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EDITORIAL NOTE

Intellectual Property is the key driver to propel the economic growth of a nation. Hence, understanding IP gains utmost significance not only from a business point of view but also from a socio-economic perspective. We as nationals of any country should be vigilant in protecting and defending our IP rights. However, there are multiple issues and challenges that need discussions, and reforms. The IP Press Law Review (IPPLR) is an initiative of The IP Press to extend our objectives of spreading awareness on the issues concerning intellectual property rights and related laws. It aims to promote study and research in the field of intellectual property laws in the form of academic literature. This issue reflects some of the key concerns of the Intellectual property regime both under national and international parlance. It is envisioned to embody some of the most brainstorming insights that help readers to grasp the discourse around contemporary developments in the field of Intellectual Property Law. Throughout the year, the editorial board has reviewed the papers with multiple rounds of editing to ensure quality and standard.

This issue presents intriguing issues and challenges pertaining to intellectual property law in the national as well as the international regime. The first paper encapsulates the protection of personality rights under Intellectual property laws and briefly presents the status of multiple jurisdictions. The second paper discusses a pertinent issue of protection of fictional characters that have been a cause of concern in many disputes. The author discusses the theoretical framework and analyses various tests laid down by the judiciary.

The third paper explores religion as a subject and object of the trademark. The author determines the legality of the trademark of religious symbols for private companies and religious organisations. The fourth paper presents a policy discussion on the overlap between trademark and functionality doctrine. The fifth submission deals with the congruence of intellectual property assets in combination and corporate restructuring wherein the author states that IP has immense power to help businesses to grow and hence its valuation becomes an important aspect of commercialization of IP. The sixth paper demonstrates how open-ended section 57 of the Copyright Act, 1957 is which leads to ambiguity. The author asserts reforms in the current provision of moral rights. The seventh paper discusses the recent dissolution of the intellectual property appellate board in the backdrop of the Tribunal Reform Bill, 2021. The eighth paper discusses the relevance of IP Due diligence and suggests quarterly checks and steps carry out the due diligence process to combat the closing down of businesses and lifelong losses. The ninth paper presents analyses of the patent denials in the biotechnology sector and their impact on the industry. The tenth paper presents an interesting analysis of trademarkability of non-conventional trademarks due to hindrances of graphical representation and discusses multiple judgements of the European courts. The last two items present an analysis of two landmark cases, one Monsanto case and two, Phonpe v. Bharatpe trademark tussle.

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TRIALS AND TRIBULATIONS OF TRADEMARKING RELIGION IN INDIA

Pavitra Naidu*

ABSTRACT

The following paper explores religion as subject and object of trademark. The paper begins by segregating religion into religious symbols and religious organizations in order to understand the varying effect of trademark law on both of them. The paper begins by examining the right to religion in India and its limitations. Next, it defines the application of trademark law in India. The crucial part of the paper focuses on the jurisprudence present on the issue wherein it analyses the past case-laws to deduce the various scenarios wherein trademark is permitted by Indian Courts in cases of religious symbols and trademark protection offered to religious organizations. The paper also compares the final position of India with its counterparts such as China, the United States of America and the European Union. Finally, before concluding, the paper weighs the right to trademark protection against the threat it imposes on the freedom of speech to determine whether the protection trademark laws offers is sufficient to satiate the level of protection religious organisations or public demands with respect to religious symbols.

Keywords: Trademark, religion, religious symbols, fundamental rights, U.S.A, China, European Union, freedom of universe.

