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PERSONALITY RIGHT UNDER THE IPR REGIME: A COMPARATIVE ANALYSIS OF DIFFERENT JURISDICTIONS

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ABSTRACT

Personality rights in India involve legal protections related to unauthorised use of one's name, image, and likeness, involving elements of privacy, publicity, and personal autonomy. This emphasises the growing imperative for people to control their identity in an ever-changing digital environment. Personal identity has gained much importance, especially with the advancements in various aspects of life. Hence, the legal structure existing in the form of statutes such as the Copyright Act, Trademarks Act, and Information Technology Act is the pillar of protecting personality rights but is quite weak and surely divided. This paper deals with the current legal landscape of personality rights under the Indian IP regime by analysing relevant provisions of law and relevant judgements to the extent to which personality rights are being enjoyed presently. The paper suggests an urgent need for holistic legislation to provide legal protection to personality rights under the current IP regime in India.

Keywords: Publicity rights, celebrity rights, privacy, copyright, trademarks, passing off.

INTRODUCTION

With the commercialisation of personal information, knowing the issues of personality rights has become paramount. Personality rights involve privacy and publicity protections that keep the individual from unauthorised exploitation of identity while permitting the individual to capitalise on their brand. The digital age has seen the personality rights issue become a moving spectrum, and thus, a detailed examination of existing legal frameworks and their efficacy in providing protection to individual rights is essential. The Intellectual Property Rights (IPR) regime has both

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national and international protection processes under which personality rights can be protected by law. The types include copyright, trademark, right of publicity, and privacy. According to the Trademark Act 1999 framed by the Government of India, a person can register his name, picture or signature as a trademark to stop the unlawful commercial use of his name, picture or signature. The Copyright Act of 1957 gives protection to artistic and literary creations. Yet, it does allow the use in a photograph, film or other similar work of a picture or likeness of a public personality. The courts have recognised personality and publicity rights under the law. These rights allow people to control if and how their name, image or likeness can be commercially exploited. The Right to Privacy under Article 21 provides implicit protection to personality rights and is also the constitutional foundation for resolving disputes regarding personality rights.

Laws that protect rights relating to likeness and personality have been enacted by many nations. The Paris Convention, instituted in 1883, and the Madrid System allow individuals to obtain protection for their names or likenesses in many countries worldwide. The Berne Convention for the Protection of Literary and Artistic Works protect artistic creations that may represent a person. It indirectly protects the identity rights of such a person. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) implicitly safeguards personality rights by acknowledging the Right to Privacy. The Uniform Domain-Name Dispute-Resolution Policy (UDRP) oversees the issue of cybersquatting and safeguards the rights of individuals regarding cybersquatting. Some of the main obstacles and aspects that require improvement are the absence of consistency in global legislation, the necessity for a complete legal framework, and the delicate equilibrium between safeguarding individual rights and promoting freedom of speech.

Personality rights protect a man as a bodily, spiritual and moral entity and enable him to continue living with his sense of existence.[3] These rights are now protected in many countries.[4] However, the concept of "personality rights" is no newfangled idea. This modern notion was taken from the idea of natural law in ancient times, which indeed presented non-derivable human rights inalienable at birth with a human being and linked rights to personality.[5] In 1877, Gareis and later Gierke and Kohler introduced the concept of the "right to personality[6]." The right to personality could lead to specific rights or values of personality, such as the right to physical integrity, freedom, and dignity.[7] Gierke listed what makes personality rights distinctive: they are private, not patrimonial, and very personal because attached to the person to whom they belong and die with them (they can't be transferred to someone or bequeathed).[8] However, Gareis and Gierke considered that the products of the mind belonged to the general right of personality. Contrasted with this, Kohler made a distinction between property rights over the intellectual and personality, showing how there is something profoundly different between the intellectual creations of a person and his personality, which constitutes a legal object of a different sort called intangible or intellectual property.[9] A person has the right to prevent others from using their name, picture, voice, likeness, or other personality traits without their permission. The emergence of the commercial aspect of personality in the market

3. Lucky Rana and Silpy Sharan, "Protection of personality and image rights in India"1 *IP Press Law Review* 110-120 (2022).
4. Christian von Bar, *The Common European Law of Torts* 62 (Clarendon Press, Oxford, Second edition 1998).
5. Johann Neethling, "Personality rights: a comparative overview" 38(2) *The Comparative and International Law Journal of Southern Africa* 210-245 (2005).
6. Stig Stronghom, *Right of Privacy and Rights of The Personality: A Comparative Survey* (1967).
7. *Ibid*. at 3.
8. Akshat Agarwal and Aditya Bhargava, "Whose Personality is it Anyway*?"*21 *IJLT* 30-40 (2024).
9. Agnes Augustian, "Protection of Personality Rights in India: Issues and Challenges" 1(1) *IPR Journal of Maharashtra National Law University* 44-53 (2023).

enhanced the significance of the value aspect, facilitating greater focus on intellectual property rights. Moreover, this has impacted personality rights due to the increased potential for their economic exploitation; as marketing has emerged as the primary company strategy, competitiveness has intensified. Countries such as the United States, Germany, and Guernsey have enacted statutory legislation to safeguard personality rights and restrict their unlawful use. The concept of personality rights was initially recognised in India by the courts in the twenty-first century, although it was established considerably earlier in the mid-twentieth century. Certain aspects of personality rights have been protected by Indian courts using existing intellectual property regulations. Under trademark law, names and signatures are protected; under copyright law, the expression of personality is safeguarded. Consequently, it is apparent that in India, only certain facets of personality are addressed by existing intellectual property regulations; however, the safeguarding of further personality traits is not encompassed by any present legislation.

This paper will conduct a systematic study of the law regarding personality rights in five major jurisdictions: India, the USA, Canada, the EU and China, to explain doctrinal comparisons and the gaps in existing regulation in these jurisdictions. It also considers whether existing intellectual property law is adequate to protect identity from commercial and virtual misuse. A key focus of the study is the societal and legal implications of artificial intelligence and its implications, including the impersonation by artificial intelligence, deepfakes, and biometric misuse. It further probes into how posthumous and transferable personality rights are treated to assess whether such rights exist under the law, their scope and enforceability. Ultimately, the study aims to propose harmonisation strategies, including the potential international treaty and cooperation mechanisms, to strengthen the global standard for personality rights protection.

Safeguarding Specific Aspects of Personality Rights under Intellectual Property Legislation

Article 21 of the Indian Constitution is the closest law that shields personal rights in India.[10] Nonetheless, Indian courts employed both copyright and trademark law to safeguard certain aspects of personality rights, therefore partially excluding the commercial dimension of these rights. Occasionally, passing off has been utilised to protect personal rights. While many situations in India under review adhere to the protection of individuals' rights according to existing IP regulations, it may appear that the current framework is enough. Comprehensive research, however, surpasses superficial analysis and uncovers the necessity for diverse elements and subtleties that are often overlooked, thereby rendering the existing intellectual property regulations inadequate. Nonetheless, the courts have granted remedies while disregarding these facts. Consequently, the entire subject of personality has been excluded; thus, as the introduction indicates, only a limited number of personality qualities are considered protected under the existing intellectual property laws. Moreover, courts have at times interpreted the safeguarding of personal rights in conjunction with the protection of established trademarks.[11] Moreover, trademark laws regulate the unauthorised use of personality attributes; for example, the landmark case in India that first examined the commercial aspect of personality rights is *D.M. Entertainment v. Baby Gift House*[12] The complainant, Indian artist Daler Mehndi, established D.M. Entertainment Pvt. LTD. in 1996 and registered trademarks for the initials DM, representing his identity, together with all associated rights, which were conferred to the company. Additionally, the defendants operating toy and gift stores are located in Delhi. The dispute is around the sales of dolls inspired

