
PERSONALITY RIGHTS IN THE DIGITAL AGE: PROTECTING IDENTITY AGAINST COMMERCIAL EXPLOITATION AND TECHNOLOGICAL MISUSE IN INDIA

Hemant Merawat, Indore Institute of Law, Madhya Pradesh¹

ABSTRACT

The digitisation of social and commercial life has transformed identity from a corporeal and contextual phenomenon into a replicable and monetizable digital construct. In India, personality protection has developed incrementally through constitutional interpretation, passing off doctrine, and judicial innovation rather than through a coherent statutory design. This article interrogates the normative foundations of personality rights in the digital age, situating them at the intersection of dignity, autonomy, and economic value. It argues that Indian jurisprudence reflects an unresolved conceptual oscillation between treating identity as an extension of constitutional personhood under Article 21 and conceptualising it as a commercially exploitable asset analogous to intellectual property. The tension is further complicated by Article 19(1)(a), which mandates vigilance against overbroad enforcement that may chill artistic, journalistic, or transformative expression. Through an examination of recent judicial responses to AI-generated deepfakes, synthetic endorsements, and digital impersonation, the article demonstrates that existing remedies—though adaptive—remain reactive and fragmented. Comparative engagement with American right of publicity doctrine and European data protection models reveals divergent normative priorities: proprietary control versus dignity-centred informational self-determination. The article ultimately contends that India requires a hybrid constitutional-commercial framework that preserves the moral integrity of identity while acknowledging its market value. Such a model must embed speech safeguards, technological specificity, and proportional enforcement mechanisms to ensure that personality protection evolves coherently within a rapidly algorithmic public sphere.

Keywords: Digitisation, Personality, constitutional, Commercially exploitable, Artificial Intelligence, Deepfakes, Constitutional.

¹ Indore Institute of Law, Madhya Pradesh

1. Introduction

The digital revolution has fundamentally reshaped the meaning and value of identity. In contemporary India, personality is no longer confined to physical presence or traditional media representation; it exists simultaneously as data, image, voice, and algorithmic imprint. Social media platforms, e-commerce ecosystems, influencer marketing industries, and artificial intelligence technologies have transformed personal attributes into commercially exploitable assets. A person's likeness can be replicated, manipulated, and monetised with unprecedented ease.

Indian law, however, has evolved personality protection incrementally rather than systematically. The constitutional recognition of privacy as a fundamental right under Article 21² of the Constitution, as affirmed by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v Union of India*,³ marked a transformative moment in identity jurisprudence. Yet, while privacy protects autonomy and dignity, it does not expressly define the commercial dimension of personality. Courts have attempted to bridge this gap by invoking doctrines of passing off, trademark law, unfair competition, and equitable relief to restrain unauthorised commercial exploitation⁴. This judicial creativity, though commendable, has resulted in doctrinal fragmentation.

The urgency of reform becomes particularly evident in the context of emerging technologies. Deepfakes, voice cloning, AI-generated avatars, and data-driven behavioural replication allow for the synthetic recreation of individuals without consent. Unlike traditional misappropriation, technological misuse is scalable, borderless, and often anonymous. The reputational and economic consequences may be severe, while existing legal remedies remain reactive and case-specific.

Moreover, personality rights exist in tension with constitutionally protected freedoms, especially freedom of speech and expression under Article 19(1)(a)⁵. Any attempt to strengthen personality protection must therefore navigate the delicate balance between dignity and democratic discourse. The absence of a coherent statutory framework leaves this balancing

² Constitution of India 1950, art 21.

³ *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

⁴ *Titan Industries Ltd v Ramkumar Jewellers* (2012) 50 PTC 486 (Del).

⁵ Constitution of India 1950, art 19(1)(a).

exercise largely to judicial discretion.

2. Conceptual Framework of Personality Rights

2.1 Meaning and Evolution of Personality Rights

Personality rights refer to the legal protection granted to an individual over attributes that form their identity, including name, image, voice, likeness, signature, and distinctive personal traits. These rights aim to prevent unauthorised use or exploitation of such attributes, particularly for commercial gain.

In India, personality rights have not developed through a single statute but through judicial interpretation. Early recognition emerged through principles of passing off and unfair competition, where courts restrained false endorsements and misleading commercial representations⁶. A significant judicial articulation occurred in *ICC Development (International) Ltd. v. Arvee Enterprises*⁷, where the Delhi High Court acknowledged that the right of publicity vests in an individual and protects the commercial value of identity.

The conceptual foundation strengthened after the Supreme Court's landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁸, which recognised privacy as a fundamental right under Article 21 of the Constitution. This decision expanded the understanding of personal autonomy and informational control, indirectly reinforcing personality-based claims. In the digital age, courts have increasingly applied these principles to online misuse, including deepfakes and unauthorised digital replication.

This evolution mirrors the broader theoretical understanding that publicity rights function as a distinct legal interest protecting the commercial value of identity.⁹

2.2 Distinction Between Privacy Rights and Publicity Rights

Although often used interchangeably, privacy rights and publicity rights serve distinct purposes. Privacy rights protect an individual's interest in being left alone and in controlling personal information. They are rooted in dignity, autonomy, and freedom from unwarranted

⁶ Shivaji Rao Gaikwad v Varsha Productions 2015 SCC OnLine Mad 158.

