




# National IPR Policy, 2016 & Its Implementation

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# National IPR Policy-Timeline

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- IP Think Tank constituted by the Government in October, 2014
  - The government released the first draft of the policy on 19<sup>th</sup> December, 2014
  - Think Tank held extensive consultations and received comments from around 300 stakeholders/delegations
  - Think Tank submitted the final draft on 18<sup>th</sup> April, 2015
  - Final IPR policy approved by the cabinet on 12<sup>th</sup> May, 2016
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# National IPR Policy- Overview

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- Vision document to act as a catalyst to bring together strengths of the government, research and development organizations, educational institutions and corporate entities in the creation of an innovation-conducive environment
  - Rationale lies in need to create awareness about the importance of IPRs as a marketable financial asset and economic tool
  - Recognizes India has a TRIPS-compliant, robust, equitable and dynamic IPR regime
  - Lays down seven objectives which are elaborated with steps to be undertaken by the identified ministry/department
  - DIPP has been made the nodal point to coordinate, guide and oversee implementation and future development of IPRs in India
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# Vision & Mission Statement

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**VISION:** *“An India where creativity and innovation are stimulated by intellectual property for the benefit of all; an India where intellectual property promoted advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources, an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared. ”*

**MISSION:** *Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to Foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and Focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.*




# **OBJECTIVE 1: IPR Awareness: Outreach and Promotion**

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- Brought about to create public awareness about the economic, social and cultural benefits of IPRs among all sections of society
- Lays emphasis on need to propagate the value of transforming knowledge into IP assets

## **STEPS-**

- Adopt the national slogan “**CREATIVE INDIA, INNOVATIVE INDIA**” and launch campaigns in association with initiatives such as ‘Make in India’, ‘Digital India’, ‘Start-up India’ and other future initiatives
  - Create suitable course materials for educational institutions, online and distant learning programs and include IPR in school curriculum
  - Study best practices and success stories in other countries to design and launch public outreach programs
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# Steps taken to implement Objective 1

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- Awareness/ sensitization programs on IPR are organized by IPO as well as with industry associations, Chambers of commerce, academic institutions etc.
- **Indian Intellectual Property Panorama** released by Government of India on 31st March 2016 to increase awareness and sensitivity among stakeholders, academia and researchers
- Scheme for facilitating **Start Ups Intellectual Property Protection (SIPP)** launched to facilitate IP creation among Start-Ups by providing several incentives such as reduced official fees, filing and prosecution assistance etc.
- DIPP organised **IP AWAKE: CII-DIPP road show** on '**IPR and National IP Policy**' to appraise people about the benefits to Start-up companies towards promoting IP filings
- CGPDTM has launched "**KIDS Nook**" taking IP awareness to the next generation with the release of Comics on General Intellectual Property, Patents, Designs & Trade Marks



# Steps taken to implement Objective 1


- Scheme initiated by **DeitY – “Support IPR Awareness Workshops/Seminars”**, for creating awareness about IP Rights among various stakeholders especially in E&IT sector.
- DIPP published a discussion paper on SEP and their availability on FRAND terms with objective to sensitize the stakeholders towards need and importance of regulating SEPs as well as facilitating their availability on FRAND terms.
- CIPAM is in talks with NCERT to incorporate IPRs as a part of school curriculum
- A number of business and law schools have started giving specialization courses on IP such as:
  - IIT Kharagpur Rajiv Gandhi School Of Intellectual Property Law- Three year LLB programme with specialization in Intellectual Property
  - WIPO-IGNOU One Year Post Graduate Masters in IP Diploma etc.

# OBJECTIVE 2: GENERATION OF IPRs

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Aims to tap the vast knowledge base in India spread over R&D institutions, enterprises, universities and technical institutions.

