

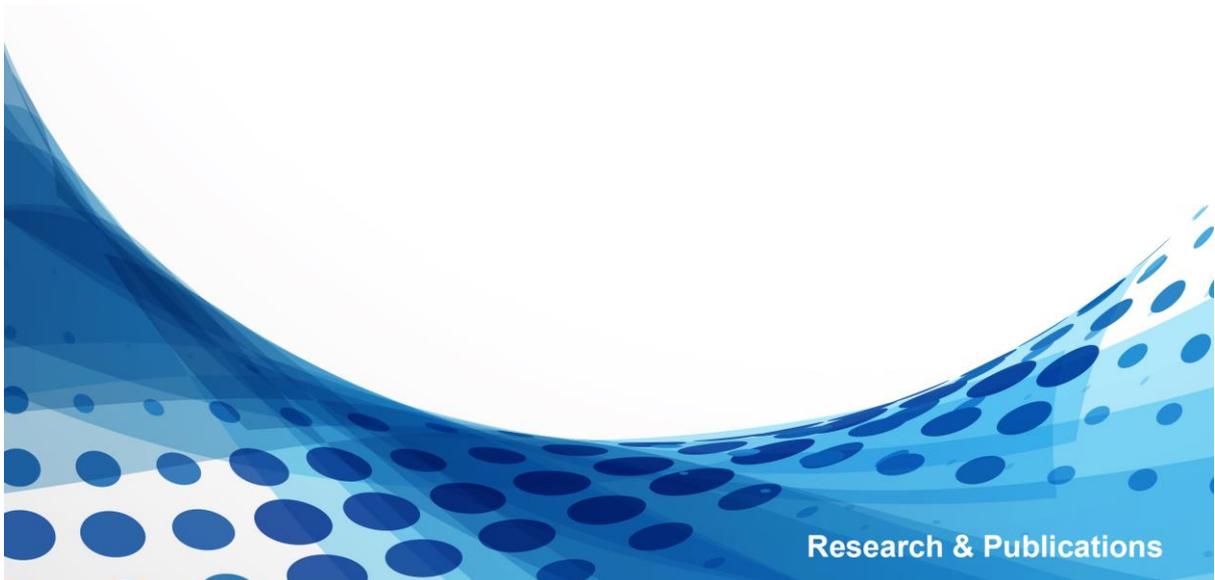


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An Empirical Analysis of ‘Scandalous’ and ‘Obscene’ Trade Marks in India

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An Empirical Analysis of ‘Scandalous’ and ‘Obscene’ Trade Marks in India

M P Ram Mohan,^{*} Aditya Gupta^ψ & Vijay V. Venkitesh^α

Abstract

Morality-based restrictions on trademarks have gained widespread acceptance since their statutory recognition in 1875, appearing in the domestic statutory language of 163 out of 164 WTO member states. Building upon our earlier conceptual work, this study empirically examines the administration of India's iteration of moral-based trademark limitations, which prohibit the registration of scandalous or obscene marks. Expanding on a prior anecdotal and purposive study, the authors create a novel dataset to analyze the implementation of the provision. The dataset examines 1.6 million trademark examination reports filed between 2018-2022. Through auto-coding, the authors identify 140 applications objected for containing scandalous or obscene matter. A systematic analysis classifies the objections into three categories - those concurrently raising relative and absolute grounds of refusal, successful circumvention of morality objections through ambiguity, and an alarming lack of objections for potentially offensive marks. The findings provide empirical evidence in the administration of morality-based proscriptions in India.

Keywords: trademarks; scandalous and obscene; intellectual property; empirical legal studies

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1. Introduction

Should a sexual-wellness company be allowed to use the image of a condom painted in a national flag as their trademark? Not only would the mark instigate abhorrence from the population of the country, it may also invoke prohibitory and criminal sanctions under the laws enacted to protect the dignity and sanctity of national symbols.¹ However, would this outrage pacify if the mark was supplanted with the phrase, “*We believe it is our patriotic duty to protect and save lives...Join us in promoting safer sex. Help eliminate AIDS.*”² This fact situation is not a result of the authors’ overactive imagination. These are the exact facts of a dispute before the American Trademark Trial and Appeal Board (TTAB).

In 1989, Jay Critchley, an American artist and activist, artistically applied the United States Flag to a condom. Through his work, he wanted to communicate his “*belief that the use of condoms is a patriotic duty.*”³ The campaign was such a success that Critchley decided to incorporate his artwork in a marketing campaign and labelled it “*Condoms with a Conscience.*”⁴ He adopted a modified version of his artwork as a trademark “*in a manner to suggest the American Flag.*”⁵ His application for the registration of the mark was denied, under Section 2(a) of the American Trademark Act, 1946 (Lanham Act),⁶ which prohibited the registration of scandalous and immoral marks. The United States Patents and Trademark Office (USPTO) adopted a *civil-religious* viewpoint and held that “*the flag is a sacrosanct symbol*

¹ See for example, India: The Prevention of Insults to National Honour Act, 1971 and The Emblems and Names (Prevention of Improper Use) Act, 1950,

² The Indian population is no stranger to campaigns centered around the use of condoms. From government backed campaigns pitching condoms as a means to control population in late 1960s, to compulsorily bundled distribution of condoms in 1970s, the use of condoms has been a part of the Indian discourse for decades. See: (HI)STORIES OF DESIRE: SEXUALITIES AND CULTURE IN MODERN INDIA, 144–147 (Rajeev Kumaramkandath, Sanjay Srivastava, & Indian Institute of Advanced Study eds., 2020); DINESH C. SHARMA, INDIAN INNOVATION, NOT JUGAAD - 100 IDEAS THAT TRANSFORMED INDIA 16 (2022); While continuing to remain controversial, condoms have also played a part in the political campaigning in the Indian democracy. As early as 2024, Indian political parties have used condom packets adorned in their party symbols as part of their campaigns. See: Lok Sabha campaign heats up in Andhra Pradesh as condoms with YSRCP, TDP symbols go viral, THE TIMES OF INDIA, Feb. 22, 2024, <https://timesofindia.indiatimes.com/india/lok-sabha-campaign-heats-up-in-andhra-pradesh-as-condoms-with-ysrcp-tdp-symbols-go-viral/articleshow/107919980.cms> (last visited Apr 13, 2024).

³ Robert F. Howe, *Condom Firm Prevails on Showing the Colors: Red White and Blue Logo to Be Registered*, WASHINGTON POST, Mar. 8, 1993, <https://www.washingtonpost.com/archive/politics/1993/03/09/condom-firm-prevails-on-showing-the-colors/e84fafc0-b821-45c1-b36d-d78ce1b3e6c0/> (last visited Mar 31, 2024).

⁴ For the unveiling of the marketing campaign see: TRANSAMERICA - CONDOMS WITH A CONSCIENCE, (2014), <https://www.youtube.com/watch?v=qZwJ1gWqacc> (last visited Mar 31, 2024).

⁵ In re Old Glory Condom Corp., 26 U.S.P.Q.2d 1216, 1217 (TTAB 1993). The USPTO also held that, “‘Despite the admirable intent displayed in the applicant’s desire to prevent the spread of sexually transmitted diseases, the majority of the public would still be offended by the use of the flag to promote items associated with sex.’”; Victor Castellucci, *In Re Old Glory Condom Corp.*, 12 J. CONTEMP. LEGAL ISSUES 50 (2001).

⁶ 15 U.S.C. § 1052(a).

whose association with condoms would necessarily give offense.”⁷ Critchley criticized the USPTO’s decision and explained, “Basically, what they’re saying is that condoms are immoral and scandalous and anything to do with sex is dirty. It’s really Neanderthal, the whole attitude.”⁸ He appealed from the USPTO’s decision, and after a three year long legal battle secured the registration of the mark, with approval from the TTAB.⁹

The case of Jay Critchley is not an isolated one. Trademark registrations have become the most recent battleground for the reclaiming of identity and destigmatization of stereotypes. One of these attempts was recently reviewed by the United States Supreme Court, when an Asian-American band sought to reclaim the word *Slants*¹⁰ by registering it as their trademark. The all-Asian band made public appearances, participated in community outreach programs and even wrote a song to confirm their challenge of the racially charged slur. The lyrics of the song read, “We sing for the Japanese/And the Chinese/And all the dirty knees/Do you see me?”¹¹ However, their attempt for registration was denied by the USPTO, and they were accused of having adopted a disparaging mark. After a characteristic *David v. Goliath* legal battle against the USPTO, the Supreme Court of the United States held that the bar against disparaging marks was violative of the First Amendment, thus striking down the trademark provision and allowing the band to register its mark.¹²

These cases are some of the instances which explain the potential over-reach of morality-based proscriptions to the trademark subject matter. These issues become even more pronounced in cases where these proscriptions are administered inconsistently, providing Trademark Examiners with unbridled discretion. In a pioneering study, Beebe and Fromer, examined 3.6 million trademark applications, and demonstrated that the bar against ‘scandalous and

⁷ In re Old Glory Condom Corp., *supra* note 5; MICHAEL WELCH, FLAG BURNING: MORAL PANIC AND THE CRIMINALIZATION OF PROTEST 89–90.

⁸ WELCH, *supra* note 7.

⁹ In re Old Glory Condom Corp., *supra* note 5.

¹⁰ The term originated at a time when America was at war with Asian countries, and emerged as a slur taunting the ‘slanted eyes’ of some people of Asian descent. See: PHILIP HERBST, THE COLOR OF WORDS: AN ENCYCLOPAEDIC DICTIONARY OF ETHNIC BIAS IN THE UNITED STATES 207 (1997). Also see: U.S. Trademark Application Serial No. 77952263 (filed Mar. 05, 2010) (see prosecution history).

¹¹ How the Slants Reclaimed Their Name, DISSENT MAGAZINE (Aug. 16, 2007), https://www.dissentmagazine.org/online_articles/the-slants-reclaimed-name-supreme-court-free-speech/ (last visited Sep 27, 2023).

¹² Matal v. Tam, 137 S. Ct. 1744, 2017 U.S. LEXIS 3872; Mark Conrad, *Matal v. Tam—A Victory for the Slants, a Touchdown for the Redskins, but an Ambiguous Journey for the First Amendment and Trademark Law*, 36 CARDOZO ARTS & ENT. LJ 83 (2018); Also see the case of Iancu v. Brunetti, where the Supreme Court held that the bar against scandalous and immoral marks violates the First Amendment. Clay Calvert, *Iancu v. Brunetti’s Impact on First Amendment Law: Viewpoint Discrimination, Modes of Offensive Expression, Proportionality and Profanity*, 43 COLUM. JL & ARTS 37 (2019).

immoral' marks is administered inconsistently by the USPTO.¹³ They also comment on the result of such vague and inconsistent application on the constitutional legitimacy of the provision.

The present study represents a first of its kind effort by the authors to replicate Beebe and Fromer's study in the Indian context, studying the bar against marks containing scandalous or obscene content embodied in Section 9(2)(c) of the Trade Marks Act, 1999.¹⁴ The scope of the present study is limited to studying the administration of the provision by the Trade Marks Registry. The study does not engage with the potential meaning and interpretation of the morality-based prohibition in the Indian context. Part 1 comments on the origin and controversy regarding morality-based proscriptions in international trademark law. Part 2 focuses on the Indian law, and identifies the legislative lineage and relevance of S. 9(2)(c), in Indian trademark law. Part 3 comments on the importance of providing bulk datasets for research, and also explains the novel dataset created by the authors. Part 4 provides some basic statistics and trends observed by the authors in their dataset. Part 5 assimilates the methodology suggested by Beebe and Fromer, to present the administration of S. 9(2)(c) by the Registrar of Trademarks in India.

2. The question of morality-based proscriptions

The precepts of intellectual property law are not completely divorced from moral and social facets. Not only does intellectual property law engender a lively debate about the foundational role of morality in the grant of monopolies, it also sparks an ongoing debate regarding the continued role of moral precepts in the developing new IP standards.¹⁵ Some scholars maintain that IP should evolve in an ethical, principled and moral manner, harmonizing with the tapestry of societal values.¹⁶ Yet, amidst this lively discourse, one realm where the hand of moral standards firmly grasps intellectual property law is its strategic alignment to prevent clashes with an imagined community moral compass. A prime example of such alignment is evident in the exclusions to IP protections, most eminently in trademark law.

¹³ They go on further to suggest that because of the inherent vagueness and inconsistency in the provision it remains unconstitutional. Barton Beebe & Jeanne C Fromer, *Immoral or Scandalous Marks: An Empirical Analysis*, 8 NYU J. INTELL. PROP. & ENT. L. 169 (2018).

¹⁴ Section 9(2)(c), Trade Marks Act, 1999, A mark shall not be registered as a trademark if- it comprises of scandalous or obscene matter.

¹⁵ See: Laurence Helfer, *Toward a Human Rights Framework for Intellectual Property*, 40 U.C. DAVIS LAW REVIEW 971 (2007); Christine Haight Farley, *A Research Framework on Intellectual Property and Morality*, in HANDBOOK OF INTELLECTUAL PROPERTY RESEARCH: LENSES, METHODS, AND PERSPECTIVES 791 (Irene Calboli & Maria Lillà Montagnani eds., 2021).

¹⁶ See: Helfer, *supra* note 15; Farley, *supra* note 15.

2.1. The Inconsistency in Administering Morality-Based Trademark Restrictions

Trademark law, like all regulatory regimes, delimits the subject matter it engages with. The limitations that the law places on ‘trademark subject matter,’ is often couched in the language of economic efficiencies.¹⁷ However, there is one body of limitations that derive their legitimacy from moral justifications: morality-based proscriptions.¹⁸ The first instance of statutory language invoking such moral considerations can be traced back to the UK Trade Marks Registrations Act of 1875, which explicitly prohibited the registration of ‘scandalous designs’ as trademarks.¹⁹ While the Westminster Assembly decided not to provide statutory protection to messages that violate prevailing social standards, they did not offer any guidance on how to assess these violations.

Despite the inherent ambiguity in the meaning and the scope of application of the morality-based exclusions in trademark law, they were adopted into the international trademark framework through Article 6quinquies of the Paris Convention for the Protection of Industrial Property, 1883. The provision allowed member countries to reject marks that are ‘contrary to morality and public order.’²⁰ Since the inception of the Paris Convention, morality-based exclusions have been embraced by 163 out of the 164 member states of the World Trade Organization.²¹

¹⁷ One of the foundational justifications of trademark law has been provided by Landes and Posner. While their conclusion has been the subject of repeated scrutiny, it remains one of the most influential policy statements guiding the development of trademark law. William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 THE JOURNAL OF LAW & ECONOMICS 265, 265–266 (1987) “Our overall conclusion is that trademark law, like tort law in general...can best be explained on the hypothesis that the law is trying to promote economic efficiency.”; A Law-and-Economics perspective on trade marks, , *in* TRADE MARKS AND BRANDS: AN INTERDISCIPLINARY CRITIQUE 241 (Lionel Bently et al. eds., 2008); TIM W. DORNIS, TRADEMARK AND UNFAIR COMPETITION CONFLICTS: HISTORICAL-COMPARATIVE, DOCTRINAL, AND ECONOMIC PERSPECTIVES 124 (2017).

¹⁸ Prof. Khalik suggests that morality based proscriptions are “entirely disconnected from the underlying purpose for which trademarks are protected.” Jasmine Abdel-Khalik, *To Live in In-Fame-Y: Reconceiving Scandalous Marks as Analogous to Famous Marks*, 25 CARDOZO ARTS & ENT. L.J. 173, 213, 214 (2007).

¹⁹ Section 6, Trade Marks Registration Act, 1875, “*That it shall not be lawful to register as part of, or in combination with a trade mark...or any scandalous design.*” EDWARD MORTON DANIEL, THE TRADE MARKS REGISTRATION ACT, 1875: AND THE RULES THEREUNDER, WITH INTROD., NOTES, AND PRACTICAL DIRECTIONS AS TO REGISTERING TRADE MARKS: TOGETHER WITH THE MERCHANDISE MARKS ACT, 1862, WITH NOTES AND A COPIOUS INDEX TO THE WHOLE 38–39 (1876), https://www.google.co.in/books/edition/The_Trade_Marks_Registration_Act_1875_an/4x0tAQAAAMAJ?hl=en (last visited Mar 18, 2023); Colin Edward Manning, *Moral Bars on Trade Mark Registration*, 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2875687.

²⁰ Article 6quinquies, Paris Convention for the Protection of Industrial Property, 1883. The TRIPS Agreement allowed member states to deny registration of trademarks and patents in line with the Paris Convention. Article 15(2), Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994. However, no concomitant exclusion exists in the international framework governing copyright law.

²¹ The only exception being Vietnam. See: Manning, *supra* note 19.

The cumulative effect of such exclusions is that signs and marks which are perceived as *morally unacceptable*, are precluded from the benefits afforded by trademark registration. The innate unpredictability of these exclusions has been a subject of repeated criticism. Many scholars have cited the inconsistency in the application of these proscriptions to argue against their constitutionality. Reviewing the application of the ban against, ‘scandalous,’ ‘disparaging’ and ‘immoral’ marks within the American trademark law, Prof. Megan Carpenter emphasizes that the lack of sufficient definitional standards force trademark examiners to apply erratic explanations, often arriving at inconsistent results.²² Prof. Alvaro Fernandez Mora reaches a similar conclusion in examining the European proscription against the registration of marks that are ‘contrary to public policy or accepted principles of morality.’²³ Likewise, the Singaporean²⁴ and Australian²⁵ trade mark regulation has been criticized for its ambiguity and lack of certainty.

