

Module-4 Copyright and Trademarks (5 hours)

Copyright: Classes of copyrights, Salient features of the Indian Copyright Act 1957, Criteria for copyright, Copyrights of the author, Copyright Infringements, Non-Copyright Work, Process of copyright registration. Copyright cases.

Trademark: Eligibility Criteria, Classification, Trade Mark Rules 2017, Advantages of registration, Types of trademark registered in India, Process for Trademarks Registration, Case examples.

4.1 Copyright

4.1.1 Introduction

Copyright as the name suggests arose as an exclusive right of the author to copy the literature produced by him and stop others from doing so. There are well-known instances of legal intervention to punish a person for copying literary or aesthetic output of another even before the concept of copyright took shape. The concept of idea was originally concerned with the field of literature and arts. In view of technological advancements in recent times, copyright protection has been expanded considerably. Today, copyright law has extended protection not only to literary, dramatic, musical and artistic works but also sound recordings, films, broadcasts, cable programmes and typographical arrangements of publications. Computer programs have also been brought within the purview of copyright law.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

In India, the law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012 to meet with the national and international requirements. The amendment introduced in 1984 included computer program within the definition of literary work and a new definition of computer program was inserted by the 1994 amendment. The philosophical justification for including computer programs under literary work has been that computer programs are also products of intellectual skill like any other literary work.

4.1.2 Meaning of Copyright

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever.

Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely

In the case of literary, dramatic or musical work (except computer programme):

- (i) reproducing the work in any material form which includes storing of it in any medium by electronic means;
- (ii) issuing copies of the work to the public which are not already in circulation;
- (iii) performing the work in public or communicating it to the public;

- (iv) making any cinematograph film or sound recording in respect of the work;
making any translation or adaptation of the work.

Further any of the above-mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

- (i) reproducing 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) communicating the work to the public;
 - (iii) issuing copies of work to the public which are not already in existence;
 - (iv) including work in any cinematograph film;
- making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

- (i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;
- (ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- (iii) communicating the film/sound recording to the public.

In the case of a sound recording:

- To make any other sound recording embodying it
- To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- To communicate the sound recording to the public.

4.1.3 Criteria for Copyright

(i). Originality of Work: The work must be an original creation of the author, not copied from another source. “Original” does not mean completely new or novel (as in patents), but it should reflect minimum creativity, skill, and judgment of the author.

Example: Writing a poem or programming a unique computer code qualifies; copying from an existing text does not.

(ii). Fixation in a Tangible Form: The work must be expressed in a material form (written, recorded, painted, or saved digitally). Mere ideas, thoughts, or concepts are not protected—only their expression in a fixed medium is eligible.

Example: Singing a song spontaneously is not protected unless recorded or written down.

(iii). Work Must Fall Under Protected Categories: Copyright law in India applies only to specific types of works: **Literary works** (books, computer programs, databases, etc.), **Artistic works** (paintings, drawings, maps, photographs, architecture, etc.), **Musical works** (musical compositions without words), **Dramatic works** (plays, choreographies, scripts, etc.), **Cinematograph films** (movies, video content, etc.), **Sound recordings** (songs, recorded speeches, podcasts, etc.).

(iv). Compliance with Indian Law: The work should not violate existing laws, morality, or public policy.

Example: Works promoting obscenity, sedition, or defamation may not enjoy copyright protection.

4.1.4 Salient features of the Indian Copyright Act 1957

a. Broad Coverage of Works: The Act provides protection to a wide range of intellectual and creative works: Literary works (books, software, databases, computer programs), Dramatic works (plays, scripts, choreographies), Musical works (musical compositions), Artistic works (paintings, photographs, architecture, drawings, maps, sculptures), Cinematograph films (films, videos, visual recordings), Sound recordings (songs, recorded audio, speeches, podcasts).

b. Bundle of Exclusive Rights: The copyright owner enjoys a set of rights, including:
Right to reproduce the work, Right to distribute/publish the work, Right to perform in public, Right to adapt and translate, Right to communicate the work to the public (including digital/online platforms).

c. Term of Copyright: The duration varies with the type of work:

Literary, Dramatic, Musical, Artistic works → Lifetime of the author + 60 years after death.

Cinematograph films and Sound recordings → 60 years from the year of publication.

