

RAMA
UNIVERSITY

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**FACULTY OF ENGINEERING &
TECHNOLOGY**

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A photograph of a tea plantation with rows of tea bushes under a bright, hazy sky. The tea leaves are a vibrant green, and the overall scene is bathed in soft, natural light.

Course: B. Tech Biotechnology
Sub Code: BBT-712

Semester: 7th
Sub Name: Bioethics, Biosafety & IPR

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JURISPRUDENCE

Meaning and Definition of Jurisprudence

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Jurisprudence involves the study of general theoretical questions

i) About the nature of law and legal system

ii) about the relationship of law to justice, morality

iii) and about the social nature of law.

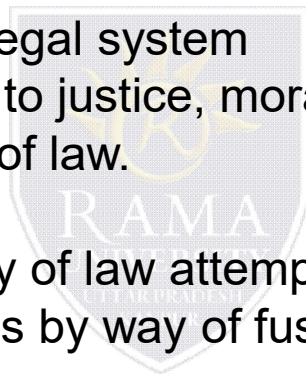
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Jurisprudence, as a philosophy of law attempts to correlate with social values and provides practical solutions by way of fusion of

i) fact

ii) justice and

iii) value



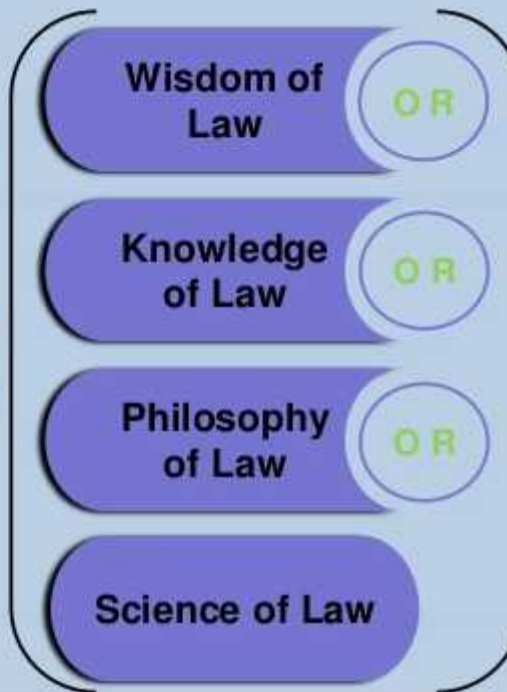
What is Jurisprudence?

An Introduction

Literal Meaning:



means



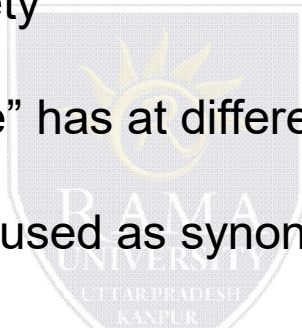
Jurisprudence as a science of law is primarily concerned with regulations of human conduct in accordance with the

- i. Set values,
- ii. Needs and
- iii. Goals of each society

The term “jurisprudence” has at different times, been used in different senses.

Sometimes it has been used as synonyms for the term

- i. “law”
- ii. Sometimes as philosophy of law and
- iii. Sometimes as a science of law

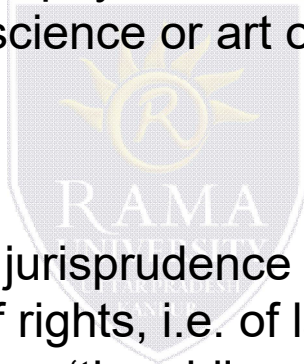


Literal Meaning of Jurisprudence

Jurisprudence is derived from two Latin words: Juris means law, and Prudentia means knowledge, study, philosophy, science or art. Hence, literally it means knowledge, study, philosophy, science or art of law.

Counterpart Terminologies

The counterpart terminology of jurisprudence in France is la philosophie du droit which means 'the philosophy of rights, i.e. of law'. Its counterpart terminology in German is Rechtsphilosophie, i.e. 'the philosophy of rights.'



Usage of the Term Jurisprudence

Jurisprudence has been used to denote different things:

In the Institutes of Justinian it was defined as the knowledge of what is just and unjust.

In sixteenth century in Europe it was used to signify the knowledge of Roman Law.

In France it has been used to for collection of the principles relating to a particular field of law, e.g., equity jurisprudence, criminal jurisprudence etc.

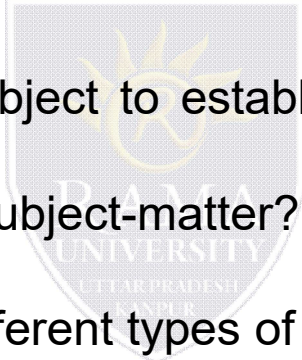
It is also used to denote the whole corpus (body) of law of a particular country, e.g. Pakistan Jurisprudence, English Jurisprudence, American Jurisprudence etc.

It has also been used express the collection of the decisions of a Courts, i.e. Case Laws, e.g. ICC Jurisprudence, Jurisprudence of Supreme Court of Pakistan etc.

Current Meaning However, the term Jurisprudence with which we are concerned in LL.B., shall mean the knowledge of law. This is scientific or analytical knowledge of the law in abstract sense or first principles of law.

