

LL.B. (Integrated) Semester VIII

Intellectual Property Law

UNIT : 1

Syllabus- Introduction to Design Law, Brief Introduction to related International Treaties and Conventions Definitions (S2), Registration of Designs and Procedure (ss 3-9, sl 6, s 21), Cancellation of Registration of Design (s19) Piracy of Registered Design (s22) and Remedies, Overlapping Between Designs Copyrights and Trademark.

Ques.1- What do you understand by design? How can a design be considered as an intellectual property capable of granting protection?

Ans.1- The term 'design' does not include any procedures such as mode of construction of an article. Earlier this Act was governed by **Design Act, 1911**. So as to bring the Design Act at par with International Law enactment of the new act came into being. Presently, design laws are maintained by the **Design Act, 2000**.

- Products which are artistically designed immediately attract the attention of customers.
- A design gives aesthetic sense and appearance to the product.
- When people go for selecting goods for their purchase may it be textile, electronic items, utensils, cosmetic items, jewellery etc.,
- They get attracted by the shape and designs of goods or its container.
- Therefore, to attract customers the manufacturers give much attention to the design of the products.
- The creative originality of a design needs legal protection against copying. Therefore, the law provides for registration of original design and prohibits its copy by others.

Intellectual property laws in India cover the rights related to trademarks, copyrights, patents, designs and geographical indications of goods. The basis of this Act was 'first to file, first to get' system which means that an innovator or owner of any design should file an application to register the same as soon as possible to prevent it from piracy and for claiming certain rights over that particular design.

Origin and development of design act in India -The origin of the Design Act in India traces back to the British period.

- The first Act that gave privileges and protection to designs was the **Patent and Designs Act, 1872**. This Act supplemented the Act of 1859 which was passed by the Governor-General of India to protect industrial designs and grant privileges to inventors.
- The **Inventions and Designs Act of 1888** repealed this Act of 1872.
- The Act of 1888 was a reflection of the Designs Act of the United Kingdom.
- In the year **1911**, the British government enacted a new law in the form of the **Patent and Designs Act** repealing all the prior legislations.
- In 1930, this Act was amended and the government came up with some changes in the process of registration of designs in which the concept of new and original design changed to the new or original design.
- This legislation used to govern the matters related to both patents as well as designs.
- In 1970, the Patent Act was enacted to deal with the matters of patent specifically. All the provisions regarding patents from this Act were repealed and it continued to deal with Industrial designs till 2000.
- India became a member state of the WTO in the year 1995. Consequently, the Patents and Designs Act of 1911 was repealed and a new act called the **Designs Act, 2000** was enacted in compliance with TRIPS (Trade-Related aspects of Intellectual Property Rights) to make design laws for the country.
- This new Act was enforced on **11th May 2001**.

Q.1(a)- Design is defined under which section of Design Act?

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Q.b- what do you mean by the term 'Design' under Design Act?

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Q.c- write brief history of Design law?

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Q.d- Discuss the significance of design for the product.

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Q.e- when Design Act, 2000 was enforced?

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Ques.2- Define Design. What are the international treaties and conventions providing protections to the design?

Ans.2- Section 2 (d) provides about the definition of Design- “Design” means features of shape, pattern, configuration, ornament or composition of colors or lines which is applied in three dimensional or two dimensional or in both the forms using any of the process whether manual, chemical, mechanical, separate or combined which in the finished article appeal to or judged wholly 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.

Novelty and originality-A design can be considered for registration only if they are unique. A combination of previously registered design can also be considered only if the combination produces new visuals. In case **Hello Mineral Water PVT. LTD. v. Thermoking California Pure**, a design of water dispenser having a cylindrical shape was not considered as new on the grounds that mere shape and form is not sufficient to prove novelty.

Design must be unique, a Prior publication is not acceptable-The design must not be a published one. If the design is already published than the design is not eligible for the publication. There should not be any tangible copy available already in the market if you are seeking registration of the design that is in digital format. Displaying of the design in any fashion show by the creator is the publication of that design. Secret and private use of the design does not amount to the publication and can be used for the experimental purpose.

Making application of design to an Article-The applicability of the design should be to the article itself. It can be informed of a three-dimensional figure. There are two-dimensional figures also included in this act i.e any painting or any graffiti on the walls or print on the bed-sheets.

The design must not be contrary to the order and morality- The design must be registrable under the Design Act, 2000. It must not be prohibited by the Government of India or any institution so authorized. The design must be capable of registering under Section 5 of this act. The design which can cause a breach of peace and may hurt the sentiments of the people may not be allowed to get register.

Designs Law under International Agreement Law of Designs has attracted less focus in comparison to copyright, Patent and trademarks. The main global efforts at protection of designs are under the following category-

Paris Convention

- Paris Convention contain provisions of design Protection in its Articles Section 2, 4(A), (1) and 4(C) (1). Article 2 talks of national treatment of industrial designs and prohibits member countries from imposing any conditions of domicile on nationals of other ay 6 EDs considered for national treatment.
- Article 4(A) (1) states ‘that any person who has duly filed application for the registration of an industrial design, shall enjoy a right of priority for a fixed period’.
- Article 4(c 1) 1xest is priority as six months for industrial designs.

Berne Convention

- Berne Convention which aimed at protecting literary and artistic work includes designs under the category of ‘works of applied art’.
- Article 2(7), gives freedom to member countries to ‘determine the extent of the application of their laws to works of applied art and industrial designs.
- The Berne convention, under Article 7(4) gives freedom to member countries to fix the period of protection, but such period should continue at least until the end of a period of twenty-five years from making of such work.

Hague Agreement

- Hague Agreement concerns with the Industrial Deposit of Industrial Designs.
- The object behind the Industrial deposit of Industrial design is ‘to enable protection to be obtained for one or more industrial design in a number of states’ through a single deposit filed with the international bureau of WIPO.’

TRIPs Agreement

- Article 25(1) provides guidelines for member countries that they shall provide for the "protection of independently created designs that are new or original.

Q.2(a)- Define 'Design' under Design Act?

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Q.b- what are the criteria for valid design under Design Act?

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Q.c- discuss the provisions for design under Paris Convention.

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Q.d- what is Hague Agreement.

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Q.e- discuss the provisions for design under TRIPS agreement.

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Ques.3- Discuss the provision relating to registration and cancellation of design under the Design act, 2000? What are the grounds of piracy of registered design under the design act?

Ans.3- Procedure for registration of design in India-

Chapter 2 of the Design Act deals with the registration of designs and the procedure to be followed for the same. The following steps must be followed:

- An application for the registration shall be made in the patent office in the prescribed form along with the prescribed fee. The class in which the design is to be registered must be specified in the application and the article(s) to which it is to be applied. There are separate applications which need to be filed for each class of article.
- The controller will give the application for examining it so as to check whether the design is capable of being registered or not. If everything seems perfect then the controller will accept the application and proceed further.
- If there is any objection, then the applicant or his agent will be asked to make necessary amendments so as to register the design and nullify the objection.
- If the objection does not get removed within three months after the hearing, the application will be withdrawn.

Prohibition of registration of certain designs (SECTION 4): A design which -

- is not new or original; or
- has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- is not significantly distinguishable from known designs or combination of known designs; or
- Comprises or contains scandalous or obscene matter shall not be registered.

Application for registration of designs

- The application for registration of designs is given under **Section 5** of the Design Act, 2000.
- The controller registers a design under this Act after verifying that the design of any person, claiming to be the proprietor, is the new or original design not previously published anywhere and is not against any public policy or morality. Provided that such a design should be capable of being registered under this Act.
- The applications under the Act shall be filed in the Patent Office in the prescribed manner along with the prescribed fee for filling the form.
- The design should be registered in a specific class and not in more than one class. In case of any doubt regarding the class in which the design should be registered, the Controller will decide the matter.
- The controller may even reject any design and not register it. In such a case, the person aggrieved may file an appeal before the High Court.
- If any application is not complete within the prescribed time limit owing to the fault of the applicant then it shall be abandoned.
- A design when registered shall be registered as of the date of the application for registration.
- A wide variety of items that can be registered under the Act include cutlery, dresses, etc.

