
THE RIGHT TO CONTROL ONE'S IDENTITY: A CONSTITUTIONAL AND IPR-BASED STUDY OF PERSONALITY RIGHTS IN INDIA, THE US, AND EUROPE

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ABSTRACT

The right to control one's identity, commonly referred to as personality rights, lies at the intersection of constitutional law and intellectual property regimes. This paper undertakes a comparative analysis of how India, the United States, and Europe recognise and protect such rights. While the Supreme Court of India in *K.S. Puttaswamy v. Union of India* (2017) established privacy as a fundamental right under Article 21, its scope remains inadequate to safeguard the commercial and reputational dimensions of personality rights, such as name, image, likeness, and voice. Unlike the United States, where the right of publicity is recognised through statutory and common law mechanisms, or the European Union, where the European Convention on Human Rights and the General Data Protection Regulation (GDPR) afford robust protections, India lacks a dedicated statutory framework.

The study highlights the limitations of constitutional privacy jurisprudence in addressing market-oriented exploitation of identity and stresses the need for a distinct legislative regime. It examines key judicial doctrines, intellectual property overlaps, and landmark cases such as *Zacchini v. Scripps Howard Broadcasting Co.* in the US and *Von Hannover v. Germany* in Europe. Further, it explores contemporary challenges including deepfakes, AI generated likenesses, and the digital spread of personal attributes across social media platforms. The paper concludes by proposing harmonisation strategies and law reform for India, advocating for a codified right of publicity that balances commercial interests, free speech, and individual dignity in a digitally connected society.

Keywords: Personality Rights, Comparative Law, Right of Publicity, Digital Identity, Law Harmonisation

1. Introduction

Personality rights represent an evolving area of legal discourse situated at the confluence of personal autonomy, commercial exploitation, and the challenges of an increasingly digitised society. Broadly understood, these rights protect an individual's control over their unique identity, encompassing name, image, likeness, voice, signature, gestures, and other distinguishing characteristics that constitute their persona. At their core, personality rights are rooted in the idea that every person possesses a distinct identity integral to dignity and autonomy, but in the modern era of celebrity culture, media proliferation, and digital economies, they also carry substantial commercial value¹. This dual dimension as both a private entitlement and a public economic asset renders personality rights one of the most complex and contested fields of twenty first century law.

Historically, personality rights emerged from the confluence of common law principles of privacy and the evolving need to protect individuals against commercial exploitation of their persona. The first recognized legal formulation of these rights can be traced to the United States in the early twentieth century with cases addressing unauthorized use of a person's image or performance for commercial gain. One of the earliest instances was *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953), which recognized that a celebrity's likeness could be the subject of exclusive commercial rights. This concept evolved into the modern right of publicity, distinguishing it from privacy or defamation, as it focused explicitly on the economic value of identity. In India, although the doctrine of personality rights has a shorter history, foundational jurisprudence can be traced to *R. Rajagopal v. State of Tamil Nadu* (1994), which articulated a limited "right to be let alone" in the context of unauthorized publication, laying the groundwork for later recognition of both dignitary and economic interests in personal identity.

Conceptually, personality rights must be distinguished from related doctrines. Privacy safeguards an individual's right to seclusion, control over personal information, and protection from intrusive surveillance or publication². Moral rights, primarily within copyright law, protect authors' interests in the integrity and attribution of their works, indirectly supporting aspects of personality protection. Reputation, though overlapping with privacy and defamation,

¹ Mira T. Sundara Rajan, *Moral Rights: Principles, Practice and New Technology* 45–47 (Oxford Univ. Press 2011), <https://doi.org/10.1093/acprof:oso/9780195390316.001.0001>

² Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 Cal. L. Rev. 125, 130–35 (1993), <https://doi.org/10.2307/3480935>

addresses the social standing of an individual and protection against false or damaging representations. The right of publicity, distinct from privacy, is concerned with the commercial exploitation of identity, especially critical for actors, athletes, and influencers whose likeness carries market value. Personality rights operate at the intersection of these doctrines, simultaneously protecting personal dignity and regulating economic exploitation, creating a hybrid legal construct that is both constitutional and commercial in nature.

In India, personality rights have gradually evolved within constitutional and judicial frameworks. The Supreme Court's landmark judgment in *K.S. Puttaswamy v. Union of India* (2017) recognized privacy as a fundamental right under Article 21, affirming personal autonomy and dignity³. Yet, the judgment primarily addressed informational privacy and state surveillance, leaving commercial misappropriation largely unregulated. Earlier, *R. Rajagopal* had addressed reputational concerns, but without codifying enforceable publicity rights. High profile cases such as *Aishwarya Rai Bachchan v. John Doe & Ors.* and *Amitabh Bachchan v. Rajat Nagi* (2022) illustrate attempts by Indian courts to protect celebrity identity from unauthorized commercial use, though remedies remain ad hoc and dependent on tort, passing off, or contractual principles. These cases underscore both the judiciary's recognition of personality rights and the pressing need for a statutory framework that articulates clear protections, remedies, and postmortem rights.

