



The Emblems and Names (Prevention of Improper Use) Act, 1950

[Act 12 of 1950]

along with

**Emblems and Names (Prevention of Improper Use)
Rules, 1982**

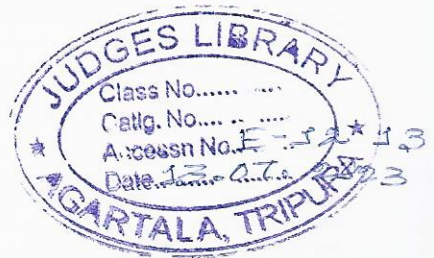
**Existing Guidelines under Item 7 of the Schedule
to Emblems and Names (Prevention of
Improper Use) Act, 1950**

**State Emblem of India (Prohibition of Improper Use)
Act, 2005**

**State Emblem of India (Regulation of Use)
Rules, 2007**

and

Case Law

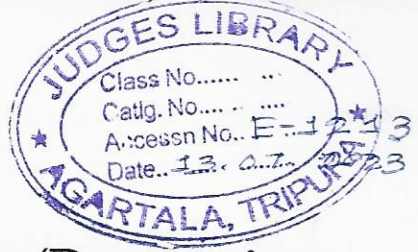


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The Emblems and Names (Prevention of Improper Use) Act, 1950

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The Emblems and Names (Prevention of Improper Use) Act, 1950¹

[Act 12 of 1950]

[1st March, 1950]

*An Act to prevent the improper use of certain emblems
and names for professional and commercial purposes*

Be it enacted by Parliament as follows:—

CASE LAW ► Constitutionality.—Entry 49 of List I may well supply the coverage for the Union legislative field so far as the Act is concerned. Trade Marks, designs and merchandise marks may legitimately take in matters relating to their abuses and improper uses. Even otherwise the residuary Entry 97 of List I is of wide amplitude to take care of the particular subject-matter of legislation, namely prevention of improper use of certain emblems and names for professional and/or commercial purposes, *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763.

1. Short title, extent, application and commencement.—(1) This Act may be called the Emblems and Names (Prevention of Improper Use) Act, 1950.

(2) It extends to the whole of India ²[* * *] and also applies to citizens of India outside India.

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “emblem” means any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule;
- (b) “competent authority” means any authority competent under any law for the time being in force to register any company, firm or other body of persons or any trade mark or design or to grant a patent;
- (c) “name” includes any abbreviation of a name.

3. Prohibition of improper use of certain emblems and names.—Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or

1. This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, Sec. 3 and Sch. to Pondicherry by Reg. 7 of 1963, Sec. 3 and First Sch.
2. The words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), S. 2 and Sch. (w.e.f. 1-11-1956).
3. 1-9-1950 [vide S.R.O. 441, dt. 26-8-1950]. 1-9-1975 enforced in Sikkim [vide S.O. 4292 of 1975] and to Dadra and Nagar Haveli by Reg. 6 of 1963.

of such officer of Government as may be authorised in this behalf by the Central Government.

CASE LAW ► Disrespect to National Flag.—The Flag Code provides guidelines to be observed for preservation of dignity and respect to the national flag. The national flag is both a benediction and a beckoning. In case a person shows any kind of disrespect to the national flag or does not observe the terms contained in the Code, legal action may be taken against him under the relevant statutory provisions whether any disrespect was shown to national flag requires factual determination which is beyond scope of writ proceedings, *V.K. Naswa v. Union of India*, (2012) 2 SCC 542.

► **Restriction on use of emblems or seals.**—Restriction is only on use of emblems or seals of names of State and State or Central Government in consonance with any trade or activity and not on an association involving sports activities, *T.N. Chess Assn. v. District Registrar*, (2008) 3 CTC 16.

► **National Anthem.**—The National Anthem is the poem as it was written by Rabindranath Tagore. He himself had said that the five stanzas in which the poem was written are addressed to God. The poem is a reflection of the real India as a country — a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song. It has since the decades inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet Rabindranath Tagore.

The Prevention of Insults to National Honour Act, 1971 (Act 69 of 1971) enacted by Parliament makes it an offence for whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing. Article 51-A of the Constitution of India, inserted by the Forty-second Amendment, provides for it being the fundamental duty, amongst others, of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. The Constitution of India, its ideals and institutions, the National Flag and the National Anthem have been treated almost on a par. From the language of clause (a) of Article 51-A, it is clear that the National Anthem is an ideal and an institution for the Indian citizens, *Sanjeev Bhatnagar v. Union of India*, (2005) 5 SCC 330.

► **Power to add new names.**—Power to add new names and emblems to the Schedule is not unguided, uncanalised and arbitrary leading to discrimination and imposition of unreasonable restrictions. It is not a case of excessive delegation of power, *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763.

