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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

THE PRICE OF A PERSONA: PERSONALITY RIGHTS AND THE COMMERCIAL VALUE OF IDENTITY IN INDIA

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ABSTRACT

The rapid growth of the digital economy has made personal identity a valuable commercial asset. Today, a person's name, image, voice, likeness, signature, reputation and digital persona are widely used in advertising, entertainment, sports, influencer marketing, gaming and digital commerce. At the same time, the development of Artificial Intelligence (AI), deepfakes, voice cloning, digital replicas and synthetic media has made the unauthorised use of a person's identity easier and more sophisticated, creating significant gaps in India's existing legal framework.

Although Indian courts have gradually recognised personality rights through constitutional interpretation and judicial decisions, India still does not have a dedicated law to protect them in the commercial sphere. At present, personality rights are protected through constitutional provisions, intellectual property laws, cyber law, consumer protection laws, data protection law and common law principles. However, these laws provide protection only in certain situations and do not adequately address AI-generated identity misuse, commercial licensing, intermediary liability, digital replicas or post-mortem personality rights.

This paper critically examines the development of personality rights in India by analysing constitutional principles, statutory provisions, judicial developments and the legal challenges created by Artificial Intelligence. It also compares selected international legal frameworks to identify reforms that may be relevant to India. The paper argues that the existing piecemeal legal framework is not sufficient to address the commercial use of personal identity in the digital age and proposes a comprehensive, technology-responsive Personality Rights Act that can balance commercial interests, technological innovation, privacy and freedom of speech.

Keywords: Personality Rights, Right of Publicity, Commercial Value of Identity, Artificial Intelligence, Deepfakes, Digital Identity, Intellectual Property Rights.

1. INTRODUCTION

Identity has become one of the most valuable commercial assets in the modern digital economy. A person's name, image, voice, likeness, signature, reputation and digital persona are no longer seen only as parts of personal identity but also as valuable assets that can be used for commercial gain. These identity attributes are widely used in advertising, celebrity endorsements, sports, entertainment, influencer marketing, gaming and digital content creation, allowing individuals and businesses to generate substantial economic value. As digital commerce continues to grow, identity has become an important intangible asset capable of generating commercial value through endorsements, sponsorships, licensing and branding.

The rapid development of Artificial Intelligence has brought a major change in the way identity can be created, reproduced and used for commercial purposes. Technologies such as generative AI, deepfakes, voice cloning, facial synthesis and digital avatars can create highly realistic digital representations without the knowledge or consent of the person concerned. Unlike traditional forms of identity misuse, AI makes it possible to create, modify and commercially use a person's identity on a much larger scale, leading to reputational damage, consumer deception, financial loss and unfair commercial gain.

Personality rights broadly refer to an individual's right to control the commercial use of identifiable aspects of their identity. These rights protect not only dignity, privacy and reputation but also the economic interests connected to identity. As businesses increasingly rely on celebrity endorsements, influencer branding and digital personas, personality rights have become important for preventing unauthorised commercial exploitation and ensuring that individuals retain control over the commercial benefits generated through their identity.

Despite their growing importance, personality rights in India continue to develop without a dedicated law. At present, protection comes from constitutional provisions, intellectual property laws, privacy laws, cyber laws, consumer protection laws, data protection law and judicial

decisions. Although these laws provide remedies in specific situations, they do not fully address commercial licensing, AI-generated identity misuse, digital replicas, voice cloning, intermediary liability or post-mortem personality rights. As a result, courts have often had to apply existing legal principles to situations that were not considered when these laws were originally made.

Despite the growing recognition of personality rights by Indian courts, India still lacks a clear legal framework to regulate the commercial use of identity in the AI era. This gap creates uncertainty for individuals, businesses, digital platforms and technology developers. This paper therefore critically examines the existing legal framework governing personality rights, analyses comparative legal approaches and proposes a technology-responsive Personality Rights Act that can balance commercial interests, technological innovation, privacy and freedom of speech in the digital age.

RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology based on the analysis of primary and secondary legal sources. Primary sources include the Constitution of India, statutory laws, judicial decisions, subordinate legislation and regulatory guidelines relating to personality rights. Secondary sources include books, peer-reviewed journal articles, government reports, policy papers and other scholarly publications. A limited comparative approach is also used to examine the legal frameworks of the United States, the United Kingdom and the European Union and identify reforms that may be relevant to India. The study is analytical in nature and examines whether the existing legal framework adequately protects the commercial value of identity in the age of Artificial Intelligence.

RESEARCH OBJECTIVES

This paper seeks to:

1. Examine the concept and development of personality rights in India.
2. Analyse the legal challenges created by Artificial Intelligence and emerging digital technologies.
3. Examine the constitutional, statutory and judicial framework governing personality rights

in India.

4. Compare selected international legal frameworks and identify reforms that may be relevant to India.
5. Propose a comprehensive legal framework that protects personality rights while balancing commercial interests, technological innovation, privacy and freedom of speech.

2. EVOLUTION AND EMERGING CHALLENGES OF PERSONALITY RIGHTS IN INDIA

Personality rights have developed from broader principles of privacy, dignity and reputation into a legal concept that also protects the commercial value of a person's identity. Traditionally, the law focused mainly on defamation, unauthorised publication and interference with private life. However, the growth of advertising, entertainment, sports, social media and digital commerce has transformed identity into a valuable commercial asset. Today, a person's name, image, voice, likeness, signature, reputation and digital persona may generate significant economic value through endorsements, sponsorships, licensing and digital branding.

In India, personality rights have developed mainly through constitutional interpretation, common law principles and judicial decisions rather than through a dedicated statute. Courts have gradually recognised the commercial value of identity while balancing it with privacy, dignity and freedom of speech. The growth of Artificial Intelligence has further expanded the scope of these rights through technologies such as deepfakes, voice cloning, digital replicas, digital avatars and synthetic media. These technologies can reproduce and commercially exploit a person's identity without consent, sometimes without directly copying a copyrighted work.

However, the rapid development of Artificial Intelligence has also created new challenges that existing laws were not designed to address. Issues relating to AI-generated identity misuse, commercial licensing, digital replicas, intermediary liability, cross-border enforcement and post-mortem personality rights remain insufficiently regulated. Personality rights have therefore moved beyond their traditional connection with privacy and reputation and now require a legal framework capable of addressing both their commercial evolution and emerging technological challenges.

4. LEGAL FRAMEWORK GOVERNING PERSONALITY RIGHTS IN INDIA

Unlike several jurisdictions that provide statutory recognition to personality rights, India continues to protect these rights through a combination of constitutional principles, intellectual property law, cyber law, consumer protection laws, data protection law and judicial interpretation. This framework has developed over time to address different legal concerns such as privacy, commercial goodwill, consumer protection and digital offences. However, none of these laws was specifically enacted to regulate the commercial use of identity. As a result, the existing framework provides only partial protection and often requires courts to apply traditional legal principles to new technological challenges.

4.1 Constitutional Framework

The constitutional foundation of personality rights mainly comes from Articles 21 and 19(1)(a) of the Constitution of India. Although the Constitution does not expressly recognise personality rights, judicial interpretation has expanded the scope of Article 21 to include privacy, dignity, autonomy, reputation and informational self-determination. These constitutional values provide a basis for protecting personal identity from unauthorised exploitation

The landmark decision in the case of *R. Rajagopal v. State of Tamil Nadu* recognised that every individual has a right to privacy and cannot ordinarily be subjected to unauthorised publication of matters relating to private life. This principle was further strengthened in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where the Supreme Court unanimously recognised privacy as a fundamental right under Article 21. The Court also recognised that privacy includes control over personal information and individual identity, making the judgment particularly important in the digital era.

However, constitutional protection mainly safeguards personal liberty and dignity rather than the commercial value of identity. At the same time, Article 19(1)(a) guarantees freedom of speech and expression. Therefore, any future framework for personality rights must balance commercial protection with legitimate journalism, academic research, artistic expression, parody, satire, criticism and matters of public interest.

4.2 Intellectual Property Framework

Although personality rights are closely associated with intellectual property, existing IP statutes provide only indirect protection.