⁷ *ICC Development (International) Ltd v Arvee Enterprises* 2003 (26) PTC 245 (Del)

⁸ *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

⁹ J Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, Thomson Reuters 2019).

intrusion. The focus is defensive — preventing unwanted exposure or misuse.

Publicity rights, on the other hand, are commercial in nature and protect the economic value associated with an individual's public image¹⁰. They protect an individual's ability to control and monetise the economic value of their persona. While privacy prevents intrusion, publicity prevents misappropriation. The harm addressed is not merely emotional or reputational but also financial.

The conceptual overlap between privacy and commercial identity protection has led to scholarly debate regarding whether publicity should be treated as a species of intellectual property or as an extension of privacy¹¹. Courts often derive publicity protection from privacy jurisprudence, creating conceptual overlap. However, the two interests are analytically distinct: one safeguards personal dignity; the other safeguards commercial value.

2.3 Theoretical Foundations: Dignity, Autonomy and Commercial Value

The justification for personality rights rests on three interrelated theoretical foundations.

First, the dignity-based theory views identity as intrinsic to personhood. Unauthorized commercial use reduces an individual to a marketable object, undermining constitutional values of human dignity.¹² Second, the autonomy-based theory emphasizes control. Individuals should decide how, when, and in what context their identity is used. This aligns with informational self-determination recognised in constitutional jurisprudence.

Third, the economic or property-based theory recognizes that identity can generate measurable commercial value¹³. Celebrities invest time, labour, and resources in building reputation and goodwill¹⁴; permitting free commercial exploitation would create unjust enrichment and disincentivise brand-building. In the digital age, these three foundations intersect. AI-generated replicas challenge dignity, compromise autonomy, and appropriate economic value simultaneously. A coherent personality rights framework must therefore integrate all three

¹⁰ Michael Madow, 'Private Ownership of Public Image: Popular Culture and Publicity Rights' (1993) 81 California Law Review 125.

¹¹ Pamela Samuelson, 'Privacy as Intellectual Property?' (2000) 52 Stanford Law Review 1125.

¹² Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785).

¹³ GWF Hegel, *Philosophy of Right* (1821).

¹⁴ Michael Madow, 'Private Ownership of Public Image' (1993) 81 California Law Review 125.

theoretical dimensions rather than privileging one at the expense of others.

3. Constitutional Foundations in India

3.1 Article 21 and the Right to Privacy

Article 21 of the Constitution of India guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Over time, judicial interpretation has expanded the meaning of “life” beyond mere physical existence to include dignity, autonomy, and the right to develop one’s personality¹⁵.

Personality rights find their strongest constitutional footing within this expanded interpretation. The protection of identity — including name, image, voice, and personal attributes — is intrinsically linked to dignity and individual autonomy. Unauthorized commercial exploitation of these attributes may amount to an infringement of personal liberty¹⁶, particularly when it distorts identity or appropriates personal value without consent. Thus, Article 21 serves as the constitutional anchor for safeguarding identity against misuse. In the digital age, where personal data and likeness circulate widely, the scope of Article 21 becomes even more significant. The right to control one’s digital persona increasingly forms part of the broader right to live with dignity¹⁷.

3.2 Judicial Recognition in *Justice K.S. Puttaswamy (Retd.) v. Union of India*

The Supreme Court’s landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* fundamentally reshaped privacy jurisprudence in India. The Court unanimously affirmed that the right to privacy is a fundamental right protected under Part III of the Constitution, primarily under **Article 21**. This interpretative shift reflects what scholars describe as a transformative constitutional approach, in which dignity and autonomy are treated as foundational constitutional values.¹⁸ Informational privacy — the ability to control dissemination and use of personal data — has direct implications for personality rights. If individuals possess constitutional control over personal information, it logically extends that they should have control over the commercial use of their likeness and persona. Although the

¹⁵ MP Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

¹⁶ R. Rajagopal v State of Tamil Nadu (1994) 6 SCC 632 [26]–[28]

¹⁷ Law Commission of India, *Report No 272: Implementation of the Right to Privacy* (2017).

¹⁸ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

case did not directly address publicity rights, its recognition of dignity and autonomy provides a robust normative foundation for personality protection in commercial and digital contexts.

3.3 Balancing Article 19(1)(a) and Personality Interests

While **Article 21** protects dignity and identity, **Article 19(1)(a)**¹⁹ guarantees freedom of speech and expression. Personality rights frequently intersect with this freedom, particularly in cases involving satire, artistic representation, media reporting, or public commentary.

Indian courts, therefore, engage in a balancing exercise. Commercial misappropriation that falsely implies endorsement or exploits identity for profit is more likely to attract protection. However, expressive uses serving public interest, journalistic reporting, or creative transformation may fall within constitutional protection.

The challenge lies in distinguishing legitimate expression from exploitative commercial use. Overbroad personality claims could chill speech and artistic creativity, while weak enforcement may enable unfair commercial gain. The constitutional framework thus requires proportionality ensuring that restrictions on speech are reasonable, narrowly tailored, and justified by legitimate protection of dignity and economic interests²⁰.

In essence, personality rights in India operate within a constitutional equilibrium: they derive strength from **Article 21** but must coexist with the expressive freedoms guaranteed under **Article 19(1)(a)**.

