

**Maharaja Surajmal Institute Law Journal**  
**Year 2025, Volume-2, Issue-2 (July - December)**



# Beyond Privacy and Passing-Off: Designing India's Comprehensive AI-Era Personality Rights

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## ARTICLE INFO

**Keywords:** trademark law, substantial economic value, jurisdictions

*Doi:* 10.48165/msilj.2025.2.2.3

## ABSTRACT

Human society has long celebrated individual talent through public figures—actors, athletes, musicians, writers, and digital influencers—whose identities evolve into commercially valuable brands. Their names, images, voices, and mannerisms possess significant economic worth, giving rise to personality rights (also known as publicity rights), which enable individuals to control and monetize the commercial use of their persona. These rights recognize identity as a valuable intangible asset that must be protected from unauthorized exploitation.

In India, personality rights are not codified but are instead protected through a fragmented legal framework, including passing-off under trademark law, defamation under the *Bhartiya Nyaya Sanhita, 2023*, and the right to privacy under Article 21 of the Constitution. However, rapid technological advancements, particularly in artificial intelligence, have exposed critical gaps in this framework. AI-driven tools can now create deepfakes, replicate voices, generate digital avatars, and simulate real individuals at scale, enabling widespread misuse across social media, advertising, and political communication, often without clear accountability or effective remedies.

This paper undertakes a comparative doctrinal analysis to examine the status and limitations of personality rights in India. It distinguishes between the proprietary nature of publicity rights and the personal dimension of privacy rights, and evaluates approaches adopted in jurisdictions such as the United States, United Kingdom, European Union, Japan, and Brazil. By identifying regulatory shortcomings and emerging risks, the study highlights the urgent need for a coherent and robust legal framework in India to safeguard personality rights in the digital era.

## INTRODUCTION

Human society has long celebrated individual talents and accomplishments through the *persona* of public figures – actors, athletes, musicians, writers and digital influencers – who, over time, become brands in their own right. These

celebrities command substantial economic value, as their names, images, voices and mannerisms carry immense commercial appeal. In this context, *personality rights* (sometimes, also referred to as '*publicity rights*') describe an individual's entitlement to control and profit from the use of their persona. Such rights acknowledge that a per-

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son's identity and likeness are valuable, intangible assets that should not be exploited without consent.

Traditionally, Indian law has protected aspects of a person's identity through a patchwork of torts and intellectual-property rules – for example, passing-off actions under trademark law, defamation under the *Bhartiya Nyaya Sanhita 2023* (BNS 2023- previously, S. 499 of Indian Penal Code- IPC), and privacy claims under Article 21 of the Constitution. However, rapid advances in digital technology have exposed serious gaps in this framework. Today, Artificial intelligence (AI) can now generate highly realistic *deepfakes*, clone voices, create virtual avatars, and also simulate real individuals at scale. It means that any actor's image or influencer's voice can be instantly reproduced and misused worldwide, often without any identifiable wrongdoer or clear redress. Such misuse can occur through social media, advertising, or even political propaganda, posing novel threats to personal dignity and reputational value.

Against this background, the present paper offers a comparative doctrinal analysis aimed at locating personality rights in India's law and identifying where it falls short. *First*, we set out the conceptual foundations – distinguishing publicity rights *i.e.*, the proprietary right to one's image and brand, from the right to privacy, *that is*, the personal right to be left alone. *Second*, we survey how different jurisdictions address these interests: the United States, where a robust common-law right of publicity has long been recognized; the United Kingdom (UK) and European Union (EU), which have relied more on privacy and data-protection norms; and other models from Japan, Brazil, and elsewhere. *Third*, we examine India's current legal landscape, which is quite fragmented and lacks any statutory framework for 'personality rights' *per se* and relies on constitutional guarantees and existing IP and tort law remedies. Throughout, we highlight key doctrinal gaps – especially India's *fragmented* approach – and compare the protections on offer abroad.

In this era of Internet 4.0, nothing has been left untouched by AI-driven technologies. The celebrity persona has also been disrupted by AI and AI-driven deepfakes. It is a commonplace now to fabricate voices or images in real time, create virtual avatars, and make intimate impersonations. Thus, we further analyse how recent advances in deepfakes, voice synthesis, and synthetic media technologies

are raising urgent issues. By examining illustrative cases – including the 2024 Bombay High Court decision affirming Arijit Singh's right to control AI-generated voice clips<sup>4</sup>, and recent instances of deepfake scams involving public figures<sup>5</sup> – we show how existing Indian rules (defamation, passing off, privacy) are poorly equipped to prevent or remedy these harms. In particular, victims face a “*no-man's-land*” of liability as, defamation requires a false statement and proof of harm; passing off requires consumer confusion; and privacy has traditionally focused on intrusion or disclosure of private facts. None of the so-called solutions or remedies clearly fits the case of AI generated deepfake image creation and voice-fabrication.

Finally, the paper sets out *recommendations for reform*. We propose that India should adopt a unified statutory right of personality or right of publicity tailored specifically to the digital age. Such a law would define the scope of protected attributes (name, image, voice, digital likeness), provide for swift injunctive and statutory remedies, and include procedural tools (notice-and- takedown, expedited relief) to address AI-generated misuse. We suggest broad principles (technological neutrality, extra-territorial reach, and a balance with freedom of expression) and institutional measures (a dedicated nodal agency or coordination with data-protection authorities) to ensure effective enforcement. We aim to forge a coherent, future-ready doctrine; one that safeguards individuals' brand value and dignity in India while balancing and respecting legitimate creative and expressive interests.