Government works, public undertakings, international organizations → 60 years from publication.

d. Moral Rights (Author's Special Rights) : Apart from economic rights, the author has moral rights:

Right of paternity (to be identified as the author),

Right of integrity (to prevent distortion, mutilation, or modification of the work that harms author's reputation).

e. Limitations & Exceptions (Fair Dealing/Fair Use): Certain uses of copyright works are permitted without permission, e.g.,

Private or personal use, research, criticism, or review

Reporting of current events

Use for educational purposes

Reproduction by libraries or archives in specific conditions

f. Licensing and Assignment: Copyright can be assigned (transferred) or licensed (permission granted) to others. Licensing includes voluntary licenses and compulsory licenses (in certain public-interest cases like translations, works for the disabled, etc.).

g. Digital and Technological Updates (2012 Amendments): Recognition of digital rights and protection against technological circumvention. Provisions for internet broadcasting and digital licensing.

h. Protection Against Infringement: Unauthorized use of a copyrighted work amounts to infringement. Remedies include:

Civil remedies (injunction, damages, accounts of profit)

Criminal remedies (fines and imprisonment)

4.1.5 Classes of Work

In India, following classes of Copyrights exist:

- **Literature:** Books, Essays, Research articles, Oral speeches, Lectures, Compilations, Computer programme, Software, Databases.
- **Dramatics:** Screenplays, Dramas.

- **Sound Recordings:** Recording of sounds regardless of the medium on which such recording is made e.g. a Phonogram and a CD-ROM.
- **Artistic:** Drawing, Painting, Logo, Map, Chart, Photographs, Work of Architecture, Engravings, and Craftsmanship.
- **Musical:** Musical notations, excluding any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy Copyright protection.
- **Cinematograph Films:** Cinematograph Film‘ is a visual recording performed by any medium, formed through a process and includes a sound recording. For example, Motion Pictures, TV Programmes, Visual Recording, Sound Recording, etc.

4.1.6 Copyright Pertaining to Software

The definition of "Literary work" under section 2 (o) of the Copyright Act, 1957 includes computer programmes, tables and compilations including computer "literary data bases. Computer programme as stated above was included within the definition of "literary work" in 1984 and the new definition of "computer programme" under Section 2 (ff) introduced in 1994 means a set of instructions expressed in words, codes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

Computer programmes (also known as "software") originated with the invention of the computer itself. However, it was only with the advent of Personal Computers (PCs) in the 1980s that software became widely available and the need for protecting software under Copyright law became an issue. In the initial stages, computer programmes were developed by the manufacturers of computers themselves. With the emergence of wide use of PCs, production of software became delinked from manufacturers of computers. Development and manufacturing of software has now become an independent activity and the number of companies engaged in this activity has also increased. It is however the output and variety which has grown manifold which has given rise to problems of enforcement of Copyright in them. While vigorous competition among producers of software has, on the one hand brought about improvement in the quality of computer programmes and brought down the prices, the increased opportunities have also given rise to what is commonly known as "software piracy" - the activity of duplicating and distributing software without authority from the holder of the copyright.

The philosophical justification for including computer programmes within the definition of 'literary work' has been that computer programmes are also products of intellectual skill like any other literary work. Developing a computer programme is an activity which is comparable to the writing of a novel or other literary work excepting that the "language" used as well as its uses are of a very different kind. Though a software can be written by individual programmer, most of the major software's are the outcome of group efforts, where medium to large sized teams spend months or even years to write a programme.

Like the unauthorised copying of literary works, unauthorised copying of computer programmes also attracts the same legal consequences under the Copyright law. However, since the facility of copying a computer software and its duplication is within the easy reach of a potential pirate and since copies of software are indistinguishable from the original, publishers/owners of software are also confronted with daunting problems for safeguarding their interests under the Copyright law when large scale software piracy takes place.

Software piracy has assumed enormous proportions in certain countries and has become a friction point in international trade negotiations. Within domestic jurisdictions also software piracy has

thrown up serious challenges to enforcement authorities. The Copyright (Amendment) Act, 1994 has tried to address these questions and has incorporated internationally recognized standards and procedures for enforcement of copyright in the field of computer programmes. The relevant provisions have been discussed under remedies against infringement of copyright.

4.1.7 Authorship and Ownership and Rights

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings. Generally the author is the first owner of copyright in a work.

“Author” as per Section 2(d) of the Act means

- In the case of a literary or dramatic work the author, i.e., the person who creates the work.
- In the case of a musical work, the composer.
- In the case of a cinematograph film, the producer.
- In the case of a sound recording, the producer.
- In the case of a photograph, the photographer.
- In the case of any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

Ownership of Copyright

The Copyright laws clearly state the ownership of Copyright.

- The person who created the work is considered as the first (original) holder (owner) of the Copyright.
- In case the author is an employee and has been contracted to do the work by a proprietor (of the company/firm/society /organization, etc.), the owner of the Copyright shall be the proprietor.
- The government will be the primary owner of the government work in the absence of any kind of arrangement.
- The person delivering a speech is the first owner of the Copyright.

