

Personality Rights and the Doctrinal Confusion of Categories: Reassessing the Copyright, Trademark and Privacy Overlap in Indian Law after the 2026 Interim Orders

Mona Mishra¹, Aadya Chauhan²

^{1,2}BA LLB (Hons.) 5th Year, Siksha 'O' Anusandhan University

Abstract

Indian courts have granted increasingly assertive relief against the digital misuse of celebrity identity, from injunctions restraining deepfakes to takedown directions against artificial intelligence chatbot platforms. This paper argues that a recurring feature of these 2026 orders, most visibly the Delhi High Court's interim order in *Allu Arjun v. Frankly Retail Pvt. Ltd.*¹, is the treatment of personality attributes as constituting the plaintiff's copyright, a characterisation that cannot be reconciled with the closed categories of protectable work under Section 13 of the Copyright Act, 1957. This is not a stylistic slip. It marks a real shift away from earlier decisions that layered privacy, passing off and trademark reasoning without triggering any one statute's defined consequences, toward an approach that expressly invokes copyright and thereby imports duration, assignability and infringement tests that were never designed for identity claims. Drawing on the existing case law, comparative statutory and judicial models from the United States and Germany, and the practical consequences of getting the label wrong, the paper argues that courts should confine identity relief to the passing off and privacy frameworks that already work well, reserving copyright language for cases that genuinely involve a copyrightable work, and that Parliament should consider a narrowly drawn statutory right of publicity modelled on the free expression carve outs already recognised in Indian passing off jurisprudence.

Keywords: Personality Rights, Passing off, Copyright Overlap, Right of Publicity, Deepfakes

I. Introduction

The idea that a well known person has some legal claim over the commercial use of their name, voice or likeness is no longer a peripheral concern confined to unauthorised merchandise disputes. Generative artificial intelligence tools that can clone a voice, morph a face, or simulate a public figure's manner of speech have turned what was once an occasional passing off dispute into a recurring emergency. Between

¹*Allu Arjun v. Frankly Retail Pvt. Ltd.* (Delhi High Court, interim order, 2026). The pinpoint paragraph reference (para 35) and the characterisation of the plaintiff's attributes as constituting his "copyrights" are drawn from secondary reporting rather than independent verification of the primary order. See "Evolving IP Or Judicial Overreach? India's Personality Rights Problem," LiveLaw, 19 May 2026. The primary order should be independently verified against the Delhi High Court record before citation in any submission.

January and April 2026 alone, Indian High Courts granted interim protection to a range of public figures, restraining unauthorised deepfakes, cloned voices and fabricated endorsements in each case.² This judicial responsiveness deserves credit. Courts have moved quickly to grant dynamic and John Doe style injunctions against defendants who are often anonymous, numerous and hard to identify, and they have done this without waiting for Parliament to legislate a dedicated statute.

The difficulty is not that courts are protecting too much. It is that the reasoning behind that protection has started to blur three legally separate frameworks into one another, and in at least one recent order, has done so in a way that expressly invokes a statute whose defined categories the claim simply does not fit. This paper examines that blurring, traces how it developed through the case law, and argues that the practical stakes of getting the label wrong are higher than they first appear, before proposing both a judicial and a legislative path toward resolution.

II. Three Distinct Sources Of Protection

Indian law did not begin with a single theory of personality rights. It developed three separate doctrinal routes that happened to arrive at similar practical outcomes on similar facts, without ever needing to merge into one another.

A. The constitutional and privacy route

In *R. Rajagopal v. State of T.N.*³, the Supreme Court placed an individual's control over their own biography and public narrative within the fundamental right to privacy under Article 21, describing it as an aspect of the right to be let alone, and holding that publishing private facts without consent is actionable regardless of truth, except where those facts already form part of the public record. The case concerned a prisoner's autobiography rather than commercial exploitation, but its recognition of a constitutionally grounded zone of personal control became the foundation later courts drew on when they extended protection to the commercial misuse of identity.

B. The passing off route

The Delhi High Court in *ICC Development (International) Ltd. v. Arvee Enterprises*⁴ carried this reasoning into the commercial sphere, holding that the right of publicity grows out of the right to privacy and belongs only to an individual, never to a corporation or an event, and that no one may monopolise a persona without that individual's association or consent. The Madras High Court's decision in *Shivaji Rao Gaikwad v. Varsha Productions*⁵ went further, holding that once a person becomes a celebrity, unauthorised use of their persona is actionable even without proof that the public would be confused, a deliberate loosening of a core element of the tort of passing off to fit the identity context. The Delhi High Court in *D.M. Entertainment (P) Ltd. v. Baby Gift House*⁶ applied the same passing off logic to protect a singer's persona and, notably, carved out an express exception for satire and parody, a limiting principle this paper returns to in Part VI. *Anil Kapoor v. Simply Life India & Ors.*⁷ extended the same passing off

²See “IP News Updates, January to April 2026,” The IP Matters, describing interim injunctions granted to various public figures in the first quarter of 2026 restraining AI driven impersonation and unauthorised commercial exploitation of name, voice and likeness.

