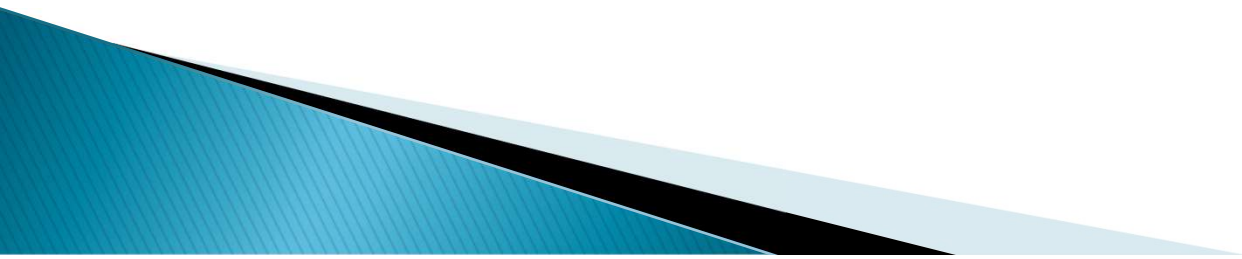


LAW OF INDUSTRIAL AND INTELLECTUAL PROPERTY

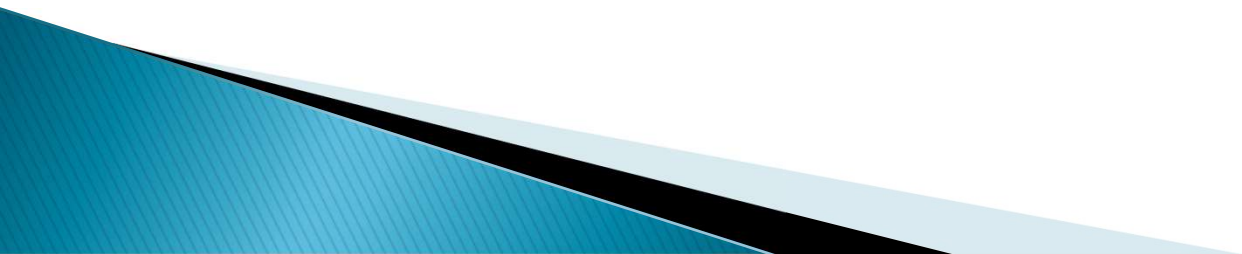
ASST. PROF SHRADDHA S CHOUDHARY
DAYANAND COLLEGE OF LAW, LATUR

1. INTRODUCTORY

- ▶ **Meaning of Property –**
 - ▶ Property simply means a bundle of rights & that any distribution of rights & privileges among persons with respect to things can be dignified with the label of property.
 - ▶ Property is any physical or virtual entity that is owned by an individual or jointly by a group of individuals.
 - ▶ A thing or things belonging to someone.
- 

▶ **Traditional Principles of Property –**

- I) Control over the use of the property.
- II) Right to take any benefit from the property.
- III) Right to transfer or sell the property.
- IV) Right to exclude others from the property.



▶ **Kinds of Property –**

▶ Generally, there are 3 kinds of Properties –

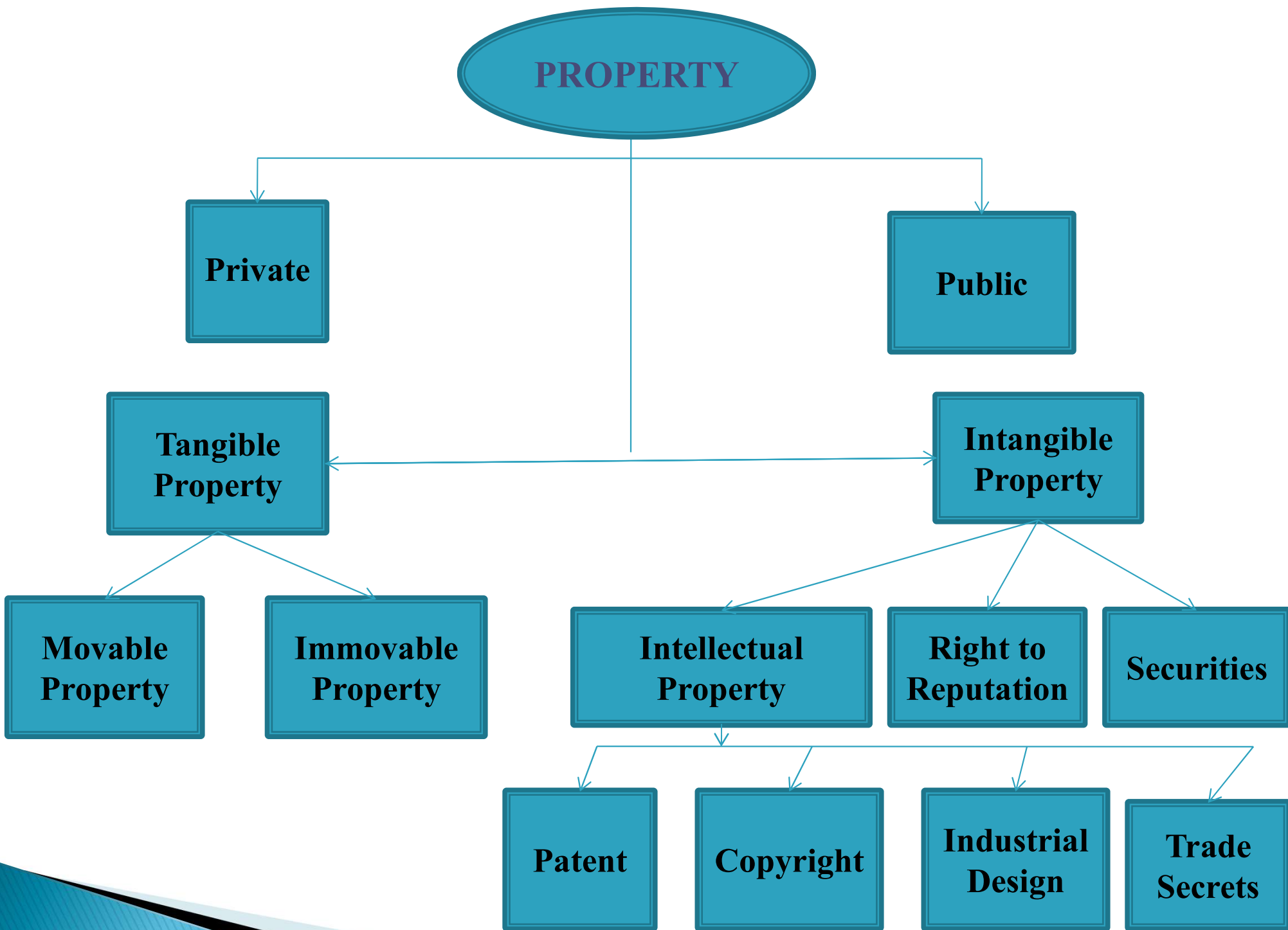
I) Movable Property – Eg. Wrist watch, car

