

Balancing Of Privacy and Publicity: The Legal Analysis of Personality Rights In India

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Abstract: This contribution offers a comparative overview and synthesis of the current state of personality rights protection. Rather than aiming for an exhaustive analysis, it provides a snapshot of the legal landscape across different jurisdictions. The primary objectives are to summarize, systematize, and critically engage with existing literature, while also highlighting specific doctrinal and practical challenges. In doing so, the discussion seeks to lay the groundwork for more detailed inquiries into particular aspects of personality protection. Key themes explored include the recognition and foundational principles of personality rights, the extent of their protection, the interplay between the general right to personality and more specific personality rights, and the conceptual nature of personality and related harm. Additionally, the study addresses the classification of personality rights, their demarcation from patrimonial rights, their status as human rights, and the scope of post-mortem and corporate personality protection. Personality rights are situated within an evolving jurisprudential framework concerned with safeguarding individual identity and personal attributes. Among these, the right of publicity pertains specifically to the protection of one's identity, existence, and likeness against unauthorized imitation and commercial use. Although this area of law has historical roots, it has recently attracted renewed attention due to advances in artificial intelligence, which have introduced novel dimensions of risk and exploitation. Judicial interpretations have increasingly recognized personality rights as an extension of the right to privacy. In the absence of dedicated legislation, Indian courts have drawn upon existing intellectual property regimes such as trademark and copyright law as well as constitutional provisions, to adjudicate disputes and offer remedies.

Keywords: Personality Rights, Intellectual Property, Right to Privacy, Commercial Exploitation, Statute.

INTRODUCTION

Personality rights, which affirm an individual's status as both a physical and spiritual-moral being and ensure their ability to enjoy their own sense of self, are recognized to varying degrees across different legal systems. While the contemporary understanding of these rights continues to evolve, their conceptual roots can be traced back to classical natural law, particularly its emphasis on innate and inalienable human rights encompassing aspects of personhood. From this foundation emerged the notion of a "right to personality," from which more specific entitlements—such as the rights to physical integrity, freedom, and dignity—may be derived. Gierke offered one of the earliest systematic distinctions between personality rights and other legal rights, characterizing them as private, non-patrimonial, and inherently tied to the individual such that they are neither transferable nor heritable, and typically extinguish upon death.

A significant doctrinal development arose from the divergence between Gareis and Gierke, who regarded the products of intellectual effort as falling within the general right of personality, and Kohler, who argued for a clear separation. Kohler contended that intellectual creations possess an existence independent of their creator's personality and thus belong to a distinct category of legal objects—namely, immaterial or intellectual

property. This conceptual distinction laid the groundwork for modern understandings that treat personality rights and intellectual property as related but separate fields.

Today, the notion of personality rights as a discrete category of private rights is well established across much of Europe and has gained traction in other jurisdictions, including South Africa and the United States. Despite this broad acceptance, considerable variation persists among legal systems regarding both the recognition and the extent of protection afforded to these rights, reflecting ongoing doctrinal and practical debates.

The concept of personality rights has gained significant traction with the rise of digital platforms and social media. In an increasingly technology-driven world, these rights have emerged as a crucial area of legal discourse. Personality rights refer to the legal protections associated with an individual's persona, encompassing the recognition of a person as both a physical and moral being, and ensuring the safeguarding of their sense of identity and existence. As individuals seek to prevent unauthorized copying and commercial exploitation of their personal attributes, the importance of these rights has become more pronounced.

Scholars trace the origins of personality rights to classical natural law, which emphasized the inherent dignity and autonomy of the individual. Contemporary understandings have expanded to include various facets of personal identity, such as the right to control and authorize the use of one's name, voice, likeness, style, and overall persona. These protections serve as a shield against unauthorized imitation and commercial exploitation, thereby preserving an individual's dignity and capacity for self-expression within society. They also contribute to maintaining a person's sense of belonging and existence, free from the fear of being misappropriated or manipulated for others' gain.¹

Historically, the relevance of personality rights was limited due to the absence of widespread media and digital technologies. However, modernization and technological advancements have enabled the imitation and replication of personal identities in ways that were previously unimaginable. This has raised concerns about defamation, misrepresentation, and broader forms of abuse. In the contemporary landscape, media platforms possess the capacity to distort or misrepresent information with relative ease, amplifying the need for robust legal protections. Infringements upon personality rights can also implicate fundamental rights, potentially depriving individuals of their constitutional guarantees. As technology continues to evolve and media presence expands, the development and enforcement of personality rights have become increasingly important across jurisdictions worldwide.²

Recognition and Basis of Protection of Personality Rights

Given the profound importance individuals attach to various aspects of their personality, so significant that many personality rights have been constitutionally enshrined as human rights it can be assumed that all legal systems strive to offer comprehensive protection against infringements, and are indeed obliged to do so by virtue of their human rights dimensions. Nevertheless, the

approaches adopted across jurisdictions have varied considerably.

