

Trademark Rights and Creative Expression: Rethinking Film Title Protection in India

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ABSTRACT

Film titles sit awkwardly within Indian intellectual property law. The Supreme Court has confirmed that a title alone is not a "work" in which copyright subsists, while High Court authority treats titles as capable of functioning as trade marks once secondary meaning is shown. The resulting position is settled at its extremes and unstable in its middle: courts agree that titles are not copyright subject matter and that iconic titles such as *Sholay* deserve protection, but they have articulated no consistent method for the large intermediate class of ordinary-language titles over which producers increasingly assert exclusivity. This article reconstructs, evaluates and improves the analytical basis on which those disputes are decided. It uses secondary data exclusively, combining doctrinal analysis of Indian primary authorities, a structured narrative review of literature retrieved from Scopus, Web of Science, HeinOnline, JSTOR, SSRN, Google Scholar and Indian legal databases, and functional comparison with the United States, United Kingdom, European Union, Australia and Canada. Three doctrinal patterns recur: secondary meaning operates as a gate that no judgment has furnished with a key; delay and acquiescence function as the field's hidden ratio, displacing substantive reasoning; and Article 19(1)(a) is absent from title disputes despite being plainly engaged. The theoretical contribution is the Creative-Commercial Balance Framework a four-stage, fourteen-factor model that separates trade mark function from creative significance and attaches proportionate rather than binary remedies. Applied to the decided cases, it reproduces their outcomes while making the reasoning explicit and reviewable.

Keywords:-Film titles; Trade mark law; Passing off; Secondary meaning; Freedom of expression; Indian intellectual property law; Entertainment law; Creative industries

1. INTRODUCTION

1.1 Background

A film title works simultaneously as compressed narrative meaning, a genre signal, the anchor of a distribution campaign, and for a franchise a durable brand licensed across merchandise, music, gaming and streaming. India, producing among the world's largest annual output of feature films across more than a dozen languages, generates title conflicts at a matching rate. A parallel, non-statutory register operated by trade associations IMPPA, the Film and Television Producers Guild of India, WIFPA and regional bodies compounds the problem: the industry treats those registers as though they conferred rights, and courts have repeatedly held that they do not^[1].

Two propositions appear settled. Copyright does not subsist in a title: in *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016) 2 SCC 521, the Supreme Court held that a title is "not complete by itself", falls outside "work" under Section 13 of the Copyright Act, 1957, and that "*Desi Boys*" was in any event commonplace and unoriginal. But a title may be protected as a trade mark registered under the Trade Marks Act, 1999, usually in Class 41, or unregistered and protected through passing off under Section 27(2) on proof of secondary meaning and likely confusion^[2]. That framework comes from *Kanungo Media (P) Ltd v. RGV Film Factory*, 2007 SCC OnLine Del 314, and was applied emphatically in *Sholay Media and Entertainment Pvt Ltd v. Yogesh Patel*, CS(COMM) 8/2016 (Del HC, 2022).

1.2 The research problem

Two propositions are not a doctrine. Between the copyright exclusion and the trade mark inclusion lies a large, under-governed space. Most titles are neither coined marks nor cultural monuments; they are ordinary words, idioms, proverbs and song fragments drawn from living linguistic stock precisely the material trade mark law is ordinarily reluctant to enclose. A claim over such a phrase engages not only a rival producer but a diffuse public interest in keeping cultural vocabulary available. Indian judgments rarely name that interest, still less weigh it [3]. The problem is also procedural. Title litigation is overwhelmingly interlocutory, resolved on interim applications days before release, when the balance of convenience is dominated by sunk promotional spend and the court has neither evidence nor time for a distinctiveness inquiry. Outcomes therefore turn on delay, acquiescence and comparative investment rather than on whether the title performs a source-identifying function. Doctrine made almost entirely at the interim stage tends never to be fully made at all [4].

1.3 Research gap

Indian commentary is abundant but practitioner-oriented: it restates Krishika Lulla and Kanungo Media, notes that association registration is unenforceable, and advises a Class 41 filing. Comparative scholarship on expressive uses is sophisticated but built around the First Amendment and the *Rogers v. Grimaldi* filter, which has no Indian analogue. Almost nothing (a) treats the title as a distinct legal object with hybrid character, (b) connects Indian title cases to general trade mark theory, or (c) asks what a constitutionally sensitive Indian test looks like given that Article 19(1)(a) operates through the structured reasonable-restrictions regime of Article 19(2) rather than a categorical guarantee.

1.4 Objectives and research questions

The objective is reconstruction rather than description: to identify the implicit logic of Indian title decisions, expose its inconsistencies, and propose a defensible framework. Six questions organise the study.

RQ1. How has Indian trade mark jurisprudence approached film titles, and what implicit decision rules can be reconstructed from the case law?

RQ2. What distinguishes a title as commercial source identifier from a title as creative expression, and can Indian doctrine sustain that distinction?

RQ3. How have Indian courts balanced trade mark rights, passing off, confusion, reputation and creative freedom and where has that balancing been performed only implicitly?

RQ4. What limits should apply to exclusive rights over words used as film titles, and on what normative basis?

RQ5. What is genuinely transplantable from the United States, United Kingdom, European Union, Australia and Canada, given differences in legal tradition?

RQ6. What framework would give India a more coherent approach?

1.5 Contribution

Four contributions follow. Doctrinally, the article identifies delay and acquiescence as the field's hidden ratio. Theoretically, it argues that the "hybrid object" characterisation, though descriptively accurate, is analytically empty without a method for disaggregating the functions a title performs in a given dispute. Normatively, it develops the Creative-Commercial Balance Framework and a decision matrix. Methodologically, it demonstrates a reproducible secondary-data protocol in a field where empirical confusion data is absent and declines to simulate it [5], [6], [7].

2. CONCEPTUAL AND THEORETICAL FOUNDATIONS

2.1 Trade mark theory and the search-costs account

The dominant economic justification treats marks as devices reducing consumer search costs, thereby incentivising investment in consistent quality (Landes & Posner, 1987). A mark is not property in a word but property in a relationship between sign and source; protection is justified only so far as that relationship exists and is threatened. The implication for titles is immediate and routinely overlooked: the question is never whether a producer "owns" a phrase, but whether, in the relevant market, the phrase denotes origin. Where it does not, there is nothing to protect, and the claim is a linguistic monopoly in the ordinary sense [8].

Titles are structurally awkward subject matter because they violate the theory's implicit assumption of separability. A conventional mark is external to its product; "Titan" says nothing about a watch. A title is internal: it describes, alludes to, or interprets the work. The same words carry expressive content and potentially source significance at once. Dogan and Lemley (2007) frame this as the trade mark-use problem: liability should attach to uses that function as marks, not to every use of a registered word. That distinction does heavy work here, and no Indian court has articulated it [9].

2.2 The single-work problem

Trade mark systems distinguish the title of a single work from that of a series on functional grounds: a series title recurs across offerings and can designate common origin, whereas a single-work title ordinarily designates the work itself. Kanungo Media adopted this distinction expressly. It is defensible but is a proxy, not a principle: what matters is whether consumers treat the sign as indicating origin. A single work of sufficient cultural saturation (Sholay) plainly achieves that; a long-running but obscure series may not[10].

2.3 Incentive theory and its weak fit

Incentive justifications translate poorly. No filmmaker forgoes a film because titles are unprotectable; the investment incentive comes from copyright in the cinematograph film under Section 13(1)(b) and the producer's first ownership under Section 17. This matters normatively: arguments for stronger title protection framed as rewarding creative labour are Lockean desert claims, not incentive claims, and desert reasoning in trade mark law has been criticised as expansionary and unmoored from the consumer-protection rationale (Bone, 2006; Lemley, 1999)[11].

2.4 Consumer protection

This is the strongest ground for title protection. Where a second entrant adopts a title that leads audiences to believe a film is a sequel, remake or authorised extension, the harm is concrete and of the kind trade mark law exists to prevent. Indian passing-off doctrine, structured around goodwill, misrepresentation and damage, is well adapted to it. The limitation is evidentiary: Indian courts assess confusion by judicial impression, without surveys or market data, in proceedings where such evidence could not realistically be adduced [12].

2.5 Creative-expression theory

Against source identification stands scholarship arguing that trade mark law undervalues expressive interests because it treats words as commercial instruments rather than communicative resources (Ramsey, 2010; Tushnet, 2008; Katyal, 2010). Titles are an acute case: chosen for connotation and resonance, drawn from a finite shared pool. A regime permitting enclosure on thin evidence imposes costs on later creators that are real, diffuse, and represented by no party to the litigation[13].

In India the anchor is Article 19(1)(a), subject to Article 19(2). The structure differs materially from the American position: Indian doctrine does not treat commercial regulation of speech as presumptively invalid, and Article 19(2) does not list intellectual property among permissible grounds so a trade mark injunction restraining an expressive phrase must be justified through the statutory scheme, not a constitutional carve-out. Indian courts have engaged Article 19(1)(a) extensively in certification and exhibition litigation but, so far as the reviewed case law discloses, never in title disputes[14]. That asymmetry is a principal finding.

2.6 Public-domain theory

Public-domain scholarship supplies the last component (Litman, 1990; Boyle, 2008; Samuelson, 2006): the unowned is constitutive, not residual, and each enclosure is individually small and cumulatively significant. Applied here, ordinary words and idioms belong presumptively to the linguistic commons, and the burden of displacing that presumption should rest on the claimant. This is not an argument against protection but about default rules and burdens of proof and it is the normative foundation of the framework in Section 10.

3. REVIEW METHODOLOGY

3.1 Research design

The study is a qualitative, secondary-data, doctrinal-comparative review combining black-letter analysis of Indian primary authorities, a structured narrative literature review, case-law analysis, and functional comparison. No primary empirical research was conducted: no surveys, interviews, questionnaires, experiments or fieldwork, and no datasets generated or simulated[15].

3.2 Distinguishing primary authority from secondary literature

Although classified as secondary-data research, the study separates source types throughout. **Primary legal authorities:** the Trade Marks Act, 1999; Copyright Act, 1957; Constitution of India; Trade Marks Rules, 2017; Cinematograph Act, 1952; and judgments of the Supreme Court, Indian High Courts and foreign courts. **Secondary literature:** peer-reviewed articles, monographs, chapters, practitioner commentary, WIPO and WTO materials, IP Office publications and industry reports. Propositions of law cite primary authority; interpretive claims cite scholarship; the article's own arguments are labelled as such[16].

