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PROTECTION OF PERSONALITY RIGHTS IN THE DIGITAL AGE

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ABSTRACT

Name, voice, expressions, etc. of every person is so unique that is why these features have been protected by Intellectual Property Rights (IPR) and are known as personality rights of a person. This right plays a significant role in providing big commercial gains to the celebrities that is why this right is also famously known as celebrity rights. On the research topic "Protection of Personality Rights in the Digital Age", the researcher has conducted a doctrinal research. The researcher has analyzed the impact of existing and future technologies on personality rights. It has been analyzed how constitutional protection to privacy rights and protections provided through IPRs are safeguarding personality rights in the digital era in India. The researcher has read and analyzed the Articles of the constitution, constitutional principles and judgments of the courts regarding the right to privacy. Intellectual Property (IP) laws have also been analyzed to understand how personality rights are protected in India. Previous research works done on understanding personality rights have been examined. Relevant books and journals on the constitutional safeguards and IPRs have also been referred to. Recent articles on the issues like personal rights, misuse of AI, protections of personal rights in the modern era, etc. have also been analyzed. The researcher had shown that the personality rights have already been recognized as IPR in India and identity, name and various other personal features and information of a person has been protected under the fundamental right of "right to privacy" as well but still cases of misuse of unique identity and personality of a person have not been properly stopped and no strict actions are taken against infringers of personality rights and right to privacy of a person.

KEYWORDS: Personality rights, celebrity rights, right to privacy, fundamental right, IPR, Trademark, Copyright, AI, misuse of AI, Digitalization, violation of personality rights, misuse of technology, regulations to control AI, special law for personality rights.

1- INTRODUCTION

1.1- MEANING OF PERSONALITY RIGHTS & THE IMPACT OF DIGITALISATION

These days technological advancement is happening at a very rapid speed and various tools and software have been developed which can easily do those things which were quite time taking a few years ago. For example the emergence of modern digital gadgets, smartphones, advanced AI tools and software have made it quite easier to swiftly copy the personal features like voices, facial & bodily features, signature steps, mannerism, expressions, etc. of a person. These activities can be performed even without taking the permission of that person whose features are copied which results in the violation of right to privacy of that concerned person. In this way, it has become very important in modern times to bring a special law to protect personality rights in India because the existing Indian laws have not directly provided any specific provision to protect personality right, as well as these laws are not capable enough to regulate the misuse of digitalization and misuse of AI technology which have created big threats in safeguarding the privacy and personal rights of a person. Meme pages on social media platforms and various other websites are carelessly allowing to post various contents in which personal features of a person or celebrity are copied rampantly without their permission. These activities have to be stopped. Use of personal features without the permission of the concerned people have been prevented in many countries but Indian laws have to be amended and developed to provide a special legal framework to prevent the misuse of personal features without the permission of the concerned people whose personal features are copied. Damages were awarded in 1931 in the case of *Tolley vs Fry*¹ when an amateur golf player's picture was used without taking his permission for the purpose of advertisement but in India it is quite common to see the unauthorized use of photos of various celebrities on the top of various shops or in various print & digital advertisements where no actions are taken by the authorities to prevent such misuse. AI tools have made it quite easier to copy the image and voice of a person and with the help of this technology an audio-visual content can be very easily created for the purpose of advertisement or for any other purposes. Deepfake and pornographic contents have also been made with help of AI tools & software which makes it necessary to provide more protection to the personality rights in the coming days and to have strong legal control over the use of AI tools and software.

¹ *Tolley V. Fry* (1931) AC 333; (1931) 1 All ER Rep 131.

A person has the right that his personal features like his name, voice, facial & physical features, expressions, etc. should not be used by others without his permission. This right is known as personality right. The personal features are usually quite abstract, they are developed by the intellect of a person that is why personality rights are a form of IPR. Indian IP laws have not specifically defined what is personality right but in 2017 the SC had declared the right to privacy as a fundamental right.² The right to privacy protects the personal features a person from being used without his permission but in the era of modern technology and due to the growing misuse of AI tools and software, it has become very necessary to bring a specific law in India to define and provide a specific mechanism to protect personality rights and to provide a framework for the grant of license to digital content creators and social media influencers for legally using personal features of a person. In the end, it all depends on the modern ways to have legal control over advanced technologies, AI tools and software.

