
TABLOIDS TANGO WITH THE TOMBSTONED: A JURISPRUDENTIAL WALTZ THROUGH INDIA'S POSTHUMOUS MEDIA LANDSCAPE

Rhea Thakur, O.P. Jindal Global University (Jindal Global Law School)

Introduction

Does the right to dignity outlive an individual? Scattered judicial observations and judgements have addressed the issue, but the question remains largely unanswered, exposing a significant hiatus concerning the protection of personal legacy within India's media-related regulatory framework. This paper aims to examine the complex and often overlooked intersection between press freedom and posthumous personality rights. It highlights the ethical and legal tensions that arise when the media transgresses and engages with the deceased. While Section 228 (A) of the Indian Penal Code nominally offers protection to victims of sexual offenses, its limited scope and archaic framing renders it inadequate in addressing challenges posed by India's current media landscape, where lived experiences are amplified, monetized, and sensationalized. The lack of clear statutory safeguards facilitates commodification of grief and trauma, more often than not prioritizing profit and publicity. This study analyses how media outlets exploit structural gaps in the law by turning private tragedies into a public spectacle and how, despite the development of India's legal mechanisms over time, demonstrating a progressive orientation toward enabling economically disadvantaged groups to access justice, such protections remain insufficient in the present case. Socio-economic disparities compound injustice, essentially emphasizing that only those with significant resources can aspire to pursue such legal remedies. This analysis ultimately calls for a comprehensive legislative reform that extends posthumous privacy rights and codifies the principle that an individual's right to dignity does not end with death. It insists that constitutional guarantees of free speech and press freedom must be carefully balanced against human dignity and the respect owed to a person's memory, ensuring that rights are safeguarded even in the face of commercial pressures.

I. What Are Posthumous Personality Rights?

The concept of posthumous rights refers to the everlasting legal recognition and protection of

an individual's persona even after their death.^[1] The purpose of these rights encompass the protection of a deceased's name, likeness, image, voice and other distinctive personal attributes, preventing any unauthorized commercial exploitation.^{[2][3]} These rights safeguard the dignity, legacy and economic interests transferred to any heirs or estates.^{[4][5]} It recognizes one's personality as a form of intellectual property—not inheritable in nature—balancing public interest and the right to free expression along with that of families and estates.

⁶Prior to a more in-depth analysis, it is integral to understand that posthumous personality rights must be analytically distinguished from defamation and reputational claims, which traditionally extinguish upon death under Indian law. ⁷Unlike defamation, which is concerned with reputational injury, posthumous personality rights focus on unauthorized commercial and representational use of an individual's identity.

II. The Urgent Need For Posthumous Personality Rights In India

^{[8][9]}India's rapidly expanding digital media landscape heightens the risk of the aforementioned post-mortem exploitation. Hence, the absence of clear legal safeguards leaves the deceased's integrity susceptible to commercialization and monetization.^{[10][11]} This jurisprudential void not only compromises an individual's dignity, but also undermines the principal of constitutional morality that our society seeks to uphold.

III. Statutory Silences And Doctrinal Gaps

^{[12][13]}The current statutory provisions in India that recognize posthumous personality rights emerge in a fragmented manner covering constitutional guarantees [Art. 21—Right to privacy and dignity], tort law (defamation and privacy torts), contractual arrangements and licenses,

¹ J. Thomas McCarthy, *The Rights of Publicity and Privacy* § 9:17 (2d ed. 2023).

² *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 573–75 (1977).

³ Mark P. McKenna, *The Right of Publicity and Autonomous Self-Definition*, 67 U. Pitt. L. Rev. 225, 232–34 (2005).

⁴ *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953).

⁵ Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* 18–22 (2018).

⁶ Restatement (Third) of Unfair Competition § 46 (Am. L. Inst. 1995).

⁷ *N.S. Veerabhadraiah v. Aroon Purie*, 2002 SCC OnLine Kar 190.

⁸ Internet & Mobile Ass'n of India, *Digital in India Report* (2023).

⁹ Apar Gupta, *Digital Media Ethics and Regulation in India*, 15 NUJS L. Rev. 87 (2022).

¹⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, ¶ 121.

¹¹ Gautam Bhatia, *The Transformative Constitution* 89–94 (2019).

