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TRIPS AGREEMENT AND ITS IMPACT ON INDIAN TRADEMARK LAW: A DOCTRINAL AND JUDICIAL ANALYSIS

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Abstract

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) fixed minimum standards of protection for intellectual property for all members of the World Trade Organization. After joining the WTO system, India had to bring its trademark law in line with these standards. This paper looks at how TRIPS affected the development of Indian trademark law, mainly through the enactment of the Trade Marks Act, 1999.

The study first explains the main trademark provisions under TRIPS, including protection of service marks, rights conferred, protection of well-known trademarks, duration of protection, non-use cancellation and enforcement obligations. It then analyses the position under the Trade and Merchandise Marks Act, 1958 to understand the changes introduced after TRIPS compliance. The paper compares important provisions of the 1999 Act with Articles 15 to 21 and Part III of TRIPS.

The paper also studies important Supreme Court decisions to understand how courts have interpreted trademark rights after 1999. The study shows that the structure of the 1999 Act clearly reflects TRIPS standards, especially in relation to service marks, well-known trademarks and enforcement. However, Indian courts do not give protection only because a brand is famous in other countries. They ask for proof of reputation in India and apply proper tests to check likelihood of confusion.

The paper finally concludes that TRIPS has clearly influenced Indian trademark law, but it has not taken away domestic principles or the role of courts. The system today follows international obligations, but Indian judges still apply their own reasoning and look at Indian market conditions. So, there is compliance with TRIPS, and there is still judicial control and balance.

I. Introduction

The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) changed the global system of intellectual property law. It was adopted in 1994 under the agreement that created the World Trade Organization (“WTO”). It came into force on 1 January 1995.¹ Unlike previous intellectual property treaties, TRIPS is enforceable through the WTO dispute settlement system.² This shows that non-compliance can cause trade consequences. For this reason, TRIPS has a stronger practical effect than earlier conventions. India is a founding member of the WTO. Therefore, it had to bring its intellectual property laws in line with TRIPS within the transition period given to developing countries.³ In the area of trademarks, this required changes to domestic legislation. The earlier law, the *Trade and Merchandise Marks Act, 1958*, was replaced by the *Trademarks Act, 1999*. The 1999 Act reflects India’s effort to comply with international minimum standards.

TRIPS provisions on trademarks are mainly found in Articles 15 to 21.⁴ Article 15 explains what signs can qualify as trademarks. Article 16 provides the rights given to the trademark owner, especially protection against use of identical or similar marks where confusion is likely.⁵ Article 16(3) requires protection of well-known marks even for different goods in certain situations.⁶ In addition, Part III of TRIPS sets rules on enforcement. It mandates members to provide civil remedies, injunction, damages and measures against border infringing goods.⁷ Before TRIPS compliance, Indian trademark law mostly covered marks for goods. Service marks were not clearly recognised in the 1958 Act. There was also no detailed statutory provision on well-known trademarks. Courts gave protection through passing off actions, but the statute was limited in scope. Enforcement remedies were there, but the structure was not fully in line with TRIPS standards.

The 1999 Act expanded the definition of trademark. It includes services, shapes of goods, packaging, and combination of colours. Section 11 recognizes well-known trademarks and the Act also improved infringement remedies. However, it would be incorrect to say that all these

¹ Marrakesh Agreement Establishing the World Trade Organization annex 1C, Apr. 15, 1994, 1869 U.N.T.S. 299 (Agreement on Trade-Related Aspects of Intellectual Property Rights).

² Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 1–2, Apr. 15, 1994, 1869 U.N.T.S. 401.

³ TRIPS Agreement art. 65(2).

⁴ TRIPS Agreement arts. 15–21.

⁵ TRIPS Agreement art. 16(1).

⁶ TRIPS Agreement art. 16(3).

⁷ TRIPS Agreement pt. III (arts. 41–61)

developments were forced only because of TRIPS. Even before the 1999 Act, the Supreme Court in *N.R. Dongre v. Whirlpool Corp.* protected a foreign mark on the basis of trans-border reputation.⁸ This reveals that the Indian courts had already been heading towards extended protection.