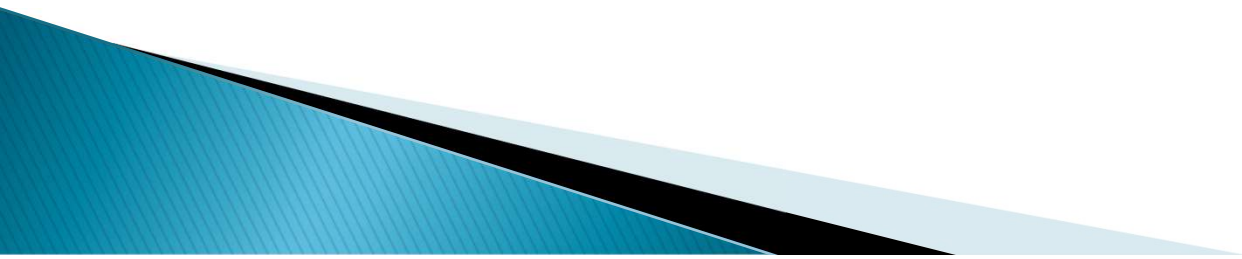
II) Immovable Property – Eg. Land, house

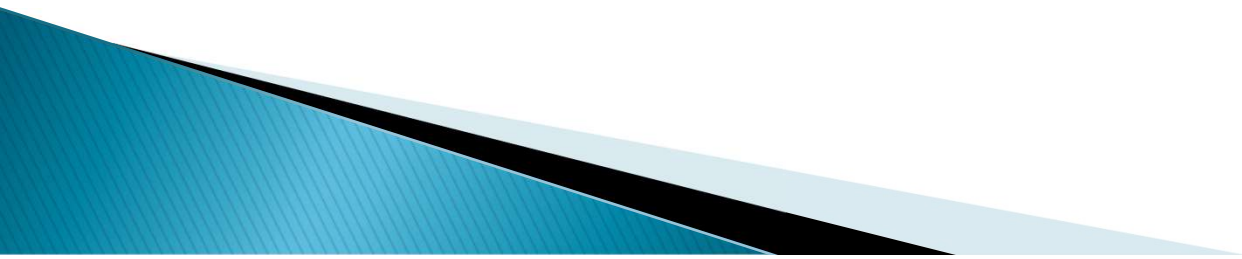
III) Intellectual Property – Eg. Copyright, patent, trademark etc.

▶ The movable & immovable property are also known as “**Corporeal or Tangible property**”. These have bodily existence. These can be seen or touched. These can be sensed by any of the five physical senses.





- ▶ **Meaning of Intellectual Property –**
 - ▶ Only human beings have capacity to create property by using their intellect.
 - ▶ Thus any property created by human being can be said to be ‘Intellectual Property’.
 - ▶ In its broadest sense, all rights resulting from intellectual activity in the **industrial, scientific, literary or artistic fields** are Intellectual Property.
- 

- ▶ Intellectual property law confers property rights on intangibles.
 - ▶ The essential characteristic of intellectual property is the exclusive use of mind in its creation to the exclusion of any assistance of material objects.
 - ▶ Rightly, Property that is created by man making use of nothing but his intellect.
 - ▶ Eg. Literary work, designs, trade marks, patents etc.
- 

- ▶ **Definition of Intellectual Property –**
- ▶ Intellectual property is a creation of a man's intellect without assistance from physical objects, consisting of reproducible set of information such as musical, literary, and artistic work; inventions, symbols, names, images and designs used in commercial & industrial field.
- ▶ **Intellectual Property** is that property which is created by human intelligence or mental labour and is mostly in intangible form even though it can be converted into corporeal form.
- ▶ **Prof. Niblett** – Intellectual property is the most basic form of property as a man uses nothing to produce it other than his mind.

▶ **Scope of Intellectual Property Rights –**

- ▶ A/c to the definition in WIPO, intellectual property shall include the rights relating to –

I) Literary, artistic & scientific works

II) Performances of performing artists, phonograms & broadcasts

III) Inventions in all fields of human endeavor

IV) Scientific discoveries

V) Industrial designs

VI) Trademarks, service marks & commercial names & designations

VII) Protection against unfair competition & all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

- ▶ **Nature / Characteristics / Ingredients / Salient Features/Essentials of Intellectual Property –**
- ▶ **1. Incorporeal Property –**
- ▶ It is non-corporeal.
- ▶ It is not tangible.
- ▶ It can not be perceived by any of the senses.
- ▶ Its physical possession is not possible. One may acquire possession of copyrighted/patented work but that does not mean acquisition of copyright/patent in the copy of the work.
- ▶ **Eg.** A person purchased a book. He may lawfully read it, lent it, gift it or burn it but he can not translate it or convert it into another form or make it's cinematograph film without lawful authority.
- ▶ Ownership of intellectual property is represented by authorship of the work not by it's possession.

▶ **2. It is Indestructible –**

- ▶ Every conventional property is capable of destruction. (Eg. Chair, tree)
- ▶ Intellectual property is intangible so it is indestructible. The space occupied by it is beyond destruction.

▶ **3. Intellectual Property Rights are Negative –**

- ▶ The owner of intellectual property has a right to prevent all other persons from infringing his right in it & all other persons are under a corresponding duty to refrain from violating such rights.
- ▶ The object of intellectual property law is to prevent the unauthorized use of intellectual property by persons other than the owner.
- ▶ **Eg.** Trademark of a company.

▶ **4. Original Form of Property –**

- ▶ A work to be called as an intellectual property must not be copied or duplicated from the other work. It should be the brainchild of its owner. The work may originate from the same idea but it should be expressed in different manner.

▶ **Eg.** Patent.

▶ **5. Rights in Intellectual Property for Limited Duration –**

- ▶ The intellectual property laws permit the exploitation of intellectual property for limited duration.
 - ▶ Unlike conventional property, the duration to exploit intellectual property is specific.
 - ▶ It is for to maintain balance between public & private interest.
 - ▶ **Eg.** Patent is granted for 20 years.
- 

▶ **6. Rights in Intellectual Property are Qualified –**

- ▶ The doctrine of eminent domain applies to intellectual property.
- ▶ Eminent domain is the sovereign power vested in the State to acquire private property for the public use. The ultimate control over the intellectual property vests in the State. In public interest, the State may acquire intellectual property from its owner & restrict its enjoyment.

▶ **7. It is Capable of Use by More Than One Person –**

- ▶ Subject matter of intellectual property can be used by number of persons at a time.
- ▶ A cinematograph or piece of music or literary work may be enjoyed by many at a time.
- ▶ This feature is not available in conventional property.
- ▶ **Eg.** Use of a motorcycle.

▶ **8. Exploitation of Rights in Intellectual Property Obligatory-**

- ▶ Intellectual property laws ensure that the rights granted under it shall be properly exploited by its owner. It forces the owner to grant licenses for such exploitation.
 - ▶ Under certain circumstances, compulsory licenses are granted by proper authorities in public interest & emergencies.
 - ▶ International Conventions such as Paris Convention, TRIPS etc. speaks about granting of compulsory licenses for exploitation of such rights.
- 

- **9. Intellectual Property Laws Territorial in Application but Regulated by International Conventions –**

- ▶ Intellectual property laws are territorial statutes. These are applicable within the country legislating it.
 - ▶ These laws are regulated by **International Conventions such as WIPO, TRIPS** etc. This is because of the rapid progress in printing technology & improvement in the means of communication technology which led the subject matter of intellectual property to be easily pirated. Ultimately, it resulted into forcing the civilized nations to devise means for regulating intellectual property laws at international level.
- 

- ▶ **Competing Rationale of Legal Regime for Protection of Intellectual Property –**
 - ▶ Every human effort which promote economic, social, scientific & cultural development of society must be encouraged.
 - ▶ The creator must be suitably rewarded by affording legal protection to his intellectual creation.
 - ▶ Thus, the intellectual property rights are the **legal rights governing the use of creations by human minds.**
 - ▶ The intellectual property law regulate the **creation, use & exploitation of mental or creative labour.**
- 

- ▶ The **conventional property laws** such as Transfer of Property Act, Land Laws etc. are **not sufficient** to protect the rights of the creator of intellectual property. Hence special kind of law is needed that guarantees sufficient protection to their creations. Such laws are known as intellectual property laws.



