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# DIGITAL RESURRECTION AND POSTHUMOUS PERSONALITY RIGHTS IN THE AI ERA

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## ABSTRACT

The technological advancements we are witnessing today in generative AI and generative technologies are creating the ability to digitally resurrect someone who has passed away through methods such as deep fakes and generative voice, digital avatars, and interactive chatbots. While there is a clear commercial and emotional interest in the use of these technologies, the increasing use of these technologies also raises very serious legal questions that are not addressed by existing legal frameworks including: Does a person have any rights to their likeness, identity, or persona after they die? Who owns a deceased person's digital likeness? (Heirs, Companies, or the public?). How do existing laws regarding intellectual property, privacy, or publicity apply to the postmortem exploitation of a deceased person's digital likeness? This article will analyze the concept of digital resurrection through a tripartite analysis of Indian law, comparative international law, and ethical philosophy; the analysis will conclude with a recommendation that the absence of a clear, comprehensive, and coherent legal framework regarding the posthumous rights to personalities will create a significant gap in the law that must be addressed through legislation. Furthermore, we will advocate for a new category of posthumous personality rights that will be separate from existing intellectual property or data protection legislation and will survive death; will vest in a clearly defined class of individuals.

**Keywords:** Digital Resurrection, Posthumous Personality Rights, Deepfakes, Right of Publicity, Artificial Intelligence, Data Protection, Identity Rights, Post-Mortem Privacy, Generative AI, Indian Law.

## 1. INTRODUCTION

In 2020, a South Korean television programme used digital technology to recreate the interactions of a mother with her daughter, Nayeon, who died when she was 7 years old. The representation of Nayeon included a technologically produced visual likeness, the use of artificial intelligence, and the use of virtual reality to create the likeness of her voice and mannerisms<sup>1</sup>. This portrayal was highly controversial, receiving both praise as being an innovative use of technology and condemnation as being an egregious violation of ethics. On March 30, 2023, Tupac Shakur's estate threatened legal action against an AI company for producing an audio track that sounded very much like the famed rapper's voice.<sup>2</sup> The actors' union strike in Hollywood in 2023 was, at least in part, the result of production companies securing the rights to digitally portray (i.e., recreate) actors, including those who have passed away.<sup>3</sup> The resurrection of J. Jayalalithaa, the former Chief Minister of Tamil Nadu, who passed away, is going to be used as part of political campaign ads for the elections in 2024 in India. This raises major legal and constitutional questions regarding how to represent, endorse, and promote, "dead political figures," within the framework of elections and democracy<sup>4</sup>. These examples are not stand-alone cases; together, they represent the beginning of a monumental legal battle that will determine how identity is defined by the law in the 21st Century.

Digital resurrection refers to the creation, simulation or animation using artificial intelligence (AI), machine learning (ML), GAN (Generative adversarial networks) and other similar technologies of the personality, voice, appearance and/or behaviour of a deceased person<sup>5</sup>. This can occur using a variety of technologies from basic deepfake video productions of a celebrity's face on the body of another person to much more complex AI models trained on all of the written correspondence, social media activity and recorded speech of the deceased which are

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<sup>1</sup> MBC Documentary, *Meeting You* (MBC, South Korea, 6 February 2020); Naomi Appleton, 'Digital Afterlife and the Grieving Process' (2021) 15 *Journal of Information Ethics* 42, 44.

<sup>2</sup> 'Tupac Estate Threatens Legal Action Over AI Voice Clone' (*Billboard*, 14 March 2023) <<https://www.billboard.com/music/music-news/tupac-shakur-estate-threatens-legal-action-ai-voice-clone>> accessed 1 February 2025.

<sup>3</sup> Screen Actors Guild – American Federation of Television and Radio Artists, *Position Paper on AI in Entertainment* (SAG-AFTRA 2023) 3–5.

<sup>4</sup> 'Viral Deepfakes of Politicians and Actors Raise Alarm Bells for Indian Elections' (*Outlook India*, 27 May 2024).

<sup>5</sup> Bettina Berendt and others, 'The Ethics of Digital Resurrection' (2022) 38 *AI & Society* 1201, 1202.

capable of generating new material in that person's style and voice<sup>6</sup>. Examples of companies offering to preserve the personality and alter the behaviour of the deceased for the purpose of allowing their survivors to engage with them include Hereafter AI; StoryFile; and Eternos<sup>7</sup>. An example of how deepfake technology has been used to create false posthumous speeches is the AI deepfake of Robert Kardashian that provides an endorsement for his daughter's marriage 17 years after he died in 2003<sup>8</sup>.

Digital resurrection creates legal problems across a large number of doctrinal categories. Under personality rights, one of the questions that arise is whether the right to control one's own identity, likeness and reputation (which is fundamentally a personal right) can be retained after someone dies and, for how long, and who is entitled to exercise that right. Developing from an intellectual property perspective, another question that arises is: Are things such as a deceased person's voice, facial expressions or other representative behaviour (as an example) eligible to be protected through intellectual property laws? Another area of inquiry is whether an AI-generated simulation of these personal characteristics constitutes an infringement of an intellectual property right. From a data protection perspective, another question that arises is whether personal data taken from data subjects (often without their explicit consent) that is used in the creation and development of AI simulations can be processed after the death of the individual. Finally, from the regulatory/legislative perspective, who is accountable for determining what developers and users of these resurrection technologies should be obligated to do in respect to such things as disclosure, consent, and the prevention of harm?

