

WHAT'S IN A PERSONALITY? TOWARDS A SUI-GENERIS FRAMEWORK FOR THE PROTECTION OF PERSONALITY RIGHTS

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Abstract

This article examines the protection of personality rights in the digital age, highlighting the legal vacuum in India which lacks a sui generis framework. The current Indian approach is a “patchwork” system, drawing implicitly from the constitutional right to privacy, copyright law, and trademark law. This contrasts with international models, such as the property-based “right of publicity” in the United States, the goodwill-focused tort of passing off in the UK and Australia, China's dignity-based protections in its Civil Code, and the EU's data-centric approach under the GDPR. To address India's fragmented system, the paper proposes the “Trinity Persona Doctrine,” a framework that conceptualizes personality rights through three distinct interests. The first is the “Dignity Interest,” an inalienable right rooted in human dignity that protects against demeaning uses and survives death. The second is the “Associative Interest,” which safeguards an individual's reputation from false attributions and misleading endorsements, independent of economic harm. The third is the “Economic Interest,” a transferable right allowing individuals to control and profit from the commercial exploitation of their persona, acknowledging the labor involved in creating a public identity. The article concludes by advocating for Parliament to enact a specific statute based on this doctrine to create a cohesive, balanced, and future-proof legal regime for personality rights in India.

Keywords: Personality Rights, Patchwork, Sui-generis, GDPR, Digital Interest.

INTRODUCTION

“Rahul, Naam toh suna hoga?”¹

What, or rather who comes to your mind when you hear this dialogue? The answer is Shah Rukh Khan. Why do we associate him to this dialogue? He did not write this, he does not own

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¹ Yash Chopra (dir.), *Dil To Pagal Hai* (Yash Raj Films, 1997)

the rights to the movie, then why do we associate his name to this dialogue? This is because it comes with the personality of the actor. These bunch of rights are known as personality rights. Other notable examples include, “*Jhakkas*” by Anil Kapur² and “*Bhidu*” by Jackie Shroff. Recently the Delhi High Court has adjudicated on the disputes wherein these marks were in question³. In the *Sadguru Case* the Delhi High Court restrained misuse of Sadhguru’s name, image, and likeness in unauthorized digital content and merchandise while in the Warikoo case Court granted interim relief to entrepreneur Ankur Warikoo against unauthorized use of his persona in online scams and impersonation. It ordered swift takedowns and preservation of data by platforms, recognising personality rights in the digital sphere. It directed takedown of infringing material and disclosure of online intermediaries to protect personality rights. What does a name, a face, or a voice mean? The answer is all-encompassing in the twenty-first century, with a cultural and economic impact that people in the past couldn't have envisaged. We live in a time when a person's identity can be digitized, copied, and shared around the world in an instant. A smile can be used to sell a product in a far-off market, a voice can be synthesized to tell a viral meme, and a likeness can be used in a deepfake ad without the person's knowledge or permission. This is the interesting but dangerous world of personality rights, a changing area of law where a person's essential identity has become a valuable and vulnerable commodity in the global digital market.⁴

In the US, the right of personality is sometimes called the “right of publicity.” It is the natural right of a person to choose how their personal traits are used for business. This includes not just their name or picture, but also how they look, sound, sign their name, and act in ways that are distinctive to them that make up their public persona. This legal theory came from the right to privacy, which was a big deal in the famous case *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* It made a distinction between the right “to be let alone” and the right to control the economic value of one's identity. Privacy protects the private and personal parts of life from unwanted intrusion. Personality rights, on the other hand, protect the individual as a brand⁵ from unauthorized use⁶. This is important for both celebrities and, more and more, regular

² YUDH (Trimurti Films, India, 1985)

³ *Sadhguru Jagadish Vasudev & Anr. v. Igor Isakov & Ors.*, CS(COMM) 578/2025 (Delhi High Ct. May 30, 2025); *Ankur Warikoo & Anr. v. John Doe & Ors.*, CS(COMM) 514/2025 (Del. H.C. May 26, 2025)

⁴ Amy M. Conroy, *Protecting Your Personality Rights in Canada: A Matter of Property or Privacy?*, Vol. 1(1), *WESTERN J. LEG. STUD.*, 1 (2003) (‘Conroy’)

⁵ Arpita Khare, “Impact of Indian Cultural Values and Lifestyles on Meaning of Branded Products: Study on University Students in India” 23 *J. Int’l Consumer Mktg.* 365 (2011)

⁶ Garima Budhiraja, *Publicity Rights of Celebrities: An Analysis under the Intellectual Property Regime*, Vol. 6 *NALSAR STUD. L. REV.*, 87 (2011)

people whose brief moments of fame can be spread online forever. The personalities are important for they allow the brands to have an economic benefit⁷.

