
DISPARITIES OF EXHAUSTION DOCTRINE

Smriti Gupta, National Law University, Delhi

ABSTRACT

This paper examines the inconsistent application of the exhaustion principle across different types of intellectual property rights—trademark, patent, and copyright. The exhaustion doctrine limits an IP holder's control over a product after its first sale, but its application varies significantly across domains. These inconsistencies raise important questions about underlying legal rationales and affect the rights of consumers, market dynamics, and enforceability of IP protections.

The study conducts a doctrinal analysis to explore how these variations impact distribution rights and resale control. It further delves into the jurisdictional differences between national and international exhaustion regimes, especially in the context of parallel imports and resale rights. Such divergence can lead to international legal conflicts and economic inequality. By assessing the broader implications on trade, consumer access, and IP holder interests, the paper argues for a more harmonized application of the exhaustion principle to enhance legal clarity and promote equitable global competition.

Keywords: Exhaustion Theory, IP holders' rights, consumer rights, International exhaustion, National Exhaustion.

I. INTRODUCTION

Doctrine of “Exhaustion”

Intellectual Property (IP) laws grant various exclusive rights to owners, including the rights to reproduce, distribute, sell, and communicate their work to the public. Among these, the right of distribution is one of the most crucial commercial rights for an IP owner, allowing them to decide whether, how, and in what form their work enters the market. It also enables them to determine whether a work will be sold, rented, lent, or given away freely. However, the doctrine of exhaustion places a limitation on this right. This principle states that once a product incorporating IP rights is lawfully sold in the market, the IP owner loses control over its further distribution. Essentially, after the first sale of a product, the original owner no longer has any rights over its subsequent sale or distribution, granting the purchaser the freedom to resell it.¹

The exhaustion concept, sometimes known as the first-sale rule, generally states that a right holder's rights end when a product related to his rights is sold for the first time, or with his consent, and that he no longer has the power to stop the protected product from being used or sold.²

In India, the doctrine of exhaustion has evolved through various judicial decisions and legislative amendments, shaping the country's legal and policy framework. However, unlike other jurisdictions where exhaustion related disputes have progressed beyond definitional ambiguities to exploring the limits of the law in novel scenarios, cases in India have primarily focused on determining the nature of the exhaustion regime—whether it follows a national or international approach.³

Copyright law in India follows the first-sale doctrine, which means that once a copyrighted item is sold, it can be used or resold without needing more permission. Trademark law is more cautious, often focusing on where the goods are sold and whether they meet quality standards. Patent law is trickier, especially when it comes to parallel imports and protecting public

¹ Raman Mittal, “Whether Indian Law Allows Parallel Imports of Copyrighted Works: An Investigation”, (2013) 55 *JILI* 504.

² S. K. Verma, “Exhaustion of Intellectual Property Rights and Free Trade – Article 6 of the TRIPS Agreement”, (1998) 29(5) *International Review of Industrial Property and Copyright Law* 537.

³ India does not have any regime for regional exhaustion within the regional economic block called South-Asia Association for Regional Cooperation (SAARC). Shamnad Basheer & Mrinalini Kochupillai, TRIPS, Patents and Parallel Imports in India: A Proposal for Amendment, 2 *Indian J. Intell. Prop. L.* 63 (2009).

interest. Because each area of IP has its own rules and court cases, applying the exhaustion principle can get quite complicated.

Given the fragmented application of exhaustion in India, a unified approach could bring clarity, improve enforcement, and boost market efficiency. This study explores how exhaustion differs across copyright, trademark, and patent laws in India, and whether harmonizing these rules could resolve current challenges. By examining laws, court decisions, and stakeholder views, it aims to assess if a common exhaustion framework is both workable and beneficial.

Parallel Importation

Parallel importation is the practice of bringing goods that have been sold in a third country into the home market with the title holder's approval. According to the territorial exhaustion principle, the owner of the title may, at any time, even after his domestic market distribution rights have been exhausted, forbid the parallel importation of original goods that he has sold or that he has authorized in a foreign nation. Evidently, this enables the owner of the title to separate his markets and shield them from the competition that would otherwise result from the presence of multiple authorized or licensed dealers of the same product worldwide.⁴

TRIPS Agreement and Exhaustion

Discussions on “Uruguay Round” on the “General Agreement on Tariff and Trade (GATT)” prompted controversial discussions since it comprised “trade-related aspects of intellectual property rights (TRIPs)”. On the other hand, the Trips Agreement does not address problem of IP rights depletion. When rights are exhausted, a situation known as parallel imports, or grey marketing, occurs in which a product that is legitimately promoted in country A under the intellectual property regime is brought into country B opposed to the desires of the relevant IP owners in country B. The TRIPs Agreement's Article 6 basically states that current exhaustion laws are unaffected by TRIPS.⁵

The boundaries of the exhaustion doctrine are not defined by any international standard. The primary cause of this is that intellectual property laws are both national and territorial in nature.