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1. INTRODUCTION

Religion is an integral part of human lives and is a very personal choice. The state protects the autonomy of individuals to follow and practice their religion as they deem fit. India is a secular country, and strives to provide an environment conducive for all religions to flourish. However, there is an interesting intersection between one's right to religion and the right to expression and freedom of trade, both of which are constitutional rights. Religious signs, symbols and phrases are often used in trade. Since, all commercial activities conducted under these signs do not correspond to the religious entities; there is an increasing chance of misappropriation of religious signs that causes concern regarding preservation of religion and its culture. In such situation, it is important to understand the motivations behind a trademark that contains religious symbols/ signs/ phrases. Hence, it is important to ensure that the right to religion is not diluted due to implementation of other rights and vice versa. This paper will focus on intersection of religion-trademark law and explore if religious symbols can be registered as trademarks by private individuals/companies and by religious organisations as source identifiers. The paper will also adopt a critical lens to assess the impact of trademark registration of religious symbols by private individuals (including companies) or religious organisations upon the freedom of speech.

A. Can we Trademark Religious Symbols?

It has been observed that there are a few situations where religious symbols might require trademark protection, such as- 1) when a company wishes to trademark a phrase, name, symbol that has religious connotations or, 2) when a religious organisation wishes to protect their goodwill and wants trademark protection of a religious symbol representing their organisation. Therefore, the real question is whether religion can be subject (owner) as well as an object of trademark protection.

Since, trademark protection for religious organisation is not a common practice in India; it raises an additional set of question such as-

Should religious organizations be allowed to own trademarks especially if the religious mark is commonly used? Will it prevent a devotee from praying to that God and prohibit the use of trademarked symbols in their religious ceremonies? How will a religious organisation prove that their religious mark is worthy of trademark protection? , Finally, is this in line with the secular nature of India?

B. Intersection of Right to Religion and Trademark Law

In order to determine if private individuals or religious organisations can register religious phrases or symbols as trademarks, it is important to understand the laws applicable in this context. Primarily, the two important laws to analyse the issue would be the fundamental Right to Religion and Trademark Law.

iii. Right to Religion

Theoretically, India is a secular country, implying that the State considers and treats all religions equally.¹ However, secularism was not one of the founding principles of this nation. The Constituent Assembly had not added the word secular in the Indian preamble; it was added later by the 42nd constitutional amendment and has no corresponding mention anywhere else in the Constitution of India.² Hence, there remains a cloud of confusion regarding the exact meaning and legislative intent behind this word.

The matter was addressed in the case of *S.R. Bommai v. Union of India*³, where Adv. Mr. Jethmalani called secularism a “vague concept not defined in the Constitution”. However, the Court held that in India, secular is not a passive attitude of religious tolerance but a positive concept of equal treatment of all religions. It required the government to exercise benevolent neutrality. Further, the Supreme Court held that secularism was a constitutional goal and the basic feature of the constitution as affirmed in the case of *Keshavananda Bharti & Indira N. Gandhi v. Raj Narain*⁴.

Furthermore, in India, right to “profess, practice and propagate religion” is a fundamental right guaranteed under Article 25 of the Constitution⁵; however, the State is allowed to regulate “economic, financial, political or other secular activity associated with religious practice”. Additionally, Article 26 of the Constitution allows religious denominations the freedom to manage their religious affairs. The Freedom of Religion granted in Article 25 and 26 is elucidated through Article 27, 28, 30 and 51 A.

¹Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta (ed), *Oxford Handbook of the Indian Constitution* (2016).

²ibid.

³*S.R. Bommai v. Union of India* (1994) 3 SCC 1.

⁴*Keshavananda Bharti and Indira N. Gandhi v. Raj Narain* (1975) 2 S.C.C. 159.

⁵The Constitution of India 1950.

Next, one has to distinguish between what are secular practices and religious practices. Therefore, to deal with the issue, the Court has come up with their own test to determine what constitute as essential elements of a Religion. The reason for achieving such distinction is crucial in determining the scope of State intervention. Parts that constitutes as ‘essential part of religion’, are off-limits for the State and the religious organisations have autonomy to conduct their affairs whereas, the State has the right to regulate the ‘extraneous or unessential’ parts.

