
RECLAIMING IDENTITY IN THE AGE OF ARTIFICIAL INTELLIGENCE: RETHINKING THE ADEQUACY OF PERSONALITY RIGHTS IN INDIA

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Introduction

In an era characterized by the swift advancements in artificial intelligence, this paper delves into the suitability of current Indian law in safeguarding personality rights. Its main research issue is whether the current Indian legislation adequately protects the individual personality right from AI generated misuse of identity and if not then what legislative changes are needed in the current framework. According to a secondary research how can comparative models from UK, Germany, Italy and US affect the development of a more robust development in the Indian Framework?

The research approach of this paper is doctrinal in nature. This paper analyses the primary legal sources which is the constitutional provisions, the statutes and the case laws from India and four comparative jurisdictions UK, US, Italy and Germany, alongside the secondary academia, and the comparative analysis is used normatively to identify what elements are missing in the Indian framework which can be adapted from the foreign framework.

This paper has 4 research objectives, first being to map the existing doctrinal landscape of the personality rights in India and identify the gaps in structural and theoretical limitations, secondly to analyse the adequacy of the Indian civil and criminal law in addressing the AI generated identity harms for example- deepfakes, voice cloning etc. thirdly, to comparatively evaluate the models of personality rights protection in the US, UK, Italy and Germany with a view to identify and evaluate provisions that India can maybe adopt. Fourth, being to purpose the framework of a hybrid civilcriminal- regulatory statute for personality rights in India, rooted in the constitutional values of dignity and autonomy recognised in the case of Puttaswamy.

This paper is structured into four chapters , chapter 1 talks about the historical and theoretical

foundations of personality rights, chapter 2 maps the current doctrinal landscape in India and identifies the structural limitations, chapter 3 explores the comparative models of personality rights protection, and finally chapter 4 analyses the adequacy of civil and criminal law against the AI-generated identity harms, and proposes a hybrid legislative framework as a solution.

SUB-THEMES

This paper is formatted around four interconnected sub-themes. The first being the theoretical foundation of personality rights, then examining the three primary factors- dignity, autonomy, and economic value and arguing that no single theory is sufficient to address the harms which is caused by the AI-generated identity misappropriation.

The second sub-theme talks about the doctrinal limitations of the Indian law, and critically examines the existing laws and protection provided under the tort of passing-off, article 21, privacy jurisprudence, copyright, and criminal provisions under BNS and IT act, identifying the celebrity bias in passing off doctrine and the gap between privacy law and commercial identity protection, and the challenges undermining the criminal enforcement.

The third sub-theme is more on discussing the personality rights in different jurisdictions and comparing it with India and understanding from different country models and what India can learn from it.

The fourth sub-theme concerns legislative design. Drawing on the doctrinal and comparative analysis, the paper proposes a three-pronged hybrid framework comprising civil remedies available to all individuals regardless of commercial goodwill, targeted criminal liability for serious AI-generated identity harms, and a regulatory regime governing AI systems that create or deploy identity attributes.

The fourth sub-theme concerns with the legislative design, drawing on the comparative and doctrinal analysis, the paper proposes a 3 pronged hybrid framework comprising of the civil remedies available to all individuals regardless of the commercial goodwill, targeted criminal liability for serious AI-generated identity harms, and a regulatory system governing the AI systems that create or deploy identity attributes.

Chapter 1: Conceptual and Doctrinal Foundations of Personality Rights

A. Historical Emergence and Civil Law Origins

At a time when identity can be replicated, bought and sold, manipulated, and digitally manufactured on an industrial scale, who owns the self? The name, the voice, the likeness, and other unique identifiers that distinguish persons have come to possess tremendous commercial value. Recognising this fact, courts have been forced to admit personality to be more than simply a matter of expressive reality; personality interests have increasingly been treated as legally cognisable interests warranting protection. But how are personality interests to be protected? Does the law secure an individual's autonomy over their identity, or does it instead protect the commercial interest in a public persona? These are the questions driving this paper, which seeks to delineate the contours of personality rights in India today.

The roots of modern personality rights doctrine can be traced back to German scholars' development of the right to personality more fully, the *allgemeines Persönlichkeitsrecht* or general right of personality. German jurists Hermann von Gareis and Otto von Gierke pioneered the concept of *Personlichkeit*, describing it as an aggregation of legally protectable interests including *Leben* (life), *Ehre* (honour), *Namen* (name), and *Personlichkeit selbst* (personal identity). Independently of property or contract.¹ Individuals were thought to have rights against others who interfered with these personal interests. Foremost among these protections was the idea that an individual's identity loosely defined was worthy of protection by the law. This was grounded firmly in dignity.

This approach heavily influenced continental European law. In France, which had developed its own civilian theory of *droits de la personnalité*, the *droit à l'image* was protected as a facet of personality grounded in autonomy. According to the European Court of Human Rights' decision in *Recklos and Davourlis v Greece*, image rights fall under the auspices of private life protected by Article 8 of the ECHR: "The Court reiterates that the placing of an individual's image within the public domain without their consent constitutes an interference with their right to private life. In particular, the Court observes that everyone's image discloses their unique features and constitutes one of the principal elements of one's personality."² In

¹ Paul M Schwartz and Karl-Nikolaus Peifer, 'Prosser's Privacy and the German Right of Personality: Are Four Privacy Torts Better than One Unitary Concept?' (2010) 98 California Law Review 1925, 1928–1930.

² *Recklos and Davourlis v Greece* App no 1234/05 (ECtHR, 15 January 2009).

other words, under European law, the right to control one's identity is distinct from the economic interest in a public persona. This holding will be relevant in considering how AI deep fakes and fake identities interact with personality rights later in this paper.

B. Personality Rights in India: A Hybrid and Derivative Framework

Personality rights in India have evolved neither from a discrete legislative grant, nor exclusively from constitutional jurisprudence, but rather from an accretion of constitutional principles, judgemade doctrines, and piecemeal case law. In India, we have not so clearly identified the personality right as an extension of human dignity as in Germany nor have we allowed it to separate entirely from dignity concerns to form an independent commercial tort as in the United States. Instead, Indian courts have reached the protection of identity through a derivative application of laws concerning privacy, defamation, intellectual property, and more. Some scholars have criticised Indian law's reluctance to develop a distinct right of personality as a system that is both hybrid and derivative: While drawing from intellectual property, privacy, and reputation law, it is not reducible to any one of those causes of action.

