

PRESERVING CELEBRITY PERSONA: A COMPARATIVE EXAMINATION OF PERSONALITY RIGHTS IN INDIA AND AROUND THE WORLD AMIDST AI ADVANCEMENTS

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ABSTRACT

In today's fast-paced world, ideas pertaining to intellectual property rights give rise to a plethora of ways to safeguard an individual's interest. In the same manner when the intellectual property rights conjoin with a person's personal rights, personality rights come into existence. But as these rights are provided to individuals, simultaneously, new challenges come as a threat. For instance, one of the biggest threats in the current scenario is the growing usage of Artificial Intelligence. Personality rights' exploitation has been an issue for a long, but in the modern era, it has found recognition to develop and safeguard the interests of celebrities who are violated of their personal rights. Celebrities have the power to control their public persona, including their name and voice, and the right to decide when the media may photograph or record them. There are several occasions where privacy invasions, harassment, or humiliation have affected celebrities. India has a long history of valuing its cultural heritage and traditions while upholding the dignity and privacy of individuals. Both the right to life and the right to an individual's own personality are protected by Article 21¹ of the Indian Constitution. This paper aims to demonstrate the interpretation of personality rights concerning celebrities in modern times and their legal standing in India. It supports the claims with various cases exhibiting the issue and various remedies provided by Indian courts. The paper draws a comparative study of various jurisdictions all around the world and analyses their take on personality rights, and focuses on the potential India can reach to safeguard the public rights of celebrities. The paper also focuses on AI driven media commercially exploiting the personal rights of celebrities by using their images and voices generated through AI mechanisms and in other forms.

Keywords: Personality rights, Intellectual Property Rights, Artificial Intelligence, Celebrity Rights, Right to Privacy.

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¹ Constitution of India 1950, art 21.

INTRODUCTION

The idea of personality rights has developed as a crucial subject in both legal and ethical discourse in the modern media-driven environment, where interconnectedness is pervasive. Personality rights are legal protection for a person's name, appearance, voice, and other distinguishing characteristics. A personality right is simply the right to protect one's identity under the protection of privacy and property rights. These rights give people the capacity to regulate how their identities are used for commercial purposes, preventing exploitation or deception.

As mentioned above, the term 'personality rights' refers to a performer's ability to consent to the use of their name, voice, image, or any unofficial endorsement. These rights cover a variety of characteristics, such as names, positions, or things connected to the person. People have control over how their 'personality' and other aspects of their identity are used for commercial purposes. These rights are mainly seen as property rights rather than personal rights, and can be divided into two main categories: the right to privacy and the right of publicity, both of which can be commercially exploited.

A recent example which underscores the significance of personality rights can be the case in which Mr. Amitabh Bachchan's rights were protected by an ad interim ex parte ruling of the Delhi High Court.² In this instance, the defendants improperly used Mr. Bachchan's photos and linked them to an online lottery, taking advantage of his notoriety to their advantage. Harish Salve, the plaintiff's attorney, requested a John Doe order to protect against any violation of Mr. Bachchan's rights. Additionally, a temporary injunction was filed to stop the defendants from selling or otherwise giving up their rights to domain names that contain references to Amitabh Bachchan.³ Actor Rajnikanth's involvement in a similar case, *Shivaji Rao Gaikwad v. Varsha Production*,⁴ demonstrates how personality rights are upheld in India. Rajnikanth's lawsuit was heard by the Madras High Court in 2015, which emphasised that despite the lack of thorough codification on personality rights, judicial decisions in India recognise personality rights.

² *Amitabh Bachchan v Rajat Nagi* (2022) 6 HCC (Del) 641.

³ Malavika Prasad, 'Amitabh Bachchan's voice, image can't be used without his permission: Delhi HC' *The Indian Express* (New Delhi, 25 November 2022) <<https://indianexpress.com/article/cities/delhi/amitabh-bachchan-delhi-high-court-voice-image-rights-8289009/>> accessed 2 September 2023.

⁴ *Shivaji Rao Gaikwad v Varsha Productions* 2015 SCC OnLine Mad 158.

In the realm of personality rights, one main question that arises is what right is exploited when a person's personality rights are violated. Personality rights and privacy rights are closely related since both of them protect a person's unique traits, identity, and reputation against unauthorised use and unwelcome public exposure. Article 21,⁵ the cornerstone of preserving and defending a person's personality rights serves as the legal foundation for recognising the right to privacy. When we talk about the right to privacy in India, it is to be noted that it was distinguished in the case of *R Raja Gopal v. State of Tamil Nadu*⁶ by two different features. First, it gives people a chance to file tort claims to get compensated for unauthorised privacy invasions, which in the case of personality rights can be the unauthorised use of a person's image, voice, etc. Second, the right to privacy is guaranteed legal protection because it is recognised by the Constitution, and thus, the people who think that their right is being violated, can seek remedies from the court.

In the event of a privacy infringement, recognised remedies frequently include compensation for the emotional harm these violations cause. The official acknowledgement of personality rights and the enactment of legislation are essential for the effective monitoring and prevention of exploitative behaviours. Protecting someone's right to privacy in their personal life is crucial in the end. Private information disclosure without appropriate consent is a breach that may be remedied under certain conditions.

Publicity rights have historically been incorporated with intellectual property rights in the Indian setting. This was partly because the *Puttaswamy* judgement⁷ from August 2017 demonstrated the relatively recent recognition of the right to privacy as a basic right. As a result, India's efforts to create the right to publicity as a component of the right to privacy have made little progress. In this paper, the authors aim to thoroughly examine the Right to Publicity from numerous angles. The historical context of privacy and publicity rights will be looked at before exploring global options. The discussion will then turn to how these rights are managed and developed in India, particularly in light of the adoption of the Right to Privacy. The paper will also cover the difficulties brought on by the quick development of artificial intelligence in the dynamic environment today.

⁵ Constitution of India 1950, art 21.

⁶ *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632.

⁷ *KS Puttaswamy v Union of India* (2017) 10 SCC 1.