## STEPS-

- Assessment and evaluation of potential in specific sectors by carrying out a comprehensive base line survey or IP audit across sectors
  - Include IP creation as a key performance metric for public funded R&D entities as well as technology institutions
  - Establish and strengthen IP facilitation centers as nodal points
  - Promote R&D through tax benefits
  - Creation of an effective and simple loan guarantee scheme to encourage Start-Ups
  - Introduce support systems for MSMEs, Start-Ups and other grassroots innovators to reduce transaction costs relating to IP creation
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# Steps taken to implement Objective 2

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- Real time status of IP applications with file wrappers and e-registers now open to public.
- 50% fee reduction for MSMEs
- The operationalization of the Madrid protocol for international protection of trademarks provides users the facility of protecting their trademark in 90 countries by filing a single application in one language with one set of fees filed at the Trademarks Registry
- India participated in 30<sup>th</sup> Session of WIPO's Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore held from May 30 to June 3, 2016.
- TKDL has been an effective deterrent against bio-piracy
- Regulatory relaxations granted to Startups as per RBI notification dated June 23, 2016. These directions have been issued under Section 10(4), 11(1) of the FEMA, 1999(42 of 1999):
  - Start-ups allowed to receive foreign venture capital investment irrespective of the sector in which they operate
  - Simplification of the process of dealing with delayed reporting of foreign direct investment (FDI)-related transaction by building a penalty structure into the regulations itself
  - In case of transfer of ownership of a start-up enterprises, receipt of the consideration amount on a deferred basis as also enabling escrow arrangement or indemnity arrangement up to a period of 18 months permitted

#startupindia



# Start-Up India

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**Intellectual Property Protection Scheme (SIPP) for Facilitating IPRs** launched on 16th January 2016

Rules have been amended to include Start-Ups as an applicant for filing a patent application. The amended rules (2fb) define a company/LLP/a registered Partnership firm that:

incorporated/founded not more than 5 years back,

do not have a turnover of more than INR 25 crores in any financial year, during the past 5 years, and

are working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology and intellectual property (this activity has been clarified to be creation or addition of value for customers or workflow)

are recognized as many as 180 entities as Startups (as on 19<sup>th</sup> July 2016)

Government is in the process of setting up a Rs 2,000 crore credit guarantee fund with a view to providing funding facilities to startups

Under the SIPP, a team of facilitators have been appointed by the DIPP to assist Start-Ups in advising, filing & disposal of IP registrations. The annual fee of the facilitators shall be borne by the government

As many as 281 individual and 2 organizational patent and design facilitators & 215 trademark facilitators have been empanelled by the government.

## **OBJECTIVE 3- LEGAL AND LEGISLATIVE FRAMEWORK**

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Aims to establish a strong and effective system of IPR laws to balance the interest of right owners with larger public interest. The existing laws which are TRIPS compliant provide a stable and effective legal framework for protection and promotion of IPR.

### **STEPS-**

- Review, update and improve the existing IPR laws in consultation with all stakeholders.
- Engage constructively in negotiation of international treaties and agreements
- Suitably amend Indian Cinematography Act, 1952 in order to provide for penal provisions for illegal duplication of films
- Identify important areas of study and research for future policy development such as interface of IP with competition law and policy etc.
- Examine the issues of technology transfer, know-how and licensing relating to SEPs on FRAND terms and provide suitable legal framework to address the same