- ▶ It is necessary to protect the intellectual property because it is a powerful tool of economic growth inspiring creativity & innovation, generating the revenue, promoting investment, enhancing culture, preventing brain-drain & nurturing overall economic health. It affects virtually all aspects of economic & cultural life. It has become an important component of business transactions.



- ▶ Intellectual property is intangible in nature. It can not be possessed & be taken in custody.
 - ▶ It prevents third parties from violating the rights of the copyright owner.
 - ▶ This is a branch of law which protects some of the finer manifestations of human achievement.
 - ▶ For the protection of rights of owner, **States** have enacted various laws on this subject.
 - ▶ These laws afford **reasonable protection** to the owner & prevent unjust encroachment over such rights of the owner.
- 

- ▶ The society as a whole gets benefitted by the intellectual property & it stimulates further creativity & competition in the public interest.
 - ▶ Intellectual property law assures **healthy competition** in two ways –
 - ▶ **I)** It guarantees the holder IPRs monopoly over commercial exploitation of his right for a certain period &
 - ▶ **II)** Infringement of his rights is met with stringent penalty.
 - ▶ Eg. Thomas Alwa Edison – Invention of Bulb.
 - ▶ IPR should be protected with the help of special laws.
- 

- ▶ **Main Forms of Intellectual Property & Competing Rationale For Protection Of Various Intellectual Properties -**
- ▶ Following are some of the main forms of Intellectual Property –
 - A) Copyright**
 - B) Trademarks**
 - C) Patents**
 - D) Designs**



▶ **A) Copyright –**

- ▶ Copyright The subject matters of copyright are original creations in **literature, dramatic, musical & artistic works**. It also extends to computer programme, cinematograph film & sound recording. (**The Copyright Act, 1957**).
- ▶ The copyright subsists in any original work mentioned above from the moment of its publication during the lifetime of the author plus 60 years with certain exceptions.
- ▶ **Eg.** Novel – author.
- 

▶ **B) Trademark –**

- ▶ It is a **mark or symbol or image or sign etc.** by which the **goods of a trader or manufacturer or services of a service provider** are identified.
 - ▶ A trade mark is a symbol which is applied or attached to goods offered for sale in the market, so as to distinguish them from the similar goods.
 - ▶ **Eg.** B for Bajaj, R for Reliance etc. in unique shapes & designs.
 - ▶ The **Trade Marks Act, 1999** protects the rights of a registered trade mark owner & also prevents any infringement of his related rights.
- 

▶ **C) Patent –**

- ▶ A patent is a license given to the inventor to make exclusive use of his invention.
 - ▶ It is the protection assured by the State to use the invention in monopoly.
 - ▶ The invention may relate to a new product or an improvement of an existing product or a new process of manufacturing new products.
 - ▶ The rights in patent may be exploited by the patentee himself or he may assign or grant licenses in this regard.
 - ▶ The Patent Act, 1970 governs the law relating to patents in India.
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▶ **D) Designs –**

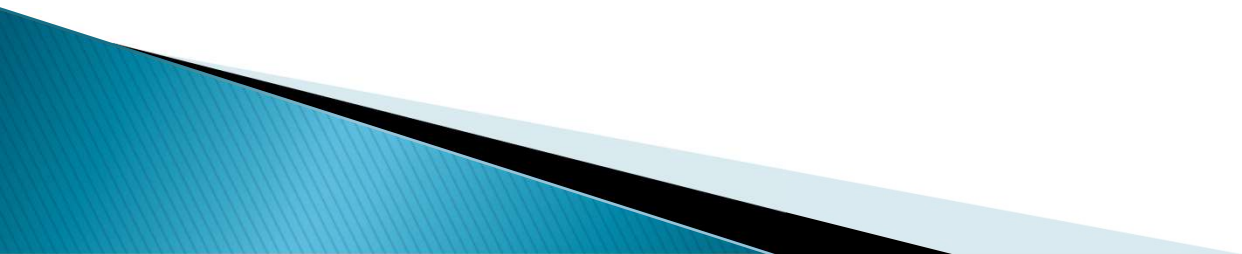
- ▶ A design is some **shape, configuration, pattern or ornamentation or composition of lines or colours applied to an article** in any form by any industrial process or means.
- ▶ A registered design can be exploited by assigning or licensing the rights to others capable of exploiting it on a royalty or lump sum basis.
- ▶ The law relating to designs is governed by the **Designs Act, 2000**.
- ▶ The registered owner of design has copyright in design registered for 10 years. Acquisition of copyright means that such owner is empowered to restrain the use of design by others.

Idea + Expression = Copyright

Idea + Innovation + Invention = Patent

Idea + Quality + Identity = Trademark

Idea + Appearance = Design



► **Object of Intellectual Property Law –**

The object of Intellectual Property Law is twofold –

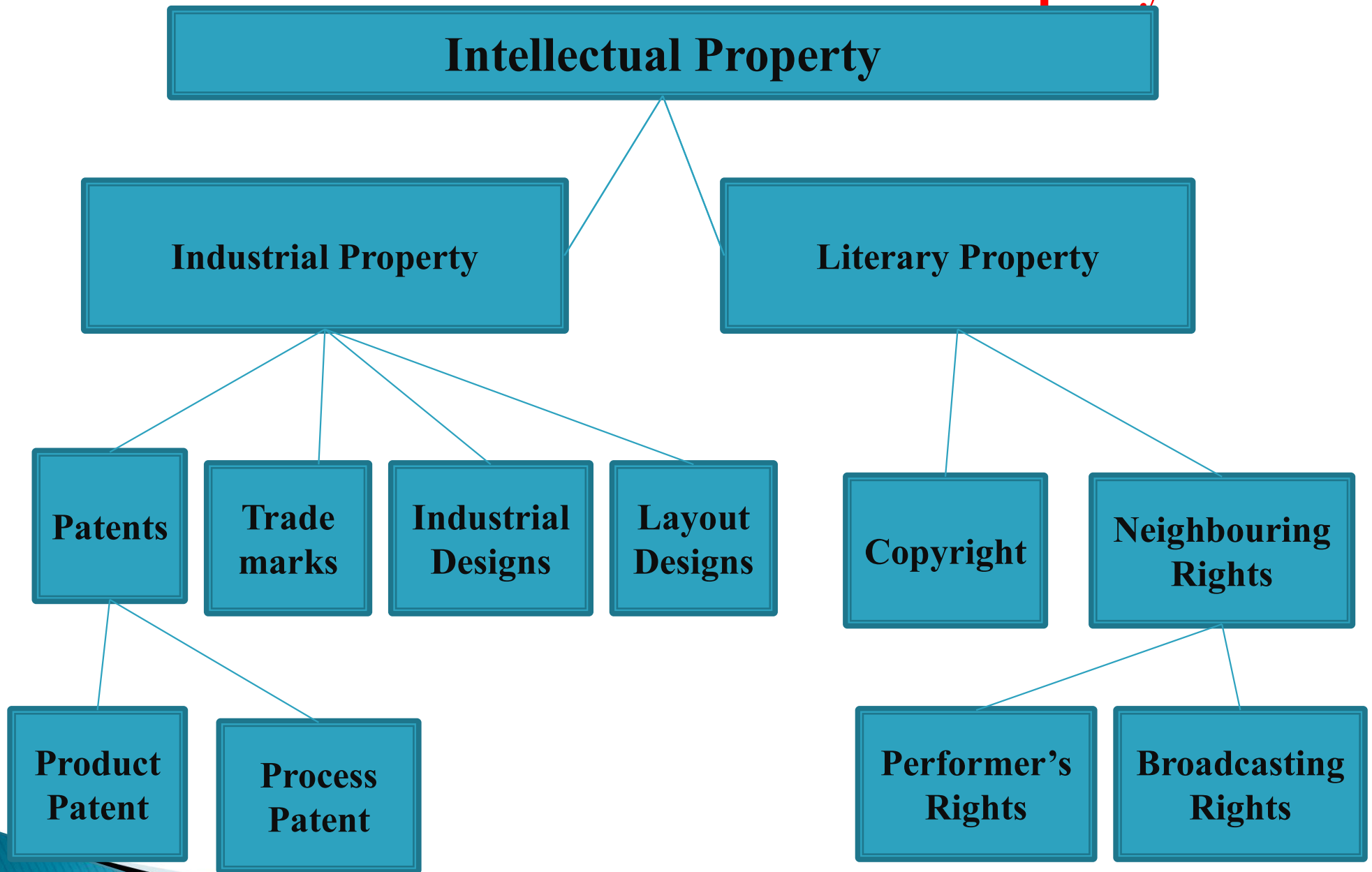
I) It protects the moral & economic rights & rights to reputation of creators & the rights of the public in access to those creations.

