
RETHINKING PERSONALITY RIGHTS IN THE DIGITAL ERA

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ABSTRACT

The rapid changes of digital era has foundationally reshaped the way an individual's identity is created, represented and used which is raising serious concerns for the personality rights protection. This paper goes through the background and evolution of personality rights from their origin to present-day development of digital-era, where identity is seen as dignity and also as a property with commercial value. The Indian legal framework will be thoroughly analysed and highlights the gaps which are fragmented and inadequate, that needs to be filled. Indian legal framework relies totally on constitutional interpretation, Tort law and IPR principles rather than a proper codified statutory regime.

In this study we will explore emerging challenges like misuse of social media, deepfake technology, NFTs and online defamation, which poses significantly higher risks to individual's personality (identity and reputation). A comparative analysis will be made between United States, European Union and United Kingdom. Key lessons for India from these nations to India has been broadly studied. A balanced approach that protects personality rights while safeguarding freedom of speech and expression is majorly the need of the hour.

Hence the absence of a codified, comprehensive legal framework will leave the individuals vulnerable in the digital era. It can be recommended that enactment of the personality rights Act will strengthen the existing data protection laws and also specialised mechanisms for effective enforcement has to be established parallelly. So the study ultimately argues for a nuanced and forward looking legal approach that aligns both developing technology with constitutional values of dignity, freedom of speech and expression.

Keywords: Personality rights, Right to Privacy, Right to Publicity, Deepfakes, Article 19, Article 21, online defamation.

BACKGROUND OF THE STUDY:

In modern legal jurisprudence, personality rights will play a crucial role in addressing the meeting point of individual rights, human dignity, and economic considerations. The traditional doctrinal bounds of personality rights have been under extraordinary stress as human society continues to evolve at an accelerating rate into digital areas. Current legal framework is not sufficient to protect personal identity (like person's name, image, voice etc.) as the digital technology makes it so simple to copy, alter, and profit from this information. The famous 1890 essay by Samuel Warren and Louis Brandeis, which said that the common law should safeguard an individual's right "to be given required space or to be let alone,"¹ is typically credited for preaching privacy as a legally recognised right. What Melville Nimmer called the "right of publicity" emerged when courts and academics gradually separated between the private and commercial aspects of personality in the decades that followed.² These days, the conceptual foundation of personality rights doctrine is formed by the twin architecture of privacy and publicity.

More than legislative interference, the judiciary played an important role in the formation, evolution and amendment of personality rights in India. The Supreme Court has, over time, made it quite clear that a person's privacy—including aspects linked to their identity and personality—is protected under Article 21. This comes through strongly in cases like *R. Rajagopal v. State of Tamil Nadu*³ and *Justice K.S. Puttaswamy v. Union of India*.⁴ That said, on the ground, things are not as settled as they may seem. There is no one inclusive or complete law that deals with personality rights only.

Meaning and how the personality rights evolved?

Personality rights can be seen as the set of rules or rights that allows a person to control how their identity is used, whether it is for commercial gain or otherwise. These rights will cover different aspects of a person's identity (like name, image, voice, signature, etc. This has developed over time through different legal concepts and not an overnight thing even though it seems straightforward today. On the non-commercial side, William Prosser's well-known classification of privacy torts like privacy intrusion or invasion, public disclosure of personal

¹ Warren & Brandeis, 'The Right to Privacy' (1890) 4 Harvard Law Review 193.

² Melville B. Nimmer, 'The Right of Publicity' (1954) 19 Law & Contemporary Problems 203.

³ *R. Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632.

⁴ *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

data without consent etc. has helped to explain how the law protects individuals from misuse of their identity. On the commercial side, scholars like Melville Nimmer and later J. Thomas McCarthy played a key role in shaping the idea of the “right of publicity,” which focuses on the economic value attached to a person’s identity.⁵

The idea of personality rights has evolved alongside changes in technology. It all started in nineteenth century with the advent of photography, that is when people began objecting or complaining to the unauthorised use of their photos or images and a very good example in legal dispute according to this statement is *Roberson v. Rochester Folding Box Co.*⁶, here the statutory right to privacy in New York has been upheld and interestingly the court initially refused to grant relief but the public backlash eventually helped. The evolution of mass media like cinema, radio, television from the twentieth century has increased the exposure of individuals making them vulnerable identity thefts and exploiting their identity for commercial purposes.