4. Judicial Development of Personality Rights in India

4.1 Early Recognition: ICC Development (International) Ltd. v. Arvee Enterprises

The Delhi High Court first articulated the commercial dimension of personality protection in *ICC Development (International) Ltd v Arvee Enterprises*,²¹ where the Court observed that the right of publicity ‘vests in an individual and he alone is entitled to profit from it’.²² Importantly, the Court clarified that such rights are distinct from event-based goodwill claims.

¹⁹ Constitution of India 1950, art 19(1)(a).

²⁰ *Modern Dental College v State of Madhya Pradesh* (2016) 7 SCC 353.

²¹ *ICC Development (International) Ltd v Arvee Enterprises* 2003 (26) PTC 245 (Del) 263.

²² *ibid*.

Subsequent cases expanded this reasoning. In *DM Entertainment Pvt Ltd v Baby Gift House*,²³ the Court restrained unauthorised use of the persona of the singer Daler Mehndi, recognising that identity constitutes an enforceable commercial interest. The decision implicitly adopted a labour-based justification: commercial value arises from reputation built through personal effort.

More recently, in *Anil Kapoor v Simply Life India*,²⁴ the Delhi High Court granted dynamic injunctions against AI-generated misuse of the actor's image, name, and voice. The Court's reasoning reflects a technological adaptation of traditional publicity principles, acknowledging that synthetic reproduction may cause irreparable reputational and economic harm.

4.2 Expansion Through Celebrity Protection Cases

Following *ICC Development*, Indian courts progressively expanded protection for celebrities against unauthorised commercial use of their identity. In *DM Entertainment Pvt Ltd v Baby Gift House*²⁵, the Delhi High Court restrained the unauthorised commercial use of a celebrity's persona, affirming that identity carries enforceable commercial value. In these cases, courts relied on a combination of passing off, trademark principles, and privacy-based reasoning. The underlying rationale has been that a celebrity's persona carries commercial value built through labour, reputation, and public recognition. Unauthorized use that creates an impression of endorsement or association constitutes unfair commercial exploitation.

Over time, judicial reasoning evolved to recognise that personality rights extend beyond photographs or names to include voice, signature style, distinctive traits, and other identifying characteristics. The approach reflects a growing acknowledgment that identity itself is a marketable asset deserving legal protection.

4.3 Recent Deepfake and AI-Related Orders of the Delhi High Court

The emergence of artificial intelligence and deepfake technology has significantly influenced recent judicial responses to personality rights violations. The Delhi High Court has increasingly treated synthetic replication of public figures as a serious and urgent legal concern.

²³ *DM Entertainment Pvt Ltd v Baby Gift House* 2010 (42) PTC 520 (Del).

²⁴ *Anil Kapoor v Simply Life India* 2023 SCC OnLine Del 6914.

²⁵ *DM Entertainment Pvt Ltd v Baby Gift House* 2010 (42) PTC 520 (Del).

In *Anil Kapoor v Simply Life India*²⁶, the Court granted dynamic injunctions restraining the unauthorised AI-generated use of the actor's name, image, and voice. The decision signalled judicial recognition that digital impersonation can cause immediate and irreparable harm.

This approach continued in subsequent matters, including *Aishwarya Rai Bachchan v Aishwaryaworld.com (2025)*²⁷, where the Court restrained the commercial misuse of the actor's persona through deepfakes, unauthorised merchandise, and AI-based impersonation. Similar protective orders were later granted in cases involving actors and singers subjected to AI morphing and voice cloning.

These decisions demonstrate the Court's willingness to issue broad and technology-responsive injunctions, including orders against unknown defendants and directions to intermediaries for content removal²⁸. However, the reliance on case-specific judicial intervention highlights the need for a clearer statutory framework to address AI-driven identity misuse more systematically.

5. Statutory Framework Governing Identity Protection

Unlike jurisdictions that recognise a codified right of publicity, India does not have a single comprehensive statute dedicated to personality rights. Instead, protection against commercial exploitation and technological misuse of identity is scattered across multiple legal instruments.²⁹ This fragmented statutory framework reflects an evolutionary rather than intentional approach to identity protection.

5.1 Information Technology Act, 2000

The Information Technology Act, 2000 (IT Act) serves as the primary legislation governing digital conduct in India. Although it does not explicitly recognise personality rights, several of

²⁶ *Ibid.*

²⁷ *Aishwarya Rai Bachchan v Aishwaryaworld.com & Ors., CS (COMM) 956/2025*, Delhi High Court, order dated 9 September 2025.

²⁸ *Amitabh Bachchan v Rajat Nagi* (Delhi HC, 2022 interim order).

²⁹ While this paper focuses primarily on civil, commercial, and regulatory frameworks, it is pertinent to note that the Bharatiya Nyaya Sanhita, 2023 (which replaced the Indian Penal Code, 1860) offers limited punitive recourse. Provisions concerning cheating, cheating by personation, and defamation may be invoked where identity misuse involves explicit deception or reputational injury. However, criminal law is inherently punitive rather than compensatory, and it does not directly address the commercial misappropriation of identity for profit.

its provisions indirectly address online misuse of identity.

Sections dealing with identity theft and cheating by personation³⁰ provide remedies where an individual's digital credentials, image, or likeness are used fraudulently. Additionally, provisions relating to violation of privacy and publication of private content can be invoked in cases involving non-consensual digital manipulation³¹. The Act also establishes a framework for intermediary liability³², under which online platforms may be required to remove unlawful content upon receiving notice.