So, the influence of TRIPS on Indian trademark law is considerable though not absolute. It resulted in legislative revising, better identification of well-known marks, guarding of service marks and enforcement regulations. At the same time, it raises issues about balance. Greater trademark protection can be helpful to the business around the world but can also create more compliance pressure to the small traders.

This paper examines the trademark provisions of TRIPS, compares them with the 1999 Act, investigates key Supreme Court judgments since TRIPS and analyses whether harmonisation has enhanced Indian trademark law and still afforded flexibility to domestic one.

II. Protection of trademarks under TRIPS: Substantive Obligations

Articles 15 to 21 of the Agreement on Trade-Related Aspects of Intellectual Property Rights provision establish minimum standards of trademark protection. These provisions do not unify trademark law across countries. They only create a baseline. Members can offer better protection though not less than this.⁹ This is clear from Article 1(1), which permits Members to determine the appropriate method of implementing TRIPS within their own legal systems.

A. Definition and Registrability – Article 15

In the article 15(1), any sign that can help identify goods or services of one undertaking and those of other undertakings shall be considered as a trademark.¹⁰ It gives examples like words, names, letters, numerals, figurative elements, and combinations of colours. The wording is broad and it focuses on the distinguishing function of a mark. However, TRIPS allows Members to require visual perceptibility as a condition for registration.¹¹ It implies that the countries are not bound to safeguard intangible marks such as sounds or smells. The agreement does not mandate protection of every modern form of

⁸ *N.R. Dongre v. Whirlpool Corp.*, (1996) 5 S.C.C. 714 (India).

⁹ TRIPS Agreement art. 1(1).

¹⁰ TRIPS Agreement art. 15(1).

¹¹ *Id.*

trademark. It leaves space for domestic discretion.

Article 15(2) allows the Members to decline registration when they have other reasons but they must not be a derogation of the Paris Convention.¹² Article 15(3) permits Members to make registration depend on use.¹³ Therefore, TRIPS does not prohibit use-based systems. It only ensures that the essential distinguishing function is respected.

B. Rights Conferred – Article 16

Article 16(1) explains the core right of a registered trademark owner.¹⁴ The owner can stop third parties from using identical or similar signs for identical or similar goods or services where confusion is likely. Where identical signs are used for identical goods or services, confusion is presumed.¹⁵

TRIPS does not define how courts should assess confusion. It does not list factors such as similarity of goods, class of purchasers, or visual comparison. These questions are left to domestic law and therefore, national courts retain interpretative authority.

Article 16(2) is a continuation of protection of well-known marks as stipulated in Article 6bis of the Paris Convention.¹⁶ It requires Members to consider knowledge of the trademark in the relevant sector of the public. This is important as it does not require universal recognition. The focus is on the relevant market segment.

Article 16(3) goes further. It requires protection of well-known marks even for dissimilar goods or services, provided that use would indicate and is likely to damage the interests of the owner. This resembles dilution protection, but TRIPS does not use that term instead it only sets two conditions: connection and possible damage.

C. Exceptions – Article 17

Article 17 allows limited exceptions to trademark rights.¹⁷ Incidentally, descriptive use of a term can be permitted. The exception must take account of legitimate interests of both the trademark owner and third parties. This text displays the fact that the rights of trademarks are not absolute, and TRIPS is open to the necessity of the balance.

¹² TRIPS Agreement art. 15(2).

¹³ TRIPS Agreement art. 15(3).

¹⁴ TRIPS Agreement art. 16(1).

¹⁵ Id.

¹⁶ TRIPS Agreement arts. 16(2)(3).

¹⁷ TRIPS Agreement art. 17.

D. Duration and Renewal – Article 18

Article 18 gives that registration at the outset and renewals should be done to a term not less than seven years.¹⁸ The registration should be renewable. TRIPS has not established a time limit rather it stipulates that trademarks can be used as long-term commercial identifiers.