In the United States, the concept of personality rights evolved more systematically through the right of publicity, which treats identity as a property like interest capable of commercial exploitation. Landmark cases such as *Zacchini v. Scripps Howard Broadcasting Co.* (1977), *White v. Samsung Electronics* (1992), and *Hart v. Electronic Arts* (2013) extended protection to performances, likenesses, and digital representations, emphasizing economic value alongside personal dignity. State level statutory schemes now reinforce these rights, providing clear remedies and balancing them against First Amendment free speech interests.

Europe's trajectory differs, prioritizing human dignity and informational self-determination under Article 8 of the European Convention on Human Rights. Cases such as *Von Hannover v. Germany* (2004) and *Google Spain v. AEPD* (2014) illustrate the integration of dignity, privacy, and digital control, including the "right to be forgotten" under the GDPR, which

³ Nandita Saikia, *Intellectual Property Law in India* 212–220 (Kluwer Law Int'l 2018), <https://kluwerlawonline.com>

empowers individuals to manage their digital identities⁴. European law thus combines constitutional principles with statutory regulation to provide a proactive, rights-based protection framework.

Taken together, the comparative landscape highlights a pressing reality: India's reliance on Article 21 and judicial improvisation is insufficient. Unlike the United States, which offers commercial remedies, and Europe, which integrates digital and human rights protections, India lacks a codified statutory structure. The dual nature of personality rights protecting both dignity and economic value necessitates a comprehensive legal framework. By situating identity within constitutional guarantees, intellectual property regimes, and digital law, India can harmonize domestic jurisprudence with global best practices, ensuring enforceable, consistent, and future ready protections in an era of technological and commercial transformation.

2. Constitutional Foundations: Article 21 and Comparative Protections in the US and Europe

In India, personality rights are not codified as a separate statute but are protected through a combination of constitutional guarantees, intellectual property laws, and judicial remedies. Article 21 of the Constitution, guaranteeing the right to life and personal liberty, has been interpreted to include privacy and dignity, forming the backbone for protection against unauthorized exploitation of identity, as seen in *K.S. Puttaswamy v. Union of India* (2017). Courts have also relied on tort principles such as passing off, breach of confidence, and defamation to prevent misuse of names, images, and likenesses, illustrated in cases like *ICC Development v. Arvee Enterprises* and *Titan Industries v. Ramkumar Jewellers*. Intellectual property laws, including the Trade Marks Act 1999 and Copyright Act 1957, offer partial safeguards, allowing celebrities and public figures to protect names, stage names, logos, and performance recordings against commercial misappropriation⁵. Additionally, the proposed Digital Personal Data Protection Act aims to regulate personal data online, indirectly supporting digital identity protection. However, the absence of a dedicated statutory right of publicity results in fragmented enforcement, leaving remedies largely dependent on judicial discretion. India thus protects personality rights through a hybrid of constitutional, IP, and

⁴ Mark A. Lemley & Eugene Volokh, Freedom of Speech and Injunctions in Intellectual Property Cases, 48 Duke L.J. 147, 150–58 (1998), <https://doi.org/10.2307/1373004>

⁵ Anushka Singh, Privacy, Personhood and Publicity Rights in India, 14 Nat'l L. Sch. India Rev. 37, 40–45 (2002), <https://www.jstor.org/stable/44283765>

common law provisions, but lacks a comprehensive legislative framework that clearly defines scope, remedies, and postmortem rights.

A comparative look underscores this gap more starkly. In the United States, the jurisprudence under the First and Fourteenth Amendments has long acknowledged not only the value of personal autonomy but also the commercial significance of individual identity⁶. The right of publicity, which emerged prominently in *Zacchini v. Scripps Howard Broadcasting Co.* (1977), recognized that a person's performance, likeness, or identity could be commercially exploited in ways that directly affect livelihood and autonomy. Unlike Article 21, which remains confined to privacy and dignity within a constitutional framework, the US system treats identity as a property like right capable of protection against unauthorized use. This approach reflects a nuanced balance: while freedom of expression under the First Amendment remains robust, courts have carved out protections ensuring that commercial misappropriation of identity does not undermine individual rights.

European jurisprudence presents yet another layer of contrast. Rooted in Article 8 of the European Convention on Human Rights, the right to respect for private and family life extends beyond mere protection from state intrusion and imposes positive obligations on states to secure privacy against private actors as well⁷. Landmark cases such as *Von Hannover v. Germany* (2004) demonstrated the European Court of Human Rights' emphasis on dignity and informational self-determination, particularly in the context of celebrity identity and media intrusion. Similarly, the decision in *Google Spain v. AEPD* (2014) underscored the "right to be forgotten," recognizing individuals' control over digital identity in an age where information permanence can erode dignity and autonomy. Unlike the Indian framework, European law integrates both constitutional guarantees and detailed statutory regimes particularly the General Data Protection Regulation (GDPR) to safeguard identity in personal and commercial contexts alike.