► **Flying the National Flag.**—Flying the National Flag is a symbol of free expression under Article 19(1)(a) and therefore protected. This right however is neither unfettered, unsubscribed, unrestricted nor unchannelled. Right to fly the flag is regulated by the Emblems and Names (Prevention of Improper Use) Act, 1950 and Prevention of Insults to National Honour Act, 1971. Development of freedom of speech and expression in various countries also discussed. History of development of this right under the constitution traced, *Union of India v. Naveen Jindal*, (2004) 2 SCC 510.

► **Use of name or emblem prohibited.**—Use of name or emblem is prohibited where intention is to have patronage by using name of Government of India/State or local that name “Bharath Chamber” used by Partnership Firm for purpose of making patronage by using name of Government of India, prohibition under provision would not apply, *Bharat Chamber v. District Industries Centre*, (2012) 6 CTC 453 (Mad).

4. Prohibition of registration of certain companies, etc.—(1)

Notwithstanding anything contained in any law for the time being in force, no competent authority shall—

- (a) register any company, firm or other body of persons which bears any name, or
- (b) register a trade mark or design which bears any emblem or name, or
- (c) grant a patent in respect of an invention which bears a title containing any emblem or name,

the use of such name or emblem is in contravention of Section 3.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or a colourable imitation thereof, the competent authority may refer the question to the Central Government, and the decision of the Central Government thereon shall be final.

5. Penalty.—Any person who contravenes the provisions of Section 3 shall be punishable with fine which may extend to five hundred rupees.

6. Previous sanction for prosecution.—No prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer authorised in this behalf by general or special order of the Central Government.

CASE LAW ► Prosecution institution of.—Under Section 6, no prosecution can be instituted except with previous sanction of Central Government or of any officer authorised by general/special order of Central Government. Therefore, in order to maintain prosecution, it must be shown that sanction was obtained from Central Government. Direction issued by Senior Economic Advisor, Ministry of Consumer Affairs, Government of India to Chief Secretary, Government of Tamil Nadu to investigate matter and to take action, would not amount to “sanction”. Senior Economic Advisor, Ministry of Consumer Affairs is not competent authority. Secretary, Department of Consumer Affairs alone is designated to issue sanction for prosecution. Therefore, sanction not granted by competent authority, held, not valid. Even otherwise, communication issued by Senior Economic Adviser being only a direction to take action, not a sanction to prosecute. Prosecution, held, not maintainable in absence of sanction, *R.K. Balasubramanian (Dr.) v. Inspector of Police*, (2013) 3 MWN (Cri) 96 (Mad).

7. Savings.—Nothing in this Act shall exempt any person from any suit or other proceeding which might, apart from this Act, be brought against him.

8. Power of the Central Government to amend the Schedule.—The Central Government may, by notification in the Official Gazette, add to or alter the Schedule, and any such addition or alteration shall have effect as if it had been made by this Act.

CASE LAW ► Notification under.—This notification is not an executive order but a piece of subordinate legislation made by the Central Government under Section 8 of the Act. If it is duly published in the Gazette of India over the signature of the Under Secretary who is authorised for the purpose the question of violation of Article 77 does not arise, *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763.



► **Delegation of legislative power.**—Section 8 makes provision for empowering the Central Government to add to or alter the Schedule. In the nature of things, there is no abdication of legislative function by Parliament in delegating its power under Section 8 in favour of the Central Government which will be the appropriate authority to consider from time to time as to the items to be included in or omitted from the Schedule in the light of knowledge and experience gathered from the nook and corner of the entire country. There is, therefore, no excessive delegation of legislative power by Parliament in favour of the Central Government, *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763.

► **Power to add new names and emblems to the Schedule.**—Power to add new names and emblems to the Schedule not unguided, uncanalised and arbitrary leading to discrimination and imposition of unreasonable restrictions. It is not a case of excessive delegation of power. Inclusion of “Chhatrapati Shivaji” in the Schedule is not improper, *Sable Waghire & Co. v. Union of India*, (1975) 1 SCC 763.

9. Power to make rules.—⁴[(1)] The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

⁵[(2)] Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

THE SCHEDULE

[See Sections 2(a) and 3]

1. The name, emblem or official seal of the United Nations Organisation.
2. The name, emblem or official seal of the World Health Organisation.
3. The Indian National Flag.

⁶[4. The name, emblem or official seal of the Government of India or of any State, or any other insignia or coat-of-arms used by any such Government or by a Department of any such Government.]