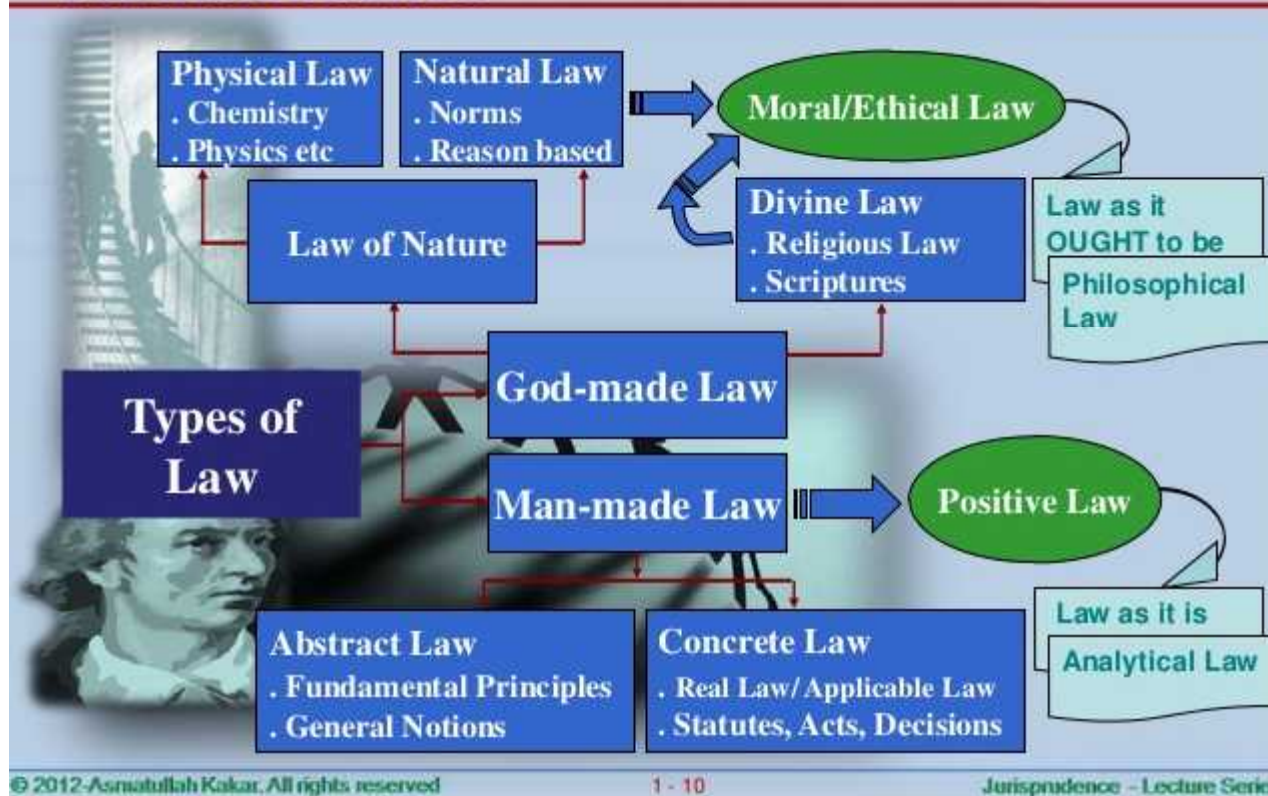
SUBJECT-MATTER OF JURISPRUDENCE

Simply subject-matter of jurisprudence is law, as it is the study of law. Law is basically comprised on rules that regulate the conduct of human beings with the object to establish justice in societies. But what type of law is its subject-matter? To find the answer to this question let us see the different types of law.



What is Jurisprudence?


An Introduction



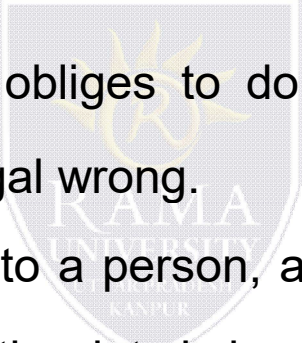
CONCEPT OF PROPERTY, RIGHTS & DUTIES

Legal rights are, clearly, rights which exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them.

According to positivists, legal rights are essentially those interests which have been legally recognized and protected. John Austin made a distinction between legal rights and other types of rights such as Natural rights or Moral rights. By legal rights, he meant *rights which are creatures of law, strictly or simply so called*. He said that other kind of rights are not armed with legal sanction and cannot be enforced judicially.



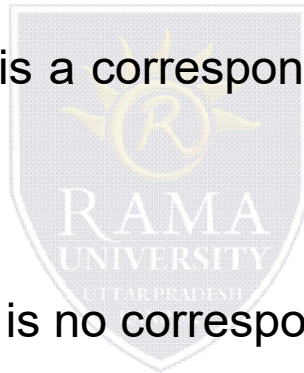
On the other hand, Salmond said that a legal right is an interest recognized and protected by rule of law and violation of such an interest would be a legal wrong. Salmond further said that:

- 
1. A legal duty is an act that obliges to do something and act, the opposite of which would be a legal wrong.
 2. Whenever law ascribes duty to a person, a corresponding right also exists with the person on whom the duty is imposed.
 3. There are two kinds of duties: **Moral Duty and Legal Duty.**
 4. Rights are said to be the benefits secured for persons by rules regulating relationships.
-

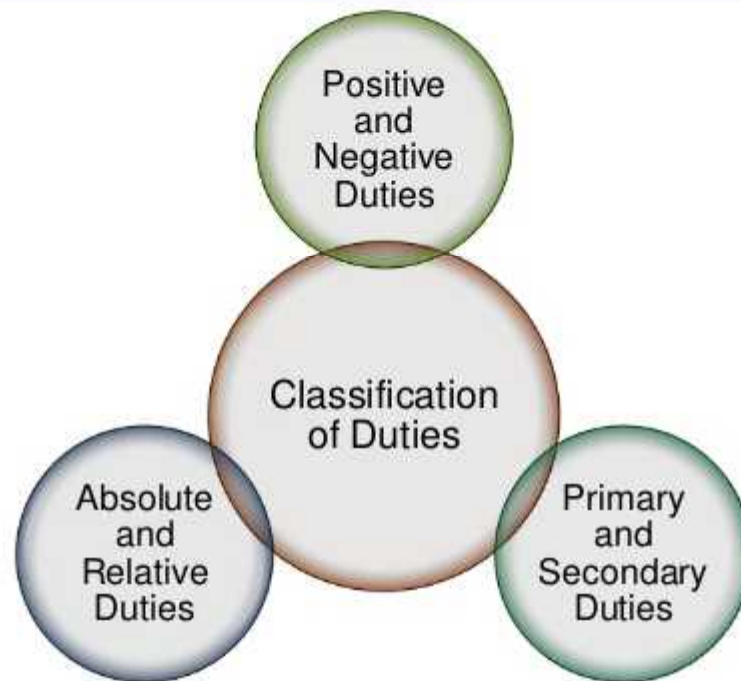
On the other hand, Austin said that Duties can be of two types:

a. **Relative Duty** – There is a corresponding right existing in such duties.

b. **Absolute Duty** – There is no corresponding right existing.



CLASSIFICATION OF DUTIES




Elements of a Legal Right

According to Sir John Salmond, each legal right has 5 essential elements –

The Person of Inherence – It is also known as the subject of right. A legal right is always vested in a person who may be distinguished, as the owner of the right, the subject of it or the “person of inherence”. Thus, there cannot be a legal right without a subject or a person who owns it. The subject means the person in whom the right is vested or the holder of the right. There can be no right without a subject. A right without a subject or a person who owns it is inconceivable. The owner of the right, however, need not be certain or determinate. A right can be owned by the society, at large, is indeterminate.

The Person of Incidence – A legal right operates against a person who is under the obligation to obey or respect that right. He is the “person of incidence”. He is a person bound by the duty or the subject of the duty.



Contents of the Right – The act or omission which is obligatory on the person bound in favour of the person entitled. This is called the context or substance of right. It obliges a person to act or forbear in favour of the person who is entitled to the right. It may also be known as the substance of the right

Subject matter of Right – It is something to which the act or omission relates, that is the thing over which a right is exercised. This may be called the object or subject-matter of the right. Some writers, although argue that there are certain rights which have no objects.

