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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE CURRENT LEGAL LANDSCAPE CONCERNING THE INTERSECTION OF PERSONALITY RIGHTS WITH EMERGING TECHNOLOGIES, SPECIFICALLY DEEP- FAKES, GENERATIVE AI, AND VIRTUAL IDENTITIES.

AUTHORED BY - PARUL SHARMA¹ & PRABSIMRAN KOUR NAYYAR²

Abstract

Personality rights have emerged as a crucial legal frontier in an era shaped by digital media, rapid technological innovation, and unprecedented forms of identity exploitation. In India, the evolution of these rights has been driven primarily by judicial interpretation, with courts gradually recognizing an individual's name, image, voice, and other identity attributes as protectable interests. Despite this progress, the absence of a dedicated statutory framework continues to create uncertainty, especially as deepfakes, AI-generated content, and pervasive online commercialization blur the boundaries between personal autonomy and public exposure. The growing misuse of celebrity personas, coupled with increasing threats to ordinary individuals' digital identities, underscores an urgent need for a clearer, more comprehensive legal regime. Looking ahead, the future of personality rights in India depends on developing robust legislation that balances commercial interests with the fundamental right to control one's identity. Such a framework must address emerging technologies, safeguard against unauthorized exploitation, and ensure that the law evolves in step with the realities of a digitally interconnected society. This research outlines how the judiciary has been proactive, granting urgent injunctions to protect celebrities from AI-generated misuse, such as in landmark cases involving the Bachchan family and Suniel Shetty. These judicial interventions, often leveraging the fundamental Right to Privacy and Dignity under Article 21 of the Constitution, have elevated the status of the commercial persona to a constitutional plane.

Keywords: Personality Rights, Deepfakes, AI, Copyrights, Trademark, Dignity, Fundamental Rights.

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Introduction

“A human identity is the most personal form of property a person has, and its value is uniquely susceptible to misappropriation.”³

Picture a situation where your name, your voice, or even a distinctive aspect of your personality like the way you walk is used on a giant billboard without your consent. What might have once seemed like a distant or fictional scenario is now a genuine and pressing concern in the digital era, where personal identity can be captured, replicated, and misused with unprecedented ease.

In India, the law relating to personality rights has been evolving rapidly. With social media exploding and online content dominating public attention, the personal identity of celebrities from film actors to sports icons has turned into a commercial asset. As the boundary between personal life and public visibility continues to blur, and as technology advances at a fast pace, Indian courts and legislators are actively reshaping how personality rights are understood and protected. Many celebrities have engaged in legal disputes in recent years to protect their ‘personality rights’. These rights give people the ability to regulate the use of their name, appearance, voice, and even distinguishing characteristics, especially in commercial contexts.

The sheer volume of personality rights cases in the legal system is on the rise. These examples show a conflict between freedom of expression and the right to regulate one's identity. This article explores the intricacies of personality rights, including the legal struggles of celebrities, the evolving advertising and content creation landscape, and new challenges that will influence media and entertainment law in India.

Legislatively, the Ministry of Electronics and Information Technology (MeitY) has initiated a significant regulatory catch-up through draft amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules). These proposals introduce mandatory labeling and metadata embedding for ‘Synthetically Generated Information’ (SGI) and impose enhanced due diligence obligations on Significant Social Media Intermediaries (SSMIs) to combat deepfakes.⁴ Concurrently, the Digital Personal Data Protection (DPDP) Act, 2023, provides a new consent-based mechanism for controlling the processing of biometric data, likeness, and voice used in synthetic media.⁵

³ McCarthy, *The Rights of Publicity and Privacy* (2d ed.)

⁴ <https://ksandk.com/Personality Rights in India: Life, Legacy, and the Law>

⁵ <https://neetiniyaman.com/Personality Rights in India: Life, Legacy, and the Law>

However, the legal landscape remains challenged by several key structural conflicts: the absence of a specific exception for Text and Data Mining (TDM) creates a legal vacuum hindering AI development and exposing models to copyright infringement risk; the judicial reliance on broad ex parte injunctions in urgent cases risks sidelining the constitutional imperative that guarantees to all citizens the fundamental right to freedom of speech and expression⁶ and the overly expansive definition of SGI⁷ risks chilling legitimate creative endeavors such as parody and satire. Furthermore, protection for virtual identities in the Metaverse remains nascent, largely treated as a financial matter (Virtual Digital Assets or VDAs) rather than a subject of integrated personal rights protection. The future stability of the Indian framework depends on introducing comprehensive, technologically neutral legislation to codify personality rights, harmonize the conflicting consent requirements of the DPDP Act⁸ and proposed TDM exceptions, and ensure that AI regulation protects dignity without undermining fundamental freedoms.

The Doctrinal Foundation of Personality Rights in India

India's legal approach to personality rights is distinctive because it is not codified in a standalone statute. Instead, the legal foundation has evolved dynamically through judicial interpretation, establishing a strong constitutional nexus for personal autonomy.

