



Persona Unveiled: Navigating The Dynamic Landscape Of Personality Rights In the Entertainment Industry Amidst The Deepfake Menace

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Abstract

In the last decade Indian Entertainment Industry has seen tremendous growth right from its range of blockbuster content in Cineplexes and OTTs (Over-the-top media services platforms) to the emergence of dynamic individual artists in all sectors of media. This robust commercial growth of the industry has revolutionized the status of the personalities associated with these industries given the massive influencing power and the well-known status to these individuals known as celebrities.

The right to publicity, popularly known as personality rights, in its most basic sense is the right to protect, control, and profit from one's image, name, or likeness. There are two discernible facets of publicity rights: first, the right to protect one's image from being commercially exploited without permission, by treating it as a tort of passing off; and second, the right to privacy which entails one's right to be left alone.¹ In India, Personality rights are dealt with within the ambit of Intellectual Property Rights as it was only until recently through the Puttuswamy Judgement in 2017 that the Right to Privacy was declared as a fundamental right. Thus, there has been very little development of the right to publicity as a facet of right to privacy in India.² As Personality Rights provide well-known individuals or celebrities with the right to safeguard their likeness from being unlawfully exploited by third parties without consent or authorization, at the same time today's contemporary advancements in technology, notably Artificial Intelligence (AI), have ushered in the

¹ Samarth Krishnan Luthra & Vasundhara Bakhru, Publicity Rights and the Right to Privacy in India, Volume 31 NLSIR, 125,125-126,(2019),<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1259&context=nlsir#:~:text=The%20right%20to%20publicity%2C%20popularly,image%2C%20name%2C%20or%20likeness.>

² ibid

peril of such rights being compromised through the proliferation of deepfakes. Deepfake technology produces convincing fake media by manipulating visuals and audio using deep learning algorithms. Deepfakes may simulate the behaviors and traits of certain people, including actions or words, by studying and imitating their mannerisms and traits. The advancement of technology has made it difficult to differentiate between authentic and fraudulent content, giving rise to moral dilemmas and potential legal ramifications.³This paper will explore the concept and evolution of personality rights /celebrity rights in India, how they differ from the rights associated with an ordinary person whilst comparing the origin and framework of Personality rights in the United States throwing a light on how it has evolved compared to India. This paper will also briefly focus on the emerging threat of the AI- technology of deep fakes its impact on the Entertainment Industry and how it has begun to impact the personality rights of individuals.

Keywords: Personality Rights, Celebrity Rights, AI-Technology, Deep fakes

RESEARCH OBJECTIVES

1. To Understand the concept of Celebrity rights and Personality Rights and whether an ordinary person can have personality rights.
2. To Examine the evolution of Personality Rights.
3. Comparative analysis Between the framework surrounding personality rights in India and the US.
4. The threat of Ai generated tools like Deepfakes on personality rights and its impact on the Entertainment Industry.

INTRODUCTION

“Copyrights without personality rights are like a story without characters — incomplete and vulnerable to distortion”

The concept of personality right encompasses the right of a person to control the unauthorized use of their personality attributes such as name, image, voice, likeness, etc. Each jurisdiction has a different interpretation of what constitutes a right, even though it encompasses both commercial and non-commercial components. Some see it as a single right that covers both commercial and non-commercial aspects, while others see it as two distinct rights. Consequently, the nomenclature employed by each country differs; for example, in India, the phrases "personality rights" and "publicity rights" are used synonymously.⁴

³ Natalie Yesufu, The Rise of Deep Fakes in the Entertainment Industry, Toolify.ai, (Dec 23, 2023), <https://www.toolify.ai/ai-news/the-rise-of-deep-fakes-in-the-entertainment-industry-207811>

⁴ Agnes Augustian, Protection Of Personality Rights In India: Issues And Challenges, Volume I Issue I, IPR JMNLUN, 44-53, (June 2023), <https://www.nlunagpur.ac.in/PDF/Publications/5-Current-Issue/4.%20PROTECTION%20OF%20PERSONALITY%20RIGHTS%20IN%20INDIA.pdf>

Publicity Rights' are those, that individuals with the title of celebrities hold due to their name, likeness, voice, fame, and personality. These rights are sometimes referred to as "personality rights" or "Celebrity rights".

Celebrity rights or Personality rights are unique rights, which are distinct from others. It is a form of property that can be exclusively enjoyed by the celebrity himself.⁵ This right is conferred to individuals only when they attain popularity or fame and are known by a considerable number of people due to certain attributes of their personality. The personality rights in India have gone through an evolution since it was first recognised by the court through its judicial pronouncements. As public figures gain greater recognition and prominence, the commercial value of their image and persona grows. This, however, also leaves them at risk of exploitation through unlawful commercial usage and media misrepresentation.⁶

The famous adage from the Spiderman movie fits perfectly in this present scenario; "*With great power comes great responsibility*" with great popularity and influencing power of the celebrities along with a myriad set of rights comes even greater responsibility to protect this popularity and rights from being commercially exploited illegally. The "Celebrities" have the right to manage the economic use of their names, personas, photos, and other characteristics thanks to personality rights.