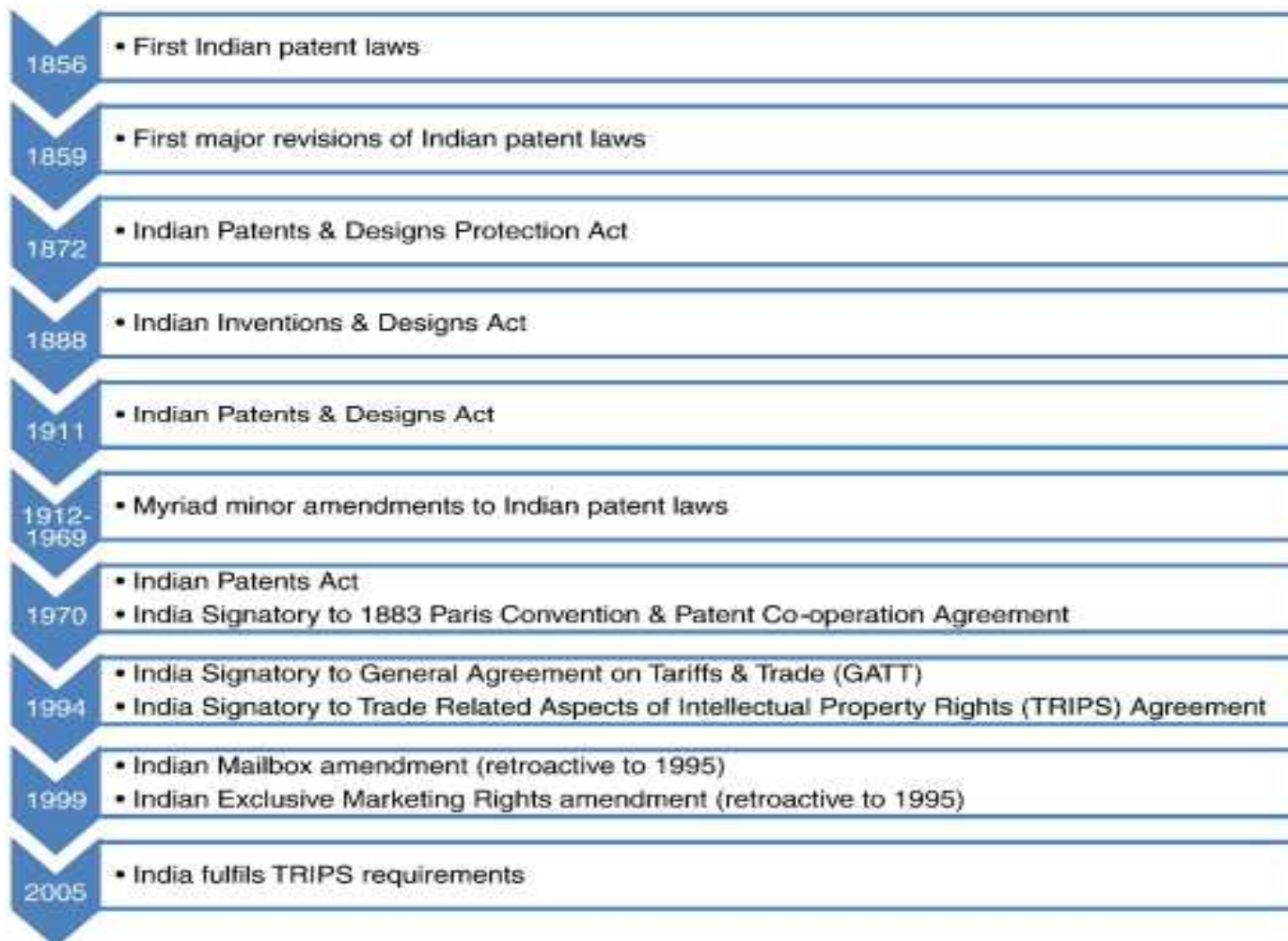
Title of the Right – Salmond has given the fifth element also, that is, “title”. He says that “every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner”.

CLASSIFICATION OF RIGHTS



History of Indian Patent System

1856	THE ACT VI OF 1856 ON PROTECTION OF INVENTIONS BASED ON THE BRITISH PATENT LAW OF 1852. CERTAIN EXCLUSIVE PRIVILEGES GRANTED TO INVENTORS OF NEW MANUFACTURERS FOR A PERIOD OF 14 YEARS.
1859	THE ACT MODIFIED AS ACT XV; PATENT MONOPOLIES CALLED EXCLUSIVE PRIVILEGES (MAKING, SELLING AND USING INVENTIONS IN INDIA AND AUTHORIZING OTHERS TO DO SO FOR 14 YEARS FROM DATE OF FILING SPECIFICATION).
1872	THE PATENTS & DESIGNS PROTECTION ACT.
1883	THE PROTECTION OF INVENTIONS ACT.
1888	CONSOLIDATED AS THE INVENTIONS & DESIGNS ACT.
1911	THE INDIAN PATENTS & DESIGNS ACT.
1972	THE PATENTS ACT (ACT 39 OF 1970) CAME INTO FORCE ON 20 TH APRIL 1972.
1999	ON MARCH 26, 1999 PATENTS (AMENDMENT) ACT, (1999) CAME INTO FORCE FROM 01-01-1995.
2002	THE PATENTS (AMENDMENT) ACT 2002 CAME INTO FORCE FROM 20 TH MAY 2003
2005	THE PATENTS (AMENDMENT) ACT 2005 EFFECTIVE FROM 1 ST JANUARY 2005



History of Copyright Law:

1847:

Copyright law entered India through an enactment.

According to the 1847 enactment, the term of copyright was for the lifetime of the author + seventy years post-mortem.

Purpose:

Specifically reserves the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in law other than the 1847 Act.

Registration of copyright with the Home Office was mandatory for the enforcement of rights under the Act.



1914:

Indian legislature enacted a new Copyright Act with few modifications

First Introduced criminal sanctions for copyright infringement (sections 7 to 12).

Second - Modified the scope of the term of copyright; under section 4.

Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24th January, 1958.

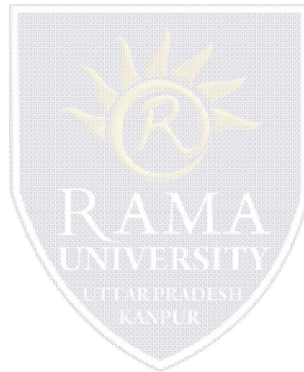


Copyright Enforcement Advisory Council (CEAC)

The Government has set up on November 6, 1991 a Copyright Enforcement Advisory Council (CEAC) to review the progress of enforcement of Copyright Act periodically and to advise the Government regarding measures for improving the enforcement of the Act.

Amendments:

1981
1984
1992
1994
1999
2010
2012



History of Trademark Law:

1940: The Indian Trademarks Act was passed .

1958: The Trademark and Merchandise Act,

Purpose:

Enables the registration of trademarks so that the proprietor of the trademark gets legal right to the exclusive use of the trademark.

Objective:

Easy registration and better protection of trademarks and for prevention of the use of fraudulent marks on merchandise.

1999 – The Trademark Act 1999

Objective:

To confer the protection to the user of the trademark on his goods and prescribe conditions on acquisition, and legal remedies for enforcement of trademark rights.

History of Geographical Indications:

1999: Geographical Indications of Goods (Registration and Protection) Act, 1999

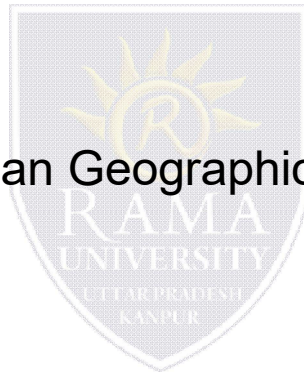
2002: The Geographical Indications of Goods (Registration and Protection) Rules, 2002- deal with registration and better protection of geographical indications relating to goods.

Purpose:

Provide legal protection to Indian Geographical Indications which in turn boost exports.

