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DEEP FAKE DIGINITY: PERSONALITY RIGHTS AND IPR

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ABSTRACT

Personality rights, encompassing the protection of an individual's name, image, likeness, and other personal attributes from unauthorized commercial exploitation, have increasingly intersected with intellectual property rights (IPR) in the digital era. This research paper examines the evolving legal landscape where personality rights converge with IPR frameworks, including copyrights, trademarks, and publicity rights, to safeguard personal identity against misuse in advertising, media, and online platforms.

*Drawing on comparative analysis of jurisdictions such as the United States, European Union, and India, the study explores key challenges, including the commodification of persona in social media, deepfake technologies, and posthumous rights. Through doctrinal research, case law review (e.g., landmark decisions like *Zacchini v. Scripps-Howard Broadcasting Co.* and EU GDPR implications), and policy evaluation, the paper identifies gaps in existing IPR regimes that fail to adequately address non-commercial infringements or cross-border enforcement.*

Findings reveal that while IPR provides robust tools for monetization and protection, it often prioritizes economic interests over privacy, leading to inconsistencies in global harmonization. The paper proposes reforms, such as integrating personality rights into unified IPR treaties and leveraging AI ethics guidelines to mitigate emerging threats.

Ultimately, this work underscores the need for a balanced approach that harmonizes personality rights with IPR to foster innovation while preserving human dignity, offering insights for policymakers, legal practitioners, and scholars in intellectual property law.

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INTRODUCTION

*Aishwariya Rai Bachchan moved to Delhi High court to protect her identity from unauthorized commercial exploitation, rights against AI misuse*². A significant portion of the populace views the term "celebrity" as an honour and a prize for achievement. Politicians gain it by votes, athletes and artists gain it through skill, businesspeople and TV personalities gain it through wit, and some people get it naturally, like princes and princesses, who get it by birth or marriage. Some individuals could get it by accidentally participating in noteworthy events. Importantly, when a celebrity wishes to safeguard their personality rights, there are two distinct aspects to consider: first, the right to prevent commercial exploitation of their image without their consent by treating it as a tort of passing off; this is commonly known as publicity rights and falls under the purview of intellectual property laws second, the right to privacy which entails one's right to be left alone.

Jurisprudence in USA and UK

The US right of publicity emerged as a distinct doctrine in the mid-20th century, evolving from common law privacy torts outlined by William Prosser in 1960, particularly the tort of appropriation of name or likeness. Initially rooted in privacy, it shifted toward economic protection as courts recognized the commercial value of celebrity identities, especially in advertising and merchandising.

The foundational case is *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*³ (1953), where Judge Jerome Frank coined the term "right of publicity" in the context of a baseball player's exclusive deal for his image on trading cards, distinguishing it from mere privacy by emphasizing its transferable property nature. This marked a pivotal shift, affirming that individuals could monetize their identity like intellectual property. The US Supreme Court later validated the doctrine in *Zacchini v. Scripps-Howard Broadcasting Co.*⁴ (1977), ruling that televising a performer's "human cannonball" act without consent infringed his publicity rights, even under the First Amendment, as it appropriated economic value rather than newsworthy expression.

² The Hindu Bureau. "Aishwarya Rai Bachchan Personality Rights Upheld by Delhi HC Against AI Misuse." The Hindu, September 11, 2025. <https://www.thehindu.com/news/cities/Delhi/delhi-hc-protects-aishwarya-rai-bachchans-personality-rights-against-ai-misuse-unauthorised-products/article70037113.ece>. last visited 2025-10-23

³ 202 F.2d 866 (2d Cir. 1953)

⁴ 433 U.S. 562 (1977)

The right of publicity is often analogized to IPR as a property right—assignable, licensable, and descendible—but it is not federally protected like copyrights or trademarks. It overlaps with trademarks in preventing unauthorized endorsement (e.g., *Jordan v. Jewel Food Stores, Inc*⁵. (2014), where Michael Jordan sued over a pizza ad implying sponsorship) but requires no proof of consumer confusion, unlike Lanham Act claims. Courts distinguish it from copyright, as in *Toney v. L'Oréal USA, Inc*⁶. (2005), where a model's publicity claim survived alongside copyright infringement for unauthorized photo use. This interplay positions publicity rights as a "gap-filler" in IPR, addressing personal identity where traditional IP falls short.