One prominent model is exemplified by German law, which recognizes a general right to personality as the foundation for broad-based protection. Although the *actio iniuriarum* of Roman law had historically provided a basis for such claims in Germanic regions, the German Civil Code (BGB) initially omitted a general personality right, largely due to the prevailing view that the protection of dignity through criminal sanctions was sufficient. Instead, the BGB explicitly codified only specific personality rights, including those pertaining to name, image, dignity, reputation, bodily integrity, life, freedom, and health. It was only later, through judicial interpretation, that a general right to personality was developed to fill the gaps left by statutory law.³

FUNDAMENTAL RIGHTS AND THEIR IMPACT ON PRIVATE LAW: A FUNDAMENTAL RIGHTS PERSPECTIVE

The fundamental freedoms and human rights relevant to the protection of personality rights, establishing criteria for delineating the scope of conflicting interests and demonstrating the influence of constitutional rights on private law relationships. Regarding the tension between media freedom and personality rights, the essential function of freedom of expression in democratic societies tends to support a strong position for the media, even when their actions impinge upon the personality rights of others. Correspondingly, freedom of expression is robustly protected as a fundamental right, whereas, across the legal systems surveyed, only the core aspects of personality rights receive similar constitutional safeguarding. An unconditional priority of media freedom cannot be derived from constitutional principles alone. Within systems of fundamental rights, certain rights may be subject to statutory specification or limitation, thereby assigning to the democratically legitimated legislature the task of balancing competing societal interests. This legislative latitude has, in practice, enabled interests not explicitly protected at the constitutional level—such as personal honour—to

¹ Neethling, J., 2005. Personality rights: a comparative overview. *Comparative and International Law Journal of Southern Africa*, 38(2), pp.210-245.

² Gordon, H.R., 1960. Right of Property in Name, Likeness, Personality and History. *Nw. UL Rev.*, 55, p.553.

³ Neethling, J., 2005. Personality rights: a comparative overview. *Comparative and International Law Journal of Southern Africa*, 38(2), pp.210-245.

be accorded significant weight, even against constitutionally entrenched freedoms like those of the media.

The common foundation of all fundamental freedoms and human rights lies not in abstract values, however important—such as the preservation of democratic function—but in the dignity of the individual. Human dignity constitutes a basic prerequisite of civilized social existence, and that freedom of expression itself evolved from the individual's pursuit of self-realization within society. From this perspective, the objective cannot be to grant unconditional priority to either sphere, but rather to achieve a fair and adequate balance between the claims of the media and those of the individual. Media freedom, therefore, is not an end in itself but a means of realizing underlying constitutional values, and simultaneously serves as a justification for protecting personality rights. Both domains must be harmonized to enable optimal individual self-realization in society.

The practical utility of constitutional and human rights analysis in adjudicating individual personality rights cases. While he concedes that constitutional values are generally already reflected in ordinary legislation at least insofar as the latter complies with constitutional norms. Fundamental freedoms retain relevance in assessing the constitutionality of legislative choices. Moreover, the constitution provides interpretive guidance in cases where statutory provisions are ambiguous or their application raises constitutional questions.⁴

HOW DID THE QUESTION OF PERSONALITY RIGHTS GAIN ATTENTION

The rapid advancement of artificial intelligence has introduced profound transformations across various domains, many of which are likely to have lasting effects. However, these developments have also given rise to significant negative consequences, one of the most pressing being the creation of "deep fakes." Deep fakes refer to digitally manipulated content generated through deep learning techniques, which can produce entirely new material by replicating or altering existing features of an individual. Such content is

increasingly being deployed with malicious intent to harm reputations, thereby intensifying the need to protect individuals from identity-based defamation.

A prominent illustration of this concern emerged in May 2024, when actress Scarlett Johansson publicly accused OpenAI of imitating her voice in its latest GPT model. The company introduced "Sky," a voice feature within GPT-4o, which Johansson claimed bore an "eerily similar" resemblance to her voice in the film *Her*. The actress expressed serious concern over the incident, emphasizing the broader societal risks posed by deep fakes and calling for urgent measures to address the issue. She specifically highlighted the growing global threat to intellectual property rights and the need for legal frameworks capable of addressing such emerging challenges.

This incident underscored the increasing relevance of personality rights in the digital era and drew attention to the inadequacy of existing protections. It raised critical questions about the ease with which voices, images, and other personal attributes can be appropriated and manipulated to produce content distinct from the original, yet damaging to the individual concerned. Beyond the immediate implications for celebrities and public figures, the case also illustrated how AI-driven technologies may infringe upon fundamental rights more broadly. Such practices not only undermine the creative contributions of artists but also expose individuals to the risks of unauthorized imitation and misappropriation. In the aftermath, demands for stronger protection of personality and intellectual property rights have intensified across multiple jurisdictions.⁵

Status of Personality Rights in India

In India, personality rights are still an emerging area of law, lacking explicit statutory codification. Their development has largely been driven by common law principles and judicial interpretation. Often used interchangeably with publicity rights in commercial contexts, these rights have gained recognition primarily through court decisions that apply and adapt existing legal frameworks to offer protection.

⁴ Koziol, H., 2005. Protection of personality rights against invasions by the mass media: summary and outlook. In *Persönlichkeitsschutz gegenüber Massenmedien* (pp. 681-697). Springer, Vienna.

⁵ Halpern, S.W., 1994. The Right of Publicity: Maturation of an Independent Right Protecting the Associative Value of Personality. *Hastings LJ*, 46, p.853.

