Copyright gives the creator of the work the right to reproduce the work, make copies, translate, adapt, sell or give on hire and communicate the work to public. Any of these activities done without the consent of the author or his assignee is considered an infringement of the copyright. There is a provision of ‘fair use’ in law, which allows copyrighted works to be used for teaching and for research and development. In other words, making one photocopy of a book for teaching students may not be considered an infringement, but making many photocopies for commercial purposes would be considered an infringement. There is an associated right with copyright, known as the ‘moral right’, which cannot be transferred and is not limited by the term. This right is enjoyed by the
creator for avoiding obscene representation of their works. As per law the copyright in any work created by an individual when in employment would automatically vest with the employer unless there is an agreement contrary to this between the employer and the employee.

3.1-2 Term of Copyrights

The term of copyright is different for different works. The total term of protection for literary work is the author’s life plus sixty years.\(^3\) For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published.\(^4\) For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.\(^5\) Copyright gives protection for the expression of an idea and not for the idea itself. Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. The performer's right shall subsist until fifty years\(^6\) from the beginning of the calendar year, next following the year in which the performance is made.

3.1-3 Procedure for the Registration of Copyrights

Copyright is a right that arises automatically upon the creation of a work that qualifies for copyright protection. There is no registration process; this means that there is no registration certificate to prove ownership of copyright. To prove ownership, the author will need to produce original and, preferably, dated evidence of the creation of the work and proof of authorship.\(^7\)

India is a member of the Berne Convention, an international treaty on copyright. Under this Convention, registration of copyright is not an essential requirement for protecting the right. It would, therefore, mean that the copyright on a work created in India would be automatically and simultaneously protected.

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3. Id. Section 22.
4. Id. Section 23-27.
5. Id. Section 37.
6. Id. Section 38.
through copyright in all the member countries of the Berne Convention. The moment an original work is created, the creator starts enjoying the copyright. However, an undisputable record of the date on which a work was created must be kept. As a violation of copyright is a cognizable offence, the matter can be reported to a police station. It is advised that registration of copyright in India would help in establishing the ownership of the work. The registration can be done at the Office of the Registrar of Copyrights in New Delhi. It is also to be noted that the work is open for public inspection once the copyright is registered.

Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. The entries made in the Register of Copyrights serve as prima-facie evidence in the court of law. The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights. Chapter VI of the Copyright Rules, 1958 sets out the procedure for the registration of a work. The procedure for registration is as follows:

i) Application for registration is to be made on prescribed form (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules;

ii) Separate application should be made for registration of each work;

iii) Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules; and

iv) The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

Both published and unpublished works can be registered. Copyright in works published before 21st Jan., 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Three

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copies of published work may be sent along with the application. If the work which is to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. In case two copies of the manuscript are sent, one copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office. When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form-V\(^1\) with prescribed fee.

The registration is not mandatory of the protection of the copyright work.\(^{11}\) In *M/s. Manojah Cine Production v. A. Sundaresan*,\(^{12}\) the Madras High Court held that it is clear from the provisions of Sections 13, 14, 45 and 48 of the Copyright Act that the only effect of registration is that it shall be prima facie evidence of particulars entered in the register at the Registrars office.

### 3.1-4 Compatibility with International Standards

Copyright as provided by the Indian Copyright Act is valid only within the borders of the country. To secure protection to Indian works in foreign countries, India has become a member of the following international conventions on copyright and related rights:-

i) Berne Convention for the Protection of Literary and Artistic works, 1886.

ii) Universal Copyright Convention, 1952.

iii) Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms.


v) Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

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In general, all Intellectual Property law is territorial law. Section 13(2) of the Copyright Act discusses the works in which copyright subsists. In case of published works, the Act applies only to the works first published in India, irrespective of the nationality of the author. In case of an unpublished work copyright subsists only if the author at the time of making the work was a citizen of India. And in the case of a work of architecture the copyright subsist only if the work is located in India.

However, Section 40 of the Copyright Act gives the Government of India the power to extend the benefits to all or any of the provisions of the Act to works first published in a foreign country. This is done by notification in the official gazette of India of an order called International Copyright Order. The countries mentioned in the International Copyright Order are countries that are members of the Conventions in the field of copyright to which India is a party. One common feature of international conventions in the field of intellectual property is to provide protection to all citizens of other member States as if they were national of the country. Thus all citizens of a Berne Convention country will get their copyright protected as if they were Indian citizens. Similarly, Indian authors get protection for their works in foreign countries that are members of Berne Convention as if they were nationals of that country. This principle is called national treatment. Berne Convention for the Protection of Literary and Artistic Works is the primary convention in the copyright field.

The Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties aims at considering that the double taxation of copyright royalties is prejudicial to the interests of authors and thus constitutes a serious impediment to the dissemination of copyrighted works, which is one of the basic factors in the development of culture, science and education of all peoples. It believes that the encouraging results already achieved by action against double taxation, through bilateral agreements and domestic measures, whose beneficial effects are generally recognized, can be improved by the conclusion of a multilateral convention specific to copyright royalties. This convention seeks to find effective measures designed to avoid double taxation of copyright royalties.
India is the member of the convention but the Government of India does not consider itself bound by Article 1 to 4 and 17\textsuperscript{13} of the Convention.

Copyright of works of the countries mentioned in the International Copyright Order are protected in India, as if such works are Indian work. Copyright of nationals of the countries who were members of the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the TRIPS Agreement are protected in India through the International Copyright Order. However, there is an exception to the national treatment rule. In respect of the term of copyright it shall not exceed that enjoyed in the country of origin.

Under the TRIPS Agreement Section1 (Article 9-14) standards has been fixed regarding the availability, scope and use of the intellectual property rights. Article 14 has fixed the minimum term of protection for the copyright work and the Indian Copyright has fulfilled the criteria fixed by the TRIPS Agreement, hence, came to the conclusion that the Indian Copyright Act is compatible with the international standards.

3.2 The Procedure for Acquiring Patent under the Patents Act, 1970

The most common and efficient way of protecting an invention is by obtaining a patent. A Patent is an exclusive monopoly rights granted by the Government to an inventor over his invention for a limited period of time. Patent is recognition to the form of intellectual property manifested in invention. A patent is granted by the patent office of the country in which you wish to protect your invention. Patent rights are granted in return for the inventor’s full disclosure of the technology to the public in the patent application. Another way of obtaining protection is to keep the technology secret, and to rely on what is referred to as trade secrets. Trade secrets protection allows the preservation of the confidential nature of information from being unduly revealed and used by unauthorized people. In this chapter, the procedure for the acquisition of the patent under the Indian law and its compatibility with the international conventions related to patents has been discussed.

\textsuperscript{13} As quoted from http://portal.unesco.org/en site visited on 15 Sep., 2008.
Patent was developed over several centuries. There were patents back in the 17th century. The system has evolved in the intervening years and India now has a very modern system. India is still developing the international system to make it even more modern and to keep it abreast of technological change and the changing economic system. The Indian Patent system originated under the rule of the East India Company based on the British Patent Law of 1852. It was called as The Act of 1856 which granted certain exclusive privileges to inventors for a period of 14 years. This Act was modified in 1859 which granted patent monopolies called exclusive privileges (making, selling and using inventions in India and authorizing others to do so) for a period of 14 years from date of filing an application. Further developments took place at periodic intervals widening the scope of Intellectual Property with new acts coming into force namely:-

i) The Patents and Designs Protection Act, 1872,

ii) The Protection of Inventions Act, 1883, further consolidated as The Inventions and Designs Act 1888,

iii) The Indian Patents and Designs Act, 1911.

After India gained independence, the Patents Act came into force on 20th April 1972.14 To comply with the TRIPS Agreement of which India is a signatory, the 1970 Act was amended by a series of amendments namely:-

i) The Patents (Amendment) Act, 1999 which came into force on March 26, 1999 with retrospective effect from 1st January 1995


iii) The Patents (Amendment) Act 2005 has come into force in order to comply with TRIPS Agreement.

Patents are one of the oldest forms of intellectual property protection and, as with all forms of protection for intellectual property; the aim of a patent system is to encourage economic and technological development by rewarding intellectual creativity. Patent is issued, upon application, by a government office (commonly the Patent Office), a patent is a document which describes an invention and creates a legal situation in which the invention can normally only be

exploited with the authorization of the owner of the patent. In other words, a patent protects an invention, and grants the owner the exclusive rights to use their invention for a limited period of time. And an invention may be defined as a new solution to a technical problem.