1.2- PERSONALITY RIGHTS ALSO KNOWN AS CELEBRITY RIGHTS

The other name of "personality right" is "celebrity right". A celebrity is "*a famous or a well-known person and is merely a person who many people talk about or know about*".³ Popularity of an actor, comedian, musician, sports person, politician or the popularity of any other renowned person gives him a tag of "celebrity". Celebrities develop and create their unique features through their intellect and hard work. A common man may not have those valuable personal features which a celebrity may have. Commercial exploitation of those features can provide big monetary gains to a celebrity. The unique features of a celebrity if used without his permission for commercial gains then that should not be allowed and violators have to pay compensation as well. "Considerable energy and ingenuity are expended to those who achieved celebrity value to exploit this value for profit."⁴ Use of personal features should only be permitted when one has been given a license for the commercial exploitation of those unique features of a celebrity. In this way, celebrity rights enable a celebrity to gain control over publication of his unique features. Control over the right to publicity is a unique feature of celebrity rights. According to the Delhi HC, "*The right to control the commercial use of human identity is the right to publicity.*"⁵ Celebrity right gives a control over the right to publicity but the Indian laws have not expressly

² *Justice K. S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

³ *Titan Industries Ltd. vs Ramkumar Jewellers*, 2012 SCC OnLine Del 2382.

⁴ Souvanik Mullick and Swati Narnaulia, "Protecting Celebrity Rights Through Intellectual Property Conceptions", Volume 1 Issue 4 *NUJS Law Review* 615 (2008), available at: <https://nujlawreview.org/2016/12/03/protecting-celebrity-rights-through-intellectual-property-conceptions/> (last visited March 15, 2024).

⁵ *Titan Industries Ltd. vs Ramkumar Jewellers*, 2012 SCC OnLine Del 2382.

defined what personality or celebrity right is, in this way it is very difficult in India for a celebrity to prevent someone to use his unique features specially it has become so difficult for a celebrity in the era of digitalization where various advanced technologies, AI tools, etc. are very easily capable of copying the unique features of a celebrity.

2- NO SPECIFIC LAW FOR THE PROTECTION OF PERSONALITY RIGHTS IN INDIA

How India is regulating personality rights? India has no specific law to regulate personality rights but there are various indirect ways through which various celebrities have gained protections and have stopped others from misusing their personal features. Action against the breach of privacy has been established as the strongest measure to prevent others from violating the personality right. Right to privacy and personality rights have already been correlated by the hon'ble Supreme Court (SC) In 1994-95,⁶ where the Court said,

*"The first aspect of this right must be said to have been violated when, for instance, a person's name or likeness is used without his consent for advertising or non-advertising purposes or for any other purpose."*⁷

The right to privacy has also been recognized as a fundamental right which shows that personality right should also be treated as a fundamental right. Due to the lack of formal recognition of personality right as a fundamental right and due to lack of specific mechanism to protect personality rights in India, it is very difficult to protect personality rights in this digital era.

Personality right or celebrity right is an IPR but the IP laws have not directly provided any specific provision to register such rights and to prevent others from using personal features of the holder of personality right without his permission. The lack of mechanism to regulate the right of publicity also makes it difficult in India to prevent the misuse of personality rights.⁸

If personal features are capable of being registered as a trademark then those personal features can get protection and be prevented from misuse but the Trademark Act⁹ is not comprehensively able to recognize all personal features of a person, especially a common man can face difficulties

⁶ *R Raja Gopal v State of Tamil Nadu*, 1995 AIR 264

⁷ *R Raja Gopal v State of Tamil Nadu*, 1995 AIR 264, para 9

⁸ Vikrant Rana, Nihit Nagpal and Akif Abidi, "Personality rights from Amitabh Bachchan to Sushant Singh to Anil Kapoor: Indian and Global View Point", *Bar and Bench*, November 03, 2023, available at: <https://www.barandbench.com/law-firms/view-point/personality-rights-amitabh-bachchan-sushant-singh-anil-kapoor-indian-and-global-view-point> (last visited on March 16, 2024).