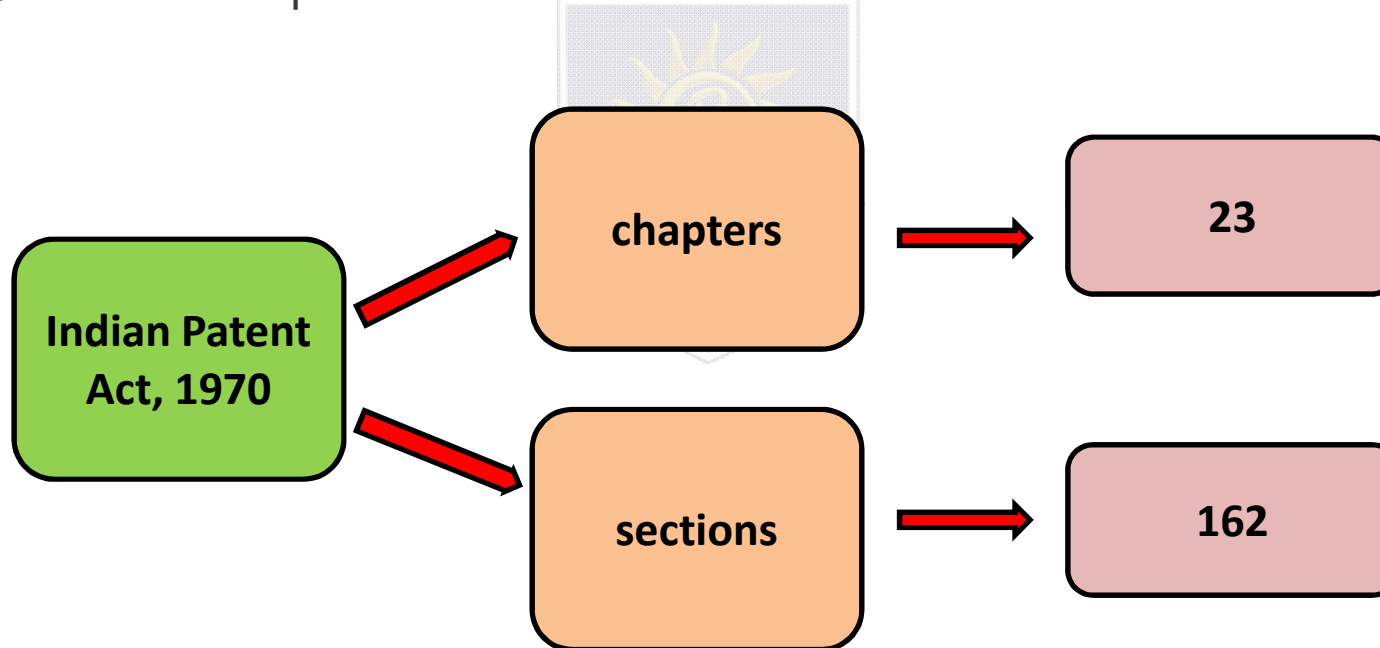
According to the Act:

The term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory.



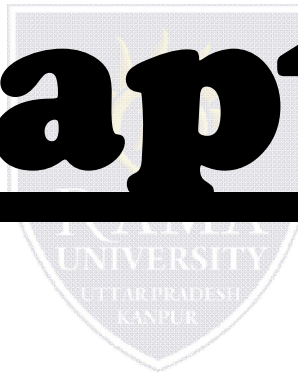
INDIAN PATENT ACT 1970

- The Indian legislation which control the patents system.
- In India the grant of patents is governed by the patent act 1970 and rules 1972 which is operative in the whole of India.



<https://www.slideshare.net/ShyamasundarT/ripathy/patent-act-36282014>

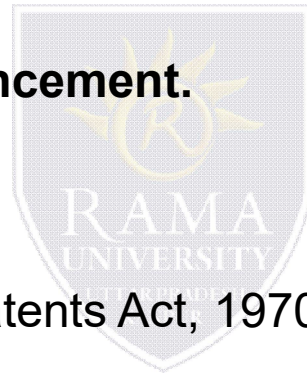
Chapters



PRELIMINARY

Short title, extent and commencement.

- This Act may be called the Patents Act, 1970.
- It extends to the whole of India.
- It shall come into force on such date as the Central Government may, by notification in the Official Gazette

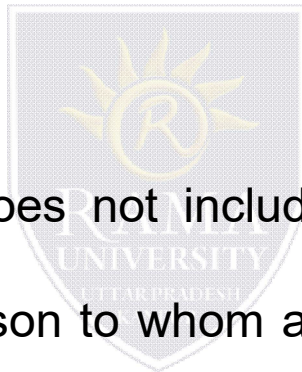


Definitions and interpretation.

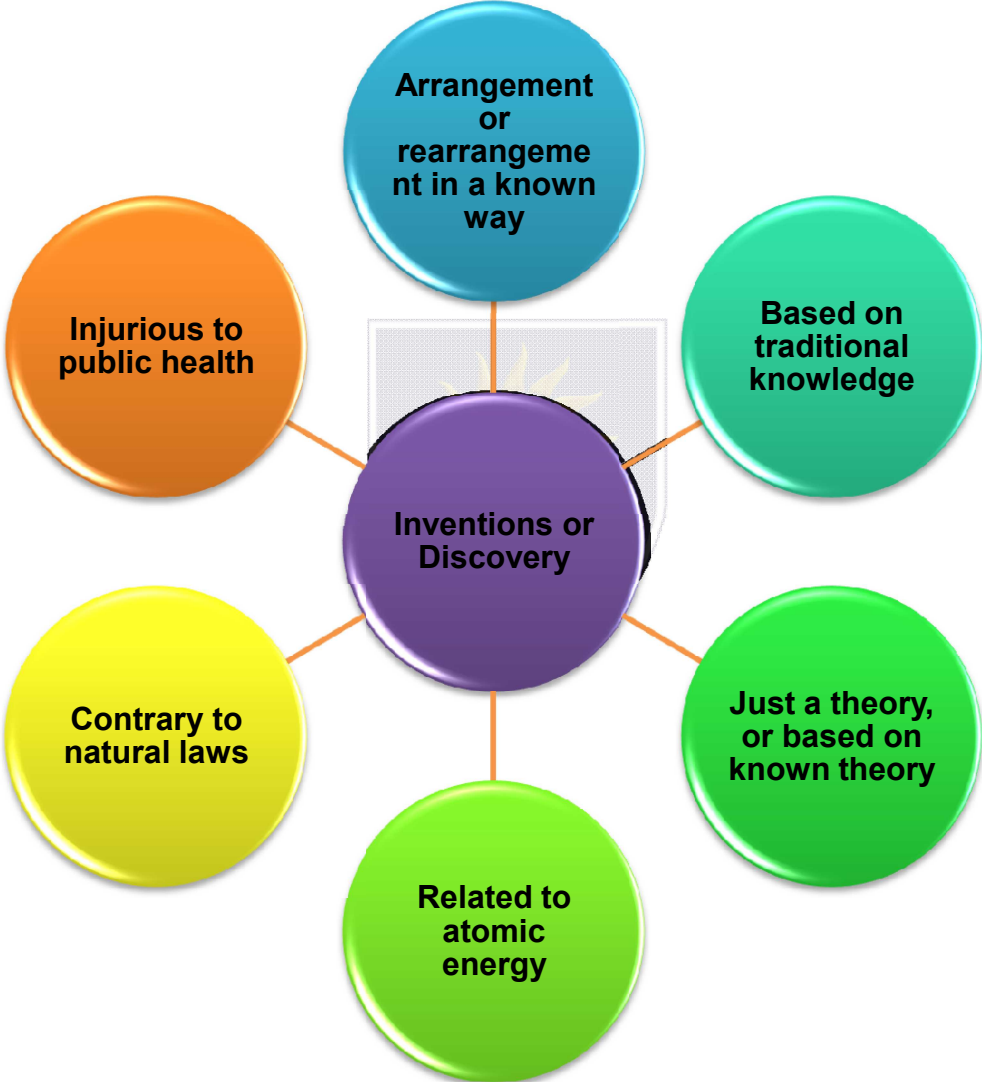
- **Assignee** includes the legal representative of a deceased inventor.
- **Invention** means any new and useful- (i) art, process, method or manner of manufacture (ii) machine, apparatus or other article (iii) substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention
-
- **Legal Representative** means a person who in law represents the estate of a deceased person Contd...