⁴ Gül Okutan, “Exhaustion of Intellectual Property Rights: A Non-Tariff Barrier to International Trade?”, (1996) 30 *Annales de la Faculté de Droit d'Istanbul* 46.

⁵ ‘Alexander J. Stack, “TRIPS, Patent Exhaustion and Parallel Imports”, (1998) 1 *Journal of World Intellectual Property* 657.’

Each country creates and enforces its own IPR laws only within its boundaries. An intellectual work's author must submit a separate application for enforcement and protection in each country. The lack of homogeneity in the worldwide exhaustion system is caused by the national nature of IPR legislation. Prior to examining additional factors contributing to the absence of global agreement about the management of exhaustion, it is crucial for our objectives to examine the diverse forms of exhaustion that are common in various legal systems.

Types of exhaustion

The concept is based on the assumption that the right holder loses control over how the product is developed after it is first sold and put into circulation because he has already profited from the initial sale. Three kinds or doctrines—National Exhaustion, Regional Exhaustion, and International Exhaustion—are further distinguished based on the territorial extent to which the concept of exhaustion applies.

National Exhaustion- A scenario known as "national exhaustion" occurs when a nation's laws acknowledge that owner of an IP right in no circumstances has the authority to regulate its movement outside of its borders after the product is first sold. Nonetheless, the law continues to protect his right to stop a third party from importing his own authentic goods from another country without his authorization. This is to make sure that his own products, which have been distributed in another country with his permission by him or his representatives, don't interfere with the flow of his products in other countries.

Regional Exhaustion- Of course, regional exhaustion is a broader concept that is legally recognized by a bilateral or regional convention, such as the EU. Accordingly, the rightful owner cannot regulate the movement of the products throughout the entire region, that is, among the states that are parties to the regional treaty or agreement, after they are placed in the stream of commerce following the initial sale.

International Exhaustion- International Exhaustion is the broadest type, in which a nation's laws take the explicit, explicit, unambiguous, and unequivocal stance that, provided since the items were "lawfully acquired/sold/purchased" from a distributor, agent, or licensee of the right owner and are not counterfeit, the right owner is powerless to prevent their importation into the country.

Conceptual Debates and Reform Proposals

Recent scholarship has challenged whether the traditional idea of exhaustion fits today's innovation systems. Amelia Rinehart, for example, suggests a new approach using "metered payments" after exhaustion, allowing ongoing compensation without full control after sale.

Rinehart proposes a hybrid framework:

A key proposal for patent exhaustion is to allow rights-holders to use metered (usage-based) payments after the first sale, instead of keeping full control over the product. This strikes a balance—patent holders can still earn fair returns over time, especially for products used repeatedly, like software or biotech tools, without violating the exhaustion rule. The idea avoids giving patent owners monopoly-like powers after sale, while still supporting innovation and investment in high-cost technologies.⁶

This reconceptualization challenges the traditional exhaustion narrative and opens the door to nuanced regulatory frameworks that adapt to sector-specific needs without undermining the exhaustion principle's core.

Pamela Samuelson raises a key concern that traditional exhaustion principles do not work well in the digital world, where no physical copy is transferred—instead, what happens is simply a reproduction. To address this, she proposes a concept of "digital exhaustion", which would allow legal buyers of digital content like e-books or software to resell or transfer them under certain conditions. One model she supports is controlled digital lending, where, for example, a library could lend out a digital book to only one user at a time—just like with physical books. Samuelson argues that legal reforms are needed to bring back a reasonable equilibrium between user rights and copyright law in technological age. She believes that exhaustion is vital not only for protecting cultural access but also for maintaining healthy market competition.⁷

Christopher Sprigman expresses concern that intellectual property law is becoming excessively skewed in support of the owners of rights, often at cost of consumer and user rights. To address this imbalance, he advocates for default exhaustion rules that cannot be easily

⁶ Amelia Smith Rinehart, "Contracting Patents: A Modern Patent Exhaustion Doctrine", (2010) 23 *Harvard Journal of Law & Technology* 483, University of Utah College of Law Legal Studies Research Paper No. 13, available at <https://ssrn.com/abstract=1472239> (accessed May 5, 2025).

