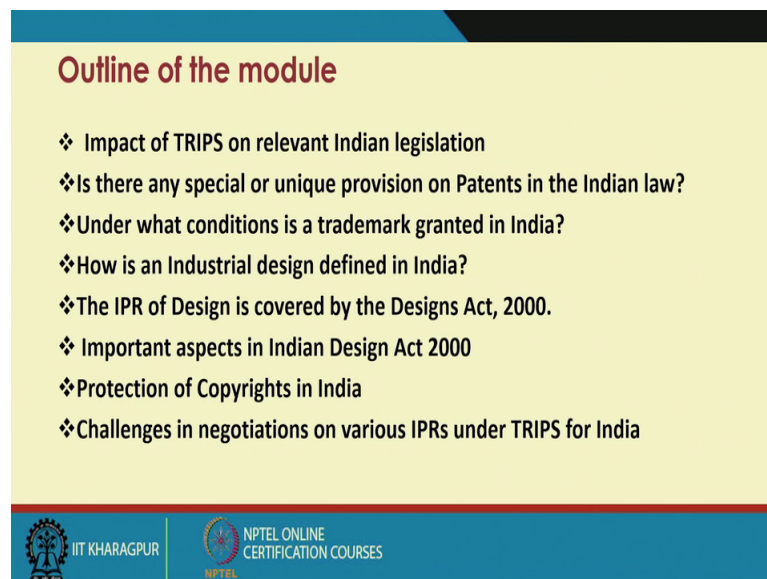


Ethics in Engineering Practice
Prof. Susmita Mukhopadhyay
Vinod Gupta School of Management
Indian Institute of Technology, Kharagpur

Lecture - 15
Trade related Intellectual Property Rights in India

Welcome back. In the last session, we have discussed about TRIPS. In general, in this particular session, we are going to discuss about the Indian obligations and the TRIPS. Because it is very important to know what is the relevant condition in India because in the last discussion we saw like though there is some general agreement, but how the execution takes place? It depends on the member countries and their rules and regulations with their respective legal system. So, we here in this module, we are going to discuss about the conditions with relevance to India.

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Outline of the module

- ❖ Impact of TRIPS on relevant Indian legislation
- ❖ Is there any special or unique provision on Patents in the Indian law?
- ❖ Under what conditions is a trademark granted in India?
- ❖ How is an Industrial design defined in India?
- ❖ The IPR of Design is covered by the Designs Act, 2000.
- ❖ Important aspects in Indian Design Act 2000
- ❖ Protection of Copyrights in India
- ❖ Challenges in negotiations on various IPRs under TRIPS for India

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So, again the outline of this module will focus on impact of TRIPS on relevant Indian legislation. Is there in the special or unique provision on Patents in the Indian law? Under what conditions is a trademark granted in India? How is an Industrial design defined in India? The IPR of design is covered by the Design Act, 2000, important aspects in Indian Design Act 2000, protection of Copyrights in India and challenges in negotiations on various IPRs under TRIPS in India.

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Impact of TRIPS on relevant Indian legislation

In order to meet the requirements and comply with the international obligations, a number of domestic IPR laws were amended. The Indian Patent Act, 1970 was amended to conform to the requirements of TRIPS.

The first amendment to the Patent Act 1970 was effected through the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1st January, 1995.

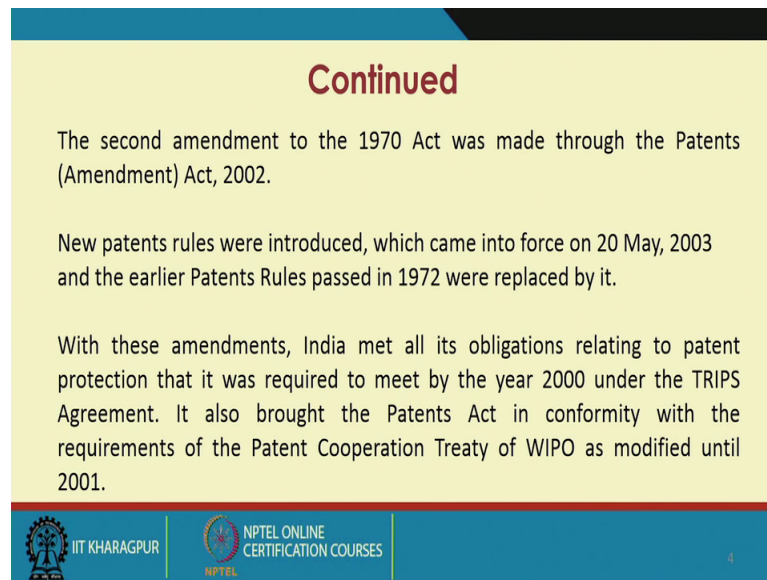
“It allowed for filing of patents in the areas of drugs, pharmaceuticals and agro chemicals even though such patents were not allowed”

