

UNIT – V:

LAW RELATING TO INTELLECTUAL PROPERTY

1. Introduction to Intellectual Property (IP)

Intellectual Property refers to creations of the human mind—ideas, inventions, artistic works, symbols, designs, etc.—which the law protects by granting exclusive rights to the creators or owners.

Meaning of Intellectual Property

- IP is intangible in nature (cannot be touched, only expressed).
 - It is the result of creativity and innovation.
 - It provides the creator with exclusive rights to use, produce, and market their creations for a limited time.
 - Encourages creativity, innovation, invention and economic growth.
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2. Main Forms of Intellectual Property

1. **Copyright**
 2. **Trademarks**
 3. **Patents**
 4. **Industrial Designs**
 5. **Trade Secrets**
 6. **Geographical Indications (GI)**
 7. **Plant Variety Protection**
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3. Copyright

Meaning of Copyright

- Copyright is the exclusive legal right given to the creator of literary, artistic, musical, or dramatic works.
- It includes the right to reproduce, distribute, perform, translate, or adapt the work.

- **Computer programs and software** are also protected as “literary works” under Indian law.

Law Relating to Copyright in India

- Governed by the **Copyright Act, 1957**.
 - Also guided by international treaties like the Berne Convention and TRIPS Agreement.
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Historical Evolution of Copyright Act, 1957

- Before independence, copyright law was based on British law.
 - The **Copyright Act, 1914** was the first Indian law.
 - Replaced by the **Copyright Act, 1957**, which consolidated and modernized the law.
 - Subsequent amendments in **1983, 1984, 1992, 1994, 1999, 2012** gave protection to computer software, digital works, satellite broadcasting, etc.
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Computer Programs (Software)

- Treated as **literary works**.
 - Protection includes source code, object code, manuals, databases.
 - Unauthorized copying or distribution constitutes copyright infringement.
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Ownership of Copyrights

- The creator/author is the first owner.
- Exceptions:
 - Works created during employment → employer is the owner.
 - Commissioned works (photographs, paintings) → the person who commissions is owner unless agreed otherwise.

Assignment of Copyright

- Copyright can be transferred to others through a written agreement.
 - Assignment includes transfer of rights like publishing, translating, or selling.
 - Must specify duration, territory, and rights being assigned.
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Criteria for Copyright Infringement

Infringement occurs when:

- Work is copied without permission.
 - Work is reproduced or communicated to public without authorization.
 - Software is pirated or illegally duplicated.
 - Substantial similarity is shown between the original and copied work.
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Internet Piracy

Forms include:

- Illegal downloading and distribution of movies, software, music.
- Sharing copyrighted material on torrent sites.
- Streaming pirated content.
- Unauthorized upload of books or PDFs.

Remedies for Copyright Infringement in India

1. **Civil Remedies**
 - Injunction (stop further infringement)
 - Damages (monetary compensation)
 - Delivery of infringing copies
 2. **Criminal Remedies**
 - Imprisonment (6 months to 3 years)
 - Fines
 - Seizure of pirated copies
 3. **Procedural Steps**
 - File complaint with police or court
 - Cease-and-desist notice
 - Legal suit in district court
 - Online removal (DMCA-type notice for websites)
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4. Patents

Meaning of Patent

A patent is an exclusive right granted to an inventor for a new invention, product, or process that:

- is **new** (novel),
- involves **inventive step** (non-obvious),
- is **industrially applicable** (useful).

Law Relating to Patents in India

- Governed by the **Patents Act, 1970** (effective 1972).
- Major amendments in **1999, 2002, and 2005** to comply with TRIPS.
- The 2005 amendment introduced **product patents** for pharmaceuticals and chemicals.

What Can Be Patented

- New machines
- New manufacturing processes
- Chemical compositions
- Industrial devices
- Medicines (post-2005)

What Cannot Be Patented

- Discoveries of natural laws
 - Abstract theories, mathematical methods
 - Business methods
 - Computer programs *per se*
 - Plants, animals
 - Medical treatment methods
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Patent Rights

- Right to prevent others from making, selling, or using the invention.
 - Patent term: **20 years** from date of filing.
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Patent Infringement

Occurs when someone makes, sells, or imports a patented invention without permission.

