BEYOND JUDICIAL RECOGNITION: DOCTRINAL AND LEGISLATIVE DEFICIENCIES IN THE PROTECTION OF PERSONALITY RIGHTS IN INDIA

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ABSTRACT

Personality rights have emerged as a significant yet unsettled area of Indian jurisprudence, particularly as personal identity is increasingly exploited through advertising, social media, artificial intelligence (AI), synthetic media and digital impersonation. Indian courts have recognised an individual's interest in protecting their name, image, voice, likeness and other identifiable attributes against unauthorised appropriation. Yet protection remains dispersed across constitutional principles, common-law doctrines and intellectual property legislation. This paper examines two connected deficiencies: the absence of a statutory definition of "personality" or "identity", and uncertainty concerning the descendibility and post-mortem survival of personality rights. Through doctrinal analysis of decisions including R. Rajagopal v State of Tamil Nadu[1], ICC Development (International) Ltd v Arvee Enterprises[2], Krishna Kishore Singh v Sarla A Saraogi, Deepa Jayakumar v A.L. Vijay and Anil Kapoor v Simply Life India, it identifies conceptual and remedial gaps in the existing framework. It argues that judicial innovation has provided valuable protection in individual disputes but cannot substitute for a coherent legislative regime. The paper proposes a calibrated statutory framework defining protected identity attributes, distinguishing personality interests from privacy and publicity rights, and establishing clear rules on post-mortem protection, succession, remedies and freedom of expression.

Keywords: Personality rights; right of publicity; privacy; identity; post-mortem rights; intellectual property; artificial intelligence; legislative reform.

[1]R. Rajagopal v State of Tamil Nadu (1994) 6 SCC 632.
[2]ICC Development (International) Ltd v Arvee Enterprises 2003 (26) PTC 245 (Del).

1. Introduction

Identity is not merely a name or a photograph. It is the combination of attributes through which a person is recognised: appearance, voice, signature, distinctive gestures, performance, reputation and, increasingly, a digital representation generated or manipulated by technology. These attributes may carry economic value, but they also express autonomy, dignity and the interest in not being falsely represented. When a person's identity is used to imply an endorsement they never gave, to sell merchandise, or to generate a synthetic voice or image, the legal injury may arise even where no copyrighted work has been copied and no private fact has been disclosed.

Indian courts have progressively responded to such disputes through privacy, passing off, trademark principles and the broader language of personality and publicity rights. In R. Rajagopal v State of Tamil Nadu, the Supreme Court explained the constitutional significance of privacy and the limits on unauthorised publication of matters concerning private life. ICC Development (International) Ltd v Arvee Enterprises, decided by the Delhi High Court, clarified that publicity rights are connected to the individual and the attributes of personality, rather than automatically belonging to an event organiser. Later disputes concerning celebrity endorsements and online impersonation have brought the doctrine into sharper focus. In Anil Kapoor v Simply Life India[3], the Delhi High Court granted interim protection against specified uses of the actor's identity, including uses involving AI tools and deepfakes.

Despite these developments, India has no comprehensive statute specifically codifying personality rights. Existing law offers remedies, but it does not provide a single definition, a settled taxonomy of protected interests, or a comprehensive set of rules governing transfer and survival after death. This fragmented structure leaves important questions to be resolved through case-specific judicial reasoning. It also risks treating celebrity identity as a special category when the underlying interests in identity, autonomy and freedom from impersonation may affect ordinary individuals.

This paper focuses on two deficiencies that expose the limits of the present framework: first, the absence of a statutory definition of "personality" or "identity"; and second, uncertainty concerning descendibility and post-mortem rights. It adopts a doctrinal methodology,

[3]Anil Kapoor v Simply Life India, CS(COMM) 652/2023, order dated 20 September 2023 (Delhi High Court).

examining judicial decisions, constitutional principles and relevant legislation. Its central argument is that reform should not create an absolute property right in every reference to a person. Instead, legislation should clarify the interests protected, identify the circumstances in which unauthorised use is actionable, and balance protection with free expression, public interest and the legitimate circulation of information.