In recent years, the inherent inconsistency of trademark provisions restricting disparaging, scandalous, and immoral marks has received substantial judicial and statutory attention. In 2017, the United States Supreme Court (USSC) explained how the bar against disparaging marks can be used to silence minority and dissenting opinions, and is therefore violative of the free speech principles embodied in American constitutional jurisprudence.²⁶ Building on its decision, in 2019 the USSC reached a similar conclusion when reviewing the bar against scandalous and immoral marks.²⁷ Across the Atlantic, the European Union has also struggled with the innate inconsistency in these provisions. The EU Intellectual Property Network

²² Megan Carpenter & Kathryn Murphy, *Calling Bullshit on the Lanham Act: The 2 (a) Bar for Immoral, Scandalous, and Disparaging Marks*, 49 UNIVERSITY OF LOUISVILLE LAW REVIEW 465 (2010).

²³ A. 7(1)(f), Regulation (EU) 2017/1001 on the European Union Trade Mark [2017] OJ L154/1, “trade marks which are contrary to public policy or to accepted principles of morality.” The language of the provision in EU law is overly broad and given the explicit references to morality there is bound to be some inconsistency in the applications of the provision. The author here identifies three axes of inconsistency, 1) the conceptual boundaries of the provision, 2) how to determine what constitutes relevant public, 3) the applicable legal test(s). Alvaro Fernandez De La Mora Hernandez, *Inconsistencies in European Trade Mark Law: The Public Policy and Morality Exclusions*, INTELLECTUAL PROPERTY QUARTERLY 271 (2020).

²⁴ Anil Samtani, *Trade Marks That Are Contrary to Public Policy or Morality: The Search for the Right-Thinking Man*, INTELLECTUAL PROPERTY QUARTERLY 39 (2012).

²⁵ Anne-Marie Cropley, *The Registration of Scandalous Trade Marks*, INTELLECTUAL PROPERTY FORUM: JOURNAL OF THE INTELLECTUAL AND INDUSTRIAL PROPERTY SOCIETY OF AUSTRALIA AND NEW ZEALAND 20 (2008).

²⁶ Matal v. Tam, *supra* note 12; For more details see: Calvert, *supra* note 12; M. P. Ram Mohan & Aditya Gupta, *‘Scandalous’ and ‘Obscene’ Trademark Law: Determining the Scope of Morality-Based Proscriptions in Indian Law*, 46 EUROPEAN INTELLECTUAL PROPERTY REVIEW 225 (2024).

²⁷ Iancu v. Brunetti, 2019 U.S. LEXIS 2, 139 S. Ct. 782 (2019); For more details see: Calvert, *supra* note 12; Ram Mohan and Gupta, *supra* note 26.

developed a ‘Common Practice’ guide to enhance the consistency in the administration of morality-based restrictions on trademarks within the EU.²⁸

These developments highlight the growing recognition that provisions restricting disparaging, scandalous, and immoral trademarks pose a potential threat to fundamental rights, and that a more consistent and principled approach is needed in this area of intellectual property law. However, the first step towards delineating any such guidelines and examining morality-based proscriptions is understanding the administration of the provision and identifying the possible inconsistencies in its application. In a previous study, the authors commented on the lack of guidelines and consistency in the administration of morality-based proscriptions in India.²⁹ This underscores the need for a comprehensive examination of these issues across different jurisdictions.

2.2. The lineage and interpretation of morality-based proscriptions in India

Morality based limitation on the subject matter of intellectual property laws is not a unique feature of trademark laws. Similar provisions have been legislated in Indian Patents Act, 1970, where if the commercial exploitation of a patent would be contrary to *public order or morality*, it would be prohibited from protection.³⁰ While the copyright law in India does not include any morality-based proscriptions, it remains unclear whether copyright can subsist in potentially obscene and immoral works.³¹ Given the unique legislative lineages, purpose and content of

²⁸ See: Brady, Rachel Claire, *Trade Marks Contrary to Public Policy or to Accepted Principles of Morality - a Critical Analysis of CPI4*, 45 EUROPEAN INTELLECTUAL PROPERTY REVIEW 472 (2023).

²⁹ Ram Mohan and Gupta, *supra* note 26; MP Ram Mohan & Aditya Gupta, *Scandal and Obscene Trademarks: Determining Immoral Trademarks in Indian Law*, SPICYIP (Jan. 3, 2024), <https://spicyip.com/2024/01/scandal-and-obscene-trademarks-determining-immoral-trademarks-in-indian-law.html> (last visited Mar 20, 2024).

³⁰ Section 3(b) of the Patents Act, 1970 suggests that any invention which is contrary the intended use or commercial exploitation of which is contrary to *public order or morality* shall not be an invention, and would therefore not qualify as a patentable subject matter for the purposes of Patents Act, 1970. The provision draws relevance from the Article 27.2 of the Agreement on Trade Related Aspects of Intellectual Property Rights, See: Kathleen Liddell, *Immorality and Patents:: The Exclusion of Inventions Contrary Toordre Publicand Morality*, in NEW FRONTIERS IN THE PHILOSOPHY OF INTELLECTUAL PROPERTY 140 (Annabelle Lever ed., 2012); For the debate in Indian law see: Lokesh Vyas, *Morality-Obscenity Dichotomy: An Unfathomable Intellectual Property Law Approach*, BERKELEY JOURNAL OF INTERNATIONAL LAW (Jan. 21, 2019), <https://www.berkeleyjournalofinternationallaw.com/post/morality-obscenity-dichotomy-an-unfathomable-intellectual-property-law-approach> (last visited Apr 26, 2024).

³¹ See: Gautam Patel, *Content Legitimacy and Copyright: Guest Post by Justice G. Patel*, SPICYIP (Jun. 1, 2017), <https://spicyip.com/2017/06/content-legitimacy-and-copyright-guest-post-by-justice-g-patel.html> (last visited Apr 26, 2024); Joshua D. Sarnoff, *Is Copyright Content Neutral? : Prof. Joshua D. Sarnoff Responds to Justice Gautam Patel*, SPICYIP (Jun. 2, 2017), <https://spicyip.com/2017/06/is-copyright-content-neutral-prof-joshua-d-sarnoff-responds-to-justice-gautam-patel.html> (last visited Apr 26, 2024); Aniruddha Majumdar, *Should Illegal Works Receive Copyright Protection?*, SPICYIP (Sep. 4, 2020), <https://spicyip.com/2020/09/should-illegal-works-receive-copyright-protection.html> (last visited Apr 26, 2024).

these provisions and limitations, the scope of the present study is limited the proscriptions contained in Indian Trademark law.

The legislative lineage of morality-based proscriptions in Indian Trademarks Law, can be traced back to the Trade Marks Act, 1940.³² Before 1940, trademark affairs in India were administered under the principles of English common law. Infringement matters were resolved in accordance with the Specific Relief Act of 1877, while registration procedures were overseen by the Registration Act of 1908.³³

The Act of 1940 adopted the morality based proscription from English Law and embodied them in Section 8. The provision prohibited registration of any scandalous designs which would be contrary to morality, or the religious susceptibilities of the Indian population.³⁴ Unlike the English Law, Section 8 adopted an explicit prohibition against registration of marks which are likely to hurt religious sentiments, which was a unique feature of the newly adopted law in India.

The prohibition against the derogatory use of religious symbols draws its provenance from the unique socio-political situation of the Indo-British textile trade of the late 19th century. As textile mills from the Great Britain and India, ventured to explore new markets, their mill cloth was labelled with “*ornate rectangular frame with an image from Indian mythology, or British Royalty.*”³⁵ As Indian mills started using similar labels, in 1877, the Bombay Mill Owners’ Association petitioned the government to introduce a trademark law in line with the Trade

³² For a history of regulation of issues related to trademarks before 1940 and the advocacy efforts which led to the enactment of the Trade Marks Act of 1940, K. Rama Pai, *The New Trade Marks Act*, in THE INDIAN TEXTILE JOURNAL 42 (1890), https://www.google.co.in/books/edition/The_Indian_Textile_Journal/D2GNthrvR3kC?hl=en&gbpv=0; T. P. Datta, *Trademark Law in India Special Issue: III - Reports from Foreign Nations*, 46 TRADEMARK REP. 752 (1956).

³³ P. B. Venkatasubramanian, *The Law of Trademarks in India*, 7 WORLD DEVELOPMENT 737 (1979)“Some executed documents asserting their rights to the exclusive use of a particular trademark and registered them under the Indian Registration Act of 1908, which was primarily a law for registration of documents and, particularly, those transferring an interest in immovable property..... The jurisdiction of the Court under section 54 of the Specific Relief Act of 1877 to grant a perpetual injunction against infringement of a trademark was often sought with success. Damages could also be secured.”; V. K. Unni, *Transnational Influences in Trade Mark and Domain Name Protection: The Indian Experience*, in LOCATING INDIA IN THE CONTEMPORARY INTERNATIONAL LEGAL ORDER 185, 186–187 (Srinivas Burra & R. Rajesh Babu eds., 2018); Datta, *supra* note 32.

³⁴ Section 8, Trade Marks Act, 1940; No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of Justice; or

(b) be likely to hurt the religious susceptibilities of any class of His Majesty's subjects; or

(c) be contrary to any law for the time being in force or to morality.

³⁵ PRASHANT REDDY T & SUMATHI CHANDRASHEKARAN, CREATE, COPY, DISRUPT: INDIA’S INTELLECTUAL PROPERTY DILEMMAS 323–324 (2016).

Marks Registration Act of 1875 introduced in England.³⁶ When their petition was declined, the Bombay Mill Owners' Association "*defiantly decided to register their marks and labels of different mills in their own books, and resort to arbitration to resolve disputes.*"³⁷ The Mill Owners' resolution incorporated a condition that names of gods and goddesses would not be registrable.³⁸ In 1930s, when the deliberations for the creation of the Act of 1940 were initiated, a proposal was floated that the restriction imposed by the Bombay Mill Owners' Association, should be incorporated in the new legislation in an amended form.³⁹ The resulting Act of 1940, included an explicit prohibition against the use of religious symbols which was "*introduced to deal with local conditions.*"⁴⁰

Therefore, through the Act of 1940, the morality based proscriptions adopted in Indian trademark laws, were effectively split in three constituent parts: marks which contain scandalous designs, marks which are contrary to morality, and marks which can potentially hurt religious susceptibilities. Given the unique provenance and the legislative history of the bar in favour of religious susceptibilities, the authors believe that it warrants a different study. Therefore, the present study is limited to studying the bar against scandalous marks, and marks which are contrary to morality.

The Act of 1940 was replaced by the Trade and Merchandise Marks Act of 1958. The Act of 1958 was enacted after a comprehensive review of the law of trademarks in India.⁴¹ Following the report submitted by the Justice Ayyangar Committee,⁴² an amending bill was introduced,

³⁶ Datta, *supra* note 32; In the British empire, India was one of the 16 countries which had no trademarks legislations. Sir Courtney Terrell observed, "In company with Abyssinia, the Solomon Islands, Monaco, St. Helena, Sarawal and few other countries of similar commercial standing, the great Empire of India has not trademark legislation." Venkatasubramanian, *supra* note 33.

³⁷ T AND CHANDRASHEKARAN, *supra* note 35 at 324; JYOTINDRA JAIN, BOMBAY/MUMBAI: VISUAL HISTORIES OF A CITY (2013) "Competition between the indigenous mills and their British counterparts politicized the registration of labels and trademarks. Despite a demand made in 1877 by the Bombay Mill Owners Association that the government introduce a Trade Marks Act for India, the government proposed, in 1881, that all Indian trademarks and labels should be registered in London. Bypassing this proposal, the 'Bombay Mill Owners Association decided in 1886 to register the marks and labels of different mills in the books of the Association and refer the disputes to arbitration.'

³⁸ JAIN, *supra* note 37; T AND CHANDRASHEKARAN, *supra* note 35 at 324.

³⁹ S. VENKATESWARAN, THE LAW OF TRADE AND MERCHANDISE MARKS IN INDIA 563-564 (1937), <http://archive.org/details/in.ernet.dli.2015.41800> (last visited Apr 1, 2024); T AND CHANDRASHEKARAN, *supra* note 35 at 324.

⁴⁰ RAJAGOPALA N. AYYANGAR, *Report of Shri Justice N. Rajagopala Ayyangar on Trade Marks Law Revision*, 35-36 (1955), https://spicyip.com/wp-content/uploads/2015/02/Ayyangar_Committee_Report_TradeMarks_2015.pdf (last visited Dec 19, 2021).

⁴¹ With the rapid growth and development of commerce and industry. During the last decade, there has been a persistent demand from the commercial public for revision of the law is dealing with trademarks and trade descriptions.' LOK SABHA DEBATES, FOURTH SESSION, (1958), https://eparlib.nic.in/bitstream/123456789/1960/1/lsd_02_04_05-05-1958.pdf.

⁴² AYYANGAR, *supra* note 40.

and after a series of consultations and revisions,⁴³ the Act of 1958 was enacted. In his report, Justice Ayyangar pointed out that the relevant English law, on which Section 8 in the Act of 1940 was modelled, had faced some judicial criticism. He suggested that Indian law should move away from English law and towards Australian trademark law, which, at the time, did not reference morality and only proscribed the registration of scandalous marks.⁴⁴

The resulting provision was embodied in S. 11(c), of the Act of 1958, and prohibited the registration of marks that “*comprises or contains scandalous and obscene matter.*”⁴⁵ The discussion of the transition from the Act of 1940 to the Act of 1958 clarifies that the morality based proscription in Indian law was adopted from the Australian law, where the restriction is limited to scandalous marks.⁴⁶ However, this discussion does not clarify how did the term ‘obscene’ find mention in the Act of 1958. In a previous study, the authors have problematised the incorporation of the word ‘obscene’ in India’s morality-based proscription.⁴⁷ The Ayyangar Committee does not make a reference to a bar against ‘obscene’ marks. After the Committee’s report was submitted, public consultations were conducted,⁴⁸ and the resulting bill was also referred to a Joint Parliamentary Committee (JPC).⁴⁹ In the meticulous evidence submitted by the JPC,⁵⁰ and the plethora of amendments suggested by them,⁵¹ no reference was made to the inclusion of a bar against marks containing obscene matter. Therefore, it remains unclear how the term ‘obscene’ finds reference in the Act of 1958.

Regardless of its provenance, the bar against scandalous and obscene marks continues to be a part of Indian Law till date. The Act of 1958 has since been replaced by the Trade Marks Act of 1999, which incorporates the bar against marks that “*comprises or contains scandalous and obscene matter,*” in Section 9(2)(c).

⁴³ After the report was submitted by Justice Ayyangar, a joint parliamentary committee was constituted to evaluate the Trade and Merchandise Marks Bill.

⁴⁴ The Ayyangar Committee made a limited reference to the term ‘morality.’ While dealing with the issue of morality based proscriptions, the Committee omitted any reference to the term ‘morality.’ However, use of the term was relegated to a different provision which prohibited the use of trademarks which are ‘contrary to law or morality.’ The reference to morality was moved away from the interpretation and construction of the term ‘scandalous,’ and was now referred to a different provision. AYYANGAR, *supra* note 40 at 35–36.

⁴⁵ Section 11(c), Trade and Merchandise Marks Act, 1958.

⁴⁶ At the time when the Trade and Merchandise Marks Act, 1958 was prepared, Justice Ayyangar made reference to Section 28, of the Australian Trade Marks Act, 1955. Since then the Act of 1955 has been replaced by the Australian Trade Marks Act, 1995, which incorporates the morality based proscription in Section 42(a). The language for both the provisions is identical, and only includes a reference to scandalous marks.

⁴⁷ Ram Mohan and Gupta, *supra* note 26 at 16, 17.

⁴⁸ LOK SABHA DEBATES, FOURTH SESSION, *supra* note 41 at 11398–113200.

⁴⁹ India, Parliamentary Debates, Lok Sabha, 5 May 1958, 13196-13216; India, Parliamentary Debates, Lok Sabha, 7 May 1958, 1854-1856. Invitation from Lok Sabha to the Rajya Sabha to join the Joint Committee.

⁵⁰ JOINT COMMITTEE ON THE TRADE AND MERCHANDISE MARKS BILL, 1958, *Evidence*, (1958).

⁵¹ JOINT COMMITTEE, *The Trade Marks and Merchandise Marks Bill, 1958*, (1958).

In the eight decades since the prohibition was incorporated in the Indian trademark law, it has suffered from an acute lack of judicial, administrative and academic engagement. The authors have previously studied the administrative guidance published by the Registrar of Trade Marks, and have demonstrated that it lacks any engagement with the legislative history of the provision and its effect on the interpretation of the provision.⁵² In the following parts of the paper, the absolute lack of definitional standards and guidelines for the administration of the provision, it has yielded erratic and inconsistent results.

3. Dataset

Publicly accessible bulk datasets of trademark application and registration information are crucial for enabling comprehensive, data-driven research on the administration of trademark law, including morality-based restrictions. Such datasets allow researchers to systematically examine trends, predictability, and potential biases in how trademark provisions are applied. This section outlines the dataset developed by the authors to conduct their analysis of morality-based restrictions in Indian trademark law. It also emphasizes the importance of trademark offices making their data publicly available in a structured format, and discusses the valuable research opportunities to better understand the practical implementation of trademark regulations.

In 2015, The Office of the Controller General of Patents, Designs and Trade Marks (CGPTDM) in India, completed the digitization of their trade mark records. All the details of trade mark applications, including their prosecution history and current status has been made available to the general public, free of cost through IP India's website, www.ipindia.gov.in.⁵³ The first digitized entry on the register dates back to June 1, 1942, where the mark 'BLACK & WHITE' was registered by the Trade Marks Office at Kolkata.⁵⁴ Since, 1942, the Registry has processed over 6.3 million applications, all of which have been digitized and are available on the CGPTDM's website.

The website provides extensive data-points including the original trade mark application, the examination report, opposition notices, replies thereto, along with all the notices for Show Cause Hearings and all the office orders issued by the Registrar of Trade Marks. While the

⁵² Ram Mohan and Gupta, *supra* note 26; Mohan and Gupta, *supra* note 29.