# Steps taken to implement Objective 3

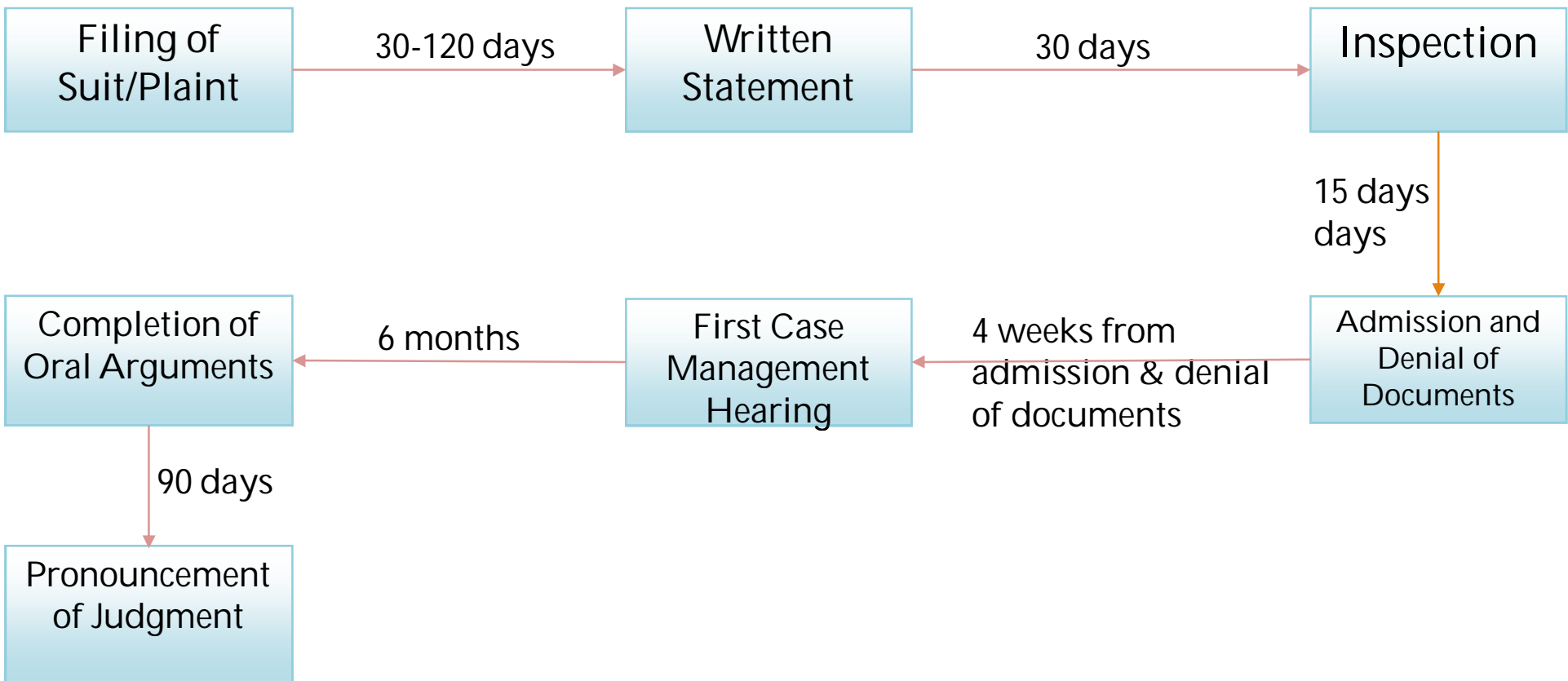
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## **The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015**

1. Strict Timelines
2. Payment of Costs
3. Streamlined process
4. Introduction of case management hearing
5. Summary Judgment



# The Commercial Courts Act : Strict timelines





# Expedited Trial in Patent Cases

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- **Glenmark Pharmaceuticals Ltd. v. Merck Sharp and Dohme Corporation & Anr.**
  - Vide order of the Supreme Court dated 15<sup>th</sup> May 2015, Local Commissioner directed to record evidence on a day-to-day basis
  - The final arguments commenced on 6<sup>th</sup> July 2015, concluded on 27<sup>th</sup> August, 2015 and judgment was pronounced on 7<sup>th</sup> October, 2015.
  - The Supreme Court observed, "*Unusual and extraordinary course of action taken to ensure highly contested commercial cases that require immediate attention are disposed of quickly*"

## **Telefonaktiebolaget LM Ericsson v. Lava International Limited**

- The Supreme Court, vide order dated 16<sup>th</sup> December 2015, directed the High Court to decide the suit as expeditiously as possible in view of the time consumed in the settlement talks
- The suit was filed on 19<sup>th</sup> March 2015, the trial commenced on 28<sup>th</sup> March 2016 and concluded on 20<sup>th</sup> July 2016. The final arguments in the suit commenced from 22<sup>nd</sup> August 2016