This article proceeds in five parts. Part II traces the conceptual and philosophical foundations of personality rights and examines their traditional limitations upon death. Part III analyses the existing Indian legal framework encompassing constitutional rights, tort law, intellectual property law, and the Digital Personal Data Protection Act, 2023 and identifies its inadequacies in addressing posthumous digital exploitation. Part IV undertakes a comparative analysis of relevant international frameworks, with particular reference to the United States, European Union, and United Kingdom. Part V proposes a normative framework for posthumous personality rights in India, anchored in a proposed legislative model. Part VI concludes.

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<sup>6</sup> Ian Goodfellow and others, 'Generative Adversarial Networks' (2014) 27 *Advances in Neural Information Processing Systems* 2672.

<sup>7</sup> HereAfter AI, *Product Overview* <https://www.hereafter.ai> accessed 1 February 2025.

<sup>8</sup> Matthew Dunne-Miles, 'Deepfakes, Dead Relatives and Digital Resurrection' (*The Face*, 6 April 2021).

## 2. PERSONALITY, IDENTITY, AND THE LEGAL MEANING OF DEATH

### A. The Nature of Personality Rights

The personality rights are a set of legal rights that protect an individual's identity (name, likeness, voice, image, reputation etc.)<sup>9</sup> as well as their overall identity as an individual against another party's use or misuse of their personality. There are two basic theories of personality rights: a moral/dignity theory that recognizes that personality rights exist because of the moral inherent to all humans and the right of people to not be used or misused<sup>10</sup>; and a proprietary/economic theory that classifies the commercial value of a person's identity as items available for transfer or sale as property.<sup>11</sup>

The origin of publicity rights goes back to the Second Circuit court case of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*<sup>12</sup>. In that ruling, the Court distinguished privacy rights from publicity rights; a) by stating that everyone has both a right to stop the commercial use of one's likeness, and a right to commercially exploit one's likeness. This distinction has had a major effect on interpreting personality rights throughout the world, especially in relation to the digital use of image rights after death.

These two axes become more tense when put under stress of death. Assuming the personality rights arise from dignity and autonomy, does it stand to reason that they survive the individual being protected by their dignity & autonomy? An individual that has died has lost autonomy (i.e. cannot experience humiliation) and as such historically view MDL and many civil-law systems treat the personality rights as they are personal and die with the individual being protected<sup>13</sup>. The flip side is if rights of publicity are seen as being a form of property that being something of commercial value (like a trademark or copyright) then they can be seen to be passed on upon death. The family member interest adds to the tensions identified above, as surviving family members will have suffered both the loss of dignity and the economic consequences of the exploitation of their family member's identity after their death. However a deceased individual cannot continue to suffer as a result of the exploitation of their identity.

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<sup>9</sup> Raymond Wacks, *Privacy: A Very Short Introduction* (2nd edn, Oxford University Press 2015) 56–58.

<sup>10</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1998) 38–42.

<sup>11</sup> Melville Nimmer, 'The Right of Publicity' (1954) 19 *Law and Contemporary Problems* 203.

<sup>12</sup> *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* 202 F.2d 866 (2d Cir 1953).

<sup>13</sup> Horst-Peter Götting, *Persönlichkeitsrechte als Vermögensrechte* (Mohr Siebeck 1995) 102.

## B. Digital Resurrection and the Integrity of Personal Narrative

The philosopher Janna Levin has written that identity is fundamentally narrative it is the story we tell about ourselves, organised around memory, intention, and continuous selfhood<sup>14</sup>. Digital resurrection disrupts this narrative in a uniquely troubling way. Unlike a biography, a film portrayal, or even a wax statue, an AI simulation of a deceased individual is interactive, dynamic, and generative. It can be made to say things the person never said, adopt positions they never held, and behave in ways they would have found deeply objectionable. The simulation presents itself and is experienced by its audience not merely as a representation of the person, but as a continuation of the person.<sup>15</sup>

The legal significance of this issue is important. There has been an earlier case in entertainment which serves as an example of this issue, specifically the case of *Lugosi v. Universal Pictures*<sup>16</sup> by the California Supreme Court in the year 1979 that ruled on whether the right of publicity of Count Dracula due to the likeness of actor Bela Lugosi was passed onto his estate after he died. It was determined that since Mr. Lugosi's likeness was not in use for commercial gain during his life, he did not have a viable right of publicity that would continue after his death. In response to this case, the California Legislature enacted the Celebrities Rights Act in 1985 to expressly create the right of posthumous publicity. More recently, Lucasfilm, in its film *Rogue One: A Star Wars Story* has caused global controversy about the adequacy of consent based models for posthumous rights based on their use of digital technology to recreate actor Peter Cushing after he died<sup>17</sup>. Similarly, actress Carrie Fisher was allowed to appear in *Star Wars: The Rise of Skywalker* based on the permission of her estate, which illustrates how consent models may be created with the best of intentions, but do not have the legal structure and will ultimately be negotiated by contract between the parties involved.<sup>18</sup>

Digital resurrection is not comfortably categorized by existing laws for the purposes of creating rights or obligations for individuals. It cannot be categorized as defamation (as no factually false statements about a person are created by a third party), it is also not an action for passing-off (as there is no commercial activity associated with digital resurrection), it does not amount

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<sup>14</sup> Janna Levin, *A Madman Dreams of Turing Machines* (Pantheon Books 2006) 14.

