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Judicial Law-Making in the Algorithmic Age: Towards a Sui Generis Intellectual Property Regime for Personality Rights in India

ZAHARA SHEIKH* AND FATIMA FARIDI**

ABSTRACT

*The proliferation of deepfakes, powered by Generative Adversarial Networks, poses a direct threat to personality rights as an intellectual property asset. India has no dedicated statute governing such rights, yet a commercially cultivated persona, comprising name, voice, likeness and distinctive mannerisms, carries substantial economic value. Confronting this statutory vacuum, the Indian judiciary has engaged in purposive judicial law-making, stretching the Trade Marks Act, 1999, the Copyright Act, 1957 and constitutional privacy jurisprudence to generate, incrementally, what this paper contends is a sui generis intellectual property regime. Through a five-phase analysis of decisions from *Titan Industries v. Ramkumar Jewellers* (2012) to *Vikas Pahwa v. Ashok Kumar* (2026), the paper traces the doctrinal arc from dignity-based tort relief toward a property-centric framework grounded in Hegelian theory. Comparative reference to the United States right of publicity and the EU AI Act shows that the Indian regime, while judicially creative, remains fragmented and litigation-heavy. The paper recommends the enactment of a Digital Personality Protection Act to consolidate the judicial architecture already in place.*

Keywords: *deepfakes, personality rights, right of publicity, generative adversarial networks, judicial law-making, intellectual property, sui generis, digital personality protection act*

I. INTRODUCTION: THE DIGITAL FRONT OF IPR

A. Persona as an Intellectual Property Asset

In the contemporary commercial landscape, a human being functions simultaneously as a legal person and as a brand. A personality right is a form of individual ownership that attaches inherently and automatically to a person; it requires neither registration nor contractual creation. It recognises that a persona, the composite of name, likeness, voice, catchphrases and distinctive behavioural traits, carries independent commercial value that deserves legal protection.

* Author is an Advocate in India.

** Author is a Student at Amity Law School, Noida, Uttar Pradesh, India.

Philip Kotler's formulation that personality consists of "the unique psychological traits that drive consistent and enduring responses to a consumer's environment"¹ illuminates how a cultivated professional identity becomes goodwill over time. Georg Hegel's personality theory of property supports this reading: the actualisation of the human will requires property, and by controlling intangible assets through intellectual property rights, creators gain the freedom to express their intentions in the world.² On this account, a persona is not a mere byproduct of fame; it is a form of capital.

B. The Deepfake Threat and Unfair Competition

Deepfakes are manufactured images, audio or video created or modified using artificial intelligence. They manipulate appearances to make individuals appear to say or do things they never actually did. The engine driving this manipulation is the Generative Adversarial Network (GAN). A GAN architecture consists of two deep neural networks, a generator and a discriminator. The generator starts with random input, or noise, and creates synthetic data, whether images, text or sound, that mimics real data drawn from a given training set, while the discriminator evaluates authenticity and feeds corrections back to the generator.

When trained on a specific individual's publicly available recordings and footage, a GAN effectively becomes an identity extraction machine, capable of generating synthetic representations on demand and without consent.³ This is commercial free-riding, in which the defendant deploys a digital substitute to trade upon the claimant's established goodwill: a sophisticated computational variant of passing off.

II. THE JURIDICAL FOUNDATION: FROM TORT TO IP

A. The Hegelian Theory: Property as an Extension of Self

Georg Wilhelm Friedrich Hegel's personality theory of property posits that the actualisation of the human will requires an external embodiment in property.⁴ As Sreenivasulu N.S. notes, properties are extensions of one's personality, and it is the personality that is extended and that blooms through the protection of proprietary rights.⁵ When a GAN scrapes a person's voice recordings to generate a synthetic vocal clone, it does not merely copy data; it appropriates the

¹ PHILIP KOTLER & GARY ARMSTRONG, *PRINCIPLES OF MARKETING* 174 (17th ed., Pearson Education 2018).

² SREENIVASULU N.S., *LAW RELATING TO INTELLECTUAL PROPERTY* 14–15 (Regal Publications 2013).

³ Ian Goodfellow et al., *Generative Adversarial Nets*, in *ADVANCES IN NEURAL INFORMATION PROCESSING SYSTEMS* 2672 (2014).

⁴ G.W.F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* paras. 44–45 (A.W. Wood ed., Cambridge University Press 1991).

⁵ Sreenivasulu, *supra* note 2, at 14–15.

external manifestation of that individual's will, severing the person from their digital extension. That demands a property remedy, not merely a dignitary one.