⁷[5. The emblems of the St. John Ambulance Association (India), and the St. John Ambulance Brigade (India), consisting of the device of a white eight pointed cross embellished in the four principal, angles ⁸[* * *], whether or not the

4. Section 9 renumbered as sub-section (1) and sub-section (2) ins. by Act 4 of 1986, S. 2 and Sch. (w.e.f. 15-5-1986).

5. Ins. by Act 4 of 1986, S. 2 and Sch. (w.e.f. 15-5-1986).

6. Subs. by S.R.O. 1230, dt. 4-6-1955.

7. Ins. by S.R.O. 561, dt. 20-3-1952.

8. The words “alternatively with a lion passant quadrant and a unicorn” omitted by S.O. 2155/72, dt. 12-8-1972.

device is surrounded or accompanied by concentric circles or other decoration or by lettering.]

⁹[6. The name, emblem or official seal of the President, Governor, ¹⁰[* * *]
¹¹[Sadr-i-Riyasat] or Republic or Union of India.]

¹²[7. Any name which may suggest or be calculated to suggest—

(i) the patronage of the Government of India or the Government of a State;
or

(ii) connection with any local authority or any corporation or body constituted by the Government under any law for the time being in force.]

¹³[8. The name, emblem or official seal of the United Nations Educational, Scientific and Cultural Organisation.]

¹⁴[9. The name, or pictorial representation of Rashtrapati, ¹⁵[* * *], Rashtrapati Bhavan, Raj Bhavan.]

¹⁶[9-A. The name or pictorial representation of ¹⁷[Chatrapati Shivaji Maharaj or] Mahatma Gandhi, ¹⁸[or Pandit Jawahar Lal Nehru], ¹⁹[Shrimati Indira Gandhi,] or the Prime Minister of India,] ²⁰[except the pictorial use thereof on calendars where only the names of the manufacturers and printers of the calendars are given and the calendars are not used for advertising goods].

²¹[9-B. The name or pictorial representation of “Shri Lal Bahadur Shastri”.]

²²[10. The medals, badges or decorations instituted by the Government from time to time or the miniatures or replicas of such medals, badges or decorations ²³[or the names of such medals, badges or decorations or of the miniatures or replicas thereof].]

²⁴[11. The name, emblem or official seal of the International Civil Aviation Organisation.]

9. *Ins.* by S.R.O. 1230, dt. 4-6-1955.

10. The word “Rajpramukh” omitted by the Adaptation of Laws (No. 3) Order, 1956 (w.r.e.f. 1-11-1956).

11. *Ins.* by S.R.O. 2011, dt. 7-9-1955.

12. *Ins.* by S.R.O. 1230, dt. 4-6-1955.

13. *Ins.* by S.R.O. 1230, dt. 4-6-1955.

14. *Ins.* by S.R.O. 2011, dt. 7-9-1955.

15. The words “Rashtra Bhavan” omitted by S.O. 1916, dt. 30-7-1960.

16. *Ins.* by S.O. 416, dt. 14-2-1959.

17. *Ins.* by S.O. 1120, dt. 23-3-1968.

18. *Ins.* by S.O. 4116, dt. 5-12-1964.

19. *Ins.* by S.O. 239(E), dt. 27-3-1985.

20. *Ins.* by S.O. 2668, dt. 10-9-1963.

21. *Ins.* by S.O. 448(E), dt. 28-2-2011.

22. *Ins.* by S.R.O. 525, dt. 23-2-1956.

23. *Ins.* by S.R.O. 1862, dt. 17-8-1956.

24. *Ins.* by S.R.O. 2906, dt. 4-9-1957.

²⁵[12. The word “Interpol” which is an integral part of the International Criminal Police Organisation.]

²⁶[13. The name, emblem or official seal of the World Meteorological Organisation.]

²⁷[14. The name and emblem of the Tuberculosis Association of India.]

²⁸[15. The name, emblem and official seal of the International Atomic Energy Agency.]

²⁹[16. The names of “Ashoka Chakra” or “Dharma Chakra” or the pictorial representation of Ashoka Chakra as used in the Indian National Flag or in the official seal or emblem of the Government of India or of any State Government or of a Department of any such Government.]

³⁰[17. The name of the Parliament or the Legislature of any State, or the Supreme Court, or the High Court of any State, or the Central Secretariat, or the Secretariat of any State Government or any other Government Office or the pictorial representation of any building occupied by any of the aforesaid institutions.]

³¹[18. The name and emblem of the Rama Krishna Math and Mission consisting of a Swan floating on waters, with a lotus in the foreground and the rising sun in the background, the whole being encircled by a wild serpent (facing right) with the words [“तन्नो हंसः प्रचोदयात्”, superimposed on the bottom portion.]

³²[19. The name and emblems of Sri Sarada Math and Ram Krishna Sarada Mission consisting of a swan (facing right) floating on waters, with a Lotus in the foreground and the rising sun in the background, the whole being encircled by a wild serpent (facing right) with the words [“तन्नो हंसः प्रचोदयात्”, superimposed on the bottom portion.]