⁷ Pamela Samuelson, "Preliminary Thoughts on Copyright Reform", (2007) *Utah Law Review* 551, available at <https://ssrn.com/abstract=1002676> (accessed May 5, 2025).

overridden by private contracts. He supports a more user-centered approach to IP law, where people who buy a product retain full ownership rights—including the ability to resell, modify, or lend it. Sprigman criticizes the growing use of post-sale restrictions, like End User License Agreements (EULAs), arguing that these practices weaken the exhaustion principle and negatively affect innovation, resale markets, and consumer freedom.⁸

EXHAUSTION DOCTRINE IN VARIOUS IP TYPES –

“Exhaustion” conception, also known as the “first sale doctrine”, is applied differently under different intellectual property (IP) laws in India. An outline of the doctrine's application to Indian laws pertaining to patents, copyrights, and trademarks is provided here.

i) Exhaustion in “Patent law” –

The exclusive power to prevent someone from developing, using, selling, offering for sale, or bringing an invention into the jurisdiction of the patent grant is granted by the patent owner. According to the “Doctrine of Exhaustion”, sometimes referred to as the “First- Sale Doctrine”, the unrestricted sale of the patented invention exhausts the patent holder's rights over the product. The Doctrine of Exhaustion states that after the first unrestricted sale, the patentee loses control over the patented product. According to the doctrine, exclusive right of a patent holder as expressed in a claim of patent expires with the first sale of patented goods.

Patent Exhaustion provision in India - India thoroughly reviewed its patent system following its independence in 1947, with the Ayengaar Report on Patent Law from 1958 serving as the most notable example. India passed its first patent law after gaining independence in 1970. The 1970 Act had provisions that addressed tiredness, even though the “Ayengaar Report” did not direct challenge of “exhaustion”. As required by the TRIPS Agreement, these are maintained in the 2002 and 2005 modifications to the Patent Act.⁹

“107A. certain acts not to be considered as infringement...

(b) Importation of patented products by any person from a person who is duly authorised under

⁸ Christopher Jon Sprigman, “Reform(aliz)ing Copyright”, (2004) 57 *Stanford Law Review* 485, available at <https://ssrn.com/abstract=578502> (accessed May 5, 2025).

⁹ ‘Shamnad Basheer and Mrinalini Kochupillai, ‘TRIPS, Patents and Parallel Imports: A Proposal for Amendment’ (2009) 1 *Indian Journal of Intellectual Property Law* 63-86.’

the law to produce and sell or distribute the product, shall not be considered as an infringement of patent rights.”¹⁰

According to this clause, an importer is allowed to purchase the patented invention from the patent owner's principal sale and bring it into India. The wording of this clause supports the idea of worldwide patent exhaustion, even if courts have not yet interpreted it.

Several groups have been debating and discussing the term "authorized under the law." While some liberal groups argue that authorization under the law include both verbal and tacit agreement under any laws, conservative groups assert that the Indian patent law restricts authorization to that granted by the patent holder.¹¹

Interpreting "authorized under the law" to mean authorization under the patent law of the country from which the products are being imported would achieve the aforementioned balance. According to this understanding, importing a patented goods after purchasing it from a person permitted by another nation's patent legislation absolves the importer of patent infringement. The government, the Patent Office, or the patent holder may provide such permission.

The “Strix Limited v. Maharaja Appliances Limited (2009)”¹² case exposed confusion in India over parallel imports. Strix, holding a patent for kettle heaters, sued Maharaja for importing similar Chinese kettles. Maharaja claimed the Chinese supplier had a valid patent under ‘Section 107A(b)’ and challenged Strix’s patent validity but couldn’t provide the Chinese patent number. The Delhi High Court assumed no such patent existed and sided with Strix. This raised questions about whether similar patents could exist independently in China, given patent novelty rules.

In “Ericsson vs. Lava (2023)”¹³, the issue of patent exhaustion arose when Lava claimed that Ericsson’s patent rights were exhausted because the components in question were allegedly sold by authorized licensees. Referring to ‘Strix Limited v. Maharaja Appliances’, Delhi HC

¹⁰ ‘Patent Act, 1970.’