EXPLORING PERSONALITY RIGHTS IN INDIA: A JURISPRUDENTIAL ANALYSIS

Foreign nations have specialised legal structures governing the regulation of publicity rights which have been dealt with in this paper further. In contrast to these nations, India's efforts to protect publicity rights lag behind significantly. Currently, the Emblems and Names (Prevention of Improper Use) Act of 1950,⁸ is the only specialised law that provides protection to particular dignitaries. Therefore, it is essential to swiftly establish exhaustive regulations regarding media laws, intellectual property laws, and their interrelated legal domains.

The protection of rights enshrined in the Indian Constitution is notable. It includes Article 19⁹ and 21,¹⁰ and the intellectual property landscape, which includes the Trade Marks Act of 1999¹¹ and the Copyright Act of 1957.¹² Specifically, Section 14¹³ of the Trade Marks Act of 1999 states that *“any attempt to register a Trade Mark pertaining to a living celebrity, or one who died within twenty years prior to the registration, if it fraudulently implies an affiliation, shall be void upon unauthorised application.”* Sections 2(qq)¹⁴ and 38¹⁵ of the Copyright Act of 1957 recognise the rights of performers, applicable to the protection of celebrity rights.

However, in the case of *Fortune Films v. Dev Anand*,¹⁶ it was determined that acting does not precisely fall into a single category, making the protection of an actor's performance vulnerable to exploitation. Notably, the 1994¹⁷ amendment to the Copyright Act rectified this omission, thereby recognising the performer's rights. Sections 38,¹⁸ 39,¹⁹ and 39A²⁰ of the Copyright Act currently acknowledge and protect the rights of performers.

⁸ Emblems and Names (Prevention of Improper Use) Act 1950.

⁹ Constitution of India 1950, art 19.

¹⁰ *ibid*, art 21.

¹¹ Trademarks Act 1999.

¹² Copyright Act 1957.

¹³ Trademarks Act 1999, s 14.

¹⁴ *ibid*, s 2(qq).

¹⁵ *ibid*, s 38.

¹⁶ *Fortune Films International v Dev Anand* 1978 SCC OnLine Bom 156.

¹⁷ Copyright (Amendment) Act 1994.

¹⁸ Copyright Act 1957, s 38.

¹⁹ *ibid*, s 38.

²⁰ *ibid*, s 39A.

In *Manisha Koirala v. Shashilal Nair*,²¹ the question of protecting an actor's on-screen image arose. Similarly, the fundamental issue in *Neha Bhasin v. Anand Raj Anand*²² was the definition of 'live-performance.' The court ruled that every initial performance must be live, whether performed directly or recorded in a studio. Without the performer's prior consent, the exploitation of such copyrighted material constitutes a violation of their rights.

Section 57²³ of the Copyright Act 1957 recognises the moral rights of authors and serves to safeguard their reputation. These rights can be classified as identification or attribution rights or dissemination or disclosure rights.

In India, it is evident that there is a substantial potential for and a need for comprehensive developments in various aspects of legal protection for celebrity rights. Existing intellectual property laws provide limited protection for celebrity rights via the Copyright Act of 1957²⁴ and the Trade Marks Act of 1999,²⁵ supplemented by the Emblems and Names (Prevention of Improper Use) Act of 1950;²⁶ however, deficiencies remain.

The juxtaposition of celebrity rights with the constitutionally protected freedom of speech and expression, as articulated in Article 19,²⁷ must be considered first and foremost. This parallels the conflict between publicity rights and free expression found in the First Amendment²⁸ of the United States Constitution. The interaction between these rights requires investigation to determine whether they are in harmony or discord. In *ICC. Development (International) Ltd. v. Arvee Enterprises*,²⁹ the Delhi High Court explained that publicity rights derive from the right to privacy and attach only to an individual or their distinctive traits such as name, personality traits, signature, or voice. Although an individual can acquire publicity rights through associations with events, sports, or movies, these rights do not extend to the event itself or associated corporate entities.

²¹ *Manisha Koirala v Shashilal Nair* 2002 SCC OnLine Bom 827.

²² *Neha Bhasin v Anand Raaj Anand* 2006 SCC OnLine Del 440.

²³ Copyright Act 1957, s 57.

²⁴ Copyright Act 1957.

²⁵ Trademarks Act 1999.

²⁶ Emblems and Names (Prevention of Improper Use) Act 1950.

²⁷ Constitution of India 1950, art 19.

²⁸ US Constitution 1791, First Amendment.

²⁹ *ICC Development (International) Ltd v Arvee Enterprises* 2003 SCC OnLine Del 2.

Transferring publicity rights from individuals to organisations would violate Article 19³⁰ and 21³¹ of the Indian Constitution.

INDIAN JUDICIAL INTERPRETATION: PERSONALITY RIGHTS IN CONTEXT OF RIGHT TO PRIVACY, PROPERTY RIGHTS AND TRADEMARK

In *Sonu Nigam v. Amrik Singh*,³² the unauthorised use of an iconic Indian singer's image to promote a music award ceremony was challenged. The official award photographs were authorised, but the various billboards placed in the city for the promotion were not authorised by the singer and, therefore, violated the publicity rights associated with the singer's reputation. Ordering the removal of unauthorised billboards, the Bombay High Court acknowledged and confirmed the existence of personality and publicity rights associated with celebrity status. This situation demonstrates a violation of Personal Rights.

In the case of *Rajat Sharma v. Ashok Venkatramani*,³³ advertising of the 'Zed Hindustan' news channel using the names of renowned news anchors like 'Rajat Sharma' resulted in allegations of violation of personality rights. They stated that no one would want to watch the popular programmes that will be broadcasted on this channel once they go on the air. This was alleged to be a violation of the personality rights associated with the renowned news anchors. Consistent with previous decisions, the court acknowledged the inherent celebrity rights and emphasised the need for prior consent before using names, personality characteristics, or associated attributes.

In *D.M. Entertainment v. Baby Gift House*,³⁴ the concept of the assignability of publicity rights was first introduced. A company entrusted with the right to commercialise a person's persona effectively enforced this right against the defendant in this instance. This case defined essential criteria for the enforcement of publicity rights in India, marking a watershed moment in the history of publicity rights in India. Notably, the primary criterion is 'identifiability,' and the defendant's appropriation of persona attributes is a secondary consideration. This decision aligned publicity

³⁰ Constitution of India 1950, art 19.

