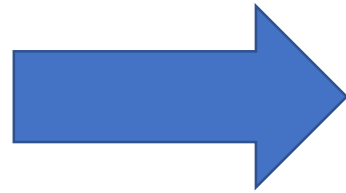


**IPR**  
**GENESIS, BENEFITS AND**  
**IMPORTANCE**  
**2 ND NOVEMBER, 2019**

- PRATHIBA M. SINGH
- JUDGE, DELHI HIGH COURT

# INTELLECTUAL PROPERTY EVERYWHERE



**Trademarks  
Designs  
Trade  
Secrets  
Trade dress**



**Copyrights-  
Authors  
Photographers**



**Oral-B**



# INTELLECTUAL PROPERTY IN DAILY LIFE



**SEMICONDUCTOR CHIPS**

**BRANDS**



**DESIGNS**



**PATENTS IN TECHNOLOGY**



App Store



Google play

**COPYRIGHTS IN 'APPS'**

# INTELLECTUAL PROPERTY IN DAILY LIFE



*fabindia*

Calvin Klein

Raymond

DESIGNS  
TRADEMARKS  
COPYRIGHTS  
GEGRAPHICAL  
INDICATIONS



# INTELLECTUAL PROPERTY IN DAILY LIFE



**TRADEMARKS, COPYRIGHTS, TRADE DRESS**



**COPY-  
RIGHTS  
IN  
RECIPES**

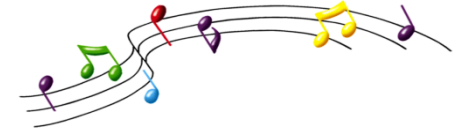


**PLANT VARIETIES  
GEOGRAPHICAL INDICATIONS**



**DESIGNS  
TRADE SECRETS**

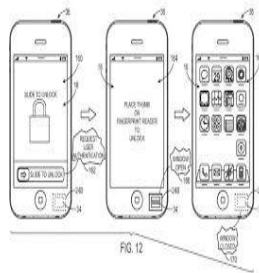
# INTELLECTUAL PROPERTY IN DAILY LIFE



**COPYRIGHTS IN MUSICAL WORK  
FM RADIO-COMPULSORY LICENSING**



**DESIGNS**



**PATENTS IN  
TECHNOLOGY**



**HONDA**

**TRADEMARKS, COPYRIGHTS IN  
ARTISTIC WORK**

# INTELLECTUAL PROPERTY IN DAILY LIFE



TRADEMARKS



TRADE DRESS



COPYRIGHTS IN  
SOFTWARES

# INTELLECTUAL PROPERTY IN DAILY LIFE



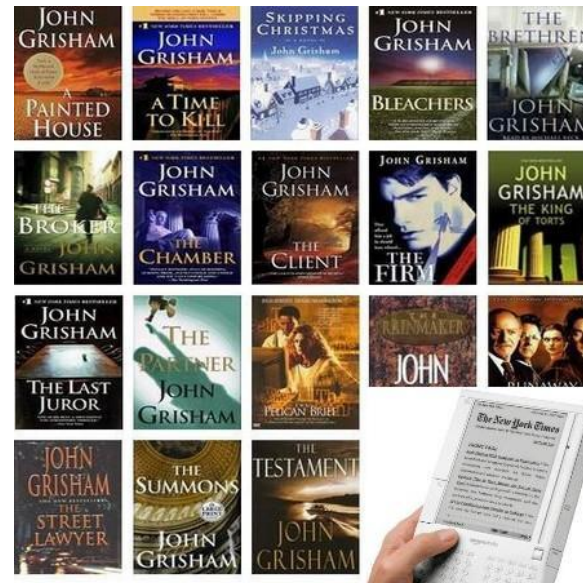
**BROADCASTING RIGHTS**

**COPYRIGHTS**

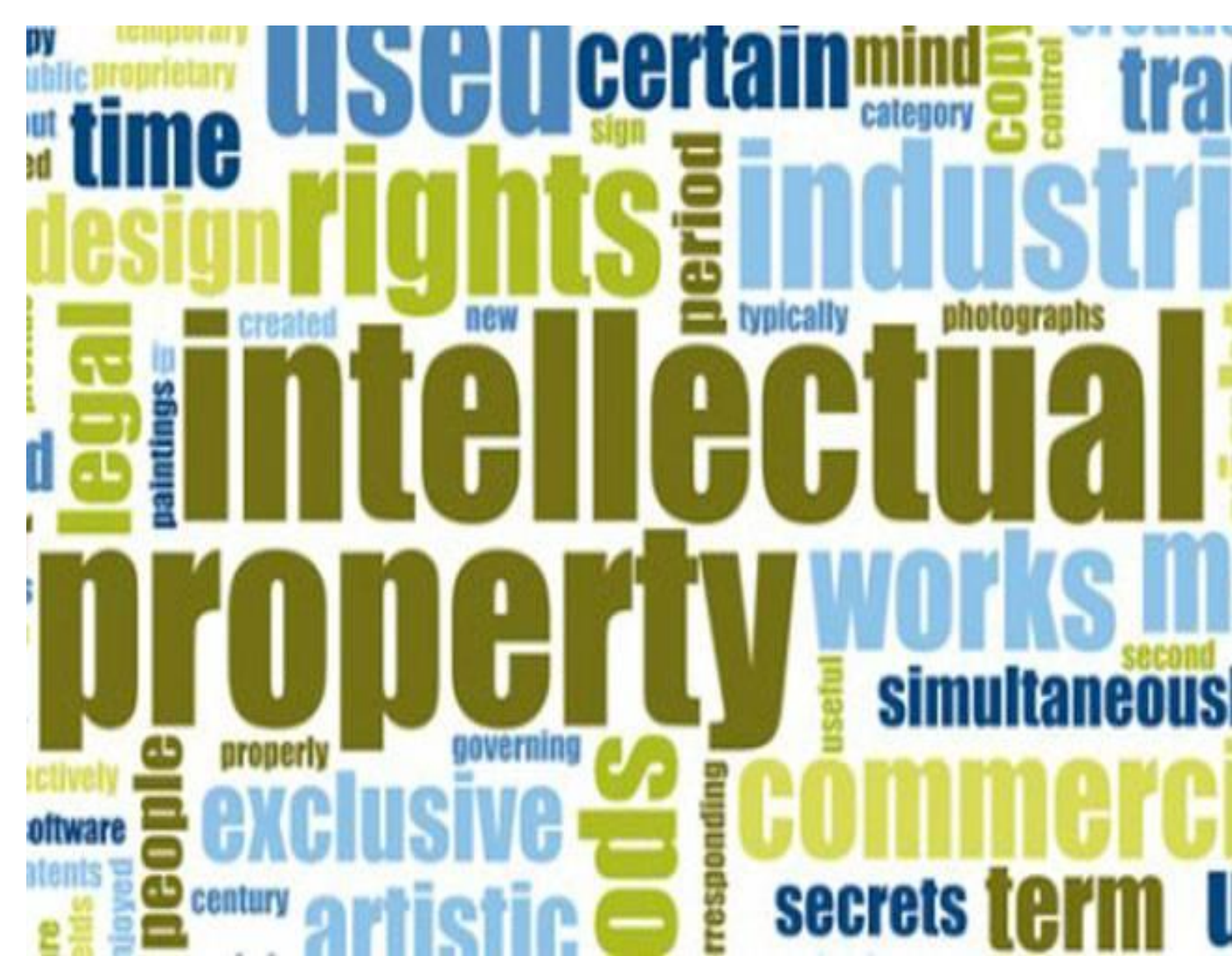




# INTELLECTUAL PROPERTY IN DAILY LIFE



COPYRIGHTS IN BOOKS



I.P.R.  
PERMEATES  
OUR  
LIVES  