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Now, we will start our discussion one by one. Now what is the impact of TRIPS on relevant Indian legislation? Here, we find in order to meet the requirements and comply with international obligations, a number of domestic IPR laws were amended. The Indian Patent Act, 1970 was amended to conform to the requirements of TRIPS.

The first amendment to the Patent Act, 1970 was effected through the Patents Amendment Acts, 1999 that was brought into force retrospectively from 1st January, 1995. It allowed for filing of patents in the areas of drugs, pharmaceuticals and agro chemicals even though such patents were not allowed.

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The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002.

New patents rules were introduced, which came into force on 20 May, 2003 and the earlier Patents Rules passed in 1972 were replaced by it.

With these amendments, India met all its obligations relating to patent protection that it was required to meet by the year 2000 under the TRIPS Agreement. It also brought the Patents Act in conformity with the requirements of the Patent Cooperation Treaty of WIPO as modified until 2001.

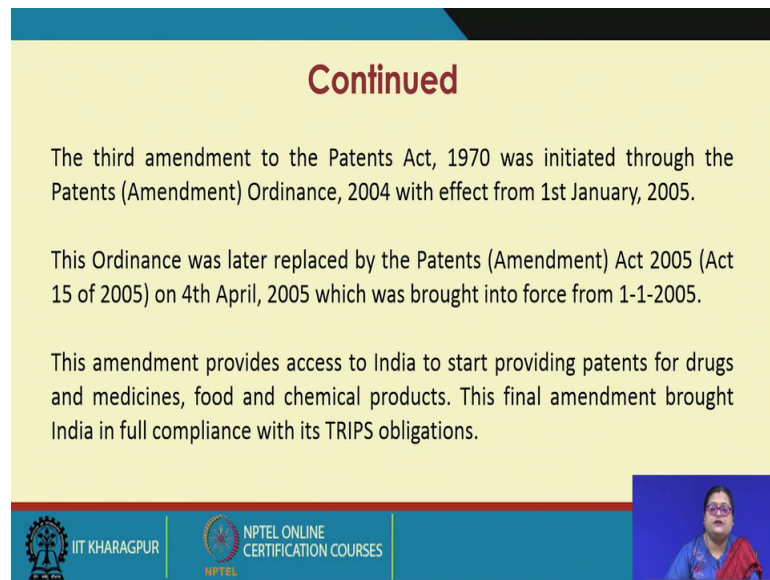
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So, originally these patents were not allowed, but after the amendments these patents were allowed keeping in line to with the TRIPS agreement.

The second amendment to the 1970 Act was made through the Patents Amendment Act of 2002. New patent rules were introduced which came into force on May 2003 and earlier patent rules passed in 1972 was replaced by it. With these amendments, India made all its obligations relating to protect patent protection that it was required to meet by the year 2000 under the TRIPS agreement.

It also brought the Patents Act in conformity with the requirements of the Patent Cooperation Treaty of WIPO as modified until 2001; so, how it got aligned with the TRIPS agreement and with the Patent Cooperation Treaty of WIPO, gradually by two different amendments.

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The third amendment to the Patents Act, 1970 was initiated through the Patents (Amendment) Ordinance, 2004 with effect from 1st January, 2005.

This Ordinance was later replaced by the Patents (Amendment) Act 2005 (Act 15 of 2005) on 4th April, 2005 which was brought into force from 1-1-2005.

This amendment provides access to India to start providing patents for drugs and medicines, food and chemical products. This final amendment brought India in full compliance with its TRIPS obligations.

