

FOREIGN TRADE POLICY AND PROCEDURE



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LEGAL FRAMEWORK AND TRADE FACILITATION

1) Legal basis of foreign trade policy

a) Notified By

Central Government

b) Provision empowering Government

Section 5 of the Foreign Trade (Development & Regulation) Act, 1992

2) Duration of ftp

a) Effective from

1st April 2023

b) Continue Until

Until it is amended or otherwise specified

3) Amendment to ftp

a) Who can amend

Central Government

b) Provision empowering Central Government

Section 3 and Section 5 of FT (D&R) Act, 1992

4) Hand book of procedures (HBP) and Appendices & Aayat Niryat forms (ANF)

Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify

a) Hand Book of Procedures, including Appendices

b) Aayat Niryat Forms or amendment thereto

c) Laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority

for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders

5) Specific provision to prevail over the general

Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision

6) Transitional Arrangement

a) License/ Certificate before commencement

Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefit

issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated

b) Import/ export already made

In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected

c) Irrevocable Letter of credit before amendment

The import/export on or after the date of such regulation/restriction will be allowed for importer/ exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC

PROHIBITIONS ON TRADE (COUNTRY, ORGANISATIONS, GROUPS, INDIVIDUALS ETC. AND PRODUCT SPECIFIC)

1) Prohibition on Import and Export of 'Arms and related material' from / to Iraq

a) Prohibition

The import/export of Arms and related material from/to Iraq is '**Prohibited**

b) Government of Iraq

Export of Arms and related material to Government of Iraq shall be permitted subject to 'No Objection Certificate' from the Department of Defence Production

2) Prohibition on Trade with the Islamic State in Iraq and the Levant [ISIL, also known as Daesh], Al Nusra Front [ANF] and other individuals, groups, undertakings and entities associated with Al Qaid

a) Provision

Trade in oil and refined oil products, modular refineries and related materials, besides items of cultural (including antiquities), scientific and religious importance is prohibited

b) Prohibition with whom

- a) Islamic State in Iraq and
- b) the Levant [ISIL],
- c) Al Nusra Front [ANF] and
- d) Other individuals, groups, undertakings and entities associated, directly or indirectly, with Al Qaida

c) Reason

Compliance with United Nations Security Council Resolution No. 2199 [2015]

3) Prohibition on direct or indirect import and export from/to DPRK

Direct or Indirect export and import of items, whether or not originating in Democratic People's Republic of Korea (DPRK) to/from DPRK is prohibited

4) Direct or Indirect Export/Import to/ from Iran

Direct or indirect export to Iran or import from Iran of any item, material, equipment, goods and technology mentioned in the following documents would be permitted subject to the provisions contained in Annex-B to the United Nations Security Council Resolution 2231

5) Prohibition on Import of Charcoal from Somalia

a) Prohibition

Direct or indirect import of charcoal is prohibited from Somalia, irrespective of whether or not such charcoal has originated in Somalia

b) Declaration

Importers of Charcoal shall submit a declaration to Customs that the consignment has not originated in Somalia

c) Reason

United Nations Security Council Resolution 2036(2012)

IMPORT / EXPORT THROUGH STATE TRADING ENTERPRISE

1) Meaning of State Trading Enterprise

- a) State Trading Enterprises (STEs), for the purpose of this FTP, are those entities which are granted exclusive right/privileges export and /or import as per Para 2.20 (a) of FTP
- b) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import

2) Special Privileges

Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE)

3) List

The list of STEs notified by DGFT is in Appendix-2J.

4) Power of DGFT to authorize other

DGFT may, however, grant an authorisation to any other entity to import or export any of the goods notified for exclusive trading through STEs

5) Factors to be achieved

STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with **commercial considerations**, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

TRADE WITH SPECIFIC COUNTRIES

1) Trade with neighboring countries

DGFT may issue instructions or frame schemes as may be required to promote and regulate trade and strengthen economic ties with neighbouring countries.

2) Transit Facility

a) Bilateral treaties and Strategic and Economic Interest of India

Transit of goods through India from/ or to countries adjacent to India shall be enabled and regulated in accordance with strategic and economic interests of India as well as the bilateral treaties between India and those countries

b) Conditions specified by DGFT

Arrangements will be subject to conditions and restrictions as may be specified by DGFT in accordance with International Conventions/ Treaties/Agreements

3) Trade with Russia under Debt-Repayment Agreement

In case of trade with Russia under Debt Repayment Agreement, DGFT may issue instructions or frame schemes as may be required, and anything contained in FTP, in so far as it is inconsistent with such instructions or schemes, shall not apply.

IMPORT OF SPECIFIC CATEGORIES OF GOODS

1) Import of samples

a) No Authorisation shall be required for Import of bonafide technical and trade samples of items "restricted" in ITC (HS)

b) Exception

Defence/security items, seeds, bees and new drugs

2) Import of Gifts

a) Payment of custom

Import of goods as gifts with payment of full applicable duties is allowed

b) Custom Clearance not done

Import of goods, including those purchased from e-commerce portals, through post or courier, where Customs clearance is sought as gifts, is prohibited if custom clearance is not done

c) Exception where custom clearance not needed

Life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

3) Import through Passenger Baggage

a) Import without authorisation

The following are allowed to import without authorisation but subject to Baggage Rules notified by Ministry of Finance but subject to limit notified by Customs

i) Bona-fide household goods

- ii) Personal effects
- iii) Samples of such items that are otherwise freely importable

b) Exporters coming to India

Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage

c) Restricted, Prohibited or Canalised through STE's

Are not permitted as part of passenger baggage except with a valid authorization/ permission issued by DGFT

4) Import of goods used in projects abroad

a) After completion of Project

Project contractors after completion of projects abroad, may import without an Authorisation

b) Capital Goods

Capital goods used in the project, can be imported without authorisation provided they have been used for at least one year

5) Import of Prototypes

a) Import subject to payment of duty

Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User

b) Condition

Engaged in production of or Having industrial license / letter of intent for research in item for which prototype is sought for product development or research

c) Self-Declaration

Upon a self-declaration to that effect, to the satisfaction of Customs authorities.

IMPORT POLICY FOR SECOND HAND GOODS

A) Second Hand Capital Goods

1) Desktop Computers; Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; Air Conditioners; Diesel generating sets

a) Import Policy-

Restricted

b) Condition-

Importable against Authorisation

2) All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time

a) Import Policy-

Restricted

b) Condition-

- i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time
- ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"

3) Refurbished / re-conditioned spares of Capital Goods**a) Import Policy-**

Free

b) Condition-

Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare

4) All other goods not covered in above

Import Policy – Free

B) Second Hand Goods other than capital goods**1) Import Policy**

Restriction

2) Conditions

Importable against Authorisation

C) Second Hand Goods imported for the purpose of repair/refurbishing / reconditioning or re-engineering**1) Import Policy**

Free

2) Conditions

Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification

OTHER PROVISION RELATING TO IMPORT**1) Import under Lease Financing**

No specific permission of DGFT is required for import of lease financed Capital Goods

2) Execution of Legal Undertaking (LUT) / Bank Guarantee (BG)**a) Provision**

Any duty-free import is allowed or where otherwise specifically stated

b) Condition

Importer shall execute, Legal Undertaking (LUT) / Bank Guarantee (BG) / Bond with the Customs Authority

3) Special provision for Hides Skins and semi-finished goods

a) Import into Bonded Warehouse

Hides, Skins and semi-finished leather may be imported in the Public/ Private Bonded warehouse for the purpose of DTA sale

b) Unsold items re-exported

Unsold items thereof can be re-exported from such bonded warehouses on payment of the applicable rate of export duty.

4) Sale on High Seas

Sale of goods on high seas for import into India may be made subject to FTP or any other law in force

5) Merchant Trading

a) Meaning

Merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary

b) Allowed

It is allowed subject to compliance with RBI guidelines, except for goods/items in the CITES and SCOMET list

CITES- Convention of International Trade in Endangering Species

SCOMET- Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET)

6) Private/Public Bonded Warehouses for Imports

a) Subject to Rules, Regulation, Notification

Private/ Public bonded warehouses may be set up in DTA as per rules, regulations and notifications issued under the Customs Act, 1962

b) Home Consumption

Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

c) Clearance

The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962

QUALITY COMPLAINTS AND TRADE DISPUTES

OBJECTIVE

1) Good Image abroad to promote exports

Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible

2) Importer grievance

Importers too may have grievances as well.

3) Out of Scope

- a) Complaints/Disputes between two or more Indian entities
- b) Complaints/disputes between two or more foreign entities are also not covered.

QUALITY COMPLAINTS/ TRADE DISPUTES

1) From Foreign Buyer

Complaints received from foreign buyers in respect of quality of goods or services or technology supplied by exporters from India

2) Received Against Foreign Supplier

Complaints of importers against foreign suppliers in respect of quality of the goods or services or technology supplied

3) Unethical Commercial Dealing

Complaints of unethical commercial dealings categorized mainly

- a) Non-supply/ partial supply of goods or services or technology after confirmation of order
- b) Supplying goods or services or technology other than the ones as agreed upon
- c) Non- payment
- d) Non-adherence to delivery schedules

PROVISIONS IN FT (D&R) ACT, 1992, AS AMENDED & FT (REGULATION) RULES, 1993, AS AMENDED FOR NECESSARY ACTION AGAINST ERRING EXPORTERS/ IMPORTERS

1) Section 8: Suspend or Cancel IEC

Director General of Foreign Trade or any other officer authorized by him to suspend or cancel the Importer Exporter Code Number

2) Section 9(2): Refuse to grant or renew

Director General of Foreign Trade or an officer authorised by him to refuse to grant or renew a license, certificate, scrip or any other instrument bestowing financial or fiscal benefit granted under the Act

3) Section 9(4): Cancel or suspend License

Director General of Foreign Trade or the officer authorized by

him to suspend or cancel any License, certificate, scrip or any instrument bestowing financial or fiscal benefit granted under the Act

4) Section 11(2):Fiscal Penalty

Imposition of fiscal penalty in cases where a person makes or abets or attempts to make any import or export in contravention of any provision of the Act, any Rules or Orders made there under or the Foreign Trade Policy

MECHANISM FOR HANDLING OF COMPLAINTS/ DISPUTES

1) Constitution of CQCTD at RA

To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be constituted in the Regional Authorities (RAs) of DGFT

2) Name of RA and Jurisdiction

Names of RAs, where CQCTD has been constituted and jurisdiction of CQCTD is given in Chapter 8 of the Handbook of Procedures

3) Functions of CQCTD

a) Enquire and Investigation

The Committee (CQCTD) will be responsible for enquiring and investigating into all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs.

b) Prompt and Effective redressal

It will take prompt and effective steps to redress and resolve the grievances of the importers/ exporters and overseas buyers/ sellers preferably within three months of receipt of the complaint.

c) Take assistance

The Committee (CQCTD) may take the assistance of the Export Promotion Councils/FIEO(Federation of Indian Export Organsiation)/Commodity Boards or any other agency as considered appropriate for settlement of these disputes

d) Meetings

CQCTD will hold its meetings at regular intervals and at least four in a year given the pendency of complaints/disputes.

PROCEEDINGS UNDER CQCTD

CQCTD proceedings are conciliatory in nature and the aggrieved party, whether the foreign entity or the Indian entity, is free to pursue any legal recourse against the other erring party

PROCEDURES TO DEAL WITH COMPLAINTS AND TRADE DISPUTES

The procedure for making an application for such complaints or trade disputes and the procedure to deal with such quality complaints and disputes is given in the **Handbook of Procedures**.

CASE OFFICER

A Case Officer will be assigned for monitoring purposes in the designated Regional Authorities for resolving complaints and trade disputes in a time bound manner

NODAL OFFICER

Director General of Foreign Trade would appoint an officer, not below the rank of Joint Director General, in the Headquarters, to function as the 'Nodal Officer' for monitoring the trade disputes and coordinating with Regional Authorities of DGFT, Foreign Trade Divisions of Department of Commerce, Indian Missions and other agencies.

EXPORTS

1) Free Exports

a) Free export

All goods may be exported without any restriction

b) Exception

Exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force

2) Benefits to Supporting Manufacturers

a) Meaning of Merchant Exporter

"Merchant Exporter" means a person engaged in trading activity and exporting or in tending to export goods.

b) Supporting Manufacturing

"Supporting Manufacturer" is one who manufactures goods/products or any part/accessories/components of a good/ product for a merchant exporter or a manufacturer exporter under a specific Authorisation

c) Provision

The names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in Tax Invoice / Shipping Bill / Bill of Export/ Airway Bill for any benefit to the supporting manufacturer

3) Third Party Exporters**a) Meaning of Third Part Exports**

“Third-party exports” means exports made by an exporter or manufacturer on behalf of another exporter(s)

b) Provision

Export documents such as shipping bill shall indicate name of both manufacturing exporter/manufacturer and third-party exporter(s).

EXPORT OF SPECIFIC CATEGORY**1) Export of Samples**

- a) Exports of bonafide trade and technical samples of freely exportable item shall be allowed without any limit.
- b) The procedure for Export of Samples and Free of charge goods shall be governed by provisions given in Para 2.63 of Handbook of Procedures.

2) Export of Gifts**a) Threshold Limit**

Goods including edible items, of value not exceeding Rs.5, 00,000/- in a licensing year, may be exported as a gift

b) Items restricted for exports

Items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an Authorisation

c) Meaning of Licensing Year

“Licensing Year” means period beginning on the 1st April of a year and ending on the 31st March of the following year.

3) Export of Passenger Baggage**a) Without authorization**

Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger’s departure from India

b) Items restricted by ITC (HS)

Items mentioned as restricted in ITC (HS) shall require an Authorisation

c) Indian official posting abroad

Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption

d) Samples without authorization

Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation

4) Export of Replacement Goods**a) Without Authorisation**

Goods or parts thereof on being exported and found defective/damaged or otherwise unfit for use may be imported for replacement free of charge by the exporter and such goods shall be allowed for export by Customs authorities

b) Authorisation

Export item is 'Restricted' or under SCOMET list, the exporter shall require an Authorisation for export of such replacement goods.

5) Export of Spares

Warranty spares of plant, equipment, machinery, automobiles or any other goods may be exported along with main equipment or subsequently but within contracted warranty period of such goods, subject to approval of RBI.

6) Re-export of imported Goods found defective and unsuitable for use

Imported goods found defective after Customs clearance, or not found as per specifications or requirements may be re-exported back as per Customs Act, 1962.

7) Private Bonded Warehouses for Exports

a) Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by Department of Revenue.

b) Such warehouses shall be entitled to procure goods from domestic manufacturers for manufacturing and other operations in accordance with Section 65 of the Customs Act, 1962.

PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

1) Objective

To provide a framework for cross-border trade of goods and services from India in the digital economy and the promotion of e-Commerce and other emerging channels of exports from India.

2) Meaning of E-commerce

"E-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the Reserve Bank of India from time to time

3) Meaning of E-commerce platform

E-Commerce platform is an electronic platform, including a web-portal, that enables the commercial process of buying and selling through the internet

4) E-Commerce Export Logistics Provider

Any service provider who provides logistics services towards exports of goods or services for e-Commerce Exports.

5) E-Commerce Exports of Goods

The payment shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time

6) E-Commerce Exports of Services

The payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time.

7) Export through Courier Service/Post

- a) Exports through a registered courier service/Foreign Post Office is permitted
- b) The value limit for exports through courier service shall be Rs. 10,00,000 per consignment
- c) Importability of such items shall be regulated in accordance with FTP and the ITC(HS) based Import Policy

A) PROMOTION OF E-COMMERCE EXPORTS**Handholding and outreach to promote e-Commerce Exports****B) E-COMMERCE EXPORT HUBS (ECEHs)****1) Objective of E-Commerce Export Hubs**

The objective is to establish designated areas as E-Commerce Export Hubs (hereafter called “ECEH”), which would act as a centre for favourable business infrastructure and facilities for Cross Border E-Commerce activities.

2) Creation of ECEH**a) Private Initiative**

The ECEH shall ordinarily be setup through private initiative

b) Public-Private-Partnership (PPP)

It may also be setup in Public-Private-Partnership (PPP) mode in partnership with the State governments/Central government

c) Approval for Committee

Request for approval of an ECEH proposed shall be submitted to the notified committee to be constituted by DGFT

d) Existing Infrastructure

Existing facility with the required infrastructure may also apply to be designated as ECEH

3) Nature of ECEH Operations**a) Agglomeration benefit**

ECEH will function to achieve agglomeration benefits for e-commerce exporters.

The ECEH may provide for storage (including cold storage facilities), packaging, labelling, certification & testing and other common facilities for the purposes of export.

b) Logistic infrastructure

Provide for dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub.

c) SCOMET and Restricted Goods

All goods, including SCOMET and Restricted goods may be handled at ECEH

d) Capital goods subject to payment of duty

Capital goods brought to a ECEH shall be utilized only for activities on payment of the duties and taxes, as applicable, in terms of extant laws

4) Entitlement under ECEHs

ECEH may be provided financial assistance under MAI scheme, for e-Commerce export promotion projects for marketing, capacity building and technological services such as imaging, cataloguing, product video creation of e-Commerce Goods

C) Promotion of e-commerce exports through postal route

Dak Niryat Kendras

Dak Ghar Niryat Kendras shall be operationalised throughout the country to work in a hub-and-spoke model with Foreign Post Offices (FPOs) to facilitate cross-border e-Commerce and to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets

STATUS HOLDER

A STATUS HOLDER CERTIFICATION

1) Objective

Status Holder” is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country’s foreign trade.

2) Guidance and Handholding

Status Holders are expected to not only contribute towards India’s exports but also provide guidance and handholding to new entrepreneurs.

3) Eligibility

a) IEC number

All exporters of goods, services and technology having an import-export code (IEC) number, on the date of application, shall be eligible for recognition as a status holder based on export performance

b) Export Performance

An applicant may be categorized as status holder on achieving the threshold export performance in the current and preceding three financial years

c) Gems & Jewelry Sector

Gems & Jewelry Sector above export performance threshold during the current and preceding two financial years shall be required.

d) FOB value

The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees

e) Deemed Export

FOR value of exports in Indian Rupees shall be converted in USD at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year

B STATUS HOLDER CATEGORIES

Status	Export Performance Threshold In USD Million
One Star Status House	3
Two Star Status House	15
Three Star Status House	50
Four Star Status House	200
Five Star Status House	800

C GRANT OF DOUBLE WEIGHTAGE**1) One Star Export House**

Double Weightage shall be available for grant of One Star Export House Status category only

2) Ineligible

Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House.

3) Double Weightage

- a) Micro and Small Enterprises as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006
- b) Manufacturing units having ISO/BIS Certification
- c) Units located in North Eastern States including Sikkim, and Union Territories of Jammu , Kashmir and Ladakh
- d) Export of fruits and vegetables falling under Chapters 7 and 8 of ITC HS

4) Only Once in above category

A merchandise shipment/ service rendered can get double weightage only once in any one of above categories.

5) Other Conditions for grant status**a) Re-export**

Exports made on re-export basis shall not be counted for recognition.

b) SCOMET

Export of items under Authorisation, including SCOMET items, would be included for calculation of export performance

c) Transfer from one IEC to another

Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.

D PRIVILEGES OF STATUS HOLDERS**1) Self Declaration basis**

Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis

2) Input-Output norms fixed on priority

Input-Output norms may be fixed on priority within 60 days by the Norms Committee

3) Exemption from bank guarantee

Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP

4) Negotiation of document

Exemption from compulsory negotiation of documents through banks. Remittance / receipts, however, would be received through banking channels

5) Establish Export warehouse

Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines

6) Preferential and Priority

The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies

7) Free of cost basis for export promotion

a) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rupees One Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower

b) Pharmaceutical

The annual limit would be 2% of the average annual export realisation during preceding three licensing years

c) Health programs of international agency

Vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding three licensing years

E SKILLING AND MENTORSHIP OBLIGATIONS**a) Partner in Training**

Status Holders are being made “partners” in providing mentoring and training in international trade.

b) Model Training program

A model training program of a minimum duration of 6 weeks would be put up in public domain for guidance.

c) Factors deciding candidate

Detailed eligibility requirements, selection criteria, training curriculum etc will be at the discretion of the Status Holder

d) Number of trainee

Status Holders will endeavor to provide skill upgradation/ training in international trade as detailed below:

Status	Number of Trainee/ Year
Two Star Status House	5
Three Star Status House	10
Four Star Status House	20
Five Star Status House	50

INTER-MINISTERIAL COMMITTEE FOR MSME TRADE RELATED GRIEVANCES

- 1) An inter-ministerial committee to be set up to examine MSME trade related grievances which have policy ramifications.
- 2) This will expedite decision making with a ‘whole of government approach’.

CITIZEN’S CHARTER

- 1) DGFT has in place a Citizen’s Charter, giving time schedules for providing various services to clients.
- 2) Timeline for disposal of an application is given in Chapter 11 of HBP.

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

A POLICY REGARDING IMPORT/ EXPORT OF GOODS

1) Free subject to certain exception

Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports

2) Other Acts or in law

There are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force

B INDIAN TRADE CLASSIFICATION (HARMONISED SYSTEM) [ITC (HS)] OF EXPORTS AND IMPORTS

1) Meaning

ITC(HS) is a compilation of codes for all merchandise / goods for export/ import

2) Digits

Goods are classified based on their group or sub-group at 2/4/6/8 digits

3) International Harmonized system

ITC(HS) is aligned at 6-digit level with international Harmonized System goods nomenclature maintained by World Customs Organization

4) National Harmonized system

India maintains national Harmonized System of goods at 8-digit level notified under First Schedule of the Customs Tariff Act, 1975

5) Policy against each item of ITC(HS)

- a) Schedule I- Schedule 1 of ITC (HS) lays down the Import Policy regime
- b) Schedule II- Schedule II of ITC(HS) lays down the Export Policy regime.
- c) Schedule I is for new goods and not for second hand goods

C COMPLIANCE OF IMPORTS WITH DOMESTIC LAWS

1) Goods imported

Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted

2) Goods exported

Goods to be utilized/ consumed in manufacture of export products may be exempted by DGFT from domestic standards/ quality specifications

D AUTHORITY TO SPECIFY PROCEDURES

1) DGFT

DGFT may, specify Procedures to be followed by an exporter or importer or by any licensing/Regional Authority (RA) or by any other authority for purposes of implementation of the provisions of FT (D&R) Act, the Rules and the Orders made there under and the FTP

2) Public Notice

Procedures, or amendments if any, shall be published by means of a Public Notice

E MANDATORY DOCUMENTS FOR EXPORT/ IMPORT OF GOODS FROM/INTO INDIA

1) Mandatory documents required for export of goods from India:

- a) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
- b) Commercial Invoice cum Packing List
- c) Shipping Bill/Bill of Export/ Postal Bill of Export

2) Mandatory documents required for import of goods into India

- a) Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
- b) Commercial Invoice cum Packing List
- c) Bill of Entry

3) Goods which are subject to any restriction/policy conditions/require NOC/Product specific compliance

Regulatory Authority concerned may notify additional documents for purposes of export or import

4) Seek additional document

The regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance

F PRINCIPLES OF RESTRICTION

- 1) On export of foodstuffs or other essential products for preventing or relieving critical shortages;
- 2) On imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade
- 3) On imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes
- 4) On import to safeguard country's external financial position and to ensure a level of reserves
- 5) On imports to promote establishment of a particular industry

- 6) For preventing sudden increases in imports from causing serious injury to domestic producers or
- 7) To relieve producers who have suffered such injury
- 8) For protection of public morals or to maintain public order
- 9) For protection of human, animal or plant life or health
- 10) Relating to the importations or exportations of gold or silver
- 11) necessary to secure compliance with laws and regulations including those relating to the
- 12) protection of patents, trademarks and copyrights, and the prevention of deceptive practices
- 13) relating to the products of prison labour
- 14) for the protection of national treasures of artistic, historic or archaeological value
- 15) for the conservation of exhaustible natural resources
- 16) for ensuring essential quantities for the domestic processing industry
- 17) essential to the acquisition or distribution of products in general or local short supply
- 18) for the protection of country's essential security interests
 - a) relating to fissionable materials or the materials from which they are derived
 - b) relating to the traffic in arms, ammunition and implements of war
 - c) taken in time of war or other emergency in international relations
- 19) in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security

G FIRM/COMPANY UNDER ADJUDICATION PROCEEDING BEFORE THE NATIONAL COMPANY LAW TRIBUNAL (NCLT)

1) Inform to RA and NCLT

Any firm/company coming under the adjudication proceeding before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FT

2) Government dues

The total outstanding duty saved amount/dues along with interest, and any penalty imposed under FT (D&R) Act, or any other dues, shall be counted as part of the dues to the government against the said firm/company

SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES

A OBJECTIVE

The general provisions governing the export of dual use items, munitions and nuclear related items, including software and technology viz. SCOMET, are dealt with in this Chapter

B BRIEF BACKGROUND

1) Signatory to international convention

India is a signatory to international conventions on disarmament and non-proliferation

- a) Chemical Weapons Convention (CWC)
- b) Biological and Toxin Weapons Convention (BWC).

2) UN Resolution

United Nations Security Council Resolution 1540 obliges all countries to prohibit access of weapons and mass destruction and their delivery systems to non-state actors (in particular for terrorist purposes); and prescribed measures and controls on weapons of mass destruction, their delivery systems and related materials, equipment and technology

3) Multilateral export control regimes

India is also a member of the major multilateral export control regimes

- a) Missile Technology Control Regime (MTCR)
- b) Wassenaar Arrangement (WA)
- c) Australia Group (AG)

and has harmonized its guidelines and control lists with that of the Nuclear Suppliers Group (NSG)

4) Regulation of export

In consonance with the guidelines and control lists of these international conventions and obligations as well as multilateral export control regimes, India has regulated the exports of dual use items, nuclear related items, including software and technology.

5) Governing law

the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in specified goods, technology or services

C SCOMET LIST

1) Meaning

Export of dual-use items, including software and technologies, having potential civilian / industrial applications as well as use in weapons of mass destruction is regulated

2) Full Form

SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies.

3) List

The SCOMET List has been notified under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items

D CLASSIFICATION OF SCOMET CATEGORIES AND LICENSING JURISDICTION

- 1) The SCOMET List is divided into nine categories of items from Category 0 to Category 8.
- 2) Category 7 is presently 'Reserved' and has not been populated

SCOMET CATEGORY	SCOMET items	Jurisdictional Licensing Authority	Remarks
0	Nuclear materials, nuclear-related Other materials, equipment and technology	Department of Atomic Energy (DAE)	Including items mentioned in Note 2 of CIN of SCOMETList
1	Toxic chemical agents and other chemicals	DGFT	
2	Micro-organisms, Toxins	DGFT	
3	Materials, Materials Processing Equipment and related Technologies	DGFT	
4	Nuclear-related other equipment and technology, not controlled under Category '0'	DGFT	
5	Aerospace systems, equipment, including production and test equipment, and related Technology and specially designed components and accessories thereof	DGFT	
6	Munitions List	Department of Defence(DDP)/ Ministry of Defence	
7	'Reserved'	DGFT	
8	Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security,Sensors and Lasers, Navigation	DGFT	

	and Avionics, Marine, Aerospace and Propulsion.		
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EXPORT PROMOTION COUNCILS

A RECOGNITION OF EPCS TO FUNCTION AS REGISTERING AUTHORITY FOR ISSUE OF RCMC

1) Meaning

Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports.

2) Objective

Each Council is responsible for promotion of a particular group of products/ projects/services as given in Appendix 2T of ANF.

3) Function as RA

EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members

B REGISTRATION-CUM-MEMBERSHIP CERTIFICATE (RCMC)

1) Meaning of RCMC

Registration-Cum-Membership Certificate" (RCMC) means certificate of registration and membership granted by an Export Promotion Council/Commodity Board/Development Authority or other competent authority as prescribed in FTP or HBP

2) Criteria for authorization to export/ import

Any person, applying for an Authorisation to import/ export under the FTP applying for any other benefit or concession under FTP, shall be required to provide, the RCMC granted by competent authority in accordance with Procedures specified in Handbook of Procedures unless specifically exempted under FTP

3) Treated as RCMC

- a) Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board
- b) Certificate of Registration as Exporter of Coir & Coir products issued by the Coir Board

C INTERPRETATION OF POLICY

1) Decision of DGFT shall be final

The decision of DGFT shall be final and binding on all matters relating to

- a) Interpretation of Policy, or
- b) Provision in Handbook of Procedures,
- c) Appendices and Aayat Niryat Forms or
- d) Classification of any item for import / export in the ITC (HS).

2) Policy Interpretation Committee

A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT

3) Composition of Committee

- a) DGFT: Chairman
- b) All Additional DGFTs in Headquarters: Members
- c) All Joint DGFTs in Headquarters looking after Policy matters: Members
- d) Joint DGFT (PRC/PIC): Member Secretary
- e) Any other person / representative of the concerned Ministry / Department, to be co-opted by the Chairman

D EXEMPTION FROM POLICY/PROCEDURES**1) Authority to grant exemption**

DGFT

2) Grounds for exemption

Genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures

3) Conditions on granting exemption

DGFT may impose such conditions as he may deem fit after consulting the Committees while granting exemption

4) Committee consulted

Sr.No	Description	Committee
1	Fixation/modification of product norms under all schemes	Norms Committees
2	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
3	All other issues	Policy Relaxation Committee (PRC)

E PERSONAL HEARING BY DGFT FOR GRIEVANCE REDRESSAL**1) Objective**

Government is committed to easy and speedy redressal of grievances from Trade and Industry.

2) Personal Hearing

If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade, a specific request for Personal Hearing (PH) along with the prescribed application fee as per Appendix-2K has to be made to DGFT

3) Consider Request

DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC)

4) Final Decision

The decision conveyed in pursuance to the personal hearing shall be final and binding

5) No personal hearing allowed

The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992

F REGULARIZATION OF EO DEFAULT AND SETTLEMENT OF CUSTOMS DUTY AND INTEREST THROUGH SETTLEMENT COMMISSION

With a view to providing assistance to firms who have defaulted under FTP for reasons beyond their control as also facilitating merger, acquisition and rehabilitation of sick units, it has been decided to empower Settlement Commission in Department of Revenue to decide such cases also with effect from 01.04.2005

SELF-CERTIFICATION OF ORIGINATING GOODS

1) Designated agency issuing Certificate of Origin

Certificates of Origin under various Preferential Trade Agreements [PTA], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] are issued by designated agencies

2) New system

A new optional system of self-certification is being introduced with a view to reducing transaction cost

3) Eligibility

The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme

4) Other terms and conditions

a) IEM/IL

Self-certification will be permitted only for the goods that are manufactured as per the Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI) issued to manufacturers.

b) Factors

Availability of required infrastructure, capacity and trained manpower

DEVELOPING DISTRICTS AS EXPORT HUB

A OBJECTIVE

To galvanise districts of the country to become export hubs by identifying products and services with export potential in the district, addressing bottlenecks for exporting these products/services, supporting local exporters/ manufacturers to scale and find potential buyers outside India with the aim of promoting exports, manufacturing & services industry in the District

B DISTRICT EXPORT PROMOTION COMMITTEES - INSTITUTIONAL MECHANISM AT DISTRICT LEVEL

1) Institution

Institutional mechanism in the form of District Export Promotion Committees (DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the Districts.

2) Constitution

Chaired by Collector/DM/DC of the District and co-chaired by designated DGFT Regional Authority with various other stakeholders as its members.

3) Primary Function

- a) Prepare and implement district specific Export Action Plans in collaboration with all the relevant stakeholders at the Central, State and the District level.
- b) DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

C DISTRICT EXPORT ACTION PLANS FOR EACH DISTRICT

1) District wise

The District Export Action Plan (DEAP) may be prepared for each district

2) Priority of products

2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared

3) Setting targets

DEAPs may also include specific quantifiable targets to be achieved in the short term and long term.

4) Inclusion in plan

Plans may outline the interventions that are required to promote the export of identified products and services from the district

5) Public Domain

Each DEAP of each District, once adopted, may be published in the public domain on a dedicated Portal

D STATE/UT EXPORT PROMOTION COMMITTEES

To synergise the efforts of the Department of Commerce/ DGFT and the State/UT governments in promotion of exports from the State, each State shall constitute a State Export Promotion Committee (SEPC) headed by Chief Secretary of the State. The designated Regional Authority of DGFT shall be the co-convenor of the committee.

