AI REPLICATION OF CELEBRITY PERSONA THROUGH VOICE CLONING AND SYNTHETIC IMAGES - AN EXAMINATION OF THE ADEQUACY OF PERSONALITY RIGHTS AND COPYRIGHT PROTECTION IN INDIA

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ABSTRACT

The emerging of generative artificial intelligence technologies has made it possible to create realistic copies of a person's voice, appearance and other unique characteristics. This has led to a major public concern about the possibility of a person's identity being copied and used for commercial purposes without their permission especially in the case of celebrities. Nowadays it is possible to clone voices and create AI generated images which is very similar to a celebrity's identifiable characteristics without their knowledge or consent. This raises legal issues regarding the boundaries of personal rights and the protection of intellectual property. Existing research has examined AI cloning, deepfakes, copyright, performer's right, consent and licensing but these topics have not been examined together. Only limited research has been conducted on how AI can create celebrity's voices and images together thereby creating a complete digital version of that celebrity. This paper discusses how the Indian legislation is sufficient in safeguarding celebrity persona against voice cloning and AI generated images. It also deals with the relationship between personality rights and various intellectual property rights such as copyright and performer's right. It further examines the importance of consent, liability and the legal remedies available. The research employs doctrinal legal research methodology by examining Indian statutes such as the Copyright Act of 1957, the Information Technology Act of 2000 and, judicial decisions and other legal literatures. The research focuses on three main stages of AI generated celebrity persona namely, the use of personal and protected information for AI training, the creation of deepfake images and the distribution and monetization of the AI-generated persona. The existing study shows that in many cases Indian courts have started to recognize the need to protect important parts of a celebrity's persona, such as their name, image, and voice. However, this protection is extended to different parts of law, including personality rights, copyright, performers' rights, privacy, and data protection. There is no specific law in India directly deals with the technical issues of generative AI. So this absence of law creates an uncertainty regarding consent, liability and legal remedies

for AI generated images. Therefore, a clear and comprehensive legal framework is needed to protect celebrity persona throughout the process of AI generated content.

Keywords: Generative artificial intelligence, celebrity persona, voice cloning, synthetic images, personality rights

INTRODUCTION

The advent of generative artificial intelligence has significantly changed the dynamic between an individual and their image, voice, and persona. Text-to-speech voice generators, image generators based on diffusion, and face swapping in videos can now generate output from a mere one to a few minutes of original audio or just a few images that look virtually identical to an actual recording of a living, breathing person. In cases where the technology targets private citizens, there is the threat of harassment, fraud, and creation of non-consensual intimate material; however, in cases where the technology is used against celebrities and public personalities, there emerges a different problem altogether, which is the theft of an economically valuable persona by way of unauthorized replication of said persona without any consent, control, or payment from the original individual. The persona of a celebrity is not only a private matter but is also a commercially viable entity that has been cultivated through years of hard work and investment. Traditionally, advertisers and endorsement seekers had to license the use of these attributes.

However, generative AI removes this process entirely, an artificial advertisement, an artificially created voice that narrates about a product being endorsed by the celebrity, or even an artificially created image of a celebrity can be generated easily, quickly, and inexpensively without ever having entered into any contract with the said celebrity. It is in this context that Indian courts, in several cases related to the actors and singers in the film industry, have begun to tackle the issue within the ambit of 'personality rights.[1]' However, these interventions have happened through interim and ex parte orders in civil lawsuits and not based on a definitive and codified legal standard. This article seeks to explore if the present framework of Indian law, which includes personality rights recognised in common law and Article 21 of the

[1] See, e.g., Anil Kapoor v. Simply Life India & Ors., CS(COMM) 652/2023 (Del. H.C. Sept. 20, 2023) (India); Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors., CS(COMM) 389/2024 (Del. H.C. May 15, 2024) (India); Arijit Singh v. Codible Ventures LLP & Ors., 2024 SCC OnLine Bom 2445 (Bom. H.C. July 26, 2024) (India)

Constitution[2], the Copyright Act of 1957 and the intermediary and cyber-law framework of the Information Technology Act of 2000[3], is sufficient to tackle the technological reality of AI-enabled persona replication.