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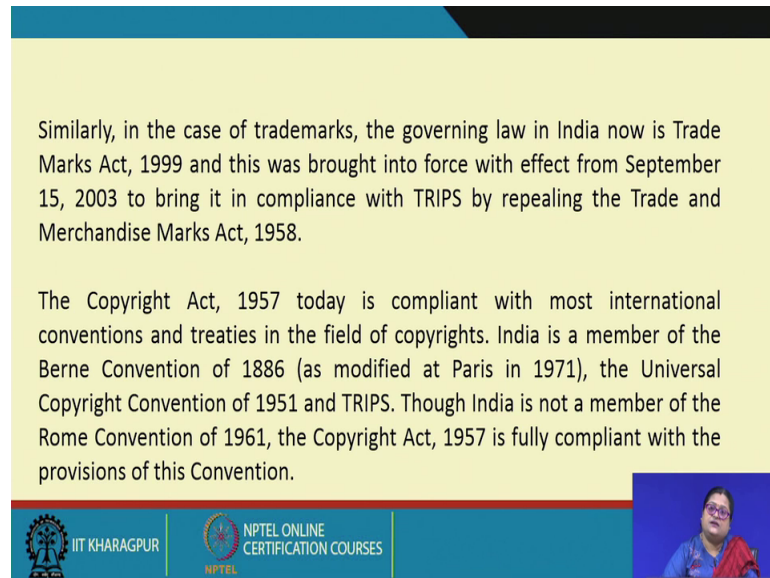


Again, there was a third amendment to the Patents Act in 1970 was initiated through the Patents Amendment Ordinance 2004 with effect from first January 2005, this ordinance was later replaced by the Patents Amendment Act 2005 act; 15 of 2005 on 4th April 2005 which was brought into force from 1st January 2005. So, what this gives? This amendment provides access to India to start providing patents for drugs and medicines, foods and chemical products.

This final amendment brought India in full compliance with the TRIPS and its obligations. So, what we see for India initially the patents were plants and some foods and medicines were not allowed, but because TRIPS provided, it slowly by step by step with amendment, it brought in these provisions, This amendment provides access to India to start providing patents for drugs and medicines, foods and chemical products.

This final amendment brought India in full compliance with the TRIPS obligation. So, what we see through this process, India got slowly aligned with the TRIPS requirement through three different amendments. Initially though patents for some medicines for some foods and plants were not allowed, but then gradually to get aligned with TRIPS requirement, these provisions were brought in through the different amendments and finally, after the third amendment, it got totally aligned with the TRIPS obligations.

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Similarly, in the case of trademarks, the governing law in India now is Trade Marks Act, 1999 and this was brought into force with effect from September 15, 2003 to bring it in compliance with TRIPS by repealing the Trade and Merchandise Marks Act, 1958.

The Copyright Act, 1957 today is compliant with most international conventions and treaties in the field of copyrights. India is a member of the Berne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951 and TRIPS. Though India is not a member of the Rome Convention of 1961, the Copyright Act, 1957 is fully compliant with the provisions of this Convention.

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Similarly, in the case of trademarks, the governing law in India now is Trade Marks Act 1999 and this was brought into force with effect from September 15, 2003 to bring it in compliance with TRIPS by repealing the trade and Merchandise Marks Act in 1958.

The Copyright Act, 1957; today is compliant with the most international convention and treaties in the fields of copyrights India is a member of the Berne Convention of 1986 as modified in Paris in 1971, the Universal Copyright Convention of 1951 and TRIPS; though India is not a member of the Rome Convention of 1961, the Copyright Act 1957 with is fully compliant with the provisions of these conventions.


In subsequent discussions, we will have details about these complain like conventions and what are these all about. And we in the last discussion if you remember, we have discussed about like the if the members from other countries are coming, then they are treated as natural and legal entities and based on the eligibility criteria of IPR as discussed under different conventions like Rome Conventions and Berne Conventions and this; we will discuss in details about these conventions in subsequent discussions.

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Two new treaties, collectively termed as Internet Treaties, were negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO). These treaties are the 'WIPO Copyrights Treaty (WCT)' and the 'WIPO Performances and Phonograms Treaty (WPPT)'.

These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the Internet and digital era. India is not a member of these treaties.



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Two new treaties, collectively termed as internet treaties were negotiated in 1996 under the auspices of the World Intellectual Property Organization, these treaties are WIPO copyright treaty; WCT and the WIPO performances and phonograms TTW PPT. these treaties were negotiated essentially to provide for protection of the rights of copyright holders performers and producers of phonograms in the internet and digital area era. India is not a member of these treaties is there.

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Is there any special or unique provision on Patents in the Indian law?

Patent act has a set of exceptions mentioned in Section 3 by which certain things cannot be protected by the law.

One unique provision is clause d mentioned in Section 3.