E NODAL DGFT REGIONAL AUTHORITY

Districts of the States/UTs have been assigned to the Jurisdictional DGFT Regional Authority and the nodal RA shall be responsible for the Districts under their jurisdiction for all activities related to Districts as Export Hubs initiative in those Districts.

G ONLINE MONITORING OF DISTRICT EXPORT ACTION PLANS

1) Online Portal

DGFT would develop an online monitoring portal that may be accessed on the DGFT website

2) Information uploaded

States/ DGFT RAs to upload all information related to the products/services with export potential of every District

3) Monitoring

The portal may also help in monitoring the progress of District Export Action Plan and DEPC meetings in all the Districts.

4) Public domain

The information and reports may also be available in public domain for the benefit of the exporters

5) Responsibility of DGFT jurisdictional RA

Each DGFT Jurisdictional RA to be primarily responsible for updating the information/progress made in implementing Export Action Plan

H EXPORT PROMOTION ACTIVITIES IN DISTRICTS

1) Training and Development

The training and development needs of District industries may be identified and trainings may be coordinated with other departments

2) Dissemination of Information

Dissemination of information through outreach activities including buyer- seller meets, trade fairs, workshops etc. may be provided in each District

I IMPLEMENTATION OF DISTRICT EXPORT ACTION PLANS

District Export Action Plan include the following

- a) Regulatory and operational reform, and
- b) Infrastructure/utilities/logistics interventions required across the entire chain from producer/farm to the export destination,
- c) Aspects like production, productivity/ competitiveness, improvements required in design,
- d) Tie up of producers with exporters, aggregation, sorting, testing, certification, packaging, transportation through cold chain or otherwise,
- e) Import export regulatory formalities,
- f) Fulfilment of destination countries standards

DUTY EXEMPTION / REMISSION SCHEMES

A OBJECTIVE

Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

B SCHEMES

1. Duty Exemption Schemes.- The Duty Exemption schemes consist of the following:
 - Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
 - Duty Free Import Authorisation (DFIA).
2. Duty Remission Scheme- Duty Drawback (DBK) Scheme, administered by Department of Revenue.
3. Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles.
4. Schemes for Remission of Duties and Taxes on Exported Products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

C APPLICABILITY OF POLICY & PROCEDURES

Authorisation under this Chapter shall be issued in accordance with the Policy and Procedures in force on the date of issue of the Authorisation.

D ADVANCE AUTHORISATION

1) Duty free import of Inputs

Advance Authorisation is issued to allow duty free import of input, which is physically incorporated

in export product (making normal allowance for wastage).

2) **Indirect material**

In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

3) **Criteria**

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures or

(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.or

(iii) Applicant-specific prior fixation of norm by the Norms Committee as per para 4.06 of Handbook of Procedures.or

(iv) On the basis of Self Ratification Scheme in terms of Para 4.06 of Foreign Trade Policy.

E ADVANCE AUTHORISATION FOR SPICES

Duty free import of spices covered under Chapter-9 of ITC (HS) shall be permitted only for activities like crushing / grinding / sterilization / manufacture of oils or oleoresins. Authorisation shall not be available for simply cleaning, grading, re-packing, etc.

F SPECIAL ADVANCE AUTHORISATION SCHEME FOR EXPORT OF ARTICLES OF APPAREL AND CLOTHING ACCESSORIES

Duty free import of fabric under 'Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing Accessories' shall be allowed, subject to the following terms and conditions

1) **Criteria of input output calculation**

The authorisation shall be issued based on Standard Input Output Norms (SION) or prior fixation of norms by Norms Committee.

2) **Self-declaration**

The authorisation may also be issued on the basis of self-declaration as per para 4.07 of HBP. In such cases, adhoc-norms shall be fixed within stipulated time period of 90 days.

3) **Relevant fabric including inter lining**

The authorisation shall be issued for the import of relevant fabrics including inter lining only as input. No other input, packing material, fuel, oil and catalyst shall be allowed for import under this authorisation.

4) **Duty drawback on non-fabric inputs**

Exporters shall be eligible for All Industry Rate of Duty Drawback, for non-fabric inputs, as determined by Central Government for this scheme.

5) **Value Addition**

For the purpose of value addition norm of Para 4.08 of FTP, the value of any other input used on which benefit of Drawback is claimed or intended to be claimed shall be equal to 22% of the FOB value of export realised. Minimum value addition shall be as per Para 4.09 of FTP.

6) Where the exporter desires to claim drawback determined and fixed by Jurisdictional Customs Authority (brand rate), he shall follow Para 4.15 of FTP regarding declarations to be made in application for the authorisation and make export under claim for brand rate. In such cases the value addition shall be as per Para 4.08 of FTP. Minimum value addition shall be as per Para 4.09 of FTP.

7) **Non transferable but may be transferred for job work**

Authorisation, and the fabric imported, shall be subject to actual user condition. The same shall be nontransferable even after completion of export obligation. However fabric imported may be transferred for job work in terms of provisions of GST Acts under intimation to the Customs authority at the port of registration (excluding the units located in areas eligible for area based exemption from Central Excise Duty). Invalidation of the Authorisation shall not be permitted.

8) **Pre-import condition**

The fabric imported shall be subject to pre-import condition and it shall be physically incorporated in the export product (making normal allowance for wastage).

9) **Physical export obligation**

Only Physical exports shall fulfill the export obligation.

G ELIGIBLE APPLICANT / EXPORT /SUPPLY

1) **Authorisation granted to whom**

Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer

2) **Pharmaceutical Product**

Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only

3) **Eligibility for Advance Authorisation**

Advance Authorisation shall be issued for:

- a) Physical export (including export to SEZ)
- b) Intermediate supply; and/or
- c) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (d), (e), (f) and (g) of this FTP.
- d) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied

H ADVANCE AUTHORISATION FOR ANNUAL REQUIREMENT AND ELIGIBILITY CONDITION

- 1) **SION**
Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION). And it shall not be available in case of adhoc norms
- 2) **Not allowed- Appendix 4-J**
Advance Authorisation for Annual Requirement shall also not be available in respect of SION where any item of input appears in Appendix 4-J.
- 3) **Past export performance**
Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- 4) **Threshold Limit**
Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs 1 Crore, whichever is higher.

I VALUE ADDITION

Value Addition for the purpose of this Chapter shall be:-

VA = $\frac{A-B}{B} \times 100$, where

B

A = FOB value of export realized / FOR value of supply received.

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

J MINIMUM VALUE ADDITION

- 1) **Minimum Value Addition**
Minimum value addition required to be achieved under Advance Authorisation is 15%.
- 2) **Exception**
Export Products where value addition could be less than 15% are given in Appendix 4D.
- 3) **Gems & Jewellery**
Minimum value addition for Gems & Jewellery Sector is given in paragraph 4.60 of Handbook of Procedures.
- 4) **Tea**
In case of Tea, minimum value addition shall be 50%.

5) **Minimum value addition for Spices**

In case of spices, minimum value addition shall be 25%.

- 6) **Import of Mandatory Spares** Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation

I IMPORT OF MANDATORY SPARES

Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation.

J INELIGIBLE CATEGORIES OF IMPORT ON SELF DECLARATION BASIS

- 1) Import of following products shall not be permissible on self-declaration basis
 - i. All vegetable / edible oils classified under Chapter- 15 and all types of oilseeds classified under Chapter- 12 of ITC (HS) book;
 - ii. All types of cereals classified under Chapter–10 of ITC (HS) book;
 - iii. All Spices other than light black pepper (light berries) having a basic customs duty of more than 30%, classified under Chapter-9 and 12 of ITC (HS)book;
 - iv. All types of fruits/ vegetables having a basic customs duty of more than 30%, classified under Chapter-7 and Chapter-8 of ITC(HS) book;
 - v. Horn, Hoof and any other organ of animal;
 - vi. Honey;
 - vii. Rough Marble Blocks/Slabs;
 - viii. Rough Granite;
 - ix. Vitamins except for use in pharmaceutical industry; and
 - x. All items with a basic custom duty of more than 30%.

- 2) For export of perfumes, perfumery compounds and various feed ingredients containing vitamins, no Authorisation shall be issued by Regional Authority under paragraph 4.07 of Handbook of Procedures and applicants shall be required to apply under paragraph 4.06 of Hand Book of Procedures to the Norms Committee.

- 3) Where export and/or import of biotechnology items and related products are involved, Authorisation under paragraph 4.07 of Handbook of Procedures shall be issued by Regional Authority only on submission of a “No Objection Certificate” from Department of Biotechnology.

K PRE-IMPORT CONDITION IN CERTAIN CASES

- 1) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.
- 2) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

L VALIDITY PERIOD FOR IMPORT AND ITS EXTENSION

Validity period for import under Advance Authorisation shall be as prescribed in Handbook of Procedures.

M RE-IMPORT OF EXPORTED GOODS UNDER DUTY EXEMPTION/ REMISSION SCHEME

Goods exported under Advance Authorisation/ Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue.

Authorisation holder shall also inform about such re- importation to the Regional Authority which had issued the Authorisation within one month from date of re-import

N EXPORT OBLIGATION PERIOD AND ITS EXTENSION

Period for fulfillment of export obligation and its extension under Advance Authorisation shall be as prescribed in Handbook of Procedures.

O CURRENCY FOR REALISATION OF EXPORT PROCEEDS

1) Freely convertible currency or INR

Export proceeds shall be realized in freely convertible currency or in Indian Rupees except otherwise specified.

2) Payment is realized from Foreign Current Account

Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.

3) SEZ developer/ co-developer

Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

4) Bill of export

Authorisation holder needs to file Bill of Export for export to SEZ unit/ developer / co-developer in accordance with the procedures given in SEZ Rules, 2006

P RE-IMPORT OF EXPORTED GOODS UNDER DUTY EXEMPTION/ REMISSION SCHEME

1) Goods exported under Advance Authorisation/ Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue.

2) Authorisation holder shall also inform about such re- importation to the Regional Authority which had issued the Authorisation within one month from date of re-import.

DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

A DFIA Scheme

1) **Import of inputs**

Duty Free Import Authorisation is issued to allow duty free import of inputs.

2) **Indirect material**

In addition, import of oil and catalyst which is consumed/ utilised in the process of production of export product, may also be allowed.

3) **Tyre**

Import of Tyre under DFIA scheme is not allowed

B DUTIES EXEMPTED

1) **Basic Custom Duty**

Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).

2) **Duty drawback**

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product

3) **No SION**

The applicant should have indicated clearly details of such duty paid inputs also in the application for Duty Free Import Authorisation, and as per the details mentioned in the application, the Regional Authority should also have clearly endorsed details of such duty paid

C ELIGIBILITY

1) **Standard SION notified**

Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified.

2) **Supporting manufacturer mentioned in export document**

Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.

3) **Application need to be filed**

Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

4) **Ineligibility**

No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import

condition or where SION prescribes 'Actual User' condition or Appendix-4J prescribes pre import condition for such an input.

D MINIMUM VALUE ADDITION

Minimum value addition of 20% shall be required to be achieved

E VALIDITY & TRANSFERABILITY OF DFIA

1) Online application

Applicant shall file online application to Regional Authority concerned before starting export under DFIA

2) Export term completion

Export shall be completed within 12 months from the date of online filing of application and generation of file number

3) Indicate file number

While doing export/supply, applicant shall indicate file number on the export /supply documents viz. Shipping Bill / Bill of Export / Tax invoice for supply

4) Separate DFIA

Separate DFIA shall be issued for each SION.

5) Transferable DFIA

Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

6) Port

Exports under DFIA shall be made from any port listed in Para 4.35 of Handbook of Procedures.

7) Indicate/Endorse in relevant Shipping Bill

Wherever SION permits use of either (a) a generic input or (b) alternative input, the specific input together with quantity [which has been used in manufacturing the export product] should be indicated / endorsed in the relevant Shipping Bill/ Bill of Export / Tax invoice for supply prescribed under GST rules

F SENSITIVE ITEMS UNDER DUTY FREE IMPORT AUTHORISATION

- 1) In respect of following inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill: "Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Solvent, Perfumes / Essential Oil/ Aromatic Chemicals, Surfactants, Relevant Fabrics, Marble, Articles made of Polypropylene, Articles made of Paper and Paper Board, Insecticides, Lead Ingots, Zinc Ingots, Citric Acid, Relevant Glass fibre reinforcement (Glass fibre, Chopped / Stranded Mat, Roving Woven Surfacing Mat), Relevant Synthetic Resin (unsaturated Polyester Resin, Epoxy Resin, Vinyl Ester Resin, Hydroxy Ethyl Cellulose), Lining Material".

- 2) While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of above inputs in the Authorisation.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

A IMPORT OF INPUT

Exporters of Gems and Jewellery can import / procure duty free input for manufacture of export product

B ITEMS OF EXPORT

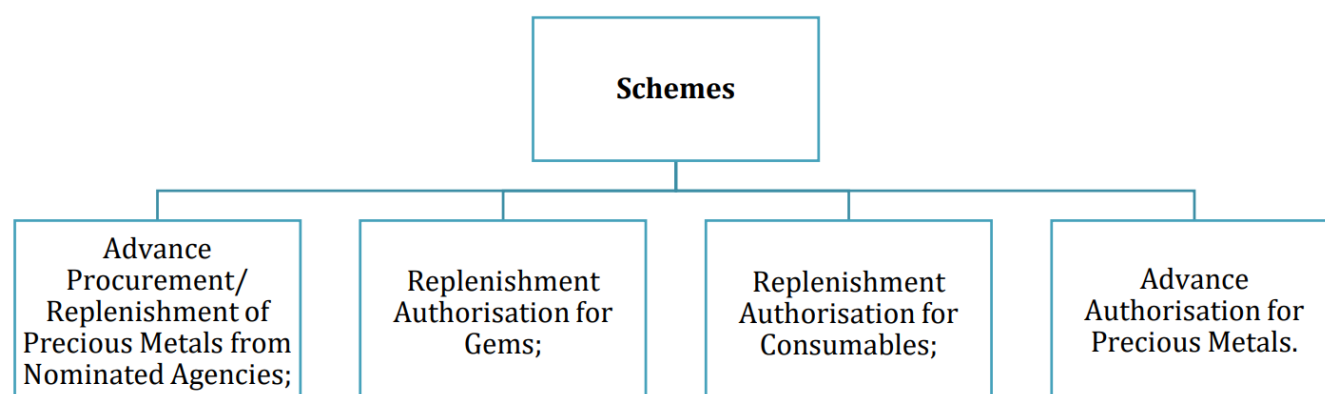
- 1) "Gold jewellery, including partly processed jewellery, and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above up to a maximum limit of 22 carats

Gold religious idols (only gods and goddess) of 8 carats and above (up to 24 carats) subject to the following conditions:

- Exports would be subject to 100% examination by the Approved Government Valuer.
- Foreign remittance has to be realized within a period of 3 months from the date of export.
- Exporters must submit confirmed export order before effecting export.
- Distinction must be made between a religious idol and simply moulded gold article/idol.
- Exports may be allowed only be actual manufactures of such idols. The findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats.

- 2) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight
- 3) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by Weight

C SCHEMES



D ADVANCE PROCUREMENT/ REPLENISHMENT OF PRECIOUS METALS FROM NOMINATED AGENCIES

1) **Nominated Agency**

Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold/ silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf

2) **Wastage norms and minimum value addition**

The export would be subject to wastage norms and minimum value addition as prescribed in Handbook of Procedures.

F REPLENISHMENT AUTHORISATION FOR GEMS

1) **Obtain Authorisation from RA**

Exporter may obtain Replenishment Authorisation for Gems from Regional Authority in accordance with procedure specified in Handbook of Procedures a

2) **Authorisation criteria**

Replenishment Authorisation for Gems may be issued against export including that made against supply by Nominated Agency and against supply by foreign buyer

3) **Studded Gold/Silver/ Platinum**

In the case of studded gold/silver/platinum jewellery and articles thereof, the value of Gem Replenishment Authorisation shall be on the remaining FOB value of exports after deducting the value of gold/ silver/ platinum including admissible wastage

G ADVANCE AUTHORISATION FOR PRECIOUS METALS

1) Advance Authorisation shall be granted on pre-import basis with 'Actual User' condition for duty free Import of:

- a) Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above;
- b) Silver of fineness not less than 0.995 and mountings, sockets, frames and findings containing more than 50% silver by weight;
- c) Platinum of fineness not less than 0.900 and mountings, sockets, frames and findings containing more than 50% platinum by weight.

2) **Export Obligation**

Advance Authorisation shall carry an export obligation

3) **Value Addition**

Value Addition shall be as per paragraph 4.37 of FTP and 4.60 of Handbook of Procedures

4) **Ineligibility**

Advance Authorisation Scheme is not available where the item of export is 'Gold Medallions and Coins' or 'Gold jewellery/articles manufactured by fully mechanized process'.

H VALUE ADDITION

Value Addition for the purpose of this Chapter shall be:-

VA = $\frac{A-B}{B} \times 100$, where

B

A = FOB value of export realized / FOR value of supply received.

B = Value of inputs (including domestically procured) such as gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

I WASTE NORMS

Wastage or manufacturing loss for gold/silver/platinum jewellery shall be admissible as per paragraph 4.59 of Handbook of Procedures

J DFIA NOT AVAILABLE

Duty Free Import Authorisation scheme shall not be available for Gems and Jewellery sector

K NOMINATED AGENCIES

- 1) **Obtain from Nominated Agency**
Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.
- 2) **Examples**
Nominated Agencies are The Handicraft and Handlooms Exports Corporation of India Ltd, MSTC Ltd., and Diamond India Limited.
- 3) **Power of RBI**
Reserve Bank of India can authorize any bank as Nominated Agency.
- 4) **Procedure provided in HBP**
Procedure for import of precious metal by Nominated Agencies shall be as per the provisions laid down in HBP.
- 5) **Monitoring Mechanism**
The procedure for import of precious metals by the Gems & Jewellery units operating under EOU & SEZ schemes will be as per the applicable schemes. The monitoring mechanism for the Nominated Agencies (other than banks authorised by RBI) shall be as per para 4.93 of HBP.

6) **Bank**

A bank authorised by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

L IMPORT OF DIAMONDS FOR CERTIFICATION / GRADING & RE-EXPORT

Following agencies are permitted to import diamonds to their laboratories without any import duty, for the purpose of certification / grading reports, with a condition that the same should be re-exported with the certification/grading reports, as per the procedure laid down in Hand Book of Procedures:

- (1) Gemological Institute of America (GIA), Mumbai, Maharashtra.
- (2) Indian Diamond Institute, Surat, Gujarat, India.
- (3) De Beers India Private Ltd., Surat, Gujarat, India.
- (4) HRD Diamond Institute Private Limited, Mumbai, Maharashtra, India
- (5) International Gemological Institute (India) Pvt. Ltd., Bandra Kurla Complex, Mumbai,
- (6) Gemological Science International (GSI) Pvt. Ltd., Mumbai, Maharashtra, India.

M EXPORT OF CUT & POLISHED DIAMONDS FOR CERTIFICATION/ GRADING & RE-IMPORT

List of authorized laboratories for certification / grading of diamonds of 0.25 carat and above are given in paragraph 4.73 of Handbook of Procedures.

N EXPORT OF CUT & POLISHED DIAMONDS WITH RE-IMPORT FACILITY AT ZERO DUTY

- 1) An exporter (with annual export turnover of Rs 5 crores for each of the last three years) or the authorized offices/ agencies in India of laboratories mentioned under paragraph 4.73 of Hand Book of Procedures may export cut & polished diamonds (each of 0.25 carat or above) to any of the agencies/laboratories mentioned under paragraph 4.73 of Handbook of Procedures with re-import facility at zero duty within 3 months from the date of export.
- 2) Such facility of re- import at zero duty will be subject to guidelines issued by Central Board of Customs & Excise, Department of Revenue

O EXPORT AGAINST SUPPLY BY FOREIGN BUYER

- 1) Where export orders are placed on nominated agencies / status holder / exporters of three years standing having an annual average turnover of Rupees five crores during preceding three financial years, foreign buyer may supply in advance and free of charge, gold/silver/ platinum, alloys, findings and mountings of gold / silver / platinum for manufacture and export

2) **Minimum value addition**

Export subject to minimum value addition as prescribed Handbook of Procedures

3) Waste Norms

In such cases of export, wastage norms as per of Handbook of Procedures shall apply

4) Who will export

Exports may be made by nominated agencies directly or through their associates or by status holder / exporter

P EXPORT PROMOTION TOURS/ EXPORT OF BRANDED JEWELLERY**1) Approval**

Nominated Agencies and their associates, with approval of Department of Commerce and with approval of Gem & Jewellery Export Promotion Council (GJEPC), may export gold / silver / platinum jewellery and articles thereof for exhibitions abroad.

2) Personal carriage

Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles and export of branded jewellery is also permitted, subject to conditions as in Handbook of Procedures

3) Personal Carriage by foreign bound passengers

Personal Carriage of Export /Import Parcels Personal carriage of gems and jewellery export parcels by foreign bound passengers and import parcels by an Indian importer/foreign national may be permitted as per the Handbook of Procedures.

Q EXPORT BY POST

- 1) Export of jewellery through Foreign Post Office including via Speed Post is allowed.
- 2) The jewellery parcel shall not exceed 20 kgs by weight

R PRIVATE / PUBLIC BONDED WAREHOUSE

Private / Public Bonded Warehouses may be set up in SEZ/ DTA for import and re-export of cut and polished diamonds, cut and polished coloured gemstones, uncut & unset precious & semi- precious stones, subject to achievement of minimum value addition of 5% by DTA units.

S SPECIAL NOTIFIED ZONE (SNZ)

- 1) Import, auction/sale and re-export of rough diamonds by entities, as notified vide RBI on consignment or outright basis, will be permitted in Special Notified Zone (SNZ) administered by the operator of SNZ, under supervision of Customs
- 2) The procedure of import, auction/ sale and re- export of rough diamonds (unsold) would be as specified by CBIC.

T EXPORT OF CUT & POLISHED PRECIOUS AND SEMI-PRECIOUS STONES FOR TREATMENT AND RE-IMPORT

Gems and Jewellery exporters shall be allowed to export cut and polished precious and semi-precious stones for the treatment and re- import as per customs rules and regulations. In case of re-export, the exporter shall be entitled for duty drawback as per rules.

U RE-IMPORT OF REJECTED JEWELLERY

Gems & Jewellery exporters shall be allowed to re-import rejected precious metal jewellery as per Handbook of Procedures.

V EXPORT AND IMPORT ON CONSIGNMENT BASIS

Gems & Jewellery exporters shall be allowed to export and import diamond, gemstones & jewellery on consignment basis as per Handbook of Procedures and Customs Rules and Regulations

W DIAMOND & JEWELLERY DOLLAR ACCOUNTS

1) Eligible Entity

Firms and companies dealing in purchase / sale of rough or cut and polished diamonds / precious metal jewellery plain, minakari and / or studded with / without diamond and / or other stones

2) Eligibility Criteria

A track record of at least three years in import or export of diamonds / coloured gemstones / diamond and coloured gemstones studded jewellery / plain gold jewellery and having an average annual turnover of Rs. 3 crore or above during preceding three licensing years

3) Condition

It may also carry out their business through designated Diamond Dollar Accounts(DDA).

4) Application of Dollar credited to account

- a) Import / purchase of rough diamonds from overseas/ local sources
- b) Purchase of cut and polished diamonds, coloured gemstones and plain gold jewellery from local sources
- c) Import / purchase of gold from overseas / nominated agencies and repayment of dollar loans from the bank; and
- d) Transfer to Rupee Account of exporter. Details of this DDA Scheme are given in Handbook of Procedures.

5) Non DDA holder

Non DDA holder is also permitted to supply cut and polished diamonds to DDA holder, receive payment in dollars and convert the same into Rupees within 7 days.

SCHEME FOR REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS

A SCHEME OBJECTIVE AND OPERATING PRINCIPLES

1) Objective

The Scheme's objective is to refund, currently unrefunded:

a. Duties/ taxes / levies, at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product and

b. Such indirect Duties/ taxes / levies in respect of distribution of exported product

2. Non availability

The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited

3) Finalised by Ministry of Finance

The overall budget/outlay for the RoDTEP Scheme would be finalized by the Ministry of Finance in consultation with Department of Commerce (DoC), taking into account all relevant factors.

4) Determination of ceiling rate

The determination of ceiling rates under the Scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT, line ministries and experts, on the sectors prioritized by Department of Commerce and Department of Revenue

5) Effective Date

The Scheme will take effect for exports from 1st January 2021

6) Mechanism of Issuance of Rebate:

Scheme would be implemented through end to end digitization of issuance of rebate amount in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes & Customs (CBIC).

7) Rebate is subject to receipt

The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been Allowed

8) Sequence/ priority/ Degree of Benefit

The sequence of introduction of the Scheme across sectors, prioritization of the sectors to be

covered, degree of benefit to be given on various items within the rates recommended by the Committee and within a ceiling as may be prescribed, on the per item/total overall benefit amount permissible, within the overall budget/ outlay finalized, will be decided and notified by the Department of Commerce (DoC) in consultation with Department of Revenue.

B INELIGIBLE SUPPLIES/ ITEMS/CATEGORIES UNDER THE SCHEME

The following categories of exports/ exporters shall not be eligible for rebate under RoDTEP Scheme:

- i. Export of imported goods covered under paragraph 2.46 of FTP.
- ii. Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India.
- iii. Export products which are subject to Minimum export price or export duty.
- iv. Products which are restricted for export under Schedule-2 of Export Policy in ITC (HS).
- v. Products which are prohibited for export under Schedule-2 of Export Policy in ITC (HS).
- vi. Deemed Exports.
- vii. Supplies of products manufactured by DTA units to SEZ/FTWZ units.
- viii. Products manufactured in EHTP and BTP.
- ix. Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962
- x. Products manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty Free Import Authorization or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy.
- xi. Products manufactured or exported by a unit licensed as hundred per cent Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy.
- xii. Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones.
- xiii. Products manufactured or exported availing the benefit of the Notification No. 32/1997-Customs dated 1st April, 1997.
- xiv. Exports for which electronic documentation in ICEGATE EDI has not been generated/ Exports from non-EDI ports.
- xv. Goods which have been taken into use after manufacture

C NATURE OF REBATE

The e-scrips would be used only for payment of duty of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 viz. Basic Customs Duty

D MONITORING, AUDIT AND RISK MANAGEMENT SYSTEM

1) **Keep record**

For the purposes of audit and verification, the exporter would be required to keep records substantiating claims made under the Scheme

2) **System placed by CBIC**

A monitoring and audit mechanism with an IT based Risk Management System (RMS) would be put in place by the CBIC, Department of Revenue to physically verify the records of the exporters on sample basis.

3) **Monitoring at regular interval**

For a broad level monitoring, an Output Outcome framework will be maintained and monitored at regular interval

E RESIDUAL ISSUES

Residual issues related to the Scheme arising subsequently shall be considered by an Inter-Ministerial Committee, named as “RODTEP Policy Committee (RPC)” chaired by DGFT (comprising members of Department of Commerce and Department of Revenue), whose decisions would be binding.

EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

A OBJECTIVE

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India’s manufacturing competitiveness.

B EPCG SCHEME

1) **Zero Custom Duty**

EPCG Scheme allows import of capital goods for pre-production, production and post-production at zero customs duty

2) **Exempt from IGST and Compensation Cess**

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess, leviable thereon

3) **Capital goods**

- a) Capital Goods as defined in Chapter 11 including in CKD/SKD condition thereof;
- b) Computer systems and software which are a part of the Capital Goods being imported;
- c) Spares, moulds, dies, jigs, fixtures, tools & refractories; and
- d) Catalysts for initial charge plus one subsequent charge.

4) **Export Obligation**

Import under EPCG Scheme shall be subject to an Export Obligation (EO) equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.

5) Average Export Obligation (AEO)

Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO)

6) Term of authorization

Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

7) Approval from Exim Facilitation Committee (EFC)

Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters

8) Goods are restricted to be exported

If the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after approval for issuance of Export Authorisation from Exim Facilitation Committee (EFC) at DGFT Headquarters

C COVERAGE**1) Eligible**

CPCG scheme covers

- a) Manufacturer exporters with or without supporting manufacturer(s),
- b) Merchant exporters tied to supporting manufacturer(s) and
- c) Service providers

2) Condition

Name of supporting manufacturer(s) shall be endorsed on the EPCG Authorisation before installation of the capital goods in the factory / premises of the supporting manufacturer(s)

3) Change in supporting manufacturer

In case of any change in supporting manufacturer(s), the RA shall intimate such change to jurisdictional Customs Authority of existing as well as changed supporting manufacturer(s) and the Customs at port of registration of Authorisation.

4) Service provider also covered

Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is certified as a Common Service Provider (CSP) by the DGFT - HQs, Department of Commerce in a Town of Export Excellence or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA)

5) Conditions to cover service provider

- a) Common utility services like providing Electricity, Water, Gas, Sanitation, Sewerage, Telecommunication, Transportation etc. shall not considered for benefit of CSP
- b) Export by users of the common service shall be counted towards fulfillment of EO of the CSP provided the EPCG Authorisation details of the CSP is mentioned in the respective Shipping bills and concerned RA must be informed about the details of the users prior to such export

- c) Such export will not count towards fulfillment of specific export obligation in respect of other EPCG Authorisations of the user
- d) Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP; and
- e) Capital goods shall be installed within a Town of Export Excellence or PM MITRA.

D ACTUAL USER CONDITION

Imported capital goods shall be subject to Actual User condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted.

E EXPORT OBLIGATION

Following conditions shall apply to the fulfillment of Export obligation:-

1) Export by Authorisation Holder

Export obligation shall be fulfilled by the Authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.

2) Direct or Third Party

For export of goods, EPCG Authorisation holder may export either directly or through third party(ies)

3) Benefits under other scheme

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme

4) Benefits avail under other scheme

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme

5) Physical Export or Deemed Export

Export obligation may be fulfilled both by physical exports as well as deemed exports. Deemed export supplies shall also be eligible for benefits available

6) DTA units

Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.

7) Royalty and Received for R&D

Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG

8) Payment in rupee for Services

Payment received in rupee terms for such Services shall also be counted towards discharge of export obligation under the EPCG scheme.

9) Extention

Extension of EO period shall be permitted as prescribed in Handbook of Procedures

F PROVISION FOR COMPANIES ADMITTED UNDER THE PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

A company holding EPCG authorizations and having been admitted under the provisions of Insolvency and Bankruptcy Code 2016 for commencement of insolvency proceedings and in respect of whom the resolution plan has been approved under Section 31 of IBC 2016 by Adjudicating Authority may be permitted to relief, concessions and waivers in accordance with the resolution plan approved/ finalised by Adjudicating Authority/Appellate Authorities as the case may be.

G LUT/BOND/BG IN CASE OF AGRO UNITS

LUT/Bond or 15% BG, as applicable, may be furnished for EPCG Authorisation granted to units in Agri-Export Zones provided EPCG Authorisation is taken for export of primary agricultural product(s) notified or their value added variants

H INDIGENOUS SOURCING OF CAPITAL GOODS AND BENEFITS TO DOMESTIC SUPPLIER

- 1) A person holding an EPCG Authorisation may source capital goods from a domestic manufacturer either through Invalidation Letter or through Advance Release Order
- 2) Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfillment of positive NFE by said EOU

I CALCULATION OF EXPORT OBLIGATION

With a view to accelerating exports, in cases where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned

J REDUCED EO FOR GREEN TECHNOLOGY PRODUCTS

- 1) For exporters of Green Technology Products, Specific EO shall be 75% of EO
- 2) There shall be no change in average EO imposed, if any
- 3) The list of Green Technology Products is given in Para 5.26 of HBP.

K REDUCED EO FOR NORTH EAST REGION AND UTS OF JAMMU & KASHMIR AND LADAKH

For manufacturing units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jammu & Kashmir and Ladakh, specific EO shall be 25% of the EO

L EXEMPTION FROM MAINTENANCE OF AVERAGE EXPORT OBLIGATION

(a) In case of export of goods relating to the following, the EPCG Authorisation holder shall not be required to maintain average export obligation.