Digital age has made the situation more vulnerable, especially the advancement of social media which allowed people to create fake accounts by hiding their identities, at the same time, artificial intelligence made the job of fraudsters to create more realistic stuff (realistic audio and video) to an extent where sometimes placing people in situations that never actually happened. Entire new ways to monetise the personal identity has happened with the Technologies like NFTs and blockchain. So new developments, leads to fresh questions and challenges legally.

So personality rights protection is very important as they serve multiple purposes, as they help individuals have control over how their identity is being used, also preventing misuse. Public figures have economic benefit from their identity. At a more foundational level, the personality rights protect a person’s dignity by making sure that their identity is not used in a harmful or misleading way without their consent.

Now, the main research question is the lack of codified laws for personality protection rights and, to divide and control jurisdictions to handle the problems that digital technology brings to personality rights. The lack of efficiency of intellectual property laws, tort law and

⁵ J. Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, West 2000).

⁶ *Roberson v Rochester Folding Box Co* 171 NY 538 (1902).

constitutional law regarding digital threats , so jurisdictional complexity has arisen.

The following goals are pursued in this paper:

1. To explain evolution of personality rights conceptually and historically;
2. To guide how to overcome shortcomings of the current Indian legal system relating to personality rights;
3. To discuss challenges to personality rights in the digital age and technology advancements;
4. Comparative analysis pertaining to personality rights in the US, the EU, and the UK; and
5. To suggest some suggestions for legislative reform in India.

Research Questions:

- i. Right to privacy and right to publicity, how did the Indian courts understood and connected the both?
- ii. Are the existing laws in India strong enough to protect personality rights in today's digital age?
- iii. What lessons India can take from the United States, European Union, and United Kingdom on how to deal with personality rights?
- iv. How can we get legislative reforms to fill the gaps without disturbing the constitutional rights and mainly freedom of speech and expression?

CONCEPTUAL FRAMEWORK OF PERSONALITY RIGHTS

Personality rights are those rights that will allow a person to control how to use their identity both in private and public domain. These rights are two dimensional, that is they are dual natured. On one side they protect the person's dignity which is not for sale anytime and on the other hand these rights recognize certain aspects of a person's identity like name, facial features, tone etc. which can have a commercial value and can be used for the profit often

through legal means. These rights are not totally intellectual or commercial in nature like patents or copyright or trademarks. They are also not personal or totally private in nature to speak about torture or harassment or inhuman treatment. These rights fall somewhere in between. In this sense we can appreciate the German legal system that has developed a very structures way via a concept of *Persönlichkeitsrecht*, where the personality is treated as an unified right in the branch of human dignity.⁷ In India we didn't approach in this way instead we have dealt with these issues through laws like tort, right to equality and intellectual property law which is more fragmented in nature.

Personality rights and the right to privacy are not the same, some overlap can be observed. Privacy is more about protecting the person from any unwanted invasion into their personal space. Personality rights are a step ahead, as they allow individuals to control the commercial usage of their identity. This creates a choice on how we want to be projected. For example, a celebrity can choose to make their identity public and gain profits and also keep restrictions on how it can be used and by whom.

Supreme court in *K. S. Puttaswamy v. Union of India* has described privacy as broad and still evolving concept that includes many aspects of human identity, dignity and personal autonomy over private information. This judgment doesn't include the commercial aspects of the personality rights but it laid an important constitutional foundation that can support them in future. The idea of a "right of publicity" has emerged separately from 1950's. this allows people to prevent others from using their identity in any kind for any commercial gain without the consent of that particular person. The reason is pretty straight forward that is any person has built any reputation through their own talent then they should have the right to benefit and control it totally. The Indian courts through various cases like *ICC Development (International) Ltd v. Arvee Enterprises*⁸ and *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*⁹ have started recognising and have begun to treat celebrity's identity as something that needs protection legally from any kind of unauthorised use as they are very vulnerable and important at the same time.