³³[20. The name of “The Bharat Scouts and Guides” with its emblem.]

³⁴[21. The name and emblem of the International Olympic Committee consisting of five inter-laced rings.]

³⁵[22. The name and the emblem of the National Youth Emblem which is in black and white and carries the profiles of the faces of two onward looking

25. *Ins.* by S.O. 1429, dt. 19-6-1959.

26. *Ins.* by S.O. 1544, dt. 6-7-1959.

27. *Ins.* by S.O. 1605, dt. 15-7-1959.

28. *Ins.* by S.O. 2438, dt. 7-10-1961

29. *Ins.* by S.O. 671, dt. 8-2-1964

30. *Ins.* by S.O. 3760, dt. 24-10-1964.

31. *Ins.* by S.O. 2356, dt. 4-8-1973.

32. *Ins.* by S.O. 2697, dt. 11-9-1973.

33. *Ins.* by S.O. 1841, dt. 10-7-1974.

34. *Ins.* by S.O. 2457, dt. 18-8-1978.

35. *Ins.* by S.O. 593(E), dt. 22-7-1999.

young persons—male and female—inscribed within a circle. Both faces are turning towards the right and the profile of the male face is in black and is situated behind that of the female face. The back of profile of the female face forms the tail and wing of a dove flying in the opposite direction with its beak extending outside the circle and carrying a twig with leaf. The profile of the dove is in white and the balance space of the profile of the female face is covered with horizontal lines in black. The space in between the black profile of the male face and the circle is also covered by horizontal lines in black. The space in between the profile of the dove and the circle to the left of the dove is also in black. The leaf and twig is in black. One eye of the dove is shown in the form of a dot.

³⁶[23. ³⁷[The name and the emblem] of the “auroville” consisting of two concentric circles; the inner circle is joint to the other circle with five equidistant radial lines to form five petals, one of the radial line is oriented vertically downwards. An inner dot is placed at the center of the symbol. The petals may be shaded in orange or any other colour, or may be unshaded.]

³⁸[24. The name of Sri Sathya Sai Central Trust and its two emblems described below:—

- (i) In the middle, it has a lotus flame that is spreading light of goodwill in all directions. Five universal human values—Truth, Right Conduct, Peace, Love and Non-violence are placed in the outer circle. These are universal values that are common to all faiths and beliefs. The emblem has no specific colour stipulation.
- (ii) This emblem is a Sarvadharm (multi-religious) Symbol and equality of all religions symbol. It depicts symbols of major world religions—Om-in Sanskrit/Devnagri (Hinduism and Sikhism), Cross (Christianity), Crescent and Star (Islam), Fire (Zoroastrianism), and Wheel (Dharma Chakra revered by Buddhists and Jains). All signs are placed in a circle signifying their equality. In the middle circle, there is a Lotus Flame that signified Purity, Virtue and Character. This emblem is used in various colours and no specific colour is officially notified.]

³⁹[25. The name of “Sri Sathya Sai”.]

⁴⁰[26. The logo/emblem of the NHRC described below:

- (i) The logo features the Ashoka Chakra at its heart. The petals in the upper half of the Chakra, which is derived from the national flag, change to brilliant orange rays radiating upwards and outwards. Like the sun’s rays, these too are indicative of hope and movement, with a far reaching penetrating quality. The rays benefit all, without distinction,

36. *Ins.* by S.O. 373(E)/86, dt. 23-6-1986.

37. *Subs.* by S.O. 276(E), dt. 28-3-2000.

38. *Ins.* by S.O. 77(E), dt. 15-1-2004.

39. *Ins.* by S.O. 578(E), dt. 14-5-2004.

40. *Ins.* by S.O. 1323(E), dt. 3-12-2004.



SCH.] EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT, 1950

and are not subject to limitations of any kind. The entire symbol is guarded by two side arms which seem to raise it and protect it, thereby suggesting universal love and hope—qualities which are the birthright of all mankind.

- (ii) The Sanskrit quotation ‘Sarve Bhavantu Sukhinah’ is also incorporated in the logo.]

⁴¹[27. The name “National Human Rights Commission” and its abbreviation NHRC/nhrc.]

⁴²[28. The Names and Emblems of Federation Internationale de Football Association (FIFA) and Federation of Internationale de Football Association (FIFA) Under 17-World Cup described below—

The Emblem of FIFA of the letter FIFA in blue on a white background. The letter FIFA are the acronym of Federation Internationale de Football Association.]

41. *Ins.* by S.O. 458(E), dt. 10-3-2008.

42. *Ins.* by S.O. 2764(E), dt. 13-9-2013.