To obtain permission to use copyrighted material, a request for the same should be made to the legal owner (of the copyrighted material), which could be the original author, the legal heir (in case of the death of the author), publisher, etc. The request must mention the following:

- Title, author and/or editor, and edition.
- Precise material to be used.
- The number of copies.
- The purpose of the material e.g. educational, research, etc.
- Form of distribution e.g. hard copy to classroom, posted on the internet.
- Whether the material is to be sold e.g. as part of a course pack.

Copyrights of the Author

The Copyrights of the creator/author are legally protected under Section 14 of the Copyright Act, 1957. The content (i.e. work) created by the author cannot be used or published by anyone without the author's consent. Copyrights provide exclusive rights to the author in the areas of publication, distribution, and usage. A Copyright owner enjoys two types of rights i.e. **Economic Rights (or Proprietary Rights) and Moral Rights (or Personal Rights)**.

Economic Rights are associated with financial benefits accruing from the sale of copyrights. As per the Act, Copyright owners can authorize or prohibit:

- Reproduction of the work in any form, including printed publications or sound recordings.
- Distribution of copies of the work.

- Public performance of the work.
- Broadcasting/communicating the work to the public.
- Translating the work into other languages.
- Adaptation of the work, such as converting a novel into a screenplay.

Moral Rights include ‘Right of Paternity’ and ‘Right of Integrity’. The ‘Right of Paternity’ - even if the Copyright has been licensed to another party, the original author of the work retains the right to claim authorship i.e. the name of the author/s will remain even though Copyrights have been transferred to another party e.g. a book publisher. The ‘Right of Integrity’ - the original author has the right to prevent misuse of the work e.g. alterations/additions/ deletions in work resulting in misrepresentation of the said work or harming the honor and reputation of the author. It is pertinent to mention that for a work, there can be more than one rights holder, for instance, a musical sound recording has many rights holders, such as the lyricist, music composer, singer, musicians and sound recorders.

4.1.8 Terms of Copyright

Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60 years beyond i.e. 60 years after his death. In the case of joint authorship which implies collaboration of two or more authors in the production of the work, the term of copyright is to be construed as a reference to the author who dies last.

In the case of copyright in posthumous, anonymous and pseudonymous works, photographs, cinematograph films, sound recordings, works of Government, public undertaking and international organizations, the term of protection is 60 years from the beginning of the calendar year next following the year in which the work has been first published.

The Copyright (Amendment) Act, 1994 has given special right to every broadcasting organisation known as broadcast reproduction right in respect of its broadcasts. This right is to be enjoyed by every broadcasting organisation for a period of twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made. In terms of Copyright (Amendment) Act, 1999 if any performer appears or engages in any performance, he has a special right in relation to such performance called performers right to be enjoyed for a period of fifty years.

4.1.9 Assignment, Transmission and Licensing

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright. Section 18 of the Copyright Act provides for the assignment of copyright in an existing work as well as future work. In both the cases an assignment may be made of the copyright either wholly or partially and generally or subject to limitations and that too for the whole period of copyright or part thereof. However, in case of assignment of copyright in any future work, the assignment has the real effect only when the work comes into existence.

As per section 19, assignment of copyright is valid only if it is in writing and signed by the assignor or his duly authorized agent. The assignment of a copyright in a work should identify the work and specify kind of rights assigned and the duration and territorial extent of such assignment. Further, it should specify the amount of royalty payable, if any, to the author or his legal heirs during the continuance of assignment and the assignment will be subject to revision, extension or termination on terms mutually agreed upon by the parties.

If the period of assignment is not mentioned it will be deemed to be taken as five years from the date of assignment. If the territorial extent of such assignment is not stipulated, it will be taken as applicable in whole of India.

The owner of copyright may grant a license to do any of the act in respect of which he has an exclusive right to do. The license can be classified into different categories: Voluntary license, Compulsory license, Statutory license.

4.1.10 Infringement of Copyrights

As per the Copyrights Acts, 1957, the following acts are regarded as an infringement of Copyrights:

- Making copies for sale or hire or selling or letting them for hire without permission.
- Permitting any place for the performance of owned work (in public) where such performance constitutes an infringement of Copyright.
- Distributing infringing copies for trade or to such an extent to affect the interest of the owner of the Copyright prejudicially.
- Public exhibition of infringing copies for trade purposes.
- Importation of infringing copies.
- Translating a work without the permission of the owner.

4.1.11 Remedies against Infringement

There are three kinds of remedies against infringement of copyright, namely:

1. Civil remedies

Injunction damages or account of profit, delivery of infringing copy and damages for conversion.

2. Criminal remedies

Imprisonment of the accused or imposition of fine or both. Seizure of infringing copies.

3. Administrative remedies

Administrative remedies consist of moving the Registrar of copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.

Jurisdiction of Courts

A suit or other civil proceedings relating to infringement of copyright is filed in the District Court or High Court within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant

Limitation

The period of limitation for filing the suit is three years from the date of infringement.

