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GREY MARKET GOODS: THE CONFLICT BETWEEN TRADE MARK RIGHTS AND INTERNATIONAL TRADE EXHAUSTION RULES

A Doctrinal and comparative study of India, the European Union, the United states and United kingdom

AUTHORED BY - PAVITHRA P
IX Semester B.COM LLB(HONS)
School of Law, Sastra Deemed University

ABSTRACT

Grey market goods are genuine products that were lawfully marked by, or with the consent of the, the trademark owner abroad and are then imported into another country outside the owners authorised distribution network. They expose a structural tension between territorial trade mark rights, which let owners segment market and price differently across them, And the trade lock preferences for the free circulation of lawfully reach(national, regional or international) largely decides who prevails. This paper uses doctrinal and comparative methods to examine how India, the European Union, The United states and the United Kingdom resolved a conflict. Statues, 30(3) and leading judgements were analysed along side peer reviewed under practical commentary. The study finds that India true section 30(3) of the trademarks act 1999 as interpreted in kapil Wadhwa vs Samsung Electronics, is the most import friendly of the 4 systems with the section 30(4) legitimate reasons proviso as the main safeguard for owners. The EU and EEA apply regional exhaustion and reject international exhaustion by member states. The United states keeps a territorial approach to trademarks but admits genuine imports unless they are materially different. The United Kingdom now operates the unilateral regime linked to EEA. The findings support the hypothesis that the geographic scope of exhaustion, moderated by a quality based exception, determines an owners control over parallel imports. The paper suggests statutory clarification of section 30(4), a consumer disclosure approach to material differences in India, and closer attention to e commerce intermediaries.

Keywords: grey market goods, parallel imports, trademark, exhaustion, doctrinal

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INTRODUCTION: CHAPTER I

1.1.Background and significance of the research Area

A Trademark tells a buyer who stands behind a product. Because it is a territorial right, the same brand may be owned or licensed by different entities in different countries, and an own and may sell the same item at very different prices across markets.t that pricing gap Invites: arbitrage: a trader buys genuine goods where they are cheap and resells them where they are dear. The resulting goods are called Grey market goods or parallel imports. They are neither counterfeit nor stolen, the dispute is about whether the owner may still use trademark law to stop them.

The question matters for several groups. Owners and their exclusive distributors argue parallel trade free rides on local advertising, after sales support And warranty investment, and that it can harm goodwill if the goods differ from local versions. Importers and consumers argue that blocking genuine goods lets owner sustain artificially high prices and partition in the market. For developing economies such as India, with price sensitive consumers and the large import and e commerce trade, the rule on exhaustion has real welfare consequences.

Exhaustion, sometimes called the first sale doctrine, holds that once the owner has put a particular item on the market, or consented to that, the owner's right to control its further circulation is spent. The unresolved issue is geography. Under national exhaustion, only a first sale inside the country exhaust the right. Under regional exhaustion, a first sale defined bloc does. Under International exhaustion, a first sale anywhere in the world does. The international trade regime deliberately leaves this choice to reach state. [12]The policy of each jurisdiction therefore relieves how it ranks brand protection against market integration and consumer access.

1.2. Literature review

Five peer-reviewed works framed the study. Abbots report to the international law, association service national approaches to parallel importation and argues that, in the absence of a global rule, exhaustion remains a matter of domestic policy, with international exhaustion defensible on competition grounds. [3]Maskus examines the economics of parallel imports and shows that the welfare effect depends on the market: parallel trade may discipline price discrimination,

[1] https://www.indiacode.nic.in/bitstream/123456789/1993/1/a199947.pdf
[2] https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm
[3] https://scholar.google.com/scholar?q=Abbott+First+Report+Final+Committee+on+International+Trade+Law+Parallel+Importation

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but it can also reduce an owners incentive to invest in local distribution and service.[4] Maskus and Chen modern vertical price control and parallel imports, indicating that bans on parallel trade can allow manufacturers to maintain price differences that would otherwise be eroded.[5]Calboli the European process move from one questions about international exhaustion to the close regional rule in Silhouette, uncriticized the resulting harm to trade with non EEA countries.[6] Jhanwar analysis the single judge and digital bench edition in a Samsung mitigation and the textual problems in section30(3), arguing that the division bench reading is the sounder one but leaves practical gaps in enforcement.[7]

three gaps emerge. First, most work examines one jurisdiction; few studies compare in India with the European Union, US and the UK together. Second, the interplay between exhaustion and the quality based exceptions(legitimate reasons in India and European Union, material differences in the United states) is seldom treated as one analytical problem. Third, the effect of online marketplaces on how these doctrine work in practice is underexplored. Bills paper completely all the three gaps.