As per the provisions of the Indian Patents Act, 1970 the main criteria for patentability are:-

i) It should be a novel,
ii) It should involved an inventive step, and
iii) It should be capable of Industrial Application

In India novelty accepted is relative i.e. it should not be published anywhere and not used in India. The basic elements of the Patent are:

i) Patents are granted for inventions in the sense of technological improvements which are not already known and have some inventiveness about them.

ii) Patent are limited to a maximum of 20 years from application, being renewed year after year at an increasing fee.

iii) In most patent systems the prize goes to the first to file a patent application in or for some country. The inventor or enterprise that secure the patent then has an exclusive right against others in the race- even those independently makes the same invention.

iv) A patent gives an exclusive right in law, which may or may not have any market value.

v) The main purpose of modern patent system is unquestionably economic. The system is to be judged by whether it does lead to earlier and wider productivity of new technology at an effective rate, taking into account the effect of early publication of the invention in the patent specification.

Inventive Step is a feature that makes the invention not obvious to the person skilled in the art. Section 2(1)(ja) of the Patent Act defines “inventive step” as a feature that makes the invention not obvious to a person skilled in the art.

art. The term “person skilled in the art” has not been defined and no such prescribed qualification is specified in the Act.

The term ‘Capable of Industrial Application’ means that the invention should be capable of being made or used in an industry. The criteria of patentability is decided by Section 2(1)(j), Section 2(1)(j)(a), Section 2(1)(ac) read along with Section 3 and 4 of the Patent Act, 1970.

3.2-1 Inventions which are not Patentable

Section 3 interpret that not everything under the Sun is patentable. In order to remove ambiguity, the inventions, which are not patentable even though they fulfill the patentability criterion, are clearly specified in the Act. Some inventions are excluded, as they do not have a technical effect while others are excluded on moral grounds. Also, inventions, which relate to atomic energy, are strictly not patentable. For example discovery of a natural substance is not patentable, as it already exists in nature, similarly a computer program, which does not bear a technical effect, is not patentable. The following would not qualify for patents under the various provisions of the Patent Act, 1970:-

i) An invention which is frivolous or which claims anything obvious or contrary to the well established natural law. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health,

ii) A discovery, scientific theory or mathematical method,

iii) A mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant,

iv) A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.

17. Section 2(1)(ac) of the Patents Act 1970.
18. Id. Chapter II, Sections 3 and 4.
19. Id. Section 4.
20. Id. Section 3(c).
21. Id. Section 3(k).
22. Id. Section 3(k).
23. Id. Section 3(d).
24. Id. Section 3(e).
v) A mere arrangement or re-arrangement or duplication of a known device each functioning independently of one another in its own way,

vi) A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient for the improvement or restoration of the existing machine; apparatus or other equipment or for the improvement or control of manufacturer,

vii) A method of agriculture or horticulture,

viii) A method or process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products,

ix) An invention relating to atomic energy falling under the Atomic Energy Act, 1962.

3.2-2 Term of Patents

The term of every patent granted after the commencement of the Act will be 20 years from the date of filing of the application, provided the renewal fees is paid on due dates. If a provisional specification has been filed followed by a complete specification, the term of the patent is counted from the date of filing the provisional application. In case of International applications under PCT, the filing date is the international filing date for determining the term of the Patent. There is no provision under the Patents Act, 1970 to extend the term of a patent.

3.2-3 Who can apply for Patent

A patent in India can be filed by the inventor/s or by their assignee. The assignee may be a natural person or a legal person such as a company or a firm. For the benefit of individual applicants, the Patent Office follows a dual fee

25. Id. Section 3(h).
26. Id. Section 4.
29. Section 53 of the Patents Act, 1970.
30. Id. Section 9.
31. Id. Section 6.
structure, one for the natural and other for legal person.32 The right to apply for a patent and ownership of patent by a company employee or an independent contractor is governed by the terms of the agreement between the said employee and his employer, or the contractor with the contracting party. A patent can be owned by an individual, a group of individuals or a legal entity e.g. a company. In *Shinning Industries v. Shri Krishna Industries*,33 it was held by the Allahabad High Court that a firm can also apply for a patent as an assignee.

A patent can be jointly filed and owned by two or more parties. An application can be filed by the inventor/s or assignee, or a legal representative of a deceased person who was entitled to make such an application, immediately before his death.34 A patent applicant can be a legal entity and need not necessarily be a natural person or persons. In a joint ownership of rights in a patent, unless there is an agreement to the contrary, each of the co-owner shall exercise his rights to his own benefits without accounting to the other person/s.35

### 3.2-4 Procedure for the Registration of Patent

The Indian Patent Office has its head office at Kolkata, which has three branch offices located at Mumbai, Chennai and Delhi. The Controller General heads the Patent Office and each branch has a Controller as its head. In case of an Indian applicant, the patent application must be filed at the patent office under whose jurisdiction the applicant's has his place of work, or place of residence or place where he conduct business from. For e.g. if an applicant provides a Chandigarh based address, the application must be filed at the Delhi Patent Office.36 In case of foreign applicant/s, the jurisdiction in which the patent application is filed would be based on the address for services of the applicant's agent. For e.g. if the address for services for foreign applicant is based at Bangalore, the patent application must be filed at the Chennai Patent Office.

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33. AIR 1975 All 231.
34. Section 6(1) of the Patents Act, 1970.
35. Id. Section 50.
36. Id. Section 74.
The branch offices have statutory functions and are empowered to deal with practically all the proceedings coming within their territorial jurisdiction. The functions of the Patent office includes:

i) Filing of applications for patents.

ii) Examination of applications including conducting search for novelty of the inventions.

iii) Acceptance of the applications.

iv) Opposition, if any, to the grant of a patent.\textsuperscript{37}

v) Grant of patent.

vi) Registration of assignments and licences.\textsuperscript{38}

vii) Renewal of patents originating in their respective jurisdictions.

In order to ensure that the invention fulfils the novelty criteria of patentability, the Patent Act allows for the filing of a Provisional application as soon as the inventor/s conceives the idea of an invention. Once the provisional patent specification has been filed in any of the above-mentioned offices, complete specification must be filed within 12 months from the date of filing of the provisional application.\textsuperscript{39} A patent specification has been divided in two parts:

i) The description of the invention,

ii) The claims.

\textbf{i) The Description of the Invention:-}

The description of the invention contains the following elements:

a) Title of the invention,

b) Field of invention,

c) Background,

d) Summary of the invention,

e) Brief description of drawings,

f) Description of the invention,

g) Examples (if any),

h) Specific embodiments (if any),

\textsuperscript{37} \textit{Id.} Chapter V.

\textsuperscript{38} \textit{Id.} Section 69.

\textsuperscript{39} \textit{Id.} Section 9.
i) Abstract,
j) Drawings/diagram/flow-chart.

ii) The Claims:-

The claims are the subject matter of the invention over which the applicant seeks monopoly. The first claim is the main claim and should enumerate the novel features of the invention. The invention may be a product, apparatus, a process, a method of doing something. The claims may contain dependent claims, which clarify the features of the main claim in detail.

Immediately on receiving the application patent office records the application number to it such that the applications filed in a year constitute a series identified by the year of such filing. If the applicant makes a request in Form 9 with the prescribed fee the application will be published as soon as possible. This is a unique provision provided by the law, which facilitates technology development via increasing research and development thereby strengthening economic and industrial development of a country.

Request for examination can be made only after publication and within 36 months from the date of filing or date of priority of the application whichever is earlier. In respect of applications filed before the 1st day of January 2005 the request should be made within a period of 48 months from the date of filing of the application. If no request for examination is made within the prescribed period the application will be treated as withdrawn. The applicant can withdraw his application any time before grant. In case where secrecy direction has been issued request may be filed within 36 months from the date of priority of the application or from the date of filing of the application, or within 6 months from the date of revocation of the secrecy direction, whichever is later.