“This provision prevents patenting of minor improvements in chemical and pharmaceutical entities unless the invention results in the enhancement of known efficacy of that substance”



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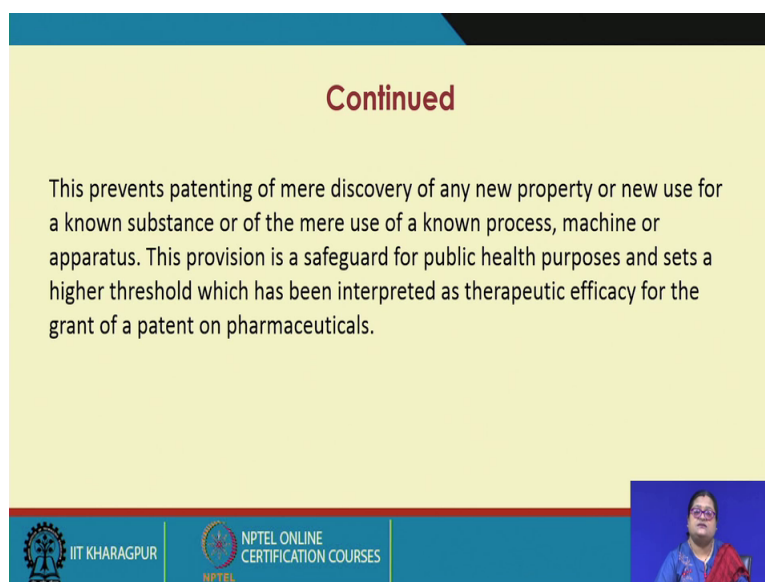


Now we are going to discuss about the Indian specific situation, is there any special or unique provision on patents in the Indian law? What we see patent act has a set of exceptions mentioned in section 3 by which certain things cannot be protected by the law; what unique provision is clause d mentioned in the section 3. This provision prevents patenting of minor improvements in chemical and pharmaceutical entities unless the invention results in the enhancement of known efficacy of that substance.

So, this is a very important step. So, that research can progress if we are going to patent each and every step of how like the improvements and more. So, in case of chemical and pharmaceutical entities and you are not going to share this information with others based on like it will tell to the intellectual property, then knowledge sharing cannot happen. We cannot progress and others cannot start the research or experimentation like how to improve on that.

So, to safeguard for that; this is a very important provision which tells these provision prevents patenting of minor improvements in chemical and pharmaceutical entities unless the invention results in the enhancement of known efficacy of that substance.


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This prevents patenting of 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. This provision is a safeguard for public health purposes and sets a higher threshold which has been interpreted as therapeutic efficacy for the grant of a patent on pharmaceuticals.

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This prevents patenting of 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. This provision as I have already discussed is the safeguard for health public health purposes and saves a

higher threshold which has been interpreted as therapeutic efficacy for the grant of a patent on pharmaceuticals.

So, it is very very important aspect from the angle of public health because if you going to safeguard every part of your knowledge and if you are not going to share with others if you are going to restrict others on experimenting on it, then public health in general may suffered. So, to protect for that to safeguard for public health this is a very very important provision given.

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Who provides Patents in India?

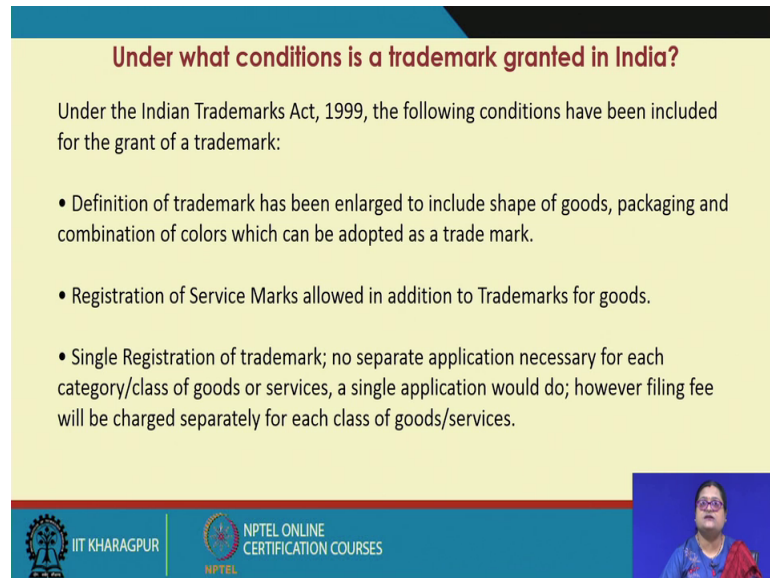
In India, the Controller General of Patents, Designs and Trademarks is responsible for the administration of the Patents Act, 1970 through the Patent Offices located at Kolkata, Mumbai, Delhi and Chennai.