These comparative perspectives highlight why India's reliance on Article 21 is insufficient for protecting personality rights. While *Puttaswamy* opened the door by affirming the centrality of privacy and dignity, its scope is structurally limited to questions of state action and

⁶ David Tan, *The Commercial Appropriation of Fame: A Cultural Analysis of the Right of Publicity and Passing Off* 119–126 (Cambridge Univ. Press 2017), <https://doi.org/10.1017/9781108236256>

⁷ Raghav Sharma, *The Right of Publicity in India: A Comparative Perspective*, 2 Indian J. Intell. Prop. L. 1, 3–9 (2009), <https://ijipl.nalsar.ac.in>

informational privacy. It does not answer how individuals can prevent corporations from misappropriating their likeness in advertisements, how heirs can enforce posthumous rights in cases of celebrity legacy, or how remedies can be standardized for unauthorized digital reproduction of identity in an AI driven world⁸. The absence of a statutory scheme leaves these issues to be resolved inconsistently by courts, creating uncertainty both for individuals and for industries dependent on image rights.

India, therefore, stands at a crossroads. The American recognition of publicity rights shows how identity can be protected as an economic asset, while European jurisprudence demonstrates the integration of dignity and informational control into a statutory framework that is adaptive to technological shifts. Learning from these models, India needs to move beyond the broad but vague shelter of Article 21 and articulate a clear statutory framework for personality rights. Such a framework must encompass both personal and commercial dimensions, address post mortem enforceability, provide remedies against private misuse, and regulate the emerging challenges of digital identity. Without this legislative clarity, personality rights will remain fragmented, leaving individuals vulnerable and the legal system unprepared to meet the demands of the digital age.

3. Judicial Doctrines and Landmark Decisions: India, the US, and Europe

The judicial evolution of personality rights across India, the United States, and Europe reveals distinct philosophies shaped by constitutional structures, societal values, and market realities⁹. In India, recognition of personality rights has been largely tethered to the constitutional guarantee of privacy under Article 21, but judicial interpretations demonstrate both progress and limitations. The landmark decision in *K.S. Puttaswamy v. Union of India* (2017) elevated privacy to the status of a fundamental right, embedding it within the guarantee of dignity and liberty. While the ruling primarily addressed state surveillance and informational privacy, it laid the foundation for interpreting personal identity, including aspects of digital and reputational protection, as a facet of autonomy and dignity.

Earlier, in *R. Rajagopal v. State of Tamil Nadu* (1994), the Supreme Court recognized a “right to be let alone,” restraining unauthorized publication of life stories without consent, except

⁸ Justin Hughes, *The Philosophy of Intellectual Property*, 77 *Geo. L.J.* 287, 291–98 (1988), <https://scholarship.law.georgetown.edu/facpub/1237>

⁹ Graeme B. Dinwoodie, *A Comparative Analysis of the Right of Publicity and Related Rights*, 16 *Cardozo Arts & Ent. L.J.* 209, 212–19 (1998), <https://cardozoaejlb.com>

when forming part of the public record. This decision marked the first explicit recognition of the need to protect personal and reputational interests, foreshadowing the contours of what would later be termed publicity rights. Similarly, in *Shreya Singhal v. Union of India* (2015), while the primary focus was on free speech and the regulation of online content, the Court acknowledged the significance of protecting personal autonomy and privacy in digital spaces, indirectly linking personality protection with emerging online challenges.

Recent celebrity related cases highlight the judiciary's proactive approach toward commercial exploitation of identity¹⁰. In *Aishwarya Rai Bachchan v. John Doe & Ors.* (Delhi HC, 2022), the court restrained the unauthorized use of the actor's name and image for fraudulent online promotions, noting that such misappropriation not only caused reputational harm but also constituted economic exploitation. Similarly, in *Amitabh Bachchan v. Rajat Nagi* (Delhi HC, 2022), the court issued a broad injunction protecting the actor's name, voice, and likeness from commercial misuse, emphasizing that even digital avatars and synthetic reproductions fell within the ambit of personality protection. Another notable example is *ICC Development (International) Ltd. v. Arvee Enterprises* (2003), where the Delhi High Court recognized a celebrity's right to control the commercial use of their persona in advertisements, extending the analogy of passing off to personality misappropriation. *Titan Industries v. Ramkumar Jewellers* (2017) also reinforced the principle that using a public figure's image without consent in commercial promotions could constitute infringement of both intellectual property rights and personality interests¹¹. Collectively, these judgments underscore India's reliance on constitutional principles, tort law, and intellectual property analogies, but also reveal the fragmented and ad hoc nature of enforcement in the absence of dedicated statutory provisions.

In contrast, the United States treats personality rights primarily as property interests. In *Zacchini v. Scripps Howard Broadcasting Co.* (1977), the Supreme Court held that broadcasting a performer's entire "human cannonball" act without consent infringed upon his economic right to benefit from his performance. The Ninth Circuit in *White v. Samsung Electronics* (1992) protected Vanna White's persona against a commercial parody involving a robot, affirming that even evocative likenesses can trigger liability. Similarly, *Hart v. Electronic Arts* (2013) extended protection to college athletes' digital avatars in video games,

¹⁰ Neil Weinstock Netanel, *Copyright and a Democratic Civil Society*, 106 *Yale L.J.* 283, 288–97 (1996), <https://digitalcommons.law.yale.edu/ylj/vol106/iss2/1>

¹¹ Paul M. Schwartz & Daniel J. Solove, *Reconciling Personal Information in the United States and European Union*, 102 *Cal. L. Rev.* 877, 880–91 (2014), <https://doi.org/10.15779/Z38ZG9C>

and *Olivia de Havilland v. FX Networks* (2018) illustrated tensions between publicity rights and First Amendment protections. The US framework emphasizes commercial remedies while balancing expressive freedoms.