With the entry of AI-generated tools such as deepfakes, that has the ability to create fabricated images and videos of any individual using the deep synthesis technology, showcase the level of threat the entertainment industry can face with the existence of such tools. In India, personality rights are not recognized or codified by any particular Act or legislation. Instead, the Indian Constitution, the Copyright Act of 1957, and a number of common law rulings and decrees regulate the right itself and acts taken in its name. Thus, in today's time, it is extremely important to understand the facets of Personality rights and its dynamic landscape in the entertainment industry.

DEFINITION AND CONCEPT

Personality Rights

It can be said to be an Individuals' rights to their name, image, reputation, resemblance, and other unmistakable characteristics of their identity, as well as information related to them, are known as personality rights.

⁷Personality rights can also be said to be to an individual's capacity to safeguard his or her identity in the context of a property or privacy right. There are two types of personality rights: the first is the right of publicity, which guards against someone's image or appearance being exploited for profit without the

⁵ A. Pareek, NIScPR Online Periodical Repository, [https://nopr.niscpr.res.in/bitstream/123456789/3605/1/JIPR%2011\(6\)%20415-423.pdf](https://nopr.niscpr.res.in/bitstream/123456789/3605/1/JIPR%2011(6)%20415-423.pdf)

⁶ Hasna Hasan, Upholding Personality Rights In India: Insights From Indian Judicial Precedents, Vol. 2 Issue 3 JLRJS, pp26, <https://jlrjs.com/wp-content/uploads/2023/04/3.-Hasna-Hasan.pdf>

⁷ Nandini Bagri, *Personality Rights In India : A Statutory And Judicial Analysis*, ip and legalfilings (April 19, 2023) <https://www.ipandlegalfilings.com/personality-rights-in-india-a-statutory-and-judicial-analysis/>

owner's permission or payment, While not the same, this right can be compared to using a trademark. The second is the right to privacy, which guards against people's identities being revealed to the public without their permission.

The notion of personality right was first acknowledged by the Indian judiciary in the case of ICC Development (International) Ltd v Arvee Enterprises (2003). However, many nations had recognized the right much earlier, in the mid-1900s.⁸

Celebrity rights

Celebrity rights are nothing but personality rights but with different nomenclature. The term celebrity right just emphasizes the idea of personality rights by highlighting that for one to possess Personality Right they need to have a celebrity status in society, someone who is well known to the public at large, ones who have the capacity or power to influence a certain demographic, a name, image, voice, likeness which is known to all. Actors, Musicians, politicians, cricketers, social media influencers, models, etc can be termed as celebrities.

⁹It was decided in the Martin Luther King Jr. Center for Social Change v. American Heritage Products Inc. case that the term "celebrity" should be used more broadly to include those who are not just members of the conventional social classes like ball players, rock stars, and movie performers. According to the "direct commercial exploitation of identity" test, When someone's identity is used without permission and with a direct or commercial motive, that individual has automatically become well-known for publicity reasons.

The term "celebrity" is not defined in the Indian Copyright Act. However, the definition of a performer found in Section 2(qq) may be considered. Not every performer is a celebrity, and celebrities aren't necessarily performers. An actor, singer, pianist, dancer, acrobat, juggler, conjurer, snake charmer, someone giving a lecture, or anybody else who puts on a performance is all included in the definition of a performer. Any performer who performs or engages in any performance related to such performance is granted a special right, known as the performers' right, by Section 38 of the Act. ¹⁰This right will remain in effect for fifty years following the start of the calendar year. Clause 3 of the same section states that anyone who, while a performer's rights are still in effect with regard to any performance, records a sound recording or visual recording of the performance, or reproduces a sound recording or visual recording of the performance, etc., without the performer's permission, shall be deemed to have violated Section 39's provisions.

Thus, it can be said that Celebrities have access to a wide range of rights, such as those related to publicity, distribution, reproduction, lending, renting, making available, personality, privacy, and so on. However, in

⁸ Agnes Augustian, Protection Of Personality Rights In India: Issues And Challenges, Volume I Issue I, IPR JMNLUN, 44-53, (June 2023), <https://www.nlunagpur.ac.in/PDF/Publications/5-Current-Issue/4.%20PROTECTION%20OF%20PERSONALITY%20RIGHTS%20IN%20INDIA.pdf>

⁹ Tabrez Ahmad† and Satya Ranjan Swain, Celebrity Rights: Protection under IP Laws, Vol 16, , pp 7-16, (January 2011), <https://docs.manupatra.in/newslines/articles/Upload/78DD5FE8-5C07-4075-934D-6917CD6BE868.pdf>

¹⁰ ibid

general, these rights fall into one of three main categories: privacy rights, publicity rights, and personality rights¹¹.

