

EC4102MS: PROFESSIONAL PRACTICE, LAW AND ETHICS (PC)

UNIT - I

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ETHICS – DEFINITION AND CONCEPT

- ▶ Ethics is the study of what is right or wrong in human conduct. This is a branch of Philosophy which studies moral principles. Hence, Ethics is also known as Moral Philosophy.
- ▶
- ▶ **Ethics**, also called **moral philosophy**, the discipline concerned with what is morally good and bad and morally right and wrong. The term is also applied to any system or theory of moral values or principles.

- ▶ **Engineering ethics** is the field of applied ethics and system of moral principles that apply to the practice of engineering. The field examines and sets the obligations by engineers to society, to their clients, and to the profession. As a scholarly discipline, it is closely related to subjects such as the philosophy of science, the philosophy of engineering, and the ethics of technology.

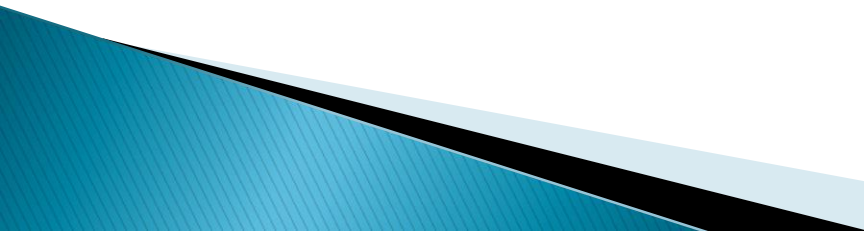
Types of Moral Issues

- ▶ There are mainly two types of Moral issues that we mostly come across while keeping the ethical aspects in mind to respond. They are –
- ▶ *Micro-ethics*
- ▶ This approach stresses more on the problems that occur on a daily basis in the field of engineering and its practice by engineers.
- ▶ *Macro-ethics*
- ▶ This approach deals with social problems which are unknown. However, these problems may unexpectedly face the heat at both regional and national levels.

Professions and Professionalism

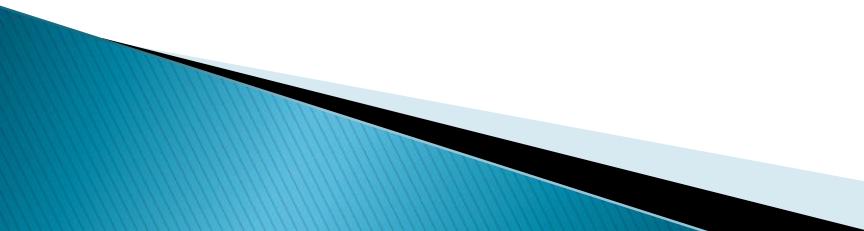
- ▶ In our previous chapters, we discussed the different aspects of solving a conflict. Let us now understand what do we mean by profession and professionalism. The words “Profession” and “Professionalism” are often referred in the moral issues.