The Trade Marks Act, 1999 protects commercially valuable aspects of identity through Sections 2(1)(m) (definition of "mark"), 11 (relative grounds for refusal of registration), 14 (restriction on registration suggesting connection with a living person) and 27(2) (remedy for passing off). These provisions recognise names and signatures as protectable marks, prevent deceptive registrations, restrict the registration of marks that falsely suggest a connection with a living person without consent and preserve the common law remedy of passing off. While these provisions help prevent false endorsements and commercial misrepresentation, they do not specifically address AI-generated identities, digital replicas or voice cloning.

Similarly, the Copyright Act, 1957¹ protects creative works rather than identity itself. Sections 38A (economic rights of performers) and 38B (moral rights of performers) protect performers in relation to their recorded performances, while Section 57 (author's special rights) protects the moral rights of authors. However, these provisions are mainly concerned with protected performances and creative works. Where an AI system independently recreates a person's voice, facial features or mannerisms without copying an existing performance, copyright protection may not apply. As a result, AI-generated digital replicas can imitate a person's identity without necessarily infringing copyright, creating a significant gap in the existing legal framework.

Therefore, although intellectual property law protects creative works and commercial goodwill, it does not recognise personality rights as an independent commercial right capable of effectively addressing modern AI-generated identity misuse.

4.3 Digital and Data Protection Framework

The Information Technology Act, 2000² provides limited protection against digital identity misuse. Sections 66C (identity theft), 66D (cheating by personation using computer resources) and 66E (violation of privacy) address identity theft, online personation and privacy violations, while Section 69A (power to issue directions for blocking public access) empowers the Government to

¹ The Copyright Act, 1957, Act No. 14 of 1957, dated 4 June 1957, w.e.f. 21 January 1958, vide Notification No. 269, dated 21 January 1958.

² The Information Technology Act, 2000, Act No. 21 of 2000, w.e.f. 17 October 2000, vide Notification No. G.S.R. 788(E), dated 17 October 2000.

block unlawful online content in accordance with law. These provisions are supplemented by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021³, particularly Rule 3 (due diligence and grievance redressal), which requires intermediaries to exercise due diligence, establish grievance redressal mechanisms and remove unlawful content upon receiving valid legal directions.

The Digital Personal Data Protection Act, 2023⁴ further strengthens privacy by regulating the processing of digital personal data. Sections 4 (grounds for processing personal data), 5 (notice), 6 (consent) and 7-9 (certain legitimate uses and obligations of Data Fiduciaries) provide rules relating to lawful processing, notice, consent, legitimate use and the responsibilities of Data Fiduciaries. These provisions strengthen an individual's control over personal information.

However, an important limitation arises from Section 3(c), which excludes certain publicly available personal data from the scope of the Act. In the context of Artificial Intelligence, this creates a significant concern because AI developers may collect publicly available photographs, videos and voice recordings from digital platforms to train AI systems that can generate digital replicas without obtaining the individual's consent. Since the Act mainly regulates personal data rather than the commercial use of identity, it provides only limited protection against AI-driven identity misuse. Consequently, while the DPDP Act strengthens data privacy, it does not adequately address the unauthorised commercial use of identity through Artificial Intelligence.

4.4 Consumer Protection Framework

The Consumer Protection Act, 2019⁵ indirectly contributes to personality rights by regulating misleading advertisements and false endorsements. Sections 2(28) (misleading advertisement), 2(47) (unfair trade practice) and 21 (powers of the CCPA) empower the Central Consumer Protection Authority (CCPA) to investigate misleading advertisements and unfair trade practices. These protections are further supported by the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022⁶, which require endorsers

³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), dated 25 February 2021, Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i).

⁴ The Digital Personal Data Protection Act, 2023, Act No. 22 of 2023, enacted on 11 August 2023, brought into force in phases vide Notification No. G.S.R. 843(E), dated 13 November 2025.

⁵ The Consumer Protection Act, 2019, Act No. 35 of 2019, w.e.f. 20 July 2020, vide Notification No. S.O. 2351(E), dated 15 July 2020.