B. Right to Privacy versus Right of Publicity

Indian courts frequently approach deepfake litigation through Article 21 of the Constitution, which the Supreme Court in *K.S. Puttaswamy v. Union of India*⁶ held to encompass the right to privacy, including informational privacy. Privacy, however, operates as a shield of dignity. It protects against unwanted exposure and is inalienable; it cannot be licensed, sold or franchised.

The right of publicity, by contrast, treats identity as a commodity carved from the common law tort of passing off. It recognises the independent economic value of a persona and is assignable, transmissible and commercially quantifiable. Deepfakes generated for commercial gain, whether an AI-generated actor endorsing a product or an unauthorised voice clone of a singer, do not merely offend dignity; they misappropriate the economic value of a persona, causing commercial substitution and brand dilution. Treating such cases exclusively through an Article 21 lens reduces the victim to someone whose feelings were hurt, when the sounder characterisation is one of intellectual property theft.

III. THE IPR PATCHWORK: STATUTORY HOOKS

A. Trade Marks Act, 1999

Section 2(1)(zb) defines a trade mark broadly enough to accommodate a distinctive name or signature, indeed any mark capable of distinguishing the goods or services of one person from those of others. The prerequisite is distinctiveness, which a celebrity's name in commerce satisfies readily.⁷ More immediately applicable is passing off, which requires goodwill and reputation, a misrepresentation likely to deceive, and actual or probable damage.⁸ Deepfakes can satisfy each element: goodwill is ordinarily established from commercial standing; a synthetic endorsement misrepresents the figure's actual affiliations; and economic damage from unauthorised commercial use is measurable.

B. Copyright Act, 1957

Section 38A grants performers economic rights to authorise or prohibit the fixation, reproduction, distribution and broadcasting of their performances.⁹ Section 38B confers moral rights to claim identification as the performer and to restrain any distortion or modification

⁶ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁷ Trade Marks Act, 1999, s. 2(1)(zb).

⁸ *Reckitt & Colman Products Ltd. v. Borden Inc.*, [1990] 1 WLR 491 (HL).

⁹ Copyright Act, 1957, s. 38A(1)(a)–(d).

prejudicial to reputation.¹⁰ Where a synthetic output is substantially derived from existing fixed performances, it may constitute an unauthorised reproduction under Section 38A. Section 57 further protects authors against modifications prejudicial to honour or reputation and, by judicial analogy, may extend to artistic integrity in the deepfake context, though it cannot address deepfakes created without reference to any specific fixed work.

C. IT Rules, 2021 and the Synthetic Content Amendments

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 require intermediaries to ensure that users do not host content that impersonates another person.¹¹ That position was substantially altered by the amendments notified on 10 February 2026, which define "synthetically generated information", require such content to carry a visible label or embedded identifier, place detection and labelling duties on intermediaries where the uploader has not complied, and compress the takedown timeline for specified categories of harmful synthetic content. Critically, however, these Rules operate as content regulation directed at platforms rather than as intellectual property protection. They supply takedown remedies, not compensatory relief against the infringer.

IV. CASE LAW ANALYSIS: PILLARS OF THE NEW REGIME

The following five phases demonstrate an expanding scope of protection, moving from the face to professional goodwill, and reveal the judiciary's incremental construction of a sui generis IP regime.

A. Phase One: Protecting the Face in *Titan Industries v. Ramkumar Jewellers* (2012)

In *Titan Industries Ltd. v. Ramkumar Jewellers*,¹² the Delhi High Court restrained a competitor that had reproduced, on hoardings, an advertisement campaign featuring Amitabh Bachchan and Jaya Bachchan without authorisation. Beyond copyright in the photographs, the Court recognised that the right to control the commercial use of human identity is the right of publicity, and that a false message of endorsement is actionable. The face, as a commercial asset, merited protection beyond copyright.

¹⁰ Copyright Act, 1957, s. 38B.

¹¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(b); as amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 (notified 10 February 2026).

¹² *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del) (CS(OS) No. 2662/2011).

B. Phase Two: Protecting Name and Voice in *Amitabh Bachchan v. Rajat Nagi* (2022)

In *Amitabh Bachchan v. Rajat Nagi*,¹³ the Delhi High Court passed an omnibus ex parte ad interim order, operating against unknown defendants in the manner of a John Doe order, restraining the use of the plaintiff's name, image, voice or any other attribute of his persona for commercial gain without authorisation. The complaint concerned fake lottery and quiz-show schemes circulated on messaging platforms and domain names incorporating his name. The voice was expressly named as a protected attribute alongside image, marking a doctrinal advance beyond *Titan Industries*.

