

Marking the Mahatma to the market

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Mahatma is once again in the dock. Long time back, the television show 'Niki Tonight' raised national adrenaline over certain uncharitable remarks made against him in the course of the programme. The outcry was predominantly fired by the sentiment that Mahatma is a national treasure and not the subject matter of travesty and ridicule.

Recognizing the national importance of Mahatma as a revered symbol of India, the Emblems and Names (Prevention of Improper Use) Act, 1950 ['the Act'] reserves the name and image of Mahatma in the Schedule of protected names and emblems thereto as a protected national asset and makes it illegal for any person to 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 trademark or design such name or emblem or any colourable imitation thereof without the previous permission of the Central Government.

It would be instructive to quote the Statement of Object and Reasons underlying the enactment of the Act:

"the General Assembly of the United Nations Organization recommended in 1946 that members of the United Nations should take necessary legislative or other appropriate measures to prevent the use, without proper authority, and in particular for commercial purposes, of the emblem, the official seal and the name of the United Nations and of the abbreviations of that name. A similar recommendation has since been received also from the World Health organization for prevention of the use of its name (and abbreviations), emblem and official seal. Instances have also come to light of the use in India (and abroad) of the Indian National Flag and emblem and of the names or pictorial representations of Mahatma Gandhi and other national leaders for commercial and trade purposes and in a manner likely to offend the sentiments of the people. The provisions of the Indian Trademarks Act, 1940, Indian Patents and Designs Act 1911, Indian Merchandise Marks Act, 1889 and the Indian Companies Act 1913 are not adequate to prevent these abuses. The Bill seeks to prevent the improper use of these names, emblems, etc, for the purposes of trade, business, calling, profession, patent or design and to impose a penalty for misuse of emblems, etc., specified in the Schedule and empowers the Central Government to make additions and amendments in the Schedule as and when necessary".

The Act came up for consideration before the Hon'ble Supreme Court of India in *Sable Waghire & Co v. Union of India* (AIR 1975 SC 1172). Briefly stated, the facts in the case involved a Notification of the Central Government dated March 16, 1968 under Section 8 of the Act, reserving the pictorial

representation and name of "Chhatrapati Shivaji Maharaj" in the category of protected emblems. At the time of the notification, the petitioner company was the registered proprietor of a pictorial representation of 'Chhatrapati Shivaji' which it had been using as a trademark along with the name 'Chhatrapati Shivaji' since 1928 in relation to its business of manufacturing and marketing beedis. The statutory rights vested in the petitioner dated back to 1938 by way of a declaration filed with the Registrar of Assurances, Bombay.

In pursuance of the notification, the Registrar of Trademarks informed the Petitioner that its use and registration of the name and image of Chhatrapati Shivaji was prohibited under the Act and proposed to cancel the existing registration owned by the petitioner. In the course of proceedings before the Registrar, the petitioner challenged the constitutional validity of the Act as well as the notification in question, besides seeking the Registrar's notice to be quashed.

Dismissing the writ petition and upholding the constitutional validity of the Act and the notification, the Hon'ble Supreme Court of India observed as follows:

" 'What is in a name' may not always be innocent. Logically proper names are not connotative but have often gathered a content, a halo, around them sometimes or for all times to come. National or international significance gets attached to certain names or institutions over the years or ages and then they belong to the nation or to all nations. Human sentiments and often a deep sense of religiosity pervade through and provide a sacred mantle as it were to the nomenclature. In order to arouse national sentiments everywhere invocation of "Chhatrapati Shivaji" in manifold ways in the era of struggle for independence of our country is now, by turn of history, repealed by an ardent worship of the proud heritage by a grateful nation. Law reflecting the national consciousness, therefore, forbids ordinary commercial use of the sacred name by individuals in their own interest as opposed to national interest"

The current debate around the purported licence granted to an American corporation by Mahatma Gandhi Trust raises the question whether his name and image can be considered to be the private property of the Trust with the right to administer the manner and context of use thereof by others. The explanation offered by the Trust apparently indicates that the objective behind the arrangement is to prevent misuse of the image and name of Mahatma in unsavoury contexts and thereby preserve the pristineness and sanctity of the name. For example, it appears that the Mahatama's image was blasphemously used in the US to advertise alcoholic products.

Though laudable in its intent, the arrangement entered into by the Trust has the potential of running foul of the Act and inviting a challenge before the courts on account of its contravention of the Act. If held to be in contravention of the Act, the arrangement would be a void contract under

Section 23 of the Indian Contract Act which makes contracts violating existing statutes void ab initio.

Pared to its original intent, the Act makes any commercial use of the protected names and emblems illegal and prohibited. In this context, it would be interesting to examine whether the on-going advertising campaign for a brand of salt marketed under and by reference to the name DANDI and the image of Mahatma Gandhi would fall foul of the Act and thus illegal. It is obvious that the commercial is making use of the historical significance of the Dandi March and its association with the Mahatma, which is reinforced by the image of the Mahatma.

It is time to sit up and examine whether our national treasures may be sacrificed to the commercial imperatives of character merchandising and thus be reduced to mere commodities.

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