(i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries), Pisciculture, (vi) Animal husbandry and Dairying, (vii) Floriculture & Horticulture, (viii) Poultry, (ix) Viticulture, (x) Sericulture, (xi) Carpets, (xii) Coir, and (xiii) Jute

(b) However, this exemption from maintenance of average export obligation shall not be allowed for import of fishing trawlers, boats, ships and other similar items.

(c) Goods, excepting tools imported under EPCG scheme by sectors specified shall not be allowed to be transferred for a period of five years from date of imports even in cases where export obligation has been fulfilled.

DEEMED EXPORT

A OBJECTIVE

To provide a level-playing field to domestic manufacturers and to promote Make in India, in certain specified cases, as may be decided by the Government from time to time.

B DEEMED EXPORT

- 1) “Deemed Exports” for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange
- 2) Deemed Exports” for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council.

C CATEGORIES OF SUPPLY

1) Supply of Manufacture

- a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
- b) Supply of goods to EOU / STP / EHTP / BTP.
- c) Supply of capital goods against EPCG Authorisation

2) Supply by main / sub-contractor(s)

- a) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.
- b) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad
- c) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies / Funds
- d) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix- 7A.
- e) Supply of goods required for setting up of any mega power project all be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the Notification
- f) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.
- g) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of Section 3 of United Nations (Privileges and Immunities Act), 1947
- h) Supply of goods to nuclear power projects provided:
 - a) Such goods are required for setting up of any Nuclear Power Project
 - b) The project should have a capacity of 440 MW or more
 - c) A certificate to the effect is required to be issued by an officer not below the rank of Joint

- d) Secretary to Government of India, in Department of Atomic Energy Tender is invited through National competitive bidding (NCB) or through ICB

CONDITIONS FOR REFUND OF TERMINAL EXCISE DUTY

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods.

CONDITIONS FOR REFUND OF DEEMED EXPORT DRAWBACK

- 1) Supplies will be eligible for deemed export drawback
- 2) Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time
- 3) No CENVAT credit has been availed by supplier of goods on excisable inputs

COMMON CONDITIONS FOR DEEMED EXPORT BENEFITS

1) Notified Entities

Supplies shall be made directly to entities listed in the Para 7.02

2) Third Party

Third party supply shall not be eligible for benefits/exemption.

3) Sub-contractor supply to main contractor

a) Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies.

b) Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority

4) Eligibility of Sub-contractor condition

Supply of domestically manufactured goods by an Indian Subcontractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit provided name of sub- contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract.

5) Supplying Steel

Steel manufacturers supplying steel against Advance Authorization through their Service Centers/ Distributors/ Dealers/ Stock yards, shall also be eligible to claim duty drawback provided such supplies are made in accordance with Ministry of Steel

BENEFIT OF SPECIFIED SUPPLIES

1) Cement

Deemed export benefits shall be available for supplies of “Cement” under Para 7.02(d) only.

2) Steel

Deemed export benefit shall be available on supply of “Steel”:

- a) As an inputs to Advance Authorisation/ Annual Advance Authorisation/DFIA holder/ an EOU.
- b) To multilateral/ bilateral funded Agencies as per sub-para 7.02(d).

3) Fuel

Deemed export benefit shall be available on supply of “Fuel” provided supplies are made to:

- (a) EOUs.
- (b) Advance Authorisation holder / Annual Advance Authorisation holder.

LIABILITY OF INTEREST

1) Reason for rejection

Incomplete/deficient application is liable to be rejected

2) Time limit for settlement of refund

30 days from the date of issue of final Approval Letter by RA

3) Delay in refund

Simple interest @ 6% per annum will be payable on delay in refund of duty drawback and terminal excise duty under the scheme

RISK MANAGEMENT AND INTERNAL AUDIT MECHANISM

1) Selection of cases

A Risk Management system shall be in operation, wherein every month, Computer system in DGFT headquarters, on random basis, will select 10% of cases, for each RA, where benefit(s) under this Chapter has/have already been granted

2) Scrutinised

Cases shall be scrutinized by an internal Audit team, headed by a Joint DGFT, in the office of respective Zonal Addl. DGFT

3) Own office and other RA

The team will be responsible to audit claims of not only for its own office but also the claims of all RAs falling under the jurisdiction of the Zone.

4) Re-assess

The respective RA may also, either on the basis of report from Internal Audit/ External Audit Agency (ies) or suo-motu, re-assess any case, where any erroneous/ in-eligible payment has been

made/claimed

5) Recovery and Interest

RA will take necessary action for recovery of payment along with interest at the rate of 15% per annum on the recoverable amount.

PENAL ACTION

Claim is filed by submitting mis-declaration/ mis-representation of facts, then in addition to effecting recover, the applicant shall be liable for penal action under the provisions of FT (D&R) Act, Rules and orders made there under



CHAPTER 11

COMPETITION ACT 2002

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COMPETITION ACT 2002

INTRODUCTION/REASONS FOR REPEAL OF MRTP ACT 1969

MRTP Act, 1969 has become obsolete in certain areas in the light of international economic developments relating to competition laws. So the need was felt to shift the focus from curbing monopolies to promoting competition. Hence, the Competition Act, 2002 was enacted, which aims at doing away from the rigidly structured MRTP Act, 1969.

The Competition Act, 2002 is flexible, behaviour oriented and also explicitly indicates the parameters which shall be kept in view while deciding the adverse effect on competition, abuse of dominance and prejudicial combinations. The main purpose of the Act is to ensure free and fair competition in the market.

SALIENT/IMPORTANT FEATURES OF THE ACT

1. The Competition Act, 2002 has been enacted to prevent practices having an appreciable adverse effect on competition, to promote and sustain competition in the market and to protect the interests of consumers and to ensure freedom of trade.
2. With the enforcement of the Competition Act, 2002 the MRTP Act, 1969 shall stand repealed and the MRTP Commission shall be dissolved.
3. The Competition Act, 2002 seeks to achieve its objectives by prohibiting anti-competitive trade agreements, preventing abuse of dominance, regulating combinations, and formulating a policy on competition, creating awareness by imparting training on competition issues.
4. The Competition Act, 2002 provides for the establishment of Competition Commission of India and prescribes its duties, functions, and powers.

IMPORTANT DEFINITIONS

Agreement

Agreement

Agreement includes any arrangement or understanding or action in concert -

- a) Whether or not, such agreement, understanding or action is formal or in writing;
or
- b) Whether or not, such agreement, understanding or action is intended to be

enforceable by legal proceedings.

Acquisition

Acquisition means, directly or indirectly, acquiring or agreeing to acquire

1. Shares of any enterprise
2. Voting rights of any enterprise
3. Assets of any enterprise
4. Control over management of any Enterprise
5. Control over assets of any enterprise.

Cartel

Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of goods or services or, trade in goods or provision of services.

The Competition Act, 2002 prohibits formation of certain cartels.

Person

Person Includes:-

1. An Individual, HUF, Company, body corporate, firm
2. AOP whether incorporated or not, in India or outside India
3. Any corporation established by or under any Central, State or Provincial Act or a Government company as per the Companies Act, 2013
4. A co-operative society registered under any law relating to co-operative societies
5. A local authority
6. Every artificial juridical person not covered here.

Consumer

Consumer means any person who -

1. Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any person who uses those goods with the approval of the person buying those goods, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
2. Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any person who is the beneficiary of those services with

the approval of hirer or availor of those services, whether such hiring or availing of services is for any commercial purpose or for personal use.

It may be noted that under the Competition Act, 2002 even if a person purchases goods or avails of services for commercial purpose, he'll be a consumer, whereas for the purposes of Consumer Protection Act, 1986 a person purchasing goods or availing services for commercial purposes is not a consumer and cannot seek relief under that Act.

Enterprise

Enterprise means a person or department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind.

It does not include all the activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence & space.

It does not include any activity of the government relatable to the sovereign functions of the Government.

Goods

Goods mean goods as defined in the Sale of Goods Act, 1930 and include the following:

- i. Products manufactured, processed or mined;
- ii. Debentures, shares and stocks after allotment;
- iii. In relation to "goods supplied", goods imported in India

Services

Service means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, constructions, repair, conveying of news or information and advertising.

It may be noted that under the Competition Act, 2002 the services of industrial or commercial nature also fall within the scope of the Act, whereas under the Consumer Protection Act, 1986 the services of commercial nature or for business or industrial purposes are excluded for interpreting deficiency in the supply of any

service.

Relevant Market, Relevant Geographic Market, and Relevant Product Market

The terms Relevant Market, Relevant Geographic Market, and Relevant Product

Market have relevance in determination of the agreements being anti-competitive within the meaning of Section 3 of the Competition Act, 2002.

Relevant Market means the market, which may be determined by the Competition Commission of India with reference to both the markets [Section 2(r)]

Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous, can be distinguished from conditions prevailing in neighbouring areas [Section 2(s)].

Relevant Product Market means a market comprising of all those products or services, which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use [Section 2(f)].

IMPORTANT PROVISIONS

Anti Competitive Agreements

Any Agreement for goods or services, which has appreciable adverse effect on competition in India, is prohibited. These kinds of agreement are known as anti-competitive agreements.

Section 3(1) of the Competition Act, 2002 provides that no enterprise or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition. Section 3(2) further provides that any anti competitive agreement within the meaning of section 3(1) shall be void.

Prohibition on Agreements having Appreciable Adverse Effect on Competition

The following agreements shall be deemed to be prohibited under section 3(1), if such agreements cause or are likely to cause an appreciable adverse effect on

competition:

- a) **Tie-in arrangement**, i.e., an agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
Tie in agreement is also known as conditional sale or purchase.
- b) **Exclusive supply agreement**, i.e., an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
- c) **Exclusive distribution agreement**, i.e., an agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- d) **Refusal to deal**, i.e., an agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are brought.
- e) **Resale price maintenance**, i.e., an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Horizontal Agreements

- Horizontal agreements referred to agreements among competitors.
- Horizontal agreements relating to prices, quantities, bids and market sharing are particularly anti-competitive.
- Here horizontal agreements are those agreements among competitors operating at the same level in the economic process i.e. enterprises engaged in the same activity.
- Horizontal agreements between enterprises that are at the same stage of the production chain and in the same market. Horizontal agreements and membership of cartels lead to unreasonable restrictions of competition and may be presumed to have an appreciable adverse effect on competition.

Example:

- The agreements between producers, between whole sellers, or between retailers, dealing in similar kind of products.

Vertical Agreements

- Vertical agreements are like tie in arrangements; exclusive supply or distribution agreements and refusal to deal are also generally anti-competitive.
- Vertical agreements are those agreements between Non-competition undertakings operating at different levels of manufacturing and distribution process.
- Vertical agreements are agreements between enterprises that are at different stages or levels of the production chain and therefore in different markets. An example of this would be an agreement between a producer and a distributor.
- This includes, Tie in arrangements, Exclusive Supply Agreements, Exclusive Distribution Agreements, Refusal to Deal and Resale Price Maintenance (RPM).

Example:

Agreements between manufacturers of components, manufacturers of products, between producers and whole-sellers or between producers, whole- sellers and retailers.

Important Factors while determining whether an agreement has an 'appreciable adverse effect' on competition

Section 19(3) of the Competition Act, 2002 provides that while determining whether an agreement has appreciable adverse effect on competition, the Commission shall give due regard to all or any of the following factors, namely-

- a) Creation of barriers to new entrants in the market;
- b) Driving existing competitors out of the market;
- c) Foreclosure of competition by hindering entry into the market;
- d) Accrual of benefits to consumers;
- e) Improvements in production or distribution of goods or provision of services; and
- f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Bid rigging

Bid rigging means any agreement between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Bid rigging takes place when bidders collude and keep the bid amount at a pre-determined level. Such pre-determination is by way of intentional manipulation by the members of the bidding group. Bidders could be actual or potential ones, but they collude and act in concert.

“Predatory Pricing” means the sale of goods or provision of services, at a **price below cost of production** to reduce competition or eliminate the competitors.

The main objective of such price is **to reduce competition or eliminate the competitors**.

Regulation of Combination

Regulation of Combination is one of the core provisions of the Competition Act, 2002. Section 5 of the Competition Act, 2002 provides that acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises which are above the certain prescribed size in terms of (a) assets or (b) turnover as provide under section 5.

Section 6 of the Competition Act, 2002 provides that any person or enterprises entering into a combination which causes or is likely to Cause an appreciable adverse effect on combination within the relevant market in India and if such a combination is formed, it shall be void.

WHAT IS DOMINANT POSITION?

- “Dominant Position” means a **position of strength**, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to:
- **Operate independently** of competitive forces prevailing in the relevant market
or
- **Affect its competitors or consumers** of the relevant market in its favour.

ABUSING DOMINANT POSITION

- Enterprise or group shall not abuse its dominant position.
- Agreement by enterprise or group abusing its dominant position is prohibited.
- An enterprise or group is said to have abused its dominant position if it directly or indirectly;
 - imposes unfair condition or price
 - Predatory pricing
 - Limits or restricts:
 1. Production of goods or provision of services or market
 2. Technical or scientific development relating to goods or services
 - Creating barriers to entry
 - Denying of market access
- Applies dissimilar conditions to similar transactions
- Uses its dominant position in one market to gain advantages in other market.

COMBINATION

- Act provides assets or turnover as the basis of the parties to determine combination.
- It can be created by group of persons or by more than one enterprise or created as a result of, a merger or amalgamation.
- The limit of assets or turnover are set out below:

Parties to combination jointly have or enterprise after merger or amalgamation have;			Acquiring group and target jointly have or enterprise created after merger or amalgamation have;
In India	In India or outside India	In India	In India or outside India

Assets over Rs. 1000 Cr.	Assets over USD 500 million, (of which at least Rs. 500 Cr. in India)	Assets over Rs. 4000 Cr.	Assets over USD 2 billion (of which at least Rs. 500 Cr. In India)
Or	Or	Or	Or
Turnover above Rs. 3000 Cr.	Turnover above USD 1500 million, (of which at least Rs. 1500 Cr. In India).	Turnover above Rs. 12000 Cr.	Turnover above USD 6 billion (of which at least Rs. 1500 Cr. In India).

COMPETITION COMMISSION OF INDIA

Establishment of CCI [Section 7]

Section 7 empowers the Central Government to establish a Commission to be known as "Competition Commission of India." The Commission is a body corporate having perpetual succession and common seal.

The Competition Commission has its head office at New Delhi (established w.e.f. 14-10-2003).

In addition to this, the Commission can establish its offices at other places in India.

Composition of CCI [Section 8]

The Commission shall consist of a Chairman and other members, which shall not be less than 2 and more than 10. The Chairman and all the members shall be appointed by the Central Government.

Following are the qualifications of Chairman and the members:

- 1. He shall be a person of ability, integrity and standing; and**
- 2. He has been or is qualified to be a Judge of a High Court or he has special knowledge and professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, etc.**

Term of Office [Section 10]

The term of office of **Chairman shall be 5 years or up to the age of 67 years**, whichever is earlier and that of **other members shall be 5 years or up to the age of 65 years**, whichever is earlier. However, they shall be eligible for reappointment.

Vacancy

- Vacancy caused by the resignation, removal, or death or otherwise of the Chairperson or member is filled by fresh appointment.
- The senior-most Member shall act as the Chairperson, until a new Chairperson is appointed as per Act in the event of vacancy in the office of chairman.
- When the Chairperson is unable to discharge his functions due to absence, illness or any other reason, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions

RESIGNATION- Section 11

- **Chairperson or Member may resign on the following conditions:**
- **Resignation should be in writing.**
- **Resignation should be addressed to the Central Government.**
- **Chairman or Member who has resigned his office is required to continue to hold office until:**
- **He is permitted by the Central Government.**
- **The expiry of 3 months from the date of receipt of notice.**
- **A person duly appointed in his place.**
- **The expiry of his term of office, whichever is the earliest.**

Removal of Chairperson and other Members [Section 11]

The Chairperson or a Member of CCI may be removed from the office by the Central Government in the following cases:

- a) Where he is adjudged as an insolvent;
- b) Where he has been engaged in any paid employment;
- c) Where he has been convicted of an offence which involved moral turpitude;
- d) Where he has acquired such financial or other interest as is likely to affect prejudicially his functions;

- e) Where he has abused his position; and
- f) Where he has become physically or mentally incapable.

Restriction on employment of Chairperson and other Members [Section 12]

As per section 12, the Chairperson and other Members shall not, for a period of two years, accept any employment connected with the management or administration of any enterprise which has been a party to any proceeding before the Commission under this Act.

However, the said restriction shall not apply where the Chairperson or any Member is offered an employment in a corporation established by or under any Central, State or Provincial Act.

Powers of CCI

Following are the important powers of CCI:

1. To inquire into anti-competitive agreements and abuse of dominant position;
2. To determine whether an agreement has an appreciable adverse effect on competition;
3. Enquire whether a combination has caused or likely to cause an appreciable adverse effect on competition;
4. To issue "cease and desist" orders;
5. To grant such interim relief as would be necessary in a particular case;
6. To award compensation;
7. To impose fines;
8. To order division of dominant undertakings;
9. To order demerger;
10. To order cost for frivolous complaints.

Powers of CCI to regulate its own procedure [Section 36]

The CCI has been empowered to lay down its own procedure and regulation and shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908. However, it shall observe the principles of natural justice and shall be subject to the rules made by the Central Government for the procedure to be followed in inquiries.

The CCI shall have the same powers as are vested in the civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- i. Summoning and enforcing the attendance of any person and examining them on oath;
- ii. Requiring the discovery and production of documents;
- iii. Receiving the evidence on affidavits;
- iv. Issuing the commissions for the examination of witnesses or documents;
- v. Requisitioning any public record/ document from any office;
- vi. Dismissing an application in default or deciding it;
- vii. Any other such matter as may be prescribed.

Section 36 of the Competition Act, 2002 empowers the Commission to call upon the experts from the fields of economics, commerce, accountancy, international trade or from any other discipline to assist the Commission in the conduct of any inquiry before it.

DIRECTOR GENERAL

Section 16 empowers the Central Government to appoint a Director General and such number of additional, joint, deputy or assistant Director Generals or other advisers, consultants or officers. These persons shall be appointed from amongst the persons of integrity and outstanding ability and who have experience in investigation and knowledge of accountancy, management, business, public administration, international trade, economics, law etc.

Director General is an important functionary under the Competition Act, 2002. He assists the Commission by furnishing Investigation Report in respect of such matters as are referred to him by the CCI. He also assists the Commission in conducting proceedings of enquiries, which are initiated by the CCI suo moto.

ACCOUNTS OF COMMISSION

- Commission shall maintain proper accounts and other relevant records.
- It shall prepare an annual statement of accounts as per format prescribed by the Central
- Government in consultation with the Comptroller & Auditor- General of India.
- The accounts of the Commission shall be audited by the C & AG of India at such interval as may be specified by him.
- Expenses of audit is payable by the Commission to the C & AG.

The accounts of the Commission as certified by the C & AG or any other person

appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government & that Government shall cause the same to be laid before each House of Parliament.

COMPETITION APPELLATE TRIBUNAL (CAT)

<p>Appeal to CAT - Section 53B</p>	<ul style="list-style-type: none"> • CG shall establish competition appellate tribunal by notification. • Any person aggrieved by the order of the Commission may appeal to CAT within 60 days. • CAT may accept the petition after 60 days if it is satisfied that there was sufficient cause for not filing appeal within specified time. • CAT may confirm or modify or setting aside decision of the Commission after giving opportunity to both parties. • CA T shall send copy of order to parties to the appeal. • CAT shall dispose the appeal within 6 months.
<p>Composition Section 53 C</p>	<ul style="list-style-type: none"> • CAT shall consist Chairperson and not more than two other Members. • Central Government appoints Chairperson and Members from names recommended by Selection Committee. • Chairperson and Member shall be a person who is or has been judge of Supreme Court or Chief Justice of High Court. • Chairperson and Members hold office for period of 5 years and eligible for re-appointment. However, Chairperson cannot hold office after he attains age of 68 years. Members cannot hold office after age of 65 years. • Central Government shall fill any casual vacancy in the office of Chairman or person as per act.

Resignation of chairperson and members - Section 53-1	<p>➤ Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office; but he shall continue to hold office:</p> <ul style="list-style-type: none"> • Unless he is permitted by the Central Government • Until the expiry of 3 months from the date of receipt of such notice • Until a person duly appointed his successor • Until the expiry of his term of office, whichever is the earliest.
Removal of chairperson and members of commission - Section 53K	<p>➤ Central Government after consulting Chief Justice, remove Chairperson or Member who has:</p> <ul style="list-style-type: none"> • Been declared as insolvent. • Engaged in any paid employment during his term of office. • Convicted any offence involving moral turpitude. • Physically or mentally incapable to act. • Acquired financial interest, likely to adversely affect his functions.

COMPETITION ADVOCACY

Section 49 of the Competition Act, 2002 provides that while formulating a policy on competition including review of laws related to competition, the Central Government may make a reference to the CCI for its opinion on the possible effects of such a policy on competition.

The Commission shall, within 60 days of receipt of such a reference, give its opinion on it to the Central Government. Thereafter the Central Government may formulate such policy as it deems fit. It may be noted that the role of the Commission is advisory and the opinion given by it shall not be binding on the Central Government.

The CCI had also been assigned the role to take prescribed suitable measures for the following:

- a) Promotion of competition advocacy;
- b) Creating awareness about the competition; and
- c) Imparting training about competition issues.

DIFFERENCE BETWEEN MRTP ACT AND COMPETITION ACT

Subject matter	MRTP Act	Competition Act, 2002
Base	It is based upon the pre-liberalization scenario.	It is based upon the post liberalization scenario.
Focus	It focuses on curbing monopolies.	It focuses on promoting competition.
Registration of agreement	It provides for compulsory registration of agreements relating to restrictive trade practices.	It does not provide for registration of agreement.
Dominance	Under MRTP Act, dominance itself is bad.	Under Competition Act, dominance per se is not bad but only abuse of dominance is considered bad.
Provision for combination	MRTP Act does not contain any provision for combination.	Competition Act contains provisions for combination.
Power of commission	MRTP Act does not vest MRTP Commission power to inquiry into cartel of foreign origin.	Competition Act vest power to commission to inquire into cartel of foreign origin.

Chp 12 Competition Act 2002

15th September 1999.

Govt of India → High Empowered Committee → S.V.S Raghavan.

Submitted
report on 22nd

High Empowered Committee → May 2000 → GOI → Parliament

Parliament → Dr APJ Abdul Kalam → 13th Jan 2003

↓

Competition
Act 2002

Competition Act 2002



Section 66

Chapter IX

* Section 1: Short title, Extent, Commencement -

* Objective of the Competition Act, 2002.

- to prevent practices having adverse affect on Competition.
- to promote and sustain competition in markets
- to protect the interest of consumers
- to ensure freedom of trade carried on by other participants in market in India and for the market connected therewith or incidental thereto.

* What is Competition?

- Competition word is not defined in Competition Act 2002.
- Competition is a complex and technical subject.
- Economic Rivalry between market players to attract customers.
- Competition in the market means selless striving independently for buyer's patronage to maximum profit (or other business objectives).
- Buyers buy the product at a price that maximizes his benefit & sellers prefers to sell the product at a price that maximizes the profit.

* Definition

- 1) Cartel (Refer from notes) Section 2(c).
- 2) Chairperson - Sec 2(d). means the Chairperson of the Commission appointed under sub-section (1) of section 8.
- 3) Commission - Sec 2(e). means the Competition Commission of India established under of Section 7. sub section - (1)
- 4) Consumer (Refer from notes) Section 2(f).
In competition Act if goods or services are purchased or availed whether for personal use or commercial purpose still he is the consumer.
the additional difference
- 5) Director General Section 2(g) - means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section.
- 6) Enterprise (Refer from note) Section 2(i)
- 7) Goods (Refer from note) Section 2(j).

8)

Relevant Market Sec 2(r)

Determined by Commission
with reference to.Relevant
Geographic
Market

Condition for competition
for supply of goods &
service are homogenous
but different in the
neighbouring area
Sec 2(s)

Relevant
Product
Market

It comprises all those
product or services
which are
interchangeable or
substitutable by
consumers Sec 2(t)

* Types of Anti Competitive Agreement:

- Meaning :-

- Prohibited

- Types of ACA.

- a) Tie-in arrangement - an agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods. Tie in agreement is also known as conditional sale or purchase.
- b) Exclusive Supply Agreement - an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
- c) Exclusive distribution agreement - an agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- d) Refusal to deal - an agreement which restricts or is likely to restrict by any method the persons or classes of persons to whom goods are sold or from whom goods are brought.
- e) Resale price maintenance - an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

* Selection of chairpersons and members of Commission Section 9.

- Chairpersons & other members shall be selected in the manner as may be prescribed.
- They will be appointed by CG based on the name recommended by selection committee.

Composition of Selection Committee.

- i) Chief Justice of India (Chairperson)
- ii) Secretary in MCA - member.
- iii) Secretary in Ministry of Law & Justice - Member.
- iv) Two members experts having special knowledge & professional experience - member.

* Section 16: Director General.

- Appointed by CG.
- Assists commission in conducting inquiry.
- Salary allowances qualification as may be prescribed.
- He will assist commission by furnishing by investigation report.

* Section 18: Duties of Commission As an Object of Competition Act.

* Section 22: Meetings of Commission

- Time, place, rules and procedure as provided by regulations
- Chairperson of CCI will be the chairperson of Meeting
- Chairperson absent then senior most member shall preside at the meeting
- Decision will be taken by majority votes.
- Equality of votes Chairperson will have the casting vote.
- Quorum is 3 member.

* Chapter 8: Finance, Accounting & Audit.

Section 50 :- grants by CG.

The CG may make to the Commission grants of such sums of money as it may think fit for being utilised for the purpose of the Act. Such grants is to be made after due appropriation made by the parliament.

Section 51 :- Competition fund.

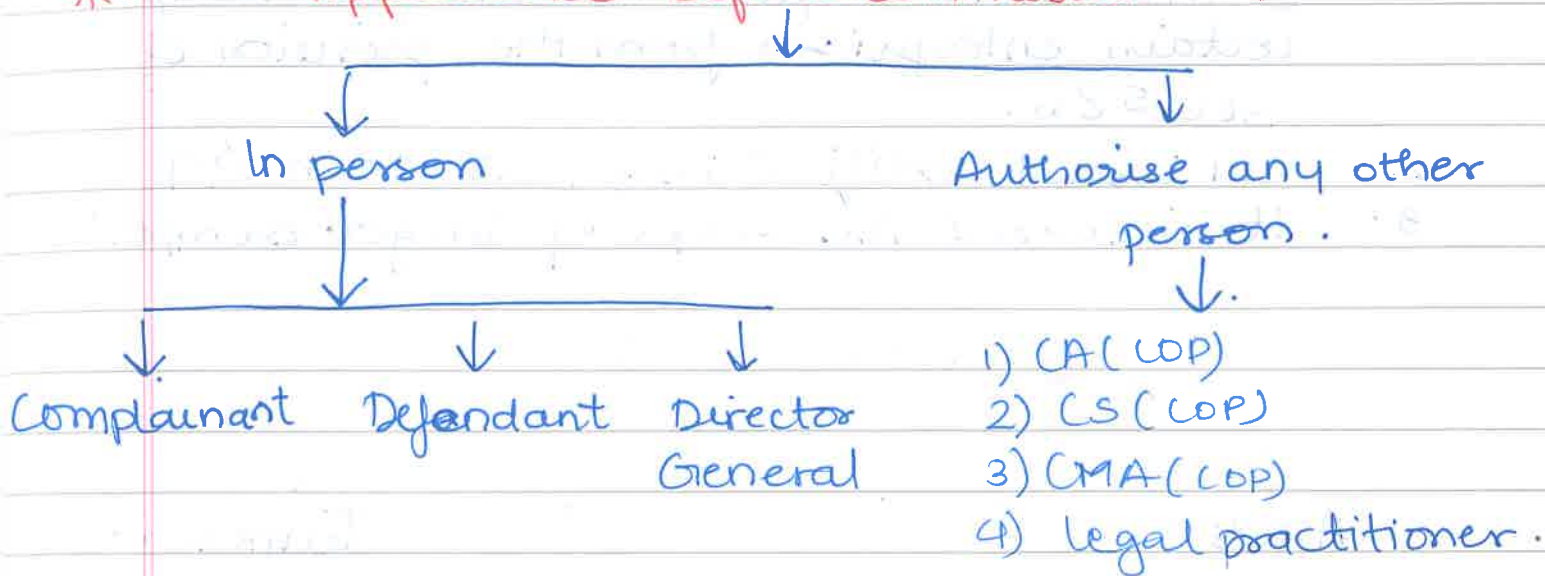
fund shall be called as competition fund - following shall be credited to the fund all (1) govt. grants.

(2) fees received

(3) Int on the amt accrued.

fund shall be utilized for admission - administration of commission.

* Appearance Before Commission - Section 35.

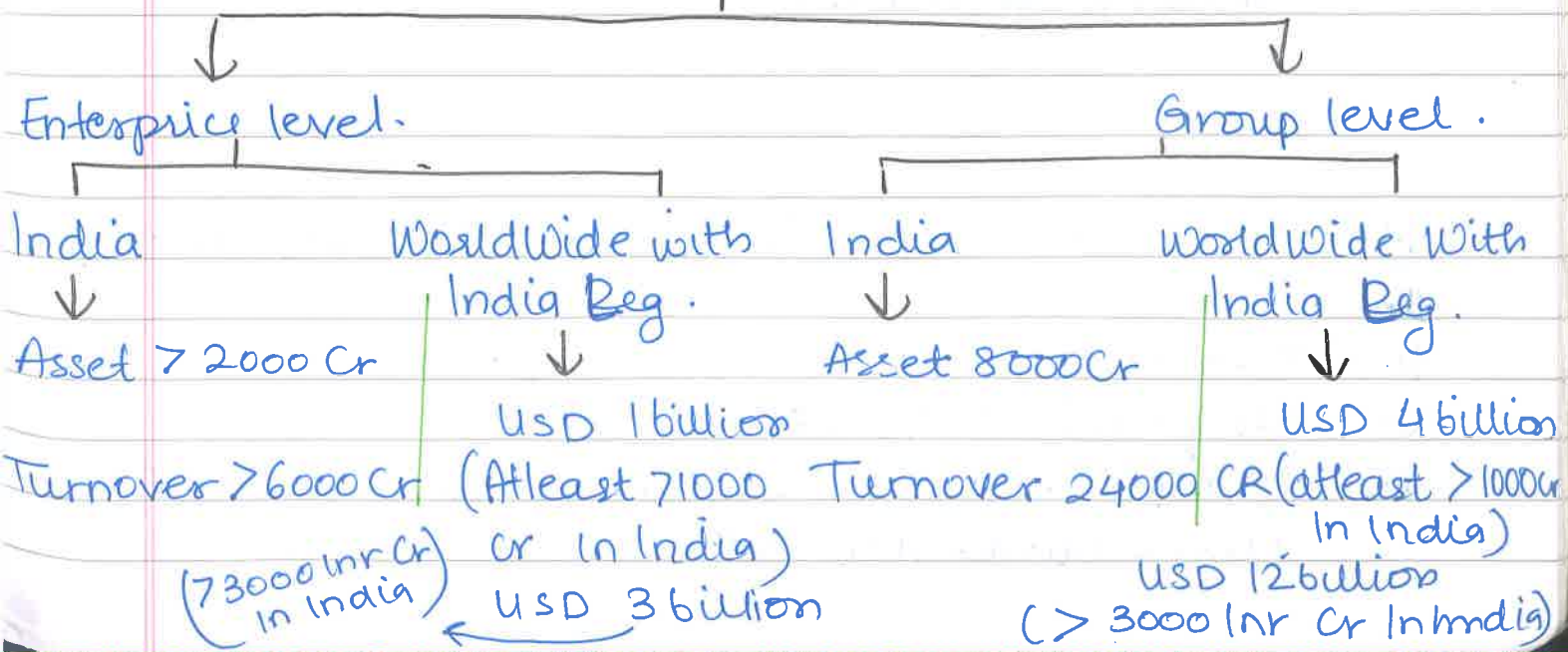


* Combination (Section 5 and 6)

— Meaning of combination.