DAILY...

# GENESIS OF INTELLECTUAL PROPERTY RIGHTS

## **Statute of Monopolies:**

British law, passed in 1623, that abolished the government-sponsored dominance by guilds of particular industries and vested the creator of intellectual property with the rights thereto.

## **Exclusive Jurisdiction:**

A federal court has exclusive jurisdiction over a case when federal courts may hear the case but state courts may not.

## **Contract Law:**

The series of statutory laws, case law and common law that governs the enforceability of agreements and promises between people.

## **Mutual Assent:**

The presence of an offer and an acceptance in the case of a contract. Mutual assent is a necessary element for most contracts to be enforceable

## **Consideration:**

The contract law doctrine which dictates that both sides of an agreement must suffer or agree to suffer a legal detriment for a contract to be enforceable (i.e., both sides must agree to give something up).

## **Misappropriation:**

The tort that applies when one party wrongfully uses information gathered by, or belonging to, another person for his or her own commercial purposes.

# GENESIS OF INTELLECTUAL PROPERTY RIGHTS



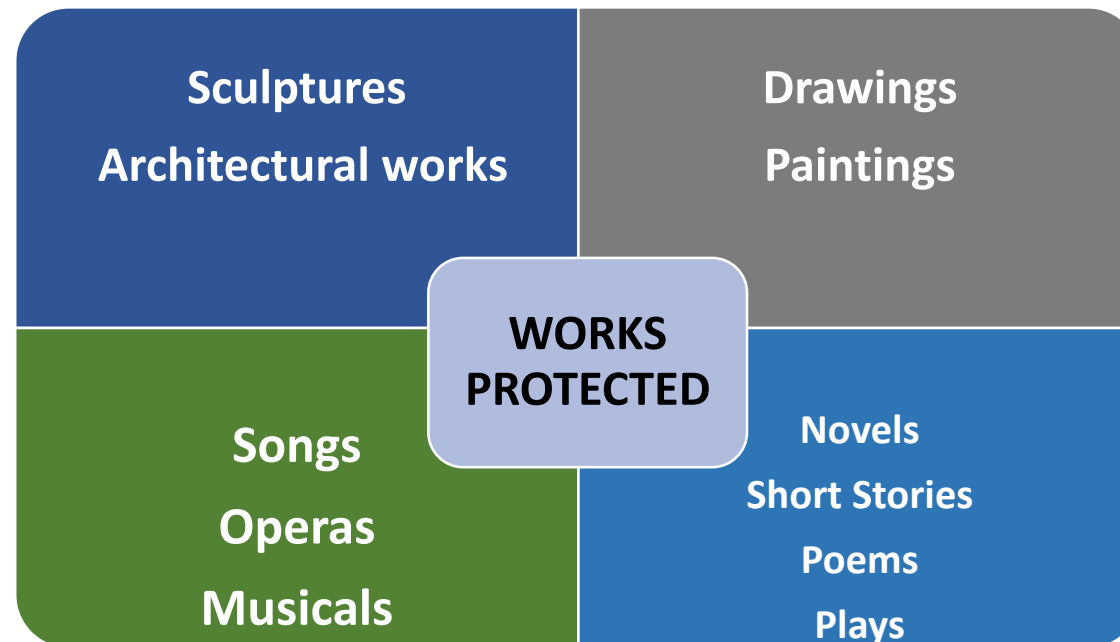


## 1883: PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

REALISING THE NEED  
FOR PROTECTION  
*EXHIBITORS FROM OTHER  
COUNTRIES REFUSED TO  
ATTEND INTERNATIONAL  
EXHIBITIONS ON  
INVENTIONS IN VIENNA AS  
THEY WERE AFRAID  
THEIR IDEAS MIGHT BE  
STOLEN*