40. Id. Section 10(4)(b).
41. Id. Section 10.
42. before the expiry of 18 months.
43. Rs. 2,500 for individual natural person(s) and Rs. 10,000 for legal entity other than natural person(s), (Section 11A(2) and Rule 23(8) Rule 24A).
45. Section 11A of the Patents Act, 1970.
46. Id. Section 11B(1).
47. Id. Section11B(3).
48. Id. Section11B(4), and Rule 24B(1)(v).
49. Supra note 44 at 63.
Applications will be taken up for examination according to the order in which the request is made. The Controller refers the application to an Examiner whether the application, specification and other documents related thereto are in compliance of the Act and Rules. The examiner has to make a report to the Controller within a period of 1 month from the date of such reference. This Report is called First Examination Report (FER). The Examiner in turn examines the application to ensure that the patent application is not hit by the provisions of Section 3, 4 and 5 such as anticipation by prior publication or prior claim etc. Further the examiner issues a report containing formal and technical objections if any, to ensure that said application is novel, non-obvious and capable of industrial application. These are the general requirement for the grant of the patent under the Patent Act, 1970.

3.2-5 Opposition for the Grant of Patent

Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the grounds that:

i) the applicant wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

ii) the invention has been published before the priority date of the claim;

iii) the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

iv) the invention claimed was publicly known or publicly used in India before the priority date of that claim;

50. Rule 24B(2)(i).
51. Section 2(1)(b) and Section 2(a) of the Patents Act, 1970.
52. Id. Section 12(1).
53. Id. Section 12(2), and Rule 24B(2)(ii).
54. Supra note 44 at 63.
55. Section 12 and 13 of the Patents Act, 1970.
56. Id. Section 25.
57. Id. Section 25(1)(a).
v) the invention so far is obvious and clearly does not involve any inventive step;
vi) the subject matter of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
vii) the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
viii) the applicant has failed to disclose to the Controller the information required by Section 8 or has furnished the information which in any material particular was false to his knowledge;
ix) in the case of convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;
x) the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;
xii) the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.

Any person can file opposition by the way of representation to the Controller at the appropriate office within a period not exceeding three months from the date of publication or before the grant of patent whichever is later against the grant of patent on the above mentioned grounds. If the Controller received any such opposition, the Controller shall give the opportunity of being heard to the parties concerned and dispose the matter in such manner and within such period as may be prescribed.

At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds,\textsuperscript{58} namely:-
i) Wrongful obtaining,

\textsuperscript{58} Id. Section 25(2).
ii) Prior publication in any specification filed in India on or after 1st Jan., 1912 or prior publication in India or elsewhere in any other document,

iii) Prior claim in complete specification of an Indian Patent,

iv) Prior public use or public knowledge in India,

v) Obviousness and lack of inventive step,

vi) Invention not patentable under the Act,

vii) Insufficient description of the invention,

viii) Failure to disclose information as required under Section 8, relating to foreign applications,

ix) If convention application, not made within the prescribed time,

x) Incorrect mentioning of source/geographical origin of biological material, if any, used in the invention,

xi) The invention is anticipated with regard to Traditional Knowledge of any community anywhere in the world.

No ground other than the statutory grounds can be taken for opposing a grant. The Controller, on the receipt of a notice of opposition, notifies the applicant. The opponent and the applicant are required to file their statements and evidence and they are given an opportunity of being heard before the case is finally decided. The opposition under Section 25 of the Act is intended to ensure that only the rightful person will get a patent for an invention; and only a patentable invention will be patented. The successive steps in opposition proceedings are as follows:-

i) Filing of notice of opposition,

ii) Filing of written statement of opposition,

iii) Filing of reply statement by applicant,

iv) Filing of evidence in support of opposition by way of affidavits,

v) Filing of evidence in support of application by way of affidavits,

vi) Filing of reply evidence by opponents by way of affidavits,

vii) Further evidence by either party, if any, with the leave of the Controller,

viii) Hearing,

ix) Decision of the Controller.

59. Supra note 44 at 82-84.
The Patent may be granted by the Controller at any time, but as soon as possible after the applicant has met with all the official requirements within the period specified in Section 21 (6 months from date of First Examination Report (F.E.R.) or within the extended period not exceeding 3 months). There is no need to make the request for grant of patent separately.\textsuperscript{60} It is after the grant of patent that the applicant has the rights of a Patentee, which includes the various exclusive rights as well as the right to sue for infringement.\textsuperscript{61} After the grant of the patent the patentee has an exclusive right to use or assign his patent.

3.2-6 Revocation of the Patent

The patent once granted can be revoked as per the provisions of the Patent Act. Any Interested person including the government can make a petition on any of the various grounds specified for revocation of patent under Section 64 of the Patents Act. Further High Court may revoke a patent if the patentee does not allow the Government to make use of it. According to Section 64(4), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government upon unreasonable terms.\textsuperscript{62} A patent may be invalidated by any interested person bringing an action for revocation on the grounds laid out in Section 64, which is quite similar to the grounds mentioned for opposition. The grounds for opposition include:

i) that the invention was prior published,

ii) that the invention is obvious,

iii) that the complete specification lacks adequate disclosure of the invention,

iv) that the applicant had failed to disclose information including the source or geographical origin of biological material used for the invention, and

v) that the invention claimed is anticipated by the knowledge available within any local or indigenous community in India or elsewhere.

\textsuperscript{60} Id. at 75.
\textsuperscript{61} Section 48 of the Patents Act, 1970.
\textsuperscript{62} Supra note 44 at 108.
A patent may also be revoked on directions of the Central Government in cases relating to atomic energy, or where the patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public interest. But before any decision for revocation is taken the rule of natural justice has been applied i.e., parties have been given opportunity to be heard and there after the action for revocation is taken if necessary.

3.2-7 Compatibility with International Standards

The procedure for the acquisition of the patent at the international scenario is similar with that of the Indian Patent Act, 1970. By international agreement, patents are available for any inventions, whether processes or products, in all areas of technology. A chemical compound can be patented. A machine, of course, can be patented. Processes for developing or making things can be patented. However, there are things that cannot be patented, and are usually excluded from the scope of patentability. Human genes, for instance, cannot be patented. Things that already exist in nature, with very few exceptions, cannot be patented. A perpetual motion machine, which goes against the laws of nature, cannot be patented unless someone can show it working. Then, of course, the old rules are set aside and something new is created. Some inventions may be excluded from the scope of patentability for public order or morality grounds.

Patent protects new and useful inventions. To be patentable, an invention must also meet certain criteria relating to novelty and other features. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) provides three criteria and conditions for an invention to be patentable. There are several characteristics that a patent office will look at to determine whether the invention is patentable. At the outset, there has to be a patent application on file. In most cases the patent application is examined by a technical expert to ensure that it meets the substantive criteria for patentability.

The first of those criteria is that it has to be new (novel), meaning that the invention must never have been made before, carried out before or used before. The second criterion is that there must have been an inventive step. In other

63. Section 65 of the Patents Act, 1970.
64. Id. Section 66.
words, it must represent a sufficient advance in relation to the state of the art before it was made to be considered worth patenting.

The term "non-obvious" is also used: if it were obvious to a person of ordinary skill in the field concerned, it would not progress to the stage qualifying for patent protection. The third criterion is that it needs to be industrially applicable. It has to be susceptible of use in some way. This is a very broad criterion. Almost anything can be used, even if it is in the research stage, but, as I mentioned, that does not apply to a perpetual motion machine, because it simply will not work. In summary therefore, in order to be patentable, an invention must be new, involve an inventive step, and be capable of industrial application.65

Filing of patent applications in multiple countries is an expensive procedure and requires lot of brainstorming as the applicant has to ascertain a large number of factors including:-

i) the expenditure involved,

ii) number of countries to seek protection in,

iii) the likely countries where the invention with have optimum market; and

iv) whether the prevailing law in a desired country are favorable for protection of the invention; for e.g. many countries do not grant software patents.

In order to encourage patent filings in different countries and to ease the applicant’s expenses, many countries have become members of international conventions such as the Paris Convention and Patent Cooperation Treaty exist which greatly reduce the cost of maintaining patent in different countries.66 There are various International conventions for the acquisition and protection of patent. The main International conventions related to patents are:-

i) The Paris Convention on Industrial Property (1883),67


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67. Discussed in detail in Chapter - II.
An international application can be filed in any of the Branch Offices of the Patent Office located at New Delhi, Chennai, Mumbai and Kolkata (Head Office). Any of these Offices shall function as receiving office, designated office and elected office for the purpose of international applications filed under the Treaty. An international application shall be filed in the Patent Office which would process the application in accordance with these rules and the provision under the Patent Cooperation Treaty. An international application designating India shall be treated as an application for patent under the Act.