10. *R. Rajagopal v. State of Tamil Nadu* (1995) AIR SC 264.
11. CS (O.S.) 893 of 2002 (Del.) (India), Arun Jaitley v. Network Solutions Pvt. Ltd., (2011) 181 DLT 716.
12. CS(OS) No. 893/2002, Delhi High Court.

by Daler Mehndi, one of whom spoke excerpts from the defendant's songs. The claimants claimed fraudulent endorsement, passing off, and infringement of the right of publicity. The court provided remedies under trademark law provisions, including passing off and fraudulent endorsement, due to the lack of specific laws protecting personality rights.[13]

Ground for Protection within the Current Legislation

The court granted remedies for trademark infringement and passing off due to specific factors: the plaintiff possessed a registered trademark and engaged in trade associated with that name, while the caricature of the plaintiff fell within the scope of the sold article. Consequently, this type of usage constituted a violation of the registered trademark. Secondly, the individual is renowned, rendering the passing-off remedy uncomplicated; similar to cases involving prominent figures, even in the absence of consumer confusion, the use enhances the goodwill of the renowned individual, constituting unfair competition adequate for a passing-off claim. Moreover, the unlawful use of his distinctive identification constitutes dilution of their trademark, so establishing a basis for pursuing remedies under passing off. The dilution of personality distinction leads to the mistaken idea that the plaintiff has licensed or has a relationship with the defendant's goods or services, which constitutes fraudulent endorsement.[14] All these elements help to explain why the court decided to award remedies under trademark. This essentially means that these elements are to be present in order to claim personality right protection under trademark.

Although the Act does not explicitly reference the occupation of personality rights, in certain instances, copyright may be invoked by the court to safeguard personality rights, despite trademark law potentially serving as a more suitable analogy for comprehending the scope of these rights. Section 2(qq)[15] delineates the definition of a performer, provided that the individual's persona aligns with this description; Section 38[16] allows for the assertion of performer rights, thereby curtailing the illicit commercialisation of one's performance; the principal clause used under copyright is Section 2(qq). Section 57[17] may also be utilised to provide protection based on moral rights. In some instances, the court may be considered to have adhered to Section 17(b)[18], as exemplified in *Titan Indus. Ltd. v. Ramkumar Jewellers*.[19] In this case, the defendant had installed billboards showcasing two prominent Indian stars, Amitabh and Jaya Bachchan, to promote his jewellery store. The plaintiff asserted a claim for the infringement of personality rights as stipulated in the contract; furthermore, the plaintiff sought an injunction to restrict copyright infringement, misappropriation of personality rights, and damages for passing off. The personalities granted their personality rights to the plaintiff. The plaintiff is the copyright owner of the aforementioned advertisement, as stipulated in Section 17(b) of the Copyright Act, 1957, a claim substantiated by the endorsement agreements that clearly affirm the plaintiff's copyright ownership. Thus, the defendant's fraudulent utilization of a similar advertisement for their products on billboards and the reproduction of the celebrity in the identical context as the plaintiffs constitutes a violation of copyright rights.[20] The court assessed the personality traits of the performance and addressed the rights of the plaintiff in relation

13. CS(OS) No. 893/2002, the Hon'ble High Court of Delhi.
14. *Ibid at 12.*
15. The Copyright Act, 1957(14 of 1957), s. 2(qq).
16. The Copyright Act, 1957(14 of 1957), s. 38.
17. The Copyright Act, 1957(14 of 1957), s. 57.
18. The Copyright Act, 1957(14 of 1957), s.17(b).
19. CS(OS) No.2662/2011, Decided by Delhi High Court.
20. *Ibid*.

to the primary author of the work. In addition to copyright, the court delineated the components of liability for infringement of the publicity right. The first component is validity, necessitating that the plaintiff possesses an enforceable right in their persona or identity.[21] The second component is identifiability, requiring that the celebrity be recognisable from the defendant's unlawful use. If individuality is distinct, a violation of the right to publicity does not require proof of falsehood or confusion.[22] These elements indicate that the plaintiff's identity must be "identifiable" from the defendant's unlawful commercial use to establish a claim of infringement of personality rights; falsehood or deception is not a prerequisite for such a claim. Consequently, it may be inferred from the cases that only superstars possess the right; the question addressed here pertains to the remedy available for lesser-known individuals seeking protection under personality rights based on the aforementioned qualities. This question remains unanswered by any Indian court. In this scenario, copyright protection is granted solely because the plaintiff possesses the copyright to the advertisement. Assume that personality qualities lack copyright protection. How should the treatment be administered in this context? These components underscore the court's inadequate implementation of various intellectual property regulations to safeguard personal liberty.

Inadequacy of Personality Rights Protection under the Present IP Structure

Since both trademarks and personality rights offer a legal framework for commercialising personal traits, the most often employed IP law in the current IP system is trademark to control personality rights.[23] While trademarks aid in safeguarding personality features, certain elements result in inadequate protection under trademark law. The primary element, and the most significant, is the variability in the degree of protection, as it pertains to the exclusive right to regulate the commercialisation of personality traits in the context of personality rights. Conversely, a trademark confers an exclusive right to the mark's owner to signify their commercial origin through the sign in association with specific goods or services.[24] Essentially, a trademark signifies the quality and origin of goods; however, the objective of personality rights differs as it aims to govern the use of an individual's persona. Therefore, it can be contended that the subject of trademark protection is inadequate. Concerning the second factor, the protection of individuality under trademark law is feasible solely if the individual possesses a registered trademark. Moreover, trademark registration is only possible if the sign is distinctive and can unequivocally identify and separate particular goods originating from one manufacturer or source from those of another. While each individual possesses a distinct personality, the second aspect—the necessity to utilise the sign in relation to the specified goods or services to signify their commercial origin is often overlooked in personality rights, as every person exhibits some form of uniqueness. Not every instance of personality can establish a trade relationship for that personality. Moreover, the Trade Mark registry may deny registration for a range of classes that the individual has no intention of using, even if the individual is eligible for registration. This illustrates the limitations of trademarks, as individuals may only assert a claim if they possess a trade relationship; even with prior trading experience, they cannot register across extensive categories. The third requirement for trademark registration is the necessity of a

21. Harshada Wadkar and Drishti Trivedi Publicity Rights and Its Scope in Intellectual Property Laws *available at* http://www.iplink-asia.com/articles/114 (last visited on August 23, 2024).

22. *Ibid.*

23. Anne Lauber-Ronsberg, The Commercial Exploitation of Personality Features in Germany from the Personality Rights and Trademark Perspectives, 107 TRADEMARK REP. 803 (2017).

24. Kusum Joshi and Vaidehi Pareek-Character Merchandising: Right of Publicity and its Relation with Trademark Laws-Specialusis Ugdymas / Special Education 2022 1 (43)- Trademark law is designed to protect the integrity of a mark's meaning by preventing uses of the mark that confuse consumers.

pictorial representation of the sign; this poses challenges, as the registration of a personality's voice is prohibited. This highlights another limitation of trademark regulations, which only safeguard specific traits of personality, rendering trademark protection inadequate. Section 2(m) delineates the mark as encompassing only the name, signature, and similar attributes, but omitting other personal characteristics such as voice, image, and resemblance. The third factor resulted in the fourth factor. This indicates that the Trademark Act encompasses only certain facets of personality within its scope. The fifth factor is that trademarks may be considered a public interest, as competitors' use of the same or similar marks is likely to result in consumer confusion, so only owners' marks should be taken under protection. Trademarks also help consumers find products that satisfy their criteria for quality, therefore reducing their costs. Act therefore obviously demonstrates great interest in consumer protection.[25] In trademark law, liability depends on the potential for confusion over the source or association through endorsement or sponsorship. However, this effectively limits the instances in which an individual can invoke their right to defend their identity to situations where the origin of items may induce ambiguity.