It is true that Indian law does not recognise a freestanding right of personality. But Indian courts have nonetheless found such protection in a bundle of derivative constitutional and statutory rights. First, and most obviously, is Article 21 of the Constitution, which guarantees the right to life and personal liberty. Courts have held on numerous occasions that there exists a fundamental right to privacy in personal identity which would be violated were a person's identity to be publicised without consent (*R Rajagopal v State of Tamil Nadu*).³ The right to privacy was given express recognition by a nine-judge bench in *K S Puttaswamy v Union of India*, where the Court expressly distinguished privacy in personal information from privacy of identity. 'We distinguish privacy of information from privacy of identity. Privacy of information relates to the facts about an individual. Privacy of identity relates to the person as recognised by society.'⁴

Indian courts have consistently found that privacy law is insufficient to ground protection for publicity interests. In *D M Entertainment Pvt Ltd v Baby Gift House*, the Delhi High Court explained that protecting personality interests solely under privacy law risks missing instances

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

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

where identity is commercialised without disclosure of personal information.⁵ Likewise, in *Anil Kapoor v Simply Live India & Ors*, the Delhi High Court granted relief protecting Kapoor's name, voice, likeness, and persona from AI-generated violation, thereby implicitly recognising that neither privacy nor any of India's existing intellectual property regimes were adequate by themselves to address AI deep fakes.⁶

C. Theoretical Justifications: Dignity, Autonomy, and Economic Value

Scholarly discussions of personality rights' theoretical underpinnings have generated three primary justifications: dignity, autonomy, and economic value. The dignity theory justifies protection of identity on the grounds of human dignity. The image and identity of a person are not assets which lie outside of the person and may be commercially bought, sold, or monetised. To the contrary, they form essential constituent parts of what makes that person who they are. A violation of personality rights is therefore a violation of the dignity of the person: It reduces them to a mere commodity.

The autonomy theory, meanwhile, understands personality protection as the right to control external perceptions of oneself. Privacy scholar Helen Nissenbaum has described this as the right "to define for oneself who and what one is."⁷ In essence, personality rights enable individuals to author the narrative of their own persona and control the context in which those identities are circulated. Autonomy rights justify protection for self-defined identity attributes, including gender expression, branding, and manner of speech.

Finally, the economic theory, or property theory justifies protection of identity interests on the basis of economic value. According to this view, which formed the basis of American right of publicity jurisprudence for many years, commercial identity has come to possess value through both intentional labour (investment of time and image in developing a persona) and unintentional market forces (becoming well-known). This market value justifies legal protection.⁸

However, critics have argued that while each of these theories is persuasive on its own terms,

⁵ D M Entertainment Pvt Ltd v Baby Gift House 2010 SCC OnLine Del 479.

⁶ *Anil Kapoor v Simply Life India & Ors* CS(COMM) 652/2023 (Del HC, 2023).

⁷ Mira T Sundara Rajan, 'Moral Rights in the Digital Age: New Possibilities for the Democratisation of Culture' (2002) 16 *International Review of Law, Computers & Technology* 187, 190.

⁸ J Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, Thomson West 2023) § 1.1.

they are each individually inadequate to ground protection for identity interests against AI deep fakes.⁹ Any robust theory of personality rights must take each of these concerns into account.

D. Personality Rights: Human Right, Tort, or Proprietary Interest?

The question that requires asking before embarking on our analysis: what exactly are personality rights? Are they best conceptualised as a human right, a tort cause of action, or a property right? On one hand, treating personality rights as fundamental rights guaranteed by the Constitution would enable courts to ground personality protection. Doing so would facilitate constitutional remedies under Articles 32 and 226, allowing cause of action to proceed directly on this basis. But treating personality rights as fundamental rights tether those rights to notions of dignity and bodily autonomy embedded in Part III jurisprudence.

On the other hand, if we treat personality rights either as a tort or property interest, the implications are significantly different. Tort causes of action imply not only availability of damage suits but also import elements of the cause of action from defamation, privacy, and so on. Property rights, meanwhile, connote alienability. These latter two approaches risk conflating personality with intellectual property interests, resulting in further entrenchment of personality rights doctrine within commercial exploitation.

The three characterisations are not mutually exclusive. For the reasons that follow in subsequent sections, this paper argues that elements of each approach must be brought to bear on understanding personality rights in India.

Chapter 2: Personality Rights in India – Scope, Structure, and Limitations

As this Chapter has laid out, the law in India provides protection for personality interests, though it has yet to robustly recognise those interests as independent of privacy and defamation law. We are now in a position to ask: to what extent do our laws in India currently protect personality rights, and what are the doctrinal limits on those protections?

A. Constitutional Grounding under Article 21

The strongest legal footing for a personality right in India appears to be under Article 21 of

⁹ Shyamkrishna Balganesh, 'Debunking Blackstonian Copyright' (2009) 118 Yale Law Journal 1126.

the Constitution, which guarantees that no person shall be deprived of their life or personal liberty except according to a procedure established by law. The expansive judicial interpretation of Article 21 has placed within its scope a litany of interests relating to personal dignity, informational privacy, and personal autonomy. Territorially, Puttaswamy recognised privacy to be inclusive of online spaces, which would seemingly extend to AI-generated content as well.¹⁰

Puttaswamy provides the strongest constitutional footing for personality rights in India. However, there are significant drawbacks with the constitutional route. First, constitutional relief under Articles 32 and 226 are writs against the state, though public applicability of fundamental rights has been recognised by Indian courts in certain cases. However, most cases involving violation of personality rights will be horizontal, occurring between private parties. Article 21 therefore appears to offer more theoretical support for a right to personality than actual remedies. Therefore, instead of acting as a self-executing mechanism for relief in commercial misappropriation instances, the constitutional framework works best as a normative foundation against which private law doctrines are formed and interpreted.

B. Judicial Reliance on the Tort of Passing Off

In the absence of a statutory cause of action for violation of personality rights, Indian courts have had to reach for other laws to provide legal protection. Indian courts have relied on defamation, copyright, trademark, and the tort of passing off to provide limited legal remedies where personality rights have been violated.