3.3 Search strategy

Databases: Scopus, Web of Science Core Collection, HeinOnline, JSTOR, SSRN, Google Scholar; and for primary materials SCC Online, Manupatra and Indian Kanoon. Period: literature 1985–2025, with no lower limit on primary judicial authority so that foundational decisions and seminal theory (Landes & Posner, 1987; Rogers v. Grimaldi, 1989) remain in scope. Boolean strings, applied to title/abstract/keyword fields and adapted per platform:

("film title" OR "movie title" OR "cinema title") AND (trademark OR "trade mark")

"film title protection"

("film title" OR "movie title") AND (copyright OR "passing off")

("entertainment trademark" OR "entertainment law") AND India

"Indian trademark law" AND (film OR cinema OR Bollywood)

("creative expression" OR "artistic expression" OR "freedom of expression") AND (trademark OR "trade mark")

"film title registration" AND India; "title protection" AND "entertainment industry"

"secondary meaning" AND ("single work" OR "literary title")

Snowballing ran in both directions: backward through reference lists, forward through citation tracking in Scopus and Google Scholar.

3.4 Inclusion and exclusion criteria

Included: peer-reviewed articles; monographs and chapters from established publishers; reported judgments; legislation and official rules; WIPO, WTO and IP-office materials; attributed practitioner commentary, used corroboratively only; industry reports from established bodies. Scopus- and Web of Science-indexed work was prioritised. Excluded: unverifiable bibliographic details; predatory journals; duplicates; promotional content; anonymous blogs; trade reporting without legal analysis; and any source whose case citations could not be corroborated against a court record or authoritative reporter[17].

3.5 Verification protocol and its honest limits

Every case relied on was checked for name, court, year and citation against at least two independent sources. Variant citations are recorded rather than silently harmonised. Kanungo Media, for instance, appears as 2007 SCC OnLine Del 314, 138 (2007) DLT 312 and 2007 (34) PTC 591. Several recent High Court decisions, including the 2022 Sholay judgment, are conventionally cited by case number and are given in that form[18].

One limitation must be stated plainly. Verification was conducted against publicly accessible legal databases and secondary corroboration, not certified copies, and full-text access to some subscription databases was unavailable. The citations are verified to the standard of reputable secondary corroboration, and the article claims no more. No case, statute, author, journal, year or DOI has been invented; where a detail could not be established it was omitted rather than supplied[19].

3.6 Thematic synthesis

Included literature was coded inductively and consolidated into the seven dimensions used in Sections 6–9: expression, source identification, passing off, copyright interface, constitutional freedom, consumer protection, and competition/public interest. Comparison follows a functional method: jurisdictions are compared by the problem each system solves, not by the labels each uses[20].

3.7 Reliability, validity and reproducibility

Reliability rests on a documented, re-executable protocol (3.3) and explicit criteria (3.4). Validity is addressed by triangulating across primary authority, scholarship and practitioner commentary, and by separating description from evaluation. Reproducibility is constrained: database contents change, and Indian judicial databases are not comprehensively indexed, so a replication would recover a substantially but not identically overlapping corpus[21].

3.8 Limitations of the review

Six limitations qualify the findings. Database coverage: Indian legal scholarship is under-represented in Scopus and Web of Science, so the indexed corpus understates Indian contributions. Language: English only a material omission in a study about linguistic commons across Hindi, Tamil, Telugu, Malayalam, Bengali and other film industries. Publication bias: litigated disputes are visible; settled and association-arbitrated disputes, probably the majority, are not. Access: many interim orders are unreported. Incommensurability: categories such as "distinctiveness" do not map perfectly across systems. Flux: jurisprudence on expressive uses is changing rapidly, notably after *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. 140 (2023).

Table 1. Literature selection and inclusion framework

Element	Specification
Databases	Scopus; Web of Science Core Collection; HeinOnline; JSTOR; SSRN; Google Scholar; SCC Online; Manupatra; Indian Kanoon
Period	Scholarship 1985–2025; no lower limit for primary judicial authority and seminal theoretical works
Languages	English only (stated limitation)
Search strings	("film title" OR "movie title") AND (trademark OR "trade mark"); "film title protection"; ("film title") AND ("passing off" OR copyright); "Indian trademark law" AND film; ("creative expression" OR "freedom of expression") AND trademark; "title protection" AND "entertainment industry"; "secondary meaning" AND "single work"
Supplementary method	Backward reference-list snowballing and forward citation tracking (Scopus, Google Scholar)
Inclusion	Peer-reviewed articles; academic monographs and chapters; reported judgments; legislation and official rules; WIPO/WTO/IP-office materials; attributed practitioner commentary (corroborative use only); established industry reports
Exclusion	Unverifiable bibliographic details; predatory journals; duplicates; promotional content; anonymous blogs; trade reporting without legal analysis; sources with uncorroborated case citations
Priority	Scopus- and Web of Science-indexed scholarship; Supreme Court and High Court authority over commentary
Verification	Case name, court, year and citation cross-checked against at least two independent sources; variant citations recorded rather than harmonised
Synthesis	Inductive thematic coding consolidated into seven analytical dimensions

Note. Compiled by the author. See Section 3 for the full protocol and Section 3.8 for limitations.

4. EVOLUTION OF FILM TITLE PROTECTION IN INDIA

Doctrine developed in four overlapping phases, distinguished less by formal shifts than by what courts treated as the operative question.

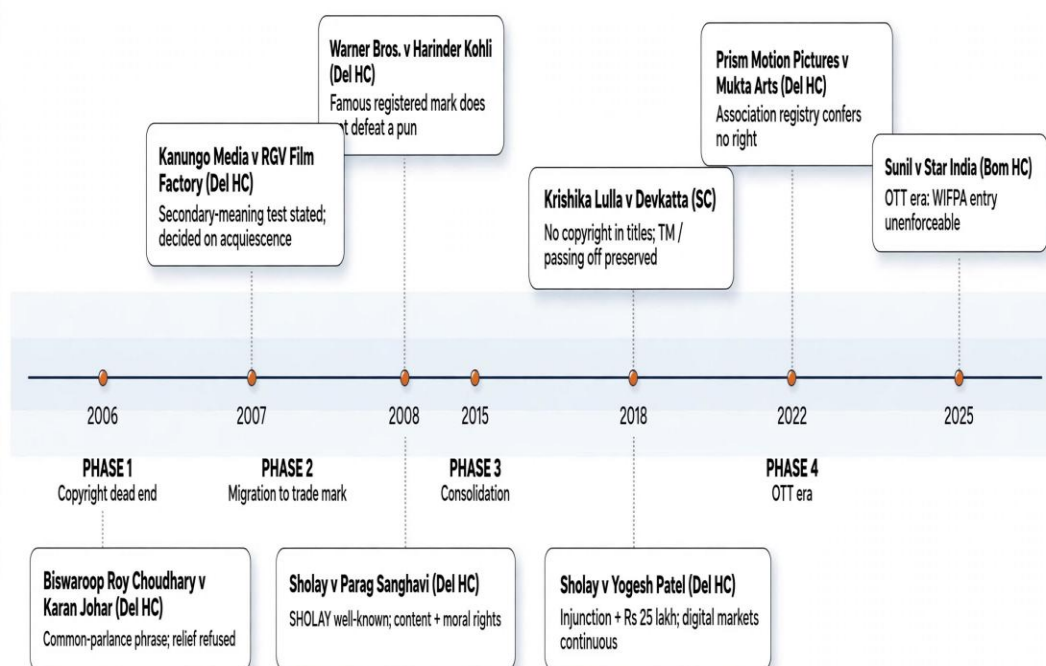


Figure 1. Four phases in the evolution of Indian film-title doctrine (2006–2025)

Figure 1 plots the eight authorities reviewed in Section 5 against four doctrinal phases. Its value is to show that the direction of travel away from copyright and towards trade mark is consistent, while the substantive threshold never develops alongside it. The 2006–2008 cluster establishes the framework; the 2015–2022 cluster confirms protection at the top of the market; the post-2018 decisions dismantle association registration. Two decades separate the statement of the secondary-meaning test in 2007 from any judicial elaboration of what satisfies it, which is precisely the interval this article treats as the field's central deficiency[22].

Phase one: the copyright dead end (pre-2006). Early claims were pleaded in copyright on the intuition that a title is part of the work it names. High Courts, following English and American authority, rejected this: a title is not a "work" under Section 13, and short ordinary-language phrases lack the originality Section 13(1)(a) presupposes. The phase produced a clear negative rule and no positive framework.

Phase two: migration to trade mark (2006–2008). With copyright foreclosed, litigation shifted to the Trade Marks Act, 1999 and passing off. *Biswaroop Roy Choudhary v. Karan Johar*, 2006 SCC OnLine Del 1152, is representative: relying on a pending Class 41 application and association registration, the plaintiff failed, the Court reasoning that the phrase was in common parlance and the defendant had travelled appreciably further in using it. *Kanungo Media* then supplied the organising framework: single-work/series, secondary meaning while deciding the case on delay and acquiescence. *Warner Bros. Entertainment Inc. v. Harinder Kohli*, 2008 SCC OnLine Del 1386, extended the analysis to a registered foreign mark and refused an injunction on marks dissimilarity, audience discernment and delay[23].

Phase three: consolidation (2015–2022). *Krishika Lulla* settled the copyright question at apex level while expressly preserving trade mark and passing off: relief is unavailable on a copyright basis "except in an action for passing off or in respect of a registered trade mark comprising such titles." *Sholay v. Parag Sanghavi*, CS(OS) 1892/2006 (Del HC, 24 August 2015), treated *SHOLAY* as well-known. *Sholay v. Yogesh Patel* (2022) delivered the fullest affirmative statement: titles are registrable and protectable; a dictionary word may acquire distinctiveness intense enough to transcend ordinary meaning; and the relevant goods and services now span digital and merchandising markets. Damages of ₹25,00,000 followed, with a permanent injunction and domain transfer.

Phase four: the OTT era (2018–present). Two developments define the present. Courts are now explicit that association registration confers no enforceable right: *Prism Motion Pictures Pvt Ltd v. Mukta Arts Ltd* (Del HC, 2018) refused to convert registry priority into legal priority for a title never used on a released film, and the Bombay High Court reiterated the point in *Sunil v. Star India Pvt Ltd*, 2025 SCC OnLine Bom 2937, observing that a trade mark registration would have supplied the missing basis. Meanwhile streaming has destabilised the goods/services analysis: web-series titles, franchise universes and catalogue branding generate cross-format conflicts the single-film paradigm never anticipated.

The trajectory is coherent in direction away from copyright, towards trade mark but unaccompanied by any substantive test. Secondary meaning is the stated threshold; the case law never says what evidence establishes it, over what period, in which market, among which audience.

