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Trademarking the Taboo: A Critical Analysis of Morality in Indian Trademark Law

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ABSTRACT

As markets expand globally, the friction between liberal branding options and public-morality oriented speech emerges at the forefront again, particularly in India with constitutional guarantees for freedom of expression. In light of the same, this research paper employs doctrinal and comparative analysis to examine the conflict within the context of other more recent controversies, such as the notorious CHUTIYARAM trademark case (2025), wherein an otherwise accepted mark by the Trade Marks Registry was quickly withdrawn following public outcry and accusations of moral impropriety. Further, this study makes a detailed examination of the statutory and judicial stance in India, with particular focus on Section 9(2)(c) of the Trade Marks Act, 1999. It draws upon various real-life examples of trademarks which have proven to be offensive and derogatory, including cases on FCUK, CHUTIYARAM, Myntra logo, BOB: Baap of Bakchod, and Sanskari Sex. In reviewing these cases, this paper demonstrates inconsistent applications of Section 9(2)(c) and evidence of administrative bias by the Trademark Registry. The paper also demonstrates the inadequacies within the Trade Marks Manual and proposes a question of clarity around definitions and substantive reform. Lastly, the research aims to critique and improve India's trademark law, contributing to the reform agenda and constitutional dialogue. It emphasizes the need for trademark law development that preserves freedom while maintaining decency, providing a foundation for the future in the context of creative marketing.

KEYWORDS

Offensive or Scandalous, Trademark, Morality, Freedom of Speech & Expression, and Section 9 (2)(c)

I. Introduction

India has a population of more than a billion people making it the second largest market in the world.[1] In addition to that, India has claimed the third rank in the global trademark filing trends in 2025 and fourth rank in 2024.[2] These facts clearly highlight that India is responsible for a large number of trademark filings in the world. This is the reason it is crucial for its trademark law to be comprehensive and revamped with the dynamic changes in the society. Now the questions arise, what is the purpose of registering a brand and protecting it through trademark? Can we really choose any name or word to be the title of our brand? What is the extent to this limit for choosing a brand name? To find the answers to all these questions, let us first understand the foundational concepts and purpose of trademarking your brand or company name.

Firstly, it is necessary to understand the meaning and purpose of the trademark and trademark law. The definition of trademark is provided under Section 2(1) (zb) of the Trade Marks Act, 1999 (hereinafter referred to as "TMA, 1999").[3] A trade mark may include words, names, symbols, logos, etc. or even a combination of these elements that is capable of distinguishing goods and services of one company from another. Now let us understand the purpose of the trademark.

The primary purpose of trademark law is twofold. First includes protecting the reputation of the brand. A trademark serves as the identity of a brand and builds the goodwill that a company cultivates through its product quality and consumer trust. By providing exclusive rights to use that brand name or logo, a trademark protects this valuable intangible asset.

Another aspect of this twofold purpose is the prevention of confusion among the consumers. Trademarks also serve as a guide for consumers to distinguish the source and quality of

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[1] World Population Review, India, (Last visited April 28, 2025), *available at*: https://worldpopulationreview.com/countries/india

[2] PR Newswire, Clarivate Report Reveals Top Trademark Portfolios, (Last visited May 15, 2025), *available at:* https://finance.yahoo.com/news/clarivate-report-reveals-top-trademark-070000368.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuYmluZy5jb20v&guce_referrer_sig=AQAAABmm25jorife4VEgKFG9AsfzNAyYwSn3NgwM0IWz0SPbwmZ6bZRu7Tb2hx6SYeOSJqZWLWM2PQWbBJdZkM9LoQfPoWkJ1OKbS13luOnfOqazNffsKLs4PUC5aN-odEH07UxbTorK17IKBIqFYwbyo8oEMg6Jl_jsp3Sd5jpDpfsg; WIPO, World Intellectual Property Indicators 2024, https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2024-en-world-intellectual-property-indicators-2024.pdf.

[3] Trade Marks Act, 1999, (Act 47 of 1999) s. 2(1) (zb)

products or services. Trademark protection prevents other entities from misleading the public by using deceptively similar marks, thereby ensuring market clarity and consumer trust.

In addition to its primary purpose of economic and commercial function, a trademark also serves as a mode of communication, often encapsulating ideas, cultural themes, and artistic nuances. This expressive function is precisely what brings trademarks into potential conflict with public morality, particularly when the mark is provocative, controversial, or satirical. Furthermore, the purpose of Indian trademark law as given in the preamble of the TMA, 1999 is "*to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks*."[4]

As concluded from the abovementioned paragraphs, trademarks might come across as merely commercial symbols and signifiers, however they are over and above that. They are cultural, linguistic, and symbolic devices that express the values, identities, and art of society. In India, the exponential growth of trade, creativity, and constitutional liberty has created the problem of offensive, scandalous and derogatory trademarks. It has become a controversial area where legal control clashes with social morality. Recently, in March 2025 several social media platforms were flooded with the controversial news of acceptance of "CHUTIYARAM" trademark by the Registry[5]. However, after a few days the Registry objected the registration of the same, stating that it was accepted by mistake[6]. This is not the first case of refusal by the Registry, nor it seems to be the last. The refusal to register certain trademarks on grounds that they are "scandalous," "obscene," or hurtful to public sentiment has raised significant constitutional and jurisprudential questions. In India, this conversation around balancing freedom of expression and public morality within the framework of Indian trademark law has intensified in the past few years. This research paper discusses in length the legal framework and judicial precedents concerned with the offensive and derogatory trademarks in India.