The tort of passing off traditionally protects commercial goodwill from misrepresentation. Passing off requires claimants to establish a reputation in a relevant market, misrepresentation by the defendant that is likely to lead the public to believe that the goods or services offered by defendant are those of the claimant or associated with the claimant, and damage or likelihood of damage to the goodwill. Courts have found the tort of passing off applicable in a variety of cases involving the right to identity. In *Titan Industries Ltd v Ramkumar Jewellers*, Delhi High Court Judge Ashok Bhan laid out the following: “In my opinion a celebrity personality like an actor, sportsman, film maker has a goodwill and reputation in relation to his endorsements. The celebrity identity and the value associated with his endorsements

¹⁰ K S Puttaswamy v Union of India (2017) 10 SCC 1.

constitute goodwill for the purpose of the tort of passing off, Use of photograph of celebrity by defendant will no doubt amount to misrepresentation as would likely to induce the public to believe that the goods or services offered by defendant are those of the plaintiff or are connected with the plaintiff in some manner.”¹¹

The courts have further expanded this principle in *Gautam Gambhir v DAP & Co*, wherein it was held that “Here there is misrepresentation on the part of the defendants in exhibiting false advertisement sheets which would clearly lead any viewer to believe that the goods and wares sold and supplied by them are associated with the well-known celebrity cricketer, Mr. Gautam Gambhir. It would amount to passing off since the plaintiff has got the goodwill attached to his personality.”¹² Structurally, there are several concerns with relying on the tort of passing off to secure protection for personality rights. In passing off, the plaintiff must first make a showing of goodwill associated with their identity. Next, the plaintiff must show misrepresentation. However, what constitutes “misrepresentation” is doctrinally tied to a false claim of association. Content that makes no express claim of association such as AI deep fakes allowing a person to say things they never actually said but still invades the commercial interest in a public identity may therefore not qualify as actionable passing off. Finally, the plaintiff must show damage to their goodwill. Noncommercial misappropriations and scandalous uses that do not on their face damage reputation may therefore fail to qualify as actionable under passing off.

C. The Relationship Between Personality Rights and Privacy Jurisprudence

Although at first glance it may seem intuitive to claim that personality rights are a sub-set of privacy rights after all, don’t we “possess” our identities? legally speaking, Indian courts have had occasion to clearly delineate privacy rights from personality rights. Privacy, as defined in Indian courts through judgments like *Puttaswamy* and *R Rajagopal v State of Tamil Nadu* protects the interests of informational privacy, bodily integrity, and personal autonomy. But privacy rights do not inherently protect a person’s right to control their identity in public spaces.

To understand why this is important, consider that a violation of privacy must generally also disclose private information about the plaintiff. But a person’s identity which is their name,

¹¹ *Titan Industries Ltd v Ramkumar Jewellers* 2012 SCC OnLine Del 2382.

¹² *Gautam Gambhir v DAP & Co* CS(OS) 410/2017 (Del HC).

voice, or likeness may not be considered private. Consider a passing off claim in which a celebrity's image is used to endorse a product without their consent. No private information is divulged. The person's identity has simply been used without authorisation for commercial purposes. Privacy law in India is not well equipped to handle this violation however the personality rights law, in protecting the autonomy we have over our public identities, can.

D. The Celebrity Bias and the Ordinary Person Problem

No discussion of the current state of Indian personality rights law would be complete without mention of the celebrity bias pervasive in passing off cases. Of the cases examined above, all involve celebrities who are either nationally or internationally recognised figures. Simply put, Indian personality rights jurisprudence where it exists protects celebrities.

But why should celebrity matter at all? If our theoretical framework is grounded in autonomy or dignity, then it should matter naught whether the plaintiff is a famous celebrity or an ordinary person. If my photo is used without my consent in an advertisement, it violates my right to control my identity whether or not I am a celebrity. What differs between celebrity use and non-celebrity use is the scale of commercial injury.

Chapter 3: Comparative Models of Personality Protection

The doctrinal fragmentation and structural defects discussed in the last chapter are unfortunately not unique to India. However, as will be demonstrated through brief surveys of the law in the United States, the United Kingdom, Italy, and Germany, other countries have developed to a greater or lesser extent more coherent models for identity protection. Placing these models in conversation with one another achieves two goals. First, it highlights both Indian law-makers and courts normative options by showing what exists elsewhere. Second, it underscores the limitations inherent in each legal framework so that importable provisions can be distinguished from those dictated by local politics or traditions.

A. United States: Right of Publicity as Property- based right

i. Statutory and common law foundations

The right of publicity describes the most robustly commercial set of personality rights doctrines in any common law jurisdiction. Regarded as property in many states, the right of

publicity grants individuals exclusive control over the commercial value of their name, image, likeness, voice, and persona. Under U.S. law, the right of publicity has both statutory and common law expression: some states, most notably California and Florida, have adopted specific right of publicity statutes while others recognise the right under state common law¹³, with *Zacchini v Scripps-Howard Broadcasting Co* establishing the Supreme Court's formulation of the right as grounded in "the economic interest which a person has in his own name and likeness." American courts have expanded the substance of the right incrementally.¹⁴

Where originally conceptualised as protecting against unauthorised duplication of name and likeness, courts have since extended the right to the composite identity of celebrities, including by sound-alikes or likeness analogues. The Ninth Circuit's decision in *Midler v Ford Motor Co* extended the reach of the right of publicity to the appropriation of singer Bette Midler's 'identity' by the unauthorised imitation of her distinctive voice in a commercial advertisement. In doing so, the Court reasoned that while Midler's name and likeness were not used in the advert, she was nonetheless identifiable by virtue of her famous voice. The implications for AI voice cloning would therefore seem considerable: if audio digitally manipulated to approximate a celebrity's voice but not technically deemed to "copy" that voice is enough to violate the right of publicity under American law, mere synthesised audio which captures the commercial appeal of the persona might also be actionable under existing precedent. The Restatement (Third) of Unfair Competition similarly describes the interest in identity as comprising "any characteristic that publicly identifies a person".¹⁵

ii. Property Orientations and Pitfalls

The American right of publicity is explicitly property-oriented. To the extent that it is recognised under common law, it is inheritable, transferable, and in most states, survives the death of the celebrity for a number of years. Intellectual property scholars like J Thomas McCarthy have defended the property orientation of the American right of publicity on the ground that it accurately tracks the commercial reality of celebrity in contemporary culture. By grounding protection for identity in market value, argue proponents of this view, celebrities and famous individuals can monetise elements of their persona in the same way that they might

¹³ Cal Civ Code § 3344 (West 2024); Fla Stat § 540.08 (2024).

