THE DOCTRINE OF APPROBATE AND REPROBATE IN INDIAN TRADE MARK JURISPRUDENCE: A CRITICAL EXAMINATION OF CONTRADICTORY PLEADINGS, SHIFTING USER CLAIMS, DISTINCTIVENESS DEFENCES AND THE OPERATION OF EQUITABLE ESTOPPEL

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I. INTRODUCTION

"*This Court wants to make it clear that* ***an action at law is not a game of chess****. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands.* ***He cannot prevaricate and take inconsistent positions***" - Hon'ble Mr. Justice Asok Kumar Ganguly & Hon'ble Mr. Justice G.S. Singhvi in Amar Singh v. Union of India[1]

The Latin maxim "*Quod approbo non reprobo*" meaning “that which I approve, I cannot disapprove” comprehensively captures the essence of all that the Doctrine of Approbate and Reprobate stands for.

The Doctrine of Approbate and Reprobate traces its origination with the development of legal systems world-wide. The doctrine of approbate and reprobate, which had been shaped by the Court of Chancery and refined through successive pronouncements of the House of Lords, the Privy Council and, in due course, the Hon'ble Supreme Court of India, while started off as an unwritten practice, eventually hardened into a cardinal rule of judicial conduct.

Even where the terms ‘Approbate’ or ‘Reprobate’ have not been used, the courts have used terminology such as “blow hot and cold”, “play fast and loose”, to constantly deter litigants and parties from adopting mutually destructive positions, basis their convenience. The doctrine prohibits parties or litigants from acting in contradictory ways to simultaneously enjoy the

[1] *Amar Singh v. Union of India,* **(2011) 7 SCC 69**

benefit of a position while repudiating its burden.

At its core, the doctrine is nothing but a facet or subset of the relatively popular Doctrines of Election and Estoppel. The rule prevents parties and litigants from approbating an instrument, transaction, judgement or representation in order to derive strategic advantages during various phases of court proceedings while reprobating the same when its burden falls due.

In Indian jurisprudence, the doctrine has been crystallised through a continuous line of judicial pronouncements by the Hon'ble Apex Court, beginning with **Nagubai Ammal & Others vs B. Shama Rao & Others**[2], further refined in **R.N. Gosain A v. Yashpal Dhir**[3], and most recently elaborated in **Suzuki Parasrampuria Suitings (P) Ltd. v. Official Liquidator**[4], and **M/s Cauvery Coffee Traders, Mangalore vs M/s Hornor Resources (International) Co. Ltd**[5], (2011) 10 SCC 420. The doctrine has further been applied by lower courts across the country in cases pertaining to various legal facets.

Hon'ble Supreme Court's recent judgement in the case of **Union of India and Others v. N. Murugesan and Others**[6]**,** perfectly captures the origin, essence, legal basis, importance of the Doctrine of Approbate & Reprobate. The judgement explains how the Doctrine of Approbate & Reprobate is a facet of doctrine of election, principle of equity & estoppel.

> *"Approbate and reprobate*
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> *26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an*

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2 *Nagubai Ammal & Others vs B. Shama Rao & Others,* **AIR 1956 SC 593**
3 *R.N. Gosain A vs Yashpal Dhir,* **(1992) 4 SCC 683**
4 *Suzuki Parasrampuria Suitings (P) Ltd.* v. *Official Liquidator*, **(2018) 10 SCC 707**
5 *M/s Cauvery Coffee Traders, Mangalore vs M/s Hornor Resources (International) Co. Ltd*, **(2011) 10 SCC 420**.
6 *Union of India and Others v. N. Murugesan and Others,* **(2022) 2 SCC 25**

> *instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.*"

Trademark jurisprudence presents, perhaps, the most fertile soil for the operation of the doctrine. The entire lifecycle of a trade mark starting from filing the application (with or without conditions, limitations or restrictions), Reply to Examination Reports, Acceptance & Advertisement (with or without conditions, limitations or restrictions), Opposition Proceedings, Registration, Enforcement, Assignments, Licensing, Infringement Actions, Passing-Off Suits, Rectification Petitions, to ancillary copyright and domain-name conflicts, is a continuous, extensive & never ending process which entails several solemn affirmations, declarations and representations made by litigants to various statutory authorities and to the courts. Each representation, once made or filed, is a calculated act to confer upon the owner a benefit which may be in the form of exclusivity, priority, enforceability or any other sort of advantage. The doctrine of approbate and reprobate thus, makes sure that having taken such benefit, the party or litigant remains bound by the representation that it made.