C. Phase Three: Protecting Attributes in *Anil Kapoor v. Simply Life India* (2023)

In *Anil Kapoor v. Simply Life India*,¹⁴ the Delhi High Court extended personality rights protection to catchphrases and distinctive mannerisms. The plaintiff's catchphrase "Jhakaas", associated exclusively with him over decades, was treated as a protectable personality attribute, and mannerisms uniquely associated with an individual in public consciousness were held to form part of the protectable persona. The order is among the earliest Indian decisions to engage directly with AI-generated and morphed content, and the injunction extended to misappropriation carried out through such tools.

D. Phase Four: Protecting Professional Identity in *Vikas Pahwa v. Ashok Kumar* (2026)

The most structurally significant recent order is *Vikas Pahwa v. Ashok Kumar*,¹⁵ in which a Senior Advocate, rather than an entertainment celebrity, obtained an ex parte ad interim injunction against unidentified persons who had used his photographs, name and professional particulars to impersonate him and to lend credibility to fraudulent investment schemes circulated through websites and messaging groups. The Court restrained the unauthorised use of his images, name, identity and contact details, and directed the removal of the impersonating material. The order matters because it treats personality rights as protecting not only the commercial persona of the entertainer but also the professional standing of an individual whose identity carries recognised value within their sphere of activity. On that reading it serves as an IPR bridge: it decouples personality rights from stardom and suggests that goodwill, wherever earned through sustained professional labour, is protectable.

¹³ *Amitabh Bachchan v. Rajat Nagi*, CS(COMM) 819/2022 (Del. H.C., order dated 25 November 2022).

¹⁴ *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 6914 (CS(COMM) 652/2023, order dated 20 September 2023).

¹⁵ *Vikas Pahwa v. Ashok Kumar (John Doe)*, CS(COMM) 38/2026 (Del. H.C., order dated 20 January 2026).

E. Phase Five: Protecting Vocal Texture in *Arijit Singh v. Codible Ventures* (2024)

In *Arijit Singh v. Codible Ventures LLP*,¹⁶ the Bombay High Court granted an ad interim injunction restraining the use of the singer's name, voice, image and other personal attributes, in particular through AI voice conversion tools that allowed users to synthesise his voice. The Court treated the distinctive vocal identity of the singer, as distinct from any specific recorded performance, as a protectable personality attribute, locating the protection at the intersection of performers' rights under the Copyright Act and the common law right of publicity. By recognising the vocal instrument itself as proprietary, the Court moved the frontier toward acknowledgment of a right of publicity that stands independent of copyright and trade mark.

V. COMPARATIVE IPR ANALYSIS

A. The United States: Right of Publicity as a Property Right

The Restatement (Third) of Unfair Competition defines the right of publicity as the right to control the commercial use of one's name, likeness and other indicia of identity.¹⁷ Unlike privacy, the right of publicity is alienable, licensable and descendible, and so constitutes a species of intellectual property. California's statute grants a post-mortem right of publicity persisting for 70 years after death, and since the 2024 amendment it expressly reaches digital replicas of a deceased personality's voice or likeness produced with artificial intelligence.¹⁸ Tennessee's ELVIS Act, in force from 1 July 2024, goes further, treating an individual's voice, including a simulation of it, as a protected property right and creating liability for those who make available tools whose primary purpose is unauthorised voice cloning. The American experience offers two lessons for India: the right of publicity functions best as an independent IP right, and statutory specificity, rather than general passing off principles, is needed to address the scale of AI-generated synthetic media.

B. The European Union: The AI Act and the Digital Services Act

Article 50 of the EU Artificial Intelligence Act requires deployers of AI systems that generate or manipulate image, audio or video content constituting a deepfake to disclose that the content has been artificially generated or manipulated, an obligation that becomes applicable from 2 August 2026.¹⁹ The Digital Services Act requires very large online platforms to assess and

¹⁶ *Arijit Singh v. Codible Ventures LLP*, 2024 SCC OnLine Bom 2445 (COM IPR Suit (L) No. 23443 of 2024, order dated 26 July 2024).

¹⁷ RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 (AM. LAW INST. 1995).

¹⁸ Cal. Civ. Code § 3344.1; as amended by Assembly Bill 1836 (2024) (digital replicas of deceased personalities).

¹⁹ Regulation (EU) 2024/1689 (Artificial Intelligence Act), art. 50.

mitigate systemic risks, which include risks arising from synthetic media.²⁰ The EU model is regulatory rather than proprietary: it focuses on platform responsibility rather than individual IP enforcement. While effective at scale and at prevention, it offers no direct compensatory remedy to the individual whose identity was misappropriated. India's optimal response will need elements of both: a right of publicity framework for individual enforcement and a platform liability framework for systemic prevention.