## CONCEPTUAL FOUNDATIONS

“Personality rights” is an umbrella term that encompasses two interrelated limbs- the right of publicity and the right to privacy. The right of publicity protects an individual's economic interest in the commercial use of their identity – essentially treating name, likeness, voice, and other persona attributes as proprietary assets. Under this right, a person can prevent others from using their identifiable traits for commercial advantage without consent. For example, reproducing a celebrity's photograph or voice in an advertisement without permission would infringe the

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<sup>4</sup> *Arijit Singh v Codible Ventures LLP* (2024) SCC OnLine Bom 2445.

<sup>5</sup> Times of India, 'Navsari man held for sharing deepfake video of PM in WhatsApp group' (16 May 2025) <https://timesofindia.indiatimes.com/city/surat/navsari-man-held-for-sharing-deepfake-video-of-pm-in-whatsapp-group/articleshow/121193983.cms> accessed 23 May 2025.

publicity right. The essence is that public figures have built a brand around their persona, and unauthorized exploitation erodes their market value and misleads consumers.

By contrast, the right to privacy protects a person's intrinsic dignity and autonomy – the right to be left alone and to control personal information about oneself. In the Indian context, the Supreme Court has recognized that privacy is implicit in the right to life and liberty under Article 21 of the Constitution. The Court stated in *R. Rajagopal v. State of Tamil Nadu* (the “Auto Shankar” case) that “None can publish anything concerning [a person's private matters] without his consent whether truthful or otherwise”.<sup>6</sup> Similarly, in *K.S. Puttaswamy v. Union of India*,<sup>7</sup> the Court unanimously affirmed that privacy is an intrinsic part of the right to life under Article 21. Privacy rights thus cover on-economic harms such as unwanted disclosure of personal data, intrusion into seclusion, or portrayal in a false or offensive light.

Although conceptually distinct, publicity and privacy rights often overlap in practice. For instance, a celebrity's photograph may raise publicity concerns because of unauthorized commercial use as well as privacy concerns if taken in a private setting. However, neither doctrine was originally conceived with the digital age in mind, as traditional privacy law under Article 21 deals with unwanted press or police surveillance<sup>8</sup>, while publicity doctrine grew out of print and video ads or movies.<sup>9</sup> Modern threats of AI-generated deepfakes or synthesized voices, do not fit neatly into either of the categories. These technologies can simultaneously violate an individual's economic control over their image and their dignity by creating lifelike misrepresentations. India's current legal framework splits protection across various statutes and common law doctrines- copyright (which protects original artistic works and moral rights), trademark and passing-off (which protects distinctive marks and prevents misleading endorsements), and constitutional guarantees of privacy. Collectively, they offer some remedy, but in a piecemeal fashion. We turn now to see how the conceptual foundations of the intertwined doctrines in general or across jurisdictions.

<sup>6</sup> *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632.

<sup>7</sup> *K S Puttaswamy (Aadhaar-5J) v Union of India* (2018) 1 SCC 809.

<sup>8</sup> *Kharak Singh v State of Uttar Pradesh* AIR 1963 SC 1295.

<sup>9</sup> SCC Online Blog, ‘A cause célèbre: Publicity rights in India’ (24 January 2022) <https://www.sconline.com/blog/post/2022/01/24/a-cause-celebre-publicity-rights-in-india/> accessed 23 May 2025. <sup>10</sup> *Haelan Laboratories, Inc v Topps Chewing Gum, Inc* 202 F 2d 866 (2d Cir 1953).

## Publicity Rights

The *right of publicity* recognizes the economic value of an individual's identity. It originated in the United States in the mid-20th century. In *Haelan Laboratories Inc v Topps Chewing Gum Co.*<sup>10</sup>, a New York court for the first time recognized an “exclusive right” of publicity. The facts were such that the baseball players had licensed their images for trading cards, and the court held that others could not use those images without permission. The court thus effectively created a new common-law “right of publicity” in 1953 to protect a person's proprietary interest in their image. This right was soon distinguished from the traditional privacy torts in *Zacchini v. Scripps-Howard Broadcasting Co.* (1977)<sup>11</sup>. The U.S. Supreme Court in this case held that a performer's right of publicity *i.e.* the right to be paid for the broadcast of his entire act was a “commercial” right distinct from privacy. It noted that privacy torts like publicity for embarrassment “*end with the death of an individual*”, whereas publicity rights “*may survive*” as a property right. Today, most U.S. states recognize a right of publicity by statute or common law, often permitting celebrities (or their heirs) to control unauthorized commercial use of their name and likeness.<sup>12</sup>

Across jurisdictions, the elements of publicity rights typically include name, image, voice, signature, and other unique attributes. Misuse or misrepresentation of these attributes can give rise to liability, even if the use is non-deceptive. For instance, in India, in the landmark case of *R. Rajagopal v. Tamil Nadu*<sup>13</sup>, the Supreme Court noted that a person's name or likeness cannot be used for commercial or other exploitation without consent. In this case, the Court disapproved of publishing details of a criminal's personal life (even though factually true) without permission, recognizing a kind of “common law right of privacy” for public figures. Indian courts have subsequently applied various doctrines to protect persona. For example, the law of passing off has been used to enjoin unauthorized advertisements showing an actor's likeness, and trademark dilution principles have been invoked against unauthorized celebrity endorsements. In *Titan Industries Ltd. v. Ramkumar Jewellers*<sup>14</sup>, the Delhi High Court granted an injunction against jewellery stores that put up hoardings of actors- Amitabh Bachchan and Jaya Bachchan without license. The court treated this as an infringement of intellectual property (copyright and passing-off) and implicitly of the Bachchans' publicity rights. More recently, the Bombay High Court in July 2024 explicitly held that a Bollywood singer's unauthorized AI-generated voice recordings and images violated his personality and publicity rights. The court underscored that celebrities are enti-

bled to control and prevent exploitation of their voice and image, even as generated by technology.<sup>15</sup>

## Privacy Rights

The *right to privacy* protects personal autonomy and dignity. The Indian Supreme Court now recognizes it as a fundamental right under Article 21. In the *Auto Shankar* case, the Court formulated a broad outline of privacy. It held that the right to privacy includes being “let alone” and forbids publishing personal information (even true information) without consent, barring some public-interest exceptions. The Court stressed that even though details may appear in public records, going beyond what is already public into intimate territory violates privacy. However, the Court also balanced this against freedom of speech by allowing publication of an autobiography based on public court records of a prisoner’s case, though it cautioned that deeper revelations could infringe privacy.<sup>16</sup> Thus, Indian privacy law aims to protect *private life*, the development of personality, as well as dignity of life.