There are two aspects to these rights, one being moral and the other being commercial usage.

⁷ Bernhard von Meibom and Henning Hühne, 'The Right of Personality in German Law' (2002) 23 *European Intellectual Property Review* 579.

⁸ *ICC Development (International) Ltd v Arvee Enterprises* (2003) 26 PTC 245 (Del).

⁹ *D.M. Entertainment Pvt. Ltd. v Baby Gift House and Ors.* CS(OS) 893/2002 (Del HC).

Moral side talks about dignity which is non-transferable and may even continue after death. The commercial aspect is very flexible and vulnerable as it can be licensed and assigned just like any other property which is in accordance with The Transfer of Property act, 1882. A celebrity can allow their photograph to be used in an advertisement but they can still raise an objection if there is any misuse which can directly or indirectly harms their public image.

We have many legal tools to address the personality rights. One being the breach of confidence which protects which protects private information shared in trust and other being passing off, which helps prevent false endorsements. Defamation helps protect reputation. Malicious falsehood will deal with false statements related to financial losses. So, all these remedies covers only a part of the problem and not everything related to personality rights.

Amongst various jurisdictions the United States have the most developed framework when it comes to publicity rights, with specific laws in place. The EU on the other hand have an indirect approach through GDPR¹⁰ (data protection rules) which includes “right to be forgotten”. The courts in *Von Hannover v. Germany* have tried to give a balanced approach between privacy rights and freedom of expression.

INDIAN LEGAL FRAMEWORK:

Article 21 of the Indian constitution deals with right to life and personal liberty, that no one shall be deprived of this right except in accordance with a method established by law. This article serves as the primary constitutional base for personality rights in India. Many other rights have gradually come within the Supreme Court's broad interpretation of Article 21, like right to privacy, right to dignity and right to reputation. The nine-judge bench in *Puttaswamy case*¹¹ ruled right to privacy is a fundamental right which is safeguarded by the part III of the Indian constitution. Through various judicial precedents, the courts have acknowledged personality rights as separate set of rights. Here we can observe two tracks, one being the publicity track which gives control on the commercial exploitation of their identity and other being privacy track which protects people from privacy intrusion:

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L119/1.

¹¹ *Puttaswamy* (n 6) para 142 per Chandrachud J.

Case Laws:

1. R. Rajagopal v State of Tamil Nadu:

Every citizen has a right to protect their privacy. This right includes private and intimate information concerning their personal life events, family, maternity, education and other such things. Publishing such content without consent is not acceptable. Also, it will be against this right. Exception is that the material that is in the public record can be published or discussed. So right to privacy and right to publicity were up-held in this case.

2. Justice K.S. Puttaswamy v Union of India:

This is the most important judgment which helped in evolution of the personality rights. Court held that right to privacy is a basic and fundamental right and the personality rights in the digital sphere, where collection and usage of personal information are acknowledged as a separate aspect of the right to privacy.

3. ICC Development (International) Ltd. v Arvee Enterprises

The Delhi High Court in this case has discussed that right to publicity is an inherent right. AS it gives them the ability to manage the usage of their personalities for profit. It held that right to publicity is a kind of property right that exists independently and in addition to the right to privacy.

4. D.M. Entertainment v Baby Gift House

Here the court held that commercial exploitation of a character (here of a renowned artist Daler Mehndi) without permission is an inactionable violation, so the Delhi High Court granted relief against the unlawful production and distribution of dolls that were fashioned after the renowned artist Daler Mehndi. As here the celebrity's persona (which is their style of look and also demeanour) is a protectable right and if commercially exploited without consent is an actionable violation.