VI. CRITICAL CHALLENGES IN THE EMERGING REGIME

A. The Public Interest Defence and Free Expression

The most fundamental challenge is the potential collision between personality rights and the guarantee of freedom of speech under Article 19(1)(a). An over-expansive personality rights framework risks suppressing legitimate parody, satire and commentary. United States courts have developed a transformativeness test to distinguish artistic commentary from commercial free-riding; Indian law has not yet produced a comparable framework. Reliance on broad injunctions creates a chilling effect on legitimate expressive activity. Any dedicated statutory framework must incorporate calibrated fair dealing exceptions for parody, satire, news reporting and academic commentary.

B. Post-Mortem Personality Rights

Whether the persona survives death as a transmissible IP asset is commercially significant. Section 57(2) of the Copyright Act allows an author's special rights to be exercised by legal representatives, and Section 38B confers analogous moral rights on performers, but personality rights as a freestanding right of publicity remain unaddressed by any statute. Courts have entertained actions brought on behalf of deceased celebrities without clear doctrinal guidance on the duration, scope or conditions of post-mortem protection. A statutory framework should address these questions explicitly, treating post-mortem personality rights as IP assets analogous to copyright in posthumous works.

C. The John Doe Dilemma and Enforcement Gaps

Deepfake creation requires no specialist expertise, and synthetic media can be distributed through encrypted platforms and peer-to-peer networks that resist conventional takedown orders. The individual creator may be anonymous, resident abroad, or both. Indian courts have granted dynamic injunctions and John Doe orders in copyright and trade mark cases, but these are blunt instruments against anonymous, decentralised, offshore actors. A comprehensive

²⁰ Regulation (EU) 2022/2065 (Digital Services Act), arts. 34–35.

statutory framework must address enforcement directly, through platform-level filtering obligations, a right of action against negligent platforms, and expedited mutual legal assistance mechanisms for cross-border enforcement.

D. Celebrity Right versus Individual Right

A further structural tension concerns the differential protection of celebrities and ordinary individuals. The existing jurisprudence has been driven overwhelmingly by celebrity litigation.²¹ *Vikas Pahwa* has begun a corrective movement, but the Hegelian rationale demands consistency: if property is an extension of the self, then protection must attach to all selves, not merely famous ones. The threshold for protection should be not national fame but recognised value within one's sphere of activity, earned through sustained labour and public recognition.

VII. CONCLUSION: THE WAY FORWARD

A. Assessment of the Judicial Architecture

This paper has traced five phases of judicial development from *Titan Industries* (2012) to *Vikas Pahwa* (2026), showing that the Delhi and Bombay High Courts have constructed a functional if fragmented personality rights framework by stretching passing off doctrine, performers' rights provisions and constitutional privacy jurisprudence. The regime as it stands is nonetheless reactive rather than preventive, jurisdiction-specific, spread across inconsistent statutory grounds, litigation-heavy, and silent on the crucial questions of post-mortem protection, non-celebrity rights and AI developer liability.

B. Proposal: A Digital Personality Protection Act

The analysis points to a single structural conclusion: legislative codification is necessary. This paper proposes a Digital Personality Protection Act incorporating the following elements. First, a comprehensive definition of the protectable persona covering name, likeness, voice, vocal texture, signature phrases and distinctive mannerisms, with a threshold grounded in recognised value within any sphere of activity rather than confined to entertainment. Second, an exclusive right to authorise commercial use of the persona, including synthetic reproduction by AI systems, assignable and transmissible to heirs for 30 years from death. Third, calibrated fair dealing exceptions for parody, satire, academic commentary, news reporting and political speech. Fourth, obligations on AI developers and platforms: a prohibition on training on an individual's biometric data without consent, mandatory synthetic media labelling, and proactive

²¹ Ayu Mustika Pamungkas & Hikam Hulwanullah, *Celebrity Persona: Can Intellectual Property Law in Indonesia Provide Adequate Protection?*, 7 JAMBURA L. REV. 197, 201 (2025).

detection requirements. Fifth, a specialised enforcement mechanism with jurisdiction to grant injunctions, award compensatory damages and issue platform compliance guidelines.

C. Final Observations

The deepfake crisis is, at its core, an intellectual property crisis. It threatens to commodify human identity for commercial gain without consent or compensation. The Indian judiciary has responded with considerable doctrinal ingenuity, but judicial law-making cannot substitute for statute. The cases decided over the past decade amount to an invitation to Parliament. In Hegel's terms, to protect one's persona is to protect the outermost expression of one's will. A Digital Personality Protection Act, enacted with the deliberation the subject demands, would mark India's contribution to ensuring that artificial intelligence serves human creativity rather than displacing it.
