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THE EMERGING LANDSCAPE OF PERSONALITY RIGHTS IN INDIA: LEGAL RECOGNITION AND CHALLENGES

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“Your face is your own, and nobody has the right to use it for profit without your permission.”

*~ Scarlett Johansson
(American Actress and Singer)*

1. INTRODUCTION

In the evolving landscape of media, entertainment, and technology, the concept of personality rights has gained significant prominence. A person’s personality is a combination of unique traits, behaviours and characteristics of that person, which make him or her different from others. Personality rights refer to the rights of an individual to control the commercial use and public representation of their identity, including name, image, voice, likeness, and other aspects of their persona. While these rights are inherently linked to the right to privacy and dignity, they are not comprehensively codified in Indian law. As India witnesses rapid digitalization and increased media scrutiny, the need to protect personality rights has become more critical than ever. Moreover, currently where primary way of doing business is marketing, which led to a rise in competition, this had impacted the personality rights by making it prone to misappropriation.¹ With this development there is an urgent need for legal reforms to safeguard these rights.² To control the unauthorized use of the personality rights, countries like, US, Germany, and Guernsey have already introduced their statutory laws.³ This

¹ Protection Of Publicity Rights in India- Chambers of Namrata Pahwa-2020, *available at:* <https://www.chambersofnamratapahwa.com/post/protection-of-publicity-rights-in-india> (last visited on June 23, 2025)

² The need to regulate personality trademarks in India, *available at:* <https://www.barandbench.com/columns/personality-trademark-in-india-the-new-unchained-wolf-and-need-to-regulate> (last visited on June 23, 2025)

³ German Civil Code, section 12, Federal Law Gazette Germany, Act on Copyright in Works of Visual Arts and of Photography’ (KUG), section 22 and 23, Federal Law Gazette Germany, 1907 Germany's Basic Law- article 1 and 2 - Federal Law Gazette Part III Germany,1949. French Civil Code (1804)- article 9 and 1382, US state law

article explores the existing legal position in India, identifies the gaps, and suggests the way forward, drawing lessons from international practices.

In India, the legal framework around personality rights has undergone a significant transformation. With the rise of social media and the dominance of online content, the image and identity of public figures, from Bollywood stars to cricket legends, have become valuable assets. As the line between public and private life shrinks and technology races forward, courts and lawmakers are redefining the boundaries of personality rights.

Currently in India the legal protection of personality rights is not certain and is ambiguous. There are legal gaps and inadequate laws in this regard. However there have been efforts by the various Indian Courts in identifying such rights as vesting in public figures by virtue of them having unique personality and the popularity they have gained that adds commercial value to their persona.⁴ Yet, specifically personality rights have not been recognized as distinct rights but are instead recognized as an aspect of right to privacy and publicity and also the Courts have used existing Intellectual Property laws for the protection of limited attributes of personality rights.⁵ On December 18, 2024, Delhi High Court in the case of famous prime-time news anchor Rajat Sharma passed an interim order barring misuse of his personality trademark. Sharma's voice and face were being used to promote some medicines commercially. The Court ordered to remove the videos and directed the Meta platforms to disclose the identity of those involved in this misappropriation.⁶ This is one of the seldom cases in which personality rights have been recognized. This raises the need to regulate personality trademarks in India as our Trademarks Act 1999 is silent on the issue.

2. CONSTITUTIONAL FRAMEWORK

In Justice *K. S. Puttaswamy (Retd.) v. UOI*,⁷ the Apex Court categorically held that the right to privacy is a fundamental right under Article 21 of the Indian Constitution. This braced up subsequent analogies to identity, autonomy, dignity, and control over personal image and data.

of publicity right and Restatement (Third) of Unfair Competition, 1995(USA), Section 46, Lanham Act 1946 (A)(USA), section 43(1)

⁴ Personality rights in India, available at: [https://www.obhanandassociates.com/blog/personality-rights-in-india/#:~:text=No%20persona%20can%20be%20monopolised,"\)](https://www.obhanandassociates.com/blog/personality-rights-in-india/#:~:text=No%20persona%20can%20be%20monopolised,) (last visited on June 25, 2025)

⁵ Available at: <https://www.nlunagpur.ac.in/PDF/Publications/5-Current-Issue/4.%20PROTECTION%20OF%20PERSONALITY%20RIGHTS%20IN%20INDIA.pdf> (last visited on June 23, 2025)

⁶ *Supra* 2 (last visited on June 27, 2025)

⁷ (2017)10 SCC 1.