Europe emphasizes human dignity and informational self-determination. In *Von Hannover v. Germany* (2004), the European Court of Human Rights protected Princess Caroline of Monaco from intrusive paparazzi images. *Google Spain v. AEPD* (2014) established the “right to be forgotten,” empowering individuals to request de-indexing of outdated content, while *NT1 & NT2 v. Google LLC* (2018) and *GC & Others v. CNIL* (2019) refined the scope and territorial reach of digital erasure, emphasizing the balance between rehabilitation, privacy, and public interest.

The divergence is clear: India relies on constitutional dignity, US law prioritizes commercial interests, and Europe integrates human rights with enforceable digital remedies¹². Indian jurisprudence demonstrates a growing recognition of personality rights, but the absence of statutory clarity leaves enforcement fragmented. As global precedents illustrate, effective protection in the digital era requires a separate legislative framework that balances autonomy, commercial value, and dignity.

4. Intellectual Property and Personality: Trademarks, Copyright, and the Right of Publicity

The intersection of intellectual property (IP) law and personality rights illustrates how modern legal systems attempt to safeguard identity not merely as a dignitary interest but as an economically valuable asset. Names, likenesses, voices, and signatures increasingly function as brands, capable of generating immense commercial value in industries ranging from cinema and sports to digital media and influencer marketing¹³. The law has therefore sought to extend IP doctrines originally designed to protect creative works and market distinctiveness towards the control of personal identity. Yet, the approaches taken in India, the United States, and Europe reveal different trajectories, with overlapping protections and significant gaps that leave individuals vulnerable to exploitation.

Intellectual Property Rights (IPR) and personality rights are closely connected because both

¹² Mark P. McKenna, *The Right of Publicity and Autonomous Self-Definition*, 67 *U. Pitt. L. Rev.* 225, 230–38 (2005), <https://doi.org/10.5195/lawreview.2005.53>

¹³ Apoorva Mehta, *Persona, Property, and Publicity: Reconsidering the Right of Publicity in India*, 24 *Nat'l L. Sch. India Rev.* 115, 121–27 (2012), <https://www.jstor.org/stable/44283811>

aim to protect valuable, distinctive attributes one of creative or commercial value, and the other of personal identity. Personality, including a person's name, image, likeness, voice, signature, and other unique traits, increasingly functions as a marketable asset, especially for celebrities, influencers, and public figures. IPR provides legal tools to safeguard these attributes by extending doctrines traditionally meant for creative works or commercial marks to personal identity. For example, trademark law allows individuals to register names, stage names, logos, or distinctive gestures, preventing unauthorized commercial exploitation and protecting the persona as a brand. Copyright can protect artistic works, photographs, or recordings associated with an individual, indirectly safeguarding personality by controlling reproduction or public use. Similarly, design rights, database rights, and even emerging AI related protections can help regulate the commercial use of personal attributes.

The nexus lies in the recognition that identity is not just a private right but also an economically valuable resource¹⁴. By applying IPR principles, the law treats personality as a quasi-property interest allowing individuals to control and monetize their identity while preventing misappropriation. In effect, IPR serves as a bridge between personal dignity and economic exploitation, providing a structured legal framework to protect personality in both physical and digital spaces.

In India, the most visible form of protection emerges through trademark law, where celebrities often register their names, stage names, or even unique gestures as marks to prevent unauthorized commercial exploitation. For instance, in *Titan Industries Ltd. v. M/s Ramkumar Jewellers* (Delhi HC, 2012), the Court restrained a jeweler from using photographs of Amitabh Bachchan and Jaya Bachchan in advertisements without consent, recognizing that such unauthorized endorsements amounted to misappropriation. Similarly, in *DM Entertainment v. Baby Gift House* (Delhi HC, 2010), the Court protected singer Daler Mehndi's persona against the unauthorized sale of dolls resembling him, holding that celebrity reputation forms a valuable commercial right¹⁵. Most recently, in *Amitabh Bachchan v. Rajat Nagi & Ors.* (Delhi HC, 2022), the actor secured an injunction against misuse of his name, voice, and image in digital and commercial platforms, demonstrating judicial recognition of personality rights in the age of online exploitation. These cases highlight how Indian courts creatively deploy

¹⁴ Graeme Austin, Private Rights for the Public Good? Intellectual Property in the Global Marketplace, 26 Yale J. Int'l L. 463, 468–75 (2001), <https://digitalcommons.law.yale.edu/yjil/vol26/iss2/5>

¹⁵ Uma Suthersanen, *Design Law in Europe: Creation and Marketing of Fashion* 201–208 (Routledge 2012), <https://doi.org/10.4324/9780203961567>

trademark, copyright, and passing off principles, but the absence of a codified right of publicity leaves remedies fragmented and uncertain, especially in digital contexts where likenesses can be instantly replicated or manipulated.