⁵³ THE OFFICE OF CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS, *Annual Report 2013-14*, 14, 15, https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_91_1_1_29_1_annual-report-13-14-.pdf (last visited Apr 13, 2024).

⁵⁴ Application No. 10., This is the first digitized application, it is not clear why are the applications filed prior to this not available in the digitized databased.

CGPTDM's completion of this herculean task is commendable, the portals which provide access have been designed to cater only to the applicants and the professionals involved in the trade mark prosecution process. The CGPTDM has not created any bulk datasets from its digitized corpus of 6.3 million applications.

3.1. Existing Datasets in other countries and Possible Research Opportunities

Many other trademark offices across the world have adopted progressive measures by establishing and providing access to comprehensive bulk datasets, facilitating streamlined access to essential information and data points relevant to trademarks. Notable examples include the USPTO Trademark Case Files Dataset,⁵⁵ the Canada Trademarks Dataset,⁵⁶ and the Australian TM-Link Dataset.⁵⁷ These datasets have emerged as invaluable resources for conducting extensive research, offering nuanced insights that have potentially reshaped the landscape of trademark laws on a global scale. Their accessibility and utility have played a pivotal role in advancing scholarly discourse and informing policy decisions.

The open availability of these datasets has kindled research along three major praxis.⁵⁸ First, the information gathered from the datasets have been used to study the operation of economy. Filkemma et. al. examine a sample of 660 new Benelux trademarks to argue in favour of using the trademark data as an indicator of innovation for Small and Medium Enterprises. The authors suggest that trademark counts allow for a better measurement of service innovation and provide important information to measure the development and proliferation of technology-based innovation products.⁵⁹ Valentine Millot also argues in favour of trademark

⁵⁵ For more details see: Stuart JH Graham et al., *The USPTO Trademark Case Files Dataset: Descriptions, Lessons, and Insights*, 22 JOURNAL OF ECONOMICS & MANAGEMENT STRATEGY 669 (2013).

⁵⁶ For more details see: Jeremy N Sheff, *The Canada Trademarks Dataset*, 18 JOURNAL OF EMPIRICAL LEGAL STUDIES 908 (2021) This particular dataset was created by the author, but the bulk of underlying data is available openly from the Canadian trademarks office.

⁵⁷ For more details see: Stephen Petrie et al., *TM-Link: An Internationally Linked Trademark Database*, 53 AUSTRALIAN ECONOMIC REVIEW 254 (2020).

⁵⁸ *Id.* at 255; The studies can also be classified between economic and non-economic studies. For a review of the economic studies see: Philipp Schautschick & Christine Greenhalgh, *Empirical Studies of Trade Marks – The Existing Economic Literature*, 25 ECONOMICS OF INNOVATION AND NEW TECHNOLOGY 358 (2016); For a review of studies which operate in the legal spectrum see: Barton Beebe, *Empirical Studies of Trademark Law*, in RESEARCH HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY LAW 617 (Ben Depoorter, Peter Seth Menell, & David L. Schwartz eds., 2019).

⁵⁹ Meindert Flikkema, Ard-Pieter De Man & Carolina Castaldi, *Are Trademark Counts a Valid Indicator of Innovation? Results of an In-Depth Study of New Benelux Trademarks Filed by SMEs*, 21 INDUSTRY AND INNOVATION 310 (2014); Also see: Ulrich Schmoch, *Service Marks as Novel Innovation Indicator*, 12 RESEARCH EVALUATION 149 (2003).

data to be studied as an indicator of non-technological innovation. She suggests that trademark data can provide important information to study innovation in service sectors.⁶⁰

The second area where trademarks data can stimulate research is studying the branding and marketing strategies of firms. When companies aim to attract new customers and alter their market positioning, it can be beneficial for them to develop a new trademark. Moreover, establishing new trademarks can also motivate a company to focus more on marketing innovation.⁶¹ Krasnikov et. al. suggest that trademarks can serve as indicators of firms' efforts to build brand awareness and associations among consumers, which in turn mitigate cash flow variability and enhance financial value.⁶²

Lastly, trademark data has been extensively used to study the operation and efficacies of trademark systems. In 2018, Beebe and Fromer analysed the Trademark Case Files Dataset published by the United States Patents and Trademarks Office to study if fewer trademarks are available due to existing registrations and if an increasing number of applications seek to claim marks which have already been claimed by previous proprietors. They find that both of these trends have been increasing since 1990s and applications filed relatively recently favour complex, unique neologisms over standard English or common surnames.⁶³ Their study concludes that “*ecology of the trademark system is breaking down, with mounting barriers to entry, increasing consumer search costs, and an eroding public domain.*”⁶⁴ Von Graevenitz, Greenhaigh, Helmers, and Schautschick studied a similar trend in the European context. They employed the openly available datasets to examine if trademark registers contain “*such a large number of unused and overly broad trade marks that the costs of creating and registering new marks substantially increase for other applicants.*”⁶⁵

⁶⁰ VALENTINE MILLOT, *Trademarks as an Indicator of Product and Marketing Innovations*, 2009/06 (2009), https://www.oecd-ilibrary.org/science-and-technology/trademarks-as-an-indicator-of-product-and-marketing-innovations_224428874418 (last visited Mar 18, 2024).

⁶¹ *Id.*; For a much broader and comprehensive view, see: Carolina Castaldi, *All the Great Things You Can Do with Trademark Data: Taking Stock and Looking Ahead*, 18 STRATEGIC ORGANIZATION 472 (2020).

⁶² Alexander Krasnikov, Saurabh Mishra & David Orozco, *Evaluating the Financial Impact of Branding Using Trademarks: A Framework and Empirical Evidence*, 73 JOURNAL OF MARKETING 154 (2009).

⁶³ Barton Beebe & Jeanne C. Fromer, *Are We Running out of Trademarks: An Empirical Study of Trademark Depletion and Congestion*, 131 HARV. L. REV. 945 (2017); Lisa Larrimore Ouellette, *Does Running out of (Some) Trademarks Matter?*, 131 HARV. L. REV. F. 116 (2017) Beebe and Fromer's study opened up a larger conversation about the empirical effects of congestion and depletion on the trademark register. Prof. Ouellette examines this issue and suggests that “But given the lack of rigorous evidence regarding either the costs or the benefits of either depletion or congestion, much less the welfare effects of any particular policy change, it seems premature to recommend significant action. Concerns about the exhaustibility of competitively effective marks might end up being no weightier than John Stuart Mill's worries about the exhaustibility of musical combinations.”

⁶⁴ Beebe and Fromer, *supra* note 63 at 1012; Beebe, *supra* note 58 at 618.

⁶⁵ Georg von Graevenitz et al., *Trade Mark Cluttering: An Exploratory Report Commissioned by UKIPO*, WORKING PAPER, INTELLECTUAL PROPERTY OFFICE (2012),

Apart from issues related to congestion and cluttering, various other scholars have empirically examined issues related to trademark registration. Gerhardt and McClanahan, studied how the involvement and quality of legal representation, compared to when an applicant proceeds *pro se*, impacted their success rate for registration. They identify that attorney-filed applications had a much higher chance of securing registration, when compared to *pro se* applicants, especially in cases when the applications met with an Office action.⁶⁶

In 2017, the United States Supreme Court held that the bar against disparaging marks violated the principles of the First Amendment, and was therefore unconstitutional.⁶⁷ In wake of the Supreme Court's decision, the scholarly community alluded to the possibility that the decision could result in the filing and registration of marks which disparage and besmirch minorities.⁶⁸ Huang examined the data from the USPTO to identify trademark applications for racially oriented marks, and the effect of the Supreme Court's ruling on these applications. Amongst a dataset of 4 million applications, she identified only 312 racially-oriented applications, and concluded that there was no overall increase in the number of racially-oriented applications following the Supreme Court's decision.⁶⁹ Goodyear extended this examination to queer trademarks, and identified that while applications for queer trademarks had significantly increased, they were unanimously self-affirming. He argued that the Supreme Court's decision

https://core.ac.uk/display/2782461?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1 (last visited Mar 28, 2024); Georg von Graevenitz, *Trade Mark Cluttering—Evidence from EU Enlargement*, 65 OXFORD ECONOMIC PAPERS 721 (2013); For a similar study in the Australian context see: Haiyang Zhang, *Does Trade Mark Cluttering Exist in Australia?*, 7 IP AUSTRALIA ECONOMIC RESEARCH PAPER (2019).

⁶⁶ Deborah R Gerhardt & Jon P McClanahan, *Do Trademark Lawyers Matter*, 16 STAN. TECH. L. REV. 583 (2012) During the period analyzed, attorney-filed applications had a higher publishing rate of 82% compared to *pro se* applications with a rate of 60%, especially when applications received an Office action from the USPTO, with rates of 72% and 45% respectively. Attorney-filed petitions had a registration percentage of 60%, which was much higher than the 42% registration rate for *pro se* applicants. The authors provide convincing and extensive evidence that higher levels of experience among both *pro se* and attorney-filed applicants are closely associated with higher publication and registration rates. Beebe, *supra* note 58 at 620.

⁶⁷ *Matal v. Tam*, *supra* note 12; See: Simon Tam, *First Amendment, Trademarks, and the Slants: Our Journey to the Supreme Court*, 12 BUFF. INTELL. PROP. LJ 1 (2018).

⁶⁸ See for example: Gary Myers, *Trademarks & the First Amendment after Matal v. Tam*, 26 J. INTELL. PROP. L. 67 (2019) Prof. Myers suggests that one of the categories of applicants who would avail the benefits of the Supreme Court's decision were "those who seek affirmatively to give offense or disparage. This last category of speakers were the natural targets of the Lanham Act's prohibitions, but the Tam ruling clearly establishes that they cannot be singled out for censorship, however offensive their intentions might be."; Alternatively, there were other scholars who argued that given that trademarks operate in a free economy, the negative effects of registering disparaging marks would curtail the number of potentially disparaging marks. See: Timothy T Hsieh, *The Hybrid Trademark and Free Speech Right Forged from Matal v. Tam*, 7 NYU J. INTELL. PROP. & ENT. L. 1 (2017).

⁶⁹ Vicki Huang, *Trademarks, Race and Slur-Appropriation: An Inter-Disciplinary and Empirical Study*, U. ILL. L. REV. 1605 (2021).

facilitated the queer community to adopt self-affirming marks, rather than serving as a medium for out-groups to adopt queer marks as symbols of hate and disparagement.⁷⁰

3.2. Building a Unique Dataset

Given the lack of comparable large-scale datasets, empirical scholarship relating to trademarks in India remains very scarce.⁷¹ This position is most critically visible in legal scholarship, empirically studying the functioning and efficacy of trademark systems in India. To alleviate this lacunae and contribute to the empirical literature examining trademark systems, the authors create a novel dataset by downloading and collecting examination reports from the online portal of the Trade Marks Registry. This exercise was conducted between October and December 2023, and 1.6 million applications filed between June 2018 and July 2022 were downloaded.⁷²

After accumulating the examination reports, the authors auto-coded the dataset to identify the applications that received an objection under S. 9(2)(c) for containing scandalous or obscene content. Through this exercise, 140 examination reports were identified, where any combination of the words ‘scandalous,’ ‘obscene,’ or ‘9(2)(c)’ was mentioned.

After identifying the applications, the authors hand-coded various important attributes of the applications including, the proprietor’s name, goods descriptions, and the trademark office where the application was filed. The applications were also classified between device marks and those for word marks.⁷³ Amongst the 140 applications that received an objection under Section 9(2)(c), 91 applications were filed for securing registrations to device marks. To conduct a comparative analysis of the device marks, the authors used either the marks

⁷⁰ Michael P. Goodyear, *Queer Trademarks*, 2024 UNIVERSITY OF ILLINOIS LAW REVIEW 163 (2024) The study revealed that even though the number of applications were low, there was a clear change regarding the nature of the racially-oriented trademark applications after the Tam decision. The empirical results show that after the Tam decision, there was an absolute and relative increase in self-appropriating applications (forty-nine) over other-appropriated applications (thirty-eight). Dealing specifically with the minority groups a relatively high proportion of self-appropriation activity was evident from African American, Asian, Jewish, and Latin groups however in the case of Native Americans, the opposite was found. .

⁷¹ There are some individually created datasets, but they have been very limited. See for example: Mohit Yadav, *A Decade of Madrid Protocol: Learnings from the Indian Experience*, 7 JOURNAL OF INTELLECTUAL PROPERTY STUDIES 54 (2023); Mohit Yadav, *Who Watches the Watchmen? – Empirically Examining Examination Reports (Part 1)*, SPICYIP (Nov. 2, 2021), <https://spicyip.com/2021/11/who-watches-the-watchmen-empirically-examining-examination-reports-part-1.html> (last visited Mar 28, 2024).

⁷² Amongst the 1.6 million applications analyzed, only 1,596,987 Examination Reports could be downloaded. A possible reason for the discrepancy can be that Examination Reports for some marks are yet to be published, or some marks were Withdrawn before the Examination Reports could be provided.

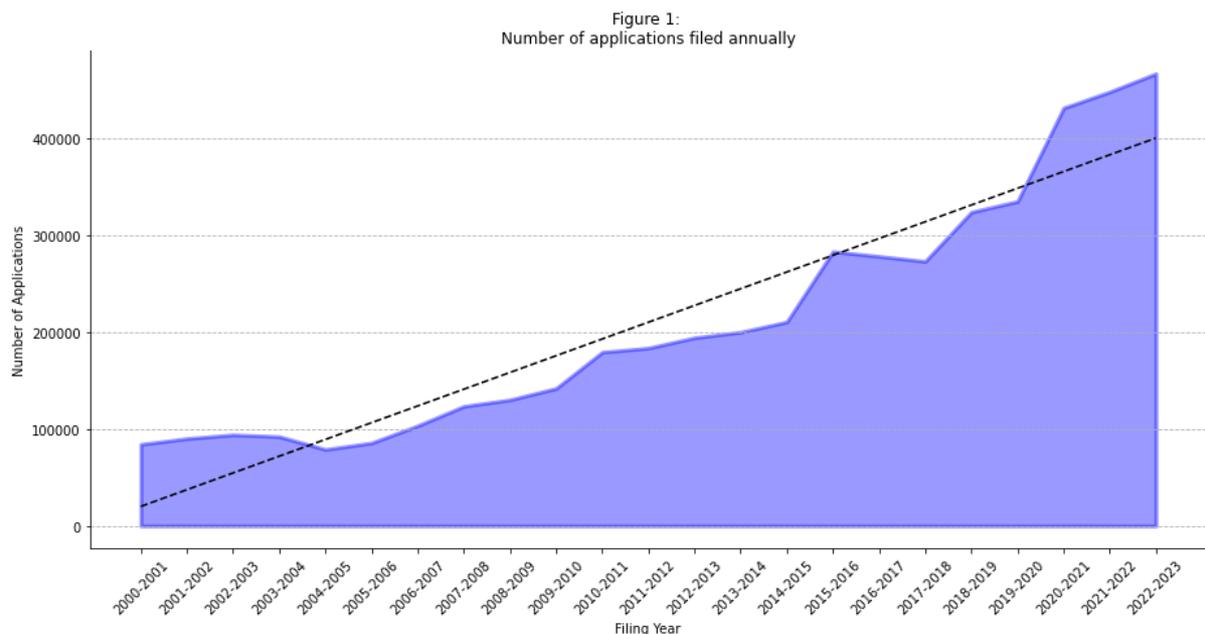
⁷³ Word mark includes one or more words, letters, numerals or anything written in standard character, Device mark includes any label, sticker, monogram, logo or any geometrical figure other than word mark.

essential textual features⁷⁴ or their textual depiction as presented in the trademark application.⁷⁵ This exercise was conducted in February 2024, and any changes made to the applications after February have not been incorporated in the database.

The next section details some important trends and statistics which arise from the examination of the author’s novel dataset.

4. Descriptive Statistics

Figure 1 provides the overall context for the study. As per the data collected from the Annual Reports of the CGPTDM, since the turn of the century, the number of applications filed for registration has been consistently increasing at the rate of 8.66% annually. In the year 2000-01, 84,275 applications were filed for registration, this number increased to 466,580 in 2022-23, effectively quintupling over the course of 22 years.



⁷⁴ S.M. Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 SCC 573 In this case, the Supreme Court suggested that “A mark is said to be infringed by another trader if, even without using the whole of it, the latter uses one or more of its ‘essential features.’” Such an interpretation essentially means that the grant of registration for a mark not only protects the composite mark, but it also protects the essential features of the mark individually. ; For more details see: Aqa Raza & Ghayur Alam, *Theoretical Underpinnings of Trademark Law: Decisions of the Supreme Court of India*, 27 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 351 (2022); Also see: Aqa Raza & Ghayur Alam, *Trademark Law Declared by the Supreme Court of India in Twenty-First Century (2000–2009) — I*, 28 JIPR (2023), <https://or.niscpr.res.in/index.php/JIPR/article/view/3016> (last visited Mar 19, 2024).

⁷⁵ Rule 23 of the Trade Mark Rules 2017 mandate that if an applicant files for a device mark, he is required to “explain with sufficient precision, a description of words, of the trademark.” Where required, the authors have used these descriptions as the essential features of the subject marks.

As discussed previously, the dataset for the present study encompasses the trademark applications filed between June 2018 and July 2022. Amongst the 1.6 million examination reports studied by the authors, only 140 applications were objected for containing scandalous or obscene matter, thereby attracting the mandate of S. 9(2)(c).

Following the issuance of the Examination Report, the applicants are required to file a reply to the objections made in the Examination Report within 30 days. In case the applicant fails to provide a reply within the stipulated timeline, his application would be deemed abandoned for due to non-prosecution.⁷⁶ In the database examined for the present study, no replies were filed for 15 applications. Surprisingly, only 3 of these were officially designated as ‘Abandoned’ by the Registry. The remaining 12, although meeting the criteria for abandonment, did not receive formal abandonment orders.⁷⁷ Details of such applications have been included as Appendix 1.