³(1994) 6 SCC 632.

⁴2003 (26) PTC 245 (Del).

⁵2015 (62) PTC 351 (Mad).

⁶CS(OS) No. 893 of 2002, decided 29 April 2010 (Del).

⁷CS(COMM) 652/2023, order dated 20 September 2023; reported at 2023 LiveLaw (Del) 857.

and privacy based reasoning to voice, catchphrases and gestures, with the Court noting plainly that AI tools now let anyone imitate a celebrity's persona, and that such imitation touches the celebrity's dignity and right to livelihood, not just commercial confusion.

C. The trademark route

This route is narrower and applies only where a name or mark actually functions as a commercial source identifier. In *Arun Jaitley v. Network Solutions Private Limited*⁸, the Delhi High Court held that a sufficiently well known personal name can attain the distinctive character required of a trademark and is protectable as such in a domain name dispute, while separately preserving the plaintiff's personal right to sue for misuse of his own name independent of trademark registration. *Titan Industries Ltd. v. Ramkumar Jewellers*⁹ proceeded on similar footing, treating a celebrity's endorsement value as a form of source identification that a defendant had wrongfully appropriated.

What stands out across these three routes, taken together, is that each stayed doctrinally self contained. The privacy route did not need trademark reasoning to succeed. The passing off route sometimes borrowed the vocabulary of persona as property without triggering any specific statute's defined categories. The trademark route was invoked only where a source identifying function was genuinely in issue. The three frameworks ran in parallel, and were sometimes pleaded together, but until 2026 they had not collapsed into a single order that treated one statute's closed subject matter categories as satisfied by attributes the statute was never drafted to cover.

III. The 2026 Break: Allu Arjun And The Explicit Invocation Of Copyright

The Delhi High Court's interim order in *Allu Arjun v. Frankly Retail Pvt. Ltd.*¹⁰ breaks from the pattern described in Part II in a specific, traceable way. The order is reported to record that the plaintiff's unique and distinctive attributes, including his name, appearance, voice, manner of delivering dialogue, gestures, attire, speech and signature, are source identifiers exclusive to him, and to state that these attributes would constitute the plaintiff's copyrights, over which no one but the plaintiff would have exclusive rights of exploitation.

This formulation does two things at once that the earlier case law, whatever its own conceptual looseness, had not done. First, it borrows the vocabulary of source identification, a trademark concept concerned with distinguishing the origin of goods or services,¹¹ to support a conclusion about copyright ownership, a completely different statute governing an entirely different subject matter. Second, and more importantly, it names the resulting right as copyright, a term with a precise statutory meaning under Section 13 of the Copyright Act, 1957,¹² which limits protectable subject matter to defined categories: literary, dramatic, musical and artistic works, cinematograph films and sound recordings. A person's name, gait, gestures or manner of speech simply do not fall within any of these categories. They are not works in the sense the statute requires.

The only genuinely copyright adjacent hook available on these facts is Section 38B of the Copyright Act, which protects a performer's moral rights in a specific performance.¹³ Even this provision is far narrower

⁸2011 SCC OnLine Del 2660; also reported at 2011 (47) PTC 1 (Del).

⁹CS(OS) 2662/2011, decided 26 April 2012; reported at 2012 (50) PTC 486 (Del).

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¹¹Trade Marks Act, 1999, ss.2(1)(zb) and 29.

¹²Copyright Act, 1957, s.13.

¹³Copyright Act, 1957, s.38B.

than a general proprietary claim over persona as such. It attaches to an identifiable performance, a particular rendition, recording or live act, not to the performer's identity considered apart from any performance, and it protects against distortion or mutilation that would prejudice the performer's reputation, which is a different wrong from unauthorised commercial exploitation of a name or gait in the abstract. Treating the whole of a person's persona as copyright cannot be rescued by pointing to Section 38B. If anything, the gap between what that section actually covers and what the order appears to grant shows how far the reasoning has drifted from the statute's own structure.

