

Intellectual Property Rights, and Competition Law
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Lecture - 05
Industrial Designs

Dear students, let us discuss the next category of Intellectual Property Law and Property Rights i.e. *Industrial Designs*.

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CONCEPTS

- Concept of Intellectual Property
- 1. Patents
- 2. Trademarks
- 3. Copyright
- 4. Geographical Indications
- 5. Designs
- 6. Integrated circuits
- 7. Trade secrets

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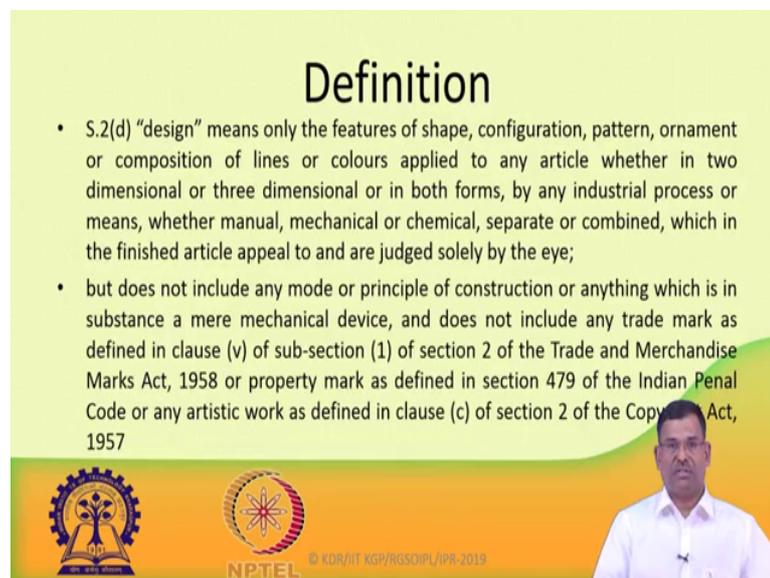
What do you mean by *Industrial Designs*? Whether designs can be registered as part of intellectual property law?

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You can see some of the industrial designs and how they look like. All these designs can be registered and can be protected as intellectual property rights.

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Let's look into the definition of design. What do you mean by design? *Section 2(d)* of the Indian Designs Act, 2000 defines and gives an inclusive definition of design. The act says that the *design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or*

three dimensional or both the 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.

This is the first part of the definition. It mentions that the design is judged solely by the eye. Solely by eye means that it is the visual appearance which gives you the design. And, the definition clearly says it can be shape, it can be configuration, it can be the pattern in the material and also it can be the composition of even the colours. All these can be registered as a design. And in the second part of the definition it clearly excludes or we can say that it does not include any mode or principle of construction or anything which is in substance a mere mechanical device.

For mechanical device, if new, you go for patenting. And it does not include any trademark defined under the trademark act or section; any property mark defined under section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act. Because for artistic work you go to the Copyright Act and you register it as Copyright and for trademark you go to the Trademark Act and you register it as a trademark not under the Designs. So, design is exclusively the visual appearance or it is solely judged by the eye.

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WHAT IS A DESIGN?

- Aesthetic aspects or outward appearance that is applied to a product
- 2 D like patterns, lines, composition, colour; or
- 3 D like shape; or combination of both 2D & 3D



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And you can see the different shapes. It can be different shapes, it can be *2D* patterns or it can be *3D* patterns, it can be lines, it can be composition, it can be colour and it can even be the combination of both *2D* and *3D* so that it is aesthetic to the eye. The aesthetic appearance, the aesthetic aspect if new can be registered as a design.

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And, you can find n number of materials, industrial materials, industrial designs so, which can be registered. These can be a design of a vehicle, it can be even design of a bottle, it can be design of a *chappal*(sandal). Where it is *2D* or it is in the medium of *3D* it can be registered as a design. So, I would say that n number of materials which can be even small, the design of a clip also can be registered so that it can be protected as an intellectual property. Protection is for a minimum period of 10 years which is the statutory period it can be protected.