1.3. Statement of the research problem

Indian lock permits resale of lawfully acquired branded goods but does not define"the market" in section 30(3), Nor does it say how far the section 30(4), exception reaches. Owners facing genuine imports of different quality, warranty are labelling have no settled tests, while importance lacks certainty about what disclosure protect them. Other major jurisdiction have chosen different exhaustion rules and tests. The problem is therefore to determine whether Indian market strikes a defensible balance between trade market protection and free movement of goods when set against these systems.

1.4. Research objectives

1. To explain the theoretical basis of trade market exhaustion and the three geographic models
2. To analyse the Indian statutory and judicial position on Gray market goods
3. To compare the Indian position with European Union, The United states and the United Kingdom

[4] https://scholar.google.com/scholar?q=Maskus+%22Parallel+Imports%22+The+World+E conomy+2000
[5] https://scholar.google.com/scholar?q=Maskus+%22Parallel+Imports%22+The+World+E conomy+2000
[6] https://scholar.google.com/scholar?q=Calboli+Trademark+Exhaustion+in+the+European +Union+Community-Wide+or+International+The+Saga+Continues
[7] https://ijipl.nalsar.ac.in/wp-content/uploads/2023/08/4.-Soumil-Jhanwar.pdf

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4. To evaluate the exception that led owners resist otherwise lawful parallel imports
5. To propose reforms to Indian law.

1.5. Research hypothesis

H1. The geographic scope of exhaustion adopted by a legal system(independent variable: national, regional or international) is inversely related to the degree of control or trademark owner can exercise over parallel imports(dependent variable: owner's ability to obtain relief against genuine imports) this relationship is moderated by the strength of the quality based exception(moderating variable: breadth of legitimate reason or material difference doctrine).
H0: the geography scope of exhaustion has no significant relationship with the owners control over parallel imports.

1.6. Research questions

1. How does section 30(3) and 30(4) of the Trade Marks Act,1999, As interpreted by the Delhi High Court regulating Gray market goods?
2. Why did the European Union choose regional exhaustion, and what cost does the choice impose an non EEA trade?
3. To what extent does the United states material difference test substitute for a formal exhaustion rule, and is it better filter than the Indian proviso?
4. How far does the quality based exception restore control to owners in each jurisdiction?
5. What reforms would best align Indian law with its consumer welfare and trade facilitation goals?

1.7. Scope and limitations

This study is confined to trademark exhaustion in relation to tangible goods. Copyright and patent exhaustion are considered only where they help explain the trademark position, as in Kirtsaeng. The four jurisdictions covered are India, the European Union, the United States and the United Kingdom. Other legal systems with distinctive rules fall outside the scope of this study. As the method is doctrinal, the paper makes no empirical claims about price effects or market shares. The law in this field continues to develop. Where secondary sources have been used to discuss judgments, readers should consult the full text of the relevant decisions.

1.8. Outline of the paper

Chapter II sets out methodology, findings for each jurisdiction under comparative table and

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discussing their significance. Chapter III concludes and chapter IV offers suggestion and direction for future research and chapter V states the sources.

CHAPTER II: MAIN BODY

2.1. Research Methodology

The research is doctrinal and comparative. The doctrinal component identifies, reads and critically analysis primary legal sources such as trademark act 1999, the relevant European Union instrument, The US and Lanham act and Tariff act provisions as discussed in cases, the TRIPS Agreement and leading judgements. The comparative component uses a functional approach each system is asked the same question(what exhaustion rule applies, who bears the burden and what exception protects the owner) and answers are tabulated against the same criteria. Secondary sources including journal articles and law firm commentary were used to locate and interpret authorities. Source liability was assessed by preferring official texts and quote or institutional publication, with commentary used only to confirm summaries.

The method has limits. Doctrinal analysis depends on available report decision, comparison between common law and civil law influences system risk oversimplifying, and the study did not test its conclusion empirically. These limitations are acknowledged in interpreting the findings.