Remedies

- Injunction
- Damages
- Accounts of profits

- Impounding of infringing goods
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5. Industrial Designs

- Protection for aesthetic or ornamental features of a product (shape, pattern, colour).
 - Governed by **Designs Act, 2000**.
 - Registration valid for **10 years**, extendable by **5 years**.
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6. Trade Secrets

- Confidential business information that gives competitive advantage.
Examples:
 - Coca-Cola formula
 - Customer lists
 - Manufacturing methods
 - No specific law in India; protected through contracts and common law.
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7. Trademarks

- Marks used to identify goods/services of a business.
Examples: logos, brand names, symbols, slogans.
 - Governed by **Trade Marks Act, 1999**.
 - Registration valid for **10 years** (renewable).
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COPYRIGHT

Meaning

Copyright is a legal right that protects original literary, artistic, musical, and dramatic works. It gives the creator exclusive rights to reproduce, distribute, perform, or adapt the work.

Examples

- Books, songs, movies, paintings

- Computer programs (treated as literary works)
- Online content, photographs, databases

Key Points

- Protection arises automatically upon creation.
 - Valid for **60 years** (different rules for authors and producers).
 - Infringement occurs when a work is copied, reproduced, or published without permission.
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TRADEMARKS

Meaning

A trademark is a sign, symbol, logo, word, or phrase used to identify goods or services of a business and distinguish them from others.

Examples

- Nike “✓” logo
- Coca-Cola name
- Apple logo

Key Points

- Governed by the **Trade Marks Act, 1999**.
 - Protection lasts **10 years**, renewable indefinitely.
 - Helps maintain brand identity and prevent confusion.
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PATENTS

Meaning

A patent is an exclusive right granted to an inventor to make, use, sell, or import an invention for a limited period.

Requirements

- **Novel** (new)
- **Inventive step** (non-obvious)

- **Industrial application** (useful)

Examples

- New machines
- Pharmaceutical formulations
- Manufacturing processes

Key Points

- Governed by the **Patents Act, 1970**.
 - Valid for **20 years**.
 - After expiry, the invention becomes public property.
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INDUSTRIAL DESIGNS

Meaning

Designs protect the aesthetic or ornamental appearance of an article—shape, configuration, pattern, or colour.

Examples

- Shape of a bottle
- Design on fabrics
- Unique patterns on mobile phones

Key Points

- Governed by the **Designs Act, 2000**.
 - Protection lasts **10 years**, extendable for 5 years.
 - Focus is only on appearance, not functionality.
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TRADE SECRETS

Meaning

Trade secrets are confidential business information that provides economic advantage.

Examples

- Coca-Cola formula
- Client lists
- Manufacturing processes
- Algorithms

Key Points

- No specific Indian statute—protected through contracts, confidentiality agreements.
 - Protection lasts as long as secrecy is maintained.
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LAW RELATING TO COPYRIGHT IN INDIA

Main Legislation

- **Copyright Act, 1957**
- India is also a member of Berne Convention, TRIPS, WIPO treaties.

Key Features

1. Types of Works Protected

- Literary (including computer programs)
- Artistic and musical works
- Cinematograph films
- Sound recordings
- Databases and digital works

2. Ownership

- Author is the first owner.
- In employment → employer owns it.
- Commissioned works → commissioner may be the owner if contract specifies.

3. Assignment

- Copyright can be assigned (transferred) through written agreement.
- Must include time period, territory, and nature of rights transferred.

4. Infringement

Occurs when:

- Work is copied without permission
- Distributed, performed, or translated without consent
- Software is pirated
- Substantial similarity exists between original and copied work

5. Internet Piracy

- Unauthorized downloads or sharing
- Torrent distribution
- Upload of PDFs, movies, songs without consent
- Illegal streaming websites

6. Remedies

Civil Remedies

- Injunction
- Damages
- Delivery/destruction of infringing copies

Criminal Remedies

- Imprisonment (6 months–3 years)
- Fines
- Seizure of infringing materials

Procedural Steps

- File complaint
- Cease-and-desist notice
- Civil suit in district court
- Takedown requests for online infringement

LAW RELATING TO PATENTS UNDER THE PATENTS ACT, 1970

The **Patents Act, 1970** (effective from 1972) is the primary legislation governing patents in India. It provides rules for **grant, rights, limitations, and enforcement** of patents. Major amendments were made in **1999, 2002, and 2005** to comply with the TRIPS Agreement.