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You can see this definitely beautiful bike. But the design is registered. It means that as far as the vehicles are concerned the design gives an aesthetic, the complete aesthetic look to that particular model and these vehicles are sold mainly because of its models and its aesthetic aspect and the design. So, this can be registered as a design, as an industrial design.

And, we can find that some of the industries like for example, the bike industry or car industry is entirely surviving on the protection of designs. If the designs are copied by competitors it would result in a lot of economic loss.

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Design

a design means the overall appearance of a product. This includes the shape, configuration, pattern and ornamentation which, when applied to a product, give it a unique visual appearance.

A product is anything that is manufactured or handmade.

Importantly the mechanics of how a product works or operates is not protected by designs law, but may be protectable as a patent.

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If you look into the designs, we can simply say that it is the overall appearance of that particular product to our eye. So, the overall appearance must be new then only it can be registered. And it can be the shape, it can be the pattern on that particular product and it can be the ornamentation and the visual appearance must be unique, then it can be registered as a design.

Whether the product can be manufactured or it can be handmade?

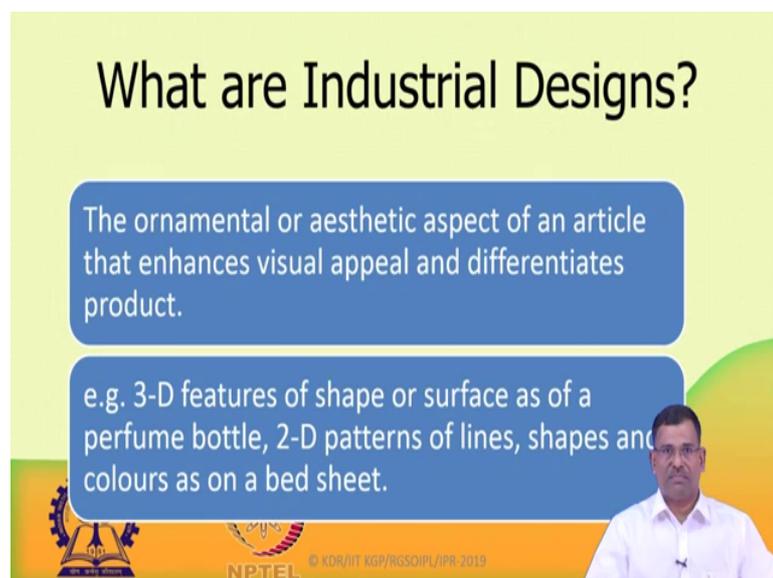
Patterns can be there, ornamentation in that particular kind of product can be there which can be registered. These designs can be registered and the designs is not concerned with the operation of the work, because the operational aspect of the materials, the goods is to be considered by the patent law, not by the design law and the design law actually looks into the aesthetic aspect or look of that particular product.

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For example, you can see this beautiful cycle. This cycle is entirely going to be sold based on its new design which we have not seen in the market. So, if it is copied then it is a complete economic loss to the one who made this particular design. So, the entire aesthetic aspect is the crux of the design registration.

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The Industrial designs on the article always enhances the visual appearance. It differentiates between the products. The visual appearance, if it is the same product,

differentiates that particular product. That means, a new pattern or a new visual appearance if it differentiates then it can be registered as a design.

If you go to the market you can find the perfume bottles are of different designs. So, these bottles also can be registered. It can be *2D* patterns or it can be *3D* patterns.

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For example: we will talk about these 2D patterns. So, you can see a series of materials, these can be electrical, these can be non-electrical, it can be a writing pen or it can be a timepiece or even the designs of *chappal*(sandal), all these consumer products can get a design registration. So, once the design is registered nobody else can copy it for a limited period of time.

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What can be registered?

'new' - meaning it must not be identical to any design previously published anywhere in the world (including on the internet), nor any design previously used ; and

'distinctive' - meaning it must not be substantially similar in overall impression to any design previously published any where in the world (including on the internet), nor any design previously used in India.