<sup>15</sup> David Gunkel, *Robot Rights* (MIT Press 2018) 89–93.

<sup>16</sup> *Lugosi v. Universal Pictures* 25 Cal.3d 813 (Cal. Sup. Ct. 1979).

<sup>17</sup> Rich Haridy, 'Star Wars: Rogue One and Hollywood's Trip Through the Uncanny Valley' (*New Atlas*, 19 December 2016).

<sup>18</sup> For discussion see Jennifer Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press 2018) 188–194.

to copyright infringement (since the expression in question cannot be fixed) and may also not even give rise to a breach of data protection law (much of the data used in digital resurrection is publicly available). Rather, the problem with digital resurrection is at the level of identity theft because a person's mode of being has been appropriated without their consent.

### C. The Philosophical Case for Posthumous Rights

The philosophical literature on posthumous harm provides some support for the recognition of posthumous personality rights, though it remains contested. Joel Feinberg's influential account of "ante-mortem interests" holds that a person can be harmed after death if events frustrate interests that were formed and held during life<sup>19</sup>. On this view, a person who during her lifetime expressed a clear desire not to be digitally simulated after death has an ante-mortem interest in that respect, and its violation constitutes a genuine harm even if it is a harm she will never experience. This framework supports the recognition of posthumous rights as an extension of ante-mortem autonomy, rather than as rights held by the dead *per se*.

Ernest Partridge's critique, by contrast, holds that posthumous interests are illusory because interests require a subject capable of holding them, and the dead are no such subject<sup>20</sup>. This view, however, proves too much: it would equally invalidate testamentary freedom, posthumous defamation torts, and the entire apparatus of estate law all of which legal systems routinely uphold. The more nuanced position, and the one that best supports a legal framework, is that posthumous rights are held and enforced *by living proxies* typically heirs or family members but are grounded in and limited by the *expressed or reasonably inferable preferences* of the deceased.

## 3. THE INDIAN LEGAL FRAMEWORK: PROMISES, GAPS, AND INADEQUACIES

### A. Constitutional Foundations

Article 21 from the Constitution is the basis for personality rights under Indian law and includes both the right to life and liberty. The Supreme Court has interpreted this article over time and has established many broad rights that are not specifically listed under the Constitution; some

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<sup>19</sup> Joel Feinberg, *Harm to Others: The Moral Limits of the Criminal Law* (Oxford University Press 1984) 79–83.

<sup>20</sup> Ernest Partridge, 'Posthumous Interests and Posthumous Respect' (1981) 91 *Ethics* 243, 248.

examples of these unenumerated rights are a right to privacy,<sup>21</sup> a right to dignity,<sup>22</sup> and a right to reputation.<sup>23</sup> The landmark nine-member bench case of Justice K.S. Puttaswamy v. Union of India<sup>24</sup> is an example of how the Supreme Court analysed certain aspects of the right to privacy to include the right to control your own narrative, the existence of personal information and its uses, and how people can use or disclose someone else's personal information without that person's permission. Justice D.Y. Chandrachud's affirmation of the theory of contextual integrity (the idea that when someone shares information about themselves in one context... (a letter to a friend), that information may not be used or disclosed in a manner with different normative expectations from that of the original context.)<sup>25</sup>

The rights guaranteed by Article 21 of the Constitution are alive by their very nature and therefore; protect individuals from the action of the state. The principle of horizontal application of rights also guarantees that the rights are available to protect individuals from one another. Therefore; upon death an individual continues to enjoy their rights. The issues of whether or not the rights of an individual can be passed onto their heirs was considered in *Krishna Kishore Singh v. Sarla A. Saraogi*<sup>26</sup>, a prominent judgment from the Delhi High Court where the father of the late actor Sushant Singh Rajput sought an injunction against the film producers of a movie based on the life of his son. The Court, per Justice C. Hari Shankar, held that "the right to privacy and, thus, the right to publicity cease to exist upon the death of the individual and, as such, cannot be inherited."<sup>27</sup> This ruling represents the most authoritative ruling on the subject of public figure rights in India to date and has made clear that the current constitutional framework will not protect against digital resurrection.

Through the decision made in *Deepa Jayakumar v. A.L. Vijay*,<sup>28</sup> it was held by the Madras High Court that privacy and reputation cease to exist with the death of an individual; that the right to privacy and reputation cannot pass by inheritance. The consequences of these two decisions in the Delhi and Madras High Courts act as very strong hurdles to the enforcement of postmortem personality rights claims in India, thus making it very clear there is an urgent need

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<sup>21</sup> *Gobind v State of Madhya Pradesh* AIR 1975 SC 1378.

<sup>22</sup> *Francis Coralie Mullin v Union Territory of Delhi* (1981) 1 SCC 608.

<sup>23</sup> *Umesh Kumar v State of Andhra Pradesh* (2013) 10 SCC 591.

<sup>24</sup> *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1.

<sup>25</sup> *ibid*, para 643 (Chandrachud J).

<sup>26</sup> *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.* CS(COMM) 187/2021 (Delhi HC, 11 July 2023).

<sup>27</sup> *ibid*, para 89 (Hari Shankar J).

<sup>28</sup> *Deepa Jayakumar v. A.L. Vijay & Ors.* (Madras HC, 2021, unreported); discussed in Fox Mandal, 'Sushant Singh Rajput's Publicity Rights: Delving into the Order's Reasoning' (September 2023) <https://www.foxmandal.in> accessed 1 February 2025.

for new legislation to address the issue of postmortem personality rights.