⁹ The Trade Marks Act, 1999 (Act No. 47 of 1999).

in registering his personal features as trademarks but such difficulties may not be faced by a celebrity. Still, celebrities face a lot of restrictions in registering their personal features as trademarks. For example name has been recognised as a mark¹⁰ and celebrities can register it as a trademark but other personal features of a celebrity are yet quite difficult to be registered as a trademark.

The Copyright Act¹¹ also does not specifically provide a mechanism to protect personality rights but this act can be used to demand the credit for the original work of a celebrity, it means if anyone uses the work of a celebrity then that person has to declare that work to be the work of that celebrity or that celebrity can prevent that person to use such work. This right can be very fruitful when dialogues, expressions, mannerisms, etc. of a celebrity are used but still the voidness of an effective law can be felt because of lack of strong mechanism to protect personality rights through the Copyright Act.

The IT Act,¹² the IPC,¹³ and the newly passed BNS, 2023¹⁴ can be applied when there are cases related to cyber crimes, defamation, stalking, cheating, etc. but these laws are also silent on protecting personality rights due the misuse of modern technologies like, AI tools, advanced software, etc. Hence, an amendment in IT Act and in other laws or introduction of a new law to regulate the use of AI tools and software is much needed.

3- NEED FOR THE PROTECTION OF PERSONALITY RIGHTS IN THIS HIGHLY ADVANCED DIGITAL ERA

Whether personality rights are anymore impacted due the growth in digitalization and emergence of advanced AI technologies? Protection of personality rights as an IP and protection of privacy of a person as a fundamental right both have become so difficult in this digital age. Various technologies are evolving these days which are capable of hurting the personality rights of a celebrity. There is a lack of appropriate laws to govern such evolving technologies in India. Indian laws have very poor legal control over the usage of AI technology. The IT Act, 2000,¹⁵ IT Rules and regulations don't have strong jurisdiction over AI which makes it necessary for the

¹⁰ The Trade Marks Act, 1999 (Act No. 47 of 1999), s.2(1)(m).

¹¹ The Copyright Act, 1957 (Act No. 14 of 1957).

¹² The Information Technology Act, 2000 (Act No. 21 of 2000).

¹³ The Indian Penal Code 1860 (Act No. 45 of 1860).

¹⁴ The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023).

¹⁵ The Information Technology Act, 2000 (Act 21 of 2000).

government to make a special law for regulating AI. Various kinds of serious harm have already been caused but the government is still trying to understand this technology. Various advanced AI tools and software are rampantly used these days to copy the personality of celebrities even without their consent. Due to the lack of proper legal control over digitalization and AI technology, it is very difficult to protect the personality rights. Due to the lack of efficient statutory protections from the misuse of modern technologies, many celebrities have approached courts to safeguard their personality rights.¹⁶

Protection through personality rights is going to play a crucial role in the coming days because there are many developed and evolving technologies which can very easily copy the personality of a person. An advertisement can be made very easily involving a celebrity by using his images, voice, dialogue, expression, etc. without the consent of that celebrity. For example, with the help of AI technology, an image or an audio visual content can be very easily created by copying the personality of a celebrity without his consent and the final edited content may include the exact look, voice, gestures, mannerism, etc. of that celebrity which may confuse a consumer to differentiate between the real and fake one.

In this digital age, personality right must also be formally recognized as a fundamental right. Harmonising personality rights with the right to privacy can allow a celebrity to directly approach the HC or SC and the government can be made responsible to safeguard the personality rights of the celebrities. Recognition of the right to privacy as fundamental right in the Puttaswamy case¹⁷ allowed the prevention of sale of identities of a person without his permission. Personality right also secures the identities of celebrities from unauthorised usage and unauthorized commercial gains but due to the vast use of technologies, the personality rights are violated very oftenly & the existing laws are ineffective in securing these rights.