Personality rights (PRs) are primarily viewed as an intrinsic facet of the Right to Privacy and Dignity, guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law under of the Constitution of India⁹. The landmark judgment in *K.S. Puttaswamy (Retd.) v. Union of India*¹⁰ affirmed privacy as a fundamental right, cementing the idea that control over one's identity, image, and likeness is essential for personal autonomy and dignity. This constitutional anchoring is critical, as it elevates protection beyond mere commercial injury. The courts have interpreted this right broadly; for instance, the *Anil Kapoor* case¹¹ recognized that the scope of Personality Rights extends beyond mere image and includes intangible elements such as voice, gestures, manner of speaking, and expressions. The misuse of these elements without consent infringes fundamental rights under Article 21,

⁶ *The constitution of India*, art. 19(1)(a)

⁷ Synthetic Generative Imagery.

⁸ Digital Personal Data Protection Act, 2023

⁹ *The constitution of India*, art. 21.

¹⁰ (2017) 10 SCC 1

¹¹ *Anil Kapoor v. Simply Life India & Ors.* CS(COMM) 652/2023

including the right to privacy and dignity. This explicit judicial linking of specific commercial attributes (like a voice, mannerism, or catchphrase) to the fundamental rights enshrined under Article 21 is a powerful mechanism. It transforms the commercial Right of Publicity, which would traditionally be confined to a tort claim, into a constitutional right. This constitutionalizing commercial persona grants claims unauthorized exploitation a higher judicial urgency, justifying broader injunctive relief necessary for rapidly removing content like deepfakes.

The Intellectual Property and Tort Nexus

While Article 21 provides a shield for dignity and privacy, the commercial aspect of personality rights often termed the Right of Publicity is protected via established mechanisms within IP and common law.

The primary legal tool for commercial protection is the common law tort of Passing Off. This doctrine, recognized under Section 27¹² of the Trademarks Act, 1999, is invoked when an individual's identity or persona is misused to imply a false endorsement or association, thereby leveraging their reputation and goodwill for commercial gain. The *Amitabh Bachchan v. Rajat Nagi* case (2022)¹³ highlighted this, where the Delhi High Court granted an injunction against the unauthorized commercial exploitation of Mr. Bachchan's voice and image. Similarly, trademark law is utilized to protect registered names, slogans, and distinctive catchphrases, as seen in the *Jackie Shroff* case¹⁴, where the actor sought protection for registered trademarks and nicknames like '**BHIDU**'.

Recently, Indian jurisprudence made an important advance in recognising the digital persona of content creators when the Delhi High Court granted a John Doe order¹⁵ in favour of Raj Shamani, one of the country's most prominent online creators. Through this order, the court extended comprehensive personality-rights protection over his name, image, voice, and likeness, restraining unknown individuals and entities from misusing his identity for commercial gain¹⁶. This development signals a broader shift in the law: personality rights are

¹² Section 27 of the Trademarks Act, 1999 states that no action for infringement lies for an unregistered trademark, though the common law remedy of passing off remains unaffected

¹³ CS(COMM) 819/2022

¹⁴ Jaikishan Kakubhai Saraf Alias Jackie v. The Peppy Store & Ors. CS(COMM) 389/2024

¹⁵ John Doe orders are injunctions issued against unknown defendants to prevent anticipated or ongoing infringement when the identity of the wrongdoer is not yet ascertainable

¹⁶ Raj Shamani v. Unknown Defendants, Delhi High Court, *John Doe Order on Personality Rights* (2025).

no longer confined to film stars or sports icons but now extend to digital influencers whose online presence carries significant economic value. Although the Supreme Court has yet to deliver a ruling specifically on personality rights for content creators, the Shamani order marks a pivotal moment in expanding these rights within India's evolving legal framework¹⁷.

Furthermore, the Copyright Act, 1957¹⁸, provides complementary, albeit limited, protection, particularly for professional performers. Sections 38¹⁹ and 38A²⁰ grant Performer's Special Rights, ensuring exclusive economic rights over sound and visual recordings of performances for 50 years. Crucially, Section 57²¹ grants Moral Rights to performers, allowing them to claim attribution and, more importantly, to restrain distortion, mutilation, or modification that prejudices their reputation. When a deepfake manipulates an existing copyrighted performance (audio/video work), the performer can invoke the right of integrity under Section 57.

A crucial gap emerges here: personality rights protect non-copyrightable elements such as likeness, gestures, and voice *style*. If a deepfake merely replicates the likeness or voice through synthesis without manipulating an existing performance recording, the performer must rely on the more ambiguous common law personality rights. This shows the inherent limitations of relying on fragmented IP statutes when facing sophisticated AI manipulation.

Critical Assessment: The Uncodified Challenge

The current reliance on a judicial patchwork, combining constitutional mandates, common law torts, and ancillary IP rights, results in significant legal uncertainty. The scope of personality rights is determined on a case-by-case basis, making predictive legal counsel challenging for innovators and content creators.