HISTORY AND EVOLUTION OF PERSONALITY RIGHTS IN INDIA

The evolution of common laws or traditional natural law, which defined personality rights as an unalienable right, is where India's notion of personality rights originated. It refers to a collection of rights that primarily include the rights to publicity and privacy.¹²

One of the first cases in India where personality rights were taken into account was in *Rustom K. Karanjia v. Mrs. Kashibai K. Karanjia*, [1980]. The Bombay High Court acknowledged in this judgment that a person's right to regulate the commercial use of their name and image might be violated if such use occurs without their permission⁴. This idea was expanded upon in other judgments, and by the 1990s, the Indian legal system had created a structure to safeguard the rights to personality. The next wave of development of the concept can be seen in the 2010 case of *Selvi v. State of Karnataka*, The Supreme Court acknowledged the value of the right to privacy and set rules for the application of scientific methods—which were increasingly being used in criminal investigations—such as brain mapping, narcoanalysis, and lie detector tests. Later in the case of *Union of India v. Amar Singh*, (2011), here Delhi High Court upheld the individual's right to manage the commercial use of their name and picture in, ruling that it may be against a celebrity's personality rights to use their image without permission for profit.¹³

Personality rights as such are not expressly stated in the Constitution, but in the case of Judge K.S. Puttaswamy v. Union of India¹⁴, privacy was acknowledged as a basic right under Article 21 of the Constitution. Privacy is a “right to be left alone” that is an extension of liberty, and anyone who uses another person’s identity without that person’s consent is seen to have violated both that person’s personality rights and their fundamental right to privacy.¹⁵ These rights Flow from Articles 19 and 21 of the Indian Constitution. There are also applicable provisions from trademark, advertising, and copyright legislation. The Trademark Act of 1999 includes "name" in its definition of a "mark," while the Indian Copyright Act of 1957 codifies "Performers' Rights." The possibility of famous people being exploited and misappropriated in commercials has also been acknowledged by the Advertising Standards Council of India (ASCI) in its Code of Self-Regulation¹⁶.

¹¹ibid

¹² Ameet Naik, Evolution of celebrity rights and the way forward, wionews,(Dec 30, 2022), <https://www.wionews.com/entertainment/evolution-of-celebrity-rights-and-the-way-forward-547816>

¹³Hasna Hasan, Upholding Personality Rights In India: Insights From Indian Judicial Precedents, Vol. 2 Issue 3 JLRJS, pp26,<https://jlrjs.com/wp-content/uploads/2023/04/3.-Hasna-Hasan.pdf>

¹⁴ AIR 2017 SC 4161

¹⁵ Nandini Bagri, *Personality Rights In India : A Statutory And Judicial Analysis*, ip and legalfilings(April 19, 2023) <https://www.ipandlegalfilings.com/personality-rights-in-india-a-statutory-and-judicial-analysis/>

¹⁶ Evolution of celebrity rights and the way forward, supra note 12

Personality rights could be easily defined as people's rights to manage how their voice, signature, catchphrases, likeness, appearance, silhouette, feature, face, expression, gesture, mannerism, distinctive character, and any other aspect of their personality are used and commercialized. Despite the lack of specific law in India pertaining to personality rights, courts have recognized these rights in a number of rulings.¹⁷

The Supreme Court in *R Rajagopal v. State of Tamil Nadu* [1995]¹⁸ stated that the right to privacy is a right "to be left alone" and is thus implied in the fundamental right to life. The court decided that as long as the life narrative of serial murderer Auto Shankar was based on public documents, the Tamil magazine Nakkheeran may print it without getting any permission. The magazine claimed that it had the right to publish the interview since it was a subject of public interest, in response to the officer's defamation lawsuit. The Supreme Court ruled that an individual's right to privacy must be weighed against their right to freedom of speech, and that publishing personal information about them without their permission may violate their right to privacy. But if it extended past these documents, it may be considered "invading his right to privacy." *Phoolan Devi v. Shekhar Kapoor*, (1996)¹⁹, is another noteworthy case in this field. In this case, actress Seema Biswas portrayed the infamous dacoit Phoolan Devi in the movie Bandit Queen. Phoolan Devi filed a lawsuit against the director, alleging that the movie falsely and defamatorily depicted her, infringing on her right to privacy and personality rights. Because the movie was based on a book that was produced with her permission, the Supreme Court ruled that the representation of her character was not sufficiently harmful to support a defamation lawsuit.²⁰