I. THE CORE COMPONENTS OF PERSONALITY RIGHTS

To understand the framework of personality rights, you need to look at its basic parts: the traits they protect, the two types of interests they serve, and the time restrictions that define their existence. The concept of protected attributes has grown a lot and currently includes the most important parts of a person's public persona. Personality rights viz the privacy rights have been heavily debated in the legal landscape⁸. Judicial organizations have agreed that identity is made up of several traits, any of which may be used for illegal or commercial gain. The range of protection has grown a lot in response to new types of infringement. It used to just cover fundamental identifiers like a person's name, image, and likeness. Recent court decisions in India have made it harder for anyone to use a celebrity's voice, signature, gestures, and other unique traits without permission⁹. The Delhi High Court has recently protected Anil Kapoor's unique way of speaking as well as walking from being used sans permission. Jackie Shroff protected his name, voice, appearance, and the moniker "Bhidu,"¹⁰ which has come to show that the law is being developed to protect these new things too¹¹.

A twin layered system which protects both the economic and moral aspects protects these qualities of these actors. The "right of publicity" is the part of the law that gives persons the unique power to control and profit from the commercial use of their name¹². When someone's image is utilized to sell a product or suggest a fake endorsement, their right is violated. This allows someone who has violated their right to profit from something they didn't create. The moral or dignitary side is based on the right to privacy, which protects people from bad uses that might hurt their reputation and integrity. This distinction is important because a false

⁷ Prakash Sharma & Devesh Tripathi, *Celebrities' Agony: Locating the Publicity Rights in the Existing IPR Framework*, Vol. 4(1), *ILI L. REV.*, 41, 48 (2019).

⁸ David Westfall & David Landau, *Publicity Rights as Property Rights*, Vol. 23, *CARDOZO ARTS & ENT. L. J.*, 71 (2005) ('Westfall & Landau'); Mark A. Lemley, *Privacy, Property, and Publicity*, Vol. 117(6), *MICH. L. REV.*, 1153 (2019) ('Lemley'); Luthra & Bakhru, *supra* note 6; Gary S. Stiffelman, *Community Property Interests in the Right of Publicity: Fame and/or Fortune*, Vol. 25(5), *UCLA L. REV.*, 1095 (1978) ('Stiffelman')

⁹ Akshat Agarwal & Aditya Bhargava, *Whose Personality Right is it Anyway?*, *INDIAN JOURNAL OF LAW AND TECHNOLOGY*, April 16, 2024, available at <https://www.ijlt.in/post/whose-personality-is-it-anyway> (Last visited, July 1 2024)

¹⁰ Jaikishan Kakubhai Saraf v. Peppy Store, (2024) SCC OnLine Del 3664

¹¹ Pranjali Sahni & Souradeep Mukhopadhyay, *Legal Basis for Personality Rights in India – The Repercussions of Unreasoned Decisions*, *SPICY IP*, April 17, 2023

¹² Niharika Salar & Sonal Sinha, *India's Take on Legal Remedy of Passing-off: A Celebrity's Perspective*, Vol. 17(2), *INDIAN J. L. & TECH.*, 44 (2021) ('Salar & Sinha'); Samarth Krishan Luthra & Vasundhara Bakhru, *Publicity Rights and the Right to Privacy in India*, Vol. 31(1) *NAT'L L. SCH. INDIA REV.*, 125 (2019) ('Luthra & Bakhru').

endorsement that is illegal (but good) may cost you money, while a false representation that is not commercial but defames you can hurt your reputation. This duality frequently leads to a dispute that courts have to decide, weighing the right to stop economic theft against claims of artistic expression or satire.

The most controversial part of personality rights is whether they endure and can be passed on, particularly after a person dies¹³. The legal status of posthumous rights varies greatly from country to country, making the world a difficult place. The most common view in India, as shown by cases like *Krishna Kishore Singh v. Sarla A. Saraogi*¹⁴, is that personality rights are linked to the right to privacy in Article 21 of the Constitution. According to the legal principle *actio personalis moritur cum persona*¹⁵ (a personal right of action dies with the person), Indian courts have ruled that the right to privacy ends when a person dies, along with the personality rights that go along with it. Consequently, these rights are not regarded as assets transferable to heirs. In some U.S. states, the right of publicity is regarded as a transferable property right¹⁶. California and Indiana, for instance, have enacted legislation that protects the identity of dead celebrities for 70 and 100 years, respectively. This implies that their estates may persist in managing and benefiting from their names. This distinction raises a significant philosophical inquiry: do personality rights constitute an essential aspect of human dignity¹⁷ that ceases at death, or do they represent a kind of intellectual property that persists and may be commodified posthumously?

II. COMPARATIVE ANALYSIS: HOW ARE COUNTRIES AROUND THE WORLD DEALING WITH PERSONALITY RIGHTS?

In this section we shall see and evaluate how are the countries in other legal systems dealing with the personality rights. How do they define it and how do they deal with its violations.

1. The United States of America

The US was the first country to create a legal foundation for personality rights, although there is a lack of uniformity throughout the states. The idea of the “right of publicity” comes from a

¹³ D. Collins, “Age of the Living Dead: Personality Rights of Deceased Celebrities” 39 *Alta. L. Rev.* 914 (2001)

¹⁴ *Krishna Kishore Singh v. Sarla A. Saraogi*, AIR 2021 (NOC 873) Del 355; (2021) 88 PTC 40 (Del)

¹⁵ Power, J.J., 1900. *Actio Personalis Cum Persona Moritur*. *Can. L. Times*, 19, p.215.