The Indian jurisprudence must navigate the inherent distinction between the Right of Publicity (the economic right to control commercial use, functioning like property) and the Right to Privacy (the non-economic right to dignity and autonomy). The privacy component

¹⁷ Delhi High Court protects podcaster Raj Shamani's personality rights - The Hindu

¹⁸ *The Copyright Act, 1957* (India).

¹⁹ Section 38 of the Copyright Act, 1957 grants performers exclusive rights over their performances, including the right to make sound or visual recordings and to authorize their commercial use

²⁰ Section 38A of the Copyright Act, 1957 grants performers exclusive economic rights to authorize the fixation, reproduction, and communication of their performances

²¹ Section 57 of the Copyright Act, 1957 grants authors moral rights, including the right to claim authorship and to prevent distortion or mutilation of their work.

is intended to cover non-economic damages, such as defamation or reputational harm, while the publicity aspect covers commercial loss. While Indian courts attempt to merge these facets, particularly by anchoring the publicity right in Article 21²², this overlap complicates the consistent application of remedies and requires a more defined statutory framework to achieve predictability.

Deepfakes and Digital Impersonation: Judicial and Regulatory Responses

Deepfake technology is a type of artificial intelligence technology used to create convincing fake videos, images, and audio recordings. Deepfakes often tend to create content that is entirely original and contains people or objects that are well known²³, but the only difference is that the content being shown through such manipulated images, videos, or audio never existed in real life and is purely formed out of such a technological process, imbibing real characteristics²⁴.

Understanding deepfakes through a technological lens, we come across the fact that deepfakes use two algorithms: a generator and a discriminator to create and refine fake content²⁵. The generator's function is to create the initial fake content, and then the discriminator spots the flaws and helps the generator to improve the authenticity of the fake content created. Such a technology, according to a report by the U.S. Department of Homeland Security, creates fake content in a matter of seconds and thus acts as a weapon of massive danger in this cyber world. Therefore, major illegal activities carried out through the usage of deep-fake technology are as follows:

1. **Falsely created evidence:** Deepfake technology, by virtue of the processes involved, helps in creating false evidence for presenting in the court of law, thereby manipulating the legal proceedings²⁶.
2. **Fraudulent acts:** Deepfake technology in this modern world have opened avenues for the cybercriminals to use such technology to create videos or images which could be

²² Ibid., p.3.

²³ See generally Chesney, Robert & Citron, Danielle, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security," 107 *California Law Review* 1753 (2019)

²⁴ Kietzmann, Jan & Pitt, Leyland, "Deepfakes: Trick or Treat?" 62 *Business Horizons* 135 (2019).

²⁵ Ian J. Goodfellow et al., "Generative Adversarial Nets," *Advances in Neural Information Processing Systems* (NIPS) 2014 (introducing the generator-discriminator framework).

²⁶ Westerlund, Mika, "The Emergence of Deepfake Technology: A Review," 10 *Technology Innovation Management Review* 38 (2019).

used to up commit crimes involving fraudulent money transfers or extortion, etc²⁷.

3. Spreading Misleading and false narrative among the public: People all over the world have access to social media platforms where people with malicious intent create such content, which spreads disharmony among the public and poses a threat to massive conflicts.

Judicial Activism and the Rise of Digital Injunctions

Indian High Courts have responded to the threat of deepfakes by granting rapid interim injunctions to protect celebrities. This spate of litigation highlights the severe potential for reputational and financial harm caused by synthetic media.

Notable case law includes:

- *Amitabh Bachchan v. Rajat Nagi* (2022)²⁸: The Delhi High Court protected Mr. Bachchan's persona, establishing that a celebrity's identity holds significant commercial value and cannot be commercially exploited without authorization.
- *Suniel Shetty v. Ashok Kumar*²⁹: The Bombay High Court granted urgent interim protection against the misuse of the actor's persona through AI-generated deepfakes, cloned audio, and obscene content. The court recognized that such material constituted a "lethal combination of a depraved mind and the misuse of technology" and directly violated fundamental rights to privacy and dignity.
- *Aaradhya Bachchan v. YouTube Channels*³⁰(2023) and related cases, including the protection granted to Nagarjuna against unauthorized use of his identity via AI, underscore the judiciary's increasing willingness to employ protective measures against digital impersonation.

A key remedial measure adopted by courts is the issuance of broad *John Doe* orders against unknown defendants to counteract the widespread, viral nature of digital infringement.¹ These orders typically direct social media intermediaries (SMIs) like Meta Platforms and X Corp. to remove infringing content within a specific timeframe and, critically, to provide subscriber details of the uploaders upon request³¹. This sequence of high-profile cases has been crucial because it demonstrates the judiciary's capacity to identify severe, modern harm and provide immediate relief. This judicial anxiety over the rapid and irreversible nature of reputational and

²⁷ Ibid.

²⁸ 2012 SCC Online Del 4818.