The Supreme Court’s Puttaswamy judgment (2017) unanimously affirmed that privacy safeguards the “inner sanctum” of an individual against both state and private intrusion.<sup>17</sup> It explicitly linked privacy to freedom of expression by highlighting the need for balancing. This judgment must be supplemented with the observations of Supreme Court in *Subramaniam Swamy v. Union of India*<sup>18</sup>. The Court observed in this case that private autonomy cannot be “allowed so much room that even the reputation of an individual would have no entry”.<sup>19</sup> Apart from the jurisprudential and practical development through case laws, India also has statutory regimes like the Information Technology Act and DPDP Act to protect personal data and digital privacy.

In summary, India has avenues to protect both the commercial and the personal aspects of personality. But **no single doctrine or statute** clearly subsumes the concept of “personality rights”. The protection is fragmented. Publicity interests are often shoehorned into passing-off or copyright, while privacy claims require intrusions into private life. This fragmentation leaves celebrities and ordinary persons alike in a precarious position, especially now that technology can mimic them at scale. We next look at how

other legal systems have structured these rights, to highlight the contrasts and possible lessons for India.

## COMPARATIVE LEGAL FRAMEWORKS

Different jurisdictions have taken distinct paths toward recognizing personality rights. We briefly survey key approaches in the United States, United Kingdom, European Union (and related countries), and a few other notable examples.

### United States

The U.S. has perhaps the most developed law of publicity. Following *Haelan Labs v. Topps*<sup>20</sup> (1953), courts quickly accepted a common-law right of publicity, and by the 1960s scholars like William Prosser categorized privacy torts into four types, with publicity as a subset. The term “right of publicity” itself entered common usage to describe the legal autonomy of an individual to control commercial exploitation of their persona. Landmark Supreme Court cases reinforced the distinction in *Zacchini v. Scripps-Howard* (1977)<sup>21</sup>, the Court confirmed that while privacy is personal, publicity is proprietary. It held that when a television station broadcast a performer’s entire human-cannonball act without consent, the performer’s right to publicity was violated. The Court explained that publicity rights can be assigned or inherited, unlike personal privacy (which dies with the individual). In *Edison v. Edison Polyform* (N.Y. 1989)<sup>22</sup>, courts

extended this view, treating a person’s name and image as “property right[s]” under the law.

Today, nearly every U.S. state has either statutory or common-law protections for publicity. These laws typically allow celebrities to prevent unauthorised use of their name, voice, signature or image for trade purposes. Some statutes expressly cover AI-generated likenesses. For example, California law<sup>23</sup> prohibits unauthorized advertisements with a deceased personality’s image for a certain period after death; it has also been amended to require disclosure of AI-generated manipulations in political campaign materials. Ss. 50 and 51 of New York’s Civil Rights Law<sup>24</sup>

<sup>11</sup> *Zacchini v Scripps-Howard Broadcasting Co* 433 US 562 (1977).

<sup>12</sup> Wex, ‘Publicity’ (Cornell Legal Information Institute) <https://www.law.cornell.edu/wex/publicity> accessed 23 May 2025.

<sup>13</sup> R. Rajagopal v. State of T.N. (1994) 6 SCC 632

<sup>14</sup> 2012 SCC OnLine Del 2382; (2012) 50 PTC 486.

<sup>16</sup> R. Rajagopal v. State of T.N. (1994) 6 SCC 632

<sup>17</sup> K.S. Puttaswamy (Aadhar-5J.) v. Union of India, (2018) 1 SCC 809

<sup>18</sup> (2016) 7 SCC 221

<sup>19</sup> Ibid

<sup>20</sup> *Haelan Laboratories, Inc v Topps Chewing Gum, Inc* 202 F 2d 866 (2d Cir 1953).

is not unduly hindered. The U.S. model shows how a jurisdiction can explicitly fill the gaps in common law through create a similar post-mortem publicity right. Courts have also enforced publicity rights in cases involving films, video games, and even clothing bearing a person's name.<sup>25</sup> Enforcement often requires showing a commercial use (advertising or sales), and defenses include news reporting or parody. Importantly, U.S. publicity laws recognize that the violation is often irreparable, permitting injunctive relief even without showing actual damage.

Overall, it would not be an exaggeration to state that the U.S. approach is proactive. It treats personality attributes as quasi-intellectual property and grants a standalone tort.<sup>26</sup> This provides legal clarity as one can sue under the "right of publicity" and usually strong remedies such as injunctions and damages. It also coexists with First Amendment values by carving out exceptions like newsworthiness, parody, and transformative use so that artistic expression statute, and how a broad definition of protected attributes can adapt to new media.

## United Kingdom

By contrast, the UK historically had no concept of publicity rights. In the 1970s and 1980s, courts repeatedly rejected privacy claims of celebrities. In *Kaye v. Robertson*<sup>27</sup>, an actor confined to a hospital after an accident was secretly photographed and interviewed by a newspaper. The English Court of Appeal famously held that UK law provided no right of privacy against such an intrusion. It was held that the plaintiff's only remedy might have been an

action for malicious falsehood, but there was no tort of privacy or publicity. Similarly, in *Pollard v. Photographic Sales Agency*<sup>28</sup>, a photographer who sold Christmas cards with a woman's picture was held liable not under privacy but as a breach of confidence because she had entrusted the negatives to him.