¹⁶ Neethling, J., 2005. Personality rights: a comparative overview. *Comparative and International Law Journal of Southern Africa*, 38(2), pp.210-245.

¹⁷ Aviles Pagan, L.A., 1998. Human Dignity, Privacy and Personality Rights in the Constitutional Jurisprudence of Germany, the United States and the Commonwealth of Puerto Rico. *Rev. Jur. UPR*, 67, p.343.

mix of state laws and common law that protect people¹⁸. Most people don't regard this right as a right to be alone; they see it as a property right to make money off of their identity's economic value. People often say that the property-based approach came from the case *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953)¹⁹. In that case, the court said that famous people own a “right in the publicity value of [their] photograph.” This made it clear that the right was not about stopping emotional pain from unwanted attention, but about protecting the financial benefits that come with being famous. In *Zacchini v. Scripps-Howard Broadcasting Co.* (1977)²⁰, the U.S. Supreme Court backed this point of view. The Court decided that the First Amendment did not provide a TV station the right to show a human cannonball's entire 15-second performance because it was taking the performer's “professional property.” The Court's reasoning was clearly based on economics: the broadcast put the performer's ability to receive paid for his performance at risk.²¹

The fact that this privilege may be passed down and has a wide range of meanings shows that it has property-like qualities. The court in *White v. Samsung Electronics America, Inc.* (1992)²² found that a TV commercial showing a robot with a blonde wig and gown moving letters around on a game board was enough to make people think of “Wheel of Fortune” host Vanna White. It didn't matter if her real name or likeness wasn't there; the court protected the economic value of her identity from being used for profit. The Celebrity Rights Act²³ protects this right in locations like California. It also makes it possible for heirs to inherit and control the publicity rights of a deceased celebrity for 70 years after death, treating the persona as an estate asset.

2. The UK

The legal system in the UK does not recognise the idea of a separate “image right” or right of personality, unlike the US system²⁴. Claimants who want to protect their identity from being used without permission must find a way to do so within a “patchwork” of existing laws²⁵. One

¹⁸ Bergmann, S., 1998. Publicity rights in the united states and germany: a comparative analysis. *Loy. LA Ent. LJ*, 19, p.479.

¹⁹ Hylton, J.G., 2001. Baseball cards and the birth of the right of publicity: The curious case of Haelan Laboratories v. Topps Chewing Gum. *Marq. Sports L. Rev.*, 12, p.273.

²⁰ Baird, D.G., 1978. Human Cannonballs and the First Amendment: *Zacchini v. Scripps-Howard Broadcasting Co.* *Stanford Law Review*, pp.1185-1209.

²¹ *Id*

²² Frank, P.B., 1994. *White v. Samsung Electronics America Inc.*: The Right of Publicity Spins Its Wheels. *Ohio St. LJ*, 55, p.1115.

²³ Gordon, S.R. and Honig, L.A., 1988. The Celebrity Rights Act. *Ent. & Sports Law.*, 7, p.1.

²⁴ Čtvrtník, M., 2023. Personality Rights, Privacy, and Post-mortem Privacy Protection in Archives: France and United Kingdom. In *Archives and Records: Privacy, Personality Rights, and Access* (pp. 55-90). Cham: Springer International Publishing.

²⁵ Stallard, H., 1997. The Right of Publicity in the United Kingdom. *Loy. LA Ent. LJ*, 18, p.565.

such way is the common law tort of passing off. This method brings to light a very different legal issue: not the protection of personality as property, but the protection of commercial goodwill and the prohibition of public deception²⁶.

To win a passing off case, the person who is suing must show that there was goodwill, deceit, and damage. The illegal part isn't using the photo; it's making the false allegation that the person who is suing has sponsored or is financially connected to the defendant's products. The important case of *Irvine v. Talksport Ltd.* (2002)²⁷ shows this very well. Eddie Irvine, a Formula One driver, won his case against a radio station that used a fake picture of him holding a radio with the station's logo. The court's decision wasn't based on Irvine's ownership of his image. Instead, it was based on the claim that the changed photo made it seem like he supported the product, which hurt the goodwill he had built up as a celebrity endorser. *Fenty v. Arcadia Group Brands Ltd.* (2015) confirmed the idea when the musician Rihanna sued the business Topshop for selling a t-shirt with her face on it²⁸. The court made it clear that English law does not recognise a "image right." Rihanna's claim won because the photo in question came from a music video for which she had carefully chosen the style, and Topshop had worked with her before. The court decided that buyers would undoubtedly be led to believe that the clothes were official, which is a false statement. Once again, the harm was to her goodwill and her power over endorsements, not to a right that was inherent to her image.