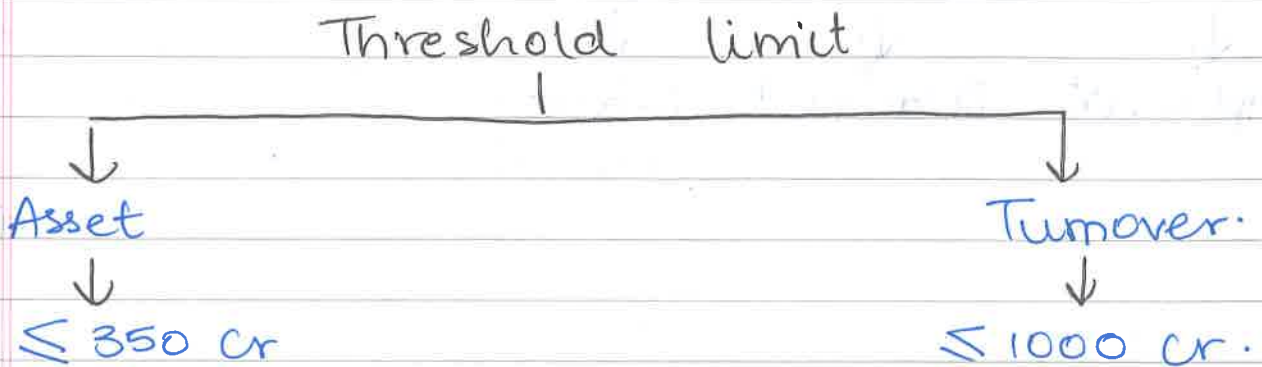
Combination means acquisition of control, shares, voting rights or assets where such person have direct or indirect control over the enterprise and merger amalgamation between the enterprise exceeding the threshold limit

— Threshold limit for combination



* De minimis Exemption / Target Exemption

1. Central Govt. in public interest has exempted certain enterprises from the provision of sec 586.
2. CG issued notification on 27th March '17
3. It increased the scope of target exemption



* Regulation of Combination Sec 6.

1. Any person or enterprises enter into combination which is having adverse effect on combination competition shall be void.
2. Any enterprise or person proposes to enter into combination shall give notice to commission in prescribed form and fees within 30 days.

* Exemption notification

- a. Exemption regarding regional rural banks (RRB)
- b. 5 years.
- c. 10 August 2017 to 10 August 2022
- d. In public interest
- e. Exemption to rrb registered under regional rural banks Act 1978.

- 2) Exemption of nationalised Bank from sec 5 & 6.
 - a) 10 years.
 - b) 30th August 2017 - 2027.
 - c) Public Interest
 - d) All reconstitution, amalgamation of nationalised bank. under Banking Companies (Acquisition & transfer of Undertaking) Act 1980 & Banking Company (Acquisition & Transfer of Undertaking) Act 1970.

- 3) Exemption of Combination involving central, public sector undertaking Enterprises operating in the Oil & Gas Sectors.
 - a) 5 years
 - b) 22 November 2017 - 22 November 2022.
 - c) Public Interest
 - d) CPSEs operating in Oil & Gas Sector under the petroleum act 1934 or under Oil field Regulation 1948.

- 4) Exemption from filing notice to the Commission :
 - a) 5 years.
 - b) 29 June 2017 - 2022
 - c) Party to combination is exempt from giving notice within 30 days.
 - d) Combination will not come into effect unless commission passed order or completion of 210 days from the date of filing notice

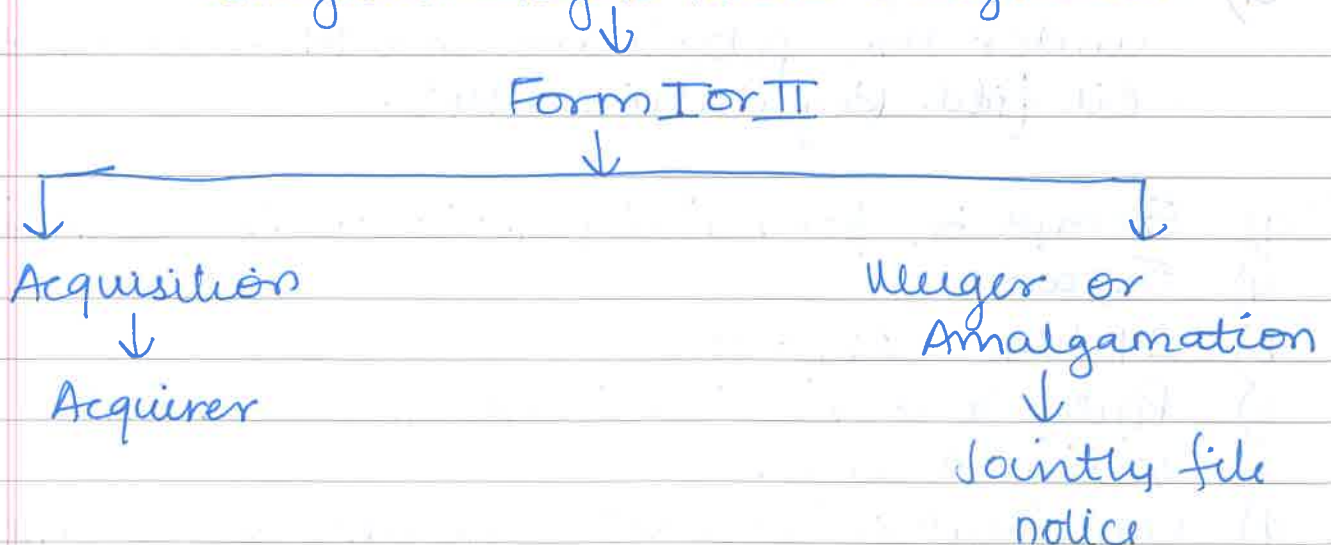
e) Commission may impose penalty which may extend to one percentage of ~~turn~~ total turnover or which ever is higher.

5) Non-applicability of Section 6.

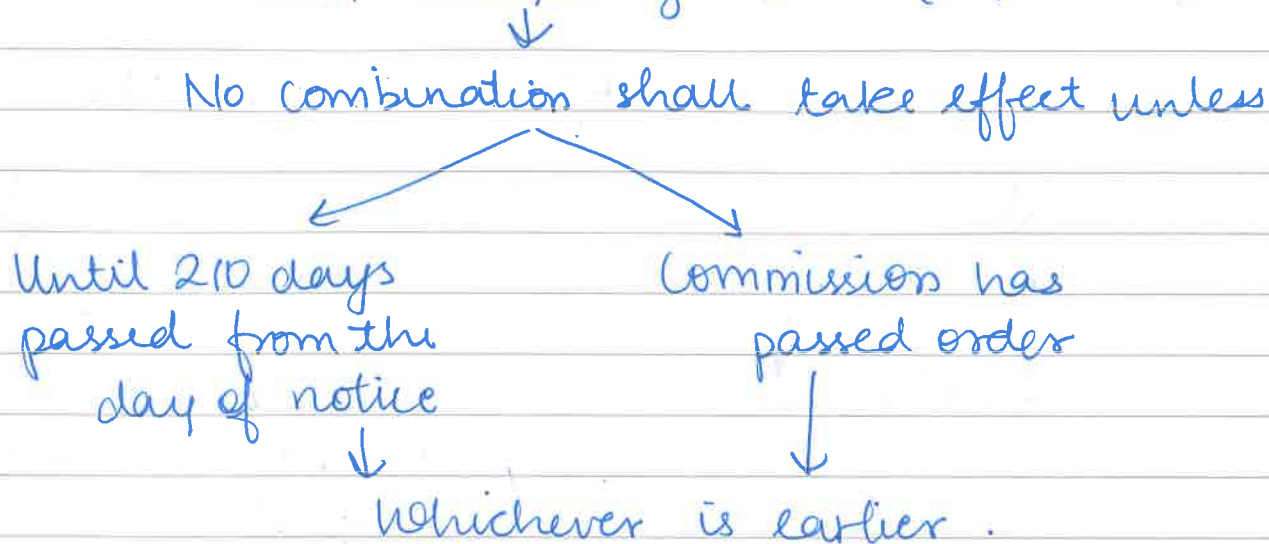


File within 7 days prescribed form from date of such acquisition or agreement.

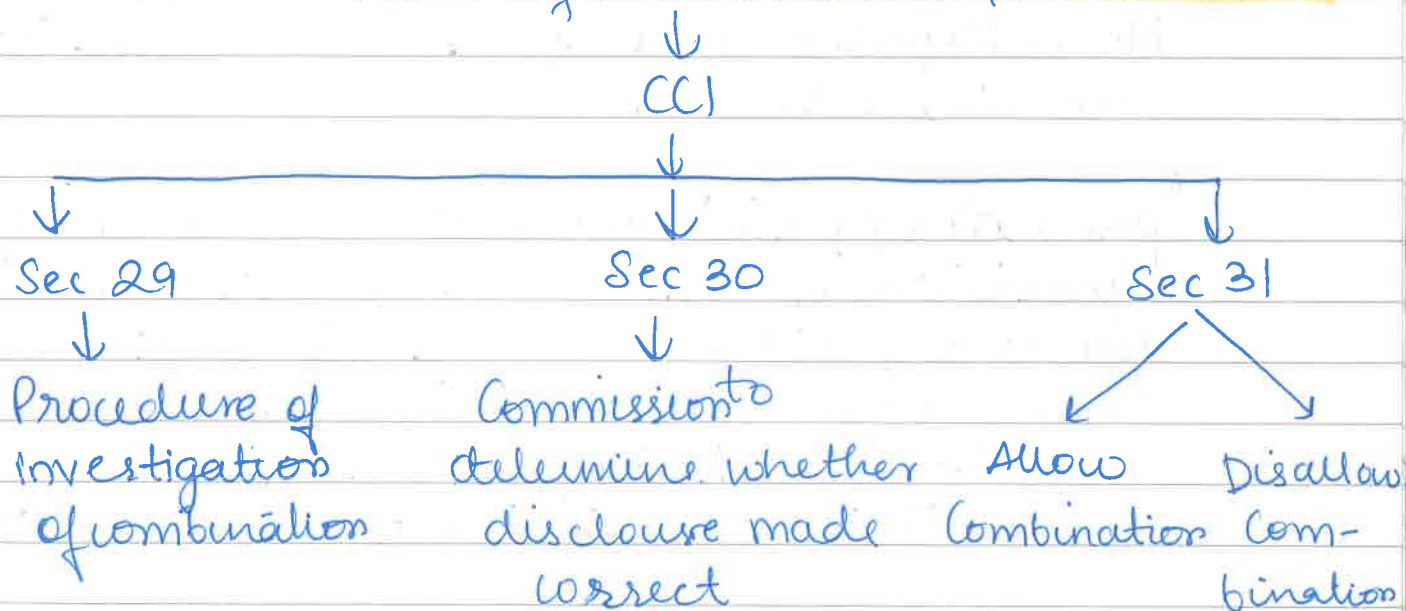
*. Obligation to file Notice : Regulation 9.



* Suspensory Regime .6(2A)

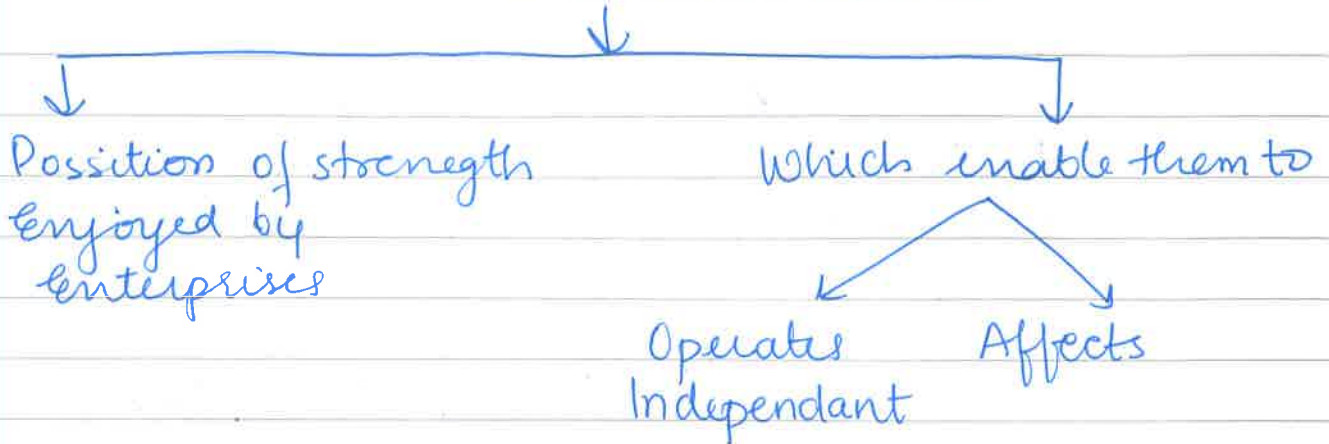


* Review of Combination by Commission



* Abuse of Dominant Position Section - 4.

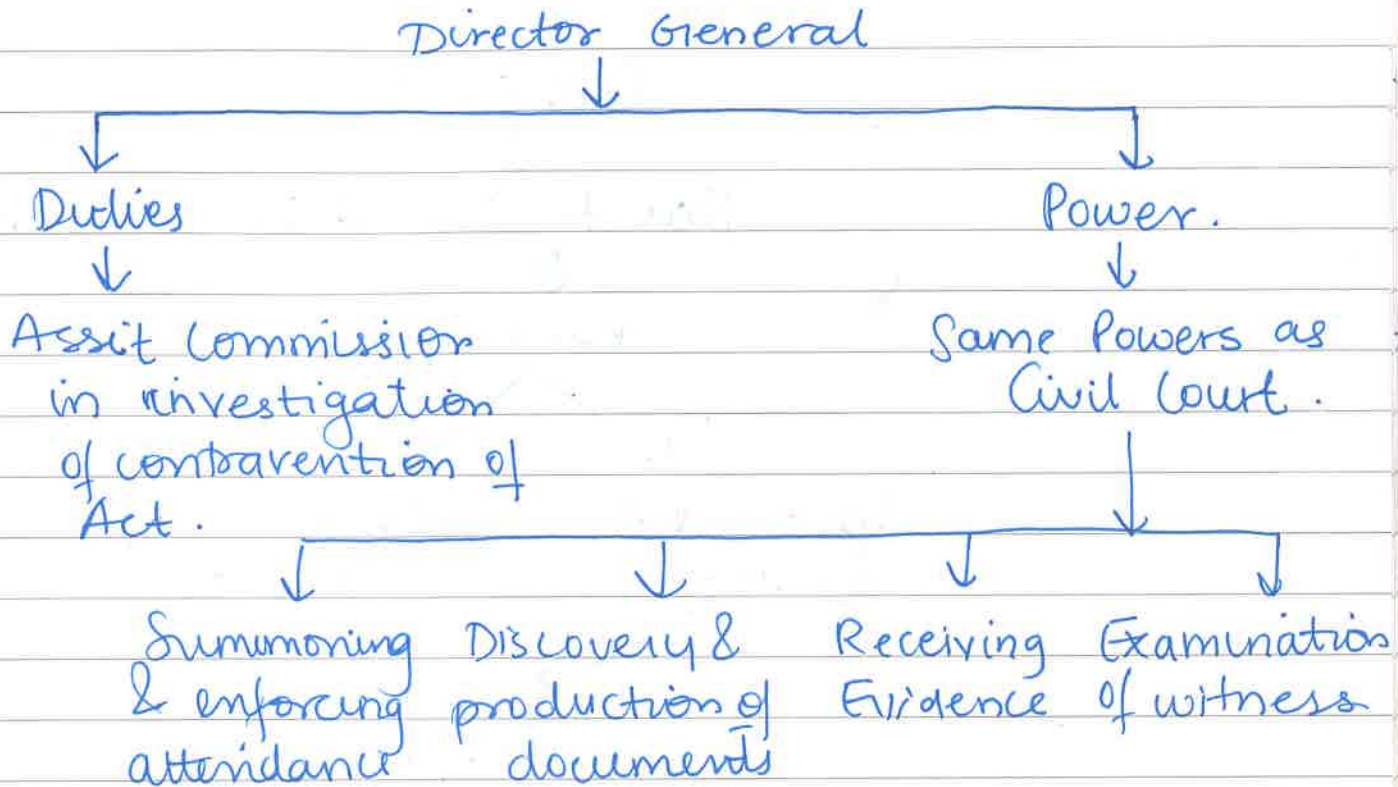
What is Dominant Position



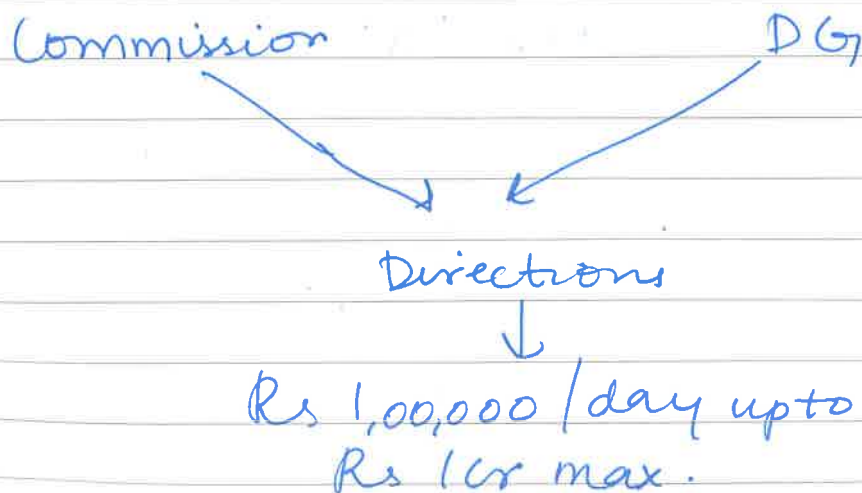
No enterprise or a group shall abuse its dominant position.

"predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

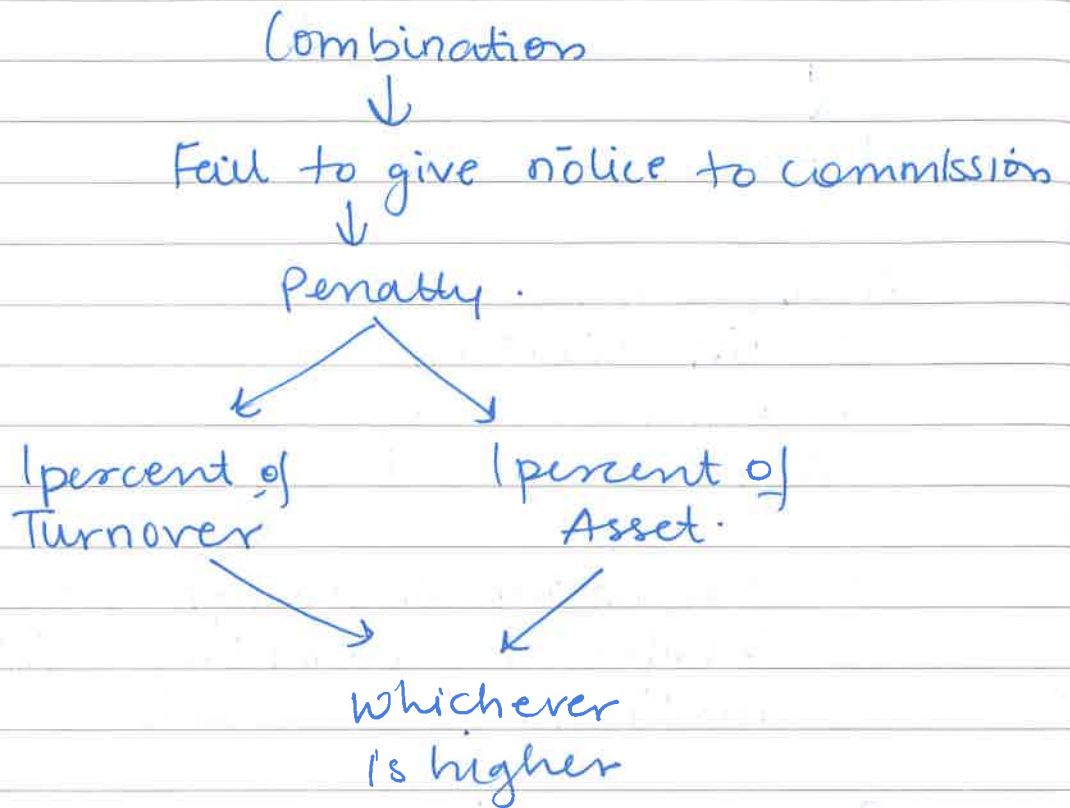
* Duties & Power of Director General Sec 36.



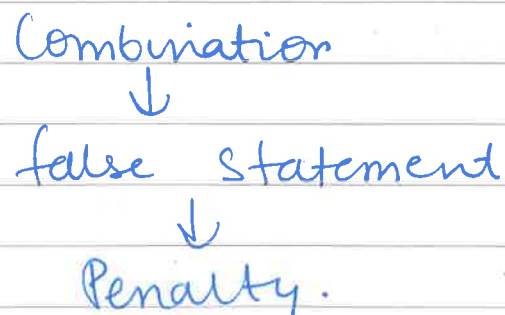
* Penalty for failure to comply with the directions of Commission & DG section 13.



* Penalty for non-turnishing of Information on Commission - Sec 43A.



* Penalty for false statement - Sec 44



Rs 50 lakh to 1 cr.

* Execution of orders of Commissions Imposing Monetary Penalty - sec 39.

1. If a person fails to pay any monetary penalty, Commission shall proceed to recover to such penalty as may be specified by the regulation.
2. The commission may also make reference if needed to income tax authority for recovery of penalty.

* Consumer Protection laws in India

1. Govt enacted various laws to safeguard the interest of consumer
 - a) Essential Commodities Act
 - b) Trademark Act
 - c) Specific Relief Act
 - d) Drugs Control Act
 - e) Drugs and Cosmetic Act
 - f) Drugs & Magic remedies (objectional & Advertisements) Act
 - g) Emblems & Names (prevention of improper use) Act
 - h) Indian standard Institution (Certificate marks) Act
 - i) Agricultural Produce (Grading & Marketing) Act
 - j) Standard of weights & Measures Act

- 2) Indian Contract Act (ICA) and Sale of Goods Act (SOGIA) contains provision for breach of contract and remedies thereof.
- 3) IPC provides stringed punishment for certain offences
- 4) In the year 1986 Govt enacted Consumer protection Act COPRA 1986.
- 5) Passing of MRTP Act 1969 could be said to be the beginning of the Govt. concern for consumer interest.

* Raghawan Committee :-

Mr.

1. Chairmanship of S.V.S Raghawan
2. Committee submitted report on 22nd May 2000
3. They recommended the replacement of MRTP Act.
4. Competition bill 2001 was introduced in the parliament which eventually become Competition Act 2002.

→ The purpose of Competition Act - An Act to provide keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition to promote & sustain competition in markets to protect the interest of consumers & to ensure freedom of trade.

carried on by other participants in market, in India & for matters connected therewith or incidental thereto.

Speech ←

→ Finance Minister (Shri. Yashwant Sinha) in the budget speech 1999 had announced.

The monopolies & Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Govt. has decided to appoint a committee to examine this range of issues & propose a modern competition law suitable for our conditions.

Q. Why do we need Competition in market?

- Ans. 1) Competition is the best means of ensuring that consumer have access to prod broadest range of services at most competitive prices
- 2) Procedures will have max incentive to innovate which will reduce the cost and meet the consumer demand.
- 3) Competition promotes efficiency in production
- 4) Govt. across the globe are increasingly trying to remove market imperfections to promote competition

- policy - helping hand (govt) → specific
- act - parliament.
- rules - administration.

* Competition law Evolution & development.

1. The first Competition Law was enacted in 1969 and was named as MRTP Act 1969.
2. The basis of MRTP Act is Article 38 and 39.
3. As per the Article lays down, inter-alia that State shall strive to promote the welfare of the people by securing & protecting as effectivly, as it may, a social order in which justice - social, economic & political - shall inform all the institutions of the national life, & the State shall, in particular, direct its policy towards securing :-
 - 1). that the ownership & control of material resources of the community are so distributed as best to subserve the common good; &
 - 2) that the operation of the economic system does not result in the concentration of wealth & means of production to the common detriment.

* Competition law & Competition policy

- 1) The Basic purpose of competition policy & law is to preserve and promote competition as the means of ensuring efficient allocation of resources.
- 2) Competition law itself cannot produce or ensure competition in the market unless this is facilitated by appropriate govt. policy.
- 3) On the other hand, Govt. policies without a law to enforce such policies & prevent

competition, malpractices would also be incomplete.

- 4) Competition policy typically has two elements: one is a set of policies that enhance competition in local & national markets. The second element is legislation designed to prevent anti-competitive business practices with minimal Govt. intervention i.e. a competition law.

Q1. What is the objective of Competition Act 2002?
Dec 2020. (3M).

Ans The objectives of the Competition Act 2002 are as under:

1. To promote & sustain competition in the markets in India.
2. To protect the interest of consumers & to ensure freedom of trade carried on by other participants in the market in India & for matters connected therewith or incidental thereto.
3. Establishment of Competition Commission of India to prevent practices having adverse effect on competition.

Q 2. Why do we need Competition under (3M).
Competition Act 2002? June 21, 22 Dec 22.

Q 3. ~~What are they~~ Explain the concept of Cartel with reference to the Competition Act 2002? June 21 Dec 13, 21, 18 (3M).

Ans 1. According to Sec 2(C) of the Competition Act 2002, Cartel includes an association of producers, sellers or distributors, traders or services providers who by agreement or amongst themselves limit control or attempt to control the production, distribution sale or price of or trade in goods or provision of services.

2. The nature of a cartel is to raise price above competitive levels, resulting in injury to consumer & to the economy. For the consumer, cartelisation results in higher prices, poor quality & less or no choice for goods or/ & services.
3. An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.
4. An import cartel comprises enterprises that get together for the purpose of imports into the country.
5. An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively

for export have been excluded from the provisions relating to anti-competitive agreements.

This is because such cartels do not adversely affect markets in India & are hence outside the purview of the Competition Act.

6. If there is effective competition in the market cartels would find it difficult to be formed & sustained.

Q4 Discuss 'Competition Law & Policy' under the Competition Act 2002 (3M) June 19, Dec 21, 22.

Q5 Who can appear before the Competition Commission of India? (3M) Dec 19, June 22.

Q6 Write a short note on Competition Advocacy? Dec 19, 13 (3M).

CHAPTER 15

INTELLECTUAL PROPERTY RIGHTS

CHAPTER 15

INTELLECTUAL PROPERTY RIGHTS

INTRODUCTION

1) Meaning

The term intellectual property relates to the creations of human mind and human intellect, this property is called Intellectual property

2) Meaning of Intellectual Property Rights

Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are Intellectual Property Rights

3) Area of Intellectual Property

- a) Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations)
- b) Trademarks including service marks
- c) Geographical indications including appellations of origin
- d) Industrial designs
- e) Patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data

LEGAL FRAMEWORK

- 1) Patent Act,1970
- 2) Trademark Act,1999
- 3) Copyright Act,1957
- 4) Design Act, 2000
- 5) Geographical Indication (Registration and Protection) Act,1999

NATURE OF INTELLECTUAL PROPERTY

1) Intangible Rights over Tangible Property

- a) One characteristic they all share is the establishment of property protection over intangible objects like ideas, inventions, signs, and information
- b) Another characteristic is intangible assets, which are tangible objects

2) Right to Sue

- a) The majority of intellectual property is challenged through legal rights of action that can only be carried out by people who have legal standing.
- b) They also have the legal right to sue anyone who uses their innovation without their permission and to be compensated with actual property

3) Rights and Duties

- a) IP results in both obligations and property rights.
- b) The owner of the IP is entitled to carry out specific tasks in connection with his creations.
- c) He has the sole authority to create, copy, sell, and otherwise exploit the work.
- d) Additionally, there is a negative right that bars others from using their statutory rights

4) Coexistence of different rights

- a) Various IPR kinds may coexist
For Ex:- An image of an innovation might be copyrighted and the invention itself might be patented.
- b) The numerous rights that can coexist in IP share many similarities and distinctions
For instance, there are similarities between a patent and an industrial design, a trademark and a geographical indicator, and so forth.
- c) Some of the rights related to intellectual property are positive rights, while the others are negative rights.

5) Exhaustion of rights:

- a) The doctrine of exhaustion generally applies to intellectual property rights.
- b) Exhaustion fundamentally means that after the first sale made by the right holder or by the authority designated for its exhaustion, that person's right expires and he is no longer permitted to halt the movement of the goods moving forward.
- c) As a result, once an IP rights holder has sold a physical good that bears IPRs, it cannot stop subsequent sales of the good.
- d) The first consent marks the end of the right.
- e) This theory is founded on the idea of free movement of products, which is legitimate by the owner's permission or right

6) Dynamism

- a) New things are being added to the IPR scope and the scope of its protection is being enlarged in accordance with the demands of scientific and technical advancement.
- b) Biopatents, Software Copyrights, and Plant Diversity Protection are just a few examples of terms that highlight recent advancements in the IPR area.

NEED OF INTELLECTUAL PROPERTY

- 1) Every invention involves labour, time, and resources.
- 2) The length of each project varies substantially.
- 3) It could be anything from a few seconds to a few years.
- 4) A certain amount of actual money is also necessary for any creative endeavour, along with education or knowledge of course.
- 5) Any creative professional making all of these investments is making a significant one.
- 6) Therefore, it is important to acknowledge and honour a creator's intellectual works

SCOPE OF INTELLECTUAL PROPERTY

1) Range

The range of IP rights is wide

2) Methods of classification

There are two methods for classifying IP as

- a) copyright or
- b) industrial property.

3) Examples of Industrial Property

Patents or inventions, trademarks, trade names, biodiversity, plant breeding rights, and other commercial interests are all examples of industrial properties

4) Copyright

- a) Copyright protects the expression of ideas that are distinct from patents but does not grant you the sole right to an idea.
- b) In addition to technological and scientific works, copyright also applies to the arts and literature. Copyright rules apply to everything, including music and audiovisual works.
- c) 60 years after the creator's passing, copyright protection continues to be in effect.
- d) In other words, a writer's book has copyright protection both during his lifetime and for 60 years following his passing

THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

1) About Agreement

The General Agreement on Trade in Services (GATS) is the first ever collection of legally binding, multinational regulations governing global trade in services

2) Effect

It came into effect in January 1995

3) Round

Uruguay Round

4) Goals

- a) Establishing a trustworthy and reliable system of international trade regulations
- b) Guaranteeing the non-discrimination of all participants
- c) Boosting economic activity through guaranteed policy bindings
- d) Advancing trade and development through progressive liberalisation.

5) Three Level of Function for goods

- a) The primary text-Which contains basic principles and obligations
- b) Annexes-Which deal with rules for particular sectors; and
- c) Individual nations' explicit commitments to allow access to their markets

6) Fourth Special Element

List that identifies the instances where the most-favored-nation principle of non-discrimination is not currently being followed by a country

7) Two Key Pillars

The two key pillars that support the GATS' contribution to global services trade are
 (a) increasing the openness and predictability of pertinent rules and regulations and
 (b) fostering progressive liberalisation through subsequent rounds of talks

8) Technical assistance

The WTO Secretariat is permitted to provide technical assistance to developing nations

9) Progressive Liberalisation

- a) Article XIX stipulates that liberalisation must take place with due consideration for national policy objectives and members' levels of development, both generally and in specific sectors.
- b) Thus, developing nations are given the option to gradually expand market access while opening fewer sectors and fewer types of transactions in accordance with their stage of development.
- c) Other sections make sure that developing nations have more freedom to pursue economic integration policies, uphold balance of payments limits, and control who can access and utilise their telecommunications transport networks and services.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**1) Meaning**

The United Nations organisation devoted to using intellectual property as a tool to foster innovation and creativity is known as the World Intellectual Property Organization (WIPO)

2) Main Office- Geneva**3) Founded-** 1970**4) Mission behind forming WIPO**

Member States to advance the protection of intellectual property all over the globe through intergovernmental cooperation and cooperation with other international organisations.