E. Requirement of Use – Article 19

Article 19 allows Members to cancel registration for non-use only after three continuous years.¹⁹ Proper justification of non-use must be identified such as the restriction of imports or other impediments not within the control of the owner. This eliminates the abuse of non-use rule. It is also a policy issue in the provision that trademarks should not be held on indefinitely, without being put into commercial operation. It strikes a balance between the rights of the individual and the access to the market.

F. Licensing and Assignment – Article 21

Article 21 leaves regulation of licensing and assignment largely to domestic law.²⁰ However, it prohibits compulsory licensing of trademarks. This is a clear difference from patent law under TRIPS. The assumption is that trademarks represent source and goodwill and therefore obligatory licensing would upset the central role of the trademarks.

G. Enforcement

Part III of TRIPS applies to all intellectual property rights, including trademarks.²¹ According to article 41, the enforcement procedures must be efficient, not overly complex or expensive.²² Articles 42 to 49 are concerned with civil and administrative procedures. Courts must have authority to give injunctions and award damages.²³ Articles 51 to 60 are specifically concerned with border measures.²⁴ Members must provide procedures to suspend release of counterfeit trademark goods. Criminal

¹⁸ TRIPS Agreement art. 18.

¹⁹ TRIPS Agreement art. 19(1).

²⁰ TRIPS Agreement art. 21.

²¹ TRIPS Agreement arts. 41–61.

²² TRIPS Agreement art. 15(2).

²³ TRIPS Agreement arts. 44–45.

²⁴ TRIPS Agreement arts. 51–60.

procedures must also be available in cases of wilful trademark counterfeiting on a commercial scale.²⁵

TRIPS does not prescribe detailed procedural codes, it only sets minimum outcomes, and each Member designs its own judicial system.

- In simple terms, TRIPS requires Members to:
- Recognise signs capable of distinguishing goods or services;
- Provide exclusive rights against confusing use;
- Protect well-known marks beyond identical goods;
- Allow indefinite renewal of registration;
- Permit cancellation for non-use after three years;
- Prohibit compulsory licensing of trademarks;
- Provide effective civil, border, and criminal remedies.

It does not eliminate domestic flexibility but establishes minimum standards and the real issue is whether domestic law is up to minimum standards and the interpretation of those minimum standards by the court.

III. Indian Trademark Law Before TRIPS: Position under the 1958 Act

Before India brought its law in line with the Agreement on Trade-Related Aspects of Intellectual Property Rights, trademark protection was governed by the Trade and Merchandise Marks Act, 1958. This Act replaced the 1940 law and continued until the Trade Marks Act, 1999 was enacted. The 1958 Act worked for many years and courts applied it regularly. But it was made in a different time. It was not written with WTO obligations or global minimum standards in mind. It was mainly a domestic law meant to regulate trade inside India.

The 1958 Act mostly dealt with trademarks for goods. It did not clearly provide statutory protection for service marks. This implied that service providers who operated in the business sector such as banking or hotel services lacked definite statutory safeguards of infringement. They could file passing off cases, but that is different from having a statutory right. Later, Article 15 of TRIPS made it clear that trademarks must be protected for both goods and services.²⁶ So in this area, the 1958 Act was narrower than what TRIPS later required.

²⁵ TRIPS Agreement art. 61.

²⁶ TRIPS Agreement art. 15(1).

The definition of “trademark” in Section 2(1)(v) of the 1958 Act was also limited.²⁷ It mainly focused on marks used in relation to goods and capable of graphical representation. The Act mostly covered word marks, label marks, and device marks. It failed to enumerate in a clear form more general classifications such as form of goods or protection of colour combinations as the subsequent law. The law was of no case, but it was more traditional in organization, and narrow in its measures, than in subsequent growth. The 1958 Act also did not define what a “well-known trademark” is. There was no detailed statutory test. Protection for famous marks developed mainly through court decisions. Courts relied on common law passing off principles. In *N.R. Dongre v. Whirlpool Corp.*, the Supreme Court protected the mark “Whirlpool” even though the company did not have strong sales presence in India at that time.²⁸ The Court accepted that reputation can cross borders through advertisements and international visibility. But this was based on judicial reasoning. The statute itself did not explain how to determine whether a mark is well-known. Later, Article 16(2) of TRIPS required Members to protect well-known marks in line with Article 6bis of the Paris Convention.²⁹ So after TRIPS, clearer statutory recognition became necessary.