# 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)
- As per the recent judgment of the Delhi High Court in **Telefonaktiebolaget LM Ericsson v Competition Commission of India & Anr:**
  - An order of investigation under Section 26(1) is amenable to judicial review
  - The Patents Act is a special Act and prevails over the Competition Act
  - There is no repugnancy or conflict between the two Acts – CCI can go into issues of ABUSE OF DOMINANCE

The judgment has started a debate on IP and Competition law & is currently under appeal

# OBJECTIVE 4-ADMINISTRATION AND MANAGEMENT

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ns towards a service oriented regime at IPOs, including steps to fix and adhere to timelines for disposal  
lications along with the need to increase the manpower.

## EPS-

ministration of the Copyright Act 1957 and Semiconductor Integrated Circuits Layout-Design Act 2000 to be  
er the aegis of DIPP.

institution of Controller General of Patents, Designs and Trademarks to be re-designated as Controller G  
Intellectual Property Rights

ate a Cell for IPR Promotion and Management(**CIPAM**) under the aegis of DIPP to facilitate promotion, crea  
mercialization of IP assets

tructure, upgrade and modernize IPOs and ICT infrastructure proposed to accelerate e-filings, e-processing and  
vices

crease coordination in IP offices in India and other countries proposed

nduct periodic **audits** of processes being adopted in IP administration for efficient grant and management of IP ri





# Steps taken to implement Objective 4

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Implementing the recommendation of IP Audits, the CSIR recently sent out a stern message to 38 laboratories to curtail indiscriminate filing of Indian and foreign patents. Henceforth, 25% of expenses incurred on prosecution and maintenance of Indian patents and up to 50% of expenses on foreign patents shall be borne by the laboratories.

The Ministry of Commerce & Industry recently launched a logo for CIPAM- The logo has been designed keeping in mind the slogan of the National IPR Policy: "Creative India, Innovative India"

Patent (Amendment) Rules 2016 and expedited examination for patents thereunder notified on 16<sup>th</sup> May 2016

Recruitment of more than 450 examiners out of which 300+ have already been recruited and the remaining are undergoing training

The system embarked on its e-journey by introducing the complete electronic processing of Patents and Trademark Applications-10% reduction in examination fee in cases of e-filings

A uniform numbering system has been introduced to bring uniformity in the Patent Offices

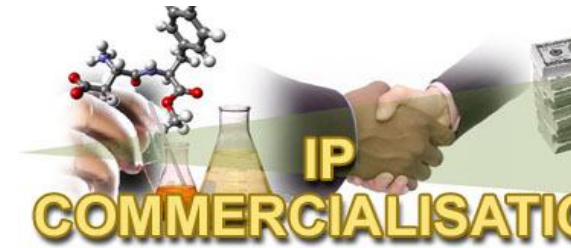
To enroll more patent agents, the IPO has decided to conduct the Patent Agent Examination in November 2016

The IPO has launched "Indian Patent Advanced Search System (InPASS)", having Full text patent search capabilities

# Steps taken to implement Objective 4

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- The Trademark Registry's website facilitates the applicant with the complete process from filing till maintaining the registrations of marks electronically
- Trademark Index is available online and all marks whether pending, advertised, registered, and abandoned or withdrawn can be searched using online system, free of cost.
- The Trademarks office has recruited 203 new Trademark Agents (15<sup>th</sup> March 2016)
- The Delhi Trade Mark Registry (in collaboration with Delhi State Legal Services Authority (DSLISA)) has decided to undertake a project, whereby 500 pending oppositions/rectifications will be referred to mediation/conciliation based on consent by the parties involved (Standard Operating Protocol published on 12<sup>th</sup> May 2016)
- On May 13, 2016, Ministry of AYUSH, Government of India and the WHO signed a historic Project Collaboration Agreement (PCA) for cooperation on promoting the quality, safety and effectiveness of service provision in traditional and complementary medicine