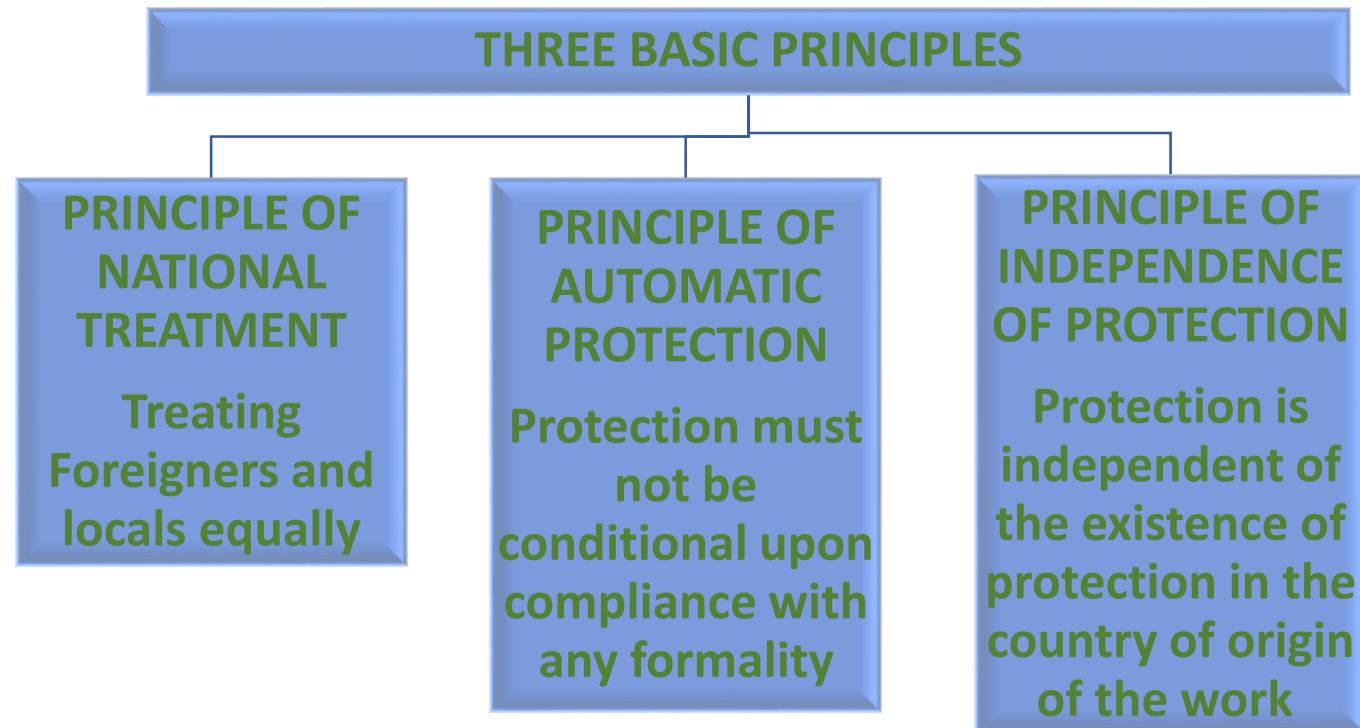
# 1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

- AGREED AFTER A CAMPAIGN BY FRENCH WRITER VICTOR HUGO AND HIS ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE
- DEALS WITH PROTECTION OF WORKS AND RIGHTS OF THE AUTHORS