4.1.12 Non-Copyright Work

The works not under the jurisdiction of Copyrights are as follows:

a. Ideas, Procedures, Methods & Concepts: Copyright protects only the expression of an idea, not the idea itself.

Example: A mathematical formula, a cooking recipe idea, or a business method cannot be copyrighted (though they may be protected under patents, if applicable).

b. Facts, News, and Data: Copyright does not protect facts, historical events, or mere data.

Example: News of an event cannot be copyrighted, but the way it is written or presented in a news article can be.

c. Official Texts of Laws & Government Works: No copyright subsists in:

Acts of Parliament/State Legislatures, Judicial decisions, judgments, orders, or notifications issued by government authorities. These are considered public documents.

d. Works in Public Domain: Works whose copyright term has expired automatically fall into the public domain. Anyone can use them without permission.

Example: Works of Rabindranath Tagore (where copyright has expired) are now free for use.

e. Titles, Names, Short Phrases & Slogans: A single word, title of a book, brand name, or short slogan is not protected by copyright (though they may be protected under trademark law).

f. Government Reports and Policies: Official government reports, press releases, and policy documents released for public use are not protected.

g. Works Contrary to Public Policy / Morality: Works that are obscene, defamatory, seditious, or unlawful are not entitled to copyright protection.

h. Useful Objects / Functional Designs: Copyright does not cover useful objects, industrial designs, or methods of construction (these may be protected under patent law or design law instead).

Example: A chair design for functional use is not copyrightable, but its artistic sketch may be.

4.1.13 Copyright Registration in India

Securing copyright registration involves a systematic process that includes the following key steps:

a. Access the official website

Visit the Official website of the Copyright Office. Log in with your valid User ID and Password. If you still need to register, click on “New User Registration”. Make sure to note down your User ID and Password for future reference.

b. Submission of Application

An application containing all the necessary particulars and a statement of the particulars must be prepared in the prescribed format (FORM XIV).

c. Dairy Number Issuance

Upon receiving the application, the registrar will issue a Dairy Number, marking the initiation of the copyright registration process. Subsequently, there is a mandatory 30-day waiting period for any potential objections to be submitted.

d. Copy Right Objection Handling

If no objections are raised within 30 days, a scrutinizer will assess the application for any discrepancies. If no differences are found, the registration will proceed, and an extract will be provided to the registrar for entry into the Register of Copyright.

e. Objection Resolution

If objections are received, both parties will receive a notification from the examiner outlining the objections. A hearing will be arranged to address these objections.

f. Application Scrutiny

Following the hearing and the resolution of objections, the scrutinizer will meticulously review the application if applicable. Subsequently, they will either approve or reject the application, depending on the specific circumstances.

g. Copyright Registration Certificate

Once the application is approved, the relevant authority will issue the copyright registration certificate. In the usual course of events, the entire process typically takes approximately 2 to 3 months to complete.