³¹ *ibid*, art 21.

³² *Sonu Nigam v Amrik Singh* Suit No 372 of 2013 (Bom).

³³ *Rajat Sharma v Ashok Venkatramani* CS (COMM) 15 of 2019 (Del).

³⁴ *DM Entertainment (P) Ltd v Baby Gift House* 2010 SCC OnLine Del 4790.

rights with the autonomy of individuals to allow or deny the commercial exploitation of their likeness, analogous to property rights.

*Arun Jaitley v. Network Solutions Private Limited*³⁵ highlighted the uniqueness of Mr. Arun Jaitley's name, which, due to its distinctiveness and extensive recognition across multiple domains, qualified as a well-known personal name or Trade Marks under Trademarks law. Mr. Arun Jaitley's name belongs to the category of names that, in addition to being personal, have acquired distinctive indication of its own. This case demonstrated the compatibility between publicity rights and Trademarks law, which provides protection within the domain of intellectual property.

These diverse cases demonstrate India's adaptable strategy, which shifts between right to privacy, property rights, and trademarks to address the complex nuances of celebrity rights, in contrast to more unified approaches adopted in other nations.

Personality rights comprise a set of entitlements that continue to evolve in India, adapting to new cases, temporal considerations, and prevailing laws. In determining potential violations of personality rights, it is crucial to consider the specific facts of each individual case. Personality rights are continuously evolving in the contemporary context, presenting a distinct framework for judicial interpretation within the jurisdiction.

POSTHUMOUS PERSONALITY RIGHTS

Recently, the question of the personality rights of a deceased celeb came to light in the case of *Krishna Kishore Singh v. Sarla A Saraogi*.³⁶

Celebrity status was attained by Sushant Singh Rajput, a prominent figure in the entertainment industry due to his work in film and television. However, his death under dubious circumstances occurred on June 14, 2020. His father, Krishna Kishore Singh, declared his legal heirship and issued a widely disseminated statement stating that no creative works involving his son, such as films, novels, or television series, should be produced without prior family consent.

Despite this assertion, Sarla Saraogi and others produced a film titled 'Nyay: The Justice' as a tribute to Sushant Singh Rajput without consulting his family.

³⁵ *Arun Jaitley v Network Sols Pvt* (2011) 181 DLT 716.

³⁶ *Krishna Kishore Singh v Sarla A Saraogi* 2023 SCC OnLine Del 3997.

Krishna Kishore Singh filed a lawsuit in the Delhi High Court to prevent the defendants from using Sushant Singh Rajput's name, likeness, or lifestyle in their upcoming ventures. The lawsuit claimed that the defendants' actions violated the plaintiffs' rights to publicity, privacy, and a fair trial. The concepts of celebrity rights, personality rights, and publicity rights were central to the case. The Plaintiff also claimed that the defendants had defamed his son by showcasing the use of drugs by the protagonist of the film, who is analogous to the plaintiff's deceased son, Sushant Singh Rajput.

Krishna Kishore Singh asserted copyright ownership over the life of the deceased actor. The Copyright Act of 1957,³⁷ however, states that historical, biographical, and news-related facts are not copyrightable because they are in the public domain and lack the originality required for copyright protection. Therefore, public events can be depicted in films without violating copyright.

The court determined that the film did not falsely imply that it was based on Sushant Singh Rajput's life or constitute a biographical portrayal. It was determined that the inclusion of a disclaimer at the outset of the film was sufficient to dispel such misunderstandings. The court acknowledged the potential harm to the defendant if the film was restrained at this juncture and if the plaintiff's claims ultimately failed. The Court also observed that if circumstances changed after the film's release, Krishna Kishore Singh could file for an injunction and monetary damages. The court ordered the defendants to submit accurate revenue reports from the film's sales and licencing of rights. Thus, Krishna Kishore Singh's request for an injunction was denied.

In recent years, there has been an increase in instances of the unauthorised use of celebrity identities for commercial purposes. Given the potential for substantial financial repercussions and reputational damage, this issue has surfaced as a significant concern for prominent figures in the entertainment industry.

Rajinikanth, a prominent figure in the Indian film industry, has issued a formal notification indicating the possibility of initiating legal proceedings against individuals who exploit his persona for financial benefit without his explicit consent.³⁸ The issued notice also asserts Rajinikanth's

³⁷ Copyright Act 1957.

³⁸ 'Rajinikanth Issues Notice to Prevent Unauthorised Use of His Name and Image, Warns of Legal Action against Violators' *The Economic Times* (Mumbai, 29 January 2023) <<http://economictimes.indiatimes.com/news/new-updates/rajinikanth-issues-notice-to-prevent-unauthorised-use-of-his-name-and-image-warns-of-legal-action-against-violators/articleshow/97415615.cms?from=mdr>> accessed 3 September 2023.

exclusive ownership of his persona and emphasises that any unauthorised use of it will be regarded as a severe infraction. This includes the use of his name, visual representation, and likeness on merchandise, advertisements, and other commercial endeavours without his express consent. The notice from Rajinikanth serves as a powerful reminder that celebrities have the right to protect their identities and that any unauthorised use of their identities will be met with legal action.

The rationale for advocating for celebrity rights extends beyond concerns regarding exploitation for commercial gain. An equally pressing issue revolves around safeguarding privacy, prompting the necessity for these rights. The emergence of personality rights, which has been influenced by evolving unethical business marketing practices and technological advancements, is not the only cause; the expanding media landscape also plays a crucial role. Amidst the defence of free expression, media outlets and paparazzi use it as an excuse to invade the private lives of actors by relentlessly following them.