Most countries have established national regimes to provide protection to the intellectual property rights within its jurisdiction. Except in the case of copyrights, the protection granted to the inventor/creator in a country (such as India) or a region (such as European Union) is restricted to that territory where protection is sought and is not valid in other countries/regions. As a patent granted in India is valid only for India and not in the USA. However, a patent granted in the EPO is valid in all the contracting states recognized by European Patent Organization. The protection so granted in a country/region not only identifies the rights of the creator/inventor or his assignees, but also enables the right holder to enforce his rights against infringers. Moreover, several international agreements exist to monitor that the inventor/creator are not denied of their rights.

The provisions of the Patent Act is similar to the section 5 (Article 27-34) of the TRIPS Agreement. Basically the TRIPS Agreement provides the basic minimum requirement for the promotion and protection of the intellectual property right. The Indian Patent Act, 1970 has been amended in the year 2005 so as to make it compatible with the TRIPS Agreement.

3.3 The Procedure for Acquiring Trade Mark under the Trade Marks Act, 1999

Trademarks existed in the ancient world. As long as 3000 years ago, Indian craftsmen used to engrave their signatures on their artistic creations before sending them to Iran. Later on over 100 different Roman pottery marks

were in use, including the FORTIS brand that became so famous that it was copied and counterfeited. With the flourishing trade in the Middle Ages the use of trademarks increased. Today trademarks are in common usage; the growing importance of trademarks in commercial activities is due to the increased competition among companies undertaking trade in more than one country. Trademarks have been used to simplify the identification by consumers of goods or services, as well as their quality and value. Thus, a trademark may be considered as a tool of communication used by producers to attract consumers.69

There are basically two main characteristics for a trademark i.e., it must be distinctive and it should not be deceptive.

Section 2(h) of the Trademarks Act, 1999 a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion. The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. So every case of deceptive similarity depends upon the facts and circumstances of each case after applying the test, which has been laid down by judiciary70 through cases.

The term trademark could be defined as "A trademark is a sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors" a trademark may consist of words, designs, letters, numerals or packaging, slogans, devices, symbols, etc.71 In simple words it is the goodwill of the company by which they have been recognized in the market. A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark may be one or a combination of words, letters and numerals. It may also consist of drawings, symbols, three-dimensional signs such as the shape of goods and their packaging, fragrances or colours and combination of colours. It is used by traders/companies/firms etc to distinguish their goods and services from those of their competitors. A consumer associates some level of quality/price/prestige with the goods of a particular trademark. In other words, the consumer uses the trademark for making a choice while buying a particular product. There are

70. Mohan Jewellery v Vummidi Bangaru Jewellers, MIPR 2007 (3) 0402.
numerous examples in our day to day life such as LG, acer, BATA, Liberty, Brooke Bond, Dabur, Park Avenue, SAIL and so on. Trademarks do not protect the design or the ideas behind the goods or services from imitation or duplication, but prevent other traders/company/firm from deceiving customers into believing that goods or services actually produced by them were produced by the trademark holder. If the consumer does not make the distinction between the two different source of products than there is violation of the right of the right of the consumer as well.

Trademark is a symbol that allows a purchaser to identify goods or services that have been proved satisfactory and not to buy goods or services that have not been satisfactory. Trademarks serve mainly three purposes viz. to encourage the production of quality products; to reduce the customer’s costs of shopping and to help the customer to make decisions on purchasing products. Trademarks help to promote economic efficiency. It is the quality, quantity, potency of the product which satisfies the consumer and that goodwill of the company in the eyes of the consumer became valuable in a competitive market.

3.3-1 Registration of Trademarks

The registration of the trademarks is not mandatory for the use of a trademark. Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the registrar in the prescribed manner for the registration of the mark. Any person includes individual, partnership firm, association of persons, a company whether incorporated or not, a trust, Central or State Government. It does not allow the representative of the proprietor to apply in his own name. A person may obtain proprietorship in a trademark either by use or by registration under this Act. He may also acquire proprietorship by assignment or by inheritance. In case of unregistered mark but in use, proprietorship will be the person who first used it in case of two rival claims whereas in case of proposed use of mark, which comes for registration, the designer or the originator will be the proprietor in case of any controversy. Between two rival claims of user of the mark and designer of the mark the former will be preferred. In Consolidated Food

72. Section 18 of the Trade Marks Act, 1999.
Corporation v. Brandon and Company,\textsuperscript{73} it was held by the Bombay High Court that priority in adoption and use of a trademark is superior to priority in registration.

At the stage of making application for the registration of trademark, the proprietor has to show his bona-fide claim. If the mark is not mistaken on the face of application and where there is also no objection to the claim, the registrar is entitled to accept the application. The law permits registration of a mark, which has been or is being used or is proposed to be used. In case of proposer of the mark, he must have definite and present intention to use the mark as on the date of the application. Definite and present intention is different from the general intention to use the mark sometime in future to something, which he may think desirable later on. Definite and present intention means a real intention to use the mark for resolved and settled purpose. In case of used mark, the use in itself is not sufficient but is to be accompanied with real intention to continue with the use.

The 'proposed use' of the trademark must be normal and fair, which, however, may include variations in presentation or colour difference but such variation should not be stretched too far so that the used form will be totally different from the one sought to be registered. If proprietor does not have the real and present intention to use the mark, and try to register is for some mala-fide intention, such as to block the mark, it would amount to registration in bad faith,\textsuperscript{74} which is a serious form of commercial fraud.

3.3-2 Procedure for the Registration of the Trademarks

The application for registration of the mark must be filed with the Registrar in the prescribed manner who has been conferred the discretion either to accept or reject or accept with amendments, modifications, conditions or limitations.\textsuperscript{75} The Registrar must communicate his decision in writing with the applicant and is

\textsuperscript{73} AIR 1965 Bom 35.
\textsuperscript{74} K. C. Kailasam and Ramu Vedaraman, Law of Trademarks and Geographical Indications (2003) at 239.
\textsuperscript{75} Section 18 (4) of the Trademarks Act, 1999.
under obligation to give the reasons in cases of rejection or acceptance on conditions or with modification.\textsuperscript{76}

In case the Registrar decides to accept the mark for registration, but before actual registration, the Registrar may withdraw his acceptance under certain circumstances under the Trade Marks Act, 1999.\textsuperscript{77} For example, if the Registrar is satisfied that the application is being accepted in error\textsuperscript{78} or that circumstances are such that such registration should not be registered, he has been empowered to withdraw the acceptance of application under Section 19 of the Trademark Act, 1999. This power can be exercised subject to certain conditions. Registrar has to issue a notice, specifying the objections, which has led him to think that the application has been accepted in error or why the mark should not be registered, to the applicant and give him an opportunity of being heard by requiring him to show cause why acceptance should not be withdrawn.\textsuperscript{79} The Trademark Act is based on the principles of natural justice i.e., Registrar has to justified his act of rejecting the application for the registration of the trademark, while doing the same he has to follow the proper procedure which should be just, reasonable and fair.

Once the Registrar has accepted the application, he shall get the application advertised in the prescribed manner after acceptance. However, the application shall be advertised before acceptance if the application is related to a trademark to which Section 9(1) and 11(1)(2) apply or in any other case as it seems expedient to the Registrar.\textsuperscript{80} The purpose of advertisement is to give information to the public at large in respect of the trademark advertised and afford an opportunity to oppose the registration of the mark on grounds given in the Act. So the advertisement must be complete in all respects and otherwise the very purpose of advertisement will be frustrated.\textsuperscript{81} If there is incomplete or incorrect information in the advertisement, it would amount to misrepresentation, which

\textsuperscript{76} Id. Section 18 (5).
\textsuperscript{77} Id. Section 19.
\textsuperscript{78} Id. Section 19(a).
\textsuperscript{79} Tikam Chand and Another v. Dy. Registrar of Trade Marks, 1998 PTC 542 (Del).
\textsuperscript{80} Section 20 of the Trade Marks Act, 1999.
\textsuperscript{81} Virendra Sethi v. Kundan Das, 2002 (25) PTC 50 (Del).
deprives a prospective opponent of the opportunity to get full information and of filing an effective opposition.82