However, UK law has evolved since then. The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into domestic law, bringing in Article 8 (right to private life) and requiring courts to protect personal privacy. English courts have, as a result, developed a tort of misuse of private information. A landmark case in this regard was *Douglas v. Hello! Ltd.*<sup>29</sup>, where Michael Douglas and Catherine Zeta-Jones sued Hello! magazine for publishing unauthorized wedding photos. The Court of Appeal recognized that, although the couple had sold exclusive rights to *OK!* magazine, they still retained control over which images were published. 'Hello!' breached their privacy because most aspects of the wedding (including the photos) had not been "traded" away. Thus, a privacy protection in a limited manner was enforced to guard editorial control over personal images.

In a nutshell, UK protection for personality is a blend. There is still no separate right of publicity akin to the U.S. Instead, a celebrity might rely on the UK Data Protection Act 2018 to claim rights over personal data, misuse of private information, copyright or trademark law or under breach of confidentiality.

The UK illustrates the *expressive-value approach*. The law is careful not to unduly restrict speech or creative expression. New personality rights protections have emerged but often through channels of privacy law rather than a robust commercial right. Even so, UK courts acknowledge that individuals can "own" aspects of their personal information in certain contexts. For instance, after *Douglas*, it is well established that personal images and details remain under a person's control unless explicitly surrendered. The existence of passing-off remedies also means celebrities can sometimes stop commercial misuse if it looks like an endorsement.

## European Union (and other jurisdictions)

Within the EU, there is no single EU "personality rights" law. EU regimes focus on privacy and data protection rather than commercial publicity. The General Data Protection Regulation (GDPR) (EU 2016/679) gives data

<sup>22</sup> *Edison v Edison Polyform Mfg Co* 73 NJ Eq 136, 67 A 392 (1907).

<sup>23</sup> California Civil Code s. 3344.1.

<sup>24</sup> NY Civil Rights Law ss. 50–51; New York State Bar Association, 'New York's new right of publicity law protecting performers and producers' [https://nysba.org/new-yorks-new-right-of-publicity-law-protecting-performers-and-producers/?srsltid=AfmBOopC5WkHZA-w36KpLf504Pgg9cuPFwMdcrgTcaY3vqC\\_\\_\\_\\_\\_A1Mj\\_IL](https://nysba.org/new-yorks-new-right-of-publicity-law-protecting-performers-and-producers/?srsltid=AfmBOopC5WkHZA-w36KpLf504Pgg9cuPFwMdcrgTcaY3vqC_____A1Mj_IL) accessed 23 May 2025.

<sup>25</sup> Assembly Bill 2839 (2023–2024 Reg Sess) [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB2839](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB2839) accessed 23 May 2025. <sup>26</sup> *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953)

<sup>27</sup> [1991] FSR 62

<sup>28</sup> L R 40 Ch Div 345 (1888).

<sup>29</sup> [2001] QB 967.

<sup>30</sup> [2004] EMLR 379; (2005) 40 EHRR 1.

subjects rights over their personal data (which can include image and audio), including the right to object to processing for commercial advertising. Article 8 of the European Convention on Human Rights (ECHR) similarly protects private life; the Court of Human Rights has held that people have a right to control personal image and identity to some extent. In *Von Hannover v. Germany*<sup>30</sup> where Princess Caroline argued against the publication of her photos taken by paparazzi and that it violated her right to privacy under Article 8 of ECHR. The Court ruled in her favour. That said, the EU does recognize some “personality” interests. For instance, several EU countries have *neighbouring rights* akin to publicity. Germany has a broad “right of personal image” within the general personality right under the civil code that prohibits commercial use of one’s name or image without consent.<sup>31</sup> France likewise treats personal names and likeness as protected property in certain cases. The European Court of Justice (CJEU) has also implied protections such as in *Pelham*<sup>32</sup>, the ECJ held that unauthorized use of a distinctive lyric, if recognizable, could infringe the performing artist’s rights under the Performers’ Rights Directive. Though not a direct case related to Personality Rights, it does give insights into the protection available to a phonogram-producer if his rights are infringed. Outside Europe, other jurisdictions have explicit statutes. Japan’s Civil Code includes a “right of portrait” that bars unauthorized use of a person’s likeness in public.<sup>33</sup> Brazil<sup>34</sup> and many Latin American countries similarly recognize image rights by law or constitution.

## INDIAN FRAMEWORK FOR PERSONALITY RIGHTS- A FRAGMENTED ONE

India does not have a dedicated personality rights statute, and such a situation is, though not unique but relatively unusual. In the U.S., state laws fill the gap. In many European countries, general rights of personality or data-protection laws cover it. India on the other hand, relies on a jigsaw of privacy (now constitutional) and intellectual-property law (trademark, copyright, passing off), without a cohesive concept of a publicity right. This leads to uncertainty, for example, there is no clear rule on who owns a celebrity’s likeness by default, or how long these rights last. Unlike the U.S., India has no concept of posthumous personality rights as well. Moreover, India’s tort remedies of defamation or passing off require stringent proofs of false statement or evidence of confusion that may often be ill-suited to pure image misappropriation. In short, India’s current framework seems **fragmented**, whereas other jurisdictions have statutory or well-developed common-law doctrines giving personality protection an identifiable status.