[4] Trade Marks Act, 1999, (Act 47 of 1999) Preamble

[5] "Delhi Trademark Office Accepts Registration of 'CHUTIYARAM' Under Class 30, Sparks Legal Debate", (Last visited May 9, 2025), *available at:* https://www.thelawadvice.com/news/delhi-trademark-office-accepts-registration-of-%E2%80%98chutiyaram%E2%80%99-under-class-30-sparks-legal-debate

[6] "'Why not Chutiyaram?': Namkeen brand applicant questions Trade Mark's U-turn," Hindustan Times, (Last visited May 9, 2025), *available at:* https://www.hindustantimes.com/india-news/why-not-chutiyaram-namkeen-brand-applicant-questions-trademarks-uturn-101742625120726.html

II. Morality and Trademark Law in India

1. Section 9 (2)(c)

Trademark is defined under Sec. 2(1)(zb) as "*a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours…*"[7] From the definition, it is clear that a mark which is capable of helping the consumers to distinguish between the goods and services of one brand to that of another is a trademark.

Further, Section 9 lists the absolute ground of refusal of registration of a trademark. In particular, Section 9(2)(c) of the Indian TMA,1999 plays a critical role to ensure that the registration of a trade mark adheres not only to commercial norms but also to broader standards of morality and decency. It reads: "*A mark shall not be registered as a trade mark if… it comprises or contains scandalous or obscene matter*."[8]

The provision which appears clear at first glance presents complicated issues because it remains unclear regarding as to what falls under the definition of "scandalous" and "obscene" matter. In this context, the Examiner is the first authority that determines whether a mark is morally offensive or not. It continues to be uncertain how their evaluations influence the trademark registration of marks that might otherwise be considered as lawful and decent.

The legislative wordings in Section 9(2)(c) use ambiguous language based on the terms "scandalous" and "obscene." The TMA, 1999 along with its supplementary Trade Marks Rules, 2017 do not contain precise explanations for the terms "scandalous" and "obscene."[9] Instead, reliance is placed on the Draft Manual[10], judicial interpretations and prevailing social norms.

In *Aveek Sarkar v. State of West Bengal*, The Supreme Court modified the obscenity standard by replacing the outdated Hicklin Test with the "Contemporary Community Standards" test which affirms that moral standards change across societies[11]. Despite this, flexibility in administrative settings such as the Trade Marks Registry often leads to inconsistent and

[7] Trade Marks Act, 1999, (Act 47 of 1999) s. 2(1) (zb)
[8] Trade Marks Act, 1999, (Act 47 of 1999) s. 9(2)(c)
[9] Trade Marks Act, 1999, (Act 47 of 1999); Trade Marks Rules, 2017, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) Notification, March 16, 2017
[10] A draft of Manual of Trade Marks Practice & Procedure, Ministry of Commerce and Industry, Government of India, March 10, 2015.
[11] 2014 (4) SCC 257

subjective decisions despite its positive aspects. The provision serves multiple purposes based on its underlying legislative intent:

- The provision works to block official registration of state-sanctioned vulgar and obscene content.
- The provision aims to prevent trademarks from functioning as channels for hate speech defamation and blasphemy.
- The provision implements measures to uphold public decency and moral order across India's pluralistic system.

Despite the legitimate nature of these goals, they must pass the constitutional assessment of reasonableness and proportionality when restricting rights under Article 19(1)(a).

2. The Constitutional Conflict: Article 19(1)(a) vs 19(2)

The fundamental right of freedom of speech and expression is ensured by the Constitution under Article 19(1)(a). This right also includes commercial speech.[12] However, this freedom is not unfettered and can be limited under Article 19(2), including reasons like decency, morality, and public order. The Indian judiciary have reaffirmed in plethora of cases that limitations under Article 19(2) should be "reasonable" and in proportion to the harm to be avoided.[13] A total prohibition on all trademarks that are considered "scandalous" or “obscene” without specific criteria would probably violate this test of proportionality. In the landmark judgment of Shreya Singhal v. Union of India, the Supreme Court struck down Section 66A of the IT Act, 2000 that used to criminalise online speech that deemed offensive or annoying.[14] The SC ruled the provision to be vague and overbroad, and the same analogy of principles is as much applicable to the indeterminate terms of Section 9(2)(c).