However, the IT Act was enacted before the emergence of sophisticated AI tools and deepfake technologies. While takedown mechanisms under intermediary rules provide some procedural protection, they are reactive rather than preventive. The burden often lies on the affected individual to detect misuse and initiate complaints. Moreover, the Act does not clearly define the scope of "digital identity," nor does it specifically address synthetic reproduction of publicly available persona attributes. Thus, while the IT Act provides procedural relief against online misuse, it lacks substantive articulation of personality-based commercial rights.

5.2 Trade Marks Act and Passing Off

In the absence of a publicity statute, Indian courts frequently rely on trademark principles and the common law tort of passing off to protect commercial persona. Under the Trade Marks Act, 1999³³, personal names and signatures may be registered as trademarks if they satisfy distinctiveness requirements. Celebrities often register their names or brand identifiers to prevent unauthorized commercial usage. In addition, the doctrine of passing off protects goodwill associated with a name or image where unauthorized use misleads consumers into believing there is endorsement or association.

Passing off has been particularly useful in cases involving false advertising, unauthorized merchandising, and look-alike endorsements. The underlying rationale is that a celebrity's identity carries commercial goodwill built through reputation and public recognition. However, trademark and passing off remedies are limited to situations involving misrepresentation and consumer confusion. They do not necessarily cover all forms of identity

³⁰ Information Technology Act 2000, ss 66C, 66D

³¹ Information Technology Act 2000, s 67A

³² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3.

³³ Trade Marks Act 1999.

exploitation, especially where there is no direct deception but clear commercial appropriation. Moreover, not every individual — particularly non-celebrities — can demonstrate commercial goodwill sufficient to sustain a passing off claim. Thus, while intellectual property doctrines provide practical tools, they operate within a commercial confusion framework rather than a dignity-based protection model.

5.3 Copyright Implications

Copyright law under the Copyright act,1957 ³⁴protects original artistic works such as photographs, films, and recordings. If a photograph of an individual is used without authorization, copyright may protect the photographer or copyright owner rather than the subject of the image. This distinction creates a conceptual gap: the person depicted may have limited control unless they own the copyright.

However, copyright may indirectly protect personality interests when the individual owns rights in audiovisual content featuring them. In digital contexts, unauthorized reproduction of video clips, voice recordings, or performances may trigger copyright claims. The challenge arises with AI-generated deepfakes or synthetic recreations that do not copy a specific copyrighted work but instead replicate a person's likeness or voice. In such cases, copyright law offers limited protection because there is no direct reproduction of an existing copyrighted expression. The misuse lies in the appropriation of identity rather than in copying a creative work.

Therefore, copyright law is only partially effective in safeguarding personality attributes in technologically advanced contexts.

5.4 Data Protection and Emerging Regulatory Framework

The enactment of the Digital Personal Data Protection Act, 2023³⁵ represents a significant move toward consent-based governance of personal data processing. Data protection frameworks aim to regulate the collection, processing, and storage of personal data, including images and biometric information. Data protection principles such as consent, purpose limitation, and data minimization are relevant to personality rights. Unauthorized scraping of

³⁴ Copyright Act 1957.

³⁵ Digital Personal Data Protection Act 2023

photographs, voice samples, or biometric data for AI training may violate consent-based processing norms. The emerging regulatory environment reflects a shift toward recognising informational control as central to individual autonomy.

However, data protection law primarily regulates data processing rather than commercial endorsement or persona monetization. It addresses how data is collected and used but does not comprehensively regulate how identity itself may be commercially exploited once publicly available.

Moreover, enforcement challenges persist, particularly in cross-border digital ecosystems where AI developers operate outside Indian jurisdiction. India's statutory framework governing identity protection is fragmented and reactive³⁶. The IT Act addresses digital misconduct but lacks substantive personality articulation. The IPC provides punitive recourse but not structured commercial protection. Trademark and passing off doctrines protect goodwill but require proof of consumer confusion. Copyright law safeguards expression rather than identity. Data protection regimes strengthen informational control but do not directly codify publicity rights.

Collectively, these instruments offer partial remedies, yet none provides a comprehensive, coherent structure for protecting personality rights in the digital age. As technology increasingly enables scalable and synthetic identity exploitation, the limitations of this patchwork approach become more apparent, strengthening the case for a dedicated statutory framework.

6. Technological Challenges in the Digital Age

The digital age has fundamentally altered the nature, scale, and speed of identity exploitation. Traditional forms of personality misuse—such as unauthorized advertisements or false endorsements—were limited by physical reproduction costs and geographical boundaries. In contrast, emerging technologies now allow instantaneous, scalable, and hyper-realistic replication of identity. The law, largely designed for analogue realities, struggles to keep pace with these developments.

³⁶ Parliamentary Standing Committee on Information Technology, *Examination of the Personal Data Protection Bill, 2019* (2021).

6.1 Deepfakes and Synthetic Media: Constitutional and Comparative Implications

Deepfake technology presents a qualitatively different threat from traditional impersonation. Danielle Citron argues that synthetic media destabilises evidentiary trust and amplifies reputational harm at unprecedented scale³⁷. Unlike conventional misappropriation, deepfakes require neither physical access nor contractual breach³⁸; publicly available data is often sufficient for replication.