## **B. Tort Law: Defamation & Privacy - Limits**

The Indian judiciary has established an ever-growing and elaborate personality rights system for living individuals over the past years. By comparison to what has yet to be established for those who have died, this system provides us with a model that will help us establish a posthumous protection system.

ICC Development (International) Ltd. vs. Arvee Enterprises<sup>29</sup>, (Delhi High Court) established the right of publicity in India as a separate right held by both individuals and entities. The court found that an individual possesses a right of publicity, which applies to the commercial use of their name, voice, likeness, or other attributes without permission. *D.M. Entertainment Pvt. Ltd. vs. Baby Gift House*<sup>30</sup>, (Delhi High Court) significantly progressed the judicial protection of celebrities' personas by prohibiting the commercial sale of dolls containing the likeness of Daler Mehndi. The court determined that a celebrity's persona, including their image, voice, and distinctive qualities, has commercial value as a result of the celebrity's skills or efforts, thus, any unauthorized use of that persona results in unjust enrichment.

With *Anil Kapoor versus Simply Life India*<sup>31</sup> et al., a landmark 2023 decision from the Delhi High Court regarding AI's emergence and the milestones achieved in its use within the world of law, the law has made an enormous contribution history-wise. The lawsuit involved the AI-generated use of deepfakes with Anil Kapoor's likeness placed over other actors, the distribution of merchandise without proper permission using his likeness, prolific unauthorized use of his name and likeness for autographed memorabilia items, and numerous websites where Anil Kapoor's image is used without permission to create an AI-generated likeness of him as a selling tool to sell merchandise. The Court then proceeded to grant an extensive ex parte injunction against each of the known and unknown defendants (a John Doe or Ashok Kumar order) prohibiting any misappropriation of Anil Kapoor's personality attributes, whether his name, likeness, image, voice, catchphrase "jhakaas," or its equivalents, and any AI-generated media. The Court held that "[d]ue to the technological advances of the digital age, including AI, it has become increasingly easy for people who use computer-generated technology to

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<sup>29</sup> *ICC Development (International) Ltd. v. Arvee Enterprises* 2003 SCC OnLine Del 2.

<sup>30</sup> *D.M. Entertainment Pvt. Ltd. v. Baby Gift House* CS(OS) No 893/2002 (Delhi HC, 2010).

<sup>31</sup> *Anil Kapoor v. Simply Life India & Ors.* CS(COMM) 652/2023 (Delhi HC, 20 September 2023).

illegally use a celebrity's persona as an unauthorized representative" and must be proactively protected by the courts through proven, reliable examination of all of the rights listed, especially using technology as new developments arise.

In *Arijit Singh v. Codible Ventures LLP*<sup>32</sup>, one of the most important Indian landmark decisions of July 2024 addresses the misuse of generative AI voice cloning tools. The Delhi High Court found for the first time in Indian law that generative AI infringes upon an individual's rights to protect their personality attributes, including their name, voice (including vocal style, technique, method of singing), mannerisms, and likeness. This case is now an important precedent regarding the definition of contributory infringement. The decision also creates new legal principles establishing liability for generative AI platforms, namely that simply providing a tool to create infringing content constitutes a violation of the law. The Delhi High Court granted a permanent injunction prohibiting Codible from using Arijit Singh's voice and using generative AI to create unauthorized recordings of Arijit Singh's voice, and also granted a dynamic injunction for all future infringements. The Delhi High Court specifically indicates that "what disturbs the conscience of this Court is the vulnerability of celebrities to being victimized by the use of unauthorized generative AI content." signals a growing judicial recognition of the systemic dimensions of the problem.

The Delhi High Court followed the justification put forth by the Bombay High Court when it ruled in *Jackie Shroff v. The Peppy Store & Ors*<sup>33</sup>. that a chatbot with the linguistic style and personality characteristics of Jackie Shroff used without his permission constitutes a violation of Shroff's personality rights free from consent due to the AI chatbot's use of celebrity personality attributes without authorisation. The 2024 ruling in *Sadhguru (Jaggi Vasudev) v. Unknown Defendants*<sup>34</sup> further exemplifies the intentionality of courts applying "Dynamic+" injunctions judicial orders that automatically apply to any subsequent illicit use which have been used by the Delhi High Court to prevent AI-driven personality abuse, which has spread through conversational artificial intelligence like a pandemic, demonstrating large and unmanageable impacts.

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<sup>32</sup> *Arijit Singh v. Codible Ventures LLP & Ors.* COM IPR SUIT (L) No 23443 of 2024, 2024 SCC OnLine Bom 2445 (Bombay HC, 26 July 2024).

<sup>33</sup> *Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors.* CS(COMM) 389/2024 (Delhi HC, 15 May 2024).

<sup>34</sup> *Sadhguru (Jaggi Vasudev) v. Unknown Defendants* (Delhi HC, 2024); discussed in Isha Foundation, 'Delhi High Court Shields Sadhguru from AI-Driven Personality Misuse' (June 2025) <https://isha.sadhguru.org> accessed 1 February 2025.