In the 1958 Act, infringement was founded on an infringed similarity and a probability of confusion.³⁰ Protection was mostly associated with comparable merchandise. The Act failed to explicitly grant indefinite protection against well-known marks clause on entirely distinct types of goods as stipulated in the TRIPS in Article 16(3).³¹ The scope of protection was more liberal to the interpretation of courts, but this kind of instance of a broad protection was not reflected in the Act itself. Civil remedies like injunction and damages were available under the 1958 Act.³² So enforcement was not absent. However, the Act was not structured in the same detailed way as the enforcement framework later required under Part III of TRIPS.³³ There was no clear and organised system for border measures similar to what TRIPS later required for counterfeit goods. The system existed, but it was not framed in treaty-style minimum standards language. The Act also allowed removal of a trademark for non-use.³⁴ But the way this was written was not directly aligned with the three-year continuous non-use rule mentioned in Article 19 of

²⁷ Trade and Merchandise Marks Act, 1958, § 2(1)(v) (India) (repealed 1999).

²⁸ *N.R. Dongre v. Whirlpool Corp.*, (1996) 5 S.C.C. 714 (India).

²⁹ TRIPS Agreement art. 16(2); Paris Convention for the Protection of Industrial Property art. 6bis, Mar. 20, 1883, 21 U.S.T. 1583.

³⁰ Trade and Merchandise Marks Act, 1958, §§ 29–30 (India) (repealed 1999).

³¹ TRIPS Agreement art. 16(3).

³² Trade and Merchandise Marks Act, 1958, §§ 105–106 (India) (repealed 1999).

³³ TRIPS Agreement arts. 41–61.

³⁴ Trade and Merchandise Marks Act, 1958, § 46 (India) (repealed 1999).

TRIPS.³⁵ Indian law did allow cancellation, but the structure was not framed with international harmonisation in mind.

Overall, the 1958 Act was not weak or useless. It provided real protection and courts actively developed principles like trans-border reputation. But it did not clearly protect service marks, did not define well-known trademarks in the statute, and was not drafted in line with WTO enforcement standards. After TRIPS became binding, changes were required so that Indian law could meet the new international minimum standards. The reform was about alignment and compliance, not about replacing a completely failed system.

IV. The Trade Marks Act, 1999 and TRIPS Compliance: A Comparative Analysis

After India became bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights under the WTO system, changes in trademark law were required. The old 1958 Act was repealed and replaced by the Trade Marks Act, 1999. The Statement of Objects and Reasons of the 1999 Act clearly mentions that the law needed to be updated in light of international developments.³⁶ So the reform was not accidental. It was related to treaty obligations.

One clear change was the recognition of service marks. Section 2(1)(zb) of the 1999 Act defines trademark in a wide way and includes marks used for goods or services.³⁷ This matches Article 15(1) of TRIPS, which says that trademarks must be capable of distinguishing goods or services.³⁸ Under the 1958 Act, services were not clearly covered. The 1999 Act removed this gap. In this area, the change is clearly linked to TRIPS standards.

The definition of trademark under the 1999 Act is broader than before. It includes shape of goods, packaging and combination of colours. TRIPS does not force countries to recognise every new type of mark, but it says that signs capable of distinguishing goods or services should be protected. By expanding the definition, India ensured that its law would not fall below the treaty requirement. In fact, the Indian definition is in some parts wider than the minimum wording of TRIPS.

³⁵ TRIPS Agreement art. 19(1).

³⁶ Trade Marks Act, 1999, Statement of Objects and Reasons (India).

³⁷ Trade Marks Act, 1999, § 2(1) (zb) (India).