➤ **Patentee** means the person for the time being entered on the register as the grantee or proprietor of the patent.

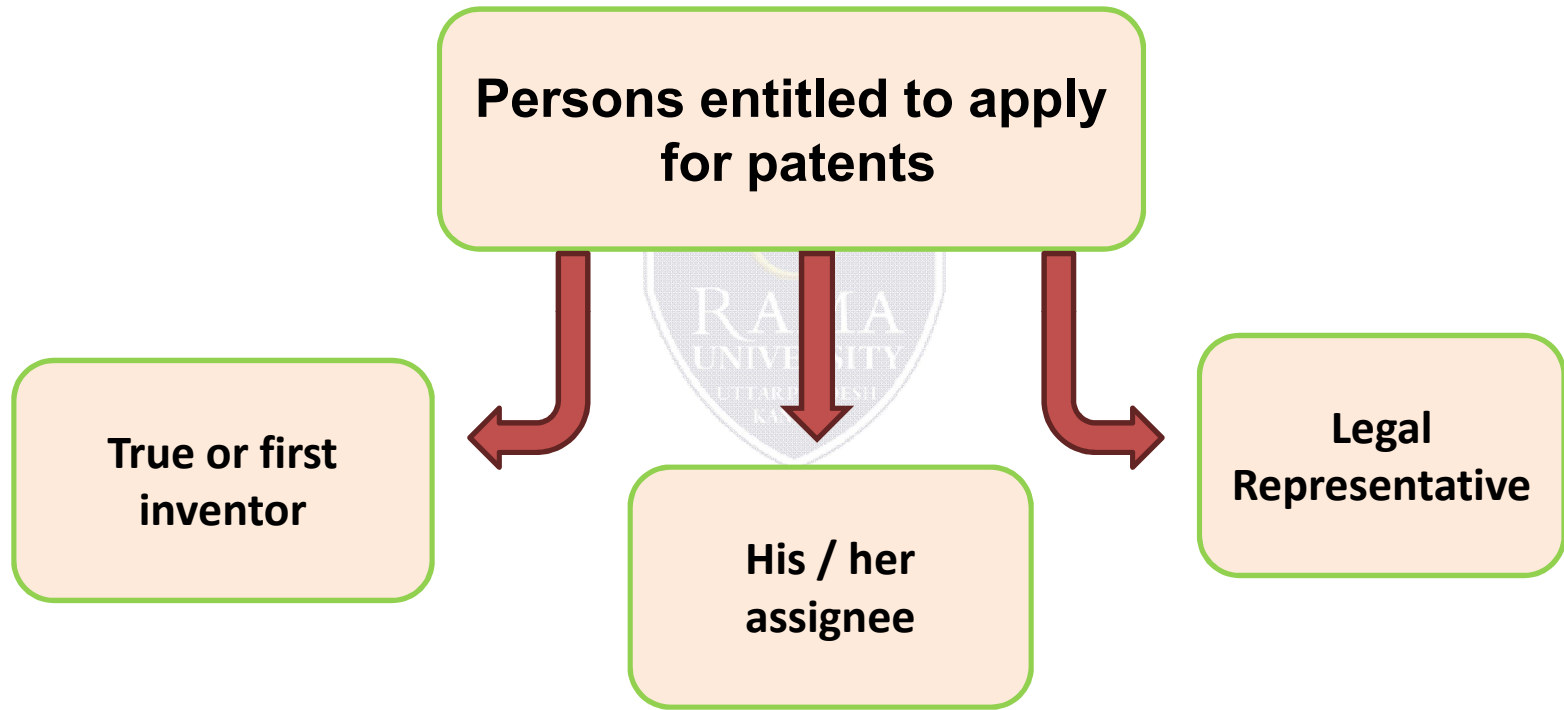
➤ **True And First Inventor** does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India



CHAPTER II: INVENTIONS NOT PATENTABLE



APPLICATIONS FOR PATENTS



Form of application

Provisional and complete specifications

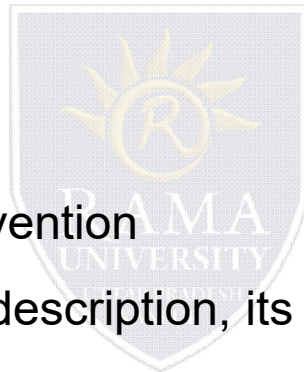
- ✓ complete specifications within 12 months (3 months relaxation after the permission of controller but have to pay a prescribed fee).

Contents of specifications

- ✓ Provisional : Title & idea of invention
- ✓ Complete : title, abstract, full description, its utility, scope, diagram, etc.

Priority dates of claims

- ✓ first to file (in India)
- ✓ first to document (in USA)



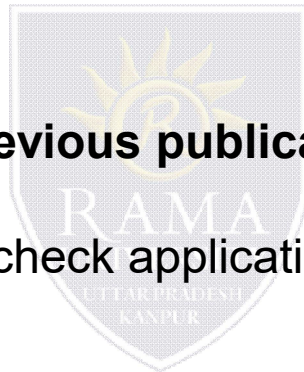
CHAPTER IV EXAMINATION OF APPLICATIONS

Examination of application:

- ✓ after submission of complete specifications.

Search for anticipation by previous publication and by prior claim :

- ✓ It is the duty of examiner to check applications

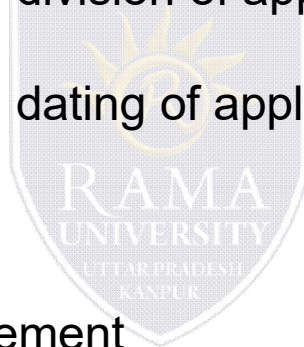


Consideration of report of Examiner by Controller:

- ✓ Controller analyse it and make gist of objection, send to applicant & provide prescribed time to him to eradicate these objections.
-

Power of Controller

- ✓ to refuse or require amended applications in certain cases
- ✓ to make orders respecting division of application
- ✓ to make orders respecting dating of application
- ✓ in cases of anticipation
- ✓ in case of potential infringement
- ✓ to make orders regarding substitution of applicants, etc.



Time for putting application in order for acceptance

- ✓ An application for a patent shall be deemed to have been abandoned unless within fifteen months from the date on which the first statement of objections to the applicant by the Controller.