⁶ <https://faolex.fao.org/docs/pdf/IND231196.pdf>

to exercise due diligence before promoting products or services. Similarly, the Advertising Standards Council of India (ASCI) Guidelines for Influencer Advertising in Digital Media require influencers to disclose material commercial relationships, helping promote transparency in digital advertising⁷.

Although these measures protect consumers from misleading commercial practices, they do not directly protect the commercial value of personality rights. Their main purpose is consumer protection rather than preventing the unauthorised commercial use of a person's identity.

4.5 Limitations of the Existing Legal Framework

The existing legal framework shows that personality rights in India are protected through different legal regimes, each serving a different purpose. Constitutional law protects dignity and privacy, intellectual property law protects creative works and commercial goodwill, cyber law deals with digital offences, data protection law regulates personal information and consumer protection law addresses misleading advertisements. However, these laws continue to operate separately and do not provide a unified legal framework for protecting personality rights.

The rapid growth of Artificial Intelligence has exposed important gaps in the existing legal framework. Existing laws do not clearly address AI-generated digital replicas, commercial licensing of identity, intermediary liability or post-mortem personality rights. As a result, courts often have to apply traditional legal principles to new technologies, which can lead to uncertainty and inconsistent legal outcomes.

These limitations show that personality rights have developed beyond the traditional areas of privacy and intellectual property law. A comprehensive law recognising personality rights as an independent legal right is therefore needed to provide greater legal certainty and effectively regulate the commercial use of identity in the digital age.

5. JUDICIAL RECOGNITION OF PERSONALITY RIGHTS IN INDIA

In the absence of a dedicated law, Indian courts have played an important role in recognising and developing personality rights. Through constitutional interpretation, common law principles and intellectual property doctrines, the judiciary has gradually expanded legal protection from privacy

⁷ <https://www.ascionline.in/wp-content/uploads/2022/09/influencer-report.pdf>

and reputation to the commercial value of identity. This development shows the growing recognition that identity is not only a personal attribute but also a valuable commercial asset that deserves protection against unauthorised use.

5.1 Constitutional Recognition of Personality Rights

The constitutional foundation of personality rights was first recognised in the case of *R. Rajagopal v. State of Tamil Nadu*⁸, where the Supreme Court held that the right to privacy forms part of Article 21 of the Constitution. The Court observed that every individual has the right to prevent the unauthorised publication of matters relating to private life, unless the information is part of the public record. Although the case mainly concerned privacy, it established the broader principle that a person's identity cannot ordinarily be used without lawful justification or consent.

This constitutional protection was significantly strengthened in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁹, where a nine-Judge Bench unanimously recognised privacy as a fundamental right. The Court held that privacy includes dignity, autonomy, informational self-determination and control over personal identity. The judgment has become an important constitutional basis for protecting identity in the digital era, particularly where personal information is continuously collected, processed and commercially used through digital technologies.

However, these decisions mainly protect personal liberty and privacy rather than the commercial value of identity. As a result, Indian courts gradually expanded personality rights through commercial and intellectual property law.

5.2 Judicial Recognition of Publicity Rights

A significant development occurred in the case of *ICC Development (International) Ltd. v. Arvee Enterprises*¹⁰, where the Delhi High Court recognised the concept of the Right of Publicity in Indian law. The Court observed that the commercial value associated with an individual's identity cannot be exploited without authorisation and recognised that commercially valuable identity requires legal protection.

⁸ *R. Rajagopal (alias R.R. Gopal) & Anr. v State of Tamil Nadu & Ors.*, (1994) 6 SCC 632.

⁹ *Justice K.S. Puttaswamy (Retd.) & Anr. v Union of India & Ors.*, (2017) 10 SCC 1.

¹⁰ *ICC Development (International) Ltd. v Arvee Enterprises & Anr.*, 2003 VII AD (Delhi) 405.

At the same time, the Court clarified that publicity rights do not create an absolute monopoly over publicly available information or sporting events. Protection is limited to preventing unauthorised commercial exploitation and must remain consistent with public interest and freedom of speech. The judgment therefore laid the foundation for balancing commercial personality rights with constitutional freedoms.