II. THE JURISPRUDENTIAL BASIS OF THE DOCTRINE

The doctrine of approbate and reprobate is not a freestanding doctrine, but its jurisprudential foundation is based upon the following principles:

1. The Doctrine of Equity;
2. The Doctrine of Estoppel (both promissory and evidentiary);
3. The Doctrine of Election;
4. The Clean-Hands Doctrine;
5. The Requirement of *bona fides* in pleading; and

6. The jurisprudence relating to abuse of process.

The Supreme Court in **Joint Action Committee of Air Line Pilots' Assn. of India *v.* DGCA[7],** held as under

> *The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."*

For the Doctrine of Approbate & Reprobate to be applicable in any proceedings, it must have the following essential elements:

1. First, a clear and unequivocal election, choice or representation by a party;

2. Second, acceptance of benefit by the electing party (although usual, but not mandatory);

3. Third, the electing party's subsequent conduct must be inconsistent with earlier election, choice or representation;

In the trademark practice, one regularly encounters situations that qualify all of the aforementioned elements of Approbate & Reprobate before various authorities *inter alia* Examiner of Trade Marks, Registrar of Trade Marks, Intellectual Property Appellate Board[8], Intellectual Property Division of the High Courts, the Commercial Courts, and even the Supreme Court.

III. THE OPERATION OF THE DOCTRINE IN TRADEMARK PROCEEDINGS

A. Contradictory Stands on Similarity and Dissimilarity of Marks

[7] *Joint Action Committee of Air Line Pilots' Assn. of India v. DGCA,* ***(2011) 5 SCC 435***
[8] now abolished through the Tribunals Reforms Act, 2021

The most common and perhaps the most readily detectable way parties approbate and reprobate is by making contradictory submissions pertaining to similarity and dissimilarity between two marks.

This can most often be seen in parallel opposition or rectification proceedings where two parties have filed oppositions against each other's trademarks. In such a case, the opponent in one proceeding assumes the role of the applicant in the other proceeding, and vice versa. During such parallel proceedings, the parties often take inconsistent stands regarding deceptive similarity and distinctiveness between the two marks in question.

Illustration: Party A applies for a trademark titled "Sonpari" in Class 30, while Party B files for a trademark titled "Sunpaari" in the same class i.e., Class 30. Here, after the acceptance and advertisement of both the marks, A files an opposition against B's trademark alleging that B's mark "Sunpaari" is identical and deceptively similar to the A's mark, hence, cannot be granted registration under Section 11(1) of the Trade Marks Act. Similarly, B files an opposition against A's trademark stating that A's "Sonpari" is identical and deceptively similar to the B's mark, hence, cannot be granted registration under Section 11(1) of the Trade Marks Act.

Here, when A files counterstatement under section 21(2) of the Trade Marks Act, 1999 to B's opposition, A alleges that its mark is completely different & distinctive from B's mark and there's no likelihood of confusion or deception. In such a case, A is said to have contravened the Doctrine of Approbate and Reprobate.

Apart from parallel proceedings, contradictory submissions with regards to similarity and dissimilarity can also be seen in cases where a party, while acting as the applicant, in reply to examination report issued under Section 11 of the Trade Marks Act, 1999, asserts before the Examiner that the applied mark is visually, phonetically & structurally dissimilar from the cited marks and the applicant, upon having secured registration on the strength of such assertion, thereafter files opposition or institutes infringement proceedings against the proprietor of the very mark cited against it in the examination report, alleging deceptive similarity.