UK personality rights are deeply intertwined with IPR, primarily through passing off, which mirrors trademark law by protecting unregistered goodwill against misrepresentation. In *Reckitt & Colman Products Ltd. v. Borden Inc*⁷. (1990), the "three-part test" for passing off—goodwill, misrepresentation, damage—directly applies to celebrity personas, as seen in *Irvine*. Copyright protects images (e.g., via the Copyright, Designs and Patents Act 1988), but passing off fills gaps for endorsement claims, as in *Fenty*. Unlike the US, UK rights are non-proprietary and non-transferable, emphasizing tort over property, though overlaps with trade marks (e.g., celebrity name registrations) create hybrid protections.

JURISPRUDENCE IN INDIA

In India, the expansion of the entertainment sector has elevated the significance of personality rights alongside privacy protections. A key catalyst occurred in 1995 through the Supreme Court's ruling in **R. Rajagopal v. State of Tamil Nadu*^{8*}—commonly referred to as the Auto Shankar matter—where the bench affirmed an individual's authority to regulate the commercial exploitation of their identity. This decision represented a fundamental evolution, validating that people, particularly public figures, hold a valid claim over the monetization of their personal attributes. The judges clarified that press freedoms derive from speech rights under Article 19(1)(a) but remain constrained by the limitations in Article 19(2), emphasizing the need to harmonize media liberties with privacy interests. Privacy was characterized as the "right to be let alone," prohibiting unauthorized publication of personal matters absent consent, except where drawn from official public documents.

⁵ 743 F.3d 509 (7th Cir. 2014)

⁶ 406 F.3d 905 (7th Cir. 2005)

⁷ [1990] 1 W.L.R. 491 (H.L.) (U.K.)

⁸ (1994) 6 SCC 632

Subsequent developments addressed whether such rights extend to corporate entities. In the seminal *ICC Development (International) Ltd. v. Arvee Enterprises*⁹ before the Delhi High Court, it was determined that publicity rights stem from privacy and apply exclusively to natural persons or markers of their individuality. Accordingly, inanimate objects fall outside this scope.

Participation in an event might confer publicity rights on an individual, but neither the event itself nor its sponsoring body acquires them. Transferring these rights to an organizer—a non-natural entity—would contravene constitutional guarantees under Articles 19 and 21.

By 2011, the Delhi High Court in *Titan Industries Ltd. v. Ramkumar Jewellers*¹⁰ articulated the celebrity publicity right as the entitlement to govern the commercial deployment of one's identity. The ruling also outlined criteria for establishing infringement liability.

The Madras High Court in 2015, via *Shivaji Rao Gaikwad (alias Rajinikanth) v. Varsha Productions*¹¹, built on prior precedents to assert that personality rights attach to those achieving celebrity stature. It noted that proving infringement does not demand evidence of falsehood, consumer confusion, or deceit, provided the famous individual is recognizable, and granted interim relief to the claimant on a prima facie basis.

More recently, the Delhi High Court's decree in *Anil Kapoor v. Simply Life India & Ors*¹² expanded protections to encompass diverse personal traits, including name, voice, photographic likeness, speech patterns, dialogue style, gestures, and autograph. Favoring the actor, the court observed that acclaim and repute can impair multiple entitlements, such as livelihood, seclusion, and dignified existence within society. While speech rights safeguard legitimate reporting, information dissemination, authentic satire, parody, and critique concerning prominent figures, excesses that defame, sully, or undermine the person's character or associated features become unlawful. The bench underscored that safeguarding the plaintiff's name, appearance, and related elements serves not only his interests but also those of his kin and associates, who oppose exploitative or derogatory applications.

⁹ 2003 (26) PTC 245

¹⁰ 2012 (50) PTC 486 (Del)

¹¹ 2015 (62) PTC 351 (Madras)

¹² CS(COMM) 652/2023 AND I.A. 18327/2013- 18243/2023

Notably, this adjudication illustrates the interplay between intellectual property mechanisms safeguarding individual attributes and broader constitutional safeguards in India.