The D.M. Entertainment case, where the court granted remedies based on trademark due to the plaintiff's status as a renowned individual and possession of a registered mark, clearly illustrates several of the aforementioned factors. Actually, this shows that the trademark law only covers either a registered mark or a well-known personality, depending on which is more relevant. Furthermore, the plaintiff in this instance had a trading relationship, which naturally helped to demonstrate the element of consumer uncertainty.[26] This indicates that trademark law is inadequate in all cases of commercial exploitation of personality rights, as there may be instances where the individual lacks any economic connection and not all uses lead to consumer confusion.[27] Trademarks primarily serve to identify its source, thereby informing consumers about the quality and attributes of the product bearing the mark. Personality rights pertain to the authority to govern the commercial utilization of one's persona or to oversee the unauthorized usage of personal attributes. The primary objective is to regulate the use of their identification in instances of unauthorized utilization; the potential for consumer misunderstanding is not a matter of concern.[28] Consumer misunderstanding does not form a major factor for personality right infringement since personality rights require associational uses instead of source-indicating.[29] These features demonstrate the inadequacy of personality rights protection within trademark legislation.

Similar to trademarks, copyright safeguards personality rights in several ways. The Indian courts have attempted to encompass personality rights within the framework of copyright under the concept of performance rights. Nonetheless, the Copyright Act's delineation of performance evidently fails to provide comprehensive protection under personality rights. This is because not all performers can meet the criteria for recognition, indicating that the protection afforded to "performers" is inadequate. Concerning personality rights, they are regarded as an intrinsic entitlement for every individual, with no differentiation between celebrities and non-celebrities in asserting this right. From the standpoint of the Indian judiciary, it is evident that personality rights are

25. Stacey Dogan, "What the Right of Publicity Can Learn from Trademark Law", 58 *Stanford Law Review* 1161 2006 *available at*: https://scholarship.law.bu.edu/faculty_scholarship/420 (last visited on August 23, 2023).
26. Sarah M. Konsky, "Publicity Dilution: A Proposal for Protecting Publicity Rights", 21 *Santa Clara High Tech. L.J.* 347 2004 *available at*: http://digitalcommons.law.scu.edu/chtlj/vol21/iss2/3 (last visited on August 23, 2023).
27. *Ibid*.
28. Anne Lauber-Ronsberg, The Commercial Exploitation of Personality Features in Germany from the Personality Rights and Trademark Perspectives, 107 TRADEMARK REP. 803 (2017).
29. Stacey Dogan, "What the Right of Publicity Can Learn from Trademark Law", 58 *Stanford Law Review* 1161 2006 available at: https://scholarship.law.bu.edu/faculty_scholarship/420 (last visited on June 23, 2023).

seen as a unique entitlement of celebrities in India. It appears to contradict the notion of personality rights[30]. Copyright confers exclusive rights to original creative works, including literary, dramatic, musical, and artistic compositions, as well as cinematographic films, sound recordings, and other related works. Conversely, individuality bestows distinct rights upon individuals regarding their character. Consequently, as previously said, the emphasis on copyright and personality rights is divergent. Copyright ensures that authors can get financial rewards for their creations, thereby promoting creativity.[31] Personality simultaneously grants individuals authority over their names, likenesses, and other personal attributes. Consequently, personality rights confer exclusive control over a persona rather than its individual representations. Concerning the safeguarding of diverse facets of personality, similarly excluded from copyright protection,[32] the protection of a name is unfeasible due to the absence of a sufficient minimum requirement, and similarly, other traits such as voice, likeness, or other personal identifiers are not suitable for copyright law to address. The individual asserting copyright must be able to demonstrate their authority over such attributes. Incentive theory, as discussed in literature regarding personality rights and copyright, posits that incentives yield significant societal benefits in the context of copyright. However, concerning personality rights, it does not necessarily require an individual to create works to receive rewards.[33] Thus, a reward for personality may not consistently benefit society. This indicates that the objectives behind these rights are distinct, rendering the protection of personality rights under copyright inadequate. At times, the conflict between copyright and individuality transcends mere inadequacy. Concerning the rights associated with an individual's likeness, particularly when it possesses artistic significance, the question arises as to whether the rights pertain to the creator of the artwork or the individual depicted within it. Despite the economic exploitation of personality rights, copyright typically takes precedence over personality rights. This exposes the violation of personality rights. Another component is exemplified in section 17(b) of the Copyright Act, 1957[34], which regulates the unauthorised use of personality within the framework of copyrighted material. This presents the rights of the primary author or owner. Occasionally, the one who executed the task may have a disagreement with the individual possessing rights to the performance. In the Titan Industries Ltd. case, Amitabh Bachchan and Jaya Bachchan, the advertising performers, acknowledge, represent, and guarantee Titan's exclusive and comprehensive ownership of all intellectual property rights to the services. This indicates that Titan Company possessed the requisite rights to the advertisement. What remedy would be available for such individuals if Titan utilised such images in violation of the agreed terms? The Act stipulates that Titan Company is the primary owner of the work, so granting them complete rights to its utilisation. This illustrates the degree of protection that performers' rights can provide, particularly when the performer does not possess the copyright to the delivered content.[35] Indeed, all these factors indicate that copyright will offer only a limited recourse to prevent the unlawful exploitation of a personality right.

30. Thomas J. MC Carthy, MC Carthy On Trademarks and Unfair Competition (4th ed. 2004).
31. Marc J. Apfelbaum, 'Copyright and the Right of Publicity One Pea in Two Pods' 71 Geo L J 1567 (1983).
32. Sim v. Heinz & Co. Ltd., [1959] 1 W.L.R. 313 (Eng.).US case- the Court said that "copyright is neither granted to voice, likeness or other identifiers of persona". See in, Akanksha Jumde & Nishant Kumar, Image Rights of Famous Persons Vis-a-Vis Right to Privacy: An Analysis under the Intellectual Property Laws in India and Other Countries.
33. Anne Lauber-Ronsberg, The Commercial Exploitation of Personality Features in Germany from the Personality Rights and Trademark Perspectives, 107 TRADEMARK REP. 803 (2017).
34. Copyright Act, 1957 Section 17(b) subject to the provisions of clause (a).
35. 5 Beverley-Smith, H. The Commercial Appropriation of Personality (Cambridge Intellectual Property and Information Law). 33-36 -Cambridge: Cambridge University Press 10.1017/CBO9780511495229 (2002).

The court employs the passing off remedy to safeguard personality rights; nonetheless, it remains inadequate since it necessitates the fulfilment of three criteria: reputation, misrepresentation, and injury to goodwill or reputation. Beyond misrepresentation, misappropriation is occurring, particularly in the context of unlawful utilisation of personality rights; in certain instances, reputation may remain intact, however, unauthorised usage may nonetheless transpire. The remedy for passing off is unviable concerning reputation; so, these features of passing off provide a hurdle to asserting a remedy for the infringement of personality rights.