Advancement of AI technology has posed big fears for the protection of personality rights. The existing Indian laws are highly incapable in controlling the usage of AI technologies. By the end of January 2024, no specific laws have been made in India to regulate the usage of AI technologies. AI tools and softwares can be misused for various wrongful purposes but the required and appropriate laws are still not being made in India to prevent the misuse of such tools

¹⁶ Ranjan Narula, "AI in conflict with personality rights in India", *ManagingIP*, October 06, 2023, available at: <https://www.managingip.com/article/2ca8psx7p9fyiwd4h2ps0/expert-analysis/local-insights/ai-in-conflict-with-personality-rights-in-india> (last visited on March 17, 2024).

¹⁷ *Ibid.*

and softwares. Recently, an advisory from the side of the Ministry of Electronics and Information Technology has asked platforms to seek a permit before launching an AI tool but this step has been criticized as a very weak step which is not strongly capable of protecting the misuse of AI tools and can not efficiently protect the personality rights from violations, and it is said that such unnecessary hindrances will create only difficulties in the growth of AI tools.¹⁸

A strong law with a vivid & strict mechanism to punish the culprits can stop a person from misusing AI tools. Not only for commercial gains but for various unauthorized and illegal activities as well these AI tools and software are used. Due to the lack of clarity of the existing laws over AI technologies, victims are directly approaching courts to seek remedies. Recently celebrity actor Mr. Anil Kapoor also reached Delhi HC to protect his personality rights from the misuse of AI technology where his personality rights were protected and misuse of his name, voice, expressions, etc. were prevented, because of which no one (nor the users of AI tools) now can use his personal feature without his permission.¹⁹

Many AI tools and software were introduced in the year 2023 and by the end of 2023 discussion on the regulation of deepfake technology had become a hot topic in India because it was seen that the images and voices of various celebrities were copied without their consent and it was used to create various vulgar & indecent videos. It was found that India had no special law to regulate deepfake and due to the constant pressure from the public, introduction of a special law to regulate deepfake was promised from the side of the Indian government. Until the end of March 2024 that law was still not made. It shows that the government conducts very little studies to understand the misuse of future technologies which makes the government to take a lot of time to create a law for a new problem. A lot of time is wasted in India just to understand a problem and then to draft a law to deal with that problem. India has to respond very quickly to deal with the emerging problems. Continuous research works are required to understand the emerging and future issues. Findings of proper research works can help in instantly suggesting the appropriate laws to govern any issue. If new laws are required then that can be created with the help of those advanced

¹⁸ Nandini Yadav, "India moves to regulate AI tools, experts say too much: Story in 5 points", *India Today*, March 4, 2024, available at: <https://www.indiatoday.in/technology/features/story/india-moves-to-regulate-ai-tools-experts-say-too-much-story-in-5-points-2510337-2024-03-04> (last visited on March 17, 2024).

¹⁹ Nupur Thapliyal, "Delhi High Court Protects Actor Anil Kapoor's Personality Rights, Restrains Use Of His Name, Image Or Voice Without Consent", *Live Law*, September 20, 2023, available at: <https://www.livelaw.in/top-stories/delhi-high-court-anil-kapoor-voice-image-misuse-personality-rights-238217> (last visited on March 17, 2024).

previous research works. Constant research works are required to be done for understanding the impact of future technologies on personality rights.

4- NEED FOR THE NEW AND STRICT STEPS

More research is required to be done for providing protection to personality right by harmonising it with fundamental right to privacy. The Article 21²⁰ can be imposed to protect the personal features of all people of India but only celebrities have managed to secure their personality right and their reputation under this article.²¹ Every person has some unique personal features but only celebrities are able to enjoy the benefits of personality rights. In this digital era, it is very easy to copy & misuse the personal features of anyone whether the victim is a celebrity or a common man. The copied content can be very easily used for commercial gains, hence the personality right has to be formally declared as a fundamental right and every person must get the right to control the commercial use and publication of his unique features. This measure will make the government responsible for protecting the personality rights and the victims can directly approach HC or SC to get relief for the violation of his fundamental right. This measure will also reduce the burden of registration of the personality rights and just like fundamental rights are granted to every citizen similarly every celebrity, every person will gain personality rights if formally the rights to privacy and personality rights are merged together as a fundamental right.