5. INDIAN LEGAL AND JUDICIAL FRAMEWORK

5.1 The statutory architecture and how it interacts

The Trade Marks Act, 1999 supplies the machinery. Section 2(1)(zb) is satisfied by any title without difficulty. The real contest is Section 9(1): descriptive and ordinary-language titles face objection under Sections 9(1)(b) and 9(1)(c), registrable only through the proviso rescuing marks that have acquired distinctiveness. Section 11 governs relative grounds, and Sections 11(2) and 11(6)–(9) supply the well-known-mark protection on which *SHOLAY*'s cross-class reach rests. Section 27(2) preserves passing off; Section 28 confers exclusive rights; Sections 29(1)–(4) define infringement, with Section 29(4) extending to dissimilar goods for reputed marks. Section 34 protects prior users against registered proprietors significant in an industry where use routinely precedes filing. Section 35, preserving bona fide descriptive use, has substantial but almost wholly unexplored potential, since a descriptive title used descriptively is precisely what it contemplates. Filings concentrate in Class 41, with ancillary Classes 9, 16, 25, 28 and 38 where merchandising is planned[24].

The Copyright Act, 1957 operates negatively. Section 13 excludes titles; Section 14's exclusive rights are not engaged by adopting a similar title for a different film; Section 17 vests first ownership of a cinematograph film in the producer a strong tool against copying a film's content and no tool at all against use of its name. The whole weight of title protection therefore falls on trade mark law and passing off.

The Constitution enters twice. Article 19(1)(a) protects cinematographic expression subject to Article 19(2); Article 19(1)(g) protects trade subject to Article 19(6). An injunction restraining release under a chosen title restrains both at once. The absence of constitutional reasoning in title cases is striking given the depth of Article 19(1)(a) jurisprudence on certification[25].

Industry mechanisms form a fourth, non-statutory layer. Association registers are private contractual arrangements binding members only, yet they shape behaviour powerfully because most disputes are resolved within them. The de facto Indian title regime is largely private ordering; the reported case law is the visible residue of a much larger submerged practice.

Table 3. Indian legal provisions relevant to film-title protection

Instrument	Provision	Function in the film-title context
Trade Marks Act, 1999	s. 2(1)(zb)	Defines "trade mark"; a title satisfies the definition without difficulty
Trade Marks Act, 1999	s. 9(1)(b)–(c) and proviso	Absolute grounds: descriptive and customary titles refused unless acquired distinctiveness is shown the principal registry filter
Trade Marks Act, 1999	s. 11(1)–(2), 11(6)–(9)	Relative grounds; likelihood of confusion; well-known mark protection (basis of SHOLAY's cross-class reach)
Trade Marks Act, 1999	s. 27(2)	Preserves passing off the operative route for the majority of unregistered titles
Trade Marks Act, 1999	s. 28	Exclusive rights conferred by registration
Trade Marks Act, 1999	s. 29(1)–(4)	Infringement, including s. 29(4) protection across dissimilar goods for reputed marks
Trade Marks Act, 1999	s. 30	Limits on infringement; statutory defences
Trade Marks Act, 1999	s. 34	Protection of prior users against registered proprietor significant where use precedes filing
Trade Marks Act, 1999	s. 35	Bona fide descriptive uses substantial but almost wholly unexplored potential for descriptive titles
Trade Marks Rules, 2017	Class 41 (with Classes 9, 16, 25, 28, 38)	Classification practice for entertainment services and merchandising extensions
Copyright Act, 1957	s. 13	Enumerates protected works; titles excluded (Krishika Lulla)
Copyright Act, 1957	s. 14	Exclusive rights; none engaged by adoption of a similar title for a different film
Copyright Act, 1957	s. 17	First ownership of a cinematograph film in the producer strong against content copying, irrelevant to the name
Copyright Act, 1957	s. 63	Criminal infringement; held untenable for a title claim in Krishika Lulla
Constitution of India	art. 19(1)(a) with art. 19(2)	Freedom of expression, including cinematographic expression, subject to enumerated reasonable restrictions IP is not an enumerated ground
Constitution of India	art. 19(1)(g) with art. 19(6)	Freedom of trade; engaged simultaneously by an injunction restraining release under a chosen title
Cinematograph Act, 1952	Part II (certification)	Certification does not adjudicate title rights, a misconception advanced in Kanungo Media
Industry mechanisms (IMPPA, WIFPA, Producers Guild)	Association title registers	Private contractual ordering binding members only; no statutory effect (Prism Motion Pictures; Sunil)

Note. Compiled by the author. Statutory provisions are cited as in force; readers should verify currency at the date of use.

5.2 Judicial analysis of leading decisions

Table 2. Major Indian judicial decisions on film-title, trade mark and passing-off protection

Case	Year	Court	Legal issue	Relevant doctrine	Decision	Significance
Biswaroop Roy Choudhary v. Karan Johar, 2006 SCC OnLine Del 1152	2006	Delhi HC	Whether a pending TM application and association registration support an injunction against "Kabhi Alvida Naa Kehna"	Common-parlance phrases; comparative extent of use as a mark/title; priority through use	Relief refused	Closest Indian approximation to a common-language caution; use-based priority preferred over registry entries
Kanungo Media (P) Ltd v. RGV Film Factory, 2007 SCC OnLine Del 314; 2007 (34) PTC 591	2007	Delhi HC	Protection of the unreleased Bengali film title "Nishabd" against "Nishabd"	No copyright in titles; single-work vs series distinction; secondary meaning; delay and acquiescence	Injunction refused	Supplies the field's organising framework, though decided on acquiescence, leaving the secondary-meaning holding arguably obiter
Warner Bros. Entertainment Inc. v. Harinder Kohli, 2008 SCC OnLine Del 1386	2008	Delhi HC	Whether "Hari Puttar" infringes the registered mark HARRY POTTER	Likelihood of confusion; discerning consumer; delay	Interim injunction refused	A strong registered global mark does not automatically defeat an allusive or punning title; narrow market view
Sholay Media & Entertainment Pvt Ltd v. Parag Sanghavi, CS(OS) 1892/2006	2015	Delhi HC	Use of "Ram Gopal Varma Ke Sholay" and of the film's content	Well-known mark; s.17 Copyright Act producer ownership; moral rights	Relief for plaintiffs; SHOLAY declared well-known	Paradigm of legitimate cumulative copyright and trade mark protection
Krishika Lulla v. Shyam Vithalrao Devkatta, (2016) 2 SCC 521	2015 (rep. 2016)	Supreme Court of India	Whether copyright subsists in the title "Desi Boys"	s.13 Copyright Act; title not a "work"; originality; s.63 prosecution untenable	Appeal allowed; proceedings quashed	Settles the copyright exclusion at apex level while expressly preserving passing off and registered trade mark routes
Anil Kapoor Film Co. Pvt. Ltd. v. Make My Day Entertainment, 2017 SCC OnLine Bom 8119	2017	Bombay HC	Title and content dispute; judicial recognition of title reputation	Reputation and unique association of a title with a single film	Referred to in later authority	Relied on in Sholay (2022) as judicial acknowledgment of the title's reputation

Prism Motion Pictures Pvt Ltd v. Mukta Arts Ltd (Del HC)	2018	Delhi HC	Whether IMPPA registration of "Double Trouble", unaccompanied by release, confers priority	Association registration confers no statutory right; use-based priority	Relief declined; coordination among trade bodies encouraged	Confirms that private registers do not create rights against non-members
Sholay Media & Entertainment Pvt Ltd v. Yogesh Patel, CS(COMM) 8/2016	2022	Delhi HC	Domain names, merchandise and TM applications using SHOLAY	Titles registrable as marks; acquired distinctiveness of a dictionary word; expanded goods/services across digital markets; dilution and tarnishment	Permanent injunction; damages of ₹25,00,000; domain transfer	Strongest affirmative authority; establishes the ceiling of protection but not the threshold
Sunil v. Star India Pvt Ltd, 2025 SCC OnLine Bom 2937	2025	Bombay HC	Whether copyright and WIFPA registration protect the title "Lootere"	Krishika Lulla applied; association registration unenforceable; trade mark route indicated	Suit dismissed	Contemporary confirmation in the OTT context; signals the inadequacy of association registration

Note. Compiled by the author from the sources cited in Section 5. Citations for decisions reported only by case number are given in that form; see Section 3.5 on verification limits.

Krishika Lulla v. Shyam Vithalrao Devkatta, (2016) 2 SCC 521 (SC). The complainant registered a synopsis titled "Desi Boys" with the Film Writers' Association in November 2008 and, on the release of Desi Boyz* in November 2011, initiated proceedings under Section 63 of the Copyright Act and the Penal Code. Held, per Bobde J. (with Lokur J.): a title "is in the nature of a name of a work and is not complete by itself"; it is not a "work" under Section 13; and "Desi" and "Boys" are commonplace words whose combination contains nothing original attributable to the complainant. The principle is twofold: categorical exclusion, plus independent failure of originality. Its most consequential sentence is the express reservation of passing off and registered trade mark rights, which channelled all later litigation into the Trade Marks Act. An unresolved tension: the two rationales point different ways. Categorical non-subsistence forecloses all titles; lack of originality implies a sufficiently coined title might qualify. The judgment does not reconcile them, and later courts have proceeded on the categorical reading without addressing the alternative.

Kanungo Media (P) Ltd v. RGV Film Factory, 2007 SCC OnLine Del 314 (Del HC). The plaintiff's Bengali film Nisshabd had been screened at festivals and awarded but never commercially released; the defendant was about to release the Hindi Nishabd. The Court rejected copyright, adopted the American two-category approach, and found that a festival-circuit Bengali film had not attained secondary meaning among the relevant public then held, independently, that delay amounted to acquiescence fatal at the interim stage. Two criticisms follow. First, the Court imported an American distinction without asking whether it fits an Indian market segmented by language, region and format, where a film may be saturated in one linguistic market and unknown in another. Second, having stated a substantive test, it decided on an equitable one: the secondary-meaning holding is arguably obiter*, a fragility rarely acknowledged when the case is cited[26].

Biswaroop Roy Choudhary v. Karan Johar, 2006 SCC OnLine Del 1152 (Del HC). The plaintiff sought to restrain Kabhi Alvida Naa Kehna*, relying on a Class 41 application and association registration. Relief was refused on two grounds that deserve more attention than they have received: the contest concerned "words or phrases in common parlance" sought to be appropriated exclusively, and the relevant comparison was which party had travelled "an appreciably longer way" in using the words as a mark or title. This is use-based priority married to a common-language caution: the closest any Indian title decision comes to a public-domain concern. That it was never developed into a doctrine of common-phrase scrutiny is a significant missed opportunity.