RECENT JUDGEMENTS RELATED TO PERSONALITY RIGHTS IN INDIA

Manchu Vishnu Vardhan Babu Alias Vishnu Manchu vs Arebumdum & Ors.,[36] This case serves as a significant example of how courts address the misuse of celebrity persona in the digital age. By granting an interim injunction and mandating the swift removal of infringing content, the court balanced the rights of individuals against the misuse of online platforms. The decision reinforces the importance of protecting the identity and reputation of public figures while holding content creators and intermediaries accountable for their actions. In the case of *Deepa Jayakumar vs A.L. Vijay*,[37] the court establishes a critical precedent regarding the posthumous right to privacy. The division bench clarified that an individual's right to privacy is intrinsically personal and extinguished upon death. Consequently, it cannot be transferred or inherited by legal successors. This decision underscores the finite nature of privacy rights and reinforces the principle that such rights are exclusive to the individual during their lifetime. The division bench determined that the posthumous right to privacy is non-transferable since an individual's right to privacy ceases with death and cannot be bequeathed to a legal successor thereafter. The recent ruling in *Krishna Kishore Singh Vs. Sarla A Saraogi & Ors.*[38] has restricted the scope of publicity rights, especially concerning posthumous personality rights. The father of the deceased actor Sushant Singh Rajput sought an injunction to prevent the streaming of the film 'Nyay: The Justice', which was inspired by his life and the ensuing police investigation and prosecution. The lawsuit claimed that the film was disseminated without authorisation from Singh's father or his legal representatives. The court determined that the requested remedies were exclusively for Sushant Singh Rajput, emphasising his rights to privacy, notoriety, and individuality. No relief concerning any rights vested in him was identified in the plaint. The court determined that the rights articulated in the complaint, including privacy, publicity, and personality rights, were non-heritable and ceased upon Rajput's death. The court determined that the film's content was sourced from publicly accessible media, rendering any claims of rights violations by Rajput or his father untenable. This verdict is consistent with the Madras High Court's ruling that personality, publicity, and privacy rights terminate upon an individual's death. In the case of *Mr Anil Kapoor v. Simply Life India and Ors*[39]., the Delhi High Court determined that a prominent Indian actor requested legal safeguarding for his personality rights, publicity rights, and other facets of his persona. The court issued an ex parte injunction against anybody participating in unlawful actions, including creating false videos and products displaying Kapoor's likeness without authorisation. The plaintiff was awarded the right to possess domain names associated with him upon remittance of fees, thereby augmenting his internet presence. This case underscores the significance of safeguarding the rights and attributes of public personalities, particularly in the digital age, where unauthorised use of their identity may result in legal ramifications. The court's ruling to issue an ex parte injunction and safeguard domain names is a crucial

36. *Manchu Vishnu Vardhan Babu Alias Vishnu Manchu vs Arebumdum & Ors* CS(COMM) 828/2024, I.A. 40391/2024, I.A. 40392/2024, I.A. 40393/2024, I.A. 40394/2024, I.A. 40395/2024 & I.A. 40396/2024

37. *Deepa Jayakumar vs A.L. Vijay* O.S.A.No.75 of 2020 and C.M.P.Nos.2945, 2946 and 9240 of 2020.

38. *Krishna Kishore Singh Vs. Sarla A Saraogi & Ors* CS(COMM) 187/2021, I.A. 10551/2021 & I.A. 14436/2021.

39. *Mr. Anil Kapoor v. Simply Life India and Ors* CS(COMM) 652/2023 and I.A. 18237/2023-18243/2023

measure in protecting a public figure's reputation and image from unauthorised use or defamation. In the case *of Jaikishan Kakubhai Saraf v. Peppy Store*,[40] the Delhi High Court has mandated the safeguarding of actor Jackie Shroff's personality and publicity rights, prohibiting companies from utilising his name, voice, or image for commercial gain without his permission. Shroff contended that such improper utilisation yields profits for third parties, induces confusion, and undermines his reputation. The court determined that Shroff has demonstrated a prima facie case warranting the issuance of an ex parte injunction, and failure to award such an injunction would result in irreparable pecuniary loss and impairment to his right to live with dignity. Multiple defendants, including gif-generating websites and a restaurant dubbed *'Bhidu',* were accused of purportedly violating Shroff's personality rights and misappropriating his persona.

Personality rights protection in the AI era

In India, the judiciary has changed significantly to adapt to deepfake tech, voice cloning, and AI-generated impersonation. An analysis of the recent judgments of the Delhi and Bombay High Courts in chronological order appears to make manifest a clear doctrinal evolution with regard to the recognition scope and enforceability of personality and publicity rights. More and more, the courts are connecting personality rights with constitutional protections contained in Article 21, common-law doctrines of passing off, and the statutory framework dealing with copyrights and performers' rights. The Indian judiciary is growing more aware of how technology affects identity, as evidenced by these rulings.

The first major pronouncement in this line of cases is *Anil Kapoor v. Simply Life India*[41], wherein the Delhi High Court expressly acknowledged the wide ambit of personality rights and granted protection to the plaintiff's image and likeness as well as his voice, gestures, dialogue delivery, mannerisms, and signatures. The Court, while identifying the increasing misuse of celebrity persona by way of manipulated videos and avatars, granted sweeping injunctive relief against any and all unauthorised AI-generated representations of the plaintiff. This case was groundbreaking, as it recognised that the voice and mannerisms of an individual are attributes of one's identity that can be protected and misusing them on the internet and digital medium can amount to dilution, misappropriation and unfair commercial exploitation.

In *Rajat Sharma & Anr. v. Tamara Doc & Ors.*[42], The Delhi High Court recently dealt with one of the first legal issues relating to impersonation using AI, where deepfake videos showed the plaintiff endorsing health products. The court has considered the misuse of his name and image as well as his journalistic credibility as a violation of personality rights and a deceptive commercial practice. Thus, the court has ordered takedown expenses and blocking a platform-level of the wrongdoings. The order envisages 2025's more detailed jurisprudence, which recognises that there can be threats to both public confidence and individual dignity from artificial intelligence-generated endorsements. It thus serves to lay the doctrine for eventual rulings concerning celebrities, influencers and digital creators.

The next significant development occurred in *Sadhguru Jagadish Vasudev v. Igor Isakov*[43], , wherein the Delhi High Court dealt with allegations of large-scale impersonation, misappropriation of personality rights, and circulation of doctored content on multiple online platforms. In this case, the Court reiterated once again the importance of Article 21 in relation to the protection of one's personality rights. The Court granted urgent interim relief without the necessity of pre-litigation

40. *Jaikishan Kakubhai Saraf v. Peppy Store* , CS(COMM) 389/2024
41. CS(COMM) 652/2023 and I.A. 18237/2023-18243/2023 at Delhi High Court.
42. CS(COMM) 1147/2024 with I.A. 48740/2024, I.A. 48741/2024, I.A. 48742/2024, I.A. 48743/2024, I.A. 48744/2024 and I.A. 48745/2024 at Delhi High Court.
43. CS(COMM) 578/2025 & I.A. 14235/2025 at Delhi High Court.

mediation, owing to the urgency involved in the removal of the viral digital impersonations. This case also spells out procedural safeguards for the filing of electronic evidence, requiring that the email filed in a suit involving AI-generated material must be hash authenticated.

In *Akkineni Nagarjuna v. BFXXX.org*[44], the Delhi High Court dealt with the proliferation of vulgar deepfake pictures of the petitioner in Akkineni Nagarjuna v. BFXXX.org. The Court unequivocally stated that such images violate the dignity, privacy, and bodily autonomy of the plaintiff. Judges are beginning to see pornographic deepfakes as worse than just a violation of publicity rights, but now more importantly, as a dignitary injury. And, therefore, they are passing orders to halt the creation or publication of such material. This was an important ruling which helped to create a legal framework to deal with sexualised AI content.