3.3-3 Opposition for the Registration of the Trademarks

Section 21 of the Trade Marks Act, 1999 allows any person to oppose an application for registration within three months from the date of the advertisement or re-advertisement of an application for registration. "Any person" need not be only a prior registered trademark owner, but the term has been used in a wider sense.83 Even a customer, purchaser or a member of the public likely to use the goods may object to the registration of a trademark in respect of such goods on the ground of possible deception or confusion. The period within which opposition to the application for registration can be filed is three month from the date of advertisement or re-advertisement, which should be in writing in the prescribed manner and on payment of the prescribed fee, to the Registrar. The grounds of opposition should be based upon the specific provisions of law. The grounds based on Section 9, 11, 12, 13, 18, 24, 33, 35, 36(2) of the Trademarks Act, 1999 would be suitable to challenge the application of registration. However, the grounds based on Section 11(2) and (3) are available only to the proprietor of earlier trademark.84

Any mark, which is not hit by the definition and Section 9, qualifies for the registration before the Registrar. However, a mark qualified under Section 9 has to meet the positive objections under Section 11 to be finally registered. Section 11 is the qualification of Section 9. Mark having crossed the threshold under Section 9 is capable of getting the protection of the Trademark Act subject to Section 11. It deals with prohibition on registration but does not hit the inherent capability of mark as to its registrability. The marks prohibited under Section 11 may not be desirable based upon public policy considerations. Section 9 of the Act lays down the ground on the basis of which, the registration of the mark can be denied absolutely. One of the grounds is ‘if the mark is devoid of distinctive character.’85 The phrase ‘distinctive character’ implies the ‘incapability of the mark

83. P. N. Mayor v. Registrar of Trademarks, AIR 1960 Cal 80.
84. Supra note 74 at 261.
85. Section 9(1)(a) of the Trade Marks Act, 1999.
to distinguish the goods or services of one person from that of the others. It also implies that the mark in itself should be distinctive in certain cases. The common word of dictionary or the name of the place can not be registered unless it is shown that the common word or the name has become distinctive of his goods or services in the mind of the purchasing public, but if he succeeds, then he will be entitled to protect his mark by registration.86

Another ground for refusal to register the mark is that the mark should not indicate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of services or other characteristics of the goods or services.87 In addition to these, a mark stands disqualified from registration if represents the shape of goods results from the nature of the goods themselves or shape of the goods necessary to obtain a technical result or shape which gives substantial value to the goods.88 At the same time the mark must not be consisted of the marks or indications, which have become customary in current language or in the bona-fide and established practices of the trade it is not desirable to monopolize such marks.89

The mark should not deceive the public or cause confusion or hurt the religious susceptibilities of any class or section of the citizens or be scandalous or obscene.90 The Section 9 lays down the pre-requisites of qualification for the protection of trademark law. These are the grounds, which are specific to the mark that means, if the mark is affected by any of these characteristics, it cannot be registered.

On receiving the notice of opposition, the Registrar is under an obligation to send a copy of the same to the applicant for registration. Upon receiving such notice, the applicant is given two months time, from the date of receipt of the notice, to file counter statement together with the prescribed fees to the registrar. This copy of counter statement shall be sent to the person who has filed opposition under Section 21(3). The applicant and the opponent are given the opportunity to produce evidence in support of their claims and may also be given

86. Supra note 74 at 91.
87. Section 9(1)(b) of the Trade Marks Act, 1999.
88. Id. Section 9(3).
89. Id. Section 9(1)(c).
90. Id. Section 9(2).
an opportunity to be heard if they so desire under Section 21(4). However, the onus is on the opponent to allege and prove the existence of facts, which may lead the tribunal to assess the existence of likelihood of confusion in the minds of the public, which includes likelihood of association with the earlier mark. But this does not relieve the applicant of his onus to satisfy the Registrar or the Court that there is no reasonable probability of confusion, in respect of all goods coming within the specification applied for and not only in respect of the goods on which he is proposing to use it immediately.91

Subject to Section 19 of the Trade Marks Act, 1999 the Registrar is under an obligation to register the Trade Mark. Under Section 23 of the Trade Marks Act, 1999 if he decides in favour of applicant after listening to the opposition. However, Central Government may direct otherwise on certain grounds. The mark can also be registered jointly for two or more persons under Section 24 if two or more persons agree to work jointly. In such cases, the Registrar shall require a copy of joint venture agreement to satisfy himself because none of them is entitled to use the mark independently. The Section in its earlier part specifically precludes the Registrar from registration of two or more persons who use the trademark independently or propose to use it independently. The registration shall be made as of the date of the application and the applicant shall be issued a certificate of registration. However, the registrar is empowered under Section 23(4) to amend the register or certificate of registration for the purpose of correcting a clerical error or an obvious mistake. The applicant must complete all formalities within one-year time period or within such time as may be given in the notice. In case of any default, the application may be abandoned and the Registrar gives notice in this regard to the applicant.

3.3-4 Term of Trademarks

The Registration shall be for a period of ten years but may be renewed from time to time in accordance with the provisions of this Act.92 Renewal can be made before the expiration of the registration. In case of default in renewal before expiration, the Act provides for the grace period of six months from the date of

91. Supra note 74 at 272.
expiration for renewal on payment of prescribed fee. However, before expiration of the last registration of a trademark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and conditions as to the renewal. If the proprietor does not file for renewal, the name of the mark will be removed from the register. However, the Registrar is entitled to restore the mark in register if it is just to do so after six months but before one year from the expiration of the last registration, on the receipt of application and on payment of the fee by the proprietor. Such restoration shall be for another ten years of period.

3.3-5 Compatibility with International Standards

International treaties have evolved to promote international trade with the least risk of unfair competition. In order to have a trademark registered in other countries an Indian company will have to register its trademark in those countries by satisfying their legal requirements such as paying the registration fees, etc. India is not yet a member of those international treaties, which facilitate getting trademark registered simultaneously in many countries with one application. The main treaties which govern grant of trademark rights in many countries are:-

i) The Paris Convention on Industrial Property(1883),

ii) The Madrid Agreement (1891),

iii) The Madrid Protocol,

iv) The Trademark Registration Treaty (1973),


vi) The TRIPS Agreement.

Under the Paris Convention, a person applying for a trademark in India can apply for the same trademark in member countries within six months of filing in India and get the priority of the Indian application in those member countries. The earlier (Indian) application cannot be for a narrower class of goods than that specified in the subsequent applications (filed in other countries). Some might argue that the facility offered by the Convention is not significant as the prior use or publication of a trademark does not prevent obtaining a registration in other countries, as happens in the case of a patent. The common principle to be

93. Supra note 67.
followed in case of all the forms of IPR is that the application for registration should be filed as quickly as possible. If you don’t, someone else will and you will lose your right, which you have missed by not being careful, active, fast and vigilant. Therefore, the period of six months does provide a cushion for maintaining your priority and till that time no one else can take the benefit of registering the same trademark in those countries.94

The Madrid Agreement was adopted on April 14, 1891 to facilitate protection of a trademark or service mark in several countries by means of a single international registration. There are 84 members comprising the Madrid Union of jurisdictions which have become party to the Agreement or the Protocol or both.95 Countries of the Madrid Agreement are mainly belonging to Europe; others are countries of Africa and four countries in the Far East namely, China, the Democratic People’s Republic of Korea, Mongolia and Vietnam. The United Kingdom, the United States of America, most Latin American countries, Japan and India are not signatories to this agreement. The Agreement covers both trademarks and service marks.96

The Madrid Protocol was formed to remove some of the features of the Madrid Agreement, which posed obstacles to accession by several countries. The Protocol relating to the Madrid Agreement concerning the International Registration of Marks was adopted at Madrid on 27th June, 1989. The Protocol, which entered into force on 1st Dec., 1995, retains the basic features of the Madrid Agreement. As on 19th Feb., 2009, 84 countries have acceded to the Protocol.97

Trademark Registration Treaty,98 1973 is administered by the World Intellectual Property Organization (WIPO) and aims at acquisition of trademark protection in a number of countries through a single application filed in a central office in the WIPO. There is no need to file the application first in the national office in the home state. The treaty came into force in 1973 when it was signed in

94. Paris Convention has been discussed in detail in Chapter II.
96. The Madrid Agreement has been discussed in detail in Chapter II.
97. Supra note 95.
98. The Trademark Registration Treaty has been discussed in detail in Chapter-II.
1973 in Vienna. In fact many advanced countries having strong trademark laws are not members of this treaty.99

The Trademark Law Treaty was signed100 on 27th Oct., 1994 at a diplomatic conference in Geneva, in order to smoothen and harmonies the process of national registration of marks. The treaty is open to the individual countries as well as inter-governmental organizations. It entered into force on August, 1996. The treaty applies to marks for goods and services but it does not cover collective marks, certification marks and guarantee marks,101 where as the Indian Trade Marks Act, 1999 cover these marks.