II) It promotes creativity & the dissemination & application of its results & encourages fair trading thereby contributing to economic & social development.



- ▶ **Kinds of Intellectual Property –**
 - ▶ **I) Copyright**
 - ▶ **II) Industrial Property –**
 - A) Patents
 - B) Industrial Designs
 - C) TM & GI
 - D) Trade Secrets
 - E) Plant Varieties
 - F) Layout Designs/ Integrated Circuits.
- 

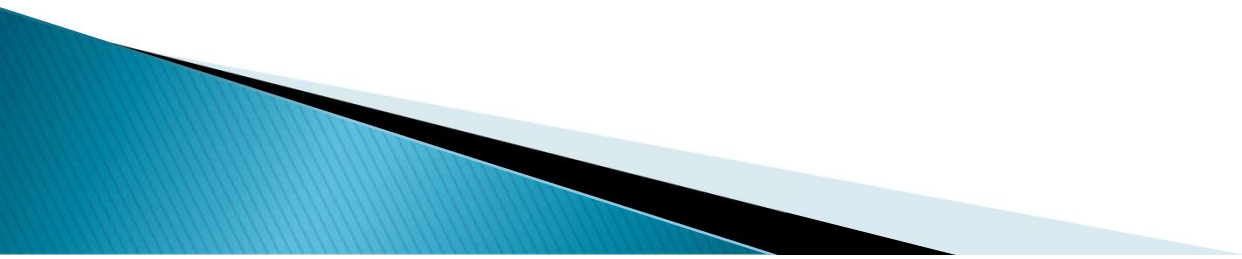
Classification of Intellectual Property



- ▶ **Some Important Concepts –**

- ▶ **I) Industrial Property –**

- ▶ Industrial property is sometimes generally misunderstood as denoting movable or immovable property used for industrial production.
 - ▶ However, it is a kind of intellectual property that relates to creations of human mind such as **inventions & industrial designs.**
 - ▶ Inventions are the new solutions to technical problems. Whereas industrial designs are aesthetic creations determining the characteristics of industrial products.
- 

- ▶ Additionally, industrial property includes trademarks, design marks, service marks, commercial names & designations & the protection against unfair competition.
 - ▶ The object of industrial property consists of signs transmitting information to consumers regarding products & services offered in the market . It also includes the protection against unauthorized use of such signs which is likely to misled consumers & misleading practices in general.
- 

- ▶ **According to Paris Convention**, the protection of industrial property has as its object –
 - I) patents
 - II) utility models
 - III) industrial designs
 - IV) trade mark
 - V) service mark
 - VI) trade names
 - VII) indications of source or
 - VIII) appellations of origin &
 - IX) the repression of unfair competition.
- 

▶ **II) Industrial Designs –**

- ▶ Industrial design is the ornamental or aesthetic aspect of a useful article.
 - ▶ The ornamental aspect may consist of the shape and/or pattern and/or colour of the article.
 - ▶ The ornamental aspect may appeal to the sense of the sight.
 - ▶ The article must be reproducible by industrial means. If this element is missing, the creation will be art, the protection of which is assured by the copyright law rather than by a law of industrial property.
 - ▶ The industrial design is protected only if it is original & new.
- 

- ▶ It is generally protected against unauthorized copying or imitation. The protection is generally for **5,10 or 15 years** depending upon its nature. The document that certifies the protection of an industrial design is called a **Registration Certificate or a Patent**.
- ▶ With the development in the field of design art, the consumers have become more & more interested in the combination of utility & pleasing aesthetic appearance in the articles they buy. It results in an increasing investment by manufacturers in design development & in a corresponding necessity to protect the result of their creative work through the registration of the relevant designs.

▶ **III) Trade Secrets –**

- ▶ Trade secret means an information having commercial value, which is not in public domain, and for which reasonable steps have been taken to maintain secrecy.
 - ▶ It is an undisclosed information by any company, unit, industry etc.
 - ▶ An information to be called as trade secret, it must satisfy **three essential conditions** namely-
 - A)** Such information must be **secret** i.e. it must not be generally known or readily accessible to the persons who generally deals within related work.
 - B)** The information must have **commercial value**. &
 - C)** The information must be **subject of reasonable steps** by its owners to keep it secret.
- 

- ▶ Trade secret may include a formula, pattern, compilation, device, method, technique or process, data or information relating to a work in industry.
- ▶ Trade secret plays a major role in protecting innovations & establishing rights to use new technology.
- ▶ In India, there is no enactment or policy framework for the protection of trade secrets. Indian courts used the provisions of other laws to deal with this new aspect.
- ▶ These laws are –
 - I) Copyright Act, 1957
 - II) IPC
 - III) CrPC
 - IV) Designs Act, 2000
 - V) The Information & Technology Act, 2000 etc.

COPYRIGHT	PATENTS	DESIGNS	TRADEMARKS
1. RIGHT TO COPY & REPRODUCE THE WORK ACQUIRED BY ITS CREATOR BY REASON OF ITS CREATION.	1. MONOPOLY GRANTED BY STATE TO INVENTOR TO EXPLOIT HIS INVENTION FOR A FIXED DURATION.	1. THE FEATURE OF SHAPE, CONFIGURATION, PATTERN, ORNAMENTOR COMPOSITION OF COLOURS APPLIED TO ANY ARTICLE BY ANY INDUSTRIAL PROCESS OR MEANS, MANNUAL, MECHANICAL OR CHEMICAL.	1. A MARK CAPABLE OF BEING REPRESENTED GRAPHICALLY & MAY INCLUDE SHAPE OF GOODS, THEIR PACKAGING & COMBINATION OF COLOURS.
2. IT EXISTS IN ORIGINAL LITERARY, DRAMATIC, MUSICAL, ARTISTIC WORKS, CINEMATOGRAPH FILMS & SOUND	2. IT PROTECTS IDEAS EXPRESSED AS AN INVENTION WHICH ARE NEW, ORIGINAL, NOVEL, NON-OBVIOUS & INDUSTRIALLY APPLICABLE.	2. IT PROTECTS NOVEL DESIGNS APPLIED TO PARTICULAR ARTICLES TO BE MANUFACTURED & MARKETED COMMERCIALY.	2. IT PROTECTS A WORD, NAME, SYMBOL OR DRAWING TO DISTINGUISH GOODS & SERVICES FROM THOSE OF OTHERS.