This precise situation came before the Hon'ble High Court of Delhi, in case titled Raman Kwatra & Anr. v. KEI Industries Ltd.[9], wherein the Division Bench, while tackling such

[9] *Raman Kwatra & Anr. v. KEI Industries Ltd*., **2023 SCC OnLine Del 38**

contradiction held as under:

> ***"We also find merit in the appellant's contention that a party, that has obtained the registration of a trademark on the basis of certain representation and assertions made before the Trade Marks Registry, would be disentitled for any equitable relief by pleading to the contrary.*** *The learned Single Judge had referred to the decision in the case of Telecare Networks India Pvt. Ltd. v. Asus Technology Pvt. Ltd. (supra) holding that after grant of registration neither the Examination Report nor the plaintiff's reply would be relevant. We are unable to agree with the said view. In that case, the Court had also reasoned that that there is no estoppel against statute. Clearly, there is no cavil with the said proposition; however, the said principle has no application in the facts of the present case.* ***A party that has made an assertion that its 2023/DHC/000083 mark is dissimilar to a cited mark and obtains a registration on the basis of that assertion, is not to be entitled to obtain an interim injunction against the proprietor of the cited mark, on the ground that the mark is deceptively similar. It is settled law that a person is not permitted to approbate and reprobate. A party making contrary assertions is not entitled to any equitable relief."***

This is exactly where the Doctrine of Approbate and Reprobate becomes applicable and bars litigant from securing registration by asserting absence of confusion later sue the cited proprietor alleging likelihood of confusion. In both the foregoing situations, litigant has made a clear and unequivocal election/statement regarding similarity/dissimilarity to gain advantage or benefit and such party’s subsequent election/statement is inconsistent with their first stance.

B. Distinctive Today, Descriptive Tomorrow

A second and equally prevalent form of approbate and reprobate is when a party claims a mark to be inherently distinctive, coined, arbitrary or invented for the purposes of registration, but later, when defending an infringement action or opposition action, contends that the very same mark is generic, descriptive or common to the trade over which no person has any exclusive rights.

It is imperative to mention that the mere act of filing trademark application for registration of a mark is itself considered a claim of inherent distinctiveness, arbitrariness or inventiveness. This is because the very act of seeking registration involves three implicit assertions namely that the mark is distinctive of the applicant's goods; the applicant claims exclusivity therein; and that the mark functions as a source-identifier. This thus, acts as an Estoppel by conduct.

No litigant can be allowed to take inconsistent positions as to the nature of a trademark. In particular a party cannot be allowed to acquire sole or exclusive rights in respect of a mark and later argue in defence that the mark is generic, common to the trade or incapable of distinctiveness. This usually happens in cases where, the applicant applies for trademark registration to claim exclusivity over a mark and upon any opposition being filed or infringement action being initiated against it, defends itself by saying that the mark is generic and common to the trade, hence, the opposition proceedings or infringement action is non-maintainable. To permit such a defense would be to allow a party to retain the benefit of registration i.e., exclusivity, while simultaneously saying that the mark being generic, non-distinctive and common to the trade is available for all to freely use thereby rendering the effect of exclusivity granted through registration non-est.

Courts across the country have encountered such positions. The Delhi High Court in **PEPS Industries Private Limited v. Kurlon Limited**[10] dealt extensively with this contradiction. KURLON had itself applied for registration of "NO TURN" claiming it to be distinctive and coined. Later, while defending infringement proceedings, it contended that "NO TURN" was descriptive. Rejecting this contradictory stand, the Court as under

> *"KURLON, having itself applied for the registration of the mark 'NO TURN' and contending the same to be a coined word, cannot now take an inconsistent plea and argue that the mark is descriptive."*

A party must maintain consistent opinions about a specific mark because they cannot change their legal strategy according to their current interests. In particular, a party cannot seek monopoly by claiming distinctiveness and escape liability by claiming genericity.

