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Beyond Trademark: The Case for Statutory Recognition of Personality Rights in India

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ABSTRACT

Indian courts have been protecting the commercial and dignitary interests that a person holds in his own identity for more than two decades, from ICC Development (International) Ltd. v. Arvee Enterprises through D.M. Entertainment Pvt. Ltd. v. Baby Gift House to the recent line of injunctions granted in favour of well-known performers, yet the legislature has said nothing. This article argues that the borrowed protection currently available under trade mark law is structurally inadequate, because the object of a trade mark is to indicate commercial origin rather than to control the use of a persona, because registration presupposes a trade connection and a graphically representable sign, because the definition of "mark" in Section 2(1)(m) of the Trade Marks Act, 1999 omits voice, image and likeness, and because liability turns on a likelihood of consumer confusion that will be absent in most cases of persona misuse. It situates that argument against two recent developments, the acceptance of India's first olfactory mark by the Trade Marks Registry and Denmark's proposed amendment to its Copyright Act conferring a likeness right on every individual, and against the constitutional recognition of privacy in R. Rajagopal v. State of Tamil Nadu and Justice K.S. Puttaswamy (Retd.) v. Union of India, which supplies both the foundation of the right and its limits. It concludes that statutory recognition is now required, whether by amendment of the existing intellectual property statutes or by a standalone enactment, and that any such measure must define the protectable attributes, address AI-generated content, and preserve adequate space for satire, journalism and comment on matters of public record.

Keywords: *personality rights, right of publicity, Trade Marks Act 1999, right to privacy, Article 21, deepfakes, artificial intelligence, statutory recognition*

I. INTRODUCTION

Claims arising from the misappropriation of personality are not a recent phenomenon in Indian courts. The right of publicity was first considered by the Delhi High Court in *ICC Development (International) Ltd. v. Arvee Enterprises*,¹ where the Court held that the right evolves from the

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¹ *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 SCC OnLine Del 2 : (2003) 26 PTC 245 (Del.) (India).

right of privacy and can therefore vest only in an individual human being, and not in a corporate organiser of an event. The commercial dimension of the right was addressed squarely in *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*,² decided by the same Court in 2010, where dolls imitating the likeness of the singer Daler Mehndi, and capable of singing a few lines of his compositions, were imported and sold without authorisation. In the absence of any dedicated statute, the Court fashioned relief out of the vocabulary of trade mark law, granting an injunction on the footing of passing off and false endorsement. The protection of personality rights has developed steadily since, and it has now reached a point at which the question requires proper attention from the legislature, because the existing intellectual property regime has proved inadequate to deal with cases of personality rights violation.

II. RECENT DEVELOPMENTS AT HOME AND ABROAD

A notable development has recently occurred in Indian trade mark practice. In November 2025 the Trade Marks Registry accepted for advertisement, and thereby exposed to opposition, an application by Sumitomo Rubber Industries Ltd. for a floral fragrance reminiscent of roses as applied to tyres. It is the first olfactory mark in India to clear examination.³

These changes are not confined to trade mark law. The intellectual property field has seen developments at the international level as well, the most striking of which is Denmark's proposed amendment to its Copyright Act, announced in 2025. The amendment would confer on every individual, and not merely on public figures, a right over the reproduction of his own likeness, facial features and voice.⁴ It is directed at realistic digitally generated imitations of personal characteristics, and at imitations of the performances of performing artists, and it is intended to place the enforcement of personality rights on a firm statutory footing. It has been widely described as the first attempt anywhere to address deepfakes through copyright law. At the time of writing, however, the bill had not received final adoption by the Folketing, and it is therefore a proposal rather than a settled model.⁵ The Danish initiative has nonetheless drawn attention to the question of personality rights at the global level, and it may serve as an indicator

² *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*, 2010 SCC OnLine Del 4790 (India).

³ *In re Application of Sumitomo Rubber Industries Ltd.*, Trade Mark Application No. 5860303 (Trade Marks Registry, India, Nov. 21, 2025) (order accepting the mark for advertisement); see also *Decoding India's First Accepted Smell Trademark: 'Rose-Fragranced Tyres'*, THE LEAFLET (Nov. 27, 2025), <https://theleaflet.in/digital-rights/law-and-technology/decoding-indias-first-accepted-smell-trademark-rose-fragranced-tyres>.