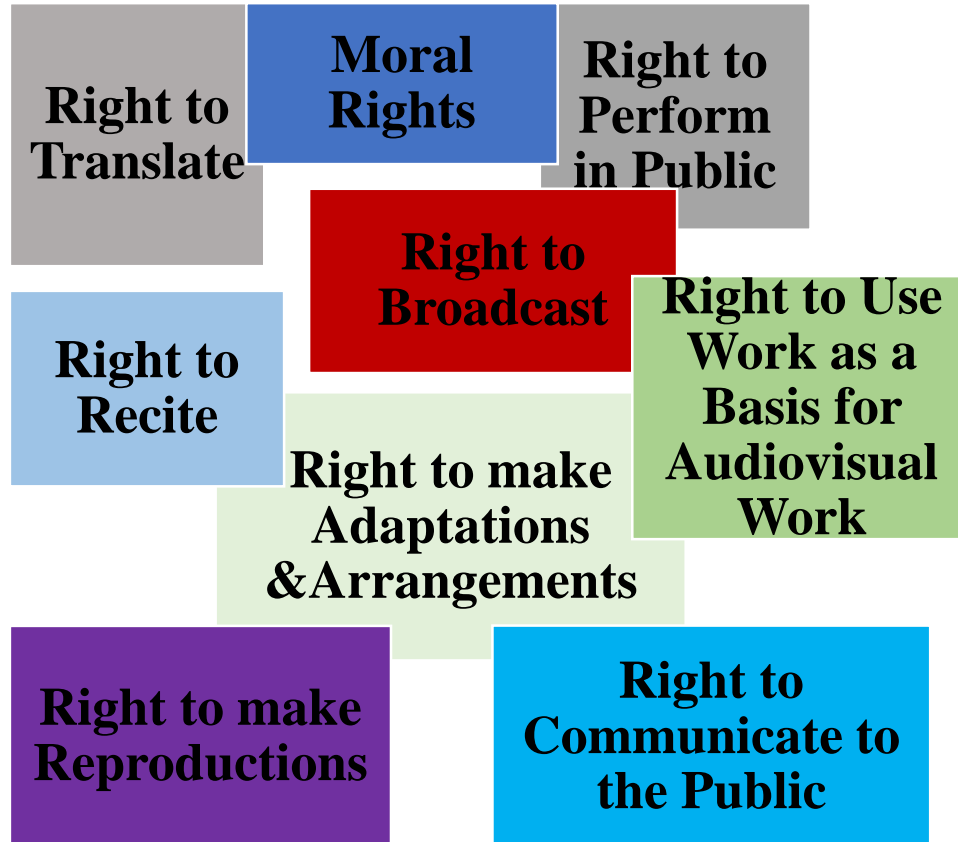


# 1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

- AIM - GIVE CREATORS THE RIGHT TO CONTROL AND RECEIVE PAYMENT FOR THEIR CREATIVE WORKS ON AN INTERNATIONAL LEVEL



# 1886: BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS



General rule is that protection must be granted until the expiration of the 50th year after the author's death

## LIMITATIONS AND EXCEPTIONS ON ECONOMIC RIGHTS:

- Reproduction in Special Cases
  - Use of Works by way of Illustrations for Teaching Purposes
  - Use of Works for Reporting Current Events
  - Ephemeral recordings for Broadcasting



## **1891 – MADRID AGREEMENT**

- One stop solution for registering and managing marks worldwide
- File one application, in one language, and pay one set of fees to protect a mark in the territories of up to 98 members
- Manage a portfolio of marks through one centralized system.

## **1893 - BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY**

The Secretariats for the Paris and Berne Convention together formed BIRPI to coordinate and allocate the necessary responsibilities to appropriately enact the Berne Convention's legislation and international copyright law.

# 1970-WORLD INTELLECTUAL PROPERTY ORGANIZATION

- BIRPI ( United International Bureaux for the Protection of Intellectual Property ) transformed to become a member state-led, inter-governmental organization known as the World Intellectual Property Rights Organization (WIPO)
- WIPO joined the United Nations in 1974 and became a specialized agency of the UN
- WIPO is now the global forum for intellectual property services, policy, information and cooperation
- All members of the UN are entitled to become members of WIPO

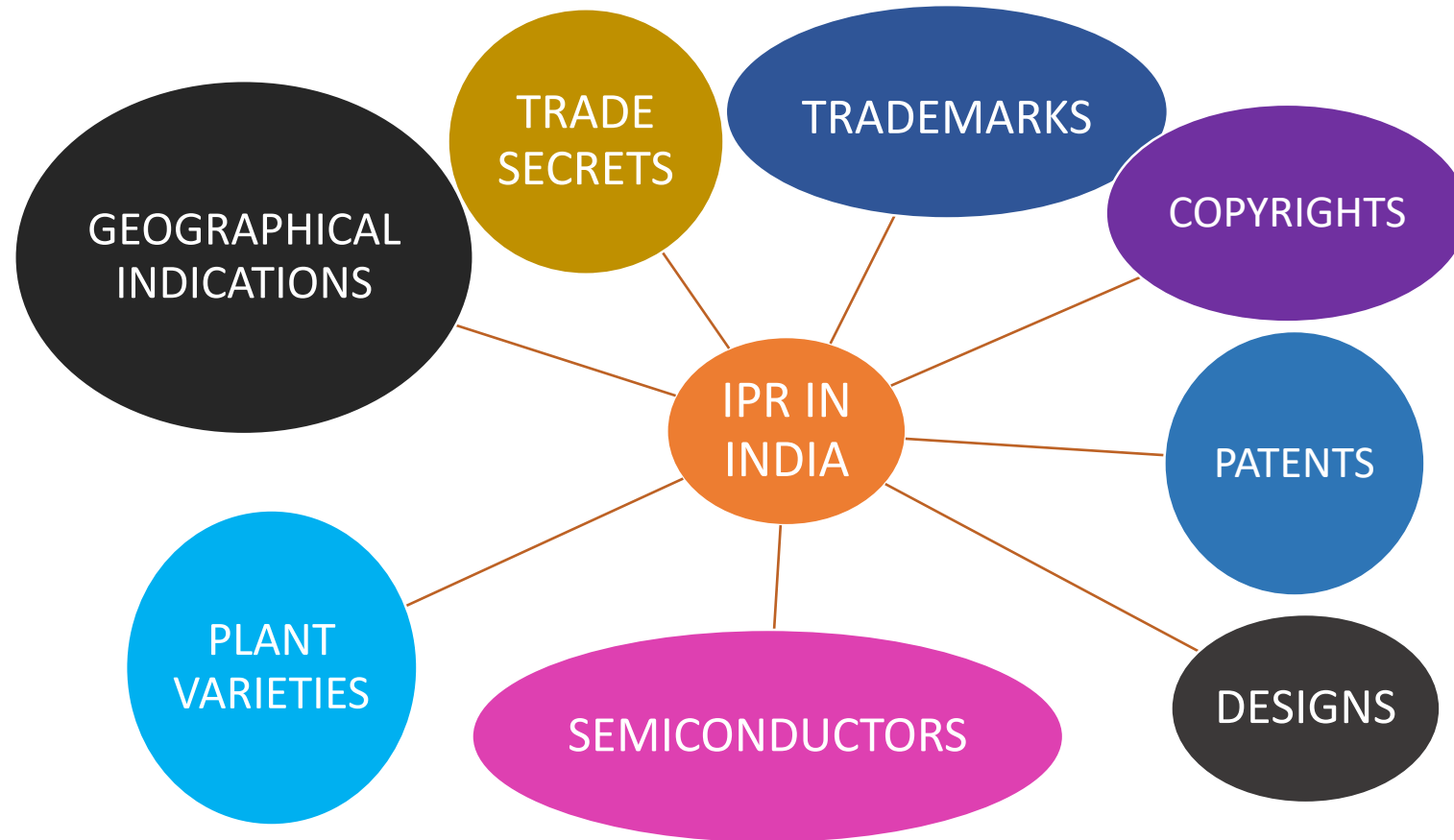
# TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS AGREEMENT)

- Came into effect on 1 January, 1995
- Most comprehensive multilateral agreement on intellectual property
  - It covers: Copyrights, Trademarks, Geographical Indications, Industrial Designs, Patents, Plant Varieties, Layout Designs of Integrated Circuits, Undisclosed Information like Trade Secrets.