The paper states that even though there has been some creative thinking by Indian courts in expanding existing categories of protection to accommodate celebrities but such protection is not proactive, fragmentary and litigation-driven by high-net-worth individuals rather than a codified and technology aware system to address all aspects of AI-generated persona right from data scraping, model training through generation to distribution and monetization. The gap identified are lack of a codified right of publicity, Personality rights are a judicial doctrine, composed of elements drawn from privacy law, passing off, and copyright, and not a statutory right, with well-defined elements and defences. Lack of an AI-specific consent or licensing mechanism, there is no statute requiring the voice print or facial print of a celebrity to be licensed prior to the training of a generative AI model. Indeterminate liability sharing among the AI platform, developer, and consumer, While recent case law (Arijit Singh) has suggested liability at the platform level for mere provision of the cloning facility, there is no codification of liability here and the issues of safe harbor under Section 79 of the IT Act39 remain to be sorted out in the AI scenario. Mismatch between the work-based regime of copyright and the identity-centric concern of personality, Copyright protects a particular work, but not the identity of the person behind the work, such that a wholly new image generated through an AI-generated mechanism will be outside the pale of copyright altogether despite obviously appropriating the celebrity persona. Interim and prohibitory relief only, Almost all reported judgments are either ex parte and/or ad interim orders in ongoing cases; there are virtually no final judgments on damages and defining the criteria of infringement and the limits of permitted parody/satire/artistic use of a celebrity image created via AI. There is no post mortem and estate protection. There is no clear provision in the laws of India concerning the survival of personality rights post-mortem and their vestment in an estate of the deceased celebrity in light of the fact that AI can be used to "revive" the voice and appearance of the dead performers for commercial exploitation. No requirement of mandatory labelling of AI-content and its civil consequences, Though there are official advisories to label AI-content, labelling failure by itself does not result in a private right of action by the celebrity

[2] India Const. art. 21
[3] Copyright Act, No. 14 of 1957(India), Information Technology Act, NO.21 of 2000(India)

ARTIFICIAL CELEBRITY PERSONALITIES: VOICE CLONING AND ARTIFICIALLY CREATED IMAGERY

There has been a considerable amount of literature written on deepfakes, non-consensual synthetic media, on copyright law and its approach towards AI generated works and also on recognition of rights of publicity by Indian judiciary. There are, however, three gaps in the current literature which need to be addressed by this paper.

First, current literature treats voice cloning and AI-generated imagery as two parallel and isolated issues. One stream of literature analyses voice cloning in the light of performers' rights under sections 38, 38A and 38B of the Copyright Act [4]and other stream deals with AI imagery through the personality rights of publicity and copyrights of personalities. In reality, however, modern-day AI technologies produce a composite synthetic identity a moving, speaking, and visual representation of the celebrity using the combination of the voice cloning, image generation, and video generation technologies at the same time. No body of literature on the Indian law has addressed the issue of the protection of such a composite identity through the prism of interaction between the various rights (i.e., copyrights, performers' rights, personality rights, privacy, and data protection) involved in this process.

Secondly, the current academic discourse in this area usually focuses on the moment of publishing or distribution of the deepfake i.e., after the generation process has already taken place. There has been comparatively little research in India analysing the earlier and upstream moment of the process – the scraping of the copyrighted materials and data of the celebrity. This upstream step poses issues relating to copyright infringement within the training dataset, applicability of the Digital Personal Data Protection Act, 2023,[5] and lack of any statutory consent mechanism for the usage of biometric-adjacent data (voice-print and facial-print) in machine learning.

Third, the current judicial precedent being limited to granting interim injunctions in commercial disputes, has not been systematically examined in order to derive a test to determine the legal doctrine of persona infringement in relation to AI, nor has been correlated to the various stages in the process of AI creation, so as to ascertain at which point in the process liability will be attached to either the AI platform, the end-user, or the hosting

[4] Copyright Act, §§38, 38A, 38B, 57, supra note 3
[5] Digital Personal Data Protection Act, No. 22 of 2023 (India)

intermediary of the outcome. This paper seeks to fill this lacuna through an analysis of the doctrinal test in relation to the various stages of the AI production pipeline (i) ingestion of training/data, (ii) deepfake generation and (iii) distribution and monetization as well as the recent rapid development of Indian case law on AI and personality rights[6]

The objectives of this research are to study the sufficiency of the Indian Personality Rights doctrine in dealing with voice cloning and artificial intelligence generated imagery of celebrities, to study the relationship between Personality rights and Intellectual Property Rights, particularly the Copyright Act, 1957 and Performers' Rights under the said Act, to critically assess the role of consent, liability and remedies in each of the three phases of AI generated celebrity persona - training, generation, and monetization and to highlight the loopholes in the current legislation and case laws and formulate a suitable legal mechanism to protect the celebrity persona from generative AI abuse.