Warner Bros. Entertainment Inc. v. Harinder Kohli, 2008 SCC OnLine Del 1386 (Del HC). Warner Bros., proprietor of HARRY POTTER, sought to restrain Hari Puttar: A Comedy of Terrors. The Court declined interim relief, combining marks and works dissimilarity, an assessment that Indian audiences familiar with the Potter property were unlikely to be confused, and disapproval of delay. Its significance: even a strong, registered, globally famous mark does not automatically defeat an allusive or punning title, and the analysis sits in confusion rather than dilution or appropriation. Against Sholay (2022) an unresolved tension appears Warner Bros. takes a narrow view of the relevant market and a robust view of consumer discernment; Sholay takes an expansive view of both. The cases are reconcilable on their facts, since the Sholay defendants traded directly on the film's identity through domains and merchandise while Hari Puttar* was a distinct film with a punning title but the reconciliation is functional, not doctrinal, and no judgment has performed it.

Sholay Media and Entertainment Pvt Ltd v. Yogesh Patel, CS(COMM) 8/2016 (Del HC, 2022). The defendants registered domains incorporating "Sholay", ran a website, published a magazine, sold merchandise using scenes and characters, sought registration of SHOLAY in India and the United States, and incorporated a company under that name. They argued that titles are unprotectable, that their application came first, that "Sholay" is a dictionary word, and that the goods differed. Singh J. rejected each: titles are registrable and protectable; the film's reputation, already acknowledged including in Anil Kapoor Film Co. Pvt. Ltd. v. Make My Day Entertainment*, 2017 SCC OnLine Bom 8119, was uncontroverted and conferred secondary meaning; the 1975 release long predated the defendants; and film content is no longer confined to theatres. Permanent injunction, ₹25 lakh damages and domain transfer followed. This is the strongest affirmative authority in the field and an easy case: registered, famous, and used by defendants in a way that made free-riding undeniable. It establishes the ceiling of protection without illuminating the threshold, which is where the hard disputes sit[27].

Sholay Media and Entertainment Pvt Ltd v. Parag Sanghavi, CS(OS) 1892/2006 (Del HC, 24 August 2015). Arising from Ram Gopal Varma Ki Aag, announced originally as Ram Gopal Varma Ke Sholay*, the Court declared SHOLAY well-known, held copyright vested in the producer under Section 17, and found infringement through plot, characters, music, lyrics and dialogue together with violation of moral rights by distortion. It demonstrates the legitimate combined operation of copyright and trade mark where a defendant appropriates both the name and the underlying work a useful contrast with the ordinary dispute where only the name is shared.

Prism Motion Pictures Pvt Ltd v. Mukta Arts Ltd (Del HC, 2018). The plaintiff had registered Double Trouble* with IMPPA but released no film. The Court declined to treat that as priority and encouraged trade bodies to coordinate registers. The principle private registry entries create no rights against non-members; use, not registry entry, generates protectable interests now firmly established.

Sunil v. Star India Pvt Ltd, 2025 SCC OnLine Bom 2937 (Bom HC). Asserting that copyright extended to his film's title and that WIFPA registration was enforceable, the plaintiff sought to restrain the OTT series Lootere. The suit was dismissed on Krishika Lulla*, with the observation that a trade mark registration would have furnished a basis for both infringement and passing off. It confirms both settled propositions in the streaming context and signals to the industry that association registration is no substitute[28].

5.3 Recurring patterns and unresolved tensions

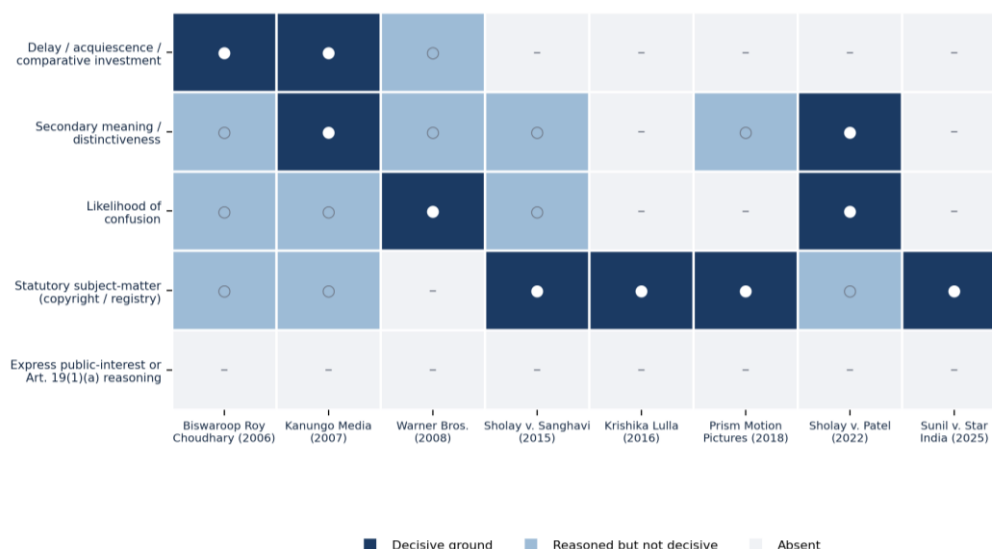


Figure 2. Grounds of decision across eight reviewed Indian judgments

Figure 2 codes the reported reasoning of each judgment by whether a ground was decisive, reasoned but not decisive, or absent. Its value is diagnostic. Delay and acquiescence are decisive in the two earliest cases and present in a third, whereas secondary meaning nominally the governing testis decisive only twice. The bottom row is uniformly empty: no reviewed decision reasons expressly from public interest or Article 19(1)(a). The coding is the author's qualitative reading of eight judgments, not an empirical measurement, and it is presented to make the interpretive basis of the delay finding transparent and open to challenge.

Four patterns emerge. First, secondary meaning is a gate without a key: every court invokes it, none specifies what satisfies it, and there is no authority on whether box office, exhibition duration, advertising spend, festival recognition, streaming viewership or survey evidence is probative, nor on the geographic and linguistic scope of the relevant public. Second, delay and acquiescence do the real work: in *Kanungo Media*, *Biswaroop Roy Choudhary* and *Warner Bros.* the substantive analysis is accompanied and arguably displaced by findings on delay and comparative investment. Third, the relevant market is defined inconsistently: *Kanungo Media* treats a Bengali festival film and a Hindi release as separate markets; *Sholay* (2022) treats theatrical, digital and merchandising markets as continuous. Both are defensible; their coexistence without reconciliation is not. Fourth, the expressive interest is never named: no reviewed decision frames refusal to enjoin a common-language title as protecting Article 19(1)(a) or the linguistic commons, even whereas in *Biswaroop Roy Choudhary* the reasoning plainly embodies it. Protection *sub silentio* is protection that is unpredictable and unreviewable.

6. TRADEMARK RIGHTS VERSUS CREATIVE EXPRESSION

6.1 Restating the tension precisely

The conflict is often described as "property" versus "speech", which invites categorical resolution in favour of whichever value the observer prefers. More precisely: trade mark law regulates the use of signs to indicate origin, and it does so by restricting what others may say. Where the restricted speech is commercial signalling, the restriction is cheap. Where it is the name of an artistic work chosen for meaning and resonance it is expensive, because no other words carry exactly that meaning. The title is unusual because it occupies both positions at once and without separation: when a producer selects *Nishabd* ("silence") for a film about the unsaid, the word does expressive work; when the same producer licenses merchandise bearing it, the word does trade mark work. Same letters, same market, same moment.

Stage 1 of the proposed framework: classification sets the initial burden of proof

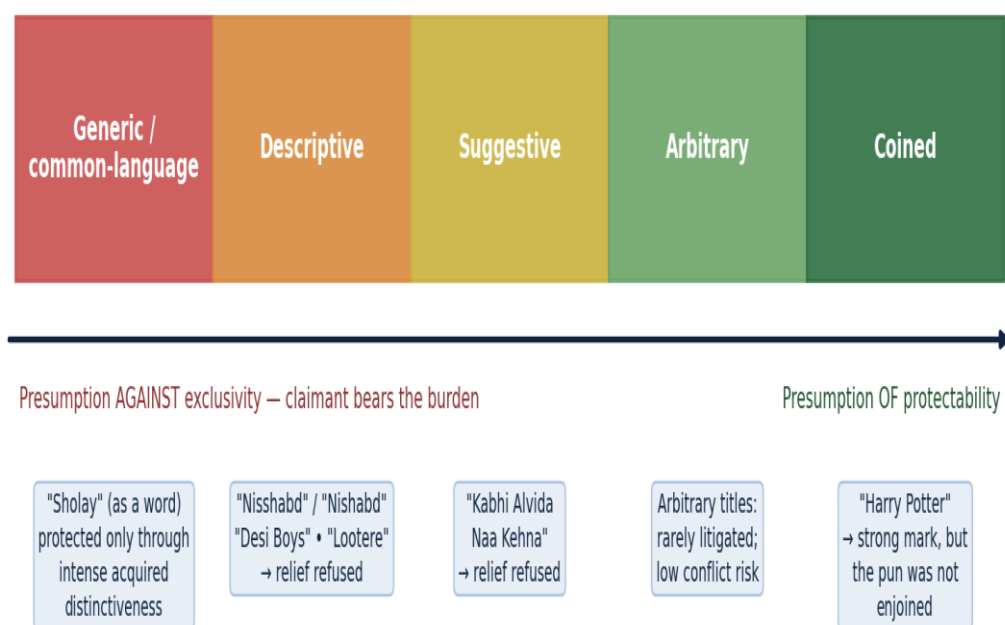


Figure 3. Distinctiveness spectrum for film titles, with litigated Indian titles positioned

Figure 3 maps the litigated Indian titles onto the distinctiveness spectrum that Stage 1 of the proposed framework applies. Its value lies in exposing a pattern the judgments never state: almost every title that reached an Indian court sits at the descriptive or common-language end, where trade mark law is least comfortable granting

exclusivity. Relief was refused in each such case, but on grounds of delay, market separation or dissimilarity rather than on linguistic ordinariness. The figure therefore shows an implicit commons-protecting practice operating without a doctrinal name, and identifies exactly where an express presumption would formalise existing judicial instinct.

6.2 Testing the hybrid-object thesis

The animating proposition is that titles occupy a hybrid space and that protection should depend on demonstrated trade mark function rather than registration or creative use alone. The review supports the descriptive half and qualifies the normative half three times.