Trademark registers now exist in most countries of the world and they are subject to a host of maximum standards in all WTO countries, thanks to the TRIPs Agreement. As the technology of product imitation advances, the world is awash with pirated versions of luxury items, toys, computer games, and many other things. It is when these copies bear famous brands that they are labeled ‘counterfeit’, rather than just ‘piracy’.102 Section 2 (Article 15-21) of the TRIPS Agreement specifically deals with the Trademarks. India is also the member state to the TRIPS Agreement. Hence, there is an impact of the TRIPS on the Indian Trademark Act which is compatible to the TRIPS standards.

3.4 The Procedure for Acquiring Geographical Indication under the Geographical Indications of Goods Act, 1999

The Geographical Indications of Goods Act, 1999 was enacted to formulate as part of the exercise in the country to set in place national intellectual property laws in compliance with India’s obligations under the TRIPS Agreement. Under this Act, which has come into force with effect from 15th Sep., 2003 the Central Government has established the ‘Geographical Indications Registry’ with all India jurisdiction at Chennai, where the right holders can register their

102. Supra note 16 at 74.
respective Geographical Indications. The Geographical Indications Act is to be administered by the Controller General of Patents, Designs and Trade Marks, who is the Registrar of Geographical Indications.103 According to Kevin M. Murphy104 Geographical Indications denotes a guarantee of quality and distinctiveness derived from a combination of unique regional, environmental, and human influences, such as climate, soil, subsoil ...all in just one word, in simple words a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods.

The term GI has been defined as ”Geographical Indications”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.105

Geographical Indications refers to the representation of the special qualities of a product linked to a region and can take the form of words, phrases, symbols or iconic emblems. They may or may not include the name of the place or region. Iconic place-specific GIs, such as the appellations Swiss chocolate, Scotch whisky and Darjeeling tea, exist alongside equally well-recognized GIs like basmati rice that do not indicate the region of origin. Once such a word, phrase or symbol is recognized as a geographical indication, producers of similar products in any other region may not use it to market their goods. Thus, the association of Scotch whisky makers was able to bring a successful action against the use of the trademark “Peter Scot” by Khoday Distilleries for whisky

manufactured in India, on the grounds that it would mislead consumers as to the place of origin of the product.

Geographical indications in a broad sense include indications of source, appellation of origin, and geographical indication (in the strict sense). It should be pointed out that the Paris Convention does not use in its terminology the term geographical indication; it rather utilizes the terms, indications of source and appellations of origin. An indication of source means any expression or sign used to indicate that a product or service originates in a country, a region, and a specific place where the product originated.

The use of geographical indications is an important method of indicating the origin of goods and services. One of the aims of their use is to promote commerce by informing the customer of the origin of the products. Often this may imply a certain quality, which the customer may be looking for. They can be used for industrial and agricultural products. Protection of such indications is on a national basis but there are various international treaties that assist the protection in a range of countries. An appellation of origin means the geographical name of a country, region, specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural or human factors or both.

Basically, a geographical indication is a notice stating that a given product originates in a given geographical area. The best known examples of geographical indications are those used for wines and spirits. For instance, the geographical indication Champagne is used to indicate that a special kind of sparkling wine originates in the Champagne region of France. In the same way, Cognac is used for brandy from the French region around the town of Cognac. However, geographical indications are also used for products other than wines and spirits, such as tobacco from Cuba, or cheeses such as Roquefort. They may also be used for industrial products, as Sheffield is for steel. The objective of the protection of Geographical Indication is:-

i) to ensure further creation of intellectual work,
ii) to forbid other from making similar use of the property, and
iii) to ensure financial gain for the owner.

Under Section 9 of the Geographical Indications of Goods Act, 1999 the following Geographical Indications cannot be registered:-

i) the use of which would be likely to deceive or cause confusion or contrary to any law,
ii) which comprises or contains scandalous or obscene matter or any matter likely to hurt religion susceptibility of any class or section of society,
iii) which would other wise be disentitled to protection in a court,
iv) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that Country,
v) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

3.4-1 Registration of the Geographical Indications

Registration of geographical indication serves two purposes. One being the interest of the producer in confining the usage of brand names of reputed products to products that originate from a specific locality with given quality and the other being the interest of the consumer in keeping him safe from confusion and deceit due to the using of reputed brand names on wrong products.\(^{108}\) Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.\(^{109}\) India has not made Geographical Indication statutorily protectable only to meet obligations under the TRIPS but also to encourage a large number of Indian Geographical Indications

to be brought in the register there by ensuring an orderly marketing of premium products.

Section 12 of the Geographical Indications of Goods Act, 1999 provides for withdrawal of acceptance of an application for registration of a geographical indication, if it has been accepted in error or other circumstances after giving an opportunity to the applicant to be heard in the matter. Where an application has been accepted, the Registrar shall cause the same to be advertised detailing material particulars of the application. The advertisement shall be ordinarily be made in the Journal within three months of the acceptance.\(^{110}\) The Registrar is vested with the power to re-advertise an application when an error is noticed after advertisement.\(^ {111}\)

3.4-2 Opposition for the Registration of the Geographical Indication

Any person may, within three months from the date of advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.\(^ {112}\) The Registrar shall serve a copy of notice so received to the applicant and if within two months from the receipt of such copy, if the applicant does not file counter-statement the application shall be deemed to have been abandoned. If the applicant sends the counter-statement than the same shall serve a copy to the person oppose the same. Thereafter, the Registrar would dispose of the matter providing an opportunity of hearing to the parties and concerning the material on record and evidences.

When an application for the registration of a geographical indication has not been opposed and the time for notice of opposition has expired; or the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall, unless the Central Government otherwise directs, register the geographical indication and the authorised users, if any,

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112. Id. Section 14.
mentioned in the application. When the geographical indication is registered, the date of the filing of the said application is deemed to be the date of registration. After the registration of a geographical indication, the Registrar shall issue a certificate. It further provides that where the registration of a geographical indication is not completed within twelve months form the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.\textsuperscript{113} The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

3.4-3 Term of Geographical Indication

Section 18 of the Geographical Indications of Goods Act, 1999 provides that the registration and the validity of registration of an authorised user for a period of ten years, but the same can be renewed from time to time. The registration of a geographical indication shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees. The application fees for registration of a geographical indication for goods in one class is Rs. 5,000/-. The application fees for registration of a geographical indication for goods in different classes is Rs. 5,000/-. The renewal fees for a geographical indication is Rs. 1000/-.\textsuperscript{114}

3.4-4 Compatibility with International Standards

The General Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) brought the protection of geographical indications (GI) to the forefront of intellectual property rights. Developing countries have seen a large potential in this form of intellectual property rights due to their being cradle of many old civilizations which are very old and have survived for centuries. The major conventions relating to geographical indications are:-


\textsuperscript{113} Id. Section 16.

\textsuperscript{114} Id. The First Schedule.
iii) The Madrid Agreement and Protocol (international registration of marks).
v) The TRIPS Agreement.

The Paris Convention for the protection of industrial property refers the said protection not as geographical indication but as "indication of source or appellations of origin". Indication of source means any expression or sign used to indicate that a product or service originates in a country, region or a specific place, whereas appellations of origin means the geographical name of a country, region or specific place which serves to designate product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural or human factors or both natural and human factors.  

Article 10ter of the Paris Convention states that the Members will provide legal protection to the nationals of other countries of the Union by way of effective legal remedies in order to repress the acts referred to in Articles 9, 10 and 10bis of the Paris Convention. Paragraph 2 of Article 10ter of the Paris Convention provides that the members may provide measures to permit federations and associations representing interested industrialists, producers or merchants provided that the existence of such federations and associations is not contrary to the laws of their countries. Such measures may include the measures to take action in the courts or before the administrative authorities with a view to repression of the acts referred to in Article 9, 10 and 10bis (of the Paris Convention) subject to the law of their country concerned.