COPYRIGHT	PATENTS	DESIGNS	TRADEMARKS
3. SUBSISTS FOR LONGEST DURATION BY THE LAW.	3. SUBSISTS FOR 20 YEARS.	3. AT THE FIRST INSTANCE FOR 10 YEARS & EXTENDABLE BY ANOTHER 5 YEARS.	3. 10 YEARS FIXED DURATION PRESCRIBED & SHALL BE RENEWED AT FIXED INTERVALS.
4. HAS HIGHEST ENTERTAINMENT VALUE.	4. HAS INDUSTRIAL APPLICATION & BENEFITS TO LARGER NO. OF PEOPLES.	4. HAS ONLY AESTHETIC VALUE.	4. HAS COMMERCIAL APPLICATION & BENEFITS ONLY TO OWNER OF TRADE MARK.
5. REGISTRATION NOT REQUIRED.	5. REGISTRATION ESSENTIAL FOR CLAIMING RELIEF AGAINST INFRINGEMENT	5. REGISTRATION ESSENTIAL TO CLAIM PROTECTION UNDER DESIGNS ACT.	5. REGISTRATION IS ESSENTIAL TO CLAIM PROTECTION UNDER TRADEMARK LAW

COPYRIGHT	PATENTS	DESIGNS	TRADEMARKS
6. REPRESENTED IN BOTH AUDIO & VISUAL MEDIUM.	6. REFLECTS IN THE WORKING INVENTIONS.	6. VISUALLY REPRESENTED.	6. VISUALLY REPRESENTED.
7. PRIMARY OBJECT IS TO PROTECT THE FRUITS OF LABOUR OF COPYRIGHT OWNER.	7. TO PROTECT RIGHTS OF PATENTEE TO GAIN COMMERCIAL ADVANTAGE OF HIS WORK.	7. TO PROTECT INDUSTRIAL DESIGNS TO PROMOTE DESIGN ACTIVITY TO ENCOURAGE THE ELEMENT IN AN ARTICLE OF PRODUCTION.	7. TO DISTINGUISH PARTICULAR GOODS OR SERVICES FROM THOSE OF ANOTHER & TO PROTECT ITS OWNER.
8. COPYRIGHT ACT PROVIDES FOR GRANT OF COMPULSORY LICENCE IN LARGER PUBLIC INTEREST.	8. CONTROLLER IS EMPOWERED TO REVOKE PATENT & GRANT IT TO PERSON CAPBLE OF IT'S PROPER WORKING	8. NO PROVISION FOR GRANT OF COMPULSORY LICENCE OR COMPELLING PUBLICATION OR USE OF DESIGNS.	8. NO PROVISION IN THIS REGARD.
9. IT IS A BUNDLE OF RIGHTS THAT	9. IT IS A RIGHT TO PREVENT OTHERS	9. IT IS LIMITED TO RESTRAIN OTHERS	9. HONEST & CONCURRENT

▶ **Importance of Intellectual Property –**

▶ **1. Creativity & Innovation –**

- ▶ The law encourages the inventors & creators to invent or create new things. It offers protection to such owners. It also prohibits any kind of unfair encroachment over the rights of the owner. If encroachment is committed law affords protection. The law protects the reputation & honour of such authors or patentees. This gives feeling of safety in the minds of the authors or patentees.

▶ **2. Generation of Revenue –**

- ▶ Additional revenue is generated by offering the developed products to consumer. The money remains in circulation. The market remains alive. It certainly create revenue.

▶ **3. Investment –**

- ▶ Industrialists & manufacturers invest in countries where the monopoly rights granted under the laws are strictly enforced. The foreign investors are attracted to invest in such countries where the laws are strictly enforced & adequate protection is given to their work.

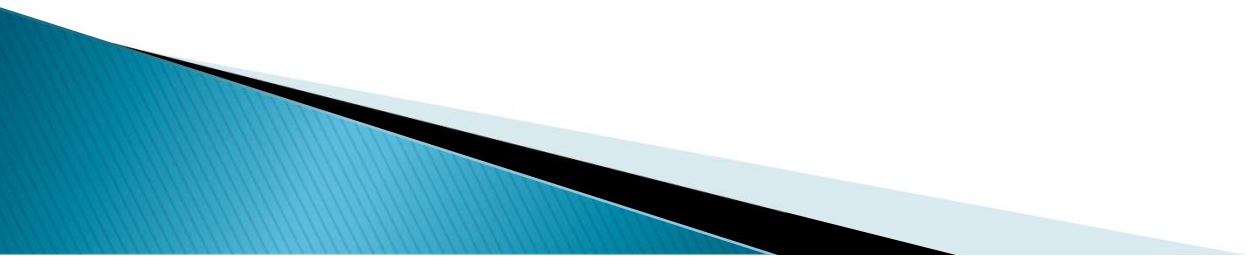
▶ **4. Enrichment of Culture –**

- ▶ Due to protection given by intellectual property laws, high quality work in literary, dramatic, musical, artistic, musical, cinematograph films & sound recording fields is created. This in terms enrich the culture of country.

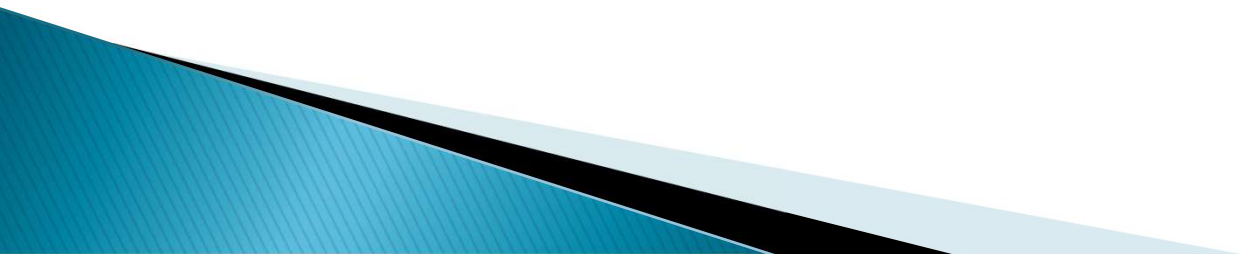
▶ **5. Discourages Brain-drain –**

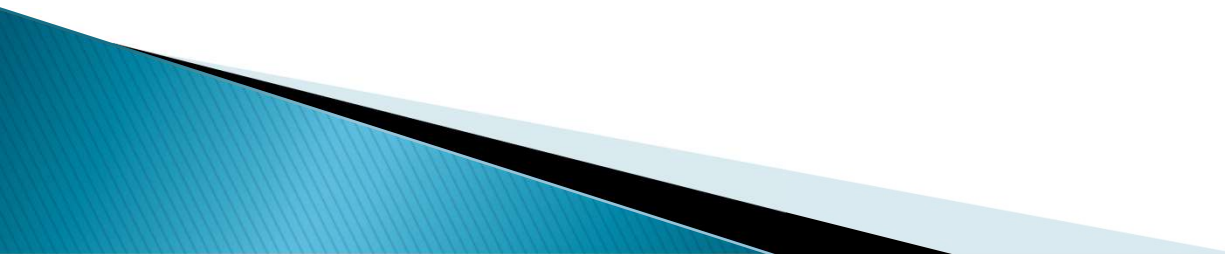
- ▶ Migration of scholars from one country to another is called as brain- drain. If the laws provide adequate protection to the authors of such work, the brain –drain of such peoples may be stopped.