Further, in the case of **Neon Laboratories Ltd. v. Themis Medicare Ltd.**[11]**,** the Hon'ble Bombay High Court aptly captured the essence of why taking inconsistent stands regarding

[10] *PEPS Industries Private Limited v. Kurlon Limited*, **2022 SCC OnLine Del 3275**
[11] *Neon Laboratories Ltd. v. Themis Medicare Ltd.,* **2014 SCC OnLine Bom 1087**

distinctive & descriptive can eradicate the entire case of a party. The Court held as under

> *"21. The issue of whether a defendant can take such a plea of a mark or a prominent feature of a mark being common to the trade when the defendant has himself applied for registration is no longer res integra:11 the second action defeats the first argument. This seems to me logical. A man may well say, "I choose to use this particular mark because it is my belief that it is common to our trade Automatic Electric Limited v R.K. Dhavan & Anr., 1999 PTC (19) 81; Indian Hotels Company Ltd. & Anr. v Jiva Institute of Vedic Science and Culture, 2008 (37) PTC 468 (Del.) (DB); Ultra Tech Cement Limited v Alaknanda Cement Pvt. Ltd. & Anr., 2011 (5) Bom CR 588 15 of 22 NMSL827-2014-F.doc and therefore none may claim exclusivity over it." It is quite another for him to say "I will contend in opposition to a claim of exclusivity that the mark I have adopted is so common to our trade that none may claim exclusivity, but I will myself nonetheless apply for registration and thereby mount precisely such a claim to monopoly, and it matters not that implicit in my registration application is a self-annihilating contradiction of my own stand of the mark being commonplace." There is a form of estoppel by conduct that applies to such a defendant. A man may not 'approbate and reprobate'. He may take inconsistent stands, but not ones that are mutually destructive."*

Further, in the case of **Empire Spices & Foods Ltd. v. Sanjay Bhimraoji Deshmukh**[12], the defendant filed for registration of the mark 'SHREE RAM BANDHU' in relation to spices & started using the same. Later, upon an infringement action being initiated by the plaintiff who was the registered proprietor and prior user of the mark 'RAM BANDHU', the defendant conveniently took the stand that the mark, being the name of a Hindu deity is common to the trade and free for everyone to use. In this regard, Hon'ble Bombay High Court held as under

> *33. The doctrine of estoppel also prohibits the Defendant from raising the defence of non-exclusivity as the Defendant has itself applied for registration of its trade mark "SHREE RAM BANDHU". A party cannot be permitted to approbate and reprobate. The fact that the Defendant applied for registration*

[12] *Empire Spices & Foods Ltd. v. Sanjay Bhimraoji Deshmukh,* **2025 SCC Online Bom 2559**

of its mark postulates acceptance by the Defendant of its distinctiveness."

C. Contradictory User Claims and False Affidavits

User claims constitute the bedrock representations of trademark proceedings, especially considering the host of benefits awarded to the prior user of a trademark including common law rights, rights under section 27(2) to initiate action for passing off against later user of identical or deceptively similar mark as well as rights under section 34 of the Trade Marks Act, 1999 to have immunity from any action taken by registered proprietor against them.

As held by the Apex Court in the case of **S. Syed Mohideen v P. Sulochana Bai**[13] that the scheme of the Act is such that rights of the prior user are acknowledged superior to rights of the registered proprietor. A bare reading of this single line itself explains the power user claim holds to make or break a trademark case.

This power however, is not loosely granted. As per Rule 25 of the Trade Marks Rules, 2017, in order to claim prior use, the trademark application must be filed with an affidavit affirming the of use of the applied mark along with cogent & unimpeachable documentary evidence. Making inconsistent or false user claims, therefore, is not merely a matter of approbate reprobate, it exposes the deponent to charges of perjury, fabrication and fraud upon the Registry, with potential consequences under Sections 227, 228, 229 and, where applicable, Section 236 of the Bharatiya Nyaya Sanhita, 2023 or its former counterparts Sections 191, 192, 193 and 199 of the Indian Penal Code, 1860, read with Sections 102 to 104 of the Trade Marks Act, 1999 where the facts also clearly disclose falsification/falsely applying a trade mark or false trade description.

In trademark law claims relating to prior use and adoption constitute foundational assertions that directly affect questions of proprietorship, priority, and entitlement to registration. Consequently, inconsistent user claims made across different proceedings or applications seriously undermine the credibility of the claimant and the integrity of the Trade Marks Register.