Certificate of registration (Section 9)

- 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.

Register of designs (Section 10)

A book named 'Register of Designs' shall be kept at the Patent Office which contains all the details regarding the registered designs such as names, addresses of proprietors of registered designs, notifications and transmissions of designs and other important information. Such register must be maintained wholly or partly on computer diskettes or floppies as may be prescribed.

Cancellation of Registration of Design and piracy

- It is provided under **Section 19** of the design Act. According to this Section-
- Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:—
 - a) that the design has been previously registered in India; or
 - b) that it has been published in India or in any other country prior to the date of registration; or
 - c) that the design is not a new or original design; or
 - d) that the design is not registerable under this Act; or
 - e) that it is not a design as defined under clause (d) of section 2.
- An appeal shall lie from any order of the Controller under this section to the High Court.

Infringement of design

If there arises any question regarding the ascertainment of infringement then the Court will directly look for the design from the point of view of an average customer. In other words, the Court will consider whether there is any confusion which is obvious or some material facts in the minds of the customers regarding the two articles.

Industrial design infringement cases

In *Disney Enterprises Inc. v. Prime Housewares Ltd.*, the international registration of industrial designs became a matter of conflict in India. A Mumbai based company Prime Housewares used to manufacture characters like Mickey Mouse, Donald Duck, etc. a suit was filed by the Disney enterprises for the infringement of their international registered designs.

The court held that the plaintiff's trademark is protected but not the designs under the Indian law. An order was passed by the court for the infringement of the trademark of the enterprises. The Indian company was asked to deliver all the infringing material to the enterprises so that it could not be used further.

Piracy of registered design- It is provided under **section 22**

- During the existence of copyright in any design it shall not be lawful for any person—
 - a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
 - b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or
 - c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.
- If any person acts in contravention of this section, he shall be liable for every contravention—
 - a) to pay to the registered proprietor of the design a sum not exceeding **twenty- five thousand rupees** recoverable as a contract debt, or
 - b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly.

Q.3(a)- Write four steps to be followed for registration under Design Act?

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Q.b- Under which section prohibition of certain design is given, mention such grounds.

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Q.c- what is infringement of design.

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Q.d- Discuss the provisions related with the cancellation of design.

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Q.e- what do you mean by piracy of design?

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Ques.4- Discuss the Overlapping between Design, Copyright & Trademark.

Ans.4-

- An overlap issue is one where the holder of the Intellectual Property Right tries to assert his right under more than one concept.
- Software's are protected under both copyright laws and patent laws.
- Similarly, industrial design patents that could be protected under the Designs Act, in specific cases, garner protection under copyright and trademark as well.
- When issues arise due to overlapping of various types of Intellectual Property Rights the courts have majorly followed two approaches.
- Either the courts should let the parties enforce such rights and benefit from such overlap or
- It should limit the scope by forcing them to demand protection under just one of the doctrines.
- India enacted the Trademarks Act 1999 and the Trademarks Rules 2002 (effective 15 September 2003) to ensure adequate protection for domestic and international brand owners, in compliance with the TRIPs Agreement.
- Pursuant to the Trademarks Act, a trademark includes inter alia, the shape of goods, their packaging and color combinations.
- Thus the shape of a good can serve a source identifying function and therefore can be an enforceable trademark. Shape of a product can be both inherently distinctive and one with secondary meaning.
- A product or container shape may also be subject to a design. In 2000, Designs Act 2000 was passed (brought into force in May 2001) to meet the obligations under the TRIPs Agreement for industrial designs. Under Designs Act, 2000 a design means features of shape, configuration, pattern, ornament or composition of lines or colours applied to any „article“ whether in two or three dimensional forms (or both), by an industrial process or means which appeals to the eye.

Thus a design should fulfill the following conditions-

- It should be new and original, Distinct from the existing designs
- Not disclosed in public
- The purpose of design registration is to protect the novel designs devised from being applied to particular articles manufactured and marketed commercially.
- The right to manufacture an article, granted to the holder of the design, is an exclusive right bearing the same design for a limited period of time.

Differentiate between design, copyright, trademarks-

The dual protection or the issue of overlap between the design and copyright has been addressed in Section 15 of the Copyright Act. The section lays down that copyright is not going to subsist in a design that has been registered under the Designs Act, 2000. Therefore when a design is registered under the Designs Act, the person has to forego his rights under the Copyright Act.

The contention arises where if the design is not registered under the Designs Act, and the article is reproduced more than 50 times by any industrial process, then the copyright of the owner in the article's design ceases.

In **Whirlpool India vs Videocon Industries Pvt Ltd**, the 'test for design infringement' was established. It was held that for a suit to be successfully decided in the favour of the plaintiff in case of design infringement it needs to be decided by the eye alone. It means that the distinctive or the essential feature of the design should have been infringed or copied and this similarity has to be judged by the eye alone.

A suit against infringement of design is brought when the uniqueness or originality of the design is violated by an act of the infringer whereas a trademark infringement occurs when the infringer tries to benefit or make a profit from the goodwill and an established presence of the business.

Trademark and Copyright laws serve two different purposes in India. Copyright is for protecting the rights of authorship whereas trademark is to protect distinctive signs related to trade. Still, an overlap occurs between copyright and trademark.

In general, the conflict arises in the areas of logos, artistic signs, emblems, short sentences, use of fictional characters as commercial signs etc. Wherever such overlap occurs the people try to get a cumulative benefit under both the Copyright and the Trademark Act.

Therefore the difference under the two Acts is the essential function they perform.

- The Design Act essentially determines the novelty factor in the shape of a product or pattern or ornament applied to an article whereas shape of goods as trademark, applied to the product under the Trademarks Act, is to identify a particular trade origin in connection with specific goods and/or services.
- The Design Act prohibits a third-party from making, selling or using a product of the protected design.
- To infringe a design, the infringing container and the container shape shown as the design must look alike to the eye of the ordinary observer.
- It makes no difference what is inside of the container.
- Under trademark law, the infringing container must be such as to cause confusion, mistake, or deception among the consuming public.
- In addition, courts analyzing a trademark infringement action would also look at the buying habits of the consumers, and the sales methods used by each manufacturer.
- Thus, dual protection from both design and trademark laws may coexist.
- The issue of conflict in the overlap of protection does not arise, as the nature of "protection" given under the two laws is different.

Q.4(a)- What do you mean by overlapping in Intellectual Property Rights?

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Q.b- What provision is given under section 15 of copyright act?

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Q.c- what kinds of overlapping occurs in Trademark and copyright act?

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Q.d- what conditions must be fulfilled under design act?

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Q.e- write two difference between design and trademark act.

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LL.B. (Integrated) Semester VIII

Intellectual Property Law II

UNIT : 2

Syllabus: Unit 2- Law relating to Geographical Indications, Introduction meaning and salient features of Geographical Indication of Goods under the Law, Geographical Indication of Goods (Registration and Protection) Act, 1999, Procedure for Registration, Duration and Renewal, Right conferred by registration, Investment of Geographical Indication, Remedies, Offences and Penalties.

Ques.1- What is Geographic Indication explain in reference to GI Act of 1999?

Q.1(a)- What do you mean by Geographical Indication?

Ans.1- Geographical indications (G.I.) are one of the forms of IPR which identifies a good as originating in the respective territory of the country, or a region or locality in that particular territory, where a given quality, reputation or other characteristic related to good is essentially attributable to its geographical origin.

