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# Can God Be Trademarked? - A Critique of Lal Babu Priyadarshini v. Amritpal Singh

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SPARSH SHARMA<sup>1</sup>

## ABSTRACT

*In this case critique, an attempt is made to evaluate the issue of the intersection of the trademark with religious names in India in light of sec 9(2) (b)<sup>2</sup> of the Trademark Act, 1999<sup>3</sup> (hereinafter referred to as 'the Act') and in the backdrop of Supreme court decision in Lal Babu Priyadarshini v. Amritpal Singh<sup>4</sup>, wherein the court deliberated on the issue as to whether the name of a religious book can become the subject matter of monopoly for an individual or not. The study analyses the decision and few relevant judicial precedents on this subject to provide more clarity with respect to trademarking religion and religious names in particular. Before the concluding para, the author has tried to bring new thoughts in the form of alternative interpretations of the original case, that this case left unanswered.*

*"Religion is the opium of the people"*

**-Karl Marx**

## I. BACKGROUND

The case revolves around the debate of granting of a Trade mark for religion related aspects, religious books in particular. In that regard it is important to discuss the legislative intent and developments that took place while enacting the Act and the said provision of law on this point, viz., sec 9(2)(b).<sup>5</sup>

*The Trade And Merchandise Marks Act, 1958<sup>6</sup>* was first formal legislation granting a regime for trade mark registration and option of filing infringement suits other than the Common law

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<sup>1</sup> Author is a student at Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur, India.

<sup>2</sup> Section 9. Absolute grounds for refusal of registration.

(2) A mark shall not be registered as a trade mark if--

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

<sup>3</sup> Section 9. Absolute grounds for refusal of registration.

(2) A mark shall not be registered as a trade mark if--

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

<sup>4</sup> CIVIL APPEAL NO. 2138 OF 2006.

<sup>5</sup> *Supra* note 2

<sup>6</sup> Act no 43 of 1958, 17th October, 1958

passing off remedy.<sup>7</sup> *sec 9 (requirement to be met by a mark to be registrable as trade mark)*<sup>8</sup> and *sec 11 (what 'shall' not be registered)*<sup>9</sup> of the said Act acted as the guideposts for the registrar to grant the certificate to the proprietor.

After a long gap, a need was felt to need for simplification and harmonization of trade mark management system (*an Act 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*) *The Trade Marks Bill, 1993* was a step in this regard.

However it was not passed then due to lacunae and instead referred to *Eighth Report of the Department-Related Parliamentary Standing Committee (PSC) on Industry on the Trade Mark Bill, 1993* chaired by Shri Moturu Hanumantha Rao. The PSC presented its report before Rajya Sabha on 21.04.1994. The amendments proposed, were accepted in toto in the new *Trade Mark Bill, 1999* which was passed in both the houses of Parliament in the month of December, 1999 to be in compliance with TRIPS obligation. Hence the new Trade Mark Act, 1999<sup>10</sup> came into existence and *sec 9(2)(b)* dealt with religious mark.<sup>11</sup> Lastly, one such recommendation proposed by the committee was with regard to religious marks to be registered as trade marks, and the committee suggested that such marks should not ordinarily be registered as a trade mark.<sup>12</sup>

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<sup>7</sup> The preamble of the said Act read- “An Act to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise”

<sup>8</sup> *Sec 9(1)* A trade mark shall **not** be registered in Part A of the register **unless** it contains or consists of at least one of the following essential particulars, namely:--

(a) the name of a company, individual or firm represented in a special or particular manner;

(b) the signature of the applicant for registration or some predecessor in his business;

(c) one or more invented words;

(d) one or more words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, a geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in India;

(e) any other distinctive mark.

<sup>9</sup> *Sec 11. Prohibition of registration of certain marks. A mark--*

(a) the use of which would be likely to deceive or cause confusion; or

(b) the use of which would be contrary to any law for the time being in force; or

(c) which comprises or contains scandalous or obscene matter; or

(d) **which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;** or

(e) which would otherwise be disentitled to protection in a court; shall not be registered as a trade mark.