This paper adopts a doctrinal legal research methodology. The sources will mainly include the study of the statutory provisions of India like the Copyright Act, 1957, the Trade Marks Act, 1999, the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, the Digital Personal Data Protection Act, 2023 along with certain constitutional provisions (Article 19 and Article 21)[7].Secondary sources such as law journal commentary, bar association commentaries, and comparative material on the American right of publicity and the EU AI Act [8]are drawn upon to provide context and analyse the Indian stance. The study is of a qualitative and analytical nature rather than being empirical.

CONCEPTUAL FRAMEWORK: PERSONALITY, PUBLICITY, AND SYNTHETIC PERSONA

Personality rights are rights which allow an individual to exercise control over the commercial exploitation of his or her personality including one's name, voice, physical appearance, signature, and any other identifying attribute. There are generally two types of interests

[6] See Kapoor, CS(COMM) 652/2023, supra note 1; Shroff, CS(COMM) 389/2024, supra note 1; Arijit Singh, 2024 SCC OnLine Bom 2445, supra note

[7] India Const. arts. 19(1)(a), 21

[8] Regulation 2024/1689, of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, 2024 O.J. (L 1689); Ensuring Likeness Voice and Image Security Act of 2024, 2024 Tenn. Pub. Acts ch. 588 (codified at Tenn. Code Ann. & 47-25-1101 et seq.); Cal. Civ. Code &3344 (West)

involved in this category, the dignitary interest which pertains to privacy and right to be left alone and the proprietary interest which is concerned with the commercial value attached to the identity of a celebrity referred to as the "right of publicity." There is no separate statutory right of publicity recognized in India and has instead been created judicially by combining the right to life, dignity, and privacy under Article 21 of the Constitution[9], and elements of copyright.

The doctrine was established by the Delhi High Court in Titan Industries Ltd. vs Ramkumar Jewellers where it held that using the identity of a celebrity without authorization for commercial gain would amount to an infringement of the celebrity's right of publicity as well as be a false endorsement because the word "celebrity" means a person who is famous or well-known.[10] The Madras High Court in its decision of Shivaji Rao Gaikwad vs Varsha Productions (also referred to as the 'Rajinikanth' case) too has observed that the unauthorised use of the celebrity's name or image or style of delivering dialogues in a movie would amount to an infringement of personality rights even if there is no defamatory angle involved so long as the use implies an association which does not exist[11].Even prior to this, the Delhi High Court had made it clear in its decision of ICC Development (International) Ltd. vs Arvee Enterprises that the right of publicity belongs to an individual and not to an event and the use of identity for making commercial gains is actionable.[12]

Protection of personality is also not confined to name and appearance but includes characteristics like voice and mannerisms. The decision of the Delhi High Court in D.M. Entertainment Pvt. Ltd. v. Baby Gift House went further to extend protection to the voice and persona of singer Daler Mehndi, prohibiting the sale of dolls and products which replicated his voice and style, concluding that unauthorized use of the celebrity's persona in commercial activity constitutes an act of misappropriation apart from any statutory copyright.[13]The only difference between this ruling and others from the early 2000s through the 2010s is the means of infringement – while past cases have concerned merchandise, dolls, or impersonators, the ability to create infinitely scalable, hyper-realistic, and easily distributed synthetic media using AI voice cloning and image generation through diffusion has rendered such infringement easier

[9] India Const. art. 21; see infra Part V.A
[10] Titan Indus. Ltd. v. Ramkumar Jewellers, 2012 (50) P.T.C. 486 (Del. H.C.) (India)
[11] Shivaji Rao Gaikwad v. Varsha Prods., 2015 (62) P.T.C. 351 (Mad. H.C.) (India
[12] ICC Dev. (Int'l) Ltd. v. Arvee Enters., 2003 (26) P.T.C. 245 (Del. H.C.) (India)
[13] D.M. Entm't Pvt. Ltd. v. Baby Gift House & Ors., MANU/DE/2043/2010 (Del. H.C. 2010) (India)

and cheaper than ever before, without even requiring any physical likeness, impersonator, or editing skills on the part of the infringer