## Personality Rights in India: Current Framework and Gaps

India offers multiple, but scattered, legal remedies that touch upon personality interests:

- **Constitutional Privacy:** The Supreme Court in *K.S. Puttaswamy*<sup>35</sup> confirmed privacy as a fundamental right, covering personal autonomy and private facts. While this principally protects individuals against intrusion (government or press), it has no ready mechanism for purely commercial misuses like an advertisement using one’s image.
- **Trademark and Passing Off:** Celebrities often register their name or logo as a trademark, or rely on passing-off law against unauthorized endorsements. A passing-off action requires showing that the unauthorised use confused the endorsement or origin of goods. Courts have allowed celebrities to sue, for example, under the Trade Marks Act 1999 or the common law of passing off, if someone uses their image/logo to sell products without permission. However, trademark law in India requires a “graphical representation” of the mark [S. 2(m)], and protects marks used in trade. It does not explicitly cover personal names unless used as a brand. Passing off may enjoin a bogus endorsement, but only if the criteria of goodwill, misrepresentation, and damage are met; these are factual hurdles not always easy for the plaintiffs to prove.
- **Copyright:** The Copyright Act, 1957, while focused on creative works, contains provisions that have some bearing on personality. Section 38 prohibits portrayal of a performer’s performance by others without consent; Section 57 (moral rights) allows

<sup>31</sup>Johann Neethling, ‘Personality Rights: A Comparative Overview’ (2005) 38 Comp & Int’l LJ S Afr 210; BVerfG, 1 BvR 1476/91, 1 BvR 198/95 and 1 BvR 102/93 (Caroline von Monaco, judgment of 15 December 1999) [https://www.bverfg.de/e/rs19991215\\_1bvr147691.html](https://www.bverfg.de/e/rs19991215_1bvr147691.html) accessed 22 May 2025.

<sup>32</sup> Case C-476/17 Criminal Proceedings against X [2019] EU:C:2019:632.

<sup>33</sup> The right to portrait in Japan is a judge-made doctrine derived from Article 13 of the Constitution and tort law. Constitution of Japan (consolidated text) art 13; Civil Code (Japan) art 709.

<sup>34</sup> Federal Constitution (Brazil, 1988) art 5(X); Civil Code (Law No 10.406/2002) art 20.

<sup>35</sup> *K.S. Puttaswamy (Aadhar-5J.) v. Union of India* (2018) 1 SCC 809

- authors to object to distortion of their works; and under Section 2(qq) a “performer” is defined to include certain artists whose “performances” may include distinctive expressions. In *Titan Industries Ltd. v. Ramkumar Jewellers*<sup>36</sup>, the court treated an advertisement featuring images of Amitabh Bachchan and Jaya Bachchan as falling under copyright and endorsement agreements. The plaintiffs had obtained copyright assignments from the celebrities for those ads, and the court enforced that copyright. Thus, by contract and copyright assignment, a player can indirectly control use of their likeness (if they own copyright in a photo or video of themselves). But absent such arrangements, copyright does not inherently give a publicity right. Moreover, when artworks (films, photos) are owned by producers, the performer cannot prevent another exploitation of a recording (for example, if an old film is broadcast).
- **Defamation and Reputation:** Criminal and civil defamation laws (Sections 499-500 IPC, and tort defamation) protect reputation against false statements. They can offer recourse if a deepfake or AI statement is defamatory. However, defamation requires the content to be false and harmful. In *Subramanian Swamy v. Union of India*<sup>37</sup>, the Supreme Court upheld criminal defamation, emphasizing that reputation is a part of personal liberty. The offence of criminal defamation exists in BNS 2023 as well. However, the existing defamation law is ill-suited to remedy AI harassment. A person targeted by a non-false deepfake<sup>38</sup> (for shock or political speech) would not easily succeed in defamation. Also, to restrain online content under defamation, one must satisfy stringent procedures and give evidence of malice, published matter, etc., making prompt injunctive relief difficult.
- **Other Statutes:** India's Information Technology Act, 2000, contains provisions against cyber-fraud and data theft, but nothing specific on image-based AI manipulation. Criminal law under the Bharatiya Nyaya Sanhita (BNS) 2023 has general offences for harassment or mischief, but again, none targeting personality misuse. Digital Personal Data Protection (DPDP) Act 2023 and Draft DPDP Rules are primarily about data privacy, not publicity.

<sup>36</sup> 2012 (50) PTC 486 (Del).

<sup>37</sup> (2016) 7 SCC 221.

<sup>38</sup> A “false” deepfake fabricates an untrue event or statement—e.g., putting words in someone's mouth they never spoke. A “non-false” deepfake, by contrast, uses the person's actual words or depicts real facts, but repurposes or re-frames them in misleading or sensational ways in order to shock, satirize, or make a political point.

In practice, therefore, Indian celebrities frequently rely on contractual controls or endorsement agreements and piecemeal litigation under passing-off, copyright, or privacy. There is no standalone “right of publicity” statute or unified tort. This fragmentation creates several practical deficiencies:

**High Proof Requirements:** To succeed in passing-off, a celebrity must prove that the public associates the infringing use with them and that they suffered loss. Defamation requires proving falsity and malicious intent. AI-enabled impersonations are rapid, anonymous, and sometimes even international, making it almost impossible to gather such evidence in time. For example, if an AI video of a celebrity is distributed anonymously on social media, the person cannot easily identify who to sue, and by the time the source might be discovered, the “use” has already proliferated. By then, the injunctive urgency is lost.

**Limited Remedies:** Indian courts generally award injunctions and damages. But without a specific statutory framework, remedies like statutory penalties or takedown orders are unavailable. Plaintiffs must go through slow civil suits, while digital impersonations can spread globally in minutes. Online platforms may or may not comply with takedown requests due to safe-harbor rules and a lack of a clear legal basis.

**Lack of Tech-Specific Measures:** The law contains no guidance on how to treat deepfakes or synthetic voice. For example, in the 2025 Modi deepfake video case, the police charged the sharer under general cyber-offences (IT Act and BNS sections on impersonation and harassment).<sup>39</sup> Passing off or trademark law offered no remedy because the deepfake was not a commercial advertisement of a product, just political mischief. Defamation was not straightforward either, since the video was not “false speech” about Modi but a digital fabrication. This illustrates the gap. Existing laws are “imperfect tools” forced to cover new harms, but they lack a conceptual foundation to fully address the problem.