<sup>10</sup> Act No. 47 of 1999

<sup>11</sup> *Supra* note 2

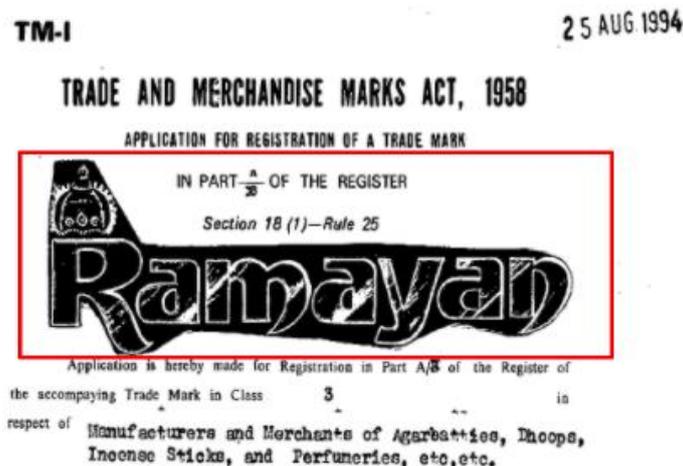
<sup>12</sup> 13.3(iii) *The Committee is of the opinion that any symbol relating to religion, gods, goddesses, places of worship should not ordinarily be registered as a trade mark. However the Committee do not want to disturb the existing trade marks by prohibiting their registration as it will result in a chaos in the market. At the same time the Committee trusts that Government will initiate appropriate action if someone complains that a particular trade mark is hurting his religious susceptibilities.*”

## II. FACTS

The present Special Leave petition<sup>13</sup> was preferred by Shri Lal Babu Priyadarshi (aggrieved by IPAB order<sup>14</sup>), trading as M/s Om Perfumery in Patna, who had made an application to the Registrar of Trade Marks to register a trademark by name “RAMAYAN” for incense sticks (agarbattis, dhoops) and perfumeries etc under class 3<sup>15</sup> of Trade mark classification.

Earlier, the Assistant Registrar of Trade Marks<sup>16</sup> had allowed the trademark registration, as the impugned trademark consisted of the *device of the crown on the alphabet ‘R’ of the word “RAMAYAN”*<sup>17</sup> and the Registrar held it to be capable of distinguishing the goods and also the word was not included in the list of marks not registrable under the Act<sup>18</sup> notwithstanding the Notice of Opposition<sup>19</sup> which was filed by the dealer (Shri Amritpal Singh trading as M/s Badshah Industries in Patna) for the sale of products of the appellant alleging that the name of a religious book cannot become the subject matter of monopoly for an individual. However, the order passed by the Registrar was set aside by the Intellectual Property Appellate Board, Chennai in favour of the dealer.<sup>20</sup>

Therefore the present SLP was heard by the division bench of Ranjan Gogoi and R.K. Agrawal, JJ (authored by R.K. Agrawal, J.).



Source: <https://ipindiaonline.gov.in/eregister/eregister.aspx> (disputed mark highlighted in red)

<sup>13</sup> Lal babu Priyadarshini v. Amritpal Singh, AIR 2016 SC 461

<sup>14</sup> 2005(30) PTC 94 IPAB (order dated 10.01.2005 passed by IPAB in Original Appeal No. 35/2004/TM/KOL)

<sup>15</sup> Application dated 25/08.1994 being No. 638073-B was filed by appellant in class-3 for registration

<sup>16</sup> order dated 31.03.2004 passed by the Assistant Registrar of Trade Marks against the opposition filed by Shri Amritpal Singh in Opposition No. CAL 59644

<sup>17</sup> The application file wrapper is annexed at the end, *Annexure I*, which depicts the contested mark

<sup>18</sup> Under sec 23(1) of Trade and Merchandise Act, 1958 “RAMAYAN” was not included in list of marks not registerable

<sup>19</sup> Notice of opposition dated 05.09.2001(Opposition No. CAL 59644) was filed vide ss. 9, 11(a), 11(b), 11(e), 12(1), 12(3) and 18(1) of *The Trade and Merchandise Marks Act, 1958*. However the Act of 1958 stands replaced by the Trade Marks Act, 1999 vide notification No. S.O. 1048(E), dated 15th September, 2003 to comply with the provisions of the TRIPS and is the current consolidated and governing law related to trademarks.