A geographical indication is given mainly to agricultural, natural, manufactured, handicraft arising from a certain geographical area.

Ques.1(b)- What are the functions of GI tag?

The relationship between objects and place becomes so well known that any reference to that place is reminiscent of goods originating there and vice versa. It performs three functions:

- First, they identify the goods as to the origin of a particular region or locality;
 - Secondly, they suggest to consumers that goods come from a region where a given quality, reputation, or other characteristics of the goods are essentially attributed to their geographic origin;
 - Third, they promote the goods of producers of a particular region. They suggest the consumer that the goods come from this area where a given quality, reputation or other characteristics of goods are essentially attributable to the geographic region.
- ❖ **Article 22** of the TRIPS Agreements define a geographical indication as “signs that originate in a member or identify a good location in an area or locality where a given quality, reputation, or speciality is assigned to its geographical location Is given Is essentially acceptable”..
- ❖ A registered geographic sign prohibits in any way the use of a geographical insignia which indicates in the designation or representation of goods that such goods originate in a geographic area. For example, Basmati rice and Darjeeling tea are examples of G.I. from India.
- ❖ The connection between the goods and place becomes so much recognized that any reference to the place reminds those specific goods being produced there and vice-versa. Some of the Examples of Indian geographical indications which are registered in India are: *Basmati rice, Darjeeling tea, Banaras Brocades and Sarees, Coorg orange, Phulkari, Kolhapuri chappals, Kangivaram sarees, Agra Petha* etc.

Q.1(c)- What are the benefits of geographical indications?

Benefits of geographical indications

- It prevents duplication of the tagged products so in another way it provides legal protection to Geographical Indications in India.
- This Tag is given to good quality products so it increases customer satisfaction.
- **The good** quality of the products opens the international door for the producers.
- Increases the revenue of the producers and employment in the region.

Ques.1(d)Who is producer under GI act?

Producer under GI Act

Section-2(k)- producer, in relation to goods, means any person who,--

(i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;

(ii) if such goods are natural goods, exploits the goods;

(iii) if such goods are handicraft or industrial goods, makes or manufactures the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods.

Authorised user of the GI tag- A producer of goods can apply for registration of GI Tag. If GI tag is issued to him then he/she is called the authorised user of the GI tag. No other individual/area can use this tag.

Q.1(e)- Who issues GI tags in India?

Who issues GI Tag in India?- GI tags are issued as per the Geographical Indications of Goods (Registration and Protection) Act, 1999. This tag is issued by the Geographical Indication Registry under the Department of Industry Promotion and Internal Trade, Ministry of Commerce and Industry.

EXERCISE-1

Q.1(a)- What do you mean by Geographical Indication?

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Q.b- What are the functions of GI tag?

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Q.c- What are the benefits of geographical indications?

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Q.d- Who is producer under GI act?

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Q.e- Who issues GI tags in India?

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Ques.2- What are the objectives and salient features of Geographical Indication act, 1999?

Q.2(a)- Write two objectives of Geographical Indication, Act 1999.

Ans.2- Objectives of the G.I. Act, 1999- The objectives of the G.I. Act 1999 is threefold,

1. It is to prohibit unauthorised persons from misusing geographical indications and to protect consumers from deception,
2. Particular law governing the geographical indication of goods in India which could well enough to cover the concern of yielders of such goods, and
3. To encourage and promote exports of the goods bearing India Geographical Indication.

Q.2(b)- Write five salient features of Geographical Indication act, 1999.

Features of G.I. Act, 1999

- Definitions and interpretations of various essential terms like “geographical indication”, “goods”, “producers”, “registered proprietor”, “authorized user” etc.

Q.2(c)- Section 5 and 6 of GI act provides for ?

- The Act provides for the establishment of a GI Registry under **section 5** and **6**. The government had notified a Geographical Indications Registry at the Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai. The registry has a pan-India Jurisdiction.
- The Act provides for maintenance of a Register of Geographical Indications in two parts. Part A is to contain all registered GIs and sand part B is to contain details of the registered authorized users.
- Under **section 11 (3)**, GI Act provides for registration of GI of goods that are divided into different classes with different fee prescribed for application.

Q.2(d)- Under which section prohibition of certain GI is given, also mention the grounds of prohibition.

- Under **section 9**, the GI Act prohibits registration of certain GIs. Among other things, registration of GIs containing scandalous or obscene matter, generic names, etc., are not registered.
- Prerequisites for framing of rules by Central Government for filing the application, its contents and materials relating to the substantive examination of geographical indication applications.
- The Act provides for conditional registration of proposed GI and imposes a compulsory advertising requirement. The objective is publication to invite objections post which the registration is accepted or cancelled. The same requirement is imposed for proposing changes to an already registered GI.
- The Act makes a distinction between producers of goods, registered proprietors of the GI and authorized users of GI. Producers may either register themselves as proprietors or authorized users. Both proprietors and users can initiate infringement action. The registration of GI and registrations as proprietor and authorized users is maintainable for the duration of ten years post which they can be renewed.
- The Act contains multiple provisions for the renewal, rectification and restoration of GI and its authorized use.
- Under **section 22 (2)**, the Central Government may notify certain goods for which it may prescribe a higher level of protection.
- The GI differs from other IPs on a very key factor. While other IP’s like trademarks, patents, copyright, etc., become the personal property or the company, inventor or author respectively, GI’s remain the property of the public belonging to the territory to which the GI is associated. Hence the GI Act, under **Section 24**, prohibits assignment, transmission, licensing, mortgage, etc., of the GI.
- Under **section 25**, the GI Act prohibits of registration of geographical indications as a trade Mark.
- The Act provides for various Provisions offences and penalties, effects of registration and the rights conferred by registration.
- Requirement describing the impacts of registration and the rights given by registration.
- **Section 85** provides for the principle of reciprocity. It also provides for power of registrar, maintenance of index, etc.
- **Section 10** provides for registration of homonymous GI. There are GIs with the same spelling and pronunciation but different meanings.

Ques.3- What is geographical indication? Discuss international arrangement related to Geographical Indication also mention duration and renewal of GI under the act.

Ans.3- A geographical indication (GI) is a sign that is used in relation to products or goods that possess specific qualities, characteristics or reputation, that is attributable to place of its geographical origin. Since the nature of the underlying product is dependent on the location of production, there is a strong correlation between the product and its geographical place of origin.

Ques.3(a)- Name three international arrangement related with GI.

History and International Arrangement

- The general standards of protection for Geographical Indication can be traced down to the **Paris Convention for protection of Industrial Property, 1883**, which includes in its wide connotation, protection to- patents, trademarks, industrial designs, utility models, trade names and service mark, in addition to geographical indications.
- These were followed by the **Madrid Agreement** for repression of False or Deceptive Indications of Source of Goods **1891**. This was followed by treaties and conventions which focused on the registration process for geographical indications. The Madrid Agreement concerning the International Registration of Marks signed in 1891.

Q.3(b)- What is Lisbon agreement?

- The **Lisbon Agreement** for the Protection of Appellations of Origins and their International Registration, **1958** and the Protocol Relating to the Madrid Agreement Concerning the international registration of marks, which came into being in 1989 have played important role in the development of a framework for the process of international registration of marks.

Q.3(c)- Which provisions under TRIPS deals with geographical Indication?

- However, the seeds for the development of laws on Geographical Indications in India were sown through the **Trade-Related Aspects of Intellectual Property Rights (TRIPS)** agreement which came into force on 1st January 1995. This agreement is considered to be the most comprehensive document on Intellectual Property Rights.
- Post coming into force of the TRIPS agreement the Parliament of India enacted the Geographical Indication of Goods (Registration and Protection) Act, 1999. This Act aimed at providing for the registration and better protection of geographical Indications of goods.

