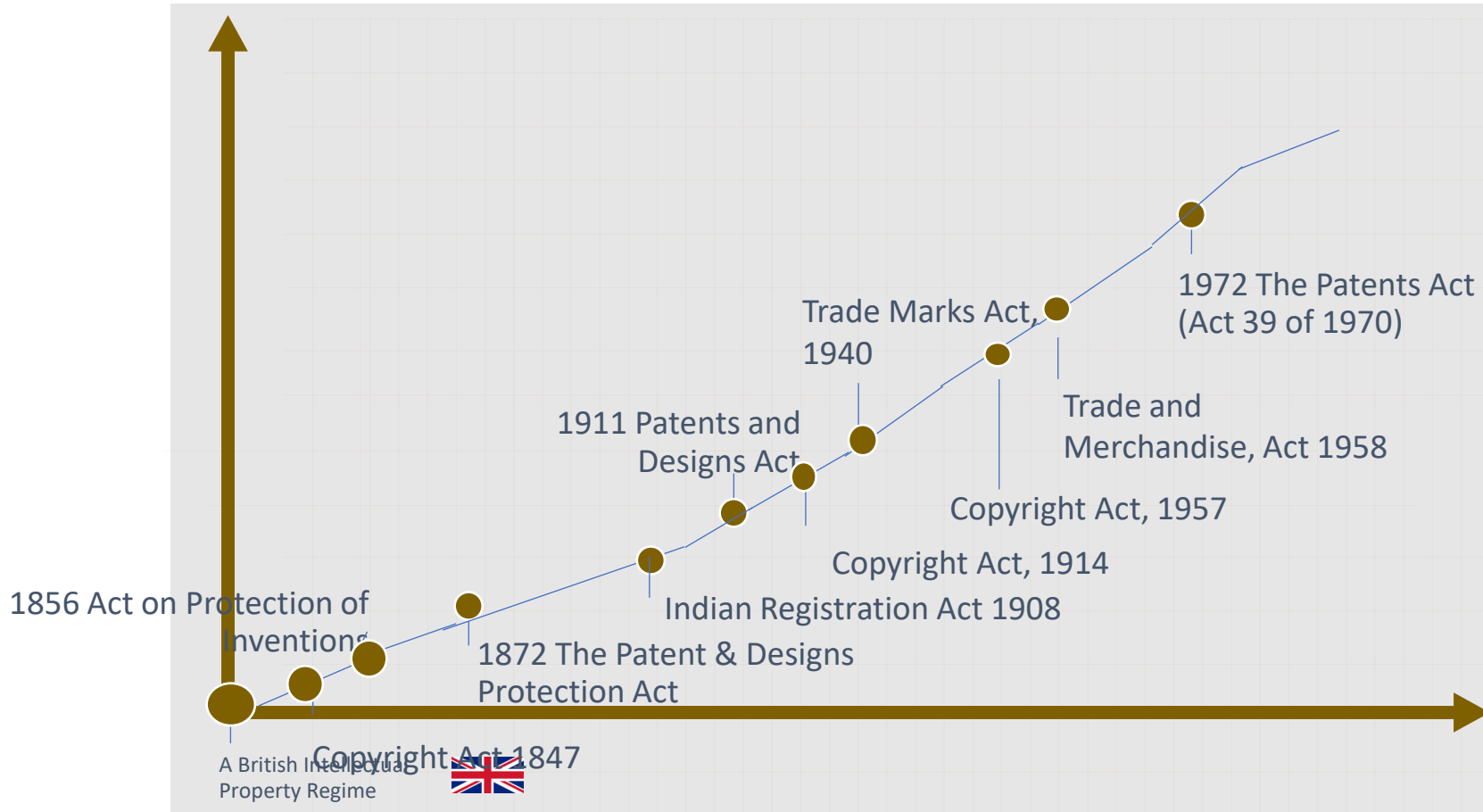


# India's IPR Regime Before TRIPS

# Pre TRIPS Evolution of IPR in India - Milestones



# Developments in the Indian Copyright Law

- 1847: First copyright act in India
- 1914: First modern law on Copyrights
  - Term of protection-life plus 50 years
  - Covered related rights
  - Protection without prior registration
- 1957: Post independence
  - Created Copyright Office and Copyright board
  - Introduced civil and criminal enforcement
  - Performing rights societies
- 1992: Major amendment
  - Term of protection : life plus 60 years
  - Broadcast reproduction protected for 25 years

# Developments in the Trademark law

- 1908: Indian Registration Act and the Special Relief Act, 1877
- 1940: Trademark Act similar to the UK Act
  - Establishment of the Trademark Registry
- 1958: Trade and Merchandise Act
  - Term of protection
  - Scope

# Patent Law Developments – Colonial Encounters

- 1859-grant of exclusive privileges (making, selling and using inventions in India and authorizing others to do so) to inventors for useful inventions-14 years from date of filing.
- 1872-Patents and designs were consolidated under one law
- 1911 -Controller of Patents made in-charge of management and administration.