Acceptance of complete specification:

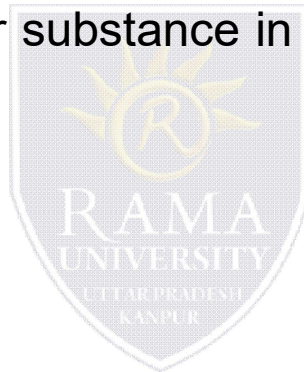
- ✓ within 12 months from the date of filing of provisional application

Advertisement of acceptance of complete specification

CHAPTER IVA EXCLUSIVE MARKETING RIGHTS

Application for grant of exclusive rights:

- ✓ To sell or distribute article or substance in India (made in prescribed form and on payment of fees).

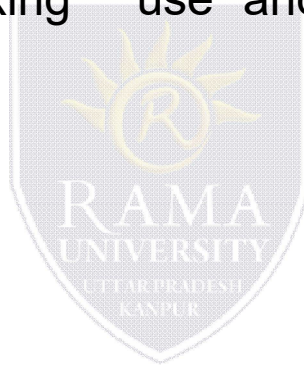


CHAPTER V OPPOSITION TO GRANT OF PATENT

Opposition to grant of patent: four months from date of advertisement of acceptance of complete specification (1 month may exceed) In cases of "obtaining" Controller may treat application as application of opponent Refusal of patent without opposition : its all depends on controller. Mention of inventor as such in patent

CHAPTER VI ANTICIPATION

Previous publication previous communication to Government public
display, etc. public working use and publication after provisional
specification



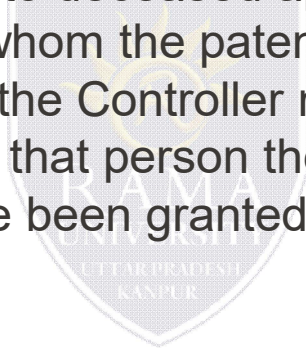
CHAPTER VII PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

To inventions relevant for defence purposes Secrecy directions to be periodically reviewed: within 9 months (extend period of 3 months) by central govt. Consequences of secrecy directions : central govt. provide him reward/payment



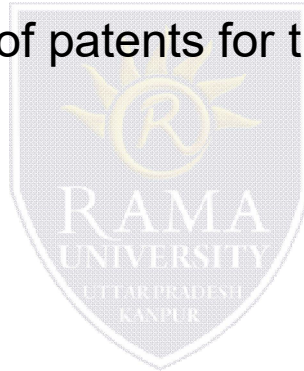
CHAPTER VIII GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY

Grant and sealing of patent: the application has been opposed and the opposition has been finally decided in favour of the applicant
Amendment of patent granted to deceased applicant the Controller is satisfied that the person to whom the patent was granted had died before the patent was sealed, the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted.



CHAPTER IX PATENTS OF ADDITION

Patents of addition any improvement in or modification of an invention which is not present in complete specification Terms of patents of addition- equal to the term of patents for the main invention.



CHAPTER X AMENDMENT OF APPLICATIONS AND SPECIFICATIONS

Amendment of application and specification before Controller: Every application for leave to amend an application for a patent or a specification under this section made after the acceptance of the complete specification and the nature of the proposed amendment shall be advertised in the prescribed manner. Amendment of specification before High Court Where an application for an order under this section is made to the High Court, the applicant shall give notice of the application to the Controller and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the High Court.

CHAPTER XI RESTORATION OF LAPSED PATENTS

Applications for restoration of lapsed patents The patentee or his legal representative, and where the patent was held by two or more persons jointly, then with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent. Rights of patentees of lapsed patents which have been restored. Same right as given to original patentee.

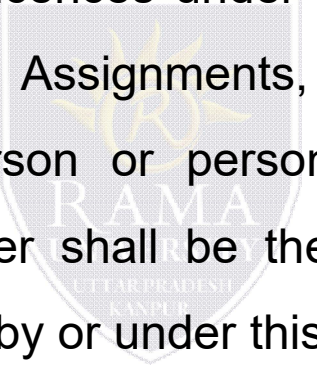
CHAPTER XII SURRENDER AND REVOCATION OF PATENTS

Surrender of patents A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

Revocation of patents in public interest Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

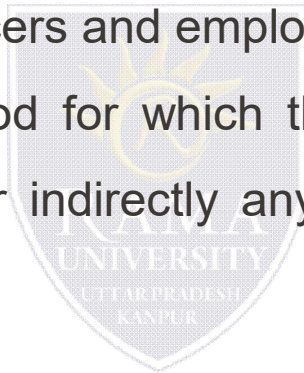
CHAPTER XIII REGISTER OF PATENTS

Register of patents and particulars to be entered therein the names and addresses of grantees of patents; notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, and revocations of patents; Assignments, etc., not to be valid unless in writing and registered Person or persons registered as grantee or proprietor of patent Register shall be the prim face evidence of any matter required or authorized by or under this act.



CHAPTER XIV PATENT OFFICE AND ITS ESTABLISHMENT

Patent office and its branches : kolkata(H.O) Branches: Delhi, Mumbai,Chennai. Restriction on employees of patent office as to right or interest in patents All officers and employees of the patent office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly any right or interest in any patent issued by that office.




CHAPTER XV POWERS OF CONTROLLER GENERALLY

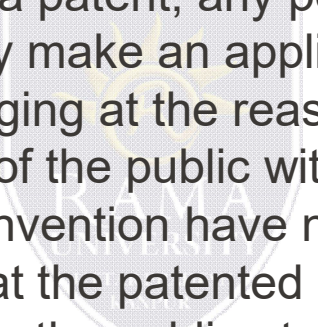
Controller have certain powers of a civil court Examining patentee. Awarding cost Issuing commission for examination of witness of document Requiring the discovery and production of any document To correct clerical error in a patent or application of patent or other specification Give final decision if there is any opposition on a specification filed, then heard both of one and decide the case. Give extension of time in different provisions.


CHAPTER XVI WORKING OF PATENTS, COMPULSORY LICENCES, LICENCES OF RIGHT AND REVOCATION

Definitions of "patented articles" and "patentee". "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force General principles applicable to working of patented inventions To encourage inventions. Have commercial utility in India.

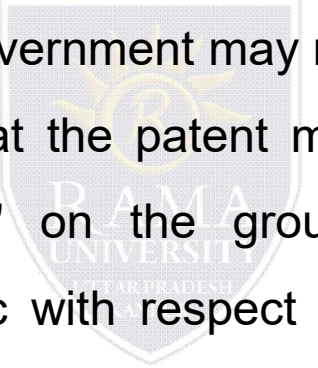


Compulsory licences At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price and praying for the grant of a compulsory licence to work the patented invention.



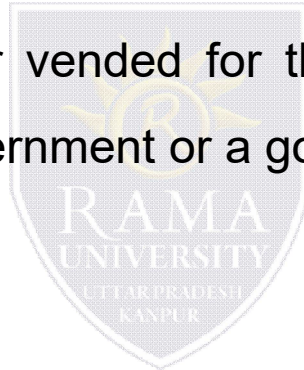



Endorsement of patent with the words "Licences of right" At any time after the expiration of three years from the date of the sealing of a patent, the Central Government may make an application to the Controller for an order that the patent may be endorsed with the words "licences of right" on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.