Leading International Instruments Concerning IPR

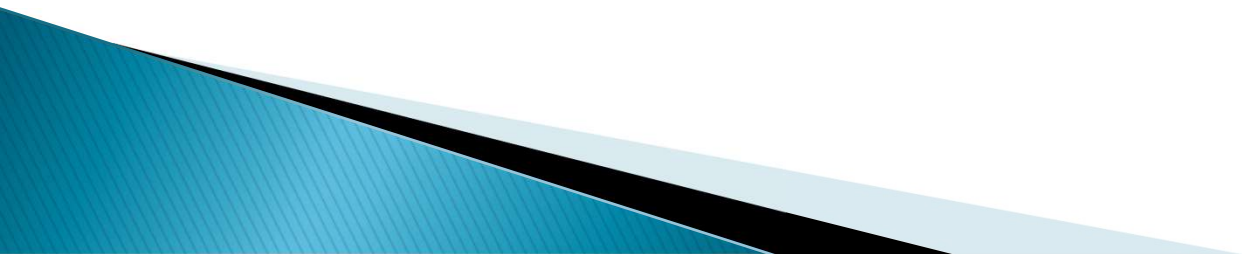
1. Berne Convention,
 2. Universal Copyright Convention,
 3. Paris Union
 4. TRIPS
 5. WIPO &
 6. UNESCO
- 

UDHR

- ▶ **Adopted by UNGA on 10th December 1948**
 - ▶ **The Declaration consists of 30 articles affirming an individual's rights which, although not legally binding in themselves, have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other laws.**
- 

- ▶ **The Declaration was the first step in the process of formulating the International Bill of Human Rights, which was completed in 1966, and came into force in 1976, after a sufficient number of countries had ratified them.**
 - ▶ **Article 27 of the Universal Declaration of Human Rights states that "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."**
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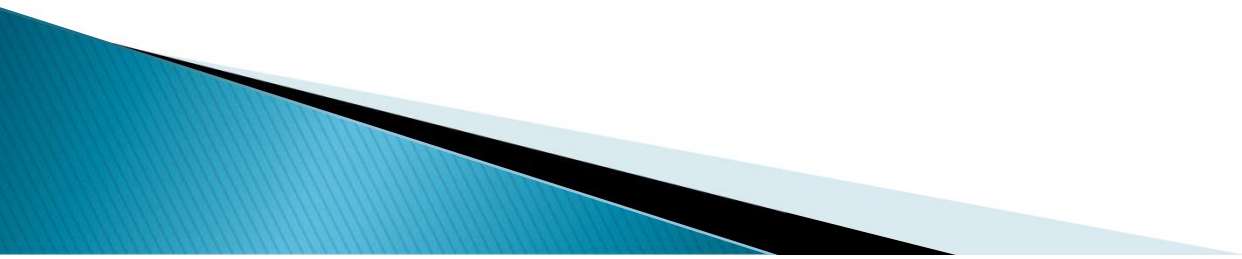
Paris Convention for protection of Industrial Property (1883)

- ▶ International exhibition of inventions held in 1873 at Vienna,
 - ▶ In which participation was hampered by the fact that many foreign visitors were not willing to exhibit their inventions at that exhibition in view of the inadequate legal protection offered to exhibited inventions.
- 

- ▶ **So, a Conference was convened in Paris in 1883. 11 States signed the Convention for the Protection of Industrial Property at the Conference and certain rules were formed:**
 - ▶ **National Treatment:** means that regarding protection of industrial Property, each country party to the convention must grant the same protection to nationals of the other member countries as it grants to its own nationals. (No Discrimination) (Article 2 and 3)
- 

- ▶ **Right of Priority:** If an industrial property right is filed by a given applicant in one of the member countries then the same applicant or his successor in title may file it in other member countries in a time period (6-12months) and it will be considered as filed on the same date as the first country.
 - ▶ **Independence of Patents:** If one country gives a patent or rejects a patent it does not mean that the patent will be accepted or rejected by the other country, any country has no influence over the fate of a patent in other country.
- 

Patent Co-operation Treaty - PCT (1970)

- ▶ Signed in Washington, United States.
 - ▶ Treaty for international co-operation in field of patents.
 - ▶ No concept of International Patents, all powers still reside with the countries
 - ▶ Complimentary Treaty to Paris Convention and is open to only those who are member of the Paris Convention.
- 

PCT establishes

- ▶ **1 An international system-Filing in a single Patent Office "receiving office with a single application "international application", in one language which will have effect in all countries party to the PCT.**
 - ▶ **2. International publication of International applications.**
 - ▶ **3. International preliminary examination of the application which gives the Patent office in the country a report containing opinion about the patentability of the Application.**
- 

Berne Convention for the Protection of Literary and Artistic Works (1886) (Modified at Paris in 1971)

- ▶ **The Berne Convention is one of the most important Convention in the field of **copyright**.**
 - ▶ **It deals with the protection of works & the rights of their authors.**
 - ▶ **An International Union for Protection of Literary & Artistic Works was established in **1886** at **Berne, Switzerland**.**
 - ▶ **It started functioning on **5th Dec. 1887**.**
 - ▶ **More than **177 States** have signed this Convention.**
- 

- ▶ It has **38 Articles**. It covers wide range of subjects dealing with literary & artistic works.
 - ▶ Aim was to "Protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works 3 Principles:
 - ▶ It has **three basic principles** & contains certain provisions. These three basic principles are –
 - ▶ **I) Principle of National Treatment** - Works created in one member country should be given equal protection in the other member country.
- 

- ▶ **II) Principle of Automatic Protection** – Protection must be given on fulfilling certain conditions in any member country.
 - ▶ **III) Principle of Independence of Protection** – If the protection is for longer term than the Convention & origin State, the contracting State may stop providing the protection to the said work.
 - ▶ This Convention recognized certain rights such as the right to translate, to perform in public, right to communicate in public, right to broadcast, right to make adaptations & arrangements, & certain moral rights.
 - ▶ India is a signatory of the Berne Convention since 1928.
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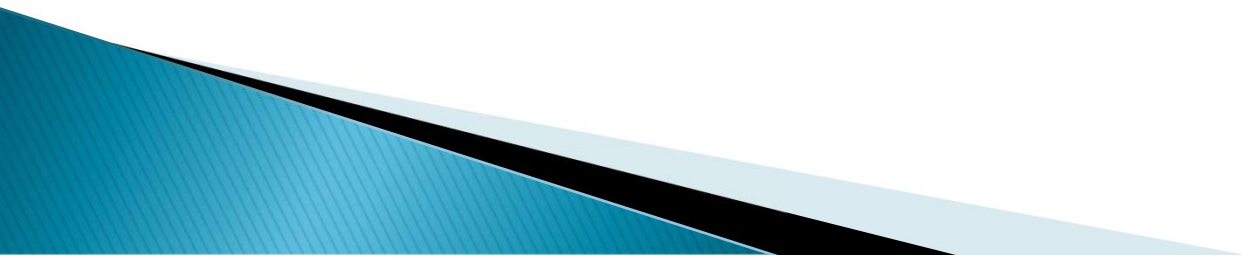
Concept of "Folklore"