The nine-judge bench judgment of the Supreme Court in Justice K.S. Puttaswamy v. Union of India has established that the right to privacy is a fundamental right under Article 21 which includes informational privacy as well as control over one's own image and identity[14]. Even earlier, in R. Rajagopal v. State of Tamil Nadu, the Supreme Court had recognised a right to control the disclosure of matters relating to one's private affairs with certain exceptions for matters of public record and of public interest[15]. The above judgments lay down the basic premise of personality rights, the use of an individual's voice or image without consent via an AI application is essentially a violation of the dignitary and autonomy interest guaranteed under Article 21, without regard to any economic loss.

The Copyright Act, 1957 does not protect the face, voice or name of a person, as copyrightable subject matter, copyright protection extends only to original literary, dramatic, musical and artistic works, cinematograph films and sound recordings, but not to the personal characteristics of the subject depicted or recorded. This forms the first substantial limitation, since a celebrity normally does not have a copyright interest in a cloned image that resembles him/her, since there is no copyrighted 'work' which is being copied. However, the Act grants two protections indirectly:

First, Sections 38, 38A, and 38B grant performers' rights, whereby a performer (which would include an actor or singer) has the right to authorise or prohibit the reproduction of his or her performance in any form, including a sound recording or visual recording and to collect royalties for commercial exploitation of such performance[16]. If an AI voice-cloning programme is trained on the performer's sound recordings or film performances without his/her consent, it can amount to an infringement of performer's rights under Section 38, apart from personality rights.

Second, Section 57 gives the creator (as well as, under certain circumstances, the performer) a right against any distortion, mutilation or modification of his/her work which would be prejudicial to his or her honor or reputation a right which, in theory, can potentially be relied

[14]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India)
[15]R. Rajagopal v. State of Tamil Nadu, (1994) 6 S.C.C. 632 (India)
[16]Copyright Act, §§ 38, 38A, 38B, supra note 3

upon in the event that an AI system creates a distorted version of a celebrity's original performance[17]. However, in practice, courts hearing cases involving modern AI technology (e.g. in the case of Arijit Singh, mentioned further down)[18] have been hesitant about relying heavily on moral rights because of the rigidity of Section 57 (which only applies to a 'work' and therefore does not apply to an entirely new synthetic performance that never happened).

Some celebrities have chosen to register their name or catchphrase as trade marks, e.g. the actor Jackie Shroff registered the trademark for 'BHIDU' and 'Bhidu ka Khopcha' – thereby creating grounds for an action for infringement of trade mark or passing off when an AI product/chatbot uses such marks without permission. However, while beneficial, this approach will provide coverage for only those particular traits that have been formally registered and will not cover an individual's voice, face, and overall likeness, which is not realistically registerable as a trademark in every possible area of usage.

The provisions contained within the Information Technology Act, 2000 include the following: Section 66E provides punishment for capturing, publishing or transmitting images of the person's private area without his consent. Section 66D provides punishment for cheating by personation using any computer resource, Section 67 provides punishment for publication of obscene material electronically.[19] These provisions do not relate to generative AI, nor do they specifically criminalize the act of creating an obscene or personating synthetic image and voice for commercial endorsement or entertainment.

Under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, as amended, intermediaries must take reasonable steps to ensure that the user does not provide content which imitates a person or is patently false or misleading,[20] while the advisories issued by the Ministry of Electronics and Information Technology on synthetic and AI-generated content (in 2023-2024) have asked significant platforms to mark content generated through AI and respond to takedown requests.[21] However, the aforementioned advisories and rules function as due diligence of the intermediaries in respect of these matters,

[17] Copyright Act, § 57, supra note 3
[18] Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1
[19] IT Act, §§ 66D, 66E, 67, supra note 3
[20] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), r. 3(1)(b) (India
[21] Ministry of Electronics & Information Technology, Gov't of India, Advisories on Artificial Intelligence and Deepfake Content (2023–2024), including Advisory on Due Diligence by Intermediaries (Dec. 26, 2023) and Advisory (Mar. 1, 2024)

but do not vest an independent enforceable right in the hands of the celebrity, nor do they address any issue of consent for the use of training data and liability for building and deploying the AI model itself.