3. Administrative Application

The operation of Section 9(2)(c) turns out to be essentially administrative. The trademark examiners within the Trade Marks Registry are given broad discretion to decide whether or not to accept or refuse applications on the basis of their opinion on what is offensive. In practice, this results in:

[12] *Tata Press Ltd.* v. *MTNL*, 1995 AIR 2438
[13] *Bobby Art International* v. *Om Pal Singh Hoon*, 1996 AIR 1846
[14] 2015 (2) SCC (CRI) 449

- One of the consequences are the inconsistent results in the trademark acceptance process. The screening of a number of trademark applications proves that. Trademarks such as Suar.in[15], FCUK FILMS[16], Gando Manas[17], AIB ALL INDIA BAKCHOD[18], SEX-PEE GOLD[19], LUNIOR SEX EDUCATION[20], were accepted, whereas similarly suggestive marks such as BOB BAAP OF BAKCHOD[21], FUCK WHAT PEOPLE THINK[22]and comparatively educative marks like SAFE SEX WEEK,[23] THE SEX-ED[24]were rejected.
- Another corollary is the involvement of personal or cultural bias, particularly in the assessment of regional slang language. The same was argued by the applicant in the CHUTIYARAM case, that the Registry withdrew its approval of the trademark because of the bias against the Hindi language.[25]
- In addition to the above-mentioned consequences, the business or brand owners suffer delays and economic loss due to the refusal of their trademark.

Such discretion, if not supported by codified rules or objective criteria, is a fertile breeding ground for arbitrariness and judicial challenge.

4. Judicial Interpretations of Offensive and Scandalous Trademarks in India

The Indian courts and administrative authorities have struggled with the intricate nexus between trademark law, public morality, and freedom of expression from time immemorial. Section 9(2)(c) has been the subject matter of various controversial cases as discussed above. This part explores significant cases that have developed the jurisprudence in this field, examining the rationale of decisions and their implications for trademark law in India.

A. The 'FCUK' Trademark Case

British fashion chain French Connection UK (FCUK) attracted a lot of attention in the early 2000s when it submitted its first application for registration of ‘‘FCUK’’ as a mark on 25 April

[15] Trademark Application No. 3718182
[16] Trademark Application No. 5563586
[17] Trademark Application No. 5422357
[18] Trademark Application No. 2835126
[19] Trademark Application No. 972515
[20] Trademark Application No. 5185972
[21] Trademark Application No. 3277948
[22] Trademark Application No. 3337426
[23] Trademark Application No. 4068024
[24] Trademark Application No. 5251506
[25] Trademark Application No. 5668327. Also see, http://images.assettype.com/barandbench/2025-03-21/ryzdv4i8/CHUTIYARAM_response.pdf

1997 for Class 25.[26] The brand name is pronounced identically to an expletive, which automatically invited criticism and controversy. In the UK, the furore deepened with the intervention of the Advertising Standards Authority (hereinafter referred to as "ASA") controlling the brand's advertising business.[27] Ultimately, the trademark “FCUK” was approved and accepted by the UKIPO following the rejection of appeal to the Appointed Person on May 17, 2006.[28]

While there was backlash in the UK, the Indian scenario brought a different legal picture. French Connection UK registered the 'FCUK' trademark without much of a problem by filing its first application on March 04, 1998.[29] It reveals a more liberal approach by Indian authorities to suggestive marks. The Indian trademark office identified the brand's name as a distinctive trademark and not an obscene term. To put it shortly, in the UK, the French Connection UK's trademark application generated quite a media frenzy and legal attention with the imposed restrictions on advertising campaigns. However, in India, the company managed to register trademark protection, demonstrating a contrasting system for suggestive brand names. This whole case demonstrates how language, marketing strategies, and legal systems interact on the global platform.

B. The 'CHUTIYARAM' Trademark Case

On March 17, 2025, the Trade Marks Registry issued an initial approval of the trademark “CHUTIYARAM” by publishing it in the trademark journal, filed in Class 30 as per the NICE classification which includes variety of products, in particular namkeen and biscuits.[30] The examiner rationalized the acceptance by interpreting the term to be a combination of two random words, "Chuti" and "Ram" at this point.[31] They stated that such components are

[26] Colin Davies, and Rhiannon Davies, “Fighting Controversy in the UK: Morality and a Trade Mark Application,” [2003] *Business Law Review* 137 at 137

[27] “FCUK slogan 'not offensive'”, The Guardian, (last visited May 2, 2025, 06:30 pm), *available at:* https://www.theguardian.com/media/2005/dec/21/marketingandpr.advertising

[28] “FCUK TRADE MARK”, Reports of Patent, Design and Trade Mark Cases, 124 Issue 1, Pages 1–33, (2007).

[29] Trademark Application No. 793779 and 793780

[30] Pramode Mallik, “'CHUTIYARAM' to hit Delhi soon? Why has it triggered controversy?”, DNA India, (last visited May 04, 2025, 01:54 pm), *available at:* available at: https://www.dnaindia.com/business/report-chutiyaram-to-hit-delhi-soon-why-has-it-triggered-controversy-3139570

[31] “Trade Marks Registry accepts ‘CHUTIYARAM’ mark for namkeen and biscuits company”, Bar and Bench, (last visited May 03, 2025, 04:10 pm), available at: https://www.barandbench.com/news/trade-marks-registry-accepts-chutiyaram-mark-for-namkeen-and-biscuits-company

considered generic and unconnected words that do not express any particular meaning, rendering the subject trademark to be distinct enough for registration.