¹⁴ *Zacchini v Scripps-Howard Broadcasting Co* 433 US 562 (1977).

¹⁵ *Midler v Ford Motor Co* 849 F 2d 460 (9th Cir 1988).

license other proprietary assets.

However, a purely property-oriented approach to protecting identity interests is not without its costs. Because the right of publicity attaches only to commercially-valuable elements of identity and incentivises holders to monetise aspects of their persona, dignitary concerns take a decidedly secondary role. A knowingly offensive deep fake that causes incalculable personal humiliation to its target but does not interfere with any tangible endorsement or commercial deal may therefore fall outside the scope of protection offered by the right of publicity. Similarly, because the right of publicity is contingent on celebrity status (someone must have already invested substantial labour or resources into becoming famous for the law to care about exploitation of their persona), the American model does not offer much help to private individuals.¹⁶

iii. The AI Challenge

AI synthesized identity misappropriation is beginning to be regulated directly in American law.

The state of Tennessee recently passed the Ensuring Likeness Voice and Image Security Act (ELVIS Act), which expressly includes AI generated replicas of voice within the statutory right of publicity, and prohibits the unauthorised creation or dissemination of digital voice replicas.¹⁷ A proposed federal law, the NO FAKES Act of 2024, would institute a federal right of publicity covering AI-generated replicas of individuals, taking audio and visual depictions without consent.¹⁸ Both state and federal laws demonstrate recognition among American lawmakers that extant right of publicity doctrine is unable to address directly harms caused by certain varieties of AI output.

B. The United Kingdom: Passing Off, Privacy, and the Absence of Personality Rights

i. Absence of sui generis protection

The United Kingdom does not recognise either a standalone personality right or right of

¹⁶ Ryan Calo, 'Robotics and the Lessons of Cyberlaw' (2015) 103 California Law Review 513, 549.

¹⁷ Right of Publicity Act 2020 (Virginia, USA); Tennessee ELVIS Act (Ensuring Likeness Voice and Image Security Act) 2024 — the latter explicitly covers AI-generated replicas.

¹⁸ NO FAKES Act (Nurture Originals, Foster Art, and Keep Entertainment Safe Act), proposed legislation introduced in the United States Senate, 118th Congress (2023).

publicity. Instead, courts have relied on tortious claims for passing off and breach of the equitable duty of confidence, as well as more recently the tort of misuse of private information, to protect interests in identity. This state of affairs has generated significant criticism from academic commentators, who argue that English law's piecemeal approach to identity protection is both over and underinclusive.¹⁹

Passing off was extended to cover personality-based claims by Laddie J in *Irvine v Talksport Ltd.*, who held that the unauthorised use of Formula One racing driver Richard Irvine's image in a radio advertisement fell within the actionable bounds of passing off because it damaged the claimant's 'interest in his own goodwill'.²⁰ *Irvine* was confirmed on appeal, as was the Court of Appeal's subsequent decision in *Fenty v Arcadia Group Brands Ltd* (trading as Topshop), which held that sale of a T-shirt emblazoned with singer Rihanna's image amounted to passing off where a significant proportion of the public would understand the image to suggest endorsement or association by the claimant.²¹

ii. Privacy

Development of the misuse of private information tort in England and Wales has at least somewhat supplemented protections available for identity interests. In *Douglas v Hello Ltd*, the House of Lords held that the unauthorised publication of wedding photographs taken under circumstances of confidentiality could found an action for breach of confidence (and by implication that an individual has a protectable interest in controlling the commercial exploitation of his or her image when that image is taken in private circumstances).²² *Campbell v MGN Ltd* confirmed that the misuse of private information about a person could give rise to liability even where the person in question was a public figure.²³

Privacy actions thus grant some protection for identity interests where those interests are cloaked in actual or perceived confidentiality. However, they cannot substitute for a property right in identity. Privacy actions protect against disclosure of information received in confidence, not the unauthorised commercial use of publicly-discernible identity markers. If

¹⁹ James Griffiths and Luke McDonagh, 'Personality Rights in English Law' [2013] Cambridge Law Journal 587, 590.

²⁰ *Irvine v Talksport Ltd* [2002] EWHC 367 (Ch), [2002] 1 WLR 2355.

²¹ *Fenty v Arcadia Group Brands Ltd (t/a Topshop)* [2015] EWCA Civ 3.

²² *Douglas v Hello! Ltd* [2007] UKHL 21, [2008] 1 AC 1.

²³ *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457.

someone's name, voice, or likeness is used in an AI-generated advertisement without consent, that person cannot sue for breach of privacy so long as no private information was disclosed even though the injury suffered is no less real than that suffered by breach of privacy. English law's failure to recognise any property right in personality leaves a gap in identity protection that cannot be remedied by passing off and privacy alone.

iii. Comparative Conclusion

The experience of the United Kingdom is instructive for India. The similarities are too close to ignore: in both countries, passing off has been wielded as the primary tool for addressing commercial injury to identity, and in both countries constitutional or positive law privacy rights have been understood as partially compensating for the absence of stronger protections for identity interests. Courts in both jurisdictions have struggled to develop a persuasive rationale for when exactly identity can and should be legally protected, leading to under-enforcement some areas and over-enforcement in others.²⁴

C. Italy: Civil Law Codification Grounded in Dignity

i. The Codified Right to One's Image

Italian law grants rights recognized under Articles 6 to 10 of its Civil Code. These articles expressly recognize, *inter alia*, a right to one's name and a right to one's image (*diritto all'immagine*). According to Article 10, 'the publication or display of a person's image in circumstances that may offend his or her honour, reputation or decorum, or harm legitimate family rights, or where it is used for commercial purposes without consent, shall give rise to an action by the person concerned for the court to order that the publication or display be prohibited or restricted in addition to any claim for damages.'²⁵ The correlative right to image under Italian law has been made by courts to flow from dignity and personality, rather than commercial strength alone. As the Italian Court of Cassation has held, the right to one's image: centers around matters of personal identity, and protection therefore arises not only in situations involving a commercial use but in any situation where use of the image is carried out against the will of the individual.²⁶ The critical thing to note about the Italian right to one's

²⁴ Tanya Aplin and Lionel Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press 2020) 112.

²⁵ Codice Civile (Italian Civil Code) arts 6–10 (governing rights to name and image).