Meaning of a Patent

A **patent** is an exclusive right granted to an inventor for an invention which is:

1. **Novel** (new)
2. **Inventive** (involves inventive step and is not obvious)
3. **Capable of industrial application** (useful)

A patent gives the inventor the sole right to make, use, sell, and license the invention for **20 years** from the date of filing.

Objectives of the Patents Act

- Promote scientific research, innovation, and industrial development.
 - Protect inventions and encourage investment.
 - Balance between inventor's rights and public interest.
 - Prevent abuse of patent rights.
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Types of Patents

1. **Product Patents**
 - Protects the final product.
 - Introduced after the 2005 amendment (especially for pharmaceuticals and chemicals).
2. **Process Patents**
 - Protects the process/method of making a product.
 - India originally allowed only process patents for drugs & chemicals before 2005.

What Can Be Patented?

An invention must satisfy **three major criteria**:

(a) Novelty

The invention must be new and not publicly disclosed anywhere in the world.

(b) Inventive Step

Must not be obvious to a skilled person in that field.

(c) Industrial Applicability

Must be capable of being made or used in industry.

What Cannot Be Patented (Section 3 & 4)

Some inventions are excluded from patentability:

- Frivolous or contrary to natural laws
 - Inventions causing harm to public health, environment, or morality
 - Mere discovery of scientific principles
 - Mathematical or business methods
 - Computer programs *per se*
 - Plants, animals, seeds, biological processes
 - Surgical or medical treatment methods
 - Atomic energy inventions (Sec. 4)
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Procedure for Obtaining a Patent

1. **Filing of Application**
 - Provisional or complete specification.
2. **Publication**
 - Published after 18 months.
3. **Request for Examination**
4. **Examination & Report**

- Controller examines novelty, inventive step, etc.
 - 5. **Response to Objections**
 - 6. **Grant of Patent**
 - If all conditions are satisfied.
 - 7. **Renewal**
 - Annual renewal fees to maintain patent for 20 years.
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Rights of a Patentee

- Exclusive right to **make, use, sell, offer for sale, and import** the patented invention.
- Right to **license** the invention.
- Right to **sue for infringement**.

These rights are **territorial** (only within India).

Limitations on Patent Rights

- **Government use** without permission in public interest (Sec. 100).
 - **Compulsory licensing** (Sec. 84) when:
 - Public requirements are not met
 - Invention is not available at a reasonable price
 - Invention is not worked in India
 - **Research and experimental use** permitted.
 - Parallel import allowed in some cases.
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Patent Infringement

Occurs when someone without permission:

- Makes, sells, or imports the patented product
- Uses or copies the patented process
- Offers the product for sale

Defences against infringement

- Invalidity of patent
- Experimental use

- Govt. use authorization
 - Patent not practiced in India
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Remedies for Patent Infringement

Civil Remedies

- Injunction (stop activity)
- Damages (monetary compensation)
- Accounts of profits
- Seizure/destruction of infringing goods

Criminal Remedies

(Not specifically provided for patent infringement under Indian law.)

Compulsory Licensing (Important Topic)

Under Section 84, compulsory license can be granted when:

- Demand for patented product is not met
- Product is too expensive
- Patent is not worked in India
- Public health necessity (e.g., medicines for HIV, cancer)

Example: Natco Pharma was granted a compulsory license to produce **Bayer's cancer drug Nexavar**.

Patent Term and Renewal

- Duration: **20 years** from filing date.
 - Must pay *renewal fee* every year after 3rd year.
 - If not renewed, the patent lapses.
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Revocation of Patent

Patent may be revoked if:

- Obtained wrongfully
 - Lacks novelty or inventive step
 - Not useful
 - Patent specification is incomplete
 - Patentee fails to comply with compulsory licensing requirements
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International Agreements Impacting Patent Law

- **TRIPS Agreement (WTO, 1995)** — required India to introduce product patents.
- **Paris Convention** — priority claim system.
- **Patent Cooperation Treaty (PCT)** — simplifies global patent filing.