Ravi Shankar v. John Doe[45], shows that the law is becoming sensitive to synthetic audio and impersonated speech. The court noted some instances in which the plaintiff's clones and videos are used to promote fake spirituality and commercial products. These deepfakes misled the public and endangered the reputation of the plaintiff as well as the moral rights of the plaintiff. Notably, the Court invoked common-law publicity rights and Article 21 to restrain the dissemination of morphed content, thereby extending the ambit of identity protection to spiritual leaders and non-filmy personalities.

In *Aishwarya Rai Bachchan v. Aishwaryaworld.com*, which involved a different kind of infringement. The Court saw a deluge of infringing activities, including deep fake videos, impersonation chatbots, fake merchandise and sexualised content. The Court said that personality rights have a dual character – dignitary as well as commercial. The Court highlighted the systemic risk posed by any AI tool that could produce hyper-realistic deepfakes, capable of causing serious reputational and emotional harm. This ruling solidified the principle that any harm related to privacy and any harm related to celebrity merchandise must be analysed together in a broader umbrella of personality rights

In *Abhishek Bachchan v. The Bollywood Tee Shop*[46], The Bollywood Tee Shop: The case of Abhishek Bachchan focused on dilution for commercial gain and unauthorised monetisation of persona. The Court addressed merchandising, unauthorised digital prints, AI posters and altered 'like' endorsement videos. Personality rights are rights to the use of a person's private and publicity domain, and their unauthorised use would constitute passing off. The order strengthened the shield on the economic value of the identity of a celebrity. Furthermore, it also clarified the responsibility of intermediaries to reveal subscriber information in case of defendants being unidentified.

In *Asha Bhosle v. Mayk Inc.*[47], The Bombay High Court addressed the case regarding AI-generated voice replication and unauthorised application of the plaintiff's songs and vocal techniques. The Court specifically stated that the use of voice distortion created by AI amounted to the infringement of personality rights and the performers' moral rights under Section 38-B of the Copyright Act. The ruling stated that an unauthorised alteration of a plaintiff's voice, style or interpretation amounted to tarnishment and dilution, effectively merging both the personality rights doctrine and protection under the applicable statute, which offers moral rights. This decision is pivotal for recognising voice cloning as actionable misappropriation.

In *Suniel Shetty v. John Doe*[48], the Bombay High Court addressed obscene deepfakes, voice-

44. CS(COMM) 1023/2025 at Delhi High Court.
45. CS(COMM) 889/2025 & I.A. 20793-20797/2025 at Delhi High Court.
46. CS(COMM) 960/2025 at Delhi High Court).
47. COMMERCIAL IP SUIT (L) NO. 30262 OF 2025 at Bombay High Court.
48. COMMERCIAL IP SUIT (L) NO. 32130 OF 2025 at Bombay High Court.

cloned impersonations, and misleading content representing the plaintiff to be in sordid or inflammatory situations. The Court mentioned that the identity markers of the plaintiff, that is, his name, likeness, gestures and voice, are attributes of personality rights. The fact that deepfakes can not only cause reputational harm but also risk people's safety was further recognised. The Court's consideration indicates that misinformation generated by artificial intelligence is a serious issue that can adversely affect society. Furthermore, the right to dignity also includes being protected from fabricated speech.

The latest decision in the series, *Akshay Kumar v. John Doe*[49], gives a detailed inventory of AI-enabled infringements such as deepfake trailers, voice cloning, religiously provocative content, and unauthorised merchandise. The court noted the deepfake's "disturbing realism" and its ability to mislead journalists and generate hatred and damage long-standing reputations. The Plaintiff's strong presence on social media was acknowledged as additional evidence of the commercial distinctiveness of his persona. The Court affirms yet again the interplay of Article 21, moral rights and common-law publicity rights while wide interim injunctions.

Over this time frame, Indian courts have progressively created a modern regime of personality rights in the context of AI. The jurisprudence reveals a coherent evolution beginning with the recognition of identity-based harm in 2023, culminating in a nuanced articulation of protection against complex, AI-inflicted violations by 2025. The Courts in India now view digital identity as an extension of constitutional dignity and an economic asset which requires urgent judicial assistance that is also technology-driven.

In 2023, a Tribunal in Beijing, China, handed down a groundbreaking judgment involving cloning. In this case, an AI company, unbeknownst to a voice actor, used machine-learning techniques to reproduce a unique vocal identity. In this context, Chinese law provided the basis for the injunction against further use of the sonic identity. The court held the AI-generated synthetic voice to be sufficiently similar as to confuse the public, which infringes personality rights in the Chinese Civil Code. The judgment is of great importance as it recognises "voice likeness" as a kind of personality right in relation to AI. Further, it lays an excellent foundation for future regulation of increasingly sophisticated digital replicas.[50]

The first AI impersonation legal precedents in the world were set in the United States, far before similar technologies. In *Midler v. Ford Motor Co.*[51], the judges determined that when someone imitates a celebrity's distinctive voice and gains commercially, it violates the right of publicity. Likewise, in *White v. Samsung Electronics*[52], the court stated that even indirect or symbolic representations, like a robot resembling Vanna White, were enough to violate her publicity rights. Recent decisions have become increasingly prominent in ongoing conversations surrounding AI-generated avatars, deepfakes, and digital reproductions, as they adopt a sweeping interpretation of 'likeness' and 'persona.'

Canada's jurisprudence, illustrated by *Gould Estate v. Stoddart Publishing*[53], recognizes limited post-mortem personality rights that protect the differentiating character of a famous person. The rationale that the case presented, though it was not AI-based, is becoming increasingly relevant as AI tools can yield realistic recreations of the deceased. The ruling highlights call for the need for clearer statutory guidance to balance freedom of expression with public interest and the commercial value of persona post mortem.

49. COMMERCIAL IP SUIT (L) NO. 32986 OF 2025 at The Bombay High Court.
50. AI-generated voice mimicry infringes on rights, *available at*: https://english.bjinternetcourt.gov.cn/2024-04/24/c_706.htm
51. 849 F.2d 460 (9th Cir. 1988).
52. 971 F.2d 1395 (9th Cir. 1992).
53. (1996), 30 O.R. (3d) 520; 1996 CanLII 8209 (ON SC).

Within the European Union, Germany's landmark *Marlene Dietrich* case[54], the Marlene Dietrich case within the European Union is an important case with a lot of personality rights (post mortem) recognition extending to the estate of the actress. The growing industry of digital resurrection has received strong doctrinal backing due to this posthumous protection, which could facilitate the protection of AI-generated depictions of deceased personalities. Lawmakers are responding to AI impersonation, as seen with new legislation in Tennessee called the "ELVIS Act." The urgency of this act further illustrates that AI impersonation needs to be regulated. The Act prohibits the usage of AI tools for cloning a person's voice or likeness without authorisation, thus demonstrating a statutory approach where tort law may not suffice.[55]

All of this indicates that a global trend is beginning to emerge for courts to expand personality-rights protection against misuse of AI-generated identities. Legal decisions are increasingly recognising that voice, likeness, and synthetic identity constitute an integral part of the personality and commercial values of the individual. Nonetheless, serious hurdles exist, including diverging national standards, complicated cross-border enforcement issues, and the need to balance personality rights with freedom of expression and innovation in technology. With that in mind, there is a pressing need for harmonised legislative frameworks, clearer statutory definitions and enhanced international cooperation to address the multifarious risks posed by AI to personality rights.