Illustration 1: C files a trademark application for the **device mark** "AlphaGama" with claim of use since 2019. However, the copyright application/registration certificate for the logo of the

[13] *Syed Mohideen v P. Sulochana Bai*, **(2016) 2 SCC 683**

mark, records the year of first publication of the artistic work as 2023.

Illustration 2: C files a trademark application for the **device mark** "Nestle Kit Kat" with claim of use since 1995. However, the record of the Trade Marks Register reflects another trademark application for the **word mark** 'Nestle Kit Kat' with the claim of use since 1999. Here, it is not logically possible for a device mark bearing the title "Nestle Kit Kat" to have been adopted before the word mark itself.

Such contradictory assertions are more and more common with the development of IP practice in the nation. Parties are aware about the benefits attached to showing pre-existing commercial use and often misuse the process of law to get undue advantage.

The acid test is increasingly applied to test the authenticity of the user claim testing the corroborative documentary trail. Claim of continuous commercial use is wholly unsustainable where the regulatory licences/registrations which are indispensable for the conduct of the asserted business were obtained after the alleged date of first user.

For example:

1. Import-Export Code (IEC) is obtained subsequent to the claimed date of commencement of import export business.
2. The FSSAI licence (for food products) post-dates the claim of use.
3. The drug licence under the Drugs and Cosmetics Act, 1940, is granted years after the asserted use of the mark for pharmaceutical goods.

The fact that a mandatory statutory licences/registrations to carry on a particular business was acquired after the alleged claim of use clearly establishes a contradiction, which destroys the claim of use.

D. Contradictory Stands on Allied and Cognate Goods

Another instance of approbate and reprobate, often seen in trademark proceedings is relating to the similarity or dissimilarity between the goods that the plaintiff/opponent or defendant/applicant deal in.

The similarity or dissimilarity of goods and services that two parties deal in, has a big impact on the trademark proceedings which may make or break a case. If at all a defendant is able to establish that the goods or services in which both the parties deal in are completely different, the same may even lead to the case being decided in its favour.

The impact of this, can be understood through a bare reading of section 11(2) of the Trade Marks Act, 1999, which allows the registration of an identical or deceptively similar trade mark dealing in goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, with the only exception being the case where the earlier trade mark is a well-known mark.

In such situations, mere contention or self-proclamation of one's own mark as well-known is not enough to qualify a trademark as well-known. Under the trademark law, the burden of proving that an earlier dated trademark is well-known is extremely heavy. As correctly explained in the case of **ITC Ltd. v. Three N Products (P) Ltd.**[14] , wherein it was clarified that "*the well-known marks label cannot be granted for the asking. There must be strong evidence to prove the case of the person claiming that his mark is a well-known mark. Therefore, the determination that the mark is well-known will be arrived at only on strong and unimpeachable evidence that the mark is in-fact a well-known mark*". Ordinarily, a trademark can only avail the benefits of a well-known mark when such a trademark is declared well-known by any competent court of law or the same is present on the records of the List of Well-Known Trade Marks[15] so published by the Trade Marks Registry. As none of the said criteria has been fulfilled by the applicant's trademark, hence, it cannot be qualified as a Well-known mark as per the provisions of section 2(1)(zg) of the Trade Marks Act, 1999.

This clearly establishes the impact that similarity or dissimilarity between goods or services has in trademark proceedings. Approbating and Reprobating in this respect, can grant parties undue advantage in Trade mark Proceedings.

One such case where Hon'ble Delhi High Court took note of defendant's contradictory stand regarding similarity or dissimilarity of goods/service was in the case of ***Eduspark International Pvt. Ltd. v. Laxmi Publications Pvt. Ltd.***[16]. Here, the defendant opposed the

[14] *ITC Ltd. v. Three N Products (P) Ltd.,* **[2013] IPAB 97**
[15] https://www.ipindia.gov.in/frontend/pdf/well_know/List_of_Well Known_Trade_Marks_as_of_10.02.2025%20(1).pdf
[16] *Eduspark International Pvt. Ltd. v. Laxmi Publications Pvt. Ltd.*, **2023 SCC OnLine Del 2062**

plaintiff's mark alleging similarity in allied goods. However, during litigation, the same defendant argued that the goods were unrelated.