2.2. Findings

2.2.1.India

Section 29 of the trademark Act,1999 defines infringement and section 29(6)(c)Treats importing or exporting under the mark as form of use.[8] That provision alone suggests that importers of branded goods use the mark. The counterweight is section30(3), which says that were goofs bearing a resistant mark or lawfully acquired, their sale or other dealing is not an infringement merely because the mark was later assigned or because the goods were put on the market under the mark by the proprietor or with consent. Section3-(4) this applies the protection where there are legitimate reasons for the owner to oppose further dealings, in particular where the condition of the goods has been changed or impaired after being put on the market.[9]

The central litigation is [10]Samsung electronic company limited Kapil Wadhwa. In February

[8] https://www.indiacode.nic.in/bitstream/123456789/1993/1/a199947.pdf
[9] https://spicyip.com/2012/03/guest-post-landmark-judgement-on.html
[10] https://indiankanoon.org/search/?formInput=Kapil%20Wadhwa%20Samsung%20Electro

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2012 a single judge of Delhi High Court restrained a former dealer from importing and selling genuine Samsung printers and cartridges, reading section3093) as recognising only national exhaustion. Limited to the Indian market. In October 2012 a division bench hearing FAO(OS)93/2012, Partially allowed the appeal unhealth that the act embodies international exhaustion.[11] [12]The bench accepted that import is used under section29(6)9©, but held that section30(3) on the legislative materials referring to goods puts on the market in any geographical area, and on the principle that trademark law protects origin and goodwill rather than the right to control resale.

The division bench did not leave owners without recourse. Section30(4) remains available where impairment or other legitimate reasons are shown, and common test note that an importer must still avoid representing an association with the proprietor, so the passing off and misleading advertising remaining open. [13]Jhanwar ads that the reading has practical difficulties, because section 30(3) refers to goods put on the market. Under the registration trademark, and the interplay with a proprietor separate Indian registration or licensee create uncertainty in later cases, including those concerning online sellers,

outside trademarks. Indian law is also import friendly for patents. The Payton act 1970 treats importing a patent product from a person authorised to sell it is as non infringing which reflects the same international approach to exhaustion(Peyton act 1970,107A(b)).[14] The cumulative position is that Indian leans towards international exhaustion across IP regime, with trademarks governed by the Delhi high court's interpretation rather than explicit statutory language on geography.

2.2.2.European Union and EEA

The European Union position was settled in SILHOUTTE international Schmied v Hartiauer(case in 1998). The Court of Justice held that national roads providing for exhaustion were goods were put on the market outside the European Union by the owner or with consent or contrary to article 7(1) of the first trademark directive.[15] Its reasoning express that mixing national international exhaustion rules with community exhaustion would obstruct free movement of goods within the single market. [16]The rule is now carried on on article 15 of

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[11] https://spicyip.com/2012/10/breaking-news-delhi-high-court.html

[12] https://lakshmisri.com/newsroom/archives/trade-marks-delhi-high-court-rules-in-favour-of-international-exhaustion

[13] https://ssrana.in/?p=843

[14] https://www.indiacode.nic.in/

[15] https://share.google/qMMPtJxU5RJ4MV2oi

[16] https://cms.law/en/gbr/legal-updates/trade-marks-copyright-and-related-rights-parallel-imports-and-exhaustion-of-rights-eu-or-international

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directive European Union and article 15 of regulation European Union which exhaust rides only where goods have been put on the market in the union(now the EEA) By the proprietor or with consent, and which preserve an owner's liability to object for legitimate reason, including changed our impaired condition.[17]

[18]Subsequent Court of Justice decision made the regional rule firm.in [19]ZinoDavidoff and Levistrauss cases, Concern to marketing in the European Union must be univocally demonstrated and the burden fall on the party claiming exhaustion. [20]In Bistrol Myers Squibb v Paeanova case and [21]Dior v Evora case, The legitimate regulations proviso was applied to repacking and damage to the prestige of the mark. The European Union does combines a strict geographic rule with the developed set of limits on the owners power inside the bloc.

2.2.3. United States

The US has no statutory extortion rule for trademarks that mirrors the European Union or India. Instead the [22]Lanham Acts infringement provisions are applied with the case law: a genuine gap that bears a mark lawfully affixed abroad is lawful to import unless it is materially different from the goods the US owner authorizes for sale. The leading decision include [23]Appalachian Artworks v Granada electronics and [24]Nestle vs casa Helvetia. Material differences may not be physical differences in warranty, after sale service or packaging may suffice, and the standard is deliberately low, since the question is whether consumers are likely to be confused about the products nature. A second layer operates at the border section 526 of the tariff fact of 1930 allows owners to seek customs exclusion of grain market goods bearing the mark offer US owned registration and the Supreme Court in [25]K Mart corp v Cartier uphill custom regulations allowing certain exception notably where the foreign and United States marks are owned by the same entity or related companies. Disputes on Gray goods also proceed under section337 before the United states international Trade Commission, where the Federal Circuit decision in Gamut Trading v ITC confirm that a material difference is the key inquiry.