The Digital Personal Data Protection Act, 2023 ("DPDP Act") regulates the processing of digital personal data and provides that processing be done based on either consent or some specific legitimate use.[22] The voice-print or facial-print of a celebrity scraped from publicly available film footage, interviews, or social media material, and used to train the voice-cloning or image generation model would be treated as 'personal data' within the scope of the Act. The DPDP Act, however, provides for an exemption of personal data which has been 'made publicly available' either by the data principal or by any other person under any statutory duty to do so[23]. The exact contours of this exception in the context of training AI on publicly available celebrity information is still unknown and open to interpretation.

Where a codified right of publicity does not exist, the Indian Courts have always resorted to an expanded interpretation of the common law tort of passing off which is traditionally designed to prevent one trader from falsely representing his goods as the goods of another to safeguard the celebrities against the false suggestion of endorsement or association or sponsorship through the unauthorised use of their persona[24]. Despite the practical benefits, it is clear that the protection of celebrity persona in India is inherently a kind of consumer protection and unfair competition law and not a distinct right to one's persona per se. This problem is especially apparent in AI cases where there is no 'trade' or 'competing goods' in the traditional sense only a machine that produces a digital portrait.

The best source to evaluate whether Indian law is adequate to the problem at hand is not found in statutes but in the set of decisions made by Indian High Courts in response to generative AI. These decisions, although ex parte in nature, demonstrate the willingness of the judiciary to protect celebrity personas and the need for doctrinal creativity in its absence.

Anil Kapoor v. Simply Life India & Ors. (Delhi High Court, 2023) has become one of the most widely talked about order on the subject of AI and rights of personality, the Delhi High Court was requested to provide relief by actor Anil Kapoor from a series of defendants, inter

[22]DPDP Act, §§ 4, 6, 7, supra note 5
[23]DPDP Act, § 3(c)(ii), supra note 5
[24] See Titan Indus., 2012 (50) P.T.C. 486, supra note 10; Gaikwad, 2015 (62) P.T.C. 351, supra note 1

alia using AI to morph his image, creating offensive or objectionable AI content featuring his face or voice, and falsely representing him as endorsing motivational-speaking courses. Justice Prathiba M. Singh has passed an interim omnibus ex parte injunction preventing the defendants and even, unusually, "the world at large", from using the personality of the plaintiff in any manner, including through artificial intelligence.[25] The Court found that freely available technology enables anyone to impersonate a celebrity using AI and that the right of privacy of a celebrity arises in situations where the image or voice or likeness of a celebrity is used in an objectionable manner. In Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors. (Delhi High Court, 2024)[26]The actor Jackie Shroff has secured an ex parte injunction prohibiting various parties – ranging from e-commerce vendors, GIF generators, to even an AI chatbot – from the exploitation of his name, nicknames ("Bhidu", "Jaggu Dada"), voice, image, and persona for commercial purposes without his consent. In his order, Justice Sanjeev Narula asked the Department of Telecommunications and the Ministry of Electronics and Information Technology to block any offending URLs, showing that the courts are increasingly resorting to administrative blocking systems to protect personality rights in the digital age, and AI world. Interestingly, the court refused to grant an injunction against a comedy YouTube video featuring the likeness of the actor on the grounds that it constitutes artistic expression under Article 19(1)(a)[27], reflecting that there needs to be an attempt at striking a balance between the protection of personality rights and freedom of speech, a task which becomes significantly more challenging in the AI era. In Arijit Singh v. Codible Ventures LLP & Ors. (Bombay High Court, 2024), it is the one which is the most relevant for AI voice cloning. Playback singer Arijit Singh sought protection of his personality traits like his name, voice, vocal style and singing technique, mannerisms, image and signature from a few AI platforms that gave users a tool by which they could convert text or audio into the singer's voice, as well as from a few merchants and a restaurant that used the singer's name without permission.[28] The Bombay High Court issued an ad interim ex parte injunction, stating that providing a user with an AI tool by which he can convert his voice (or text) into the voice of a celebrity, without any consent, is