³⁸ TRIPS Agreement art. 15(1).

Another important change relates to well-known trademarks. Section 11 of the 1999 Act gives statutory recognition to well-known marks and lists factors for determining such status.³⁹ Earlier, protection for famous marks mostly came from court decisions. After TRIPS, Article 16(2) required protection of well-known marks in line with Article 6bis of the Paris Convention.⁴⁰ Article 16(3) also notes that in some instances, dissimilar goods should be given extended protection even in case of registration.⁴² The 1999 Act considers the same by providing that a simultaneous rejection or nullification of registration may occur where registering a mark is causing harm because it is well-known. This means that what was earlier judge-made law became statutory law.

The infringement provision in Section 29 of the 1999 Act is also more detailed than before.⁴¹ It includes the same marks and similar marks in which there is likely confusion. It also offers security of the marks which have a reputation of India even where the goods are not identical, where such a use results in unfair advantage of the distinctive character or repute of the mark, or it harms the distinctive character of the mark or the reputation of the mark. This language is close to the extended protection under Article 16(3) of TRIPS.⁴² So in this area, the 1999 Act clearly incorporates treaty standards into domestic wording. The term of registration under the 1999 Act is ten years and it can be renewed indefinitely.⁴³ TRIPS only requires a minimum of seven years with indefinite renewal.⁴⁴ So India meets and exceeds the minimum duration requirement. There is no conflict here.

Section 47 of the 1999 Act gives the possibility of removal over non-use.⁴⁵ Article 19 of TRIPS permits cancellation of more than three years of non-use.⁴⁶ The Indian provision permits removal following five years and three months upon registration. This does not violate TRIPS because it does not fall below the minimum period required. So, compliance is maintained.

Civil remedies under Section 135 include injunctions and damages.⁴⁷ TRIPS Part III requires

³⁹ Trade Marks Act, 1999, § 11 (India).

⁴⁰ TRIPS Agreement arts. 16(2)-(3); Paris Convention for the Protection of Industrial Property art. 6bis, Mar. 20, 1883, 21 U.S.T. 1583.

⁴¹ Trade Marks Act, 1999, § 29 (India).

⁴² TRIPS Agreement art. 16(3).

⁴³ Trade Marks Act, 1999, § 25 (India).

⁴⁴ TRIPS Agreement art. 18.

⁴⁵ Trade Marks Act, 1999, § 47 (India).

⁴⁶ TRIPS Agreement art. 19(1).

⁴⁷ Trade Marks Act, 1999, § 135 (India).

Members to provide effective civil remedies and injunctions.⁴⁸ The Indian law clearly provides these. Border measures were later strengthened through customs rules to address counterfeit goods, which is required under Articles 51 to 60 of TRIPS.⁴⁹ Even though these mechanisms are not all contained inside the 1999 Act itself, they form part of India's overall compliance structure. It is important to understand that the 1999 Act does not simply copy TRIPS line by line. It translates treaty standards into Indian legislative language. In some areas, like well-known marks and extended infringement protection, the Indian statute provides more detailed wording than TRIPS itself. At the same time, the Act keeps traditional Indian principles such as passing off. So, the reform is both based on compliance and domestically shaped.

Overall, the Trade Marks Act, 1999 brings Indian trademark law in line with TRIPS on service marks, well-known marks, duration, non-use and enforcement. The Act reflects international minimum standards, but it is not just a mechanical reproduction of treaty text. It shows a mix of international obligation and domestic legislative choice.

V. Judicial Interpretation After TRIPS: Supreme Court Approach and Real Impact

After the Trade Marks Act, 1999 was enacted, Indian courts, especially the Supreme Court, played an important role in developing trademark law. TRIPS itself does not automatically apply in domestic courts unless incorporated into municipal law. However, after Parliament enacted the 1999 Act, courts interpreted the law in a way that mostly reflected international standards.