a. Essential Elements

The court uses ‘Essential practices’ test every time they have to decide if a practice is religious or not. This is not unique to India, most jurisdictions have to determine whether a policy places undue restriction of freedom of religion of a religious denomination. However, what is unique to India is the proactive role adopted by Indian judges in determining what is religion rather than accepting the version of religion practised by its believers.⁶ Such exegesis is possible as Articles 25 and 26⁷ allow for a wider interpretation that gives supremacy to the public interest over religious claims.⁸ There are two important purposes of conducting this test- 1) To decide whether constitutional protection can be awarded to the religious practice; 2) The legitimacy of an Act that regulates religious organisation.

b. Rights of Religious Organisations

The landmark judgement on religious organisations is *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt*⁹. In the Shirur Mutt case, the petitioner was the Mathadhipati who had contended the legitimacy of the Madras HRCE Act, 1951 that tried regulating the religious organisations. The petitioners contended that it violated the freedom awarded to religious organisation under Article 26. The Court observed that the Australian Constitutions and the US did not impose limitations on the right to freedom of religion. However, Indian Constitution, which is an improvement on their Constitutions, has imposed certain limitations on what should be considered as a religious practice. The Court finally concluded that-

⁶Choudhry (n 1) 1-14.

⁷The Constitution of India 1950, s 25, 26.

⁸ibid.

⁹*Commissioner, Hindu Religious Endowments, Madras v Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282.

“Under Article 26(b) a religious denomination or organisation enjoys complete autonomy in matters deciding as to what rites and ceremonies are essential according to the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.”¹⁰

However, the State retains right to legitimately regulate religious practices when –

“Run counter to public order, health and morality’ or in cases of ‘economic, commercial or political in their character though they are associated with religious practices.”¹¹

Effectively, the Court by upholding the Madras HRCE Act awarded the State the right to regulate Hindu temples and religious organizations. The Shirur Mutt case expanded the jurisprudence on religious organisations and had two important takeaways- 1) The recognition of “protection under Articles 25 and 26 was not limited to matters of doctrine or belief only but extended to acts done in pursuance of religion and therefore contained guarantees for rituals, observances, ceremonies and modes of worship”;and 2) “Complete Autonomy” granted to religious denominations to determine which religious practices they would consider as essential to their religion.

Therefore, Indian Constitution allows Religious Organisations the freedom to practice their religion and decide their essential practices. However, it is interesting to see if it extends the same freedom in cases these organizations require protection from reputational harm or need to establish a signifier to uniquely position themselves amongst the other organizations.

iv. Trademark Law

Trademarks are source identifiers and protect the goodwill of a company from being misused by competing organisations. They have become an essential part of capitalistic markets today. Organisations invest heavily in protecting their trademarks and expect exclusive monopoly over its use.

In India, the Trade Marks Act, 1999 is the primary legislation governing the trademarks. The Trademark law has three important aspects- Registration, Infringement and Passing off. While registering the trademark of a religious symbol for private individuals or religious organisation is

¹⁰*Commissioner, Hindu Religious Endowments, Madras* (n 5) [20].

¹¹*ibid.*

not prohibited per se, it is important that the mark adheres to the grounds of registration under Section 9&11 of the Act.

a. Registration

Registration is the most important step in the process as it determines whether your mark will be granted protection under the Act or not. Section 9 of the Act is responsible for deciding grounds for registration. There are certain circumstances wherein, registration will be rejected under the Act. For a trademark to be registered, it is important that the mark has distinctive character, non-generic, capacity to distinguish a company's goods/services from others and should not cause any confusion in the minds of public. Furthermore, as under section 9(2)(b) a mark can be declined registration if contains anything likely to hurt religious sentiments. Next important provision is Section 11 that deals with circumstances under which the Registrar can refuse marks that are identical or deceptively similar to an earlier trademark.