Recently, the Bombay High Court addressed the issue of whether personality rights extend to special cloning (AI generated of a famous singer's voice). The court ruled that a party cannot permit users of an online music platform with which they run such a service to create songs (including, among others) that sound like such a famous singer (Bhosle). In this case, the court also concluded that an individual's voice is a protected element of an individual's personality right, and that creating a digital version of an individual's voice, without their permission and consent, constitutes harassment.<sup>35</sup> As well, in *Dr. Devi Prasad Shetty v. Medicine Me & Ors*<sup>36</sup>, the Delhi High Court confirmed that the principle of personality rights can be extended beyond just movies to include protecting a doctor from any form of public disrepute. Here again, the court confirmed that the principle of personality rights is jurisdictionally limited to include all circumstances in which an individual has been a celebrity (publicly) and/or has created a financial or commercial value for his/her (celebrity) image.

Recent rulings from the Delhi High Court in *Aishwarya Rai Bachchan v. Aishwaryaworld.com & Ors*<sup>37</sup>, and *Abhishek Bachchan v. Unknown Defendants (2025)*<sup>38</sup> issued injunctions against multiple sites and prohibited these sites from using the respective plaintiff's names, images and likenesses (including sexually explicit deepfakes) to gain commercial advantage. These decisions demonstrate that Indian courts are now approaching personality misuse through AI as a mixture of fundamental dignity and economic damage.

When considered together, these cases build an impressive legal structure related to the defence of living persons' personality rights against commercial exploitation by AI. However, they all have one major flaw in common: they only apply to living persons. The combination of legislative and case law creating this doctrine will disintegrate at the instant that the individual dies, thus rendering every Indian's posthumous digital persona without any framework of protection in law whatsoever.

### **C. The Concept of Intellectual Property Law**

The rights of a creator (author) in terms of his/her Intellectual Property (creations) after death

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<sup>35</sup> *Asha Bhosle v. Mayk Inc. & Ors.* (Bombay HC, 2024); discussed in Khurana & Khurana, 'AI, Deepfakes & Personality Rights: Asha Bhosle Case' (December 2025) <https://ksandk.com> accessed 1 February 2025.

<sup>36</sup> *Dr. Devi Prasad Shetty v. Medicine Me & Ors.* CS(COMM) 1053/2024 (Delhi HC, November 2024).

<sup>37</sup> *Aishwarya Rai Bachchan v. Aishwaryaworld.com & Ors.* (Delhi HC, September 2025); discussed in Knall & Partners, 'The Price of Fame: How Indian Courts Are Forging New Law to Protect Celebrities from AI' (October 2025) <https://knallp.com> accessed 1 February 2025.

<sup>38</sup> *Abhishek Bachchan v. Unknown Defendants* (Delhi HC, 2025); *ibid.*

are governed by Intellectual Property Law. Intellectual Property Law is a long-term and broad-based solution for protecting an author's heirs' rights to an author's Intellectual Property that the author created while he/she was alive when compared to some other laws. The Copyright Act of 1957, Section 58 states that the Copyright of a Literary, Dramatic, Musical or Artistic Work will remain in effect for sixty (60) years from an author's date of death<sup>39</sup>. As a result, if an author publishes a book after death; composers write songs after death; and/or producers produce films after death, the copyright of the works will be held by the estate of the deceased author; thus, the estate shall have the right to stop/ prevent others from infringing upon the copyright of these works.

Personality itself is not protected by copyright. Copyright only protects expressions of ideas and not the identity of the creators. A person's voice as a physical feature cannot be considered as copyrightable works. A person's face and likeness are not original works of authorship. The stylistic manner with which a person speaks or writes can be copied without infringing copyright so long as there are no reproductions of specific protected expressions. This gap in copyright rights was explicitly addressed in *ANI Media Pvt. Ltd. v. OpenAI Inc.*<sup>40</sup> (the first AI copyright infringement case in India), in which the Delhi High Court had to decide if AI training with copyrighted material, without a license, constituted copyright infringement — leaving aside the issue of personality in relation to the digital resurrection of the creator.

#### **D. The Digital Personal Data Protection Act, 2023**

India's Digital Personal Data Protection Act, 2023 (DPDPA) is a significant attempt to address some of the challenges that come from the complexity of the digital economy in our country; however, it has one major flaw that directly impacts digital resurrection: The DPDPA makes no provisions for the personal data of deceased individuals — they are expressly excluded from the DPDPA's scope. This is because the definition of "data principal" under Section 3(n) (which encompasses only the individual to whom the personal data pertains) dictates that all of the consent requirements, data minimisation obligations, and purposes of limitation required under the DPDPA shall only apply during the lifetime of each respective data principal. There simply is not an equivalent provision in the DPDPA (as there is in France's *Loi pour une République numérique* and Sweden's data protection framework) that provides any mechanism to allow

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<sup>39</sup> Copyright Act 1957 (India), s 22.

<sup>40</sup> *ANI Media Pvt. Ltd. v. OpenAI Inc.* CS(COMM) 1028/2024 (Delhi HC, 2024).

data principals to appoint digital executors with the authority to manage, delete, or restrict their data after their death.

The absence of any legal requirement to comply with consent and purpose limitations of the DPDPA laws means deceased persons' digital personal data can be processed, aggregated and used freely to generate a cloned image or likeness of the deceased, even though they could not have consented to their data being used for these purposes/activities if they were alive. This lack of legal requirement to obtain consent or have a purpose limitation for deceased persons' data has led to a marked increase in the number of cases filed as Public Interest Litigations that question how inadequate India's deepfake legislation is. Some of these include *Chaitanya Rohilla v. Union of India*<sup>41</sup> that seeks to force the government to identify and block deepfake facilitating websites, and *Rajat Sharma v. Union of India*<sup>42</sup> where comprehensive legislative AI regulation standards are being sought. These lawsuits illustrate the failure of both the judiciary and civil society to bring about the necessary legislative actions in respect to this issue.