**TRIPS**

Trade **Related Intellectual Property Rights**

# INTELLECTUAL PROPERTY RIGHTS IN INDIA



# BENEFITS OF IPRS

- Provides exclusive rights to the creators or inventors.
- Encourages individuals to distribute and share information and data instead of keeping it confidential.
- Provides legal defense and offers the creators the incentive of their work.
- Helps in social and financial development.



shutterstock.com • 577164516

# Value of IP

- Manufacturing cost of iPhone X = 300 \$
  - Chinese manufacturer earns 8-10 \$
  - Retail price of iPhone X = 999\$
- 
- Bulk of the value is for the IP Residing in the phone.



# BENEFITS & IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS



- INDIA HAS ALWAYS BEEN AN INNOVATIVE SOCIETY – BUT LACKS AWARENESS REGARDING THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS
- IP STIMULATES CREATIVITY AND INNOVATION
- IP RIGHTS ARE MARKETABLE FINANCIAL ASSETS AND AN ECONOMIC TOOL
- IP PROMOTES ADVANCEMENT IN SCIENCE AND TECHNOLOGY, ARTS, BIODIVERSITY, ETC.
- IP PROVIDES COMPETITIVE ADVANTAGE IN COMMERCIAL ACTIVITIES BY PREVENTING UNAUTHORIZED EXPLOITATION BY THIRD PARTIES

# BENEFITS & IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- IP PROTECTION PROVIDES A GUARANTEE WITH RESPECT TO THE SAFETY AND QUALITY OF GOODS
  - IT ENABLES TECHNOLOGY TRANSFER – LICENSING, ASSIGNMENT
  - IP IS AN INTANGIBLE ASSET THAT HELPS SMEs GET FINANCING

Application	2015-16	2016-17	2017-18	2018-19
PATENT	46,904	45,444	47,854	50,667
DESIGN	11,108	10,213	11,837	12,583
TRADEMARK	2,83,060	2,78,170	2,72,974	3,38,542
GI	17	32	38	32
<b>TOTAL</b>	<b>3,41,089</b>	<b>3,33,859</b>	<b>3,32,703</b>	<b>4,01,824</b>

**Annual Report 2018-2019:** Govt. of India, Ministry of Commerce & Industry, Dept. of Industrial Policy & Promotion



# TRADEMARKS<sup>®</sup>

- ❖ Trademarks are distinctive marks of authenticity that distinguish goods and services of a particular merchant from others
- ❖ Trademarks act like a trust mark and reminds the customer of the satisfaction from the previous purchase
- ❖ It is an assurance of quality
- ❖ It creates an emotional appeal to products/services – building a valuable brand
- ❖ Unauthorized parties can use a mark and damage the reputation and businesses
- ❖ Registering Trademarks protects businesses appropriately against competition – by registering a TM one builds a barrier to entry around one's brand



# TRADEMARKS – Recent developments

- ❖ 100 new Trademark examiners have been appointed
- ❖ India joined the Madrid Protocol for the International Registration of Marks (July 2013)
- ❖ The Trademarks office has recruited 203 new Trademark Agents (15<sup>th</sup> March 2016)
- ❖ Indian Trademarks Office initiated E-Registration Certificates whereby the entire process of generation and dispatch of registration certificates will be automated



# COPYRIGHTS

Copyright protection gives an exclusive right to do or authorize to do certain acts with respect to the following works:

Literary



Artistic



Sound Recording

# COPYRIGHTS

- Copyright benefits the author – prevents unlawful reproduction or exploitation by others
- It is the protection or reward of the efforts of the author – need not be meritorious or creative
- It encourages people to create original work by rewarding exclusive rights
- Protection is only given to Expression and not Ideas
- Protection is Automatic

## *Examples of copyright:*

- books, brochures and newspapers
- theatrical works
- oral presentations
- choreographic works
- music (with or without words)
- drawings, paintings, buildings and sculptures
- designs
- photographic works
- computer programs

## copyright

[ 'kɒpɪ,raɪt ]

1. the exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, audio, video, etc.