<sup>20</sup> 2005(30) PTC 94 IPAB (order dated 10.01.2005 passed by IPAB in Original Appeal No. 35/2004/TM/KOL)

### III. ISSUE

The primary issue (and the main question of law) before the apex court was as to whether the name of a holy/religious book be allowed as trade mark under the aegis of the Act or not, in the backdrop of impugned facts

### IV. CONTENTIONS

The contentions raised by the appellant (here) to secure its trade mark, revolved around attributing motives on part of respondent (as the respondent used similar mark for his goods in the same class). Further, the appellant reiterated its earlier position, stated in its affidavit dated 12.06.2000<sup>21</sup>. They include, the product's popularity and recognition in minds of people on seeing the cover of the merchandise which displays the "RAMAYAN" word mark with the crown on 'R', claiming to be the prior uninterrupted user since year 1981, high demand of the product beyond Patna city, voluminous sales attributed to the use of trade mark, advertisements in TV and newspapers and capability of being distinguished.

The contentions raised by the respondent (here) were on two fronts broadly challenging the registration of the appellant's trademark. One ground was on the issue of "prior use". The appellant had admitted before the IPAB<sup>22</sup> that the respondent used the trademark "BADSHAH RAMAYAN" since 1986. Further the appellant had filed a TM 16 form dated 06.08.1996 to change the claim as the user of the word "RAMAYAN" since 01.01.1981 instead of earlier claimed 01.01.1987.

The second ground, which is the prime issue before the court, was on the trademarkability of the word mark ,i.e, "RAMAYAN". The submissions mainly revolved around the sentimental value of holy religious book of Hindus, the Ramayan and its *public juris* character. As a consequence causing harassment to other traders<sup>23</sup>, confusion and deception among the common people who would likely assume the good of the appellant to be of the other seller, lack of distinctiveness<sup>24</sup> and distinguishability- because the fundamental idea on which a trade mark is granted on ground of it being distinctive is that it has to display a "well-known" characteristic or a secondary meaning to the original word mark has to be attributed in the mind of a common man who can directly associate himself with the good coupled with that mark.

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<sup>21</sup> On 20 rupees stamp paper, the appellant stated the grounds on which it should be granted trademark (<https://ipindiaonline.gov.in/eregister/eregister.aspx> last visited on Mar. 25, 2021,09:25 PM)

<sup>22</sup> The appellant had given a reply dated July 27, 1998 in which respondent's rectification application filed before Copyright Board was admitted

<sup>23</sup> As in Patna itself, more than 20 traders used Marks including the word "RAMAYAN" within it

<sup>24</sup> As the word is not an "invented word"

No such thing is shown or proved by the appellant in this case.

## V. JUDGEMENT

The Supreme Court (as well as the IPAB) rightly relied on the *Clause 13.3 of the Eighth Report on the Trade Marks Bill, 1993* submitted by the Parliamentary standing committee<sup>25</sup>, according to which,

“**Cl 13.** *The changes suggested by the Committee in the Bill and the reasons therefore are set out in the succeeding paras of this report:-*

**13.3(iii) The Committee is of the opinion that any symbol relating to religion, gods, goddesses, places of worship should not ordinarily be registered as a trade mark.** *However the Committee do not want to disturb the existing trade marks by prohibiting their registration as it will result in a chaos in the market. At the same time the Committee trusts that Government will initiate appropriate action if someone complaints that a particular trade mark is hurting his religious susceptibilities.*” (emphasis supplied)

The court opined that the products like dhoop/agarbatti are necessary accompaniment of religious rituals among Hindus and RAMAYAN can be a source of deception to lure the customers and hurt their sentiments falling directly within the prohibitive *sec 9(2)(b)* of the Act<sup>26</sup>.