Another important piece of legislation that deals with trademark of religious symbols is the Draft Manual for Trademark Practice and Procedure. The Manual does not explicitly prohibit registration of religious symbols and deities, neither does an interpretation of Section 9(2)(b) lead to such a conclusion. The Manual acknowledges the recurring use of names and pictures of Gods and Goddess or religious symbols as trademark as a common trade practice. Hence, the Manual craves out certain exceptions to trademark registration of such marks. The Manual does not allow registration of marks that could offend religious sentiments of any class/ section of public, which is also prohibited under Section 9(2) (b) of the Act. Further, the Manual provides a list of marks that are prohibited registration. The list is prepared on the directions of the central government under Section 23(1) of the Trade & Merchandise Marks Act, 1958 that remains valid. The list includes words such as "Lord Buddha", "Shree Sai Baba", "Sri Ramakrishna", "Swami Vivekanda", "emblems of the Ramkrishna Math", "Sikh Gurus such as Guru Nanak, Guru Angad" etc. The list also includes religious symbols such as "Om" or "Names- Jesus" which cannot be registered as trademark.

Once a trademark satisfies the above-discussed conditions it is eligible for trademark registration which provides numerous benefits such as-exclusive ownership rights over the mark, helps protect the reputation, recognition of services and protects the mark against infringement etc. In case of religious organisations, obtaining trademarks will help devotees avoid scams/fraud that collects

money from them posing as the agent of the Temple. Also, by following the above mentioned guidelines trademark of religious symbols by private individuals will be capable of being a source identifier.

b. Infringement

Trademark infringement refers to an unauthorised use of a mark that is identical and deceptively similar to the registered mark. Infringement is decided from the perspective of an average consumer and whether he/she will be confused regarding the origin of the goods and services. Section 29 of the Act deals with the scope of infringement of a trademark and section 30 provides a list of defense at permit unauthorised use of a trademark.

c. Passing off

Passing off is a tort that protects the property right of an organisation in their goodwill by preventing misrepresentation that could cause damage to their goodwill/ reputation.¹² The doctrine of passing off was implemented even before the trademark law was introduced.¹³ A claim under passing off could be filed by both registered as well as unregistered trademark holders and is often used as an alternative remedy in cases of trademark infringement cases.¹⁴

Passing off can be used as an effective way to protect religious marks that are not granted trademark protection. However, the burden of proof to establish goodwill is on the one who claims passing off. This can be an expensive exercise for religious organisations, which run entirely on donations and charity. Hence, it is important they be awarded trademark protection.

In the above-mentioned framework of trademark law, it is important to assess the viability of trademark registration of religious symbols for private individuals and religious organisation.

2. JURISPRUDENTIAL APPROACH TOWARDS TRADEMARK OF RELIGIOUS MARKS

In order to determine the legality of trademark of religious symbols for private companies and religious organisations one needs to analyse the existing jurisprudence on the issue.

¹²Deborah E Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th edn 2012).

¹³ibid.

¹⁴Bouchoux(n 12).

A. Religion as symbols, phrases trademarks

For any mark to qualify as a trademark it has to fulfil the criteria of Section 2(zb) of the Trade Marks Act, 1999 which requires a mark to being represented graphically, ability to distinguish the goods/ services from others and include the shape of goods/ their packaging and combination of colours. Further, as discussed above, Section 9 of the Act does not prohibit religious symbols/ phrases/ marks unless it disparages or hurt religious sentiments of a religious denomination. This ties in with the constitutional right of religious freedom under Article 25 and 26.

Indian courts have tried numerous cases on the issue and have developed consolidated jurisprudence on it. In the case of *Lal Babu Priyadarshi v. Amritpal Singh, 2015*¹⁵, the appellant had applied for registration of the word “*Ramayan*”. The court discussed whether “*Ramayan*” which is also name of a holy book in India can be registered as per Section 9(2) of the Act. The respondent contended that since “*Ramayan*” was the name of a religious book in India, the appellants could not monopolise its use. Further, many other traders in the market selling similar products were using the word as their mark. The Supreme Court dismissed the appeal on the ground that no one can create a monopoly over the mark- “*Ramayan*”. Additionally, the Court observed that if the word “*Ramayan*” is accompanied with a suffix or prefix such that the alphabets or design or length of the word is same as “*Ramayan*” then the mark will no longer will hold significance as a religious book and may be considered for registration as a trade mark. Here, the appellant was trying to register the word “*Ramayan*” alone. The Court held that the mark was not distinguishable as 20 traders in the industry were using the same mark implying that the word has become “public juris and common to the trade.”¹⁶