The Delhi High Court declared in *ICC Development International Ltd. v. Arvee Enterprises & Anr*²¹, that using a celebrity's reputation and popularity without that person's consent is not a lawful usage. Thus, a celebrity has a right to sue for any illegal use of their name and for any unscrupulous economic exploitation. In 2009 Montblanc released luxury pens in India called "Mahatma Gandhi Limited Edition 241" and "Mahatma Gandhi Limited Edition 3000"; these were released with prior permission from the legal heir of Mahatma Gandhi i.e. Tushar Gandhi, these pens had an engraved image of Mahatma Gandhi on their nib, however when it was officially launched in India it was met with an obstruction on account of Protection under the Emblems and Names (Prevention of improper use) Act 1950. This statute prohibits the use of the names and likenesses of nationally significant individuals in trade, commerce, or professional contexts unless authorized by the government. Therefore, Montblanc was compelled to remove the infringing pens from the market as well as its advertising.²²

In *Titan Industries v. M/S Ramkumar Jewellers*²³, Delhi High Court rules that if any prominent personalities name is used in any unauthorized manner in any commercial advertising, then that celebrity will ultimately

¹⁷ Personality Rights In India : A Statutory And Judicial Analysis, Supra Note 14

¹⁸ 1995 SC 264, (1994) 6 SCC 632

¹⁹ 57 (1995) DLT 154, 1995 (32) DRJ 142

²⁰ Bisman Kaur, Gunjan Chauhan, Privacy and publicity: the two facets of personality rights, Brands in the Boardroom (2011) <https://www.remfry.com/wp-content/uploads/2017/11/privacy-and-publicity-the-two-facets-of-personality-rights.pdf>

²¹ 2003 (26) PCT 245 (Del)

²² Bisman Kaur, Gunjan Chauhan, Privacy and publicity: the two facets of personality rights, Brands in the Boardroom (2011) <https://www.remfry.com/wp-content/uploads/2017/11/privacy-and-publicity-the-two-facets-of-personality-rights.pdf>

²³ CS (OS) No.2662/2011

have the power to decide when and how their identity is utilized. The right to publicity refers to the ability to control how one's identity is used for commercial purposes.²⁴

In *Shivaji Rao Gaikwad v. Varsha Productions*²⁵, here the famous actor Rajnikanth filed a suit alleging that the film's use of his name, image, and style of delivering dialogue infringed on his personality rights. ultimately Madras High Court in this case established that personality rights apply to those individuals who have attained celebrity status. *Amitabh Bachchan v. Rajat Nagi & ors*²⁶, The actor filed a lawsuit against Rajat Nagi & Ors. and the public alleging that they had stolen his name, voice, appearance, and personality traits. The actor claimed in his petition that he had been subjected to misappropriation of his name, image, and voice, mainly by companies that publish books, T-shirt dealers, book publishers, mobile application developers, and people who ran lotteries by unethically partnering with KBC.²⁷

PERSONALITY RIGHTS IN THE UNITED STATES

In the United States the Right to publicity and copyrights are distinct, here rather the concept of publicity rights and the concept of privacy are interlinked to each other, it can be said that the right to privacy gave rise to the right of publicity. The American Right to privacy doctrine has historically been associated with the names of Louis Brandeis and Samuel Warren, who wrote "The Right to Privacy," which was published in the Harvard Law Review in 189, They demanded that judges uphold people's right "to be left alone." A right to privacy like this would compensate people for the damages caused by privacy violations. Since then the right to privacy has transformed into the right to be left alone. William Prosser, a well-known American scientist, went on to define the following categories that fall under the umbrella of the individual right to privacy: safeguards against prying eyes, the avoidance of humiliating personal information being revealed, Défense against publicity that might paint one in a negative light in public, and recourse for when one's name and likeness are appropriated, generally for profit.²⁸ In 1954, Melville B. Nimmer authored an article, The Right of Publicity, which introduced the concept of a 'right of publicity'. Nimmer highlighted that what a celebrity needed was not protection against unreasonable intrusions into privacy, but rather a right to control the commercial value of their identity²⁹ The growth of the right of publicity is a result of the appropriation of one's name and likeness. These days, a celebrity's right to publicity is interpreted as their ability to utilize, regulate, and prohibit the unauthorized use of their name, voice, likeness, and other personal characteristics. In the United States of America the right to publicity began as a subset of the right to privacy and developed alongside.