<sup>25</sup> *Eighth Report of the Department-Related Parliamentary Standing Committee on Industry on the Trade Mark Bill, 1993* (Shri Moturu Hanumantha Rao as Chairman) was presented on 21.04.1994 before Rajya Sabha as the earlier Trademark Bill, 1993 was not passed and put before this PSC for necessary amendments. The amendments were accepted in toto, in the new *Trade Mark Bill, 1999* which was passed in both the houses of Parliament in the month of December, 1999 to be in compliance with TRIPS obligation.

**Note:** When the report was presented, the Appellant's trade mark had not been registered and the application filed by the Respondent herein opposing its registration was dismissed much later only on 31.03.2004 by the Assistant Registrar of Trade Marks.

<sup>26</sup> **Section 9. Absolute grounds for refusal of registration.**

(1) *The trade marks--*

(a) *which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;*

(b) *which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;*

(c) *which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered: Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.*

(2) *A mark shall not be registered as a trade mark if--*

(a) *it is of such nature as to deceive the public or cause confusion;*

(b) *it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;*

(c) *it comprises or contains scandalous or obscene matter;*

(d) *its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).*

(3) *A mark shall not be registered as a trade mark if it consists exclusively of--*

(a) *the shape of goods which results from the nature of the goods themselves; or*

It also held that the appellant did not claim “OM’s RAMAYAN” (as *Sai Om perfumery* is proprietor name here) as a trademark but only on the word “RAMAYAN”. And therefore in absence of any prefix/suffix it was likely to cause confusion due to lack of distinctiveness<sup>27</sup>. Relevant except from the judgement is reproduced below,

15. “...If any other word is added a suffix or prefix to the word "RAMAYAN" and the alphabets or design or length of the words are same as of the word "RAMAYAN" then the word "RAMAYAN" may lose its significance as a religious book and it may be considered for registration as a trade mark....”

Further, the test of distinctiveness as laid down in the case of *National Bell Co. v. Metal Goods Mfg. Co. (P) Ltd. and Anr*<sup>28</sup> provides that in order for a trademark to be associated with a good, the good should be capable of being distinguished from other goods and it should not be extensively pirate, i.e, of the nature of *public juris*. In light of this observation, the impugned mark falls short in both the aspects- the word “RAMAYAN” is used by more than 20 traders in Patna itself, other than the respondent’s mark (“BADSHAH RAMAYAN”). And it carried a large sentimental value for the people (Hindus particularly) and therefore, no one can claim sole right to the use of such a word as it fell well within the nature of *public juris*. Hence the court refused the registration upholding what the IPAB had observed. The operating para from the judgement is reproduced below,

18. *There are many holy and religious books like Quran, Bible, Guru Granth Sahib, Ramayan etc., to name a few. The answer to the question as to whether any person can claim the name of a holy or religious book as a trademark for his goods or services marketed by him is clearly 'NO'.*

Record No. : 8   Application Number : 638073	
Word Mark	Ramayan
Appl. No.	638073 Class : 3
Appl. Date	25/08/1994
Proprietor	Mr. Lalbabu Priyadarsh.
Journal No.	- Journal Date :
Status	Abandoned
Used Since	Valid Upto :
Goods & Services Description	Manufacturers & Merchants of Agarbatties,Dhoops,Incense Sticks, and Perfumeries,etc,etc.