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We will discuss who provides patents in India. In India the Controller General of Patents to Designs and Trademarks is responsible for the administration of patents act 1970, through the patent offices located at Kolkata, Mumbai, Delhi and Chennai. So, the controller general of patents; so, through these 4 nodal locations are responsible for the administration of the patents act 1970.

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Under what conditions is a trademark granted in India?

Under the Indian Trademarks Act, 1999, the following conditions have been included for the grant of a trademark:

- Definition of trademark has been enlarged to include shape of goods, packaging and combination of colors which can be adopted as a trade mark.
- Registration of Service Marks allowed in addition to Trademarks for goods.
- Single Registration of trademark; no separate application necessary for each category/class of goods or services, a single application would do; however filing fee will be charged separately for each class of goods/services.

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Next, we will discuss under what conditions is the trademark granted in India under that; Indian trades marks act of 1999. The following conditions have been included for the grant of a trademark: definition of a trademark has been enlarged to include shape of goods packaging in combination of colors which can be adopted as a trademark. Registration of service marks allowed in addition to trademarks for goods. Single registration of trademarks, no separate application is necessary for each category or class of goods or services, a single application would do. So, we understand.

So, there is less hassle of paperwork or providing relevant documents; however, filing fee will be charged separately for each class of goods or services.

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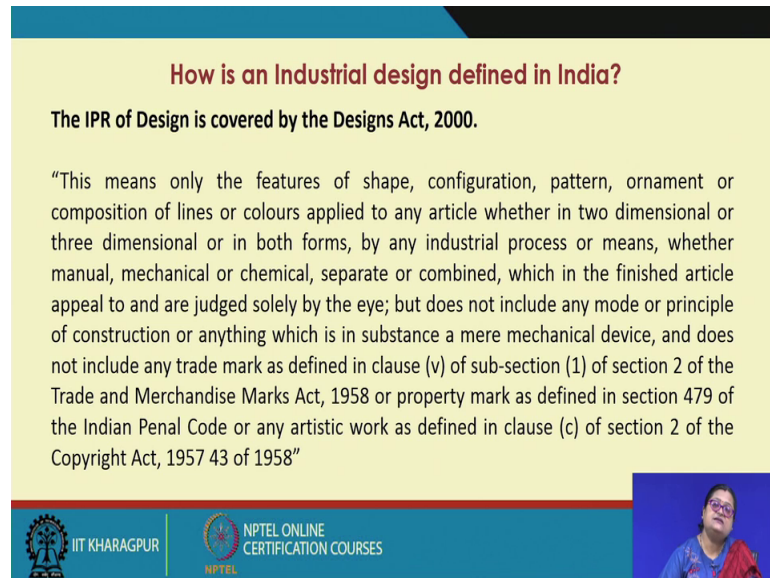
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- Enhanced punishment for the offences relating to trademark on par with the Copyright Act, 1957 to prevent the sale of spurious goods.
- Term of registration of trademark is ten years, subject to renewal thereafter.
- Registration of Collective Marks owned by associations allowed.
- Some offences relating to trademark made cognizable.
- Extension of application of convention countries in India

So, next we are going to see like there is an enhanced punishment for the offenses relating to trademark on par with the Copyright Act 1957 to prevent the sale of spurious goods terms of registration of trademark is 10 years subject to renewal. Thereafter, registration of collective marks owned by associations is allowed some offenses relating to trademark made cognizable extension of the application of convention countries in India.

So, it is very important like when like trademark its gets copied or offenses are happening. So, there is a punishment relevant punishment for that also and this helps in stopping the sale of spurious goods.

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How is an Industrial design defined in India?

The IPR of Design is covered by the Designs Act, 2000.

“This 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 does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957 43 of 1958”

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Next we will discuss about how an industrial design is defined in India the IPR of design is covered by the Designs Act, 2000? This means only the features of shape configuration pattern ornamental composition of lines and colors 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 is in the finished article appeal to and judged solely by the eyes.

But does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trademark as defined in the clause 5 of subsection one of section 2 of the Trade and Merchandise Marks Act 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause c of section 2 of the Copyright Acts 1957 43 of 1958.

