
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

FAME AND FRAUD: EVALUATING THE AMBIT OF PERSONALITY RIGHTS IN INDIA- Tanisha Khatri¹**ABSTRACT**

This paper examines the emergence of personality rights in India, in light of the increasing appearances of film stars, sportspersons, and other celebrities in various courtrooms of our country. The hassle owes its frequent occurrence to a growing need of protecting personas, as AI and Deepfakes have made it super easy to replicate one's identity, especially of popular personalities. Unconsented uses of celebrities' likeness, voice and images are leading to a myriad of cases, along with misrepresentation and false promotions which have caused public turmoil. The article navigates through the very birth of the concept of personality rights in India, its development throughout decades and the current scenario, which the law does not sufficiently cater to. Suggestions have been made in this article, that can help redefine the ambit, pertaining to drastic advancements in technology. Lastly, the paper concludes by highlighting the primary need for a reevaluation of personality rights which go hand in hand with the issues raised due to Artificial Intelligence.

Key Words: Personality Rights | Right to Privacy | Deepfake | AI | Intellectual Property | IT Act, 2000 | Copyright Act, 1957

Introduction

Personality rights refer to the rights of individuals to prevent the illegal and unauthorised use of their name, images, voice, catchphrases, likeness, and even gestures and mannerisms. These rights have been linked to the fundamental Right to Privacy and Dignity enshrined under Article 21 of the Indian Constitution. The emergence and rapid evolution of Artificial Intelligence (AI) and Deepfakes have created a pressing concern that elevates the need for judicial recognition. Especially in a country which does not have a separate legal framework that governs AI yet.

Foremost Precedent

¹ Student at Gujarat National Law University, Gandhinagar

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

The birth of personality rights within the realm of right to privacy can be traced back to 1994, in the landmark Supreme Court case, *R. Rajagopal v. State of Tamil Nadu*², infamously known as the “Auto Shankar” case. This case drew a fine line between the freedom of press and right to privacy. As per the assumptions of the State, the publication of an autobiography of a death row convict-Shankar, could potentially bring harm to the State's image and reputation. The autobiography had mentions of various instances of corruption which, when brought to public light, could lift the veil over the malpractices of individuals holding statutory powers. The Supreme Court reflected on the balance of **Article 19(1)(a)**³- Freedom of Speech and the implicit Right to Privacy under **Article 21**⁴- Right to Life by ruling that the State cannot impose prior restraint on any form of media on the grounds of apprehended defamation. It can only sue for defamation AFTER the release, when and if it contains any false, reputation-harming statements. No government official can be completely left out of the threshold of public scrutiny, especially including the matters of discharge of his duties. Furthermore, the Apex Court also highlighted that the Right to Privacy is a “*right to be let alone*”, and the publication would attract criminal liability if the autobiography violated the bounds of the convict's private life, beyond his consent. The ruling settled the bars for dignitary harm due to unauthorised exposure.

Progression of Publicity Rights

Right to Privacy laid the groundwork for Publicity rights. Over the years, the growing admiration for film stars, singers, musicians, sportspersons and other celebrities, has not come without unauthorised and illegal uses of their personality attributes. The harm is no longer just a breach to privacy, it has also become a means to unauthorised financial gain.

In 2012, Delhi High Court clearly defined in *Titan Industries Ltd. v. Ramkumar Jewellers*⁵ that the right to publicity is “the right to control commercial use of human identity”. Similarly, in *Shivaji Rao Gaikwad v. Varsha Productions (2015)*⁶, renowned actor Rajnikanth sued Varsha Productions for using his name, likeness and dialogue style in the film *Main Hoon Rajnikanth*, without his consent. Madras High Court granted interim injunction, restraining the defendants from using the plaintiff's personal attributes in their film, or promotional material. The case became a landmark in the evolution of personality/publicity rights in Indian jurisprudence with the ruling that

²*R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264

³ Constitution of India, Part III Fundamental Rights, Article 19(1)(a)

⁴ Constitution of India, Part III Fundamental Rights, Article 21

⁵*Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del)

⁶*Shivaji Rao Gaikwad v. Varsha Productions*, 2015 (62) PTC 351

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

“using a celebrity's name, likeness or caricature without consent for any commercial gain constitutes a violation of personality rights, or passing off”.

Existing Remedies

Currently, India does not hold a separate legislation for protection of personality rights of individuals. Instead, remedies are present in various legislations. Section 66E⁷ of Information Technology Act 2000, in the light of bodily privacy, criminalises the unconsented capture, transmission and/or publication of a person's private areas. Section 38⁸ of the Copyright Act, 1957 deals with the protection of performers' works. With the injunctions of John Doe/Ashok Kumar orders⁹, numerous copyright infringements and illegal actions such as piracy have been prevented. These ex parte injunctions enable ease in filing petitions when the defendant(s) is/are unidentified, which is usually the case for online infringements.