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

*Explanation.--For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.*

<sup>27</sup>A trademark shall not be registered if it is not distinctive [Section 9(1)(a)] or it is of such a nature so as to deceive the public or cause confusion [section 9(2)(a)] or hurts the susceptibilities of a class of persons [section 9(2)(b)]. The said word mark in a way contravenes with all the clauses

<sup>28</sup> MANU/SC/0369/1970 : 1970 (3) SCC 665

Source: Trademark search from <https://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx> (status is 'abandoned')

The apex court settled the law in respect of claiming an IP right pertaining to religious books/epics in the negative. Hence, the mark as on today stands on the footing of “non subsisting mark” in the Trade Mark Registry website.<sup>29</sup>

## VI. ANALYSIS

The author agrees with the position held by the court vis a vis the aspect of interfering and monopolising religion in the hands of an individual and lack of distinctiveness, the primary requirement vide definition sec 2 (zb) of Trade Marks Act, 1999<sup>30</sup>. Had the appellant in the case sought registration for “OM’sRAMAYAN” (since the word OM was written on the pack but registration was sought only for the latter) he would perhaps be entitled for the trade mark due to it being ‘invented’ or ‘coined’. Therefore the position is reaffirmed in this decision what was earlier said in *Bhole Baba Milk Food Industries Ltd. v. Parul Food Specialities Pvt. Ltd*<sup>31</sup>, where the hon’ble court restrained the trade mark for “KRISHNA” and insisted on the alternate, “PARUL’S LORD KRISHNA”, where respondent’s business dealt with sale of ghee, milk and milk products and even in *IHHR Hospitality Pvt Ltd vs Bestech India Pvt Ltd*<sup>32</sup> where the disputed mark, “ANANDA”, was held to be not coined word and *public juris*.<sup>33</sup>

Other than that, can this observation logically be extended to common names of gods(goddesses), temple names, and other allied religious symbols in a way drawing a parallel with the holy books is something left unanswered by the court. In a country like India, it is an undeniable fact that Gods are commonly used to market a good, as acceptable trade practice. This is further complicated due to the fact that in polytheism, i.e, religion like Hinduism (as opposed to monotheism) there are about 33 crore gods each with a unique power and purpose. Therefore a blanket ban on use of names/associated symbols would be a far fetched approach. In the absence of a set formula, it would be safe to exclude another set of word marks (or any other form of mark) which are in the nature of “derogatory” or directly hurting the sentiments, where it bears direct conflict with the faith. *The draft of Manual Of Trade Marks, Practice &*

<sup>29</sup> Search Index of Registered Trade Mark accessible on <https://ipindiaonline.gov.in/eregister/eregister.aspx> (last visited Mar. 25, 2021,09:35 PM)

<sup>30</sup> (zb) “trade mark” means 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;

<sup>31</sup> Delhi High Court, FAO(OS) 109/2011

<sup>32</sup> Delhi High Court,CS(OS) No. 207/2011

<sup>33</sup> 8. *The appellant has chosen to obtain registration of a word, as its trademark, which is not only public juris but is a word which is closely associated by the large mass of people in India as indicative of, in relation to an abode: a place of peace where the mind, the body and the soul can relax and rejuvenate.*

*Procedure*<sup>34</sup> may be reproduced here which aptly puts it into perspective in light of *sec 9(2)(b)*<sup>35</sup>,

*12.2.6. Marks likely to hurt religious susceptibilities:-*

**“...Accordingly such use per se is not regarded by public as offending religious sentiments of any class or section of public. However, such use in relation to certain goods may offend the religious sentiments of the people. For Example, use of names/device of deities or religious heads on footwear will be considered distasteful and will be open to objection. Similarly use of Hindu Gods in respect of Beef or meat products or use of names of Muslim saints for pork products would offend the religious feeling of respective sections of the public to attract the objection under this Section.”**

In terms of what is allowable and perhaps registered, it may be crudely said that a brand may trade mark itself on some God's name when it acquires a secondary meaning notwithstanding that word is generic. This position was emphasised in a recent Supreme court decision in *M/s Nandhini Deluxe vs. M/s Karnataka Co-operative Milk Producers Federation(KCMPF)*<sup>36</sup>, where the court allowed the registration of appellant's mark “NANDHINI” notwithstanding respondent's mark “NANDINI”<sup>37</sup>, as both had acquired distinctiveness in their relevant product market (i.e, relevant class).<sup>38</sup> Both the marks were registered despite the fact that the word “NANDHINI” refers to a god and was generic in nature. This aspect was mentioned in the judgement clearly and the same is reproduced,

24. “...(E) NANDINI/NANDHINI is a generic, it represents the name of Goddess and a cow in Hindu Mythology. It is not an invented or coined word of the Respondent...”