¹¹ ‘Dr Kalyan and Sharada, ‘Patent: Patent Exhaustion in India’ (2010) BananaIP Counse.’

¹² *Strix Ltd. v. Maharaja Appliances Ltd.*, (2008) I.A. No. 7441 of 2008 in C.S. (OS) No. 1206 of 2008 (Del HC).

¹³ *Telefonaktiebolaget LM Ericsson (Publ) v. Lava International Ltd.*, CS (COMM) 327/2021, (Del HC, Mar. 28, 2024).

emphasized that to successfully invoke defense of exhaustion in 'Section 107A of the Patents Act', defendant must give clear and convincing and unambiguous proof that:

- Product that is patented was lawfully purchased;
- Patent holder gave their approval for the sale;
- Such sale exhausted the patentee's rights, barring further control over resale or use.

In this context, Lava needed to prove that the products were sold by or through Ericsson's authorized licensees and that no post-sale restrictions applied. The court indicated that without such evidence, the defense of exhaustion could not be sustained.

ii) Exhaustion in copyright law –

The range of economic rights that the owner of a copyrighted work can enjoy is described in Section 14 of the Indian Copyright Act, 1957. This section contains several provisions that address different types of works, which can be broadly classified as the authority to make copies, share, modify, and convey information to the general public. Since notion of exhaustion is not explicitly acknowledged in the text, its applicability must be inferred from the provision's spirit.

According to the section's explanation, "a copy which has been sold once shall be considered to be a copy already in circulation for the purposes of this section." However, the Act does not specify where it is considered to be in circulation, therefore it is up for debate whether the exhaustion concept that can be deduced from Section 14 would apply regionally, nationally, or globally. The publishing industry depends on the territorial division of rights to support their internationally recognized business models, which enable them to print country-specific editions. Hence defining the scope of exhaustion is crucial.¹⁴

In 1985 case of 'Penguin Books Ltd v M/s India Books Distributors'¹⁵, court determined that importation of copies that violated copyright was the act of importing, producing, and distributing books from other nations (in this case, United States). However, this logic is less

¹⁴ "The Exhaustion of Rights and the Possible Effect of the Copyright (Amendment) Bill, 2010," The Practical Lawyer (April 10, 2012) available at: <http://www.ebc-india.com/practicallawyer/>.

¹⁵ Penguin Books Ltd v. M/s India Books Distributors, AIR 1985 Del. 29.

applicable to the analysis at hand because, at that moment, 'Section 14 of the Act' allowed copyright holders "exclusive right to publish" their creations without any further limitations. Following TRIPs negotiations in 1994, 'Section 14(a)(ii)' was changed to its current form, which no longer gives owners the authority to manage pieces that are "already in circulation."

Similarly, in 'John Wiley & Sons Inc v Prabhat Chander Kumar', court held that when books are priced and sold only in particular areas, parallel exports are prohibited.¹⁶ In this case, defendants lawfully bought books in India for less money and resold them in places that were off-limits, which was deemed impermissible. Although the legitimacy of parallel imports is not specifically addressed by this, it clearly restricts such trade. However, this reasoning is not perfect, as soon as a book is legally bought in a nation, legality of its export and potential infringement should be determined by the receiving country's courts. This highlights the ambiguity arising from the lack of uniform international enforcement of doctrines with conflicting applications.¹⁷

The 2012 Copyright Amendment

The '2012 Copyright Amendment' in India included discussions about parallel importation, but ultimately, the amendment that would have explicitly allowed parallel importation were removed from final version — and this decision was politically influenced. In 2010, the Indian government proposed 'an amendment' to 'Section 2(m) of the Copyright Act' to clarify that parallel imports — where a legally purchased copyrighted product from one country is imported into another without authorization from the owner of the copyright — would not be treated as 'copyright infringement'. This amendment aimed to align Indian law with 'principle of international exhaustion', meaning once a good is marketed anywhere in world with the copyright holder's consent, it could be freely resold or imported elsewhere.

However, powerful publishing lobbies (mostly international companies and their Indian affiliates) opposed the amendment. They argued it would cause chaos in the market and hurt exclusive distribution agreements. They even convinced some famous authors to sign a petition — though it's not clear the authors fully understood the legal consequences.

