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Protecting Persona: Personality Rights in the Realm of Intellectual Property

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

This quotation by one of the most celebrated Marvel actresses highlights the importance of personality rights in safeguarding individuality and the traits associated with a person. The concept of personality rights is well established in countries like the United States of America (USA) and Germany, whereas nations like India and the United Kingdom (UK) are still developing and expanding legal recognition in this area.

Court decisions and legislative measures over the years have shaped the interpretation of these rights. The proliferation of media outlets and new media products has created a pressing need for robust legal frameworks to prevent unauthorized commercial exploitation of individuals' personas. Public figures increasingly assert their “right of publicity,” which allows a person to control whether and how their name, image, voice, and other distinctive traits are used publicly, especially in advertising or other commercial contexts.

From a human rights perspective, personality is a fundamental aspect of dignity, identity, and personal integrity. Intellectual property rights, on the other hand, protect creations of the mind, rewarding talent and innovation. The intersection of these two domains raises critical questions about how unique individual attributes and limited creative resources can be effectively safeguarded, particularly in an era of abundant information and easily replicable digital content.

Historical aspect:

Personality rights have their roots in early liberal traditions that emphasized individual freedom and the inherent worth of the person. Philosophical writings by thinkers such as John Locke and Immanuel Kant laid the foundation for these ideas within the framework of liberal democracy.

Legally, personality rights emerged in the 19th and 20th centuries within the civil law systems of European countries. Simultaneously, intellectual property rights developed [9073]

to protect creators and promote innovation, beginning with the Statute of Anne (1710) and the Berne Convention (1886).

In India, personality rights were first recognized in the 21st century through cases such as ICC Development (International) v. Arvee Enterprises (2003) Delhi 405 and D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors. (2010) MANU Delhi 2043. However, similar rights had been acknowledged in other countries by the mid-20th century. Despite judicial recognition, India lacks a clear legislative framework, creating gaps in protection. Courts have therefore relied on existing IP laws—trademarks to protect names and signatures, and copyright to safeguard performances. Many other personality attributes, however, remain unprotected and legally vulnerable.

International Legal mechanisms on Personality Rights

Personality rights are recognized under several international instruments:

- The Universal Declaration of Human Rights, 1948 (UDHR) emphasizes dignity and privacy, indirectly supporting personality rights.
- The European Convention on Human Rights, 1950 (ECHR), through Article 8, explicitly safeguards respect for private and family life.
- International IP protection is supported by agreements like TRIPS, which sets minimum global standards, and organizations like WIPO, which harmonize and standardize IPR laws across countries.

Haelan Laboratories v. Topps Chewing Gum (United States)

In this landmark U.S. case, the right of publicity was framed as a form of commercial property, rather than purely a privacy right. The key conditions for infringement set out were:

- The individual must be recognizable (identifiability of the persona).
- Use must occur without the person's consent (lack of consent).
- The unauthorized user must derive commercial benefit from the use.
- There must be harm, either financial or reputational, resulting from the infringement.

Global Regimes

United states: Statutory Focus and Commercial Orientation

In the U.S., personality rights are treated more like transferable property than mere personal rights. Several state statutes and federal laws reflect this approach—for example:

- California’s Civil Code section 3344 requires consent and allows damages for unauthorized use of a person’s name or likeness.
- Tennessee’s “ELVIS Act” (and its revisions) provides enduring protection for a celebrity’s identity and likeness.
- Newer laws targeting deep fakes and artificial-intelligence generated replicas (such as New York’s “Digital Replicas Act” of 2024 and the federal “NO FAKES Act” of 2025) are emerging to address modern technology-enabled misuse.

United Kingdom: Tort-based Approach with Emerging Reform

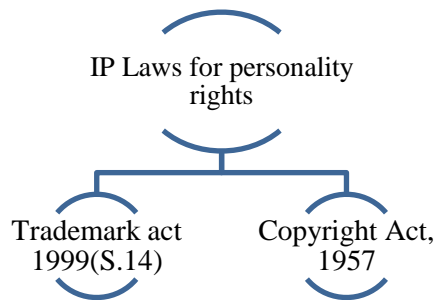
In the UK, there is no dedicated statute for personality rights; instead, protection is largely achieved through common-law torts (such as passing-off) combined with privacy protections under human-rights law. Notable decisions include:

1. Irvine v. Talksport Ltd. (2002) where claims regarding unauthorized endorsements by a sports celebrity were validated
2. Douglas v. Hello! Ltd. (2001) where private photographs and limits on their publication were addressed.

Recent legislative developments suggest reform is on the horizon:

1. A proposed law which addressed deep-fakes (October 2024) and AI-cloning (December 2024) indicated the right to one’s persona is becoming more clearly recognised
2. Consultations scheduled for January 2025 aim to raise standards for intellectual-property protection in this domain, while maintaining flexibility around harm-based remedies

National mechanism-How are personality rights protected in India ?