A further layer of confusion compounds the difficulty. Commentary on the order has observed that its reasoning appears to conflate the plaintiff's personal identity with the popularity of a fictional character he portrayed on screen, treating audience affection for a performance as though it were equivalent to a proprietary interest in the performer's own, off screen identity.¹⁴ These are analytically distinct objects even within copyright's own terms. A fictional character's specific expression may, in principle, attract copyright protection as part of the cinematograph film or the underlying literary work in which it appears, but that protection belongs to the film's rights holders and is entirely different from, and does not extend to, the real person's own name, voice or gait considered apart from the role. Collapsing the two allows a claim that could at most be framed around a specific film's intellectual property to be redirected into a freestanding personal entitlement over the actor's identity itself, which is precisely the identity as copyright move this paper argues the statute cannot support. It is fair to ask whether this is simply careless drafting in an interim order granted urgently against anonymous digital infringers, and therefore not a considered legal position that deserves this much scrutiny. Three points answer that concern.

First, the language is not an isolated slip confined to one order. Within the same quarter, the Bombay High Court's order in *Shatrughan Prasad Sinha v. John Doe & Ors.*¹⁵ is reported to have reached for a similarly composite justification, invoking the tort of passing off, the performer's moral rights under Section 38B, the right to privacy under Article 21, and trademark reasoning drawn from *Arun Jaitley*, all within a single suit framed as a commercial intellectual property infringement action. The Delhi High Court's order in *Sonakshi Sinha v. Character Technologies Inc. & Ors.*¹⁶, reported to have been delivered in March 2026 against AI chatbot platforms and associated e commerce sellers, is said to have extended similarly composite reasoning to justify a takedown direction within thirty six hours of notice. Based on the available reporting, this pattern is not one court's isolated phrasing. It looks like a recurring judicial habit of reaching for whichever statutory label lends the most immediate proprietary force to an urgent injunction, without pausing to ask whether that label's own statutory conditions are actually satisfied.

Second, interim orders of this kind are, in practical terms, rarely revisited at a genuinely contested final hearing. Defendants in *John Doe* and dynamic injunction proceedings are often anonymous, untraceable,

¹⁴The observation that the order conflates the plaintiff's personal identity with the popularity of a fictional character he portrayed on screen is drawn from "Evolving IP Or Judicial Overreach? India's Personality Rights Problem," LiveLaw, 19 May 2026, and is attributed to that commentary rather than claimed as an original observation of this paper.

¹⁵*Shatrughan Prasad Sinha v. John Doe & Ors.* (Bombay High Court, interim order, first quarter of 2026), as reported in "Personality Rights At The Intersection Of Indian IP Law," Mondaq, 2026. The primary order has not been independently verified for this draft.

¹⁶*Sonakshi Sinha v. Character Technologies Inc. & Ors.* (Delhi High Court, order reported as delivered on or about 20 March 2026), as reported in "Personality Rights At The Intersection Of Indian IP Law," Mondaq, 2026. The primary order has not been independently verified for this draft.

or based outside the jurisdiction, so the interim order ends up functioning as the practical and final resolution of the dispute in the overwhelming majority of cases. Treating the reasoning in these orders as inconsequential because they are technically interlocutory ignores how these proceedings actually end. In most instances, there is no later stage where a more careful court corrects an imprecise label.

Third, even granting that some looseness is a reasonable cost of urgency, there is a real difference between courts using property adjacent language loosely, as *Titan Industries*¹⁷ and *Anil Kapoor* arguably did in describing publicity rights as a form of control over identity, and courts expressly triggering a named statute's defined categories. The earlier cases never invoked Section 13 specifically. *Allu Arjun* does. That difference, between loose proprietary vocabulary and the express activation of a closed statutory category, is where the real break lies, and it is why this order deserves closer doctrinal attention than a passing observation about imprecise language would suggest.

IV. Comparative Perspectives: Property In The United States, Dignity In Germany

Two contrasting comparative models show that identity protection can be achieved through either a property based or a dignity based route, and that neither route needs to borrow copyright's closed subject matter categories the way the 2026 Indian orders do.

A. The American property model

*Midler v. Ford Motor Co.*¹⁸ and *White v. Samsung Electronics America*¹⁹ developed the tort of appropriation of likeness as a discrete, freestanding state law property right, entirely separate from federal copyright, which continues to protect only original works of authorship. More recent legislative responses to AI cloning follow the same separation. Tennessee's ELVIS Act²⁰ was drafted specifically to address unauthorised AI cloning of voice, likeness, image and identity, while California's digital replica statutes²¹ regulate posthumous exploitation of a performer's likeness and voice. None of these instruments needed to dress identity protection in the language of copyright.

