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PERSONALITY RIGHTS : RESERVED FOR CELEBRITIES IN THE AGE OF AI?

-Chanchal Bhati

Imagine this as an upcoming content creator. You wake up, open Instagram and find yourself in a video you clearly do not remember shooting. The image, voice, likeness and all other attributes of your persona are indistinguishable. What do you do?

With the boom of deepfakes and Artificial Intelligence (AI), any form of digital media can be synthesized using an increasingly accessible AI tools. While high courts have granted interim injunction and protected the personality rights of many celebrities against false endorsements and unauthorized use of their AI deepfakes, the conundrum arises with respect to rights of ordinary citizens. Protections are available under constitution and data privacy laws but they remain to be inadequate. This blog explores the dimensions of protection of personality rights under the Indian law while addressing the gap therein.

What are personality rights?

Personality rights in India are derived from common law. They are a bundle of rights and include the right to privacy and publicity. It constitutes everything that a personality is composed of, that is, image, likeness, voice and even catchphrases. In a recent ruling, the Delhi High court has granted John Doe or “Ashok Kumar” order in favour of the famous actor featured in a recent legal drama “Mamla Legal Hai”, Ravi Kishan. The court granted interim relief by protecting his image, likeness, voice and catchphrases from unauthorized use and commercial exploitation.

In simpler words, a person must have autonomy over its personality traits and must have the means to protect them from unauthorized exploitation.

Indian statutory framework

India does not have a standalone personality rights legislation. The Indian Copyright Act, 1957 protects a performer's rights which include unauthorized reproduction, issuance or commercialisation of their performance. In addition to this, Section 57 protects an author's work from any distortion, mutilation or modification or any other act which could affect their reputation. Under The Trade Marks Act, 1999, a person can get its name, signature or likeness registered that have attained distinctiveness. Here, it is essential that your name, sign, or any mark which is sought to be registered have originality and nexus with a trade.

Both these statutes contain no express mention of protection of personality rights.

Constitution of India and its exposition

Personality rights flow from Article 21 of the Constitution of India. Since personality is a concept which is personal to everybody, it is protected under the fundamental right to life and personal liberty. Right to privacy was first acknowledged as a right under Article 21 in a landmark case of *R. Rajagopal V. State of T.N.* The court emphasized it as "a right to be let alone". Anybody who publishes something without the consent of the person would violate the right of privacy and accordingly must be held liable for damages. The court also recognised this as a right under tort which attracts damages from its breach.

Digital Explosion

The world is witnessing an unprecedented rise of digital advancements. What was once a theory has now translated into reality. While it affords convenience, one cannot turn a blind eye towards the risks this transformation poses. There has been an increase in the rise of complaints showing unauthorized use of a person's image, voice, likeness to manipulate and extort money from victims. This has led to a significant rise in cyber crimes. While this issue also demands questions from the perspective of data privacy, with the invention of the diffusion model one can generate synthetic media from scratch even without the use of any personal data.

The Conundrum

There have been a plethora of high court judgments where the court has granted interim injunction to celebrities, protecting their personality rights. The courts have proceeded

to attach these personality rights with commercial value of a celebrity's persona. Its easy for celebrities to prove commercial value owing to their fame garnered over the years. The court has granted protection repeatedly in the cases of Arijit singh, Preity Zinta, Karan Johar, Sonakshi Sinha by ordering the take down of AI generated deepfakes within restricted timelines.

But what does the law have in store for common citizens? There is no gainsaying that common citizens are equally impacted by violation of their personality rights. For instance, a parent being extorted for money by using the cloned voice of his child. No doubt protections are available under the Bhartiya Nagarik Suraksha Sanhita, Information Technology Act and the recent Digital Personal Data Protection Act, 2023. But voice being an attribute of one's personality, warrants protection under the regime of personality rights. This is because in contemporary times, this issue is not limited to advertising and commercial exploitation.

Apart from commercial misuse, celebrities have also been victims of immoral depictions tarnishing their reputation. While it was a straight route for them by seeking injunctions, the road is not easy for a common man.

"All animals are equal but some are more equal than others." A classic quote from George Orwell endures the tests of time.

Conclusion

The court should consider approaching this issue with more nuanced and broad principles of personality rights by keeping in mind the cutting edge technology. The legislature can make amendments to the present laws while expressly addressing this issue without the need to formulate a new legislation. This must be kept in mind as there is already an overwhelming number of laws. This will help in building a more rigid legal framework without undermining a common citizen's right.