This line of reasoning has being consistent over the decade and can be seen in older cases as well. In *Manglore Ganesh Beedi Works v. District Judge, Munsif City and Ors.* the petitioner had been using the trade mark “*Manglore Ganesh Beedi*” for over 50 years and was a well known mark among its consumers. The Respondent had filed a suit claiming that since smoking bidi is prohibited and considered a social evil in Hindu religion, using the trade mark containing “*Ganesh*” who is an important deity in Hindu religion deeply hurt religious sentiments of Hindus at large. The Court observed that there was no basis or material evidence to prove that religious

¹⁵*Lal Babu Priyadarshi v. Amritpal Singh*(2015) 16 SCC 795.

¹⁶*ibid.*

feelings of Hindus was hurt by smoking Bidi. Hence, petitioner's use of the trademark containing the word "Ganesh" and having the symbol of "Lord Ganesh" was not prohibited in law.

Therefore, the jurisprudence on the issue of trademark registration of a religious mark by private individuals seems settled in law.

B. Trademark of Religious Symbols by Organisations as Source Identifiers

The ambitions of a religious organisation wanting a trademark registration is slightly different from the reasons usual commercial organization get their mark registered. A religious organisation might want to register their mark under the Act to receive legal protection over their identity. However, before they can apply for such a mark it is important that the mark has already been established as a source identifier.¹⁷ In addition to the source identification requirement, the mark would still have to qualify the conditions of registration under Section 9 & 11 of the Act, i.e. distinctiveness and no resemblance to an existing trademark.

A common issue that is faced when religious organisations register their trademark is that their marks usually have direct references to religious symbols that might make the mark generic and a ground for refusal of registration.¹⁸

The issue trademark registration of a religious organisation was addressed by the Kerala High Court in 2013 when it conducted *Suo Motu Proceedings Initiated on a Petition received from R.S. Praveen Raj v. Controller General of Patents, Designs and Trademarks and Ors.*¹⁹ The Petitioner had alleged that the registration of trademark of "picture of Attukal Deity" and "Sabarimala of Women" was against the Trade Marks Act, 1999 and violated the Article 25 and 26 of the Constitution of India. The respondents in this case- Attukal Bhagavathy Temple Trust, had obtained registration of trademark for number of services under Class 42 (Device of Deity) such as – Temple services, Social services, Welfare services and Cultural services.

The Petitioners and the Amicus Curiae contended that the icon of "Attukal Deity" is common mark in public domain and cannot be monopolised by a Trust. The registration of the mark allows the

¹⁷ Steven John Olsen, 'Protecting Religious Identity with American Trademark Law' (2013) 12 Chicago-Kent Journal of Intellectual Property 129.

¹⁸ *ibid.*

¹⁹ *Suo Motu Proceedings Initiated on a Petition received from R.S. Praveen Raj v. Controller General of Patents, Designs and Trademarks and Ors.* 2013 (4) KHC 1.

Trust to engage in commercial advantage reducing the temple to a source of commerce and therefore, hurting the sentiments of faith and beliefs of the devotees. The court then discussed the significance of status of deity in relation to the Trust. In India, Hindu Law recognises Hindu idol as a juridical subject capable of holding property and having the same legal status as that of a natural person.²⁰ The Court finally held that they did not see any reason for prohibiting registration of the trademark as the Trust was able to prove that the mark has gained acquired distinctive character in relation to the activities and services. The Court also clarified that the intention of the Trust was not to limit the rights of the devotees but to prohibit the use of the picture of the deity for limited services that they have applied under trademark registration. The Court also successfully dispelled the petitioner's contention that trademark registration reduces the deity of the temple to a source of commercialisation. The Court explained that under the registration, the devotees are not prevented from making an offering in the name of the deity; however, others are prevented from accepting such a donation/offering by projecting and promoting themselves as an Agent of the Temple Trust.