PERSONALITY RIGHTS IN OTHER COUNTRIES

USA

Athletes and celebrities from the United States, such as Michael Jordan, Tiger Woods, and Arnold Schwarzenegger, have brought the appropriate publicity cases. The right of publicity is currently recognised in 31 states, including New York and California, even though no federal laws in the US oversee it (19 by statute, 21 by common law, and 9 by a mixture of the two). Significant differences in these state laws frequently result in conflicts about which state to apply and uneven outcomes for defendants and plaintiffs.[56] States differ in what aspects of an individual's identity are protected. For instance, New Jersey's common law has been interpreted to encompass name, photograph, image, likeness, performance qualities, biographical information, vocal style, and screen persona, whereas Wisconsin's laws simply protect name and likeness. Both celebrities and non-celebrities are generally protected by the right of publicity; however, damages awarded to celebrities are usually greater.[57] The question of whether and how long a deceased persona can be protected is a contentious topic of publicity law. A post-mortem right of publicity is recognised in many jurisdictions, including California.[58] This right ranges from 10 years in Tennessee (which may be extended if commercial use persists) to 100

54. Neue Juristische Wochenschrift (NJW) 2000, 2195.
55. Kavinmathi and Jayalakshmi Iyer Venkatraman, "The Impact of Artificial Intelligence in the Music Industry: Unveiling Innovation and Unleashing Legal and Ethical Dilemmas" 6(6) *IJFMR* 1-23(2024).
56. Matthew Savare, "Image is everything" *available at*: https://www.lowenstein.com/media/4712/publicity-rights.pdf (last visited on August 12, 2024).
57. Matthew Savare, Jenna Marie *et.al*, "Right of Publicity Laws: New Jersey" Thomson Reuters, *available at*: https://www.lowenstein.com/media/7092/savareplustracyplussterba-right-of-publicity-laws-new-jersey-practical-law-9142021.pdf (last visited on august 12, 2024).
58. Sharon L. Klein and Jenna M. Cohn, "The Post-Mortem Right of Publicity: Defining it, valuing it, defending it, and Planning for it" 49 *Estate Planning a Thomson Reuters publication* 3-16 (2022).

years in Indiana.[59] However, other jurisdictions, like New York, do not grant any post-mortem rights.[60] Complicating matters further, certain courts have decided that a person's publicity rights only continue after death if they were used while they were still alive. In contrast to only 10 years for people whose identity has "commercial value," at least one state statute grants greater post-mortem protection for 75 years to those whose identity does not.[61] States differ from one another in terms of the remedies available to litigants. For instance, the statute of New York allows for punitive damages with discretion, compensatory damages, and injunctions. Injunctions, actual damages, treble damages if the defendant has "knowledge of the unauthorised use of the persona," punitive damages, attorney's fees, and actual damages,[62] "including any profits derived from and attributable to the unauthorised use of an individual's persona for a commercial purpose," are all permitted under Ohio's statute, which offers the most remedies of any state statute. To determine the number of compensatory damages, courts have mostly employed three approaches or a combination of them. First, the most obvious way to calculate damages is the fair market value of the appropriated identity, often paid as an imputed license fee or royalty. Second, the plaintiffs have also been awarded damages for their potential for future earnings or publicity. To prevent undue enrichment, courts have finally awarded all or part of the money the defendant obtained from utilising the stolen identity.[63] In the right of publicity lawsuits, defendants have a wide range of defences at their disposal, including agreement, de minimis usage, and conventional equitable defences like laches and acquiescence. But given the country's First Amendment, comparable state laws, and constitutional clauses, the most frequently advanced defence is that a specific use of a person's identity is protected by free speech.[64] Numerous state laws, like the one in California, specifically waive the right of publicity protections for uses in the news, media, and entertainment industries.[65] Notably, there is no similar carve-out in the New York statute. Political, noteworthy, and entertainment-related speech is exempt from common law recognition of publicity rights by courts in some states. The unlawful use of an identity to promote an entertainment work is often not protected, which further complicates any examination of free speech.[66] The most complex and fact-filled aspect of US publicity law is the confluence of free speech safeguards with the right of publicity doctrine, especially in light of the growing trend of "hybrid speech," which combines news, entertainment, and/or editorial content with commercial messages. Cases from around the nation show how differently courts have approached this matter, frequently using various standards to differentiate between speech that is protected and speech that is not. First Amendment defences have been raised in several of the landmark cases about the US's rights of

59. Kevin L. Vick and Jean-Paul Jassy, "Why a Federal Right of Publicity Statute Is Necessary" 28(2) n *Communications Lawyer* 1-9 (2011).
60. *Ibid*. at 13.
61. Tushar Sinha, "Post Mortem Rights of Publicity" Metacept- InfoTech and IPR, *available at*: https://metacept.com/post-mortem-rights-of-publicity/ (last visited on August 12, 2024).
62. *Ibid*. at 11.
63. Anke Saseler, Sarmistha Chakarabati, *et.al*, "Compensatory damages principles in civil and common law jurisdictions: requirements, underlying principles and limits" *available at*: https://globalarbitrationreview.com/guide/the-guide-damages-in-international-arbitration/6th-edition/article/compensatory-damages-principles-in-civil-and-common-law-jurisdictions-requirements-underlying-principles-and-limits (last visited on August 13, 2024).
64. Robert C. Post and Jennifer E. Rothman, "The First Amendment and the Right(s) of Publicity" 130(1) *Yale Law Journal* 86-172 (2020).
65. Stacy Allen, Emilio B. Nicolas and Megan Honey, "non-human persons and the right of publicity" *available at*: https://www.jw.com/wp-content/uploads/2019/08/1185.pdf (last visited on august 13, 2024).
66. *Ibid*.

publicity, such as those involving Tiger Woods, the Three Stooges, and most recently, NCAA football players in *Hart* v. *Electronic Arts, Inc*.[67]

Canada

Personality rights in Canada are protected primarily through the common law tort of misappropriation of personality, supplemented by provincial privacy statutes and trademark or passing-off doctrines. Courts recognise that individuals, especially public figures, have a commercial interest in controlling the use of their name, image, likeness, or voice[68]. Foundational decisions such as *Krouse v. Chrysler*[69] and *Athans v. Canadian Adventure Camps*[70] establish that unauthorised commercial exploitation of a recognisable persona constitutes an actionable wrong, while *Gould Estate v. Stoddart Publishing*[71] affirms limited posthumous protection. However, Canada lacks a unified national right-of-publicity statute, resulting in a fragmented legal framework. The rise of AI technologies, including deepfakes and voice-cloning tools, has exposed significant regulatory gaps, as current laws are not fully equipped to address digital impersonation or AI-generated replicas. This indicates the necessity for reforms in the laws and an approach to the protection of identity in the cyber-age.[72]

China

China offers one of the most comprehensive statutory regimes for personality rights in the world. This area of law is primarily governed by the Civil Code of the People's Republic of China 2021, which devotes a whole book to the protection of such rights as one's name, likeness, reputation, privacy, and personal information. The Civil Code expressly prohibits the unauthorised creation, use, or alteration of an individual's image, making it well-suited to address modern challenges posed by deepfakes and AI-generated content.[73] Recent case law, including the Beijing Internet Court's landmark 2023 decision on AI voice-cloning, confirms that synthetic voices and digital likenesses can infringe personality rights when they mislead the public or enable commercial exploitation[74]. Additional regulations, such as the Deep Synthesis Provisions and the Personal Information Protection Law (PIPL), strengthen protection by requiring consent for AI-generated images, voice synthesis, and the processing of biometric data. Collectively, these measures position China as a global leader in safeguarding digital identity and regulating AI-driven impersonation, although enforcement and balancing innovation remain ongoing challenges.[75]