**Enforcement and Awareness:** Indian society has become hyper-digital, yet legal awareness of personality rights is low. Victims often resort to unofficial takedowns (e.g. DMCA notices, if any) or moral appeals. There is no specialized authority monitoring AI impersonation or assisting victims. This contrasts with, say, the U.S., where state attorneys general or certain agencies may look into deceptive deepfake ads, or California's dedicated statute against AI decoys.

<sup>39</sup> See Times of India, ‘Navsari man held for sharing deepfake video of PM in WhatsApp group’ (16 May 2025) <https://timesofindia.indiatimes.com/city/surat/navsari-man-held-for-sharing-deepfake-video-of-pm-in-whatsapp-group/articleshow/121193983.cms> accessed 23 May 2025.

**Free Speech Balance:** Ironically, India's strong emphasis on free speech [Article 19(1)(a)] means courts are cautious about imposing broad constraints. Any new law must navigate the balance between protecting individuals and not stifling criticism or art. While this is desirable, it also leaves personality claims on uncertain footing. For instance, Indian courts have held that biographical writings or portrayals of public figures are often permissible unless they invade intimate privacy or defame.<sup>40</sup> Without clear rules, fears of censorship may discourage courts from robustly enforcing even legitimate personality claims.

## Key Deficiencies Summarized

- **Fragmented Doctrine:** No singular "personality right" exists; reliance on torts/contract
- leads to gaps.
- **Inadequate Scope:** Existing laws require either commercial context (trademark/passing-off) or newsworthiness exception (privacy), leaving a gap for non-commercial but harmful uses.
- **Technology Lag:** Laws predate AI; deepfakes and synthetic media fall outside typical definitions of defamation, disclosable information, or IP infringement.
- **Proving Harm:** Legal tests (falsity, confusion, malice) are ill-fitted to viral social media impersonations.
- **Lack of Remedies/Mechanisms:** No streamlined injunction/notice system for AI misuse; enforcement relies on antiquated procedures.
- **No Statutory Clarity:** Absence of clear legislative framework means inconsistent judicial results and uncertainty for stakeholders.

These deficiencies underscore India's need to rethink personality rights comprehensively. The remaining sections turn to the urgency of this need in the AI era and suggest a way forward.

## AI-Driven Disruption and Doctrinal Gaps

Digital technology has exponentially amplified the risks to personality rights. AI can now generate synthetic media that convincingly mimics real individuals. Three prominent examples illustrate the threats:

**Voice Cloning:** Deep neural networks such as Tacotron, WaveNet can analyze audio samples of a person and replicate their voice. This has commercial appeal (e.g. gaming, voice assistants) but also huge potential of abuse. In India, one of the first judicial

recognitions of this issue came in *Arijit Singh v. Codible Ventures*.<sup>41</sup> The court found that unauthorized AI-generated recordings of singer Arijit Singh's voice used in promotional content violated his personality rights. It reiterated that voice and likeness are part of a celebrity's persona, and controlling their use prevents dilution of the person's brand.<sup>42</sup> In theory, under Indian law, the plaintiff could allege breach of performer's rights under S. 38 of the Copyright Act or violation of personality rights under passing-off. But these doctrines have limitations because a cloned voice may not involve a copyrighted performance, let's assume if it's newly synthesized, and passing off requires proof of confusion. The *Arijit Singh* case relies in part on contractual copyright assignments that the celebrity gave to the film company, and it hints that courts are willing to treat voice as a proprietary attribute. Yet it stands alone; without a statutory publicity right, subsequent cases may vary in approach.

**Face-Swap and Video Deepfakes:** Generative Adversarial Networks (GANs) can swap one person's face onto another body in a video. These face-swaps range from celebrity pranks to highly malicious political misinformation. Going back to the incident of PM Modi's deepfake video at the cost of repetition but for deeper understanding of the issues.<sup>43</sup> The video combined an AI-altered image of Modi with a synthetic voiceover, spread with the apparent intent to cause public fear. While the police charged him under general cyber-offences (IT Act S.66C and BNS S. 242), there was no specific remedy under personality law. Passing-off or trademark law were also inapplicable (this was not a commercial promotion), and defamation was also not possible (the content was arguably false but political).

<sup>41</sup> *Arijit Singh v. Codible Ventures LLP* 2024 SCC OnLine Bom 2445

<sup>42</sup> *Ibid.*

<sup>43</sup> Times of India, 'Navsari man held for sharing deepfake video of PM in WhatsApp group' (16 May 2025) <https://timesofindia.indiatimes.com/city/surat/navsari-man-held-for-sharing-deepfake-video-of-pm-in-whatsapp-group/article68121193983.cms> accessed 23 May 2025.

<sup>44</sup> The Hindu, 'Amit Shah deepfake video case registered against Maharashtra Youth Congress's social media handle' (29 April 2024) <https://www.thehindu.com/news/national/maharashtra/amit-shah-deepfake-video-case-registered-against-maharashtra-youth-congress-social-media-handle/article68124147.ece> accessed 23 May 2025.

<sup>40</sup> *R. Rajagopal v. State of Tamil Nadu* (1994) 6 SCC 632

In effect, the victim could not sue under any specialized “deepfake tort” – instead, the state charged the perpetrator with endangering public order. Almost similar was the case of circulation of a deepfake video of Home Minister Amit Shah during 2024 Lok Sabha elections campaign where he can be heard stating that reservation would be entirely removed from the Constitution.<sup>44</sup> These example shows that algorithmic impersonations can intersect both personal and public spheres, eluding traditional categories. Even absent state action, an ordinary citizen in Modi's or Shah's shoes would have no direct cause of action for the harm to their reputation and dignity. Moreover, such deepfakes are a threat to the democratic fabric of the country and can meddle with the minds of the voters.