2. Conceptual and Doctrinal Foundations

Personality rights are often used as an umbrella term for interests in controlling or preventing the unauthorised use of identifiable attributes. Within that umbrella, at least three concepts should be distinguished. First, privacy protects personal autonomy and an individual's interest in controlling access to aspects of private life. Secondly, publicity rights concern the commercial value of identity and the unauthorised appropriation of that value, including false suggestions of endorsement. Thirdly, related claims may arise under passing off, defamation, copyright or trademark law, but each requires its own elements and protects a different legal interest.

The constitutional foundation is closely connected to Article 21 and the recognition of privacy as a fundamental right in Justice K.S. Puttaswamy (Retd) v Union of India[4]. Privacy, dignity and autonomy help explain why identity misuse may be objectionable even when it causes no measurable financial loss. However, constitutional privacy does not automatically establish a proprietary entitlement over all public references to an individual, nor does it resolve whether a commercial interest can be inherited after death.

ICC Development is a significant early decision[5] because it rejected the claim that the International Cricket Council could assert players' publicity rights merely because it organised a cricket event. The Court associated publicity rights with an individual's personality and noted the connection between publicity and privacy. The decision is important, but its broad language does not constitute a complete statutory code. Questions remain concerning the threshold of identifiability, the nature of actionable appropriation, the role of commercial purpose, and the defences available to defendants.

[4]Justice K.S. Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.
[5]ICC Development (International) Ltd v Arvee Enterprises 2003 (26) PTC 245 (Del).

The common-law action of passing off may assist where the use of a persona falsely represents endorsement or commercial association. In D.M. Entertainment Pvt Ltd v Baby Gift House[6], the Delhi High Court considered the unauthorised commercial use of singer Daler Mehndi's identity in relation to dolls. The decision illustrates how personality interests may be protected through passing-off principles where the circumstances support an actionable misrepresentation. Yet passing off ordinarily centres on goodwill, misrepresentation and damage. It may not adequately address every instance of identity appropriation, particularly where a use is recognisable but does not mislead consumers about commercial origin.

Likewise, copyright in a photograph or sound recording is distinct from the identity interest of the person depicted or heard. The photographer, producer or other rightsholder may own copyright, while the individual retains separate interests in the commercial use of their persona. Trademark registration may protect a registered name or sign in relation to specified goods or services, but it does not provide a general right over every recognisable element of identity. The existing framework is therefore plural rather than absent; the difficulty is that its doctrines are partial, differently structured and not always capable of addressing identity misuse on their own.

3. Doctrinal and Legislative Deficiencies: A Structured Critique

The deficiencies examined in this section concern both the subject matter of protection and its duration. The absence of a statutory definition makes it difficult to identify precisely what the law protects. Uncertainty about post-mortem rights makes it difficult to identify who may enforce a claim and for how long. Together, these problems leave courts to construct answers through litigation rather than apply a coherent legislative framework.

3.1 Absence of a Statutory Definition of "Personality" or "Identity"

Indian legislation does not provide a general definition of personality rights or identity rights. The Constitution protects privacy and dignity through constitutional doctrine; the Trade Marks Act, 1999 and Copyright Act, 1957[7] protect defined subject matter; and common-law actions may respond to misrepresentation or misuse. None, however, establishes a comprehensive

[6]D.M. Entertainment Pvt Ltd v Baby Gift House 2010 (42) PTC (Del) (decision of the Delhi High Court concerning commercial use of Daler Mehndi's persona).
[7]Trade Marks Act 1999; Copyright Act 1957.

definition applicable across the full range of personality disputes. The consequence is uncertainty about which attributes are protected and the conditions under which their use becomes actionable.

Names, photographs, likenesses, voices and signatures are familiar examples, but technology complicates the boundary. A deepfake may imitate a person's face and voice without copying a particular photograph or recording. An AI-generated avatar may reproduce distinctive gestures, speech patterns or a recognisable performance. A synthetic endorsement may be misleading even when it does not reproduce a registered trademark. The law must therefore distinguish the identity interest from the particular material through which identity is represented.

The problem can be illustrated through the relationship between copyright and personality. Copyright ordinarily protects original expression fixed in a qualifying work. It does not automatically confer on the depicted individual ownership of the photograph, nor does the photographer's copyright necessarily authorise every commercial use of the individual's likeness. Conversely, a person's objection to a synthetic depiction may concern the appropriation of identity even where no existing copyrighted work has been reproduced. Without a clear statutory vocabulary, pleadings and judgments may move between privacy, publicity, copyright and passing off without consistently explaining which interest is being protected.