First, "hybrid" is a description, not a test. Saying a title is both expression and mark tells a court nothing. Every descriptive mark is simultaneously description and mark; trade mark law resolves that through distinctiveness doctrine, not a hybridity rule. The analytical work must be done by disaggregating which function the defendant's use engages the insight of the trade mark-use literature (Dogan & Lemley, 2007), and the distinction the US Supreme Court drew in *Jack Daniel's*: expressive context does not displace ordinary confusion analysis where the defendant uses the sign as a source designator for its own goods[29].

Second, the thesis risks under-protecting genuine source identifiers. Treating every title as presumptively expressive would under-protect franchise proprietors who have invested in building source association, and consumers would bear the resulting search costs. The Sholay line is correct on its facts; any framework producing a different outcome there is wrong.

Third, "demonstrated trade mark function" conceals an evidentiary problem. Indian courts have no established practice for demonstrating source function. Unless the framework specifies what evidence counts, "demonstrated function" collapses into judicial impression the present position under a new name.

Subject to these qualifications the proposition survives, refined: film-title protection should be a function of demonstrated source-identifying use in a defined market, calibrated by the linguistic ordinariness of the phrase, with the burden of displacing the commons on the claimant, and with remedies scaled to the harm rather than issued automatically.

6.3 Why Indian courts avoid the constitutional question

Three explanations are plausible and compatible. Doctrinally, Article 19(2) does not list intellectual property, so constitutional framing is awkward: a court opening the question would have to explain the constitutional basis of trade mark injunctions generally a larger undertaking than a title dispute warrants. Institutionally, the interlocutory posture is inhospitable to constitutional adjudication. Culturally, Indian free-speech litigation in film has been dominated by censorship, so Article 19(1)(a) is associated with state restriction rather than private enforcement of property rights.

The cost is that the expressive interest is represented by no one. Each producer argues its own commercial interest; the interest of future filmmakers in an unenclosed commons goes unrepresented. That structural under-representation is the strongest reason to build public interest into the doctrinal test rather than leaving it to adversarial presentation.

6.4 The monopolisation concern, assessed honestly

The concern is easy to overstate. Class 41 registration does not prevent anyone from using the words in speech, criticism or ordinary language; its practical reach is entertainment services. Section 35 preserves descriptive use. Registry practice under Section 9(1) already screens the most obviously descriptive titles. And India's production volume suggests title availability is not a binding constraint.

The counter-argument, which the review supports, is that the harm is not exhaustion of the lexicon but chilling at the margin. The asymmetry in litigation capacity between a studio and an independent producer means a credible threat letter usually resolves matters before any court assesses distinctiveness. The relevant harm is therefore not judicial over-enforcement but the shadow uncertain doctrine casts over pre-litigation bargaining an argument for doctrinal precision, not for weaker protection[30].

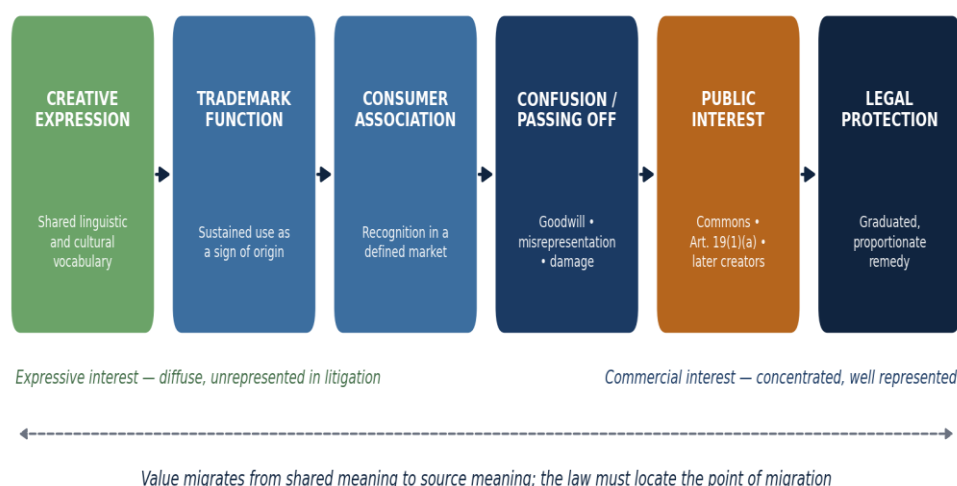


Figure 4. Conceptual relationship between the expressive and commercial dimensions of a film title

Figure 4 sets out the analytical sequence the framework proposes, from creative expression through trade mark function, consumer association and confusion to public interest and legal protection. Its value is in locating the precise analytical difficulty: value migrates along the chain from shared meaning to source meaning, and the law's task is to identify where that migration has actually occurred. The lower axis records an asymmetry driving the whole problem: the commercial interest is concentrated and well represented in litigation, while the expressive interest is diffuse and represented by nobody, which is why it must be built into the test itself[31].

7. FILM TITLES, COPYRIGHT AND PASSING OFF

7.1 The copyright boundary, correctly drawn

The exclusion is sometimes called formalistic; it is better defended substantively. Copyright protects expression, and India's originality standard following *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1, which adopted a modicum-of-creativity/skill-and-judgment test over sweat of the brow requires intellectual creation a two- or three-word phrase rarely exhibits. More fundamentally, the idea-expression dichotomy, codified for international purposes in Article 9(2) of TRIPS, cautions against protecting units of language so small that protecting the expression protects the idea. Silence or *Desi Boys* is barely distinguishable from the concept it names[32].

An institutional argument reinforces this. Copyright is long-term, registration-independent and automatic. Extending it to titles would create perpetual-in-effect claims over ordinary phrases without any of the use, distinctiveness or confusion filters trade mark law imposes which protects only what is used, only within specified goods and services, only on proof of distinctiveness, and only against confusing uses. *Krishika Lulla's channelling* is therefore correct[33].

7.2 Passing off as the operative doctrine

Because most titles are unregistered when disputes arise, Section 27(2) is the practical battleground. Indian courts apply the classical trinity with a broad conception of goodwill, including transborder reputations significant for foreign franchise titles. Each element raises a distinct difficulty.

Goodwill: in which market, among whom? Indian film markets are segmented by language, region, format and platform; a title dominant in Malayalam cinema may be unknown in Hindi. *Kanungo Media* implicitly recognised segmentation, *Sholay* (2022) implicitly rejected it for a nationally saturated property, and neither stated a general rule.

Misrepresentation: the representation is typically about sequel or franchise relationship rather than physical origin confusion as to sponsorship or affiliation, expressly contemplated by Section 29(4), but also the form most prone to over-expansion, since almost any similarity can be said to raise a question of association.

Damage: where the second film fails, tarnishment is claimed; where it succeeds, diversion. Absent any Indian empirical work on whether audiences select films by title association, damage is inferred, not demonstrated.

7.3 Overlap, and the case against automatic cumulation

Overlap is not objectionable in itself: the same object may be a copyright work, a registered mark and the subject of contract. *Parag Sanghavi* illustrates legitimate cumulation, the defendant having appropriated both name and underlying work[1].

The risk is different that a failed copyright claim is repackaged as a trade mark claim to secure, through another doctrine, the exclusivity copyright deliberately denied. Where the real grievance is that another producer used "his" phrase, with no source association and no confusion, the claim is a channelling failure. Section 9(1) and the secondary-meaning threshold are the appropriate screens. Indian courts reach the right result in such cases (Biswaroop Roy Choudhary, Sunil) without articulating the principle[2].

8. COMPARATIVE INTERNATIONAL PERSPECTIVES

8.1 Functional comparison

Table 4. Comparative international approaches to title protection

Dimension	India	United States	UK / EU	Comparative insight
Protectability of titles	No copyright (Krishika Lulla); registrable and protectable as trade marks, usually Class 41	Single-work titles not registrable on the Principal Register absent secondary meaning; series titles registrable	No title-specific rule; ordinary distinctiveness analysis under TMA 1994 s.3 / EUTMR art.7; some EU states recognise sui generis work-title rights	India's substantive position is close to the US; its distinctiveness practice is closer to the UK; neither source supplies India with an evidentiary standard
Distinctiveness	S.9(1) absolute grounds with acquired-distinctiveness proviso; enforcement-stage application inconsistent	Spectrum applied with developed examination guidance	Well-developed acquired-distinctiveness jurisprudence; EUIPO cautious where the sign describes content	The gap is not the rule but the evidence expected to satisfy it
Secondary meaning	Required for single-work titles (Kanungo Media) but never operationalised	Required and evidentially specified in practice	Acquired distinctiveness assessed on survey, market-share and use evidence	India should import the evidentiary discipline rather than a new rule
Passing off / unfair competition	S.27(2); classical trinity; broad transborder-reputation conception of goodwill	Lanham Act s.43(a) unfair competition	UK: extended passing off (Reckitt & Colman); EU: unfair-competition regimes vary by state	Shared common-law origin makes UK doctrine the most directly usable comparator for India
Consumer confusion	Assessed by judicial impression; no survey practice	Multifactor circuit tests; survey evidence routine	Average-consumer standard; global appreciation	India's omission is evidentiary, not conceptual
Creative expression	Art.19(1)(a) engaged but unnamed in title cases	Rogers filter, substantially narrowed by Jack Daniel's (2023) where the mark is used as a source designator	No threshold filter; accommodated via distinctiveness, confusion scope and statutory defences	The UK/EU approach fits India's art.19(2) structure better than a transplanted Rogers filter

Short titles	Categorically outside copyright	Outside copyright; trade mark route only	Outside copyright; originality threshold not met	Convergent across all systems reviewed
Public-interest limitations	S.30 and s.35 defences; little developed	Fair use, nominative use, First Amendment	Statutory defences; descriptive and honest-practices use	India has the statutory hooks (notably s.35) and has not used them
Enforcement	Dominated by interim injunctions immediately before release; delay and acquiescence often decisive	Merits-oriented; preliminary injunctions harder post-eBay	Interim relief with cross-undertakings in damages	Procedural posture, more than substantive rule, explains India's doctrinal thinness

Note. Compiled by the author. Australia (Trade Marks Act 1995 (Cth) s.41; Australian Consumer Law s.18) and Canada (Trademarks Act, RSC 1985, c T-13, s.7) are discussed in Section 8.1 and omitted from the grid for legibility.

United States. Single-work titles are not registrable on the Principal Register absent secondary meaning, a long-standing USPTO position reflected in the Trademark Manual of Examining Procedure; series titles are registrable. Unregistered titles proceed under Section 43(a) of the Lanham Act. The distinctive feature is the First Amendment overlay: *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), held that the Lanham Act does not bar a minimally artistically relevant use of a mark in the title of an expressive work unless the title explicitly misleads as to source or content. Jack Daniel's (2023) narrowed this sharply: *Rogers* does not apply where the defendant uses the mark as a designation of source for its own goods, and the dilution statute's noncommercial-use exclusion does not shelter source-designating parody. The position now is that expressive context matters, but only where the defendant is not using the sign as its own mark.