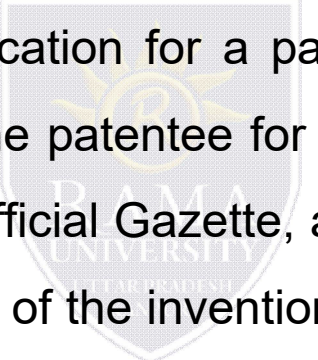
CHAPTER XVII USE OF INVENTIONS FOR PURPOSES OF GOVERNMENT AND ACQUISITION OF INVENTIONS BY CENTRAL GOVERNMENT

Meaning of use of invention for purposes of Government an invention is said to be used for the purposes of government if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a government undertaking.





Acquisition of inventions and patents by the Central Government The Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

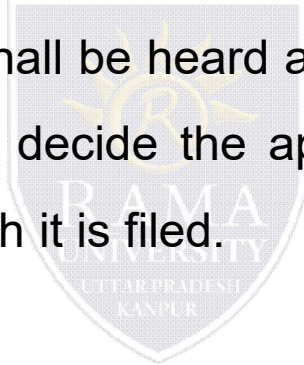


CHAPTER XVIII SUITS CONCERNING INFRINGEMENT OF PATENTS

Power of court to make declaration as to non-infringement any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent. Power of court to grant relief in cases of groundless threats of infringement proceedings Where any person threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him

CHAPTER XIX APPEALS

Every appeal under this section shall be in writing and shall be made within three months from the date of the decision. Procedure for hearing of appeals Every such appeal shall be heard by a single judge of the High Court. Every such appeal shall be heard as expeditiously as possible and endeavour shall be made to decide the appeal within a period of twelve months from the date on which it is filed.



Chapter XX- OFFENCES AND PENALTIES

OFFENCES PENALTIES

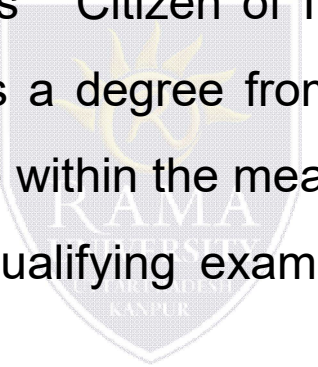
Contravention of secrecy provisions relating to certain inventions imprisonment for a term which may extend to two years, or with fine, or with both. Falsification of entries in register, etc. ----- do -----

Unauthorised claim of patent rights punishable with fine which may extend to five hundred rupees. Wrongful use of words, "patent office" imprisonment for a term which may extend to six months, or with fine, or with both. Refusal or failure to supply information ----- do -----

Practice by non-registered patent agents fine which may extend to Rs.500 in the case of a first offence and Rs.2000 in the case of subsequent offence. Offences by companies If the person committing an offence under this Act is a company offence shall

CHAPTER XXI: PATENT AGENTS

Register of patent agents The Controller shall maintain a register .
Contains names and addresses of all persons . Qualifications for registration as patent agents Citizen of India; He has completed the age of 21 years; Has a degree from any Indian university or equivalent. Is an advocate within the meaning of the advocates act, 1961. Has passed the qualifying examination prescribed for the purpose;.



CHAPTER XXIII MISCELLANEOUS

Avoidance of certain restrictive conditions Fees Restrictions upon
publication of specifications Reports of Examiners to be
confidential Publication of patented inventions Power of
Controller to call for information from patentees Evidence of
entries, documents, etc. Service of notices, etc., by post Security
for costs

INTERNATIONAL CONVENTION

What is a Convention?

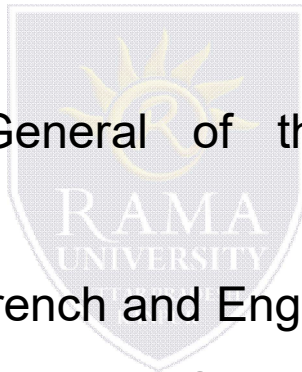
An international agreement between states or nations, concerning finance, trade, or other matters considered less significant than those governed by a treaty (a negotiation between states to reach common ground and avoid disagreements, normally ratified by the lawmaking authority of the government)

- It results in general agreement about procedures or actions which will be taken on specific topics

WIPO Copyright Treaty (WCT) - special agreement under the Berne Convention (protection of works and the rights of the authors in the digital environment)

BERNE CONVENTION

- Signed : 9 September 1886
- Location : Berne, Switzerland
- Parties : 168
- Articles: 38
- Depositary: Director General of the World Intellectual Property Organization(WIPO)
- Languages: Signed in French and English, officially translated in Arabic, German, Italian, Portuguese and Spanish
- It is the most significant international convention in the field of protecting copyright.



BASIC PRINCIPLES OF BERNE CONVENTION

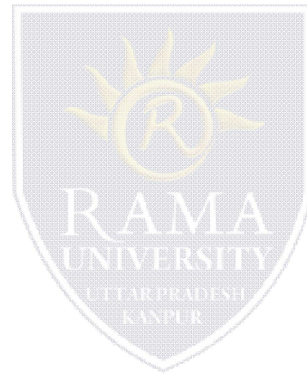
- Principle of National Treatment
- Principle of Automatic Protection
- Principle of Independence of Protection



Works protected under Berne Convention (Art. 2)

Every production in the,

- I. Literary,
- II. Scientific and
- III. Artistic Domain,



irrespective of their mode or form of its expression.

Rights protected under Berne Convention

- Right to translate
- Right to make adaptations and arrangement of the works
- Right to perform in public dramatic ,dramtico-musical and musical works
- Right to recite in public literary works
- Right to communicate to the public the performance of such works
- Right to broadcast
- Right to make reproductions in any manner or form Right to use the work as a basis for an audio-visual work and right to reproduce, distribute, perform in public or communicate to the public that audio-visual work

ROME CONVENTION

The rights given to performers are a result of many conventions and treaty. The need for the treaties arose due to the development and innovation in technology.

International Convention for the protection of Performers, Producers, Phonograms and broad casting Organizations (Rome Convention 1961)

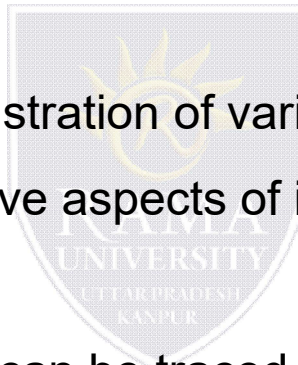
Rome Convention, 1961 granted following rights to the performers under Article 7:

1. Right to prevent the broadcasting and communication to the public of their live performances without their consent.
2. Right to prevent fixation to their live performances without their consent.
3. Right to prevent reproduction of the fixation to their live performances without their consent under the following circumstances:

If the original fixation was made without their consent

WIPO (WORLD INTELLECTUAL PROPERTY ORGANIZATION)

- WIPO is a specialized agency of the United Nations which is dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide.
- It is responsible for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property.
- The roots of this organization can be traced back to 1833 with the birth of Paris Convention for the protection of industrial property.
- It was the first major international treaty formed to help the inventors of one country to obtain protection in other countries for their creation or invention.