More research work is required to be done for criticising the existing legal framework and to provide strong statutory protection to the personality rights by suggesting required amendments. The existing Indian laws are not capable enough to secure the right to publicity. Strict measures to secure the right to publicity are not taken in India even when the right to privacy has been declared as a fundamental right by the SC. Personal features of a person like name, voice, expressions, gestures, etc. can be very easily misused by anyone in this digital era to gain commercial advantages and celebrities have been targeted the most for such unauthorised activities. The celebrities need effective statutory protection and a total prohibition on the misuse of personality rights without their permission. Publishing unauthorised advertisements, posts on meme pages, printing images of celebrities without their permission and circulating various audio visual contents are the very common examples of misuse of personality rights in which unique features, names, looks, voices, dialogues, etc. of celebrities are used without their permission for gaining commercial advantages.

²⁰ The Constitution of India, 1950, Art.21.

²¹ *Shivaji Rao Gaikwad vs Varsha Production*, 2015 (62) PTC 351 (Madras)

Whether Indian laws are capable of protecting personality rights in the technologically advanced era? The scholars have not very well examined the impact of upcoming technologies on the personality rights. These days the personality rights are massively misused with the help of AI technology. India has no law to regulate AI technology. Lack of regulatory control over AI has made it quite easier to violate privacy of a person and to infringe IPRs. When the media asked Anil Kapoor about his personality rights he also accepted the issue that violation of personality has become easier with the help of AI technology. There are many tools which can very easily copy facial features and voices of any celebrity. These cases can be very easily seen on the meme pages where fake images, audios, videos of celebrities without their permission are made with the help of AI and posted on popular social media platforms like instagram, facebook, etc. to make viral contents and gain followers and monetary benefits. Copying the voices of celebrities has become so common. These days it has become a trend to copy the voice of Prime Minister Narendra Modi with the help of AI to make funny song videos. The voices of many celebrity singers are getting copied these days with the help of AI to make song videos. Song videos have also been created with the help of AI by copying the voices of celebrity singers who have died many years ago, for example the voice of Mohd. Rafi has recently been used to make song videos which became a matter of discussion where some people supported this experiment while some people were against it. Similarly, deepfake is also an example of the misuse of AI in which facial features and looks of a celebrity can be copied without his consent to make an audio visual content, this content can be used for vulgar & indecent purposes which may harm the reputation of that celebrity.

5- CONCLUSION AND SUGGESTIONS

A new special law or an immediate amendment in the existing laws formally recognizing the personality right and providing a clear mechanism for its protection is much needed. By formally declaring personality right as a fundamental right every person can be given authority to control their personal features. This control will provide them to gain monetary benefits by granting license to others to publish their personal features.

It is concluded that India has no specific law to protect the personality rights of celebrities. Though some provisions of The Trade marks act and Copyright act can be utilized to protect the personal rights & personal features of celebrities but still no proper law is there in India to directly

provide protection to the personality rights. Due to the lack of this much needed law, the personality rights are misused everyday in India. Modern technologies and AI have also made the misuse so easy. India needs a new law in this regard and that new special law must be framed and implemented as soon as possible. A proper legal control over modern technologies especially over the misuse of AI tools and software is much needed. It is finally suggested that the following measures can be very helpful-

1. Merging right to privacy and personality rights,
2. providing protection even when there is no registration of personality right,
3. strict implementation of the laws to take action on the misuser of the personality right,
4. highlighting the inefficiency of the trademark and copyright act in securing personality rights in the modern digital era and bringing new amendments,
5. bringing a proper regulatory control over AI to prevent the infringement of IPRs especially the infringement of personality rights,
6. It is quite important to continuously research for understanding the impact of future technologies on personality rights.

