



## PERSONALITY RIGHTS IN THE DIGITAL ERA: SAFEGUARDING THE SELF IN INDIA

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### **Abstract**

Originally intended to protect an individual's identity, the right to privacy has expanded to encompass a person's name, voice, and other distinctive traits. The extent to which digitalization has impeded personal freedom is noteworthy, ranging from the illegal use of celebrity photos by street vendors to the danger of deepfakes. Today's digital world and artificial intelligence offer countless opportunities for communication and business, but they also pose significant challenges to individual rights.

The development of personality rights is traced in this article, starting with the conventional privacy principles and ending with their legal standing as an independent right. It investigates issues pertaining to the regulation and protection of the digital environment as well as novel types of cyber victimization. In order to reflect the current legal framework, pertinent statutes and case laws are also examined. In order to maintain a balance between individual dignity and technological advancement, the paper ends by suggesting a path forward for bolstering personality rights in the digital age.

**Keywords:** Intellectual Property Rights, Personality Rights, Artificial Intelligence, Deepfake, Legal Framework



## 1. Introduction

The human intellect or brain is the most complex structure. This structure is capable of doing technical as well as creative work. Intellectual Property Rights are a shield for the human intellect as they protect the diverse forms of expression of human intellect. Similarly, beyond these technical and creative expressions, the other product of the human mind is their unique charisma or personality. So, alongside other expressions, the personality rights need to be protected. Before reaching the depths of personality rights, it is essential to understand the meaning of term 'personality'. The term 'personality' refers to the set of traits and patterns of thoughts, behavior, and feelings that make you you[1]. It includes different traits, habits, characteristics, and values of a person that have evolved over the years. From the date of birth, humans go through innumerable ups and downs. They meet varied people and have their own experiences. From childhood to adulthood, humans go through a roller coaster of emotions, which ultimately shapes their personality. Like every other skill, the personality also bears certain fruits of commercial gain. When a person becomes popular, people start following him, doing what he does, and buying what he has. That is the reason that different companies take different celebrities to advertise their products, sometimes with consent and sometimes without.

In this sense, others profit from a person's reputation or personality. Personality rights refer to the safeguarding of one's identity and reputation. These inalienable and inheritable rights, which have their roots in common law, grant people authority over the use of their name, image, voice, and other distinctive characteristics. Article 21 of the Indian Constitution, which addresses the "Protection of life and personal liberty," acknowledges these rights. According to **KS Puttaswamy v. Union of India**[2], this right of personal liberty has expanded to encompass the right to privacy. A subset of the same rights is the personality right. These rights are even more complicated because they cut across boundaries.



Earlier, these rights were violated by print media, and their posters were published by different business houses, which were easy to control. But with growing technology and increasing accessibility to Artificial Intelligence, copying a person's identity has become easier than ever before. Exact replication of human images, videos, and even voice can be made in minutes. This replication is mostly used for financial gains.

Since their voices, pictures, or videos are regularly used without their consent to promote products, celebrities must protect their personality rights. However, this issue is no longer limited to celebrities. Deepfakes, artificial intelligence, and social media have put even regular people at risk. We frequently see videos or reels that go viral. Who bears responsibility when a personal reel is misused or goes viral? Personality rights are more crucial than ever in the digital age due to this growing concern.

As the Google CEO, Sundar Pichai [3], emphasizes, artificial intelligence is equivalent to the discovery of fire and electricity, and just like them, AI is going to revolutionize mankind; the same is happening today. However, these concerns have been acknowledged by the law over time, and personality rights, which protect an individual's identity from abuse, have been added.

## **2. Facets of Personality Rights**

Personality rights by and large comprise of two sorts of rights: the right to publicity, or to keep one's representation and resemblance from being commercially misused without authorization or contractual remuneration, which is like the utilization of a trademark; and the right to privacy, or the right to be left alone and not have one's charisma epitomized carte blanche. [4]



## **The right to publicity**

One of a person's greatest strengths is their personality. It takes years, and in certain situations, generations, to build a person's goodwill or reputation. The law acknowledges this and grants the individual the sole right to publicity. Just as physical property can be owned and used for profit, so too does a person's identity or persona which includes their name, image, voice, likeness, and other distinctive qualities—have commercial value. When someone else uses this persona for financial or commercial gain without authorization, this right is violated. In essence, the right to publicity ensures that only one individual is able to control and reveal their identity.