5.3 Commercial Protection of Celebrity Identity

The commercial dimension of personality rights received significant judicial recognition in the case of *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*¹¹, where the Delhi High Court restrained the unauthorised commercial use of singer Daler Mehndi's identity. The Court held that a celebrity's identity has independent commercial value and that third parties cannot unfairly profit from the goodwill associated with another person's reputation. The judgment established that personality rights extend beyond privacy and protect the commercial value of identity from unauthorised exploitation.

Similarly, in the case of *Titan Industries Ltd. v. Ramkumar Jewellers*¹², the Delhi High Court restrained the unauthorised use of photographs of Amitabh Bachchan and Jaya Bachchan in commercial advertisements. The Court held that such use falsely suggested endorsement and amounted to commercial misappropriation of celebrity identity. The decision further strengthened the commercial protection of personality rights by recognising that identity itself has economic value and deserves legal protection.

However, both decisions primarily dealt with traditional endorsement disputes and did not consider emerging technological issues such as AI-generated identities, voice cloning, or digital replicas.

5.4 Personality Rights in the Age of Artificial Intelligence

The emergence of Artificial Intelligence has required Indian courts to address new forms of digital exploitation of personality rights. A significant development occurred in the case of *Anil Kapoor v. Simply Life India Pvt. Ltd. & Others*¹³, where the Delhi High Court granted an ex parte interim injunction restraining the unauthorised commercial use of the actor's name, image, voice,

¹¹ *D.M. Entertainment Pvt. Ltd. v Baby Gift House & Ors.*, 2010 (42) PTC 520 (Del).

¹² *Titan Industries Ltd. v M/s Ramkumar Jewellers*, 2012 SCC OnLine Del 2382; 2012 (50) PTC 486 (Del).

¹³ *Anil Kapoor v Simply Life India & Ors.*, CS(COMM) 652/2023, order dated 20 September 2023 (Delhi HC).

signature, likeness, catchphrases and other distinctive characteristics, including AI-generated content. The Court recognised that technologies such as Artificial Intelligence and deepfakes have increased the risk of commercial misuse of identity and held that distinctive aspects of a person's identity deserve protection against unauthorised exploitation.

Although the judgment represents an important judicial response to AI-generated identity misuse, it mainly provides interim protection and leaves broader questions relating to AI training datasets, ownership of digital replicas, commercial licensing and intermediary liability unresolved. Therefore, the decision highlights the continuing need for comprehensive statutory regulation.

5.5 Recent Judicial Developments

Recent judicial decisions demonstrate the continued expansion of personality rights in response to emerging technologies.

In the case of *Jackie Shroff v. The Peppy Store & Others*¹⁴, the Delhi High Court recognised that personality rights can extend to distinctive expressions, nicknames, signature styles and other characteristics closely associated with an individual. At the same time, the Court emphasised that personality rights cannot override legitimate journalism, parody, satire, criticism, artistic expression or other forms of expression protected under Article 19(1)(a) of the Constitution.

Similarly, in the case of *Arijit Singh v. Codeway Infotech Pvt. Ltd. & Others*¹⁵, the Bombay High Court granted interim protection against the unauthorised use of the singer's voice, image, likeness and other personality attributes through AI-generated content. The Court recognised that a person's voice is an important part of their identity and has independent commercial value and therefore deserves protection against unauthorised AI-based imitation. The decision shows the judiciary's willingness to apply existing legal principles to emerging technologies while also highlighting the need for comprehensive statutory regulation.

Another important development concerns post-mortem personality rights. In the case of *Deepa Jayakumar v. A.L. Vijay & Others*¹⁶, the Madras High Court observed that the right to privacy is fundamentally personal and ordinarily does not continue after the death of an individual. The

¹⁴ *Jaikishan Kakubhai Saraf alias Jackie Shroff v The Peppy Store & Ors.*, CS(COMM) 389/2024, order dated 15 May 2024 (Delhi HC), 2024 DHC 4046.

¹⁵ *Arijit Singh v Codible Ventures LLP & Ors.*, IA (L) No 23560 of 2024, order dated 26 July 2024 (Bom HC), 2024 SCC OnLine Bom 2445.