5) Goal

Its goal is to foster innovation and creativity through the creation of a fair and efficient international intellectual property system for the benefit of all nations' economic, social, and cultural development.

6) 1974

The Organization was designated as a specialised agency of the UN

7) 1996

By signing a cooperative agreement with the World Trade Organization in 1996, WIPO enlarged its mandate and further illustrated the significance of intellectual property rights in the administration of globalised trade

8) Factors for growth and application of global intellectual property system

- a) **Services** - run systems which make it easier to obtain protection internationally for patents, trademarks, designs and appellations of origin; and to resolve IP disputes.
- b) **Law** - develop the international legal IP framework in line with society's evolving needs.
- c) **Infrastructure** - build collaborative networks and technical platforms to share knowledge and simplify IP transactions, including free databases and tools for exchanging information.
- d) **Development** - build capacity in the use of IP to support economic development

LEGAL FRAMEWORK OF WIPO**1) Patent Cooperation Treaty (PCT)**

- a) The Paris Convention's Patent Cooperation Treaty (PCT) enables public access to technical data pertaining to such inventions
- b) It also assisting applicants in securing patent protection for their ideas on a global scale

2) Madrid Agreement

- a) Signed in 1981
- b) Protocol pertaining to that Agreement signed in 1989
- c) It set forth the rules for the Madrid System for the International Registration of Marks
- d) The method enables the protection of a mark across a wide range of nations.

3) Vienna Agreement

The Vienna Agreement creates an International Classification of the Figurative Elements of Marks known as the Vienna Classification

4) Nice Agreement:

Regarding the International Classification of Goods and Services for the Registration of Marks, the Nice Agreement came into force

5) Locarno Agreement:

The Locarno Agreement creates the Locarno Classification, an international classification system for industrial designs

6) WIPO Copyright Treaty (WCT)

- a) A particular agreement under the Berne Convention known as the WIPO Copyright Treaty (WCT) deals with the protection of works and the rights of their authors in the digital sphere
- b) The Treaty also addresses two items that must be covered by copyright protection:
 - (i) computer programmes, regardless of how they are expressed; and
 - (ii) collections of data or other materials

7) WIPO Performances and Phonograms Treaty (WPPT)

The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two categories of beneficiaries:

- (i) performers (actors, singers, musicians, etc.); and
- (ii) manufacturers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds)

8) WIPO Intergovernmental Committee

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore is engaging in text-based negotiations to find a text or texts for an international legal instrument that will effectively protect traditional knowledge (TK), traditional cultural expressions (TCEs), and genetic resources (GRs).

9) Standing Committee on Copyright and Related Rights (SCCR):

During the biennium of 1998–1999, the Standing Committee on Copyright and Related Rights (SCCR) was established to look into issues of substantive law or harmonisation in the area of copyright and related rights

10) Hague System/Agreement:

Through the submission of a single international application, the Hague System for the International Registration of Industrial Designs offers a useful commercial option for registering up to 100 designs in 74 contracting parties spanning 91 countries

11) Lisbon System/Agreement:

By using a single registration process and a single set of costs, the Lisbon System for the International Registration of Appellations of Origin and Geographical Indications provides a way to secure protection for an appellation of origin or a geographical indication in the contracting parties

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**1) Topics address in TRIPS**

- a) How general rules and fundamental ideas of the global trading system apply to international intellectual property?
- b) What are the minimum protection criteria for intellectual property rights that members should offer?
- c) What mechanisms should members offer to defend those rights in their home countries?
- d) Specific interim framework for resolving intellectual property disputes between WTO members in order to implement TRIPS requirements.
- e) Special transitional arrangements for the implementation of TRIPS provisions

INDUSTRIAL PROPERTY

1) Meaning

Industrial property is a kind of intellectual property and relates to creation of human mind.

2) Example of Industrial Property

Trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition

3) Meaning of Industry

The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. It are concerned with both commerce as well as industry

4) Paris Convention

The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition

5) General meaning

- a) industrial property right is a collective name for rights referring to the commercial or industrial activities of a person.
- b) These activities may include the activities of industrial or commercial interests.
- c) They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc

PATENT

1) Meaning

A patent is a monopoly award that gives the inventor control over the output and, up to a certain point in the demand curve, the price of the patented goods

2) Exclusive Right

An innovation, such as a product or a technique that gives a novel approach to a problem or a new technical solution, is given an exclusive right known as a patent

3) Authority to patent holder

The patent holder has the authority to decide who may or may not use the invention.

4) License

The owner of the patent may provide another party a licence to exploit the innovation under mutually agreeable terms

5) Transfer

He has the option to transfer ownership of the patent to the buyer of the right to use the innovation.

6) Term

The patent is valid for 20 years

7) Expiry of patent

After a patent expires, the invention is no longer protected and becomes part of the public domain, meaning that the owner no longer has the sole right to use the invention

8) Transfer

The owner of the patent may provide another party a licence to exploit the innovation under mutually agreeable terms.

TRADEMARK**1) Meaning**

- a) A trademark can be any combination of words, characters, numbers, symbols, or devices showing images of people, animals, or both.
- b) A trademark acts as an effective form of advertising for the goods and their quality since it denotes the relationship between the merchant and the items during the course of commerce

2) Objective and Goal

- a) A trade mark tries to safeguard both the interests of the trader and the customer by differentiating the items of one manufacturer or trader from comparable goods of others
- b) The goal of trademark law is to give businesses the ability to acquire an exclusive right to use, share, or assign a mark by registering their mark

3) Use to Consumer

Because of the nature and quality of the goods or service, which are denoted by its distinctive trademark, it aids consumers in recognising and purchasing it

4) Service mark

Service marks set one company's services apart from those of other companies

COPYRIGHT**1) Background of Copyright in world**

- a) Statute of Anne in 1709, the first copyright Statute was first adopted
- b) In the 18th century there was dispute over the relationship between copyright subsisting in common law and copyright under the Statute of Anne.
- c) This was finally settled by House of Lords in 1774 which ruled that at common law the author had the sole right of printing and publishing his book, but that once a book was published the rights in it were exclusively regulated by the Statute.
- d) This common law right in unpublished works lasted until the Copyright Act, 1911, which abolished the Statute of Anne

2) Scope of Copyright

Copyright law has extended protection not only to literary, dramatic, musical and artistic works but also sound recordings, films, broadcasts, cable programmes and typographical arrangements of publications. Computer programs have also been brought within the purview of copyright law.

3) Amendment years

Law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012

4) 1984

The amendment introduced in 1984 included computer program within the definition of literary work

5) 1994

New definition of computer program was inserted by the 1994 amendment

6) 1999: Copyright Act, 1957 has been amended

a) To give effect to the provisions of Article 14 of the TRIPs agreement providing term of protection to performers rights at least until the end of a period of fifty years computed from the end of the calendar year in which the performance took place

b) Inserted New Section 40A

Central Government to extend the provisions of the Copyright Act to broadcasts and performances made in other countries subject to the condition however that such countries extend similar protection to broadcasts and performances made in India

c) New Section 42A

Section 42A empowers the Central Government to restrict rights of foreign broadcasting organisations and performers.

INDUSTRIAL DESIGN

A) GLOBAL SCENARIO

1) Sector which got first protection

Textile designs were the first to receive legal protection

2) First Design protection Act in world

As early as 1787 the first Act for design protection was enacted in Great Britain for the Encouragement of the Arts of design and printing Linens, cotton, calicoes and Muslins, by vesting properties thereof in the Designers, Printers and Proprietors for a limited time

3) Scope increased in 1839

In 1839 the protection under the Act was enlarged to cover "Designs for Printing other woven Fabrics".

B) INDIAN SCENARIO

1) First Design Legislation

- a) The first designs legislation enacted in India was the Patterns and Designs Protection Act, 1872.
- b) It was enacted as a supplement to the Statute-Act 15 of 1859-passed by the Governor-General of India in Council
- c) The Act of 1872 was passed to extend similar privileges to the inventors of new patterns and designs in British India, though for a very shorter duration of years
- d) It included in the term new manufacture any new and original pattern or design, or the application of such pattern or design to any substance or article of manufacture
- e) The Act, however, left undefined the expression new pattern or design.

2) Inventions and Designs Act, 1898

The Inventions and Designs Act, 1898, which consolidated and amended the law relating to the protection of inventions and designs contained provisions relating to designs in a separate part

3) Indian Patents and Designs Act, 1911.

The (British) Patents and Designs Act, 1907, became the basis of the Indian Patents and Designs Act, 1911.

4) Patent Act,1970

The patents provisions of the Indian Patents and Designs Act, 1911, were repealed by the Patents Act, 1970, a post-Independence updating and consolidation of the patents law

5) Designs Act, 1911.

The design provisions of the Indian Patents and Designs Act, 1911, continue, with some consequential amendments, with the title as the Designs Act, 1911

6) Design Act,2000

The new Designs Act, 2000 has been passed by the Parliament.

GEOGRAPHICAL INDICATION (GI)**1) Meaning**

Geographical Indicator is that part of industrial property that designates a nation or a location within it as the nation or place of origin of that product

2) Guarantee

A name typically carries a guarantee of quality and individuality, which is mostly due to the fact that it originated in the specified geographical place, region, or nation

3) TRIPS

Geographical Indications are covered by Articles 22 to 24 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was a component of the Agreements that concluded the Uruguay Round of GATT negotiations

4) Legal Framework

The Geographical Indications of Goods (Registration and Protection) Act, 1999 was passed by India as a WTO member

5) Enactment and Effective

It was enacted in December 1999, and it became effective on September 15, 2003

6) Example

Bordeaux wine, Darjeeling tea, Chanderi sarees, Kullu shawls, Tuscany olive oil, Kanchipuram silk sarees, Alphonso Mango, Nagpur orange, and Kolhapuri (Chappal) are well-known examples of GIs.

TRADE SECRET

1) Meaning

A trade secret is a method, practise, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients.

2) Benefit

An enterprise may gain a competitive edge from secret business information

3) Examples

Sales techniques, distribution strategies, consumer profiles, marketing plans, client and supplier lists, production procedures, and advertising strategies

4) Term of preservation

A trade secret can be preserved indefinitely, but there must be a significant amount of secrecy, making it difficult to obtain the information unless inappropriate means are used.

NATIONAL INTELLECTUAL PROPERTY RIGHTS PROPERTY

1) Policy Approval Date

May 12th, 2016

2) Objective

The National Intellectual Property Rights Policy was put into place to encourage innovation, enhance the business climate, and make it easier to commercially utilise intellectual property

3) Focus of Policy

- a) Improving access to healthcare, food security, and environmental protection, among other areas of critical social, economic, and technological importance.
- b) Fostering creativity and innovation and thereby promote entrepreneurship and enhance socio-economic and cultural development

4) Goals

The Policy outlines seven goals that are further defined with actions that must be taken by the designated nodal Ministry or Department

a) IPR Awareness: Outreach and Promotion –

To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.

b) Generation of IPRs - To stimulate the generation of IPR.

c) Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.

d) Administration and Management - To modernize and strengthen service oriented IPR administration.

e) Commercialization of IPR - Get value for IPRs through commercialization.

f) Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.

g) Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

CHAPTER 16
LAW RELATING TO PATENT

CHAPTER 16

LAW RELATING TO PATENT

REGULATORY FRAMEWORK

- 1) Patent Act,1970
- 2) Patent Rules,2003

INTRODUCTION

1) Meaning of Patent

- a) A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent
- b) Patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products

2) Patent Act,1970

a) Entry 49 of List I

The Patents Act was enacted by the Government of India in the year 1970 in pursuance of its powers under Entry 49 of the List I of Schedule VII of the Constitution of India

b) Union List

List I contains the list of the items in the Union List and Entry 49 reads, "Patents, inventions and designs; copyright; trade-marks and merchandise marks."

c) Notified Date

The Act was notified on 19th September 1970

d) Amended

It has been amended in the year 1995, 1999, 2002 and 2005.

3) Objective of Act

- a) To promote innovations & developments
- b) To ensure that these creations got recognition commercially without delay
- c) Patents are conceded to empower patentee to commercially utilize the monopoly for the importation of the patented product into the nation

DEFINITION AND MEANING OF PATENT

1) Definition

Section 2(1) (m) of the Patents Act, 1970, defines the term patent as to mean a patent for any invention granted under Patents Act

2) Meaning

- a) An invention is considered as new (novel), if it is not anticipated by prior publication in patent and non-patent literature
- b) An invention is novel if it has not been disclosed in the prior art, where the prior art means everything that has been published, presented or otherwise disclosed to the public before the date of filing/priority date of complete specification.
- c) An invention is considered as novel, if it has not been anticipated by prior use or prior public knowledge in India

3) Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries (1979)

In the case of Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511

- a) It was held by the Hon'ble Supreme Court of India that the object of Patent law is to encourage scientific research, new technology and industrial progress.
- b) A limited-time grant of the only right to own, use, or sell a patented method or product encourages the development of new commercially useful inventions.
- c) The disclosure of the invention to the Patent Office, which becomes public domain after a predetermined duration of the monopoly, is the cost of the monopoly grant

ADVANTAGES OF PATENT

1) Exclusive Right

Patentee have the complete rights to restrict outsider from making, operating, providing accessibility to be bought, providing or putting in the product generated by him, without his consent

2) Right to file suit

The patentee has a privilege to file the suit for encroachment of his patent and can ask for remedies like, Injunction, compensation and a settlement of profit against the individual who encroached his patent.

3) Right of Holder of Exclusive permit

The holder of the exclusive permit can also avail the rights given to the patentee and can bring a suit if there should arise an occurrence of any encroachment of Patent

4) Changes and alteration

A patentee gets the privilege to make changes in or alterations of an invention depicted or uncovered in the total determination of the primary innovation and get the particular right of a patent by the substantial change or patent as a matter of addition/certain adjustment

5) Commercially exploit or pitch his creation

Patentee can commercially exploit or pitch his creation to any skilled individual and concede permit to him to abuse his item and in this way the patentee can likewise wins benefit along these lines

WHAT CAN BE PATENTED

1) Eligibility of patent

- a) An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented.
- b) However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act

2) Definition of Invention-Section 2(1)(j)

Invention as to mean a new product or process involving an inventive step and capable of Industrial application.

3) Capable of industrial application- Section 2(1)(ac)

Capable of industrial application, in relation to an invention, means that the invention is capable of being made or used in an industry

4) New Invention- Section 2(1)(l)

New invention as to mean any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen into public domain or that it does not form part of the state of the art

5) Raj Prakash v. Mangat Ram Choudhary

It was held that inventive creation, as is notable, is to discover something or find something not found or found by anybody previously.

It isn't essential that the invention ought to be anything confounded.

The fundamental thing is that the creator was first to embrace it.

The main issue in this manner, is that each basic creation is asserted, as in the form of novelty or new character, it will be considered as an invention and the cases & specifications must be perused in that light

WHAT ARE NOT INVENTIONS

The following are not inventions within the meaning of Section 3 of the Act:

- 1) An invention which is frivolous or which claims anything obviously contrary to well established natural laws
- 2) An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment
- 3) The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature
- 4) The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;

Explanation to clause: clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy

- 5) A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance
- 6) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way
- 7) A method of agriculture or horticulture
- 8) Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products
- 9) Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals
- 10) A mathematical or business method or a computer programme per se or algorithms;
- 11) A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- 12) A mere scheme or rule or method of performing mental act or method of playing game;
- 13) A presentation of information;
- 14) Topography of integrated circuits;

15) An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components;

Section 4 prohibits the grant of patent in respect of an invention relating to atomic energy falling within Sub-section (1) of Section 20 of the Atomic Energy Act, 1962

NOVARTIS AG v/s UNION OF INDIA

The Hon'ble Supreme Court in the matter of commented, "We have, therefore, no doubt that the amendment/addition made in section 3(d) is meant especially to deal with chemical substances, and more particularly pharmaceutical products. The amended portion of section 3(d) clearly sets up a second tier of qualifying standards for chemical substances/ pharmaceutical products in order to leave the door open for true and genuine inventions but, at the same time, to check any attempt at repetitive patenting or extension of the patent term on spurious grounds.

It was further held by the Apex Court :

In the case of medicines, efficacy means therapeutic efficacy and physico-chemical properties of substances do not meet the requirement of therapeutic efficacy .

It was also held that patent applicants must prove the increase in therapeutic efficacy and just increased bioavailability alone may not necessarily lead to an enhancement of therapeutic efficacy, and in any given case, enhanced efficacy must be specifically claimed and established by research data.

In this regard, in Para 187 of the Apex Court judgment, it is held that, ".....the physico-chemical properties of beta crystalline form of Imatinib Mesylate, namely (i) more beneficial flow properties,(ii) better thermodynamic stability, and (iii) lower hygroscopicity, may be otherwise beneficial but these properties cannot even be taken into account for the purpose of the test of section 3(d) of the Act, since these properties have nothing to do with therapeutic efficacy.

CRITERIA OF PATENTABILITY

An invention is patentable subject matter if it meets the following criteria –

- 1) It should be novel.
- 2) It should have inventive step or it must be non-obvious.
- 3) It should be capable of Industrial application.
- 4) It should not attract the provisions of section 3 and 4 of the Patents Act, 1970

PERSON ENTITLED TO MAKE APPLICATION-SECTION 6

An application for a patent for an invention may be made by any of the following persons

1) True or first inventor

by any person claiming to be the true and first inventor of the invention

2) Assignee

by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application

3) Legal Representative

by the legal representative of any deceased person who immediately before his death was entitled to make such an application

FORM OF APPLICATION AND PROVISIONAL & COMPLETE SPECIFICATION-SECTION 7**1) One Invention only**

Every application for a patent to be made for one invention only

2) Assignment

Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application proof of the right to make the application

3) International Application

Every international application under the Patent Cooperation Treaty (PCT) for a patent, as may be filed designating India shall be deemed to be an application under the Act, if a corresponding application has also been filed before Controller in India

4) Provisional and Complete Specification

Every such application, not being a convention application or an application filed under PCT designating India, shall be accompanied by a provisional or a complete specification

5) Specification crucial part of patent application

The Specification is a techno-legal document containing scientific and technical disclosure and claims for the invention which is the basis of rights of a patent. The Specification, thus, forms a crucial part of the patent application

WHAT IS THE PATENT COOPERATION TREATY

- 1) The PCT is an international treaty with more than 150 Contracting States which are bound with certain formal requirements set out in the Treaty and Regulations.
- 2) The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single international patent application instead of filing several separate national or regional patent applications
- 3) However, granting of patents remains under the control of the national or regional patent offices after the corresponding national phase application has been filed and the national phase application is assessed as per patent law of that jurisdiction.

PROVISIONAL AND COMPLETE SPECIFICATION-SECTION 9

1) **Provisional Specification filed**

Where an application for a patent is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application

2) **Failed to file complete specification**

If the complete specification is not so filed, the application shall be deemed to be abandoned

3) **Two or more provisional application for single invention**

a) **Two or More Application**

Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another

b) **Single Invention**

Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent

c) **One Complete specification**

He may allow one complete specification to be filed in respect of all such provisional specifications.

d) **Calculation of 12 months**

The period of twelve months shall be reckoned from the date of filing of the earliest provisional specification

4) **Complete Specification to be treated as provisional specification**

Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated as a provisional specification and proceed with the application accordingly

5) **Post date the application of date of filing the complete specification**

Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (3) as a provisional specification, the Controller may, if the applicant so requests at any time before the grant of patent, cancel the provisional specification and post-date the application to the date of filing of the complete specification

WHEN SHOULD AN APPLICATION FOR PATENT BE FILLED?

1) Earliest possible date

An application for a patent can be filed at the earliest possible date and should not be delayed.

2) Benefit for Provisional specification

An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention

3) Risk in delay in filing application

- a) Some other inventor might file a patent application on the said invention
- b) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/he

GENERAL PROCEDURE FOR OBLIGATION OF PATENT

Step 1: Filing of Patent Application

Step 2: Publication after 18 months

Step 3: Pre Grant Opposition/Representation by any person

Step 4: Request for Examination

Step 5: Examination: Grant or Refusal

Step 6: Publication of Grant of Patent

Step 7: Post Grant Opposition to Grant Patent

Step 8: Decision of Controller

CONTENTS OF SPECIFICATION-SECTION 10

1) Types of application

Provisional or Complete

2) Contents of all application

It shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates

3) Contents of Complete Specification

- a) **fully and particularly describe** the invention and its operation or use and the method by which it is to be performed
- b) disclose the **best method** of performing the invention which is known to the applicant and for which he is entitled to claim protection
- c) end with a claim or claims defining the **scope of the invention** for which protection is claimed; and

c) be accompanied by an abstract to provide **technical information** on the invention

HOW IS PATENT APPLICATION IS PREPARED

- 1) A patent specification can be prepared by the applicant himself or his registered and authorized agent.
- 2) The patent specification generally comprises of the title of the invention indicating its technical field, prior art, drawbacks in the prior art, the solution provided by the inventor to obviate the drawbacks of the prior art, a concise but sufficient description of the invention and its usefulness, drawings (if any) and details of best method of its working.
- 3) The complete specification must contain atleast one claim or statement of claims defining the scope of the invention for which protection is sought for

WHEN IS AN APPLICATION FOR PATENT IS PUBLISHED

Every application for patent is published after expiry of 18 months from the date of its filing or priority date whichever is earlier.

However, following applications are not published.

- 1) Application in which secrecy direction is imposed.
- 2) Application which has been abandoned u/s 9(1) and i.e. when a provisional application has been filed and the complete application has not been filed with 12 months from the filing of the provisional application.
- 3) Application which has been withdrawn 3 months prior to 18 months.

REQUEST FOR EXAMINATION- SECTION 11B

1) Request for Examination

No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period

2) Prescribed Manner

A request for examination shall be made in the prescribed manner for such examination within the prescribed period, by the applicant or any other interested person.

3) No Request Received

In case the applicant or any other interested person does not make a request for examination of the application for a patent within the specified period, the application shall be treated as withdrawn by the applicant

EXAMINATION OF APPLICATION-SECTION 12

1) Referred to Examiner

The application and specification and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him

2) Contents of Report

Report contain the following matters

a) Accordance of Act and rules

whether the application and the specification and other documents relating thereto are in accordance with the requirements of the Act and of any rules made thereunder

b) Grounds of objection

whether there is any lawful ground of objection to the grant of the patent in pursuance of the application

c) Result of investigation

the result of investigations made under Section 13; and

d) Other

any other matter which may be prescribed.

SEARCH FOR APPLICATION BY PREVIOUS PUBLICATION AND BY PRIOR CLAIM-SECTION 13

Examiner to whom the application for a patent is referred shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification

CONSIDERATION OF THE REPORT OF EXAMINER BY CONTROLLER-SECTION 14

In case the report of the examiner is adverse to the applicant and requires any amendment of the application, specification or other documents, the Controller shall, before proceeding to dispose of the application, communicate the gist of objections to the applicant as expeditiously as possible and afford him an opportunity of hearing.

POWER OF CONTROLLER TO REFUSE OR REQUIRE AMENDED APPLICATION IN CERTAIN MATTERS-

The Controller to refuse the application or to require the application, specification or other documents to be amended, if he is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the provisions of the Act and the rules made thereunder

POWER OF CONTROLLER TO MAKE ORDERS RESPECTING DATING OF APPLICATION AND CASES OF ANTICIPATION-SECTION 17

1) Post Dated

At any time after the filing of an application and before the grant of the patent, the Controller may at the request of the applicant direct that the application shall be post-dated to such date as may be specified in the request and proceed with the application accordingly

2) Not Later than 6 months

No application shall be post-dated to a date later than six months from the date on which it was actually made or would be deemed to have been made

3) When application is deemed to be made if there is amendment

Where an application or specification or any other document is required to be amended under Section 15 deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant, the date on which it is refiled after complying with the requirement.

POWER OF CONTROLLER IN CASES OF ANTICIPATION-SECTION 18

It appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated, he may refuse the application unless the applicant

- 1) Shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published
- 2) Amends his complete specification to the satisfaction of the Controller

POTENTIAL INFRINGEMENT

1) Meaning

Patent infringement is the violation of the exclusive rights of the patent holder

2) No Specific definition

The Patents Act 1970, does not specifically define activities or situations that constitute patent infringement

3) Exclusive right and violation

- a) Section 48 of the Patents Act gives the patent holder/ patentee an 'exclusive right' to exclude any third- party from making, using, offering, selling, manufacturing etc. the patented invention/ product/ process, during the valid term of the patent.
- b) This essentially creates monopolistic rights over the patented invention/ product/ process.
- c) Thus, any activity which violates such a monopoly can be considered a patent infringement.

4) Governing Provision

Sections 104-114 of the Act provide certain guidelines relating to patent infringement.

5) Right of patent Holder

In cases of patent infringement, the patent holder has the right to sue the infringing party to get relief and compensation for the damage caused

POWER OF CONTROLLER IN CASE OF POTENTIAL INFRINGEMENT-SECTION 20

1) Provision

It appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public

2) Conditions for reference to other patent

- a) The applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
- b) the complete specification is amended to the satisfaction of the Controller

3) Impact of Reference

a) Revocation

Other patent is revoked or otherwise ceases to be in force

b) Other patent amended

The specification of that other patent is amended by the deletion of the relevant claim

c) Delete the reference to other patent

It is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention, the Controller may, on the application of the applicant delete the reference to that other patent.

TIME FOR PUTTING APPLICATION IN ORDER FOR GRANT-SECTION 21

1) Applicability

The applicant has complied within the prescribed period with all the requirements imposed on him by or under the Act failed to comply in connection with

- a) The complete specification
- b) In relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller

2) Provision

Application for a patent shall be deemed to have been abandoned

3) Extention in case of appeal with High Court

In case of an appeal filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.

CONTROLLER TO TREAT APPLICATION AS APPLICATION OF OPPONENT-SECTION 26

1) Obtained from Opponent

Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent

2) Consequences

- a) He may on request by such opponent direct that the patent shall stand amended in the name of the opponent
- b) A part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention

3) Application filed by opponent

The Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of the priority dates of claims of the complete specification, on the date on which the corresponding document was or deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent

RESIDENTS NOT TO APPLY FOR PATENTS OUTSIDE INDIA WITHOUT PRIOR PERMISSION-SECTION 39

1) No Application outside India

No person resident in India make or cause to be made any application outside India for the grant of a patent for an invention

2) Dispose application

The Controller to dispose of every such application within the prescribed period

3) Defence and atomic energy

If the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government

4) Non applicability of Section 39

Section 39 shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India

GRANT OF PATENT-SECTION 43

1) Grounds for grant of patent

- a) An application for a patent has been found to be in order for grant of the patent
- b) The application has not been refused by the Controller by virtue of any power vested in him by the Act
- c) Application has not been found to be in contravention of any of the provisions of the Act

the patent shall be granted

2) To whom it is granted

The patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly

3) Public Inspection

Controller has been put under obligation to publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection

GRANT OF PATENTS SUBJECT TO CONDITIONS-SECTION 47

Grant of patents subject to conditions provides that the grant of a patent shall be subject to the conditions that:

1) Government own use

a) Machine, apparatus or other article

Any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use

b) Any Process

Any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use

2) Merely of experiment or research

Any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils

3) Medicine or Drug

The medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders

RIGHT OF PATENTEE-SECTION 48

Patent granted under the Act shall confer upon the patentee

a) Subject matter of a patent is a good

The exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India

b) Subject matter of the patent is a process

The exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India

TERM OF PATENT-SECTION 53

1) Term of patent

Term of every patent which has not expired and has not ceased to have effect, on the date of such commencement shall be twenty years from the date of filing of the application for the patent

2) International Application filed

It shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty

3) Renewal fees not paid

A patent shall cease to have effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within such extended period as may be prescribed.

PATENT OF ADDITION-SECTION 54

1) Grant patent of addition

An application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification, namely the main invention and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

2) Grant patent of addition

Where an invention being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date of the patent so revoked.

3) Date of filing application

A patent shall not be granted as a patent of addition unless the date of filing of the application is the same as or later than the date of filing of the application in respect of the main invention

4) Condition

A patent of addition shall not be granted before the grant of the patent for the main invention

TERM OF PATENT OF ADDITION-SECTION 55**a) Term of patent of addition**

A patent of addition is granted for a term equal to that of the patent for the main invention or so much thereof as has not expired and remains in force during that term or until the previous cessor of the patent for the main invention and no longer

b) Renewal Fees

No renewal fees is payable in respect of a patent of addition

c) Independent Patent

if any such patent becomes an independent patent the same fees shall thereafter be payable upon the same dates, as if the patent had been originally granted as an independent patent

VALIDITY OF PATENT OF ADDITION – SECTION 56

- 1) A patent of addition application cannot be rejected on the grounds that the disclosure in the primary application or patent lacked innovative step. However, the disclosure in the main application or patent may be used as evidence of innovation against the patent addition application.
- 2) In the matter of Ravi Kamal Bali v/s Kala Tech and others the Bombay High Court on 12th February, 2008 dismissed the defendant's arguments that Patent of addition can only be granted if it has an inventive step over the main application.

APPLICATIONS FOR RESTORATIONS OF LAPSED PATENTS-SECTION 60

A patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed 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 eighteen months from the date on which the patent ceased to have effect, make an application for the restoration of the patent

PROCEDURE FOR DISPOSAL OF APPLICATIONS FOR RESTORATION OF LAPSED PATENTS-SECTION 61**1) Unintentional**

Controller is prima facie satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application

2) Publish at application

Controller shall publish the application in the prescribed manner; and within the prescribed period

3) Application of Opposition

Any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds that –

- (a) the failure to pay the renewal fee was not unintentional; or
- (b) there has been undue delay in the making of the application

4) Notify the applicant and Opportunity of being heard

If notice of opposition is given within the prescribed period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before deciding the case

5) Restoration of lapsed patent and patent of addition

If no notice of opposition is given within the prescribed period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent

RIGHTS OF PATENTEES OF LAPSED PATENTS WHICH HAVE BEEN RESTORED-SECTION 62**1) Patentee subject to conditions**

The rights of the patentee shall be subject to such conditions as may be prescribed and to such other conditions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contractor otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of the publication of the application for restoration of the patent.

2) No suit or other proceedings

No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the publication of the application for restoration of the patent

SURRENDER OF PATENTS-SECTION 63**1) Notice to Controller**

The patentee to offer to surrender his patent, at any time by giving notice to the Controller

2) Publish

The Controller shall publish the offer in the prescribed manner and also notify every person other than the patentee whose name appears in the register as having an interest in the patent

3) Notice of Opposition

Any person interested may, within the prescribed period after such publication, give notice of opposition to the Controller and where such notice is given the Controller shall notify the patentee.

4) Order revocation of Patent

If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and by order revoke the patent.

GROUNDINGS FOR REVOCATION OF PATENT-SECTION 64

A patent may be revoked on any of the following grounds

- 1) where an invention as claimed in a valid claim of earlier priority date which is included in the complete specification of another patent granted in India
- 2) where the patent application was filed by a person who is not entitled under the provisions of the Act and was granted a patent on such application
- 3) where the patent was wrongfully obtained and the rights of the petitioner or any person under/through whom he claims, were contravened
- 4) when the subject of a claim of the complete specification is not an invention within the meaning of the Act
- 5) where the invention that is being claimed is not new having regard to what was publicly known or used in India before the priority date of the claim and also having regard to what was published in any of the documents, whether in India or elsewhere
- 6) where the invention that is claimed is obvious and lacks any inventive step, having regard to what was publicly known, used or published in India, before the priority date of the claim
- 7) where the invention is not useful
- 8) where the scope of any claim is not defined properly or based on the matter which has not been disclosed in the specification
- 9) where a false suggestion or representation was made to obtain the patent
- 10) where the subject of any claim of the complete specification is not patentable under the Act
- 11) the invention that is being claimed was secretly used in India before the priority date of the claim
- 12) where the information required under Section 8 has not been disclosed by the applicant of the patent
- 13) to the Controller or the information that has been furnished is false to his knowledge;
- 14) where any direction of secrecy passed under Section 35 has been contravened by the applicant or made an application in contravention of Section 39 for the grant of a patent outside India;
- 15) where the permission to amend the complete specification under Section 57 or 58 was obtained by fraud;
- 16) the complete specification does not disclose or mentions the wrong source or geographical origin of biological material used for the invention;
- 17) the invention was anticipated having regard to the knowledge which was available within any local or indigenous community within India or elsewhere

REVOCAION OF PATENT OR AMENDMENT OF COMPLETE SPECIFICATION ON DIRECTIONS FROM GOVERNMENT IN CASES RELATING TO ATOMIC ENERGY. —SECTION 65

1) Grounds for Revocation

The Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962

2) CG can direct to revoke patent

It may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent

3) Amend instead of revocation

Controller allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent

WORKING OF PATENTED INVENTION-GENERAL PRINCIPLES-SECTION 83

In exercising the powers conferred for working of patents and compulsory licences, regard shall be had to the following general considerations, namely

1) Encourage invention and worked on commercial scale

Patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay

2) Monopoly for importation

They are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article

3) Reasonable affordable prices

Patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public

4) CG not prohibited

Patents granted do not in any way prohibit Central Government in taking measures to protect public health

5) Not abused

Patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology

6) Social and economic welfare

Contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations

COMPULSORY LICENSES-MEANING

1) Meaning

Compulsory licenses are authorizations given to a third-party by the Controller General to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner

2) National and International Level

This concept is recognised at both national as well as international levels, with express mention in both (Indian) Patent Act, 1970 and TRIPS Agreement.