3. Australia

Australian law is quite similar to UK law, with remedies that focus on preventing harm to businesses taking precedence over a person's right to privacy²⁹. The common law tort of passing off and, more crucially, laws that make dishonest or misleading behaviour illegal are two ways that people try to protect themselves³⁰. Section 18 of the Australian Consumer Law (ACL)³¹ has become a very useful weapon for famous people. It makes it illegal to take part in trade or

²⁶ Čtvrtník, M., 2023. Personality Rights, Privacy, and Post-mortem Privacy Protection in Archives: France and United Kingdom. In *Archives and Records: Privacy, Personality Rights, and Access* (pp. 55-90). Cham: Springer International Publishing.

²⁷ Bryniczka, P.M., 2004. Irvine v. Talksport Ltd.: Snatching Victory from the Jaws of Defeat-English Law Now Offers Better Protection of Celebrities' Rights. *Sports Law. J.*, 11, p.171.

²⁸ Ng, C.W., 2016. The law of passing off—goodwill beyond goods. *IIC-International Review of Intellectual Property and Competition Law*, 47(7), pp.817-842.

²⁹ Neethling, J., 2005. Personality rights: a comparative overview. *Comparative and International Law Journal of Southern Africa*, 38(2), pp.210-245.

³⁰ Catanzariti, T., 2002. Swimmers, Surfers, and Sue Smith Personality Rights in Australia. *ENTERTAINMENT LAW REVIEW*, 13(7), pp.135-141.

³¹ Nottage, L., 2009. The New Australian Consumer Law: What About Consumer ADR?. *Law and Justice Journal*, 9(2), pp.176-197.

business that is misleading, deceptive, or likely to be misleading or deceptive. This lets a famous person sue a company that uses their name or image in a way that suggests they are connected to or support the firm in some way. Like in the UK, the focus is on making sure that the commercial message is true and protecting customers from being lied to, not on a person's private rights over their identity. The law is more concerned with how the representation affects the market than with the person's own rights³².

4. The Republic of China

China's legal system is quite different from common law. China is now one of the few nations to have a particular provision in its main civil law that deals with personality rights³³. This is due to the 2021 Civil Code³⁴. Our view of personality rights has changed with this new arrangement. They are now considered essential civic rights based on dignity and human freedom, not economic tools or means to redress wrongs³⁵. The Code specifies life, bodily integrity, health, identity, reputation, and private rights. Article 1019's "right of portrait" states that no one may use another's picture without permission, save in legal cases.³⁶ You don't need kindness or dishonesty to receive this protection³⁷. Recognising that identity is multifaceted, the Civil Code protects a person's voice and other distinctive attributes. The wide Personal Information Protection Law (PIPL)³⁸ of China strengthens and modernises this dignity-focused approach by preserving a person's identity in all its manifestations.³⁹

5. The EU

The EU has set up a strong and condensed system which is designed for protecting personal identity but it does so from the point of view of data protection⁴⁰. This in addition to the countries like Germany and France which have long been protecting the people under their

³² Nimmer, M.B., 1954. The right of publicity. *Law and Contemporary problems*, 19(2), pp.203-223.

³³ Lei, C., 2018. Debating personality rights protection in China: a comparative outlook. *European Review of Private Law*, 26(1).

³⁴ Civil Code of the People's Republic of China, 2020 (effective 1 Jan 2021)

³⁵ Jie-rong Chen & Yan Sun, "Constructing the Theoretical System of the Chinese Personality Rights Law" 10 J. Law Rev. 491 (2024)

³⁶ Liming Wang, "Debating Personality Rights Protection in China: A Comparative Outlook" SSRN Paper No 3237273 (2018)

³⁷ Liming Wang, "Personality Rights in China's New Civil Code" in Huapeng Pissler & Keping Zou (eds.), *The Making of the Chinese Civil Code* 35 (Cambridge Univ. Press, 2021)

³⁸ Liming Wang & Shi Jiayou, *Chinese Law of Personality Rights* (Routledge, 2024)

³⁹ Linda Zhao, "Protection of Right of Publicity in China" Law.asia (31 Aug 2022)

⁴⁰ Kristin Kuraishi, "From the Golden Gate to London: Bridging the Gap Between Data Privacy and the Right of Publicity" 46 Brook. J. Int'l L. 733 (2021)

civil codes⁴¹. However, the General Data Protection Regulation (GDPR) has created a set of rights that apply to all EU countries, which has completely changed the situation⁴². The GDPR says that an individual's name, picture, or other identifying information is “personal data.” It is against the law to use or “process” this data unless there is a specific legal basis for doing so, such as the clear and informed consent of the “data subject.” This changes the legal burden a lot. A person who wants to restrict how their photo is used no longer has to show that it hurts goodwill or is misleading; instead, the company that uses the picture (the “data controller”) has to prove that it has the right to do so. The GDPR gives individuals a lot of important rights, such as the right to access, the right to correct, and the right to erase (sometimes known as the “right to be forgotten”)⁴³. The EU has set up a paradigm that gives people authority by making it a fundamental right to preserve their data by defining who owns their identity⁴⁴. This means that anybody who wants to exploit someone's persona for any reason, including business, must meet strict restrictions.⁴⁵

III. THE INDIAN ANGLE: ARE WE DOING ENOUGH?

In Indian law, the idea of “personality rights” is unique and constantly changing. It refers to a person's right to control and profit from the commercial exploitation of their identity⁴⁶. The imperative to protect the celebrities likeliness and personality is growing exponentially with the growth in media and advert⁴⁷ industry⁴⁸. India’s approach to this is in contrast to the other jurisdictions which have made a law regarding this, India’s policy has been developed through the courts.