## OBJECTIVE 5-COMMERCIALISATION OF IPR

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- Creation of a public platform to function as a common database of IPR and provide greater connectivity between the creators, innovators and potential users.
- Take stock of existing IP funding by different departments and bodies of the Government like BIRAC, NRDC and TIFAC, and take measures to consolidate the same

### STEPS-

- Constitute CIPAM to facilitate effective and synergetic working between various IP offices to promote, create and commercialize IP assets
- Promote licensing and technology transfer for IPR
- Promote use of FOSS along with adoption of open standards & examine the possibility of creating Indian standard operating environment
- Support financial aspects of IPR commercialization by facilitating investments in IPR providing support to the less empowered groups of IPR owners and creators, utilizing TADF for licensing or procuring patent technologies etc.



# Steps taken to implement Objective 5

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## **Start up India hub**

- Operationalized on 1<sup>st</sup> April 2016 to resolve queries and provide handholding support to Startups
- Hub has resolved more than 13,500 queries received from Startups through telephone, email and Twitter
- Startup India to launch an interactive online learning and development module to educate Startups and aspiring entrepreneurs
- The Finance Act, 2016 has made provision for Startups to get income tax exemption for 3 years in a block of 5 years if they are incorporated between 1<sup>st</sup> April 2016 and 31<sup>st</sup> March 2019.
- As on date, one application has been approved for tax benefits. Others are to be reviewed in the upcoming Inter-Ministerial Board(IMB) Meetings
- To avail IPR-related benefits, a Start Up would not be required to obtain a Certificate of Eligibility from the Inter-Ministerial Board. Only a certificate of recognition from the DIPP would be suffice
- Tax exemption on investments above Fair Market Value have been introduced for investments made in Start-Ups



# Start up India hub

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- Start Ups falling under the list of 36 “white” category industries have been exempted from all the applicable compliances under three Environment Laws viz. The Water(Prevention & Control of Pollution) Act, 1974; The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003 and The Air Water(Prevention & Control of Pollution) Act, 1981
- Norms on prior experience and turnover for public procurement for micro and small enterprises have been relaxed and provisioned in the Procurement Policy of Ministry of MSME
- A ‘fund of funds’ of INR 10,000 crores has been established which is managed by the Small Industries Development Bank of India(SIDBI). The fund will, in turn, invest in Startups to attract private capital in the form of equity, quasi-equity, soft loans and other risk capital for start ups.
- 7 proposals for Research parks, 16 proposals for Technology Business Incubators(TBIs) and 13 proposals for Startup centres have been recommended by the National Expert Advisory Committee (NEAC) formed by the MHRD which are to be implemented in the current fiscal year
- A module to recognize incubators has been launched to augment the existing list of incubators
- For effective implementation of the scheme, facilitators including government organizations like NRDC have been empanelled
- DIPP has written to the top 50 companies to support the initiative by setting up of new incubators or scale up existing incubators in collaboration with educational institutes
- DIPP has requested State Governments and Union Territories to set up Startup Hubs

# OBJECTIVE 6-ENFORCEMENT AND ADJUDICATION

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Build respect for IPR among the general public and to sensitize the inventors and creators of IP on measures for protection and enforcement of their rights.

## STEPS-

- Educate the general public on the ills of counterfeit and pirated products
- Curb the manufacture and sale of misbranded, adulterated and spurious drugs
- Set up IP cells with State governments for curbing IP offences
- Provide assistance to smaller firms to protect their IPRs internationally
- Facilitate effective adjudication of IP disputes through-
  1. Commercial courts set up at appropriate levels
  2. Promoting ADRs in resolution of IP disputes