²⁹ 2025 SCC Online Bom 3918.

³⁰ 2023 SCC Online Del 2471

³¹ <https://www.ndtv.com/entertainment/suniel-shetty-gets-high-court-relief-over-personality-rights-9435710>

financial harm caused by deepfakes led courts to prioritize dignity protection (Article 21) via swift, often *ex parte*, orders. This response accelerated the government's subsequent regulatory action.³²

HOW DEEPPFAKE TECHNOLOGY INFRINGES PERSONALITY RIGHTS

With the advent of technological influence in the form of Deepfake technology, cybercriminals tend to create videos that are driven by malicious intent for profit-making purposes³³. These videos/images/graphics usually inculcate in themselves popular personalities who are shown performing a particular act that they never did, thus attracting popularity through various social media platforms and hence generating profits for the perpetrators of this cybercrime³⁴. In its essence, personality rights are said to be infringed when a well-known act/gesture/dialogue or other special attribute of a popular personality is exploited by means of copying or mala fide use of such copied material for commercial purposes without valid authorization in the public realm³⁵. To its defense, there isn't any particular provision under the Indian legal system that explicitly protects such rights, but still celebrities in India³⁶ find protection of their personality rights under the light of Article 21³⁷ of the Constitution and the Trademarks Act 1999, as also the Delhi High Court, which is the leading judicial body in India, has provided for continuous protection of the personality rights by using its discretion and conscience, as it has since the 1990s³⁸, and has developed a significant jurisprudence in the realm of protecting such rights³⁹. Hence, by understanding Deepfake technology's usage in infringing personality rights, we come across the fact that the joint usage of provisions of the Information & Technology law and the Trademark Act 1999⁴⁰ through its section 14⁴¹ provides remedial measures that could be availed in the court of law. Therefore, in the absence of any framework or measure or

³² <https://www.scobserver.in/journal/personality-rights-the-law-must-not-overprotect-fame>

³³ Chesney, Robert & Citron, Danielle, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security," 107 *California Law Review* 1753 (2019).

³⁴ Kietzmann, Jan & Pitt, Leyland, "Deepfakes: Trick or Treat?" 62 *Business Horizons* 135 (2019).

³⁵ *Haelan Laboratories Inc. v. Topps Chewing Gum Inc.*, 202 F.2d 866 (2d Cir. 1953) (recognizing the right of publicity).

³⁶ *See generally* Arul George Scaria, "Publicity Rights in India – An Overview," 7 *NALSAR Law Review* 33 (2013).

³⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

³⁸ *DM Entertainment Pvt. Ltd. v. Baby Gift House*, 2003 SCC Online Del 820

³⁹ *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 SCC Online Del 273.

⁴⁰ Reddy, Pavan Duggal, "Legal Responses to Deepfakes under Indian Cyber Law," *Indian Journal of Law and Technology* (2022).

⁴¹ *The Trademarks Act, 1999*, § 14 (India).

subject-specific law, there exist challenges that give rise to numerous threats to celebrities, which could be summarized in a manner mentioned below:

1. **Passing off:** Deepfakes that use a person's likeness, voice, or mannerisms to promote products or services they do not endorse can be considered passing off. This misrepresentation tricks consumers into believing the public figure has a genuine affiliation with the brand. Taking inspiration from the landmark case of *Titan Industries v. M/s. Ramkumar Jewellers*⁴², the Delhi High Court restrained a jeweler from using celebrity photographs without permission, ruling that prominent people have the right to control how their identity is used commercially.
2. **Defamation and Damage to Goodwill:** Deepfakes can harm a person's carefully built public image and brand value⁴³. When a deepfake uses a celebrity's persona in a derogatory or false light, it damages the goodwill and reputation associated with their identity, which has commercial value akin to a brand.

Therefore, deepfakes act like a modern weapon in the present technological regime, where celebrities are prone to such malicious acts, which harm their reputation and goodwill and exploit their brand value for evil commercial purposes⁴⁴.

The Regulatory Framework: IT Rules Amendments 2025

In late 2025, Ministry of Electronics and Information Technology (MeitY) proposed draft amendments to the IT Rules, 2021, explicitly targeting the proliferation of Synthetically Generated Information (SGI). This intervention signifies a fundamental policy shift from reactive takedowns to proactive verification and disclosure⁴⁵.

Defining and Regulating Synthetically Generated Information (SGI)

The government defined SGI broadly as information 'artificially or algorithmically created, generated, modified or altered using a computer resource, in a manner that appears reasonably authentic or true'. This expansive definition aims to cover deepfakes, synthetic audio, and manipulated images that can be weaponized to spread misinformation, damage reputations, or commit fraud.⁴⁶

⁴² *Titan Industries Ltd. v. M/s. Ramkumar Jewellers*, 2012 SCC Online Del 2382.

⁴³ McCarthy, J. Thomas, *The Rights of Publicity and Privacy*, 2nd ed. (Thomson Reuters, 2018).