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What are the things required? When it can be registered a design? It must be 'new' it means that it must not be identical to any design previously published anywhere which is previously available in the market. That means, because of the advantage of technologies the internet and other things the examiners can search and find out whether this is already published anywhere in the world. So, it means that it should not be earlier published or previously published then only it would be considered as new.

And, the second criteria for design registration is the distinctiveness. The distinctiveness means it must not be substantially similar in overall impression. It means that the goods can be the same. If you put a different pattern or a different overall look to the already existing material that particular design can be registered, but it should not be published earlier anywhere in the world. So; that means, it must be new, it must be distinctive, and substantially different, then only it can be registered as a design.

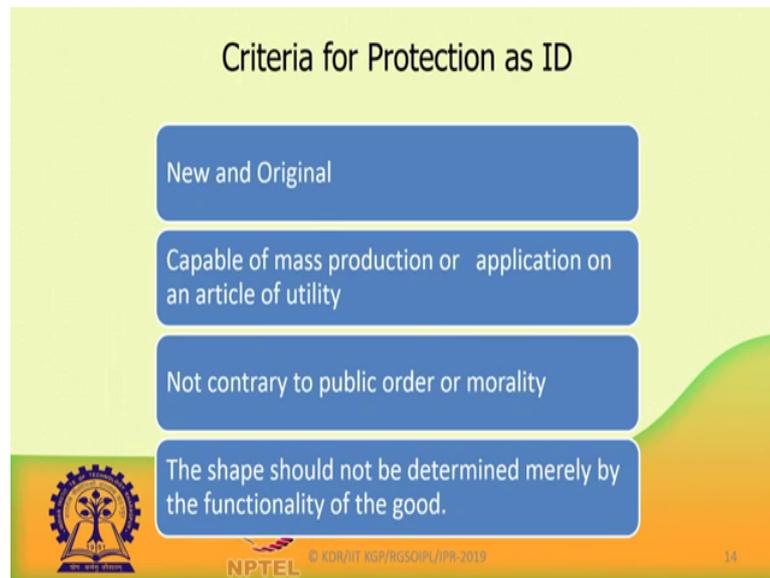
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And if you take pharmaceutical products or some industrial products, even the syringes, the designs of syringes also can be registered, the designs of capsules can be registered. Now most of the pharmaceutical companies are going for registration of the shape of their tablets, because it may have an aesthetic with which the people, the consumer identifies that particular tablet, based on the colour of the tablet or the shape of the tablet.

So, the consumer easily identifies that particular product. So, there are different varieties of products. Even pharmaceutical products are not devoid of design registrations.

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It means that the criteria for design protection is: it must be new, it must be distinctive, it must be original and the most important criteria is that it must be capable of mass production or application to an article of utility. If you can make only one prototype it cannot be registered as a design. There must be mass production, industrial mass production of that particular product then only it can be registered as a design.

And the design should not be contrary to public order or morality as well. This is one criteria applicable to all intellectual property rights, all intellectual property laws. The invention or the design or the copyright should not be contrary to public order or morality. So, if you want to get a protection it should not be contrary to the public order or morality, but public order and morality changes from place to place, society to society and countries to countries.

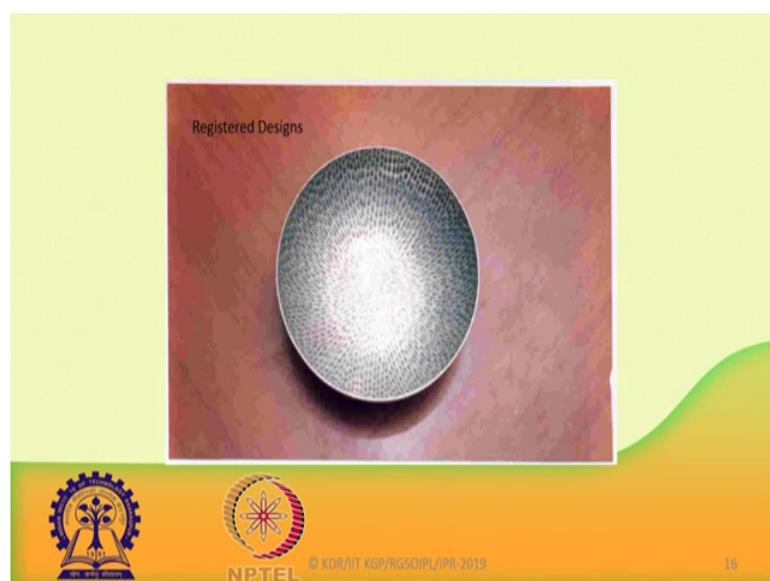
So, what is the standard of public order or morality is not defined in any of the Indian intellectual property law. The court may interpret it according to case by case or circumstance of each case. That means, the functionality of the goods are not the concern of the design, it is the aesthetic aspect which is the subject matter of design registration in India.