²⁴ ibid

²⁵ 2015 (62) PTC 351 (Madras)

²⁶ CS (COMM) 822 OF 2022

²⁷ ibid

²⁸ Kateryna Moskalenko, The right of publicity in the USA, the EU, and Ukraine, , Volume 1, Issue 2, Pages 113-120, International Comparative Jurisprudence ,(December 2015)

²⁹ Samarth Krishnan Luthra & Vasundhara Bakhru, Publicity Rights and the Right to Privacy in India, Volume 31 NLSIR,125,(2019),<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1259&context=nlsir#:~:text=The%20right%20to%20p%20publicity%2C%20popularly,image%2C%20name%2C%20or%20likeness.>

Federal law and state law make up the two components of the US legal system. State law is particular to a state, but federal law is applicable to all 50 states. Publicity rights are based on economic exploitation and privacy, and are defined as "an assignable property interest in a person's image". In the United States, people can choose to utilize state-based publicity rights or federal legislation (such as the Lanham Act) to safeguard and regulate the commercial use of their name, image, and/or likeness.³⁰

The Lanham Act of 1946 Section 43(a) provides:“

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action.”³¹

In contrast to copyrights and trademarks, the right of publicity is governed more by state laws rather than federal law. Publicity rights are implemented differently by states and are not the same as those recognized in section 43(a) of the Lanham Act. The majority of states recognize a person's right to limit how their name, likeness, and identity are used for commercial purposes. Some states rely on common law concepts, while others have explicit statutes. Notably, New York includes protection for the right to publicity in its Civil Rights legislation, meaning that everyone is covered that is even common individuals—not just famous people. This implies that even less well-known people can stop illegal commercial usage of their likeness. The California laws protect the rights of deceased people, whether well-known and unknown, and essentially covers the same practices as the New York law. The hordes of merchants peddling counterfeit John Lennon memorabilia outside Dakota's apartment building where the famous musician formerly resided in Central Park West, is . Under New York law, once a person is dead they have no more right of publicity, The vendors are not breaking any laws as long as they limit their sales to New York and do not contravene trademark laws. For instance, merchandise that implies a false endorsement by the singer may be subject to legal action under the federal Lanham Act, even if state law is not violated.³²

Postmortem rights of publicity, however, can last for up to 100 years after death or even indefinitely if the image is utilized commercially in states like Indiana, Oklahoma, and Tennessee. For regular citizens,

³⁰ Karabo Mangope & Wim Alberts "Something Old, Something New" –Aspects Of personality Rights In The United States And South Africa ,<https://obiter.mandela.ac.za/article/view/14877/19119>

³¹ Karabo Mangope & Wim Alberts "Something Old, Something New" –Aspects Of personality Rights In The United States And South Africa ,<https://obiter.mandela.ac.za/article/view/14877/19119>

³² Robert W. Clarida – Reitler Kailas and Rosenblatt, LLC., Beware the Right of Publicity, The Graphic Artist Guild, (Jan 24, 2024), <https://graphicartistsguild.org/beware-the-right-of-publicity/>

Washington offers a 10-year postmortem right; for those with commercial worth, this period is extended to 75 years.³³

The right to privacy and publicity rights under *Pavesich v. New England Life Insurance Co.* 16 was first recognized by the Supreme Court of Georgia. The main issue in this case was Mr. Pavich's assertion that New England Life Insurance Co. had improperly used his image in an advertising for the defendant's insurance products. Since then, the matter has been addressed in practically every state by legislation or court precedent. Since the right to publicity is governed by state legislation, each state has a very different level of recognition for this right. The case of *Haelan Laboratories Inc. v. Topps Chewing Gum Inc.* (1953) marked the beginning of the creation of the right as it exists today. Baseball trading cards were utilized by the Plaintiff's rival chewing gum company, Topps Chewing Gum Inc., to boost chewing gum sales. Topps sold its chewing gum to Haelan Laboratories because it believed that Topps was violating its "exclusive rights" to the players' photographs, even though Haelan Laboratories had exclusive licenses from several players allowing the use of their images on its baseball cards pictures of the exact same athletes. "Even though the Court held that the Plaintiff could not recover damages under New York's statutory privacy law, it ruled in favour of the Plaintiff based on a new common law right that it dubbed as the "right of publicity"³⁴.