But this acceptance was soon challenged. The term "Chuti" may be a word used as an insult, and when it is prefixed by "Ram," a name which carries a deep sense of devotion to a holy deity, most people felt the term to be insulting and offending.[32] This controversy soon gained momentum insisting that approving a trademark with such a name might encourage derogatory language. Consequently, the Trade Marks Registry responded by rescinding its preliminary approval. It sent a formal notice under the heading of an error in judgment citing Section 19(a) of the TMA,1999.[33] It also referred to Sections 9 and 11 of the Trade Marks Act, which address the grounds for refusal of trademarks as being offensive or against public morality.[34] Even after contentious U-turn, the applicant, Sadhna Goswami challenged this decision. She claimed the etymology of the name was made up of "Choti" or "Chutiya/ चुटिया" a small divine tuft of hair tied onto the head post-ritual, and "Ram," a revered deity in Hindu mythology.[35] The applicant remained firm, stating that the word was not a disrespectful or offensive word and was actually rooted in spirituality and tradition.

Through this case, it becomes evident that there are complex challenges in the act of balancing linguistic nuances with cultural symbolism.[36] At the same time, maintaining public morality standards throughout trademark registration process. Though, the matter is still pending, it reveals that certain words which possess no harmful intent might contain profoundly offensive interpretations for others groups. It raises questions as to whether historical and cultural meanings should carry more weight than the mere-day context of the term shadowed by social sensitivities. In the end, this situation illustrates the need for thorough evaluation in trademark law to ensure that no language is formally endorsed and becomes hurtful and inappropriate.

[32] Sankalp Tiwari, "The Chutiyaram Trademark and Its Legal Aspects: When trademark cannot be granted?", Lawyers Club India, (May 2, 2025, 6:43 pm), *available at:* https://www.lawyersclubindia.com/articles/the-chutiyaram-trademark-and-its-legal-aspects-when-trademark-cannot-be-granted--17548.asp

[33] Trade Marks Act, 1999, (Act 47 of 1999) s. 19

[34] Supra note 31

[35] Trademark Application No. 5668327, Authorisation Letter, Dated March 21, 2025.

[36] "Trademarks and Morality: A Legal Analysis of Obscene and Offensive Trademarks", Great Learnpro, (last visited May 03, 2025, 12:19 pm), *available at:* https://learnproacademy.in/trademarks-and-morality-a-legal-analysis-of-obscene-and-offensive-trademarks/

C. The 'Myntra' Logo Controversy

In January 2021, the fashion e-commerce platform, Myntra became the centre of a controversy over its logo. Naaz Patel filed a complaint accusing the company's logo to be offensive to women.[37] The complainant argued in its complaint that the stylized 'M' in Myntra's logo inappropriately resembled a woman with her legs spread open. By this incident, the fact that public perception can influence large companies was proved. In the meantime, Myntra quickly agreed to redesign its logo and consecutively filed the trademark applications for its revised logo.[38] This led to a popular brand like Myntra making changes to its visual branding just to avoid further controversy as well as amassing financial losses.

In spite of the fact that this case was not a formal legal battle based on trademark law, it highlighted a different kind of conundrum. It shows that social attitudes and activism can influence a brand's image for the positive or the negative. Even without formal trademark disputes, the companies remain in the scrutiny of the public eye, ultimately leading them to modify their logos or trademarks. However, in the era where Indian society is progressing rapidly, such social movements and activism portrays a deceptive ideology.[39] This is a case of over-scrutiny of a logo that is a simple English letter-M, not necessarily a woman spreading her legs.[40] The brands must remain vigilant of and sensitive to cultural perceptions and respond sagaciously after considering the best recourse.

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[37] "Myntra changes logo after complaint calls signage offensive to women", The Hindu, (Jan. 31, 2021, 05:28 pm), *available at:* https://www.thehindu.com/business/Industry/myntra-changes-logo-after-complaint-calls-signage-offensive-to-women/

[38] Pushpit Singh, "The point where intellectual property and obscenity intersect: Analysis of Section 9(2)(c) of Trademarks Act, 1999 in context of the Myntra case – Part 1", *NLUJ Law Review*, (May 03, 2025, 01:17 PM), *available at:* https://nlujlawreview.in/contemporary-issues/the-point-where-intellectual-property-and-obscenity-intersect-analysis-of-section-92c-of-trademarks-act-1999-in-context-of-the-myntra-case-part-1/

[39] Hetavi Bari, "'M' FOR MYNTRA: THE INTERSECTION OF INTELLECTUAL PROPERTY AND OBSCENITY", *Jus Corpus Law Journal*, (Last visited May 10, 2025), *available at:* https://www.juscorpus.com/m-for-myntra-the-intersection-of-intellectual-property-and-obscenity/

[40] Pushpit Singh, "The point where intellectual property and obscenity intersect: Analysis of Section 9(2)(c) of Trademarks Act, 1999 in context of the Myntra case – Part 2", *NLUJ Law Review*, (May 03, 2025, 01:28 PM), *available at:* https://nlujlawreview.in/intellectual-property-law/the-point-where-intellectual-property-and-obscenity-intersect-analysis-of-section-92c-of-trademarks-act-1999-in-context-of-the-myntra-case-part-2/