In Titan Industries Ltd v Ramkumar Jewellers[8], the Delhi High Court considered the unauthorised use of a celebrity couple's image in jewellery advertising. The dispute demonstrates the connection between personal identity, commercial endorsement and the impression that an individual has approved a product. D.M. Entertainment similarly shows[9] the utility of passing off where a commercial product appropriates the identity of a well-known performer. These decisions have helped develop protection, but case-specific outcomes do not settle the general definition or all the elements of a personality-rights claim.

Anil Kapoor v Simply Life India illustrates[10] the expanded range of attributes at issue in digital environments. The Delhi High Court's interim order addressed unauthorised uses of the actor's

[8]Titan Industries Ltd v Ramkumar Jewellers 2012 (50) PTC 486 (Del).
[9]D.M. Entertainment Pvt Ltd v Baby Gift House (n 6).
[10]Anil Kapoor v Simply Life India (n 3).

name, image, likeness, voice and other aspects of his persona, including certain AI-enabled manipulations, deepfakes and commercial exploitation. The order is significant because it recognises that identity misuse can occur through technologies that were not central to earlier publicity disputes. It remains, however, a judicial order in a particular proceeding, not a generally applicable legislative code defining the rights of every person.

A definition should not be so narrow that it becomes obsolete whenever a new technology appears. Nor should it be so broad that it grants a monopoly over ordinary characteristics, ideas, styles or public information. The appropriate test should focus on whether the use identifies or evokes a particular person with sufficient recognisability, whether a legally protected interest is implicated, and whether the context supplies a legitimate justification. Identifiability may arise from a single attribute or from a combination of features; a person need not always be named expressly for their identity to be appropriated.

The lack of definition also complicates the distinction between dignitary and economic injury. A false AI-generated political statement may harm dignity, reputation and autonomy without involving commercial gain. A fabricated advertisement may primarily exploit commercial goodwill. A satirical impersonation may use the same attributes but be protected expression. Treating all these situations as identical would produce overbroad liability. A statutory scheme should identify different interests and tailor the elements of each claim to the injury alleged.

Freedom of expression is central to that exercise[11]. Article 19(1)(a) protects expression, subject to the constitutionally permitted restrictions in Article 19(2). A broad personality right could be used to restrain biography, journalism, criticism, parody, political commentary, documentaries or artistic works merely because they refer to a recognisable person. Public figures must not be able to suppress legitimate discussion by invoking control over identity as an absolute entitlement. At the same time, free expression should not become a blanket defence for false commercial endorsements or malicious impersonation.

A statute should accordingly identify protected attributes, provide a functional definition of unauthorised commercial appropriation, and separately address uses that cause demonstrable dignitary or reputational injury. It should also provide explicit exceptions for news reporting, public-interest communication, historical and biographical works, commentary, satire and

[11]Constitution of India, arts 19(1)(a), 19(2) and 21.

other legitimate expression. The purpose is not to require consent for every depiction or mention, but to distinguish exploitative or harmful use from socially valuable communication.

The present framework thus suffers less from total legal silence than from conceptual fragmentation. Courts have developed useful principles, but their application depends on the doctrinal route chosen, the facts pleaded and the remedy sought. A statutory definition, supported by carefully drafted elements and exceptions, would improve predictability for individuals, creators, publishers, platforms and commercial users alike.

3.2 Uncertainty Regarding Descendibility and Post-Mortem Rights

A second major difficulty is whether personality rights survive the death of the individual and, if so, whether legal heirs or an estate may enforce them. The issue cannot be resolved by assuming that every interest associated with identity is property. Privacy, dignity, reputation, contractual rights and commercial value have different legal characteristics. Some are inherently personal; others may be embodied in transferable contracts, copyright, trademarks or other property interests.

The distinction is particularly important because the death of a person does not extinguish every legal interest connected with them. Copyright may continue for a statutory period after the author's death, and registered trademarks or contractual rights may form part of an estate, subject to the relevant legislation and legal requirements. But these examples do not establish that a general personality right automatically survives. The question is whether the particular interest asserted is personal, proprietary, statutory, contractual or independently held by the claimant.