European Countries

The right of publicity or any other specific right intended to prevent unauthorised use of a person's name, image, or likeness is not recognised

67. *Hart* v. *Electronic Arts, Inc.,* No. 11-3750 (3d Cir. 2013).
68. Jennifer McKenzie and Jill Jarvis-Tonus, "Canada: The cult of personality (rights**)"** WTR, *available at*: https://www.worldtrademarkreview.com/article/canada-the-cult-of-personality-rights
69. (1973), 1 OR (2d) 225 (CA).
70. (1977), 17 O.R. (2d) 425 (C.S.)
71. (1998), 39 O.R. (3d) 545.
72. Felipe Romero-Moreno "Deepfake detection in generative AI: A legal framework proposal to protect human rights" 58 *Computer Law & Security Review* 106162(2025)
73. Xin Dai "Privacy, reputation, and control: public figure privacy law in contemporary China" 9(2) *Peking University Law Journal* 143-186(2022).
74. *Yin XX v. A Certain Intelligent Technology Company, et al***.** (Case No. (2023) Jing 0491 Min Chu No. 12142).
75. Miao He and Yongfang Chen "Personal data protection in China: Progress, challenges and prospects in the age of big data and AI" *Telecommunications Policy* 103076(2025) *available at*: https://www.sciencedirect.com/science/article/pii/S0308596125001739

in England.[76] As a result, people have been forced to rely on a patchwork of legal theories, including those about trespass, defamation, breach of contract, and confidence, as well as self-regulatory conventions like the British Code of Advertising Practice, to try to shield their identities from being exploited for profit. Similar to trademark infringement in the US, the tort of "passing off" is the most frequently applied theory of recovery in British personality disputes.[77]

To prove their case, a plaintiff must show that the defendant's unauthorised use of their name, likeness, or image damages their reputation or established goodwill by raising doubts about the source of the goods or services. While passing off claims based on false endorsements has been recognised in more recent decisions, English courts have historically viewed this tort narrowly. For instance, Eddie Irvine, the well-known Formula 1 racer, sued Talksport Radio in *Irvine* v. *Talksport Ltd*.[78] After the broadcaster used an edited photo of Irvine holding a cell phone to make it look like he was carrying a radio that said "Talk Radio." Irvine was successful in his lawsuit, alleging that the photo modification resulted in a misleading endorsement that harmed his reputation and goodwill. In determining compensatory damages, Irvine factored in a fair endorsement fee for the promotional usage. The Appeals Court upheld.[79]

Even with Irvine's victory, passing off claims that fail is common. For instance, the musical group Spice Girls did not receive an injunction to stop the defendant from selling an unapproved sticker collection that included their pictures in *Halliwell* v. *Panini SpA*.[80] For the estates of departed celebrities, the situation is much more challenging. For instance, a British court affirmed in 1997 the UK Intellectual Property Office's denial to register several trademarks belonging to the late singer that had been submitted by Elvis Presley Enterprises, the company that owned the musician's posthumous publicity rights. Furthermore, a 1999 attempt by her memorial fund to trademark Princess Diana's face was denied, which resulted in a plethora of goods featuring her image.[81] While some living individuals, like Russell Brand and David Beckham, have acquired trademarks related to their identities, these trademarks are only for particular products and services and do not give their owners the authority to prevent all uses of their names and likenesses.

France

The French government defends the droit à l'image, which includes privacy-based and economic rights. It is a collection of personality rights that includes moral rights, privacy, honour and reputation protection, and control over image use. French case law allows for specific, defined purposes, public photos, press freedom, and parodying for educational and amusing purposes. Punitive damages are not available in most cases, but increased damages may be granted if a celebrity has not used their reputation for commercial gain. The right to picture can be transferred by living individuals with written authorisation, but postmortem safeguards and discernibility are nebulous and fact-specific.

Spain

Spain offers strong publicity rights safeguards, with Article 18 of the Constitution guaranteeing honour, personal and family privacy, and image. Articles 7.5 and 7.6 prohibit commercial use of a person's name, voice, or picture, while Article 8 allows activities with historical, scientific, or cultural interest. Economic harm is assumed in cases of violation, and moral damages are recoverable. Spain also acknowledges the post-mortem picture right, which can be upheld by

76. Hayley Stallard, "the right of publicity in the United Kingdom" 18 Loy. L.A. Ent. L. Rev. 565 (1998).
77. *Ibid*.
78. [2003] 2 All ER (Comm) 141.
79. [2003] EWCA Civ 423; [2003] 2 All ER 881; [2003] EMLR 538.
80. (1997) LEXIS June 6, 1997 (Ch.) (Eng.). 276.
81. *Ibid*. at 12.

surviving family members and enforced by the Ministry of Justice for up to 80 years.

Italy

The right to publicity in Italy is protected by the Civil Code, which includes rights related to personality, such as privacy, image, and name. In the *Dalla v. Autovox SpA* case, an Italian court expanded these rights. To claim a right of publicity action, a plaintiff must allege that the defendant used their persona for commercial purposes, caused immediate damage, and that the defendant's economic gain or fair market value. In Italy, unexploited personas are valued more than those in Britain. There is debate about whether a celebrity's right to publicity is inherited, lasting for life plus 50 years, or if it has been used for profit[82].

Germany

German law prohibits the commercial use of a person's likeness without his consent, including a picture, name, voice, or other distinguishing characteristics. Legal persons own rights to protections such as the right to a name. The German Act on the Protection of Copyright in Works of Art and Photographs (KUG) provides that the distribution and exhibition of photographs or portraits may only be made with the subject's permission. Section 12 BGB grants protection to the name of a person, which encompasses both surnames and well-known pseudonyms and nicknames. Personality rights are generally not heritable and non-assignable. However, concerning image rights, the deceased's family is allowed to use these for ten years after death[83].

Transferability and Posthumous Protection of Personality Rights: A Comparative Perspective

A comparative assessment of India, the United States, China, Canada, and the European Union reveals significant divergence in the transferability and posthumous protection of personality rights. The United States adopts a strong property-based model, allowing full transferability, licensing, and long-duration posthumous rights, making it the most robust regime for regulating AI-generated digital personas.[84] In contrast, India, China, and most EU states follow dignity-based approaches that treat personality rights as inherently personal and non-transferable, though they permit commercial licensing and recognise varying degrees of post-mortem protection. Canada occupies an intermediate position, recognising both commercial exploitation and limited inheritance through common law precedents. There is no global harmonisation in the law on these matters. This is evident in the differences in legal frameworks on AI impersonation and digital resurrection.

Role of International Treaties towards Harmonisation of Personality Rights

The personality rights issue is fragmented the world over. In light of borderless digital technology and artificial intelligence, there is a need for greater coordination. While there is no single instrument at the international level that would govern personality rights, a number of global as well as regional treaties embody. Harmonising personality-rights standards across jurisdictions can be accomplished by reference to the principles of privacy, data protection, intellectual property, and human dignity.