¹⁶ *Deepa Jayakumar v A.L. Vijay & Ors.*, 2021 SCC OnLine Mad 2642.

decision highlights the uncertainty surrounding the inheritance and duration of personality rights after death. The absence of a clear statutory framework governing post-mortem personality rights therefore remains an important gap in Indian law and highlights the need for legislative clarification.

5.6 Judicial Trends and the Need for Legislative Reform

The judicial evolution of personality rights demonstrates the proactive role played by Indian courts in addressing legislative gaps. Through constitutional interpretation, common law doctrines and intellectual property principles, the judiciary has progressively recognised identity as a commercially valuable legal interest deserving protection against unauthorised exploitation.

However, continued reliance on judicial decisions has also created uncertainty. Important questions relating to ownership, commercial licensing, AI-generated digital replicas, intermediary liability, post-mortem rights, valuation of damages and cross-border enforcement remain largely unresolved because existing judgments deal with specific disputes rather than providing a comprehensive legal framework.

Judicial development has therefore reached a stage where further expansion through case law alone cannot provide the certainty required in the digital age. A dedicated statutory framework is now essential to consolidate judicial principles, regulate emerging technologies and provide uniform standards for protecting personality rights in India.

6. COMPARATIVE INTERNATIONAL APPROACHES TO PERSONALITY RIGHTS

The growing commercial value of identity has encouraged several jurisdictions to develop legal mechanisms for protecting personality rights. Although these jurisdictions follow different legal approaches, they recognise that an individual's identity has both personal and commercial value and deserves legal protection. Unlike India, where personality rights have largely developed through judicial interpretation, many countries provide statutory safeguards for the commercial use of identity and emerging digital technologies. While these models cannot be directly adopted in India, they provide useful guidance for developing a balanced and technology-responsive legal framework.

6.1 United States

The United States has one of the more developed legal frameworks for personality rights through the Right of Publicity, which is primarily governed by state law. These laws recognise identity as having commercial value and give individuals significant control over its commercial use.

The California Civil Code § 3344 prohibits the unauthorised commercial use of a person's name, voice, signature, photograph or likeness without prior consent. Similarly, Sections 50 and 51 of the New York Civil Rights Law protect individuals against the unauthorised commercial use of their name, portrait, picture or voice. These laws provide civil remedies such as injunctions and damages, offering greater legal certainty than relying on judicial protection alone¹⁷.

Recognising the challenges created by Artificial Intelligence, the Ensuring Likeness, Voice and Image Security (ELVIS) Act, 2024 enacted in Tennessee extends statutory protection to voice, digital replicas and AI-generated performances, recognising that identity can be commercially exploited even without copying an existing copyrighted work. The American approach shows how legislation can develop alongside technological changes while providing clearer rules relating to ownership, licensing and commercial exploitation.

6.2 United Kingdom

Unlike the United States, the United Kingdom does not recognise personality rights through separate legislation. Instead, protection is derived from passing off, privacy law, the Data Protection Act, 2018¹⁸ and the UK General Data Protection Regulation (UK GDPR)¹⁹.

The doctrine of passing off protects individuals against false endorsements by preventing businesses from creating a false impression of commercial association with another person's reputation or goodwill. At the same time, the UK GDPR, particularly Articles 6 (lawfulness of processing) and 9 (processing of special categories of personal data), regulates the lawful processing of personal data and provides additional safeguards for sensitive personal information, including biometric data.

Although these legal mechanisms provide significant protection against commercial misuse and privacy violations, they do not create an independent statutory right over the commercial value of

¹⁷ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=3344

¹⁸ <https://www.legislation.gov.uk/ukpga/2018/12>

¹⁹ <https://www.legislation.gov.uk/uksi/2019/419>

identity. The British approach therefore shows both the strengths and limitations of relying on existing legal doctrines instead of dedicated personality rights legislation.

6.3 European Union

The **European Union** primarily protects identity through **data protection law** and **AI governance** rather than a separate personality rights statute.