The right of publicity “is the inherent right of every human being to control the commercial use of his or her identity.”[5] Moreover, it recognizes the economic and moral rights of a person over his personality. It enables them to live freely with their unique aura in society.

## **The right to privacy**

The right to privacy has been given the pedestal of fundamental rights under the Right to Life and personal liberty under Article 21 of the Indian Constitution in 2017. The landmark case of **K.S. Puttaswamy v. Union of India**, a nine-judge Supreme Court bench has embellished the privacy within A21 and highlighted its importance for both liberty and dignity.

Privacy ensures that a person himself and no one else has the right to his private information, traits, and identity. It establishes what is off limits for other people and protects a person's dignity and private space from any external interference.

It also supports the other facet of Personality Rights called the publicity rights. In **R. Rajagopal v. State of Tamil Nadu** [6], or the Auto Shankar case, the Supreme Court held that every detail about a person's life, unless it is available in public records, is a subject of right to privacy.



No one is allowed to interfere with or disturb the usage of such rights.

### **3. Evolution of personality rights- Traced through precedents**

In the absence of statutory support, judicial precedents govern personality rights today. The legal system in India, at present, is lacking in dealing with the modern phenomenon of a celebrity's integrity rights. [5] However, courts have laid down different precedents to support these rights time and again. These rights have evolved in the last decade and are still evolving.

From the court refusing to recognize the personality rights under **Wander Ltd. v. Antox India**[7] in 1990 to different celebrities claiming their personality rights, India has come a long way.

It begins with the recognition of the right to privacy and publication rights, which are subsets of personality rights. Firstly, the court has recognized the publicity rights as a dimension of right to privacy under A21 of the Constitution of India in the case law **ICC Development (International) Limited v. Arvee Enterprises**[8]. Following it, the landmark judgement of **R. Rajagopal vs State of Tamil Nadu** has accepted the right to privacy as a Fundamental Right under A21. Likewise, **KS Puttaswamy v. Union of India** has provided protection against unauthorized commercial use.

The case of **Daler Mehndi Entertainment vs. Baby Girl**[9] was the primary case that recognized the commercial aspect of personality rights for the first time. In this case, the company's 'baby girl' used to produce dolls which were similar to the personality of Daler Mehndi, and they produced tunes similar to his music. Thus, he seeks a permanent injunction against the production of such dolls. The Delhi High Court has laid down that:

"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."



Following it, Rajnikant was the first Indian celebrity who hailed the court to restrict unauthorized use of his voice, images, and videos in the movie 'Main hoon Rajnikant' in the case of **Shivaji Rao Gaikwad v. Varsha Productions**[10]. In this case, the Madras High Court has highlighted the importance of publicity rights and the right to privacy. It also pointed out that the usage of name, dialogues, or unique personality traits of Rajinikanth in the movie can turn out to be detrimental to his reputation. Similarly, the Delhi High Court has passed an order against the whole world, a John Doe order in the case of **Amitabh Bachchan v. Rajat Negi**[11]. The Case was filed by Amitabh Bachchan against 9 respondents. His images were used in posters, his voice from the TV show Kaun Banega Crorepati was used by people running a lottery, and [the www.amitabhbachchan.com](http://www.amitabhbachchan.com) domain name was also used by some defendants. Amitabh seeks protection of his personality rights and an injunction against unauthorized usage. As a result, the honorable Supreme Court has passed a John Doe order, which was the first order of this kind in India, and this order has restricted the public at large from using any personality traits of Amitabh Bachchan for commercial purposes.