After a reply to the examination report is filed, if the Registrar of Trade Marks is not convinced with the submissions made therein, they can require the applicant to appear in a ‘Show Cause Hearing.’ During the hearing, an applicant is required to justify why their application should be allowed to proceed.⁷⁸ Until such a hearing is completed and the Registrar passes an order to the effect, the application is considered ‘Objected.’ Alternatively, applicants have the option to withdraw their application within 30 days of the Examination Report.⁷⁹

After the reply to the Examination Report is filed and the Show Cause hearing is conducted, if the Registrar is satisfied with the submissions made therein, the objections are waived and the application is Advertised in the Trade Marks Journal.⁸⁰ Alternatively, if the Registrar is not convinced with the submissions made, the objections are sustained, and the application for registration is Refused. In the author’s dataset, an advertised mark is denoted ‘Accepted’ or ‘Accepted and Advertised,’ and if the application is refused, the status reflects ‘Refused.’ In the time period examined for the present study, only 1 application was withdrawn, 38 were

⁷⁶ Rule 33, Trade Marks Rules 2017, “If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.”

⁷⁷ The latest examination report within these 12 applications was published on April 10, 2023 and corresponds to Application No. 4230985, 4455581, 4510750, 4546877, 4614403, 4823848, 4826742, 4826743, 5124517, 5230482, 5251506, 5279876.

⁷⁸ Rule 33, Trade Marks Rules, 2017, “If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115.”

⁷⁹ Rule 35, Trade Marks Rules 2017: “A notice of withdrawal of an application for the registration of a trademark under sub-section (2) of section 133, for the purpose of obtaining repayment of any fee paid on the filing of the application, shall be given in writing within one month from the date of the receipt of communication mentioned in sub-rule (2) of rule 33.”

⁸⁰ Section 20(1), Trade Marks Act, 1999 read with Rule 33, Trade Marks Rules, 2017.

accepted, 47 were refused and 30 are currently under objection, awaiting either acceptance or refusal.

Once a trademark is Accepted and Advertised in the Trade Marks Journal, the general public is invited to oppose the application within 4 months from the date of advertisement.⁸¹ During the time that an opposition is pending, the application status reflects ‘Opposed’ in the author’s dataset. If no oppositions are filed against the application, it proceeds to be ‘Registered.’ In the present dataset, 3 applications are going Opposition proceedings, while 25 have been registered. Figure 2 visually explains the prosecution process for a trademark application in India.

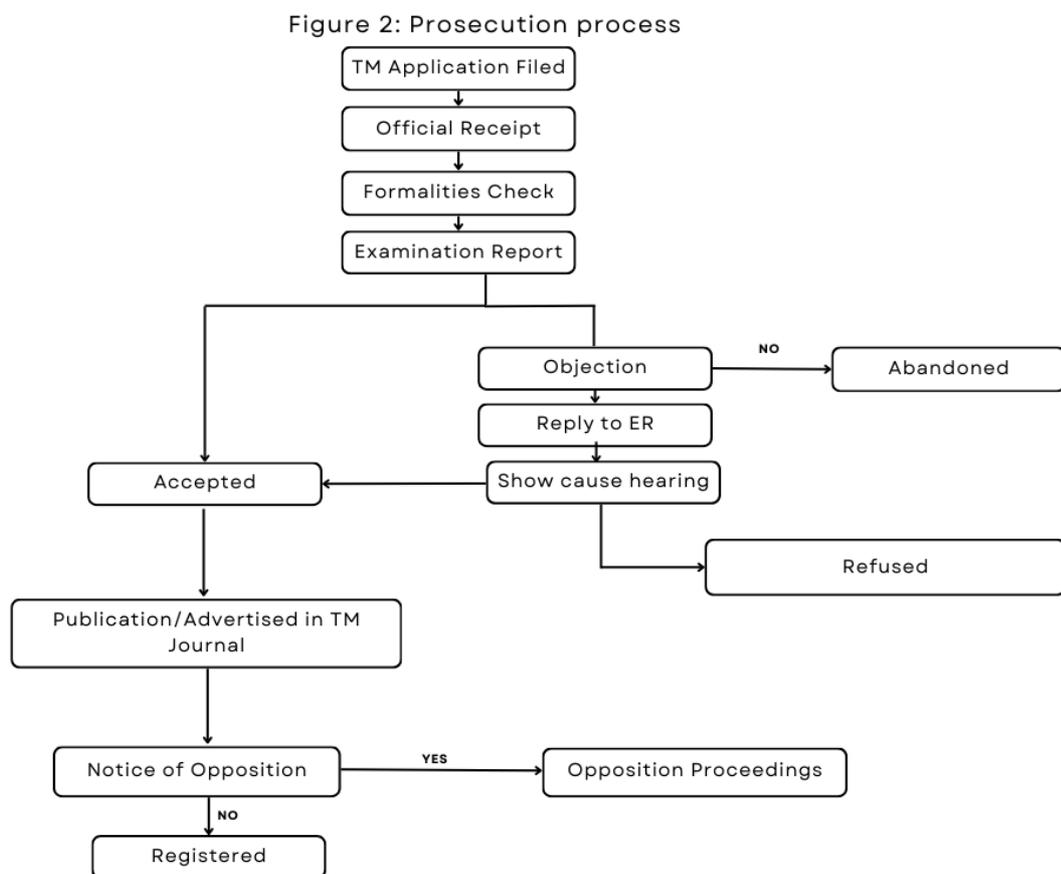


Figure 3 visualizes the progress of the applications that received an objection under Section 9(2)(c), through the trademark prosecution process. Amongst the 140 applications which were issued an objection under S. 9(2)(c), only 125 applicant filed responses to the objections raised in the Examination Report. Amongst the 125, 30 applications remain objected, and 1 has been withdrawn. In due time, the 30 applications currently under objections would either be

⁸¹ Rule 43, Trade Marks Rules, 2017.

Withdrawn, Refused or Accepted. For the remaining 95 applications, 47 were Refused, while 38 were Accepted. Amongst the 38 Accepted applications, 10 are open for Opposition, 3 have been Opposed and 25 have been Registered.

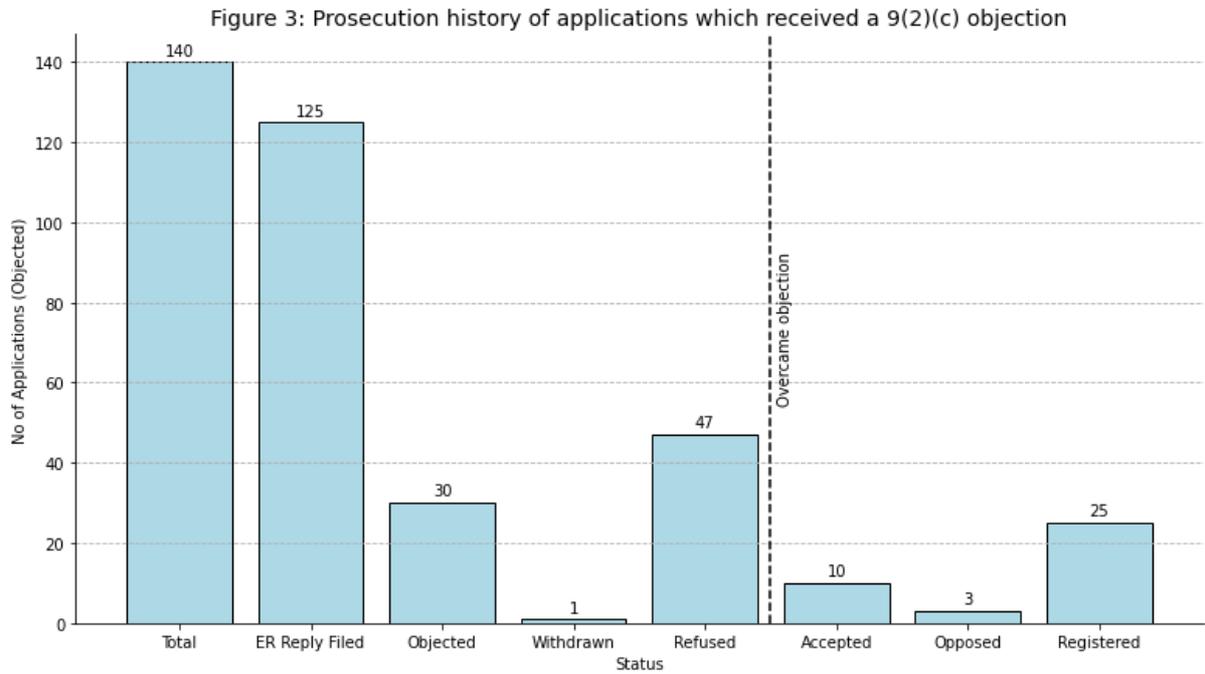
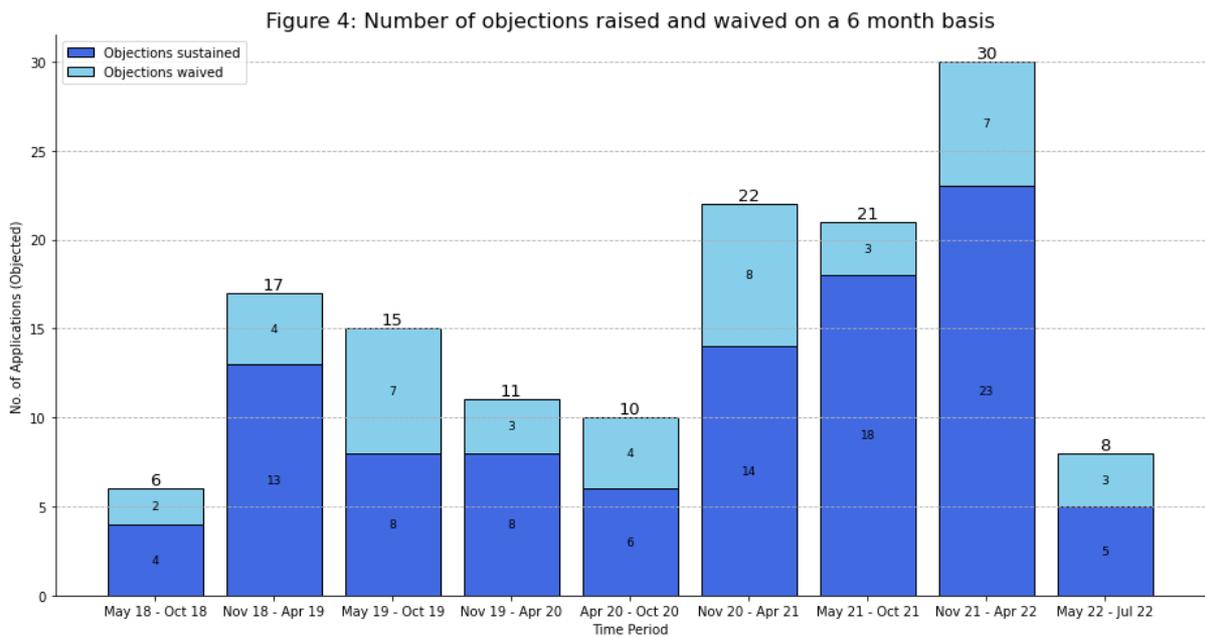


Figure 4 illustrates the number of applications that received an objection under Section 9(2)(c), presented alongside the applications that successfully overcame the objection. The tally for applications where objections were withdrawn only includes applications that were advertised in Trade Marks Journal after being objected under Section 9(2)(c) as of February 2024.



As has been shown in Figure 1, the number of applications filed each year has been steadily increasing. However, Figure 4 only represents the data on a bi-annual basis. It does not accommodate if there was an increase in the absolute number of objections which were issued during that period. Figure 5 has been included to address this and examines the number of objections issues, waived and sustained in intervals of 100,000 applications.⁸² It also analyzes how this rate varies depending on the time period in which the objections were raised.

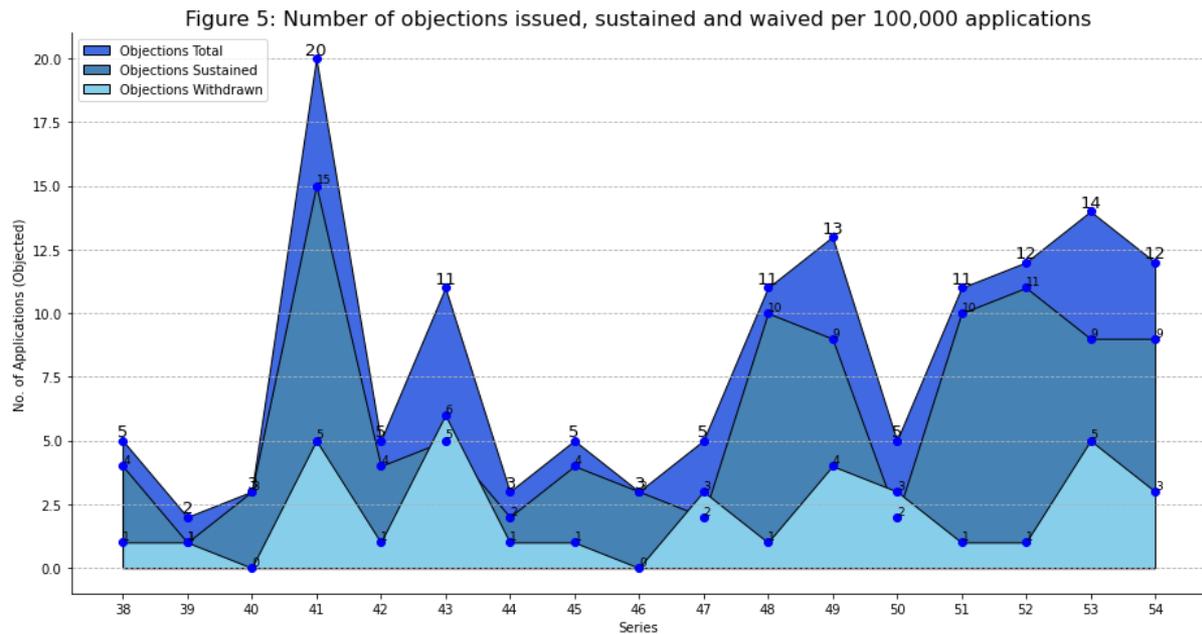
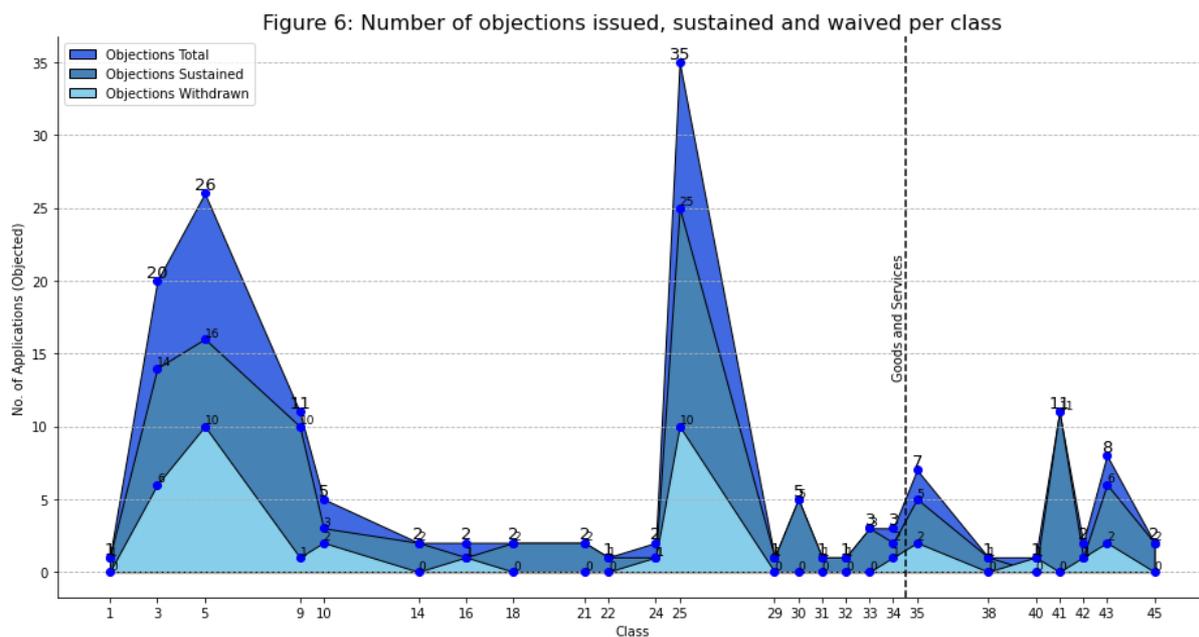


Figure 6 presents the total number of objections raised, withdrawn and sustained under S. 9(2)(c), across various trademark classes. It reveals a striking trend: objections under S. 9(2)(c) are predominantly concentrated in three classes. Class 3 (Bleaching Preparations), Class 5 (Pharmaceutical and Veterinary products), and Class 25 (Apparel Goods) collectively yield 76 objections, eclipsing 50% of all objections. Interestingly, classes pertaining to services yield fewer objections, amounting to only 29 objections, which is less than 20% of the total objections issues under S. 9(2)(c).⁸³

⁸² The horizontal axis in the figure corresponds to the series of applications numbers. For example, series 42 covers marks with application number between 4200000 and 4299999.