⁴ *Personal Identity Meets Copyright: Denmark Moves to Regulate Deepfakes in the Copyright Act*, PLESNER (July 2025), <https://plesner.com/en/news/personal-identity-meets-copyright-denmark-moves-regulate-deepfakes-copyright-act>.

⁵ The bill was unveiled on June 26, 2025 and, at the time of writing, had not received final adoption by the Danish Parliament. See Sofie Axelsson, *Owning the Self: Denmark's Copyright Turn Against Deepfakes*, SCHJØDT (Sept. 3, 2025), <https://schjodt.com/news/owning-the-self-denmarks-copyright-turn-against-deepfakes>.

for India, where violations have multiplied along with the use of artificial intelligence and deepfakes to commercialise the attributes of a person.

The acceptance of the smell mark reflects a willingness on the part of the Registry to broaden the scope of protection available under the Indian intellectual property statutes. The Registry approached the application filed by Sumitomo Rubber Industries Ltd. constructively rather than restrictively. Instead of treating the requirement in Section 2(1)(zb) of the Trade Marks Act, 1999 that a mark be capable of graphical representation as an absolute bar to olfactory marks, it accepted that a scientific characterisation of the scent, presented as a seven-dimensional olfactory vector and supported by chromatographic and spectrometric analysis, satisfied that requirement.⁶ The order signals that the Registry is alive to developments in the field and is prepared to read the statute in a manner that accommodates non-conventional marks.

III. THE INADEQUACY OF TRADE MARK LAW

Within the existing intellectual property regime, the branch most commonly invoked to regulate personality rights is trade mark law, since both trade marks and personality rights supply a legal framework for the commercial exploitation of identity. Protection through trade mark is nevertheless inadequate, and for five distinct reasons.

The first, and the most significant, is the difference in the scope of protection. A trade mark is granted in order to indicate the origin and the quality of goods or services. The object of personality rights is quite different, being the control of the use of the persona itself. The subject matter that trade mark law sets out to protect is therefore not the subject matter with which personality rights are concerned, and the fit between the two is imperfect from the outset.

The second is that protection through trade mark is available only where the person holds a registered mark, and registration is possible only where the sign is distinctive, in the sense that it identifies and distinguishes particular goods as emanating from one undertaking rather than another. The element of distinctiveness is easily satisfied in the case of personality, since every individual possesses some measure of uniqueness. The difficulty lies in the second element, namely the requirement that the sign be used in relation to specified goods or services in order to indicate their commercial origin. In many cases it is simply impossible to find a trade relation to which the personality can be attached. Even where registration is otherwise available, the Registry may decline to allow it across a range of classes in which the applicant has no intention

⁶ Trade Marks Act, No. 47 of 1999, § 2(1)(zb), INDIA CODE (1999); *In re Application of Sumitomo Rubber Industries Ltd.*, *supra* note 3.

to use the mark. The consequence is that only a person who has some form of trade relation may raise a claim at all, and even that person may not register across a wide range of categories.

The third is the requirement that the sign be capable of graphical representation. This creates a practical difficulty, because the voice of an individual cannot readily be registered. Only limited aspects of a personality are therefore capable of protection under trade mark law.

The third difficulty leads directly into the fourth. Section 2(1)(m) of the Trade Marks Act, 1999 defines a "mark" to include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, the shape of goods, packaging or a combination of colours, or any combination of these.⁷ Other attributes of personality, such as voice, image and likeness, find no mention. Only a limited set of personal attributes can accordingly be registered under the Act.

The fifth is that trade mark protection is, in an important sense, an instrument of consumer protection rather than of personal protection. A proprietor's mark is protected only where a rival's use of the same or a similar mark is likely to cause confusion among consumers, which shows that the principal concern of the Act lies with the consumer. Liability therefore turns on the likelihood of confusion as to source, or as to connection by endorsement or sponsorship. That confines the protection of personality to the narrow class of cases in which confusion as to the source of goods is likely to arise, and leaves everything outside that class unprotected.