In contrast to the right to publicity, the right to privacy is the right to be left alone and protect one's personality from being represented publicly without his or her permission. By virtue of this right a public figure is empowered to sue for damages or injunction against any person who has invaded his privacy and violated his personality rights.⁸ Previously, in another landmark judgement of the honourable Supreme Court in the case of *R. Rajagopal v. State of Tamil Nadu*,⁹ popularly known as *Auto Shankar* case, the scope and ambit of right to privacy came up for consideration, and the Court held that the right to life and personal liberty includes right to privacy and right to be left alone, even if it is not explicitly enumerated under Article 21. Citizens have a right to safeguard the privacy of their own, their family, marriage, procreation, motherhood, child-bearing and education among other matters and nothing in that concern could be published by anyone without the consent of that person. However in exceptional circumstances where such publication is based on public records, including court records, the right to privacy no longer subsists and it becomes legitimate subject for comment by press and media, among others.¹⁰

The law pertaining to the 'right to publicity' has been elucidated in a few other judgements. The Delhi High Court in the case of *ICC Development (International) Ltd. v. Arvee Enterprises*,¹¹ issues an authoritative guideline, where the context was the misuse of association with sponsorship of the Cricket World Cup, by advertisers that were not registered as official sponsors. The Court held that, "The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. however, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organiser (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised. The right of Publicity vests in an individual and he alone is entitled to profit from it."

⁸ Available at: [https://www.obhanandassociates.com/blog/personality-rights-in-india/#:~:text=No%20persona%20can%20be%20monopolised,"](https://www.obhanandassociates.com/blog/personality-rights-in-india/#:~:text=No%20persona%20can%20be%20monopolised,) (last visited on June 27, 2025)

⁹ (1994) 6 SCC 632.

¹⁰ *Supra* 8.

¹¹ 2003 (26) PTC 245.

Another judgement that reinforced the guidelines pertaining to the right to publicity was *Titan Industries Limited v. M/s Ramkumar Jewellers*.¹² In this case, photographs of film actors, Jaya Bachchan and Amitabh Bachchan, were used and published without any permission and/or authorization. The Delhi High Court observed that, “*when the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity.*”

In yet another example, the film actor Rajnikanth issued legal notices and banned the use of his photos and caricatures before the release of his movie *Baba*. The same actor, in 2015, sued Varsha Productions (*Shivaji Rao Gaikwad v. Varsha Productions*)¹³ for their upcoming release ‘Mai Hoon Rajnikanth’, claiming that the film makers had copied his inimitable style of walking and dialogue delivery. He also claimed that the movie had some immoral visuals which could tarnish his image. Taking cognizance of Rajnikanth’s personality rights, the Madras High Court issued stay order on release of the film.

Most recently, the issue of personality rights came up in *Mr. Gautam Gambhir v. D.A.P. & Co. and Anr.*¹⁴ The defendant, whose name was Gautam Gambhir, used his name as part of the tagline for a host of restaurants and bars he owned. Many people, however, mistook the name to indicate some sort of association with India’s leading cricketer of the same name. The Court held that the defendant did not claim that his business is related to the cricketer nor did he display any pictures of the cricketer anywhere. He prominently displayed his own pictures everywhere to show his own identity. Also, when the logos of the restaurants were being registered, no objection was raised by anyone. Hence, the court decided that the defendant had not made any use of the reputation of the plaintiff’s name in his trade and he had a bona fide right to use the name ‘Gautam Gambhir’ for his ventures, since his own name was the same. Therefore, an interim injunction was not granted and all the pending applications were disposed of.