²⁶ Corte di Cassazione, Sezione I Civile, 16 April 1991 n 4031 (Italy) (Veronesi case).

image is that, unlike the American right of publicity or the English law of passing off, it does not require the claimant to demonstrate goodwill in order to seek redress.

ii. Protection beyond the celebs

The importance of the Italian approach for India stems from the fact that it protects more than celebrities or stars. The fact that the right to one's image protects identity rather than marketability means that it attaches equally to every person, regardless of whether the person has become famous, or has acquired goodwill. Thus, a non-celebrity whose photograph is used by a brand in its advertisement without permission would have the same right as a celebrity in similar circumstances to control the use of her image by the brand.²⁷ Therefore, the Italian law of personality rights accords fully with the dignitary basis described in Chapter 1, and offers a framework through which India can disconnect the law of personality rights from the goodwill nexus.

D. Germany: Personality as a Grundrecht

i. Two Layers of Protection

Germany perhaps provides the strongest constitutional anchoring of personality rights of any jurisdiction we have discussed so far. Firstly, Article 1(1) of the German Basic Law states that the 'dignity of man shall be inviolable. To respect and protect it shall be the duty of all state power.'²⁸ Article 2(1) of the Basic Law further guarantees every person the right to 'develop his personality in freedom.' The German Federal Constitutional Court has read both of these provisions to collectively grant a general right of personality (*allgemeines Persönlichkeitsrecht*).

At the private law level, the German Federal Court of Justice (*Bundesgerichtshof*) affirmed the general right of personality to be an actionable right in civil law in *BGH Schacht*, and outlined three kinds of claims that could flow from the right: claims for damages; injunctions; and, in some cases, claims for payment in lieu of the injunctive relief²⁹. Going a step further, the German Federal Constitutional Court – in its judgment on the Census Act – introduced the

²⁷ Vittorio Zeno-Zencovich, 'Personality Rights' in Guido Alpa and Vincenzo Zeno-Zencovich (eds), *Italian Private Law* (Routledge 2007) 98–105.

²⁸ Grundgesetz (Basic Law) art 1(1) (Germany): 'Human dignity shall be inviolable'.

²⁹ *BGH*, 25 May 1954, *BGHZ* 13, 334 (*Schacht*) — foundational recognition of the general right of personality in German private law.

right to informational self-determination that prevents the unauthorized collection and use of personal information. Right to informational self-determination has gained currency against background of AI tools processing enormous quantities of personal data and creating synthetic version of personalities.³⁰

ii. Lebach Principle: A Balancing Test

The most useful takeaway from the German experience is the Federal Constitutional Court's approach towards reconciling the general right of personality with the freedom of speech and expression, or freedom of press. The seminal case on this front is the Lebach decision, where the court was required to determine whether the news of the release of a criminal convicted for murder and the broadcasting of his image violated his right of personality by broadcasting his identity repeatedly. The court held that naming and displaying the criminal's image and broadcasting it repeatedly closer to the time of his release interfered with the right to personality because his continued broadcast will hamper his rehabilitation as a social human being. This interference could not be justified by the news element. The court thus propounded the principle that freedom of speech will have to be balanced against the right of personality in cases where both came into conflict.³¹

This approach, which envisages a balancing of interests in each case instead of outrightly preferring one right over the other, can be emulated by Indian courts while dealing with cases regarding the right of personality. Issues regarding the extent to which personality rights can be enforced against freedom of speech (including satirical speech) and expression and the public's right to information about public figures are yet to be hammered out by Indian courts. German law thus provides an established doctrine to approach such issues.³²

iii. Takeaways for India

Indian law can borrow from the German experience in several ways. First, personality rights can receive constitutional recognition short of elevating it to the stature of a fundamental right enjoyed by citizens. The German Constitution and private law model demonstrates that the

³⁰ Bundesverfassungsgericht (BVerfG), 15 December 1983, BVerfGE 65, 1 (Census Act Case) — establishing the right of informational self-determination.

³¹ BVerfGE 35, 202 (Lebach) (Federal Constitutional Court of Germany, 5 June 1973).

³² Ansgar Ohly, 'Personality Rights' in Estelle Derclaye (ed), Research Handbook on the Future of EU Copyright (Edward Elgar 2009) 270–290.

two are not mutually exclusive and the twin layers of protection can complement each other with the constitutional providing the moral force and the latter providing the practical relief. Second, as seen from the German approach to right of personality at private law level, a dignity-based approach need not be unworkably vague or economically unviable. Third, the German approach towards reconciliation of right of personality with freedom of speech provides a model that Indian courts can adapt while dealing with similar conflicts. This is of increasing importance in the face of AI generated content which will often toe the line between protected speech and actionable appropriation. We can take away a few lessons from this comparative study. Rights structured around property such as the American right of publicity may offer easy administrative closure around economic disputes but fail dramatically at protecting dignitary concerns. Also, they tend to exclude private persons from within their scope. Rights recognized under patchwork common law doctrines such as those in the United Kingdom offer some recourse to commercial public figures through passing off and privacy but fail to offer redress beyond those narrow confines. Rights codified under civil law statutes such as in Italy offer a more wholesome alternative, recognizing personality rights under constitutional dignity instead of commercial value. Finally, rights that receive constitutional recognition such as in Germany offer the strongest foundation and the most well-developed means of reconciliation with freedom of speech in cases of overlap.

Chapter 4: Personality Rights in the Age of AI – Civil and Criminal Dimensions

Privacy at Crossroads: Synthetic Identity Deepfakes

Imagine the internet populated with videos of every person you know, doing things that they never actually did, created solely with artificial intelligence. Recent advances in AI technology now enable creation of photorealistic fake images, cloning of voices, and generation of video deepfakes depicting real people in scenarios they never chose to participate in. Deepfakes and synthetic voice cloning of prominent Indian citizens have already occurred. Combined with new capabilities in virtual digital avatars that can endlessly speak and behave like real persons without their consent, AI technology poses the greatest current threat to the right to personality.

Indian civil and criminal law provides few tools with which to address identity harms arising out of artificial intelligence technology. Chapter 2 described why the law of passing off provides inadequate protection for personality rights. Chapter 3 demonstrated how public and private defamation law is poorly designed for vindicating personality violations in most

instances. In this chapter, we discuss AI identity harms in further detail and argue that Indian criminal law provides little recourse for victims of personality violations stemming from AI and digital technologies.