United Kingdom. The Trade Marks Act 1994 has no title-specific rule; titles are assessed under Section 3 distinctiveness, and descriptive titles are refused absent acquired distinctiveness. There is no general unfair-competition tort; extended passing off does the work, its requirements goodwill, misrepresentation, damage (*Reckitt & Colman Products Ltd v. Borden Inc.*, [1990] 1 WLR 491) closely tracking Indian doctrine given shared origins. There is no *Rogers* filter; expressive interests are accommodated through distinctiveness, the scope of the confusion inquiry, and statutory defences.

European Union. Under Regulation (EU) 2017/1001 and Directive (EU) 2015/2436, absolute grounds exclude non-distinctive and descriptive signs, with acquired distinctiveness available. EUIPO practice treats single-work titles cautiously where the sign is perceived as describing content. The Court of Justice's functional approach protection extends to uses affecting the functions of the marks supplies a tool Indian law lacks and could usefully borrow, because it makes the source-identification question explicit rather than assumed. Several Member States additionally recognise *sui generis* protection for work titles as a distinct commercial designation, decoupling title protection from the register entirely.

Australia. Section 41 of the Trade Marks Act 1995 (Cth) applies ordinary distinctiveness analysis. Section 18 of the Australian Consumer Law supplements passing off and is oriented to consumer deception rather than protection of the trader's goodwill a structurally different and arguably better-targeted way of addressing the title problem, because it asks directly whether the public is misled.

Canada. The Trademarks Act, RSC 1985, c T-13 provides for registration subject to distinctiveness, with Section 7 supplying statutory analogues to passing off. Canadian courts have been comparatively restrained absent clear secondary meaning.

India (baseline)	Limited	Low	Low	Limited	Low	n/a
United States	High	High	High	Moderate	Moderate	Limited
United Kingdom	Moderate	High	Limited	Moderate	Moderate	High
European Union	Moderate	High	Limited	Moderate	Moderate	Moderate
Australia	Moderate	Moderate	Limited	High	Moderate	Moderate
Canada	Moderate	Moderate	Limited	Moderate	Moderate	Moderate
	Doctrinal clarity of the title rule	Evidentiary discipline on secondary meaning	Explicit protection of expressive interests	Consumer-deception orientation	Availability of graduated remedies	Transplantability of the approach into India

Figure 5. Comparative positioning on six functional dimensions

Figure 5 positions six jurisdictions on the functional dimensions analysed in Section 8. Its value is to isolate where India actually lags. India is not unusual in its substantive rule; it is unusual in scoring low on evidentiary discipline, explicit protection of expressive interests, and availability of graduated remedies. The final column records the article's comparative conclusion that the American approach is the least transplantable, because the Rogers filter presupposes a constitutional structure India does not share, while UK practice is the most usable. The assessment is the author's qualitative ordinal reading of Section 8, not a quantitative index.

8.2 What is transplantable, and what is not

The Rogers filter is the most frequently suggested import and the least transplantable. It construes a statute against a constitutional guarantee treating content-based restriction as presumptively invalid. Article 19(2) authorises reasonable restrictions on enumerated grounds, and Indian constitutional method proceeds by proportionality, not categorical threshold filters. Grafting a threshold immunity onto Section 29, which offers no textual hook, would be awkward and Jack Daniel's has demonstrated the filter's instability at home.

What is transplantable is more modest and more useful. From the United States: the clarity of the single-work/series distinction and the requirement that secondary meaning be proved rather than assumed a discipline Indian courts nominally accept but do not enforce evidentially. From the European Union: the functional test, asking whether the defendant's use affects the origin function, which translates directly into Section 29 analysis without constitutional retrofitting. From Australia: the consumer-deception orientation, which could reframe how Indian courts characterise the interest at stake in passing off. From Germany and comparable civilian systems: the insight that a dedicated, narrower work-title right may serve the industry better than stretching general trade mark law.

The deeper point is that India's problem is not the absence of a rule but the absence of evidentiary discipline. No transplant fixes that.

9. THEMATIC SYNTHESIS OF EXISTING SCHOLARSHIP

9.1 A note on bibliometrics

Genuine bibliometric analysis requires exported metadata with citation counts, co-authorship and keyword co-occurrence networks from a defined query. This article presents no bibliometric statistics. The corpus on film-title protection is small and unevenly indexed much relevant Indian material sits in journals outside Scopus and Web of Science, and in practitioner publications not indexed at all. Publication counts, h-indices or cluster maps on that base would convey false precision. The study therefore uses qualitative structured literature synthesis and makes no quantitative bibliometric claims; the observations below are impressions formed during the review, not measurements.

9.2 Dominant themes

Six themes recur. Descriptive restatement dominates Indian writing: it maps the field usefully and is largely without theoretical ambition. Trade mark expansion and its critics (Lemley, 1999; Bone, 2006; Beebe, 2004;

Dinwoodie, 2008) argues that the field has drifted from consumer protection towards a property conception of marks for which film titles are an unexamined case study. Trade mark and expression (Ramsey, 2003, 2010; Tushnet, 2008; McGeeveran, 2008; Katyal, 2010) is analytically strong but jurisdictionally parochial. Public domain and the commons (Litman, 1990; Boyle, 2008; Samuelson, 2006) supplies the vocabulary for resisting incremental enclosure without applying it to titles. Indian public-interest IP scholarship offers a proportionality framework not yet brought to entertainment law. Creative-industries research explains why titles matter commercially but rarely engages doctrine.

9.3 Disagreements in the literature

Three genuine disagreements are visible: whether confusion should remain the organising concept of liability or whether dilution and misappropriation reflect independent interests; whether expressive interests are better served by threshold filters (Rogers) or by calibrating ordinary confusion analysis (the position dominant after Jack Daniel's, and, this article argues, the better fit for India); and whether confusion is an empirical question requiring surveys or a legitimate matter for judicial assessment of the ordinary consumer.

9.4 Research gaps

Table 5. Major themes in the literature and corresponding research gaps

No.	Theme	What the literature establishes	What it fails to resolve (gap)
1	Descriptive restatement of Indian doctrine	The copyright exclusion and the trade mark route are settled and widely reported	No operational content for secondary meaning: what evidence, over what period, in which market
2	Trade mark expansion and its critics	Trade mark law has drifted from consumer protection towards a property conception	Film titles remain an unexamined case study for that thesis
3	Trade mark and expression	Trade mark protection of expressive material carries real speech costs	Analysis is built on First Amendment architecture; no Indian art.19(1)(a)/19(2) account exists
4	Public domain and the commons	Incremental enclosure of shared material imposes diffuse cumulative costs	Never applied systematically to titles; no proposed default rule or burden allocation
5	Indian public-interest IP scholarship	Indian IP law has a distinctive balance-and-access orientation	Not extended to entertainment law or to title disputes
6	Creative-industries and franchise economics	Titles are significant brand assets across merchandising and platform markets	No engagement with doctrine; no empirical work on Indian title-based consumer behaviour
7	Market definition	Indian courts implicitly vary the relevant market between cases	No theory of the relevant public in a multilingual, multi-platform market
8	Association registration	Courts hold it unenforceable	Its actual operation, dispute volumes and distributive effects on independent producers are unstudied
9	Copyright–trade mark channelling	Claims migrate from copyright to trade mark after Krishika Lulla	No screening principle to prevent trade mark law delivering the exclusivity copyright withheld
10	Remedies	Outcomes are treated as binary	Intermediate remedies disclaimers, distinguishing elements, field-limited injunctions, damages in lieu are unexplored
11	Comparative method	Foreign rules are catalogued	Comparisons are descriptive, not functional; no analysis of what is transplantable given constitutional structure

Note. Compiled by the author from the reviewed corpus. Gaps 1–8 of Section 9.4 correspond to rows 1, 7, 8, 3, 9, 6, 10 and 11 respectively. Eight gaps, stated as what scholarship fails to resolve rather than as observations about volume.

1. **No operational content for secondary meaning.** The requirement is reproduced but never specified: what evidence, over what duration, in which linguistic market, and how festival, theatrical and streaming exposure should be weighted differently. The test is stated but unusable.
2. **No theory of the relevant public in a multilingual market.** "The consumer" is treated as undifferentiated, though a title may be distinctive in one segment and generic in another, with consequences for distinctiveness, confusion and the territorial scope of injunctions.
3. **Unexamined function of association registration.** That it is unenforceable is repeated; what is unresolved is whether it operates as efficient private ordering whose outputs should inform priority, or as anti-competitive gatekeeping. Its dispute volumes and effects on independent producers are unstudied.
4. **No constitutional account.** Indian scholarship on Article 19(1)(a) and film concerns certification. Nothing analyses whether a private trade mark injunction over a title engages Article 19(1)(a), what justification standard applies, or how proportionality would operate. This is the field's most conspicuous theoretical gap.
5. **No screening principle against repackaged copyright claims.** Channelling from copyright to trade mark is noted; the risk that trade mark doctrine delivers the exclusivity copyright withheld is not addressed.
6. **No empirical understanding of Indian title-based consumer behaviour.** Whether audiences infer sponsorship from title similarity is unknown. Courts infer it; no published study tests it. This article cannot fill the gap with secondary data and flags it as the priority for primary research.
7. **Remedies are unanalysed.** The question is treated as binary, though intermediate remedies disclaimers, distinguishing sub-titles, field-limited injunctions, damages in lieu are the most obvious route to reconciliation.
8. **Comparative work is descriptive, not functional.** Foreign rules are listed without analysing which differences follow from constitutional structure, which from market structure, and which are genuinely available for transplant.

10. THE CREATIVE–COMMERCIAL BALANCE FRAMEWORK

10.1 From limitation to proposal

The framework is a conceptual model, not a statement of existing law and not a proposed statutory provision. Its logic runs: existing Indian law → identified limitation → proposed analytical framework.

Existing law: titles are excluded from copyright (Krishika Lulla); registrable and protectable as marks on proof of secondary meaning and confusion (Kanungo Media; Sholay, 2022); association registration confers nothing (Prism Motion Pictures; Sunil).

Limitation: the threshold is unoperationalised; the market undefined; the expressive interest unnamed; remedies binary; outcomes driven by delay rather than entitlement.

Proposal: a four-stage analysis, fourteen factors, graduated remedial output.