These cases became landmark precedents in recognition of personality rights in India. Anil Kapoor, in case '**Anil Kapoor v. Simply Life India and Others**'[12] 2023, also claimed these rights. Different people were using AI to make deep fakes of actor Anil Kapoor. So, he seeks an injunction against unauthorized usage of his dialogue 'jhakass' as well as his walking style and other personality traits. Later, **Jackie Shroff** [13] and **Karan Johar** [14] also claimed similar rights.

Similarly, characters of the popular Indian TV show "**Taarak Mehta ka Ooltah Chashmah**" [15] also became a victim of the AI when deepfakes of characters, showing vulgar and pornographic content, went viral.

Alongside celebrities, popular political figures also stepped into the realm of personality rights. In **Arun Jaitley v. Network Solutions Pvt. Ltd.** [16], the former finance minister Arun Jaitley,

who was a renowned politician in India, wanted to get a domain name registered in his name, but when he applied for registration, he came to know that someone had already registered a domain name under [www.arunjaitley.com](http://www.arunjaitley.com). He asserted it as a violation of his personality rights. In this case, the honorable Supreme Court recognized personality rights as well-known marks under the purview of the Trademarks Act.

However, cases like **Ram Gopal Verma & Ors. Vs Perumalla Amrutha**[17] have assigned a boundary to the usage of these rights. This case pointed out that the information that is already available in the public domain is not a subject of personality rights and can't be protected.

#### **4. Statutory Framework**

##### **Constitution**

The Constitution of India is the foremost law that deals with personal rights. Article 21 and cases like *ICC v. Aarvee* and *R. Rajgopal v. Union of India* that have recognized the right of publicity under privacy and the right of privacy as a part of Article 21. Collectively, they have put the personality rights on a pedestal similar to fundamental rights.

##### **Copyright Act, 1957**

The Copyright Act of 1957 does not recognize personality rights directly, and no direct provisions are available to support these rights. But some indirect provisions have been used time and again by different people in precedents. These provisions include S. 2(qq), S.38, and S.38A.

Any individual who performs, including actors, singers, musicians, dancers, and others, is considered a performer under Section 2(qq). This definition includes people whose identity and artistic expression are fundamental to their public persona and character.

Performers have the sole right to prevent their performances from being unlawfully



reproduced, shared with the public, broadcast, or sold under Sections 38 and 38A. The performers' financial and ethical interests are safeguarded because these rights are in effect for 50 years after the year of performance. Because it forbids the exploitation of a performer's identity, voice, and performance without consent, this kind of protection is an essential part of personality rights.

**In Ramkumar Jewellers v. Titan Industries Ltd. [18]** The defendant in this case had erected billboards featuring prominent Indian celebrities Jaya Bachchan and Amitabh, promoting the defendant's Jewelry store. Based on the contract (in which the personalities granted the plaintiff their personality rights), the plaintiff asserted that personality rights were being violated. Also, the plaintiff filed suit against such violation under Section 17(b) of the Copyright Act, 1957 and seek remedy of passing off. Consequently, it was proved that copyright rights have been violated by the defendant's dishonest use of a similar product advertisement on hoardings and the reproduction of celebrities in the same context as the plaintiffs. In this case, the court attempted to address the plaintiff's rights under the work's first author's jurisdiction and take into account the performer's personality.

However, it is evident from interpreting the Copyright Act's definition of the performer that it will not offer the full protection needed by personality rights. This is due to the fact that some performers are unable to meet the requirements.

Personality right is regarded as an exclusive right of celebrities<sup>29</sup>, which actually appears to be at odds with the concept of personality right<sup>30</sup>. Protection of names is not possible due to the lack of sufficient minimum requirements, and similarly, other attributes like voice, likeness, or

other identifiers of persona are not suitable for copyright law to deal with. This is evidence that the protection under the aspect of "performers" is insufficient in India.

**Trademarks Act, 1999**

Personality rights are also indirectly but significantly protected by the Trade Marks Act of 1999.

Since names are included in the definition of a mark in Section 2(1)(m), a person's name may serve as a trademark if it is connected to their reputation or goodwill.