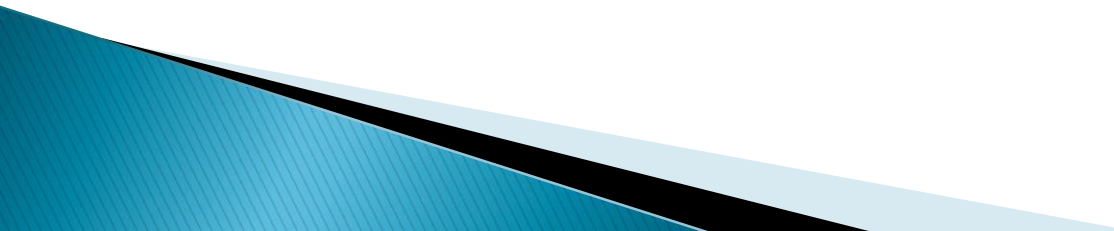
Profession

- ▶ Profession means a job or an occupation, that helps a person earn his living. The main criteria of a profession involves the following.
 - ▶ **Advanced expertise** – The criteria of a profession is to have sound knowledge in both technical aspects and liberal arts as well. In general, continuing education and updating knowledge are also important.
 - ▶ **Self-regulation** – An organization that provides a profession, plays a major role in setting standards for the admission to the profession, drafting codes of ethics, enforcing the standards of conduct and representing the profession before the public and the government.
 - ▶ **Public good** – Any occupation serves some public good by maintaining high ethical standards throughout a profession. This is a part of professional ethics where each occupation is intended to serve for the welfare of the public, directly or indirectly to a certain extent.
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Professionals

- ▶ A person who is paid for getting involved in a particular profession in order to earn a living as well as to satisfy the laws of that profession can be understood as a Professional. The definition of a professional is given differently by different experts in the field

- ▶ **Code of ethics:**
 - ▶ Both Code of Ethics and a Code of Conduct are similar as they are used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others inappropriate. With similarities, comes differences.
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- ▶ **Code of Conduct:**
 - ▶ It is a set of rules, standards, principles and values outlining the expected behaviour for the members of an organisation.
 - ▶ These are legally enforceable which sets out the standards of behaviour expected of those working in the public service.
 - ▶ These are designed to prevent certain types of behaviours like conflict of interest, self-dealing, bribery and inappropriate actions.
 - ▶ The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment.
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Conflict of Interest

- ▶ A conflict of interest happens when an individual involved in multiple interests finds themselves in a decision-making situation where serving one of those interests would harm another. Interests include many different types of commitments, duties, obligations, and values, such as:
 - ▶ Contractual or legal obligations (to business partners, vendors, employees, employer, etc.)
 - ▶ Loyalty to family and friends
 - ▶ Fiduciary duties
 - ▶ Professional duties
 - ▶ Business interests

Gift vs. bribe

- ▶ A gift is something of value given without the expectation of return; A bribe is the same thing given in the hope of influence or benefit
- ▶ A bribe is a quid pro quo situation where an individual gives a gift, something of value, to a public official with the intent that it influences the public official's actions. The public official does not have to accept that for the individual to be prosecuted for a bribe.
- ▶ Basic difference is: Gift is given to someone without any expectation in return. Value of gift is often based on closeness in relationship, time of gifting, economic condition of giver and receiver. Bribe is given with expectation of favor towards giver

Unit II

GENERAL PRINCIPLES OF CONTRACTS MANAGEMENT

INDIAN CONTRACT ACT, 1872

- In the year 1861, the third law commission of British India under the chairmanship of Sir John Romily presented the report on contract law for India. The law commission submitted a draft on 28th July 1866. The draft contract law after several amendments was enacted as The Act 9 of 1872 on 25th April 1872 and the INDIAN CONTRACT ACT 1872 came into force w.e.f. 1st September 1872.
- The Indian Contract Act, 1872 is one of the oldest in the Indian law regime, passed by the legislature of pre-independence India; it received its assent on 25th April 1872. The statute contains essential principles for formation of contract along with law relating to indemnity, guarantee, bailment, pledge and agency.

CONTRACT

- Broadly speaking, a contract is an agreement made between two or more persons to do or to abstain from doing a particular act. A contract invariably creates a legal obligation between the parties by which certain rights are given to one party and a corresponding duty is imposed on the other party.
- The law of contract is the most important part of mercantile law in India. It determines the circumstances in which the promise made by the parties to a contract shall be binding on them and provides for the remedies available against a person who fails to perform his promise.

Agreement

- Section 2(e) of the Contract Act defines agreement as every promise 'and every set of promises forming the consideration for each other. In this context a promise refer to a proposal (offer) which has been accepted.

Valid Contract:

- A contract which satisfies all the conditions prescribed by law is a valid contract. If one or more of these elements is/are missing, the contract is either void, voidable, illegal or unenforceable.