Part A: Civil Law Inadequacy in the AI Context

i. The Nature of AI-Generated Identity Harm

AI produced identity harms manifest in four main ways. Deepfake technology enables the ‘performance’ of another person’s likeness (i.e. face and body movements) onto another person’s media stream (such as a video they appear in). Voice cloning enables the recreation of another person’s voice, with a synthetic voice clone speaking phrases the voice owner never spoke. Generative AI models such as ChatGPT and Gemini allow users to generate text, images and audiovisual representations of real people saying and doing things they never actually said or did. Digital avatar technology can create digital bodies that can speak and act endlessly, without any involvement from the person they portray.³³

What all these methods of identity reproduction have in common is that they allow identity attributes – face, voice, mannerisms, persona – to be reproduced realistically on a mass scale. They can be reproduced without consent, without compensation, and without the involvement of the person being reproduced. The harms that result range from economic harm from loss of endorsement value associated with identity, to dignitary harms from commercial or expressive use of one’s identity without consent, to autonomy harms over one’s own self-representation, to reputational harms associated with untrue assertions of conduct or speech.

ii. Deepfakes and the Limitations of Existing Passing Off Doctrine

As discussed in Chapter 2, several doctrinal limitations counsel against extending the common law tort of passing off to protect personality rights generally. When it comes to deepfakes, voice cloning, and other forms of synthetic identity technology, these limitations are at their starkest.

The first limitation is the requirement that the defendant must cause some misrepresentation. To be found liable in passing off, a defendant must falsely represent that goods or services are

³³ Deepa Kansra, 'Deepfakes and the Indian Legal Landscape: A Critical Appraisal' (2024) 36 National Law School of India Review 45, 58.

those of the plaintiff. But much harm is caused by deep fakes of celebrities where the public is not actually deceived as to who produced the underlying product. If a celebrity is shown drinking Coke in a deepfake video that is not likely to deceive anyone as to who brewed the drink. The injury is caused by the wrongful commercial utilisation of someone's likeness. But a plainly dishonest deep fake that say's Jessica Singh is drinking Pepsi when she obviously is drinking Coke and the video is plainly doctored may cause dignitary harm and commercial harm to Ms Singh without triggering the misrepresentation requirement of passing off.

The second limitation is that the plaintiff must have goodwill in their identity. As argued in Chapter 2, this effectively exempts ordinary people from any liability under the tort of passing off. If your photos are used by someone else on AI-generated content to advertise their product without your consent, you will have no remedy under passing off because you have no commercial goodwill in your own identity.

The third problem is that harms may be difficult to prove where the AI generated content did not divert any commercial benefit. For example, many deep fakes produced are not for commercial purposes at all, but for political chicanery, harassment, satire, or even entertainment. Much reputational damage and dignitary harassment may occur that does not actually involve loss of commercial endorsement value.

iii. Non-Commercial Misuse of Identity and Limits of Constitutional Remedies

As the previous section notes, much of the damage facilitated by AI technology will relate to noncommercial misuse of identity. A.I generated deepfake technology can be used for political espionage and manipulation, harassment, satire, and entertainment. This category of AI generated identity misuse is the hardest to reconcile with existing law.

Arguably, the constitutional right to privacy provides a cause of action to enjoin non-consensual use of one's identity. The constitutional right recognised in Puttaswamy would apply where either the state is involved in deepfake generation, or where the violation is serious enough to invoke horizontal application of the right to privacy. However, the realities of AI deepfake generation do not easily map to remedies under Article 32. Constitutional lawsuits take years to resolve. Such suits are expensive and may be technically challenging. It is difficult to identify anonymous online actors in order to file suit against them. Constitutional law is thus poorly suited to provide remedies for real time violations of personality taking

place in digital spaces.³⁴

India's lack of codified legal recognition of personality rights becomes acute in this context. The DPDP Act establishes a framework for obligations on data fiduciaries who process personal data, but does not directly cover identity appropriation through AI technology³⁵. Many deepfake images and videos can be generated without actually "processing" any personal data as defined under the Act. AI engines can create deepfake content of public figures using nothing more than publicly available pictures or videos. This creates obvious gaps in DPDP remedies. The Intermediary Guidelines place some content moderation responsibility on social media intermediaries,³⁶ but as noted in Chapter 3 does not give rise to a standalone right to restrict deepfake content. The Guidelines have also been poorly enforced against intermediaries.

iv. The Inadequacy of Copyright as a Substitute

Copyright law is also insufficient to serve as a complete substitute for privacy rights vis-a-vis protection of identity. Copyright does not protect identity, but only original expression. X person's identity their face, their mannerisms, their voice is not copyrightable. Copyright may protect certain pictures of X, or certain videos of X, or voice recordings of X, but it does not protect X's identity from being copied. AI engines can create new copyright infringing copies of X derived entirely from public content online including copyright protected content.³⁷

Part B: The Criminal Law Interface

i. Existing Criminal Provisions Applicable to Personality Violations from AI Technology

Indian criminal law has never really recognised personality rights as a distinct class of rights. The few criminal law provisions that may apply to violations of personality arising from AI technology were written to address conduct that is materially different from AI identity appropriation. These provisions include:

Sections 318 and 319 of the Bharatiya Nyaya Sanhita criminalise cheating, and cheating by

³⁴ K S Puttaswamy v Union of India (2017) 10 SCC 1.

³⁵ Digital Personal Data Protection Act 2023 (India), ss 4–5 (obligations of data fiduciaries).

³⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (India), r 3(1)(b).

³⁷ Shyamkrishna Balganesh, 'Privative Copyright' (2016) 73 Washington & Lee Law Review 1828, 1840.

impersonation specifically. The latter offence occurs when someone ‘by words, either spoken or written, or by conduct, represents himself to be another person’. ³⁸These sections may catch some cases of deepfake identity appropriation – specifically where someone uses a deepfake of a celebrity to directly extract money from someone else by false pretences. For instance, someone may send you a deepfake video of your boss asking you to transfer them money, and this is punishable under cheating by impersonation. But it will not capture many cases of commercial misuse of deepfakes where the celebrity’s identity is being used to earn money for someone else’s commercial benefit.