# PATENTS



NEW



INVENTIVE  
STEP



INDUSTRIAL  
APPLICATION

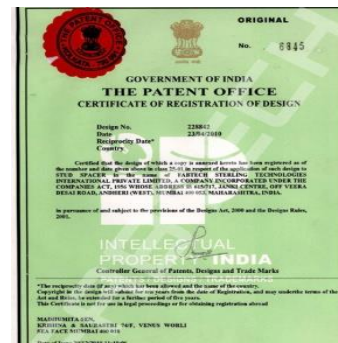
- Exclusive right granted for an invention – product or process
- Such product/process provides a new way of doing something or provides a new technical solution to a problem
- Patent Application must contain all technical information regarding invention
- Territorial Rights – generally, exclusive right only applicable in the country/region where patent filed or granted
- Term of Patent: Generally, 20 years from the date of filing application

# PATENTS – RECENT DEVELOPMENTS

- Patent Amendment Rules, 2016
- 458 new Patent Examiners appointed
- E-filing portal
- Reduction in time for filing response from 12 months to 6 months
- Expedited patent examination – on request

# PATENTS – RECENT DEVELOPMENTS

- According to the Rules, an applicant may claim refund of 90% of fees paid for request for examination/expedited examination, by filing a request for withdrawal of an application before the issuance of First Examination Report.
- Benefits for start-ups – conducive business environment & promoting patent initiative
- Hearings may now be held through video conferencing or audio-visual communication
- Reduction in time period for filing response to FER-6 months





# DESIGNS

- Features of shape, configuration, pattern, ornament, composition – lines or colours
- Applied to any article- two dimensional, three dimensional – by industrial process
- Judged solely by the eye
- Registered proprietor – exclusive right to apply the design to article in the class in which the design is registered – can sue for infringement
- Right to License or sell as legal property – for consideration/royalty
- Artistic works u/s 2(c) of Copyright Act, 1957 – cant be registered as Designs



# Designs – Recent developments

YEAR	2002-2003	2013-2014	2014-2015	2015-2016 Up to Dec. 2015
FILED	3,124	8,533	9,327	8,035
EXAMINED	3,124	7,281	7,459	5,589
REGISTERED	2,364	7,178	7,147	5,972

**Annual Report 2015-2016: Govt. of India, Ministry of  
Commerce & Industry, Dept. of Industrial Policy &  
Promotion**

# GEOGRAPHICAL INDICATION

- GI registration provides legal protection to goods in national and international markets
- Prevents unauthorized use of the GI and gives the right to sue for infringement
- Legal protection promotes exports and provides financial benefits
- Term: 10 years – can be renewed



# DARJEELING TEA – GI

*...the champagne of teas*

- ❖ 87 Tea Estates – more than 1 lakh workers – 8 to 9 million kgs produced every year – 70% exported
- ❖ Well-known for flavour and quality – recognition all over the world
  - ❖ Quality, reputation and characteristics – attributable to Geographic Origin – cannot be replicated anywhere else



1986 – Darjeeling logo created and registered in various countries including UK, USA, Canada

1999 – Darjeeling certified TM Protection Scheme

2004 – Registered as GI

Various Legal victories due to Registration as GI

# KASHMIR PASHMINA

**Known all over the world for its soft, strong, light texture & excellent insulation**

**Handwoven Pashmina Shawls of Kashmir – accredited with GI mark in 2008**

**Mark imprinted in the form of a label – assurance of testing and quality**

**Done to restore the Handicrafts industry in Kashmir and the economic prosperity of artisans**



# PLANT VARIETIES and farmers rights

- Act - Authority set up to promote new varieties of plants and protecting the same – along with the rights of the farmers/breeders
- Term: For trees and vines - 18 years, For other crops - 15 years, For extant varieties - 15 years
- Infringement of any right under the PV Act attracts both Civil and Criminal action
- Infringement: producing, selling, importing, exporting any variety without the permission of the owner or using of a denomination which is similar to a registered denomination- likely to confuse
- National Gene Fund, Benefit Sharing




# INJUNCTIONS

- IPR violations online have created several difficulties for the enforcement of intellectual property rights.

- Problems such as anonymity and change of URLs have been sought to be dealt with through various kinds of injunctions.

product is counterfeit

VI Creative India Innovative India

 सत्यमेव जयते

## Online Copyright Piracy: Enforcement Issues

There are a number of intricacies involved in taking enforcement action against online copyright piracy

territorial limitations


Anonymity

**The Online Piracy Puzzle**

Change of URLs

Statutory Safe Harbors

Activate Windows  
Go to PC settings to activate Windows

 CIPAM  
Creative India Innovative India

CIPAM working closely with NIXI to combat piracy on .IN domain

# Intellectual Property and Competition Law

- The debate between IP and Competition law is a delicate balance
- Recently, the interplay between IP and Competition Law has been discussed in several cases –
  - SEP cases (FRAND licensing)
  - Copyright cases (JCB, T-Series)
  - Monsanto (Seeds)
  - Automobile parts (some copyright issues, confidential information)
  - SabMiller (Franchising)
  - Microsoft (Copyright licensing)
- Issue of jurisdiction arises when CCI is knocked at for overlapping issues

# TRIPS & Multilateralism

- Till the 1980s IPR laws were localised and territorial
- Changed with enactment of TRIPS agreement
- Multilateral agreement with more than 180 countries as members of the WTO
- From 1990s till 2015 all countries changed and adapted to TRIPs



# Multilateralism to Bilateralism

- In the last five years trend is to withdraw from multilateralism
- Move towards bilateralism
- National interest is paramount
- MAKE IN INDIA, MAKE AMERICA GREAT AGAIN – Political messages

# Post TRIPS

- Measures of Protectionism
- Climate deal – withdrawn
- UNESCO – withdrawn
- Build a wall
- So are we now seeing an age of more Bilateral rather than multilateral agreements



OR



# The B.T Cotton dispute Monsanto Technology v. Nuziveedu Seeds



- Monsanto entered into 'sub-licensing agreements' with Nuziveedu Seeds granting sub-licensees non-exclusive, non-transferable right, to use Monsanto Technology's patented technology to produce, sell Genetically Modified Hybrid Cotton Planting Seeds within the territory
- Sub-licensee of Monsanto for more than 12 years, in 2015, the Sub-Licensees ceased payment of its trait fees - MMB, the sub-licensor, terminated the agreements -called upon the sub-licensees to abide with its post-termination obligation's.
- Monsanto Technology, patent holder, filed injunction suit before the DHC restraining sub-licensees from illegally manufacturing and marketing Genetically Modified Hybrid Cotton Planting Seed utilising Plaintiff' patented technology sold under the trade marks BOLLGARD/BG and BOLLGARD-II/BG-II