Q.3(d)- What is the duration of registration of GI?

Duration of Protection (Section 18)

- A Geographical Indication is registered for a period of **10 years** and the registration may be renewed from time to time for a period of 10 years at a time.

Q.3(e)- What is the provision for renewal of registration of GI?

Renewal

- At the time before the expiration of last registration of geographical indication, the Registrar shall send the notice to the registered proprietor or the authorized user as the case may be, about the date of expiration and the conditions as to payment of fees and upon renewal of which registration shall be obtained.
- Failure to do so may result in removal of geographical indication
- Rights conferred by Registration
- Under section 21 of the act, the authorised user and proprietor of the geographical indication is allowed certain rights in terms of the indication.
 - These include:
 1. An exclusive right to make use of the indication in relation to goods to which the indication has been obtained.
 2. In case of infringement, to seek relief in a manner provided in the act.
 - However, it needs to be remembered that these rights conferred by registration are not absolute and are subject to conditions which restrict the powers allowed to the user.

EXERCISE-3

Ques.3(a)- Name three international arrangement related with GI.

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Q.b- What is Lisbon agreement?

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Q.c- Which provisions under TRIPS deals with geographical Indication?

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Q.d- What is the duration of registration of GI?

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Q.e- What is the provision for renewal of registration of GI?

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Ques.4) Discuss the provision relating to registration of GI under the chapter II GI Act, 1999? (2014, 2016, 2017, 2018)

Ans.4(a)- Who can file for Geographical Indications?- An application for registration of the Geographical Indication can be made by an association of persons or producers or any organisations or authority established by or under any law for time being in force; who must be representing the interest of the producers of the concerned goods; and desirous of registering a geographical indication in relation to such goods.” (*Section 11(1)*)

Ques.4(b)- To whom application for registration is applied.

Whom to apply- The Application must be submitted to the Registrar under the Act, the Controller of Patents, Designs and Trademarks who are appointed under **sub-section (1) of Section 3** of the Trademarks Act 1999 shall be the Registrar of Geographical Indications. He shall be assisted by the respective number of the officers, who are appointed by the central government as they may think fit.

Whom to consider an authorized user- The authorized user is:

- The manufacturer of the goods can apply for registration as an authorized user.
- It must be in relation to a registered geographical indication.
- He should apply in writing with the prescribed fee.

Whom to consider as the registered proprietor of a geographical indication- The registered proprietors of Geographical Indications are:

- A person, manufacturer, organization or association established under law or legislation may be a registered owner.
- Their name must be entered in the Register of Geographical Indicators as there are registered owners for the Geographical Indication.

Ques.4(c)- Mention steps for registration process of GI.

Registration process of geographical indications

Step 1: Application filing

- Please check if the Indication falls within the definition of Section 2(1) (e) of the GI Act.
- The association of individuals or producers or any association or authority should represent the interest of the producers of the goods concerned and file an affidavit as to how the Applicant claims to represent their respective interests.

Ques.4(d)- What are the contents of application for registration of GI?

➤ **Contents of the application (Section 11 (2))-**

- Applications must be made in triplicate.
- The Application must be signed by the Applicant or his agent and must be accompanied by a description of the case.
- Describe the special features and how those standards are maintained.
- Three certified copies of GI-related field maps.
- Description of the inspection structure if there is an area for regulating the use of G.I.
- Provide details of all applicants with the address. If there are a large number of manufacturers, then collective reference applications for all producers of goods and G.I. should be made. If registered, it should be indicated accordingly in the register. The Application must be sent to a respective address in India.

Steps 2 and 3: Preliminary Examination and Examination (Section 11 (5) to (7))

- The examiner will check the Application for any deficiencies.
- The Applicant should take measures in this regard within one month of communication.

- The content of the case description is evaluated by an advisory group of experts who will master the subject.
- Furnished will ascertain the correctness of the description.
- After that, an examination report will be issued.

Step 4: Show cause notice (Section 12)

- If the Registrar has any objection to the Application, he shall file such objection.
- Applicant must reply within two months or apply for a hearing.
- The decision will be duly communicated. If the Applicant wants to appeal, he can request it within a month.
- The Registrar also has the right to withdraw an application, if it is mistakenly accepted, after giving it on the occasion of a hearing.

Step 5: Publication in Geographical Indication Journal (Section 13) - Every Application, within three months of acceptance, will be published in the Geographical Indications Journal.

Step 6: Resist Registration (Section 14)

- Any person opposing the G.I. application, published in the journal, can file a notice of protest within three months (another month upon request which is to be filed before three months).
- The Registrar will provide a copy of the notice to the Applicant.
- Within two months, the Applicant will send a copy of the counter statement.
- If he does not do so, he is believed to have dropped his Application. Where a counter-claim has been filed, the Registrar will serve a copy on the person giving notice of the protest.
- Thereafter, both parties will lead their respective evidence through affidavits and supporting documents.
- After this, the date of hearing of the case will be fixed.

Ques.4(e)- How registration is granted under GI act?

Step 7: Registration of Application (Section 16)

- Where an application for G.I. has been accepted, the Registrar will register the Geographical Indication. If the date of filing the Application after being registered will be considered as the date of registration.
- The Registrar will issue a certificate to the Applicant with the seal of the Geographical Indicators Registry.

Step 8: Duration, Renewal of Application (Section 18)

- A registered G.I. will be valid for 10 years and can be renewed on payment of a renewal fee.
- At the time before the expiration of last registration of geographical indication, the Registrar shall send the notice to the registered proprietor or the authorised user as the case may be, about the date of expiration and the conditions as to payment of fees and upon renewal of which registration shall be obtained.

Step 9: Additional Security for Notified Goods

- An application can be made to the Registrar for respective goods which are notified by the Central Government for additional protection for the registration of geographical Indication in Form GI-9, there will be three copies of the case details and three copies of the issued notification.
- The Application will be made jointly by the registered owner of Geographical Indication in India and jointly by all the producers of Geographical Indication.

Step 10: Appeal- Any person who is aggrieved by an order or decision may prefer an appeal to respective High Court.

EXERCISE-4

Ques.4(a)- Who can file for Geographical Indications?

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Q.b- To whom application for registration is applied.

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Q.c- Mention steps for registration process of GI.

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Q.d- What are the contents of application for registration of GI?

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Q.e- How registration is granted under GI act?

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Ques.5) Discuss the provisions for infringement and their remedies under the GI act 1999.

Q.5(a)-Which section deals with infringement of GI?

Ans.5- Infringement of geographical Indication- Section 22 of the Act provides about the infringement of Geographical Indications.

Q.5(b)- What do you mean by infringement of GI?

A registered geographical indication is violated by a person who is not a registered proprietor or authorized user, uses such a sign on the goods or suggests that such goods originate in another geographic area, which confuses someone other than the actual place of goods public. A geographical indication of the trademark also infringes upon any use that constitutes an act of “unfair competition”, detailed **explanation of 1 and 2 of Section 22(1)(b)**. This provision seeks to give effect to **Article 22(2)(b) of the TRIPS Agreement**, which requires members to “provide legal means for interested parties to prevent any use that the **Article 10bis** of the Paris Convention (1967). A geographical indication is also violated by a person who is not a registered proprietor or authorized user, who uses another geographical indication for the goods, which is actually true as to region, or locality from where the goods originated and publicly misrepresentation that goods originate in a region, or a locality to which such registered geographical indicators belong.

Article 22 (4) of the TRIPS Agreement states that the preservation of the geographical Indication of a trademark must be enforced even if the G.I. “is truly true as to the area, region, or locality in which the goods are in another territory” is generated “.