# Steps taken to implement Objective 6

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- Cable and internet piracy interdicted for movies, sports broadcasts etc., through several judicial orders followed by administrative steps
- Significant state-level enforcement developments- establishment of India's first anti-piracy policy unit in Telangana and Andhra Pradesh's anti-piracy campaign
- Amendments contemplated to make unauthorised camcording of movies etc. illegal
- The Japan Institute for Promoting Invention and Innovation (JIPII) and the Overseas Human Resources and Industry Development Association (HIDA) has sought nomination of suitable candidates for three training programs being organised in the JPO for the financial year 2016 (Circular published on 6<sup>th</sup> May 2016)
- The chair of the BRICS IP Cooperation Programme for the year 2016 has been handed over to the INDIA, CGPDTM being the Chairman (14<sup>th</sup> July 2016)
- The **Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007** came into existence to strengthen the statutory and executive guidelines provided for the protection of intellectual property rights at the borders.



# Arbitrability of Intellectual Property Disputes

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- Legal claims arising from IP licensing and other commercial transactions are essentially “in personam” disputes- Nothing exists under Indian law which ousts such disputes from arbitration
- Arbitration can avoid parallel litigations and has inherent advantages in dealing with commercial disputes in respect of flexibility, confidentiality & finality
- IP arbitrations are rare because IP disputes frequently do not involve a pre-existing contractual relationship. Arbitration, however, requires a contractual agreement to arbitrate
- **Under the recently amended Arbitration and Conciliation Act, 2015 an application for setting aside the arbitral award shall be disposed of expeditiously and in any event within a period of one year from the date on which the notice is served upon the other party (Section 34(6))**



# OBJECTIVE 7- HUMAN CAPITAL DEVELOPMENT

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Research to be undertaken to enrich the process of policy, law, strategy development and international negotiations at the government and organizational levels and develop IPR expertise.

## STEPS-

Strengthen and empower RGNIIPM, Nagpur to conduct training for IPR professionals

Strengthen IP Chairs in educational institutes of higher learning

Introduce IP courses and modules in all major training institutes

Strengthen existing IP cells and create new ones in various educational institutes

Make IPR an integral part of the curriculum in all Institutions

# Steps taken to implement Objective 7

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- RGNIIPM is engaged in conducting free public IP awareness programs inside & outside the organisation (June, July 2016)
- The Ministry of Human Resource Development Under the scheme of Intellectual Property Education, Research and Public Outreach (IPERPO) has so far set up 18 IPR Chairs in various universities and institutes considering their potential for development and growth of IPR Education, Research and Training
- IP cells have been established in various institutions such as IISc, JNU etc. to harness the fullest potential of the Institutes in terms of innovation and IP productivity
- **National Innovation Council (NInC)** has been setup to discuss, analyse and help implement strategies for inclusive innovation in India and prepare a Roadmap for Innovation in 2010-2020
- The **India Innovation Portal** is an information aggregator and is intended to become a one stop resource on innovations in the country. The Portal has classified various innovation resources under Knowledge, News, Events, Media, and Directories and offers each user the power to personalise the portal to suits ones needs.

# Steps taken to implement Objective 7

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## • **Atal Innovation Mission (AIM)**

- AIM is Government's endeavour to serve as a platform for promotion of world-class Innovation Hubs, Grand Challenges, Start-up businesses and other self-employment activities, particularly in technology driven areas.
- The guidelines for harnessing private sector expertise to set up incubators, annual grand challenge for innovative solutions to problems posed by industry and Government departments, annual grand challenge for incubators and establishments, annual grand challenge for incubators and establishments of tinkering labs have been formulated and published on **NITI Aayog's** and Startup India websites

## • **National Innovation Foundation (NIF)**

- NIF has been set up by the **Department of Science and Technology (DST)** to make India innovative by documenting, adding value, protecting the IPRs of the contemporary unaided technological innovators as well as of outstanding traditional knowledge-holders and disseminating their innovations on commercial and non-commercial basis
- NIF has till date recognised 816 grassroots innovators and school students at the national level
- Micro Venture Innovation Fund (MVIF) at NIF, with support from Small Industries Development Bank of India (SIDBI), has provided risk capital of more than Rs 3.84 crore to 193 projects

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The End!