The European Union has approached such risks through a dignity-centred data governance model under the General Data Protection Regulation (GDPR), which emphasises consent and purpose limitation³⁹. While GDPR does not explicitly codify publicity rights, its informational self-determination framework parallels the autonomy rationale articulated in *Puttaswamy*⁴⁰.

The American approach, by contrast, conceptualises publicity as a transferable property right. In *Haelan Laboratories v Topps*⁴¹, the Second Circuit recognised that a person has a proprietary interest in the commercial value of their photograph. This property-centric model enables post-mortem licensing but has been criticised for excessive commodification of identity⁴².

6.2 AI Training Models and Unauthorised Data Scraping

Beyond visible deepfakes lies a more subtle challenge: the use of personal data in training artificial intelligence systems. Generative AI models are trained on vast datasets scraped from the internet, including photographs, videos, voice recordings, and publicly accessible content. These datasets frequently contain identifiable information belonging to individuals who have not provided consent for such use.

Although the output of a generative model may not reproduce a specific image, it can replicate distinctive facial features, voice patterns, or stylistic traits closely associated with identifiable

³⁷ Danielle Keats Citron, 'Deep Fakes: A Looming Crisis for Privacy, Democracy and National Security' (2019) 107 California Law Review 1753, 1760–1768.

³⁸ Bobby Chesney and Danielle Citron, 'Deep Fakes and the New Disinformation War' (2019) 107 Foreign Affairs 147

³⁹ Regulation (EU) 2016/679 (General Data Protection Regulation), arts 5, 6.

⁴⁰ *Puttaswamy* (n 2) [297]–[323].

⁴¹ *Haelan Laboratories Inc v Topps Chewing Gum Inc* 202 F2d 866 (2d Cir 1953) 868.

⁴² Jennifer Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press 2018) 45–61

individuals. This raises a doctrinal question: does training on personal data constitute misappropriation of personality, even if the final output is “synthetic”?⁴³

The issue becomes more complex when AI systems are used commercially. If a company deploys an AI-generated avatar resembling a well-known personality to promote products, the economic value derived from that resemblance directly implicates publicity concerns. Yet existing Indian law does not clearly regulate model training practices or require disclosure of dataset sources.

Data protection frameworks, particularly under the General Data Protection Regulation (GDPR)⁴⁴, emphasise consent, purpose limitation, and lawful processing of personal data. The regulatory gap between data governance and publicity law becomes particularly evident in AI contexts, where exploitation is indirect but economically significant.

6.3 Voice Cloning, Virtual Avatars and Digital Resurrection

Technological advancement now enables voice cloning with minimal input data. A few seconds of recorded speech can be sufficient to generate convincing synthetic audio. This poses serious risks in advertising, political campaigns, and fraudulent schemes.

Similarly, virtual avatars and digital replicas are increasingly used in gaming, metaverse environments, and marketing campaigns. Some technologies even enable “digital resurrection,” where deceased personalities are recreated through AI for commercial or entertainment purposes. Such practices raise profound ethical and legal questions, particularly regarding post-mortem personality rights and inheritance of publicity interests.

Indian jurisprudence has not yet comprehensively addressed posthumous personality claims. Without statutory clarity, it remains uncertain whether heirs can control digital replication of deceased individuals. As AI blurs the boundary between life and digital simulation, the law must determine whether identity retains protection beyond physical existence.

⁴³ Pamela Samuelson, ‘Privacy as Intellectual Property?’ (2000) 52 Stanford Law Review 1125.

⁴⁴ Regulation (EU) 2016/679 (General Data Protection Regulation), arts 5, 6.

6.4 Algorithmic Amplification and Platform Accountability

The technological threat to personality rights is not limited to content creation; it also involves distribution mechanisms. Social media algorithms are designed to maximise engagement, often amplifying sensational or controversial material. Deepfake or misleading endorsement content can therefore achieve rapid virality before verification mechanisms intervene.

Platform liability frameworks in India rely primarily on notice-and-takedown procedures⁴⁵. While intermediaries may remove content upon complaint, they are generally not required to proactively monitor all uploads. This reactive model places the burden on victims to detect and report misuse, a difficult task in large-scale digital ecosystems.

Furthermore, anonymity and cross-border hosting complicate enforcement. In many cases, infringing content originates outside India, making jurisdictional remedies slow and uncertain. The combination of algorithmic amplification and jurisdictional fragmentation magnifies the harm caused by identity misuse. Technological disruption has transformed personality exploitation from isolated commercial misconduct into a systemic digital risk⁴⁶. Deepfakes, AI training models, voice cloning, and algorithmic distribution collectively undermine traditional legal assumptions about consent, control, and territorial enforcement.

The challenge for Indian law is not merely to extend existing doctrines but to reconceptualise personality rights for a technologically mediated world. Effective protection must address three dimensions simultaneously: creation of synthetic identity, commercial monetization of likeness, and platform-driven dissemination. Without legislative clarity and technological accountability mechanisms, judicial remedies alone may prove insufficient to safeguard identity in the digital age.

7. Comparative Jurisprudence

Comparative analysis plays a crucial role in understanding the evolution and possible future direction of personality rights in India. Since India does not yet have a codified right of publicity, examining foreign jurisdictions that have developed clearer doctrinal frameworks provides useful normative guidance. The United States and the European Union represent two

⁴⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1

⁴⁶ NITI Aayog, *National Strategy for Artificial Intelligence #AIforAll* (2018).

contrasting models: one treats personality largely as a property interest, while the other approaches it primarily through dignity and data protection principles.