Another way of looking at the judgement is that it was a dispute between commercial entities for profit-making which perhaps wanted to ride on the cusp of goodwill of “RAMAYAN”. Hence the "intended purpose" (profit making) is also a matter of concern and part of factual analysis. In *Controller General Of Patents vs \* Additional*<sup>39</sup>, the trade mark application was

<sup>34</sup> [https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1\\_32\\_1\\_tmr-draft-manual.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_32_1_tmr-draft-manual.pdf) (last visited on Mar. 25, 2021,09:15 PM)

<sup>35</sup> Notwithstanding the explanation appended to the section (*Explanation.--For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration*), if the use is on such a good which can seriously injure and deeply hurt the sentiments en masse, it ought not be registered

<sup>36</sup> 2018 (9) SCALE 202

<sup>37</sup> the respondent had challenged the appellant's mark on several grounds like prior use, phonetic similarity, well known nature, confusion and deception in minds of public

<sup>38</sup> As the products dealt with by both entities were different, the way of writing (and device mark) was quite different court held that it was not capable of causing confusion to a reasonable man

<sup>39</sup> SUO MOTU PROCEEDINGS INITIATED ON A PETITION RECEIVED FROM SRI.R.S.PRAVEEN RAJ, THIRUVANANTHAPURAM, REGARDING TRADEMARK REGISTRATION ON THE PICTURE OF THE

filed by a temple "trust"<sup>40</sup> for the registration of the "picture of the Attukal Deity" and on the appellation "Sabarimala of Women" within Class 42 (Device of Deity) with intended purposes like Temple services, Social service, Welfare service and Cultural activities.<sup>41</sup> Clearly, the trade mark sought is of the nature of *public juris*, but the court here rightly shifted away due to the fact that the money collected by the donations is pumped back into the free service for people, which furthers the idea of noble charity in hinduism. And by granting trade mark, in form of device mark, the scrupulous elements would be estopped from misusing the mark to extract profit by charging money by providing food, for instance. Therefore the court carved out a subtle distinction from the commercial ventures, and established that the right granted would not affect the belief/faith of a devotee with God in this scenario but only prevent misuse/extraction for material benefit by an unsolicited individual as envisaged in the preamble of the Act<sup>42</sup>. Hence the author feels that such segregation was perhaps a nicer way of looking at the issue at hand where Trade mark law worked in conjunction with the Constitutional approach (unlike the common notion that they are antithesis to one another).

## VII. CONCLUSION

Article 25 of the constitution<sup>43</sup> prevents any interference in matters pertaining to professing, practicing and propagating the religion unless it is related to issues like health or social reform or social welfare. With this in mind, if a trade mark is simply permitted to be registered for a holy book/sign, it would directly interfere with the aspect of religion as the registration provides

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DEITY OF ATTUKAL TEMPLE, THIRUVANANTHAPURAM, W.P.(C).No.14153 of 2009 (S)

<sup>40</sup> A 'trust' enjoys special privileges deriving from Article 26 of the Indian Constitution, as god is treated as a 'perpetual minor' in law

<sup>41</sup> Trademark No. 1420800 and Trademark No. 1420799 (taken from, Aseri A. Commercializing religion via trademarking God. *J World Intellect Prop.* 2019;1-7.)