One of the important cases after TRIPS is *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*⁵⁰ Although this case was decided under the 1958 Act, the principles laid down continued to influence post-1999 interpretation. The Supreme Court explained how likelihood of confusion must be assessed. It stated that factors such as nature of marks, degree of resemblance, nature of goods, class of purchasers and mode of purchase are relevant.⁵¹ This structured approach to confusion analysis is consistent with Article 16(1) of TRIPS, which protects against use causing likelihood of confusion. Even though TRIPS does not list detailed

⁴⁸ TRIPS Agreement arts. 41, 44.

⁴⁹ TRIPS Agreement arts. 51–60.

⁵⁰ *Cadila Health Care Ltd. v. Cadila Pharm. Ltd.*, (2001) 5 S.C.C. 73 (India).

⁵¹ TRIPS Agreement art. 16(1).

factors, the Court's reasoning fits within the treaty standard.

Another significant case is *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*⁵² This case dealt with the protection of a foreign mark claimed to have trans-border reputation. The Supreme Court held that mere global reputation is not enough. The plaintiff must show that the mark had acquired reputation in India at the relevant time. The Court stressed evidence of actual spill-over of reputation into the Indian market. This judgment is important because it brings balance. It prevents automatic protection of every internationally known mark without proof of Indian recognition. At the same time, it does not reject the principle of trans-border reputation. It only insists on proof.

This reasoning is consistent with Article 16(2) of TRIPS, which requires consideration of knowledge of the trademark in the relevant sector of the public.⁵³ TRIPS does not say that global fame alone is sufficient. It requires recognition in the relevant public. The Supreme Court's approach in *Toyota* therefore aligns with treaty language while avoiding over-expansion of rights. Extended protection for reputed marks was discussed in cases under Section 29(4) of the 1999 Act also. This provision allows action for different goods if the registered trademark has reputation in India and the use takes unfair advantage of or harms its distinctive character or reputation badly.⁵⁴ This reflects Article 16(3) of TRIPS and courts have generally required proof of reputation in India before granting such extended protection. This shows that Indian courts do not consider reputation automatic.⁵⁵

In *Milmet Oftho Industries v. Allergan Inc.*, the Supreme Court held that multinational corporations who have not yet entered the Indian market may still be protected if they are first in the world market and have a significant reputation. However, the Court also warned that multinational companies should not throttle Indian companies if there is no real intention to enter the Indian market.⁵⁶ This shows judicial caution. The Court recognised global realities but also kept domestic interests in view.

The Supreme Court has also repeatedly recognised that passing off continues to exist alongside

⁵² *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Indus. Ltd.*, (2018) 2 S.C.C. 1 (India).

⁵³ TRIPS Agreement art. 16(2).

⁵⁴ Trade Marks Act, 1999, § 29(4) (India).

⁵⁵ TRIPS Agreement art. 16(3).

⁵⁶ *Milmet Oftho Indus. v. Allergan Inc.*, (2004) 12 S.C.C. 624 (India).

statutory infringement under the 1999 Act. Section 27 of the Act preserves common law rights.⁵⁷ This means that TRIPS-based statutory reform did not remove traditional Indian remedies. Courts continue to apply principles of goodwill, misrepresentation and damage in passing off cases. Overall, the judicial trend after TRIPS shows three things. First, courts apply likelihood of confusion in a clear manner. Second, protection of well-known or reputed marks is recognised but requires proof of Indian reputation. Third, the 1999 Act reform has not eliminated common law principles.

Therefore, the real impact of TRIPS in judicial practice is indirect but visible. Courts do not cite TRIPS in every case, but the structure of the 1999 Act reflects treaty standards, and judicial reasoning operates within that structure. At the same time, Indian courts have not given unlimited protection to foreign or famous marks without evidence. This shows that harmonisation has occurred, but not at the cost of judicial balance.