Persisting Grey Areas

As of now, in India there isn't a comprehensive structure for accurately defining the ambit of personality rights. Even with the active IP acts, it is difficult to account for the intrinsic characteristics or attributes of celebrities as intellectual property. For instance, Section 38 of the Copyright Act, 1957 states that a “performer” earns exclusive rights in relation to his performance, for fifty years. The description of a “performer” includes actors, singers and musicians. However, there is a lack of broader perception here. It only defines the performance itself, but not the commercial value of one's persona while he's not performing. Furthermore, the progression in AI represents another set of potential obstacles that transcend civil liability. Deepfakes, Face Morphing, Voice Cloning etc. have created a highly problematic scenario for artists, as their attributes can be easily faked, manipulated and distorted. This malicious deployment of a celebrity's digital likeness to deceive the public directly attracts criminal liability under the **Bharatiya Nyaya Sanhita, 2023**¹⁰. Such misleading content constitutes cheating by personation under Section 319, while the creation of the deepfake itself functions as the forgery of a false electronic record intended to harm reputation under Section 336(4).

Moreover, personality rights come in conflict with Article 19(1)(a), where freedom of speech and expression protects works of parody and satire, news and biographies. The fine line where

⁷ Information Technology Act, 2000, Section 66(e)

⁸ Copyright Act, 1957, Section 38

⁹ <https://www.ijlrr.com/post/the-significance-of-john-doe-orders-or-ashok-kumar-order-as-a-remedy-for-infringement-of-broadcastin>

¹⁰ Bharatiya Nyaya Sanhita, 2023

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

constitutional protection ends and infringement begins remains ambiguous. India does not currently have a codified test to determine the transformative threshold of the above mentioned works. The judiciary relies on subjective interpretation of all cases.

A Critical Imperative

Given the various loopholes that create an apprehension regarding personal safety and privacy among the citizens, India is in a desperate need for equipping a compact and comprehensive legal toolkit – a framework that addresses, analyses and averts the persisting issues. These include explicit definitions that cover the ambit of “persona” and its attributes that can be commercialised. Secondly, the use of AI and its consequences that attract liability must be encompassed. Social media must go under thorough verification before providing platforms for promotion. It ought to be made sure that celebrated artists must be made known and credited for the use of their name, images, voice, likeness etc. In addition to this, efforts need to be made to mandate watermarks or warnings on all AI generated/facilitated content, such that viewers/observers are not misled into believing artificial content to be real or true.

These imperatives can either be legislated as a unique statute, or the requisite changes can be incorporated into the existing laws, all while ensuring balance between freedom and misuse.

In Light of Comparative Analysis

Many US States allow celebrities to have legal control over their identity, just like any other asset. Some states also grant post mortem publicity rights, passed down to the heir(s) of the deceased celebrity. Conversely in the majority of Europe, the core protected interests include a person's name, images/likeness, personal identity and reputation or honour. Grounded under the **European Convention on Human Rights**¹¹, the General Data Protection Regulation (GDPR) acts as a solid framework to protect one's identity, private life and commercial attributes.

Conclusion

The Constitution of India is a tapestry woven with various threads of components taken from constitutions all around the world. Therefore, our legislators should voice injustices and incorporate a framework that is inspired by the plethora of comprehensive personality and publicity laws in the US and Europe. During an evolutionary era of development and ever changing technological landscapes, a flourishing country like ours should not be one without a proactive statutory jurisdiction on personality rights. Human resource remains the ultimate asset, however illegal and

¹¹European Convention on Human Rights, 1950

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

uncredited commercial exploitation of its attributes must be penalized. The legal gaps, if bridged with urgency, shall prevent breaches of privacy, and minimise instances of gross injustices.

BIBLIOGRAPHY

A. Cases

1. *R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264
2. *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del)
3. *Shivaji Rao Gaikwad v. Varsha Productions*, 2015 (62) PTC 351

B. Statutes

1. Constitution of India, Part III, Article 19(1)(a)
2. Constitution of India, Part III, Article 21
3. Information Technology Act 2000, Section 66(e)
4. Copyright Act 1957, Section 38
5. Bharatiya Nyaya Sanhita 2023
6. European Convention on Human Rights 1950

C. Web Sources

1. <https://www.ijlr.com/post/the-significance-of-john-doe-orders-or-ashok-kumar-order-as-a-remedy-for-infringement-of-broadcastin>
2. <https://sdlawlibrary.libguides.com/exparte>