In Krishna Kishore Singh v Sarla A Saraogi[12], the Delhi High Court considered a claim by the father of the late actor Sushant Singh Rajput in relation to a proposed film. The dispute raised questions about whether privacy and personality interests could be enforced by a legal heir after death. The decision is commonly discussed as authority against treating the deceased's personal privacy as an inheritable right in the manner asserted. It also highlights the importance

[12]Krishna Kishore Singh v Sarla A Saraogi, CS(COMM) 187/2021, judgment dated 10 June 2021 (Delhi High Court).

of distinguishing a claim to control a deceased person's representation from a claim based on the claimant's own rights.

The Madras High Court considered the issue in Deepa Jayakumar v A.L. Vijay[13], concerning a proposed biographical web series about former Tamil Nadu Chief Minister J. Jayalalithaa. The Court held that the privacy, reputation and personality interests relied upon did not survive death as inheritable rights in the manner claimed. It reasoned that a person's reputation and privacy cannot simply be inherited like movable or immovable property. The decision strongly illustrates the judicial reluctance to recognise a general posthumous privacy right enforceable by relatives.

These decisions provide important guidance, but they should not be read as resolving every issue involving post-mortem commercial identity. A claim to enforce a deceased person's personal privacy is different from enforcement of a valid licence, copyright, registered trademark, contractual entitlement or a right expressly conferred by legislation. A family member may also have an independent cause of action if a publication invades their own privacy or makes actionable statements about them. The legal basis of the claim must therefore be identified rather than presumed.

The statutory position remains incomplete. Section 306 of the Indian Succession Act, 1925[14] provides rules concerning the survival of certain causes of action, subject to specified exceptions. It does not create a dedicated regime for post-mortem personality rights, prescribe their duration, or establish a procedure by which heirs may license a deceased person's identity. Copyright and trademark statutes protect their respective subject matter[15] and may allow rights to continue or pass to successors, but neither necessarily answers whether identity itself is descendible.

This uncertainty has practical consequences. A deceased performer's voice or likeness may be used to advertise a product, create digital merchandise, or generate a synthetic performance. Heirs may claim that the use exploits the deceased's commercial reputation; a producer may argue that the work is a biography or a legitimate artistic representation. Without clear statutory rules, parties cannot reliably determine whether consent is required, who is entitled to grant it,

[13]Deepa Jayakumar v A.L. Vijay, O.S.A. No 75 of 2020, judgment dated 12 December 2019 (Madras High Court).
[14]Indian Succession Act 1925, s 306.
[15]Copyright Act 1957; Trade Marks Act 1999.

what duration applies, or whether the use is actionable at all. The result may be inconsistent litigation and excessive reliance on interim injunctions.

There are also strong reasons not to grant perpetual or unrestricted control to heirs. A person's historical significance often makes their identity relevant to public discussion long after death. Biographies, films, documentaries, scholarship, satire and political commentary may contribute to public understanding. If heirs could prevent any unapproved representation, the law could give private individuals extensive control over historical narratives and creative expression. The commercial value of a famous identity should not automatically outweigh public interest or artistic freedom.

A more defensible approach would distinguish personal privacy from narrowly defined post-mortem commercial interests. Privacy as an aspect of the deceased individual's own autonomy ordinarily cannot be exercised by heirs as though the individual remained alive. However, legislation could choose to protect certain commercial identity interests for a limited period, subject to conditions. Such protection should be a deliberate statutory choice, not an assumed consequence of inheritance.

If Parliament adopts limited post-mortem protection, the statute should identify the qualifying interests, duration, authorised representatives, transfer rules and permissible uses. It should also address whether the deceased must have commercially exploited their identity during life, whether written directions can control posthumous use, and how competing claims among heirs are resolved. A clear priority rule could prevent multiple relatives from issuing inconsistent licences or pursuing overlapping claims.

The statute should provide exceptions for reporting, historical documentation, biography, scholarship, parody, satire and other legitimate expression. It should also distinguish commercial exploitation from mere reference. A documentary that accurately identifies a historical figure should not be treated in the same manner as an advertisement that falsely implies the figure endorsed a product. A synthetic performance created for entertainment may require a more contextual analysis than a fabricated statement presented as authentic.

