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PERSONALITY RIGHTS IN INDIA: PROTECTING IDENTITY IN THE DIGITAL AGE

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INTRODUCTION

In an era where personal branding is a cornerstone of the global economy, the sanctity of an individual's identity has become a significant legal battleground. "Commercial exploitation" refers to the unauthorized use of an individual's physical or intellectual property for financial gain. For celebrities and public figures, this issue is particularly acute; their name, voice, likeness, and overall persona possess immense commercial value. Because their identity is the engine of their livelihood, it is essential to protect it from unauthorized appropriation.

Personality rights often bifurcated into the "right to privacy" (protecting against intrusion) and the "right of publicity" (controlling commercial use) have emerged as the primary legal shield for individuals. As marketing-driven business models continue to dominate, the rise of artificial intelligence (AI) has significantly increased the ease with which a person's aura and artistic characteristics can be manipulated. This article explores the legal landscape of personality rights in India, tracing its evolution from constitutional privacy to modern, technology-focused judicial interventions.

THE TWO FACETS OF PERSONALITY RIGHTS: PRIVACY VS. PUBLICITY

At its core, personality rights represent the authority an individual holds over their own identity. In India, there is no single, dedicated statute governing these rights. Instead, the legal framework is a tapestry woven from judicial precedents, constitutional principles, and existing intellectual property laws.

- **The Right to Privacy**

The evolution began with the recognition of the right to privacy under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. In the landmark case of *R. Rajagopal v. State of Tamil Nadu (1995)*¹ (the "Auto Shankar Case"), the Supreme Court of India recognized that a person has a right to control the publication of their life story and likeness. This set the stage for the understanding that an individual's identity is not public domain simply because they are famous.

- **The Right of Publicity**

While privacy protects the individual from unwanted intrusion, the "right of publicity" protects the economic interest inherent in one's identity. This right allows individuals to derive financial benefit from their persona and to prevent others from capitalizing on their goodwill without consent. Indian courts have consistently held that these right vests solely in natural persons, as seen in *ICC Development (International) Ltd. v. Arvee Enterprises (2003)*², where the Delhi High Court clarified that publicity rights are tied to human autonomy and cannot be transferred to non-living entities or event organizers.

JUDICIAL DEVELOPMENT OF PERSONALITY RIGHTS

In the absence of specific legislation, the Indian judiciary has largely relied on the common law principle of "passing off" to protect celebrities. Passing off is a tort used to prevent one party from misrepresenting their goods or services as those of another, thereby deceiving the public and exploiting the original owner's goodwill.

The seminal case of *D.M. Entertainment Pvt. Ltd. v. Baby Gift House (2013)* remains the cornerstone for commercial personality rights in India. In this case, Daler Mehndi, the famous Punjabi singer, sued the defendants for selling dolls that imitated his likeness, wore his signature attire, and even played his songs. The Delhi High Court ruled in favour of the plaintiff, holding the defendants liable for:

1. Violation of the Right of Publicity: Recognizing that Daler Mehndi's persona had clear commercial value that was misappropriated.

¹ *R.Rajgopal v. State of Tamil Nadu*(1994)6 S.C.C.632(India)

² *ICC Dev.(Int'l)Ltd.v.Arvee Enters.,2003(26)P.T.C.245(Del)(India)*

2. False Endorsement: Noting that the dolls created a false impression that the artist had endorsed or authorized the product.

3. Passing Off: Concluding that the defendants were trading on the singer's reputation to deceive consumers.

This judgment was pivotal because it explicitly categorized a celebrity's persona as a protectable asset, equivalent to a trademark.

Following *D.M. Entertainment*, courts began to broaden the definition of what constitutes "persona." In *Titan Industries Ltd. v. Ramkumar Jewellers (2012)*³ the court protected the images of Amitabh and Jaya Bachchan, reinforcing that celebrity rights are a holistic mix of privacy, publicity, and intellectual property. The courts moved beyond just names and photographs, acknowledging that mannerisms, gestures, and voices are intrinsic to an individual's commercial identity.

THE ERA OF OMNIBUS INJUNCTIONS

Recent cases demonstrate that the Indian judiciary is responding to this technological threat with unprecedented speed.

Anil Kapoor v. Simply Life India & Ors. (2023): This case marked a significant shift in digital protection. Actor Anil Kapoor sought to protect his name, voice, image, and specific mannerisms (such as his famous "Jhakaas" catchphrase) from AI-generated deepfakes, GIFs, and digital merchandise. The Delhi High Court granted an ex parte omnibus injunction, explicitly prohibiting the use of his persona across all digital formats, including AI-driven platforms.

Jaikishan Kakubhai Saraf v. Peppy Store (2024): Actor Jackie Shroff (known as "Bhidu") successfully restrained unauthorized use of his name and catchphrases in merchandise and content, further solidifying that even unique linguistic styles fall under the umbrella of protected personality rights.

These rulings signal a shift: courts are no longer waiting for specific "passing off" instances. Instead, they are issuing protective orders that cover future technological infringements,

³ *Titan Indus. Ltd. v. Ramkumar Jewellers*, 2012 (50) P.T.C. 486 (Del.) (India)

recognizing that AI-generated content can cause irreparable reputational and financial harm before a lawsuit even reaches trial.

CHALLENGES AND NEED FOR STATUTORY FRAMEWORK

Despite the proactive stance of the judiciary, the reliance on judicial interpretation creates a state of "flux."

1. Inconsistency: Because protection is granted on a case-by-case basis, celebrities must bear the significant cost and effort of litigation to secure their rights.

2. Ambiguity for Third Parties: In the absence of a statute, digital platforms and content creators often struggle to define the "fair use" boundary particularly regarding parody, satire, and public interest.

3. Limitations of Existing Law: While the Copyright Act and Trademark Act provide some coverage, they are not tailored for the fluid nature of human identity. Section 14 of the Trademark Act, for instance, restricts the registration of a living person's name as a trademark, but it is a reactive tool, not a proactive shield for "aura" or "charisma."

CONCLUSION

The evolution of personality rights in India has been a triumph of judicial pragmatism. Starting from the basic right to privacy, the courts have successfully adapted common law principles like "passing off" to protect the commercial realities of the 21st century. However, as the line between reality and AI-generated content continues to blur, the "judicial shield" must eventually be supplemented by a robust statutory framework.

A dedicated legislation would provide clarity, reduce the burden on courts, and ensure that individuals—whether celebrities or private citizens—maintain control over their identity in an increasingly automated world. Until such legislation is enacted, the current trend of proactive judicial intervention remains the best and indeed the only, line of defences against the unauthorized exploitation of the human persona.