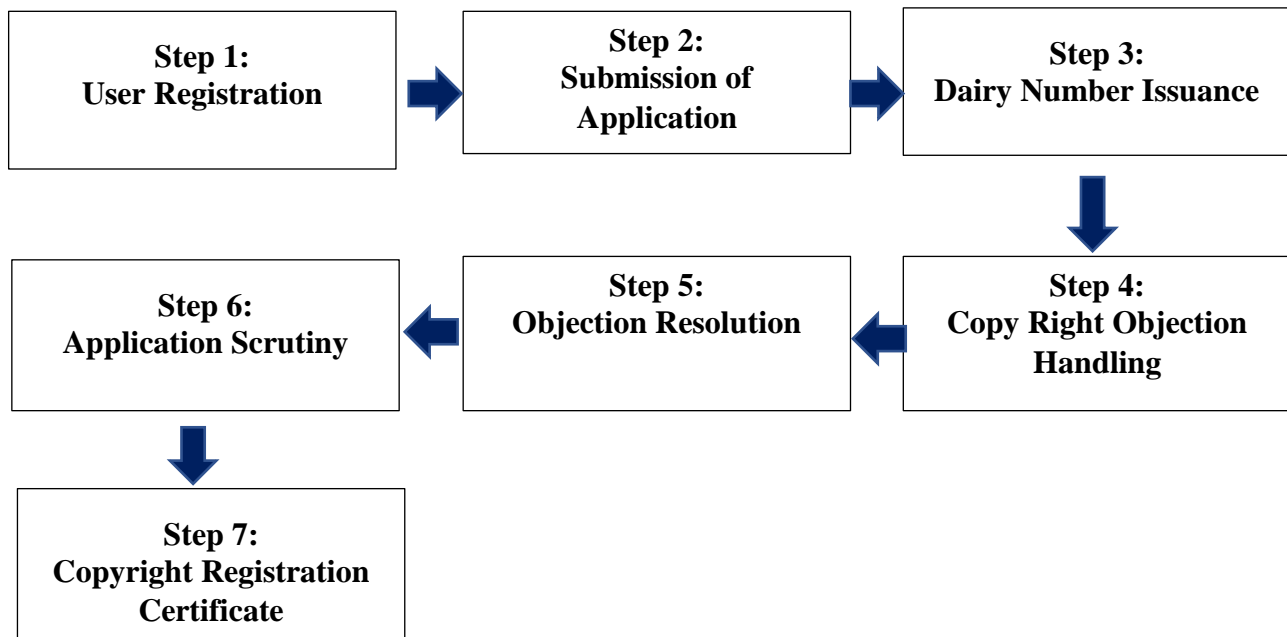


Figure. Workflow of Copyright Registration

4.1.14 Copyright Cases

A. R.G. Anand vs. Deluxe Films (1978):

Case Summary: A playwright (R.G. Anand) wrote a play called Hum Hindustani. Later, Deluxe Films released a movie New Delhi, which Anand claimed was copied from his play.

Court's Decision: The Supreme Court ruled that ideas cannot be copyrighted, only the expression of ideas can. Since the film was only inspired by the idea but had a different treatment, there was no infringement.

Key Takeaway: Copyright protects expression, not ideas.

B. Eastern Book Company vs. D.B. Modak (2008):

Case Summary: Eastern Book Company (EBC) published the Supreme Court Cases (SCC) law reports, which contained judgments of the Supreme Court along with editorial notes, formatting, and headnotes. They sued D.B. Modak for copying.

Court's Decision: Judgments themselves (being government works) are not copyrightable, but the editorial work, headnotes, and formatting done by EBC involved skill and judgment, so they were protected.

Key Takeaway: Copyright exists in original compilations and editorial work, but not in raw government judgments.

C. Super Cassettes Industries Ltd. vs. Myspace Inc. (2011)

Case Summary: Super Cassettes (owner of T-Series music rights) sued Myspace, alleging users uploaded copyrighted songs/videos without permission.

Court's Decision: The Delhi High Court initially held Myspace liable for copyright infringement, but later recognized the importance of “safe harbour protection” for internet intermediaries under the IT Act.

Key Takeaway: Online platforms are not directly liable for user-uploaded content if they act responsibly to remove infringing material.

D. University of Oxford vs. Rameshwari Photocopy Services (2016)

Case Summary: Oxford, Cambridge, and other publishers sued a Delhi University-affiliated photocopy shop for photocopying books and selling compilations to students.

Court's Decision: The Delhi High Court ruled in favor of the photocopy shop, holding that making course packs for educational purposes amounts to “fair dealing” under the Copyright Act.

Key Takeaway: Education and research get special protection under copyright law in India.

4.2 Trademark

4.2.1 Introduction

A trade mark (popularly known as brand name in layman's language) is a visual symbol which may be a word to indicate the source of the goods, a signature, name, device, label, numerals, or combination of colours used, or services, or other articles of commerce to distinguish it from other similar goods or services originating from another. It is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise.

A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it or to authorize another to use the same in return for payment. The period of protection varies, but a trade mark can be renewed indefinitely beyond the time limit on payment of additional fees. Trade mark protection is enforced by the courts, which in most systems have the authority to block trade mark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trade marks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

4.2.2 Eligibility Criteria

For goods/services to be legally classified as Trademark, they need to pass the following conditions:

i. Distinctiveness - The goods and services for which the protection is sought should possess enough uniqueness to identify it as a Trademark. It must be capable of identifying the source of goods or services in the target market.

ii. Descriptiveness - The Trademark should not be describing the description of the concerned goods or services. Descriptive marks are unlikely to be protected under Trademark law.

However, descriptive words may be registered if they acquire — secondary meaning, such as the brand name ‘Apple’ is used by a USA based multinational company that manufactures electronic gadgets.

iii. No Similarity to the prior marks - The mark should be unique and should not be having similarity to the existing marks.

4.2.3 The Trade Marks Act 1999

The salient features of the Trade Marks Act, 1999 includes

- (a) Providing for registration of trade mark for services, in addition to goods.
- (b) Amplification of definition of trade mark to include registration of shape of goods, packaging and combination of colours.
- (c) All 42-international classification of goods and services (as earlier used) now applicable to India as well.
- (d) Recognition of the concept of "well-known trademarks".
- (e) Increasing the period of registration and renewal of trade marks from 7 to 10 years, to bring it in conformity with the accepted international practice.
- (f) Widening the scope of infringement of trade marks. For instance, use of a registered trade mark as trade name or as a part of a trade name or use of a mark which is identical or deceptively similar to a registered trade mark.
- (g) Creation of an "Intellectual property Appellate Board" for hearing appeals against orders and decisions of the Registrar of Trade Marks for speedy disposal of cases and rectification applications which hitherto lie before High Courts.
- (h) Criminal remedies in case of falsification of trade marks.
- (i) Recognition of use of trade mark by even an unregistered licensee.
- (j) Expeditious examination of a trade mark application on payment of five times the application fee.