Rejecting this inconsistent position, the Court held:

> *"**19.** It has clearly been admitted by the defendant that goods of the plaintiff and the defendant are allied goods. Therefore, now the defendant cannot be allowed to take a contrary stand to the effect that the goods of the plaintiff and the defendant are different. The defendant cannot be permitted to approbate and reprobate.*
>
> ***20.** Counsel for the plaintiff has correctly placed reliance on the judgment of a Coordinate Bench of this Court in Anchor Health and Beauty Care Pvt. Ltd. v. Procter & Gamble Manufacturing (Tianjin) Co. Ltd., 2014 SCC OnLine Del 2968, wherein it was held that where the defendants themselves have applied for registration of a mark, they cannot take a contrary stand that the aforesaid mark is descriptive. The defendant cannot be permitted to approbate and reprobate. In the present case also, once the defendant in the Notice of Opposition has taken a stand that the goods of the plaintiff and defendant are similar or allied, they cannot now be permitted to take a stand that the goods of the plaintiff and the defendant are different."*

The decision in the foregoing case affirms a critical principle that representations made at any stage of the trade marks proceedings whether it is in opposition proceedings, examination replies or counter-statements do not exists in a vacuum. They constitute binding admissions, deployable against the maker in every subsequent forum.

E. Simultaneous Invocation of Section 11(1) and 11(2) of the Trade Marks Act, 1999

It is a common practice in trademark opposition proceedings for litigants to claim protection under Section 11(1) as well as Section 11(2) of the Trade marks Act, 1999. However, a bare reading of the two provisions makes it expressly clear that the two, cannot be invoked simultaneously.

Section 11(1) states that a trademark, which is identical or deceptively similar to prior existing trademark and is being used in relation to identical or similar goods & services and there exists a likelihood of confusion on the part of the public, **shall not be granted registration**.

While Section 11(2), as already explained supra, **allows the registration** of an identical or deceptively similar trade mark dealing in goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, with the only exception being the case where the earlier trade mark is a well-known[17] mark.

The very foundation of these provisions operates in distinct and mutually exclusive situations. One cannot, in a single proceeding, invoke both Section 11(1) and Section 11(2) of the Act. Invocation of both these sections by a party, in the same proceeding is self-destructive & contradictory. Once the a party has chosen to invoke Section 11(2), its plea under Section 11(1) is rendered non-est in law. This is because Section 11(1) applies in situations where the rival marks relate to identical or similar goods or services and likelihood of confusion is alleged, whereas Section 11(2) is a distinct and exceptional provision applicable only where the goods or services are dissimilar, but the earlier mark is claimed to be a well-known trade mark with reputation in India warranting extended protection. Thus, the very invocation of Section 11(2) demolishes the factual basis necessary for Section 11(1) and acts as an implied acceptance of the fact that the rival marks deal in different goods and services.

This is a relatively technical type of approbate and reprobate, which despite being extremely common, often goes unnoticed by parties. This contradiction, however, holds the power to materially affect the outcome of the case.

F. Registration subsequent to Disclaimers, Limitations, Restrictions or Conditions

Under section 28(2) of the Trade Marks Act, 1999, exclusive rights conferred by registration of a trademark registration may have some conditions, restrictions or limitations. Such conditions, restrictions or limitations may be imposed by the owner of the trademark itself or may be applied by the trade marks registry to ensure avoidance of conflict, overlapping rights or disputes.

Having availed the benefit of registration, the proprietor may not subsequently repudiate the

[17] 2(1)(*zg*) ―well known trade mark‖, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

very disclaimer, conditions, restrictions or limitations which made registration possible.

Illustration: C files for a trademark application for the composite mark "HERBAL GLOW" with the disclaimer that registration over the composite mark shall not grant C, any right over the individual word *per se* "HERBAL". A later suit seeking exclusivity over the word "HERBAL" simpliciter is barred by the doctrine.

Such contradictory actions with respect to disclaimer, conditions, restrictions or limitations in trademark applications are often seen with regards to the geographical territory of use.