Next, the Court discusses the constitutional legitimacy of registration and states that it does not fall foul of the Article 25 and 26 of the Constitution as the religious denomination is guaranteed the right to establish and maintain the organisation for religious/ charitable purposes and is allowed to manage their affairs. Therefore, the writ petition was closed as it was devoid of any merit.

This judgment was a very important milestone that has interpreted previous literature on the topic to conclusively arrive at the eligibility and constitutionality of trademark of a religious symbol by a religious organisation in India. It clearly demarcated thresholds of when a religious organisation can register their mark as a trademark.

C. Trademark of Religious Symbols in Other Jurisdictions

Internationally, the efficacy of how trademark rules can be utilized to prevent misappropriation of religious signs in trade is a highly debated topic.²¹ The international legal framework consisting of Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS")²² and other inter-

²⁰*Ram Jankijee Deities v. State of Bihar* (1999) 5 SCC 50; *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* 1(1925) 52 IA 245.

²¹Olsen (n 17)

²² TRIPS Agreement, art 15(1).

state agreements between members of WTO and WIPO²³ do not directly prohibit the use of the religious signs for trademark applications, instead leaves it on individual member-state to determine whether such an application could impact the morality or public order of their society.²⁴ The following countries have allowed trademark registration of religious marks by religious organisations.

i. United States of America:

In the United States of America, the Lanham Act, 1946 contains provisions regarding trademarks and permits religious signs to be protected as trademarks. The Lanham Act also allows religious organisations to obtain trademark registration of their marks and obtain same rights as any other commercial entity.²⁵ The basis of the provision is that even though religious organisations do not sell any goods or service, they need trademark protection to protect their reputation and goodwill. However, the Lanham Act maintains the right to deny registration to any mark that “consists of or comprises immoral, receptive, or scandalous matter”²⁶

ii. China:

Similarly, in China, Shaolin Temple, which is a Buddhist monastery and where Kung Fu was originated, has trademarked its religious signs “Shaolin” and “Shaolin Temple”. The Temple has applied for trademark in all 45 classes.²⁷ The aim of the Temple behind trademark registration was to prevent misappropriation of religious signs and not commercial utilization of the mark. It might be interesting to note how Shaolin Temple manages to defend their mark in all these classes. The Temple uses trademark infringement and unfair competition against any case of misappropriation of the religious signs.²⁸

iii. European Union:

European Union has a specific provision that outlines the grounds for absolute refusal of registration of a mark if it contains concerning state emblems, official hallmarks, and emblems of

²³ Paris Convention for the Protection of Industrial Property (March 20, 1883; effective July 7, 1884, and amended June 2, 1934 and July 14, 1967).

²⁴ Martin Senftleben, *Study on Misappropriation of Signs* (2012).

²⁵ *Purcell v. Summers* 145 F. 2d 979, 985 (4th Cir. 1944); *Oklahoma Dist. Council of the Assemblies of God of the State of Okla., Inc. v. New Hope Assembly of God of Norman, Okla., Inc.*, 597 P. 2d 1211, 1215 (Okla. 1979).

²⁶ 15 U.S.C. § 1052 (a).

²⁷ Bo, Jing. 2005. The historical of the protection of Shaolin Temple’s Intangible Heritage. *The Religions Cultures in the World* 2: 2–9.

²⁸ *ibid.*

intergovernmental organizations.²⁹ However, this list does not have religious signs, therefore, implying that theoretically, religious signs could be trademarked. However, in some European Union countries, religious symbols are denied trademark registration due to their high symbolic values and historical personages.³⁰

Therefore, it appears that in spirit of protecting disparaging of religious marks by corporate for private gains, foreign jurisdictions have been benevolent in allowing religious organisations to obtain the trademark registration of such marks. This forms a good comparative model that India can adopt.