¹² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹³ Law Comm'n of India, Report No. 243, *Section 498A IPC* (2012) (discussion on privacy and dignity).

and limited case laws. Although, various courts have acknowledged the commercial value of personality in such cases, this piecemeal approach combined with the discernible absence of a coherent framework governing transfer, duration and enforcement, eventually results in leaving ordinary individuals particularly unaware of their rights. ^{[14][15]}Effective legal protections remain largely reserved for high-profile individuals or celebrities despite empowerment of marginalized communities and development in the legal system.

The constitutional foundation for recognizing posthumous personality rights can be traced back to Justice K.S. Puttaswamy v. Union of India, wherein the Supreme Court reaffirmed privacy as intrinsic to dignity, autonomy and personality under Art.21. While the judgement does not directly adjudicate post-death rights, ¹⁶Justice Kaul's concurring opinion acknowledges that privacy interests may survive death in certain cases. This assertion suggests that the absence of such rights reflects a regulatory vacuum rather than a limitation.

IV. Section 228(A) Of The IPC: An Incomplete Shield Of Privacy

^{[17][18]}Section 228(A) of the Indian Penal Code was introduced to safeguard the identities of victims of sexual offence cases, aiming to prevent secondary victimization and shield them from societal stigma. This law criminalizes the publication or dissemination of any information that could reveal the identity of such victims without their consent across all media platforms, instinctively reinforcing the principle of privacy and dignity.

Despite its principled intent, Section 228(A) suffers from significant limitations. This provision applies specifically to victims of a limited category of sexual offences. It prohibits identity disclosure and is permitted only through the victim's consent, a court order, or disclosures made during authorized investigations. Although exceptions are narrowly defined, violations are punishable with imprisonment of up to two years, a fine, or both.

^{[19][20]}Lenient penalties that fail to act as effective deterrents, widespread lack of awareness among victims, their families and general public regarding their rights under this provision,

¹⁴ Anil Kapoor v. Simply Life India, 2023 SCC OnLine Del 3913.

¹⁵ Lawrence Liang, *Personality Rights in India*, 3 Indian J.L. & Tech. 123 (2007).

¹⁶ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, ¶ 647 (Kaul, J., concurring).

¹⁷ Indian Penal Code, 1860, § 228A.

¹⁸ Law Comm'n of India, 84th Report, *Rape and Allied Offences* (1980).

¹⁹ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

²⁰ Vrinda Grover, *Sexual Violence and the Law in India*, 44 Econ. & Pol. Wkly. 65 (2009).

frequent misuse of disclosures allowed by the police or courts, and the media's routine justification grounded in transparency and public interest collectively contribute to the distortion of the law's application. As a consequence, it plagues complainants affected by other and equally important crimes, offering them little to no protection and repudiating their dignitary rights. Procedural delays and exploitation of loopholes by media organisations preaching "public interest" to justify coverage also arise as repercussions of these limitations.

However, due to its substandard execution, media continues to sensationalize the identities of victims beyond the limited category of sexual crimes, exposing them to unethical reporting. This disjointed protection contributes to a societal polarization, where only select victims benefit from legal safeguards, leaving others vulnerable to public scrutiny and harm. All of which is unequivocally contrary to protections provided under Section 228(A).

V. John Doe Orders: Scope And Constraints In Protecting Posthumous Rights

^{[21][22]}John Doe orders are a form of proactive interlocutory injunctions issued by courts to prevent the infringement of legal rights and restrain the publication, dissemination or commercial exploitation of protected personal information by unidentified or unknown parties. John Doe orders can be considered instrumental in protecting the identity of victims or deceased individuals from irreversible harm, especially in cases involving rapid and anonymous online leaks. These rights provide crucial interim protection while formal legal proceedings are underway.

Despite their potential, these orders are infrequently invoked in India in cases of posthumous rights or privacy violations. Their utility is hindered by several factors such as procedural hurdles, reactive nature and resource dependency. ^{[23][24]}Amitabh Bachchan, Anil Kapoor, Suniel Shetty, Jackie Shroff, Aishwarya Rai, Salman Khan, Hrithik Roshan, Karan Johar, R. Madhavan, Ajay Devgn, Sunil Gavaskar, and Junior NTR are few such celebrities who have opted for John Doe orders.

Raj Shamani—a prominent Indian podcaster, entrepreneur, and content creator—approached the Delhi High Court seeking urgent legal protection over the unauthorized misuse of his name,

²¹ Taj Television Ltd. v. Rajan Mandal, 2003 SCC OnLine Del 861.

²² Nandan Kamath, *John Doe Orders in India*, 25 Nat'l L. Sch. India Rev. 1 (2013).