By contrast, the United States has evolved a far more direct system through statutory and common law publicity rights, recognized in over thirty states. These rights explicitly acknowledge that an individual's persona has commercial value and that unauthorized exploitation whether through advertisements, video games, or merchandise requires compensation. The principle was reinforced in *ETW Corp. v. Jireh Publishing, Inc.* (6th Cir. 2003), where Tiger Woods challenged the sale of paintings featuring his likeness, raising the issue of balancing publicity rights against artistic expression¹⁶. While the court allowed the paintings under First Amendment grounds, it underscored the strong judicial recognition of publicity claims. In *Hart v. Electronic Arts, Inc.* (3d Cir. 2013), the unauthorized use of college athletes' likenesses in video games was held to infringe publicity rights, extending protection into digital entertainment. More recently, *Olivia de Havilland v. FX Networks* (California Ct. App., 2018) addressed whether dramatized portrayals of real celebrities in biographical series violated publicity rights; the court sided with free speech but highlighted the ongoing judicial engagement with evolving media exploitation. This framework ensures robust remedies, including damages and injunctions, though courts must constantly navigate the tension with First Amendment protections.

Europe's framework, while equally attentive to personality, is anchored in dignity and moral rights rather than pure economic interests. Under copyright law, authors retain moral rights that prevent distortions of their works which could harm their reputation, indirectly supporting personal identity protection¹⁷. But the most transformative development has been the General Data Protection Regulation (GDPR), which empowers individuals to control personal data, including images, names, and online identifiers. This regime provides a robust mechanism against unauthorized digital exploitation. In *NT1 & NT2 v. Google LLC* (UK, 2018), the High Court balanced rehabilitation and privacy with public interest in access to information, refining the "right to be forgotten" in the online context. Soon after, in *GC & Others v. CNIL* (CJEU, 2019), the European Court clarified the territorial limits of the right to be forgotten, holding

¹⁶ Richard Garnett, Privacy, Commercial Exploitation and Human Dignity, in *The Law of Privacy and the Media* 65–74 (Mark Warby et al. eds., Oxford Univ. Press 2016), <https://doi.org/10.1093/he/9780198715987.003.0004>

¹⁷ Thomas McCarthy, *The Rights of Publicity and Privacy* §§ 1:1–1:7 (Thomson Reuters 2020), <https://store.legal.thomsonreuters.com>

that delisting obligations under the GDPR do not extend globally but must respect proportionality and free information flows. These judgments, alongside earlier cases like *Google Spain v. AEPD* (2014), show how Europe prioritizes dignity, privacy, and informational autonomy over property-based remedies.

A comparative perspective reveals clear overlaps and gaps. In India, personality rights remain underdeveloped, forcing courts to borrow from trademark, copyright, and privacy jurisprudence without offering comprehensive remedies. The US provides strong commercial protection but risks under protecting dignity where speech interests dominate¹⁸. Europe prioritizes dignity and privacy but lacks a property-based remedy that could address commercial misappropriation. Together, these differences highlight the urgent need for India to adopt a hybrid statutory framework that, like the US, recognizes the economic value of identity while, like Europe, safeguarding dignity and digital autonomy. Without such harmonization, personality rights in the age of AI, deepfakes, and global commerce will remain fragmented and inconsistently enforced.

5. Personality Rights in the Digital Era: Challenges from Social Media, Search Engines, AI, and Commercial Exploitation

The digital era has profoundly reshaped the landscape of personality rights, transforming individual identity into a persistently reproducible, commodified, and globally visible asset. Social media platforms, search engines, and digital archives allow unprecedented self-expression, personal branding, and audience engagement, but they also amplify vulnerabilities. Unauthorized use of names, photographs, voices, or synthetic replicas can spread across digital networks within seconds, often leaving individuals powerless to control their own identity or manage reputational consequences. In this context, personality rights have evolved from matters of dignity and autonomy into critical instruments of digital survival.

Search engines present a unique challenge by indexing content that can remain indefinitely associated with a person, including outdated or misleading reports, allegations, or criminal proceedings. Such persistent visibility can severely affect professional prospects, social perception, and psychological wellbeing¹⁹. European jurisprudence, particularly the landmark

¹⁸ Aparna Chandra, *Autonomy, Identity, and Constitutionalism: Personality Rights in India*, 7 *Indian J. Const. L.* 75, 82–89 (2013), <https://ijcl.in>

¹⁹ Peter K. Yu, *Cultural Relics, Intellectual Property, and Intangible Heritage*, 81 *Temp. L. Rev.* 433, 437–45 (2008), <https://scholarship.law.tamu.edu/facscholar/22>

Google Spain v. AEPD case, addressed these concerns by recognizing a “right to be forgotten,” enabling individuals to request removal or de-indexing of harmful or irrelevant information. The ruling emphasized that digital permanence can infringe on personal dignity and autonomy. Similarly, in social media contexts, impostor accounts or manipulated images have been used for financial gain or trolling, demonstrating that identity misappropriation extends beyond reputational harm into commercial and malicious exploitation.