In India, one of the closest laws that protects personality rights is the Article 21 of the Constitution of India, which guarantees with right to life and personal liberty. From the Intellectual Property rights perspective, since international instruments do not fully address the commercial dimensions of personality rights, Indian courts have relied on provisions under **copyright act 1957** and **trademark law 1999** to protect certain aspects of personality rights. In some instances, the doctrine of **passing off**, enshrined under **Section 27 of the Trademark act 1999** has also been employed as a means of protection. At first glance, considering various Indian cases, it may seem that the existing intellectual property laws provide sufficient safeguards for personality rights. Yet, a closer and more detailed examination reveals that many important aspects remain unaddressed, highlighting the inadequacy of current IP laws in offering comprehensive protection.

Jurisprudential aspect of personality rights in India

With the growth of the entertainment industry, the concept of personality rights in India gained prominence alongside the right to privacy. Indian courts have gradually recognized that individuals, particularly celebrities, have a legitimate interest in controlling the commercial use of their persona. Several landmark cases have shaped the understanding of these rights.

R. Rajagopal v. State of Tamil Nadu (1995) – Supreme Court

In this pivotal case, the Supreme Court recognized an individual’s right to control the commercial use of their identity. The Court emphasized that while freedom of the press is protected under Article 19(1)(a), it is subject to reasonable restrictions under Article 19(2) and must be balanced against the right to privacy. Privacy was defined as the “right to be let alone,” and the Court held that no one could publish information about a person’s private affairs without consent unless it was derived from public records. This case catalyzed the emergence of personality rights in India.

ICC Development (International) Ltd. v. Arvee Enterprises – Delhi High Court

The Delhi High Court addressed whether personality rights could vest in a corporation. The Court held that the right of publicity stems from the right to privacy [9076]

and is confined to individuals or indications of their personality. Consequently, non-living entities, including corporations or event organizers, cannot claim such rights. While a person involved in an event may acquire the right of publicity, this does not extend to the event or its organizers. Any attempt to transfer a person's publicity rights to a non-human entity would violate Articles 19 and 21 of the Constitution.

Titan Industries Ltd. v. Ramkumar Jewellers (2011) – Delhi High Court

In this case, the Delhi High Court formally defined the “right to publicity” for celebrities as the right to control the commercial use of human identity. The Court also provided guidelines regarding liability for infringement of this right, reinforcing the protection of a person's commercial persona under Indian law.

Shivaji Rao Gaikwad (Mr. Rajinikanth) v. Varsha Productions (2015) – Madras High Court

Relying on prior judgments, the Madras High Court ruled that personality rights are vested in individuals who have achieved celebrity status. The Court noted that infringement of publicity rights does not require proof of falsity, confusion, or deception, particularly when the celebrity is easily identifiable. The judgment confirmed that celebrities are entitled to legal protection against unauthorized use of their persona.

Anil Kapoor v. Simply Life India & Ors. – Delhi High Court

This case expanded the scope of personality rights to include various attributes such as name, voice, image, likeness, gestures, manner of speaking, and signature. The Court emphasized that a person's reputation and fame intersect with multiple rights, including the right to livelihood, privacy, and dignity. While free speech, news reporting, satire, parody, and genuine criticism remain protected, any use that tarnishes or misappropriates an individual's persona is illegal. The Court further highlighted that protection of personality rights also safeguards the individual's family and social circle from misuse of their image or identity.

New Legal Framework and Enforcement of Personality Rights in the Digital Age

Personality rights in India are still developing, and enforcing these rights online presents significant challenges. The rapid evolution of technology underscores the need for a more comprehensive legal framework. Encouragingly, the growing body of case law demonstrates that individuals are increasingly able to exercise control over how their identities are represented and disseminated in the digital space.

To strengthen personality rights, legislative reforms are necessary to create laws that address the unique challenges of the digital age. These reforms should provide clear definitions of personality rights, outline their scope across various mediums—including social media—and offer protection against emerging threats such as deepfakes, online impersonation, and covert data harvesting.

Effective enforcement requires robust mechanisms, with regulators equipped with the tools and expertise to respond swiftly to violations. Collaboration between law enforcement agencies, technology companies, and advocacy groups is essential to curb misuse and exploitation.

In addition, empowering individuals through public awareness and legal literacy initiatives is vital. Media literacy programs, workshops, and educational campaigns can help the public understand their rights, recognize potential infringements, and respond appropriately. Such collaborative efforts can create a more informed and vigilant society capable of protecting personality rights in the digital era.

Conclusion-

Personality rights represent a vital intersection between human dignity and intellectual property, ensuring that individuals—particularly public figures and creators—can control the commercial use of their identity, image, and other personal attributes. While countries like the USA and Germany have developed robust frameworks, India and the UK are still evolving in this domain. Indian jurisprudence, through landmark cases, has progressively recognized the right of publicity and expanded protections for celebrities' persona, yet gaps remain, particularly in addressing lesser-known individuals and new-age digital challenges.

In the digital era, with the proliferation of social media, deepfakes, and AI-driven content, enforcing personality rights has become increasingly complex. Legislative reforms, comprehensive laws, and effective enforcement mechanisms are essential to safeguard individuals from unauthorized exploitation while balancing freedom of expression. Moreover, public awareness, media literacy, and education play a critical role in empowering individuals to assert and protect their rights.

Ultimately, personality rights are not just a legal safeguard—they are a recognition of the intrinsic value of personal identity and individuality. Strengthening these protections ensures that every person has the authority over how their persona is represented and used in society, fostering a culture of respect, accountability, and fairness in both physical and digital realms.