⁴⁴ Westerlund, Mika, "The Emergence of Deepfake Technology: A Review," 10 *Technology Innovation Management Review* 38 (2019).

⁴⁵ khaitanco.com/thought-leadership/Proposed-amendments-to-the-IT-Intermediary-Rules

⁴⁶ IT rules update: MeitY mandates deepfake labelling, tighter social media oversight; content removal made transparent - The Times of India

Mandatory Obligations

The Draft Amendments introduce mandatory obligations for both the creators and the platforms that host SGI:

1. **Labelling and Traceability:** All public-facing AI-generated media must ensure ‘visible labelling, metadata traceability, and transparency’. This labelling must cover at least 10% of the visual or initial audio duration to ensure prominence⁴⁷.
2. **Enhanced Due Diligence:** Significant Social Media Intermediaries (SSMIs), defined as platforms with over 50 lakh (5 million) registered users in India, must obtain user declarations regarding whether uploaded content is synthetically generated⁴⁸. Furthermore, SSMIs are mandated to deploy ‘reasonable and proportionate technical measures’ to verify these declarations and ensure appropriate labelling.

Intermediary Liability and Safe Harbour

These new proactive duties are tied directly to the intermediary's liability under the IT Act. Non-compliance with the due diligence obligations under the amended rules leads to the loss of Safe Harbour protection provided by provision⁴⁹ of the Information Technology Act, 2000. The failure to act upon content that violates these rules, including deepfakes, will be deemed a failure in exercising due diligence. This represents a significant move, forcing SSMIs to become active regulators of deepfake creation and dissemination, placing India in a strict accountability regime like some global standards⁵⁰.

Safeguards

Having examined the extent of acts that hamper the personality rights, there also exist the legal safeguards that could be availed by victims of such infringement; thus, such legal safeguards provided under the Indian legal system are as follows:

1. **Article 21 of the Constitution of India:** In the Indian legal context, protection of personality rights is sought against any kind of infringement, as it advocates for the right to life and privacy, which are evidently the heart and soul behind the jurisprudence of personality rights in India⁵¹.
2. **Judicial Discretion:** For seeking protection against such malicious acts, various judicial

⁴⁷ Labelling of AI-Generated Content on Social Media - Civildaily

⁴⁸ Proposed Rules for AI-Generated Content Amid Deepfake Concerns: Impact on Platforms and User Experience

⁴⁹ *Information Technology Act, 2000, s. 79(1) (India)*.

⁵⁰ <https://www.meity.gov.in/static/uploads/2025/10/8e40cdd134cd92dd783a37556428c370.pdf>

⁵¹ *Ibid. p.no 9*

bodies in India, especially the Delhi High Court, have developed a separate jurisprudence over the years through their discretion and conscience, due to which maximum cases pertaining to personality rights infringement are dealt with by this court⁵².

3. Trademarks Act 1999: Though no special provision is given for such rights protection, yet the courts in India take their inspiration from the provision⁵³ of the act, as it provides for individuals to get trademarks registered under their name.
4. Intermediary Liability under Information and Technological Law: Under the IT (Intermediary Guidelines) Rules, 2021, social media platforms are required to swiftly take down deepfake content reported as misinformation or privacy violations. Failure to do so can result in the loss of their legal immunity (safe harbor)⁵⁴.

Thus, the abovementioned are the legal safeguards provided by the Indian legal system, which are relied upon for seeking remedies in case infringement of personality rights takes place⁵⁵. Specifically, in today's era, the conjoint usage of the IT Act & Rules, the DPDP Act & Rules⁵⁶, as well as the provisions of the constitution and IPR law, gives a solid shield to the citizens of the country against any material breach.

The Digital Personal Data Protection (DPDP) Act, 2023

The DPDP Act, 2023, provides a complementary legal avenue for challenging deepfakes by focusing on the underlying data. Since deepfakes require harvesting personal data, such as images, videos, and biometric identifiers (likeness or voice), unauthorized deepfake creation constitutes a violation of data protection principles⁵⁷.

The Act mandates consent for the processing of personal data. If a deepfake is produced or disseminated without the individual's consent, particularly concerning their likeness or voice, violations could fall under the DPDP Act. The law provides substantial penalties for non-compliance, with fines potentially reaching ₹250 crore (approximately \$30 million)⁵⁸.

An unauthorized deepfake infringement can therefore be addressed via a sophisticated, multi-

⁵² *Titan Industries Ltd. v. M/s. Ramkumar Jewellers*, 2012 SCC OnLine Del 2382

⁵³ *Trademark Act, 1999, s. 14*

⁵⁴ *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, r. 3(1)(b)(ii)

⁵⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

⁵⁶ *Digital Personal Data Protection Act, 2023*, s. 4–7 (India)

⁵⁷ Deepfake Laws and the Right to Privacy: Is India Ready for AI-Generated Lies? - My Legal Pal

⁵⁸ Digital Personal Data Protection Act 2023: Deepfake Laws & Penalties

pronged legal strategy involving⁵⁹:

- 1) A Civil Suit for injunctions (Personality Rights/Tort/IP).
- 2) Criminal/IT Act provisions for impersonation or privacy violation; and
- 3) DPDP Act enforcement for unauthorized data processing.