10.2 Structure

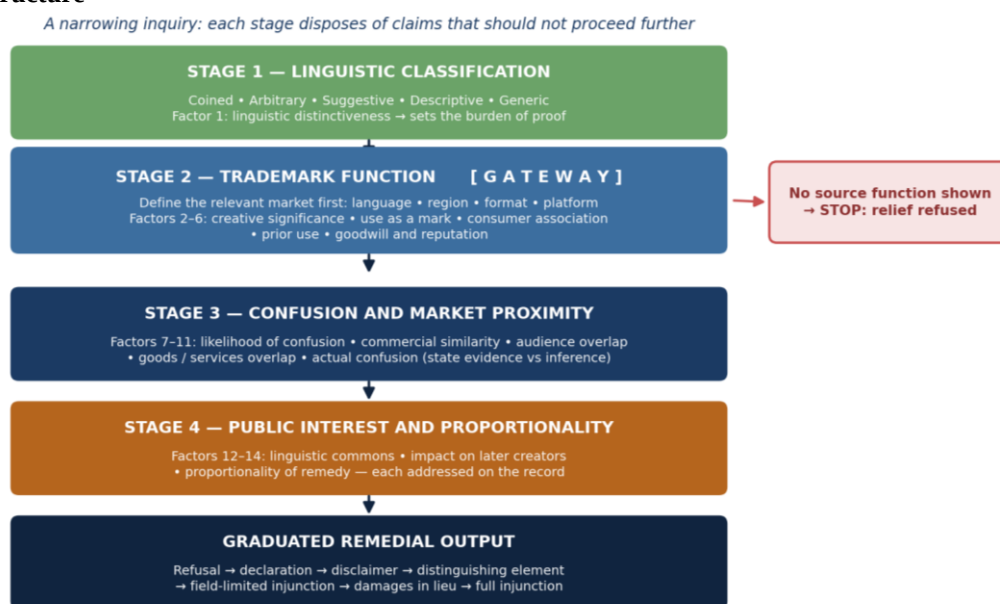


Figure 6. The Creative–Commercial Balance Framework: four stages, fourteen factors

Figure 6 presents the article's original contribution as a narrowing sequence. Its value is that each stage disposes of claims that should not proceed, so judicial effort is concentrated where the dispute is genuine. Stage 2 operates as a gateway: if no source-identifying function is demonstrated in an expressly defined market, the claim ends there, which removes most tactical assertions over ordinary phrases before confusion is ever considered. Stages 3 and 4 then calibrate rather than decide, and the output is a graduated remedy rather than a binary injunction. This is a proposed analytical model, not a statement of Indian law.

Stage 1 Linguistic classification (screening). Classify the title as coined, arbitrary, suggestive, descriptive, or generic/common-language. Classification sets the burden: coined and arbitrary titles carry a presumption of protectability; suggestive titles are neutral; descriptive and common-language titles carry a presumption against exclusivity, displaceable only by strong Stage 2 evidence. This operationalises the concern latent in *Biswaroop Roy Choudhary* and gives Section 9(1) reasoning effect at enforcement, not merely registration.

Stage 2 Trade mark function (gateway). Does the title, in the defined relevant market, in fact identify source for the claimant and is the defendant using the sign as a source designator for its own offering? Factors: creative significance; trade mark function (merchandising, licensing, franchise extension, registration, sustained branding); consumer association; prior use (actual commercial use, not registry entry); goodwill and reputation. Critically, the relevant market must be defined expressly by language, region, format and platform before these factors are assessed. This is the single most important discipline the framework imposes, converting secondary meaning from a conclusion into a finding.

Stage 3 Confusion and market proximity. Likelihood of confusion as to source, sponsorship or affiliation; commercial similarity; audience similarity; goods and services similarity across classes and platforms; actual confusion where available, with explicit acknowledgment where absent. Courts should state whether confusion is found on evidence or on inference, treating inference as weaker where the mark sits in the descriptive or common-language band.

Stage 4 Public interest and proportionality. Public-interest considerations including the commons; impact on subsequent expression (whether an injunction forecloses a meaningful expressive choice or merely a convenient one); proportionality of remedy. Article 19(1)(a) values enter here not as a trump but as a mandatory consideration addressed on the record. The claim is procedural as much as substantive: an interest that must be addressed is an interest that can be reviewed on appeal.

Table 6. The Creative–Commercial Balance Framework: stages, factors and evidential indicators

Stage	Factor	Question for the court	Indicative evidence
1. Linguistic classification	1. Linguistic distinctiveness	Is the title coined, arbitrary, suggestive, descriptive, or generic/common-language?	Dictionary and corpus evidence; prevalence of the phrase in idiom, proverb or song; prior use as a title
2. Trade mark function	2. Creative significance	How central is the phrase to the expressive content of each work?	Relationship of title to theme, character or narrative; alternatives reasonably available
	3. Trade mark function	Is the claimant using the title as a mark rather than merely as a name?	Registration; licensing; merchandising; franchise extension; sustained brand use
	4. Consumer association	Do consumers in the defined market associate the title with the claimant as a source?	Recognition evidence; unsolicited media association; survey evidence where available
	5. Prior use	Who used the title commercially first, and to what extent?	Release dates; promotion records; continuous use not association registry entries
	6. Goodwill and reputation	What is the reach and durability of the claimant's goodwill?	Box office and viewership; duration of exhibition; advertising spend; awards; catalogue longevity
3. Confusion and proximity	7. Likelihood of confusion	Is confusion as to source, sponsorship or affiliation likely?	Mark similarity; strength; audience sophistication; reasoned inference expressly labelled as such

	8. Commercial similarity	How proximate are the two undertakings commercially?	Production scale; distribution channel; pricing and release strategy
	9. Similarity of target audiences	Do the works address the same public?	Language; region; genre; certification category; platform
	10. Similarity of goods/services	Do the rights and the use overlap in classes and platforms?	Registration classes; theatrical, OTT, merchandising and gaming extensions
	11. Evidence of actual confusion	Is there any evidence of confusion in fact?	Documented instances; trade or press misattribution; absence to be stated expressly
4. Public interest and proportionality	12. Public-interest considerations	Would exclusivity remove a phrase from the shared linguistic and cultural commons?	Ordinariness of the phrase; cultural or idiomatic status; availability to other creators
	13. Impact on subsequent expression	Does an injunction foreclose a meaningful expressive choice or merely a convenient one?	Expressive necessity of the phrase; availability of adequate alternatives
	14. Proportionality of remedy	What is the least restrictive response adequate to the harm?	Graduated scale: refusal → declaration → disclaimer → distinguishing element → field-limited injunction → damages in lieu → full injunction

Note. Authors' proposed analytical framework. This table does not state existing Indian law and is not supported, as a framework, by any authority. See Section 10.

10.3 Graduated remedies

The remedial output is deliberately non-binary: (i) refusal; (ii) declaration without injunction; (iii) disclaimer requirement, mandating on-screen and promotional disassociation; (iv) distinguishing-element requirement, such as a qualifying sub-title or producer attribution; (v) field-limited injunction, restraining specified classes or platforms while permitting the title; (vi) damages or account in lieu; (vii) full injunction, where the use is source-designating, the mark distinctive and reputed, and confusion likely. Options (iii)–(vi) are common comparatively and almost unused in Indian title litigation the framework's most immediately implementable contribution.

10.4 Proposed decision matrix

The following is the **authors' proposed analytical framework**. It is **not** existing Indian law and is not supported, as a matrix, by any authority.

Table 7. Proposed decision matrix (authors' analytical framework not a statement of Indian law)

Distinctiveness	Reputation	Consumer confusion	Creative / public interest	Possible legal approach
Low	Low	Low	High	No protection. The claim is in substance an assertion of ownership over ordinary language; the commons presumption is undisplaced. Relief refused; costs may be appropriate where the claim is used tactically against a weaker party.
Low	High	Low	High	No injunction; narrow residual protection at most. Reputation attaches to the work rather than to the sign as a source identifier. Consider a declaration or a disclaimer requirement instead of restraint on the title itself.

High	High	High	Low	Full protection. The paradigm infringement case: a distinctive, reputed mark used by the defendant as a source designator with a likely confusion effect and no substantial expressive interest. Injunction and damages appropriate (cf. <i>Sholay</i> , 2022).
High	High	Low	High	Protection limited to source-designating uses. Permit the expressive use of the title while restraining merchandising, domain-name and franchise-suggestive uses. Field-limited injunction is the proportionate remedy.
High	High	High	High	The genuinely hard case. Neither interest defeats the other categorically. Prefer intermediate remedies: mandatory distinguishing sub-title, prominent producer attribution, promotional disclaimers, or damages in lieu of reserving a full injunction for evidenced actual confusion or demonstrable bad faith.

Note. Authors' proposed analytical framework (Section 10.4). The configurations are illustrative, not exhaustive, and are not supported as a matrix by any Indian authority.

10.5 Applying the framework to decided cases

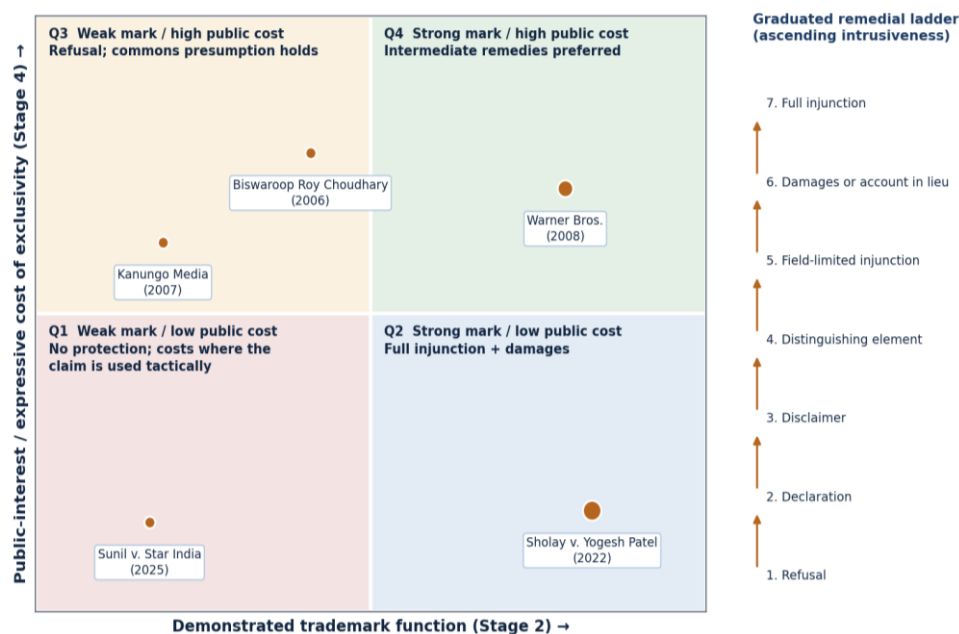


Figure 7. Remedy positioning map: reviewed Indian decisions on the two framework axes

Figure 7 plots the reviewed decisions against demonstrated trade mark function and the public-interest cost of exclusivity, with the graduated remedial ladder alongside. Its value is validation: the framework places every decided case in the quadrant that matches its actual outcome, so the model reproduces rather than reverses Indian judicial practice. The empty region is as informative as the occupied one: no Indian decision yet sits in the intermediate band of quadrant four, where disclaimers, distinguishing elements or field-limited injunctions would

be appropriate, because Indian courts have not used those remedies in title disputes. Placement is the authors' analytical judgment.