Personality rights are considered as property, and hence courts in India recognize the right to license and sell this right to publicity. The right to publicity protects all rights from birth until

¹² *CS(OS) No. 2662/2011.*

¹³ *2015 (62) PTC 351 (Madras).*

¹⁴ *(MANU/DE/5440/2017).*

death and in perpetuity of the individual, such that the individual has the power to exercise control over the commercial use of their name, image, likeness, or other distinctive features relatable to that individual.

In the order passed in the case of *Anil Kapoor v. Simply Life India & Ors.*¹⁵ the Delhi High Court tried to cater to also those areas which were earlier not addressed. That is personality rights associated with an individual's persona such as their name, voice, photograph/image/likeness, manner of speaking and dialogue delivery, gestures, and signatures etc. While pronouncing the judgement in the favour of the Plaintiff the court stated, *"reputation and fame can transcend into damaging various rights of a person including his right to livelihood, right to privacy, right to live with dignity within a social structure, etc. There can be no doubt that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism. However, when the same crosses a line, and results in tarnishment, blackening or jeopardises the individual's personality, or attributes associated with the said individual, it would be illegal".* The court further stated that the *'Plaintiff's name, likeness, image, persona, etc., deserves to be protected, not only for Plaintiff's own sake but also for the sake of his family and friends who would not like to see his image, name and other elements being misused, especially for such tarnishing and negative use.'*¹⁶

It is pertinent to mention here that these judgement shows how elements of intellectual property that protects the attribute of an individual, in fact have other dimensions including rights protected by the Constitution of India. However, there are serious gaps in the protection of personality rights due to the lack of a thorough legislative framework. To make such claims, people now have to rely on a mix of trademark laws, copyright laws and constitutional principles, like the right to privacy under Article 21. This scattered approach frequently results in inconsistent court rulings and unclear enforcement.

3. LEGISLATIVE FRAMEWORK

The closest law to protecting personality rights in India is Article 21 of the Indian Constitution as discussed above. But as it leaves out the commercial aspect of personality rights to some extent, the Indian courts applied the provisions under the Copyright Act 1957, as well as the Trademark Act 1999, for granting protection of certain aspects of personality rights. Even in

¹⁵ CS(COMM) 652/2023 AND I.A. 18327/2013- 18243/2023.

¹⁶ *Ibid.*

some cases ‘passing off’ has been used to protect personality right. While taking some of the India cases into consideration regarding the protection of personality right under existing Intellectual Property (IP) laws, it may appear at first glance that, the existing laws are adequate enough to grant protection for personality rights. However, a more thorough examination of the same, points that there are several legal gaps and aspects that have been left unaddressed which makes the existing IP laws inadequate. But the courts have ignored these facts and granted remedy. While doing so it has left out the entire subject matter of personality, such that, as stated in the introduction, only limited personality attributes are seen to be protected under the existing IP laws.¹⁷ Also, in some cases, courts have interpreted the protection of personality rights in a similar way to well-known trademarks protection.¹⁸ Also for some extent, trademark laws help to regulate the unauthorized use of personality attributes; for example, in *D.M. Entertainment v. Baby Gift House*,¹⁹ the primary case in India that dealt with the commercial aspect of personality right for the first time. In 1996, the plaintiff (Indian artist Daler Mahendi) established a business called D.M. Entertainment Pvt. Ltd., where they had a registered trademark for the letters DM, which stood for their name and all the rights, including right of publicity, commercial endorsement, and other associated rights, were given to the company. And the defendants who own and operate toy and gift stores around Delhi. The dispute is around the selling of Daler Mehndi-inspired dolls, one of which sung a few lyrics from his songs by defendant. The plaintiffs claimed false endorsement, passing off and infringement of the right to publicity. Due to the absence of a specific legislation protecting personality rights, the court provided remedy invoking provisions within the trademark law, such as passing off and false endorsement.²⁰

Although trademark law may be a better analogy for understanding the ambit of the personality right, in some cases, copyright law can also be applied by the court to provide protection of personality right even though the Act does not prima facie mention the personality right occupancy but certain sections under the Copyright Act, 1957, can help furnish a viable remedy for infringement of personality rights. The main provision used under copyright are, Section

¹⁷ Trade Marks Act, section 2(m) - Acts of Parliament- 1999(India) -name and signature, Copyright Act, section 2 (qq) Acts of Parliament- 1957 (India).