⁸³ For multiclass applications which are classified as Class 99, the authors have counted each of these as one entry in the corresponding classes. There were 6 multiclass applications bearing application nos. 4185754 which was applied for Classes 3, 24, 25; 4188747, which was applied for Classes 3, 9, 14, 18, 25; 4741941 which was applied for Classes 3, 35; 4823848 which was applied for Classes 9, 45; 4863251 which was applied for Classes 9, 16, 35, 38, 41, 42; 5251506 which was applied for Classes 35, 41, 43. Given these redundancies, the total count for the following figure is 155.



The data presented in Figure 6 reveals some striking trends when compared to the total number of applications filed in each class. Out of the 1.6 million applications studied, only 120,367 were filed in Class 25 (Apparel Goods). Yet, these Class 25 applications account for 35 objections issued for containing scandalous or obscene content. This means that while Class 25 applications make up only 7.54% of the total applications, they are responsible for over 22% of the objections received under Section 9(2)(c). Similar trends can be witnessed in Class 3 (Bleaching Preparations), and Class 35 (Services for advertising and other office functions). Figure 7 further compares the percentage of applications filed in each class with the number of objections under Section 9(2)(c) within that class. These findings suggest disproportionately high rates of morality-based objections in certain trademark classes, warranting further investigation into potential reasons for such high proportions as a separate study.

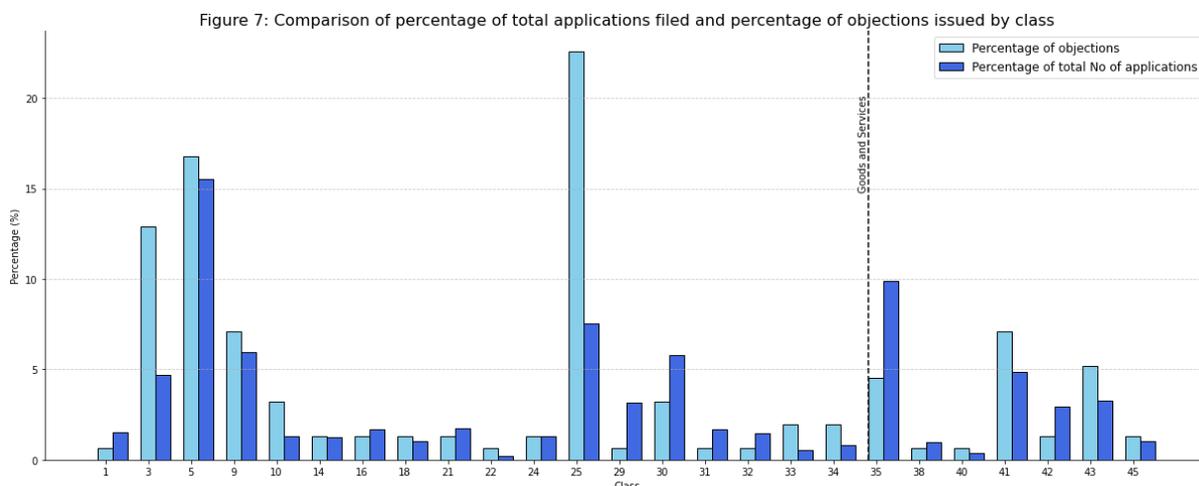
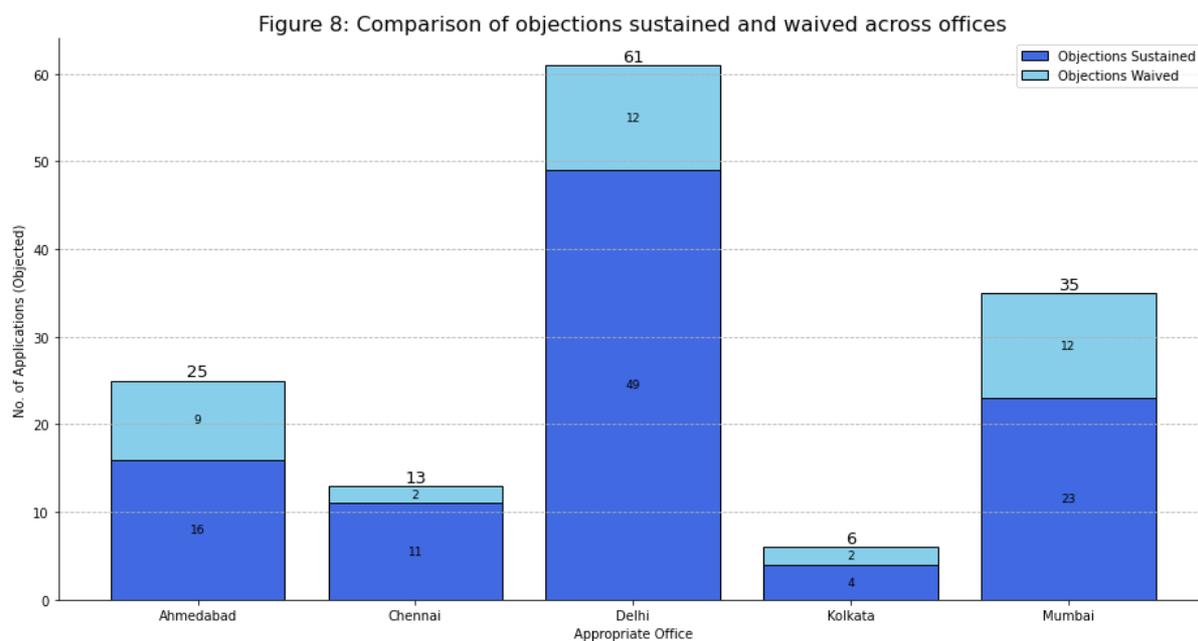


Figure 8 presents the total number of objections raised, withdrawn and sustained under S. 9(2)(c), across the different Trade Mark Offices.



The table shown below provides a comparison between the proportion of total objections issued by each office and the absolute number of applications submitted during May 2018 to July 2022 for prosecution before that office.

Appropriate Office	Number of Applications filed	Percentage of applications filed	Number of applications objected under 9(2)(c)	Percentage of objections issued under S. 9(2)(c)
Ahmedabad	228686	14.29%	25	17.86%
Chennai	312101	19.51%	13	9.29%
Delhi	591517	36.97%	61	43.57%
Kolkata	98251	6.14%	6	4.29%
Mumbai	369445	23.09%	35	25.00%

5. Trade Mark Registry's Application of Section 9(2)(c)

As discussed in Part 1, the authors in a previous study examined the scope and potential interpretation of Section 9(2)(c) by analyzing the jurisprudential lineage of the provision.⁸⁴ The guidelines identified through the doctrinal study were then anecdotally tested by creating a purposive sample. This sample was generated by studying the existing literature to identify potentially scandalous and obscene terms. Using these terms, the authors conducted representative searches on the Trade Marks Register to observe how such potentially objectionable content was treated in practice.

This preliminary exploration provided valuable insights into the practical application of the morality-based restrictions outlined in Section 9(2)(c). Building on these earlier findings, this part presents a comprehensive, data-driven analysis of the administration of morality-based trademark objections, using author's dataset.

To explain the findings in a cohesive manner, the authors adopt the methodology suggested by Beebe and Fromer. In a pioneering study published in 2019, Beebe and Fromer shed light on the administration of the morality-based proscriptions in the American Trademark Law.⁸⁵ In order to provide evidence of inconsistency on the American Trademark Register, they provide three sets of evidence:⁸⁶

- 1) Instances where relative and absolute grounds for objection were used concurrently,
- 2) Marks that successfully navigated morality-based objections by using vague grounds,
- 3) Potentially scandalous or immoral marks that evaded objections altogether.

5.1. Combined Section 9(2)(c) and Section 11 objections

After an application for registration of a trade mark is submitted, it undergoes an examination process. During the examination process, a Trade Marks Examiner scrutinizes the application based on two key criteria: absolute and relative grounds. Absolute grounds, covered by S. 9, pertain to inherent qualities of a mark that may render it objectionable. For instance, S. 9(2)(c) prohibits the registration of marks that contain 'scandalous' or 'obscene' matter. On the other hand, relative grounds for refusal, governed by Section 11,⁸⁷ are attracted when the potential registration of the mark could lead to confusion in the marketplace and encroach upon rights

⁸⁴ Ram Mohan and Gupta, *supra* note 26; Mohan and Gupta, *supra* note 29.

⁸⁵ Beebe and Fromer, *supra* note 13.

⁸⁶ *Id.*

⁸⁷ Section 11, Trade Marks Act, 1999, Relative grounds for refusal of registration.

of other proprietors. S. 11(1)⁸⁸ prevents the registration of mark which are similar/identical to pre-existing marks on the Trade Marks Register, and are sought to be applied in reference to goods that are also similar/identical. S. 11(2) extends the extends this protection to well-known marks, even if applied to dissimilar goods.⁸⁹

When an examination report combines S. 9(2)(c) and S. 11 to object to an application, it hints at a contradiction within the Registry's decision-making process.⁹⁰ By citing S. 9(2)(c), the Trade Marks Registrar objects to the presence of scandalous and obscene matter in the *applied-for* mark.⁹¹ By invoking Section 11 and citing the existence of a similar registered mark, the Registrar implies an inconsistency. How can a mark, having navigated the prosecution process, be deemed confusingly similar to the *applied-for* mark potentially containing scandalous or obscene elements? This raises questions about the scrutiny applied during prosecution. Therefore, by its own admission, the Trade Marks Registry is administering S. 9(2)(c) in an inconsistent manner.

Between July 2018 and June 2022, the Trade Marks Registrar combined S. 9(2)(c) with S. 11 for 32 applications.⁹² Comparing this to American trademark practices, it highlights a concerning trend. In Beebe and Fromer's research, out of 1901 instances where morality-based restrictions were applied, only 114 times were they combined with relative grounds for refusal, making up less than 0.6%.⁹³ However, in the Indian context, this proportion increases to 2.2%.⁹⁴

⁸⁸ Section 11(1), Trade Marks Act, 1999: (1) Same as provided in section 12, a trade mark shall not be registered if, because of -

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

⁸⁹ Section 11(2), Trade Marks Act, 1999: (2) A trade mark which -

(a) is identical with or similar to an earlier trade mark; and
(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due course would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

⁹⁰ The concomitant use of Section 9 and 11 is a common practice of the Indian Trade Marks Registrar. While it invokes a larger question, given the limited scope of research on this issue, the authors comment on the limited question of the interaction between 9(2)(c) and Section 11(1) & 11(2), Trade Marks Act, 1999.

⁹¹ The term *applied-for* mark refers to the mark which has been submitted for registration.

⁹² For a list of all the applications which received a conjoint objection under S. 9 & 11, please see Appendix 2.

⁹³ Beebe and Fromer, *supra* note 13 at 182–189.

⁹⁴ It should be noted that unlike Beebe and Fromer's dataset, the present dataset includes device marks and composite marks. In some instances, the objection for relative grounds depends of words or images in the mark, which are not potentially scandalous. For example, in case of the mark FUCK CABERNET, the similar mark cited in the examination report was CABARNET SAUBIGNON. Therefore, while the scandalous part of the mark

For instance, in March 2019 an application for registration of the mark CHOR BAZAR was filed in reference to services related to hotels and resorts (Class 43).⁹⁵ Objecting to the registration of the mark under S. 9(2)(c), the Trade Marks Examiner suggested that the mark contains scandalous or obscene content. The Examiner also suggested that a previous mark, ‘CHOR BIZARRE’ was already registered in Class 43, and since the two marks were confusingly similar, the *applied-for mark* could not be registered. Interestingly, when the cited mark, CHOR BIZARRE mark was examined in 2012, no objections under S. 9(2)(c) were raised.⁹⁶

Similarly, the mark ‘SAX VIDEO’ encountered an objection due to its alleged scandalous and obscene content when proposed to be used in reference to scientific instruments, electrical devices, computers, media, and fire extinguishers (Class 9).⁹⁷ Additionally, it also faced objection under S. 11(1) for its perceived similarity to the registered mark ‘SAX VIDEO PLAYER,’⁹⁸ used for computer software in Class 9. Notably, ‘SAX VIDEO PLAYER’ underwent examination just 18 months prior to the *applied-for mark* and did not receive any objections for containing scandalous or obscene matter.

In 2019, an application was made to register the mark ‘NEUD XPOSE YOURSELF’ for pharmaceutical and veterinary preparations (Class 5).⁹⁹ Despite opposing the mark for containing scandalous or obscene matter, the Examiner suggested that the mark was confusingly similar to a mark ‘NUDE,’ which was already registered for a variety of healthcare goods (Class 5).¹⁰⁰

Interestingly, the cited mark ‘NUDE’ did not encounter objections for being scandalous when it underwent examination in 2008. However, since then, it has been used as a basis for objecting to the registration of numerous marks incorporating the word ‘NUDE’ in Class 5, such as ‘NUDE HAIR,’¹⁰¹ ‘NUDE WHEY,’¹⁰² and ‘NUDEC.’¹⁰³ Such a usage of Section 9(2)(c) by the Registrar of Trade Marks raises important questions. Firstly, the fact that ‘NUDE’ was not

is the word ‘FUCK,’ the relative objection for the mark stems from the word, CABARNET. See Appendix 5 for more details.

⁹⁵ Application No. 4134601, with Examination Report dated 28/06/2019.

⁹⁶ Application No. 2048839, with Examination Report dated 23/01/2012.

⁹⁷ Application No. 4298319, with Examination Report dated 10/12/2020.

⁹⁸ Application No. 4176758, with Examination Report dated 24/06/2019. This mark was subsequently refused for under S. 9(1)(b) and S. 11(1), Trade Marks Act, 1999, by an order dated 09/11/2021.

⁹⁹ Application No. 4144265 with Examination Report dated 12/08/2022.

¹⁰⁰ Application No. 1556058, with Examination Report dated 05/06/2008.

¹⁰¹ Application No. 3730705, with Examination Report dated 22/02/2018.

¹⁰² Application No. 4059541, with Examination Report dated 25/01/2019.

¹⁰³ Application No. 2845848, with Examination Report dated 12/01/2016.

deemed scandalous or obscene in 2007 but was considered so in 2019. Does this suggest a potential shift towards more stringent moral standards over time? Secondly, the registration of a potentially scandalous or obscene word in 2007 has led to the subsequent refusal of many similar marks in the same class. This trend can potentially hint at congestion within the Trade Marks Register, a phenomenon also observed in the American Register by Beebe and Fromer.¹⁰⁴ However, either of the two potentialities are beyond the scope of the present study and need to be examined in further detail in order to be conclusively established.

In addition to the three marks discussed earlier, there are another 29 instances within the 49-month period examined in this study where Section 9(2)(c) has been invoked alongside Section 11.¹⁰⁵ Some noteworthy instances are discussed below:

- An applicant applied for the mark ‘DICKS’ in reference beverage and food essentials (Class 30).¹⁰⁶ Along with an objection under S. 9(2)(c), the examiner suggested that the mark was confusingly similar to an earlier mark, ‘DEEKS’, which was used in reference to bread & pastry assortment.¹⁰⁷ The applications for the two marks were submitted with only a 25-month interval, and the application for DEEKS was passed without any objection under S. 9(2)(c).
- Another mark where a similar treatment can be observed is a device mark, the essential feature for which was ‘LAZYBUMS.’¹⁰⁸ The mark was applied for registration in March 2021, for clothing and apparel. The Examiner objected that the mark contains scandalous and obscene content, while also citing another mark with an identical essential feature, LAZY BUM. The cited mark was examined only 4 months prior to the subject mark, and yet the former was not objected for containing scandalous or obscene matter.¹⁰⁹

5.2. Applications that overcame an objection under S. 9(2)(c)

Once the reply to an Examination Report is submitted, and the Show Cause Hearing is conducted, if the Trade Marks Registrar is convinced by the submissions made by the applicant, his application is Accepted and advances further in the prosecution. Subsequently, it will be

¹⁰⁴ Beebe and Fromer, *supra* note 63.

¹⁰⁵ Further details for the other marks can be found in Appendix 2.

¹⁰⁶ Application No. 5285293, with Examination Report dated 10/02/2022.

¹⁰⁷ Application No. 4188451, and Application date: 05/03/2019.

¹⁰⁸ Application No. 4909601, with Examination Report dated 04/05/2021.

¹⁰⁹ Application No. 4827491 with Examination Report dated 30/01/2021.

published in the Trade Marks Journal for public notification. A review of the various Replies to the Examination Reports filed by the applicants, provides further evidence that the conduct of the Trade Marks Registrar is arbitrary and inconsistent in the administration of S. 9(2)(c).¹¹⁰

Amongst the 140 applications in the dataset that received an objection under S. 9(2)(c), only 38 applications managed to overcome the objection,¹¹¹ while 47 applications were refused by the Registrar of Trade Marks. However, the criteria used by the Registrar to evaluate the responses from applicants defending their marks against objections under S. 9(2)(c) remains vague and erratic. This issue is further exacerbated by the fact that the orders issued by the Trade Marks Registrar are summary in nature and do not provide any explanations as to the merit or content of the marks.

This ambiguity is most clearly exemplified in the prosecution record for the mark ‘KISS MARY,’ applied for registration in the cosmetics and toiletry preparations category (Class 3) in March 2021.¹¹² The Registrar of Trade Marks objected to its registration, citing the presence of scandalous and obscene material. However, in the applicant’s response, there was a failure to address this specific objection. The only objection highlighted in the Examination Report corresponded to S. 9(2)(c). The Registrar did not make any references to S. 11, and no confusingly similar marks were cited in the Examination Report. Despite the only objection relating to absolute grounds, the reply mischaracterized the objection and defended the mark against the cited marks in the examination report, when no such marks were cited by the Registrar. The applicant failed to defend against any objections related to Section 9, let alone Section 9(2)(c) specifically. Despite the erroneous Reply, the Registrar accepted the application on January 24, 2024, and it was advertised in the Trade Marks Journal on February 5, 2024.