⁴¹ Anna E. Helling, *Protection of “Persona” in the EU and in the U.S.: A Comparative Analysis* 25 (LL.M. Thesis, Univ. of Georgia, 2005); Luljeta Plakolli-Kasumi & Qerkin Berisha, “Publicity Rights as a Tool for Protection of Celebrities and Public Figures” 72 PFZ L. Rev. 1303 (2022)

⁴² Tatiana-Eleni Synodinou, “Image Right and Copyright Law in Europe: Divergences and Convergences” 3 Laws 167 (2014)

⁴³ European Data Protection Supervisor, *Study on the Essence of the Fundamental Rights to Privacy and to the Protection of Personal Data* 12 (2023)

⁴⁴ Samuel D. Warren & Louis D. Brandeis, “The Right to Privacy” 4 Harv. L. Rev. 193, 213 (1890)

⁴⁵ Supra at 40, Supra at 39.

⁴⁶ Naeha Prakash, “Stars in Their Eyes: The Dominance of the Celebrity Brand and Intellectual Property Norms Protection through Fan Goodwill” 35(2) Hastings Comm. & Ent. L.J. 247 (2013)

⁴⁷ Supriyo Patra & Saroj K. Datta, “Celebrity Endorsement in India — Emerging Trends and Challenges under Globalization” 5(3) J. Mktg. & Commc’n 16 (2010)

⁴⁸ Danish Hussain, “Celebrity Use in Indian Advertising: Analysis and Appraisal” 19(1) Int’l J. Indian Cult. Bus. Mgmt. 1 (2019)

1. The Legislative Framework: A System of Protections That Isn't Complete

There is a complete vacuum in India regarding laws which protect the rights of the personalities which are also known as the “*Rights of publicity*”⁴⁹. Due to this conundrum, the people who want to protect their personalities need to make use of laws which have not been designed for that purpose and are a patchwork system⁵⁰. Hence, the protection here is implied and not explicit⁵¹. The Constitution of India is the main source of this protection. The court has interpreted Article 21's Right to Life and Personal Liberty as covering numerous rights that are not listed, such as the Right to Privacy. *R. Rajagopal v. State of Tamil Nadu* (1994)⁵² was the first case to propose this, and the landmark Supreme Court case *K.S. Puttaswamy v. Union of India* (2017)⁵³ made it a fundamental right however, the case of *Dreamline* has held that this is merely advisory⁵⁴. The Supreme Court set the constitutional basis for personality rights claims by acknowledging privacy as a fundamental right. This is because the ability to control one's identity is an important part of personal autonomy and privacy⁵⁵.

The Copyright Act of 1957 doesn't preserve a person's individuality; it protects the unique ways that person is shown. A picture is a “artistic work,” a film portion is a “dramatic work,” and a song is a “musical work.” But this protection is frequently not very strong. Unless a contract says otherwise, the photographer usually owns the copyright to an image, not the subject. Section 38⁵⁶ gives “performer's rights,” which provide further protection. This lets a performer stop anyone from recording, sending, or copying their live performance without permission, which gives them control over a very important part of their public identity⁵⁷.

The Trade Marks Act of 1999: This law gives a more direct way to protect things, although it is more focused on business. A trademark might be a celebrity's name, signature, or distinctive slogan. This means that no one else can use it in connection with goods or services. Section 14 of the Act is very important because it says that you can't register a trademark that makes it

⁴⁹ Samarth K. Luthra & Vasundhara Bakhru, “Publicity Rights and the Right to Privacy in India” 31 NLSI Rev. 125 (2019)

⁵⁰ Garima Budhiraja, “Publicity Rights of Celebrities: An Analysis under the Intellectual Property Regime” 6 NALSAR Stud. L. Rev. 87 (2011)

⁵¹ Jishnudeep Kolay, “Lights, Camera and Action: Rethinking Personality Rights in India” 17 NUJS L. Rev. 3 (2024)

⁵² *R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264; (1994) 6 SCC 632

⁵³ *K.S. Puttaswamy (Retd.) v. Union of India*, AIR 2017 SC 4161; (2017) 10 SCC 1

⁵⁴ 2024: PHHC: 025132

⁵⁵ Pranjal Mishra, “Indian Perspective of Publicity Rights of Celebrities in Modern Times” 2 Int'l J. Legal Sci. & Innovation 373 (2020)

⁵⁶ Prakash Sharma & Devesh Tripathi, “Celebrities’ Agony: Locating the Publicity Rights in the Existing IPR Framework” 4 ILI L. Rev. 41 (2019)

⁵⁷ Tankala Balakrishna, “Publicity Rights and the Right to Privacy in India” 9 Int'l J. Acad. Res. 44 (2022)

seem like it has anything to do with a living person or a dead person from the previous twenty years without getting permission. This regulation makes it illegal for someone to use a recognised person for business purposes without their permission⁵⁸.