#### IV. COMPARATIVE INTERNATIONAL PERSPECTIVES

##### A. United States: The Right of Publicity and Its Posthumous Extensions

The US has created a very sophisticated framework for posthumous personality rights through the right of publicity doctrine. An example of the fundamental tension in this area is found in *Lugosi v. Universal Pictures*<sup>43</sup>, where the California Supreme Court stated that Bela Lugosi's likeness was not commercially exploited during his life; therefore, there was no heritable right of publicity established. The California legislature passed a law in 1985 creating a statutory posthumous personality rights framework the Celebrity Rights Act, which has since been amended to provide for digital replicas. Thus, California has set the standard for creating statutory personality rights for posthumous personalities on a worldwide basis.

The *Martin Luther King Jr. Center for Social Change, Inc. v. American Heritage Products, Inc*<sup>44</sup>. case determined the possibility for recognition of a posthumous right of publicity without

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<sup>41</sup> *Chaitanya Rohilla v. Union of India* W.P.(C) 11295/2023 (Delhi HC, 2023).

<sup>42</sup> *Rajat Sharma v. Union of India* (Delhi HC, 2024); Chambers and Partners, 'Artificial Intelligence 2025 – India' (Global Practice Guides, 2025) <https://practiceguides.chambers.com> accessed 1 February 2025.

<sup>43</sup> *Lugosi v. Universal Pictures* (n 16).

<sup>44</sup> *Martin Luther King Jr. Center for Social Change, Inc. v. American Heritage Products, Inc.* 694 F.2d 674 (11th Cir 1983).

an explicit statutory mandate by relying on the predominance of the commercial purpose test to establish the distinction between the commercial exploitation of a celebrity's image vs. valid artistic works that have an express purpose. The Sixth Circuit's ruling in *ETW Corp. v. Jireh Publishing, Inc.*<sup>45</sup> clarified the balancing test by holding that when a person has used a celebrity's name, likeness or picture in an artistically transformative way, those works are protected by the First Amendment. This analysis is now the predominant framework for AI-generated material in the USA.

The outcomes in *Midler v. Ford Motor Co.*<sup>46</sup> by the Second Circuit Court particularly present relative to the use of voice cloning. The Court stated that creating a voice to imitate a well-known individual, without obtaining their consent for such a creation, violated that individual's publicity rights. The Court examples used recorded sounds. In voice cloning of dead individuals, a sound exists but there is no recording of the sound used to produce the sound. Voice cloning technology would create a replica of the voice (the sound) not of the recording of the voice (the physical representation or the record). The legal principle exists in relation to dead people but courts have yet to decide on the legal right to use a voice from a dead person. However, the trend in the law in the United States has strongly indicated that courts will apply the *Midler* decision to the posthumous voice cloning of deceased persons by virtue of the law established by *Lehrman v. Various Unknown Parties (2024)*<sup>47</sup> which is based on voice cloning from living persons.

Both the No Fakes Act (2023) and the No AI FRAUD Act (2024), two proposed federal laws, will create a nationwide right to protect individuals (alive and deceased) against producing "AI-generated replicas" without their permission, and both can be enforced by the estates of individuals for a defined period after their death. Although neither of these laws has yet been passed, they demonstrate a clear direction from Congress.

## **B. European Union: The GDPR Framework and Its Posthumous Limitations**

Recital 27 of the GDPR indicates that while deceased individuals' personal data is not subject to the GDPR, there are still laws that govern the use of the personal data of deceased individuals. In France, the *Loi Pour Une République Numérique (2016)* enables individuals to

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<sup>45</sup> *ETW Corp. v. Jireh Publishing, Inc.* 332 F.3d 915 (6th Cir 2003).

<sup>46</sup> *Midler v. Ford Motor Co.* 849 F.2d 460 (9th Cir 1988).

<sup>47</sup> *Lehrman v. Various Unknown Parties* (ND Ill, 2024); discussed in Blank Rome LLP, 'Breaking Down the Intersection of Right-of-Publicity Law, AI' (2024) <https://www.blankrome.com> accessed 1 February 2025.

provide binding instructions about the use of their personal data after they die and allows individuals to choose a trusted person to act on their behalf with respect to their wishes. For this reason, these laws appear to have created the opportunity for the creation of digital wills. Germany has taken an even more expansive approach towards the personality rights of deceased individuals and has applied those rights to deceased individuals even after their deaths<sup>48</sup>. For example, in *Marlene Dietrich*, the Bundesgerichtshof ruled that an individual's personality rights (like the right to use their likeness for commercial purposes) would survive after an individual's death, assuming that the person's identity continues to have commercial value and that individuals' estates own those rights after the individual's death<sup>49</sup>.