<sup>42</sup> TRADE MARKS ACT, 1999 (Act No. 47 of 1999)

Long Title, "*An Act 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.*"

<sup>43</sup> 25. Freedom of conscience and free profession, practice and propagation of religion.—

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

(<https://legislative.gov.in/sites/default/files/COI-updated.pdf>, last visited on Mar. 25, 2021,09:15 PM)

a bundle of monopoly rights to the proprietor and prevents the public at large to use the same.<sup>44</sup> More particularly, it impinges on the aspect of “propagation”, where any person may disseminate his/her religious belief or idea or view for edification or benefit of others. Hence “RAMAYANA” is one such mode or means to achieve the same as it carries a sentimental value in almost every Hindu’s heart and faith<sup>45</sup>. The simple monopoly is also not justified on the touchstone of any social reform for that matter. In Indian setup, Hindu religion in particular, for instance, ‘Ganesha’ means auspicious and good start whereas ‘Laxmi’ is associated with good fortune. Hence these words reverberate the sentiments of countless people, lack distinctiveness and fall outside the invented word category. Therefore the public right here enjoys a constitutional backing and outweighs the individual right of the trade mark seeker.

However, as the aspect of trademarking is a mixed question of both law as well as fact, it has to be seen in individual cases whether it falls within the scope of simple monopoly in order to ride over the goodwill of the religious mark or it genuinely stands out in the sense of acquiring a secondary meaning to it. In the latter case, the proprietor perhaps is entitled to get his mark registered as discussed in the preceding ‘analysis’ part. The only word of caution that needs to be seen is that the use of any word should not lead to ‘consumerism’, which may have severe consequences or ripple across other domains like faith as for this very aspect the provision, *sec 9(2)(b)* was incorporated in the Act at the very first place. A test of outrage must be amongst an identifiable section of the public, i.e, *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.*<sup>46</sup> Based on this it can be said that if a mark amounts to distaste (ought not have been taken) does not mean that it should be prohibited. Trade as such is religion neutral and treats all word marks merely as an instrument of recognition or goodwill and the way generic/unrelated names are used for goods *creates laughter and mystery behind it.*<sup>47</sup>

<sup>44</sup> Section 17 read with Section 28 of the Trademarks Act, 1999 thereof provides that when a trademark is registered, it confers on the proprietor thereof the exclusive right to use it

<sup>45</sup> In *The Commissioner, HRE v. Sri Lakshmindra Thirtha Swamiar*, 1954 AIR 282 ‘religion’ was defined as, “...Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic...”

<sup>46</sup> Manual of Trademark Practice & procedure available at [https://ipindia.gov.in/writereaddata/Portal/POGuidelinesManuals/1\\_32\\_1\\_tmr-draft-manual.pdf](https://ipindia.gov.in/writereaddata/Portal/POGuidelinesManuals/1_32_1_tmr-draft-manual.pdf) (last accessed on 28.04.21).

<sup>47</sup> The parliament debate had reverberated this issue of sentiments in trademarking in a somewhat different way but essence remained the same. Lok Sabha Debate Discussion On The *Trade Marks Bill, 1999* on 22 December, 1999 by Shri Priya Ranjan Dasmunsi (Raiganj) highlighted, “Some of the established trade marks are also causing some problems. There is a provision not to give any trade mark which is susceptible to any religious sentiment, etc....I wonder, how does smoking link with monkey? ”> हिन्दुस्तान में एक वानर भाई बीड़ी है। ”> ”>I do not understand the logic of linking smoking with monkey or an elephant with mustard oil. ”> हाथी मार्का तेल खरीदो तो अच्छा है। हाथी मार्का तेल एक समय में इतना मशहूर हो गया था कि सब लोग गलतफहमी में थे कि हाथी की छाप है तो ठीक है। ”> ”> Somebody riding on an elephant shouts ”> वह तेल खरीदेगा। ”> ”>He is not giving food to the poor

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*elephant. But he is putting somebody as a rider on the elephant. I personally feel that since we have a lot of respect for the wildlife, the way we are using the symbol of elephant or tiger or monkey for the sake of our consumerism is very very painful and sickening to me. This matter of course does not cause concern for the trade. But it sometimes creates laughter and mystery behind it.”* (<http://loksabhaph.nic.in/Debates/Result13.aspx?dbsl=6872> last visited on Mar. 25, 2021, 09:45 PM)