# Life and Death Matter? The Protection of Well-known Personal Names in India

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**Achuthan Sreekumar of Anand and Anand draws on a recent High Court of Delhi ruling on the unauthorised use of Ratan Tata's identity to consider how Indian jurisprudence protects well-known personal names**

This article focuses on the law concerning the protection of well-known personal names in India, especially posthumously, through considering a judgment dated February 7 2025 passed by the High Court of Delhi in *Sir Ratan Tata Trust & Anr. v Dr. Rajat Shrivastava & Ors.*The caseconcerned unauthorised commercial use of the name of Shri Ratan Tata, who passed away on October 9 2024, leaving a legacy of leadership, ethical business practices, and philanthropy.

The judicial view from a privacy/personality rights angle

Several courts in India have noted that any action based on an individual's right to publicity/privacy or rights based on reputation and personality may not survive posthumously based on the legal maxim actio personalis moritur cum persona, meaning a personal right of action dies with the person. This view has been taken in, for example, *The Managing Director, Makkal Tholai v Mrs. V. Muthulakshmi* (2007), *Deepa Jayakumar v A.L. Vijay* (2021), and *Krishna Kishore Singh v Sarla A Saraogi and Ors.* (2023).

Furthermore, there are two aspects of a well-known personality:

- Factual aspects that are correct and are publicly available; and
- Aspects that are not publicly available, such as facts pertaining to the individual's personal life.

The court in the case of *Phoolan Devi v Shekhar Kapoor and Ors.* (1995) took the view that the realm of a person's private life should be protected. The tort of unreasonable public disclosure of embarrassing private factsmay also be applicable in appropriate cases when it is shown that the facts being publicised are not newsworthy and, rather, amount to prying into private lives.

It can be argued that the right of publicity is a distinct right separate from the right of privacy. No one can exploit the personality of a well-known person or individual after their death without

authorisation. Such rights of publicity are akin to a right to property being transferable and heritable.

In the case of *Kirtibhai v Raghuram* (2010), the High Court of Gujarat dealt with a film concerning the late Jalaram Bapa of Virpur (a revered saint). The court upheld the injunction order passed by the trial court, noting that if an injunction as prayed for was not granted, irreparable loss would be caused to the heirs of Jalaram Bapa. The court also noted that even if the plaintiff succeeded in establishing his right to privacy concerning the life of Jalaram Bapa subsequent to the release of the film, whatever damage caused to the plaintiff cannot be compensated and that it prima facie appears that the right to privacy and the right to publicity cannot be compensated in terms of money.

The judicial view from a commercial/trademark angle

Before considering this judicial view, it is important to note that Section 14 of the Trade Marks Act, 1999 deals with a scenario in which a trademark application "is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark". The section notes that "the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trademark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent".

Therefore, a well-known personal name can also act as a source identifier or a trademark, making it a commercial property. There have been several judgments passed by Indian courts holding that personal names such as Ratan Tata are unique and well known, with distinctive indicia of their own, and therefore it can safely be assumed that they have all the trappings of a well-known trademark as envisaged in Section 11(6) of the Trade Marks Act, 1999. Thus, the unauthorised commercial use of well-known personal names can be restrained by applying trademark law and principles.

Celebrities have even applied for registration of their names, signatures, and other insignia as trademarks and copyrights. Similar views were taken by the courts in *Arun Jaitley v Network Solutions Private Limited & Ors.* (2011) and *Tata Sons Limited & Anr v Aniket Singh* (2015). In the case of *Tata Sons Ltd. v Sandy Chak* (2004), the High Court of Delhi was faced with a case concerning illegal spamming activities. Through a judgment dated October 22 2009, the court permanently injuncted the defendant from using and/or circulating any communication – whether in emails, pamphlets, advertisements, or any other form – suggesting any kind of connection, endorsement, association, support, or any other form of involvement with the Tata Group by using the mark 'Tata', the name of Ratan Tata, or the domain www.tata.com.

The most recent judgment on this subject is the aforementioned ruling dated February 7 2025, passed by the High Court of Delhi. The defendants in this case were using the well-known personal name of

Ratan Tata without authorisation, the well-known and registered trademarks 'Tata' and 'Tata Trusts', and the below logo and photograph, and were hosting award functions in New Delhi claiming to be endorsed by Tata Trusts and/or the Tata Group. The court, after hearing the arguments, passed a judgment restraining the defendants from using the well-known personal name of Ratan Tata, the well-known and registered trademarks 'Tata' and 'Tata Trusts', and the below logo and photograph.






In paragraph 45 of the judgment, the court noted that "[t]hus, it is manifest that the name of Late Shri Ratan Tata is a well-known personal name/mark, which needs to be protected from any unauthorised use by any third party."The court's ruling underscores the importance of safeguarding iconic personal names and brand identifiers from exploitation by third parties, even posthumously.

Therefore, despite the view that an individual's right to publicity/privacy or rights based on reputation and personality may not survive posthumously, if it is shown that such rights are commercial in nature or have all the trappings of a trademark, the same are protected by Indian courts from unauthorised commercial exploitation.

The judicial view taken by foreign courts

In *Martin Luther King Etc. v American Heritage Products, Inc.* (1983), the United States Court of Appeals for the 11th Circuit held that "the right of publicity survives the death of its owner and is inheritable and devisable. Recognition of the right of publicity rewards and thereby encourages effort and creativity. If the right of publicity dies with the celebrity, the economic value of the right of publicity during life would be diminished because the celebrity's untimely death would seriously impair, if not destroy, the value of the right of continued commercial use. Conversely, those who would profit from the fame of a celebrity after his or her death for their own benefit and without authorization have failed to establish their claim that they should be the beneficiaries of the celebrity's death. Finally, the trend since the early common law has been to recognize survivability,

notwithstanding the legal problems which may thereby arise."

In *Lugosi v Universal Pictures* (1979), it was held that "[t]here is no reason why, upon a celebrity's death, advertisers should receive a windfall in the form of freedom to use with impunity the name or likeness of the deceased celebrity who may have worked his or her entire life to attain celebrity status. The financial benefits of that labor should go to the celebrity's heirs".

The Supreme Court of Georgia agreed with the above argument in the case of *The Martin Luther King, Jr., Center for Social Change, Inc., et al. v American Heritage Products, Inc., et al.* (1982) and held that the right to publicity survives the death of its owner and is inheritable and devisable.

Final thoughts on the protection of well-known personal names in India

In this age of consumerism, any person – be they an actor, a businessman, or a philanthropist – spends a considerable amount of time, effort, and money on building and developing their persona. Allowing a third party to unauthorisedly and commercially exploit the same is not correct under the law or equitable principles.

Therefore, today's laws must tick more and more boxes to prevent unauthorised parties from making unlawful commercial gains through using a deceased person's persona, publicity, or other rights.

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