The constitutional foundation for personality rights in India is most prominently found in Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Supreme Court has expansively interpreted this provision to encompass the right to privacy, thereby creating a basis for safeguarding individuals against unauthorized intrusions into their personal identity. However, Article 21 does not fully extend to the commercial aspects of publicity rights, such as the unauthorized exploitation of a person's name, image, or likeness for economic benefit.

To address this limitation, Indian courts have turned to intellectual property legislation. Provisions under the Trade Marks Act, 1999, and the Copyright Act, 1957, have been used to adjudicate cases involving the commercial misuse of personal attributes. In addition, the common law doctrine of passing off has been invoked in certain instances, particularly when unauthorized use leads to false endorsement or misleading associations. Through these interpretive strategies, the judiciary has endeavoured to protect both the dignitary and economic dimensions of an individual's persona.⁶

Evolution of Personality Rights in India: Through Judicial Precedents

The judiciary encountered the question of personality rights for the first time in the case of *D.M Entertainment v. Baby Gift House*.⁷ In this matter, the plaintiff filed a suit against Baby Gift House for marketing and selling dolls that bore a strong resemblance to the singer Daler Mehndi and were promoted using his name. The dolls not only resembled the artist in appearance but were also capable of singing in a style similar to his, giving rise to claims concerning the unauthorized commercial exploitation of his persona.

The plaintiff sought a permanent injunction, alleging infringement of his publicity rights. The Delhi High Court ruled in favour of the plaintiff, *DM Entertainment*, granting the injunction. In its decision, the Court found that the dolls were clearly modelled after the singer's persona and amounted to an unauthorized appropriation of his commercial identity. It held that no individual may trade upon the name or likeness of another without

obtaining proper consent. In arriving at this conclusion, the Court drew upon common law principles underlying intellectual property rights.

Significantly, the Delhi High Court observed

“The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality.”

This ruling marked an important development in Indian jurisprudence, as it explicitly recognized that an individual's name, likeness, and identity warrant legal protection beyond the traditional confines of physical or bodily integrity.

The case of *Arun Jaitley v. Network Solutions Private Limited & Ors.*⁸ can be considered one of the most notable legal judgments in the domain of personality rights. In this case, the Delhi High Court addressed the protection of publicity rights in the context of domain names, drawing an analogy to the safeguards afforded to well-known trademarks. The central issue involved the alleged bad-faith registration and commercial exploitation of a domain name bearing the name of a prominent public figure. The plaintiff, Arun Jaitley, a respected Indian politician with significant public recognition and goodwill, sought to obtain a domain name corresponding to his name. Upon inquiry, it was discovered that the domain <www.arunjaitley.com> had already been registered by another party. The plaintiff contended that the registration was made in bad faith and was intended to commercially exploit his identity, thereby infringing upon his personality rights. The Delhi High Court ruled in favor of the plaintiff, holding that the domain name had indeed been registered with mala fide intent. It observed that Arun Jaitley was not merely a public figure but a personality with distinct recognition and established goodwill across the country. In its reasoning, the Court emphasized that the name "Arun Jaitley" deserved protection under trademark law, and that its use should remain exclusively with the plaintiff. No other person, particularly those seeking to commercially exploit the name, could be permitted to appropriate it. Accordingly, the Court granted an injunction restraining the defendants from using or dealing with the domain name.

⁶ Kaur, G., 2019. Right to Privacy and Right of Personality: Legal discourse in India. *International Journal of Research and Analytical Reviews*, 6, p.758.

⁷ 2010 SCC OnLine Del 4790

⁸ 2011 SCC Online Del 2660

The case of *Shivaji Rao Gaekwad v. Varsha Productions*⁹ is a recognizable legal precedent regarding the personality rights of a well-known celebrity in India. Eleven years later, a significant ruling further shaped the understanding of personality rights in India. This case centred on the publicity rights of the acclaimed actor Rajinikanth, who filed a suit against Varsha Productions to restrain the use of his name and distinctive style in an upcoming film titled *Main Hoon Rajinikanth*. The Madras High Court, in its judgment, affirmed the significance of publicity rights, particularly in the context of well-established celebrities.

The Court held that a valid cause of action arises when the individual concerned is identifiable and holds a recognizable reputation in society. It further observed that unauthorized use of a celebrity's name and persona could create a false impression among the public and potentially cause harm to their reputation and public image. This ruling reinforced the legal recognition of personality rights in India and underscored the need to protect celebrities from unauthorized commercial exploitation of their identity.

Likewise, the Delhi High Court, in the case of *Titan Industries v. Ramkumar Jewellers*,¹⁰ incorporated the jurisprudence that had become more robust in the present case. The court primarily focused on identifying the celebrity in question. The status and the presence of the celebrity become an integral part of deciding whether they can seek protection under personality rights. It was in the case of *Selvi J. Jayalalithaa v. Penguin Books India*¹¹ that the principle of identifiable personality was initially enunciated in jurisprudence.

Another notable precedent that is relevant in this domain is the infamous case of *K.S. Puttaswamy v. Union of India*.¹² The intersection of privacy and personality rights gained renewed attention in a landmark ruling on August 24, 2017, when a nine-judge bench of the Supreme Court of India unanimously affirmed the right to privacy as a fundamental right protected under Part III of the Constitution. This decision reaffirmed the constitutional importance of privacy for all citizens and established it as a cornerstone for related legal protections, including those pertaining to

personality rights. At its most basic level, the judgment recognized that every individual is entitled to exist and function with a reasonable expectation of privacy in their personal affairs.

