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TRADEMARK LAW IN INDIA: A CRITICAL AND COMPARATIVE STUDY

~ *Kshema Sangam*

ABSTRACT:

Trademarks are particularly important in the contemporary businesses as they are used to differentiate goods and services, safeguard business image, and avoid confusion among consumers. In India, the legal framework concerning trademarks is regulated by the Trademarks Act, 1999¹ that updated the legislation according to the global standards. In this paper the legal framework concerning trademarks in India is discussed making a comparison between the Indian regime to the regime practiced in the United States under the Lanham Act and in the European Union under the European Union Trademark Regulation. The paper shows the strengths of the hybrid system of India and the obstacles of the delays in the process and lack of effectiveness of enforcement. It concludes that although the Indian trademark regime has a strong legal basis, some procedural and institutional measures can be organized to make it more efficient and business conducive.

INTRODUCTION:

A trademark is a unique sign, term, name, emblem, shape, sound, or a mixture of any of the aforementioned which identifies and differentiates the products or services of one business over those of others. In essence, a trademark is a sign of origin. It assures the consumers of the fact that the product or service to which the mark is attached has a certain source and is of a certain standard. Gradually, a trademark is more than a commercial mark it stands for the goodwill, reputation and the brand value acquired by a business due to consistent performance and consumer confidence. The importance of trademarks is that they can be used in two ways. Consumer wise, they ensure that there are no confusions and deceit in the marketplace because informed choices are made when buying. Business-wise, they secure investment, innovation, and competitive advantage, by ensuring brand identity is not stolen and unfair competition. They are important intangible assets in a globalized and digitally based economy, which add

¹Trademarks Act, No. 47 of 1999, § 2(1) (zb) (India).

up to the existence of a business in the market in terms of commercial success. India has a legal framework governing trademark protection under the Trademarks Act, 1999 that replaced the earlier 1958 legislation and brought domestic law in line with international standards. The primary objectives of the Act are to provide statutory protection to trademarks, prevent fraudulent and deceptive use of marks, promote fair competition, and protect consumer interests.

I.LEGAL FRAMEWORK IN INDIA:

The Trademarks Act, 1999 is the major law which regulates trademarks in India which repealed the Act of 1958 and put the Indian law in conformity with the TRIPS Agreement² commitments. It updated the definition of trademarks and brought the protection to the services and non-traditional marks. Section 2(1) (zb) of this act defines trademark as a “*mark that is able to be represented graphically and which is able to differentiate goods or services of one individual and that of another*”. This Act acknowledges distinct types of marks namely words, logos, labels, shapes, colors, and even sound marks.

Overview of the registration process:

1. Filing the application, stating the type of goods/services.
2. Examination by the Registrar.
3. Journal publication of the mark.
4. Opposition Proceedings (in any)
5. Grant of Registration and issuance of certificate.

In India, a trademark is registered for a period of ten years, which ends on the date of registration³. It can be renewed if one pays the renewal fee which is dictated by the time limit of ten years.

II.CAUSES OF ACTION AND REMEDIES FOR TRADEMARK VIOLATIONS IN INDIA:

1.Infringement: Section 29 of the Act states that infringement arises when an individual applies a mark, which is similar or misleadingly close to a registered trademark⁴ with regards to similar goods or services, results in confusion. In the case of *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd*⁵ it was established that the similarity must be assessed from the

² Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.

³ Trademarks Act, No. 47 of 1999, § 25, India.

⁴ Trademarks Act, No. 47 of 1999, § 29, India.

⁵ *Cadila Health Care Ltd. v. Cadila Pharm. Ltd.*, (2001) 5 S.C.C. 73 (India).

perspective of an average consumer with imperfect memory. The Court stressed on similarity in terms of phonetics, visuals, and structure, and discouraged the dissection of marks artificially.

2. Passing Off: Trademark owners may also apply the common law protection of passing off even without registration. Passing off essentials were acknowledged in the case of *Amritdhara Pharmacy v. S. N. D. Pharmaceutical*⁶ in which the Court mentioned that central consideration should be the presence of deceptive similarity and likelihood of confusion. In this way, Indian law embraces a dualism, that is, registered and unregistered marks receive protection under statutory law and common law, respectively.

3. Protection of Well-Known Marks. The section 11 of the Act also safeguards the well-known trademarks against misuse even in other goods and services that are not related⁷. Indian courts have extended this to avoid tainting of reputation. Acknowledgment of famous marks acknowledges adherence to the international requirements and international business conditions.

III.COMPARATIVE ANALYSIS: INDIA, UNITED STATES AND EUROPEAN UNION:

1.The foundation of Trademark Rights:

India has a hybrid system of trademarks. Although registration is granted by the Trademarks Act, 1999, under which statutory rights are granted. In some situations, the registration may be invalidated by prior use of a mark. Indian courts have always reiterated that earlier user rights are more important than later registration. Under this method, goodwill is identified as one that has been obtained upon actual commercial use.

In comparison, United States, under Lanham Act⁸, is more of a first-to-use system, meaning that trademark rights are acquired by actual use in commerce. Registration reinforces enforcement but lacks rights where there is no use. The European Union is governed by the European Union Trademark Regulation⁹ that takes the form of first-to-file where registration forms the main source of trademark rights.

Critical Observation: The hybrid model in India protects small and local businesses which might not be the ones that are registered to mark but have built a goodwill. This system however

⁶ *Amritdhara Pharmacy v. Satya Deo Gupta*, A.I.R. 1963 S.C. 449 (India).

⁷ Trademarks Act, No. 47 of 1999, § 11, India.

⁸ Lanham Act, 15 U.S.C. §§ 1051–1127.