The following table summarizes the legal and regulatory actions against deepfakes:

Deepfakes: Legal and Regulatory Action

Legal/Policy Instrument	Primary Protection/Harm Addressed	Key Mechanism	Remedy/Penalty
Constitutional Law (Art. 21)	Dignity, Privacy, Reputation	Judicial Injunctions (ex parte/John Doe)	Takedown Order, Damages
Common Law/IP Statutes	Commercial Misappropriation	Passing Off, Trademark/Copyright Infringement	Injunction, Damages, Account of Profits
DPDP Act, 2023	Unauthorized Personal Data Processing	Consent Requirements (for likeness/voice), Data Protection Board	Fines up to ₹250 crore
Draft IT Rules, 2025	Misinformation, Traceability, Accountability	Mandatory Labelling (SGI), SSMI Due Diligence	Loss of Section 79 IT Act, 2000, Safe Harbou

Generative AI and the Copyright Conflict

The legal challenges surrounding generative AI extend beyond the output (deepfakes) to the input stage, specifically the use of copyrighted material for Text and Data Mining (TDM) to train AI models. This area highlights a critical legislative deficit in India.

The TDM Legal Vacuum in India

Training Generative AI Models systematically reproduces vast volumes of data, often copyrighted content, to learn and operate effectively. Under the Copyright Act, 1957, Section

⁵⁹ *Ibid.*

14⁶⁰ grants author the exclusive right to reproduce their work, including storing it electronically. Consequently, the systematic use of copyrighted works for TDM constitutes *prima facie* infringement unless an explicit legal exception applies⁶¹.

India's legal framework provides no explicit statutory exception for TDM. Developers must rely solely on the narrow Fair Dealing doctrine outlined in Section 52⁶² of the Copyright Act, 1957. This doctrine is interpreted restrictively by Indian courts, which emphasize the specific enumerated purposes permitted, such as private research, criticism, review, parody, or news reporting. Commercial, systematic TDM conducted for profit generally falls outside the scope of recognized fair dealing exceptions.

This lack of a TDM exception means that the current legal framework, designed for analog works, actively inhibits a core developmental activity of generative AI. This regulatory lag places Indian AI companies at a distinct competitive disadvantage compared to counterparts in jurisdictions that have adapted their laws to facilitate TDM. The absence of clarity regarding machine learning necessitates that developers painstakingly license content or risk legal action, hindering "unencumbered innovation".

Legal Consequences and Industry Strategy

The legal precarity for AI developers is underscored by recent litigation. High-profile infringement actions, such as the *Asian News International (ANI) v. OpenAI & Anr.*⁶³ case before the Delhi High Court, are testing the boundaries of reproduction rights in the AI training context. These lawsuits confirm that, absent a clear statutory carve-out, AI firms face significant risk.

Consequently, developers are left with two primary choices: relying on open-access material and works in the public domain or engaging in the expensive and complex process of obtaining licenses from rights holders for training data. In the immediate absence of statutory guidance, the industry relies heavily on contractual safeguards, such as requiring warranties from data

⁶⁰ Section 14 of the Copyright Act, 1957 defines "copyright" as the exclusive right to do or authorize specific acts in relation to a work, including reproduction, communication, adaptation, and translation.

⁶¹ Training AI, Testing Law- India's Copyright Challenge with TDM – Law School Policy Review

⁶² Section 52 of the Copyright Act, 1957 outlines specific acts that do not constitute copyright infringement, commonly known as "fair dealing" exceptions

⁶³ [CS(COMM) 1028/2024]).

providers that the training material was lawfully obtained and using indemnities to shift the financial risk of infringement disputes to the party best positioned to control data sourcing⁶⁴.

Conflict between Data Law and IP Law in Training

A complexity unique to the intersection of Personality Rights and AI is the interaction between Copyright Act, 1957 and the Digital Personal Data Protection Act, 2023 (DPDP Act). Even if India introduced a statutory TDM exception (solving the IP issue), the DPDP Act still mandates consent for processing personal data, including biometric data, likeness, and voice.

If an AI model is trained on a dataset containing publicly shared celebrity images, a TDM exception might permit the copying of the image as a copyrighted work. However, the DPDP Act still requires consent from the data principal (the celebrity) for the processing of the data as a persona. Legislative reform concerning AI training must explicitly harmonize TDM policy with the stringent data principal consent requirements to achieve comprehensive legal compliance.