So, what we find it gives an extensive coverage of what is design and we find like it is a form of any shape configuration pattern ornament composition lines applied to any article whether two dimensional three dimensional or in both forms and which can be produced either manually or mechanically or chemical or separate or it is combined and the and the finished article and it is judged solely by the eye, but does not include any mode or principle of construction and does not include any trademark as defined in the clause. So, it is something which is not included and there are certain things which are not included as mentioned in the details.

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- identification of non-registerable designs
- introducing a classification system (Locarno classification)
- elimination of secrecy period of two years for a registered design
- provision of public inspection after notification
- introduction of rights of registered proprietor of design

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So, identification of non-registerable designs introducing a classification system, elimination of secrecy period of two years for a registered design provision of public inspection after notification introduction of rights of registered proprietor of design. So, if you have a design which is of aesthetic nature; so, which is so, so you can go for the protection of this under the Designs Act 1000.

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- initial term of protection is 10 years followed by another 5 years on request
- provision of restoration of lapsed design.

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So, the initial term of protection is for 10 years which is followed by another five years in request and provision of restoration of the lapsed design. So, that it becomes; so, like

artistic because it has its artistic value. So, it can be referred to. So, provision for the restoration of that lapse design is also there.

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Protection of Copyrights in India

The Indian Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses.

Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such. In India, the duration of copyright for authors is life of the author plus 60 years after his/her death and for cinematograph films and sound recordings 60 years from the year of production.

After the death of the owner, the rights pass on to his/her legal heirs.

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Next, we will go for discussion all the protection of copyrights, in India the Indian Copyright Act 1957 protects original literally dramatic musical and artistic works and cinematograph films and sound recordings from unauthorized uses unlike the case with patents copyright protects the expressions and not the ideas. So, in patent; it is an idea for in copyright, it is an expression forms.

There is no copyright protection for ideas procedures methods of operation or mathematical concepts as such in India the duration of copyright for authors is the life of authors plus 60 years after his or her death and for cinematograph films and sound recordings 60 years from the year of production after the death of the owner the right passes on to his or her legal heirs.

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Challenges in negotiations on various IPRs under TRIPS for India

There is current debate on patenting of life forms, whether access to medicines through Doha declaration has been achieved.

Other issues of concern are biodiversity and its link with sui generic systems of plant protection and technology transfer.

There is also debate on whether to extend enhanced protection for geographical indications beyond wines and spirits. Internet access and sharing of electronic files has questioned some of the established rules in copyright. On all these issues India needs to examine world trends and proactively develop informed policy interventions.

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Now, we will discuss about some of the challenges in negotiations and various IPRs under TRIPS for India, presently, there is some debate on the patenting of life forms whether access to medicines through Doha Declaration has been achieved other issues of concern are biodiversity. And it is linked with sui generic systems of plant protection and technology transfer, there is also debate on whether to extend enhanced protection for geographical indications beyond wines and spirits internet access and sharing of electronic files has questioned some of the established rules in copyright on all these issues India needs to examine world trends and proactively develop informed policy interventions.

So, in this discussion, we have focused on like what India has done in. So, that in conformity with the TRIPS; what are the provisions of Indian Patents Act, Copyrights Act, Designs Act and Trade Marks Act, we have also discussed some of the challenges which India presently is facing and where it needs to gear up. So, that it can make these challenges and we are brainstorming is required.

In the subsequent discussion, we will discuss about the different conventions and eligibility criteria. We can also discussed about the like we have discussed about the Locarno system of classification. So, in one of the discussions, we are going to discuss in details about this. So, that this remains as reference point with us which we can refer to why we are trying to look for the protection of our own IPR.

Now, why in engineering practice we are discussing about this because while we are looking for engineering designs and like processes of doing things; maybe we will be facing issues of patent like if you have an idea of developing a design.

So, where to go for look for patent? How do you do? If you are an engineering entrepreneur maybe you want to do something on your own, how to go for the trademark? Then what are the issues of copyright in it? How can you protect for your design? These will be comes in this will become important issues when you are going to maybe as an entrepreneurs. You are going to open up your own firm and you are going to look forward to your own inventions and designs and developing new products and services.

So, in that aspect; this is a very very important discussion to the like engineers engineering entrepreneurs maybe who are developing products and services and thinking of doing something on their own and want that like they like get the benefit of it also and also on other hand share it like with the society and public at large. So, that their work gets recognizable.

Thank you.