3. THREAT TO FREEDOM OF EXPRESSION?

While registration of trademark of religious marks might solve the issue of misrepresentation and disparage, one needs to ascertain its impact on freedom of expression and speech of an individual.

The fundamental right of Freedom of speech and expression is the foundation of modern democracy and is important for development of other civil liberties as well. Right to freedom of expression and speech is enshrined under Article 19 of the Indian Constitution. It is a fundamental right awarded to the citizens of India. There is a fine balance between right to freedom of expression and protecting a trademark against dilution. In order to allow citizens to exercise this fundamental right, trademark law allows certain third-party unauthorised use of the trademark, if it does not cause any confusion in the minds of the consumers regarding the source of the goods or products.

One such use of a trademark is parody. A parody is one such way of exercising the right to freedom expression and is accepted as defense against unauthorised use of a trademark, which might otherwise be considered infringement. A parody involves criticizing or ridiculing an original work. It is used to comment on the trademark itself and not use it to comment on another work.³¹ The message a parody conveys is usually humorous. Therefore, parody can be differentiated from original trade mark. It has been observed that parody can affect the reputation of the mark in the society. In India, parody was discussed in the case of *Civic Chandran and Ors. v C. Ammini Amma*

²⁹ EU Trademark Directive, art 3(1)(h).

³⁰ EU Trademark Directive, art 3(1)(g) and article 3(1)(f).

³¹ *Louis Vuitton Malletier S.A. v. Haute Dig gity Dog, L.L.C.* 507 F.3d 252, 260

and Ors.,³² where the court held that “the purpose of reproduction of artistic work i.e. counter drama was not misappropriation, to produce a play similar to the original... Since copying was for the purpose of criticism, it amounted to fair dealing and did not constitute infringement of the copyright.”

However, most religious organisations view freedom of expression as a western ideal of freedom, hence do not consider doctrine of parody acceptable.³³

Hence, even after obtaining trademark protection, the religious organization continues to be under the threat of destabilization of a trademark. This could affect the religious organisation’s identity and affect both its legal rights as well as social identity. Therefore, Religious organisations might need protection beyond what trademark law offers.

4. CONCLUSION

India is a secular nation that is developed on the theory of equal-respect for all religions.³⁴ This means that our Indian State policies oscillate between *sarva dharma samabhava* (goodwill towards all religions) and *dharma nirpekshata* (religious neutrality).³⁵ However, the framing of laws around religion is such that it leaves ample scope for interpretation of constitutional provisions. This makes the task very difficult for Indian courts when compared to other secular jurisdictions where there is a clear demarcation between the state and religion.³⁶ This lack of distinction also leads to uncertainties regarding the rights and duties of a religious organisation. Add to this the lack of clarity regarding their right to apply for trademark creates an environment of chaos.

Religious organisations require trademark law to achieve protection for their marks, however trademark law has obligations towards the consumers and need to ensure that the mark is worthy of trademark protection without encroaching upon civil liberties of individuals. These two demands might be difficult to harmonise.

³²*Civic Chandran and Ors. v C. Ammini Amma and Ors.* Manu/KE/0675/1996.

³³ David A. Simon, ‘Register Trademarks and Keep the Faith: Trademarks, Religion and Identity’ (2009) 49 IDEA 233.

³⁴Shefali Jha, ‘Secularism in the Constituent Assembly Debates: 1946–50’ (2002) 37(30) Economic and Political Weekly 3175.

³⁵Choudhry(n 1) 1-14.

³⁶*ibid.*

Internationally there are a few models such as USA, China and European Union that India can adopt. However, the difference in cultural and political environments of these countries and India requires that legislature and judiciary proactively come up with solutions to address this multifaceted issue of trademark of religious symbols by religious organizations that will be best suited for our society.