The ruling carried profound implications for the safeguarding of personal identity and image. By affirming that privacy is inherent to human dignity and personhood, the Court provided a constitutional foundation for the protection of an individual's name, likeness, and persona from unauthorized commercial use. In doing so, it positioned Article 21 as a potential basis from which personality rights could be derived and developed within Indian jurisprudence.

Notably, however, the specific recognition of publicity rights as an aspect of the right to privacy was addressed only in the concurring opinion of Justice Sanjay Kishan Kaul. While the majority judgment laid a broad constitutional groundwork, it was this separate opinion that explicitly linked the commercial dimensions of personality—such as control over one's image and identity—to the broader right to privacy.

The recent landmark case that addressed a different dimension of personality rights was in the case of *Krishna Kishore Singh v. Sarla A Saraogi*.¹³ This case addressed the complex interplay between the right to privacy, personality rights, and the commercial exploitation of a deceased celebrity. The proceedings were initiated by the father of the late actor Sushant Singh Rajput, who sought to restrain a film production from commercially capitalizing on his son's image and the circumstances surrounding his death.

In its judgment, the Court observed that while an individual is entitled to enforce publicity rights during their lifetime, such rights do not automatically extend to their legal heirs or estate after death. The ruling underscored the distinction between the living celebrity's control over their persona and the posthumous limits of that control.

The decision is regarded as significant for its attempt to balance the deceased's right to privacy with the principles of creative expression and media freedom. It also raised important questions about the scope and recognition of personality rights for deceased individuals within Indian jurisprudence, an area that remains largely unsettled.

⁹ 2015 (62) PTC 351 (Mad.)

¹⁰ 50 PTC 486 (Del. 2012)

¹¹ (2013) (54) PTC 327 (Mad)

¹² (2017) 10 SCC 1

¹³ 2023 SCC OnLine Del 3997

Kinds of Personality Rights in India

In India, the judgments indicate the classification of personality rights, also known as publicity rights, into two components. The two components are:

Protection from Commercial Exploitation

Commercial exploitation refers to the act of using another person's tangible or intangible property—particularly intellectual property—for financial gain without authorization. In contemporary society, celebrities and public figures are especially vulnerable to such practices, as their identities, voices, names, and overall personas are frequently imitated or replicated for commercial purposes. This unauthorized use is often fuelled by public recognition and the goodwill these individuals have cultivated, and is increasingly enabled by technologies such as artificial intelligence.

This reality underscores the importance of personality rights, which serve as a legal mechanism to protect individuals from unauthorized commercial exploitation. Often referred to as the right of publicity, this aspect of personality rights enables individuals to control the use of their identity and prevent others from profiting from it without consent. It allows personalities to safeguard not only their creative output and distinctive traits but also the broader public perception of their persona, thereby preserving their legacy and reputation within society.

In certain respects, this protection functions analogously to the common law remedy of passing off. To successfully invoke such protection, individuals must demonstrate that they have established significant goodwill or recognition in the public sphere through their unique attributes and presence. Once established, legal safeguards become necessary to prevent unauthorized imitation or misrepresentation of that persona, whether for commercial gain or other purposes.¹⁴

Right to Privacy

The right to privacy is closely intertwined with the broader framework of personality rights. As previously discussed, the Supreme Court of India has recognized the right to privacy as a

fundamental right emanating from Article 21 of the Constitution. This constitutional guarantee plays a crucial role in preventing the unauthorized exploitation of an individual's identity and personal information. It effectively creates a protective boundary that distinguishes private matters from information that has been voluntarily placed in the public domain.

Article 21 has thus served as a foundational element in the evolution of personality rights within Indian jurisprudence. It has reinforced the understanding that an individual's private sphere should remain free from intrusion and, importantly, that others should not be permitted to profit from unauthorized access to or use of another's personal attributes. In this sense, the right to privacy constitutes an essential component of personality rights, one that must be upheld and respected in both legal and social contexts.¹⁵

RECENT DEVELOPMENTS OF PUBLICITY RIGHTS IN INDIA

In the absence of dedicated legislation, Indian courts have increasingly relied on the Copyright Act, 1957, and the Trade Marks Act, 1999, to adjudicate disputes involving personality rights. Although these statutes were not originally enacted to address such claims, their provisions have been interpreted expansively to offer legal protection against unauthorized commercial exploitation of an individual's persona. Through evolving judicial interpretation, celebrities and public figures have been able to approach the courts to safeguard their unique identity and preserve their distinctive attributes from misappropriation.

Under the Trade Marks Act, 1999, individuals may now register elements of their persona—such as names, voices, or distinctive styles—as trademarks. Section 14 of the Act further provides protection against the unauthorized use of a person's name or any misrepresentation likely to cause confusion. Similarly, the Copyright Act, 1957, has been invoked in this context. Section 2(qq), which defines a "performer," has been used to argue for the inclusion of personality rights within the scope of performer's rights. Section 38 of the same Act also plays a significant role in prohibiting the unauthorized commercial use of a performer's work.