Within the cohort of 47 applications, a recurring theme emerges concerning objections under S. 9(2)(c). Applicants frequently resort to invoking the distinctiveness of their mark. However,

¹¹⁰ One variable that cannot be accommodated in the present dataset are the arguments made by the applicant in a Show-Cause Hearing before the Registrar. There are no digitized records of the arguments made by the applicant in case the Registrar schedules a Show-Cause hearing.

¹¹¹ This proportion is significantly higher than the one explained in Beebe and Fromer’s paper. In their dataset, 231 applications in the pool of 1901 applications moved beyond the stage of objection. This means that around 12% of the applications which received an objection for containing scandalous or immoral content were able to overcome this objection. For the present dataset, the success rate for overcoming an objection under S. 9(2)(c) is significantly higher at 27%.

¹¹² Application No. 4901606 with Examination Report dated 26/03/2021.

this strategy does not consistently sway the Registrar's decision, leading to inconsistencies in the application process.

For example, in March 2019, an applicant applied for the mark 'NUDES' for providing services as an Architectural Firm (Class 42).¹¹³ The Registrar cited S. 9(2)(c) and objected the mark for containing scandalous or obscene content. The applicant defended the mark by claiming that the mark was a coined and invented term, which has no reference with the services offered under the mark. These submissions should have no bearing on whether the mark contains scandalous or obscene matter. Regardless, the mark was Accepted by the Registrar and was published in the Trade Marks Journal. Similar ambiguity is apparent in the cases of various other marks, such as 'HORNI,' applied for registration concerning medicinal and pharmaceutical preparations (Class 5),¹¹⁴ 'CEX,'¹¹⁵ 'BOOBS & BUDS,'¹¹⁶ and 'RIBALD THE NEECH,'¹¹⁷ all applied for registration relating to clothing and apparel (Class 25).

Conversely, appeals to distinctiveness have remained unsuccessful in many cases. For example, in March 2021, an applicant applied for the registration of the mark 'NUDE ROMANCE,' to be used in reference to non-medicated cosmetics and toiletry preparations (Class 3). When the application was objected for containing scandalous or obscene content, the applicant invoked the inherent distinctiveness of the mark, claiming that the mark was a coined term, and did not bear any inherent connection or meaning to the goods in reference to which it was adopted. However, the Registrar was not convinced with the applicant's submissions and the application was refused.¹¹⁸

Identical treatment has been afforded to various other marks. In April 2019, an applicant applied for the registration of three marks, 'FUCK CHARDONNAY,'¹¹⁹ 'FUCK MERLOT,'¹²⁰ and 'FUCK CABERNET,'¹²¹ in reference to alcoholic preparations. All the three applications were objected for containing scandalous or obscene content. In his reply, the applicant appealed to the inherent and applied distinctiveness of the marks. The Registrar refused to waive the objections and held that "*the content of the mark being "FUCK" means have sexual intercourse*

¹¹³ Application No. 4116164, with Examination Report dated 23/04/2019.

¹¹⁴ Application No. 4148440, with Examination Report dated 31/05/2019.

¹¹⁵ Application No. 4391659, with Examination Report dated 16/01/2020.

¹¹⁶ Application No. 5335706, with Examination Report dated 29/03/2022.

¹¹⁷ Application No. 5290558, with Examination Report dated 15/02/2022.

¹¹⁸ Application No. 4921530, with Examination Report dated 16/04/2021.

¹¹⁹ Application No. 4158615, with Examination Report dated 10/06/2019.

¹²⁰ Application No. 4158636, with Examination Report dated 12/06/2019.

¹²¹ Application No. 4158869, with Examination Report dated 12/06/2019.

with (someone). I found this content of mark scandalous. The applicant failed to overcome the objections under section 9(2) (c) raised in the examination report, hence, refused.”¹²²

Similarly, when the registration for the mark ‘SANSKARI SEX’ was objected for containing scandalous or obscene content, the applicant appealed to the inherently distinctive nature of the mark. However, the Registrar refused the application and held that “*The applicant submitted that the applied mark is coined, innovative, unique combination and distinctive. It does not designate any characteristics of the applied services. Therefore, prayed for acceptance of the mark. However, the applied mark consists of obscene or scandalous matters which is prohibited u/s 9(2)(c) of the Trade Marks Act,1999. Hence, refused.*”¹²³

The analysis of the dataset reveals that appeals to the distinctiveness of a mark represent just one approach among many that applicants employ in responding to objections under Section 9(2)(c). The outcomes are inconsistent - for some marks, such appeals to distinctiveness were sufficient for the Trademark Registrar to overcome the morality-based objection, while in other cases they were not successful. This suggests the standards and decision-making criteria used by the Registrar to evaluate responses to Section 9(2)(c) objections remain unclear and unpredictable. The lack of a consistent, reasoned approach undermines the transparency and fairness of the trademark registration process.

5.3. Applications for potentially Scandalous and Obscene marks that never received an objection under Section 9(2)(c)

The inconsistency in the conduct of the Trade Marks Registry is not limited to waiver of objections, it also extends in the issuance of objections. For applications filed between June 2018 and July 2022, the Trade Marks Registry did not issue objections under S. 9(2)(c) to significant number of applications that, based on the Registry’s own practices were immoral and scandalous. In order to identify such applications, the authors studied the Trade Marks Journal to identify applications which were similar to the marks intercepted by the Registry for containing scandalous and obscene content.

For example, in November 2018, an applicant applied for registration of the mark “NAKED AND RAW COFFEE FACE WASH” in reference to cosmetics and toiletries (Class 3). The

¹²² Acceptance or Refusal orders are usually unreasoned and only include the final decision of the Registrar. There are only a very few orders which provide explicit reasons for the acceptance/refusal. The authors have extracted the said reasons where available.

¹²³ Application No. 4344760 with Examination Report dated 27/11/2019.

Mumbai Trade Marks Office opposed the registration of the mark under S. 9(2)(c).¹²⁴ However, when the same applicant applied for the marks ‘NAKED & RAW COFFEE FACE SCRUB’¹²⁵ and ‘NAKED & RAW COFFEE BODY SCRUB’¹²⁶ in the same class, before the same office, no objections under S. 9(2)(c) were raised. There was only a difference of 7 days between the publication of the examination report for the first mark and the remaining two. In fact, the same applicant also applied for the mark ‘NAKED AND RAW,’ before the Mumbai Trade Marks Office, within Class 3, and the mark proceeded to registration without any objection under Section 9(2)(c). Furthermore, there are many other marks with the constituent word NAKED already registered in Class 3. Some of these marks are: NAKED TRUTH BY MYGLAMM,¹²⁷ NAKED URBAN DECAY,¹²⁸ NAKED SKIN¹²⁹ and NAKED BASICS.¹³⁰ None of these marks received any objections for containing scandalous or obscene content.

A similar case can be highlighted in reference to Tobacco Products in Class 34. An Applicant applied for two device marks, the essential textual element of which was ‘HASH’¹³¹ and ‘HASH LIGHTS.’¹³² Both the marks were filed before the Delhi Office, and were examined within a 16-month interval. Yet while the second mark was objected for containing scandalous and obscene content, the first mark received no such objection. This was also noted by the Applicant in his Reply to the Examination Report for the second mark.

Such a treatment can also be witnessed when the applied-for marks contain non-English words. In March 2019, the mark ‘CHOR BAZAR,’ was applied in reference to providing services related to hotels, resorts etc. (Class 43). The Chennai Trade Marks Office objected the mark under S. 9(2)(c). Not only did the Registrar suggest that the mark was confusingly similar to a previously existing mark, CHOR BIZAREE,¹³³ they also omitted to consider the fact that there

¹²⁴ Application No. 3992781 with Examination Report dated 03/12/18; The objection was subsequently waived after the applicant submitted a Reply to the Examination Report where he claimed that “*Therefore the word NAKED should be read in conjunction with RAW, COFFEE and FACE WASH and when read conjointly it does not amount to any obscene or scandalous matter because the word NAKED is used as a general term to denote coffee. It may further be pleaded that mere using of word NAKED doesn’t amount to the attraction of Section 9(2)(c) of Trademark Act as it is not obscene and scandalous because the word Naked means anything expressing or suggesting unchaste and lustful ideas which means for a word to come under the definition of obscenity, it must not arouse sexual desire which is absent in the instant application as this application is for a face wash only which do not contain any such abovementioned ingredients.*”

¹²⁵ Application No. 3992780, with Examination Report dated 11/12/2018.

¹²⁶ Application No. 3992779, with Examination Report dated 11/12/2018.

¹²⁷ Application No. 4425513, with Examination Report dated 13/02/2020.

¹²⁸ Application No. 2440524, with Examination Report dated 12/12/2013.

¹²⁹ Application No. 2440525, with Examination Report dated 12/12/2013.

¹³⁰ Application No. 2440526, with Examination Report dated 12/12/2013.

¹³¹ Application No. 4432682, with Examination Report dated 04/03/2020.

¹³² Application No. 5053495, with Examination Report dated 05/08/2021.

¹³³ Application No. 2048839, with Examination Report dated 23/01/2012.

were various other marks registered in the same class which did not receive an objection for containing scandalous and obscene content. Some of these marks are MAAKHAN CHOR,¹³⁴ BIRYANI CHOR¹³⁵ and KAAMCHOR.¹³⁶

One of the clearest enunciations of the inconsistency in administration of S. 9(2)(c) can be witnessed by studying marks where a composite component is the word 'SEXY.' For example, between June 2018 and July 2022, the Registrar of Trade Marks objected four marks with the constituent word being 'SEXY:' 'I'MSEXY,'¹³⁷ 'JUSTSXY,'¹³⁸ 'FEEL SEXY WITH POP CULTURE,'¹³⁹ SEXY BRA.'¹⁴⁰ Within this time period, there were five other application which passed the examination stage without being objected under S. 9(2)(c): SEXYBEAST,¹⁴¹ SEXYBUST,¹⁴² SEXYFISH,¹⁴³ PLAY SEXY¹⁴⁴ and LA SENZA 24 SEXY.¹⁴⁵

Another trend that can be witnessed relates to moral paternalism and how it affects the decisions made by Trade Marks Examiners. In January 2021, an application for registration of the mark 'ONE DOLLAR SEX CLUB' was filed before the Delhi Trade Marks Office. The applicant sought to apply the mark in reference to dating and matchmaking services and applied for registration under Class 9 and 45. The concerned examiner issued an objection under S. 9(2)(c) suggesting that the mark contained scandalous and obscene matter.¹⁴⁶ The decision of the Registrar becomes difficult to reconcile with the fact that there are many marks in Class 45 which include the constituent word SEX. Some examples include, 'SSS STOP SEX SLAVERY,' applied in reference to "providing social services in relation to prevention of human slavery and exploitation,"¹⁴⁷ 'PROJECT SAMVAAD: CREATING A SAFE SPACE FOR SEXUAL AND SOCIO-EMOTIONAL WELLBEING,'¹⁴⁸ and 'SAFE SEX WEEK,'¹⁴⁹ applied for providing legal, personal and social services.

¹³⁴ Application No. 2896645, with Examination Report dated 06/04/2016.

¹³⁵ Application No. 3046361, with Examination Report dated 27/05/2016.

¹³⁶ Application No. 3485330, with Examination Report dated 03/03/2017.

¹³⁷ Application No. 4185753, with Examination Report dated 04/07/2019.

¹³⁸ Application No. 4185754, with Examination Report dated 04/07/2019.

¹³⁹ Application No. 4928075, with Examination Report dated 12/05/2021.

¹⁴⁰ Application No. 4957580, with Examination Report dated 25/05/2021.

¹⁴¹ Application No. 5041399, with Examination Report dated 22/07/2021.

¹⁴² Application No. 4673633, with Examination Report dated 19/10/2020.

¹⁴³ Application No. 4200537, with Examination Report dated 05/08/2019.

¹⁴⁴ Application No. 4111366, with Examination Report dated 29/03/2019.

¹⁴⁵ Application No. 3349743, with Examination Report dated 21/12/2020.

¹⁴⁶ Application No. 4823848, with Examination Report dated 22/01/2021.

¹⁴⁷ Application No. 2045207, with Examination Report dated 09/03/2012.

¹⁴⁸ Application No. 4882994, with Examination Report dated 10/03/2021.

¹⁴⁹ Application No. 4068024, with Examination Report dated 09/02/2019.

The varying treatment of marks within the same class suggests that Trade Marks Examiners base their moral standards on the specific goods and services associated with the mark. Such a nuanced approach is important for determining morality-based proscriptions in trademark law.¹⁵⁰ However, it is important that any discretion awarded to the Trade Marks Examiners is constrained by broad guidelines and principles for its determination. As highlighted in the previous study, such guidelines are completely absent as is evidenced by the conduct of the Trade Marks Registry. Such discretion can lead to inconsistent results. As the present dataset reveals, only 25% of the applications that received an objection under S. 9(2)(c), successfully navigated the objections. The remaining 36% remain stuck in the objection process, while 32% were refused. Therefore, an office objection under S. 9(2)(c), poses a significant barrier to registration of a trade mark and needs to be administered consistently and methodologically.

6. Discussion and Conclusion

The examination of morality-based proscriptions in trademark law, both internationally and within the Indian context, highlights the complexities and inconsistencies inherent in such regulations. The previous study conducted by the authors revealed the lack of clear definitional and guiding standards to govern the application Section 9(2)(c) of the Indian Trade Marks Act 1999.¹⁵¹ By creating and leveraging a novel dataset, this study provides empirical evidence of the inconsistencies in the administration of the provision. While these complexities are innate to the nature of morality-based provisions, acknowledging their existence is the crucial first step towards mitigating them.

While engaging with this issue, it should be noted that trademark laws assimilate a complex paradox. On the one hand, it regulates commercial expression, and is aimed at improving market efficiencies, and reducing consumer search costs. On the other hand, trademarks can become powerful expressions of political, social and expressive speech.¹⁵² Prof. Katyal suggests that this complexity arises because of trademark law's inherent conflict between two metaphors: the marketplace of goods and the marketplace of ideas. While the marketplace of

¹⁵⁰ In their previous study, the authors have strongly argued in favor of such a nuanced analysis. M. P. Ram Mohan & Aditya Gupta, *'Scandalous' and 'Obscene' Trademark Law: Determining the Scope of Morality-Based Proscriptions in Indian Law*, December 2023 IIMA WORKING PAPER SERIES (2023), <https://www.iima.ac.in/publications/scandalous-and-obscene-trademark-law-determining-scope-morality-based-proscriptions> (last visited Dec 15, 2023); Also see: Amanda Scardamaglia, *Are You Nuckin Futs? Registering "Scandalous" Trade Marks in Australia*, 34 EUROPEAN INTELLECTUAL PROPERTY REVIEW 628 (2012).

¹⁵¹ Ram Mohan and Gupta, *supra* note 26.

¹⁵² For example, see the potential of the Barbie mark. From an important commercial moniker for Mattel to an immutable social icon, the Barbie trademark is the prototypical example of this tension. M. P. Ram Mohan & Aditya Gupta, *Litigating Barbie: Trademark Infringement, Parody, and Free Speech*, 47 DELAWARE JOURNAL OF CORPORATE LAW 33 (2022).

goods premises itself of fixed nature of property rights, the marketplace of ideas is premised on dynamism and fluidity.¹⁵³ Thus, trademarks can have a fixed meaning for use in trade, but also an expressive meaning which is fluid, and can take on different meanings.

This dynamism is best explained by reference to one of the trademark applications intercepted by the authors' dataset. In February 2022, Isha Yadav, a doctoral student from a public university in India, applied for the trademark 'MUSEUM OF RAPE THREATS AND SEXISM.'¹⁵⁴ She applied the mark in reference to training, education, entertainment and cultural services. Possibly because the word 'rape' forms part of the trademark, the Registry cited an objection under Section 9(2)(c). However, a basic search of the context in which the mark is applied reveals that Ms. Yadav has been engaged in memorializing and documenting instances of violence against women in digital formats.¹⁵⁵ In one of her social media posts, she invites women to create a physical installation of harassment and misogyny which have only been amplified through digital media. She says:

"This installation is community curated, which means the affected communities or the people who've faced online harassment or sexism, come together and build it up together.

You should come because there hasn't been an event of community curation like this one ever before. I actively let voices curate and speak for themselves, and it will be a strong statement to build this together.

*We begin this when we are setting up the museum. If we have spoken in the course of this project, or you're keen about this, then I'd be glad if you can help me build this up. No prior curation experience is required, it's an exercise in solidarity. All you need is your anger."*¹⁵⁶

Ms. Yadav's case serves as the prototypical example of the inherent conflict in trademark law. The remit of her mark is not limited to its commercial function, it embodies a powerful social and political comment. Despite its potentiality, the mark is now stuck in an administrative tussle, and as the present study would imply, she has only a 27% chance of navigating this tussle successfully.

¹⁵³ Sonia K Katyal, *Trademark Intersectionality*, 57 UCLA L. REV. 1601 (2009).

¹⁵⁴ Application No. 5331306 with Examination Report dated 24/03/2022.

¹⁵⁵ Anjani Chadha, *Lifting the Vile Veil*, INDULGEXPRESS (2022), <https://www.indulgexpress.com/msociety/2022/Jan/15/lifting-the-vile-veil-38492.html> (last visited Apr 14, 2024); Aamna, *Part Woolf/Part Gogh: A Peek At Isha Yadav's Life-Sized Canvas*, FEMINISM IN INDIA (2020), <https://feminisminindia.com/2020/06/30/peek-at-isha-yadavs-life-sized-canvas/> (last visited Apr 14, 2024).