[25] Kapoor, CS(COMM) 652/2023, supra note 1. See also Surana & Surana, Protecting Celebrity Persona and Commercial Interests: Analysis of Anil Kapoor v. Simply Life India & Ors. (2024); Software Freedom Law Center, India, Case Tracker: Anil Kapoor v. Simply Life India (2023)

[26] Shroff, CS(COMM) 389/2024, supra note 1. See also SSRana & Co., Using "Jaggu Dada" Can Take You to Courts Now, SSRana Newsletter, Issue 15 (2024)

[27] India Const. art. 19(1)(a)

[28] Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1. See also Synthetic Singers and Voice Theft: Bom HC Protects Arijit Singh's Personality Rights (Parts I & II), Spicy IP (2024); Bombay High Court Safeguards Celebrity Personality Rights in AI Era: Arijit Singh Case, AZB & Partners (2024); AI Voice Cloning: How a Bollywood Veteran Set a Legal Precedent, WIPO Magazine, World Intellectual Property Organization (2024)

itself a violation of the rights of the celebrity's personality and publicity, not only the distribution of any output generated by the tool. The High Court noted that moral rights of the plaintiff were raised under Section 57 of the Copyright Act, though their central reasoning was based on personality rights under common law.[29]

This judgment is significant in that it places liability at the stage of provision of the ability to clone the AI in question, and not wait for infringement through specific output of content to occur before imposing liability a method which holds profound implications for allocation of liability in the context of the three stage pipeline discussed in Part VII below. The Precedent from Other Cases such as Sourav Ganguly, Amitabh Bachchan, and Daler Mehndi, Though these previous decisions pre-date generative AI, they still have significance to the doctrinal structure. In Sourav Ganguly v. Tata Tea Ltd., the Calcutta High Court ordered a stay on unauthorized commercial exploitation of the cricketer's image and name in a marketing campaign.[30] In Amitabh Bachchan v. Rajat Nagi & Ors., the Delhi High Court issued a comprehensive injunction against unauthorized commercial exploitation of the actor's name, voice, image, style of speech and catch phrase from his game show, even where it involved AI-generated content or lottery frauds.[31] In conjunction with D.M. Entertainment (protection of Daler Mehndi's voice and persona against imitation dolls) and Titan Industries (rights of the celebrity defined)[32], these decisions show an evident trend in the court rulings: for over two decades, the Indian courts have been consistently broadening the scope of protection in regard to personality attributes and have not hesitated to provide such protection for modes of infringement specific to AI whenever necessary. What is notably lacking in the body of case law is a decision in the form of a final ruling concerning the standard of liability, possible measures other than injunction, and the question of whether the platform of AI is intermediary or direct infringer.

STAGE-BY-STAGE ANALYSIS OF THE PROCESS OF PRODUCTION AND USE OF AI-GENERATED CELEBRITY PERSONA

In order to fill the identified gap in legal protection, this Part will analyse the available (and unavailable) forms of legal protection in relation to each of the three stages of AI-generated

[29] Copyright Act, § 57, supra note 3; Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1
[30] Sourav Ganguly v. Tata Tea Ltd. & Anr., 2018 SCC OnLine Cal 12871 (Cal. H.C.) (India)
[31] Amitabh Bachchan v. Rajat Nagi & Ors., CS(COMM) 819/2022 (Del. H.C. Nov. 25, 2022) (India)
[32] D.M. Entm't, MANU/DE/2043/2010, supra note 13; Titan Indus., 2012 (50) P.T.C. 486, supra note 10

celebrity persona:(i) the training stage, (ii) the generation stage, (iii) the distribution and monetization stage. Looking at them as one continuum, as opposed to separate instances, helps us see where Indian law is interfering well and where it is mute.