Furthermore, a contract is a legal text that requires. Even though they are not explicitly designated as personality rights, these provisions aid in the international acknowledgement of identity-related harms. Likewise, the Berne Convention for the Protection of Literary and Artistic Works indirectly support likeness

82. Silvio Martuccelli "The Right of Publicity under Italian Civil Law" 18 *Loy. L.A. Ent. L. Rev*. 543 (1998). Available at: https://digitalcommons.lmu.edu/elr/vol18/iss3/6

83. Right of Publicity in Germany Vossius & Partner Patentanwälte Rechtsanwälte mbB 2019, *available at*: https://www.lexology.com/library/detail.aspx?g=2d450050-94dd-40e8-9bf1-a1798deac2a6

84. Thakur, Akash, Safeguarding Identity: A Comparative Analysis of Law for Personality Rights in The United States & India (December 10, 2024). *Available* at SSRN: https://ssrn.com/abstract=5249576

and image by regulating the use of images of identifiable individuals in artistic works.[85] The Paris Convention and the Madrid System relate mostly to industrial property. However, they do allow for the transnational protection of personal names and marks. Accordingly, the above-mentioned instruments may provide celebrities and public figures with a partial mechanism for controlling the commercial use of their identity.[86]

ICANN has set out the Uniform Domain-Name Dispute-Resolution Policy (UDRP), which provides for a resolution system for domain names. UDRP has become useful against cybersquatting and regulating personal names in the digital space. Moreover, various regional instruments like the General Data Protection Regulation (GDPR) of the European Union enhance privacy and the protection of personal data, including biometric identifiers. They offer some of the strongest international legal protection relevant to the personality right in the age of AI.[87]

In the context of the above frameworks, the absence of a singular international treaty governing personality rights from which a similar right to publicity and personality would emanate shows the challenges of cross-border exploitation of one's identity related to AI-generated deepfakes, voice-cloning and synthetic media. As the national laws cannot regulate digital impersonation, which crosses jurisdictions, dissemination through global platforms and training sets comprising of foreign data sets, harmonisation is important.

Toward harmonisation, several pathways can be considered. To begin with, the development of international "soft law" instruments (for example, guidelines or recommendations under the auspices of WIPO, UNESCO or the UN Human Rights Council) could set minimum standards on consent, identity, digital likeness, post-death rights, etc. National legislation could be envisaged according to these soft norms without immediate treaty-level commitments.

Furthermore, incorporating personality-rights protection into existing international treaties on IP, including those under WIPO, will help ensure consistency in the registration and enforcement of all rights relating to name, likeness, and digital persona. Another possibility is developing a model law or proposing uniform principles that could assist countries in updating their domestic legislation. These ideas could help many countries overcome the issues surrounding AI-generated identity manipulation, similar to the approach taken by the UNCITRAL with its model law. To improve the enforcement situation on a global scale, there is a need to bolster cross-border cooperation by means of mutual legal assistance, platform-level enforcement obligations, and shared databases to identify AI-generated impersonations.

Overall, international treaties currently provide fragmented and indirect support, but they encourage the development of a more integrated global framework. As transnational AI technologies proliferate, harmonisation is becoming not only desirable, but also necessary, to protect autonomy, dignity and the commercial value of identity. If properly coordinated on a global basis, regulatory divergences would be lowered significantly and would enhance protection against impersonation risk, which is growing rapidly.

85. Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) (Authentic text), Art. 2, *available at*: https://www.wipo.int/wipolex/en/text/283698 (last visited on July 15 2025).

86. Paris Convention for the Protection of Industrial Property of March 20, 1883, available at: https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on July 20, 2025).

87. Uniform Domain Name Dispute Resolution Policy On 21 February 2024, available at: https://www.icann.org/en/contracted-parties/consensus-policies/uniform-domain-name-dispute-resolution-policy/uniform-domain-name-dispute-resolution-policy-25-02-2012-en (last visited on July 22, 2025).

COMPARATIVE ANALYSIS OF LAWS RELATED TO PERSONALITY RIGHTS IN DIFFERENT COUNTRIES

Countries Name	India	USA	England	Australia	Canada	European Union	China
Personality rights include	Publicity right	Publicity right	Publicity rights	Publicity right	Publicity right	Publicity Right	YES
Personality Rights are protected through the Statutes	Not	Yes	Not	Not	Yes	Yes	Yes
Personality rights are protected through the common law	Yes	Yes	Yes	Yes	Yes	Not	Not
Posthumously Protected personality rights	Not	Yes	Not	Not	Not	Yes	Yes
Transferability	Not	Not	Not	Not	Not	Yes	Yes
Personality rights are protected against AI	Yes	Yes	Not	Not	Yes	Yes	Yes
Remedies available	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Defences available	Yes	Yes	Yes	Yes	Yes	Yes	Yes

CONCLUSION

A study of personality rights in India, the USA, England, Australia, Canada, the European Union and China reveals the differential recognition and protection of such rights in these jurisdictions. In this age of Internet and globalised media, technology and AI, personality rights – the right to control and commercialise an identity – have become a matter of concern with the passage of time. We find some areas of convergence; however, there are essential differences in statutory protection, posthumous recognition, transferability and measures against new issues like AI exploitation.

It is important to realise the extent to which people rely on legislation as opposed to common law protections. Countries like the US, Canada, the EU, and China have adopted a full-fledged legal system to protect rights in personality. Provided predictability and foreseeability and ensures the litigants can enforce their rights effectively. Countries such as India, England, Australia, etc., are primarily based on common law principles. The individualised articulation of rights generates a degree of indeterminacy while permitting judicial latitude.

The right of posthumous personality makes another area of difference. The right of publicity is protected by the USA, the EU, and China. The right aims to protect a person's name, identity, and image that has commercial and cultural value even after their death. In terms of personality rights, India, England and Australia do not protect them after death. Thus, it limits the scope of this right. Thus, it prevents the estates or heirs from improperly aborting use. In these countries, the absence of such protections reveals a more restricted view of personality rights.

Very few regimes recognise the transferability of personality rights, such as the EU and China, and even there, it is contested. This makes it possible to utilise identification rights, their commercial exploitation, and respective allocation by individuals. In states like India, the USA, England, and Australia, these rights are mostly inalienable and non-transferable, which means these rights are perceived as personal and inalienable.

Over the past few years, AI has truly become one of the major concerns due to its ability to mimic an individual's appearance, voice, and image. India, the USA, Canada, the EU, and China have taken steps to incorporate safeguards related to AI into their privacy rights legislation. These safeguards protect persons against deepfakes, unauthorised digital reproductions, as well as any other AI-generated infringements. Yet countries like England and Australia are by no means complete in their comprehensive way of addressing this matter, thus being lacking in the modern adaptation of law.

Despite these differences, remedies and defences are generally available in all of the jurisdictions studied. Remedies commonly include damages, injunctions, and an order to stop misuse, providing claimants with avenues of redress. Fair use, permission and free speech are defences where individual personality rights often come into conflict with other worthwhile goals like free speech and artistic expression."

It follows that the comparative research evidences a disjointed nature of personality rights protection. Some nations have advanced statutory and post-mortem safeguards, whereas others depend on less codified common law concepts. Only a cohesive strategy can help effectively safeguard personality rights in contemporary times, owing to the surging influence of AI and globalisation. The nexus of personality rights with technology and business indicates that international harmonisation may enhance enforcement and equity across nations.

As it is evident from the above discussion, the current setup of intellectual property law does not provide adequate protection of personality rights to be used for commercial purposes. Therefore, there is a need for a comprehensive law that would enable people to preserve their personality and also economically exploit their image and other personal characteristics by registering their identity. In the present context, the image of a person is something worth a lot of money, more than any other part of his personality; thus, the management of image rights could be the most powerful force in the market for a long time to come. Hence, adequate protection can be provided through the enactment of sui generis legislation regarding personality rights.

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