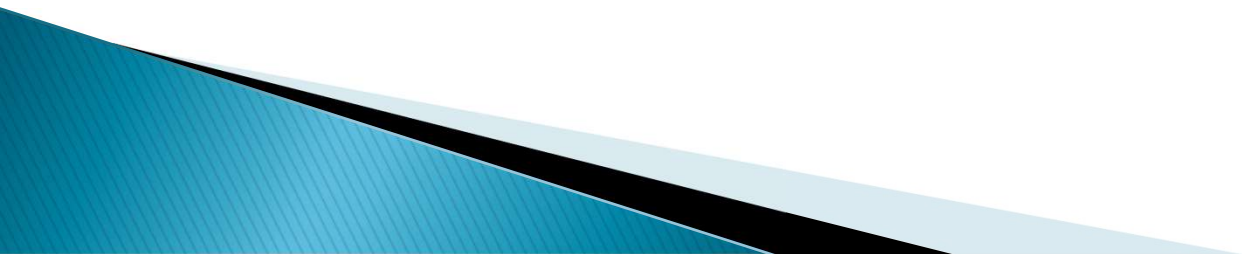
- ▶ **Though the word wasn't used but the convention gives the rights to the country if the author is unknown and there is a ground to presume that work originated from that country.**

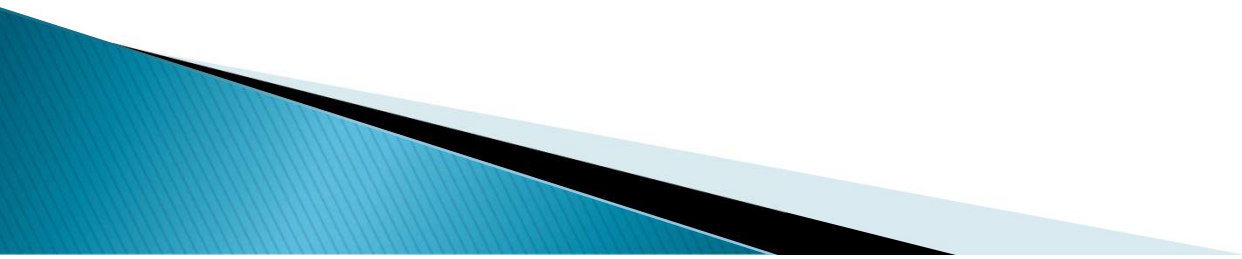


Universal Copyright Convention - UCC (1952)

- ▶ Adopted in Geneva, Switzerland
 - ▶ **2. Universal Copyright Convention (UCC)-**
 - ▶ The Universal Copyright Convention (UCC) was signed & entered into force on **Sept. 6, 1952** at **Geneva**. It was developed as an alternative to Berne Convention. It was entered into by the countries like USA, Soviet Union & China as they did not join the Berne Convention to allow these countries to participate in international agreement.
- 

- ▶ **Developed by UNESCO as an alternative to Berne Convention for states who didn't agree with Berne Convention but still wanted to be part of a multilateral copyright treaty.**
 - ▶ **The UCC is administered by the UNESCO of the UNO.**
 - ▶ **The basis of the UCC is the **National Treatment** & also the requirement of maintenance of specific **minimum legal standards** by each contracting State**
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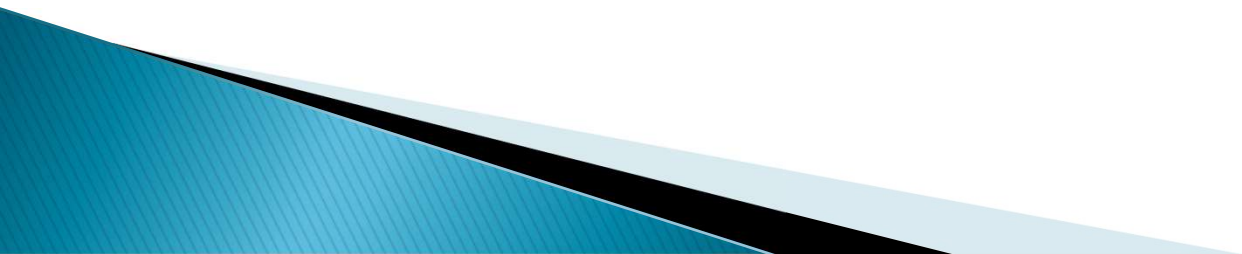
- ▶ **The Berne Convention did not require registration or the inclusion of a copyright notice for copyright to exist and provided copyright for single term based on the life of the Author.**
 - ▶ **Under UCC copyright protection was provided for a fixed renewable period and for copyrighting it must contain a copyright notice and be registered at a Copyright Office.**
- 

- ▶ These totally different procedures created difference between Berne convention members and UCC members.
 - ▶ The contracting States are under an obligation to provide adequate & effective protection of the rights of authors & other copyright proprietors.
 - ▶ It has **21 Articles** & certain **Protocols**.
 - ▶ The protection given for the published as well as the unpublished works.
- 

- ▶ **The UCC was revised in Paris in 1971. It contains special provisions for developing countries to obtain compulsory licenses under certain conditions to translate copyrighted works for teaching, scholarship & research purposes. It protects **economic rights** of the authors effectively.**
 - ▶ **It also recognized granting of copyright for a minimum term of **25 years** from publication or life of author plus 25 years.**
 - ▶ **India is a member of the UCC since 1958.**
 - ▶ **But today most states are members of the TRIPS agreement, the UCC has lost significance.**
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Madrid Agreement Concerning the International Registration of Marks, 1891 (followed by a protocol in 1989)

- ▶ **The Madrid system provides a centrally administered system of obtaining a bundle of trademark registrations in separate jurisdictions.**
 - ▶ **The Madrid Protocol system provides for the international registration of trade marks by way of one application that can cover more than one country.**
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- ▶ **The 1891 treaty with the 1989 protocol forms the system of international registration of marks (trademark)-Madrid System.**
 - ▶ **The Madrid system is administered by the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.**
 - ▶ **There are 90 countries part of the Madrid System.**
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Rome Convention, 1961

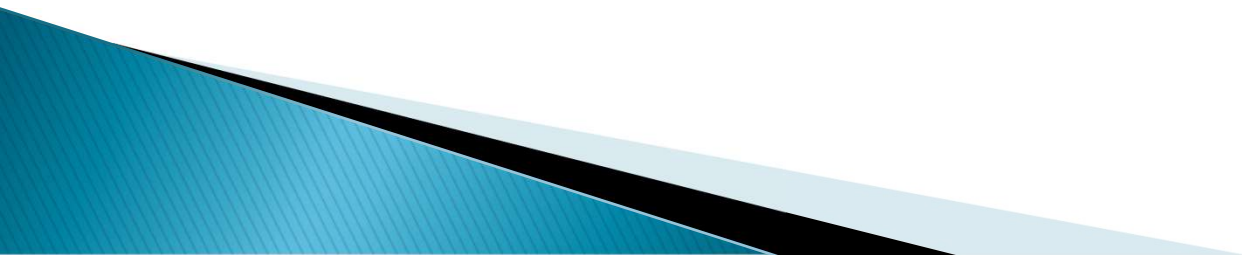
- ▶ First Convention to deal with neighbouring rights
 - ▶ **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)**
 - ▶ **Protection Performers, Producers etc (Actors, Singers, Musicians, Dancers and those who perform or produce literary or artistic work)**
 - ▶ **Protection from acts which they have not consented to such as broadcasting Communication or reproduction .**
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- ▶ **The Rome Convention allows for limitations and exceptions to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works.**
 - ▶ **Duration of protection must be at least 20 years.**
- 

4. TRIPS

- ▶ It is the Agreement on Trade Related Aspects of Intellectual Property Rights. (TRIPS)
 - ▶ In 1986, an Accord called as “**Final Act**” was signed by the members of the GATT. TRIPS being one of such agreements & the other being formation of WTO.
 - ▶ With the growth in the industrial sector, there was a necessity of establishment of world-body to regulate world-trade was increased.
 - ▶ The relative efforts by the nations resulted into formation of World Trade Organization (WTO) replacing GATT.
- 