The Stage one is Data Ingestion and Training the Model. Here, the developer gathers the recordings of the celebrity's movies, interviews, songs, and photos, which are frequently obtained from openly available sources like YouTube, streaming services, or social media, and uses them as the training dataset for their voice cloning or image generating AI. There are two different legal interests involved here: the copyright subsisting in the underlying sound recordings, cinematograph films, and photographs (usually owned by a film studio, music label, or broadcaster and not by the celebrity themselves), and the interest of the celebrity themselves in their voiceprint and facial print as biometric-adjacent personal data. Indian copyright law has no settled position with regard to whether the use of copyrighted works for training a machine learning model counts as an infringing "reproduction" of them, nor do we have any equivalent to the text and data mining exception[33]. On the other hand, the DPDP Act's exception of personal data that is 'publicly available' raises doubts regarding the right of a celebrity to contest its publicly available voice or image from being processed through AI because while the data was not unlawfully obtained, it was never consented to for the very specific purpose of being used for the downstream processing[34].This stage of the process is the one least litigated and least understood under Indian law, yet the stage where a licensing regime would be most effective in preventing future harms.

Stage two is Generation of the Synthetic Voice or Image. At this stage, the user inputs a prompt or a sample and the trained machine outputs a synthetic voice clip, image, or video of the celebrity. The most significant aspect of the reasoning of the Bombay High Court in the case of Arijit Singh is that it establishes anticipatory liability for the mere availability of a technology which can generate a cloned voice of the celebrity[35].

Third Stage is Distribution, Publishing and Monetization, which involves uploading the synthetic content or using it to make sales or endorsements or collect payments (like the 'motivational speaker' cases and the fake lottery scams in the Anil Kapoor and Amitabh Bachchan litigation), Indian law is comparatively well-equipped via the use of the personality

[33]Copyright Act,§§ 14, 51, 52, supra note 3
[34]DPDP Act, § 3(c)(ii), supra note 5
[35]Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1

right (passing off), trademark infringement (where there is an infringement of a registered trademark) and intermediary take-down obligations under the IT Rules, 2021[36]. There has been an evident willingness on part of the courts in granting John Doe or Ashok Kumar type injunctions against unknown defendants as well as directing government departments to block offending URLs[37]. However, enforcement is structurally challenging; synthetic content can be re-uploaded across mirror sites and other anonymous websites faster than the takedown orders could be executed, and monetary compensation is not usually provided in such interim proceedings, while cross-border AI platforms might simply be beyond the jurisdiction of Indian courts.

The contemporary Indian legal system can only be said to intervene with confidence and judicial decisiveness at Stage Three, and tentatively and inconsistently at Stage Two (using the inchoate facilitation-liability doctrine in Arijit Singh) while doing nothing at Stage One. Stage One is the stage at which the prevention of the infringement could actually occur through licensing consent before using a celebrity's voice or image to train an AI model and therefore is the greatest regulatory loophole, and the most obvious one for legislation to address.

For a better understanding, let's briefly discuss the comparison. In the United States, there are a number of states, which have statutory right of publicity[38], especially the state of California and Tennessee, and the latter one even has a specific legislation called ELVIS Act, 2024 that specifically provides protection against unauthorized AI voice cloning. TheEU's Artificial Intelligence Act provides transparency mandates that make it obligatory to label all AI generated or manipulated 'deepfakes' clearly as such, through regulatory enforcement, rather than relying on any private civil lawsuits alone[39]. India does not have both a codified right of publicity similar to the US state laws and horizontally applicable AI transparency mandate similar to the EU AI Act at this time; protection is judge-made, and on a case-by-case basis, which, although flexible, can never replace what a specific law could provide in terms of predictability, deterrence, and regulatory enforcement.

On the strength of the above analysis, the following steps are recommended to plug the

[36]IT Rules, r. 3(1)(d), supra note 21
[37]See Kapoor, CS(COMM) 652/2023, supra note 1; Shroff, CS(COMM) 389/2024, supra note 1; Bachchan, CS(COMM) 819/2022, supra note 32
[38]Cal. Civ. Code § 3344 (West); Ensuring Likeness Voice and Image Security Act of 2024, 2024 Tenn. Pub. Acts ch. 588 (codified at Tenn. Code Ann. § 47-25-1101 et seq.)
[39] Regulation 2024/1689, of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, 2024 O.J. (L 1689), art. 50(4)