Section 356 of BNS deals with criminal defamation, which is committed when anyone ‘imputes anything to a person with intent to harm, or knowing that such imputation will harm, the reputation of that person’³⁹. As discussed in Chapter 3, personality rights violations need not involve harm to reputation (much less intention to harm reputation), and occur with or without falsity. If someone made a deepfake video of me giving a speech I never gave, it could cause me harm regardless of whether the ‘speech’ defamed me. Someone might show me wearing a Deadpool costume endorsing a product I’d never endorse. This is a violation of my personality rights whether the deepfake harms my reputation or not.

Section 66C of the Information Technology Act criminalises identity theft, which it defines to mean someone who ‘fraudulently or dishonestly uses the electronic signature, password or any other unique identification feature of any other person’.⁴⁰ Section 66D criminalises cheating by impersonation using a computer resource. Both these sections can apply to identity theft using AI engines – say a language-learning AI engine teaches you how to mimic someone’s voice, which you then use to defraud someone. But the statute requires that identity theft be done with fraudulent or dishonest intent. Many misappropriations of identity using AI will be neither fraudulent nor intended to cause financial harm.

ii. Evidentiary and enforcement Concerns

Beyond substantive limitations of criminal statutes in their applications to AI technology, there are significant hurdles to detection and enforcement. Enforcement of criminal law against violators of personality rights using AI will be technically difficult. Attributing creation of

³⁸ Bharatiya Nyaya Sanhita 2023 (India), s 318 (cheating), s 319 (cheating by impersonation).

³⁹ Bharatiya Nyaya Sanhita 2023 (India), s 356 (criminal defamation).

⁴⁰ Information Technology Act 2000 (India), s 66C (identity theft), s 66D (cheating by impersonation using computer resource).

deepfakes to anyone will be hard. Many AI engines used to create deepfake images and videos are available for free online, and can be used by anyone. Policing deepfake technology use will likely require cooperation from the private companies who are hosts of this technology.

Detection of deepfakes is another area where India lags behind. Agencies in India will need training and equipment to spot deepfakes.

Enforcing criminal law against AI deepfakes will frequently raise cross-border jurisdictional issues. This is because deepfake technology is often generated in one jurisdiction (the tool is hosted in country A), distributed through servers in another jurisdiction (social media platform servers in country B), and consumed in India. Sorting out which country's criminal law applies to certain deepfake videos of Indian personalities, and how Indian law enforcement can prosecute foreign creators, will take time that our criminal law systems do not have. International criminal law treaties are not well equipped to deal with fast-evolving technologies.⁴¹

iii. Recent Judicial Engagement

With respect to AI-generated identity violations, however, Indian courts have started to flex their muscles within the confines of the existing doctrine. The Delhi High Court decision in *Anil Kapoor v. Simply Life India & Ors* did grant an injunction against AI-generated misappropriation of the plaintiff actor's identity-signifiers – including his persona and his voice. Further, the judgement explicitly recognised that this framework had to be supplemented to better respond to the harms specifically caused by generative AI models. The case was decided in civil court, but its implications for the criminal law interface remain instructive – namely, that existing doctrine is simply insufficient to deal with these harms and requires supplementation at a legislative level.⁴²

Part C: *Should Personality Violations Be Criminalised?*

i. Arguments in Favour of Criminalisation

Arguments in favour of criminalising certain violations of personality rights specifically

⁴¹ Smriti Parsheera, 'Platform Governance and AI: Regulatory Gaps in India's Digital Framework' (2023) 15 *Journal of Indian Law and Society* 110, 125.

⁴² *Anil Kapoor v Simply Life India & Ors* CS(COMM) 652/2023 (Del HC, 2023).

caused by AI technologies rest on three bases. Firstly, seriousness of the harm caused. AI can enable deep fakes, voice cloning, and synthetic media that can seriously damage a person's reputation, livelihood, relationships, and mental health. Creating and distributing non-consensual deepfakes of individuals in sexual scenarios has been internationally recognised as a form of sexual violence/harassment, and multiple jurisdictions have sought to criminalise the same. The dignitary harm caused by AI-generated identity appropriation reducing a person to a set of data that can be replicated at will is of a similarly serious nature, and may well justify criminalisation.

Secondly, criminal sanctions may provide better deterrence for powerful, well-funded actors who will find loopholes in any civil law framework. Violations of personality rights by AI application pose difficulties for civil enforcement, especially given that most violators possess greater financial and technological resources than their victims, and may often operate internationally in ways that make pursuing civil remedies untenable. Custodial sentences and criminal fines present an opportunity for stronger deterrence against AI-generated personality violations, especially if backed by adequate jurisdiction and enforcement provisions.⁴³

This is implicit in the direction taken by the European Union, whose proposed AI Act imposes significant fines for uses of AI that it prohibits, including manipulative AI systems, and puts forth an outright regulatory framework for high-risk AI uses involving biometric data. It indicates an international move towards using measures stricter than civil law to govern AI-generated identity harms.

Thirdly, India recognised an independent rights to privacy in Puttaswamy, grounded in Part III of the Constitution. Criminalising AI violations of personality rights would reaffirm the importance of individual dignity and autonomy in the face of technological developments working actively to undermine it.

ii. The Risk of Over-Criminalisation

However, several reasons counsel caution against criminalisation. Foremost among these is the risk of over-criminalisation. Criminal law cannot determine the line between what constitutes valuable speech and what constitutes harmful speech with perfect precision.

⁴³ European Parliament, Artificial Intelligence Act (Regulation (EU) 2024/1689), arts 5, 50 (prohibiting certain AI practices and imposing transparency obligations for synthetic media).

Content generated by or about real individuals using AI ranges from legitimately harmful deep fakes intended to harass and defraud, to satirical content that allows AI-users to engage with politics and celebrities in productive ways, to avant-garde art that pushes the limits of expression and technology. Broad criminal provisions against AI violations of personality rights that do not carefully separate harmful from legitimate activity risk chilling speech that the state should have no business chilling. The Law Commission of India has itself expressed hesitation over criminalisation in scenarios where expression-related harms are involved. Overcriminalisation is a risk where the State seeks to punish valuable speech alongside harmful speech by failing to demarcate the offence satisfactorily.⁴⁴

The concern is particularly acute where, as here, the technology itself is not inherently bad or harmful, but specific uses of the technology cause harms. A criminally-sanctioned regime that targeted specific harmful uses of AI (non-consensual deepfakes created for commercial gain, harassment, or political manipulation) rather than AI-generated identity violations as a general category would likely be both more proportionate and more enforceable in practice.