¹⁴ Augustian, A., 2023. Protection of personality rights in India: Issues and challenges. IPR Journal of Maharashtra National Law University Nagpur, 1, pp.44-53.

¹⁵ Samarth Krishan Luthra and Vasundhara Bakhru, "Publicity Rights and the Right to Privacy in India"

Recent case law reflects the growing relevance of these protections in the digital age. In 2023, actor Anil Kapoor filed a suit seeking to restrain the unauthorized commercial exploitation of his name, dialogue delivery, walking style, and overall persona. He contended that such misuse affected his livelihood, family life, and right to live with dignity. The court took note of the increasing role of artificial intelligence in creating deepfakes and other imitative content, highlighting the persistent and evolving nature of the threat to personality rights.

Similarly, in May 2024, the Delhi High Court passed an interim order protecting the publicity rights of actor Jackie Shroff. He alleged that his voice, image, and signature dialogues were being used without consent by e-commerce platforms, social media users, and AI applications for commercial gain. The case underscored the inadequacy of existing legal frameworks in addressing contemporary challenges posed by technology and digital media. In a related development, the Bombay High Court also granted relief to filmmaker Karan Johar against violations of his personality rights, further signalling judicial recognition of the need for enhanced protection in this area.¹⁶

NEED FOR STATUTE IN INDIA

The rapid expansion of digital media and emerging technologies has brought about significant transformations in society. While these developments have driven progress in many areas, they have also introduced a range of challenges, particularly in the realm of personality rights. Indian courts have been compelled to address novel legal questions arising from the unauthorized use of personal attributes in digital spaces. Among the most pressing of these is whether India requires a dedicated statutory framework to govern publicity rights, a question that continues to engage scholars, lawmakers, and the judiciary alike.

As previously discussed, Indian courts have sought to address gaps in protection by applying existing legal instruments. The Constitution, particularly through Article 21, has provided a foundational basis for recognizing the dignitary aspects of personality rights. However, it has fallen short in

addressing their commercial dimensions. To fill this void, courts have turned to intellectual property legislation—namely the Trade Marks Act, 1999, and the Copyright Act, 1957—as well as the common law tort of passing off. While these sources have offered interim relief in specific cases, their application remains piecemeal and inadequate for the comprehensive protection of personality rights.

A further layer of complexity arises from the judicial treatment of publicity rights in relation to fundamental rights. In his concurring opinion in the Right to Privacy judgment, Justice Sanjay Kishan Kaul was the first to explicitly link publicity rights with the right to privacy. Although this marked a significant conceptual advancement, it stopped short of establishing publicity rights as an independent constitutional guarantee. This raises a broader jurisprudential question: whether personality rights, in their entirety, can be elevated to the status of fundamental rights. To date, no judicial precedent has definitively resolved this issue. The ambiguity stems in part from the fact that personality rights are rooted not only in personal autonomy but also in the commercial exploitation of one's likeness and identity.

Another unresolved question concerns the scope of beneficiaries. Are personality rights available to all individuals, or are they confined to those who have cultivated a distinct public persona? Justice Kaul, in his opinion, suggested that such rights should extend to every citizen. However, several High Court rulings have conditioned protection on the plaintiff's ability to demonstrate a recognizable public presence or positive goodwill. This divergence in approach underscores the need for greater clarity and uniformity in the legal framework governing personality rights in India.

In the case of *Indian Young Lawyers Assn. v. State of Kerala*¹⁷, Justice Dhananjay Chandrachud, in his separate opinion has stated that,

“The Constitution postulates every individual as its basic unit. Part III of the Constitution guarantees rights aimed at recognizing every individual as its basic unit. The individual is the bearer of rights under Part III of the Constitution.”

Drawing from the observations of Justice Sanjay Kishan Kaul and Justice Dhananjaya Y. Chandrachud, it can be inferred that the right to publicity ought to be recognized as a fundamental

¹⁶ Chandra, M., 2025. The Business of Being You: Evolving Law of Personality Rights in India. Trends in Intellectual Property Research, 3(2), pp.1-3.

¹⁷ AIRONLINE 2018 SC 243

right available to all citizens. However, this proposition has yet to receive direct and authoritative judicial consideration. In light of this gap, the case for a comprehensive legislative framework dedicated to personality rights becomes increasingly compelling. A uniform statute would serve several critical functions:

Establishing a Uniform Legal Framework

At present, neither the judiciary nor individuals can rely on a single, dedicated statute to address violations of publicity rights. Claimants are compelled to seek recourse under legislation not originally designed for such purposes, such as the Trade Marks Act or the Copyright Act. Similarly, courts must adapt provisions from disparate areas of law to adjudicate personality rights disputes. A dedicated statute would provide a coherent and accessible legal framework, offering clarity and consistency for all stakeholders.

Enhancing Clarity and Accessibility for Citizens

A well-defined legal framework would enable individuals to better understand their rights and obligations in the realm of personality. With clear statutory guidance, citizens would be empowered to identify violations and pursue appropriate legal remedies when their persona is exploited without authorization.

Reducing Judicial Inconsistencies and Legal Uncertainty

The current absence of specific legislation has led to fragmented and sometimes inconsistent judicial outcomes. Unresolved questions—such as whether personality rights survive death—continue to create uncertainty. A comprehensive statute could address these issues directly, providing definitive guidance and promoting uniformity in judicial decision-making.