A comparison of India's TDM framework with global standards illustrates the legislative gap:
Copyright vs. AI Training: India and Global Standards

Jurisdiction	Statutory TDM Exception	Fair Use/Dealing Doctrine	Legal Risk for Commercial Training
India (Current)	Absent	Narrow, enumerated purposes (Fair Dealing)	High (Prima facie infringement)
European Union (EU)	Present (DSM Directive)	Varies by Member State	Lower (Subject to opt-out mechanisms)
United States (US)	Absent (Relies on courts)	Broad, Four-Factor Test (Fair Use)	Moderate (Dependent on "transformative" use)

⁶⁴ <https://www.maheshwariandco.com/blog/ai-and-copyright-law-in-india>

Constitutional Tensions: Balancing Personality Rights and Free Speech

The rapid expansion of personality rights, particularly in response to deepfakes, inevitably generates constitutional tension with the fundamental Right to Freedom of Speech and Expression, guaranteed under the Constitution⁶⁵.

The Conflict: Dignity vs. Expression

Courts are tasked with maintaining a delicate balance, ensuring that the protection of dignity and reputation⁶⁶ does not unduly restrict public discourse and creative expression⁶⁷

Judicial decisions have historically drawn a line, consistently protecting non-commercial speech such as news reporting, criticism, genuine parody, and satire. Misuse crosses the line and becomes unlawful when it results in 'tarnishment, blackening, or jeopardizing a person's identity or reputation' or involves deliberate, unauthorized commercial exploitation, which amounts to passing off and misappropriation.

A critical example of this judicial balancing occurred in the *Jackie Shroff* case⁶⁸. While the Delhi High Court granted a broad injunction against commercial misappropriation of his name and voice via deepfakes and merchandise, it notably refused to grant an *ex parte* injunction against the creator of 'Thug Life' style videos. The court recognized these videos as artistic expression, confirming judicial restraint against restricting non-commercial parody that creates economic value for the creator.⁶⁹

Critiques of Judicial Remedies and Regulatory Overreach

Despite attempts at balance, procedural and regulatory decisions have attracted substantial critique regarding potential overreach.

Procedural Critique of Injunctions

The frequency with which courts grant broad *ex parte* (one-sided) interim injunctions to protect celebrity interests is a point of contention. Critics argue that this process bypasses adequate constitutional engagement with free speech principles, often sidestepping the public interest and public-record exceptions recognized by the Supreme Court. The speed and breadth of these

⁶⁵ *The Constitution of India*, art. 19(1)(a).

⁶⁶ *The Constitution of India*, art. Article 21

⁶⁷ *The Constitution of India*, art. Article 19(1)(a).

⁶⁸ Jaikishan Kakubhai Saraf Alias Jackie v. The Peppy Store & Ors. CS(COMM) 389/2024

⁶⁹ <https://neetiniyaman.com/protection-of-personality-rights-in-india>

orders, driven by anxiety over irreversible digital harm, lead to a system currently skewed toward rapid celebrity relief, potentially institutionalizing a system of pre-emptive censorship. Furthermore, the court has been advised to favor specific, URL-based takedown orders over blanket injunctions to ensure clarity, precision, and enforceability, while minimizing the impact on legitimate content⁷⁰.

Regulatory Critique of SGI Definition

The expansive definition of 'Synthetically Generated Information' (SGI) proposed in the draft IT Rules carries the risk of significant regulatory overreach and a chilling effect on creativity. By including any content 'algorithmically created, generated, modified or altered' that appears authentic, the definition fails to delineate clearly between 'harmful deception' i.e. malicious deepfakes and 'legitimate creativity' i.e. satirical AI art or digital edits⁷¹.

This means legitimate creative expression is subjected to the same stringent mandatory labelling (10% visibility/audibility) and verification requirements as malicious content. If the traditional defence against PR claims has historically been non-commerciality or genuine commentary, the digital era necessitates a re-evaluation. Deepfakes designed purely for defamation or manipulation (non-commercial yet harmful) clearly violate dignity. Therefore, while the Harm and Intent test is replacing the old Commerciality Test, the current broad SGI definition may impose burdensome technical requirements on creators, thereby chilling freedom of speech by failing to provide an exemption for benign, clearly marked, non-deceptive parody⁷².

Policy Gaps and Recommendations for a Harmonized Framework

The confluence of judicial activism, reactive IT regulations, and the DPDP Act has created a high-velocity, complex, and sometimes contradictory legal environment. To ensure stability, predictability, and balanced protection for digital personhood, several legislative reforms are imperative.