Furthermore, whether a person is alive or dead, Section 14 offers particular protection against the unapproved use of their name. No person is allowed to register a trademark which is similar to any other person and confuses the public that it belongs to that person and tarnish his reputation.

However, aspects of personality, like voice, appearance, and likeness, have not been covered here. Trademark is given to show the product's origin and quality, but personality rights are utilized to regulate persona usage. Consequently, it can be claimed that the trademark protection subject matter is insufficient.

**Consumer Notification 2022**

By prohibiting the unapproved commercial exploitation of a celebrity's persona, the Consumer Protection Act of 2019 and the Guidelines for Prevention of Misleading Advertisements and Endorsements of 2022[19], which are notified by the Central Consumer Protection Authority (CCPA), indirectly protect personality rights. In order to ensure that endorsements are founded on accurate information, sincere opinions, or firsthand experience, the Guidelines require endorsers to do their research before endorsing any goods or services.

In addition to misleading customers, using a celebrity's name, image, or voice for commercial purposes without permission is an infringement on their personality rights. The CCPA has the authority to fine the manufacturer or endorser up to ₹10 lakhs under Section 21(2) of the Consumer Protection Act, 2019, which could go up to ₹50 lakhs.

### **Advertisement Standard Council of India**

Despite being self-regulatory, the Advertising Standards Council of India (ASCI) Code is crucial in preventing the infringement of personality rights. In particular, Chapter 4 of the ASCI Code prohibits the unwarranted use of a person's or business's name, initials, or goodwill in order to obtain an unfair competitive advantage. As per clause 4.2, no person can take undue advantage by unauthorized use of any other person's name or identity. The world at large is restricted from using the name, images, or goodwill of people without their consent or exceeding their consent.

However, these rules are not legally enforceable, but their persuasive value deters unethical conduct by different advertisers and thus protects the personality rights indirectly.

### **Common Law Remedy**

The passing off remedy is another remedy used by the court to grant protection for personality rights, but this too is not sufficient to cover the personality right because, under passing off, the three parameters needed to be fulfilled to claim such rights:

- Reputation
- Misrepresentation
- Damage to goodwill or reputation.

As in the context of unauthorized use of personality rights, more than misrepresentation, misappropriation is happening; in some cases, reputation may not be infringed, but unauthorized use might be happening. As long as reputation is not violated, then the remedy under passing off is not possible; therefore, these elements of passing off became a hurdle to claim a remedy under passing off right for personality right infringement.

The digital media age has been proliferating in society today. The world is being

positively revolutionized by ongoing technological and digital advancements, but society is also experiencing a number of negative effects at the same time. It has brought about a number of unmatched difficulties that have forced the Indian judiciary to concentrate on yet another crucial area. The legal question raised in this area is making it difficult for academics, lawmakers, and the judiciary to decide whether or not publicity rights in India require a statute.

However, these laws appear to be adequate; there are many intricacies that are still untouched. For covering those legal gaps, an appropriate legal recognition is necessary. In the following section, the grey areas of the existing legislative framework for personality rights are highlighted.

## 5. Emerging challenges

### No particular statute

Every street of every village can't be checked for claiming personality rights. We come across innumerable violations of personality rights in our day-to-day lives. From the juice vendor to general stores, it is common to use images of celebrities. However, there is no particular legislation that people can seek to protect their unique personality traits. Either citizens are unaware of such rights, or they fail to navigate the correct mechanism to protect themselves against such violations.

### Defamation & privacy concerns on social media

Social media platforms have become a new avenue for personality rights violations. Content creators often use others' photos, voice, or video clips to increase their reach. Many fan pages use obscene deepfakes of celebrities for commercial gains.

### Non-celebrity digital users' personality rights

### **Viral reels, memes, and deepfakes**

They often feature non-consensual use of ordinary individuals' photos or videos, leading to harassment, cyber bullying, and reputational harm. The infamous case of the Kulhad pizza

owner's leaked video is one such example. The owners contended that the video was morphed, and it has reduced their sales by 90%[20]. Similarly, innumerable MMS and Delhi metro viral reels cause irreparable damage to the victims.