7.1 The Right of Publicity in the United States

The United States has developed one of the most structured and commercially robust frameworks for personality protection through the “Right of Publicity.” Unlike India, where protection is judicially constructed, the U.S. model is recognized either through state statutes or common law. The right of publicity was first clearly articulated in *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953)⁴⁷, where the court recognized that individuals possess a transferable property right in the commercial value of their photograph. Since then, Various states such as California, under California Civil Code § 3344⁴⁸, have enacted statutory provisions explicitly protecting name, image, likeness, and voice, and other distinctive characteristics against unauthorized commercial use. The American model treats identity as an economic asset. The emphasis is not merely on privacy or dignity, but on preventing unjust enrichment and protecting commercial investment in persona. Importantly, many U.S. states recognize post-mortem publicity rights, allowing heirs to control and monetize a deceased celebrity’s persona for decades after death. This has enabled estates of artists, musicians, and actors to license digital recreations and merchandising rights lawfully.

However, the U.S. framework also faces constitutional balancing under the First Amendment, which protects freedom of speech. In *Zacchini v Scripps-Howard Broadcasting Co*⁴⁹, the United States Supreme Court recognised that the unauthorised broadcast of an entire performance could infringe a performer’s economic interest in his act.

7.2 Personality and Data Protection under European Law

In contrast, the European Union approaches personality protection through dignity, privacy, and data protection rather than explicit publicity rights. European legal systems, particularly those influenced by civil law traditions, emphasize the protection of personal dignity and moral rights. The General Data Protection Regulation (GDPR)⁵⁰ plays a central role in regulating the

⁴⁷ *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

⁴⁸ California Civil Code § 3344.

⁴⁹ *Zacchini v Scripps-Howard Broadcasting Co* 433 US 562 (1977).

⁵⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L 119/1.

processing of personal data, including images, biometric identifiers, and voice recordings. Under GDPR principles, individuals retain strong control over how their personal data is collected, processed, and used. Consent, purpose limitation, and transparency are foundational requirements.

Unlike the U.S. property-oriented approach, European jurisprudence frames identity as part of fundamental human dignity. The right to one's image is recognized in many European countries as a personality right rooted in constitutional or civil codes. Unauthorized commercial use of an individual's likeness can therefore constitute a violation of privacy and personality even without proof of consumer confusion.

European courts also demonstrate strong sensitivity toward digital harms, including facial recognition, AI profiling, and data scraping. The emphasis is on informational self-determination rather than purely economic control.

However, the European model may not provide the same structured commercial licensing clarity as the U.S. right of publicity. It protects dignity robustly but does not uniformly treat persona as a transferable commercial asset.

7.3 Normative Lessons for Indian Law

India occupies a middle position between these two models. Its constitutional jurisprudence, particularly after the recognition of privacy as a fundamental right, aligns more closely with the European dignity-based approach. At the same time, Indian courts have increasingly recognized the commercial value of persona in celebrity endorsement and merchandising disputes, reflecting elements of the American property-based framework. The comparative analysis suggests several normative lessons for India:

- First, clarity matters. The U.S. experience demonstrates that explicit statutory recognition of publicity rights reduces doctrinal ambiguity. A defined scope — including protected attributes, duration, and exceptions — enhances predictability for courts and commercial actors.
- Second, dignity must remain central. The European emphasis on autonomy and informational control aligns with India's constitutional commitment to human dignity under Article 21. Any future Indian legislation should avoid treating identity purely as

transferable property divorced from personhood.

- Third, speech safeguards are essential. Both U.S. and European jurisprudence recognize the need to balance personality protection with freedom of expression. India, with its strong constitutional protection under Article 19(1)(a), must ensure that parody, artistic transformation, and public interest reporting remain protected.
- Fourth, technological specificity is necessary. Both jurisdictions are increasingly confronting AI and deepfake challenges. India can proactively incorporate AI-specific provisions — such as consent requirements for digital replicas, watermarking mandates, or liability standards for synthetic endorsements — rather than relying solely on general privacy doctrine.
- Finally, post-mortem clarity is important. The U.S. recognition of inheritable publicity rights provides economic certainty in digital resurrection scenarios. India must determine whether personality rights should survive death and, if so, for what duration and under what conditions.

8. Doctrinal Tensions and Normative Conflicts

Personality rights in India exist at the intersection of constitutional values, commercial interests, and technological realities. While courts have increasingly recognized the need to protect identity from unauthorized exploitation, the doctrinal foundations of such protection remain unsettled. The resulting tensions are not merely technical; they reflect deeper normative conflicts about the nature of identity, the limits of property, and the scope of free expression in a democratic society.

8.1 Property versus Personality: Conceptual Ambiguity

A central debate in personality rights concerns their true nature. Should identity be treated as a form of property, similar to intellectual property, or as a personal right rooted in dignity and autonomy?

The property-based approach views identity as an economic asset. Public figures invest time and effort in building reputation, and unauthorised commercial use can amount to unjust enrichment. This perspective fits comfortably within passing off and endorsement disputes,

where the primary harm is financial.