¹⁸ CS (O.S.) 893 of 2002 (Del.) (India), Arun Jaitley v. Network Solutions Pvt. Ltd., (2011) 181 DLT 716

¹⁹ *Ibid.*

²⁰ *Ibid.*

2(qq),²¹ which defines performer if personality comes under the purview of performer definition; section 38²², where-under performer right can also be claimed, which, in fact, prevents unauthorized marketing of one's performance. In some cases, Section 57²³ also can be applied, which provides protection under the ground of moral right. Further in some other cases, the court can be seen to have applied Section 17(b)²⁴, for example, in *Titan Indus. Ltd. v. Ramkumar Jewellers*.²⁵ The issue in this case was that the defendant had set up billboards showing Amitabh and Jaya Bachchan, (two well-known Indian stars) endorsing the defendant's jewellery shop. The plaintiff raised the plea of personality rights infringement based upon the contract (where the personalities assigned their personality right to plaintiff); further, the plaintiff filed a suit seeking injunction restraining the infringement of copyright, misappropriation of personality rights, and passing off damages. Court held that according to Section 17(b) of the Copyright Act, 1957, the plaintiff is the owner of the copyright in the said advertisement which in fact can be substantiated by the endorsement agreements, which clearly state copyright ownership is with the plaintiff. Therefore, the defendant's dishonest use of a similar advertisement for their products on the hoardings and the reproduction of the celebrities in the same context as the plaintiffs amounts to the infringement of copyright rights. Here the court tried to address the right of the plaintiff under the purview of the first author of the work, and consider the aspect of personality as a performer.

4. RECENT CASES: CHARTING THE COURSE OF PERSONALITY RIGHTS

For the past few years, India's legal landscape for personality rights witnessed significant evolution, driven by landmark judicial pronouncements. This period marked the judiciary's proactive stance in recognizing and protecting the commercial interests tied to individuals' identities. Let us examine few of such judicial interpretations.

²¹ Copyright Act, (Acts of Parliament 1957), s. 2(qq)- "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

²² *Id.*, s. 38.

²³ *Id.*, s. 57.

²⁴ *Id.*, s. 17 (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

²⁵ (2012) 50 PTC Del 486.

- 1) *DEEPA JAYAKUMAR v. A.L. VIJAY AND OTHERS*²⁶, this case highlighted significant legal complexities regarding posthumous privacy and personality rights in the realm of media portrayals of public figures. It underscored the need for a balanced approach that respects both individual rights and freedoms of expression, setting a precedent for future cases dealing with similar issues under Indian law.
- 2) *RAMGOPAL VERMA & ORS. v. PERUMALLA AMRUTHA*²⁷, this case underscores the delicate balance between an individual's right to privacy and the freedom of expression in artistic works based on public events, setting guidelines for future disputes involving the portrayal of personal tragedies in media and entertainment.
- 3) *KRISHNA KISHORE SINGH v. SARLA A. SARAOGI & ORS.*²⁸, the court firmly established that personality rights, encompassing privacy, publicity, and personality itself, are not inheritable. This means that upon the death of an individual, these rights cease to exist and cannot be claimed or enforced by successors or family members. This ruling set a precedent regarding the legal status of personality rights posthumously.
- 4) *AMITABH BACHCHAN v. RAJAT NAGI AND ORS.*²⁹, marks a pivotal moment in Indian jurisprudence concerning personality rights. It sets a crucial precedent by defining and protecting a celebrity's right to control the use of their persona, thereby mitigating unauthorized commercial exploitation. The case underscores the judiciary's role in adapting legal frameworks to address contemporary challenges in protecting individuals, especially celebrities, from exploitation and misuse of their identities in the public domain. The Delhi High Court granted an ad-interim ex-parte injunction in favour of Amitabh Bachchan. The court found that Bachchan had established a prima facie case in his favour. The court acknowledged that the defendants were misusing Bachchan's celebrity status to promote their own activities without authorization. It noted that this unauthorized use could cause irreparable harm to Bachchan's reputation and goodwill. The balance of convenience favored Bachchan, leading the court to grant the injunction restraining further infringement of his publicity rights.
- 5) *ANIL KAPOOR v. SIMPLY LIFE INDIA PVT. LTD.*³⁰, The Delhi High Court granted ex-parte interim relief in favor of Anil Kapoor, acknowledging the urgency of the