D. Other Notable Cases

- **'FUCKIRA PRODUCTS'**[41]: This application although was not denied registration, but was objected under Section 11, without attracting any objection under 9(2)(c) in spite of the inclusion of an explicit term.[42]
- **'SANSKARI SEX'**[43]: Despite the juxtaposition of traditional values, i.e., 'Sanskari' with a taboo subject ('Sex'), the application faced objections. It reflects that the Registry at times have a cautious approach towards approving controversial trademarks. It seems to prioritise public morality because of the bias towards Hindi language, over the reasoning and intent behind the trademark's meaning.
- **'BOB BAAP OF BAKCHOD'**[44]: This trademark faced refusal in Class 35 when it was examined on the basis of using offensive words that are commonly interpreted as offensive slang in Hindi language. At the same time, while the mark was rejected in Class 35, it was accepted and duly registered in Class 38, Class 41, and Class 42.[45]

These cases bear witness to the inconsistencies in the decisions of the Registry. In some of the cases, the Registry tends to err on the side of caution, often rejecting trademarks that contain language or themes potentially deemed offensive. While the other cases shows that plethora of marks are objected or even refused even if they are part of contemporary vernacular or satire.

E. Analysis

The analysis of abovementioned cases demonstrates the following patterns and implications:

- **Subjectivity in Decision-Making** - The inability to follow established norms and objectively oversee the registration process results in indecisiveness as evident in accepting and rejecting "CHUTIYARAM" trademark at the two different times.[46]

[41] Trademark Application No. 3853928

[42] Tanya Choudhary, "Revising Trademark Restrictions: The new wave of interpreting 'Scandalous' or 'Immoral' Words", The IP Press, (May 03, 2025, 02:54 PM), *available at:* https://www.theippress.com/2020/05/17/revising-trademark-restrictions-the-new-wave-of-interpreting-scandalous-or-immoral-words/

[43] Trademark Application No. 4344761

[44] Trademark Application No. 3277948

[45] Trademark Application No. 3277949, 3277951, and 3277952

[46] "CHUTIYARAM Accepted Despite Public Morality Concerns", Compliance Calendar, (Last visited May 03, 2025, 02:03 pm), *available at:* https://www.compliancecalendar.in/learn/chutiyaram-accepted-despite-public-morality-concerns

- **Public Opinion Influence** - It is quite apparent that public outcry and media attention have the potential to influence administrative choices, thus the effect of public opinion on trademark registration.
- **Cultural Sensitivity** - Trademarks that rely on semantic nuance or cultural references affecting a large section of a society are subject to more intense scrutiny. This underlines the value of cultural expertise in the examination process.
- **Balancing Act** - Officials such as Examiners and Registrars must maintain harmony between protecting public morality and upholding freedom of expression. This ensures that decisions are not capricious but rather rooted in consistent legal reasoning.

III. International Context and Need for Reform

When comparing with the U.S. trademark law, Section 2(a) of the Lanham Act did the same in prohibiting "immoral" or "scandalous" marks. Nevertheless, in the landmark decisions of Matal v. Tam and Iancu v. Brunetti, the Supreme Court of the U.S. found that barring registration on a view-point-discriminatory ground infringed the First Amendment. The Court reiterated the importance of remembering that trademark registration does not represent government speech and the state could not stifle private expression even if it is offensive in some cases. This comparison leads to the question: Should India rethink its morality-based bans on trademarks, especially where they stifle protected speech in a commercial environment? An increasing number of researchers and practitioners call for Section 9(2)(c) to be reformed because of its vagueness and overreach. Few suggestions include the following:

- To add statutory definitions or examples of scandalous or obscene material.
- It would be better to establish a "public harm" test, as distinct from a "public discomfort" threshold in this context.
- To establish a review board or a systematic appeal process with judicial review for the cases of refusals on moral grounds.

Section 9(2)(c) though founded on legitimate state interests, is marred by ambiguous language, subjective discretion, and potential constitutional invalidity. Its unorthodox nature invites discretion that may result in arbitrary outcomes, thus undermining India's commitment to both free expression and regular trademark registration. For a better balanced, open, and constitutionally sound system, there is an urgent need for statutory clarity, judicial restraint, and administrative accountability in implementing this provision.

IV. Trademark Office Guidelines on Offensive and Scandalous marks

As previously explained, the law related to offensive and scandalous trademarks in India has its statutory foundation under Section 9(2)(c).[47] Notwithstanding, the actual implementation of this statutory obligation largely depends on the way examiners working at the Trade Marks Registry interpret and enforce it. The core guiding text for these examiners is the Draft of Trade Marks Works Manual (hereinafter referred to as "the Manual").[48] Albeit, the Manual was formulated to engender consistency in practice, yet it tends to grant broad latitude to examiners in making judgments about scandalous or obscene marks. It is because of its failure to provide definitional clarity or objective evaluation criteria.