However, reducing identity to transferable property risks over-commercialisation. If persona rights become freely assignable and inheritable without limits, identity may be detached from personal values and moral integrity. The dignity-based approach, in contrast, treats personality rights as extensions of constitutional personhood. Here, the harm lies not only in economic loss but in distortion of selfhood and autonomy. Yet this view alone may overlook the commercial realities of modern branding and endorsement practices. Indian jurisprudence reflects this unresolved tension. Courts often shift between privacy-based reasoning and commercial misappropriation logic, without clearly defining whether personality is fundamentally property, dignity, or a hybrid of both.

8.2 Freedom of Speech and Artistic Transformation

One of the most sensitive tensions in personality rights law lies in its interaction with freedom of speech under Article 19(1)(a). While identity deserves protection, it cannot become a mechanism for silencing satire, journalism, artistic creativity, or political criticism.

Public figures inevitably attract commentary and reinterpretation. Parody accounts, caricatures, biographical portrayals, and critical media content depend on recognisable elements of personality. If personality rights are framed too expansively, they risk chilling legitimate public discourse and creative expression. The real challenge is separating commercial exploitation from expressive use. A misleading advertisement suggesting endorsement is clearly distinct from satire or commentary. However, in digital spaces where content is often indirectly monetised, this distinction becomes less straightforward.

Indian courts have approached this balance cautiously, relying largely on contextual analysis rather than a fixed doctrinal test. A structured proportionality framework would offer greater clarity while safeguarding both individual dignity and constitutional speech guarantees.⁵¹ This tension was evident in the 2025 *Raj Shamani* proceedings before the Delhi High Court. While the Court restrained deceptive AI-generated endorsements and impersonation tools, it declined to impose a sweeping ban on content that was plainly satirical or self-identified as parody. The Court observed that claims involving commercial misappropriation could not be mechanically

⁵¹ *Tata Sons Ltd v Greenpeace International* 2011 SCC OnLine Del 466.

combined with claims against protected satire, as the constitutional defenses differ in substance. The approach signals a developing judicial awareness that personality rights must not be invoked to curtail legitimate expressive freedom.

8.3 Commercial Speech and Endorsement Liability

Another doctrinal tension concerns commercial speech. Unlike artistic expression, commercial advertising is subject to greater regulatory control. When identity is used in promotional content, the harm is more tangible: consumer deception, dilution of goodwill, and unjust enrichment.

Indian courts have been more willing to restrain unauthorized use in commercial contexts than in purely expressive contexts. However, digital platforms complicate this distinction. Influencer content often blends personal expression with commercial promotion. Sponsored posts, affiliate marketing, and algorithm-driven monetization blur traditional boundaries between private speech and advertising.

Additionally, AI-generated endorsements create new forms of commercial speech without direct human authorship. If a deepfake video appears to promote a product, determining liability becomes complex. Should responsibility lie with the content creator, the advertiser, or the platform hosting the content? The normative conflict here revolves around accountability in decentralized digital ecosystems. Personality rights enforcement must adapt to distributed responsibility while ensuring that commercial gain derived from identity without consent is restrained.

8.4 Post-Mortem Rights and Inheritability

The question of whether personality rights survive death introduces another doctrinal tension. If identity is conceptualized as property, post-mortem protection appears logical. Estates could license digital recreations and merchandising rights, preserving economic value.

However, if personality rights are grounded primarily in dignity, posthumous extension becomes philosophically complex. Can dignity survive death? Should heirs control how a deceased individual is digitally resurrected? Technological capabilities such as AI-driven digital resurrection intensify this debate. Recreating deceased actors for films or generating synthetic performances may be commercially lucrative, but they raise concerns about

authenticity and moral integrity. Indian law does not provide clear guidance on post-mortem personality rights⁵²⁵³. Without statutory clarity, disputes may hinge on contractual arrangements or intellectual property claims rather than principled recognition of identity interests. The absence of clear inheritance rules creates uncertainty for creative industries and estates alike. At the same time, unlimited post-mortem control may restrict cultural reinterpretation and historical representation.

8.5 Ordinary Individuals versus Celebrities

Another important tension relates to who should benefit from personality protection. Traditionally, such claims were brought by film stars, sportspeople, and other public figures whose identity carried obvious commercial value. In today's digital environment, however, identity misuse is no longer limited to celebrities. Ordinary individuals can also face harm through deepfakes, impersonation, or misleading online advertisements.

If personality rights are framed only as economic interests, protection may end up favouring those with established market value. A dignity-oriented approach, on the other hand, supports protection for all individuals, since autonomy and reputational integrity are not dependent on fame. While the scale of financial harm may differ, the invasion of identity affects both public figures and private individuals alike. A balanced framework must therefore recognise commercial interests without excluding broader dignity concerns.

The rise of digital creators further complicates this landscape. Influencers, podcasters, and online entrepreneurs often build substantial goodwill through social media platforms. In *Raj Shamani v John Doe* (Delhi High Court, 2025), the Court granted a "John Doe" injunction against AI-generated deepfakes falsely portraying the podcaster as endorsing betting and cryptocurrency schemes, as well as chatbots impersonating him for financial solicitation. The order reflects an important shift: personality rights are no longer confined to traditional entertainment industries but extend to digital creators whose online presence has measurable commercial and reputational value.