Elevating Personality Rights to Fundamental Status

Legislative recognition could also serve to formally embed personality rights within the constitutional framework, extending them to all citizens as fundamental entitlements. Such a step would resolve foundational questions regarding the nature and scope of these rights and provide a strong basis for future legal development.

Addressing Contemporary Technological Challenges

The rapid evolution of digital media and artificial intelligence has introduced new and complex forms of infringement that traditional laws are ill-

equipped to handle. From deepfakes to AI-generated imitations, modern violations demand modern legal responses. A dedicated statute could directly address these challenges and offer remedies suited to the technological landscape.

Ensuring Comprehensive Protection for All Individuals

While celebrities are often the most visible victims of personality rights violations, ordinary individuals are equally susceptible to unauthorized use of their identity, particularly in the digital age. A uniform law would not only safeguard the publicity rights of public figures but also provide robust protection to every citizen, ensuring that all persons can defend their persona against exploitation.

In sum, the enactment of a dedicated statute on personality rights would address existing legal gaps, resolve judicial inconsistencies, and provide a forward-looking framework capable of adapting to emerging challenges in an increasingly digital world.¹⁸

THE EVOLUTION OF PERSONALITY RIGHTS: IDENTITY PROTECTION IN THE DIGITAL AGE

As we navigate a landscape increasingly defined by artificial intelligence and sophisticated digital tools, personality rights have transitioned from a niche legal curiosity to a central pillar of modern jurisprudence. The rise of deepfakes and identity manipulation has forced a re-evaluation of how the law shields an individual's likeness, voice, and persona from unauthorized exploitation. Personality rights do not exist in a vacuum; they represent a complex convergence of several legal domains:

1. Intellectual Property: Treating identity as a commercial asset.
2. Privacy Rights: Protecting the "right to be let alone."
3. Right to Livelihood: Ensuring professionals can control the economic value of their reputation.
4. Human Dignity: Safeguarding the intrinsic value of an individual's persona.

India currently lacks a standalone statute dedicated to personality rights. This absence has forced the

¹⁸ Tomar, H., 2023. Evaluating the Regulations concerning the Right to Publicity in the Context of India. Part 2 Indian J. Integrated Rsch. L., 3, p.90.

judiciary to adopt a "patchwork" approach, pulling from various existing frameworks to resolve disputes:

The Trade Marks Act, 1999: Used when a persona is used to "pass off" goods or services.

The Copyright Act, 1957: Invoked for performer's rights or specific creative expressions.

Article 21 of the Constitution: Providing a foundation through the fundamental right to life and privacy. This reliance on fragmented laws has led to inconsistent rulings, leaving critical questions—such as whether these rights survive after death (posthumous rights) or if they apply to non-celebrities—largely unsettled. The rapid advancement of AI presents unique hurdles that existing laws are ill-equipped to handle. Beyond traditional commercial theft, we are seeing:

Synthetic Identities: AI-generated content that mimics real people with uncanny accuracy.

Algorithmic Misuse: The use of personal data to create deceptive "digital twins."

Global Infringement: Digital content crosses borders instantly, making jurisdictional enforcement a nightmare. To move beyond a reactive judicial approach, there is a growing consensus for a unified legislative framework. Codifying personality rights would provide:

Legal Certainty: Clear definitions of what constitutes an infringement.

Preventive Measures: Guidelines for tech platforms and advertisers to vet content.

Remedial Clarity: Standardized penalties and damages for identity theft.

Personality rights are no longer just about the "rich and famous." In a world where anyone's image can be manipulated and monetized with a few clicks, these rights have become essential to personal autonomy. A dedicated statute would not only protect individual integrity but also foster a digital environment where innovation and human dignity can coexist.¹⁹

PERSONALITY RIGHTS AS INTELLECTUAL PROPERTY RIGHTS

The intersection of personality rights and intellectual property (IP) is foundational to understanding modern identity protection. Both fields are built on the pillars of ownership, control, exclusivity, and the prevention of unauthorized

exploitation. Every individual possesses a unique persona that constitutes a form of inherent "intellectual" property, necessitating a shift from seeing these rights merely as privacy concerns to viewing them as commercial assets.

The Conceptual Synergy between Identity and IP

The parallels between traditional IP regimes and personality rights are striking. Like a trademark protects a brand's reputation, personality rights shield the commercial "goodwill" of a human being.

Why IP Recognition is Essential for India

Transitioning personality rights into a formal IP framework provides three critical advantages:

Protection of Commercial Assets

For public figures, an identity is not just a personal trait; it is a professional asset cultivated through years of effort and investment. In industries like advertising and entertainment, a celebrity's likeness is a marketable right. Recognizing this as IP ensures that licensing agreements and sponsorships are governed by clear, enforceable rules, preventing third parties from reaping "unjust enrichment" from another's fame.

Legal Clarity and Uniformity

Currently, Indian courts rely on a mix of Article 21 (Right to Privacy) and common law torts like "passing off." The Landmark Precedent: In *R. Rajagopal v. State of Tamil Nadu*, the Supreme Court recognized the right to control the publication of one's identity.