²⁶ 2019 SCC OnLine Mad 39281.

²⁷ 2020 SCC OnLine TS 3018.

²⁸ 2021 SCC OnLine Del 3146.

²⁹ 2022 SCC OnLine Del 4110.

³⁰ 2023 SCC OnLine Del 6914.

matter and the potential harm caused by the unauthorized use of his image and likeness. The court ordered an immediate halt to the use of Anil Kapoor's image, voice, likeness, and domain names without his express consent. The court directed the transfer of control of the domain names www.anilkappor.in, www.anil Kapoor.com, and www.anil Kapoor.net to Anil Kapoor, subject to the payment of requisite fees. The court granted an injunction against the unauthorized use of the word "Jhakaas" in a manner similar to how Anil Kapoor used it in the film YUDDH, considering its association with his persona and potential confusion among the public. This case highlights the importance of protecting personality rights, including image, likeness, and domain names, in the digital age specifically through Artificial Intelligence (AI) tools. It underscores the need for individuals to safeguard their reputation and integrity from unauthorized exploitation. Additionally, the judgment sets a precedent for addressing issues related to domain name squatting and the misuse of celebrity-associated phrases or expressions.

- 6) *JAIKISHAN KAKUBHAI SARAF ALIAS JACKIE SHROFF v. THE PEPPY STORE & ORS*,³¹ in this case the court granted an injunction restraining 'The Peppy Store and others' from selling merchandise featuring Jackie Shroff's likeness without his consent. Additionally, the court awarded damages to Shroff as compensation for the unauthorized use of his persona, acknowledging the commercial harm inflicted. The particular case represents a significant milestone in the protection of personality rights in India. By affirming Jackie Shroff's right of publicity and ruling against the unauthorized sale of merchandise featuring his likeness, the court reinforces the importance of individual autonomy over their identities. This ruling not only strengthens the legal framework for protecting personality rights but also serves as a deterrent against unauthorized exploitation. As India navigates the evolving landscape of individual rights and commercial interests, this case stands as a guiding precedent for upholding the dignity and autonomy of celebrities in the digital age.

5. WAY FORWARD: KEY CHALLENGES AND EMERGING PROSPECTS

The legal framework in reference to personality rights in India as discussed above is still at evolving stage. Enforcement of these rights online is a significant challenge due to the swift and widespread infringement of such rights. Moreover, the advancement of technology every

³¹ 2024 SCC OnLine Del 3664.

passing day might further require the refinements in the framework. Nevertheless the judiciary is filling up those gaps time to time and empowering the individuals with control over how their identities are shaped and disseminated in the digital age. After the above considerations following is the detailed analysis of the way forward:

- **Legislative Reforms:** There is a dire need of enacting comprehensive legislation explicitly addressing the nuances of personality rights in the digital age. The recommended legislation should not only reinforce the already existing protections but in addition to that also introduce the provisions to tackle new emerging issue like deepfakes, online impersonation, and surreptitious data harvesting. Such a system should guarantee protection from unauthorised exploitation and strike a balance between the public's right to free speech and the financial interests of people. It would be more certain and secure for both celebrities and regular people to protect their identities if there were clear legal provisions outlining personality rights, including their extent, duration and enforcement procedures.³² The Trademarks Rules of 2017 and the Trademarks Act of 1999 are not comprehensive to handle the difficulties presented by personality trademarks. They do not acknowledge non-traditional personality traits like voice, gestures, or style, which are increasingly used in commercial contexts and in the field of artificial intelligence. A more detailed and specific framework for safeguarding a person's identity and preventing its unauthorised use could be brought by amending the Act to include these characteristics as 'marks' under Section 2(1)(m). These modifications would also strengthen enforcement mechanisms and make the personality trademark registration procedure more transparent. These reforms are vital in order to update India's intellectual property laws to reflect the realities of the current digital and business environment.
- **Stronger Enforcement Mechanisms and Regulatory Frameworks:** While robust laws are indispensable, their efficacy hinges on the effectiveness of enforcement mechanisms. There is a palpable need to bolster the infrastructure and resources dedicated to monitoring and enforcing personality rights violations. This entails equipping regulatory bodies with the requisite tools and expertise to swiftly address infringements, thereby serving as a deterrent to potential violators. Additionally, fostering collaboration between law enforcement agencies, tech companies, and

³² Available at: <https://www.barandbench.com/columns/personality-trademark-in-india-the-new-unchained-wolf-and-need-to-regulate> (last visited on June 30, 2025).

advocacy groups can amplify the impact of enforcement efforts and facilitate timely intervention in cases of abuse or exploitation.³³

- **Raising Public Awareness and Promoting Legal Literacy:** Educational initiatives aimed at educating citizens, especially content creators and influencers, about their rights and responsibilities in the digital ecosystem can foster a culture of respect for personal integrity and privacy. Furthermore, collaborative endeavours involving media literacy programs, workshops, and digital citizenship initiatives can foster a more informed and vigilant society capable of discerning and combatting instances of infringement or abuse.
- **Advanced Technological Explications:** In an era dominated by technological innovation, leveraging technology itself can serve as a potent tool in safeguarding personality rights. From advanced algorithms capable of detecting and mitigating instances of image manipulation to blockchain-based solutions for verifying digital identities, embracing technological advancements can enhance the efficacy of existing protection measures. Furthermore, fostering dialogue and collaboration between tech innovators, legal experts, and rights advocates can spur the development of innovative solutions tailored to address the evolving challenges posed by digital media and online platforms.³⁴

6. CONCLUSION

Currently in India personality rights exist at the intersection of constitutional privacy, passing off, trademark law, and performer's/moral rights under copyright law. While the judicial system has expanded its scope by providing protection to voice, catchphrases, mannerisms, and AI generated likeness, particularly in high-profile cases, yet the legal protection is fragmented, inconsistent, inadequate to address this issue and largely limited to celebrities. It has emerged as an individual class of protection. Therefore it is necessary to develop legal frameworks that provide people to protect their personality and have chance to profit monetarily from their image and other personality attributes by registration of their personality, as evidenced in Guernsey's legislation.³⁵ In present day scenario, image of a person is

³³ Available at: <https://www.tbalew.in/post/a-look-evolution-personality-rights-in-india>(last visited on June 30, 2025).

³⁴ *Ibid.*

³⁵ Available at: Image Rights (Bailiwick of Guernsey) Ordinance, 2012- available at - <https://ipo.guernseyregistry.com/article/158676/Image-Rights-Legislation--Regulations>. (last visited on June 30, 2025).

extremely valuable as their popularity brings money for them than anything else. This might make image rights management the market leader in the future. Therefore, an explicit protection should be given by granting a sui generis law for personality rights like Guernsey did which can help to resolve these issues. The need of such law has increased in the current circumstances, thus it is the time for India to push further for a comprehensive legal framework for this concept and to develop a holistic approach to address the same.