¹⁶ John Wiley & Sons Inc. v. Prabhat Chander Kumar Jain, ILR (2010) 5 Del 510

¹⁷ Bonadio, *supra* note 3

Despite the Parliamentary Standing Committee supporting the amendment and rejecting the publishers' objections, the Minister for Human Resource Development dropped the amendment when the Copyright (Amendment) Bill, 2010 was presented in Parliament. As a result, the '2012 Copyright Amendment Act' went forward without the clarification on parallel importation. The issue was never formally debated or settled in the final legislation. The amendment wasn't legally rejected — it was quietly omitted for political reasons, leaving the law vague and courts divided.

This lack of clarity means Indian courts have continued to interpret parallel imports inconsistently, often ignoring the broader public interest and first sale doctrine principles. The dropped amendment would have resolved this confusion, but lobbying and misinformation sidelined it.¹⁸

iii) Exhaustion in trademark law-

"Section 30(3)(b)" of the Trade Marks Act, 1999, addresses 'trademark exhaustion' in India.

Any legally obtained items are exempt from infringement if they were sold under the registered brand by the owner or with his permission.¹⁹

Section 29 of the Indian Trade Marks Act, 1999', which addresses 'trademark infringement', states that utilization of a 'registered trademark' by anyone besides proprietor may constitute a breach.²⁰ It further clarifies that both imports and exports are considered as "use" of the trademark.²¹ At first glance, this may suggest that parallel imports are restricted under these provisions. Nonetheless, "Section 30(3) of the Act" clarifies that once a goods is properly acquired, its sale or any further transactions by that person or their successor will not constitute infringement.²²

International exhaustion principle was not supported by early case law. In 'Hindustan Lever Ltd. v. Briju Chhabra'²³, for instance, the court prohibited the sale of genuine parallel-imported

¹⁸ Pranesh Prakash, Why Parallel Imports of Books Should be Allowed, (Jan. 25, 2011), <http://cis-india.org/a2k/blog/parallel-importation-of-books>.

¹⁹ Michael Sardina, "Exhaustion and First Sale in Intellectual Property", (2011) 51 *Santa Clara Law Review* 1055, 1056.

²⁰ Sec. 29 (1) of the Trademarks Act, 1999

²¹ Sec. 29(6) of the Trademarks Act, 1999.

²² Sec. 30(3) of the Trademarks Act, 1999

²³ Suit No. 2345 of 2000, High Court of Delhi

products solely due to geographical restriction agreements that the plaintiffs had that prohibited the defendants from selling in India. Court accepted plaintiffs' claim that their legal rights had been violated without addressing the concept of international exhaustion. This omission suggests that the court was either unaware of or did not consider the principle, likely because there isn't any specific clause on trademark exhaustion in law at that time.

In '*Xerox Corporation v. Puneet Suri*'²⁴, the court ruled that it was not illegal in India to sell and import Xerox machines that were legally purchased in another nation. It further decided that 'Section 30(3) of the Act' supports 'principle of international exhaustion'. This case marked the first instance where the court explicitly acknowledged and upheld international exhaustion.

In landmark '*Kapil Wadhwa v. Samsung Electronics*'²⁵, 'Delhi High Court's division bench' overturned the single bench ruling, affirming 'Section 30(3) of the Act' recognizes 'international exhaustion'. Respondents, engaged in manufacturing and trading electronic goods, argued that appellants were violating their rights by importing their printers from overseas markets and reselling them in India under their name at reduced prices. 'Single bench' had previously decided that 'Section 29(1)'²⁶, r/w 'Section 29(6)'²⁷, banned importation of authentic goods without permission of trademark owner, determining that "Section 30(3)" backed 'national exhaustion'. But division bench disagreed, ruling that the provision indeed endorses international exhaustion.

Nevertheless, it is unclear from Section 30(3)(b) whether the phrase "the market" refers to the Indian market (making it "national exhaustion") or worldwide markets (making it "international exhaustion"). One Delhi High Court judge concluded that "the market" obviously mentioned in the Indian market and thus the idea of "national exhaustion" was included in the *Kapil Wadba-Samsung* case.²⁸

The "Division Bench" reversed this, citing the Section as an instance of "international exhaustion" and concluding that the term "market" signified "any market" due to the lack of a

²⁴ *Xerox Corporation v. Puneet Suri*, CS (OS) No. 2285/2006 (Del HC).

²⁵ *Kapil Wadhwa v. Samsung Electronics*, [2013] 53 PTC 112 (Del).