B. The German dignity model

Germany offers a structurally different but equally instructive alternative. Since the 1950s, German courts have recognised a general right of personality grounded directly in human dignity and free personal development under Articles 1 and 2 of the Basic Law, rather than in any property or intellectual property statute. In the *Marlene Dietrich* case,²² the Federal Court of Justice held that the non material, dignitary core of this right is inalienable and dies with the person, but that its financially valuable components, control over the commercial use of name, image and voice, descend to the deceased's heirs, who may enforce them independently. The German court reached this result entirely through the general personality right and ordinary tort law, without needing to treat a persona as a copyrighted work. The European Court of Human Rights' decision in *Von Hannover v. Germany*²³ reinforced this dignity based framing, holding

¹⁷Supra note 10.

¹⁸849 F.2d 460 (9th Cir. 1988).

¹⁹971 F.2d 1395 (9th Cir. 1992).

²⁰Tennessee's Ensuring Likeness, Voice, and Image Security Act, 2024 ("ELVIS Act").

²¹California AB 2602 (2024) and AB 1836 (2024), regulating digital replicas and posthumous exploitation of a performer's likeness and voice.

²²Bundesgerichtshof, judgment of 1 December 1999, I ZR 49/97, BGHZ 143, 214 ("Marlene Dietrich").

²³*Von Hannover v. Germany*, European Court of Human Rights, Application No. 59320/00, judgment of 24 June 2004.

that unauthorised publication of a public figure's private life photographs can itself violate the right to respect for private life, independent of any commercial or property analysis.

C. The comparative point

These two models sit at opposite ends of a spectrum, pure property in the United States and pure dignity in Germany, yet both manage the same AI era harms India's courts are now grappling with, and neither model has needed to reach into copyright's closed statutory categories to do so. This matters because it undercuts a plausible defence of the Indian approach: that the urgency and novelty of deepfake era harms left courts no cleaner doctrinal tool than copyright to reach for. India's own passing off and Article 21 privacy frameworks, already established through Rajagopal, ICC Development and Anil Kapoor, sit doctrinally closer to the German dignity model than to the American property model, which makes the 2026 turn toward copyright language in Allu Arjun even harder to justify as a necessary adaptation, since a structurally compatible dignity based alternative was already sitting in the case law, waiting to be used consistently.

V. Why The Label Matters: A Concrete Consequence

A sceptical reader might accept everything argued so far and still ask why any of this matters in practice, if the injunction granted would have been the same whichever framework justified it. The answer becomes concrete once duration, assignability and the applicable infringement test enter the picture.

A. Duration and inheritance

Copyright in India generally lasts for the life of the author plus sixty years,²⁴ and copyright is freely assignable as property, including by testamentary disposition, to heirs and licensees who can then enforce it in their own right. If a court's characterisation of a celebrity's name, voice and gestures as copyright is taken at face value in a later dispute, it would follow that a performer's estate could claim exclusive control over the deceased celebrity's persona for six decades after death, transferable and licensable like any other copyright asset. Passing off protects goodwill, which is tied to an ongoing business or reputation and does not survive the death of the individual in the same open ended proprietary form. Privacy under Article 21 is, on its own terms, a personal right rather than a freely assignable and inheritable property interest that lasts for a fixed statutory term. The copyright characterisation therefore does not simply relabel an outcome that would have been reached anyway. It brings in a specific, lengthy, freely transferable term of control that neither of the other two available frameworks would generate on their own terms.

B. A concrete hypothetical

Consider a documentary filmmaker or biographer who, some years after a well known actor's death, wants to use archival interview footage of the actor's voice and characteristic mannerisms to illustrate a critical retrospective of his career, without the estate's consent. Under a passing off framework, the estate would need to show ongoing commercial goodwill capable of being misappropriated, and would most likely face a strong parody, commentary or fair dealing style defence of the kind recognised in D.M. Entertainment²⁵. Under a privacy framework, the personal, non transferable character of Article 21 rights makes it doubtful the claim would even survive the actor's death in an assignable form. Under a copyright framework, by contrast, the estate would simply assert a subsisting proprietary right, current for decades, over the actor's voice and mannerisms as protected works, shifting the burden onto the documentary maker to establish a

²⁴Copyright Act, 1957, s.22 (term of copyright: the life of the author plus sixty years).

²⁵Supra note 7.

statutory defence built for literary and artistic works, such as fair dealing for criticism or review, rather than one built for identity based claims. The same set of facts produces three different starting points, and the copyright characterisation in Allu Arjun, if pushed to its logical conclusion, points toward the most expansive and longest lasting form of control among the three.