The right to publicity in USA can be divided into four extensive categories out of which the fourth category would include the right to publicity, while the other three would include the right to privacy. In the case of *Zacchini v. Scripps-Howard Broadcasting Co.*³⁵, the US Supreme Court provided additional clarification on this distinction. Entertainer Hugo Zacchini had a performance he called "The Human Cannon Ball," in which he would launch himself 200 meters away into a net from a cannon. The performance space was closed off to onlookers and only accessible to individuals who had purchased tickets for the event. Without the petitioner's permission, the Respondent's videographer brought a camera to the performance and videotaped it. After that, the videotape was shown on the news. Although the Supreme Court ruled in favor of the petitioner, it cited *New York Times Co. v. L.B. Sullivan*³⁶ and *Time Inc. v. J. Hill*³⁷ to support its decision that the right to privacy was a private right and the right to publicity was a commercial right that extended to protect the rights of performers. Furthermore, the distinction lay in the fact that, although a personal tort could not be assigned or inherited, the right of publicity, being a property right, was both assignable and descendible, even though the criteria for a breach of both the right to privacy and the right to publicity remain the same. In the same way, the Court widened the term "property rights" to encompass publicity rights in *Edison v. Edison Polyform Mfg. Co.*³⁸. Though, a person's right to privacy expires upon

³³ *ibid*

³⁴ Beware the Right of Publicity, *Supra* Note 26

³⁵ 1977 SCC OnLine US SC 153; 53 L Ed 2d 965; 433 US 562 (1977)

³⁶ 1964 SCC OnLine US SC 43; 11 L Ed 2d 686; 376 US 254 (1964).

³⁷ 4 1967 SCC OnLine US SC 1; 17 L Ed 2d 456; 385 US 374 (1967).

³⁸ 73 NJ Esq 136; 67 A 392, 395 (NJ Ch 1907).

their death, although their right to publicity may still remain³⁹. Thus, while the right to publicity falls within the concept of the right to privacy, it is treated differently in the United States.

However, the right to privacy and the right to publicity in the USA are not free of exceptions

Written Consent: The most fundamental exception to the norm is where the subject has willingly agreed to have such media about him published, ideally in writing with a statement outlining the intended use of the subject's name, likeness, or image.⁴⁰

Must be related to an individual: Because buildings and other structures are not covered by the right to publicity, images and other digital media, including videos, cannot be used in relation to them.⁴¹

Newsworthiness: According to the legislation, media that features a person in relation to a noteworthy occurrence may be used. In *Fraley v Facebook, Inc*⁴², The plaintiffs filed a lawsuit against Facebook alleging that the social media platform violated their right to publicity when it used their image and likeness in "Sponsored Stories."¹⁰⁷ The plaintiffs contended that Facebook's unauthorized use of their photos had deprived them of their economic value and that, to their friends, they were celebrities.¹⁰⁸ Facebook contended that the stories were noteworthy and that "expressions of consumer opinion are generally newsworthy," despite the fact that the plaintiffs are well-known to their friends. Facebook's move to have the case dismissed was denied by the court, who found in favor of the plaintiffs.⁴³ "In *Martin Luther King v. American Heritage Products*⁴⁴ as well, the Court held that newsworthiness must be construed in a wide sense. However, in *Taggart v. Wadleigh-Maurice Ltd*⁴⁵, the Court held that if an individual was an "involuntary performer", then the publication of his private matters would constitute a breach of publicity."⁴⁶

Use of public record: Applying Texas law, the Fifth Circuit U.S. Court of Appeals determined in *Matthews v. Wozencraft*, 34 that the ex-husband's rights to privacy and notoriety were not violated by a book that described the author and her experiences as undercover agents. News coverage included information about their convictions and activities. As a result, it was a matter of public record and regarded as noteworthy.⁴⁷

Parody and Jest: Since non-commercial speech in the US is granted the highest level of constitutional protection, satirical speech has historically been upheld by the courts. *White v. Samsung Electronics America, Inc.* case *Samsung Electronics America, Inc.*⁴⁸ used a robot that looked like American television

³⁹ Statutes in certain States of the United States of America make an express provision for the survival of rights after death, for example Tennessee recognises the right for another 10 years after the individual's death, while California does so for another 70 years.

⁴⁰ J. Thomas McCarthy, *The Right of Publicity and Privacy*, § 10.6 (2003).

⁴¹ Samarth Krishnan Luthra & Vasundhara Bakhru, *Publicity Rights and the Right to Privacy in India*, Volume 31 NLSIR, 125, (2019), <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1259&context=nlsir#:~:text=The%20right%20to%20publicity%2C%20popularly,image%2C%20name%2C%20or%20likeness.>

⁴² 830 F Supp 2d 785 (2011).