IV. THE CONSTITUTIONAL DIMENSION AND ITS LIMITS

The Supreme Court has also drawn attention to the other side of the argument for protecting personality. In *R. Rajagopal v. State of Tamil Nadu*,⁸ the Court held that the privacy of a citizen is protected under the Constitution as an aspect of the right to life and personal liberty, but in the same judgment it identified the exceptions attaching to that general rule. Chief among them is that matters forming part of the public record may be published or commented upon, and that a person who voluntarily thrusts himself into public controversy cannot claim the same measure of protection. The contours of the right therefore remain unsettled. Many aspects of a celebrity's persona already lie in the public domain, and the use of publicly available material, particularly in contexts that are neither obscene, misleading nor defamatory, could in principle fall within the bounds of lawful use.

The right to privacy recognised in *R. Rajagopal*⁹ as implicit in Article 21 was placed beyond doubt by the nine-Judge Bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India*,¹⁰ which

⁷ Trade Marks Act, No. 47 of 1999, § 2(1)(m), INDIA CODE (1999).

⁸ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India).

⁹ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India).

¹⁰ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

held that privacy is a fundamental right guaranteed by Article 21 and by Part III of the Constitution as a whole. Its scope has since been broadened by successive judicial interpretation of what the right covers. Article 21, which guarantees the right to life and personal liberty,¹¹ has gained fresh significance in a world in which the judiciary has affirmed privacy as a right belonging to every person. The courts have also drawn a link between privacy and personality rights, treating the public use of a person's name, voice or persona for commercial gain and without consent as an invasion of that person's privacy. These interpretations, developed over three decades, show the growing need for attention to violations of publicity rights.

V. THE CASE FOR STATUTORY RECOGNITION

Given the growing number of suits filed by celebrities for the protection of their personality rights,¹² the time has come for the Indian legislature to give those rights statutory recognition. This may be done either through targeted amendments to the existing intellectual property statutes, in particular by broadening the definition of "mark" in Section 2(1)(m) of the Trade Marks Act, 1999¹³ to include voice, image and likeness, or by enacting a standalone provision that comprehensively covers every aspect of personality rights protection, including its posthumous and commercial dimensions.

Such a legislation would need to define the scope of the protectable attributes and to provide robust civil and criminal remedies. It would also need to address the threat posed by AI-generated content and deepfakes. The regulatory response so far has come from outside the intellectual property statutes. The amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which came into force in February 2026, define synthetically generated information and impose labelling, provenance and expedited takedown obligations on intermediaries.¹⁴ Those rules regulate the circulation of synthetic content, but they do not confer on the individual any right in his own persona that he can assert and license, and the intellectual property regime remains unequipped to supply one.

At the same time, the legislature must keep the freedom of speech and expression in mind and carve out appropriate exceptions for satire, journalism and public interest use, drawing guidance

¹¹ INDIA CONST. art. 21.

¹² See, e.g., *Amitabh Bachchan v. Rajat Nagi*, CS(COMM) 819/2022 (Del. H.C. Nov. 25, 2022) (India); *Anil Kapoor v. Simply Life India*, CS(COMM) 652/2023 (Del. H.C. Sept. 20, 2023) (India); *Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store*, CS(COMM) 389/2024 (Del. H.C. May 15, 2024) (India); *Arijit Singh v. Codible Ventures LLP*, COM IPR Suit (L) No. 23443 of 2024 (Bom. H.C. July 26, 2024) (India).

¹³ Trade Marks Act, No. 47 of 1999, § 2(1)(m), INDIA CODE (1999).

¹⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 (India) (in force Feb. 20, 2026), amending the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

from the ruling in *R. Rajagopal*¹⁵ and from the constitutional recognition of privacy as a fundamental right in *Puttaswamy*.¹⁶ The legislature would further benefit from commissioning an empirical study of the practical dimensions of personality rights violations in India before settling on a legislative framework, and from the lessons of Denmark's proposed copyright amendment,¹⁷ which would extend statutory personality rights protection to every individual and not merely to public figures.

VI. CONCLUSION

India has laid the jurisprudential groundwork through three decades of judicial interpretation, from *ICC Development* and *D.M. Entertainment* to the recent line of injunctions protecting the names, voices and likenesses of well-known individuals against unauthorised and increasingly synthetic exploitation. What remains is the legislative step. Until it is taken, the right of a person to his own identity will continue to depend on the uncertain mercy of an intellectual property regime that was never designed to protect it.

¹⁵ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India).

¹⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

¹⁷ *Personal Identity Meets Copyright: Denmark Moves to Regulate Deepfakes in the Copyright Act*, *supra* note 4.