# The B.T Cotton dispute

## Monsanto Technology v. Nuziveedu Seeds

- **PROCEEDINGS BEFORE THE HON'BLE DELHI HIGH COURT**

Directed

- The Defendants (Sub-licensees) pay the outstanding royalty amount,
  - secure the disputed amount by way of corporate indemnity bonds,
  - a cap on the total number of seeds that the Defendants may be entitled to sell;
1. Monsanto's endeavour to protect its IP rights, juxtaposed by the government policies and regulations attempting to curtail the right of Monsanto to levy its chosen trait fees and some of which challenged before the various High Courts.
  2. New controversy with the Agriculture Ministry vying for a change in the way seed companies and seed-technology companies such as Monsanto share royalty, technology and determine the price as which farmers buy cotton seed. Different arms of government are split over whether seed tech companies have the right or are obliged to license their technology to seed companies on request.

# The B.T Cotton dispute

## Monsanto Technology v. Nuziveedu Seeds

- Various State Government notifications affecting rights of a patent holder as they have sought to fix not only the MSP of cotton but also the trait value being charged by the technology provider.
- notifications are : -
  1. The Gujarat Cotton Seeds Act;
  2. The Andhra Pradesh Cotton Seeds Act;
  3. The Maharashtra Cotton Seeds Act;
  4. The Cotton Seeds Price (Control) Order, 2015 which led to the May 18, 2016 notification
- The aforesaid notifications were challenged

# The B.T Cotton dispute

## Monsanto Technology v. Nuziveedu Seeds

- **CENTRAL GOVERNMENT NOTIFICATION DATED MAY 18, 2016**
- The notification is based on the following premise: -
- *“And whereas, even though biotechnology inventions are patentable, once the GM Traits developed through biotechnology are transferred into a variety (“transgenic variety”), the transgenic variety per se cannot be patented; the seeds carrying such trait also cannot be patented and hence, the plant varieties including transgenic varieties carrying the GM Traits can be protected only under the Protection of Plant varieties and Farmer’s Rights Act, 2001”*
- ...
- *“And whereas, based on the existing intellectual property rights regime for biotechnology, plants and varieties in the seed industry, it is felt necessary to prescribe the licensing guidelines so that all seed companies have access to the GM Traits without any restraint and at the same time biotech trait development is adequately rewarded under the fair, reasonable and non-discriminative mechanism (FRAND mechanism);”*

## The B.T Cotton dispute Monsanto Technology v. Nuziveedu Seeds

The notification laid down the following guidelines: -

- access to the GM Trait shall not to be a barrier for entering the market by an eligible seed company.
- Licensor shall not refuse grant of a license to any eligible seed company fulfilling the requisite criteria.
- Licensee (aggrieved by denial of GM Trait license by a Licensor),can make an appeal to the Controller who shall have powers to issue necessary directions to the concerned party to ensure non-discriminative licensing so as to encourage competition
- Central Government to fix “Trait Value” shall have regard to the efficacy of the GM Trait to the farmers, the reward and return on investment already made by the concerned proprietor or as the case may be, the authorized user of the GM Technology used for developing GM Trait and the applicable ceiling limits on royalty collections prescribed, if any, by regulations and press notes issued under the Foreign Exchange Management Act, 1999-
- shall also consider factors like the year of patenting and commercialization of the trait in India, efficacy of trait, gradual reduction in trait value from the year of commercial use in India

For a new GM Trait, commercialized after this notification, the maximum trait Value may be up to 10% of Maximum Sale Price (MSP) of GM cotton seeds as fixed by the Central Government under the said Order every year, for the initial period of five years from commercialization. From the sixth year onwards, it shall taper down every year @ 10% of initial trait value as above fixed under the Order.

**The said notification was rescinded *vide* notification dated May 24, 2016**

# Monsanto v Nuziveedu

- The Supreme Court set aside a Delhi High Court division bench order that said Monsanto's patent over Bt cotton was not valid and enforceable in India.
- The 2018 division bench's judgment overruled a single-judge order issued in 2017. The division bench held that Nuziveedu Seeds, a Hyderabad-based company, had not infringed on Monsanto's patent by selling the specialised seeds.
- The Supreme Court said the division bench ought to have "confined its adjudication to the question whether grant of injunction was justified or unjustified in the facts and circumstances of the case".
- The suit involved complicated mixed questions of law and facts with regard to patentability and exclusion of patent which could be examined in the suit on basis of evidence.
- Before a patent is revoked, Section 64 of the Patents Act and the Civil Procedure Code require consideration of the claims in a suit and the counter claims, as well as the examination of expert witnesses and inspection of documents.