In general parlance, effects of a trademark registration extends throughout the geographical territory of the country. However, there may be cases where a trademark application mentions a particular state, group of states throughout which, the effect of the trademark registration may extend. In such situations where the registration of a trademark has been granted subject to geographical limitations recorded under Section 30(2)(b) of the Act, or pursuant to a settlement, co-existence or consent agreement, the proprietor is bound by such limitations. Any attempt asserting exclusive rights beyond the territorial scope of the right, is liable to be characterised as an abuse of process and an impermissible departure from the prior election.

Illustration: A registered proprietor accepts, in settlement of opposition proceedings, restriction of his rights to "the State of Gujarat only". A subsequent suit seeking pan-India injunction is barred by the doctrine.

G. Other Common Manifestations

For completeness, the following recurring patterns of contradiction may be identified:

1. Concurrent Use v. Exclusivity: A claim of honest & concurrent user under Section 12 of the Trade Marks Act, is cannot sustain with a simultaneous assertion of exclusivity under Section 28 of the Trade Marks Act.

2. Inherent v. Acquired Distinctiveness: An assertion of inherent distinctiveness before the Registrar, followed by an alternative plea of secondary meaning before the Court through acquired distinctiveness are completely contradictory to each other.

3. Delay and Acquiescence: A claim of recent discovery of infringement is unsustainable

where prior oppositions, co-existence negotiations or correspondence demonstrate long-standing awareness on the part of the plaintiff.

4. Licensing Contradictions: A party which has, by registered or unregistered user agreement, acknowledged itself to be a permitted user of a senior proprietor, cannot subsequently claim independent proprietorship.

IV. EQUITABLE CONSEQUENCES

The doctrine of approbate and reprobate has direct, immediate and decisive consequences on trademark proceedings, particularly at the interim stage where equitable relief is sought.

The grant of a temporary/interim injunction under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908, is governed by the trinity of considerations as mentioned by the Hon'ble Supreme court in the case of **Dalpat Kumar And Anr. vs Prahlad Singh**[18] i.e., *prima facie* case, balance of convenience and irreparable injury, but is additionally conditioned upon the conduct of the applicant. The maxim he who seeks equity must come with clean hands assumes paramount significance.

Where a litigant is found to have approbated and reprobated, the consequences may include, refusal of interim injunction *notwithstanding* the existence of a *prima facie* statutory right; refusal of all forms of discretionary equitable relief, including ex parte ad-interim orders, Anton Piller (search-and-seizure) orders and Mareva (asset-freezing) orders; imposition of costs under Section 35-A of the Code of Civil Procedure, 1908, and the costs regime under the Commercial Courts Act, 2015; initiation of *suo motu* rectification proceedings under Section 57(4) of the Trade Marks Act, 1999; and reference for prosecution under Section 227, 228, 229 and, where applicable, Section 236 of the Bharatiya Nyaya Sanhita, 2023 or its former counterparts Sections 191, 192, 193 and 199 of the Indian Penal Code, 1860, where the contradiction is supported by sworn affidavits.

V. CONCLUSION

The Doctrine of Approbate and Reprobate functions as a vital equitable protection mechanism within the Indian trademark regime. The legal system requires all parties involved in trademark

[18] *Dalpat Kumar And Anr. vs Prahlad Singh*, **AIR 1993 SC 276**

rights to come before the courts and quasi-judicial authorities with clean hands, provide accurate information about their trademark.

As correctly observed by the Hon'ble Supreme Court in the case of Amar Singh v. Union of India, "*an action at law is not a game of chess*". This statement finds its most natural application in the trademark practice, where every pawn moved before the Registrar is one that cannot be retracted before the Court.

In present day trademark practice, where disputes often span from examination proceedings, oppositions, rectifications, infringement suits, copyright claims, and even domain name conflicts, inconsistent pleadings have become more common. The Doctrine of Approbate and Reprobate therefore acts as a necessary check against such shifting positions and ensuring that no one can abuse the process of law.

Ultimately, trademark law is not only about protecting business goodwill and proprietary rights, but also about ensuring honesty in commercial dealings. This doctrine ensures that parties cannot turn contradictory statements into a litigation strategy.