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And, we have talked about the 2D products as well as the textiles and jewellery. Nowadays if you go to the market for jewellery we find that the jewellery entirely depends upon the designs. There are so many designs which are available. If it is new it can be also be registered as a jewellery design whether it is a chain, or it is an earring, or it is a ring. It can be registered as a design particularly when design will preserve the shapes.

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So, you can find some unique shapes which gives to you these aspects. These can also be registered as a design if this can be recognised as a design.

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So; that means, the patterns in a vessel can also be registered as a design and you can see this is a 6 piece coaster set. Here everything is a coaster set, but this is the shape of pineapple. So, this can be very well registered as a design, because it gives the aesthetic aspect. It is very important as it give you an intellectual property right on designs.

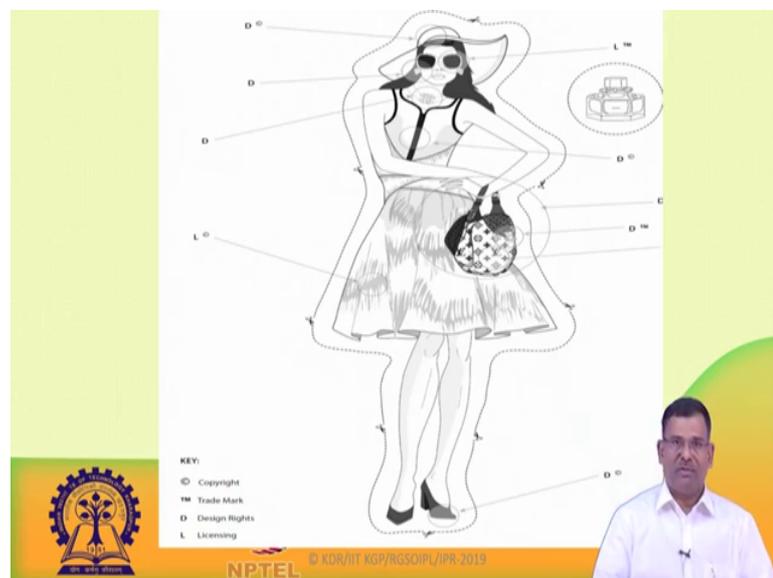
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Designs registrations can be end up in high value *suit*. So, here one designer accused another designer of a plagiarism of design. So, the news item says, the plagiarism of design which is used in one of the famous movies. Ultimately that case has been settled by the designers mutually.

But, what I want to say is that a design which is a famous one, if it is used in movies and other things, it can become famous very quickly and can quickly become viral. So, it means that you will end up in trouble. There can be a huge suit you may be facing for violation of designs even in textile items.

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And most importantly you can see that in a single item there can be multiple intellectual property rights protection. For example, you can see this particular picture, where you can find some of the copyrightable materials, you can see the trademark registrations, you can see the design rights and also you can see the licensing, license material.

So; this means multiple intellectual property rights can be found in a single thing that are used on a day to day basis by the human beings.

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Samsonite v. Vijay Sales

Where design likely to be used for industrial production, copyright protection under the Copyright Act cannot be claimed



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And if you look into some of the disputes you can find some interesting disputes.