VI. Enforcement, Border Measures and Practical Impact After TRIPS

One of the major changes brought by the Agreement on Trade-Related Aspects of Intellectual Property Rights was the requirement of effective enforcement. Earlier intellectual property treaties focused more on recognition of rights. TRIPS went further and required Members to create proper enforcement mechanisms. Part III of TRIPS lays down detailed obligations regarding civil remedies, provisional measures, border measures and criminal procedures.⁵⁸ Because of this, compliance was not only about defining trademark rights, but also about making those rights practically enforceable. Under the Trade Marks Act, 1999, civil remedies are clearly mentioned. Section 135 gives courts the power to grant injunctions, damages, accounts of profits and delivery up of infringing goods.⁵⁹ This matches Article 44 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which says judicial authorities must have the power to grant injunctions.⁶⁰ So at the legal level, Indian law provides what TRIPS requires. In practice also, Indian courts frequently grant interim injunctions in trademark cases, especially where the marks are clearly similar or the case involves counterfeiting. Courts often stop the defendant at an early stage. So, enforcement is not only written in the statute.

⁵⁷ Trade Marks Act, 1999, § 27 (India).

⁵⁸ TRIPS Agreement arts. 41–61.

⁵⁹ Trade Marks Act, 1999, § 135 (India).

⁶⁰ TRIPS Agreement art. 44.

Provisional measures are also important. TRIPS Article 50 requires Members to give prompt and effective provisional measures to stop infringement.⁶¹ In practice, Indian courts grant temporary injunctions and sometimes appoint local commissioners to seize infringing goods. Even though the procedure comes from the Code of Civil Procedure, 1908, such relief aligns with TRIPS requirements. Border measures are another key area. Articles 51 to 60 of TRIPS require Members to provide procedures for suspension of release of counterfeit trademark goods by customs authorities.⁶² In India, this requirement has been implemented through customs rules issued under the Customs Act, 1962. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 allow right holders to record their trademarks with customs authorities and seek suspension of infringing imports.⁶³ This is a direct practical impact of TRIPS compliance. It strengthens protection against cross-border counterfeiting. Criminal remedies are also recognised. TRIPS Article 61 requires criminal procedures in cases of wilful trademark counterfeiting on a commercial scale.⁶⁴ The 1999 Act contains criminal provisions under Sections 103 and 104, which provide penalties for applying false trademarks and selling goods with false trademarks.⁶⁵ These provisions existed in earlier law as well, but post-TRIPS enforcement has gained more structured attention.

In practical terms, enforcement after TRIPS has become more systematic. Courts are more willing to grant interim relief in clear cases. Border enforcement through customs has become an important tool for brand owners. However, enforcement in India still depends on litigation speed, judicial backlog and cost of proceedings. TRIPS requires effective enforcement, but it does not guarantee fast adjudication. So, while the legal framework is compliant, practical efficiency varies. Overall, TRIPS has had a visible impact on enforcement architecture in India. Civil remedies, border measures and criminal penalties are now structured in a way that meets international minimum standards. At the same time, enforcement still depends on domestic institutional capacity. Therefore, compliance exists at the legal level, but practical effectiveness depends on implementation.

⁶¹ TRIPS Agreement art. 50.

⁶² TRIPS Agreement arts. 51–60.

⁶³ Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, notified under Customs Act, 1962 (India).

⁶⁴ TRIPS Agreement art. 61.

⁶⁵ Trade Marks Act, 1999, §§ 103–104 (India).

VII. Critical Evaluation: Harmonisation, Sovereignty, and Market Impact

The reforms in Indian trademark law after the Agreement on Trade-Related Aspects of Intellectual Property Rights are linked with harmonisation with international standards properly. When India passed the Trade Marks Act, 1999, it made its law in line with the minimum standards under TRIPS. In areas like service marks, well-known trademarks, duration of protection and enforcement, the law now clearly satisfies treaty obligations. In some areas, the protection given under the 1999 Act is even more detailed than the wording of TRIPS.

Harmonisation has certain clear benefits. It makes Indian trademark law more predictable for international trade. Foreign companies feel safer investing in countries where intellectual property law follows global standards. Stronger protection for well-known marks and better enforcement mechanisms help in reducing counterfeiting. From this angle, TRIPS-based reform has made the formal structure of Indian trademark law stronger.