3) Provision for Compulsory License

There are certain pre-requisite conditions, given under sections 84-92, which need to be fulfilled if a compulsory license is to be granted in favour of someone

COMPULSORY LICENSES-SECTION 84

1) **Term-** Expiry of 3 years from the date of grant of patent

2) **Authority-** Controller

3) Grounds of application

- a) Reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- b) the patented invention is not available to the public at a reasonably affordable price, or
- c) the patented invention is not worked in the territory of India.

4) Contents in application for compulsory license

- a) Nature of the applicant's interest together with such particulars as may be prescribed
- b) Facts upon which the application is based

5) Grant License

The Controller on being satisfied may grant a licence upon such terms as he may deem fit.

6) Criteria and Considerations

a) Nature, Time and Measures

The nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention

b) Ability to work

The ability of the applicant to work the invention to the public advantage

c) Capacity of applicant

The capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted

d) Efforts to obtain licence

as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit

7) Exemption from above criteria

- a) National emergency or other circumstances of extreme urgency or
- b) In case of public non-commercial use or
- c) On establishment of a ground of anti-competitive practices adopted by the patentee

REVOCAION OF PATENT BY THE CONTROLLER FOR NON-WORKING-SECTION 85**1) Provision**

Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent

2) Grounds for Revocation

- a) Patented invention has not been worked in the territory of India or
- b) Reasonable requirements of the public with respect to the patented invention has not been satisfied or
- c) Patented invention is not available to the public at a reasonably affordable price

3) Contents of Application for revocation

- a) Prescribed particulars
- b) Facts upon which application is made
- c) Nature of applicants interest (If application is by other than Central Government)

4) Order

The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention has not been satisfied or patented invention has not been worked in the territory of India or is not available to the public at a reasonably affordable price, may make an order revoking the patent.

5) Time Limit

The controller has however been put under obligation to ordinarily decide such application within one year of its presentation

TERMINATION OF COMPULSORY LICENCE-SECTION 94

1) Application for Termination

On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence may be terminated by the Controller

2) Conditions

Provided the circumstances that give rise to the grant thereof no longer exist and such circumstances are unlikely to recur.

3) Right to object

The holder of the compulsory licence has been entitled to object to such termination

CONVENTION COUNTRIES-SECTION 133

A convention country is that country, which is a signatory or party or a group of countries, union of countries or intergovernmental organizations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights.

NOTIFICATION AS TO COUNTRIES NOT PROVIDING FOR RECIPROcity.—SECTION 134

Where any country notified by the Central Government as Convention Country does not accord to citizens of India the same rights in respect of the grant of patents and the protection of patent rights as it accords to its own nationals, no national of such country shall be entitled either solely or jointly with any other person:

- a) to apply for the grant of a patent or be registered as the proprietor of a patent
- b) to be registered as the assignee of the proprietor of a patent; or
- c) to apply for a licence or hold any licence under a patent granted under the Act

CONVENTIONAL APPLICATION-SECTION 135

1) Priority Date

A person has made an application for a patent in respect of an invention in a convention country (basic application) and that person or legal representative or assignee of that person makes an application under the Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification being a claim based on matter disclosed in the basic application, is the date of making of the basic application

2) Application in two or more countries

Applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months shall be reckoned from the date on which the earlier or earliest of the said applications was made

3) Designating India

In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section 11B shall be made only for one of the applications filed in India

SPECIAL PROVISION RELATING TO CONVENTION SPECIFICATIONS-SECTION 136

- 1) Every convention application shall—
 - a) be accompanied by a complete specification; and
 - b) specify the date on which and the convention country in which the application for protection, or as the case may be, the first of such applications was made; and
 - c) state that no application for protection in respect of the invention had been made in a convention country before that date by the applicant or by any person from whom he derives title
- 2) A complete specification filed with a convention application may include claims in respect of developments of, or additions to, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of Section 6 to make a separate application for a patent
- 3) A convention application shall not be post-dated under sub-section (1) of section 17 to a date later than the date on which under the provisions of this Act the application could have been made

SUPPLEMENTARY PROVISIONS AS TO CONVENTION APPLICATIONS-SECTION 138

- 1) Where an conventional application is made, the applicant shall furnish , when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country and verified to the satisfaction of the Controller within the prescribed period from the date of communication by the Controller.
- 2) **Foreign language**
If any such specification or other document is in a foreign language a translation into english of the specification or document verified by affidavit or otherwise to the satisfaction of the Controller are required to be furnished

PATENT AGENT

1) **Governing Provision**

Sections 125-132 of the Patents Act, 1970 read with the Patents Rules deal with the Patent Agents

2) **Functions of Patent Agent**

- a) Drafting of specifications
- b) Making of application for a patent,
- c) Subsequent correspondence with the Patent office on the objections raised
- d) Representing the applicant's case at the hearings,
- e) Filing opposition
- f) Defending application against opposition

PATENT OFFICE AND ITS ESTABLISHMENT**1) Who is Controller Patent**

The Controller General of Patents, Designs and Trade Marks appointed under Section 3(1) of the Trade Marks Act, 1999 shall be the Controller of Patents

2) Patent Office

There shall be an office for the purpose of Patent Acts which shall be known as the patent office

3) Notification

The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office

APPEAL TO HIGH COURT-SECTION 117A(1)**1) Scope of Appeal**

An appeal shall lie to the High Court from any decision, order or direction of the Controller of Central Government under section 15, section 16, section 17, section 18, section 19, section 20, sub-section (4) of section 25, section 28, section 51, section 54, section 57, section 60, section 61, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

2) Prescribed form and accompany

Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

CHAPTER 17

LAWS RELATING TO TRADEMARK

CHAPTER 17

LAWS RELATING TO TRADEMARK

REGULATORY FRAMEWORK

1. Trade Marks Act, 1999
2. Trade Marks Rules, 2017

OBJECTIVE OF ACT

Trade Marks Act, 1999 is an Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. It extends to the whole of India.

SOURCE OF TRADEMARK LAWS

1. The National statutes i.e., the Trade Marks Act, 1999 and rules made thereunder.
2. International Multilateral Convention.
3. National Bilateral Treaty.
4. Regional Treaty.
5. Decision/Rulings of the Courts.
6. Office Practice reduced in Manuals and Guidelines.
7. Text Books written by Academician and Professional Experts

FUNCTIONS OF TRADEMARK

1. It advertises the goods/services
2. It identifies the goods/or services and its origin
3. It creates an image for the goods/services
4. It guarantees its unchanged quality

DEFINITION AND MEANING OF TRADEMARK

1) Definition-Section 2(1)(zb)

Mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours

2) Meaning of Trademark

A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

3) Essential Requirement to register Trademark

- a) The selected mark should be capable of being represented graphically
- b) It should be capable of distinguishing the goods or services of one undertaking from those of others
- c) It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person

DEFINITIONS

1) Certification mark-section 2(1)(e)

Certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person

2) Collective Mark-section 2(1)(g)

Collective mark means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.

3) Well Known Trademark-Section 2(1)(zg)

A well-known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Example- Google

Trademark Rules,2017

1) Application for Well Known Trademark

A trademark owner can file an application in form TM-M with a request made to the Registrar for declaring the mark to be “well-known”

2) Factors for recognition of well known trademark

- a) Reputation,
- b) Nationally,
- c) Internationally and the cross-borders.

3) Goodwill across the nation and range of products

Well-known trademarks have its goodwill and reputation protected across the nation and across categories of goods and services.

4) Restriction to register trademark

It is law that restricts the Trade Mark Registry to allow and register any mark as a trademark which is deceptively similar to any of the well-known trademark

4) Mark- Section 2(1) (m)

Mark is defined to include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.

5) Assignment-Section 2(1)(b)

Assignment means an assignment in writing by act of the parties concerned.

6) Deceptively Similar-Section 2(1)(h)

A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion

7) Package-Section 2(1)(h)

The term package include any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork.

8) Permitted Use- Section 2(1) (r)

Permitted use, in relation to a registered trade mark, as to mean the use of trade Mark

- I. by a registered user of the trade mark in relation to goods or services
 - a) with which he is connected in the course of trade; and
 - b) in respect of which the trade mark remains registered for the time being; and
 - c) for which he is registered as registered user; and
 - d) which complies with any conditions or limitations to which the registration of registered user is subject
- II. by a person other than the registered proprietor and registered user in relation to goods or services
 - a) with which he is connected in the course of trade; and
 - b) in respect of which the trade mark remains registered for the time being; and
 - c) by consent of such registered proprietor in a written agreement; and

d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject.

9) Service- Section 2(1)(z)

Service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising

BRIEF DESCRIPTION OF STAGE WISE PROCESSING IN TRADE MARK REGISTRATION

A) Pre- Examination Processing

1) Filing of Application

- a) A Trade Mark Application may be filed **online or offline**
- b) After digitization of offline applications, both online and offline applications are merged and proceed further for processing through the Trade Mark system

2) VIENNA Codification

- a) If applied mark consists of figurative elements, codification of the figurative elements is done as per VIENNA Agreement and then application moves for examination
- b) Trade Marks applied as word per se directly proceed for examination.
- c) It is expected that all applications which may require VIENNA Codification or otherwise should be processed expeditiously and serially as per priority based on the date of filing of application

B) Examination of applications

1) Allotment of application

Allotment of applications for the examination is done by the automated system serially on the basis of the date of filing

2) Two Stages of Examination

a) Report by Examiner

Report is prepared by an Examiner and then the application and examination report is forwarded to Examination Controller for approval

b) Approval or Rejection by Controller

Examination Controller evaluates the examination report, and if found proper, approves it and thereafter the examination report is issued to applicant.

However, if some deficiency is noted by the Controller, the examination report is reverted/referred back to the concerned Examiner with suggestions for resubmission/re-examination

At this stage, application may be accepted or an objection may be raised

3) Publication in Journal

In case it is accepted, it will be published in Trade Mark Journal

4) Examination Report issued to applicant

examination report will be issued to the applicant containing office objections which needs to be replied by the applicant within 30 days from the date of receipt of examination report.

C) Post Examination Processing

1) Reply with one month and its failure

Applicant needs to submit his reply to the office objections within one month time

2) Fails to submit

If he fails to do so, the application is abandoned for want of reply

3) Reply received

If reply is submitted within the prescribed period, the same is considered by the authorized officers for the purpose

4) Accepted

The authorized officer may accept application and the same is to be published in the Trade Mark Journal

5) Other Cases

Office objections cannot be waived or found not met, a hearing opportunity is offered to the applicants in all those cases where a decision can adversely affect the interest of the applicant, a hearing opportunity is given as per law

In case the objection/s raised by the office are not met after consideration of reply to the examination report, the application moves for show cause hearing

D) Post Advertisement Processing

1) Publish

After the acceptance of the mark, trademark is published in Trade Mark Journal

2) No opposition Filed

If no opposition is filed within four months from the date of publication of the trademark, the published trademark becomes eligible for registration.

3) Issue of Certificate

The issuance of registration certificate is done through automated Trade Mark system

4) Validity

The Trade Mark once registered is valid for 10 years

5) Renewal

The same can be renewed after every 10 years for an indefinite period by paying the prescribed fee on the prescribed form

E) OPPOSITION

1) Opposition is raised

If the trademark is opposed by any third party after the publication, the same needs to be disposed of as per rules after giving proper hearing opportunity to both the parties

2) Opposition Dismissed

The opposition is dismissed, the trade mark proceeds for registration and registration certificate is issued to the applicant

3) Opposition Accepted

In case opposition is allowed, the application gets refused as per law

F) POST REGISTRATION TRADEMARK MANAGEMENT

1) Post Registration Changes

Registered proprietor to record the post registration changes pertaining to

- a) proprietor name,
- b) Address,
- c) Address for service,
- d) Assignment or registered user

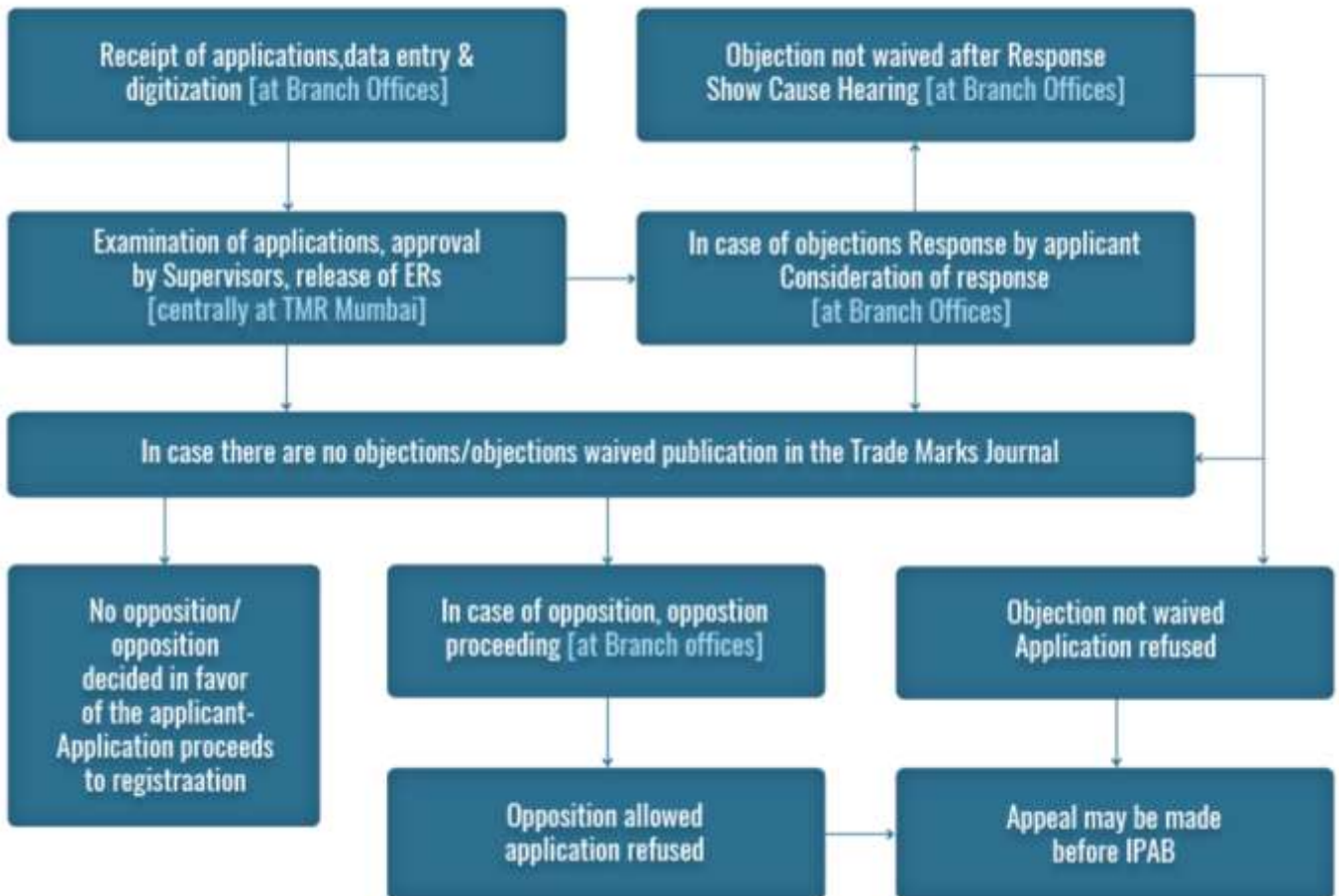
2) Objection

In case the concerned officer examining the request raises some objections and requires some compliance on part of the applicant, the same should be processed ordinarily within 30 days from the date of compliance by the applicant.

3) Notice to previous Owner

Registry to send one month notice to previous registered proprietor in case any change in proprietorship by way of assignment or transmission is filed by the applicant.

TRADEMARK REGISTRATION WORKFLOW CHART



WHAT ARE THE BENEFIT FOR REGISTERING THE TRADEMARK

1) Exclusive right to use trademark

The registration of a trademark confers upon the owner the exclusive right to the use the trademark in relation to the goods or services in respect of which the mark is registered and to indicate so by using the symbol (R)

2) Seek Relief

Owner can seek the relief of infringement in appropriate courts in the country

3) Subject to conditions

The exclusive right is however subject to any conditions entered on the register such as limitation of area of use etc

4) Two or more registration

Two or more persons have registered identical or nearly similar marks due to special circumstances, such exclusive right does not operate against each other.

ABSOLUTE GROUNDS FOR REFUSAL OF REGISTRATION -SECTION 9

Provisions relating to absolute grounds for refusal for registration prohibit the registration of those trademarks

1) Not capable of distinguishing

which are devoid of any distinctive character, that is =to say, not capable of distinguishing the goods or services of one person from those of another person

2) Marks or identification use in trade

Marks or indications which may serve in trade to designate the

Kind,

Quality,

Quantity,

Intended purpose,

Values,

Geographical origin or

Time of production of the goods or rendering of the service or other characteristics of the goods or service

3) Customary in current language

Marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered

4) Shape of Goods

Shape of goods which result from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods

5) Deceive or Confusion

Trademark tends to deceive the public or cause any confusion

6) Hurt to religious sentiments

The trademark hurts any religious sentiment of any demographic section of Indian citizens

7) Scandalous or Obscene Matter

It comprises or contains scandalous or obscene matter

8) Emblems and Name (Prevention of Improper Use) Act, 1950

Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

HIMALAYA DRUG COMPANY VS. S.B.L. LTD.

The Appellant had filed a suit against the Respondent for infringement of trade mark "Liv.52" by use of the trade mark "Liv-T". The lower court dismissed the suit of the Appellants holding that the mark 'LIV' is publici juris and there is no similarity between the two trademarks. 'Liv' will be considered as the generic on account of the fact that it is used in respect of medicine used for treatment of ailment of 'Liver' and non-distinctive part of the mark and it is to be ignored even if the two rival marks are to be taken as a whole

The Plaintiffs filed an appeal before the High Court of Delhi, whereby the High Court reversed the finding of the lower court and upheld the principles of Trade Mark law of comparison and infringement. The court held that the onus of proving that the term 'LIV' has become generic lied heavily on the Defendant, more so in the light of the fact that the Trade Mark of the Plaintiff had voluminous sales, was being used since the year 1955 and was registered since the year 1957 and as seven years had expired from the date of the registration, the Registration of the trade mark the trade mark was taken to be valid as per Section 32 of the erstwhile Trade Marks Act, 195

The Defendant could not prove by way of its evidence that the word 'LIV' is generic. The Plaintiff on the other hand proved the distinctiveness of its mark by way of its evidence by providing the orders where the mark 'LIV.52' has been granted protection. The court also noted that consumer asked for Plaintiff's product as Liv.52 thus 'LIV' was the essential and prominent feature of the mark 'LIV.52' and restrained the Defendant from using the mark 'LIV-T' and the Court allowed the Defendant to amend its mark accordingly to a mark which will not be similar to the mark of the Plaintiff

AMRITPAL SINGH VS. LAL BABU PRIYADARSH

Intellectual Property Appellate Board (IPAB) the word RAMAYAN was refused registration on the grounds that: Firstly, it was not capable of distinguishing the goods of the applicant and Secondly, that it was likely to hurt religious sentiments of a class of society.

Further, Intellectual Property Appellate Board referred the case Registrar of Trade Marks v. Ashok Chandra Rakhit Ltd., AIR 1955 SC 555 where in the Hon'ble Supreme Court in his order inter alia observed

"(4) It appears that subsequently the Registrar found that the word "Shree" was used by Hindus as an auspicious symbol and placed even on letter heads and that consequently it was not adapted to distinguish within the meaning of the Act. In course of time, therefore, a practice became established in the Registry whereby the word "Shree" was either refused registration as a trade mark or a disclaimer was enforced if it were made a part of a trade mark. So inflexible had been this practice that barring this particular trade

mark No. 3815 there was no other trade mark containing the word “Shree” which had been registered without a disclaimer of the word “Shree”. Naturally this circumstance was bound to be regarded as an invidious discrimination and, indeed, pointed reference is said to have been made to it and it was suggested that the Registry should deal impartially and uniformly with all applications in matters relating to practice.”

LIMITATION AS TO COLOUR- SECTION 10

- 1) Trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the Registrar or the High Court, as the case may be having to decide on the distinctive character of the trade mark
- 2) Trade mark is registered without limitation of colour, it shall be deemed to be registered for all Colours

PROHIBITION OF REGISTRATION OF NAMES OF CHEMICAL ELEMENTS OR INTERNATIONAL NON-PROPRIETARY NAMES-SECTION 13

1) Provision

Section 13 states that no word

(a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a mixture) in respect of a chemical substance or preparation, or

b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name, shall be registered as a trade mark

USE OF NAMES AND REPRESENTATIONS OF LIVING PERSONS OR PERSONS RECENTLY DEAD

Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent

WITHDRAWAL OF ACCEPTANCE-SECTION 19

1) When can the acceptance can be withdrawn

After the acceptance of an application for registration of a trade mark but before its registration

2) Hear the Applicant

The Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

3) Circumstances of withdrawal

- a) Application has been accepted in error
- b) Circumstances of the case the trade mark should not be registered
- c) It should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted

ADVERTISEMENT OF APPLICATION-SECTION 20

1) Advertisement in prescribed manner

Once the Registrar for registration has accepted the application, he shall get the application advertised in the prescribed manner after acceptance

2) Purpose of Advertisement

The purpose of advertisement is to give information to the public at large in respect of the trademark advertised and afford an opportunity to oppose the registration of the mark on given grounds.

3) Guideliness for advertisement

Advertisement must be complete in all respects and otherwise the very purpose of advertisement will be frustrated. If there is incomplete or incorrect information in the advertisement, it would amount to misrepresentation, which deprives a prospective opponent of the opportunity to get full information and of filing an effective opposition

REGISTRATION-SECTION 23

1) Registration within 18 months

When an application for registration of a trade mark has been accepted and either

- a) the application has not been opposed and the time for notice of opposition has expired or
- b) the application has been opposed and the opposition has been decided in favour of the applicant

2) Certificate of Registration

On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry

3) Application treated abandoned

Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice

4) Amendment

The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

DURATION, RENEWAL, REMOVAL AND RESTORATION OF REGISTRATION-SECTION 25

- 1) It allows registration of a trademark for a period of 10 years.
- 2) In keeping with the generally accepted international practice and to reduce the work-load of the Trade Marks Office, Section 25 allows renewal of registration for successive periods of 10 years, from the date of the

original registration or the last renewal

- 3) Section 25(4) provides for restoration of removed trade marks on payment of renewal fee.

CAN A REGISTERED TRADEMARK BE REMOVED FROM THE REGISTER?

It can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register. The Registrar also can suo moto issue Notice for removal of a registered trademark

WHO CAN APPLY FOR A TRADEMARK AND HOW

1) Proprietor or Person using Trademark

Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply in writing in prescribed manner for registration

2) Contents of Application

- a) Trademark
- b) Goods/ services
- c) Name and address of applicant
- d) Power of Attorney (Agent,if any)
- e) Period for use of Mark

3) Mode of Submission

- a) Personally at the Front Office Counter of the respective office
- b) Sent by post
- c) On line through the e-filing gateway

DIFFERENT TYPES OF TRADEMARK THAT CAN BE REGISTERED

- 1) Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.
- 2) An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.
- 3) Letters or numerals or any combination thereof.
- 4) The right to proprietorship of a trademark may be acquired by either registration under the Act or by use in relation to particular goods or service.
- 5) Devices, including fancy devices or symbols.
- 6) Monograms.
- 7) Combination of colors or even a single color in combination with a word or device.

- 8) Shape of goods or their packaging.
- 9) Marks constituting a three dimensional sign.
- 10) Sound marks when represented in conventional notation or described in words by being graphically represented

APPLICATION FOR REGISTRATION- SECTION 18

1) Written Application

Any person claiming to be the Proprietor of a trademark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trademark.

2) Single Application for Different Class

Registration in several classes of goods or services by means of a single application is allowed

3) Fees for application

The fee payable is to be calculated on the basis of the number of classes in which registration is sought.

REGISTRATION/ OBLIGATION ON REGISTRAR-SECTION 23

Obligation on the Registrar to register the trade mark where the procedure for registration of a trade mark has been completed viz., the application has been accepted and either the application has not been opposed or the opposition has been dismissed.

IMPERIAL TOBACCO CO. OF INDIA LTD. VS. THE REGISTRAR OF TRADE MARKS CALCUTTA HIGH COURT

The Imperial Tobacco Company manufactured and distributed cigarettes with a label "simla" all over the country. ITC Ltd. made an application to the Registrar for the registration in the year 1960 and 1966. But both the times the registration application was refused by the registrar.

The Calcutta High Court rejected the appeal on the ground that the term "simla" is a famous geographical place. This term cannot be registered as a trademark. The trade mark "Simla" with the label is composite in character. Its essential feature is the word Simla. "Simla" is neither an invented word nor is it a word having a dictionary meaning. It is a well-known hill-station of India. Its geographical signification is, therefore, plain and unequivocal. The snow-clad hills in outline on the label makes the geographical significance inescapable.

AMUL CANADA BY THE KAIRA DISTRICT COOPERATIVE MILK PRODUCERS UNION LIMITED (AMUL DAIRY) AND THE GUJARAT COOPERATIVE MILK MARKETING FEDERATION (GCMMF), AMUL'S OFFICIAL BRAND'S

The dairy behemoth discovered that the organisation had imitated the trademark "Amul" and the slogan "Amul - The Taste of India" in January 2020. The four people were listed as Amul Canada workers. Amul testified before the court that he never granted Amul Canada or any of the four people permission to utilise their trademarks and copyrights.

Canadian Court opined that the defendants had violated and infringed the copyright and trademark. The court awarded CAD 32,733 (around Rs 19.5 lakh) in damages and issued an order prohibiting the defendants from using “Amul” and “Amul-The Taste of India” copyright and trademark

SAMSUNG ELECTRONICS COMPANY LIMITED AND ORS. VS. KAPIL WADHWA AND ORS

The plaintiffs have raised the complaint before this court by preferring a suit for infringement of the trade mark and passing off the mark SAMSUNG.

Court held that “Section 30(3) of the Trade Marks Act, 1999 acts as an exception to the infringement of registered trade marks as the head note of Section 30 itself speaks for itself which says limits on the effects of registered trademark and the wordings of Section 30(3) in particular also states that the selling of goods in the market or otherwise dealing in those goods is not an infringement of trademark.

The said exception operates in the nature of defence to an infringement wherein the person using the mark in a particular form or dealing otherwise in the goods under the mark can plead that the said goods are lawfully acquired from the market wherein the proprietor has also put the goods in the market or the proprietor has given consent to the effect of such dealings or usage.

The provision relating to exhaustion or proprietor’s consent is a complete defense to an infringement act. Therefore, the nature and the scope of Section 30(3) is that it operates as a defence to the infringing act and cannot be said to giving any additional right beyond the same

PASSING OFF

1) Black’s Law Dictionary defines passing off

The act or an instance falsely representing one’s own product as that of another in an attempt to deceive potential buyers. Passing off is actionable in tort under the law of unfair competition. It may be actionable as trademark infringement

2) Purpose of remedy of passing off

- a) Protect the interest of the trademark relations he has created in the market place
- b) Protect the interest of consumer or purchaser of goods against acts tending to create false impression and to deceive or confuse him inducing the belief that the business or products of one manufacturer or trader are those of another
- c) Protect the social interest by promoting fair dealing in the market place and prevent unethical and unfair practices in trade

3) Proof by Plaintiff

- a) The plaintiff, in an action of passing off, has to establish that his business or goods has acquired the reputation and that his mark has become distinctive of his goods among the public at large.
- b) He has to establish that there is likely hood of deception or confusion in the minds of the public. He, however, does not have to establish the fraudulent intention on the part of the defendant.
- c) Thirdly, he has to establish that confusion is likely to cause damage or injury to the reputation, goodwill and fair name of the plaintiff. He need not prove the actual loss or damage in an action of passing off.

MAHENDRA AND MAHENDRA PAPER MILLS LTD. VS. MAHINDRA AND MAHINDRA LTD.

Supreme Court broadly stated, in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered—

- 1) The nature of the marks i.e. whether the marks are word marks or labels marks or composite marks i.e. both words and label works.
- 2) The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- 3) The nature of the goods in respect of which they are used as trademarks.
- 4) The similarity in nature, character and performance of the goods of the rival traders.
- 5) Class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and /or using the goods.
- 6) The mode of purchasing the goods or placing orders for the goods.
- 7) Any other surrounding circumstances which may be relevant in the extant of dissimilarity between the competing marks.

Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case

REGISTRATION TO BE PRIMA FACIE EVIDENCE OF VALIDITY-SECTION 31

In all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity

SAVING FOR VESTED RIGHTS-SECTION 34

- 1) The proprietor or a registered user of a registered trademark is not entitled to interfere with or restrain the use by any person of a trademark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a prior date.
- 2) In case of unregistered marks, the owner of the trade mark may lodge a case against passing off action in case his trademark is used by some other person. It has been held by the courts in various cases and the ownership of a trademark is decided by its usage in commercial transactions.

UNIPLY INDUSTRIES LTD. VS. UNICORN PLYWOOD PVT. LTD. AND OTHERS

The Supreme Court observed that for inherently distinctive marks ownership is governed by priority of use for such marks.

- 1) The first user of sale of goods/services is the owner who is senior to others.
- 2) These marks are given legal protection against infringement immediately upon adoption and use in trade.
- 3) Some courts indicate that even prior sales of goods – though small in size with the mark – are sufficient to establish priority, the test being to determine continuous prior user and the volume of sale or the degree of familiarity of the public with the mark.

Therefore, the proprietorship of the trademark is decided by the date of usage of the mark by a person in business transactions

ASSIGNMENT AND TRANSMISSION

1) Section 37

Entitles the registered proprietor of a trademark to assign the trade mark and to give effectual

receipts for any consideration for such assignment

2) Section 38

Deals with the assignability and transmissibility of a registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof.

3) Section 39

Unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

4) Section 40: Restriction on assignment or transmission where multiple exclusive rights would be created.—

i) Provision

A trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to—

- (a) same goods or services;
- (b) same description of goods or services;
- (c) goods or services or description of goods or services which are associated with each other

ii) Exception

Such assignment is not deemed to be invalid, if having regard to the limitations imposed, the goods are to be sold in different markets - either within India or through exports

5) Section 42

Conditions for assignment of a trade mark without goodwill of business. Such an assignment shall not take effect unless the assignor obtains directions of the Registrar and advertises the assignment in accordance with the directions of the Registrar and as per the prescribed manner

6) Section 43

Deals with the assignability and transmissibility of certification trade marks and provides that the assignment of certification trade mark can only be done only with the consent of the Registrar

7) Section 44

States that associated trademarks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes

8) Section 45

Deals with the procedure for registration of assignment and transmission and provides that where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

PROPOSED USE OF TRADE MARK BY COMPANY TO BE FORMED-SECTION 46

The Registrar to allow registration of a trademark, if he is satisfied that—

- 1) A company is about to be formed and registered under the Companies Act and that the applicant intends to assign the trademark to that company with a view to use thereof in relation to those goods and services by the company; or
- 2) The proprietor intends it to be used by a person, as a registered user after the registration of trademark

REMOVAL OF TRADE MARK FOR NON-USE-SECTION 47

1) Which trademark will be removed

Trade mark which is not used within five years of its registration, becomes liable for removal either completely or in respect of those goods or services for which the mark has not been used

2) Calculation of 5 years

The five years period starts from the date on which the trade mark is actually entered on the register

3) Special Circumstances

A mark is not removed from being removed from the register on ground of non-use if such non-use is shown to have been due to special circumstances in the trade which may include restriction imposed by any law or regulation on the use of trade mark in India

REGISTERED USER

1) Section 48

Section 48 deals with registered users

2) Section 49

Section 49 provides for registration as registered user.