2. The Role of the Judiciary

Judicial rulings have led to the most important changes in Indian personality rights laws. The court has aggressively connected constitutional privacy, copyright, and trademark law to create a powerful and flexible right of publicity.

The process began with the courts recognising the right to privacy as a way to protect people from having their personal stories shared without their permission, as shown by the *Auto Shankar* case. The court quickly saw that this problem went beyond privacy and included the monetary value of a person's identity. In *ICC Development (International) Ltd. v. Arvee Enterprises (2003)*⁵⁹, the Delhi High Court was one of the first to say explicitly that the “right of publicity” comes from the right of privacy. This gives people the power to choose how their identity is used for business purposes.

The well-known singer Daler Mehndi was involved in the case *D.M. Entertainment Pvt. Ltd. v. Baby Gift House (2010)*⁶⁰, which made this idea quite evident. The court stopped a third party from selling dolls that looked like the musician, complete with his unique turban and clothes, and that even performed parts of his songs. The court said that this was a clear breach of his right to publicity and that it was passing off since it made it seem like the singer was connected to the items in a way that was not true.

The case of *Titan Industries Ltd. v. Ramkumar Jewellers (2012)*⁶¹ has made the legal position clearer on this point of law. The DHC held that when the photos of Amitabh and Jaya Bachchan were used in an ad, the irresistible inference was that it was done for economic benefit. The court went on to hold that a violation of the right of publicity did not have as a sine qua non the quest for misunderstanding or dishonesty, mere act of using someone else's name or picture sans their permission was enough.

⁵⁸ Niharika Salar & Sonal Sinha, “India's Take on Legal Remedy of Passing-off: A Celebrity's Perspective” 17 *Indian J. L. & Tech.* 44 (2021)

⁵⁹ *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 (26) PTC 245 (Del)

⁶⁰ *D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.*, 2010 (44) PTC 575 (Del)

⁶¹ *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del)

The DHC in another landmark judgement of *Anil Kapoor v. Simply Life India*⁶² has protected the usage sans permission of his name, image, likeliness, mannerisms and the catch phrase “*jhakkas.*” This case is of importance as it takes note of the changing landscape of the IPR wherein not AI can manipulate and replicate a lot of these tokens. Hence, these rights and their protection needs to be adjusted for digital flexibility.

IV. WHY A *SUI-GENERIS* FRAMEWORK IS NECESSARY

In discussions about what legal system should be in charge of protecting people's dignity, reputation, and economic value in the digital age, one common argument is that current laws which are a mix of constitutional privacy, tort (defamation, passing off), intellectual property, and equity can be used to do so. This this paper we argue, both doctrinally and normatively, that the current frameworks are conceptually and operationally inadequate for addressing the novel, platform-enabled harms generated by synthetic media and automated distribution⁶³. A narrowly tailored *sui-generis* statute is not only desirable but essential; it provides definitional clarity, evidentiary and procedural instruments suited to distributed harms, a calibrated remedial framework, and an internal balancing mechanism that mitigates ad-hoc judicial improvisation while honouring constitutional liberties.

At its core, the current framework is flawed because it has too many legal bases that don't work together. Personality-related injuries are currently litigated under various doctrines, each possessing distinct elements, presumptions, and remedies⁶⁴. Defamation deals with false statements that hurt someone's reputation⁶⁵. Passing off protects against commercial misattribution by making people think they are buying something else⁶⁶. Copyright and performers' rights protect creative works and recordings. Constitutional privacy laws protect people's right to privacy and their right to choose what information they share. Synthetic harms, such as voice-cloning used to promote a product, deepfake videos that make a public figure sound like they said something, or algorithmically generated “avatars” sold as likenesses, often

⁶² *Anil Kapoor v. Simply Life India & Ors.*, CS (COMM) 652/2023, order dated 20 Sept 2023 (Del HC)

⁶³ Cascon, F.C., 2024. Digital Platforms and Personality Rights. *Eur. J. Privacy L. & Tech.*, p.54.

⁶⁴ Augustian, A., 2023. Protection of personality rights in India: Issues and challenges. *IPR Journal of Maharashtra National Law University Nagpur*, 1, pp.44-53.

⁶⁵ D. Mishra & M. Arora, *The Movement Against Criminal Defamation: Lessons for a Postcolonial India*, 9 Indian J. Const. L. 62 (2020)

⁶⁶ A. Banerjee, *Spill-over Reputation in Passing Off Actions: Indian and English Law Compared*, 14 Oxford Univ. Commonwealth L.J. 21 (2014).

involve dignity, attribution, and commercial exploitation at the same time. When judges try to fit these kinds of mixed harms into one traditional box, they make category errors⁶⁷.