For instance, Shilpa Shetty, a prominent Bollywood actress, litigated against a prominent newspaper for publishing her photographs. The court ruled that the publication of the photograph constituted an invasion of her privacy and, as a result, awarded damages to her.³⁹ This scenario necessitates a delicate balance between factors germane to defamation actions, the extensive protection of freedom of speech and press, and the constitutionally mandated necessity of upholding the right to privacy. Although certain exceptions to the right to free speech may require meticulous tailoring, courts cannot disregard the constitutionally protected underpinnings of the right to privacy. The right to free speech should not be misunderstood as a license for unrestricted intrusion into the privacy of individuals, as this would negate their inherent rights.⁴⁰

VIOLATION OF PERSONALITY RIGHTS THROUGH IMITATION

As the field of intellectual property laws evolves, the proliferation of parody, as manifested by parody videos, gains momentum. Numerous imitators have been embroiled in legal entanglements in recent years as a result of imitating the likeness or characteristics of distinct personalities or professions. Respected imitators frequently accumulate substantial financial gains from their

³⁹ 'Shilpa Shetty's Plea for Right to Privacy Upheld by High Court' *Times of India* (Mumbai, 2 August 2021) <<http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/shilpa-shettys-plea-for-right-to-privacy-upheld-by-high-court/articleshow/84968675.cms>> accessed 28 August 2023.

⁴⁰ *Shilpa Shetty Kundra v Clapping Hands Pvt Ltd and Ors* MANU/MH/3240/2021.

imitations, profiting commercially without the permission of the individuals they imitate. Instances such as Sugandha Mishra's performance, where she attempted to imitate Lata Mangeshkar's voice, only to be criticised as an insult to the legendary vocalist, illustrate that this practise frequently results in the defamation of the original actors.⁴¹

While legal precedents have been established regarding the imitation of persona, name, and image for commercial purposes, the legality of mimicry intended for derision or amusement remains largely unaddressed due to the absence of any judicial or legislative resolutions.

In a notable instance from 2010, Amitabh Bachchan issued a notice on social media to copyright his voice in response to an advertisement imitating his voice without his consent, thereby preventing unwarranted associations with products that could potentially tarnish his public image.⁴²

In a similar case, *Midler v. Ford Motor Co.*,⁴³ the defendants attempted to use a Bette Midler song in a Ford automobile advertisement. In the absence of Midler's permission, they enlisted Ula Hedwig to record a rendition that closely resembled Midler's original. When this commercial aired, Midler sued the defendants on the grounds that the substitute singer imitated her singing manner and persona. The court ruled in Midler's favour, determining that the defendants' explicit instruction to imitate her voice indicated their intent to profit from the song's association with Midler's distinctive vocal identity. Thus, the court upheld the merger of the right to publicity and personality rights, granting entertainers, artists, and celebrities exclusive control over the commercial exploitation of their names, images, personalities, voices, and likenesses.

Pertaining to personality rights, novel advertising techniques, technological advancements, and instances of erroneous interpretations of the right to freedom of expression will continue to pose a variety of challenges. The most important aspect to highlight, however, is India's recognition of

⁴¹ Entertainment Bureau, 'Comedian Sugandha Mishra, Famous for Mimicking Lata Mangeshkar, Remembers Legendary Singer' *News18* (New Delhi, 6 February 2022) <<https://news18.com/news/movies/comedian-sugandha-mishra-famous-for-mimicking-lata-mangeshkar-remembers-legendary-singer-4742354.html>> accessed 1 September 2023.

⁴² Chandna Arora, 'Big B to Copyright His Voice!' *Times of India* (Mumbai, 9 November 2023) <<http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/big-b-to-copyright-his-voice/articleshow/6888630.cms>> accessed 8 September 2023.

⁴³ *Midler v Ford Motor Co* 849 F2d 460 (9th Cir 1988).

personality rights as a burgeoning legal domain, which offers ongoing development and provides actors with essential protection against a variety of potential infringements.

A GLOBAL PERSPECTIVE ON PUBLICITY RIGHTS

In the above paragraphs, the concept of personality rights has been explored in the context of India; however, it is essential to recognise that these rights did not originate within the Indian legal framework. Rather, they evolved gradually, influenced by legal precedents and developments of various nations, with the United States and the United Kingdom serving as the primary jurisdictions where these rights underwent significant development.

ORIGIN AND DEVELOPMENT IN THE UNITED STATES

In the United States, the idea of the right to publicity originated as a subset of the Right to Privacy; both rights evolved simultaneously. In England and Wales, legal doctrines such as passing off, breach of confidence, trademark law, data protection, and defamation gave rise to legal remedies addressing the unjustified and unauthorised exploitation of a person's image. Hence, it is important to take into account these two countries when one discusses the concept of publicity rights and its application under the right to privacy.

The establishment of the contemporary notion of the right to publicity can be traced back to the case of *Haelan Laboratories Inc. v. Topps Chewing Gum Inc.*⁴⁴ In the present case, the defendant used baseball trading cards to advertise the sale of its chewing gum. Despite Haelan Laboratories having secured exclusive licenses from multiple players, granting permission for the use of their images on its baseball cards, Topps, in contrast, employed photographs of the same players to market its chewing gum. Haelan Laboratories initiated legal action against Topps, alleging a breach of its “*exclusive rights*” over the players' images. Although the court determined that the Plaintiff could not seek damages under New York's statutory privacy law, it ruled in favour of the plaintiff on the basis of a new common law right, the “*right of publicity*.”

The court's ruling additionally affirmed that while the right of publicity initially derived from the broader right to privacy, it had evolved into a distinct and autonomous legal right with its own ground for legal action. It has been clearly stated that people with fame or performing status

⁴⁴ *Haelan Laboratories Inc v Topps Chewing Gum Inc* 202 F2d 866 at 870 (2nd Cir 1953).

required a right that gave them control over the economic worth of their identity, as opposed to merely safeguarding them against unauthorised breaches of privacy.⁴⁵

Nevertheless, it is essential to observe that the first judicial recognition of the right to publicity as an integral aspect of privacy is a landmark judgement given by the Supreme Court of Georgia in the year 1905 in the case of *Pavesich v. New England Life Insurance Co.*⁴⁶

APPROACH IN THE UNITED KINGDOM

The United Kingdom adopts a distinct approach compared to the United States in addressing the concepts of the right to privacy and the right to publicity. Unlike the United States, the United Kingdom law does not formally recognise a specific right to publicity, nor does it establish a separate legal framework to safeguard an individual's image or likeness from unauthorised utilisation. This position was made clear in the case of *Kaye v Robertson*⁴⁷ in the year 1991, which primarily focused on the unpermitted publication of pictures of actor Mr. Gordon Kaye taken while he was being treated for injuries in the hospital. In the present case, a reporter from The Sunday Sport gained entry to Kaye's hospital room, capturing photographs and recording his responses without informed consent. Lord Justice Glidewell emphasised that the United Kingdom does not have a statute protecting personal information. Consequently, he invoked the law pertaining to malicious falsehood as the foundation for defending Kaye's interests, emphasising that he possessed valuable rights that needed protection, including the right to commercialise his story.