identified loopholes, Enactment of a codified right of publicity or personality rights law, identifying attributes protected (name, voice, image, signature, mannerisms), standards for infringement, defences (news reporting, parody, satire, and academic commentary) and damages or other remedies available (statutory damages, profits, and injunction).Consent-and-licensing condition as a requirement for utilizing one's voice, image, or any other adjacent biometrics for training of the commercial generative AI model, as provided in the Digital Personal Data Protection Act, 2023[40] as making it clear that such use is not covered by the exemption of "publicly available data" when the purpose of use is to create synthetic replica of the identified person. A multi-level liability regime under the Information Technology Act, 2000 to be put in place to differentiate between (a) the software companies developing and distributing AI tools specifically for celebrity or identity cloning, (b) online platforms hosting such tools with actual awareness of their infringing nature, and (c) end-users producing and distributing the infringing content, based on the facilitation liability rationale set out in the case of Arijit Singh v. Codible Ventures[41]. Mandatory and independently actionable labelling of AI-created or AI-modified voice and images of an identifiable individual, non-compliance with which could entail a right of action for the individual in addition to intermediary due diligence obligation provided in the IT Rules, 2021 Amendment to the Copyright Act, 1957 for clarification on the status of copyrighted works used as AI training data and amendment of Sections 38-38B of the Copyright Act, 1957 for extending the scope of performers' rights to expressly include unauthorised AI based synthesis of the voice/performance style of a performer, and not mere reproduction of existing fixed performances thereof[42]. Clarification of the duration and inheritability of personality rights, in view of the potential use of AI technology to bring back to life the voice/image of deceased personalities in a commercial capacity. Creation of an expeditious administrative/judicial takedown process for cases of infringement of personality rights through AI-generated persona.

CONCLUSION

The Indian courts have shown considerable doctrinal flexibility in the face of the rapid succession of AI based impersonations of well-known actors and musicians in extending personality rights, passing-off and moral rights to prevent unauthorised cloning of celebrities' voice or image. The judgments in Anil Kapoor v. Simply Life India, Jackie Shroff v. The Peppy

[40] DPDP Act, § 3(c)(ii), supra note 5
[41] Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1
[42] Copyright Act, §§ 38–38B, supra note 3

Store, and Arijit Singh v. Codible Ventures[43] all jointly confirm that courts appreciate the qualitatively different nature of the threat posed by generative AI to personality rights, and are prepared to offer broad, even facilitation-based, injunctions to counter this threat. However, this paper has illustrated that despite the welcome efforts of courts to improvise, they simply cannot substitute for a comprehensive statutory regulatory mechanism. The current legal protection available to the personality of a celebrity spans various doctrines of constitutional privacy, the common law tort of passing off, the performer's and moral rights under Copyright Act, the trademark law, and the nascent regime of data protection, which each covers only part of the issue, while no provision tackles in a codified fashion the complete three-step process of an AI generated persona's lifecycle involving data ingestion, creation, and distribution or monetization. Specifically, the upstream ingestion step of feeding copyrighted performances and biometric data of a celebrity into AI tools to create the very tools needed to generate his or her persona remain largely unregulated, despite this being the most effective point of regulation preventing harm. Hence, in order for Indian law to progress from litigation to the proactive protection of the persona of celebrities through the advent of generative artificial intelligence, a well-defined, detailed, and technology-driven legal framework, encompassing the right of publicity, AI training consent, platform liability based on levels, and content labelling, becomes inevitable. In summary, the comparative exercise has revealed that the US resorts to the ad hoc regulation of state statutory rights and, in addition to this, to AI-specific legislation in Tennessee, whereas the EU resorted to horizontal transparency regulation without having an individual right of action for it. China makes use of consent and labelling requirements imposed directly by the administration through its cyberspace regulator. Finally, both the UK and India continue to resort to a gradual evolution of common law doctrines that were not intended for the purpose of regulating generative AI. However, what sets apart India from the UK, despite similarities in the way both countries regulate AI, is the large number of lawsuits brought before Indian courts and initiated by celebrities such as Anil Kapoor, Jackie Shroff, and Arijit Singh, creating a significant amount of fragmented interim jurisprudence, which still lacks any comparison in the UK case law. It is fair to say that, despite similar lack of statutory regulation, India is closer to the frontier of judicial improvisation than the UK.

[43]Kapoor, CS(COMM) 652/2023, supra note 1; Shroff, CS(COMM) 389/2024, supra note 1; Arijit Singh, 2024 SCC OnLine Bom 2445, supra note 1

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