Whether copyright protection can be for designs as well? If something is already copyrighted can you protect it by designs? Our Designs Act says other way around that if it is registered as a design you will get an automatic copyright protection but not the other way around. That means, for copyrighted material you are not going to get design protection but design registered materials are going to get a copyright protection as well. So, it means that there can be multiple protection for the same products if you register it.

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ID	TM
<ul style="list-style-type: none">• Has to be integral part of product• Should be original and new but need not be distinctive	<ul style="list-style-type: none">• Is applied on the product but need not be embodied in it.• Should be distinctive

And if you compare the industrial designs with trademarks, designs are always an integral part of the product, but trademarks are applied on the product and need not be embedded on that particular product. Industrial designs also must be original, new, but need not be distinctive, since in the case of distinctiveness distinction should be proved but for the trademark it must be distinctive as well.

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The slide is titled 'ID, Copyright, Patent' and contains two blue text boxes. It features a green and yellow background with a speaker's video feed in the bottom right corner. The logos of IIT KGP and NPTEL are visible at the bottom.

ID, Copyright, Patent

If the article is not mass produced or the design can not be applied on a useful article, the design would be an aesthetic work, protectable under copyright.

Some engineering designs may be sufficiently innovative, protectable as a patent.

If you compare patent, copyright and industrial designs, you can say that the only exception is that if the mass production of article is not there, the designs cannot be granted. And even though it is a useful article the design would be for aesthetic work or it is protectable under copyright. If it is an aesthetic work it can be protected under the copyright as well. And here you can see that even engineering designs also can be protected under copyright act.

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So, you can see some of the apparel works which you can get designs for. So, it can be for jackets, it can be for the aesthetic aspect. Aesthetic aspect is always looked into for the registration of designs.

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And we have registered some of the textile products from Orissa. So, you can see the certificate for that.

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So, this is actually a wall hanging. So, this particular design was registered by Rajiv Gandhi School on behalf of the Sambalpuri Bastralaya or Sambalpuri Bastralaya Handloom Co-operative Society in Sambalpur in Orissa.

The peculiarity of this wall hanging is that usually the clothes are made up of weft and warps. And this is only one, it is made up of one side, this is only on one side not both the sides. We registered this wall hanging, you can see the tribal motifs, the specific motifs which is very particular to Orissa. So, it is registered and we registered it in the year 2010 and we got the certificates. You can see the others as well. All these are textile products and these designs, these specific designs have motifs in the designs.

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So, the aesthetic aspect is clearly written here. What is new in it? The novelty resides in the surface ornamentation and color combination of the wall hanging as illustrated. Anybody can make this, but this design is now already registered. The design registration is for the surface ornamentation and the color combination which is claimed in this particular wall hanging.

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And, this is the third one. Again you can see the specific motifs and also the surface ornamentation very specifically.

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So, we registered this on behalf of the Sambalpuri Bastralaya from Sambalpur, Orissa.

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What is Excluded?

Any mode or principle of construction or anything which is in substance a mere mechanical device

Trade mark

Property mark

Artistic work



So, there are some exclusions as well from the registration of designs. So; that means, any mode or principle of construction or anything which is in substance mere mechanical devices are non-registrable. A trademark cannot be registered as a design, property mark cannot be registered as a design and artistic works cannot be registered as a design, all these can get appropriate protections under the *Copyright Act*, *Trademarks Act* and even *Patent Act*.

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Piracy

Piracy of designs - (a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

Suit - to pay such damages as may be awarded and to be restrained by injunction accordingly: Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:



And piracy of designs is one of the important menace which is in the market. So; that means, for the registered proprietor of the designs damages are also prescribed in the act.

So, the registered owner can ask for an injunction, ask for damages which is prescribed under this particular act. So, for piracy remedies are available in the act itself.

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Industrial Design, as I told you, is the commercial exploitation of the design or the idea or the creativity which is coming from the author which can be protected under this particular Designs Act.

So, I want to say that design registration protection is very important for some of the industries, industrial products and can make a lot of economic benefit out of it. And this is one of the important category of intellectual property protection hence this should be taken very seriously by the government and implemented strictly in India.

So, I hope that the student got an idea about the broad aspects of design registration.

Thank you.