The Gap: Without a dedicated statute, these rights remain fragmented. Categorizing them under IP would provide a clear statutory definition, reducing the current overlap with defamation or general privacy laws and ensuring consistent judicial application.

Resilience against Technological Misuse

Traditional laws are often toothless against deep fakes, digital morphing, and AI replication. These technologies don't just "invade privacy"; they "steal identity" for commercial or malicious gain.

An IP-based framework offers preventive remedies (such as injunctions) and structured enforcement mechanisms that are better suited for the rapid, viral nature of digital exploitation than traditional tort law.

The dual structure of personality rights—incorporating both economic and moral

¹⁹ Meçani, Z., 2025. Legal Personality in the the Digital Age. *Interdisciplinary Journal of Research and Development*, 12(3), pp.128-128.

dimensions—mirrors the architecture of Copyright law. By recognizing these rights as a distinct form of Intellectual Property, India can move toward a more robust, digitally-relevant legal system that safeguards the dignity and the "brand" of the individual.²⁰

REDEFINING PERSONALITY RIGHTS: BEYOND THE CELEBRITY SPOTLIGHT

In a landmark shift for Indian intellectual property and privacy law, the Delhi High Court has fundamentally expanded the scope of personality and persona rights. Traditionally viewed as the exclusive privilege of Bollywood stars or elite athletes, these protections—which guard against the unauthorized commercial use of a person's identity—are now recognized as a right for "one and all." This evolution acknowledges that in a digital-first economy, an individual's professional reputation holds significant commercial value that warrants legal shielding.²¹

The Shift from Fame to Recognition

The core of the Court's clarification lies in decoupling "personality rights" from "celebrity status." While household names like Aishwarya Rai or Anil Kapoor have historically secured injunctions against the misuse of their likeness, the Court noted that accomplished professionals—such as renowned cardiac surgeon Dr. Devi Prasad Shetty—deserve similar protections. The legal benchmark has shifted from universal fame to demonstrable public recognition within a specific field. For legal practitioners, this means:

Sectoral Recognition: One does not need to be a movie star; being a leading authority in medicine, law, or academia is sufficient if that reputation carries commercial weight.

Evidence-Based Claims: Plaintiffs can now use professional honors, media appearances, and social media influence as evidence to establish their "persona" in the eyes of the law.²²

²⁰ Hughes, J., 1998. The personality interest of artists and inventors in intellectual property. *Cardozo Arts & Ent. LJ*, 16, p.81.

²¹ Neethling, J., 2005. Personality rights: a comparative overview. *Comparative and International Law Journal of Southern Africa*, 38(2), pp.210-245.

²² Dr. Devi Prasad Shetty & Anr. vs. Medicine Me and Ors. 2024 SCC Online Del 8565.

Personality Rights as a Shield Against Deception

The Court's ruling is not merely about protecting egos; it is a tool for consumer protection. By anchoring these rights in the public interest, the judiciary aims to prevent "illicit commercial gains" derived from misleading the public.

Key Legal Principle: Protection is granted when the unauthorized use of a persona is likely to deceive the public into believing a person has endorsed a product or service they have no connection to. This is particularly critical in the age of AI and Deepfakes. A fraudulent advertisement using a doctor's AI-generated voice to sell unverified medicine is no longer just a privacy violation—it is a commercial tort that the Delhi High Court is now better equipped to penalize.²³

THE ELVIS ACT

The ELVIS Act: Tennessee's Legislative Shield Against AI Identity Theft

In a pioneering move to counter the digital manipulation of human identity, the State of Tennessee enacted the Ensuring Likeness, Voice, and Image Security (ELVIS) Act of 2024. Officially designated as Public Chapter No. 558, this legislation modernizes the state's approach to personality rights, specifically targeting the threats posed by generative Artificial Intelligence.

From the PRPA to ELVIS: A Historical Evolution

The ELVIS Act is an overhaul of the Personal Rights Protection Act of 1984 (PRPA). Originally created following the death of Elvis Presley to ensure that an artist's commercial legacy survived them, the PRPA focused on name and likeness.

The 2024 amendment significantly broadens this scope to include an individual's voice. This is a direct response to the "AI wave," which has seen a proliferation of:

Soundalikes: AI-generated audio that mimics a specific artist's vocal timbre and style.

Deepfakes: Visual media where a person's physical appearance is digitally swapped or manipulated.

Key Provisions and Enforcement

The Act, which went into effect on July 1, 2024, introduces several sophisticated mechanisms for enforcement:

²³ 2024 SCC Online Del 8565.

Expanded Standing: Under Section 8, the right to sue is not restricted to the artist alone. Record labels and entities with exclusive contracts to an artist's recordings can initiate legal action, ensuring that unauthorized commercial use is challenged even if the artist is deceased.

Platform Liability: Perhaps the most controversial aspect is Section 6, which extends liability to those who "make available" infringing content or the technology used to create it.

The Knowledge Threshold: Section 11 clarifies that platform owners or service providers can be held accountable if they "reasonably should have known" that their technology was being used for unauthorized identity replication.

Balancing Innovation and Fair Use

Despite its stringent protections, the ELVIS Act recognizes the importance of creative expression. It explicitly exempts uses that fall under:

Satire and Parody: Recognizing these as protected forms of commentary.