**Synthetic Avatars and Likeness:** AI platforms can create fully interactive digital avatars that speak or perform in a person's likeness. Imagine an AI agent that looks and sounds like a known politician, on the phone soliciting funds, or a “virtual influencer” on social media who livestreams using a film star's face. Unlike a one-off deepfake video, these avatars are continuous and can be deployed in mass outreach. For instance, during India's 2024 elections, there were reports of campaigns using AI-generated audio calls in various languages that sounded like the candidates themselves (voice-cloned)<sup>45</sup>. Traditional law has no concept of a tort for persistent, autonomous misrepresentation of someone's persona. Passing-off or unfair competition law can sometimes address false endorsement, but not a scenario where the endorser is nonexistent. Privacy law could cover some broadcast intrusions, but the interactive, entertaining nature of an avatar (sometimes voluntarily followed by users) complicates the analysis. In short, synthetic avatars represent a wild west of impersonation for which the law has no dedicated remedy.

These disruptions reveal a common theme- *existing doctrines falter because they were not designed for algorithmic likeness*. As one analysis put it, victims face a liability “no-man's-land” for many reasons: (a) there is no unified tort for name-image-voice misuse, (b) no special expedited remedy for AI-generated harms, and (c) no clear proof standards for dynamic digital content. In a viral deepfake, by the time anyone thinks to sue, the content has spread organically, and tracking the original creator (or proving “malice”) may be impossible. Passing off demands survey-style evidence that consumers confuse the impersonation with actual endorsement – a heavy evidentiary burden. Privacy law demands a breach of confidentiality or highly intrusive act, which many AI impersonations will not neatly fit into (especially if the person is a public figure who consents to some publicity).

The consequence is that AI-driven harms often go unremedied in India. Meanwhile, other jurisdictions are scram-

bling to catch up. In the U.S., for example, some states have enacted anti- deepfake laws (e.g., criminalizing certain non-consensual deepfake pornography, or requiring political ads to disclose synthesized content). California's laws address unauthorized digital replicas of politicians and news anchors near elections. The EU's proposed AI Act, although focused on high-risk AI, may indirectly influence how synthetic media are regulated.<sup>46</sup> A statutory personality right in India would ideally be “AI-proof” – defined broadly enough to cover new media, with remedies calibrated for rapid response.

## Core AI-Related Challenges

- **Ease of Generation:** Any single person can produce a convincing fake of a celebrity or politician with consumer-grade apps. This democratizes impersonation beyond what an advertiser could ever do.
- **Viral Spread:** Deepfakes can be shared instantly on social platforms, bypassing traditional media gatekeepers. The harm (reputation, confusion, panic) snowballs quickly.
- **Anonymity:** The creators/distributors can be anonymous or offshore, making enforcement hard.
- **Proving Identity and Harm:** Demonstrating that the image/voice belongs to a specific individual can be difficult, and linking it to actual reputational damage is complex.
- **Global Reach:** A video made in one country can reach millions in another, raising cross- border enforcement issues.

These factors make it clear that a reactive approach – waiting for courts to figure cases out through existing law – will be inadequate. The legal system needs deliberate reform to address these vulnerabilities.

## TOWARDS A COMPREHENSIVE INDIAN LAW

Given the gaps identified above, there is a compelling case

<sup>45</sup> ‘India's experiments with AI in the 2024 elections: the good, the bad, the in-between’ (Tech Policy Press) <https://www.techpolicy.press/indias-experiments-with-ai-in-the-2024-elections-the-good-the-bad-the-inbetween/> accessed 23 May 2025.

<sup>46</sup> European Commission, ‘Regulatory framework on AI’ <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> accessed 23 May 2025.

for India to enact a *statutory personality rights regime*. This would not only explicitly acknowledge the economic and personal value of identity, but also tailor remedies to modern technologies. Below we outline key principles and possible elements of such a framework, drawing on comparative best practices.

## Guiding Principles

- **Comprehensive Definition:** The law should define protected attributes broadly: name, likeness (photograph, image, caricature), voice, signature, distinctive gestures or catchphrases, digital avatar or virtual likeness, etc. It should specify that these include AI-generated or virtual reproductions that simulate the person's persona. Defining "persona" in inclusive terms ensures emerging technologies are covered.
- **Technological Neutrality:** The protection should apply regardless of medium. Whether a likeness appears in print, film, VR, online, or as an AI-generated hologram, the law should treat it the same. This aligns with how other intellectual property laws are drafted to be technology-neutral.
- **Protection Term:** The statute should clarify the duration. Typically, personality rights last at least during the person's lifetime; many jurisdictions extend them for some period after death (as a kind of heir-inherited right). India might consider a post-mortem term (for example, 10-70 years after death) to protect estates and respect moral interests.
- **Balance with Expression:** Any law must safeguard freedom of expression and creativity. Exemptions could include uses in news reporting, academic or artistic works, satire/parody, and other cases of public interest. For instance, a documentary film using a politician's image or a biographical movie should not be automatically infringing. The statute could enumerate fair-use style exceptions or incorporate a reasonableness test, similar to how privacy and copyright exceptions work.
- **Extra-Territorial Scope:** The statute should attempt to reach cross-border violations. It could stipulate that if an Indian's persona is commercially exploited or harmed, the law applies even if the infringing act occurred abroad or on foreign servers. This might mirror the EU's approach (GDPR-style) or certain IP laws (e.g. Section 2(m) of the Trademarks Act was amended for extraterritorial effect). At a minimum, the law should allow Indian courts to exercise jurisdiction if the injury is felt in India (e.g. a deepfake made

overseas but disseminated widely online affecting an Indian citizen's reputation).