The Manual's para 48 quotes that a trademark shall not be registered if it "*comprises or contains scandalous or obscene matter."*[49] There is no clear definition and scarcely any illustrative examples in the Manual of what is "scandalous" or "obscene." Instead, the Manual gives a general guidance that obscene or scandalous matter is that which is " *A mark which on its face appears to be offensive shall be refused.*"[50] Such vague words lead to over-reliance on examiners' personal interpretation, which is not enough as clearly mentioned in Para 49 of the said Manual.[51] Hence, the process is vulnerable to subjectivity, inconsistency, and personal or cultural prejudices. In addition, the Manual mentions the provision that marks are merely distasteful should not be objected under Sec. 9(2)(c) unless they have crossed a specific line of being "obscene" or "scandalous" by causing outrage.[52] But this line is nowhere clearly defined in statutory law, or in administrative guidance. The suggestion regarding the proportion of the public to declare the trademark to be attracting outrage is set in vague terms as: "*The outrage must be amongst an identifiable section of the public. A higher degree of outrage amongst a small section of the public will be sufficient to raise an objection, just as a lesser degree of outrage amongst a larger section of the public will also suffice.*"[53]

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[47] Supra note 8

[48] Office of the Controller General Patents, Designs and Trademarks, CG/TMR/Public Notice/2015/83 (Issued on March 10, 2015), https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_43_1_tmr-manual-2008.pdf

[49] ibid

[50] Archana Priyadharshini, "Exploring the Not-Very-Common Provisions of Section 9", Selvam & Selvam, (Jun. 19, 2019), *available at:* https://selvams.com/blog/exploring-the-not-very-common-provisions-of-section-9/

[51] Supra note 48

[52] ibid

[53] ibid

Moreover, there is no standard reference point on whose perception will be the outrage be decided. This is tricky in a nation like India, where there are wide differences in language, culture, and principles of morality across regions.

For instance, the recent case in March 2025 when the public commotion over the trademark "CHUTIYARAM" exemplifies how administrative actions are subject to changing public opinion. While initially accepted by the Trade Marks Registry, the mark was later withdrawn following media and public outcry. The Trademark Office's volte face proved not merely the lack of objective guidelines but also the effect of moral panic or media trials on what would otherwise be a legally sound administrative decision. This case, and several others like it, is indicative of the fact that in practice, the Registry does not always apply a systematic test or checklist to find obscenity or scandalousness. The decision usually hinges on linguistic connotation, perceived offensiveness, or examiner judgment. In most such instances, neither legal doctrine nor public interest test is uniformly applied.

The Manual refers to the requirement to safeguard religious susceptibilities but does not otherwise say how this is to be assessed. Without doctrinal instruments such as the proportionality test[54], the Registry may end up over-censoring trademarks which might not be truly injurious. Although the Manual and the Trade Marks Rules, 2017 identify procedures for examination and publication, they do not establish parameters to help an examiner differentiate between satire and obscenity, irony and vulgarity, or cultural allusion and derogation. Without descriptive guidelines, such applications depend heavily on examiner temperament, rather than legal principle. Importantly, there is no requirement for the examiner to refer to contemporary social standards, public surveys, or expert opinions in determining offensiveness. The contrast with judicial practice in obscenity-related cases is striking.

The lack of procedural protection is also on the cards. The Trade Marks Registry does not insist on recording reasons when a trademark is opposed on grounds of being scandalous. Applicants are usually confronted with a one-line objection under Section 9(2)(c) without detailed reasoning or citation. In many of the cases, this practice renders such decisions indisputable in appeal or writ proceedings, and leaves applicants with scarcely any alternative than to change their trademarks. In light of these concerns, this study proposes the following reforms to be considered:

[54] *Association for Democratic Reforms & Anr.* v. *Union of India & Ors*, (2024) 2 S.C.R. 420

(i) Definitional Clarity can be provided by insert clear definitions of "scandalous" and "obscene" in the Manual or through Rules.

(ii) A catalogue of illustrative examples could be added, gathered together from previous decisions. It will help in providing direction concerning unacceptable content.

(iii) The Examiners need to adopt a Proportionality Test in order to consider balancing the expressive value of a trademark with the extent of possible public harm in such cases.

(iv) In these types of cases, there is a need to establish standards for evaluating regional slang, irony, and satire so that unfair penalization of cultural expression is averted.

(v) Mandate the examiners to provide reasoned directives when invoking Section 9(2)(c) instead of simply issuing a one-line objection.

(vi) Training and Review Mechanisms could be established which will mandate regular training of examiners and an oversight body to review morality-refusals.

Even as one of the fastest-growing IP jurisdictions, India stands to fall behind if its morality-based refusal standards continue to be ad hoc and opaque. Brands increasingly use provocative language and cultural allusions in advertising, especially in fashion, satire, and start-up sectors. This uncertainty in the legal environment will deter innovation and discourage legitimate expression. To deal with this, India needs to reform its administrative apparatus, not just to bring itself in line but also to be able to keep its integrity with the rest of the global IP community.

V. Interpretation of Obscenity and Scandalous in the Context of Morality and Public Order in Indian jurisprudence

In India, the courts have struggled time and again with determining what content oversteps the mark from acceptable to offending or scandalous under Indian jurisprudence. The following cases discuss the stance of the court over the last few decades.