⁴³ Arabo Mangope & Wim Alberts "Something Old, Something new" –Aspects Of personality Rights In The united States And South Africa, <https://obiter.mandela.ac.za/article/view/14877/19119> <https://obiter.mandela.ac.za/article/view/14877/19119>

⁴⁴ 250 Ga 135; 296 SE 2d 697 (Ga 1982)

⁴⁵ 489 F 2d 434 (3rd Cir 1973)

⁴⁶ *Publicity Rights and the Right to Privacy in India*, Supra Note 35

⁴⁷ *ibid*

⁴⁸ 971 F2d 1395 (9th Cir 1992)

personality Vanda White, who is well-known for hostess the program "Wheel of Fortune."The majority ruling held that, first, where parodies rely on the identity of a public figure, the First Amendment will take precedence over a right-to-publicity claim; and second, that advertising that uses a celebrity's image must evoke the celebrity's identity in order for the humor to be understood. It is suggested that further work is necessary to guarantee that each right is adequately safeguarded while also maintaining the incentive for people to produce artistic works.

WHAT ARE DEEP FAKES

"Deepfakes are a form of synthetic media generated by using artificial intelligence/ machine learning algorithms"⁴⁹ basically fabricated images, audios, and videos made using artificial intelligence, that appear to be authentic and are often created with the intent of deceiving audiences. Synthetically generated media widely varies in technical sophistication and application, ranging from low-quality "cheap fakes" to more high-quality "deepfakes," and has the ability to challenge and influence perceptions of reality.⁵⁰ They can alter original content, usually, an individual's face or body, to make it appear as though the subject has said or done something they haven't. Therefore, it might be used maliciously to disseminate fake information, blackmail someone, or harm their reputation. 'The technology combines computer vision and machine learning techniques in a Generative Adversarial Network (GAN) architecture'. GANs are designed to generate synthetic data for use in situations when real data is scarce. This can involve text-to-image synthesis, picture or video synthesis (also known as "deepfakes"), and music or art in the vein of well-known artists or a series of training songs or visuals. But when left unchecked and undiscovered by top discriminators, these "deepfakes" can have a devastating effect on the lives of common people, celebrities, big businesses, and political parties.

Depending on the intended usage, deepfakes have the potential to be both very beneficial and harmful. The technology has been put to good use across several sectors. It has been applied to the entertainment industry to generate parodies and bring deceased performers back to life, as well as in the health sector to teach artificial intelligence to identify tumors. However But the most common application of this technology has been for ill intent, such as creating revenge pornographic content for harassment of women, creating fake videos of celebrities endorsing illegal pyramid schemes to dupe the common man and many other such negative uses.

IMPACT OF DEEPFAKES ON THE ENTERTAINMENT INDUSTRY

Due to the rise of deep fake technology Celebrities face unique challenges, One of the most distressing phenomena can be said to be the exploitation of their likeness and image rights often quirky and humorous images and videos are created morphing the different celebrities' images, and many a times certain business used this deep faked images to promote their business without any authorization or consent Deepfakes are

⁴⁹ Josh Baker, An Introduction To Deepfakes, Lancashire Cyber Foundry, https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/cyber-foundry/lcf-articles/LCFArticle-Josh-Deepfakes_WEB.pdf

⁵⁰ Raina Davis, Chris Wiggins & others, Deepfakes, Tech Factsheets For Policymakers

Spring 2020 Series, <https://www.belfercenter.org/sites/default/files/2020-10/tappfactsheets/Deepfakes.pdf>

used for more than just light-hearted entertainment, even though they are frequently linked to humorous videos. Surprisingly, 96% of deepfakes are made with pornographic intentions, and many of them place the faces of famous female celebrities on porn stars. Serious questions of consent, privacy, and possible reputational harm are raised by this malicious use of deepfakes. Deepfakes that go viral can have disastrous effects, ruining an actor's reputation and making them feel distressed. In addition, there are worries regarding the future employment prospects of actors and actresses due to the ambitions to use deepfakes in high-profile movie projects and on online streaming services.⁵¹ Deepfakes provide moral and legal conundrums, especially when it comes to the replication of historical figures. Laws are in place to safeguard the image rights of celebrities who are still alive, but things get murkier when it comes to those who have passed away. Due to the absence of legal protection following a death, deepfakes portraying well-known individuals can be created in an ethically and legally dubious manner, possibly distorting their beliefs and upsetting their families. There is a threat of Deepfakes eventually finding their way into the mainstream entertainment, even though for now they are mostly employed in memes, comedy, and independent productions. The practicality of exploiting the likenesses of departed actors and actresses in future films is called into doubt by this transition. Although the idea of bringing famous characters like Marilyn Monroe back to life is thrilling, it also raises questions about the opportunities that are now available to working actors and actresses and the possibility of a scarcity of jobs in the field.⁵²

IMPACT OF DEEP FAKES ON PERSONALITY RIGHTS

Recently Bollywood actor Anil Kapoor sought interim injunction against use and misuse of his personality rights where he alleged that the said defendants were employing different aspects of the plaintiff's identity and were maliciously abusing them. Publicizing and earning money by using his images to advertising that he will be speaking at an event as a motivational speaker, using fake morphed images of the actor and selling prints of his image, Creating images and videos of the actor in a morphed manner; using artificial intelligence to create extremely offensive photos and videos, not only of the plaintiff but also of other actresses, such as Katrina Kaif, Madhuri Dixit, and the late Sridevi, whose faces are being morphed with the plaintiff's, making the plaintiff appear in a song or picture dressed like these actresses; utilizing artificial intelligence to create cartoon versions of the actor and many such unethical and illegal activities.