²³ Amitabh Bachchan v. Unknown Defendants, 2022 SCC OnLine Del 4110.

²⁴ Anil Kapoor v. Simply Life India, 2023 SCC OnLine Del 3913.

image, voice, likeness, and persona. A single judge bench of said High Court granted him interim legal protection by issuing injunctions and orders, under the pretext that he was a prominent figure in the public domain. This judgement played a role in substantiating the proposition that limited legal protection is available to common people.

Additionally, entrenched economic disparities coupled with widespread lack of legal awareness renders John Doe orders largely inaccessible as an alternative. The costs associated with urgent litigation, sustained enforcement, and legal representation make this remedy commercially and practically unviable for most individuals and families.

Overall, while John Doe orders provide a limited mechanism for addressing identity-related harms, they function more as a temporary patch than a sustainable solution—failing to fill the broader systemic gaps in India's protection of posthumous rights.

VI. Media's Evasion Of Legal Accountability: When Freedom Becomes Impunity

India's inability to protect posthumous dignity does not arise from absence of constitutional values. It occurs from the lack of enforceable mechanisms capable of restraining media excesses. While press freedom remains foundational to democratic discourse, the media's frequent invocation of right to freedom of speech and expression as a blanket justification for intrusive and often unethical reporting practices has enabled systematic intrusions into private grief and posthumous identity.

In practice, public interest has evolved from a core tenet into a rhetorical shield, enforced to legitimise disclosures that primarily serve commercial visibility rather than democratic necessity. ^{[25][26]} The Press Council of India's advisory norms, devoid of legal teeth, coercive force and limited in capacity, function more as aspirational ethics and advisory bodies than as regulatory watchdogs.

In digital ecosystems, reputational and dignitary harm is not merely amplified, it is irreversible. Once disseminated, identity-revealing content cannot be meaningfully retracted, rendering ex post facto remedies largely symbolic. In the absence of legislative clarity, courts compelled to intervene, often hesitate in imposing stringent penalties or restrictions, over concerns of stifling

²⁵ Press Council of India Act, 1978.

²⁶ Uday Shankar, *Media Regulation in India*, 6 NUJS L. Rev. 45 (2013).

press freedom.

VII. Notable Indian Judgements On Posthumous Rights And Media Overreach

Even though Indian courts have intermittently acknowledged the moral and dignitary dimensions of posthumous harm, it has also emphasized that publicity or personality rights attach only to living individuals, consistently dismissing any translation or recognition into enforceable legal rights, as noted earlier. This judicial position neither reflects a complete rejection of posthumous personality rights nor does it permit an unequivocal endorsement of unchecked press freedom. Rather, it reveals a sustained institutional hesitation rooted in the absence of legislative guidance.

²⁷In *ICC Development (International) Ltd. v. Arvee Enterprises*, the Delhi High Court theorised that commercial publicity rights do not extend to companies or events, emphasizing its inherently personal nature. This reasoning was reaffirmed in *DM Entertainment Pvt. Ltd. v. Baby Gift House*, stating that a celebrities name and likeness have real commercial value and serve as source-identifiers. These rulings underscore that a person's identity can be treated as a quasi-property right, protecting the economic value of their persona. Despite the fact that both decisions recognised the economic value of personality while firmly limiting its enforceability to the lifetime of the individual, it offers no indication that such protection could survive death.

²⁸In *Rajagopal v. State of Tamil Nadu*, the Supreme Court similarly affirmed the right to privacy, while also firmly stating that its protection ordinarily does not extend posthumously, particularly where publication concerns matters of public record. Although the judgement is frequently cited to defend press freedom, its treatment of post-death privacy remains tentative, rather than conclusive, leaving the doctrinal question unresolved. The constitutional repositioning of privacy under Art.21 in *Justice K.S. Puttaswamy v. Union of India* reopened this unresolved space. By grounding privacy in dignity, autonomy and personality, the Supreme Court articulated a conception of privacy that is not strictly temporal. Justice Kaul's concurring opinion explicitly acknowledged that privacy interests may survive death in limited contexts, particularly where disclosure implicates or adversely affects surviving family members. While

²⁷ *ICC Dev. (Int'l) Ltd. v. Arvee Enters.*, 2003 SCC OnLine Del 246.

²⁸ *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632.

not binding, this observation signals that the absence of posthumous protection is a matter of legislative omission rather than constitutional prohibition.

Courts have consistently dismissed heir's attempts to enforce personal rights of the deceased.