In numerous cases, the absence of a dedicated legal framework safeguarding an individual's right to privacy has led the courts to resort to the principles of breach of confidence. A significant example can be seen in the historical case of *Pollard v Photographic Co.*,⁴⁸ in which a photographer took a picture of Mrs. Pollard and used the image without her permission on Christmas cards that were later sold to the general public. The court decided in favour of Mrs. Pollard, basing its decision on the law of breach of confidence, as it found that the photographer had abused the confidential authority entrusted to him by using the image without permission. However, it is noteworthy that there has been a considerable evolution and shift in the United

⁴⁵Johann Neethling, 'Personality rights: A Comparative Overview' (2005) 38(2) CILSA 210
<<https://jstor.org/stable/23252295>> accessed 2 September 2023.

⁴⁶ *Pavesich v New England Life Insurance Co* 50 SE 68 (1905).

⁴⁷ *Kaye v Robertson* [1991] FSR 62.

⁴⁸ *Pollard v Photographic Co* (1888) 40 Ch Div 345.

Kingdom's privacy legal landscape. This transformation has been primarily influenced by two factors: firstly, the introduction of the Human Rights Act in 1998,⁴⁹ which incorporates the European Convention on Human Rights;⁵⁰ and secondly, the passage of specific laws addressing various aspects of an individual's right to privacy, along with judicial interpretations that have expanded these provisions.

The conjunction of the ECHR with the English Human Rights Act, 1998⁵¹ has instigated a notable advancement and augmentation of the realm of the right to privacy within the United Kingdom. It can now be claimed that a certain amount of protection is provided within the framework of English law regarding the commercial use of an individual's likeness and personal data, even though there still exists some extent of ambiguity. People maintain control over information about themselves, including details of their private lives or visual representations of certain events, and they have the legal and ethical right to protect that information.

Publicity rights have developed together with the emergence of the right to privacy and have become one of its essential components. In addition, there has been a simultaneous evolution in which passing off or the context of intellectual property rights is now being used to recognise publicity rights.

THE GERMAN SCENARIO

The German legal system is a prime example of a legal framework that recognises a comprehensive safeguard for individual personality. In this framework, a fundamental right to personality is recognised, providing the cornerstone for a broad range of identity-related protections. The German Civil Code (*Bürgerliches Gesetzbuch*, BGB)⁵² did not legally integrate the *actio iniuriarum*, which provided for a comparable foundation within this jurisdiction's common law heritage. This omission was primarily justified by the notion that the protection conferred through criminal sanctions of dignity alone was considered adequate. It is significant that the German legal system includes explicit legislative recognition of distinct personality rights. The rights to one's

⁴⁹ Human Rights Act 1998.

⁵⁰ European Convention on Human Rights 1950, art 8.

⁵¹ English Human Rights Act 1998.

⁵² *Bürgerliches Gesetzbuch* 1900.

name, image, dignity, reputation, bodily integrity, life, personal freedom, and physical well-being are included in this category.

FRENCH LEGAL SYSTEM: BROAD SHIELD FOR PERSONALITY RIGHTS

On the other hand, there are legal systems that differ from one another because they do not support the creation of a broad-spectrum general right to personality, mainly because their legal framework is supported by a different foundation for the comprehensive protection of individual identity. This paradigm is clearly illustrated within the French legal system. Here, the legal authorities have created a significant shield for rights related to personal identity. This development is based on the general delictual provision outlined in the Civil law, which is highlighted by the broadening of the definition of harm to include harm to a person's personality.

DEVELOPMENT IN AUSTRALIA AND NETHERLANDS

A third category comprises legal systems that despite relying on an alternative foundation for comprehensive safeguarding of individual identity, concurrently acknowledge a general right to personality. The legal systems in Austria and the Netherlands serve as excellent examples under this category. These jurisdictions go beyond their additional basis of protection in recognising and preserving personality rights. For instance, in Austria, complete recognition and protection of personality rights are not only clearly stated in the Allgemeines Bürgerliches Gesetzbuch⁵³ (ABGB), which highlights these rights, but also finds support within the more general delictual law requirements.

Despite the existence of the broad delictual provision in the Burgerlijk Wetboek⁵⁴ (BW) and the provision addressing the compensation for intangible harm resulting from violations of an individual's physical well-being, dignity, reputation, or any other type of personal infringement—encompassing non-physical harm like psychological distress, invasions of privacy, and restrictions on the freedom of movement—a significant development occurred in the Netherlands in 1994 when the Hoge Raad, the country's highest court, acknowledged the existence of a general right

⁵³ Allgemeines Bürgerliches Gesetzbuch 1811.

⁵⁴ Burgerlijk Wetboek 1838.

to personality. Though its exact legal status is still up for debate, it is believed that this right will support other fundamental freedoms, most notably the right to privacy.⁵⁵

ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON PERSONALITY RIGHTS

AI-based applications have subtly assimilated into our daily lives, frequently unnoticed. Private corporations have mostly been driving this incremental adoption of AI technology, placing a heavy emphasis on consumer goods.⁵⁶ Within the private sector, AI technology has historically been widely used. But in more recent years, it has gradually increased its sway over social media. Social media was somewhat less significant a decade ago, but as time has passed, it has come to dominance, with a sizeable section of the population creating profiles on various social media platforms. AI has started to play a significant role in this area as social media integration has increased.