A. Pre-Community Standard Test Cases

In the landmark case of Ranjit Udeshi vs State of Maharashtra, the Supreme Court addressed the issue of obscenity in the context of freedom of speech.[55]The Court held Section 292 of the Indian Penal Code, which criminalizes the sale of obscene books, to be constitutional.[56] The

[55] 1965 AIR 881

[56] The Indian Penal Code, 1860, (Act 45 of 1860) s. 292

SC used the Hicklin test, which stated that any portion of work is obscene if it degrades the mind of such persons who are susceptible to such immoral influences.[57] The Court explained that obscenity may not be covered under Article 19(1)(a) of the Constitution because it falls within the reasonable restrictions permissible under Article 19(2) in the public interest of decency or morality. [58] Another landmark judgment regarding obscenity is the Bobby Art International Case.[59] The SC held that if a scene is introduced to establish the sympathetic nature of the movie and does not arise sexual passion in an ordinary reasonable person, then such scene cannot be considered as obscene. This case is significant in the context of trademarks because it underscores the delicate balance that needs to be maintained between freedom of speech and expression and the need to safeguard public morality and decency.[60] The SC also held that everything that appears to be obscene may not actually be obscene if there is a message to be conveyed by it,[61] which is often the case in deciding the scandalous and obscene trademarks.

B. Community Standard Test Case

With the evolution of Indian society, the Hicklin test was denigrated for being too broad and not considering the alleged obscene work holistically. This gave rise to a change in judicial strategy in Aveek Sarkar case, wherein the Supreme Court employed the "community standards test."[62] This test assesses obscenity against modern community standards and evaluates whether the overall material appeals to prurient interests.[63] The Court ruled that *"only the sex-related material which tend to "excite lustful thoughts" can be considered as obscene, and the obscenity must be tested from the perspective of an average person."*[64]

[57] R. v. Hicklin (1868), 3 QB 360; Jaanvi Jolly, "Section 9 of Trademarks Act, 1999", iPleaders, (Oct, 2, 2024), *available at:* https://blog.ipleaders.in/section-9-of-trademarks-act-1999/?#Section_93c_Shape_which_provides_substantial_value_to_goods

[58] Supra note 55

[59] *Bobby Art International, Etc* vs *Om Pal Singh Hoon & Ors*, 1996 (4) SCC 1

[60] "Bobby Art International, Etc vs Om Pal Singh Hoon & Ors on 1 May, 1996 – Case Summary", LAWFYI.IO, (Last visited May 06, 2025, 03:56 pm), *available at:* https://lawfyi.io/bobby-art-international-etc-vs-om-pal-singh-hoon-ors-on-1-may-1996-case-summary/

[61] *Ajay Goswami* vs *Union of India & Ors*, 2007 (1) SCC 143

[62] *Aveek Sarkar & Anr* vs *State of West Bengal and Anr*, 2014 (4) SCC 257

[63] Supra note 57

[64] Supra note 38

C. Post-Community Standard Test Cases

These principles were applied to trademark law by the Delhi High Court in Lal Babu Priyadarshi v. Amrit Pal Singh, wherein the HC considered the registrability of the word "Ramayan" for incense sticks.[65] The Court ruled that the application of the name of a religious scripture as a trade mark for business goods could be offensive to religious feelings and was accordingly banned under Section 9(2)(b) of the TMA, 1999, which prohibits marks likely to cause hurt or offense to religious susceptibilities.[66] It was another case which dramatizes the conflict of power of balancing the trademark and public order and morality before a judge. In addition, the Delhi High Court in Amar Nath Sehgal v. Union of India case, acknowledged the moral rights of artists under the Copyright Act, 1957.[67] The Court ruled that the demolition of the plaintiff's mural by the government infringed his moral rights and the country's cultural heritage. Even though this case was concerning copyright law, it indicates that the judiciary is aware of moral factors involved in intellectual property rights.

To conclude, Indian jurisprudence while interpreting scandalous and obscene matter demonstrates a cautionary approach towards morality and public order by balancing individual freedoms against social values. Judicial tests have shifted from being categorical to context-sensitive evaluations with a view towards community standards of the day and the possibility of giving offence to public sensibilities. This evolving process ensures that trademarks conform with the moral and cultural fabric of society.

VI. Conclusion & Recommendations

Section 9(2)(c) is under constant scrutiny for being vague and could be a culturally laden term as per the recent controversial cases. There is no definition, criterion, or test of the statutory formulation for defining “scandalous or obscene matter.” Hence, this provision is subject to discretionary interpretations which could be arbitrary and result in decisions that may not align with constitutional considerations of the right to equality and free speech.

Among the most significant issues with the existing standard is its open-ended language. The definitions of “scandalous” and “obscene” and therefore potential categorizations are decisive

[65] *Lal Babu Priyadarshi* v. *Amritpal Singh*, (2015) 16 SCC 795

[66] Iram, “What Can not be Registered as Trademark in India?”, Kanakkupillai, (Dec. 21, 2023), *available at:* https://www.kanakkupillai.com/learn/what-cannot-be-registered-as-trademark-in-india/

[67] *Amar Nath Sehgal* vs *Union Of India And Anr*., 117 (2005) DLT 717; Copyright Act, 1957 (Act of 14 of 1957)

on their own. There should be flexibility and interpretation in any legal systems. However, without definitional guidance or an example of that could provide illustrative guidance for purposes of consistency, could generate opportunity for inconsistencies in practice. In India, trademark examiners at the Registry assess trademark applications and often issue rejection notices invoking Section 9(2)(c), without sufficient analysis, resulting in a lack of transparency for applicants and creates uncertainty in pursuing trademark registration.