⁹ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trademark.

is usually associated with long litigation procedures since prior use must be proven using documentary evidence. Although the EU model entails predictability and administrative transparency the flexible nature of the approach adopted by India, though fair, can sometimes lower the business certainty concerning commerciality

2. Possibility of Confusion and Consumer Perception:

The Indian courts have focused on the general perception that is formed in the mind of a typical buyer. Whereas in the United States, courts use a multi-factor likelihood of confusion test which is very structured and is considering mark-similarity, intent, strength of the mark, channels of trade and actual confusion. In The European Union, a global appreciation test is used which assesses visual, phonetic, and conceptual close-ups, as well as uniqueness of the preceding mark.

Comparative Insight in this is that India lacks a codified statutory confusion test, which creates a level of judicial discretion. Higher codification of structured factors would increase the predictability and consistency of doctrines.

3. Well-Known Marks and Dilution Protection:

The famous trademarks are identified and guarded in Section 11 of the Trademarks Act, 1999 even concerned to the dissimilar goods or services if reputation is portrayed. Lanham act in United States explicitly offers protection against dilution, in terms of blurring as well as tarnishment. Likewise, article 9 of European Union trademarks regulation guards reputed marks against unreasonable benefit or harm to distinctive character.¹⁰

Critical Gap in India is that there are no transparency and homogeneity in the procedure of declaring a well-known status. Determination is mostly left at the discretion of the court, but the EU system offers more organized procedures. In India, there is a need to have more codification of the procedures to increase transparency and predictability.

4. Mechanisms and Remedies of Enforcement:

Indian law provides remedies to infringement of trademarks under the Indian law which include, injunctions, damages or account of profits, infringement of goods-delivery-up, Criminal Penalties in Sections 103,105 of Trademarks Act.¹¹ Although there is a strong statutory framework, the weak enforcement hinders the effectiveness of enforcing various laws through procedures that are delayed and inconsistent criminal enforcement. In the United States Courts may impose huge damages, especially where the infringement was willful, and this is

¹⁰ Regulation (EU) 2017/1001, art. 9.

¹¹ Trademarks Act, No. 47 of 1999, §§ 103–105, India.

backed by involving a thorough discovery process. The European Union enjoys the advantage of coordinated cross-border enforcement mechanisms amongst the member states making it more efficient. Weaknesses in India as compared to other countries. Despite a thorough legal system on paper, there are still issues of implementation in practice because of the judicial backlog, comparatively small damage awards and ineffectiveness of judicial procedures. Practical enforcement could be mostly enhanced to deterrence.

5. Intermediary liability and Digital Trademark Protection:

Digital protection of trademarks has been extended to the courts of India, especially in the case of “*Yahoo! Inc. v. Akash Arora*”¹², domain names were accepted as a protectable trademark. Even so, India does not have a well-organized trademark-specific safe harbour system equivalent to the United States system. Advanced digital regulatory mechanisms have enabled the European Union to produce more articulate intermediary liability regimes.

Indian judiciary has shown flexibility in resolving the online trademark disputes. However, there is need to reform laws to have predictable and organized systems of digital enforcement especially in relation to intermediary liability and web-based marketplaces.

IV. CRITICAL ASSESSMENT OF THE INDIAN REGIME OF TRADEMARK:

1.Procedural delays: The first one is pendency in examination and opposition proceedings. Delayed dispute resolution undermines commercial certainty and weakens deterrence.

2. Fraud and Criminal Enforcement: Although the criminal penalties of falsification are established in Section 103, 104 and 105 of the Act, they seldom get enforced , allowing counterfeit markets particularly in metropolitan areas to continue thriving.

3.Non-Traditional Trademarks: Sound marks are registered in India, but the need to have a graphical representation has long been used to block the recognition of unusual marks, like scent marks and motion marks. The EU has eased this requirement and this will give a possible direction in which reforms may be made.

4. Digital Economy Challenges: The use of online markets and international e-commerce makes it difficult to enforce. Digital protection could be enhanced by making more explicit the intermediate liability standards and organized notice-and-takedown systems.

- Lessons on Comparative Jurisdictions:

The procedural framework adopted in the United States demonstrates notable efficiency, particularly in opposition proceedings before the Trademark Trial and Appeal Board, where disputes are resolved through a relatively streamlined and specialized mechanism. Similarly,

¹² *Yahoo! Inc. v. Akash Arora*, 1999 P.T.C. (19) 201 (Del. H.C.).

the centralized registration system under the European Union Trade Mark Regulation facilitates uniform protection across multiple member states, thereby enhancing cross-border legal certainty and reducing administrative complexity. Moreover, stricter border control mechanisms in several Western jurisdictions have proven effective in combating counterfeiting and protecting brand integrity.

V.CONCLUSION:

Trademarks constitute the legal foundation of brand identity, commercial reputation, and consumer trust. An effective trademark system must therefore do more than merely confer rights, it must ensure clarity, enforceability, and adaptability in a dynamic marketplace. The Trademarks Act, 1999 reflects a mature and comprehensive framework which balances statutory protection with fair recognition of prior user rights. Its hybrid model shows sensitivity to India's diverse commercial landscape, safeguarding both established corporations and small or local enterprises that rely on gained goodwill.

Nonetheless, improving efficiency in the process, shortening opposition and infringement related actions, enhancing enforcement of anti-counterfeiting, and provision of standards of intermediary liability would be helpful to facilitate the sound working of the Trademarks Act, 1999.

These reforms call for institutional strengthening rather than structural change. With targeted procedural and digital improvements, India's trademark regime can preserve its fair hybrid character while delivering greater certainty, deterrence, and global competitiveness.