Ques.5(c)- What kind of remedies are available against infringement?

Remedies for infringement of Geographical Indications

- Remedies relating to infringement of geographical indications are similar to remedies related to trademark infringement. Act penalize the falsification of a geographical indication.
- Remedies which are available for conservation of geographical indications may be broadly classified into two categories:

Q.5(d)- Discuss civil remedies for infringement of GI.

Civil remedies

Injunction

- Injunctions include temporary injunction and permanent injunction. An injunction is granted for the protection of violations of related items, documents or other evidence in respect of the subject of the suit.
- An injunction is granted for restricting the defendant from disposing of or dealing with his products which may adversely affect plaintiffs’ ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff as compensation of damage.
- The aforesaid remedy of injunction is more effective and can prevent greater harm to the plaintiff. Or other peculiar remedies that may eventually be given to the plaintiff.

Damages

- The remedy of damages or account of profits in the form of compensatory damages is available to prevent infringers from infringement.
- Damages (other than nominal losses) or accounts of profits may be ruled out Where the defendant satisfied the court that he was unaware and there was no reasonable basis for that Assuming that the plaintiff’s geographical Indication was registered when he was engaged in using it; And when he became aware of the existence and nature of the geographical Indication, he stopped using it.

Q.5(e)- Discuss criminal remedies for infringement of GI.

Criminal Treatment

- Criminal remedies are more effective as compared to civil remedies because the former can be disposed of quickly.
- Pendency of civil suits does not justify a stay of the criminal proceedings which involve the same question.
- Since criminal proceedings directly attacking the violator's honour and social status
- In some cases he comes forward for the Settlement of the matter out of court to save their reputation.
- **Chapter VIII** of the Act deals with offences and punishment for such crimes.

The Act has penal provisions for violation of various provisions related to Geographical indications which are discussed below:

- Falsifying and incorrectly applying geographical indications to the goods.
- Selling goods to which false geographical indications apply.
- Misrepresentation of a geographical indication in registered form.
- Improperly describes a place of geographically connected business indication Registry.
- Falsification of entries in the register.
- The punishment granted for the infringement offences varies from **six months to three years imprisonment** and a fine of **not less than rupees fifty thousand** but may extend to **rupees two lakh**.
- However, the court for adequate and special reasons in writing may grant lesser punishment.

EXERCISE- 5

Ques.5(a)- Which section deals with infringement of GI?

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Q.b- What do you mean by infringement of GI?

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Q.c- What kind of remedies are available against infringement?

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Q.d- Discuss civil remedies for infringement of GI.

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Q.e- Discuss criminal remedies for infringement of GI.

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LL.B. (Integrated) Semester VIII

Intellectual Property Law II

UNIT : 3

Syllabus: UNIT III:- "Plant Varieties and Farmers Rights Act 2001"- Protection of Plant Varieties and Farmers Rights Act, 2001: Aims and Objects, Farmers Rights, Compulsory License, Registration, Infringement and Remedies, Biological Diversity Act, 2002: An Overview, Salient features of the Act, 2002- Brief Introduction.

Ques.1- Explain the aims and objectives of protection of plant varieties and Farmer's Rights act, 2001.

Q.1(a)- Give brief intro of Protection of plant varieties and Farmer's Rights act, 2001.

Ans.1- Introduction:

- In order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered necessary to recognize and to protect the rights of the farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
- The Govt. of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting sui generis system. Indian legislation is not only in conformity with International Union for the Protection of New Varieties of Plants (UPOV), 1978, but also have sufficient provisions to protect the interests of public sector breeding institutions and the farmers.
- The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interests of all the stakeholders including private, public sectors and research institutions, as well as resource- constrained farmers.

Q.1(b)- Discuss the need for Protection of plant varieties and Farmer's Rights act, 2001.

Need and Justification of the Act

- The concept of plant breeders' rights arises from the need to provide incentives to plant breeders in creative work of research which sustains agricultural progress through return on investment made in research and. persuade the researcher to share the benefit of his creativity with society.
- It is considered necessary to recognize and protect rights of farmers in respect of their contribution made in consuming, improving and making available plant genetic resources for development of new plant varieties.
- It is also necessary to protect plant breeders' rights to stimulate investment for research and development both in public and private sector for the development of new plant varieties.
- The grant of such protection will facilitate growth of seed industry, which will ensure the availability of high quality seeds and plant material to farmers.

Q.1(c)- Mention advantages of Protection of Plant varieties and Farmer's Rights act, 2001.

Visible Advantages of the Act

- By assuring a reasonable rate of return on a new plant variety'
- when it finally reaches the market place, a system of plant breeders' right encourages better and mission oriented research for development of varieties that are fully suited to a given agro-climatic regions.

- India has developed commendable strength in agricultural research. Indian breeders, working mainly in the public research system, have developed a large number of new varieties. In the absence of plant breeder's rights these varieties would be freely available to others for exploitation.
- New varieties developed on the basis of these varieties could get protected in other countries without any benefit accruing to Indian institutions/ organizations, whereas the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India.
- Therefore, putting a system of plant breeders' rights in action through law in India would provide protection to the public research system varieties developed by them. In future researchers' access to foreign germplasm may get linked to the provision of plant breeders' right.
- In the absence of plant breeders' rights, foreign companies would be hesitant to organize buy-back production of seeds in India for export to their countries for fear of unauthorized use of their genetic material.

Q.1(d)- What is the objective of Protection of Plant varieties and Farmer's Rights act, 2001.

OBJECTIVE OF THE ACT:

- To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
- To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
- To accelerate agricultural development in the country, protect plant breeders' rights; stimulate investment for research and development both in public & private sector for the development new of plant varieties.
- Facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.

EXERCISE-1

Q.1(a)- Give brief intro of Protection of plant varieties and Farmer’s Rights act, 2001.

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Q.b- Discuss the need for Protection of plant varieties and Farmer’s Rights act, 2001.

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Q.c- Mention advantages of Protection of Plant varieties and Farmer’s Rights act, 2001.

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Q.d- What is the objective of Protection of Plant varieties and Farmer’s Rights act, 2001.

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Ques.2- Discuss registration process and criteria for protection under protection of Plant Varieties and Farmer's right, 2001?

Q.2(a)- Which chapter and section of PPV&FR act, 2001 deals with registration process?

Ans.2- Registration Process: Registration Criteria- **Chapter III & Section 14 to 23** deals with registration process.

- Before a plant variety can be eligible to be registered under the provisions of the act, there are certain criteria which are to be met by the variety in order to be protected by the protected.
- Therefore, the act provides for certain pre-requisites which are to be met, and are stated under **Section 15** of the act. The section states that for every variety to be registered, it must be novel, distinct, uniform, Stable [**the DUS Test**].
- Further to create less ambiguity while interpreting these terms, it even provides for the meanings of the above stated terms, it defines them as:

Q.2(b)- Mention criteria for registration under PPV&FR act, 2001.

- **Novel:** as defined under **Section 15(3)(a)]** if prior to the date of filing of the application it has not been sold or disposed, earlier than a year in India, when it came to countries beyond the borders of India, it was set to four years, however it was set to six years in the case of trees and vines prior to the filing of such application before the authority.
- **Distinct:** as defined under **Section 15(3)(b)** if it can be distinguished on the basis of one basic characteristic from any other variety
- **Uniform:** as defined under **Section 15(3)(c)** as it being uniform in its basic characteristics even after being subjected to variation.
- **Stable:** as defined under **Section 15(3)(d)** as the main characteristics of the variety remaining the same after every propagation or at the end of a cycle of propagation.

Q.2(c)- Mention term of registration for various plant varieties under PPV&FR act, 2001.