As more people engage with social media, there is a bigger possibility of exploitation and violations of individual rights. Individuals' fundamental rights have been violated as a result of the use of AI technology to imitate personalities. In a recent case,⁵⁷ the plaintiff, i.e. Anil Kapoor, a prominent Bollywood actor accused twenty-one defendants of using his photographs and taglines without permission for merchandising, creating GIFs, and making deepfakes using generative Artificial Intelligence. The deepfakes altered photos of Anil Kapoor to resemble other Disney characters and celebrities, including Katrina Kaif, Madhuri Dixit, and the late Sridevi. Anil Kapoor claimed that the defendants used various aspects of his character for harmful and profit-driven reasons. Pravin Anand, Advocate for Anil Kapoor, emphasised the misuse of AI technology in creating misleading and potentially dangerous information. The improper use of AI technology in India creates important legal issues, especially related to defamation and privacy breaches. The court prohibited the production of products, GIFs, and ringtones for commercial use, as well as the registration of domain names containing Anil Kapoor's name. In recent years, concerns and discussions around personality rights and artificial intelligence (AI) have grown in India.

⁵⁵ Samarth Krishan Luthra and Vasundhara Bakhru, 'Publicity Rights and the Right to Privacy in India' (2019) 31(1) NLSIR 125 <<https://jstor.org/stable/10.2307/26918425>> accessed 27 August 2023.

⁵⁶ Shashi Shekhar Vempati, 'India and the Artificial Intelligence Revolution' [2016] CEIP <<https://jstor.com/stable/resrep12855>> accessed 2 September 2023.

⁵⁷ *Anil Kapoor v Simply Life India* 2023 SCC OnLine Del 6914.

Questions about the ethical and legal ramifications of AI-generated content and interactions are becoming more important as technology develops. Deepfake videos, virtual influencers, and chat bots among other forms of AI-generated material, present serious problems for personality rights. People may discover that their voice or likeness is being used without their permission, raising worries about identity theft, defamation, and false information.

It becomes difficult to determine consent in the production and usage of AI-generated content. People can discover that their voice or likeness is being used in ways to which they did not consent, which raises concerns about whether consent should be sought and how it can be enforced. The dissemination of content produced by AI has the potential to propagate false information and deceit. False information spread via realistic-appearing films or text can be detrimental to a person's reputation as well as the public's trust and social standing.

China has just launched a mobile application called 'Zao'⁵⁸ that facilitates the overlaying of an individual's photographic or videographic representation onto the visual content of another person. The aforementioned application has generated significant societal opposition as a result of the considerable apprehensions regarding privacy it engenders. The visual content or video produced using this method of superimposition is generally known in academic circles as a 'deepfake.' Significantly, there has been a discernible increase in the dissemination of deepfakes throughout the online sphere.

Facebook has taken action in response to the growing concern by launching a detection project with the objective of minimising the negative impact of deepfakes. Deepfake content is commonly linked to individuals of public prominence, such as celebrities, politicians, and other notable figures. Moreover, it has been employed for malicious intentions, such as seeking retribution against colleagues or former lovers. The development of pornographic photos or films through the malicious exploitation of modern technology is a matter of significant concern.⁵⁹ A deepfake video of actress Rashmika Mandanna in a licentious state surfaced recently and spread rapidly on the

⁵⁸ Rohan Abraham, 'How deepfake app Zao became most-downloaded free app in China, and what's next' *The Economic Times* (Mumbai, 12 September 2019) <<http://economictimes.indiatimes.com/magazines/panache/how-deepfake-app-zao-became-most-downloaded-free-app-in-china-and-whats-next/articleshow/71096391.cms>> accessed 3 September 2023.

⁵⁹ Matt Beard, 'To fix the problem of deepfakes we must treat the cause, not the symptoms' *The Guardian* (London, 23 July 2019) <<https://theguardian.com/commentisfree/2019/jul/23/to-fix-the-problem-of-deepfakes-we-must-treat-the-cause-not-the-symptoms>> accessed 29 August 2023.

internet.⁶⁰ The event initiated a discussion on the improper use of artificial intelligence technology, leading many prominent individuals to voice their concerns. The Delhi Police findings indicate that the culprit altered Rashmika's post to enhance his social media visibility.⁶¹

In response to this concerning matter, prominent internet platforms such as Google and Pornhub have implemented proactive measures by implementing restrictions and removing instances of non-consensual synthetic pornography generated using deepfake technology. These steps demonstrate an increasing acknowledgement of the need for strong protective measures against the negative consequences of deepfake technology on individuals, privacy, and society as a whole.

LACK OF SPECIFIC LEGISLATION IN INDIA

Regarding personality rights and AI-generated content, India does not have any explicit legislation. However, people may be shielded from unauthorised use of their persona by existing laws on defamation, privacy, and intellectual property.

The Personal Data Protection Bill of 2018⁶² acknowledges the right to be forgotten in three specific situations: when the data becomes inaccessible, when consent is revoked, or when data processing violates legal provisions. It is imperative to acknowledge that this legislation does not establish an unequivocal entitlement to erasure. Alternatively, individuals have the option to pursue legal remedies if their circumstances align with the aforementioned scenarios or if there are particular laws that address concerns pertaining to publicity rights in relation to deepfake technology and AI-generated synthetic images or videos. Ensuring that the rights afforded to individuals within this legislation do not encroach onto the fundamental constitutional right to Freedom of Speech and Expression, which is cherished by citizens, is of utmost importance.

The legal framework pertaining to publicity rights in India is now in its early stages, with a limited body of recognised legal principles and precedents on this matter. There are certain elements pertaining to the right of publicity that remain unaddressed by the judiciary. The exponential

⁶⁰ The Hindu Bureau, 'Delhi Police Files FIR in Rashmika Mandanna deepfake Case' *The Hindu* (New Delhi, 11 November 2023) <<https://thehindu.com/news/cities/Delhi/delhi-police-files-fir-in-rashmika-mandanna-deepfake-case/article67522778.ece>> accessed 01 March 2024.