However, harmonisation is limited too. TRIPS establishes a minimum threshold and is associated with the WTO dispute settlement system.⁶⁶ This implies that India will not be able to lower protection below those levels in case it risks trade repercussions. Therefore, policy flexibility is more limited than it used to be before the year 1995. This has been interpreted in the trademark law as a provision to stronger proprietary rights and protection to the reputed marks. Although this is advantageous with the big brand owners, it can put pressure on the small traders who might not have good legal grounds. Indian part (4) of the 1999 Act provides protection to marks having reputation that are extended.⁶⁷ This is an expression of Article 16(3) of TRIPS. However, the sphere of exclusive rights can also be extended with the help of protection. If applied too broadly, it may affect competition. Indian courts have tried to control this by asking for proof that the mark actually has reputation in India. Reputation is not assumed just because a brand is famous internationally. This approach indicates that courts are careful and do not give automatic monopoly.

In *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, the Supreme Court clearly said that global reputation alone is not enough.⁶⁸ There must be evidence of recognition in India. This shows that courts are aware of domestic realities. They do not allow foreign

⁶⁶ TRIPS Agreement arts. 1(1), 64.

⁶⁷ Trade Marks Act, 1999, § 29(4) (India); TRIPS Agreement art. 16(3).

⁶⁸ *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Indus. Ltd.*, (2018) 2 S.C.C. 1 (India).

companies to automatically block Indian traders without proof.

At the same time, stronger enforcement mainly helps those who have the money and resources to go to court. Big companies can file suits, monitor markets and record their marks with customs authorities. Small businesses may consider litigation expensive and slow. TRIPS requires effective enforcement, but it does not solve issues of access to justice. So, the legal structure may be strong, but practical use depends on financial capacity. TRIPS also allows limited exceptions. Article 17 permits exceptions that take into account legitimate interests of others.⁶⁹ Indian law still recognises honest use and passing off principles. So, harmonisation has not removed all balancing tools from the system. Overall, TRIPS has clearly influenced Indian trademark law. The 1999 Act reflects treaty standards regarding definition, rights, extended protection and enforcement. But courts have not given unlimited rights. They insist on proof and apply structured reasoning. So, harmonisation has happened, but it has not completely removed domestic control. The system now follows global standards, but interpretation still depends on Indian courts.

VIII. Conclusion

The impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Indian trademark law is clear, but it is not total. After India became part of the WTO system, it had to follow certain minimum standards. The main response was the enactment of the Trade Marks Act, 1999. This Act changed the structure of trademark law in India and brought it in line with treaty requirements. Protection of service marks, recognition of well-known trademarks, clearer infringement rules and stronger enforcement provisions are all part of this change.

TRIPS was no replacement of Indian law. It merely established minimum standards. Those standards were established in the domestic legislation in the 1999 Act. The Indian statute is in part even more detailed than the text of the treaty, e.g. in the extended protection of reputed marks. It was not merely duplication of the reform. It entailed the translation of international standards in Indian law. Since 1999, judicial courts interpreted the working of these provisions in actual situations. They use tests of likelihood of confusion in a systematic manner. They guard famous and renowned marks, yet, they require demonstration of the repute in India. They

⁶⁹ TRIPS Agreement art. 17.

do not accept foreign fame automatically. At the same time, common law passing off still exists. The new legislation failed to eliminate previous principles. So, there is both change and continuity.

In enforcement also, India now provides civil remedies, temporary injunctions, criminal penalties and border measures. On paper, the system meets TRIPS standards. However, the real application remains at the court delays, the cost of litigation and the availability of legal means. In practice strong rights in the statute do not necessarily lead to immediate results. In the end, TRIPS has clearly influenced Indian trademark law. The structure and language of the 1999 Act demonstrate the influence; Courts have however not provided blanket protection. They also need evidence and the use of balance. So, harmonisation has happened, but domestic control has not disappeared. The current Indian trademark law is more consistent with international standards, though, it is still construed and implemented on local facts by the Indian courts.