²⁶ Sec. 29 (1) of the Trademarks Act, 1999

²⁷ Sec. 29 (6) of the Trademarks Act, 1999

²⁸ *Samsung Electronics Co. Ltd. & Anr. v. Kapil Wadhwa & Ors.*, (2012) SCC OnLine Del 1004 ("*Kapil Wadhwa* (Single Judge)").

clear qualification.²⁹

Competition Law Considerations

Parallel imports, which are unauthorized imports, create competition within the same brand rather than between different brands. This happens when products made abroad are brought into the manufacturer's home market, competing with the original local supply.³⁰ The main concern for manufacturers is that parallel importers sell the same products at lower prices, even after covering transportation costs. Since these imports are cheaper, they can replace locally sold versions, potentially reducing the manufacturer's sales and revenue.³¹

Intellectual property laws grant owners the right to control how their goods are distributed, including deciding whether to allow imports based on their business interests. If free trade takes priority over these rights—meaning parallel imports cannot be restricted—it could reduce the incentive for creators and businesses to develop and market new products. Additionally, IP owners may withdraw from international markets if cheaper products from abroad undercut their own, cutting off a key source of revenue needed to sustain innovation and investment.³²

The issue of parallel imports involves balancing two opposing interests—promoting free trade, which benefits consumers, and protecting intellectual property rights. Therefore, finding a legal solution requires carefully weighing both sides to ensure a fair and effective approach.

II. JURISDICTIONAL DIFFERENCES (NATIONAL VS. INTERNATIONAL EXHAUSTION)

“EXHAUSTION OF RIGHTS DOCTRINE IN OTHER JURISDICTIONS” –

European Union –

Regarding exhaustion, “European Union (EU)” takes a different stance than other legal systems. In order to maintain barrier-free internal markets, it adheres to community-

²⁹ *Kapil Wadhwa & Ors. v. Samsung Electronics & Anr.*, (2012) SCC OnLine Del 5172 (“*Kapil Wadhwa* (Division Bench)”).

³⁰ Vautier, ‘Economic Consideration, supra note 25, at 5–7. Hugh C. Hansen, International Exhaustion: A Policy and Psychological Analysis of the Debate, in *Intellectual Property Law & Policy* 114-2 to -5 (Hugh C. Hansen ed., vol. 6, 2001)’.

³¹ Gary Lipner, ‘Market Goods, supra note 25, at 3. Rothnie, Parallel Imports, supra note 24, at 1’.

³² See OECD, *Report on Parallel Imports*, supra note 39, at 16.

wide/regional exhaustion. Market integration, or merging the national markets of the Member States to create a single internal common market, is its main objective.³³

In **Deutsche Grammophon v. Metro**, for the first time, the EU's complete mandate of community-wide exhaustion was recognized by the "European Court of Justice (ECJ)." ³⁴ "European Court of Justice" decided that works protected by copyright must be distributed in the group without being restricted by the owners' exclusive rights.

United States –

International exhaustion, as demonstrated by pertinent statutes and court rulings, is not yet recognized by the United States. This is more apparent in the case of patents and copyright than in trademarks.³⁵

While present "U.S. patent law" states, "whoever without authority... offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent." ³⁶ The exhaustion of rights principle, which states that rights of the patentee are essentially exhausted by the initial authorized sale, limits the statute's apparent prohibition of all parallel imports.³⁷

In 1890, "U.S. Supreme Court" rendered a conclusion in **Boesch v. Graff**, the landmark patent case that dealt with overseas exhaustion. This ruling established the rule that an unapproved sale of a patentable product overseas does not exhaust U.S. patent rights.

The present 'U.S. patent law' states "whoever without authority... offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent."³⁸ The exhaustion of rights principle, which states that rights of patentees are essentially exhausted by the initial

³³ 'Verma, supra 5, at 546. Article 30 and 36 of the Rome Treaty has been so construed by the ECJ so as to remove obstacles in making internal market a reality.'

³⁴ '1971 E.C.R. 487, 502. The facts of the case were that Deutsche Grammophon manufactured sound recordings in Germany which were marketed in France by its subsidiary Polydor. The records were in turn bought by the defendant, Metro, and re imported into Germany where it tried to sell them at a lower price than set in Germany.'

³⁵ 'Verma, supranote 5, at 543'.

³⁶ '35 U.S.C. § 27 1(a) (1994)'.