The causes of such misuse are multifaceted. Rapid online content proliferation allows near instant replication without authorization. AI technologies, including deepfake tools, make it possible to create realistic yet fraudulent representations of individuals, including videos, images, and voice recordings. Algorithm driven amplification of sensational content further exacerbates the risks, as engagement driven platforms often prioritize virality over accuracy. High-profile examples include AI generated videos of celebrities used in unauthorized advertisements or political campaigns and influencer content replicated across websites for commercial gain. These incidents illustrate that digital misappropriation is pervasive, affecting public figures and private individuals alike.

The rise of AI generated content, particularly deepfakes, introduces novel threats to personality rights. Deepfakes can convincingly mimic an individual’s appearance or voice, enabling commercial, political, or malicious exploitation without consent²⁰. Unlike traditional copyright or defamation issues, synthetic identities are created algorithmically, leaving no clear human author for legal recourse. Questions regarding ownership, liability, and enforceable remedies remain unresolved, particularly in India, where personality rights are not statutorily codified. European data protection laws, including the GDPR, empower individuals to control personal information, but AI generated imitations often evade these protections as they do not constitute direct personal data. The United States relies on state-level publicity rights to address some commercial misappropriation, yet cross border and anonymous digital content often remain beyond the reach of existing frameworks.

Parallel to technological threats is the monetization of identity in the influencer economy. Influencers leverage personal images, voices, and curated personas to build digital brands and secure endorsements²¹. However, AI driven replication, impersonation, or unauthorized

²⁰ Sudhir Ravindran, Intellectual Property Rights and Personality Rights: An Overlap?, 12 J. Intell. Prop. L. & Prac. 245, 249–56 (2017), <https://doi.org/10.1093/jiplp/jpw181>

²¹ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* 212–218 (Oxford Univ.

commercial use undermines both credibility and market value. The rapid commercialization of personal identity risks reducing dignity and autonomy to mere economic performance, leaving individuals dependent on platforms' policies and contractual arrangements. Non-consensual deepfakes, algorithmic manipulation, and fraudulent endorsements exacerbate these vulnerabilities, highlighting the inadequacy of traditional privacy or defamation remedies.

India currently occupies a transitional space. Courts have acknowledged the importance of informational control and privacy, and limited judicial decisions have invoked principles akin to the "right to be forgotten" in cases involving sensitive personal information. Nonetheless, the absence of a comprehensive statutory framework leaves protection inconsistent and case specific²². Proposed legislation such as the Digital Personal Data Protection Act addresses data control but does not explicitly codify personality rights, leaving gaps in protection against AI driven misappropriation, social media exploitation, or commercial misuse.

The convergence of social media, search engines, AI, and commercial exploitation underscores the urgent need for a harmonized statutory framework in India. Such a framework should integrate preventive and compensatory mechanisms, regulate unauthorized digital and commercial uses of identity, and provide clear remedies for reputational harm caused by synthetic media. By learning from international best practices while aligning with constitutional values, India can protect both personal dignity and economic autonomy, ensuring that identity remains under individual control in the digital age.

6. Comparative Remedies and Regulatory Models: Statutory, Tort, Contract, and Administrative Routes

Statutory frameworks form the backbone of personality rights enforcement across jurisdictions, providing clarity and predictability to both individuals and commercial actors. In the United States, publicity rights are primarily governed by state statutes, with California and New York offering the most developed examples. California's Civil Code grants individuals the right to control the commercial use of their name, voice, signature, photograph, or likeness, extending these protections even after death²³. New York, which historically resisted broad publicity

Press 2016), <https://global.oup.com>

²² David Erdos, Data Protection and the Right to Reputation: Filling the Gaps after Google Spain, 6 J. Intell. Prop. Info. Tech. & Elec. Com. L. 122, 128–34 (2015), <https://www.jipitec.eu>

²³ Vikram Raghavan, Privacy and Publicity Rights: A Constitutional Dialectic, 9 NUJS L. Rev. 289, 296–302 (2016), <https://nujlawreview.org>

rights, has recently codified protections for deceased personalities, reflecting the growing recognition of celebrity identity as a valuable asset. In Europe, the approach is more holistic, emphasizing privacy, dignity, and data protection through instruments like the General Data Protection Regulation (GDPR) and the Charter of Fundamental Rights. Article 17 of the GDPR, the “right to erasure,” empowers individuals to control their digital identity, allowing them to request removal of harmful or outdated content. In India, statutory protection remains fragmented. While the Trade Marks Act, 1999, the Copyright Act, 1957, and the constitutional right to privacy provide partial safeguards, the absence of dedicated legislation leaves courts to adjudicate on a case by case basis, creating uncertainty for both celebrities and ordinary citizens.

Tort law supplements statutory protections by offering flexible mechanisms to address personality rights violations, though its application varies significantly across jurisdictions. In the United States, tort claims such as misappropriation, defamation, and invasion of privacy are frequently invoked, with misappropriation of likeness being particularly effective against unauthorized commercial use or digital manipulation. The European model embeds tort like remedies within the broader framework of privacy and data protection law, allowing courts to recognize reputational harm as actionable under civil law and GDPR enforcement. India, by contrast, relies heavily on judicial creativity in the absence of codified tort remedies. Courts occasionally invoke principles such as passing off, breach of confidence, and defamation, but these remedies remain fragmented, inconsistent, and often dependent on protracted litigation, undermining timely enforcement against misuse in digital or AI driven contexts.