- ▶ **Came into force : 1st Jan 1995, Includes most of Berne Convention Rules. Had to be Implemented within 6 years for developed countries i.e 31 December 2000 and within 10 years for developing countries i.e. 31 December 2004.**
- ▶ **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members**

- ▶ **The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date.**
 - ▶ **Obligations under TRIPS apply to all members equally but developing countries were given more time to make changes in their national laws.**
 - ▶ **TRIPS included provisions regarding**
 - ▶ **National Treatment (Article 3)**
- 

- ▶ **Most Favoured Nation (Article 4):** With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.
 - ▶ **Standards of protection to its members**
 - ▶ **Enforcement of IPR's, provides procedures, remedies, provisional measures in detail.**
 - ▶ **WTO's dispute settlement procedures apply in case of disputes.**
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Objects of TRIPS -

- I) To promote adequate protection of intellectual property rights.**
 - II) To resolve disputes on trade related intellectual property issues.**
 - III) To establish mutually supportive relationship between WTO & WIPO.**
 - IV) To create public awareness about the economic, social & cultural benefits of IPRs among all the sections of society.**
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- The main object of the TRIPS is to provide standards relating to the availability, scope & use of IPR such as copyright, trademark, geographical indications, patents, industrial designs etc.
 - The basic principles of TRIPS are **national treatment (giving others the same treatment as one's own nationals) & most favored nation treatment (non-discrimination)**.
 - It is divided into 7 Parts & 73 Articles.
 - It has **162 member** parties. India is also its signatory (1995).
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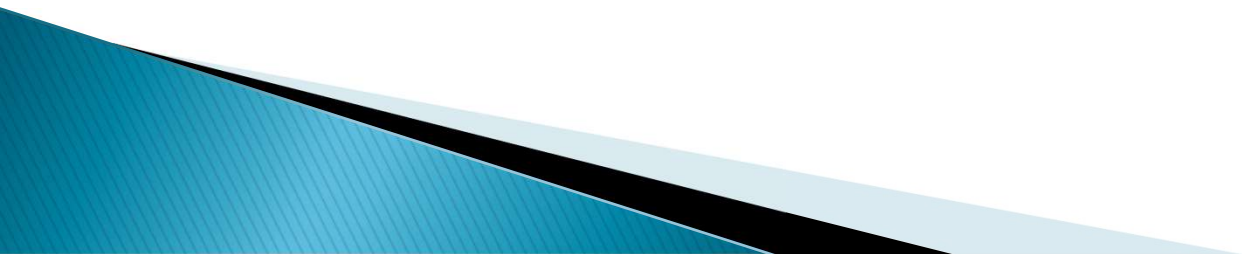
The agreement establishing WTO was concluded at Marrakesh (Morocco) on April 15, 1994 & it came into force on January 1, 1995.

TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs & Trade (GATT) in 1994 & is administered by WTO.

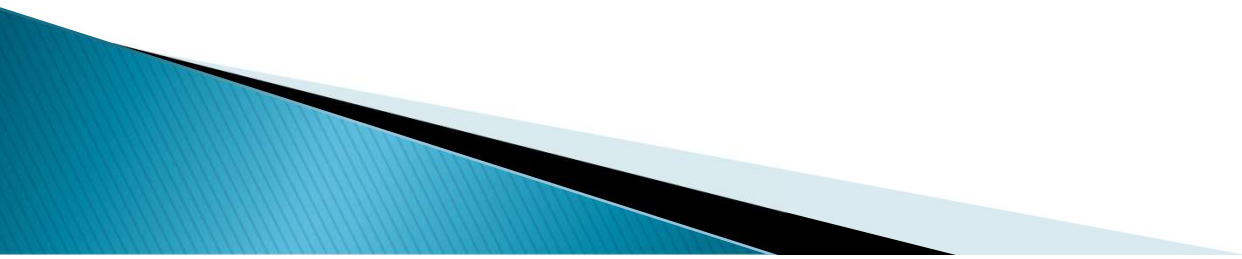
Another reason for conclusion of TRIPS is the exploitation of commercial benefits of the developed countries by the developing countries.



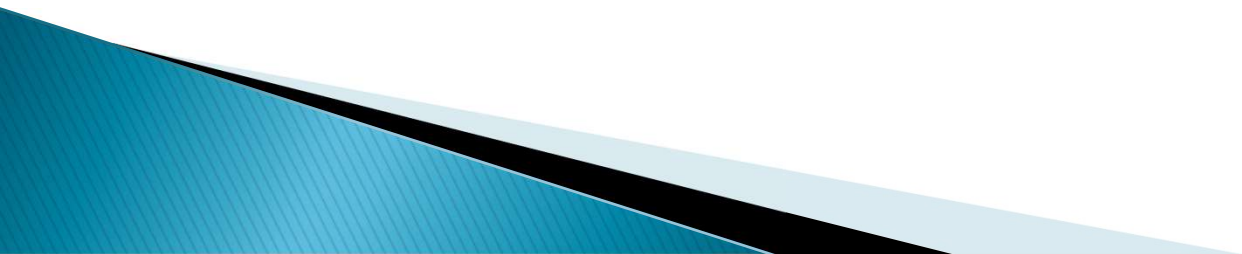
- ▶ **TRIPS plus:** In recent years, many developing countries have been coming under pressure to enact or implement even tougher or more restrictive conditions in their patent laws than are required by the TRIPS Agreement - these are known as TRIPS plus' provisions.



The Internet Treaties

- ▶ **WCT (WIPO Copyright Treaty) (2002) - Copyright protection to literary works, computer programs & databases, musical works, audio visual works, works of fine art and photographs.**
 - ▶ **WPPT (WIPO Performance and Phonograms Treaty) (1996) - Deals with the rights of performers and producers of phonograms such as tapes, CD's and Mp3's etc.**
- 

Marrakesh VIP Treaty

- ▶ **Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities)**
 - ▶ **Adopted in Marrakesh, Morocco in June 2013.**
 - ▶ **India first country to ratify the treaty.**
- 

- ▶ **5. WIPO (World Intellectual Property Organization) –**
 - ▶ WIPO is the most important international organization for the promotion of intellectual property at global level.
 - ▶ The Convention establishing the WIPO was signed at **Stockholm** on **July 14, 1967**.
 - ▶ It has **191** member States currently. India joined WIPO in 1975.
 - ▶ Its headquarter is located at **Geneva**. It is a specialized body of UNO & also acts as a complimentary body with WTO for the promotion & protection of IPRs.
- 

▶ **Objectives of WIPO -**

- ▶ I) To promote the protection of intellectual property throughout the world through co-operation among the states.
 - ▶ II) To ensure administrative co-operation among the unions.
 - ▶ The membership is open to any State which is a member of any of the Unions. Even a State not member of the Unions can join, if it is a member of the UNO.
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Functions of the WIPO –

- ▶ I) To promote development measures for protection of IPRs at global level & to harmonize the national legislations in this field.
 - ▶ II) To perform the administrative tasks of the Paris Union & the Berne Union.
 - ▶ III) To encourage the international agreements for the protection of IP laws.
 - ▶ IV) To provide legal assistance to the states in the field of IP.
 - ▶ V) To assemble & disseminate information relating to IP & to carry out & promote studies in this field and publish the results of this studies. &
 - ▶ VI) To maintain relative services, registration & publication of the data concerning the registrations etc.
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- ▶ **Functioning of WIPO (4 Organs) –**
 - ▶ **I) General Assembly –**
 - ▶ It consists of the member States of the Convention establishing WIPO which are the members of the Unions.
 - ▶ **II) Conference –**
 - ▶ It consists of the States party to the Convention, whether or not they are members of any of the Unions.
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