ESSENTIALS OF A VALID CONTRACT

1. Proper offer and its proper acceptance
2. Intention to create legal relationship
3. Free consent
4. Capacity of parties to contract
5. Lawful consideration
6. Lawful object .
7. Agreement not expressly declared void
8. Certainty of meaning
9. Possibility of performance
10. Legal formalities

CONTINGENT CONTRACTS

A contingent contract is a contract to do or not to do something if some event, collateral to such contract, does or does not happen (section 31). For example, A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract. The following are the essential features of a contingent contract.

1. Performance of a contingent contract is made dependent upon the happening or nonhappening of some event.
2. The event on which the performance is made to depend, is an event collateral to the contract i.e., it does not form part of the reciprocal promises which constitute the contract.
3. The contingent event should not be the mere will of the promisor.

Rules Regarding Enforcement of Contingent Contracts

The rules regarding contingent contracts are summarized hereunder (sections 32 to 36):

1. .Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. And if, the event becomes impossible, such contract becomes void (section 32).
2. .Contracts contingent upon the non-happening of a certain future event can be enforced when the happening of that event becomes impossible, and not before (section 33).
- .If a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies

TERMINATION AND DISCHARGE OF A CONTRACT

The term 'discharge of a contract' means that the parties to it are no more liable under the contract. A contract may be discharged in any one of the following ways:

- By performance
- By mutual agreement³ By lapse of time
- By operation of law
- By impossibility of performance⁶ By breach.

UNIT – III

**Arbitration, Conciliation and ADR (Alternative
Dispute Resolution) system**

Arbitration is a form of Alternative Dispute Resolution (ADR)”.

- ▶ The concept of arbitration means resolution of disputes between the parties at the earliest point of time without getting into the procedural technicalities associated with the functioning of a civil court.
- ▶ The dictionary meaning of Arbitration is “*hearing and determining a dispute between the parties by a person or persons chosen by the parties*”

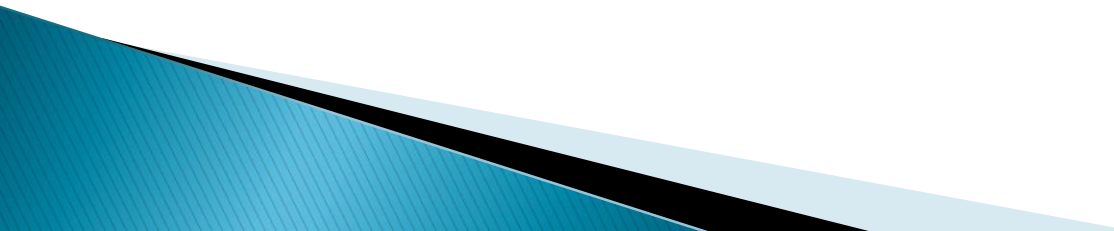
Principle Characteristics of Arbitration

- ▶ **Arbitration is consensual:** An arbitral proceeding can only take place if both the parties to the disputes have agreed to it. Generally, parties insert an arbitration clause in the contract for future disputes arising from non-performance of contractual obligations. An already existing dispute can also be referred to arbitration if both the parties to the dispute agree to it (submission agreement).
- ▶ **Parties choose the Arbitrators:** Under the Indian Arbitration Act parties are allowed to select their arbitrator and they can also select a sole arbitrator together who will act as an umpire. However, the parties should always choose an arbitrator in an odd number.
- ▶ **Arbitration is neutral:** Apart from selecting neutral persons as arbitrators, the parties can choose other important elements of proceeding such as the law applicable, language in which the proceedings should be conducted, the venue for arbitration proceedings. All these things ensure that no party enjoys a home court advantage.