WIPO seeks to:

- Provide services for international application for industrial property rights.
- Exchange intellectual property information among member countries.
- Provide legal and technical assistance to developing and other countries
- Resolve the private disputes on intellectual property and harmonizes the intellectual property (IP) laws and procedures.

WIPO was established by the convention in 14 July 1967, which entered into force in 1970.

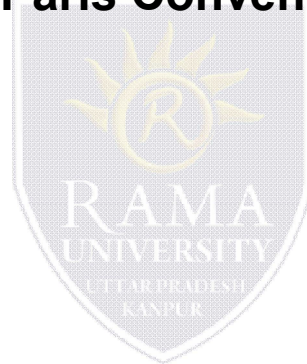
WIPO undertakes development cooperation for developing countries through advice, training and furnishing of documents.

PARIS CONVENTION TREATY

The Paris Convention was signed in 1833 for the first time by 11 countries and entered into force in 1834.

The important features of the Paris Convention are:

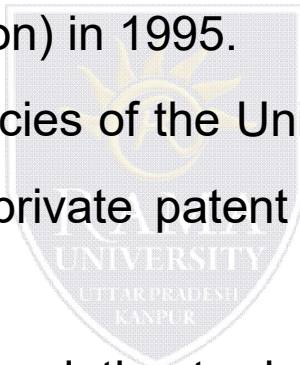
- ✓ National Treatment
- ✓ Parallel importation
- ✓ Right of priority
- ✓ Independence of patents
- ✓ Protection against false indication and unfair competition.



However, the main objective of the convention is to give protection for obtaining, maintaining and enforcing the industrial property of the member nations.

GATT (GENERAL AGREEMENT ON TARIFFS AND TRADE)

- GATT was signed in 1947, and came into force on 1 January 1948 signed by 23 states.
- It was amended in 1966 and lasted until 1993 when it was replaced by the WTO (World Trade Organization) in 1995.
- It is one of the important agencies of the United Nations, which provides better and wider protection for the private patent holders of the developed nations than the Paris Convention.
- It is a multilateral agreement regulating trade among about 150 countries.
- The purpose of the GATT was explained as the 'substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis'.



WTO (WORLD TRADE ORGANIZATION)

- WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT).
 - In 1995 WTO was established, which replaced the GATT.
 - WTO's principle rule book for trade in goods is GATT
 - WTO intends to supervise and liberalize international trade and officially commenced on 1 January 1995.
 - It had 157 members (till 2012) of which 117 are developing countries. The headquarters of WTO is at Geneva, Switzerland.
 - Its activities are supported by a secretariat of 700 staffs, led by the WTO Director General.
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Benefits of WTO:

- System helps in promoting peace
- Helps in dispute settlement
- Makes rules that makes life easier
- Conducts free trade that cuts the costs of living
- Provides more choice of products and qualities
- Income that is due is raised
- Governments are shielded from lobbying
- System encourages good government



TRIPS (TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT)

- The TRIPs Agreement came into effect on 1 January 1995.
- It provides standards for the full range of intellectual property rights and also the enforcement of those standards both internally and through legal and administrative actions.
- The general timetable for implementing the TRIPs agreement is 1 year for industrialised countries; 5 years for developing countries and countries shifting from centrally planned economics; 10 years for least developed countries.



The agreement covers 5 broad issues:

- ✓ Application of basic principles of the trading system and other international intellectual property agreements.
- ✓ Methods used for the adequate protection of intellectual property rights.
- ✓ Enforcement of those rights sufficiently and adequately in their own territories.
- ✓ Settling of disputes on intellectual property rights between members of the WTO.
- ✓ Special transitional arrangements during the period when the new system is being introduced.

Basic features of TRIPs agreement:

1. Standards:

- ✓ The agreement sets out the minimum standards of protection that has to be provided by each member country.
- ✓ The main TRIPs standards, relating to pharmaceuticals, that countries must include in their patent law are:
 - a. Availability of patents for both pharmaceutical products and processes inventions that are new, involve an inventive step and are capable of industrial application.
 - b. Protection of the product directly obtained using a patented process.

2. Enforcement:

- ✓ It deals with the internal methods or procedures for the enforcement of IPR.

3. Dispute settlement:

- ✓ The agreement makes disputes between WTO members in respect of TRIPs obligations subject to the WTO's dispute settlement procedures.
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Madrid – The International Trademark System

The Madrid System is a one stop solution for registering and managing marks worldwide. File one application, in one language, and pay one set of fees to protect your mark in the territories of up to 96 members.

Benefits of Madrid System

- ✓ Convenient: The Madrid System is a centralized filing and management procedure. Through the Madrid System you can file one international application, in one language (English, French) and pay one set of fees in Swiss francs to obtain international registration in multiple territories.
- ✓ Cost effective: Filing an international application is the equivalent of filing a bundle of national applications, effectively saving you time and money.
- ✓ Broad geographic coverage

MAJOR CHANGES IN INDIAN PATENT SYSTEM AS POST TRIPS EFFECTS

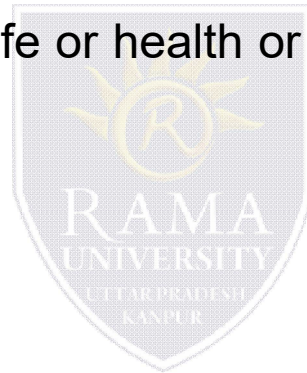
Conditions Under TRIPS Agreement - For An Invention To Be Patentable


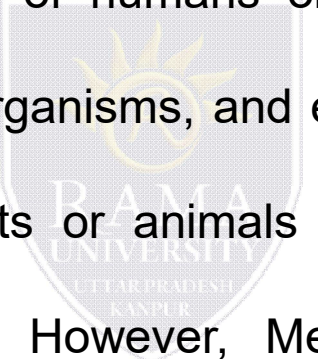
- Article 27 of TRIPS Agreement establishes the following conditions for an invention to be patentable.
- The product or process must be “new”, involve an “inventive step” (non-obvious) and should be “capable of industrial application” (useful).
- Patents shall be available irrespective of the place of invention, the field of technology and whether products are imported or locally produced.

Exceptions To Patenting

- Under Article 65.1 and 65.2 of TRIPS Agreement, developing countries (including India) had 5 years to comply with the TRIPS provisions. Under Article 65.4, a further 5 years were provided to comply with the requirement of granting product patents in areas where such protection was not granted.
- The developing countries thus got a leeway of 10 years to introduce product patent regime in all areas of technology.

Article 27.2 permits a member state to exclude inventions from patentability only where it is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.



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- Article 27.3 permits exclusion of (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.
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CHANGES UNDER THE INDIAN PATENT ACT (1970)

- **India availed of the 10 years exemption** (provided under Article 65.1, Article 65.2 & Article 65.4) to fully comply with the TRIPS provisions.
- Vide the **first amendment** to the Patent Act from **1st January 1995**, the GOI provided for **EMR (exclusive marketing rights)** and set up a **mail box facility** to accept product patent applications.
- The second amendment to the Indian Patent Act (1970) - applied from January 1, 2000 - introduced a **“uniform” patent term of 20 years** for innovations in all areas; **rationalized time lines** to reduce time taken for grant of patent.

REFERENCES

➤ www.iprindia.nic.in