Protection of Certain Aspect of Personality Right Under IP Laws Existing legal protection

In India, the primary constitutional safeguard for personality rights falls under Article 21, which encompasses the right to life and personal liberty. However, this provision largely overlooks the economic dimensions of such rights. To bridge this gap, judicial authorities have resorted to copyright and trademark statutes to shield select elements of an individual's persona. In certain instances, the common law remedy of passing off has also been invoked for this purpose. A cursory review of relevant Indian precedents might suggest that current intellectual property frameworks sufficiently address personality rights concerns. Yet, a more thorough examination reveals significant shortcomings, with numerous nuances and facets remaining unaccounted for, rendering these laws insufficient overall. Despite this, tribunals have proceeded to afford relief, often bypassing these deficiencies. In the process, the broader scope of personality as a protectable interest has been narrowed, resulting—as noted earlier—in coverage limited to only certain attributes under prevailing IP regimes. Furthermore, some rulings have analogized personality rights protections to those afforded to famous marks.

Trademark provisions, to a degree, assist in curbing unauthorized exploitation of personal identifiers. A pioneering illustration is the 2010 Delhi High Court decision in **D.M. Entertainment Pvt. Ltd. v. Baby Gift House^{13*}*, marking the first direct engagement with the mercantile side of personality rights in the country. The plaintiff, singer Daler Mehndi, had incorporated D.M. Entertainment Pvt. Ltd. in 1996 and secured trademark registration for the "DM" designation, encompassing his name while assigning to the company various associated entitlements, including publicity rights and endorsement privileges. The defendants operated gift and toy outlets in the Delhi area and marketed dolls modeled after the artist; one variant even reproduced snippets of his song lyrics. Alleging dilution through implied sponsorship, passing off, and violation of publicity rights, the claimants sought redress. Lacking dedicated statutory measures for personality rights, the bench granted protection by applying trademark principles, particularly those related to passing off and misleading affiliation.

¹³ 2010 (44) PTC 58 (Del).

Embedding Personality Rights in Global IP Frameworks and Harnessing AI Ethics to Counter Digital Risks

India's personality rights jurisprudence, rooted in Article 21 and judicially extended through trademark and copyright lenses, reveals a fragmented landscape ill-equipped for globalized digital economies. Integrating these rights into unified international intellectual property treaties—such as amendments to the TRIPS Agreement or a dedicated WIPO protocol—offers a structured pathway. A multilateral framework could standardize definitions of publicity rights, delineate transferable and inalienable elements, and mandate cross-border enforcement mechanisms. This would harmonize protections for celebrities' names, likenesses, voices, and gestures, preventing forum-shopping and jurisdictional arbitrage in AI-driven infringements like deepfakes or synthetic media.

Leveraging AI ethics guidelines complements this integration by addressing emerging threats at the technological frontier. Bodies like the IEEE and UNESCO have outlined principles emphasizing consent, transparency, and non-maleficence in algorithmic content generation. Indian policymakers can adapt these into binding regulations, requiring platforms to implement watermarking for AI-generated personas, mandatory attribution to original rights-holders, and opt-in datasets for training models. Courts could invoke such guidelines as soft law to interpret “reasonable restrictions” under Article 19(2), balancing free expression with dignity.

A hybrid model—treaty-based substantive rights coupled with ethics-informed procedural safeguards—mitigates risks without stifling innovation. For instance, licensed use of celebrity avatars in virtual reality could thrive under clear royalty structures, while unauthorized morphing triggers automated takedowns. Legal practitioners would benefit from predictable liability standards, reducing reliance on passing-off claims. Scholars gain fertile ground to study intersections of human rights, technology, and commerce.

Ultimately, this dual approach transforms personality from a peripheral IP concern into a core pillar of digital governance. By embedding dignity-centric safeguards within global IP architecture and AI ethics, India can lead in shaping a rights-respecting innovation ecosystem, influencing BRICS nations and beyond.

CONCLUSION

In conclusion, personality rights in India, anchored in Article 21, now encompass name, voice, likeness, gestures, mannerisms, and signature, extending beyond privacy to commercial control. Yet, reliance on trademark, copyright, and passing-off leaves gaps in scope, duration, transferability, and digital enforcement. With AI amplifying misuse through deepfakes and synthetic media, fragmented protections fall short. India must enact dedicated legislation, integrate inalienable personality rights into global IPR frameworks, and embed AI ethics protocols to safeguard human dignity while enabling innovation. A cohesive, forward-looking regime is essential to balance individual autonomy with cultural and technological progress.