¹⁵⁶

Appendixes and Supplementary Material

Appendix 1: Applications which fulfil the criterion for abandonment

TM Applied for	Device/Word (Class)	Proprietor	Application (Date of Application)	no of	Date of ER
MAJOON FIRE	Device Mark Class: 25	MOHAMMAD MOBEEN	4230985 Date: 10/07/2019		14/08/2019
While London	Device Mark Class: 3	JITENDRA SINGH	4455581 Date: 27/02/2020		09-03-2021
Bad Ass Stylez	Device Mark Class: 35	SAMEER ANIL DATE	4510750 Date: 26/05/2020		09-07-2020
Legal Bribe	Word Mark Class: 9	ANUBHAV MINOCHA TRADING AS LEGAL BRIBE	4546877 Date: 27/06/2020		28/07/2020
EDISIAC - 24HRS KAMANTRA	Device Mark Class: 5	VELOCE INNOVATIONS LLP	4614403 Date: 18/08/2020		08-09-2020
ONE DOLLAR SEX CLUB	Word Mark Class: 9, 45	APPPARTNERS GMBH	4823848 Date: 18/01/2021		22/01/2021
Beach Bum	Device Mark Class: 25	APARNA GUPTA	4826742 Date: 19/01/2021		22/01/2021
Beach Bum	Device Mark Class: 22	APARNA GUPTA	4826743 Date: 19/01/2021		22/01/2021
She Angel	Device Mark Class: 25	VISHAL	5124517 Date: 09/09/2021		18/09/2021
Chutiya Chaiwala	Device Mark Class: 30	SURENDRA SINGH ARYAN	5230482 Date: 01/12/2021		22/12/2021
The SexED	Device Mark Class: 35,41,43	THESEXED, LLC	5251506 Date: 17/12/2021		10-04-2023
Linga	Device Mark Class: 31	CHITRA KRISHNAMOORTHY	5279876 Date: 11/01/2022		08-02-2022

Appendix 2: Applications which received concomitant objections under Section 9(2)(c) and Section 11

TM applied for (Class)	Application No (Date of application)	Similar mark (Class)	Similar mark app no (Date of application)
POROGARA-1-- Class: 5	3847916 Date: 31/05/2018	PROGRA Class: 5	1422140 Date: 17/02/2006
Easy Life Ultra Class: 5	3948141 Date: 18/09/2018	Easylife Class: 5	1047087 Date: 24/09/2001
		Easylife Fresh Class: 5	2458751 Date: 11/01/2013
		Easy To Life Class: 5	3373617 Date: 28/09/2016
Chor Bazar Class: 43	4134601 Date: 30/03/2019	Chor Bizzare Class: 43	2048839 Date: 02/11/2010
NEUD XPOSE YOURSELF Class: 5	4144265 Date: 11/04/2019	Xpose Class: 5	960725 Date: 04/10/2000
		Nude Class: 5	1556058 Date: 07/05/2007
FUCK CABERNET Class: 33	4158869 Date: 26/04/2019	Cabarnet Saubignon (label) Class: 33	1519793 Date: 22/11/2006
Kamashastr Class: 5	4175585 Date: 14/05/2019	Kamashastram Class: 5	3175335 Date: 03/02/2016
KickAss Class: 3	4217864 Date: 26/06/2019	Kick Class: 3	2535905 Date: 22/05/2013
		Kick Class: 3	2781774 Date: 28/07/2014

INDIE MODA Class: 25	4249938 Date: 29/07/2019	Indi Moda Class: 25	4169270 Date: 07/05/2019
SAX VIDEO Class: 9	4298319 Date: 19/09/2019	Sax Class: 9	3754007 Date: 20/10/2017
		Sax video player Class: 9	4138425 Date: 05/04/2019
		Sax Video Player Logo Class: 9	4176758 Date: 15/05/2019
HORNY GRA Class: 5	4301361 Date: 23/09/2019	Horni Class: 5	4148440 Date: 16/04/2019
SANSKARI SEX Class: 41	4344761 Date: 12/11/2019	Sanskasr (Label) Class: 41	1528436 Date: 06/02/2007
		Sanskasr Class: 41	1838719 Date: 13/07/2009
		Sanskasr with device of kids Class: 41	2702579 Date: 20/03/2014
		Each alphabet is represented in different colored squares Class: 41	3515739 Date: 28/03/2017
While London Class: 3	4455581 Date: 27/02/2020	Whites of London (Label) Class: 3	1487249 Date: 13/09/2006
JONA APPETITE POWER Class: 5	4463714 Date: 05/03/2020	Jona Class: 5	2279487 Date: 08/02/2012
PRAMOVIT + Class: 5	4658286 Date: 16/09/2020	Promovit Class: 5	2627260 Date: 13/11/2013

TALATIN 30 Class: 5	4704748 Date: 16/10/2020	Talapin Class: 5	1876542 Date: 26/10/2009
MURLI BLACK MAGIC Class: 3	4778977 Date: 13/12/2020	Black Magic Class: 3	926013 Date: 22/05/2000
		Black Magic Incense Sticks (label) Class: 3	986019 Date: 25/01/2001
		Murli Dhoop Class: 3	1368186 Date: 01/07/2005
		Murli Class: 3	1968300 Date: 19/05/2010
		Murli (Device) Class: 3	2341058 Date: 31/05/2012
		Murli Class: 3	2516529 Date: 19/04/2013
Lazybums Class: 25	4909601 Date: 17/03/2021	Device Mark Class: 25	4827491 Date: 20/01/2021
Feel Sexy With Pop Culture Class: 25	4928075 Date: 31/03/2021	Sexy Silk Class: 25	3490332 Date: 23/02/2017
		Sexy and Broke Class: 25	3593890 Date: 18/07/2017
		Sexy and Broke Class: 25	3593891 Date: 18/07/2017
		Sexy Bust Class: 25	3661801 Date: 24/10/2017
		Sexy Fish Class: 25	4200537 Date: 07/06/2019
		Sexy Flexy Class: 25	4354462 Date: 21/11/2019
1857REVOLTEA CAFE FOR THE	4962348 Date: 01/05/2021	1857 Class: 25	4088622 Date: 15/02/2019

REVOLUTIONARY ORGASM Class: 25		1857 Supply & Co. Class: 25	4155683 Date: 23/04/2019
Pemi Class: 25	5078928 Date: 07/08/2021	Pami Class: 25	1311780 Date: 28/09/2004
Kamatoys: Unizip for more happiness Class: 10	5082265 Date: 10/08/2021	Kama Sutra Class: 10	607037 Date: 17/09/1993
		Kama Sutra Exotica Class: 10	1052185 Date: 15/10/2001
		KamaSutra(label) Class: 10	1517212 Date: 03/01/2007
		Kamasutra (special form writing) Class: 10	1517215 Date: 03/01/2007
		Kama Sutra Class: 10	1517216 Date: 03/01/2007
		Kamagni Class: 10	1838907 Date: 13/07/2009
		KAMASUTRATOYS Class: 10	4042679 Date: 31/12/2018
		KamaSutra Class: 10	4227345 Date: 06/07/2019
		Kama Class: 10	4696956 Date: 10/10/2020
		Kamamoods Class: 10	4766227 Date: 03/12/2020
Kamajoy: A ride to euphoria Class: 10	4769301 Date: 05/12/2020		
Rapchik Class: 5	5120990 Date: 07/09/2021	Rapicheck Class: 5	1366994 Date: 27/06/2005

		Rapichek Class: 5	1420031 Date: 08/02/2006
She Angel Class: 25	5124517 Date: 09/09/2021	Angel Class: 25	580049 Date: 31/08/1992
		Angels Class: 25	608563 Date: 05/10/1993
		Angels (label) Class: 25	955278 Date: 12/09/2000
		Angel Sarees Class: 25	2330295 Date: 11/05/2012
		Angel Class: 25	4509946 Date: 26/05/2020
DD DRUNK N DRIVE DRINK HEALTHY . DRIVE SAFELY Class: 43	5175813 Date: 16/10/2021	O & M'S DRINK & DRIVE Class: 43	4429543 Date: 04/02/2020
		DND Drink & Dine Class: 43	4679913 Date: 29/09/2020
Linga Class: 31	5279876 Date: 11/01/2022	LINGA Class: 31	5202992 Date: 09/11/2021
Afroasia V-18 Class: 5	5282887 Date: 13/01/2022	V-18 Long & Safe Class: 5	4663576 Date: 19/09/2020
Dicks Class: 30	5285293 Date: 14/01/2022	Deeks Class: 99	4188451 Date: 05/03/2019
Rocket Man 100 Class: 5	5312073 Date: 03/02/2022	Rocket Class: 5	3135386 Date: 22/12/2015
		Rocketgun Class: 5	4170659 Date: 08/05/2019
Alira Beauty Class: 25	5347803 Date: 27/02/2022	Ellira Class: 25	4957098 Date: 26/04/2021
		Elira Class: 25	5268906 Date: 31/12/2021

RIBVA Class: 3	5382090 Date: 24/03/2022	Riba Class: 3	3751784 Date: 13/02/2018
		Ribha Class: 3	3783476 Date: 20/03/2018
STANMARK'S Class: 5	5384366 Date: 25/03/2022	Stanmark Class: 5	933241 Date: 20/06/2000
		KABZRELIEF Class: 5	4707615 Date: 18/10/2020
		Kabjrelief Class: 5	5266554 Date: 29/12/2021

Appendix 3: Applications which overcame an objection under Section 9(2)(c)

TM applied for	Device/Word (Class)	Application Number (Date of application)
SPLITSVILLA	Device Class: 14	Mark 3899091 Date: 26/07/2018
NAKED AND RAW COFEE FACE WASH	Word Class: 3	Mark 3992781 Date: 05/11/2018
Nudes	Word Class: 42	Mark 4116164 Date: 13/03/2019
Fantasize	Device Class: 3	Mark 4116877 Date: 14/03/2019
Nanga Punga	Device Class: 3	Mark 4138993 Date: 05/04/2019
HORNI	Word Class: 5	Mark 4148440 Date: 16/04/2019
TRUCK OFF	Device Class: 43	Mark 4156419 Date: 24/04/2019
CHIRKUT	Word Class: 25	Mark 4188439 Date: 27/05/2019
INDIE MODA	Device Class: 25	Mark 4249938 Date: 29/07/2019
HORNY GRA	Device Class: 5	Mark 4301361 Date: 23/09/2019
MC... BC... Men's comfortwear and Boxers company...	Device Class: 24	Mark 4321302 Date: 15/10/2019
MC... BC... Men's comfortwear and Boxers company...	Device Class: 25	Mark 4321303 Date: 15/10/2019
Dr Kuldeeps Anal - Fit	Device Class: 5	Mark 4351899 Date: 19/11/2019

Tharki	Device Class: 43	Mark	4365353 Date: 03/12/2019
CEX	Device Class: 25	Mark	4391659 Date: 28/12/2019
JONA APPETITE POWER	Device Class: 5	Mark	4463714 Date: 05/03/2020
Slimbee	Device Class: 25	Mark	4575274 Date: 18/07/2020
TALATIN 30	Device Class: 5	Mark	4704748 Date: 16/10/2020
RONASTUD	Device Class: 5	Mark	4720856 Date: 27/10/2020
Sexual	Device Class: 3, 35	Mark	4741941 Date: 11/11/2020
Vardhaman's Galaxy	Device Class: 5	Mark	4862041 Date: 13/02/2021
kiss Mary	Device Class: 3	Mark	4901606 Date: 12/03/2021
Ladyshine	Device Class: 25	Mark	4928149 Date: 31/03/2021
Curvear	Device Class: 10	Mark	4943684 Date: 13/04/2021
1857REVOLTEA CAFE FOR THE REVOLUTIONARY ORGASM	Device Class: 25	Mark	4962348 Date: 01/05/2021
Hash Lights	Device Class: 34	Mark	5053495 Date: 21/07/2021
Pemi	Device Class: 25	Mark	5078928 Date: 07/08/2021
Mischief Eye	Word Class: 9	Mark	5081899 Date: 10/08/2021

Rapchik	Word Class: 5	Mark	5120990 Date: 07/09/2021
Ribald The Neech	Device Class: 25	Mark	5290558 Date: 19/01/2022
Rocket Man 100	Device Class: 5	Mark	5312073 Date: 03/02/2022
Khukumoni	Device Class: 3	Mark	5324953 Date: 11/02/2022
Boobs & Buds	Device Class: 25	Mark	5335706 Date: 19/02/2022
Do Epic Shit	Word Class: 16	Mark	5374184 Date: 17/03/2022
RIBVA	Device Class: 3	Mark	5382090 Date: 24/03/2022
4EX EXTEN PLEASURE	Word Class: 10	Mark	5436342 Date: 05/05/2022
CHITRASHALA	Device Class: 40	Mark	5439443 Date: 07/05/2022
CHARSHI	Device Class: 35	Mark	5455058 Date: 19/05/2022

Appendix 4: International Classification of Goods and Services

Class	Description
1	Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics; Fire extinguishing and fire prevention compositions; Tempering and soldering preparations; Substances for tanning animal skins and hides; Adhesives for use in industry; Putties and other paste fillers; Compost, manures, fertilizers; Biological preparations for use in industry and science
2	Paints, varnishes, lacquers; Preservatives against rust and against deterioration of wood; Colorants, dyes; Inks for printing, marking and engraving; Raw natural resins; Metals in foil and powder form for use in painting, decorating, printing and art
3	Non-medicated cosmetics and toiletry preparations; Non-medicated dentifrices; Perfumery, essential oils; Bleaching preparations and other substances for laundry use; Cleaning, polishing, scouring and abrasive preparations
4	Industrial oils and greases, wax; Lubricants; Dust absorbing, wetting and binding compositions; Fuels and illuminants; Candles and wicks for lighting
5	Pharmaceuticals, medical and veterinary preparations; Sanitary preparations for medical purposes; Dietetic food and substances adapted for medical or veterinary use, food for babies; Dietary supplements for human beings and animals; Plasters, materials for dressings; Material for stopping teeth, dental wax; Disinfectants; Preparations for destroying vermin; Fungicides, herbicides
6	Common metals and their alloys, ores; Metal materials for building and construction; Transportable buildings of metal; Non-electric cables and wires of common metal; Small items of metal hardware; Metal containers for storage or transport; Safes
7	Machines, machine tools, power-operated tools; Motors and engines, except for land vehicles; Machine coupling and transmission components, except for land vehicles; Agricultural implements, other than hand-operated hand tools; Incubators for eggs; Automatic vending machines

8	Hand tools and implements, hand-operated; Cutlery; Side arms, except firearms; Razors
9	Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; Mechanisms for coin-operated apparatus; Cash registers, calculating devices; Computers and computer peripheral devices; Diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; Fire-extinguishing apparatus
10	Surgical, medical, dental and veterinary apparatus and instruments; Artificial limbs, eyes and teeth; Orthopaedic articles; Suture materials; Therapeutic and assistive devices adapted for persons with disabilities; Massage apparatus; Apparatus, devices and articles for nursing infants; Sexual activity apparatus, devices and articles
11	Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes
12	Vehicles; Apparatus for locomotion by land, air or water
13	Firearms; Ammunition and projectiles; Explosives; Fireworks
14	Precious metals and their alloys; Jewellery, precious and semi-precious stones; Horological and chronometric instruments
15	Musical instruments; Music stands and stands for musical instruments; Conductors' batons
16	Paper and cardboard; Printed matter; Bookbinding material; Photographs; Stationery and office requisites, except furniture; Adhesives for stationery or household purposes; Drawing materials and materials for artists; Paintbrushes; Instructional

	and teaching materials; Plastic sheets, films and bags for wrapping and packaging; Printers' type, printing blocks
17	Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; Plastics and resins in extruded form for use in manufacture; Packing, stopping and insulating materials; Flexible pipes, tubes and hoses, not of metal
18	Leather and imitations of leather; Animal skins and hides; Luggage and carrying bags; Umbrellas and parasols; Walking sticks; Whips, harness and saddlery; Collars, leashes and clothing for animals
19	Materials, not of metal, for building and construction; Rigid pipes, not of metal, for building; Asphalt, pitch, tar and bitumen; Transportable buildings, not of metal; Monuments, not of metal
20	Furniture, mirrors, picture frames; Containers, not of metal, for storage or transport; Unworked or semi-worked bone, horn, whalebone or mother-of-pearl; Shells; Meerschaum; Yellow amber
21	Household or kitchen utensils and containers; Cookware and tableware, except forks, knives and spoons; Combs and sponges; Brushes, except paintbrushes; Brush-making materials; Articles for cleaning purposes; Unworked or semi-worked glass, except building glass; Glassware, porcelain and earthenware
22	Ropes and string; Nets; Tents and tarpaulins; Awnings of textile or synthetic materials; Sails; Sacks for the transport and storage of materials in bulk; Padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; Raw fibrous textile materials and substitutes therefor
23	Yarns and threads for textile use
24	Textiles and substitutes for textiles; Household linen; Curtains of textile or plastic
25	Clothing, footwear, headwear

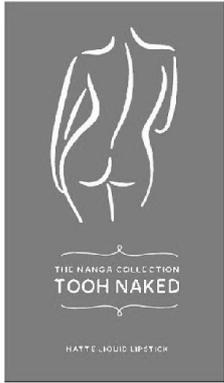
26	Lace, braid and embroidery, and haberdashery ribbons and bows; Buttons, hooks and eyes, pins and needles; Artificial flowers; Hair decorations; False hair
27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; Wall hangings, not of textile
28	Games, toys and playthings; Video game apparatus; Gymnastic and sporting articles; Decorations for Christmas trees
29	Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs; Milk, cheese, butter, yogurt and other milk products; Oils and fats for food
30	Coffee, tea, cocoa and substitutes therefor; Rice, pasta and noodles; Tapioca and sago; Flour and preparations made from cereals; Bread, pastries and confectionery; Chocolate; Ice cream, sorbets and other edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt, seasonings, spices, preserved herbs; Vinegar, sauces and other condiments; Ice [frozen water]
31	Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; Raw and unprocessed grains and seeds; Fresh fruits and vegetables, fresh herbs; Natural plants and flowers; Bulbs, seedlings and seeds for planting; Live animals; Foodstuffs and beverages for animals; Malt
32	Beers; Non-alcoholic beverages; Mineral and aerated waters; Fruit beverages and fruit juices; Syrups and other preparations for making non-alcoholic beverages
33	Alcoholic beverages, except beers; Alcoholic preparations for making beverages
34	Tobacco and tobacco substitutes; Cigarettes and cigars; Electronic cigarettes and oral vaporizers for smokers; Smokers' articles; Matches
35	Advertising; Business management, organization and administration; Office functions
36	Financial, monetary and banking services; Insurance services; Real estate services