Advantages of Arbitration in India

- ▶ **Expertise in Technical matters:** An arbitrator can easily deal with technical matters which is scientific in nature because generally arbitrators are appointed based on their expertise and skill in a particular field. Thus the disputes are resolved more effectively and efficiently.
- ▶ The *arbitral process is cost effective* and *less time consuming* than the traditional way of dispute resolution in the court of law.
- ▶ There is the *convenience of the parties* as they are able to decide on the language, venue and time of the proceedings.
- ▶ *Privacy and confidentiality of the parties* are maintained as there is no unnecessary publicity of the dispute.
- ▶ *Arbitral proceeding is more flexible than the court proceeding* as under the arbitral proceeding one does not have to follow the strict and rigid rules and regulation as that of the court. This is due to the reason that parties set the rules and regulations of the proceedings.

Meaning of Conciliation

- ▶ Briefly stated, conciliation means any third party assisted alternate dispute resolution (ADR) approach. He discusses the details of the dispute with the parties and on the basis of facts collected, he himself draws up and proposes a solution, which in his opinion is most fair and reasonable. It differs from mediation, the mediator only assists the parties to resolve their dispute without, however, himself drawing up a solution. It is far less informal than the process of conciliation.
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Application & Scope Of Conciliation In India

- ▶ **Section 61 of the Arbitration and Conciliation Act of 1996**, provides for the Application and Scope of Conciliation.
- ▶ **Section 61 points** out that the process of conciliation extends, in the first place, to disputes, whether contractual or not. But the disputes must arise out of the legal relationship. It means that the dispute must be such as to give one party the right to sue and to the other party the liability to be sued. The process of conciliation extends, in the second place, to all proceedings relating to it.
- ▶ But **Part III** of the Act does not apply to such disputes as cannot be submitted to conciliation by the virtue of any law for the time being in force.

Difference Between Conciliation and Arbitration

- ▶ In case of arbitration, a prior 'agreement in writing to submit to arbitration disputes which have arisen or which may arise in future, is necessary. But conciliation may be resorted to without the existence of such prior agreement and it generally relates to disputes which have already arisen.
- ▶ As a corollary of this, it follows that there being a prior arbitration agreement between the parties, both of them are bound by the agreement. But in case of conciliation, since a written invitation is made by one party, the other party may or may not accept the same.
- ▶ While the role of conciliator is to help and assist the parties to reach an amicable settlement of their dispute, the arbitrator does not merely assist the parties but he also actively arbitrates and resolves the dispute by making an arbitral award.
- ▶ In case of conciliation a party may require the conciliator to keep the factual information confidential and not disclose it to the other party, but it is not so in arbitration as the information given by a party is subjected to scrutiny by the other party. Thus there is no question of confidentiality in case of arbitration awards.

UNCITRAL Model Law

- ▶ UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.
- ▶ 1940's Arbitration Act was **an attempt to consolidate & amend the law pertaining to domiciliary conflicts**. To reduce the already overworked judicial system in India, the legislation introduced Arbitration & Conciliation Act, 1996 for speedy, thrifty, & flexible disposal of disputes.
- ▶ The UNCITRAL Model Laws for E-commerce. The Model Law has been divided into two parts. The Part I relates to the general provisions relating to e-commerce, it legislates the three principles of **non-discrimination, technological neutrality, and functional equivalence**.

UNIT- 4

Engagement of Labour and Labour & other
construction-related Laws

INTRODUCTION

- Under the RECS Act, every building worker between the ages of 18 to 60 years who engaged in any building or construction work for at least 90 days (during the past one year) is eligible to register as a beneficiary.
- An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.
- The four labour codes — the Code on Wages, Industrial Relations Code, Social Security Code and the Occupational Safety, Health and Working Conditions Code — are set to replace 29 labour laws
- The objective of the law is: - to promote the construction development by using modern technique and technology in coordination with the local knowledge as well as the usage of both domestic and imported materials.

The Industrial Disputes Act, 1947

- The Industrial Disputes Act, 1947 regulates the Indian labour law so far as that concerns trade unions as well as individual workmen employed in any industry in the Indian mainland. It was one of the last legislative act before the passing of the Indian Independence Act of 1947.