4.2.4 Classification of Trade Marks

Trademarks are classified based on their nature, purpose, and distinctiveness. This helps in determining protection, registration, and enforcement under the Trade Marks Act, 1999.

1. Product Marks:

Applied to goods or products to identify their source.
Example: Amul (for dairy products).

2. Service Marks:

Used to represent services instead of goods.
Example: Airtel (telecommunication services).

3. Collective Marks

Owned by an association or group to distinguish members' goods/services from others.
Example: CA logo (Institute of Chartered Accountants of India).

4. Certification Marks:

Indicate that the product/service meets standards of quality, origin, or material certified by an authority.
Example: ISI mark, Agmark.

5. Well-Known Trademarks

Widely recognized by the public and enjoy strong protection even if not registered in a specific class.
Example: Coca-Cola, Google.

6. Shape Marks

Protect the 3D shape of goods or packaging if distinctive.

Example: Coca-Cola bottle shape.

7. Sound Marks

Trademarks in the form of a unique sound or tune.

Example: Nokia tune.

8. Color and Pattern Marks

A specific combination of colors or patterns associated with a brand.

Example: Cadbury purple.

The classification of trademarks ensures systematic protection of different types of intellectual property, safeguarding both businesses and consumers. It also facilitates the process of registration and enforcement under Indian and international trademark systems.

4.2.5 Trade Mark Rules 2017

The Trade Mark Rules, 2017 have been notified and have come into effect from March 6, 2017. These Rules, which replace the erstwhile Trade Mark Rules 2002, will streamline and simplify the processing of Trade Mark applications.

Key Features:

- i. **Simplification of Process** – The number of trademark forms was reduced from **74 to 8**, making the filing process easier.
- ii. **Online Filing Encouraged** – Lower fees for e-filing compared to physical filing to promote digital transactions.
- iii. **Fee Structure** –
 - a. Higher fees for corporates, firms, and companies.
 - b. **50% concession** for start-ups, individuals, and small enterprises.
- iv. **Sound Marks & Non-Traditional Marks** – Provision made to register **sound marks** (e.g., musical notes, jingles) through MP3 files.
- v. **Expedited Processing** – Applicants can request **fast-track examination** on payment of higher fees.
- vi. **E-communication** – All communications from the Trademark Office are sent electronically, reducing delays.
- vii. **Recognition of Well-Known Marks** – A clear procedure was introduced to apply for recognition of a trademark as a “**well-known mark**.”
- viii. **Hearings via Video Conferencing** – Provision to conduct hearings through video conferencing for convenience and transparency.

The Trade Mark Rules 2017 aim to make trademark registration in India simpler, faster, more transparent, and startup-friendly, while also aligning with modern business practices like digital filing and protection of non-traditional marks.

4.2.6 Types of Trade Marks Registered in India

Trademark can be a word that must be able to speak, spell and remember. It is highly recommended that one should choose the Trademark like invented word, created words, and unique geographical name. One should refrain from Trademarks like common geographical name, common personal name and the praising words which describe the quality of goods, such as best, perfect, super, etc. To ensure all these characteristics in a Trademark, it is suggested to conduct a market survey to ensure if a similar mark is used in the market.

Following are some examples of the registerable Trademarks:

- Any name including personal or surname of the applicant or predecessor in business or the signature of the person e.g. the Trademark 'BAJAJ' is named after industrialist Mr. Jamnalal Bajaj.
- A word having no relevance to the product/services e.g. Trademark 'INDIA GATE' is being used for food grains and allied products.
- Letters or numerals or any combination thereof e.g. 'YAHOO' is the abbreviation of the phrase 'Yet Another Hierarchical Official Oracle'. It has now become a worldwide famous Trademark.

Table. Some of the famous examples of Trademarks.

S. No.	Type of the Mark	Mark	Company/Firm
1.	Distinctive General Word	'Apple'	IT Company
2.	Fanciful Designation	'Kodak'	Photograph Film
3.	Distinctive Personal Names	'Ford'	Automotive
4.	Device	'Udhaar'	Financial Technology
5.	Number	'4711'	Perfume
6.	Picture	Allegator	Knitwear Manufacturing
7.	Slogan	Drink it to believe it	Soft Drinks

4.2.7 Advantages of Trade Mark Registration

Trademark registration in India provides legal, commercial, and financial advantages, ensuring strong brand identity and protection.