According to the Madrid Agreement for the Repression of False Indications of Source, 1891 all goods bearing a false or deceptive indication of source, by which one of the contracting States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, must be seized on importation, or such importation must be prohibited, or other actions and sanctions must be applied in connection with such importation. The Agreement provides for the cases and the manner in which seizure may be requested and

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115. Supra note 101 at 213.
116. Id. at 214.
affected. It prohibits the use, in connection with the sale or display or offering for
sale of any goods, of all indications in the nature of publicity capable of deceiving
the public as to the source of the goods. It is reserved to the courts of each
contracting State to decide what appellations (other than regional appellations
concerning the source of products of the vine) do not, on account of their generic
character, come within the scope of the Agreement. The Agreement does not
provide for the establishment of a Union, any governing body or a budget. The
Agreement, concluded in 1891, was revised at Washington in 1911, at The
Hague in 1925, at London in 1934, at Lisbon in 1958, and at Stockholm in
1967.\(^{117}\)

The Lisbon system has been established under the Lisbon Agreement for
the Protection of Appellations of Origin and their International Registration of
1958 in order to facilitate the international protection of appellations of origin,
which is administered by the International Bureau of WIPO, the system is used by
the 26 Contracting Parties to the Lisbon Agreement. Its latest amended
regulations entered into force on 1\(^{st}\) April, 2002. Appellation of origin is the
geographical name of a country, region or locality which serves to designate a
product originating therein, the quality and characteristics of which are due
exclusively or essentially to the geographical environment, including natural and
human factors. The system offers the possibility of obtaining the protection of
appellation of origin in the Contracting Parties to the Lisbon Agreement (i.e.,
excluding the country of origin) by using one single registration procedure. India
is not the member to the Lisbon Agreement.

The TRIPS Agreement is most accepted and most influential measure at
the global level taken in the direction of protecting geographical indications as a
type of intellectual property. Section 3 (Article 22-24) of the TRIPS Agreement
specifically provided the minimum requirements that the member state should
follow to protect the geographical indications. The Procedure for Acquiring
Geographical Indication under the Geographical Indications of Goods Act, 1999
was the aftermath effect of the signing of the TRIPS Agreement which specifically

prescribed the procedure for the acquisition and the enforcement of the geographical indications.

3.5 The Procedure for Acquiring Design under the Designs Act, 2000

Industrial designs make an article attractive and appealing, thereby adding to its commercial value and increasing its marketability. Protecting an industrial design helps to ensure a fair return on the investment; it improves the competitiveness of a business against copying and imitating the design by competitors; it helps to increase the commercial value of a company, as successful industrial designs constitute business assets; it encourages creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. The owner of an Industrial Design benefits through the industrial development of their products and the protection helps to ensure a fair return on investment. However, the consumer and the public at large benefit as well, as industrial design protection is conducive to fair competition and honest trade practices, encourages creativity and thus leads to more aesthetically attractive and diversified products.

An industrial design is that aspect of a useful article which is ornamental or aesthetic. It may consist of three-dimensional features such as the shape or surface of the article, or two-dimensional features such as patterns, lines or color. Industrial designs are applied to a wide variety of products of industry or handicraft: from watches, jewelry, fashion and other luxury items, to industrial and medical implements; from house-ware, furniture and electrical appliances to vehicles and architectural structures; from practical goods and textile designs to leisure items, such as toys and pet accessories.

By protecting an industrial design, the owner of the design is given a right against its unauthorized copying or imitation by third parties. In other words, the owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy of the protected design. Since industrial designs are that aspect of an article which makes it aesthetically appealing and

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119. Supra note 65.
attractive, they serve to add to the commercial value of the product and facilitate its marketing and commercialization. To be protected under most national laws, an industrial design must appeal to the eye. Industrial design does not protect any technical features of the article to which it is applied.120

Also industrial design protection injects creativity into the industrial and manufacturing sector, contributes to the expansion of commercial activities, and enhances the export potential of national products. So industrial design protection benefits the owner, the consumer and the economy in general. Another interesting feature of industrial designs is that they can be relatively simple and inexpensive to develop and protect. Therefore they are reasonably accessible to small and medium-sized enterprises, even to individual artists and craftsmen, in both industrialized and developing countries.

"Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article, whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but it does not include any mode or principle of construction or anything which is in substance a mere mechanical device.121 In this context an article means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately. Stamps, labels, tokens, cards, etc. cannot be considered an article for the purpose of registration of design because once the alleged design i.e. ornamentation is removed, only a piece of paper, metal or like material remains and the article referred to ceases to exist. An article must have its existence independent of the designs applied to it. So, the design as applied to an article should be integral with the article itself.

The Essential requirements for the registration of design under the Designs Act, 2000 are:-

i) The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may

120. Ibid.
121. Section 2(d) of the Design Act, 2000.
reside in the application of a known shape or pattern to a new subject matter. However, if the design for which the application is made does not involve any real mental activity for conception, then registration may not be considered.

ii) The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article. Thus, designs of industrial plans, layouts and installations are not registrable under the Act.

iii) The design should be applied or applicable to any article by any industrial process. Normally, designs of artistic nature such as painting, sculptures and the like which are not produced in bulk by any industrial process are excluded from registration under the Act.

iv) The features of the designs in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant. Thus, any design in the inside arrangement of a box, money purse or almirah may not be considered for showing such articles in the open state, as those articles are generally put in the market in the closed state.

v) Any mode or principle of construction or operation or any thing, which is in substance a mere mechanical device, would not be a registerable design. For instance, a key having its novelty only in the shape of its corrugation or bend at the portion intended to engage with levers inside the lock it is associated with, cannot be registered as a design under the Act. However, when any design suggests any mode or principle of construction or mechanical or other action of a mechanism, a suitable disclaimer in respect thereof is required to be inserted on its representation, provided there are other registerable features in the design.

vi) The design should not include any trade mark or property mark or artistic works.

vii) It should be significantly distinguishable from known designs or combination of known designs.

viii) It should not comprise or contain scandalous or obscene matter.\(^{122}\)

\(^{122}\) Id. Section 4.
3.5-1 Registration of Design

The Designs Act, 2000 provides for the registration of design of articles. A proprietor of a design can make an application to the Controller, for the registration for his design if his design is new or original which is not previously published in any country and which is not contrary to public order or morality.123 The Controller refers the application to the examiner who examines the application to ascertain that whether the design is capable for registration under the Designs Act, 2000 or nor and sends his report to the Controller. A design is registered only in one class of articles but if there is any doubt that in which class a design is to be registered than the question is to be decided by the Controller.

On acceptance of the design filed in respect of an application, the Controller shall direct the registration and publication124 of the particulars of the application and the representation of the article to which the design has been applied, in the Official Gazette. When publishing in the Gazette, the Controller may select one or more views of the representation of the design, which, in his opinion, would depict the design best.125 The Controller shall grant a certificate of registration to the proprietor of the design when registered. The Controller may, in case of loss of the original certificate, or in any other case, in which he deems it expedient, furnish one or more copies of the certificate.126

3.5-2 Term of Registration

The total term of a registered design is 15 years. Initially the right is granted for a period of 10 years, which can be extended by another 5 years127 by making an application and paying a fee128 of Rs. 2000/- to the Controller before the expiry of initial 10 years period. The proprietor of design may make the application for such extension even as soon as the design is registered. The fee for filing an application or design registration in India is Rs. 1000/-. If anyone contravenes a design he is liable for every offence to pay a sum not exceeding

123.  Id. Section 5.
124.  Id. Section 7.
Rs. 25,000/- to the registered proprietor subject to a maximum of Rs. 50,000/- recoverable as contract debt in respect of the design.

First to file rule is applicable for registrability of a design. If two or more applications relating to an identical or a similar design are filed on different dates, the first application will be considered for registration of design. Therefore the application should be filed as soon as you are ready with the design. After publication in the official gazette on payment of the prescribed fee of Rs. 500/- all registered designs are open for public inspection. Therefore, it is advisable to inspect the register of designs to determine whether the design is new or not. There is yet another important provision for ensuring that the design is different from anything published anywhere in the world. This is quite a strict condition. There would be many designs, which are not protected, and these would not be part of any database maintained by design offices. An applicant has to take the responsibility of ensuring that he has done an extensive search and satisfied himself of the novelty of his design. However, in practice as the cost involved in filing and obtaining a design registration is not high, a design application is made if the stakes involved are not high and you have not copied any design. The application for registration of design can be filed by the applicant himself or through a professional person (i.e. patent agent, legal practitioner etc.). An agent residing in India has to be employed by the applicants not resident of India.