⁶¹ Express Web Desk, 'Main Accused in Rashmika Mandanna deepfake video case arrested, says police' *The Indian Express* (New Delhi, 20 January 2024) <<http://indianexpress.com/article/cities/delhi/rashmika-mandanna-deepfake-video-accused-arrest-delhi-police-9118870/>> accessed 01 March 2024.

⁶² Personal Data Protection Bill 2018.

advancement of deepfake technology and its capacity to generate deepfake pornography necessitates the implementation of a specialised legislative framework to effectively govern the right to publicity in a comprehensive manner.

In a recent legal matter, namely *Aaradhya Bachchan v. Bollywood Time*,⁶³ the claimant, Aaradhya Bachchan, a prominent figure recognised for her parentage as the child of Bollywood celebrities Aishwariya Rai Bachchan and Abhishek Bachchan, initiated a formal complaint. The case was related to the dissemination of films on the YouTube platform that inaccurately asserted her severe illness or death, alongside manipulated visuals generated using artificial intelligence techniques. The primary objective of these movies was to appeal to viewers in order to increase the number of subscriptions, with a particular focus on highlighting the urgent necessity for legislative intervention.

By a notification dated 7th November, 2023,⁶⁴ the Central government has directed prominent social media intermediaries to undertake measures to combat the dissemination of misinformation and deepfakes. The Information Technology Rules of 2021 require these intermediaries to promptly detect and eliminate any such content within the designated timeframes. Failure to comply with these directives may result in the forfeiture of legal protections accorded under Section 79(1)⁶⁵ of the Information Technology Act, 2000. Union Minister Rajeev Chandrasekhar emphasised that deepfakes are harmful, especially to women, and that the government is steadfastly committed to safeguarding the security and trust of digital citizens. In line with the provisions of the IT legislation, Chandrasekhar outlined the necessity for online platforms to promptly address cases of misinformation and deepfakes. In order to demonstrate the government's commitment to protecting its citizens from cyber dangers, he encouraged victims to file First Information Reports (FIRs) and take advantage of the legal channels provided by the IT regulations.

The increasing awareness of the unbridled use of deepfake technology has drawn a lot of attention. Well-known people, especially celebrities, who have been subjected to misuse of the same are

⁶³ *Aaradhya Bachchan v Bollywood Time* 2023 SCC OnLine Del 2268.

⁶⁴ PIB Delhi, 'Ministry of electronic & IT, Union Government issues Advisory to Social Media intermediaries to identify misinformation and deepfakes' (*Ministry of Electronics & IT*, 07 November 2023) <<http://pib.gov.in/PressReleaseIframePage.aspx?PRID=1975445>> accessed 01 March 2024.

⁶⁵ Information Technology Act 2000, s 79(1).

expressing growing concerns. As a result, the central government is taking coordinated action in response to increasing cases to address the infringement of personality rights caused by deepfakes. An ongoing Public Interest Litigation⁶⁶ at the Delhi High Court, filed by advocate Chaitanya Rohilla through advocate Manohar Lal, aims to establish regulatory controls for deepfake technology. The PIL specifically calls on the government to proactively identify and limit access to websites that host deepfakes and AI-generated content. It also supports creating detailed guidelines to control the use of this technology.

AN ANALYSIS ACROSS VARIOUS JURISDICTIONS

The United States is currently witnessing a legal case involving Karen Hepp,⁶⁷ an anchor for Fox 29 News, which brings attention to the complex issues associated with deepfake technology. Hepp has taken legal action against Facebook, Reddit, Imgur, and Giphy, alleging that her image was used without authorisation in sexually explicit advertisements. The United States adopts a distinctive approach to privacy concerns as a result of the First Amendment. While some individuals may argue that deepfakes fall under the umbrella of freedom of expression, it is important to note that this protection does not apply to child pornography, as it is explicitly prohibited from the safeguards provided by the First Amendment.⁶⁸ The state of Virginia has enacted legislation that criminalises the dissemination of non-consensual deepfake photos and videos. However, it is imperative to establish legislation that specifically addresses the issue of personality rights inside the realm of deepfakes in the United States.

A global company with its headquarters located in Hong Kong fell victim to a deepfake scheme that cost them \$25.6 million. This instance highlights the widespread threat posed by deepfake technology, as malicious actors used artificial intelligence to plan a complex ruse aimed at gullible employees. The elaborate plan was carried out over around one week, demonstrating the criminals' systematic approach. The malefactors used cutting-edge deepfake technology to digitally imitate a number of people, including senior business executives, in the context of a fictitious video conference. The well-constructed deepfake images created an illusion of authenticity by closely

⁶⁶ *Chaitanya Rohilla v Union Of India* MANU/DEOR/314000/2023.

⁶⁷ Adi Robertson, 'News anchor sues Facebook and Reddit after a convenience store creepshot showed up in dating ads' (*The Verge*, 6 September 2019) <<https://theverge.com/2019/9/6/20853408/karen-hepp-facebook-reddit-imgur-giphy-convenience-store-photo-dating-ad-lawsuit>> accessed 10 September 2023.

⁶⁸ US Constitution 1791, First Amendment.

mimicking the appearance and voice of real corporate employees, even if the victim was initially sceptical.⁶⁹

It is highly appreciated and acknowledged that deepfake technology has many positive uses such as using it in the film industry for dubbing a person in a stunt, in the educational sphere for improving interaction, etc. But one can't deny that it has also been misused for negative ends, such as creating non-consensual pornography, manipulating political opponents, and engaging in dishonest economic practices. Evidently, since deepfake technology has become so widely accessible, a large percentage (90–95%) of produced films contain explicit and nonconsensual content, and they disproportionately target women, especially those who are underage.⁷⁰ An example of this may be found in the case of Twitch streamer QTCinderella, who was repeatedly duped by illegal deepfake pornographic movies. Surprisingly, the current American legal system was unable to resolve the infringement, highlighting the urgent need for legislative action.⁷¹ Within the European Union, the General Data Protection Regulation⁷² (GDPR) has a provision known as the Right to Erasure, which grants individuals the ability to petition for the removal of their personal data. Individuals who have been targeted by deepfake technology may have the opportunity to pursue legal remedies by invoking the Right to be Forgotten, as outlined in Article 4(1)⁷³ of the General Data Protection Regulation (GDPR). This provision embraces all aspects pertaining to an identified or identifiable individual, including deepfake content. In order to tackle the problem of deepfakes, hosting sites might potentially implement measures similar to YouTube's copyright takedown protocols.