3) Section 50: Power of Registrar for variation or cancellation of registration as registered user

- a) Used the trade mark otherwise than in accordance with the agreement
- b) Used in such a way as to cause or likely to cause confusion, or deception
- c) Proprietor/registered user misrepresented or has failed to disclose any material facts for such registration
- d) Stipulation in the agreement regarding the quality of goods is not enforced
- e) Circumstances have changed since the date of registration

4) Section 51

Power of Registrar to call for information relating to agreement in respect of registered users.

Empowers the Registrar to require the proprietor to confirm at any time during the continuation of registration as registered user, whether the agreement, on the basis of which registered user was registered is still in force, and if such confirmation is not received within a period of one month, the Registrar shall remove the entry thereof from the Register in the prescribed manner

5) Section 52

Recognises the right of registered user to take proceedings against infringement

6) Section 54

- a) The registered user will not have a right of assignment or transmission.
- b) However, it is clarified that where an individual registered user enters into partnership or remains in a reconstituted firm, the use of the mark by the firm would not amount to assignment or transmission

COLLECTIVE MARKS-SECTION 61 -68

1) Meaning

Collective Marks means a trades mark distinguish the goods or services of members of an association of person not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others

2) Registration and Reservation

Registration of a collective mark which belongs to a group or association of persons and the use thereof is reserved for members of the group or association of persons

3) Characteristic

Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises.

4) Who can use the mark

It may be owned by an association which may not use the collective mark but whose members may use the same

5) Quality and Prescribed standards

The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use

6) Primary Purpose

The primary function of a collective mark is to indicate a trade connection with the Association or Organisation

CERTIFICATION TRADE MARK-SECTION 69-78**1) Meaning**

Certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person

2) Purpose

The purpose of certification trade mark is to show that the goods on which the mark is used have been certified by some competent person in respect of certain characteristics of the goods such as origin, mode of manufacture, quality, etc

3) Additional Mark

A certification trade mark may be used in addition to the users own trade mark on his goods.

4) Not dealing in the goods

The proprietor of a certification trade mark does not himself deal in the goods.

5) Registrar

Central Government empower the final authority for registration of certification trade mark to the Registrar.

APPOINTMENT OF REGISTRAR AND TRADE MARK REGISTRY**1) Section 3**

Appointment of the Registrar and other officers

2) Section 4

Empowers the Registrar to withdraw any matter pending before an officer and deal with such matter himself or transfer it to another officer with reasons for such transfer to be recorded therein.

3) Section 5

Deals with the establishment of the Trade Marks Registry and branch offices and provides that the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958 shall continue to be the Trade Marks Registry for the purposes of this Act.

REGISTER OF TRADE MARKS-SECTION 6

1) Head Office

Maintenance of a single Register of Trade Marks at Head Office including therein particulars of registered trademarks and other prescribed particulars, except notice of trust

2) Branch Office

A copy of the Register is to be kept at each branch office

3) Mode of Maintaining

The maintenance of records in computer floppies or diskettes or in any other electronic form subject to the prescribed safeguards.

4) Contents of Register

- a) Class and goods/ services in respect of which it is registered including particulars affecting the scope of registration of rights conferred
- b) Address of the proprietors
- c) Particulars of trade or other description of the proprietor;
- d) Convention application date (if applicable);
- e) Where a trademark has been registered with the consent of proprietor of an earlier mark or earlier rights, that fact.

CLASSIFICATION OF GOODS AND SERVICES AND PUBLICATION OF INDEX-SECTION 7,8 AND RULE 20

1) Power to registrar-Section 7

Registrar to classify goods and services according to international classification of goods and services and to determine any question related thereto.

2) Publish Index- Section 8

the Registrar to publish an alphabetical index of classification of goods and services.

3) Rule 20 of the Trade Marks Rules, 2017

Classification of goods and service for the purpose of registration of trademark, the goods and services shall be classified as per current edition of "the International Classification of goods and services (NICE classification)" published by the World Intellectual Property Organization (WIPO). The Registrar shall publish a class wise and an alphabetical index of such goods and services, including goods and services of Indian origin

TRADE MARK AGENT-SECTION 145

Where, by or under the Trade Marks Act, any act is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

- (a) a legal practitioner, or
- (b) a person registered in the prescribed manner as a trade marks agent, or
- (c) a person in the sole and regular employment of the principal.

QUALIFICATIONS FOR REGISTRATION AS TRADEMARK AGENT

Rule 144 of the Trade Marks Rule states that subject to the provisions of Rule 145, a person shall be qualified to be registered as a trademarks agent if he-

- a) is a citizen of India
- b) is not less than 21 years of age
- c) is a graduate of any university in India or possesses an equivalent qualification and has passed the examination prescribed in rule 148 or is an Advocate within the meaning of the Advocates Act, 1961 or is a member of the Institute of Company Secretaries of India
- d) is considered by the Registrar as a fit and proper person to be registered as a trademark agent.

MANNER OF MAKING APPLICATION FOR TRADEMARKS AGENT

1) Duplicate

All applications under the provisions of Part IV of the Trade Marks Rules, 2017 shall be made in duplicate

2) Trademark registry office

It shall be sent to or submitted at that office of the Trade Marks Registry within whose territorial limits the principal place of business of the applicant is situate.

APPLICATION FOR REGISTRATION AS A TRADEMARKS AGENT

1) Form TM-G

Every person desiring to be registered as a trademarks agent shall make an application in Form TM-G

2) Information

The applicant shall furnish such further information bearing on his application as may be required of him at any time by the Registrar.

CHAPTER 18

LAWS RELATING TO COPYRIGHT

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LAWS RELATING TO COPYRIGHT

REGULATORY FRAMEWORK

- 1) The Copyright Act, 1957
- 2) The Copyright Rules, 2013

WHAT IS COPYRIGHT

1) Meaning

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings

2) Objective

- a) The object of copyright is to protect and reward the general advantages i.e. the authors' labour on the created work.
- b) This helps the writers to constantly produce and carry out more plays

SCOPE OF ACT

- 1) The Copyright Act provides an economic right to the author to reproduce the work, to issue copies, to perform or communicate it to the public, to make any cinematograph film or sound recording or to make any adaptation or translation of the work.
- 2) The Act also provides a right to claim authorship of the work; an integrity right- right to protect one's honor and reputation and a general right- right to not have a work falsely attributed to oneself.
- 3) These moral rights remain with the author even after assignment of the copyright

WHY SHOULD COPYRIGHT BE PROTECTED?

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

DEFINITIONS

1) Adaption

“Adaptation” means,-

- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
- (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
- (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
- (iv) in relation to a musical work, any arrangement or transcription of the work; and
- (v) in relation to any work, any use of such work involving its re-arrangement or alteration

2) Sound Recording

Sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced

3) Communication to Public

Communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

However, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public

4) Author

“Author” means,-

- (i) in relation to a literary or dramatic work, the author of the work
- (ii) in relation to a musical work, the composer in relation to an artistic work other than a photograph, the artist
- (iv) in relation to a photograph, the person taking the photograph
- (v) in relation to a cinematograph or sound recording the producer; and
- (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created

WORKS IN WHICH COPYRIGHT SUBSISTS-SECTION 13

1) Class of work for which copyright subsist

At copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

2) If infringement then copyright does not subsist

Copyright shall not subsist—

- (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work
- (b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

3) Meaning of the word- Work

It may be noted that 'work' means any of the following works, namely:-

- a) a literary, dramatic, musical or artistic work
- b) a cinematograph film
- c) a sound recording.

4) Work of Architecture

In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

5) Copyright to subsist in India additional conditions

- a) In the case of a published work, the work is first published in India
- b) The work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India
- c) In the case of an unpublished work other than a work of architecture , the author is at the date of making of the work a citizen of India or domiciled in India
- d) In the case of a work of architecture the work is located in India

MEANING OF COPYRIGHT-SECTION 14

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

1) Copyright in the case of a Literary, Dramatic or Musical Work, not being a Computer Programme

- i. To reproduce the work in any material form including
- ii. The storing of it in any medium by electronic means;
- iii. To issue copies of the work to the public not being copies already in circulation;
- iv. To perform the work in public, or communicate it to the public
- v. To make any cinematograph film or sound recording in respect of the work;
- vi. To make any translation of the work
- vii. To make any adaptation of the work
- viii. To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).

2) Copyright in the case of a Computer Programme

- i. to do any of the acts specified in specified in respect of a literary, dramatic or musical work;
- ii. to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programmer:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

3) Copyright in the case of an Artistic Work

To reproduce the work in any material form including—

- (A) the storing of it in any medium by electronic or other means or
- (B) depiction in three-dimensions of a two-dimensional work or
- (C) depiction in two-dimensions of a three-dimensional work

4) Copyright in the case of a Cinematograph Film

(i) to make a copy of the film, including—

- (A) a photograph of any image forming part thereof; or
- (B) storing of it in any medium by electronic or other means.

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.

(iii) to communicate the film to the public.

5) Copyright in the case of a Sound Recording

(i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording

(iii) to communicate the sound recording to the public.

It may be noted that a copy which has been sold once shall be deemed to be a copy already in circulation

GRAMOPHONE COMPANY OF INDIA LTD. VS. SUPER CASSETTE INDUSTRIES LTD

Infringement of original literary, dramatic and musical works.

Whether action of the Defendant in using its sound recording to produce a cinematograph film constitutes infringement of the Plaintiffs copyright in the original literary, dramatic and musical works.

Copyright conferred on the owner of a copyright in a sound recording by virtue of Section 14(e) does not specifically include the right to make a cinematograph film embodying the sound recording. It gives the owner exclusive right to make any other sound recording embodying it.

Right to utilise the literary, dramatic or musical work to make a cinematograph film is specifically conferred on the owner of the copyright in the literary, dramatic or musical work by virtue of Section 14(a)(iv) of the Act.

Without the specific permission of the owners of the copyright in the musical, dramatic, or literary works from which the sound recording was made, the owner of the copyright in a sound recording cannot proceed with incorporating the sound recording or version recording in a cinematograph film.

TERM OF COPYRIGHT-SECTION 22-29

1) Term of Copyright in Published Literary, Dramatic, Musical and Artistic Work

Copyright shall subsist in any literary, dramatic, musical or artistic work published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.

In the case of a work of joint authorship, be construed as a reference to the author who dies last.

2) Term of Copyright in Anonymous and Pseudonymous Works

In the case of literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the author dies.

3) Term of Copyright in Posthumous Work

In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published or, where

an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.

A literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any sound recordings made in respect of the work have been sold to the public or have been offered for sale to the public

4) Term of Copyright in Cinematograph Films

In the case of a cinematograph film, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published

5) Term of Copyright in Sound Recording

In the case a sound recording copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the sound recording is published

6) Term of Copyright Government Work

In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

7) Term of Copyright in Works Of Public Undertakings

In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

8) Term of Copyright in Works of International Organizations

In the case of a work of an international organisation to which the provisions of section 41 apply, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published

ASSIGNMENT OF COPYRIGHT-SECTION 18

1) Who can assign

Owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person

2) Term of assignment

Assignment of copyright can be either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof

3) Assignment of future work

In case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence

4) Medium or mode of exploitation

No such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work

5) Meaning of Assignee in case of future work

Assignee in respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence

VIDEO MASTER VS. NISHI PRODUCTION

Hon'ble Bombay High Court considered the issue whether assignment of video rights would include the right of satellite broadcast as well. The Court agreed with the defendant's arguments that there were several public communication channels, including video TV, satellite broadcasting, and terrestrial television broadcasting. The film's owner owned independent copyright in each of those formats, and he could assign it to various people. As a result, the video copyright granted to the plaintiff would exclude the satellite broadcast copyright of the film, which was a separate entitlement of the owner of the film.

MODE OF ASSIGNMENT-SECTION 19**1) Writing**

An assignment of the copyright in any work should be in writing signed by the assignor or by his duly authorised agent.

2) Contents in writing

The assignment of copyright in any work required to identify such work, and also specify

- a) the rights assigned
- b) the duration
- c) territorial extent of such assignment
- d) the amount of royalty and
- e) any other consideration payable to the author or his legal heirs during the currency of the assignment

The assignment subject to revision, extension or termination on terms mutually agreed upon by the parties.

3) Deemed to lapsed

Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

4) Void Assignment

The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.

5) Copyright in case of cinematograph film

The Assignment of copyright in any work to make a cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

K.A. VENUGOPALA SETTY VS. DR. SURYAKANTA V. KAMATH

Under the provisions contained in section 19 of the Act, assignment of copyright must be in writing and signed by the author or his duly authorized agent stating in clear terms about the right proposed to be assigned as well as the size of the work. Hence, an oral assignment is invalid and it is impermissible in law.

The Hon'ble Court ruled that Section 19A of the Act, which deals with copyright disputes, will only be applicable when a copyright assignment is made in compliance with Section 19 of the Act, which means it is in written and signed by the assignor or his properly authorised agent. Therefore, provision 19A cannot be considered to apply in the current instance and preclude the lawsuit because there isn't an assignment in writing as required by section 19 of the Act

DISPUTES WITH RESPECT TO ASSIGNMENT OF COPYRIGHT-SECTION 19A

1) Revoke assignment

If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Commercial Court may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment

2) Commercial Court pass order in case of dispute regarding assignment

If any dispute arises with respect to the assignment of any copyright, the Commercial Court may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable

3) Meaning of Commercial Court

It may be noted that Commercial Court for the purposes of any State, means a Commercial Court constituted under section 3, or the Commercial Division of a High Court constituted section 4, of the Commercial Courts Act, 2015.

4) Term for disposal

Every complaint received shall be dealt with by the Commercial Court as far as possible and efforts shall be made to pass the final order in the matter within a period of six months from the date of receipt of the complaint and any delay in compliance of the same, the Commercial Court shall record the reasons thereof

LICENCES BY OWNERS OF COPYRIGHT-SECTION 30

1) Grant any interest by license

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by licence in writing by him or by his duly authorised agent

2) Future work

In the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence

3) Death of licensee of future work

A person to whom a licence relating to copyright in any future work is granted, dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence

COMPULSORY LICENCE IN WORKS WITHHELD FROM PUBLIC-SECTION 31

1) Compliant with Commercial Court

A complaint is made to the Commercial Court that the owner of copyright in the work

- a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public
- b) has refused to allow communication to the public by broadcast of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable

2) Hearing, Opportunity

The Commercial Court, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary pass reasonable order

3) Grounds for refusal is not reasonable

If it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Commercial Court may determine

4) Grant license

Registrar of Copyrights shall grant the licence to such person or persons who, in the opinion of the Commercial Court, is or are qualified to do so in accordance with the directions of the Commercial Court, on payment of such fee as may be prescribed

TERMINATION OF LICENSE- SECTION 32B

1) Grounds for cancellation

The owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated

2) Effect of termination

Termination shall take effect only after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation.

MEANING OF COPYRIGHT SOCIETY

- 1) A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957.
- 2) Such a society is formed by authors and other owners.
- 3) A copyright society can issue or grant licences in respect of any work for which it is authorised to by the authors or owners of the work.
- 4) The Copyright Society is a legal body that protects or safeguards the interest of the owner in the product in which copyright subsists.
- 5) Copyright societies give assurance to the creative author of the commercial management of their works.
- 6) It can also be described as a registered collective administration society for the management and protection of copyright

REGISTRATION OF COPYRIGHT SOCIETY-SECTION 33

1) License through copyright society

The business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under the Act

2) Factors considered by Government

Central Government registers association of persons as a copyright society after taking into account the following factors-

- In the interests of the authors and other owners of rights;
- The interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights; and
- The ability and professional competence of the applicants.

3) Term of license for society

Registration granted to a copyright society shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form

4) Renew registration

Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society

5) Cancel the registration

Central Government if satisfied that a copyright society is being managed in a manner detrimental to the interests of “authors and other owners of right” concerned, cancel the registration of such society after such inquiry as may be prescribed

ADMINISTRATION OF RIGHTS OF OWNER BY COPYRIGHT SOCIETY-SECTION 34

1) Exclusive authorisation

It empowers a copyright society to accept exclusive authorisation from an author and other owners of right to administer any right in any work by issue of licences or collection of licence fees or both

2) Withdrawal of authorisation

Authorization can be withdrawn by an author and other owners of right

3) Competent to enter into agreement

Copyright society is competent to enter into agreement with any foreign society or organisation administering rights corresponding to rights under the Indian Copyright Act to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation

4) Functions and power of Society

- a) Issue licences under section 30 in respect of any rights under this Act
- b) Collect fees in pursuance of such licences
- c) Distribute such fees among author and other owners of right after making deductions for its own expenses
- d) Perform any other functions consistent with the provisions of section 35.

CONTROL OVER THE COPYRIGHT SOCIETY BY THE AUTHOR AND OTHER OWNERS OF RIGHT-SECTION 35

1) Collective Control

Every copyright society is subject to the collective control of the owners of rights it administers.

2) Governing Body

Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society

3) Equal membership right

All members of copyright society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties

BROADCAST REPRODUCTION RIGHTS-SECTION 37

1) Term

The Broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made

2) Rights

During the continuance of a broadcast reproduction right in relation to the broadcast or any substantial part thereof,-

(a) re-broadcasts the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d).

PERFORMER RIGHT-SECTION 38

- 1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.
- 2) The performer's right subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made

WHAT ARE THE MORAL RIGHTS OF AN AUTHOR

- 1) The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.
- 2) Moral rights are available to the authors even after the economic rights are assigned.

COPYRIGHT PROTECTION TO FOREIGN WORKS-SECTION 40

1) Work first published in India

The Copyright Act applies only to works first published in India, irrespective of the nationality of the author

2) Work published outside India

Section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country.

3) Similar protection as in foreign country

The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that too on a reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act

THE INTERNATIONAL COPYRIGHT ORDER, 1999

In exercise of the powers conferred by section 40 of the Copyright Act, 1957 and in supersession of the International Copyright Order, 1991, the Central Government hereby makes the following Order, namely the International Copyright Order, 1999

2) In International Copyright Order, 1999, unless the context otherwise requires:-

- (a) "Berne Convention Country" means a country which is a member of the Berne Copyright Union, and includes a country mentioned either in Part I or in Part II of the Schedule;
- (b) "Phonogram" means an exclusively aural fixation of a performance or other sounds;
- (c) "Phonograms Convention Country" means a country which has either ratified, or accepted, or acceded to the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms, done at Geneva on the Twenty ninth day of October, one; thousand nine hundred and seventy-one, and includes a country mentioned in Part V of the Schedule;
- (d) "Schedule" means the Schedule appended to this Order;
- (e) "Universal Copyright Convention Country" means a country which has either ratified, or accepted, or acceded to the Universal Copyright Convention, and includes a country mentioned either in Part III or in Part IV of the Schedule;
- (f) "World Trade Organisation Country" means a country which is a member of the World Trade Organisation and which has either ratified, or accepted, or acceded to the Agreement on Trade Related Aspects of Intellectual Property Right, 1994 and includes a country mentioned in Part VI of the Schedule.

3. Subject to the provisions of paragraphs 4, 5 and 6, all the provisions of the Copyright Act, 1957 except those in Chapter VIII, and those other provisions which apply exclusively to Indian works, shall apply :-

- (a) to any work first made or published in a country mentioned in Part I, II, III, IV or VI of the Schedule, in like manner as if it was first published in India;
- (b) to any work first made or published in a country other than a country mentioned in Part I, II, III, IV or VI of the Schedule, the author of which was, at the date of such publication, or, where the author was dead on that date, he was at the time of his death, a national of a country mentioned in Part I, II, III, IV and VI of the Schedule, in like manner, as if the author was a citizen of India at that point of time
- (c) to an unpublished work, the author whereof was, at the time of the making or publication of the work, a national or domiciled in any country mentioned in Part I, II, III, IV and VI of the Schedule, in like manner, as if the author was a citizen of, domiciled in, India;
- (d) to any work first made or published by a body corporate incorporated under any law of a country mentioned in Part I, II, III, IV or Part VI of the Schedule, in like manner, as if it was incorporated under a law in force in India; and

(e) to a sound recording first made, the producer of which was, at the date of such production, a national of a country mentioned in Part V or Part VI of the Schedule or a body corporate incorporated under a law in force in such a country, in like manner as if the producer was the citizen of India or a body corporate incorporated under a law in force in India, as the case may be, at that point of time.

4. Notwithstanding anything contained in paragraph 3, the provisions of Chapter VIII of the Act shall apply to a Broadcasting Organisation and a Performer in a World Trade Organisation Country mentioned in Part VI of the Schedule

5. Notwithstanding anything contained in clause (a) of paragraph 3 and paragraph 4 of the provisions of sub-section (1) of section 32 of the Act-

(i) shall not apply to a work first made or published in any Berne Convention Country mentioned in Part I and Part II of the Schedule.

(ii) shall not apply to a work first made or published in any World Trade Organisation Country mentioned in Part VI of the Schedule.

(iii) shall apply to a work first made or published in any Universal Copyright Convention Country mentioned in Part III or Part IV of the Schedule. Only in respect of the translation of such work into any language specified in the Eighth Schedule to the Constitution of India.

6. The provisions of section 32 (excluding its sub section (1) 32A and 32B shall apply to a work first made or published in a Berne Convention Country mentioned in Part I of the Schedule or in a Universal Copyright Convention Country mentioned in Part III of the Schedule or in a World Trade Organisation Country mentioned in Part VI of the Schedule.

7. The term of copyright in a work shall not exceed that which is enjoyed by it in its country of origin

Explanation- In this paragraph, “the country of origin” shall mean-

(a) in the case of a work first made or published in a Berne Convention Country or in a Universal Copyright Convention Country or a World Trade Organisation Country, that country;

(b) in the case of a work made or published simultaneously either in a Berne Convention Country or a Universal Copyright Convention Country or in a World Trade Organisation Country and in a country which is neither a Berne Convention Country nor a World Trade Organisation Country, the former country;

(c) in the case of a work which is made or published simultaneously in several Berne Convention Countries, the country whose laws grant the shortest term of copyright to such a work’

(d) in the case of a work which is made or published simultaneously in several Universal Copyright Convention Countries, the country whose laws grant the shortest term of copyright to such a work

(e) in the case of a work which is made or published simultaneously in several World Trade Organisation Countries, the country whose laws grant the shortest term of copyright to such a work;

(f) in the case of an unpublished work or a work first made or published in a country other than a Berne Convention Country or a Universal Copyright Convention Country or a World Trade Organisation Country,

the country of which the author was a citizen, or the country in which he was domiciled at the time of its first publication, whichever grants the longer term of copyright

REGISTRAR OF COPYRIGHTS POSSESS CERTAIN POWERS OF CIVIL COURTS

- 1) The Register of Copyrights is to be maintained by the Copyright Office to enter the names or titles of works and the names and addresses of authors, publishers and owners of copyright
- 2) The Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely,
 - (a) summoning and enforcing the attendance of any person and examining him on oath
 - (b) requiring the discovery and production of any document
 - (c) receiving evidence on affidavits
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) requisitioning any public record or copy thereof from any court or office;
 - (f) any other matter which may be prescribed

SANJAY SOYA PRIVATE LTD. VS. NARAYANI TRADING COMPANY

The Bombay High Court ruled that no section of the Act requires registration of copyright before requesting relief under the Act. Instead, it is up to the owner's choice whether to register copyright under the Act. The Convention and the TRIPS Agreement were also cited by the court to buttress its ruling. Registration just establishes a presumption of validity for information placed in the Copyright register. The word "may" is used in Section 45(1) of the Act, which deals with entries in the register of copyrights, and Section 51 states that infringement is not limited to the registered Work. Protection should be "automatic" as soon as the Work is created

PROCEDURE FOR REGISTRATION

The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights

1) Application

Application for registration is to be made on specified Form (Including Statement of Particulars and Statement of Further Particulars)

2) Separate Application

Separate applications should be made for registration of each work

3) Requisite Fees

Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules

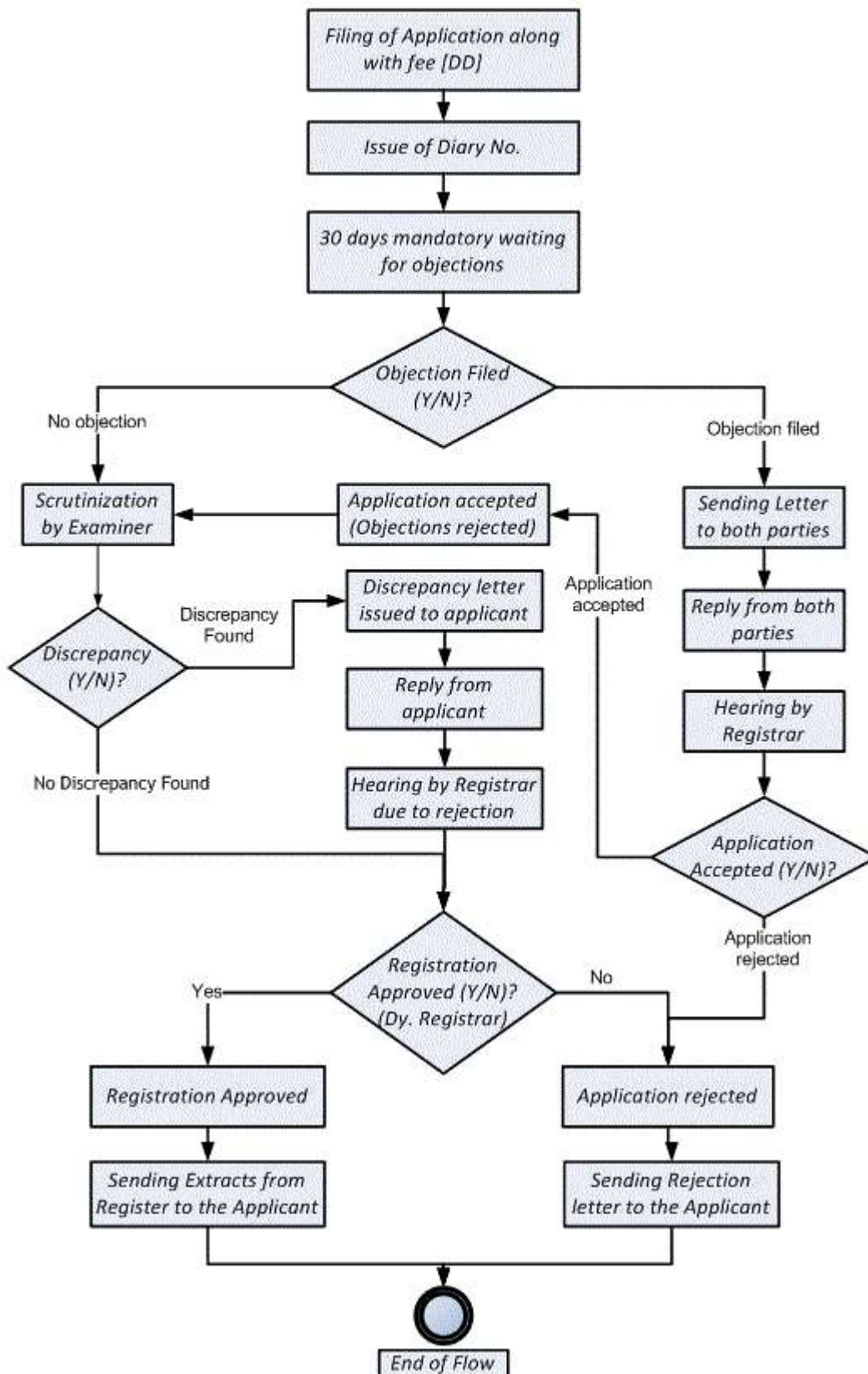
4) Signing

The applications should be signed by the applicant. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed, if applicable

5) Mode of making payment

The fee is to be paid either in the form of Demand Draft or Indian Postal Order or through E payment. Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically

Copyright Registration Workflow



INFRINGEMENT OF COPYRIGHT

1) Meaning of Infringement

- a) Copyright infringement refers to the unauthorized use of someone's copyrighted work.
- b) Thus, it is the use of someone's copyrighted work without permission thereby infringing certain rights of the copyright holder, such as the right to reproduce, distribute, display or perform the protected work.
- c) Copyright protection gives exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights.
- d) If any person without authorisation from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright.
- e) If the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement

WHICH ARE THE COMMON COPYRIGHT INFRINGEMENTS?

The following are some of the commonly known acts involving infringement of copyright:

- 1) Making infringing copies for sale or hire or selling or letting them for hire
- 2) Permitting any place for the performance of works in public where such performance constitutes infringement of copyright
- 3) Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright
- 4) Public exhibition of infringing copies by way of trade and
- 5) Importation of infringing copies into India.

S.K. DUTT VS. LAW BOOK CO.

The Hon'ble Court held that in infringement of copyright the onus of proof is on plaintiff to satisfy the court that the defendant had infringed his copyright. The plaintiff having failed to establish any infringement of his copyright, no question of granting any relief to the plaintiff could arise. It may here be noted, however, that there was on behalf of the plaintiff, no evidence to indicate what damage, if any, accrued to him, assuming that there was an infringement of his copyright by the defendants

MEANING OF INFRINGING COPY

It may be noted that "Infringing copy" means,-

- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

OWNER OF COPYRIGHT-SECTION 54

Owner of copyright” shall include

- a) an exclusive licensee
- b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author
- c) in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher

REMEDIES FOR INFRINGEMENT OF COPYRIGHT

The Copyright Act, 1957 provides to an author both Civil, Criminal and border enforcement remedies.

They are:

- 1) **Civil Remedies:** provide for injunctions, damages, interpretation of accounts, delivery and destruction of infringing copies and damages for conversion.
- 2) **Criminal Remedies:** provide for imprisonment, fines, seizures of infringing copies and delivery of infringing copies to the owner.
- 3) **Border Enforcement:** also provides for prohibition of import and destruction of any imported goods that infringe the copyright of a person with the assistance of the customs authorities of India.

PROTECTION OF RIGHT OF MANAGEMENT INFORMATION-SECTION 65B

1) Provision

Any person, who knowingly removes or alters any rights management information without authority, or distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

2) Meaning of Right Management Information

“Rights Management Information” means,—

- (a) the title or other information identifying the work or performance;
- (b) the name of the author or performer;
- (c) the name and address of the owner of rights;
- (d) terms and conditions regarding the use of the rights; and
- (e) any number or code that represents the information referred to in sub-clauses (a) to (d), but does not include any device or procedure intended to identify the user

OFFENCE FOR INFRINGEMENT OF COPYRIGHT OR OTHER RIGHTS CONFERRED BY THIS ACT-SECTION 63

1) Provision

Any person who knowingly infringes or abates the infringement of the copyright in a work or any other right conferred under the Act (except for resale share right in original copies), liable to

- a) **Imprisonment** for a minimum period of six months which may extend to three years and
- b) **Fine**- Minimum fine of fifty thousand rupees which may extend upto rupees two lakhs

2) Less Penalty and Imprisonment

- a) The court has been empowered to impose a sentence less than six months or a fine less than fifty thousand, if the infringement had not been made for gain in the course of trade or business
- b) The section requires the courts to mention adequate and special reasons in the judgement.