- i. **Legal Protection** – Provides the owner with exclusive rights to use the mark and protection against unauthorized use or infringement.
- ii. **Exclusive Rights** – The registered owner can use the mark for the goods/services under the relevant class across India.
- iii. **Brand Recognition & Goodwill** – Helps in creating a unique identity in the market and builds consumer trust.
- iv. **Business Expansion** – A registered trademark allows easy licensing, franchising, or transfer of rights, enabling business growth.
- v. **Deterrent to Competitors** – Prevents others from using a similar mark, thus avoiding market confusion.
- vi. **Legal Evidence in Court** – Serves as prima facie evidence of ownership in case of disputes or infringement suits.

- vii. **Intangible Asset** – A trademark becomes a valuable asset for the company, adding to its overall worth.
- viii. **Global Registration Advantage** – A registered trademark in India can be used as a basis for registering in foreign countries under international treaties.
- ix. **Perpetual Protection** – Registration is valid for **10 years** and can be renewed indefinitely, ensuring long-term security.
- x. **Customer Loyalty** – A unique and protected mark helps attract and retain customers by signifying quality and reliability.

4.2.8 Procedure of Registration of Trade Mark in India

The process of trademark registration in India involves several stages. Here is a brief overview of the typical process:

a. Trademark Search: Conduct a thorough search to ensure that your proposed trademark is unique and not already registered or being used by others in a similar or related class of goods / services. This will help you assess potential conflicts and objections during the Trademark Registration process. For this, you need to determine the appropriate class or classes of goods or services for registering your Trademark, based on the Nice Classification system. The Nice Classification system categorizes goods and services into 45 classes, with each class representing a distinct category.

b. Application Filing: Prepare and file the trademark application with the Office of the Controller General of Patents, Designs and Trademarks (CGPDTM) in India. The application should include the necessary details, such as the applicant's name, address, trademark representation, and a list of goods or services for which the mark will be used.

c. Objection / Acceptance by the Trademark Examiner: Once the application is filed, the trademark office examines it to assess compliance with legal requirements. They review factors such as distinctiveness, similarity to existing trademarks, and adherence to trademark laws. If any objections or discrepancies are found, the applicant may need to address them and provide suitable responses within 30 days of receiving the objection. If the replies are satisfactory, the examiner will proceed to the next stage.

d. Journal Publication: If the trademark application passes the examination stage, it is published in the Trademarks Journal. This publication allows third parties to oppose the registration within a specified period of four months. If no opposition is raised, the application proceeds further to the last stage.

e. Opposition: However, if a third party raises opposition during the time the mark is published in the Trademark Journal, the applicant will have to file an appropriate reply and counterevidence to the opposing party. If the opposing party does not find the reply satisfactory, then the Department shall call a show cause hearing to resolve the issue.

f. Trademark Registration: Upon successful completion of the publication stage, the trademark registration is granted, and a Certificate of Registration is issued. The registration is valid for ten years from the date of application and can be renewed indefinitely by paying the trademark renewal fees at regular intervals.