Fleeting/Incidental Use: Ensuring that minor or accidental appearances do not trigger heavy-handed litigation.

The ELVIS Act represents a significant shift from reactive to proactive digital law. By holding not just the creators, but potentially the AI service providers and hosting platforms accountable, Tennessee has set a high bar for identity protection. Whether this serves as a blueprint for global AI regulation or creates a hurdle for technological "fair use" remains a subject of intense legal debate.²⁴

UNDERLINING LEGAL HURDLES IN INDIA

The current legal landscape in India lacks a dedicated, cohesive framework to address the nuances of AI-generated cloning. This absence creates significant hurdles in protecting the personality rights of individuals, particularly as technology outpaces existing statutes. While international jurisdictions are moving toward specialized legislation—such as the EU AI Act or Tennessee's "ELVIS Act"—India continues to rely on a patchwork of traditional laws and judicial interpretations that were not designed for the digital age.

LIMITATIONS OF CURRENT INDIAN STATUTES

Statute Scope & Limitations

Copyright Act, 1957 Sections 38A and 38B protect "performers," but this is limited to specific acoustic or visual presentations. It does not cover the intrinsic qualities (like a voice's timbre) used by AI to generate new, unauthorized content.

Trademarks Act, 1999 Section 14 allows the Registrar to block marks suggesting a false connection to a living person. However, it offers little protection for non-commercial use or for traits (voice, movement) that aren't registered as specific marks or logos.

IT Act, 2000 While Sections 66C and 66D cover identity theft and impersonation, they are geared toward traditional cybercrime. Section 67 addresses obscenity, but fails to regulate deepfakes that are misleading yet not legally "obscene."

The Performance and Identity Gap

Under the Copyright Act, an artist is recognized as a "performer" only regarding their actual, physical performance. When AI clones a voice to create an entirely new song or speech, it falls outside this definition because the artist did not technically "make" that specific performance. Consequently, victims are forced to rely solely on Personality Rights, which are often difficult to enforce without a statutory basis.

The Posthumous Protection Vacuum

A critical gap exists in the duration of these rights. Unlike some United States jurisdictions that grant posthumous personality rights, Indian courts have taken a narrower view.

Case Study: In *Krishna Kishore Singh v. Sarla A. Saraogi*²⁵, the Delhi High Court established that both the right to privacy and the right to publicity expire upon the individual's death. This leaves the legacies of deceased public figures vulnerable to AI exploitation without legal recourse for their estates.

India's legal framework remains fragmented and reactive. The reliance on common law and existing statutes creates "judicial creatures" that attempt to bridge gaps but fail to provide the certainty needed to combat sophisticated deepfakes and AI identity theft. Without a focused legislative overhaul, the

²⁴ <https://www.barandbench.com/view-point/a-resurgence-of-elvis-addressing-the-deepfake-dilemma>

²⁵ 2023 SCC Online Del 3997.

protection of personality rights in the digital era will remain inadequate.²⁶

THE CONCLUSION & RECOMMENDATIONS

As AI technologies continue to disrupt the creative and digital landscapes, India faces an urgent need for an integrated legal framework to protect personality rights. The current reactive and fragmented approach lacks the consistency required to safeguard identity, dignity, and economic interests.

The following recommendations outline a strategic path forward for legislative reform:

Codification of Personality and Publicity Rights:

India requires a dedicated statute that explicitly defines the scope of personality rights, including a person's name, voice, image, and likeness.

Post-Mortem Rights: Crucially, this framework must extend protection beyond the individual's life, allowing heirs to manage and monetize the identity of the deceased. This would align Indian law with international standards and prevent the unauthorized digital "resurrection" of celebrities.

Regulation of AI and Deepfakes:

To combat the misuse of synthetic media, the law should move beyond temporary advisories (like those from MeitY) and establish enforceable standards:

Mandatory Disclosures: All AI-generated content should carry clear labels (e.g., "This content was AI-generated").

Prior Consent: Legal mandates should require explicit permission before using an individual's attributes to train or deploy AI models.

Takedown Protocols: Specific, streamlined standards for the removal of unauthorized deepfakes must be codified to ensure rapid enforcement.

Modernizing Intellectual Property (IP) Statutes:

Existing IP laws must be updated to address the "mimicry" capabilities of generative AI:

Copyright Act: Amendments should clarify whether AI-cloned styles constitute

"performances" or "derivative works." Furthermore, Section 38B (Moral Rights) should be expanded to protect an artist's identity from digital distortion.

Trademarks Act: Provisions should evolve to cover digital avatars and voice assistants, ensuring that unique personality traits are protected even when they don't fit the traditional definition of a "mark" or "logo."

Implementation of Consent-Based Licensing:

To balance technological innovation with creator rights, India should establish a centralized licensing scheme.

Identity Licensing: This would allow artists or their estates to grant time-limited licenses for the use of their likeness or voice.

Royalty Streams: Platforms like YouTube or Spotify could utilize this system to verify consent and ensure that royalties are paid directly to the creator or their estate, fostering a transparent digital economy.

A holistic legal framework is no longer a luxury but a necessity. By addressing these gaps, India can protect its citizens from the risks of AI-generated cloning while providing a stable environment for the digital creative industry to thrive.

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