Consumer protection and contract law offer another important avenue for safeguarding personality rights, particularly in commercial scenarios. Within the influencer economy, contracts define permissible use of a person’s name, image, or digital likeness²⁴. In the United States and European Union, endorsement agreements often include explicit clauses addressing AI manipulation or posthumous content use, anticipating emerging threats such as deepfakes. European consumer protection authorities actively monitor misleading endorsements, reinforcing transparency and ethical practices. In India, the Indian Contract Act, 1872, allows private parties to regulate identity related rights through contractual agreements; however, enforcement remains weak due to unequal bargaining power, particularly for emerging

²⁴ N.S. Gopalakrishnan, *Intellectual Property Rights: Unleashing the Knowledge Economy* 178–185 (Eastern Book Co. 2011), <https://www.ebcwebstore.com>

influencers and non-celebrity individuals²⁵. Although consumer protection law theoretically applies to false or misleading endorsements, it has not been systematically developed to tackle AI driven identity manipulation or large-scale digital misappropriation.

Administrative oversight further strengthens personality rights enforcement by holding intermediaries accountable. In the United States, the Federal Trade Commission (FTC) actively regulates deceptive endorsements, influencer marketing, and online misrepresentation. European Data Protection Authorities (DPAs) similarly enforce GDPR compliance, imposing penalties for unauthorized processing of personal data. India, however, lacks a dedicated regulatory authority for personality rights. The Digital Personal Data Protection Act, 2023, provides a foundation for administrative enforcement but primarily addresses data protection and fails to explicitly cover commercial exploitation of identity. This absence of centralized oversight leaves a critical enforcement gap, particularly in the context of cross border digital platforms and AI generated content.

To address these deficiencies, India requires a harmonized framework that integrates statutory, tort, contract, and administrative measures. Dedicated legislation should define the scope of identity attributes, establish remedies for unauthorized use, and explicitly include post-mortem rights, allowing heirs or estates to exercise control over commercial exploitation²⁶. AI specific safeguards must be incorporated, including platform liability for hosting synthetic or manipulated content and mandatory labelling of AI generated material. Contract law reforms should ensure fair and transparent endorsement agreements to protect creators and influencers. Finally, administrative enforcement should be strengthened through a specialized authority empowered to issue penalties, mandate takedowns, and coordinate with international regulators. Comparative analysis demonstrates that while the US, EU, and India offer partial remedies, enforcement remains fragmented. A harmonized Indian framework recognizing both post mortem and AI related risks is essential to safeguard the dignity and economic value of personal identity in the digital age.

7. Recommendations: Law Reform, Harmonisation, and a Blueprint for India

The absence of a dedicated statutory right of publicity in India highlights a significant gap in

²⁵ Lawrence Liang, *Beyond Representation: Intellectual Property, Personality Rights and the Digital Commons*, 5 *Sarai Reader* 235, 241–48 (2005), <https://archive.sarai.net>

²⁶ Ritu Sharma, *Publicity Rights and the Indian Legal Landscape*, 25 *J. Intell. Prop. Rts.* 157, 162–70 (2020), <https://nopr.nispr.res.in>

the legal system, particularly when contrasted with the United States and Europe. While Indian courts have occasionally recognized personality rights under the broader canopy of the right to privacy, as in *ICC Development v. Arvee Enterprises* and *Titan Industries v. Ramkumar Jewellers*, these protections remain inconsistent and heavily dependent on judicial discretion²⁷. A comprehensive statutory right of publicity would create clarity by defining the attributes of identity deserving protection, including name, image, likeness, voice, signature, digital avatars, and biometric identifiers. Such legislation should address both living and deceased individuals, ensuring post mortem publicity rights can be exercised by heirs or estates, thereby preventing unauthorized commercial exploitation after death a lacuna that California law, for instance, effectively addresses. Codifying these rights would shift enforcement away from piecemeal litigation, provide predictable remedies, and empower individuals to assert identity as a form of property with both economic and dignitarian significance.

The rise of AI generated content, deepfakes, and algorithm driven amplification has introduced unprecedented risks to personality rights in India. Social media platforms and digital spaces, where regulatory oversight is still evolving, have enabled unauthorized endorsements, synthetic likenesses, and manipulated videos, often undermining personal dignity and democratic processes. To address these challenges, India should implement a dual-layer regulatory framework. First, AI specific safeguards should require platforms to label AI generated content, enabling users to distinguish between authentic and synthetic identities, while imposing liability on companies that knowingly host or promote harmful content. Second, influencer economies must be monitored to prevent deceptive practices, unauthorized impersonations, or undisclosed paid partnerships. Drawing lessons from the US Federal Trade Commission guidelines and the EU Digital Services Act, India could establish rules on disclosure, accountability, and redress. Integrating biometric verification or blockchain backed authentication for high-risk categories, such as political advertising, could further reduce identity misuse in critical public spheres.