- **Procedural Mechanisms:** Provide for expedited relief. The statute could allow *ex parte* injunctive relief (similar to the interim injunction regime in Section 9 of the Civil Procedure Code) specifically for personality rights violations. It could also mandate that once prima facie infringement is shown, platforms must immediately takedown unauthorized uses (akin to notice-and-takedown in copyright). Specialised rules might fix shortened timelines for hearing such cases, recognizing the fast-paced nature of digital harms.

## Proposed Elements of Model Law

- **Exclusive "Right of Publicity":** A new property right for individuals (or their authorized assign) to control commercial use of their identity. This can be created as a new part of the Copyright Act or a standalone act. It would give the owner of the right legal standing to stop unauthorized "use of persona" in advertisements, merchandise, or any form of trade. Similar to U.S. state laws, it could allow individuals to license their persona, and prevent others from selling "endorsements" as if guaranteed by the celebrity.
- **Personality Data Protection:** Borrowing from data-protection regimes, the law could treat biometric or sensitive personal attributes (face scans, voice prints) as specially protected. Unauthorized collection or processing of such data for synthetic media could attract penalties.

## Remedies

1. Injunctions: Mandatory injunctions against infringing uses, including swift takedowns for online content.
  2. Statutory Damages: Pre-set damages for unauthorized use of identity (similar to some U.S. statutes or Indian DPB proposals). This reduces the need for proof of actual loss.
  3. Criminal Penalties: For wilful, malicious impersonation (e.g. deepfake defamation or fraud), fines and imprisonment could be prescribed. However, care must be taken to avoid chilling expression. A narrowly tailored offence could target misrepresentations intended to cause harm or gain.
- **Cumulative Remedies:** The law should allow invoking multiple statutes: for example, a case might proceed under the personality-rights law as well as trademark or trademark dilution law, without prohibiting plaintiffs from choosing the most advantageous remedy.

- **Fair Use/Exceptions:** Explicit carve-outs for journalistic reporting, academic work, parody, and incidental use. Also, the use of a person's persona in live news coverage should be allowed. This balances the public interest in information and creativity. An example is the "newsworthiness" exception in U.S. publicity law and parallel exceptions in the Indian Copyright Act for fair dealing.
- **Administrative Enforcement:** The statute could designate a specialised cell or authority (possibly within the Intellectual Property Appellate Board or under the Ministry of IPR) to handle personality-rights complaints. This "IPR Digital Authority" could issue guidelines for AI watermarking and provenance, coordinate with the Data Protection Authority, and maintain a registry of personality rights (though a registry is optional, since publicity rights are generally unregistered rights in common law). The goal is not heavy regulation but rather a clearinghouse for grievances and tech standards.
- **Public Awareness and Standards:** The law or accompanying policy should encourage the development of technological safeguards: digital watermarking of official media, transparency standards for AI content, etc. Public education campaigns on deepfake literacy and a simple notice mechanism (like flagged channels) can empower individuals to protect themselves.
- **Balancing Clause:** Inspired by legal drafts worldwide, a balancing clause might be included, directing courts to ensure that "nothing in this Act shall unduly inhibit freedom of speech, scientific research or artistic creation". In copyright, a similar balance is struck through fair-dealing provisions; in personality rights, this balance might be achieved by interpreting exceptions broadly.

By enacting such a framework, India can align with global best practices while addressing its own structural gaps. The objective is not to stifle creativity or satire, but to prevent clear-cut commercial or malicious exploitation of personal identity, especially where existing remedies fail. Importantly, any new law should recognize both public figures and private individuals. One advantage of a statutory approach is that it can explicitly provide some protection even to non-famous persons against deepfake defamation or identity theft, which tort law currently does not fully cover.

## CONCLUSION

Personality rights sit at the intersection of human dignity, economic interest and expressive liberty. In India, they have

thus far been protected in piecemeal fashion – through defamation, passing-off, copyright and constitutional privacy – with each doctrine addressing only part of the problem. This fragmented approach has become increasingly inadequate. The rapid rise of AI-generated media has exposed glaring gaps: deepfakes and voice clones can now erode a person's reputation or livelihood in seconds, without falling neatly under any existing cause of action.

Our comparative review shows that many jurisdictions have recognized this problem and responded with more coherent legal tools. The United States developed an explicit right of publicity; the UK and EU have expanded privacy and data protections; others have adopted statutory image rights. India, by contrast, remains largely unprepared. Celebrities and even ordinary citizens lack clear remedies when their digital likeness is misappropriated.

To remedy this, we recommend the enactment of a unified personality-rights statute in India. Such legislation should define and protect a person's identity attributes, provide effective remedies (including tailored injunctions and damages), and incorporate safeguards to balance free expression. It should be designed to withstand future AI innovations – for example, by including voice and biometric likeness in its scope and adopting broad definitions. Institutional support (awareness campaigns, a nodal IP/AI committee) and coordination with data protection enforcement will strengthen the regime.

In pursuing this reform, lawmakers must heed the unique features of India's legal landscape. Any new law must complement India's commitment to free speech and innovation. It should learn from past constitutional jurisprudence (such as *R. Rajagopal* and *Puttaswamy*) which balances individual rights with the public interest. Drawing upon global lessons, India can chart a path that both secures the market value of personal brand and affirms each person's right to dignity in the digital age.

With clear statutory rights in place, an individual misused by an AI deepfake could obtain prompt relief: for instance, an interim injunction ordering immediate takedown of the fake video, and compensatory damages for any harm done. Offenders could face penalties, deterring bad actors. At the same time, artists and media would retain the freedom to use personalities under fair-use exceptions. Thus, India could forge a coherent, future-ready doctrine – one that protects citizens' persona and preserves the creative commons.

In sum, revitalizing personality rights under a dedicated legal framework is not merely a matter of celebrity privilege, it is about adapting the law to technological realities. By addressing the doctrinal gaps and implementing an AI-resilient statute, India can ensure that its citizens enjoy both the fruits of innovation and the shelter of the rule of law.