The decision regarding *Mephisto* confirms that a deceased person's personality rights can exist postmortem. This is true even when there will be no commercial use of the deceased. The Court of First Instance (the German Supreme Court) found that a novel which depicts a character which is only superficially dissimilar from a real actor can infringe upon the actor's posthumous personality rights.<sup>50</sup> There are legal requirements imposed on facilities and institutions that provide software services related to Artificial Intelligence under the European Union Artificial Intelligence Act (2024). While the Act does contain requirements regarding the use of "Gates" or "Access Formula", it does not provide for the establishment of postmortem personality rights or the use of technologies associated with "Digital Resurrection"; therefore, there is a significant void in the comprehensive governing framework of the EU in relation to its current AI governance framework.

### C. United Kingdom

The United Kingdom has taken a much more light touch approach to regulating AI since it left the EU, and the Data Protection Act (DPA) in the UK excludes from coverage any data on a deceased person, consistent with the EU's General Data Protection Regulation (GDPR). However, there are limited circumstances under which the misappropriation tort (as established in *Campbell v Mirror Group Newspapers*<sup>51</sup>) may apply to protect the privacy interests of a deceased person's estate by imposing liability for misappropriation of their identity to generate a financial profit. Also, the UK Law Commission's consultation regarding the reform of the

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<sup>48</sup> Loi pour une République numérique (France) No 2016-1321, art 63.

<sup>49</sup> *Marlene Dietrich* Case (Bundesgerichtshof, 1 December 1999) BGHZ 143, 214.

<sup>50</sup> *Mephisto* Case (Bundesgerichtshof, 20 March 1968) BGHZ 50, 133.

<sup>51</sup> *Campbell v. Mirror Group Newspapers Ltd* [2004] 2 AC 457 (HL).

law of defamation has identified, but not answered, the issue of whether to allow claims for defamation against dead people. This would affect the regulation of simulations created by AI that would simulate dead people making false statements.

D. South Korea & Japan Present Valuable Opportunities to Contrast Cultural Issues

#### **D. The Instructive Contrast: Allowing Posthumous Rights in Different Jurisdictions**

One of the most obvious consequences of the different legal regimes for posthumous rights in India and in the United States (in this case, presented in the case of *Shaw Family Archives Ltd. v. CMG Worldwide Inc*<sup>52</sup>.) is the question of what happened with the location or state of domicile of Marilyn Monroe at the time of her death so that it could determine which posthumous right statute would govern her. The very existence of these types of disputes is indicative of how far along in their commercial development these rights have become within some jurisdictions in the United States.

As opposed to these, there can be absolutely no dispute about posthumous rights in India, as stated by the court in the case of *Krishna Kishore Singh*.

### **V. TOWARD A NORMATIVE FRAMEWORK**

#### **A. The Case for a Dedicated Posthumous Personality Rights Statute**

Reviews of Parts III and IV demonstrated that India's regulatory framework (constitutional laws, tort law statutes) does not adequately protect against the unapproved digital exploitation of an individual's identity, following that individual's death. Copyright, trademark, dishonesty and data protection laws alone do not close the regulatory gap. A new statute should be created that would establish a separate legislative framework, specifically the Posthumous Personality Rights Act (PPPA), to remedy these issues. The proposed PPPA would incorporate five (5) core components.

The proposed PPRA should be built around five foundational principles:

First, To begin with, posthumous personality rights are better viewed as a hybrid right—not just dignitarian, but also proprietary—to demonstrate both the intrinsic dignity of a person's

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<sup>52</sup> *Shaw Family Archives Ltd. v. CMG Worldwide, Inc.* 486 F. Supp. 2d 309 (SDNY 2007).

identity and its potential commerciality. A conceptual view of purely dignity-based rights makes them impossible to assign or exploit commercially and a conceptual view of purely proprietary rights turns a deceased person's identity into merchandise only. The hybrid view captured in the German Marlene Dietrich doctrine is the best statement of the complexity of these interests.

Second, the temporal aspect of the right should be clearly defined. The right to a post-mortem time period that is indefinite would have the effect of severely limiting the ability of people to engage in freedom of expression, create works of historical scholarship, and comment artistically. A thirty-year post-mortem protection period after death is suggested by comparing practices in different countries, and during this thirty-year period, any commercial use of a deceased person's digital likeness, voice or persona shall only occur with the consent of the designated right holders. In addition, a second protection against simulators of the likeness of a decedent (with no consideration of commercial intent) based upon dignity should be provided for the duration of the life of the immediate family members of the decedent (i.e., parents, siblings and children). This approach is consistent with that advocated by Professor Jennifer Rothman in her groundbreaking work regarding post-mortem dignitary harm.<sup>53</sup>

Third, the right should vest in a defined class of successors, constituted by a "digital executor" designated by the deceased during their lifetime (modelled on France's digital legacy framework), and in default of such designation, in a statutory order of priority beginning with the surviving spouse, then adult children, then parents.

Fourth, the PPRA should impose disclosure and consent obligations on providers of digital resurrection technologies, requiring prior written consent from the designated right-holder before creating or deploying any AI-generated simulation of a deceased individual. Where the deceased left explicit instructions including through a "digital will" those instructions should be binding on successors and developers alike.

Fifth, the PPRA should create a cause of action enforceable by the designated right-holder, providing remedies including injunction, account of profits, and statutory damages. In cases of egregious or malicious exploitation, the court should be empowered to award punitive damages.

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<sup>53</sup> Rothman (n 18) 240.