# Patent Law Developments – Post Colonial Interventions

- 1950 and the 1952 compulsory licence on patents in respect of food and medicines, insecticide, germicide or fungicide (Tek Chand Committee Report)
- 1959 Justice N Rajagopala Ayyangar Report
- Patent Act 1970

# Ayyangar Report: Factors that determine the advantages of awarding Patents

## Two main factors:

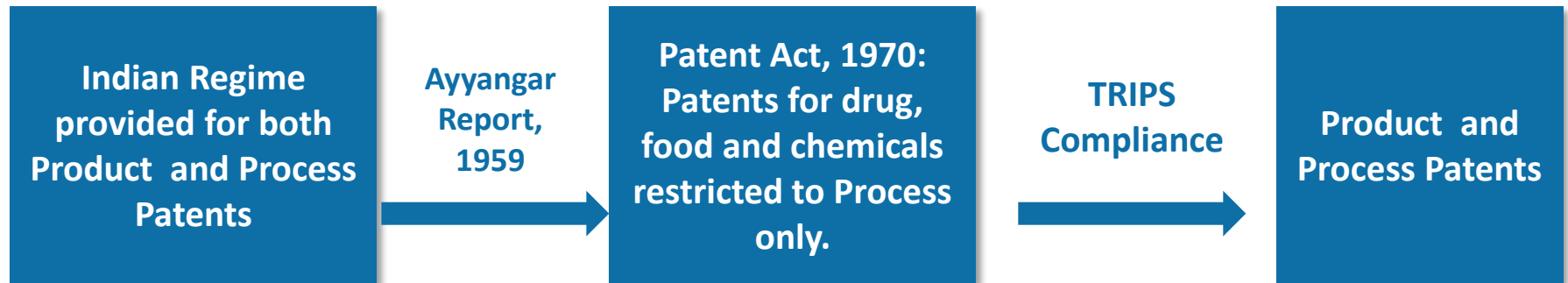
- Country needs to be technologically advanced to maintain the rate of invention which is brought forth by the promise of the reward.
  - the degree of diffusion of scientific and technological education and the number of persons reaching high proficiency by such education;
  - a massive industrial production which could absorb this R&D
  - capital investment
- patented invention must be worked in the country which grants the patents.

# Patent Amendments in the 1970 Act

- recognized only process patents for food, chemical and pharmaceutical substances.
- Reduced period of protection -7 years
- Revocation for insufficient disclosure
- Information from companies for working of the patent



# Patent Regime: Pre and Post Justice Ayyangar's Report and TRIPS



## 1999

- Product patent applications through a “mailbox”
- Exclusive Marketing Rights

## 2002

- Addressed scope of patentable inventions, strengthened compulsory license provisions.

## 2005

- Product patents in the area of chemicals, pharmaceuticals, and agricultural chemicals and foods

The deadline for complying with TRIPS obligations was January 1, 2005.

# IPRs: India's past experience in FTAs

# In the presentation

- IPR in existing FTAs
- IPR chapter in Stalled/on going negotiations
- IPR in the US India Trade Policy Forum

# Chapter on IPRs in existing FTAs/CEPAs

- India Singapore Comprehensive Economic Partnership Agreement
- India Korea Comprehensive Economic Partnership Agreement
- India Japan Comprehensive Economic Partnership Agreement

# India Singapore CEPA

- Non binding Cooperation Clause
- Cooperation to include organization of symposia, workshops, collaboration in projects
- MoU for Cooperation between IP offices was signed in 2016 but no work programme decided

# India Korea CEPA

- Obligations: TRIPS Agreement
- More Extensive Protection non mandatory but allowed as long as consistent with TRIPS
- Voluntary nature of Cooperation in Intellectual property- capacity building and human resource development
- Non Application of the Dispute Settlement Chapter

# India Japan CEPA

- General Provisions –compliance with TRIPS Agreement
- Streamlining of Procedures- Address concerns of Japan
- Patents: distinction between when subject matter among other things is also a computer programme and computer programme per se

- India European Free Trade Association
  - To be discussed



# India Japan CEPA

- Well known Trademarks

- How will a Trademark be recognized to be well known?

- What criteria will be taken into account when refusing or cancelling or invalidating a Trademark that is identical with or similar to a well known trademark?

- Expedited Examination

# Negotiations-Stalled/Still on going

- India-EU Bilateral Trade and Investment Agreement
  - TRIPS Plus
  - Copyright protection in the Digital Environment
  - Data Exclusivity/Test Data Protection
  - Enforcement regime –beyond TRIPS includes third party liabilities
  - Geographical Indications through list approach
  - Patent term extension

Agreements from which  
India has withdrawn

# Regional Comprehensive Economic Partnership Agreement

- TRIPS Plus
- Copyright and Trademark protection in Digital Environment
- Enforcement- comprehensive provisions that also go beyond TRIPS

Thank you