Term of Protection- Post the issuance of certificate of registration the rights are granted on such registered variety to the applicant but such rights are limited to a certain limited term of protection. The calculation of this term starts from the very date of the registration.

➤ **Initial Term of Protection:**

- Trees and vines: 9 years
- Any other crops: 6 years
- This abovementioned Initial Term of Protection is subject to renewal process on payment of fees thus, the Total Term of Protection is:
 - Trees and vines: 18 years
 - Extant Varieties: 15 years
 - Any other cases: 15 years

Q.2(d)- What kind of plant varieties are exempted from registration under PPV&FR act, 2001.

➤ **Exclusions**

- While the act provides for the means as well as process through which varieties can be registered thereby protecting the intellectual property of an applicant, it also contains certain exceptional cases where certain varieties cannot be registered under the provisions of the act.
- This is stated under Section 29 of the act which talks about the exclusion of varieties in certain cases.
- It states that no variety shall be registered in instances where the registration of such a variety or its commercialization could lead to harm to public order, morality or the lives of human beings and animals as well as plant life or the environment.
- In addition to this, if any such variety involving technology can cause harm to human beings, animals or plants, it shall not be registered under the provisions of the act.

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EXERCISE-2

Q.2(a)- Which chapter and section of PPV&FR act, 2001 deals with registration process?

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Q.b- Mention criteria for registration under PPV&FR act, 2001.

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Q.c- Mention term of registration for various plant varieties under PPV&FR act, 2001.

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Q.d- What kind of plant varieties are exempted from registration under PPV&FR act, 2001.

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Ques.3- Discuss the infringement of a registered plant variety and remedies available for it under Protection of Plant Varieties and Farmer's Right Act, 2001.

Q.3(a)- Which chapter and section of PPV&FR act, 2001 deals with infringement?

Ans.3- Infringement, Offences, Penalties and Procedure Infringement: Chapter X, Section 64 to 67 of the act deals with infringement.

Q.3(b)- What is infringement of Plant varieties under PPV&FR act, 2001?

Infringement- (section 64)

- Subject to the provisions of this Act, a right established under this Act is infringed by a person-
- Who, not being the breeder of a variety registered under this Act or
- a registered agent or
- a registered licensee of that variety,
- sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered license or registered agency without permission of the registered licensee or registered agent, as the case may be;
- who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.

Q.3(c)- Where suit for infringement of plant varieties has to be filed?

Suit for infringement, etc- (Section 65)

- No suit
- for the infringement of a variety registered under this Act; or
- Relating to any right in a variety registered under this Act, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.
- For the purposes of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall mean the District Court within the local limits of whose jurisdiction the cause of action arises.

Q.3(d)- What kind of remedies are available for infringement of plant varieties?

Relief in suits for infringement- (Section 66)

- The relief which a court may grant in any suit for infringement referred to in **section 65** includes an injunction and at the option of the plaintiff, either damages or a share of the profits.
- The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:-
- discovery of documents;
- preserving of infringing variety or documents or other evidence which are related to the subject-matter of the suit;
- Attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Ques.4- Explain the composition powers and functions of National Biodiversity Authority.

Q.4(a)- Give brief intro about National Biodiversity Authority.

Ans.4- Brief Introduction- The National Biodiversity Authority

- The National Biodiversity Authority (NBA) was established in 2003 by the Central Government to implement India's Biological Diversity Act (2002).
- It is a Statutory body that performs facilitative, regulatory and advisory functions for the Government of India on the issue of Conservation and sustainable use of biological resources.
- The NBA has its Headquarters in Chennai, Tamil Nadu, India.

Q.4(b)- What is the structure of National Biodiversity Authority?

Structure of the NBA

- The National Biodiversity Authority consists of the following members to be appointed by the central government, namely:
- A Chairperson.
- Three ex officio members,
- one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests.
- Seven ex-officio members to represent respectively the Ministries of the Central Government dealing with:
- Agricultural Research and Education Biotechnology
- Ocean Development
- Agriculture and Cooperation
- Indian Systems of Medicine and Homoeopathy Science and Technology
- Scientific and Industrial Research;
- Five non-official members to be appointed from amongst specialists and scientists having special knowledge and experience in the required matters.

Q.4(c)- What is the function of National Biodiversity Authority?

Functions of the NBA

- Creating an enabling environment, as appropriate, to promote conservation and sustainable use of biodiversity.
- Advising the central government, regulating activities and issuing guidelines for access to biological resources and for fair and equitable benefit sharing in accordance with the Biological Diversity Act, 2002.
- Taking necessary measures to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resources derived from India illegally.
- Advising the State Governments in the selection of areas of biodiversity importance to be notified as heritage sites and suggest measures for their management.

Q.4(c)- What is the structure and function of State Biodiversity Boards?

➤ **State Biodiversity Boards (SBBs)**

- The SBBs are established by the State Governments in accordance with Section 22 of the Act. Structure:
- The State Biodiversity Board consists of the following members:
- A Chairperson
- Not more than five ex officio members to represent the concerned Departments of the State Government
- Not more than five members from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.
- All the members of the SBB are appointed by the respective State Governments.

➤ **Functions of SBBs**

- Advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation, sustainable use or sharing equitable benefits.
- Regulate by granting approvals or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by people.

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EXERCISE-4

Q.4(a)- Give brief intro about National Biodiversity Authority.

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Q.b- What is the structure of National Biodiversity Authority?

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Q.c- What is the function of National Biodiversity Authority?

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Q.d- What is the structure and function of State Biodiversity Boards?

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LL.B. (Integrated) Semester VIII
Intellectual Property Law II
UNIT : IV

Syllabus: UNIT IV (Topography & Folklore) :- Semiconductor Integrated Circuit Layout Design Act, 2000, Folklore, Indigenous Knowledge, Know How.

Ques.1- What do you understand by ‘Traditional Knowledge’? Discuss the protection mechanism of traditional knowledge at national and International level with suitable illustrative cases.

Q.1(a)- What do you mean by Traditional Knowledge?

Ans.1- Traditional knowledge refers to the knowledge, innovations, and practices developed by communities over generations, often orally transmitted and closely tied to a specific culture or way of life. This knowledge encompasses a wide range of fields, including agriculture, medicine, ecology, and technology. It is often deeply rooted in local ecosystems and cultural contexts, reflecting the intimate relationship between communities and their environments.

Traditional/ Indigenous Knowledge:

- Indigenous intellectual property is a term used in national and international forums to describe intellectual property that is "collectively owned" by various Indigenous peoples, and by extension, their legal rights to protect specific such property.
- This property includes cultural knowledge of their groups and many aspects of their cultural heritage and knowledge, including that held in oral history.
- In Australia, the term Indigenous cultural and intellectual property, abbreviated as ICIP, is commonly used.
- There have been various efforts made since the late 20th century towards providing some kind of legal protection for indigenous intellectual property in colonized countries, including a number of declarations made by various conventions of Indigenous peoples.
- The World Intellectual Property Organization (WIPO) was created in 1970 to promote and protect intellectual property across the world by cooperating with countries as well as international organizations.

Q.1(b)- Mention International Arrangement provides protection to Indigenous Knowledge.

- The UN's Declaration on the Rights of Indigenous Peoples (UNDRIP), signed by 144 countries in 2007, includes several clauses relating specifically to the protection of intellectual property of Indigenous peoples.
- Indigenous intellectual property is a concept that has developed as an analog to predominantly western concepts of intellectual property law, and has been promoted by the World Intellectual Property Organization (WIPO), as part of a broader effort by the United Nations (UN) to see the world's indigenous, intangible cultural heritage better valued and better protected against perceived, ongoing mistreatment, as they are not adequately covered by western law.
- Indigenous intellectual property rights relate to the legal rights to protect specific such property, which includes cultural knowledge of their groups, aspects of their cultural heritage in the visual arts, literature, and performing arts, as well as science and traditional medicines.
- It may include knowledge held in oral history.
- International bodies such as the UN have become involved in the issue, making more specific declarations that intellectual property also includes cultural property such as historical sites, artifacts, designs, language, ceremonies, and performing arts in addition to artwork and literature.
- Nation states across the world have experienced difficulties reconciling local indigenous laws and

cultural norms with a predominantly western legal system, in many cases leaving Indigenous people's individual and communal intellectual property rights largely unprotected.