The General Data Protection Regulation (GDPR) strengthens individual control over personal information through Articles 6 (lawfulness of processing), 9 (processing of special categories of personal data) and 17 (right to erasure). These provisions regulate the lawful processing of personal data, provide additional protection for sensitive personal information and recognise the Right to Erasure (Right to be Forgotten) in appropriate circumstances²⁰.

The European Union AI Act further complements this framework by introducing transparency requirements for AI-generated content. Article 50 requires appropriate disclosure when users interact with certain types of AI-generated or manipulated content, including synthetic media. These transparency requirements aim to reduce deception and promote the responsible use of Artificial Intelligence²¹.

The European approach shows that effective regulation of AI requires not only data protection but also transparency and accountability. However, transparency alone cannot fully prevent the unauthorised commercial use of identity, making personality rights equally important.

6.4 Lessons for India

The comparative analysis shows that the main difference between India and these jurisdictions lies not in judicial recognition but in legislative certainty. While Indian courts have progressively recognised personality rights, the absence of dedicated legislation continues to create uncertainty regarding commercial licensing, AI-generated digital replicas, intermediary liability and post-mortem personality rights.

India does not need to completely adopt foreign legal models. Instead, it should develop a framework suited to its constitutional values and digital economy by adopting selected best practices. A future Personality Rights Act should clearly define protectable identity attributes,

²⁰ <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

²¹ <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>

regulate consent and commercial licensing, address AI-generated identity misuse, strengthen intermediary obligations and provide effective civil remedies while protecting freedom of speech, journalism, artistic expression, parody and other matters of public interest.

The comparative experience shows that judicial protection alone is not sufficient to address the rapidly changing challenges created by Artificial Intelligence. A balanced statutory framework is therefore needed to provide greater legal certainty, encourage responsible technological innovation and protect the commercial value of identity in India's evolving digital economy.

7. REIMAGINING PERSONALITY RIGHTS IN INDIA: THE WAY FORWARD

The preceding chapters show that personality rights in India have developed mainly through judicial interpretation rather than comprehensive legislation. Although constitutional law, intellectual property law, cyber law, consumer protection law and data protection law provide partial protection, they do not adequately regulate the commercial use of identity in the age of Artificial Intelligence. The growing use of deepfakes, voice cloning, digital replicas and AI-generated endorsements therefore makes legislative reform necessary and timely.

7.1 Enacting a Dedicated Personality Rights Act

The foremost requirement is the enactment of a dedicated Personality Rights Act recognising personality rights as an independent legal right. The legislation should clearly define protectable identity attributes, including a person's name, image, likeness, voice, signature, nickname, biometric identity, digital persona and other distinctive characteristics capable of commercial exploitation. It should also distinguish personality rights from privacy and conventional intellectual property rights, thereby providing greater legal certainty regarding the commercial use of identity.

To minimise future ambiguity, the proposed legislation should also define important technological concepts. For example, a digital persona may be defined as an AI-generated or digitally created representation that reproduces or substantially imitates an identifiable person's name, image, voice, likeness, biometric identity, gestures or other distinctive characteristics. Such clarity would help courts deal more effectively with emerging forms of AI-generated identity misuse.

7.2 Regulating AI-Generated Identity Misuse

Future legislation should establish clear principles governing ownership, consent, licensing, assignment and commercial use of personality rights. Any commercial use of a protected identity should ordinarily require the prior consent of the rights holder.

The legislation should also expressly regulate AI-generated deepfakes, voice cloning, digital replicas, virtual influencers, synthetic media and AI-generated endorsements by prohibiting their unauthorised commercial exploitation. It should also clarify the legal position regarding post-mortem personality rights by recognising limited commercial rights that can be exercised by legal heirs for a reasonable statutory period. Such provisions would reduce legal uncertainty while encouraging responsible technological innovation.

7.3 Strengthening Digital Enforcement

Effective legal protection requires stronger digital enforcement mechanisms. Existing remedies often become available only after infringing content has already spread across digital platforms, reducing their practical effectiveness.