- *“We are therefore satisfied that the Division Bench ought not to have disposed of the suit in a summary manner by relying on documents only, extracted from the public domain, and not even filed as exhibits in the suit, much less examination of expert witnesses, in the facts of the present case. There is no gain saying that the issues raised were complicated requiring technological and expert evidence with regard to issues of chemical process, biochemical, biotechnical and microbiological processes and more importantly whether the nucleic acid sequence trait once inserted could be removed from that variety or not and whether the patented DNA sequence was a plant or a part of a plant etc. are again all matters which were required to be considered at the final hearing of the suit.”*

- *“The Division Bench ought to have confined itself to examination of the validity of the order of injunction granted by the learned Single Judge only. But we are not inclined to remand the matter for that purpose to the Division Bench as we are satisfied in the facts and circumstances of the case that the nature of the injunctive relief granted by the Single Judge was in order and merits no interference during the pendency of the suit,”*
- Setting aside the order of the division bench, the Supreme Court restored the single judge’s March 2017 order. *“The suit is remanded to the learned Single Judge for disposal in accordance with law. In view of the importance of the question involved, we expect the parties to cooperate and facilitate the learned Single Judge in early disposal of the suit,”*

# TRANSNATIONAL NATURE OF IP



- Earlier conflicts between nations raged on the basis of territory, sovereignty, etc.;
- However, with the success of diplomatic endeavours such as the setting up of the United Nations and the World Trade Organisation;
- Now, “wars” are fought on trade related issues, economic issues, imposition of tariffs, etc.
- We can call this SOFT WAR.
- Biggest weapons in these SOFT WARS are the size of the market, human resource potential, and Intellectual Property.

# TRANSNATIONAL NATURE OF IP

- What India lacks is cutting-edge intellectual property, though it is up and coming now;
- Intellectual Property is the greatest asset that one can possess;
- IP conflicts can often lead to breakdown of negotiations of Free-Trade Agreements and Bilateral Investment Treaties;
- IP also affect multilateral negotiations on topics such as Data Protection and Data exclusivity;
- There are challenges being faced to balance the rights of the owners of IP, Ecommerce websites, and the consumer

# COOPERATION AMONGST COUNTRIES

- Thus, there is a greater need to understand the dynamics and potential of each country in IP.
- A robust IP system can be put in place in the following manner:
  - Creation of joint policy committees to build consensus;
  - Hub to be created for exchange of best practices in IP litigation across nations;
  - Neutral forum to debate contentious IP issues, that pervade across boundaries;

# COOPERATION AMONGST COUNTRIES

- Technology licensing – A forum needs to be created for exchange of technology by well-negotiated contracts;
- Discussion on taxation and tariffication needs to be had;
- Interaction between academic institutions and policy/research bodies;
- Collection of data;
- Publication of reports



# OTHER ISSUES

- The other potential issues that could come up for consideration of the Courts in India are:
  - Source code copyright infringement cases;
  - Cases of infringement based on look and feel of an app or a website;
  - Jurisdictional issues emanating from extra-territorial nature of the internet;
  - Development and rights in the technology based on gestures;
  - Licensing of latest patented technology and negotiation of FRAND rates;

# Way forward

- Continue the streamlining of registration processes;
- Financial incentives for SMEs, Start-Ups and Women entrepreneurs;
- Provide Helpdesks in all the IP offices professionally manned;
- Use Alternative Dispute resolution for mediating IP disputes even in the IPOs – for eg., Opposition matters;
- Scientific Advisers – Update the list and make more space for even those in the private sector including women;



# INDIA & IP

- India has evolved a robust jurisprudence in IP – while balancing the social, cultural ethos of the people and the economic position of the country;
- Innovation and Access are both important;
- India ought to contribute in evolution of future Standards – sensitization is needed at all levels;
- In IP for the large masses – more needs to be done for eg., in areas of agriculture, storage of food, crops and transportation. More technologies are needed;
- Traditional products from India – bigger markets ought to be created.

The  
INTELLECTUAL PROPERTY  
APPELLATE BOARD  
(‘IPAB’)

# CURRENT STATUS

- The **IPAB** is a specialized forum which was constituted under the Trade Marks Act and the Patents Act in order to ensure expeditious disposals of intellectual property matters.
- As of today, there are no judicial members functioning in the IPAB. There is also only one technical member relating to Plant Varieties Protection.

S.No.	Subject of Cases	No. of Cases pending as on 23/05/19
1.	Trade Mark	2626
2.	Patent	617
3.	Geographical Indication	01
4.	Copyright	691

Source: <https://ficpi.org/news/indian-intellectual-property-appellate-board>

- In *Novartis AG v. UOI & Ors.*, [W.P.(C) 11346/2019, decided on 23rd October, 2019], it was observed that more than 16 years have passed since the IPAB was constituted, however, the process of functioning of the IPAB has still not been streamlined. In view of this, the Id. ASG was directed to take instructions on the following:
  - i) Total number of cases pending before the IPAB;
  - ii) Conditions of appointment and Status of appointment of Chairperson of IPAB;
  - iii) Status of appointment of technical members of IPAB;
  - iv) Financial autonomy given to IPAB;
  - v) Recruitment of staff of IPAB and processes thereof;

# Importance of IP

- IPR laws are unlike other branches of law – Civil, criminal, taxation, etc.,
- They impact negotiation of treaties
- They could invite sanctions – US 301 Reports
- Judicial decisions are usually cited in such reports to either commend or criticise a country
- While courts ought to be immune to such reports – awareness of such reports is essential to know the importance and significance of this branch of law
- Eg. DU Photocopying case, Roche Vs. Cipla, Novartis Vs. UOI

# Importance of IP

- Negotiation of trade agreements are held up because of IPR issues – Eg. Compulsory licensing, Data Exclusivity, Data protection
- Sec. 3(d) in the Patents Act has been a sore point
- Sale of counterfeits on e-commerce platforms
- Parallel imports – Samsung

# Importance of IP

- IP litigation is on the rise in India
- In Delhi alone 600-700 fresh IPR suits are filed every year in the High Court
- In the District courts approx. 1500-1800 fresh suits are filed every year
- The number of suits are increasing every year
- India has developed robust jurisprudence in this field – matches global standards
- Issues are complex and arise contemporaneously
- IP consciousness is essential at all levels of the judiciary.