Objectives of the Industrial Disputes Act, 1947

- This Act was passed with a key objective of “Maintenance of Peaceful work culture in the Industry in India” which are mentioned under the Statement of Objects & Reasons of the statute.
- The Act also lays down:
- The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
- The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
- The actions to be taken against unfair labour practices on part of an employer or a trade union or workers.

Industrial Disputes Act, 1947

- Hesitation in hiring
- Lower investments
- Lower overall manufacturing performance
- Foreign investors are deterred from investing in India.
- Apart from Chapter V-B, Section 9-A is also a cause of concern. This section says that if employers are modifying the wages and other allowances, they need to provide the labour commission a notice 21 days in advance. Thus, if employers quickly need to redeploy the employees to meet certain time-bound targets, this practice disallows that.

Collective bargaining

- Collective bargaining is **the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment**, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more.
- **Factors include:**
- The existence of both common and competitive interests linking the groups;
- How groups are recognized as participants in a dispute;
- The balance of power between the competing groups;
- The frequency of negotiations;
- The number of bargaining groups;
- The existence of bargaining deadline;

The Employees Compensation Act, 1923

- The Employees Compensation Act, 1923 is the first social security measure undertaken in India to provide workmen and their dependents relief for injury by accident resulting in either death or disability. According to the theory of notional extension of employment, a fictitious employment extension is a presumptive or imaginary extension of an employee's working time under certain circumstances in order to enjoy temporary benefits under various laws by the employer

Real Estate Regulatory Authority

- RERA, the full form of which is Real Estate Regulatory Authority, stands for **transparency in the real estate industry**. It was brought to action to eradicate the existing discrepancies and problems within the sector.
- The Real Estate (Regulation & Development) Act, 2016 has included, among its many regulations, a provision for the establishment of a state level Real Estate Regulatory Authority (RERA). The founding objective of this body is **to monitor the real estate sector and adjudicate disputes related to real-estate projects**.

Need for the Real Estate (Regulation and Development) Act, 2016

- To control and regulate the real estate sectors by shutting out malpractices;
- To keep consumers out of perils such as delayed delivery, transfer of title of the property, the quality of amenities provided and necessary changes to be made etc., before purchase;
- To appoint authorities to manage the real estate sector and to establish an Appellate Tribunal for each State. To enable home buyers to file complaints in case of any wrongdoing committed by the builders or developers;
- To contribute a good percentage to India's GDP;
- To create accountability and responsibility for the authorities so appointed;
- To tighten the security on the use of investments done by the home buyers or investors;
- To have a supreme authorisation on the registration for the projects required to be registered; and
- To maintain quality in delivering the project to the buyers as per their interest and give scope for complaints to the authorities in case of any structural defects.

Salient features of the RERA Act, 2016

- To regulate and promote the real estate sector by establishing the Real Estate Regulatory Authority.
- To carry out the sale of plots, buildings or apartments as the case may be, or the sale of all the real estate projects transparently and efficiently.
- To protect the interests of the consumers and buyers and ensure the prevention of malpractices against them.
- To establish adequate and speedy dispute redressal systems and also establish Appellate Tribunals to hear and adjudge appeals from the orders, directions or decisions of the Real Estate Regulatory Authority.
- Establishes state-level regulatory authorities called RERA.
- To work on residential real estate projects and register all the projects that are to be undertaken without which the promoters cannot promote or sell.
- The Act provides the right to legal representation on behalf of the client by a CA, CS or CMA or legal practitioners
- It imposes a stringent penalty on promoters, and real estate agents and also prescribes imprisonment.

UNIT-V

Law relating to Intellectual property

The Concept of Intellectual Property

- According to the (WIPO) Intellectual Property refers to creation of mind i.e. inventions, industrial designs for article, literary & artistic work, symbols etc. used in commerce.
- Ex: Literary works (Books, Novels, Scripts...etc.), inventions (First Aero plane, CAR, Bulb.....etc.)