³⁷ 'For detailed discussion, see, Darren E. Donnelly, Parallel Trade and International Harmonization of Exhaustion of Rights Doctrine, 13 SANTA CLARA COMPUTER AND HIGH TECH. J. 445 (May 1997).

³⁸ 35 U.S.C. § 27 1(a) (1994)'.

authorized sale, limits statute's apparent prohibition of all parallel imports.³⁹

Therefore, it can be concluded that 'U.S. system of rights exhaustion' vacillates between national and international fatigue. Only after sales are approved by U.S. patent holder will patentee's rights be deemed exhausted in the United States.

After examining the regimes in the US and the EU, it is now appropriate to examine the Indian regime for fatigue, which is still in its infancy.

India –

Although "exhaustion" and "parallel imports" are not specifically mentioned in the Patents Act (1970), they are mentioned in "Statement of Objects and Reasons" that was attached to the Patents (Second Amendment) Bill 1999, which later became the "Patents (Amendment) Act, 2002".⁴⁰

According to "Section 107A(b) of the Act", product patents are permitted in India as long as importer has the proper authorization from the patent holder to market or sell the item. "Section 107A(b)" was amended to remove the restrictive nature of the "exhaustion provision" and state that "importation of patented products by a person from any person who is duly authorised under the law to produce and sell or distribute the product" would not constitute infringement.⁴¹

It is clear from this paragraph that the patentee's agreement was no longer the basis for the law. By eliminating agreement as a determining element prior to rights of patentee being exhausted, the aforementioned rule created a more liberalized international exhaustion regime that will facilitate parallel imports.

Following an analysis of patent law requirements, a more thorough investigation of trademark exhaustion is necessary. The basic rule is that, as long as the goods remain materially

³⁹ 'For detailed discussion, see, Darren E. Donnelly, Parallel Trade and International Harmonization of Exhaustion of Rights Doctrine, 13 SANTA CLARA COMPUTER AND HIGH TECH. J. 445 (May 1997)'.

⁴⁰ 'According to the 'Statement of Objects and Reasons' appended to the Patents (Amendment) Act § 107A(b) (2002) was introduced to ensure availability of the 'patented' product to the Indian market at minimum international market price.'

⁴¹ 'Basheer & Kochupillai, supra note 76, at 490. The Parliamentary debates and the official press release preceding the passage of the Act made it clear that Section 107A(b) was aimed at permitting parallel imports and endorsing the principle of international exhaustion.'

unchanged, owner of a trademark cannot utilize its legal authority to prevent the entry of goods bearing their mark into India once they have been released anywhere in the world with the owner's approval.⁴²

"Section 107 of the Trade Marks Act (1999)" allows someone to operate a brand in India while portraying it as foreign registered, provided that it is clearly indicated in English that the trademark is registered in a foreign nation rather than India.

In addition to these, "Section 30(3)", which describes the "Principle of exhaustion", states "further sale or other dealings in goods bearing a registered trade mark by the person or by a person claiming to represent him are not considered an infringement." All of these clauses allow right holders to lawfully impose restrictions on parallel imports.

International Exhaustion : Does India stand to gain from it?

International exhaustion presents difficult problems even if it encourages free trade and may result in lower pricing for consumers. According to the idea, goods that are lawfully sold in one nation may be resold in another without the approval of intellectual property owners, which could help developing nations by lowering import costs. However, the price and quality disparity that fuels global weariness can result in problems like free-riding, in which rival imports profit from the goodwill of established brands without adding to them. As a result, the reputation of the brand may suffer from buyers being confused or disappointed by differences in quality and after-sales services for the same product across markets.

International exhaustion can also affect innovation, particularly in industries like pharmaceuticals where price arbitrage may deter local R&D investment. Businesses frequently rely on increased earnings from established markets to finance research; however, worldwide weariness may jeopardize this financial model, especially in developing nations like India. Additionally, the proliferation of gray market products has the potential to upset businesses' pricing policies, marketing plans, and financial results. In the end, even if international exhaustion has advantages, an unregulated strategy could hurt IP owners and upset market structures, indicating the necessity for balanced regulation to guarantee both IP protection and

⁴² 'Sonia Baldia, Exhaustion and Parallel Imports in India, in PARALLEL IMPORTS IN ASIA 163 (Christopher Heath ed., 2004).'

consumer access.⁴³

HYBRID VS HARMONISED APPROACH

Harmonized Approach: One Rule for All IP Types

What It Means:

Uniformly apply international exhaustion (or national/regional) across copyright, trademark, and patent law, with consistent statutory language and judicial interpretation.