The Necessity of Codified Personality Rights Legislation

⁷⁰ <https://www.barandbench.com/view-point/recalibrating-the-expanding-scope-of-personality-rights-in-india-the-surge-and-the-concerns>

⁷¹ <https://www.techpolicy.press/indias-new-it-rules-on-deepfakes-threaten-to-entrench-online-censorship>

⁷² <https://www.forbesindia.com/article/news/explained-indias-ai-content-labelling-regulation/2988179/1>

The current reliance on common law and constitutional principles creates inherent legal uncertainty. A dedicated statutory Right of Publicity/Personality Law must be introduced to provide predictable definitions and standardized remedies. This new law must be technologically neutral, focusing on defining the right which is control over name, likeness, voice, and unique attributes rather than specifying the infringing method. This ensures future technologies are automatically covered, guaranteeing legal longevity. Crucially, the statute must clearly delineate the economic rights which are transferable and potentially descendible, as property from the moral/dignity rights which should remain non-transferable and perpetual.⁷³

Addressing Generative AI and Copyright Law Deficiencies

To promote the growth of the Indian AI sector, legislative action on the input side is urgent:

1. **Introduce a Targeted TDM Exception:** The Copyright Act, 1957, must be amended to include statutory exceptions for Text and Data Mining, aligning India with global standards. This exception should differentiate between non-commercial research or public good uses, which should be largely permissible, and large-scale commercial exploitation, where licensing rights should be preserved⁷⁴.
2. **Clarify AI Authorship:** Legislative guidance is necessary to clarify the ownership status of AI-generated content output, addressing the ambiguity of 'authorship' under Section 17 of the Copyright Act, 1957 where the creations are largely autonomous⁷⁵.

Refinement of the Digital Governance Framework

The regulatory efforts focused on synthetic media need harmonization to prevent conflicting obligations:

1. **Harmonize IT and DPDP:** Clear provisions must be introduced into the IT Act and the DPDP Act to specifically address AI-generated content and deepfakes. Procedures should be explicitly defined for removing unauthorized biometric data/likeness utilized in deepfakes, ensuring the SGI regulations are smoothly integrated with the DPDP Act's consent and data protection mandates.
2. **Ensure Proportionality in SGI Regulation:** The current expansive definition of Synthetically Generated Information must be refined to explicitly exempt or reduce the

⁷³<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1259&context=nlsi>

⁷⁴ <https://www.maheshwariandco.com/blog/ai-and-copyright-law-in-india>

⁷⁵ <https://ksandk.com/intellectual-property-rights/copyright-challenges-of-generative-ai-in-india>

compliance burden for benign, clearly marked, non-deceptive parody, satire, and criticism. This refinement is essential to mitigate the chilling effect on freedom of expression⁷⁶

3. Global Enforcement Mechanisms: The legal framework must include clear provisions for governance and remedies concerning content hosted on foreign platforms, including penalties for deepfakes created or disseminated with prejudice from abroad⁷⁷.

Judicial and Policy Proportionality

Regulatory and judicial procedures must evolve to guarantee procedural fairness:

1. Proportional Remedies: The judiciary should continue to apply a highly cautious approach to *ex parte* injunctions, favouring URL-specific takedown orders over broad, blanket injunctions that are functionally impossible to enforce and excessively restrict potentially legitimate speech⁷⁸.
2. Intermediary Protection: The regulatory framework must explicitly retain "Good Samaritan" protections, ensuring that intermediaries who voluntarily and in good faith moderate and remove synthetic content do not inadvertently forfeit their Section 79 Safe Harbour protection⁷⁹.

Conclusion

The legal landscape governing the intersection of personality rights with deepfakes, generative AI, and virtual identities in India is defined by dynamic tension and rapid adaptation. The judiciary, anchored by the constitutional mandate of dignity and privacy under Article 21, has effectively created a robust, albeit uncodified, common-law defence against the commercial and reputational harms posed by synthetic media. This judicial urgency has spurred significant legislative initiatives, particularly the MeitY's move toward mandatory labelling and stringent platform accountability for synthetically generated information.

Furthermore, the current framework suffers from structural fragility. The reliance on common law creates inconsistency, while the legal vacuum concerning Text and Data Mining directly

⁷⁶ The constitution of India, art. 19(1)(a).

⁷⁷ Akhil Satheesh, "Deepfakes and the Copyright Connection: Analysing the Adequacy of the Present Machinery", (2022) Richmond Journal of Law and Technology, Blog (jolt.richmond.edu, 25-1-2022)

⁷⁸ Swanand Bhale, "Deepfake Laws in India: The Need for Legal Regulation in the AI Era", (2025) Manikchand Pahade Law College

⁷⁹ Biranchi Naryan P. Panda and Isha Sharma, "Deepfake Technology in India and World: Foreboding and Forbidding", (2025) Asian Institute of Research, Law and Humanities Quarterly Reviews 24

impedes the necessary technological foundation for indigenous AI development. Furthermore, the aggressive regulatory response against deepfakes risks impinging upon fundamental freedoms of speech, requiring careful delineation between harmful deception and legitimate artistic parody. The transition to a stable and effective digital rights framework demands legislative leadership. India must move beyond its dependence on judicial interpretation and fragmented IP statutes by introducing a dedicated, technologically neutral law for personality rights. Such legislation, coupled with a balanced TDM exception and the careful harmonization of IT and DPDP rules, is crucial. This integrated approach will ensure that India safeguards its citizens' digital identities and dignities while fostering an accountable and innovative AI ecosystem.