3.5-3 Revocation of Registration

The registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in Form 8, to the Controller of Designs, with a fee of Rs. 1500/- on the following grounds that:–

i) the design has been previously registered in India,

ii) the design has been published in India or elsewhere prior to the date of registration,

iii) the design is not new or original,

iv) the design not registerable,

v) the design is not a design under Section 2(d)\textsuperscript{129} of the Designs Act, 2000.

3.5-4 Compatibility with International Standards

The protection of industrial designs has, in comparison to other intellectual property rights attracted less focus of international efforts. At the international level there are various conventions which frame the guiding principles for the protection and enforcement of the designs they are:-

i) The Paris Convention (1883);
ii) The Berne Convention (1886);
iii) The Hague Agreement on Industrial Designs (1925);
iv) The TRIPS Agreement.

The Paris Convention 1883 provides for the right of priority in the case of industrial designs. This right means that, on the basis of a regular first application filed in one of the contracting States, the applicant may, within a certain period of 6 months apply for protection in any of the other contracting States; these later applications will then be regarded as if they had been filed on the same day as the first application. In other words, these later applications will have priority (hence the expression "right of priority") over applications which may have been filed during the said period of time by other persons for the same utility model, or industrial design. Moreover, these later applications, being based on the first application, will not be affected by any event that may have taken place in the interval, such as any publication of the invention or sale of articles bearing the mark or incorporating the industrial design. One of the great practical advantages of this provision is that, when an applicant desires protection in several countries, he is not required to present all his applications at the same time but has six months at his disposal to decide in which countries he wishes protection and to organize with due care the steps he must take to secure protection.

The Berne Convention (1886) which aimed at protecting literary and artistic works includes designs, although impliedly, under the category of 'works of applied art', while defining the ambit of 'literary and artistic works'.

The Hague Agreement concerning the International Deposit of Industrial Designs first came into existence in 1925. The Agreement aims at providing a mechanism for securing protection of an industrial design in all the member countries by means of an international deposit. The international deposit could be
in the form of the industrial product or drawing or photograph or any other graphic representation of the said design. The duration of protection was 15 years from the date of deposit, this divided in two periods namely, one period of five years and the other of ten years. This Agreement is now being implemented by the WIPO. India is not yet a member of the Hague Agreement.

Section 4 of the TRIPS Agreement discusses the protection of the industrial designs by the member States. Article 25 and 26 specifically provides the requirements of the protection of industrial designs. Article 26 specifically mention the minimum duration of the protection of the design i.e. 10 years where as our Indian statute Section 11 protect the registered design for 10 years from the date of registration, which can extend to five more years on the application by the proprietor.

To sum up, the provisions specified for the registration of the copyright in the Indian Copyright are in compliance with the international standards. The term of protection for the copyright work is more than that prescribed by the TRIPS Agreement. On the whole the registration of the copyright work is not mandatory but registration is the Prima facie evidence in favour of the author. On the legislation front, copyright laws in India are comparable to those of many developed countries. In order to keep a pace with the contemporary technological developments, India's copyright legislation had been amended from time to time, e.g. in 1983, 1984 and 1994, since its commencement in 1958. The punishments for copyright violations had been made progressively more stringent. The present law is also almost in full conformity with the Uruguay Round Agreement on Trade Related Intellectual Property Rights. In spite of all these, awareness on copyright is rather poor in the country and piracy is believed to be wide spread. Piracy of copyrighted products is a problem as old as the copyright itself. Only in recent years it has received prominence, especially in the academic and policy circles. In India, no official estimate is available to indicate the extent of piracy and associated economic loss. But perceptions are that the piracy is a big problem.

The piracy takes away certain portion of revenue from the legal owner of copyrights. The commercial exploitation of copyrights also yields income to the creative persons in the form of royalties. The State gets income in the form of
excise duty, sales tax, income tax etc, which pirates do not pay. Therefore, piracy brings in losses for all involved in the legitimate production and distribution of copyright items. The important among these are the trade loss and loss to the state exchequer.

The development of the society depends on the development of science and technology which ultimately depends on the encouragement and support provided through rewards. Patents are a reward for the efforts and labour in producing new and novel innovations. The object behind the patent is to serve the purpose of the society by encouraging and simulating further research and development. The purpose of any research should be the benefit of common man.

The Patent (Amendment) Act, 2005, has successfully brought the Indian Patent law in compliance with the obligations of the TRIPS Agreement and as a result the Indian Patent regime is now globally competitive and harmonized with the international norms, but India is a developing country; about 28% of the population was living below the poverty line, the major concern is not only to make the patent laws compatible with the international scenario but how to provide proper health to the persons who could not afford the price of the medicine. There is a need to amend the Indian Patent Act so as to exempt the drugs, medicines, food and food products from the purview of product patent regime. The Patent Amendment Act, 2005 has been issued to fulfil India's obligation to the World Trade Organization. The Act, allowed for full introduction of product patents and for deletion of the exclusive marketing rights, a transitional arrangement provided to drug companies until a full product patent regime was introduced.

The use of the trademark is not a new concept in the Indian scenario; it is there at the time of the kings and emperors that the traders use the mark so as to differentiate the goods from that of other. For the acquisition of trademark the Trademark Act prescribed the procedure to be followed before the Registrar, no doubt the registration of the trademark is optional but if the mark is registered than the civil and criminal can be initiated against the infringer, but where as the non registered are concerned the action for passing-off is the only remedy available against the infringer. Indian Trademarks Act, 1999 is basically not only
based upon the previous Acts on the Trademarks but it is also in compliance to the Trade Related Aspects of the Intellectual Property Rights. The traders desiring the protection in other countries has to file separate application in the countries in which they wants to protect their trademarks. To facilitate the foreign nationals and Indian who wants to protect there trademark in other countries the Trade Marks (Amendment) Bill, 2007 has been introduced in the Parliament on 23 August, 2007, which facilitates to secure the simultaneous protection of trademarks in other countries. The Trade Marks (Amendment) Bill, 2007 which was passed by the Indian Parliament on 25 Feb., 2009 is a step towards the International Registration of the trademarks under the Madrid Protocol.

While many specialty Indian products have historically enjoyed worldwide recognition, the concept of geographical indication is a new one it is only after the acceptance of the Trade Related Aspects of the Intellectual Property Rights that the Indian Parliament has enacted the Procedure for Acquiring Geographical Indication under the Geographical Indications of Goods Act, 1999, which marks an important milestone in this recent policy of the Indian government. Once a geographical indication is registered in India, it becomes relatively easier to seek its protection in other countries, particularly the member countries of WTO. The Geographical Indications of Goods Act, 1999 protects the work in the field of agriculture goods, natural goods or manufactured goods of handicrafts or goods of industry. The main aim of the Geographical Indications of Goods Act, 1999 is to provide the registration and the better protection of the geographical indication relating to the goods.

Registration of an industrial design is not necessarily the only means of protection. It is possible, if certain conditions are met, to protect industrial designs under copyright law or the law against unfair competition. Protecting industrial designs helps economic development, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products. Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries. The Designs Act, 2000 provides the procedure for the
registration and its enforcement of the same. As India is the member state to the
various international conventions relating to the industrial design, its Designs Act
is compatible with the international standards.

To acquire the intellectual property right and to enforce the same, various
statutes have been enacted by the Indian Parliament. The Government of India
not only provides the basic provisions but also helps the intellectual person for
the acquisition of the same; the Patent Facilitating Centre is one of such
facilitating centre. The Patent Facilitating Centre (PFC) was set up by
Department of Science and Technology under Technology Information
Forecasting and Assessment Council (TIFAC) in 1995. It aims at introducing
patent information as a vital input in the process of promotion of research and
development programmes, providing patent facilities to scientists and
technologists in the country for Indian and Foreign patents on a sustained basis.

With the advancement of science and technology the law should also
adopt these changes, and the intellectual property laws in India have always
adopted such modification by amending its law so as to make it compatible with
the international laws. With the passage of time law develops to meet new
challenges, and the amendment in the last decade is the aftermath effect of the
development in the field of science and technology so as to protect the right of
the intellectual creator.