Finally, any post-mortem regime should avoid conflating protection of the deceased's commercial identity with the living relatives' own interests. A relative should be able to protect their own privacy or pursue a claim independently available under law, but kinship alone

should not automatically confer ownership of every aspect of the deceased's persona. Legislative clarity would protect legitimate estate interests while preventing the creation of an unlimited hereditary veto over speech and culture.

4. Towards a Coherent Legislative Framework

The deficiencies identified above call for a dedicated statutory framework that clarifies the nature and scope of personality rights without creating an absolute property right in identity. First, legislation should define the protected interest in functional terms and identify illustrative attributes, including name, image, likeness, voice, signature and other characteristics that identify an individual. The list should be technologically neutral so that protection can respond to synthetic media and future forms of representation.

Secondly, the statute should distinguish personal and dignitary interests from commercial publicity interests. The elements of a claim should reflect the interest asserted: unauthorised commercial appropriation, false endorsement, harmful impersonation and intrusion into private life are not identical wrongs. Such differentiation would prevent the law from relying on a single broad label to resolve disputes that raise different questions.

Thirdly, the law should clarify the relationship with existing intellectual property rights. Copyright in a photograph or recording should remain distinct from the depicted person's identity interest; trademark rights should not be treated as a substitute for a general personality right; and passing off should remain available where its established elements are met. Clear coordination rules would reduce doctrinal overlap and avoid duplicate recovery for the same injury.

Fourthly, the legislation should address post-mortem interests expressly. Parliament should decide whether a limited commercial right survives death, define its duration, identify the persons entitled to enforce it and establish rules for licensing and disputes among heirs. Personal privacy should not automatically be inherited, and commercial protection should not be perpetual by default. Any statutory right should be balanced by clear exceptions for public interest and expression.

Fifthly, remedies should be proportionate. Courts should be able to grant injunctions where necessary, but orders should identify the impugned use and avoid unnecessarily broad

restrictions on lawful speech. Damages, corrective notices and targeted directions may be appropriate depending on the nature of the infringement. For digital platforms, procedural safeguards should allow prompt action against manifestly unlawful impersonation while preserving a meaningful opportunity to contest mistaken or overbroad requests.

Comparative experience may inform reform, but foreign models should not be imported mechanically. Jurisdictions differ in their treatment of publicity rights, inheritance, constitutional speech and commercial identity. India's framework must be designed around its own constitutional protections[16], existing statutes and jurisprudence. The goal should be coherence, not the wholesale adoption of a proprietary model that treats every attribute of identity as an asset.

5. Conclusion

Personality rights in India have developed through judicial decisions and overlapping legal doctrines rather than a comprehensive legislative framework. This development has provided meaningful protection in individual disputes, but it has not settled the full scope of protected identity or the legal consequences of death. The absence of a statutory definition leaves uncertainty about which attributes are protected, when use is actionable and how identity interests interact with copyright, trademarks, passing off and freedom of expression. The uncertainty surrounding descendibility and post-mortem rights creates further difficulty for heirs, estates, creators and commercial users.

The decisions in ICC Development, D.M. Entertainment, Titan Industries, Krishna Kishore Singh, Deepa Jayakumar and Anil Kapoor demonstrate both the capacity of courts to respond to changing forms of identity exploitation and the limits of case-by-case development. They should not be read as establishing an unlimited right to control every reference to an individual. Nor does the absence of a dedicated statute mean that no legal remedies exist. Rather, the current framework is fragmented and does not comprehensively resolve the questions addressed in this paper.

Legislative reform should define protected identity interests, distinguish personal autonomy from commercial publicity, coordinate personality claims with existing intellectual property

[16]Constitution of India, arts 19(1)(a), 19(2) and 21.

doctrines, and specify whether and how limited post-mortem commercial interests may survive. It should also preserve space for journalism, biography, historical inquiry, parody, satire and other legitimate expression. A principled regime would protect individuals against deceptive or exploitative appropriation without allowing identity rights to become a private veto over public discourse.

The central task is therefore to move beyond judicial recognition towards legislative clarity. A coherent framework would improve predictability, reduce doctrinal confusion and ensure that protection remains effective as digital technologies transform the ways in which identity can be copied, simulated and commercialised.