INTELLECTUAL PROPERTY RIGHTS:

- Intellectual property Rights, very broadly, means the legal rights which result from intellectual Activity in the industrial, scientific, literary and artistic fields.
- Countries have laws to protect intellectual property for two main reasons.
 - One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations.
 - The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

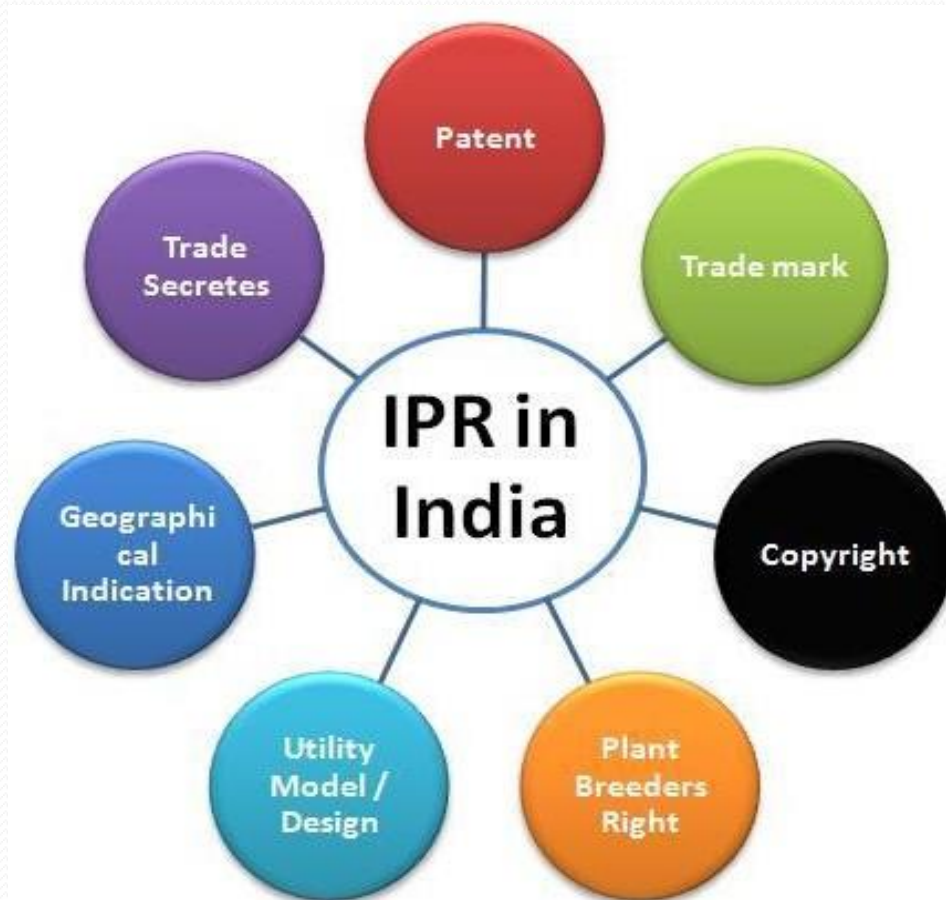
Intellectual Property System in India

- As discussed above, historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485.
- This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions.
- In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "**The Indian Patents and Designs Act, 1911**".

Benefits of IPR's:

- Idea Based products are creating wealth for companies and countries.
- IP ownership is an Incentive for individuals (Inventors).
- Knowledge of IP adds tremendous monetary value to your work.
- To improve the quality of your own work.
- Opens up a world of new career opportunities for you.
- Empowers you to take your own decisions.
- Special value for qualified engineers in terms of consultancy promotion

TYPES OF INTELLECTUAL PROPERTY RIGHTS





- **Patent**

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

- **Trademarks:**

- A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise

- **Copyrights and related rights:**
- Copyright is a legal term describing rights given to creators for their literary and artistic works.
- **Geographical Indications (GI):**
- GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.
- **Industrial Designs:**
- 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

- **Trade Secrets:**
- It may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets.
- **Layout Design for Integrated Circuits:**
- Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.