Copyright is the contrast. In [26]Kirtsarng v John Wiley and sons, The Supreme Court held that the fascist doctrine applies to copies lawfully made abroad, producing international extortion

[17] https://eur-lex.europa.eu/eli/dir/2015/2436/oj
[18] https://eur-lex.europa.eu/eli/reg/2017/1001/oj
[19] https://curia.europa.eu/en/actu/communiques/cp01/aff/cp0158en.htm
[20] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0427
[21] Parfums Christian Dior v Evora, C-337/95: full judgment on EUR-Lex
[22] https://www.law.cornell.edu/uscode/text/15/1114
[23] https://www.courtlistener.com/?q=%22Original+Appalachian+Artworks%22+Granada
[24] https://quimbee.com/cases/societe-des-produits-nestle-v-casa-helvetia
[25] K Mart Corp v Cartier, 486 U.S. 281 (1988)
[26] Kirtsaeng v John Wiley & Sons, 568 U.S. 519 (2013)

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for copyright. Trademark remains more owner friendly because the doctrine is tied to consumer confusion not to ownership of a particular copy.

2.2.4 United Kingdom

Before Brexit, The UK followed European Union regional exhaustion. Since 1st January 2021 it has been free to choose its own regime, and it chose to participate unilaterally in the EEA exhaustion system. Goods first placed on the market in the EEA are treated as exhausted in the UK, so imports from the EEA are allowed, while the European Union reached the United Kingdom as a 3rd country, So imports from the United Kingdom into the EEA can be opposed.[27] [28]The resulting United Kingdom asymmetry Favors United Kingdom importers and United Kingdom based owners but not United Kingdom exporters student European Union. The government consulted on alternatives, including a national regime and then international or mixed regime, and commentary indicates that continuing the United Kingdom approach was the likely outcome.

2.2.5. International framework

[29]TRIPS article6, for the purpose of dispute settlement nothing in the agreement shall be used to address exhaustion, subject to national treatment and most favoured nation obligations. The Doha declaration on TRIPS and public health confirms that each member is free to establish its own exhaustion regime. No external knob therefore forces India or other towards given a model.

2.2.6. Comparative summary

CRITERION	INDIA	EU/EEA	UNITED STATES	UNITED KINGDOM
Exhaustion model	**International (Delhi High court, Kapil Wadhwa DB)**	**Regional (EEA)**	**Territorial in form, genuine imports allowed unless materially different**	**Unilateral EEA-Linked**
source of rule	**trademarks act 1999, S 30(3) as interpreted**	**DIRECTIVE 2015/2436 Art 15; regulation**	**Lanham Act; case law, Tariff Act s 526; custom**	**Post Brexit exhaustion regulations**

[27] https://www.mishcon.com/news/consultation-on-the-uks-future-regime-re-exhaustion-of-rights-and-parallel-trade
[28] https://www.hoganlovells.com/en/publications/brexit-uk-consults-industry-on-future-exhaustion-of-rights-regime
[29] https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

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		2017/1001 Art 15; Silhouette	**rules**	
owner's main exception	**section 30(4) legitimate reasons, including impaired condition**	**legitimate reasons such as repackaging, impairment**	**material differences physical or non physical**	**legitimate reasons, as an European Union law**
burden of proof	**owner proving legitimate reasons :importer proving lawful acquisition**	**Party claiming exhaustion shows consent**	**owner shows material difference**	**as in European Union law**

2.3. Discussion

the finding supports the hypothesis. The ranking of jurisdiction by openness to parallel imports tracks the geographic scope of exhaustion. India, which recognises international exhaustion, offers owners the least upfront control, while European Union regional rule gives owners substantial control over imports from outside the EEA. The US shows the moderating variable at work: although its trademark doctrine is not framed as exhaustion, the material difference test lets owners block imports only when they can show something consumer would care about. The more demanding and consumer focused the exception, the closest system is to international exhaustion in practice.