3) Exception

Any person who knowingly infringes or even abets the infringement of the copyright in a work or any other rights conferred by the Copyright Act except the right to resale share in original copies commits the offence of copyright

JITENDRA PRASAD SINGH VS. STATE OF ASSAM (2003)

The Hon'ble Gauhati High Court held that the phrase "punishable with imprisonment for a term, which may extend to three years" will mean that the imprisonment can be for a term as long as three years, but the expression, "punishable with imprisonment for less than three years" will mean that the imprisonment can be for a term less than three years. Therefore, offences under Section 63 of the Act are non-bailable in nature, and as such an application for anticipatory bail will be maintainable

M/S KNIT PRO INTERNATIONAL VS. THE STATE OF NCT OF DELHI

The Hon'ble Supreme Court of India Judgement dated May 20, 2022 inter alia observed that thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned counsel appearing on behalf of respondent no.2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever.

Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence. Thereby the High Court has committed a grave

error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside. In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence. Consequently, the impugned judgment and order passed by the High Court taking a contrary view is hereby quashed and set aside and the criminal proceedings against respondent No.2 for the offence under Sections 63 & 64 of the Copyright Act now shall be proceeded further in accordance with law and on its own merits treating the same as a cognizable and non-bailable offence

POWER OF POLICE TO SEIZE INFRINGING COPIES-SECTION 64

1) Power to seize

Empowers any Police Officer, not below the rank of a sub-inspector, to seize without warrant, all copies of the work and all plates used for the purpose of making infringing copies of the work, wherever they are found

2) Pre-condition before seizing

Police Officer has to satisfy himself before such seizure, that an offence under Section 63 in respect of the infringement of copyright in any work has been, is being or is likely to be committed

3) Produce before Magistrate

Police Officer has been put under obligation to produce before the Magistrate, as soon as practicable, all copies and plates so seized

4) Application by interested person

Any interested person may make an application to Magistrate, within fifteen days of such seizure, for restoring to him such copies and plates.

POSSESSION OF PLATES FOR PURPOSE OF MAKING INFRINGING COPIES-SECTION 65

Any person, who knowingly makes or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, to imprisonment which may extend to two years and also fine

CHAPTER 19

LAWS RELATING TO GEOGRAPHICAL INDICATION

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LAWS RELATING TO GEOGRAPHICAL INDICATION

REGULATORY FRAMEWORK

- 1) Geographical Indications of Goods (Registration and Protection) Act, 1999
- 2) The Geographical Indications of Goods (Registration and Protection) Rules, 2002

OBJECT OF GEOGRAPHICAL INDICATION

The object of the Geographical Indications of Goods (Registration and Protection) Act, 1999 is three fold

- 1) Specific law governing the geographical indications of goods in the country which could adequately protect the interest of producers of such goods
- 2) To exclude unauthorized persons from misusing geographical indications and to protect consumers from deception and
- 3) To promote goods bearing Indian geographical indications in the export market

MEANING . ANALYSIS AND EXAMPLE OF GEOGRAPHICAL INDICATION

1) Meaning

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, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be

2) Analysis of Geographical Indication

- It is an indication.
- It originates from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods.
- The manufactured goods should be produced or processed or prepared in that territory.
- It should have a special quality or reputation or other characteristics

3) Examples

Darjeeling Tea (word & logo); Pochampalli Ikat ; Salem Fabric; Chanderi Sarees; Solapur Chaddar; Solapur Terry Towel; ; Kotpad Handloom fabric ; Mysore Silk ; Kota Doria; Mysore Agarbathi; Kancheepuram Silk ;Bhavani Jamakkalam ; Kullu Shawl ; Madurai Sungudi ; Madur kathi; Banaras Zardozi; Gorgonzola (Food Stuff, Italy); Wooden Mask of Kushmand; Gobindobhog Rice; Kashmiri Hand Knotted Carpet, Orissa Pattachitra; Berhampur Patta (Phoda Kumbha) Saree & Joda; Madhubani Paintings; Raktsey Karpo Apricot of Ladakh etc

4) Definition of Indication- Section 2(g)

Indication includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies

REGISTRATION OF GEOGRAPHICAL INDICATION-SECTION 8**1) Registration according to class of goods and specific area or locality**

A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

2) Classify the goods

The Registrar may also classify the goods under in accordance with the International classification of goods for the purposes of registration of geographical indications

3) Index of classification of goods

Registrar may publish in the prescribed manner in an alphabetical index of classification of goods

4) Question regarding the class of goods or specific area

Any question arising as to the class within which any goods fall or the definite area in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published shall be determined by the Registrar whose decision in the matter shall be final

PROHIBITION OF REGISTRATION OF CERTAIN GEOGRPAHICAL INDICATION-SECTION 9

They are as follows:-

- 1) The use of which would be likely to **deceive or cause confusion** or
- 2) The use of which would be **contrary to any law** for the time being in force or
- 3) Which comprises or contains **scandalous or obscene matter** or
- 4) Which comprises or contains any matter likely **to hurt the religious susceptibilities** of any class or section of the citizens of India or
- 5) Which would otherwise be disentitled to protection in a court or
- 6) Which are determined to be **generic names or indications of goods** and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country or

Meaning of Generic names or indications:-

Means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods

- 7) Which, although literally true as to the territory, region or locality in which the goods originate, but **falsely represent** to the persons that the goods originate in another territory, region or locality, as the case may be

APPLICATION FOR REGISTRATION-SECTION 11

1) Application for registration

Apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication

2) Who can file written application

Association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing

3) Different Application and Different fees

Application maybe made for registration of a geographical indication for different classes of goods and fee payable therefore shall be in respect of each such class of goods.

4) Jurisdiction for filing application

Every application shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication elates is situated

5) Examination of application

Every application shall be examined by the Registrar in such manner as may be prescribed.

6) Decision of Registrar

The Registrar may

- a) Refuse the application or
- b) may accept it absolutely or
- c) subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

7) Reason in writing

In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision

8) Contents of Application

- a) A single application may be a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with

its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

- b) The class of goods to which the geographical indication shall apply;
- c) The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured
- d) The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both
- e) A statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed and
- f) such other prescribed particulars.

REGISTRATION-SECTION 16

1) Certificate of Registration

The Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate sealed with the seal of the Geographical Indications Registry

2) Default to complete registration by Applicant

- a) Registration of a geographical indication is to be completed within twelve months from the date of the application
- b) Registrar will issue notice to applicant in prescribed manner
- c) If application is not completed within 12 months then it will be abandoned

STEP BY STEP GUIDE ON GEOGRAPHICAL INDICATION OF GOODS REGISTRATION PROCESS

Step 1: Filing of Application

Please check whether the indication comes within the ambit of the definition of a Geographical Indication under section 2(1)(e) of the Act.

The association of persons or producers or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.

- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- Details of the special characteristics and how those standards are maintained.

- Three certified copies of the map of the region to which the GI relates.
- Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.
- Give details of all the applicant together with address. If there is a large number of producers a collective reference to all the producers of the goods may be made in the application and the GI. If registered will be indicated accordingly in the register.

STEP 2 & 3:Preliminary Scrutiny and Examination

- The Examiner will scrutinize the application for any deficiencies.
- The applicant should within one month of the communication in this regard, remedy the same.
- The content of statement of case is assessed by a consultative group of experts will versed on the subject.
- The will ascertain the correctness of particulars furnished.
- Thereafter an Examination Report would be issued.

Step 4: Show Cause Notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application, if it is accepted in error, after giving on opportunity of being heard.

Step 5:Publication in the Geographical Indication Journal

Every application, within three month of acceptance shall be published in the Geographical Indications Journal

Step 6:Opposition to Registration

- Any person can file a notice of opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the Journal.
- The registrar shall serve a copy of the notice on the applicant.
- Within two months the applicant shall sent a copy of the counter statement.
- If he does not do this be shall be deemed to have abandoned his application. Where the counter statement has been filed, the registrar shall serve a copy on the person giving the notice of opposition.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.
- A date for hearing of the case will be fixed thereafter.

Step 7: Registration

- Where an application for a GI has been accepted, the registrar shall register the geographical indication.
If registered the date of filing of the application shall be deemed to be the date of registration.
- The registrar shall issue to the applicant a certificate with the seal of the Geographical indications registry.

Step 8: Renewal

A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee

Step 9: Additional Protection to Notified Goods

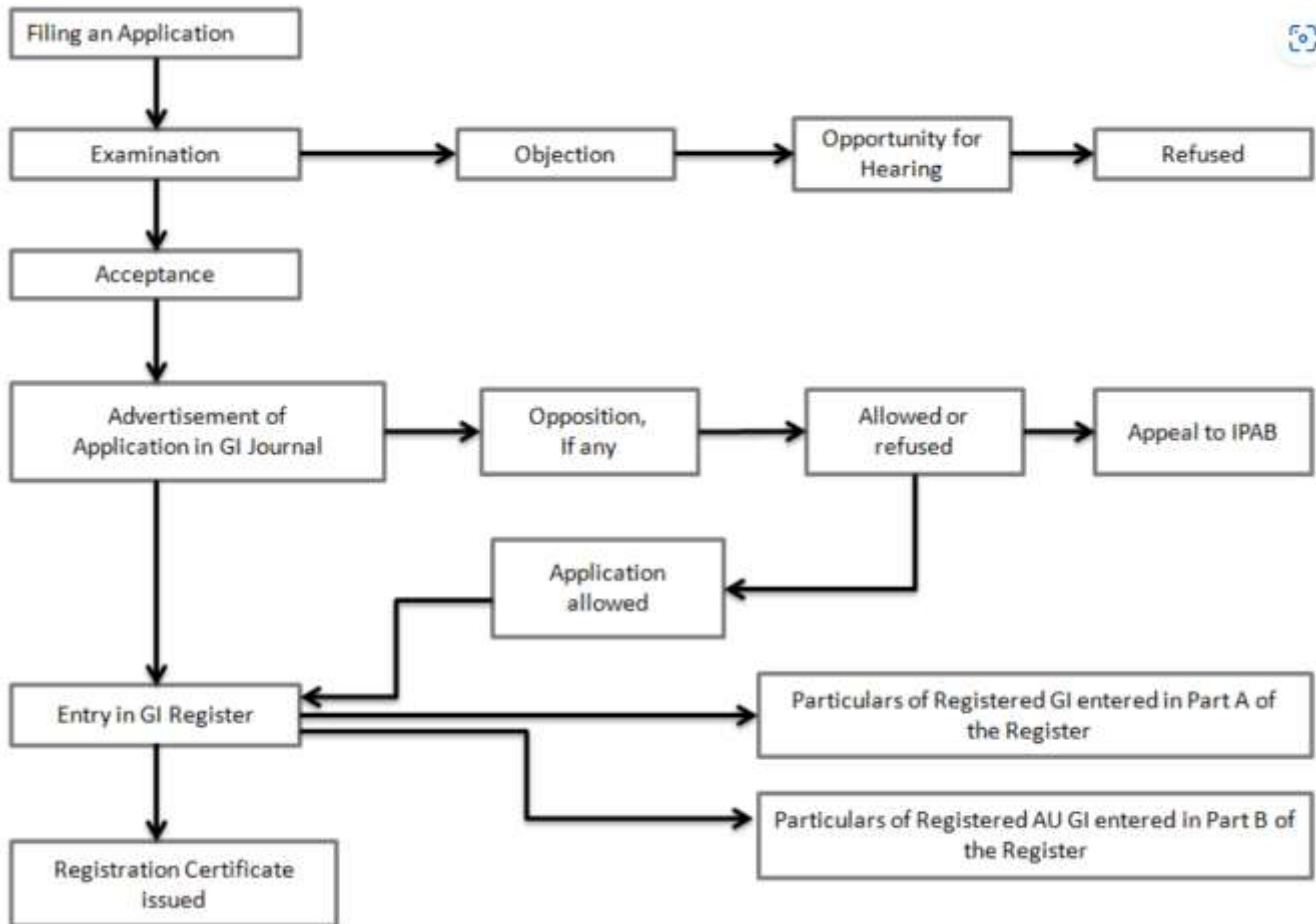
Additional protection for notified goods is provided in the Act.

Step 10: Appeal

Any person aggrieved

by an order or decision may prefer an appeal

GEOGRAPHICAL INDICATION REGISTRATION WORKFLOW



BENEFITS OF REGISTRATION OF GEOGRAPHICAL INDICATION

1. Legal Protection

It confers legal protection to Geographical Indications in India.

2. Prevent Unauthorised Use

Prevents unauthorised use of a Registered Geographical Indication by others.

3. Increase Export

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

4. Prosperity

It promotes economic prosperity of producers of goods produced in a geographical territory

DURATION OF REGISTRATION- SECTION 18

1) Term

The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section

2) Authorized User

The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier.

3) Renewal for 10 years

The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be

INFRINGEMENT OF UNREGISTERED GEOGRAPHICAL INDICATION-SECTION 20

A person shall not be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication

WHEN IS REGISTERED GEOGRAPHICAL INDICATION IS SAID TO BE INFRINGED-SECTION 22**1) Mislead the public**

When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods

2) Unfair Competition

When the use of geographical indication result in an unfair competition.

3) Passing Off

Passing off in respect of registered geographical indication is also considered as infringement

4) False Representation to public

When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates

MEANING OF UNFAIR COMPETITION

“Act of unfair competition” means any act of competition contrary to honest practices in industrial or commercial matters.

The following acts shall be deemed to be acts of unfair competition, namely

- 1) All acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor

- 2) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor
- 3) Geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods

ASSIGNMENT OR TRANSMISSION-SECTION 24

- 1) Any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement
- 2) On the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force

PROHIBITION OF REGISTRATION OF GEOGRAPHICAL INDICATION AS TRADEMARK-SECTION 25

1) Provision

Registrar of Trade Marks shall, suo-motu or at the request of an interested party, refuse or invalidate the registration of a trade mark

2) Reason for invalidation

- a) It contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates,
- b) Use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods

HOW A GEOGRAPHICAL INDICATION IS DIFFERENT FROM A TRADE MARK?

- 1) A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.
- 2) Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

TEA BOARD, INDIA VS. ITC LIMITED

Plaintiff moved an interlocutory application for temporary injunction for restraining the defendant from using or conducting or making its business at the hotel by the name "DARJEELING LOUNGE". Application stated that usage of the word "DARJEELING" in the name and logo by defendants is passing off or

attempting to pass off its business or services so as to discredit the fame of Darjeeling tea as a geographical indication and/or to mislead persons.

Hon'ble Calcutta High Court inter alia observed that passing-off as in Section 20(2) of the GI Act has to be seen in the light of what it implies in trade mark law. As to whether any goods or services are passed off as some other goods or services would depend on a variety of factors ranging from the nature of the marks, their resemblance, the nature of the goods and services, the similarity of the character of the goods and services, the mode of accessing the goods or services and other surrounding circumstances.

The word "Darjeeling" - as precious to tea as it may be as champagne to sparkling wines of that province in France - cannot be exclusively claimed by the plaintiff by virtue of its registration as a geographical indication or as a certification trade mark. Even for a case of passing-off, the use of "Darjeeling" by a person other than the plaintiff can be complained of if the word or the geographical indication has any nexus with the product with which it is exclusively associated upon the registration. It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights. The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks.

As to the case of dilution, the name "Darjeeling" has been extensively used in trading and commercial circles for decades before the GI Act was enacted. In a case of dilution by blurring, it is the uniqueness of a mark which is protected even in a case where there is no likelihood of confusion. But the word "Darjeeling" has been and continues to be so widely used as a business name or for like purpose for so long that the plaintiff's recent registration would, prima facie, not entitle it to enjoy the kind of exclusivity that it asserts.

MEANING OF APPLYING GEOGRAPHICAL INDICATION-SECTION 37

A person shall be deemed to apply a geographical indication to goods who

1) Goods

Applies it to the goods themselves; or

2) Package

Applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

3) Annexes and Enclosure

places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or

4) Manner which creates a belief

Uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or

5) Advertisement, Invoice, Catalogue, Business Letter, Business paper, Price List, Document Etc

In relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

FALSIFYING AND FALSELY APPLYING GEOGRAPHICAL INDICATIONS-SECTION 38

A person shall be deemed to falsify a geographical indication who, either:

(a) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or

(b) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise

A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication:

(a) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;

(b) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.

Any geographical indication falsified or falsely applied referred to as a false geographical indication.

In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

PENALTY FOR APPLYING FALSE GEOGRAPHICAL INDICATIONS-SECTION 39

Any person who

- 1) falsifies any geographical indication
- 2) falsely applies to goods any geographical indication makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication
- 3) Applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address

- 4) Tamper with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71
- 5) Causes any of the things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud

be punishable with imprisonment for a term which shall not be less than **six months but which may extend to three years** and with fine which shall not be less than **fifty thousand rupees but which may extend to two lakh rupees**.

It may be noted that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees

SPECIAL PROVISIONS RELATING TO APPLICATIONS FOR REGISTRATION FROM CITIZENS OF CONVENTION COUNTRIES-SECTION 84

Central Government may by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of the Act for the fulfillment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens.

CHAPTER 20

LAWS RELATING TO DESIGN

CHAPTER 20

LAWS RELATING TO DESIGN

REGULATORY FRAMEWORK

- 1) Designs Act, 2000
- 2) Designs Rules, 2001

INTRODUCTION

1) Meaning

Industrial designs refer to creative activity which result in the ornamental or formal appearance of a product and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design

2) Intellectual Property

Industrial designs are an element of intellectual property

3) First Legislation in India

The first legislation in India for protection of Industrial Designs was The Patents & Designs Protection Act, 1872.

4) Inventions & Designs Act of 1888

The Inventions & Designs Act of 1888 re-enacted the law relating to protection of inventions and designs and contained provision relating to Designs in a separate part 3.

5) Patent & Design Act, 1911

The Patents & Designs Act enacted in 1911 also provided for protection of Industrial Designs

6) Patent Act, 1970

The Patents Act, 1970 repealed the provisions of the Patents and Designs Act, 1911, so far as they related to Patents.

The provisions relating to Designs were not repealed and continued to govern the Designs Law

7) Design Act, 2000

India joined the WTO as a – member State in 1995. Consequently, the Patents & Designs Act, 1911 was repealed and the Designs Act, 2000 was enacted, to make the Designs Law in India TRIPS compliant.

8) Article 25 of TRIPS Agreement

Article 25 of the World Trade Organization TRIPS Agreement, obliges Members to provide for the protection of independently created industrial designs that are new or original

9) Objective of Design Act

The objective of the Designs Act, 2000 is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means.

ESCORTS CONSTRUCTION EQUIPMENT LTD. VS. ACTION CONSTRUCTION EQUIPMENT PVT. LTD,1999

Delhi High Court observed that the primary object the Act is to protect shape and not the function or functional shape. The expression design doesn't include a method or principle of construction or features of shape or configuration which is dictated solely by the function which the article to be made in that shape or configuration has to perform.

DEFINITION AND MEANING OF DESIGN

1) Definition of Design-Section 2(d)

Design means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye,

but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and

does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957

2) Artistic Work-Section 2(c) of Copyright Act,1957

“Artistic works” means: -

- a) A painting, a sculpture, a drawing (including a diagram, map, chart or plan) on engraving or a photograph, whether or not such work possesses artistic quality;
- b) An work of architecture; and
- c) Any other work of artistic craftsmanship.

3) Narumal Khemchand vs. The Bombay Co., Ltd

Copying of design cannot be treated as counterfeiting of trademark

4) Meaning of Article

Article means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately

PROPRIETOR OF A NEW OR ORIGIN DESIGN

1) Person for whom the design is executed

Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed

2) Person by whom the design or right is so acquired

Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired

3) Other Person

In any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person

PROHIBITION OF REGISTRATION OF CERTAIN DESIGNS-SECTION 4

A design which prohibited of registration under Section 4 of the Design Act, 2000 are as follows

- 1) Is **not new or original**; or
- 2) Has been **disclosed to the public** anywhere in India or in any other country by publication in tangible
- 3) 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
- 4) Is **not significantly distinguishable** from known designs or combination of known designs; or
- 5) Comprises or contains **scandalous or obscene matter**, shall not be registered.

M/S BRIGHTO AUTO INDUSTRIES VS. SHRI RAJ CHAWLA

- 1) It was held by the Honorable Court that new is taken generally to mean as different to what has gone before and original as something originating from the author.
- 2) In the matter of novelty the eye has to be the ultimate arbiter and the determination has to rest on the general ocular impression.
- 3) To secure recognition for its newness or originality it is imperative that a design identical with or even materially similar to the relevant design should not have been published or registered previously.
- 4) A slight trivial or infinitesimal variation from a preexisting design will not qualify it for registration taking into account the nature involved the change introduced should be substantial.
- 5) It is not necessary to justify registration that the whole of the design should be new, the newness may be confined to only a part of it but that part must be a significant one and it should be potent enough to impart to the whole design a distinct identity, unless the registration sought for the said part alone.
- 6) Further it was held that it is the duty of the court to take special care that no design shall be counted new or original, unless it is distinct from what previously existed by something essentially new or original which is different from ordinary trade variants, which may have lost, been common matters of test or choice in that trade

APPLICATION FOR REGISTRATION OF DESIGNS (SECTION 5)

1) Authority for Registration- Controller

The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act

2) Prescribed form,manner and fees

Every application shall be in the prescribed form and shall be filed in the patent office in the prescribed manner and shall be accompanied by the prescribed fee

3) One Design one Class**4) Refusal and Appeal**

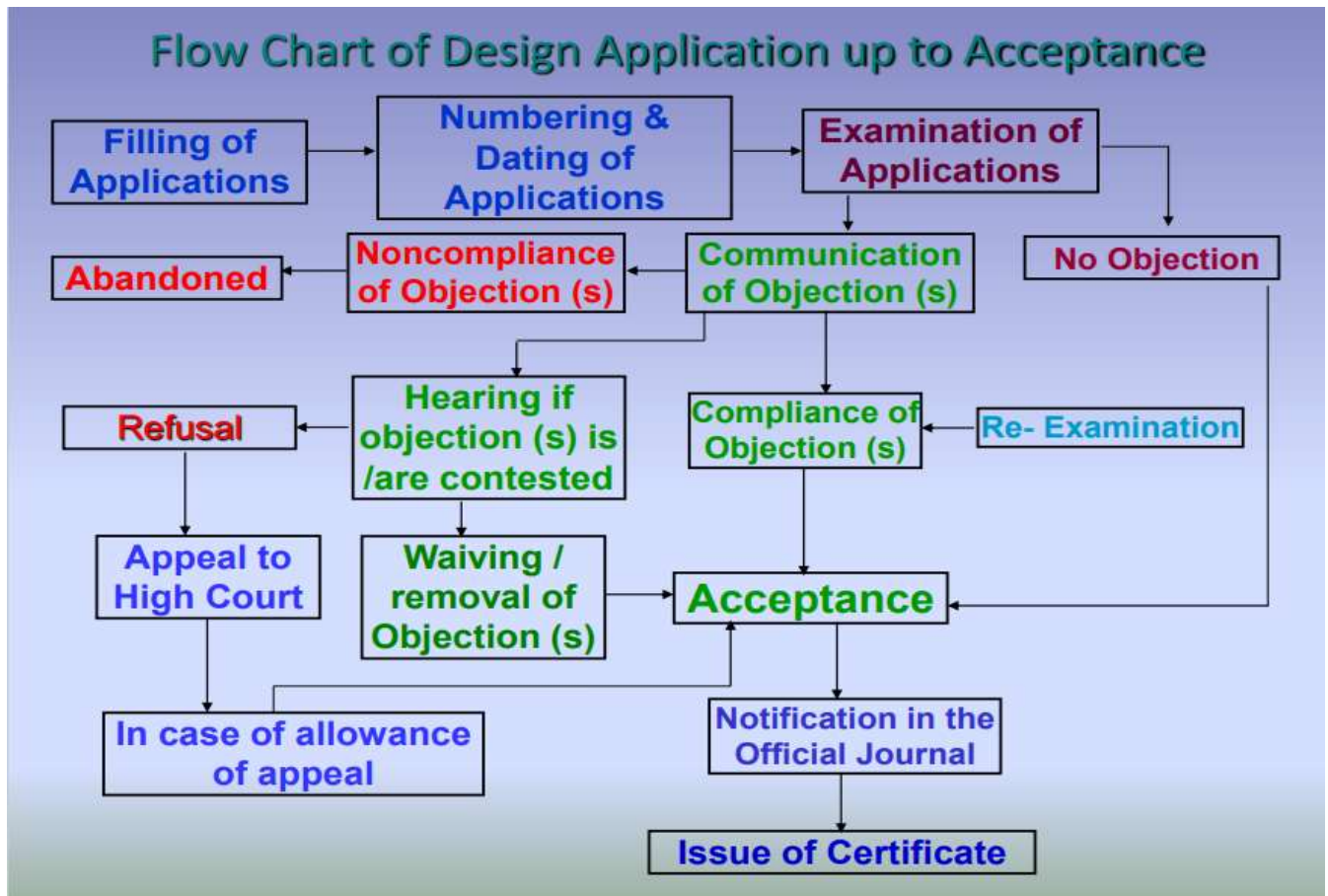
The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the High Court.

5) Deemed to be abandoned

An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

6) Registration Date

A design when registered shall be registered as of the date of the application for registration



REGISTRATION IN RESPECT OF PARTICULAR ARTICLE (SECTION 6)

1) Class of Design

A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.

2) Question regarding class of design

It shall be determined by the Controller whose decision in the matter shall be final.

3) Change of class of registration

It shall not be refused not the registration will be invalidated

- a) on the ground of the design not being a new or original design, it was so previously registered
- b) on the ground of the design having been previously published in India or in any other country

4) Registration of design belonging to same class or another class

Where any person makes an application for the registration of a design in respect of any article and either—

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application, the applicant, had been the registered proprietor of that design.

ESSENTIAL REQUIREMENT OF REGISTRATION OF DESIGN

1) New or original

The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter.

2) Features applied on article

The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.

3) Applicable to any article

The design should be applied or applicable to any article by any industrial process.

4) Visible

The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant.

5) Non registrable

Any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.

6) Does not include

The design should not include any Trade Mark or property mark or artistic works as defined under the Copyright Act, 1957

PUBLICATION OF PARTICULARS OF REGISTERED DESIGN-SECTION 7

Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection.

SUBSTITUTION OF APPLICATION OR JOINT CLAIMING (SECTION 8)

1) Form and fees

A request for substitution of applicant shall be filed in Form-2 along with the required fee.

Controller is satisfied that, upon registration of design, the claimant would be entitled to any interest in the design the Controller may direct that the application shall proceed:

- i. in the names of the claimant(s); or
- ii. in the names of the claimant(s) and the applicant or the other joint applicant(s), as the case may be

2) Consent of Other Joint applicant

In case of joint applicants, the Controller shall not pass such direction without with the consent of the other joint applicants

3) Request by Survivors

In case, joint applicant's dies at any time before the design has been registered, a request may be made for substitution by the survivor(s) and the Controller may direct that the application shall proceed in the name of the survivors alone

4) Dispute between joint applicants

- a) The Controller may give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may be
- b) Controller shall not pass any such direction without giving an opportunity to be heard to all the concerned parties

CERTIFICATE OF REGISTRATION -SECTION 9**1) Certificate**

The Controller grant a certificate of registration to the proprietor of the design when it registered.

2) Loss of Original certificate

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

3) Effect of Registration

The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration

REGISTER OF DESIGN-SECTION 10**1) Place of Register**

There shall be kept at the patent office a book called the register of designs

2) Contents

- a) Names and addresses of proprietors of registered designs
- b) Notifications of assignments and of transmissions of registered designs

c) such other matter as may be prescribed

3) Mode

It may be maintained wholly or partly on computer, floppies or diskettes, subject to such safeguards as may be prescribed.

COPYRIGHT ON REGISTRATION-SECTION 11

1) Term

When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration

2) Extention

- a) Application for the extension of the period of copyright is made to the Controller in the prescribed manner
- b) On payment of the prescribed fee
- c) It shall be extend the period of copyright for a second period of five years from the expiration of the original period of ten years.

MICROFIBERS V/S GIRDHAR AND CO

It observed the following guidelines:

- 1) The definition of artistic work has a very wide connotation as it is not circumscribed by any limitation of the work possessing any artistic quality. Even an abstract work, such as a few lines or curves arbitrarily drawn would qualify as an artistic work. It may be two dimensional or three dimensional. The artistic work may or may not have visual appeal.
- 2) The rights to which a holder of an original artistic work is entitled are enumerated in Section 14(c) of the Copyright Act.
- 3) It is the exclusive right of the holder of a Copyright in an original artistic work to reproduce the work in any material form. For example, a drawing of an imaginary futuristic automobile, which is an original artistic work, may be reproduced in the three-dimensional material from using an element, such as a metal sheet.
- 4) The design protection in case of registered works under the Designs Act cannot be extended to include the copyright protection to the works which were industrially produced
- 5) A perusal of the Copyright Act and the Designs Act and indeed the Preamble and the Statement of Objects and Reasons of the Designs Act makes it clear that the legislative intent was to grant a higher protection to pure original artistic works such as paintings, sculptures etc and lesser protection to design activity which is commercial in nature. The legislative intent is, thus, clear that the protection accorded to a work which is commercial in nature is lesser than and not to be equated with the protection granted to a work of pure Article.
- 6) The original paintings/artistic works which may be used to industrially produce the designed article

would continue to fall within the meaning of the artistic work defined under Section 2(c) of the Copyright Act, 1957 and would be entitled to the full period of copyright protection as evident from the definition of the design under Section 2(d) of the Designs Act. However, the intention of producing the artistic work is not relevant.

- 7) This is precisely why the legislature not only limited the protection by mandating that the copyright shall cease under the Copyright Act in a registered design but in addition, also deprived copyright protection to designs capable of being registered under the Designs Act, but not so registered, as soon as the concerned design had been applied more than 50 times by industrial process by the owner of the copyright or his licensee.
- 8) In the original work of art, copyright would exist and the author/holder would continue enjoying the longer protection granted under the Copyright Act in respect of the original artistic work per se. If the design is registered under the Designs Act, the design would lose its copyright protection under the Copyright Act. If it is a design registrable under the Designs Act but has not so been registered, the design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation would harmonize the Copyright and the Designs Act in accordance with the legislative intent

RESTORATION OF LAPSED DESIGN-SECTION 12

1) Reason for lapse of Design

Design has ceased to have effect by reason of failure to pay the fee for the extension of copyright

2) Application for restoration

An application for the restoration of the design in the prescribed manner on payment of such fee as may be prescribed shall be made

3) Time limit

It shall be made within one year from the date on which the design ceased to have effect

4) Who can make application

- a) Proprietor of design
- b) Legal Representative
- c) Joint Owners-With the leave of the Controller one or more of them without joining the others

5) Contents of application

Contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

CAN THE REGISTRATION OF A DESIGN BE CANCELLED?-SECTION 19

According to Section 19 of the Act, the registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in prescribed form with fee to the Controller of Designs on the following grounds:

- 1) That the design has been previously registered in India; or
- 2) That it has been published in India or elsewhere prior to date of registration; or
- 3) The design is not new or original; or
- 4) Design is not registrable; or
- 5) It is not a design under Clause (d) of Section 2.

DESIGN TO BIND GOVERNMENT-SECTION 20

As per Section 20 a registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970 shall apply to registered designs as they apply to patents

PIRACY OF REGISTERED DESIGN

Meaning of Piracy of Design

Piracy of a design means the application of a design or its imitation to any article belonging to class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of the design

During the existence of copyright in any design it shall not be lawful for any person, without the license or written consent of the registered proprietor:

- 1) 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, or to do anything with a view to enable the design to be so applied
- 2) To import such article for the purposes of sale;
- 3) To publish or expose or cause to be published or exposed for sale, that article

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

1) Applicability

The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person else-where during or after the period of the holding of the exhibition

2) Provision

Exhibition without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof

3) Conditions

- a) The exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and
- b) The application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design

APPEAL**1) Authority**

An appeal lies to the High Court against an order passed by the Controller

2) Time Limit

Every appeal shall be made within three months of the date of the order of the Controller

3) Grounds of appeal

- a) Refusing registration of design (Section 5)
- b) Passed in a cancellation petition (Section 19)
- c) Passed in a rectification petition (Section 31)
- d) Refusing registration on the ground of public order or morality (Section 35)

4) Final Decision

The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.