It is very essential to draw a precise line between AI identity harms that warrant criminalisation and those that do not. Not every unauthorised use of a person's image is a matter of criminal law. Where a company is using a celebrity's image for promoting something without their consent is primarily a economic harm, the person is losing the control over the commercial value of their identity and the associated revenue through brand endorsements. This is a wrong that definitely deserves some kind of remedy, but that remedy should lie in civil law. An injunction to restrain the further use, the damages caused and the profits made from such a misappropriation are the proportionate responses.

Criminal liability should be reserved for identity based harms which are very serious in nature like non-consensual sexual deepfakes, AI assisted frauds and manipulation through synthetic media where the gravity of the harm, the deliberateness of the conduct and the public interest justify penal sanction. Therefore the distinction is not between the harms that are they serious enough or not, it is just that those that are serious enough to criminalise and those that are better left to the civil remedies.

⁴⁴ Law Commission of India, Report No 267, 'Hate Speech' (2017), discussing the limits of over-criminalisation in expression-related offences.

iii. The Need for a Separate Legislative Framework

Based on the discussion till now, this paper opines that Indian lawmakers need to take a 3-pronged approach to AI-generated violations of personality rights. Civilly, this would involve the introduction of a statutory framework for personality rights which-Explicitly defines personality rights to include name, image, voice, persona and other publicly; identifiable aspects of individual identity; Makes protection of such rights available to all individuals, irrespective of existence of commercial goodwill; Provides specific tortious causes of action for violation of such rights by AI; Provides remedies of injunctive relief, damages for economic loss as well as mental anguish and moral wrongdoing, and disgorgement of profits; Mandates specific duties and obligations on AI creators and distributors with respect to collection and use of personal data and identity attributes for training and deployment of generative AI models.⁴⁵

Criminally, this would involve enacting provisions which- Criminalise creation and distribution of synthetic media depicting real individuals in a sexual manner without their consent; Criminalise

AI identity misappropriation used for purposes of fraud or targeted harassment or for political gain; Enhance penalties under existing provisions for infliction of economic loss via AI generated deepfakes by attributing commercial endorsement value to the targeted individual's identity; Provide a framework for jurisdiction that is specific enough to deal with trans-border AI generated identity violations.

We have previously seen that the upcoming Digital India Act, proposed in MeitY's 2023 consultation draft, could serve as a good basis for some of the abovementioned provisions to take shape. However, as drafted, it lacks any provisions which specifically deal with AI-generated violations of personality rights, either civilly or criminally. Enacting a stand-alone statutory framework for personality rights, influenced by the comparative examples from Chapter 3 and rooted in Indian constitutional values of dignity and autonomy recognized in Puttaswamy would be ideal, and should be prioritised by lawmakers.

⁴⁵ Digital India Act (proposed, Ministry of Electronics and Information Technology, 2023 consultation draft), Chapter IV (proposed provisions on digital identity and online harms).

iv. Hybrid Civil-Criminal Approach

What India needs is not a purely civil model that would replicate many of the deficiencies of the status quo ante. Nor does it need an exclusively criminal model, which risks over-criminalisation and negative consequences for free speech. Instead, what is required is a hybrid model in which:

Civil remedies are available against any person who misappropriates another's personality, without a requirement of commercial goodwill; Criminal liability is limited to the above categories of AI identity violation which cause serious harm and can be demarcated from freedom of speechprotected activity; A regulatory regime is put in place for AI systems that create, use, or distribute identity attributes.⁴⁶

Civil remedies should be available against any individual who has misappropriated another person's personality without his/her consent and crucially, without any requirement of goodwill. This existing position under the passing off, which essentially restricts protection to public personalities and celebrities who have already established a commercial value in their identity, is very different from this.

Under the proposed framework, any ordinary person whose face is used in any ai generated ads, or whose voice is cloned to sell a product in the market or if any photographs are scraped from social media and fed into the generative ai models without the person's permission to do so, should have an equal right to seek an injunction, claim damages and recover any profits that are made by the wrongdoer by using the person's identity to sell the product in the market.

Criminal liability, on the other side, should be limited strictly to the categories of AI identity harm that are very serious in nature to justify the penal sanctions. The creation of AI identity of nonconsensual deepfakes and placing a person in sexual scenarios with the use of generative ai models, committing fraud by cloning someone's voice and deploying fake data to falsely attribute someone all these are harms of a qualitatively different order, where the gravity of the offence and the injury and the public interest in deterrence together justify the criminal punishment over and above any civil remedy.

⁴⁶ Melanie Ehrlich, 'When Your Voice is Not Your Own: Voice Cloning, Deepfakes, and the Case for Federal Legislation' (2023) 57 Columbia Journal of Law & Social Problems 1.

Such a model incorporates elements of successful systems across the world. The foundation of dignity in Germany's constitutional order provides the value-grounding. Italy's civil law provisions provide a good structure for expanding coverage to all individuals regardless of goodwill. The US' nascent legislation in the AI sphere (in the form of the ELVIS Act, as well as proposed NO FAKES Act) provides useful models for the civil and criminal provisions needed to deal with AI identity misappropriation. The EU's AI Act provides a blueprint for the regulatory component. Together, they provide the foundation for a comprehensive hybrid civil-criminal model for protecting personality rights in India.

Conclusion

To reiterate, this paper has argued that Indian law, while having recognised a variety of causes of action against identity-based harms and demonstrating increasing sophistication in its treatment of personality rights more generally, does not contain an explicit, positive law framework dedicated to protecting personality rights. Historical and comparative analysis shows that the strongest and most comprehensive protections for personality rights are both constitutionally-grounded and extended through civil legislation to all individuals, rather than celebrities with commercial goodwill. Doctrine reveals endemic fragmentation, rootless theoretical underpinnings, and categorical gaps that leave victims of AI-generated personality violations without any legal recourse. Civil law causes of action such as passing off and copyright cannot offer redress against AI violations of personality. Criminal law offers some potential cover, but the penal provisions that exist are inadequate for tackling trans-border AI violations, and fail to cover a whole range of identity appropriation enabled by AI. Constitutional remedies remain prohibitively expensive and slow for the average Indian citizen to access. India therefore needs a statutory framework for personality rights that encompasses civil, criminal and regulatory aspects. It should be rooted in Indian constitutionalism, draw from successful legislative models both within and outside India, and be tailored to tackle the harms caused by AI to personal identity.

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