The India outcome rests on persuasive view of trademark function. A trademark guarantees the source and quality of goods. And when a genuine product bearing the owners mark reaches the consumer, the source guarantee is intact. The owners remaining interest is in controlling distribution and price, which is a competition and contract matter rather than a trademark one. The view aligned with consumer welfare in a price sensitive market, and with the division bench refusal to treat trademark law as a tool for market partitioning.

The European Union reached the opposite policy for a coherent reason; a single market cannot tolerate member states applying different exhaustion rules, because goods important under the most liberal route would follow to all. The [30]Calboli argues is a exclusion of cheaper goods from third countries. The rationale does not transfer to India, which has no single market integration objective but does not have interest in import competition.

[30] https://scholar.google.com/scholar?q=Calboli+Trademark+Exhaustion+in+the+European+Union+Community-Wide+or+International+The+Saga+Continues

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The main weakness of the Indian model is the breadth and vagueness of section 30(4) impairment of condition is the only example the statue gives, so court must decide whether difference in warranty, language of labelling, safety standards or after sales service quality. The United states experience suggests that a clear test. Ideally centred on consumer information, reduces litigation. India also lacks a doctrine that tells an import how to disclose that goods are parallel imports even though disclosure is the practical route to avoid passing off and confusion.

Online market practice sharpen the problem. A platform list many display the brand name but obscure whether the seller is authorised, whether the product is a local variant and whether warranty applies. Owners then played infringement or passing off to obtains takedowns, While seller invoke section30(3). Because Kapil wadhawa decision predates the current scale of e commerce, quotes and regulators have to extend its logic to intermediaries as [31]Jhanvar note. The consumer protection regime, which requires accurate product information, offers a complimentary tool that avoid stretching trademark law.

CHAPTER III: CONCLUSION

The paper set out to test how different legal system reconcile trademark rights with the free movement of genuine goods and whether Indian law strikes are defensible balance. It found that the geographic scope of exhaustion is the single most important determinant, that the quality based exception moderates the outcome, and that India's international exhaustion model is coherent with the trademarks function and with consumers interest. The European Union region exhaustion is explicatable by single market objective, The US material difference test shows how consumer confusion lens can police genuine imports without a formal exhaustion label. And the United Kingdom unilateral regime illustrate how policy choices can be made asymmetrically.

The significance of the finding is twofold, first they show that conflict between trademark rights and exhaustion rules is a policy choice expressed in a doctrinal language, so reform should start from policy aim. Second they identify the Indian model real gap: not the direction of rule but the lack of definition into exception. The hypothesis is supported and the stated objectives were met though the doctrinal method means the conclusion about welfare remain inferential.

[31] https://ijipl.nalsar.ac.in/wp-content/uploads/2023/08/4.-Soumil-Jhanwar.pdf

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CHAPTERIV: SUGGESSTIONS

1. **Clarify section 30(4) by amendment or rules:** Parliament should specify, non exhaustively, the circumstances that count as legitimate reasons: alteration or impairment, Material differences in composition, safety or regulatory compliance an absence of a valid warranty or after sale supports that the consumer would expect.
2. **Adopt a consumer information test for material differences:** Following the United states experience, Indian courts should ask whether difference would matter to an ordinary purchaser and whether importer has disclosed it. Disclosure should be a defence not an afterthought.
3. **Recover clear disclosure by parallel importers**: Guidance or an amendment to the act should oblige importers to state that goods are parallel imports, identify the importer and explain warranty arrangement. This protects consumers and reduce passing of claims.
4. **Codify the geographic rule**: The division bench reading is persuasive but not statutory. Parliament should state expressly that goods placed on the market anywhere under the mark by or with the consent of the proprietor or exhausted, subject to section30(4), ending uncertainty at the single judge level.
5. **Align border enforcement**: Custom procedure for IP enforcement should be reviewed so that genuine parallel imports are not detained as infringing, and so real material difference dispute have a fast route to a decision.
6. **Addresses e commerce platform:** Intermediary guidelines should require sellers to declare authorised status and product origin, so owners can change misleading listing without suppressing lawful resale.

Future directions

Empirical research could test the price and welfare effects of India's regime across sectors such as electronics, cosmetics and pharmaceutical. Comparative work could extend to other regime with distinct approaches and to interaction between exhaustion, competition law and vertical restraints. Researchers should also follow the UK’s permanent exhaustion decision and any appellate treatment of section30(4) in India, section online sales.

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