### **Posthumous Personality Rights**

**Krishna Kishore Singh v. Sarla A Saraoji**[21]. This case highlighted a grey area related to personality rights in India. The father of late actor Sushant Singh Rajput filed a case against the usage of his personality in an upcoming movie. However, the honourable court stated that personality rights are only available to living persons. Thus, this case brings the personality rights of the deceased person into the limelight. However, they were rejected by the court, but it still persists as a grey area. Similarly, **Deepa Jayakumar v. A.L. Vijay & Ors.**[22], Support this observation by stating that personality Rights extinguish with death and are inalienable.

Justice Sanjay Kishan Kaul wrote the majority opinion, which addressed the question of posthumous publicity rights by concluding that "a person's privacy rights expire upon death" and that they are inextricably linked to and derived from the right to privacy. However, the court did not determine whether denying them posthumous privacy rights was done merely to shield their dignity from unwelcome, biased portrayals or also to compensate for financial losses brought on by how their personalities were portrayed.

### **Digital contracts & click-wrap agreements eroding personality rights**

People usually click 'I agree' to whatever appears on their screen without even knowing what they are agreeing to. They pay money to use online platforms in today's data-driven world, but they also give up some aspects of their identity in exchange. In this fast changing world, the private information of a person including his name, address, health issues, passwords, mobile number, email id, chats and posts, everything has become a profit yielding good.

People don't even know how and for what purposes their data is being used. They are unable to detect any data or contract breach. Whatever is entered on AI is stored and used for further

processing. Often, without users fully understanding how much of their personal identity is being traded, the data they collect is then used to develop research and strategies for online marketing and advertising. A report from McKinsey Global Institute estimates that Big Data could generate

\$3 trillion in value every year.[23] "Imagine a world where every private conversation you have on a Microsoft service could become fodder to train AI," said the Mozilla Foundation, which recently launched a campaign for transparency regarding Microsoft's Terms of Service Agreement. The sound and pictures from every video call on Teams or Skype, all of your Chat messages, all of your Microsoft email attachments, and a lot more. We haven't even thought about, let alone agreed to, the use of our private conversations in a world that exists. The campaign asks, "What chance does the average person have if nine privacy experts can't figure out what Microsoft wants to do with your data?"[24] The court levied \$724 million on Facebook for using the private data of its users for unauthorized purposes and sharing it with third parties.

## **Increased interference of Artificial Intelligence**

The usage of ChatGPT and other AI models across the globe has also posed serious concerns.

The \$10 billion deal between Microsoft and ChatGPT[25] itself raises concerns about data security. In this era, where we ask everything from AI, use it to edit photos, and even treat it as a therapist for minor inconveniences, we are actually fodder for the mechanism of these AI models.

ChatGPT language models are developed using three primary sources of information [26]:

- (1) information that is publicly available on the internet,
- (2) information that we license from third parties, and
- (3) information that our users or our human trainers provide.

## **6. Way Forward**

There is no particular statute that can be resorted to by common people. The first step towards achieving personality rights should be a clear law that deals with such matters and guarantees personality rights.

An e-portal for unauthorized morphed deepfakes should also be introduced. Although different websites are like:

- <https://cybercrime.gov.in> for reporting cybercrime, including deepfakes, cyber stalking, and impersonation.
- <https://www.gac.gov.in> for complaining against the inaction of the social media grievance redressal officer, and
- <https://www.cert-in.org.in> for complaining against large-scale cyber breaches is available.

Yet, a direct online resolution for claiming copyrights is still not available. Moreover, these portals take a lot of time to process the complaint. So, we need a portal that resolves

conflicts in a time-bound manner and is accessible to everyone.

Also, these rights transcend boundaries, and global issues require global cooperation. Thus, the need of the hour is an internationally recognized portal for adequate protection of such rights that provides early relief.

Likewise, a comprehensive law on an international level that aligns with the growing technology and artificial intelligence must be enacted. The applicability of such law should not only be limited to individuals or companies but also to intermediaries like Facebook, Meta, Instagram, etc.

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