Relation with copyright and trademark:

In India personality rights are partially protected under the trade mark law, which is the Trade

Marks Act of 1999. It offers protection against unauthorised use in cases where a celebrity's name or voice or any such aspects have been registered as a trademark. In *Titan Industries Ltd. v. Ramkumar Jewellers*¹² the Delhi High Court acknowledged that a famous person's endorsement contract in association to any brand creates protectable bonafide. This protection is totally commercial in nature and could not cover all types of harmful exploitation and trademark registration have formal procedures that many people can't afford.

Performers protection is provided through performers rights of the Copyright Act 1957. They don't fully address the entire scope of the personality rights issues and here the scope is narrow. Performers rights do not cover the involuntary or non-consensual usage of the performers image or voice in the situations that don't have any relation to the protected performance. But they can protect from broadcasting of a live performance without consent.

So we can say that India does not have any specific laws or rules or remedies in relation to the personality rights alone. Many people, leaving apart the stardom or status are facing digital age atrocities and personality rights at stake always. Most importantly the posthumous Publicity rights, scope of performer rights which is narrow, deep fakes and AI generated content and many others lack the precise regulations. The insufficiency of data protection laws to address commercial exploitation of personality rights stands out to be a major issue today.

DIGITAL ERA CHALLENGES TO PERSONALITY RIGHTS

Nowadays social media has become a place where people express themselves more clearly and constantly interact with others. YouTube, Instagram, X, Facebook etc are no longer just for content sharing. They are places where an identity has been actively build for the users. Many users portray or carefully project what they want to show and carefully shape how they appear online and by doing so they are creating a real economic value. This is the "influencer economy". Along with the pros comes cons. So the misuse of the digital content or identity has become a serious problem. Things like content copying, fake accounts, huge endorsements have been confusing and has become a dangerous threat in the digital space. So the personality rights are at stake.

Deepfake technology has become one of the biggest concerns nowadays. Also by using AI we can create realistic content where a person appears to say or do things they never actually said

¹² *Titan Industries Ltd v Ramkumar Jewellers* (2012) 50 PTC 486 (Del).

or did. An average viewer can't make the difference sometimes. This is a serious issue when such content is used to harm someone's reputation.¹³

By using the combination of this and various other types of technologies some non-consensual intimate content is being created. And these deepfakes are used to spread false statements, fake endorsements and even political misinformation. In *Anil Kapoor v. Simply Life India*¹⁴, the Delhi high court has stepped in to protect a celebrity's identity from being misused through these digital tools.

Another issue that we see nowadays is the Meme culture. Many of them are harmless or humorous, but sometimes they are also crossing the boundaries where someone's image is used in a misleading, defamatory or demeaning way without consent, and this amounts to violation of their rights. So the boundary between acceptable satires or comedy and actionable exploitation has been crossed.

New technologies like NFTs (non-fungible tokens) have brought-in new challenges to the room. Tokenisation of digital assets has made it possible to create, sell and buy NFTs based on the photos and likeness of actual people without their consent. It is still in infancy stage where the kind of laws that can be applied here are still in a point for discussion stage.

An important law that establishes a framework for the protection of personal data in India is the Digital Personal Data Protection Act 2023. But it only partially address the personality rights issues brought up by surveillance capitalism as it majorly concentrates on data protection and not commercial exploitation of the identity. IT Act 2000, also partially address issues like online defamation and related harms. This is supported by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. But these instruments gives limited relief only.

So practically a person's identity should not be used without their consent. But it is not how it works online. Also websites often use design tricks also known as dark patterns to trick the users into giving more consent than they realise. It is another threat on the digital space.

¹³ Nina Wang, 'Deepfakes: The New Face of Online Deception' (2021) 34 *Harvard Journal of Law & Technology* 477.

¹⁴ *Anil Kapoor v Simply Life India & Ors CS(COMM) 652/2023 (Del HC)*.

COMPARATIVE ANALYSIS:

In UK there are no separately recognised personality rights as a clearly defined legal right. Instead, the protection of the personality is spread across different areas of law, which makes the overall approach somewhat unclear and inconsistent. The system in UK relies on a mix of existing laws rather than having one specific law. So the UK courts have been cautious about expanding law to recognise personality rights formally. In UK privacy is covered under the concept of misuse of private information which has developed from the breach of confidence after the Human Rights Act, 1998. Passing off is used to prevent false endorsements. Defamation law protects reputation. This model is quite close to the Indian legal system.