The central criticism here is that the standard applied under Section 9(2)(c) operates as a moral gatekeeping mechanism rather than a legal threshold. In a nation as multicultural as India is—fulfilled with rich linguistic, cultural, religious, and regional diversity—the notion of a "unified moral code" is impossible. As such, judgments on whether a mark is "obscene" or "scandalous" are not only differ but may also do so in a way that effectively promotes dominant cultural or language standards over minority cultures or subcultures.

For instance, a sign such as "BOB: Baap of Bakchod" can be funny or cheeky in front of urban youth crowds but prove to be vulgar in front of elder or conservative judges. Just as hybrid word or regional colloquial phrases can be misconstrued or completely rejected as having "offensive meanings," these case studies illustrate how the determination to reject often comes not from demonstrable harm to public decency but rather discomfort or inexperience with slang or satirical language. These deficiencies are also compounded by the absence of evaluative criteria in the Trade Marks Manual with respect to infringers that are vulgar, obscene, or scandalous. Given the definitions, lack of clarity has downstream impacts:

- **Legal uncertainty:** The uncertainty as to what language, imagery, or references can be denied under Section 9(2)(c).
- **Chilling effect on speech**: The ability of creators and brand builders to completely exercise their creativity and use of stronger brand names, may be self-censored to avoid arbitrary acceptance/rejection.
- **Inconsistency in decisions:** The Registry may allow or deny similar face value definitions based on an examiner's personal beliefs, public sentiment or societal pressure through the media.
- **Disproportionate impact:** Creatives, start-ups and certain industries are impacted from using bold thinking in branding methods (i.e., fashion, entertainment, satire).

Over and above that, the notion of scandalousness is prone to gender and class implications. It is observed that the marks that evoke sexuality, even in non-explicit ways, are often met with

immediate suspicion. For instance, the marks of brands like "Kamasutra"[68] have found commercial and legal success likely due to their long-standing use, whereas contemporary marks such as "Sanskari Sex" or "Fuckira Products" are attracting objections, despite arguably being more clever than offensive.[69]

These contemporary incarnations of identity, satire, and sexuality reveal a generational or cultural discomfort. This causes the trademark authorities to rely on intuitions reflecting dominant cultural prejudices rather than using a consistent standard rooted in the constitution. Not only was there a failure to recognize or a refusal to respect the accommodation of satirical, artistic, or countercultural expression, but the law was also routinely and transparently deployed as a shield for moral conservatism rather than as a neutral arbiter for consumer protection. Academically, this approach is not easy to square with Article 19(1)(a), granting the right to free speech, not just political or social, but commercial and artistic. Although, Art. 19(2) allows reasonable restrictions based on decency or morality, such restrictions must be assessed for their proportionality, as in Modern Dental College and Research Centre v. State of Madhya Pradesh.[70] A vague moral standard cannot pass this proportionality test as most of the time, the restriction has not been narrowly tailored nor is it necessary.

Based on these findings, the research proposes a compelling argument for reform. The current regime should adapt to allow for a more objective, rights-respecting, and culturally considerable standard as reiterated throughout the research. A few recommendations may include:

(i) **Codifying a proportionality test:** In lieu of a mark being labelled scandalous, or in the registration process denying a mark, all examiners should be required to demonstrate that the restriction is reasonable, necessary, and constitutes a minimal impairment and proportional to the harm.

(ii) **Building illustrative guidelines:** India should build for examiners an illustrative, but non-exhaustive, list of examples in a manner similar to the UKIPO's trademark practice manual with contextual clarity on the examples and the purpose of the manual.

[68] Trademark Application No. 1517202
[69] Supra note 41 and 43
[70] (2016) 7 SCC 353

(iii) **Cultural training for examiners:** Examiners should have cultural training that assists with assessing marks with consideration of the linguistic and cultural sensibilities when a mark is in a regional, or hybrid language.

(iv) **Public opinion should not be the only determinative factor:** Decisions should be made based on legal principles and not on viral social media campaigns or news coverage, which was the problem in the CHUTIYARAM case.

(v) **Panel Reference for Morality-based Refusals**: A possible oversight mechanism with a mix of legal practitioners, sociologists and linguists may be helpful in examining this controversial class of cases.

To sum up, although the aim of the morality-based limits would be to ensure societal decency, morality-based refusal in Indian trademark law is still ambiguous and culturally loaded. This specific degree of ambiguity is detrimental to the consistency and fairness of the law and to the detriment of innovative, creative brand development. In closing, Indian trademark jurisprudence should develop to include a rights-based, context sensitive and inclusive practice that accommodates diversity of expression, while also respecting public standards.

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