Q.1(c)- What is the need for protection of traditional knowledge?

The protection of traditional knowledge is crucial for several reasons:

1. **Preservation of Culture:** Traditional knowledge is often integral to the cultural identity of communities. Protecting it ensures the preservation of cultural heritage and the continuation of unique practices and traditions.
2. **Safeguarding Intellectual Property:** Traditional knowledge is vulnerable to misappropriation and exploitation. Protecting it helps prevent unauthorized use and ensures that communities benefit from any commercialization of their knowledge.
3. **Promotion of Sustainable Development:** Many traditional practices are environmentally sustainable and offer valuable insights into living in harmony with nature. Protecting traditional knowledge promotes sustainable development by recognizing the importance of indigenous wisdom in addressing modern challenges.

Protection Mechanisms:

Q.1(d)- What protection is provided to traditional knowledge at national level?

1. **National Level:** Many countries have developed legal frameworks to protect traditional knowledge. These mechanisms may include laws recognizing the rights of indigenous peoples, establishing databases of traditional knowledge, and implementing regulations to govern access and benefit-sharing. Currently, India has not any effective legislation for the protection of traditional knowledge.

Illustrative Case: India's Traditional Knowledge Digital Library (TKDL)

India has implemented the TKDL to protect traditional knowledge related to Ayurveda, Unani, and other traditional systems of medicine. The database contains extensive documentation of traditional medicinal formulations, preventing their unauthorized patenting by external entities.

Q.1(e)- What protection is provided to traditional knowledge at international level?

2. **International Level:** At the international level, efforts have been made to develop mechanisms for the protection of traditional knowledge, often through agreements and conventions that recognize the rights of indigenous peoples and address issues of access and benefit-sharing.

Illustrative Case: Convention on Biological Diversity (CBD)

The CBD, adopted in 1992, includes provisions for the protection of traditional knowledge associated with biological resources. It encourages member states to respect, preserve, and maintain traditional knowledge, as well as to ensure the fair and equitable sharing of benefits arising from its utilization.

Illustrative Case: Nagoya Protocol

The Nagoya Protocol, a supplementary agreement to the CBD, specifically addresses access to genetic resources and the fair and equitable sharing of benefits arising from their utilization. It provides a framework for ensuring that traditional knowledge holders are involved in decision-making processes and receive a fair share of benefits.

In conclusion, traditional knowledge is a valuable resource that must be protected at both national and international levels. By recognizing the rights of indigenous peoples, implementing appropriate legal frameworks, and promoting fair and equitable benefit-sharing, we can ensure that traditional knowledge continues to enrich human culture and contribute to sustainable development.

EXERCISE-1

Q.1(a)- What do you mean by Traditional Knowledge?

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Q.b- Mention International Arrangement provides protection to Indigenous Knowledge.

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Q.c- What is the need for protection of traditional knowledge?

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Q.d- What protection is provided to traditional knowledge at national level?

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Q.e- What protection is provided to traditional knowledge at international level?

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Ques.2- What is Semi-conductor Layout Design? What can be registered under Semi-conductor Integrated Circuits Layout Design (SICLD) Act, 2000? What is the registration process and term of protection of it?

Ans.2- INTRODUCTION

- In today's dynamic and competitive environment, IP rights are key elements needed to maintain an edge in the market.
- It is crucial that the companies understand that what can be protected and how within their respective countries.
- The starting point of this intellectual property was the copyrights, trademarks and the upgrowing patents then came legislations covering industrial designs and geographical indications as important intellectual properties.
- With the growing technology and development and with the growing competition to become a high-tech country, a revolution in the field of Information Technology arrived.
- With the advancement of this information technology, a new branch in the field of intellectual property flourished, called as the Layout-Design or the of the semiconductor integrated circuits.
- The semiconductor integrated circuit is an integral part of every computer chip.
- The fifth generation computers are using Very Large Scale Integration (VLSI) where numerous transistors are accommodated on a single chip, cutting down the size of the chip and at the same time increasing its processing power significantly.
- This ultimately translates into smaller and more powerful computers. Hence, the development of the layout-design on a semiconductor integrated circuit as an intellectual property is quite significant.
- Hence, a step was taken by various organizations to pass regulations regarding this issue. One such was the World Trade Organization, and the result was the TRIPS agreement addressing the intellectual property related issues.
- India being a signatory of the WTO also passed an Act in conformity with the TRIPS agreement called the Semiconductor Integrated Circuits Layout-Design Act (SICLDA) passed in the year 2000.

Q.2(a)- what do you mean by semiconductor and layout-design?

- Semiconductor integrated circuit" means a product having transistors or other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.
- Layout-design" means a layout of transistors, and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.
- Commercial exploitation" in relation to the SICLD means to sell, lease, offer or exhibit for sale or otherwise distribute such semiconductor integrated circuit for any commercial purpose.

Economic importance and impact of this protection

- Important economic, social, political and technological developments over the past few years have had a fundamental impact on how intellectual property is created, exploited and traded.
- The same is the case with "Semiconductor Integrated Circuits Layout-Designs".

Q.2(b)- what is protected under semiconductor and layout-design act, 2000?

What is protected?

- A layout design expressed in any manner, which is original, which has not been commercially exploited for more than 2 years from the date of application for the registration, which is inherently distinctive and capable of being distinguishable from any other registered layout design, is protected or registered under the Act.

Who can apply?

- The application for the protection of layout design can be made by
- the person who claims to be the creator of the layout design,
- his legal representative,
- a person registered in the prescribed manner as a layout design agent or
- A person in the sole and regular employment of the principal, in writing to the registrar in the prescribed manner.

- The application can be filed either alone or jointly.
- The application has to be filed within the territorial limit that is a principal place of business in India of the applicant.

Q.2(c)- Mention registration steps under semiconductor and layout-design act?

Procedure for registration

- Filing of application in writing to the registrar in the office of SICLD registry in a prescribed form along with 3 sets of drawings produced to the plotter which describes the layout design and 3 sets of photograph of masks used for the fabrication of the semiconductor integrated circuits by using of the layout design or drawings which describes the pattern of such masks.
- Acceptance of the application with acknowledgement by way of returning one copy of the application. The registrar can also withdraw the acceptance if the application is found to be prohibited for registration.
- The application is advertised in a prescribed manner within 14 days of acceptance of layout design application. If any opposition is found to the registration, then a notice is sent to the registrar in the prescribed manner within 3 months from the date of advertisement.
- The registrar can call for evidences to be produced by both the parties and finally give his decision.
- If the application is not opposed or the opposition has been decided in favor of the applicant, the registrar shall register the said layout design in the register of layout design and also issue a certificate sealed with the seal of the SICLD Registry.

Q.2(d)- what is duration of registration under semiconductor and layout-design act?

Duration of Registration- The registration of the layout design shall be only for the period of **10 years** counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in any country, whichever is earlier.

Exclusive Right to the Registered Proprietor

- The registration of the layout design gives to the registered proprietor of the layout design the exclusive right to the use of the layout design and to obtain relief in respect of infringement.
- This right shall be available to the registered proprietor of that layout design irrespective of the fact as to whether the layout design is incorporated in an article or not.