## **B. Amendment to the Digital Personal Data Protection Act, 2023**

In addition to a freestanding PPRA, the DPDPA should be amended to extend its key protections to the personal data of deceased individuals for a defined period. Specifically, the following amendments are proposed:

1. The definition of "data principal" should be amended to include deceased individuals, with the consent and rights management functions exercisable by the digital executor or statutory successors as defined under the PPRA.
2. A new provision should be inserted permitting data principals, before their death, to file "posthumous data directives" with platforms specifying whether their personal data should be preserved, deleted, or made inaccessible after death, and whether it may be used to train AI systems.
3. Platforms should be required to implement technical measures to honour posthumous data directives within a defined period following notification of the data principal's death.

## **C. Regulating AI and Deepfake Technologies**

A comprehensive response to digital resurrection requires, in addition to posthumous personality rights legislation, sector-specific regulation of the AI and deepfake technologies that enable it. The following regulatory principles are proposed:

**Mandatory disclosure:** Any AI-generated audio, video, or interactive simulation of a real (living or deceased) person should be required to carry a clear, prominent, and technically embedded disclosure to that effect a form of "digital watermarking" that persists even when content is shared across platforms.

**Consent architecture:** Developers of AI training datasets that include personal data including voice recordings, facial images, and text communications should be required to maintain documented evidence of consent (or its posthumous equivalent) for each identifiable individual in the dataset. The burden of proof for consent should rest with the developer.

**Platform liability:** Based on the principles of contributory infringement set out in Arijit Singh

and the intermediary liability principles established in *MySpace Inc. v. Super Cassettes Industries Ltd*<sup>54</sup>, platforms will be held liable for violations of an AI-derived posthumous personality right when they have been notified but only if they act promptly to remove the infringing content or disable access to it.

**Harm-based liability:** A strict liability regime subject to a defence of authorised consent should apply to the commercial deployment of AI-generated simulations that cause demonstrable harm to the deceased's family members. This would cover cases such as AI-generated videos depicting a deceased person endorsing products, committing criminal acts, or expressing views contrary to their known positions.

#### **D. Balancing Freedom of Expression**

A posthumous personality rights law ought to be very carefully calibrated to make sure it does not extend too far and thereby prevent legitimate artistic, academic, and political expression from taking place. The PPRA should include specific exceptions based on the fair dealing provisions of the 1957 Copyright Act.

**Satire and Parody:** The depiction of a deceased person in a manner that clearly indicates that it is intended to be satirical or parody-like, and would be perceived as such by a reasonable person, should not result in liability against the creator of that work. This exemption recognizes the "transformative use" test established in *ETW Corp. v. Jireh Publishing* and the protection of free speech guaranteed by Article 19(1)(a) of the Indian Constitution.

**Commentary from the Perspective of History and Academia:** Deceased persons' images when used in documentary films, educational materials, museum exhibits, and academic publications and not intended for commercial gain shall be exempt.

Incidental reproduction of deceased persons' images or sounds during authentic news reporting is not actionable based on news as per Delhi High Court (*Phoolan Devi v. Shekhar Kapoor*<sup>55</sup>) principles with regard to living persons; therefore, the public's right to know the facts mitigate against personality rights privacy claims.

The courts should remain vigilant to protect against abuse of such exceptions by commercial

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<sup>54</sup> *MySpace Inc. v. Super Cassettes Industries Ltd*. CS(OS) No 2682/2008 (Delhi HC, 2017).

<sup>55</sup> *Phoolan Devi v. Shekhar Kapoor & Ors*. 1995 SCC OnLine Del 347.

entities to avoid liability; for example, the alleged defendants in Krishna Kishore Singh case attempting to raise free speech defences led the Court to consider carefully the difference between true artistic expression and commercial use of artwork that is only being referred to as artistic/commercial.

## VI. CONCLUSION

Digital resurrection technology is not a distant speculative prospect. It is a present and rapidly proliferating reality that is already generating concrete harms emotional, economic, reputational, and dignitarian to deceased individuals' families and to the integrity of public discourse. The law, in India as in most jurisdictions, is significantly behind the curve.

This article has argued that the gap cannot be filled by the creative extension of existing doctrines. Copyright protects expression, not identity. Defamation law protects the living. Data protection law, as currently framed, abandons the deceased. Constitutional rights expire with their holder. What is needed is a new, dedicated legal institution posthumous personality rights grounded in a coherent philosophical account of why the dead retain claims on the living, and calibrated by reference to the comparative wisdom of jurisdictions that have grappled most seriously with these questions.

The proposed framework a Posthumous Personality Rights Act, complemented by amendments to the DPDPA and sector-specific AI regulation is not merely a technical legal fix. It is an expression of a society's values: a recognition that persons are more than data points, that identity is more than intellectual property, and that the dignity we accord to human beings in life is not entirely extinguished when life ends. As AI technologies grow ever more capable of conjuring the dead, the urgency of answering this question legally, philosophically, and humanly can only increase.

The courts cannot wait for the legislature indefinitely. In the absence of statutory intervention, Indian courts should adopt a purposive and expansive interpretation of Article 21, reading into it a right of posthumous dignity enforceable by immediate family members, modelled on the approach of the German Federal Court of Justice in *Marlene Dietrich*<sup>56</sup> and the principles articulated in *Puttaswamy*. Such a judicial bridge, however, can only be a temporary solution. The scale, speed, and commercialisation of digital resurrection demands a legislative response

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<sup>56</sup> *Marlene Dietrich* Case (Bundesgerichtshof, 1 December 1999) BGHZ 143, 214.

and it demands it now.