The existing framework under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 should therefore be strengthened by introducing clear procedures for reporting personality rights violations, preserving digital evidence and ensuring timely removal of infringing content after due verification. The legislation should also clearly define the responsibilities of AI developers, digital intermediaries, advertisers, commercial users and online platforms, thereby reducing uncertainty regarding liability for AI-generated identity misuse.

7.4 Uniform Civil Remedies and Constitutional Balance

The absence of uniform remedies has resulted in inconsistent judicial outcomes. Future legislation should therefore empower courts to grant injunctions, compensatory damages, accounts of profits, removal of infringing digital content and other appropriate civil remedies, depending on the nature of the infringement. While awarding compensation, courts may consider factors such as the commercial value of the identity, the financial benefit obtained by the infringer, the duration of unauthorised use and the resulting reputational or economic harm.

At the same time, personality rights should not create an unrestricted monopoly over identity. The legislation must provide reasonable exceptions for journalism, academic research, parody, satire,

criticism, artistic expression and matters of legitimate public interest, thereby maintaining an appropriate balance between personality rights and the constitutional guarantee of freedom of speech and expression under Article 19(1) (a).

7.5 Need for Legislative Reform

The increasing commercial value of identity shows that personality rights have developed beyond the traditional areas of privacy and intellectual property law. Existing laws continue to protect certain aspects of identity but do not adequately address Artificial Intelligence, digital replicas, commercial licensing, intermediary liability or post-mortem personality rights. As a result, courts often have to apply traditional legal principles to emerging technologies, leading to legal uncertainty and inconsistent outcomes.

A dedicated statutory framework would bring together the principles developed through judicial decisions while also addressing technological developments that existing laws do not adequately regulate. Such legislation would strengthen individual rights, support lawful commercial licensing, encourage responsible innovation, reduce unnecessary litigation and provide greater legal certainty for businesses, creators, advertisers, AI developers and digital platforms. More importantly, it would ensure that India's legal framework keeps pace with technological developments while maintaining an appropriate balance between commercial interests, privacy and freedom of speech.

8. CONCLUSION

The rapid advancement of Artificial Intelligence and the growth of the digital economy have transformed personality rights from a concept traditionally associated with privacy and reputation into an important commercial right. Today, a person's name, image, voice, likeness, signature and digital persona have significant economic value and are widely used in advertising, entertainment, sports, influencer marketing, gaming and digital commerce. At the same time, technologies such as deepfakes, voice cloning, digital replicas and synthetic media have created new forms of identity exploitation that existing legal frameworks were never designed to address.

This study demonstrates that personality rights in India continue to be protected through a fragmented combination of constitutional principles, intellectual property law, cyber law,

consumer protection law, data protection law, common law principles and judicial precedents. Although these legal frameworks provide important safeguards, they do not comprehensively regulate the commercial use of identity or adequately address the challenges created by Artificial Intelligence. As a result, important issues relating to commercial licensing, AI-generated identity misuse, intermediary liability, digital replicas and post-mortem personality rights remain uncertain.

Indian courts have played a significant role in recognising personality rights by progressively developing constitutional and common law principles to protect commercially valuable identity. However, judicial development alone cannot provide the certainty and consistency required in an increasingly technology-driven society. The comparative analysis further shows that several jurisdictions have adopted statutory mechanisms to regulate commercial identity and emerging technologies, providing useful guidance for future reforms in India.

Accordingly, this paper argues that India should enact a dedicated Personality Rights Act recognising personality rights as an independent legal right. Such legislation should clearly define protectable identity attributes, regulate commercial licensing, address AI-generated identity misuse, strengthen digital enforcement, clarify intermediary liability and provide effective civil remedies while maintaining an appropriate balance between commercial interests, technological innovation, privacy and freedom of speech and expression.

Ultimately, identity has become one of the most valuable intangible assets of the digital age. As Artificial Intelligence continues to reshape the creation and commercial use of identity, the law must evolve accordingly. A comprehensive statutory framework would not only strengthen the protection of personality rights but also promote responsible innovation, commercial certainty, consumer confidence and a fair digital economy. Such reform would ensure that India's legal framework remains capable of protecting both individual rights and technological progress in the years ahead.