Registered User-

- A person may be registered as a registered user of the layout design when the registered proprietor and the proposed registered user apply jointly in writing to the Registrar.
- The application shall accompany the agreement in writing or its authenticated copy, entered between the registered proprietor and registered user.
- The registered proprietor also has to submit an affidavit to the satisfaction of the Registrar.

Assignment and Transmission

- A person who becomes entitled by assignment or transmission to a registered layout design shall apply to the Registrar in the prescribed manner to registered title.
- The Registrar on the proof of his title to his satisfaction register him as the proprietor of the layout design.

Q.2(e)- what remedies are available against infringement under semiconductor and layout-design act?

Protection against Infringement

- The act of reproducing, selling, importing and distributing of integrated circuit layout design for commercial purposes constitutes infringement.
- Where such act is performed for the purposes of scientific evaluation, analysis, research or teaching shall not constitute the act of infringement.
- Any person who commits infringement shall be punishable with imprisonment for a term, which may extend to 3 years, or with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees, or with both.

Adjudicating Authority

- The Government of India appoints a person to be known as a registrar of the SICLD. He has both administrative and legal powers. Any person aggrieved by an order or decision of the Registrar may file an appeal to the Layout Design Appellate Board.
- The procedure and powers of the Appellate Board are that of a civil court as given under the Civil Procedure Code, 1908.
- If any person is not satisfied by any decision or order of the Appellate Board may file an appeal to the High Court within prescribed period and in a prescribed manner.

Convention Countries

- Any country which accords to the citizens of India similar privileges and rights as granted to its own citizens,
- the Central Government may specify such country to be a convention country and provide the citizens of such convention countries the similar privileges as granted to citizens of India under the SICLD Act.
- Where any country does not accord to the citizen of India the same rights in respect of registration and protection of layout design as it accords to its own citizens, the citizens of such countries shall not be entitled to be registered as a proprietor of layout design, assignee of the proprietor of a registered layout design or to be registered as a registered user of a layout design.

Highlights of Indian Legislation

- There is protection of semiconductor integrated circuits layout and designs by a registration process.
- There is a mechanism for distinguishing which layout designs can be protected.
- There are rules to prohibit registration of layout designs which are not original or which have been commercially exploited.
- Protection of 10 years period is provided to layout designs.
- Provisions regarding infringement and evidence of validity are mentioned.
- There are provisions for determining payment of royalty for registered layout designs in case of innocent or unintentional infringement.
- Penalties in the form of imprisonment and fine are imposed for willful infringement and other offences in the Act.
- The Registrar is appointed for the purpose of administration and the Appellate Board is established for facilitating the legal objective.

Conclusion

- The SICLD Act fulfills India's obligation under the TRIPS agreement as approved by the members of WTO.
- The intellectual property protection for Integrated Circuit layout design is a key factor throughout the world, and more so in India because it does not have a strong intellectual property protection policy in software.
- As integrated circuit layout designs is in its early years in India, it's important that the country boasts of a strong protection policy right in the beginning itself and the SICLD Act provides such a strong protection policy.
- The number of Indian companies focusing on integrated circuit design is beginning to grow and this would force major semiconductor companies to set up their offices and address the needs of the domestic market.
- This will encourage a lot more companies to base their operations in India.
- The Indian legislation therefore provides a comprehensive protection to the layout designs of the semiconductor integrated circuits as recognized intellectual property and bundle of rights to the proprietor of the registered layout design.

EXERCISE-2

Q.2(a)- what do you mean by semiconductor and layout-design?

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Q.b- what is protected under semiconductor and layout-design act, 2000?

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Q.c- Mention registration steps under semiconductor and layout-design act?

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Q.d- what is duration of registration under semiconductor and layout-design act??

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Q.e- what remedies are available against infringement under semiconductor and layout-design act?

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Ques.3- Write short notes on the following:

a) Folklore

b) Know-how

Q.3(a)- Discuss the concept of Folklore.

Ans.3- Concept of Folklore

- In order to preserve and enrich the cultural heritage of different nations and different communities residing in these nations, the expressions of Folklores have been adopted by various groups of people.
- Folklores are basically productions with an artistic approach consisting of traditional concepts which include verbal expressions such as
 - folktales,
 - poetries or riddles;
 - musical expressions
 - such as folksongs or instrumental music;
- expressions by actions such as folk dances, plays, acts; tangible expressions such as creation of folk art, drawings, paintings, sketches and many more.
- All this construe to a richer cultural aspect of every person's own heritage in a respectful yet artistic manner.

Q.3(b)- what is the need for the protection of Folklore?

- Everyone is allowed to carry their own interpretation and develop their own creation, but without losing the essence of the cultural representation.
- It is the appreciation of these multi-faceted abilities of folklore that is important when one examines the question of its legal protection.
- The failure to take note of all these elements will surely result in inappropriate protection of folklore and the norms of legal protection being unacceptable to society.

Q.3(c)- Mention provisions related to protection of Folklore under Indian law.

Indian Legislation and Folklore

- The pedestal of Indian culture has provided its citizens every aspect of entertainment.
- Its origination is the most ancient among representations of folks in different countries across the globe.
- The freedom and essence of any cultural activity and its portrayal have been aptly adopted and rejuvenated since the beginning of time.
- In fact, it is interesting to note that the Oscars, one of the most auspicious in the field of entertainment, was given to Parasite in the category of Best Picture the current year, whose storyline was completely in congruence with that of a 1999 Tamil movie called Minsara Kanna.
- The diverse tribes of India have further insinuated the reach to a wider spectrum across the globe.
- Under the Indian Constitution, the basic law of the land has not directly addressed the issue of protection of folklores, although Article 29 of the Constitution, which provides for the protection of the culture of minorities, is defined as a "Fundamental Right" (Part III).
- Article 29 states that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same, which makes protection of the folklore of the distinct groups in India possible.

- On the contrary, majority of the folklores existing and misused presently in India belong to small communities who do not come within the scope of the aforementioned constitutional provision and no legislation has been inculcated to protect the same.
- The only other general provision in the Constitution that can be recognized as a source to protect folklore is Article 51A (f) which provides for the fundamental duty of every citizen of India to value and preserve the rich heritage of our composite culture.
- There is no legislation based on this provision as well for translating this constitutional objective into reality.

Conclusion

- Irrespective of the constitutional provisions envisaging protection and preservation of distinct cultural groups, there is no special law prohibiting the exploitation of folklore of these communities without permission.
- In India, the law that takes care of the rights relating to literary and artistic works, sound-recordings, films, and the rights of performers and broadcasting organization, is the Copyright Act, 1957.
- The Act has been amended frequently with the most recent update having been in 1994.
- The Indian Copyright Act does not provide any provision for the protection of folklore or expressions of folklore.
- There is also no other legislation along the lines of the Model Provisions, to serve the purpose of granting legal protection to expressions of folklore. Although, under the Amendment incorporated in the Copyright Act in 1994, a certain amount of protection is offered to the performers.
- According to the Amendment Act, a performer includes, “an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture, or any other person who makes a performance.”

Q.3(d)- What do you mean by the term ‘Know-how’?

(B) KNOW HOW:

- Know-how means any form of technical information or assistance relating to the manufacture or placing into operation of the said products.
- It also means any practical knowledge, techniques, and skill that are required to achieve some practical end.
- Know-how can be defined as confidentially held, or better, closely held information in the form of unpatented inventions, formulae, designs, drawings, procedures and methods, together with accumulated skills and experience in the hands of a licensor firm's professional personnel which could assist a transferee/licensee.

EXERCISE-3

Q.3(a)- Discuss the concept of Folklore.

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Q.b- what is the need for the protection of Folklore?

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Q.c- Mention provisions related to protection of Folklore under Indian law.

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Q.d- What do you mean by the term 'Know-how'?

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