Second, traditional doctrinal forms don't fit well with the technological realities of distributed, automated media. Tort and intellectual property doctrines assume distinct human agents and identifiable actions; modern personality harms frequently emerge from distributed systems models trained on extensive datasets, content redistributed via algorithmic pipelines, and monetized through opaque advertising auctions. This leads to evidentiary problems: identifiability becomes probabilistic (a mix of voice timbre, image, and mannerisms), causation becomes diffuse (profits can be made through many layers of middlemen), and preservation becomes unreliable (key logs and prompts don't last long). The law needs procedural presumptions and preservation powers that fit the medium. For example, it should have statutory *prima facie* tests for recognizability in multimodal synthesis, mandatory preservation orders for hosting and generator platforms, and the power to force the production of provenance metadata and model logs. These rules would not replace judicial fact-finding; instead, they would adjust the burdens of proof to better match the structural realities of the harm. Third, remedies under current legislation are inconsistent with the policy objectives necessitated by personality harms. Equitable injunctions are helpful but not always available. Remedies for passing off and copyright focus on keeping people out of business or getting them paid back, but they don't do a good job of dealing with harm to dignity or mass disinformation.

Fair use and public-interest defences are two examples of balancing devices that were created in other doctrinal contexts and don't work as well when applied to synthetic representations. A statutory two-stage proportionality test:

- (i) an initial examination of identifiability and the type of use (dignitary, associative, economic), succeeded by
- (ii) an inquiry into necessity and minimality when defendants cite expressive exceptions—would offer clear, reproducible direction for judges and enhanced clarity for speakers and platforms.

In short, the main problem with the current law is not just that the remedies are not perfect, but that the doctrinal framework does not fit the type of harm. Transplanting established legal doctrines onto platformed, AI-mediated harms results in erratic jurisprudence and inconsistent

⁶⁷ Agnes Augustian, *Intellectual Property and Protection of Personality Rights in the Digital Context*, NLUA J. Intell. Prop. Rts., Vol. 2, Iss. 1, at 78–92 (2023).

protection. It is like fitting a law made for the English jurisprudence, without altering to the India jurisprudence, it might work⁶⁸, but it is not perfect, hence the need for a *sui generis* framework. In the next part of the paper, we propose a *sui generis* framework which the courts in India can employ in order to adjudicate cases of the said nature.

V. TOWARDS A SUI GENERIS FRAMEWORK: THE TRINITY PERSONA DOCTRINE

The substance of this argument is that it is not possible to have a single, clear concept of “personality rights.” On the other hand, violations of the persona cause different kinds of harm that need to be looked at in different ways. Because of this, the Trinity Persona Doctrine changes these rights in the following way:

1. The Dignity Interest: The Essence That Can’t Be Taken Away

The Dignity Interest is the most important idea, and it is considered as an inherent and unchangeable part of personality. It is not a right but a recognition of the importance of all people. Immanuel Kant's categorical imperative⁶⁹ is the basis for the ideas behind this. It says that people should always be considered as an end in themselves, not only as a means to an end. This interest protects the person's right to represent themselves against activities that might make them feel bad or objectify them. It also comes from G.W.F. Hegel's idea of property and personality⁷⁰, which says that the outward expression of the will in the world, including one's image and likeness, is necessary for self-actualization and independence. Taking away or ruining this picture is an attack on one's freedom. In India, this interest is not based on a vague right to privacy, but on a clear reading of Article 21. In *K.S. Puttaswamy v. Union of India*⁷¹, the Supreme Court said that dignity is a natural, non-negotiable part of existence. The Dignity Interest backs up this idea by safeguarding people against serious violations including non-consensual deepfakes, the unauthorised sharing of intimate photos, and demeaning impersonations that hurt a person's self-respect. Because it is an inherent right, it lasts forever, can't be given away, and stays with the individual even after they die. This lets legal heirs protect the deceased's dignity from being degraded after they die. The German *Allgemeines*

⁶⁸ Shamnad Basheer & Shouvik Kumar Guha, *Outsourcing “Bayh-Dole” to India: Lost in Transplantation?*, 23 Colum. J. Asian L. 279 (2010).

⁶⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge Univ. Press, 1998)

⁷⁰ Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right* (1821)

⁷¹ *Supra* at 48.

Persönlichkeitsrecht (General Right of Personality)⁷² is a very similar concept that is explicitly based on dignity and is seen as a fundamental right rather than just a property right.