Harmonization with global best practices is essential for India to maintain both legal and commercial competitiveness in a digital first economy²⁸. The United States, through state statutes and common law, has pioneered the recognition of publicity rights, ensuring that

²⁷ Mark A. Lemley, Property, Intellectual Property, and Free Riding, 83 Tex. L. Rev. 1031, 1037–45 (2005), <https://law.stanford.edu/publications/property-intellectual-property-and-free-riding>

²⁸ Prabha Kotiswaran, Autonomy and Vulnerability in the Indian Supreme Court's Privacy Jurisprudence, 12 Indian J. Const. L. 55, 61–69 (2018), <https://ijcl.in>

celebrity identity is protected against unauthorized exploitation. India could emulate California's model, where rights are transferable, descendible, and enforceable posthumously. The European Union, by contrast, emphasizes privacy and data protection, as seen in GDPR provisions regarding consent, erasure, and profiling, which offer critical insights for safeguarding identity against algorithmic manipulation²⁹. A selective integration of these approaches a hybrid model that balances the commercial protections of US publicity rights with the dignity oriented, rights based framework of the EU would align with India's constitutional ethos under Article 21, while fostering innovation and creative industries.

A comprehensive Indian blueprint for personality rights must rest on legislation, regulation, enforcement, and awareness. Legislation should define identity attributes, grant statutory control over commercial and dignitaries use, and recognize AI generated content and post mortem rights. Regulatory oversight by a specialized authority under the Ministry of Electronics and IT or the Data Protection Board could issue takedown orders, impose penalties, and coordinate internationally to manage cross border violations. Enforcement mechanisms should include civil remedies such as injunctions, damages, and account of profits, alongside criminal sanctions for wilful impersonation or malicious content creation, with fast track tribunals to reduce procedural delays. Finally, awareness campaigns and industry self regulation would foster responsible digital identity practices among influencers, media platforms, and consumers. By adopting a statutory right of publicity reinforced with AI and social media oversight, harmonized with global models yet grounded in India's constitutional principles, the country can protect personal dignity, preserve democratic integrity, and unlock the economic potential of identity in the digital era.

8. Conclusion

The study of personality rights reveals a common truth across jurisdictions: identity today is not merely a matter of personal dignity but also an asset of immense economic and cultural value. The comparative and doctrinal exploration undertaken in this research shows that while different systems India, the United States, and Europe have developed their own models, none in isolation provides a complete answer to the challenges of the digital age. Instead, the synthesis of their experiences highlights the urgent need for a harmonized and forward-looking

²⁹ Katherine J. Strandburg, *Privacy, Personality, and Intellectual Property in the Digital Economy*, 21 *Berkeley Tech. L.J.* 1401, 1405–14 (2006), <https://btlj.org>

framework. Judicial developments have consistently recognized that names, likenesses, voices, and digital representations hold significance far beyond traditional notions of privacy. From constitutional interpretations of dignity and autonomy, to the evolution of publicity rights and data protection laws, courts and legislatures alike have attempted to respond to the rising misuse of personal identity. Yet, the analysis makes clear that each jurisdiction, despite its strengths, also faces gaps: one leans too heavily on constitutional privacy, another on commercial property, and yet another on human dignity. The convergence of these trajectories suggests that personality rights demand a hybrid model one that secures personal dignity while simultaneously acknowledging economic value and digital vulnerability.

In the digital environment, the challenges have grown more acute. Artificial intelligence, deepfakes, social media exploitation, and the permanence of online archives have stretched existing doctrines beyond their capacity. Individuals now face the dual risk of reputational harm and commercial misappropriation, often without adequate remedies. The doctrinal analysis shows that relying solely on privacy jurisprudence leaves courts with limited tools; treating identity only as property risks overlooking its intrinsic link to human dignity; and focusing only on dignity fails to address the tangible market value of personality. Together, these lessons point toward the necessity of a comprehensive statutory scheme that integrates the strongest features of each model.

For India in particular, the comparative insights are instructive. Borrowing the economic recognition of identity from the American model and the dignity centered protections of the European framework, while grounding both in the constitutional promise of Article 21, would provide a balanced blueprint. Such a statutory scheme could codify publicity rights, provide remedies for digital misappropriation, and regulate AI driven identity exploitation, thereby closing the gaps left by piecemeal judicial improvisation. This approach would also bring much needed consistency, offering clarity to individuals seeking protection and to industries that depend on lawful use of celebrity or personal identity.

Ultimately, this research demonstrates that personality rights have outgrown the fragmented protection offered by traditional doctrines of privacy, tort, and intellectual property. They now demand a dedicated legal framework that recognizes their dual character: as a dignitary interest fundamental to autonomy and as a commercial interest central to modern economies. By adopting a hybrid model that harmonizes global best practices, India can not only safeguard

personal identity in the digital era but also position itself as a leader in shaping the jurisprudence of personality rights for the twenty first century. The conclusion is therefore clear: harmonisation, statutory recognition, and adaptability to technological change are no longer optional but essential to ensure both personal dignity and economic justice in an increasingly digital world.

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