²⁹In the case *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*—a suit filed by the father of late actor Sushant Singh Rajput—the court held that privacy, publicity and personality rights are not inheritable. The judges further elaborated that such rights “ceased to exist” post the late actor's death. They noted that no legal right was violated by the director's take on the biopic, and that granting any injunction would impose a disproportionate curb on artistic freedom.

³⁰Similarly, in *Deepa Jayakumar v. A.L. Vijay & Ors.*, the division bench ruled that the right to privacy and reputation extinguished with a person's death, and cannot be asserted by heirs. The court emphasized reputational interests cannot be inherited or considered the same as “property”. Hence, civil claims for defamation or privacy automatically abate on extinction, leaving only criminal defamation—a public-order offence—still theoretically available.

Likewise, in *N.S. Veerabhadraiah v. Aroon Purie & Ors.*, the court dismissed a damage suit post-death on the basis that defamation cause of action does not survive the plaintiff's death and therefore, abates.

To synopsise, these cases illustrate a uniform theme—Indian courts recognize the harm of unauthorized use of an individual's identity but overlooks it as a justiciable right. In practice, this clears the way for filmmakers and the media to draw inspiration on published facts of a life story, without an independent posthumous watch-dog to prevent or block wrongful portrayal. Concerns of impinging on free speech and creative freedom have resulted in judges evading accountability and delegating the final decision of any post-death protection warranty to the legislature. The net effect? Posthumous rights, customarily, remain unenforceable in India.

VIII. A Comparative Analysis: USA, Germany, Canada, And France

The principle difference between India and other countries recognising posthumous personality rights is it's binding nature and enforceability. Countries like the U.S., France, Canada, and

²⁹ *Krishna Kishore Singh v. Sarla A. Saraogi*, 2021 SCC OnLine Del 3780.

³⁰ *Deepa Jayakumar v. A.L. Vijay*, 2021 SCC OnLine Mad 2840.

Germany utilize an elaborate set of laws to control post-mortem exploitation of an individual's identity, whereas India relies on fragmented statutes and limited case laws.

[31][32]The U.S. treats posthumous personality rights and publicity as an inheritable property right. Many states—such as California—protect these rights up to decades after the death of an individual, allowing heirs to file for a suit in case of unauthorized commercial use of the deceased's name or personality. By converting personality into a limited proprietary interest, this statutory system provides remedies while still permitting historical and biographical recreations, striking a fine balance between free speech and artistic freedom against posthumous personality rights.

[33][34]German law is known for applying a different approach by protecting posthumous personality rights through right of human dignity rather than property. The general right of personality lasts for about ten years after the death of an individual, during which heirs can restrain unauthorized use of the deceased's likeness or personal attributes. Notwithstanding the time-limit on protection, Germany's constitutional emphasis on dignity reflects balance of respect for the deceased with public interest, leading with example and demonstrating that posthumous protection need not be perpetual to be effective.

³⁵Canada applies a hybrid approach by enforcing posthumous personality rights via the tort of misappropriation of personality—characterised as a quasi-proprietary right—and other complementary intellectual property rules. Here, estates can challenge unauthorized commercial use and monetization of a deceased's identity, especially to prevent unjust enrichment. Additionally, federal trademark law plays a part in restricting the above, reinforcing heir's control post-mortem.

[36][37]France, by contrast resists the proprietary framing of personality rights, treating them as intrinsically personal and generally extinguished upon death. However, French law continues to protect the dignity and privacy of an individual post-death, particularly where representations of the deceased are degrading or violate moral order. Hence, while heirs lack

³¹ Cal. Civ. Code § 3344.1.

³² Elvis Presley Enters., Inc. v. Capece, 141 F.3d 188 (5th Cir. 1998).

³³ Basic Law for the Fed. Republic of Ger. art. 1(1).

³⁴ Mephisto Case, 30 BVerfGE 173 (1971).

³⁵ Gould Estate v. Stoddart Publ'g Co., (1996) 30 O.R. (3d) 520 (Can.).

³⁶ Code civil [C. civ.] art. 9 (Fr.).

³⁷ Cour de cassation [Cass.] [supreme court for judicial matters] 1e civ., Jan. 14, 1999.

proprietary enforcement rights, courts retain discretion to intervene where said representations offend collective notions of dignity, indicating that even non-proprietary systems acknowledge limits on posthumous exploitation.