⁵² Law Commission of India, *42nd Report: Indian Penal Code* (1971). (discussion on defamation surviving death)

⁵³ *Krishna Kishore Singh v Sarla A Saraogi* (2021) 6 SCC 1.

9. Towards a Coherent Indian Framework

9.1. The Imperative for Legislative Codification

Presently, the Indian legal landscape regarding personality rights suffers from deep fragmentation, relying heavily on reactive, case-by-case adjudications drawn from passing off, generic privacy doctrines, and intermediary guidelines. While judicial activism has plugged immediate gaps, this ad-hoc approach fosters legal unpredictability. The exponential rise in digital identity misappropriation—exacerbated by synthetic media and deepfakes necessitates a paradigm shift toward a definitive legislative framework. Enacting a limited, codified right of publicity would resolve existing doctrinal ambiguities⁵⁴. Such a statute must be fundamentally anchored in the dignity and personal autonomy protected under Article 21, whilst simultaneously recognizing the tangible economic value of a digital persona. The legislative intent must not be the creation of monopolistic ownership over identity, but rather the establishment of robust barriers against deceptive endorsements and unjust commercial enrichment.

9.2. Delineating Protected Attributes and Temporal Scope

To ensure efficacy, the proposed legislation must exhaustively define the contours of protected personal attributes. This statutory umbrella should cover:

- Actual names, established pseudonyms, and recognized stage names.
- Visual likeness, including photographs and identifiable imagery.
- Distinctive vocal signatures and voice patterns.
- Stylized personal identifiers and signatures.
- Synthetic avatars and AI-generated digital replicas.

Crucially, in an era dominated by algorithmic generation, the threshold for infringement must extend beyond literal reproduction to include any unauthorized imitation that leverages recognizable association for financial gain. Furthermore, the statute must resolve the ambiguity

⁵⁴ Law Commission of India, *272nd Report (Privacy & Data Protection) (2017)*

surrounding post-mortem personality rights and assignability. Implementing a finite postmortem protection period—akin to the temporal limits found in copyright law—would strike a necessary balance between the economic interests of a deceased's estate and the broader public domain.

9.3. Calibrating Free Speech and Statutory Defenses

A robust personality rights framework must not operate as an instrument of censorship. To insulate democratic discourse and artistic freedom, the statute must embed explicit safe harbors. Protections against liability should firmly apply to:

- Journalistic endeavors and matters of public interest.
- Transformative works, encompassing parody, satire, and artistic critique.
- Bona fide academic, educational, and research applications.
- De minimis or incidental inclusions lacking commercial exploitation.

Any statutory limitation on the use of identity must strictly adhere to the doctrine of proportionality under Article 19(1)(a). Consequently, actionable claims should be primarily restricted to instances where the deployment of an individual's persona is demonstrably commercial, exploitative, or inherently misleading.

9.4. Regulatory Mandates for Artificial Intelligence

The unprecedented capabilities of generative AI demand targeted, technology-specific statutory interventions. First, the law must mandate unambiguous, prior consent for the commercial utilization of AI-generated human replicas; synthetic endorsements cannot exist in a regulatory vacuum. Second, to mitigate consumer deception, compulsory watermarking or disclosure labels must be enforced for synthetic content that mimics identifiable persons. Third, the accountability of digital intermediaries requires recalibration. Without imposing overarching, disproportionate monitoring burdens that could stifle technological innovation, platforms must be statutorily obligated to maintain:

- Expedient, time-bound takedown protocols for verified infringements.

- Transparent and accessible grievance redressal architectures.
- Strict data preservation mandates to facilitate subsequent legal investigations.

9.5. Enforcement Architecture and Proportional Restitution

Substantive rights are rendered illusory without an effective enforcement apparatus. The remedial framework must be both calibrated and scalable. The proposed statute should empower judicial authorities to grant:

- Ex-parte ad interim and dynamic injunctions to arrest immediate digital harms.
- Comprehensive compensatory damages tailored to the economic injury.
- Disgorgement of profits to deter unjust commercial enrichment.
- Pre-quantified statutory damages specifically designed for instances of mass digital misappropriation.

Acknowledging the viral velocity of online identity theft, the establishment of specialized, fasttrack adjudicatory mechanisms for deepfake and digital impersonation disputes is critical. Ultimately, however, all judicial remedies must be administered with strict adherence to proportionality, ensuring that the penalization of exploitation does not inadvertently extinguish legitimate constitutional expression.

10. Conclusion

The advent of the digital republic has irrevocably transformed human identity from a strictly physical presence into a highly replicable, programmable, and monetizable digital asset. While Indian jurisprudence has incrementally extended protection through the constitutional lens of Article 21, the current legal architecture remains a fragmented patchwork of privacy doctrines and intellectual property principles ill-equipped for the sheer scale and velocity of algorithmic misappropriation. To resolve the normative friction between the over-commodification of personhood and the dangers of under-protection, India must transcend reactive, case-by-case judicial intervention. The definitive path forward requires enacting a cohesive, constitutional commercial statutory framework that conceptualizes identity as an inseparable facet of human dignity while simultaneously recognizing its tangible commercial utility. By harmonizing the

protection of personal autonomy with the imperative to prevent unjust economic enrichment all while rigorously safeguarding democratic free speech and transformative expression this reimagined legislative model would replace anachronistic analog assumptions with principled, proportionate, and technologically resilient governance.