The US have a well-defined and well developed system for publicity rights which are in alignment with state laws, common law and its constitutional principles. The first amendment created a key role as it protects the freedom of speech. In *Midler v. Ford Motor Co.*, the court held that even imitating a person's different voice without using their name or image for commercial utility can be in violation of their publicity rights.

The European Union takes a strong stand through data protection, mainly under GDPR(data protection rights). Individual's personal data are given important rights, like access, correction and deletion of photos, biometrics, data and most interestingly included online identity too. Their key feature "right to be forgotten" under Article 17 allows people to request removal of their data in certain cases.

India has a few clear takeaways by looking at the other countries. The US shows why it is very important to have proper codified law that recognises personality rights, while balancing them with freedom of speech and expression. The EU shows how strong data protection laws can treat personality as a part of personal data and that it is not just something to be used commercially. The UK shows that relying on various common laws is not a solution for the problem especially in today's fast changing digital world.

NEED FOR LEGAL REFORMS:

We don't have codified laws for personality rights. The existing laws are an amalgamation of constitutional principles, tort law, intellectual property rights and a few inferences from judicial precedents. So this leaves a patch that needs heavy work to cover. This gap leaves the

individuals without clarity, access and proper legal protection. The process also comes across with huge expenses, time consuming and uncertainty in the outcomes is add on. So India needs a strong personality rights act with proper definitions and punishments. So this codified act will have all the rights and obligations for maintaining personality rights. Specific provisions of the act should definitely specify provisions related to AI generated content and deepfakes. AI generated content without the consent of the real individuals except under the exceptions mentioned in the copyright act should be prohibited for creation. The Digital Personal Data Protection Act 2023, must be strengthened in several aspects related to personality rights. The Act's framework for consent should be reinforced. The Judiciary (Indian) played a very important role in developing personality rights doctrine. Drawback is that the courts can only decide the cases in-front of them, they can't establish any accountable framework for personality rights protection. So it is therefore, the legislature must take responsibility to protect India's 21st century personality rights regime.

CONCLUSION:

This paper looked at how the personality rights have changed over time starting from 19th century privacy law to the complicated role played in the digital space in the 21st century. It took a closer look at the current laws in India and points out the serious gaps in how these rights are protected. It also discussed the newer challenges like social media misuse, deepfakes, NFTs, online defamation- all of which will affect a person's identity and reputation. We have seen the approaches by the United States, European Union and the United Kingdom which offers and useful insight, but they can't be simply copied and pasted to Indian legal system.

This investigation leads to four important findings. Firstly, personality rights in the digital era are beyond the scope of Indian law as it currently exists. People are exposed to grave abuses due to the lack of a specific statute, the narrow scope of tort and intellectual property law, and weaknesses in current data protection measures. Secondly, the Indian courts have played a significant role in personality rights over the period of time, especially the judgments have helped to fill some gaps, but only this is not sufficient. We still need a proper well define law to deal with these rights in a more consistent way. Third, while comparing jurisdictions provide useful advice, their methods need to be carefully modified rather than completely embraced. Lastly, personality rights are important but not at the cost of freedom of speech and expression. Proper balance has to be maintained and these rights should be in accordance with Constitution

of India.

A few suggestions have emerged based on this. There is a strong need for a codified and dedicated Personality Rights Act. This should cover both privacy and commercial aspects with clear definitions and also provide practical remedies like licensing and posthumous protection. Should deal with modern issues like deepfakes and create more transparent platform. Also, Digital Personal Data Protection Act, 2023 needs to be strengthened and encourage real content and prevent manipulative practices like dark patterns and many more. Specialized tribunal to be setup to provide faster remedies and decisions. Most importantly any new law to protect freedom of speech and expression, including journalism, satire, parody in consensus with the constitutional framework. While this paper lays the groundwork, there are still several areas that need deeper research going forward.