Though the court recognized Kapoor's "personality rights" and ruled in his favour condemning the misuse of his attributes of personality rights without his consent "offenders cannot misuse his personality attributes in any way without his consent." By granting the necessary interim injunction, The court also stated that the court can't turn a blind eye to such misuse of a personality's name and other elements, and dilution and tarnishment are all actionable torts which Kapoor would have to be protected against.

The unauthorized utilization of images, voice recordings, likeness, and persona of any individual, particularly when there is a commercial gain involved, constitutes a violation of privacy, celebrity, and all

⁵¹ Vejay Lalla, Adine Mitrani & Ors, Artificial intelligence: deepfakes in the entertainment industry, WIPO Magazine, (June, 2022) https://www.wipo.int/wipo_magazine/en/2022/02/article_0003.html

⁵² Natalie Yesufu, The Rise of Deep Fakes in the Entertainment Industry, Toolify.ai, (Dec 23, 2023), <https://www.toolify.ai/ai-news/the-rise-of-deep-fakes-in-the-entertainment-industry-207811>

aspects of an individual's personality rights. Such misuse infringes upon the rights of the individual to maintain control over their own image, identity, and reputation.

⁵³Not only Bollywood many Hollywood celebrities have also been the target of deepfakes like Artificial intelligence deepfake websites have also been used to fabricate interviews with famous celebrities. In 2021, Tom Cruise deepfakes on TikTok went viral, In certain videos, Cruise may be seen eating a lollypop and then realizing there's chewing gum inside of it, making him doubt his own intelligence; in another, he appears to be inebriated as he staggers and mumbles inside a posh clothing store. A German magazine that employed the voice AI-generating platform was threatened with legal action by the family of former Formula 1 champion Michael Schumacher for producing an AI fictitious "exclusive" Schumacher interview.

INDIAN POSITION

Fair dealing is when someone copies a work that is protected by copyright without the creator's consent. It shall not be considered a copyright infringement if a literary, dramatic, musical, or artistic work is used for the purpose of research, private study, critique, or review, whether it be of that work or any other work. The fair dealing position in India is covered under Section 52 of the Copyright Act, 1957, which provides a detailed list of actions that are not considered to be copyright infringement. Since deepfakes are not included in this list, thus it is easier to hold the creator responsible.

In addition, the Copyright Act of 1957's Section 57(1)(b)⁵⁴ guarantees both paternity and integrity rights, protection from alteration, mutilation, and distortion. Violations of exclusive rights are punishable by law in both civil and criminal courts under Sections 55, and 63 of Copyright Act of 1957

CONCLUSION

Personality Rights are special rights conferred only on individuals who's characteristics, Likeness, and status is well known among people in India personality rights are not accorded to ordinary people who don't have commercial validity attached to their status, ordinary individuals though have the right to privacy. Today Indian Entertainment Industry has evolved so are the legal implications of the dynamic environment it exists in. When negotiating the ever-changing terrain of personality rights in the entertainment sector in the face of the deepfake threat, it is clear that comprehensive legal frameworks, technological advancements, and increased awareness are critical. Proactive steps are essential, as the entertainment industry's integrity and individual rights are seriously threatened by the widespread use of deepfake technology. Laws must change to reflect the complexity of deepfake technology, providing precise standards for when people's likenesses may be used and imposing severe consequences on unsanctioned alteration. Furthermore, cooperation between industry players, legal professionals, and technological developers is essential to creating strong instruments for identifying and successfully addressing deepfake content. Furthermore, cultivating a culture of responsibility and moral behavior requires educating the public about

⁵³ Jason Nelson, Not Only Me': Actor Anil Kapoor Wins AI Deepfake Court Case, R Scene, (Sep 22, 2023) <https://decrypt.co/198256/not-only-me-actor-anil-kapoor-wins-ai-deepfake-court-case>

⁵⁴ Indian Copyright Act 1957

the risks posed by deepfakes as well as the significance of upholding the rights of individuals. People need to be empowered to stand up for their rights and safeguard their identities online.

Ultimately, the entertainment sector can reduce the risks associated with deepfake technology and protect people's rights and identities by implementing a holistic strategy that takes into account legal, technological, and societal factors.

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