Political leaders in the UK are concerned about the potentially daunting threat that artificial intelligence poses in light of the upcoming elections. Instances of deepfake audios replicating the voices of prominent figures such as Keir Starmer, the Labour leader, and Sadiq Khan, the mayor

⁶⁹ 'Hong Kong MNC suffers \$25.6 Million loss in deepfake scam' *The Economic Times* (Mumbai, 06 February 2024) <<http://economictimes.indiatimes.com/industry/tech/hong-kong-mnc-suffers-25-6-million-loss-in-deepfake-scam/articleshow/107465111.cms?from=mdr>> accessed 03 March 2024.

⁷⁰ Karen Hao, 'Deepfake Porn is Ruining Women's Lives. Now the law may Finally Ban It' (*MIT Technology Review*, 12 February 2021) <<https://technologyreview.com/2021/02/12/1018222/deepfake-revenge-porn-coming-ban/>> accessed 02 March 2024.

⁷¹ Bianca Britton, 'They appeared in deepfake porn videos without their consent. Few laws protect them' *NBC News* (New York City, 15 February 2023) <<https://nbcnews.com/tech/internet/deepfake-twitch-porn-atrloc-qtcinderella-maya-higa-pokimane-rcna69372>> accessed 02 March 2024.

⁷² General Data Protection Regulation 2016.

⁷³ General Data Protection Regulation 2016, art 4(1).

of London, surfaced online during the previous year. Furthermore, bogus BBC News videos that used deepfake technology claimed to examine Rishi Sunak's financial situation.

This trend unfolds concurrently with a recent development wherein large technology companies, such as Adobe, Amazon, Google, IBM, Meta, Microsoft, OpenAI, and TikTok, voluntarily joined forces to adopt “*reasonable precautions*” to prevent the use of artificial intelligence tools to influence democratic elections around the world. At the Munich Security Conference, executives from these organisations and twelve other entities—including Elon Musk's X—disclosed this framework. The project represents a cooperative endeavour to develop a thorough reaction system to combat deepfakes created by AI with the purpose of misleading voters.⁷⁴

In conclusion, although there are currently several legal measures and frameworks in place or being developed to tackle the issues presented by deepfake technology and AI-generated content in different jurisdictions, there is still a significant requirement for targeted legislation to adequately govern and mitigate the potential negative consequences associated with this technology, particularly in relation to the protection of personality rights and privacy.

CONCLUSION

In conclusion, a complex and pressing challenge is presented by the confluence of personality rights, intellectual property rights, and the rapidly changing field of artificial intelligence, particularly in the context of celebrity rights in India. The importance of personality rights as a key element of one's legal protection has been highlighted in this paper. Emphasis has also been placed on how important they are in defending the interests and dignity of public people, particularly in the age of media-driven interconnection.

We have examined the legal system and judicial interpretations of personality rights in India throughout this paper, highlighting the crucial role that Article 21⁷⁵ of the Indian Constitution, the Copyright Act 1957⁷⁶ and the Trade Marks Act 1999⁷⁷ play in recognising and defending these

⁷⁴ Tom Ambrose, ‘UK’s enemies could use AI deepfakes to try to rig election, says James Cleverly’ *The Guardian* (London, 25 February 2024) <<https://theguardian.com/uk-news/2024/feb/25/uks-enemies-could-use-ai-deepfakes-to-try-to-rig-election-says-james-cleverly#:~:text=A%20number%20of%20deepfake%20audios,to%20examine%20Rishi%20Sunak's%20finances.>>> accessed 03 March 2024.

⁷⁵ Constitution of India 1950, art 21.

⁷⁶ Copyright Act 1957.

⁷⁷ Trademarks Act 1999.

rights. We have seen how Indian courts have acted to preserve personality rights even in the lack of complete legislation specifically addressing this issue by carefully examining prominent cases involving celebrities like Amitabh Bachchan, Rajnikanth, and Sushant Singh Rajput.

In addition, we've performed a comparative analysis to see how other nations—most notably the United States, the United Kingdom, and Germany—have dealt with the idea of personality rights and how they fit in with privacy and intellectual property rights regulations. These overseas viewpoints give India important information on prospective legal options and frameworks for enhancing the protection of celebrities' personality rights.

The paper also discussed the new issues that artificial intelligence is posing, particularly with regard to deepfake technology and AI-generated material. By exploiting their voices, identities, and photos without their permission, these technological innovations have the potential to violate actors' personal rights, resulting in difficulties with identity theft, defamation, and false information. There is an urgent need for specialised legal measures to control personality rights in the context of AI, even if India has taken some attempts to address privacy issues through laws like the Personal Data Protection Bill of 2018 (now Digital Data Protection Act of 2023).⁷⁸

It is interesting that, despite the fact that there is a nexus between personality rights and right to privacy in India, there is a glaring lack of specific legislation that deals with this complex issue. The right to manage one's name, image, voice, and persona should all be properly defined and protected by particular legislation that India should take into consideration. This law ought to include protections against AI-generated content that infringes on fundamental rights. Legal frameworks should stress upon the significance of getting permission before using someone's appearance in any way, whether it be in conventional media or AI-produced content. In addition, it's important to set explicit guidelines for crediting and disclosing AI-generated work. Campaigns for public awareness and educational initiatives can be quite effective in educating people about the potential dangers and legal safeguards associated with personality rights in the age of artificial intelligence.

Law should transform along with the society in order to maintain peace. Legal safeguards must grow along with technological advancement in order to protect people's rights and dignity,

⁷⁸ Personal Data Protection Bill 2018.

especially celebrities who are frequently the targets of exploitation. In the context of AI, recognising and bolstering personality rights in India is not only necessary from a legal standpoint, but also a critical step towards protecting the identity and privacy of its individuals.