IX. The Need To Expand Section 228 (A) Of The Indian Penal Code

India requires a targeted legislative intervention that is instrumental in establishing a coherent and enforceable framework for posthumous dignity, rather than maintaining the status quo—symbolic privacy protections.³⁸ Any recognition of posthumous personality rights and reform must be precise, limited and constitutionally proportionate, ensuring that media freedom is regulated without being curtailed. This workable blueprint pursues an authentic aim to recognize and codify posthumous personality rights, while also bearing the rational nexus to that aim by preventing irreversible harm. If framed properly, this development could potentially discipline speech without suppressing it.

The law must incorporate a default rule barring the disclosure of a deceased individual's identity in instances involving crime, trauma or intimate personal circumstances. This supposition should commence immediately upon the death of the deceased and apply across all media platforms. Publication or dissemination should be permitted only when a court determines that identification is integral to serve transparent public interest, such as preventing imminent harm or exposing systemic wrongdoing.

This approach shifts decision-making authority away from editorial discretion and anchors it in judicial assessment, ensuring consistency and accountability.

Posthumous dignity protection must be delinked from offence classifications. In lieu of enumerating specific crimes, the system should adopt a harm-based standard, focussed on whether disclosure would result in disproportionate dignitary injury. This allows courts to respond flexibly to evolving forms of media harm without constant legislative amendment and avoids hierarchies that privilege certain victims over others.

Posthumous protection cannot meaningfully rely on consent frameworks. The law should eliminate consent-based exceptions in post-death contexts and require judicial authorization

³⁸ *Modern Dental College v. State of M.P.*, (2016) 7 SCC 353

for any identity-revealing publication. Courts should evaluate such applications using narrowly defined criteria—necessity, proportionality, and lack of reasonable alternatives.

This ensures that disclosures are justified by public interest rather than emotional vulnerability or commercial pressure.

To prevent overreach, posthumous dignity protections must be temporally limited. A statutory duration—such as ten to twenty years following death—balances respect for the deceased with long-term interests in historical documentation and creative expression. Time limits also enhance legal certainty for media actors and reduce chilling effects on speech.

The law must prioritise prevention over punishment. Courts should be empowered to grant expedited injunctions restraining imminent disclosures, particularly in digital contexts where harm is irreversible. Mandatory takedown obligations should apply to platforms and publishers upon notice of violation, accompanied by escalating penalties for non-compliance.

Remedial frameworks should also include civil compensation for dignitary harm suffered by families or estates, calibrated to the scale and reach of the violation.

The law should draw a clear distinction between public-interest journalism and commercial exploitation. Higher penalties must apply where identity disclosure is tied to monetisation, including sponsored content, streaming adaptations, and click-driven dissemination. This deters the commodification of death while preserving space for legitimate reporting.

Any restriction on publication should be explicitly governed by proportionality. Courts should be statutorily required to assess whether the disclosure pursues a legitimate aim, is necessary to achieve that aim, and employs the least restrictive means available. Embedding proportionality within the statute ensures constitutional compliance and guards against overbroad censorship.

³⁹The statute must clearly identify who may enforce posthumous dignity rights. Standing should vest in immediate family members or legally designated representatives, with courts empowered to appoint guardians of dignity where necessary. Clear locus provisions prevent

³⁹ Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608

procedural uncertainty and reduce access barriers.

Protecting posthumous dignity does not require the creation of absolute rights or perpetual control over identity. It requires precision, restraint, and enforceability. A narrowly tailored statutory framework can ensure that the law no longer abandons individuals at the moment their vulnerability becomes most profitable.

X. Conclusion And Personal Position

The absence of a coherent framework governing posthumous personality rights reveals a deeper structural imbalance between rapid media expansion and the law's capacity to protect dignity beyond death. In an era where identity persists beyond death through permanent digital footprints and mass media dissemination, the absence of clear protections renders dignity contingent rather than inherent. Such uncertainty enables disproportionate harm, particularly to individuals without social capital or legal access, and allows expressive freedoms to operate without adequate constitutional calibration. It is therefore recommended that the legislature and judiciary adopt a purposive approach to identity protection by recognising posthumous personality rights as an extension of dignity under Article 21. This must be accompanied by a principled expansion of statutory safeguards to prevent unauthorized disclosure and commercial exploitation, while ensuring that restrictions on speech remain narrowly tailored and constitutionally justified. Courts, in the interim, should develop consistent standards balancing privacy, dignity, and free expression, with heightened scrutiny of posthumous harm. Institutionalising accessible grievance mechanisms and public legal awareness is imperative to ensure that constitutional protection does not remain symbolic but operates effectively across social strata.