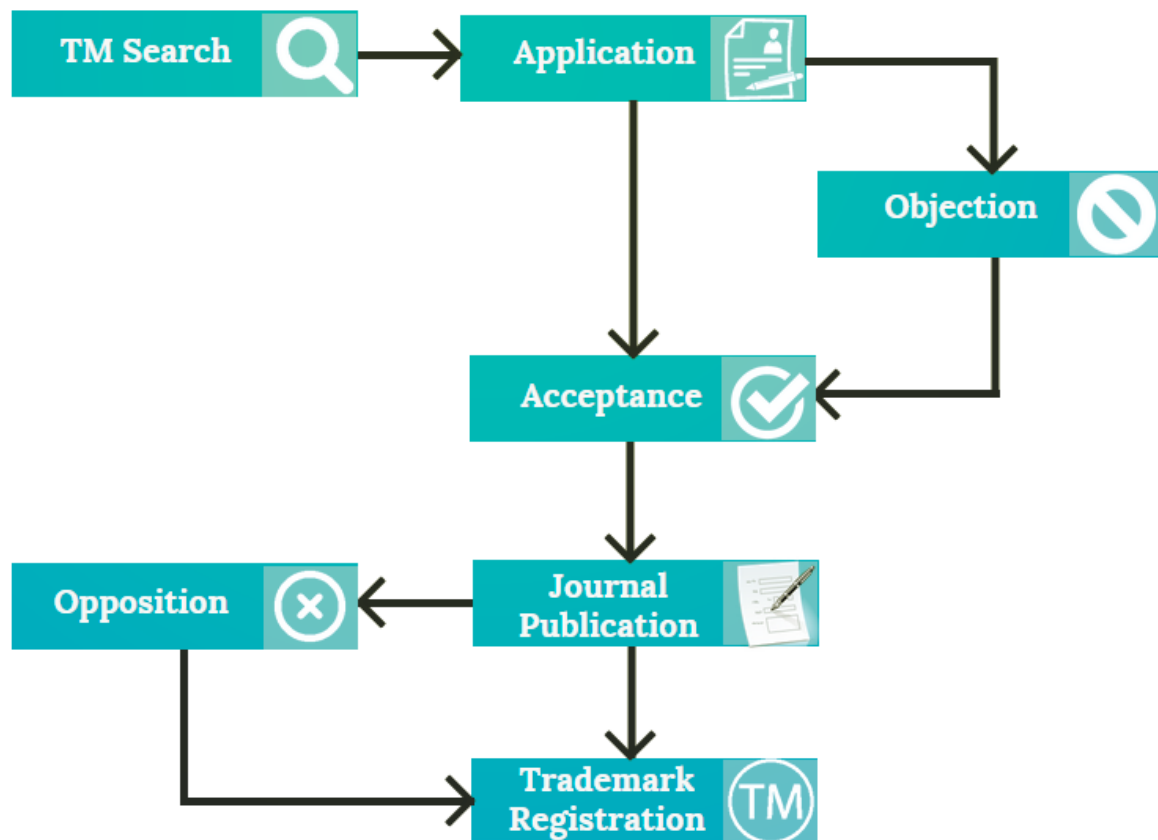


Fig 4.2 Procedure for Trade Marks Registration in India.

4.2.9 Trade Marks – Famous Case Examples

a. Yahoo! Inc. v. Akash Arora & Anr. (1999)

- First major case involving **domain names** in India.
- Court held that domain names function like trademarks → protection granted to Yahoo! against “yahooindia.com”.

b. T.V. Venugopal v. Ushodaya Enterprises Ltd. (2011)

- “Eenadu” newspaper had strong goodwill. Another party used Eenadu for incense sticks.
- Court ruled in favor of Eenadu; goodwill and reputation extend beyond the original business.

c. Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (2001)

- Dispute over trademarks Falcitab and Falcigo, both used for malaria medicines.
- Supreme Court ruled in favor of strict protection in pharmaceutical trademarks, as confusion could endanger public health.

d. Honda Motors Co. Ltd. v. Charanjit Singh (2003)

- Defendant used the mark **Honda** for pressure cookers.
- Delhi High Court ruled in favor of Honda, holding that use of a famous mark, even in unrelated goods, amounts to **passing off**.

Short Answer Type Questions

1. List the FOUR salient features of the Indian Copyright Act 1957.
2. Briefly explain the term “copyright”.
3. How an author has been defined under the Copyright Act?
4. List FOUR acts that are regarded as an infringement of Copyrights.
5. List the criteria for Copyright.
6. What is the distinction between trade mark and certification mark?
7. Explain the term ‘Well-known trade mark’.
8. Give any 4 famous examples of Trade Marks.
9. List the eligibility criteria for Trade Marks.
10. Give the classification of Trade Marks.

Descriptive type Questions

1. What is Copyright? Explain the classes of works for which copyright protection is available in India.
2. How an author has been defined under the Copyright Act 1957? Explain types of rights given to the Author.
3. Briefly explain the salient features of the Indian Copyright Act 1957.
4. Briefly describe the systematic process for copyright registration in India with a flow chart.
5. List any 5 works NOT under the jurisdiction of Copyrights with one example for each.
6. Enumerate the key features of the Trade Marks Rule, 2017.
7. Give the detailed classification of Trade Marks with example for each.
8. Explain the advantages of Trade Mark registration in India.
9. With a neat flowchart, explain the procedure of registration of Trade Mark in India.
10. Discuss any 4 case examples related to Trade Mark in India.

Discussion type Questions

1. A YouTuber uses background music without permission in their videos. Apply the criteria of copyright to determine whether this constitutes infringement.
2. Analyse a real-life copyright case (e.g., Eastern Book Company v. D.B. Modak) and explain how the court interpreted originality.
3. Evaluate whether the current copyright law in India adequately addresses digital content such as memes, OTT content, and AI-generated works.
4. Assume you are tasked with designing an awareness campaign for engineering students on “Avoiding Copyright Infringement in Academic Work.” Outline the key elements of your campaign.
5. A start-up wants to register a unique sound as its brand identity. Apply the eligibility criteria and process of trademark registration to explain how they can protect it.
6. The Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. case dealt with confusion in pharmaceutical trademarks. Analyse why stricter rules apply to healthcare-related marks.
7. Evaluate the advantages and limitations of registering a trademark in India compared to relying only on common law rights (passing off).
8. Assume you are a consultant for a new engineering start-up. Create a step-by-step strategy for selecting, protecting, and enforcing a trademark that aligns with Indian trademark laws.