2. The Associative Interest: Protecting the Integrity of Reputation

The Associative Interest protects a person's public persona against false or misleading attributions that might damage their reputation or identity. It doesn't have to do with losing money; it has to do with the right to control one's social and public image. Liberal ideas about reputation as a form of “dignitary property” and the right of each person to construct their own public story are at the heart of this philosophy. In a world where communication is key, it's important to be able to protect your name from being used for causes, commodities, or beliefs that you don't support. This issue goes beyond the commercial aspects of the tort of passing off. Cases like *Titan Industries v. M/s Ramkumar Jewellers*⁷³ show this by punishing fake endorsements. However, the Associative Interest explains the harm more clearly: it is the false association itself, not just the economic effects. It guards against the weakening or distortion of a person's public identity, whether via fake endorsements, incorrect information in political ads, or other forms of false attribution that take advantage of a person's established goodwill and public trust. This interest is based on the UK false endorsement theories, as in *Irvine v. Talksport*⁷⁴, but it puts them in a rights-based context, which frees the concept from having to show that it caused financial loss.

3. The Economic Interest: The Right to Make Money from Transferable Rights

Nature and Philosophical Foundation: This part of personality recognises that everyone has the right to make money out of their public image. The fundamental philosophical reason is Lockean: it takes a lot of work, skill, and money to build a public image, particularly if you are a celebrity. The public recognition and economic value that follow are a sort of property that the individual has the right to control and profit from. A utilitarian argument backs this up: protecting this economic interest fosters innovative and public-minded activities that improve culture and business. India doesn't have a specific law on this, but the court has implicitly accepted this interest. In *ICC Development v. Arvee Enterprises*⁷⁵ and *D.M. Entertainment v. Baby Gift House*⁷⁶, the courts agreed that celebrities had an inherent monetary value. The

⁷² Edward J. Eberle, “Human Dignity, Privacy, and Personality in German and American Constitutional Law” 1997 Utah L. Rev. 963 (1997)

⁷³ *Titan Industries Ltd. v. M/s Ramkumar Jewellers*, 2012 (50) PTC 486 (Del)

⁷⁴ *Supra* at 25

⁷⁵ *Supra* at 53

⁷⁶ *Supra* at 54

Economic Interest converts this recognition into a unique, exclusive right to use someone's name, voice, look, signature, or well-known catchphrases for business purposes. This interest is similar to the American Right of Publicity. By putting it in the perspective of the larger Trinity Doctrine, it may be changed to fit the Indian setting. This avoids the First Amendment's strictness in the US model and its often-excessive commercialisation of people's identities.

VI. POST SCRIPT: PRACTICAL RECOMMENDATIONS

As a postscript to the paper, here are some of the practical policy and legal suggestions which can make the legal regime protecting personality rights more robust. It is an aim of the paper to fill out the legal loophole and engage with the vacuum in order to provide for an avenue to fight the infringement of the personality rights.

1. Strict Definitions

The legislation relating to the protection of personality rights should codify personality attributes and the three protectable interests, *dignitary*, *associative*, *economic* so the courts have a single and united vocabulary when dealing with the disputes relating to personality rights. This, doctrinally, removes the category error apparent in the current regime.

2. Statutory presumptions and calibrations for technology

The legislation should introduce narrow yet, rebuttable presumptions to reflect on the distributed digital realities for instance, when a recognizable personality token appears in a monetized advertising, the law should presume commercial exploitation. This will remedy causation problems later on in the dispute.

3. Expedited interim remedies and takedown mechanics

Make a quick interim procedure that lets you take down and keep something right away if there is prima facie proof of recognizability and likely harm to a person of high status or business, along with a power to reveal account identities. In terms of doctrine, this balances urgency with due process; in practice, it stops uncontested viral spread and makes it easy to find commercial exploiters quickly.

4. Post-mortem rules and temporal scope

Vest economic interests in life and allow limited post-mortem survivability (policy choice: 25–70 years) while maintaining narrow post-mortem dignity protections enforceable by heirs for denigration. This doctrinally differentiates property-like claims from dignity claims and effectively inhibits perpetual commercial exploitation while permitting historical discourse.

5. Criminal prosecution only in serious harms

Make it illegal to do things that are very specific, like using malicious non-consensual intimate synthetic content to blackmail or coerce someone, or using synthetic disinformation to incite violence or undermine elections. The doctrinal objective is to prevent excessive criminalization of speech; in practice, it confines criminal law to harms that civil remedies cannot sufficiently deter.

VII. CONCLUSION

In conclusion, the Trinity Persona Doctrine provides a systematic, principle-based alternative to India's arbitrary, case-specific methodology. By differentiating and simultaneously reconciling the Dignity, Associative, and Economic Interests, it safeguards the essence of human identity, protects reputational integrity, and maintains the right to economic exploitation. This framework, in contrast to the existing disjointed torts and privacy analogies, upholds dignity as an inalienable, enduring right; bases false-association claims on a distinct “Associative Interest” instead of fragmented goodwill doctrines; and acknowledges a specifically transferable “Economic Interest,” aligned with India's constitutional principles. Parliament ought to legislate a sui generis statute that incorporates these three interests, empower courts with explicit criteria for injunctions and exceptions (including satire and public interest), mandate adversarial discovery to protect fair use defences, and create a standing review body to adapt protections as technology advances. Only then can India guarantee that person’s rights are cohesive, balanced, and resilient for the future.