C. A mismatched infringement test

A further practical consequence concerns how infringement itself would be tested. Copyright infringement analysis conventionally asks whether a defendant has reproduced, or taken a substantial part of, a fixed, identifiable work. That test assumes a work with definite boundaries, a text, a film, a sound recording, against which a defendant's output can be compared. A persona has no such fixed boundary. A gait, a manner of speech or a general look are continuous, evolving attributes rather than discrete works capable of being substantially reproduced in the copyright sense. Applying a substantial reproduction test to these attributes either stretches the test until it loses its ordinary meaning, or quietly imports the misrepresentation based test proper to passing off while still using copyright's vocabulary. That produces exactly the doctrinal confusion this paper is concerned with, since a court applying the wrong test's own formal requirements, fixation, originality, substantiality, may reach an unpredictable result in a case that a passing off or privacy analysis would have resolved on clearer and more suitable footing.

D. Contamination of unrelated copyright doctrine

Finally, there is a systemic risk beyond the personality rights context itself. Orders of this kind are searchable, citable authority. A future litigant in an entirely unrelated copyright dispute, for instance over whether a database, a format, or a style of expression qualifies as a protectable work, could cite Allu Arjun for the idea that Section 13's categories are more elastic than their text suggests. A label chosen for the narrow purpose of granting fast interim relief in a deepfake case therefore carries a downstream risk of distorting the settled boundaries of copyright subject matter in disputes that have nothing to do with personality rights at all.

VI. Toward Resolution: Judicial Discipline And The Case For Codification

Two responses follow from this analysis, and they are not mutually exclusive:-

The first is a modest procedural discipline that Indian courts could adopt without waiting for legislation. It would be unrealistic to expect a judge granting urgent ex parte relief against anonymous digital infringers to pause and specify exactly which of three doctrinal frameworks supports which element of relief, since the whole point of John Doe and dynamic injunctions is their speed. But that concern applies with much less force at the confirmation or final hearing stage, once identified defendants have appeared and the matter proceeds to a contested hearing. At that later stage, courts could adopt a discipline modelled on the evidentiary checklist the Delhi High Court itself developed for standard essential patent litigation in *Bansal v. Philips*²⁶, where the court set out precisely what a plaintiff must establish and through what evidence before final relief follows. An equivalent checklist for personality rights claims, requiring the plaintiff to state at the confirmation stage whether relief is sought under passing off, under Article 21, under trademark law where a source identifying use is genuinely in issue, or under Section 38B where an

²⁶K.K. Bansal v. Koninklijke Philips Electronics N.V. (Delhi High Court, Division Bench judgment dated 18 May 2026), as reported in “Bansal v Philips: Delhi High Court Resets SEP Evidence Standards,” *Intepat*, 28 May 2026.

actual performance is being reproduced, would preserve the speed of interim relief while restoring analytical discipline at the point where the order's reasoning actually becomes durable.

The second response is legislative. A narrowly drawn statutory right of publicity, similar in spirit to the Tennessee ELVIS Act, would remove the incentive for courts to reach for whichever neighbouring intellectual property statute lends the most immediate proprietary weight to urgent relief. Such a statute would need to address the objection that has historically dogged publicity right legislation in the United States, namely its tendency to expand into a broad restriction on expressive uses, including biography, commentary, satire and news reporting. Indian courts already have a workable answer to this concern in the passing off context. The Delhi High Court's decision in *D.M. Entertainment Pvt. Ltd. v. Baby Gift House* recognised satire and caricature as non infringing uses even within a passing off based publicity claim. A codified Indian right of publicity could import this existing carve out directly, rather than trying to draft the expression exception from scratch, and would avoid at least one well documented failure of comparable American state legislation.

VII. Conclusion

Indian courts have shown real willingness to protect individuals against the commercial exploitation of their identity in an era of deepfakes and voice cloning, and that willingness should not be understated. What the courts have not yet shown is discipline about which legal framework justifies that protection and why. The Allu Arjun order, read alongside the Shatrughan Sinha and Sonakshi Sinha orders reported within the same quarter, reveals a pattern in which copyright, trademark and privacy reasoning are used interchangeably to reach a proprietary sounding conclusion, ending in an explicit characterisation of persona as copyright that the Copyright Act's own closed categories cannot support. The stakes of this imprecision are not merely academic, since the label chosen determines duration, assignability, the applicable infringement test, and how a claim is treated after the individual's death. Courts can correct course at the confirmation stage of these proceedings without giving up the speed that makes interim relief effective, and Parliament already has a workable model, present in India's own passing off jurisprudence, for codifying a right of publicity that protects identity without inheriting the expressive overreach that has troubled comparable statutes elsewhere.