37	Construction services; Installation and repair services; Mining extraction, oil and gas drilling
38	Telecommunications services
39	Transport; Packaging and storage of goods; Travel arrangement
40	Treatment of materials; Recycling of waste and trash; Air purification and treatment of water; Printing services; Food and drink preservation
41	Education; Providing of training; Entertainment; Sporting and cultural activities
42	Scientific and technological services and research and design relating thereto; Industrial analysis, industrial research and industrial design services; Quality control and authentication services; Design and development of computer hardware and software
43	Services for providing food and drink; Temporary accommodation
44	Medical services; Veterinary services; Hygienic and beauty care for human beings or animals; Agriculture, aquaculture, horticulture and forestry services
45	Legal services; Security services for the physical protection of tangible property and individuals

Appendix 5: Applications which received an objection under Section 9(2)(c) between June 2018 and July 2022

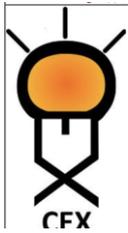
TM Applied for	Device (if device mark)	Device/Word (Class)	Application number (Date of application)
POROGARA-1--		Device Mark Class: 5	3847916 Date: 31/05/2018
Gulchharrey		Device Mark Class: 25	3871112 Date: 26/06/2018
SEXXII		Device Mark Class: 9	3895612 Date: 23/07/2018
DAFUQ		Word Mark Class: 25	3897846 Date: 25/07/2018
SPLITSVILLA		Device Mark Class: 14	3899091 Date: 26/07/2018
Easy Life Ultra		Device Mark Class: 5	3948141 Date: 18/09/2018
NAKED AND RAW COFEE FACE WASH		Word Mark Class: 3	3992781 Date: 05/11/2018

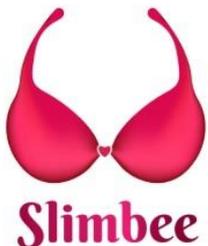
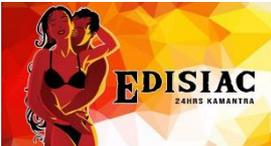
PLEASUREY -100		Device Mark Class: 5	4028194 Date: 15/12/2018
Tharki		Device Mark Class: 10	4036644 Date: 25/12/2018
SEXTTESTOSCOPE		Word Mark Class: 45	4062558 Date: 21/01/2018
Nudes		Word Mark Class: 42	4116164 Date: 13/03/2019
Fantasize		Device Mark Class: 3	4116877 Date: 14/03/2019
Chor Bazar		Word Mark Class: 43	4134601 Date: 30/03/2019
SAX Video Player		Device Mark Class: 9	4138425 Date: 05/04/2019
Nanga Punga		Device Mark Class: 3	4138993 Date: 05/04/2019

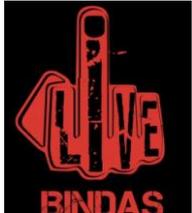
TOOH Naked		Device Mark Class: 3	4138994 Date: 05/04/2019
NEUD YOURSELF	XPOSE NEUD XPOSE YOURSELF	Device Mark Class: 5	4144265 Date: 11/04/2019
HORNI		Word Mark Class: 5	4148440 Date: 16/04/2019
CHARAMSUKH		Word Mark Class: 41	4155439 Date: 23/04/2019
TRUCK OFF		Device Mark Class: 43	4156419 Date: 24/04/2019
Fuck Chardonnay		Word Mark Class: 33	4158615 Date: 26/04/2019
FUCK MERLOT		Word Mark Class: 33	4158636 Date: 26/04/2019
FUCK CABERNET		Word Mark Class: 33	4158869 Date: 26/04/2019
CLUB RASCALS		Device Mark Class: 43	4171605 Date: 09/05/2019

Kamashastr	KAMASHASTR कामाशस्त्र	Device Mark Class: 5	4175585 Date: 14/05/2019
SEXFORCE		Word Mark Class: 5	4184255 Date: 22/05/2019
I'MSEXY		Word Mark Class: 25	4185753 Date: 24/05/2019
JUSTSXY		Word Mark Class: 45740	4185754 Date: 24/05/2019
CHIRKUT		Word Mark Class: 25	4188439 Date: 27/05/2019
LIONBONE		Word Mark Class: 3/9/14/18/25	4188747 Date: 27/05/2019
KickAss	KICK ASS	Device Mark Class: 3	4217864 Date: 26/06/2019
Sex Soul Expressed		Device Mark Class: 25	4223652 Date: 03/07/2019
MAJOON FIRE		Device Mark Class: 25	4230985 Date: 10/07/2019
INDIE MODA		Device Mark Class: 25	4249938 Date: 29/07/2019
SAX VIDEO		Word Mark Class: 9	4298319 Date: 19/09/2019

HORNY GRA		Device Mark Class: 5	4301361 Date: 23/09/2019
MC... BC... Men's comfortwear and Boxers company...		Device Mark Class: 24	4321302 Date: 15/10/2019
MC... BC... Men's comfortwear and Boxers company...		Device Mark Class: 25	4321303 Date: 15/10/2019
SANSKARI SEX		Word Mark Class: 41	4344760 Date: 12/11/2019
SANSKARI SEX		Device Mark Class: 41	4344761 Date: 12/11/2019
Dr Kuldeeps Anal - Fit		Device Mark Class: 5	4351899 Date: 19/11/2019
Tharki		Device Mark Class: 43	4365353 Date: 03/12/2019
HARAMI HARAMZADA HARAMKHOR		Word Mark Class: 41	4378072 Date: 14/12/2019

GROPING		Device Mark Class: 9	4379569 Date: 17/12/2019
CEX		Device Mark Class: 25	4391659 Date: 28/12/2019
Kickass42		Device Mark Class: 43	4396112 Date: 02/01/2020
Kinky		Device Mark Class: 25	4421263 Date: 07/01/2020
While London		Device Mark Class: 3	4455581 Date: 27/02/2020
JONA APPETITE POWER		Device Mark Class: 5	4463714 Date: 05/03/2020
Sexia		Word Mark Class: 5	4510238 Date: 26/05/2021
Bad Ass Stylez		Device Mark Class: 35	4510750 Date: 26/05/2020
Legal Bribe		Word Mark Class: 9	4546877 Date: 27/06/2020

Slimbee		Device Mark Class: 25	4575274 Date: 18/07/2020
KAAM SUTRA		Device Mark Class: 9	4583437 Date: 27/07/2020
EDISIAC - 24HRS KAMANTRA		Device Mark Class: 5	4614403 Date: 18/08/2020
BRAZZERS		Device Mark Class: 10	4621063 Date: 22/08/2020
PRAMOVIT +		Device Mark Class: 5	4658286 Date: 16/09/2020
TALATIN 30		Device Mark Class: 5	4704748 Date: 16/10/2020
RONASTUD		Device Mark Class: 5	4720856 Date: 27/10/2020
HINDU MEAT		Device Mark Class: 29	4728482 Date: 02/11/2020

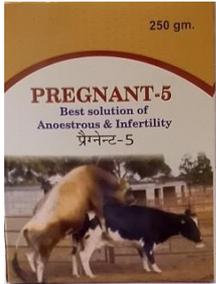
Sexual	sexūal	Device Mark Class: 3, 35	4741941 Date: 11/11/2020
MURLI BLACK MAGIC		Word Mark Class: 3	4778977 Date: 13/12/2020
Live Bindas		Device Mark Class: 25	4810676 Date: 07/01/2021
SUPER BOLLO		Word Mark Class: 1	4812148 Date: 08/01/2021
ONE DOLLAR SEX CLUB		Word Mark Class: 9, 45	4823848 Date: 18/01/2021
Beach Bum		Device Mark Class: 25	4826742 Date: 19/01/2021
Beach Bum		Device Mark Class: 22	4826743 Date: 19/01/2021

S*UCK MY Z*ITS		Device Mark Class: 3	4856096 Date: 09/02/2021
Ilaria		Device Mark Class: 25	4859014 Date: 11/02/2021
Vardhaman's Galaxy		Device Mark Class: 5	4862041 Date: 13/02/2021
The Rapist		Word Mark Class: 9, 16, 35, 38, 41, 42	4863251 Date: 15/02/2021
NAKEDGIRL		Word Mark Class: 21	4878097 Date: 24/02/2021
Beach Bitch		Device Mark Class: 25	4882735 Date: 27/02/2021
kiss Mary		Device Mark Class: 3	4901606 Date: 12/03/2021
Lazybums		Device Mark Class: 25	4909601 Date: 17/03/2021

Bubbz2joy		Device Mark Class: 25	4915517 Date: 22/03/2021
Nude Romance		Word Mark Class: 3	4921530 Date: 25/03/2021
Feel Sexy With Pop Culture		Device Mark Class: 25	4928075 Date: 31/03/2021
Ladyshine		Device Mark Class: 25	4928149 Date: 31/03/2021
Curvear		Device Mark Class: 10	4943684 Date: 13/04/2021
Sexy Bra		Word Mark Class: 25	4957580 Date: 27/04/2021
1857REVOLTEA CAFE FOR THE REVOLUTIONARY ORGASM		Device Mark Class: 25	4962348 Date: 01/05/2021
1857REVOLTEA CAFE FOR THE REVOLUTIONARY ORGASM		Device Mark Class: 30	4962349 Date: 01/05/2021
device of man		Device Mark Class: 41	4966199 Date: 06/05/2021

Big Boobs		Device Mark Class: 3	4981217 Date: 23/05/2021
SILCHAR BIDI		Device Mark Class: 34	4993183 Date: 03/06/2021
Passenger 30		Device Mark Class: 5	5016964 Date: 24/06/2021
Hash Lights		Device Mark Class: 34	5053495 Date: 21/07/2021
Pemi		Device Mark Class: 25	5078928 Date: 07/08/2021
Mischief Eye		Word Mark Class: 9	5081899 Date: 10/08/2021
Kamatoy's: Unizip for more happiness		Word Mark Class: 10	5082265 Date: 10/08/2021
Rapchik		Word Mark Class: 5	5120990 Date: 07/09/2021

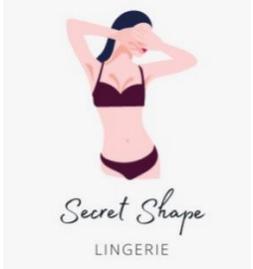
She Angel	 <p><i>She Angel</i> Woman Undergarments</p>	Device Mark Class: 25	5124517 Date: 09/09/2021
Motherfucker		Word Mark Class: 25	5134998 Date: 16/09/2021
Sambhog		Word Mark Class: 3	5135447 Date: 17/09/2021
Sambhog		Word Mark Class: 5	5135448 Date: 17/09/2021
Sumbhog		Word Mark Class: 3	5135449 Date: 17/09/2021
Sumbhog		Word Mark Class: 5	5135450 Date: 17/09/2021
Machuda		Word Mark Class: 21	5142164 Date: 22/09/2021
Blasphemy		Word Mark Class: 3	5158128 Date: 02/10/2021
Gandfaad		Word Mark Class: 30	5174405 Date: 14/10/2021

<p>DD DRUNK N DRIVE DRINK HEALTHY DRIVE SAFELY</p>		<p>Device Mark Class: 43</p>	<p>5175813 Date: 16/10/2021</p>
<p>Pregnant-5</p>		<p>Device Mark Class: 5</p>	<p>5210053 Date: 15/11/2021</p>
<p>Chutiya Chaiwala</p>		<p>Device Mark Class: 30</p>	<p>5230482 Date: 01/12/2021</p>
<p>Negro</p>		<p>Device Mark Class: 25</p>	<p>5247378 Date: 15/12/2021</p>
<p>The SexED</p>		<p>Device Mark Class: 35,41,43</p>	<p>5251506 Date: 17/12/2021</p>
<p>Haash Water solutions</p>		<p>Device Mark Class: 32</p>	<p>5261069 Date: 24/12/2021</p>

Linga		Device Mark Class: 31	5279876 Date: 11/01/2022
Afroasia V-18		Device Mark Class: 5	5282887 Date: 13/01/2022
Afroasia M-18		Device Mark Class: 5	5282888 Date: 13/01/2022
Dicks		Device Mark Class: 30	5285293 Date: 14/01/2022
Ribald The Neech		Device Mark Class: 25	5290558 Date: 19/01/2022
Nonsense Mahila		Device Mark Class: 18	5292158 Date: 20/01/2022
Cute and Nude		Word Mark Class: 3	5297810 Date: 24/01/2022
Rocket Man 100		Device Mark Class: 5	5312073 Date: 03/02/2022

Khukumoni		Device Mark Class: 3	5324953 Date: 11/02/2022
Museum of Rape Threats and Sexism		Word Mark Class: 41	5331306 Date: 16/02/2022
Boobs & Buds		Device Mark Class: 25	5335706 Date: 19/02/2022
Alira Beauty		Device Mark Class: 25	5347803 Date: 27/02/2022
RASILI PADOSAN		Word Mark Class: 30	5358563 Date: 06/03/2022
BESEKSY	BESEKSY	Device Mark Class: 25	5371655 Date: 15/03/2022
Make you look good naked		Device Mark Class: 41	5372051 Date: 16/03/2022
Do Epic Shit		Word Mark Class: 41	5374183 Date: 17/03/2022

Do Epic Shit		Word Mark Class: 16	5374184 Date: 17/03/2022
Do Epic Shit		Word Mark Class: 9	5374185 Date: 17/03/2022
Do Epic Shit		Word Mark Class: 35	5374186 Date: 17/03/2022
RIBVA		Device Mark Class: 3	5382090 Date: 24/03/2022
STANMARK'S		Device Mark Class: 5	5384366 Date: 25/03/2022
BOOB.LAND		Device Mark Class: 43	5416824 Date: 20/04/2022
UTHAPTAK		Word Mark Class: 5	5417649 Date: 21/04/2022

NA		Device Mark Class: 41	5431690 Date: 30/04/2022
TROLLFUCKERS		Word Mark Class: 35	5431693 Date: 30/04/2022
4EX EXTEN PLEASURE		Word Mark Class: 10	5436342 Date: 05/05/2022
CHITRASHALA		Device Mark Class: 40	5439443 Date: 07/05/2022
Secret Shape Lingerie		Device Mark Class: 25	5445655 Date: 12/05/2022
CHARSHI		Device Mark Class: 35	5455058 Date: 19/05/2022
Unclad		Device Mark Class: 25	5460397 Date: 24/05/2022
CHUMMICHUMMI		Word Mark	5463261

		Class: 34	Date: 26/05/2022
FUCKED		Device Mark Class: 25	5474905 Date: 03/06/2022
Mirtona		Device Mark Class: 25	5478794 Date: 07/06/2022

Appendix 6: Applications discussed in Part 5.3

TM Applied for	Device/Word (Class)	Application number (Date of application)
Naked & raw coffee face scrub	Word Mark Class: 3	3992780 Date: 05/11/2018
Naked & raw coffee body scrub	Word Mark Class: 3	3992779 Date: 05/11/2018
NAKED TRUTH BY MYGLAMM	Word Mark Class: 3	4425513 Date: 13/12/2020
NAKED URBAN DECAY	Device Mark Class: 3	2440524 Date: 11/12/2012
NAKED SKIN	Word Mark Class: 3	2440525 Date: 11/12/2012
Naked Basics	Word Mark Class: 3	2440526 Date: 11/12/2012
Hash (style)	Device Mark Class: 34	4432682 Date: 06/02/2020
Hash Lights	Device Mark Class: 34	5053495 Date: 21/07/2021
Chor Bizarre	Word Mark Class: 43	2048839 Date: 02/11/2010
Maakhan Chor	Device Mark Class: 43	2896645 Date: 09/02/2015
Biryani Chor	Device Mark Class: 43	3046361 Date: 01/09/2015

Kaamchor	Word Class: 43	Mark	3485330 Date: 16/02/2017
IMSXY	Word Class: 25	Mark	4185753 Date: 24/05/2019
JUSTSXY	Word Class: 3,24,25	Mark	4185754 Date: 24/05/2019
Feel Sexy With Pop Culture (With Device)	Device Class: 25	Mark	4928075 Date: 31/03/2021
Sexy Bra	Word Class: 25	Mark	4957580 Date: 27/04/2021
SEXYBEAST	Device Class: 25	Mark	5041399 Date: 12/07/2021
SexyBust	Device Class: 25	Mark	4673633 Date: 25/09/2020
Sexy Fish	Word Class: 25	Mark	4200537 Date: 07/06/2019
Play Sexy	Word Class: 25	Mark	4111366 Date: 08/03/2019
La Senza 24 Sexy	Word Class: 25	Mark	3349743 Date: 30/08/2016
ONE DOLLAR SEX CLUB	Word Class: 9,45	Mark	4823848 Date: 18/01/2021
S S S STOP SEX SLAVERY BOMBAY TEEN CHALLENGE	Device Class: 45	Mark	2045207 Date: 27/10/2010

PROJECT SAMVAAD CREATING A SAFE SPACE FOR SEXUAL AND SOCIO-EMOTIONAL WELLBEING	Device Class: 45	Mark 4882994 Date: 27/02/2021
Safe Sex	Device Class: 45	Mark 4068024 Date: 25/01/2019