A framework that reverses settled outcomes is suspect. Applied to the Indian cases, this one is deliberately conservative.

Sholay (2022): Stage 1 classifies a common Hindi word/presumption against exclusivity. Stage 2 decisively displaces it: registration across classes, merchandising, franchise use, overwhelming recognition in a nationally defined market, and defendants using the sign as a source designator for their own website, magazine and merchandise. Stage 3 finds sponsorship confusion across proximate digital markets; Stage 4 finds a weak expressive interest, the use being commercial. Outcome: full injunction and damages/the actual result.

Kanungo Media: Stage 1 classifies a descriptive common word. Stage 2 requires express market definition, which is where the framework improves on the judgment/the market is Bengali-language theatrical audiences, in which an unreleased festival film had limited recognition. Stage 3 finds low confusion risk across distinct linguistic markets; Stage 4 weighs the expressive interest in an ordinary word. Outcome: refusal/the actual result, reached substantively rather than through acquiescence.

Warner Bros.: Stage 2 confirms strong trade mark function for HARRY POTTER; Stage 3 is decisive, the marks and works differing and source confusion being unlikely among the relevant audience; Stage 4 notes a genuine expressive interest in a punning title. Outcome: refusal/the actual result, without reliance on delay.

Sunil (2025): Stage 1 classifies a common word; Stage 2 finds no registration, no demonstrated source function, and reliance on an unenforceable association entry. Outcome: refusal/the actual result.

The value lies not in changing outcomes but in making reasoning explicit, reviewable, and usable by parties advising clients before litigation begins.

11. DISCUSSION

11.1 What the literature collectively establishes

Three propositions command broad support. Titles are inappropriate copyright subject matter, for reasons of originality, the idea-expression dichotomy, and the structural unsuitability of a long-duration automatic right for short linguistic units. Titles can and sometimes do function as marks, and refusing protection where they do would impose real search costs and permit free-riding. Trade mark protection of expressive material carries speech costs that ordinary analysis, designed for commercial signs, does not internalise automatically.

What the literature does not establish and this negative finding matters as much as the positive ones is any consensus on the threshold: how much recognition converts a phrase into a mark, in which market, on what evidence.

11.2 Where Indian jurisprudence remains uncertain

Uncertainty concentrates in four places identified in Section 5.3: the evidentiary content of secondary meaning; market definition in a multilingual industry; reconciliation of the narrow market view in Warner Bros. with the expansive view in Sholay; and the unarticulated status of the expressive interest. A fifth, procedural, compounds them: adjudication at the interim stage means the substantive law develops in observations rarely necessary to the decision.

11.3 Why the conflict arises

The conflict is not accidental. The film title is the point at which a work's expressive and commercial identities are literally the same object. Trade mark law's normal method for handling coincidence/the distinctiveness spectrum works well for names external to the product and poorly for names constitutive of it. Copyright's method/originality excludes titles entirely and offers no calibration at all. The title falls into a gap between two regimes, each competent for part of the problem and neither designed for it.

11.4 How the framework addresses the gap

The central move is replacing a conclusory threshold with a staged inquiry forcing three findings onto the record: linguistic classification, market definition, and characterisation of the defendant's use as source-designating or expressive. Each can be made on materials ordinarily available even at the interim stage, and each is reviewable. The graduated remedial scale then permits proportionate response rather than a choice between total prohibition and total permission which is precisely the choice that drives courts towards delay-based reasoning, since an all-or-nothing remedy against a film days from release is one no court wishes to grant on incomplete evidence.

11.5 Contribution to trade mark theory

The film title is a limiting case for the search-costs account, which assumes separability between sign and product. Where that assumption fails the theory is not wrong but incomplete: it cannot tell us how much of a word's

meaning has migrated from expression to origin. Stages 1 and 2 supply that missing calibration, and the analysis suggests similar problems arise wherever marks are internal to the goods they designate: book and game titles, character names, musical-work titles, and the branding of artistic services.

11.6 Contribution to Indian entertainment-law scholarship

Three contributions: identifying delay and acquiescence as the hidden ratio; demonstrating that Article 19(1)(a) is systematically absent where plainly engaged; and recasting association registration from a curiosity into a system of private ordering whose distributive effects on independent and regional producers deserve study.

11.7 Implications for courts and policymakers

For courts, the change is modest but consequential: express findings on market definition and the nature of the defendant's use, and willingness to use intermediate remedies. For policymakers, the more promising interventions lie in registry practice and guidance: clearer examination guidance under Section 9(1) for Class 41 title applications, and coordination among trade associations of the kind encouraged in Prism Motion Pictures rather than statutory amendment, for which there is no evident need.

12. POLICY AND LEGAL IMPLICATIONS

Courts. Define the relevant market before assessing distinctiveness. State whether confusion rests on evidence or inference. Address the expressive dimension on the record so it becomes reviewable. Use graduated remedies. Reserve delay and acquiescence for cases where they are genuinely decisive rather than as a substitute for substantive analysis.

Filmmakers and producers. Prism Motion Pictures and Sunil are unambiguous: association registration is not a right. Producers building a franchise should file in Class 41 early, and in ancillary classes where merchandising is planned, and should document use: advertising spend, reach, licensing because that documentation is the evidence Stage 2 requires. Independents should note the converse: a threat resting on association registration alone is, on current authority, unlikely to succeed.

Trade mark practitioners. Advice should shift from "register the title" to "identify whether the title can perform a source function, in which market, on what evidence." At enforcement, plead source-designating use by the defendant explicitly rather than relying on similarity alone.

Policymakers and the IP Office. Examination guidance for single-work titles under Section 9(1), with illustrative treatment of common-language titles and the proviso, would reduce downstream litigation. Publishing registry data on Class 41 title applications and oppositions would enable the empirical work the field lacks.

Film associations. The suggestion in Prism Motion Pictures that trade bodies coordinate registers remains unimplemented. A unified, searchable, cross-association register with transparent criteria would reduce inadvertent conflicts and should be designed so it does not become a barrier to entry for non-member and independent producers.

Creators. The linguistic commons is a shared resource whose erosion is invisible until severe. Industry and creators' bodies have an interest in resisting expansive claims over ordinary phrases that no individual defendant has the incentive to contest.

13. FUTURE RESEARCH AGENDA

Six priorities follow from the gap analysis. First, empirical work on Indian audience behaviour: do viewers infer sponsorship or sequel relationships from title similarity, and does this vary by language market and platform? This requires primary research and is the field's most valuable missing input. Second, systematic study of the association-registration system: volumes, dispute rates, outcomes, and effects on independent producers. Third, docket analysis of interim orders, including unreported ones, to quantify how often outcomes turn on delay. Fourth, constitutional analysis of private trade mark injunctions under Article 19(1)(a) and (2), a question reaching well beyond film titles. Fifth, comparative work on sui generis work-title rights in civilian systems, testing whether a narrower dedicated right would serve India better. Sixth, extension to web-series, franchise-universe and regional-language contexts, where the single-film paradigm fits least well.

14. CONCLUSION

Indian law on film titles is settled where it matters least and unsettled where it matters most. That copyright does not protect titles is beyond argument after *Krishika Lulla*; that an iconic, registered, heavily merchandised title such as *SHOLAY* is protected is beyond argument after 2022. Between these poles sits the ordinary case: a common phrase, modest recognition, two producers, an imminent release and for that case Indian doctrine offers a threshold without content, a market without definition, a public interest without a name, and a remedy without gradations.

The hybrid character of film titles, though an accurate description, resolves nothing on its own. What resolves disputes is a method for determining which function a title performs, for whom, in which market, and at what cost to the linguistic commons. The Creative–Commercial Balance Framework is offered as one such method: four stages, fourteen factors, express findings, proportionate remedies. Applied to the decided cases it yields the outcomes those cases reached which is the point. The deficiency in Indian film-title law is not that courts decide wrongly but that they decide without articulating why, and a body of law that cannot explain itself cannot guide the far larger number of disputes that never reach a courtroom.

exists on whether audiences infer sponsorship from title similarity. The article flags rather than solves this, and a demanding reviewer may regard the framework as resting on the inferential basis it criticises.

(ii) A narrow case-law base. The reported Indian authorities number roughly a dozen. Generalisations drawn from so small a corpus particularly the delay finding are vulnerable to the objection that they are impressions rather than findings. Figure 3 makes the coding transparent but does not make it empirical; a docket study of unreported interim orders would be required.

(iii) An under-developed constitutional argument. The article asserts that Article 19(1)(a) is engaged by private trade mark injunctions without working through horizontal application, the standard of justification, or the proportionality structure in the depth a constitutional reviewer would expect.

(iii) Citation areas requiring additional verification before submission. Reporter citations for the two Delhi High Court decisions cited by case number (*Sholay v. Yogesh Patel*, CS(COMM) 8/2016; *Sholay v. Parag Sanghavi*, CS(OS) 1892/2006) should be confirmed against SCC Online or Manupatra. The neutral citation for *Prism Motion Pictures v. Mukta Arts* could not be verified beyond secondary reporting and is cited by court and year only. Parallel citations for *Kanungo Media* should be reconciled to the target journal's preferred reporter. USPTO and EUIPO practice statements in Section 8 are cited at manual and guideline level and should be pinned to current paragraph numbers. APA entries should be re-checked for DOIs at submission; DOIs are omitted here rather than supplied where unverifiable.

(iv) What would need improvement before submission. First, either conduct the empirical component or reframe the paper explicitly as a doctrinal-conceptual contribution identifying the empirical question as prior to resolution the latter is achievable within the present design. Second, deepen the constitutional analysis, particularly horizontal effect. Third, expand the treatment of civilian *sui generis* work-title rights, currently the thinnest part of Section 8, using primary-language sources. Fourth, add a systematic survey of unreported interim orders to convert the delay finding from pattern to evidence. Fifth, engage more fully with the post-Jack Daniel's American literature, which is developing rapidly and will date that section quickly. Sixth, secure subscription-database access to complete the verification protocol to the standard described in Section 3.5.

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