Advantages:

- Legal clarity and predictability for courts, businesses, and consumers.
- Reduces litigation stemming from inconsistent rules (e.g., *Strix*, Kapil Wadhwa).
- Aligns with global trade models like EU (regional) or US (increasingly international).
- Helps parallel importers work across domains without fear of IP conflict.

Challenges:

- Ignores sector-specific needs (e.g., moral rights in copyright, brand dilution in trademark, R&D recovery in pharma patents).
- Might not satisfy rights holders or international trade partners.
- Politically difficult—past attempts at copyright reform (e.g., 2012 Amendment Bill) faced lobbying backlash.

Hybrid Approach: Tailored Rules for Each IP Type

What It Means:

Adopt international exhaustion where it serves public interest (e.g., in books, generics), and

⁴³ 'Garima Budhiraja Arya and Tania Sebastian, 'Exhaustion of Rights and Parallel Imports with Special Reference to Intellectual Property Laws in India' (2014) 2 J Natl L U Delhi 26'

limited/national exhaustion where control over resale is necessary (e.g., luxury brands, digital goods). Include sector-specific carve-outs or “controlled international exhaustion.”

Advantages:

- Policy flexibility: Respects the economic function of each IP regime.
- Tailored safeguards: Prevents brand dilution (trademark), protects innovation (patents), and honors moral rights (copyright).
- Easier political and legal adoption: Already supported by Indian courts (e.g., in *Kapil Wadhwa* for trademark, limited application in patent law via Section 107A).

Challenges:

- Legal fragmentation remains.
- May increase compliance burden for businesses working across IP categories.
- Requires strong administrative and judicial competence to enforce nuanced distinctions.

III. CONCLUSION

This research looked at how the principle of exhaustion works in ‘IP law’— particularly in ‘trademarks, patents, and copyright’. It compared how this is handled in different places like ‘United States, United Kingdom, European Union and India’. The main focus was on whether India should try to make its rules match up (harmonize) across all these areas.

One major finding is that exhaustion helps balance the rights of IP owners with things like market access, consumer rights, and open trade. But there’s no single, global way to apply it. Different countries and IP types use different models—national, regional, or international. This causes confusion and legal uncertainty, which can either help or hurt the ability to trade goods freely across borders.

India doesn’t have a clear or unified exhaustion policy. Patent law leans toward international exhaustion (under ‘Section 107A(b)’, but court decisions on it have been mixed. Trademark

law is clearer—cases like ‘Kapil Wadhwa v. Samsung’ support international exhaustion. Copyright law is more confusing: while the language in the law hints at exhaustion, Indian courts have often stuck to territorial rules. In 2012, the government planned to update the law to support international exhaustion for copyright too, but dropped it due to political pressure.

India currently has a mixed system—supporting international exhaustion for trademarks (and maybe patents), but not clearly for copyright. This patchy setup creates confusion, blocks parallel trade, and leads to unnecessary lawsuits.

- One solution would be to make the rules the same across all types of IP (harmonization), whether that means national, regional, or international exhaustion. This would make things clearer, reduce costs, and make the law more predictable. But this might not be realistic, especially with industry groups like publishers pushing back against international exhaustion.
- A more practical option is a hybrid approach, where each type of IP is treated differently depending on its nature and the needs of the industry. For example, patents and trademarks, which are more commercial, could use international exhaustion to improve access and trade. Copyright could stay more limited to protect authors and publishers, especially where territorial licensing is important.

RECOMMENDATIONS

Given India’s current situation, the hybrid model seems to be the best fit. It offers:

- Policy flexibility – letting the law adapt to different industries, like allowing cheaper imported medicines or textbooks.
- Legal realism – recognizing the way Indian courts and laws already treat different IP types differently.
- Balance for stakeholders – respecting both the rights of IP owners and the need for affordable access, especially in areas like education and healthcare.

Still, this hybrid system needs more legal clarity. Parliament should clearly write into law that international exhaustion applies to trademarks and patents. For copyright, lawmakers should

find a balanced solution—protecting business models but also ensuring access to knowledge.

In the end, India's exhaustion laws shouldn't just follow legal theory. They should focus on the public good: rewarding innovation while making sure it doesn't block access or hurt competition. India needs a clear, fair, and flexible system that supports both creativity and development.