

[Home](#) / [Miscellaneous](#) / [Understanding Indian Laws Protecting Personality Rights](#)

# Understanding Indian Laws Protecting Personality Rights

Srishti Singhania  Krrishan Singhania  Manas Adhangle  Shikha Ved ...

# Personality Rights # Intellectual Property

*Protection of personality rights begins with becoming aware of the scope of protection under Indian law. Various practical steps can be taken to prevent the violation of personality rights by regularly monitoring the usage of a celebrity's name and content across various platforms.*



Personality rights, also referred to as the right to publicity, aims to protect an individual's personal identity and reputation. These rights grant individuals authority over the commercial use of their name, image, and other personal attributes including use in endorsement and advertisements, while also providing safeguard against defamation.

With the rise of celebrity culture and the pervasive influence of media, the concept of personality rights has become increasingly significant. The recent Delhi High Court order in the case of Jackie Shroff v. The Peppy Stores & Ors., CS(COMM) 3892024, has generated significant awareness about the personality rights in India. The Court's decision to restrain various entities, including e-commerce stores, AI Chatbots, and social media accounts, from exploiting the actor's name, image, voice, without his consent highlights the growing importance of protecting an individual's identity and reputation.

We have written this article to create awareness about the Personality Rights of an individuals who are famous or want to be famous in the near future. This article gives a brief outline of the law on the subject, the scope of protection under personality rights and the practical steps that can be taken by celebrities for protecting their personality rights. However, it is important to note that each case involving personality rights will be dealt separately depending on the individual facts and circumstances.

## LEGAL FRAMEWORK OF PERSONALITY RIGHTS IN INDIA

The legal framework for personality rights in India is primarily based on judicial interpretations and precedents and various provisions of different Indian laws.

### 1. Constitution of India

The Hon'ble Supreme Court has recognized the Right to Privacy under Article 21 of the Constitution of India, which serves as a foundation for protecting an individual's identity and persona from unauthorised commercial exploitation.

Indian courts have emphasized the importance of consent in using a person's identity, particularly celebrities.

## 2. Copyright Act, 1957

The Copyright Act, 1957 grants moral rights to the authors of copyrighted works under Section 57, which allows them to claim ownership/authorship over their works and restrain or claim damages in case of any distortion or modification of their work if such distortion or modification would be prejudicial to their honour or reputation, even after the assignment of Copyright. The original works protected under the Copyright Act, 1957, include literary works such as books, novels, stories etc., musical works, artistic works, cinematograph films and sound recordings.

Section 38, 38A and 38B of the Copyright Act, 1957, also grants performers the right to be given credit and claim authorship of their performance (Right to Attribution). The corollary of this is equally true, i.e. performers have a negative right of restraining others from causing any kind of damage to their performance, which in turn damages their reputation (Right to Integrity).

The aforesaid legal provisions are similar to the essence of personality rights, where individuals can object to the misrepresentation or unauthorised use of their identity.

## 3. Trademark Act, 1999

Section 14 of the Trademark Act, 1999 restricts the registration of a name of any living person or a person who died 20 years prior to the trademark application as a trademark unless the consent of the living person or his/her legal representatives is taken. Additionally, Section 2(m) of the Trademark Act, 1999 includes 'names' in its definition of 'trademark' which allows the celebrities to register their names as trademarks to avoid misuse.

### **KEY LEGAL CASES GRANTING PERSONALITY RIGHTS PROTECTION**

In the case of Jackie Shroff v. The Peppy Store & Ors., CS(COMM) 384 of 2024 the Delhi High Court issued an interim order, restraining various entities from using Shroff's name, voice, or image without his consent for commercial purposes. This decision has fortified the protection of personality and publicity rights, especially for celebrities, emphasizing the need for consent in commercial usage of personal attributes. The court recognized Shroff's status and observed that it is essential to balance freedom of expression of others with Mr. Shroff's rights to personality, publicity and moral integrity.

- Anil Kapoor v. Simply Life India and Ors. CS (COMM) 652 of 2023, the Hon'ble Delhi High Court expanded the scope of personality rights to encompass mannerisms such as speaking style, gestures, dialogue delivery, and even signatures. The primary aim behind this expansion was to safeguard the individual's reputation and fame, ensuring they remain unblemished.
- In the case of Amitabh Bachchan v. Rajat Nagi & Ors., CS (COMM) 819 of 2022, the Delhi High Court passed an omnibus order or an ex parte ad interim injunction and restrained the world at large from using one of the most well-known actor Amitabh Bachchan's name, image, voice or any of his characteristics without his permission.

### **SCOPE OF PROTECTION UNDER PERSONALITY RIGHTS**

#### 1. Right to Publicity

The right to publicity allows individuals, particularly celebrities, to control the commercial use of their name, image etc. While not explicitly defined in Indian laws, courts have recognised this right as an extension of right to privacy. It protects against unauthorised endorsements, misuse of celebrity images, and commercial exploitation of an individual's rights.

The Delhi High Court in the case of Titan Industries v. M/s. Ramkumar Jewelers, CS(OS) No.2662/2011 ruled that, "When a prominent person's name is exploited in advertising without their consent, the objection isn't that no

one should commercialize them; rather, it's that they should have the power to decide when and how their identity is utilized. The right to publicity is the ability to limit how one's identification is used for commercial purposes."

## 2. Right to Identity

Personality rights also safeguard an individual's identity from misappropriation, false endorsement, and identity theft. With increasing prevalence of digital identities and online personas, courts have begun to address the legal implications of these emerging issues as well.

The Delhi High Court in the case of Anil Kapoor vs Simply Life India & Ors., CS (COMM) 652 of 2023, expanded the understanding of personality rights in India to include not just an individual's physical attributes like name and image but also their unique mannerisms, catchphrases and other elements that are intrinsically tied to their identity.

In the modern era, influencers capitalize on their personal brands, and celebrities secure endorsement deals, greatly enhancing the value of their identities. A recognizable face or voice has more persuasive power to influence consumer behaviour, making it a highly coveted asset in the advertising industry. However, this commercial potential also brings the risks of exploitation. Unauthorized use, misrepresentation, or overexposure can damage an individual's brand, resulting in both financial losses and personal harm. Thus, Indian Courts are recognizing the importance of protecting this 'Right to Identity' and granting appropriate legal remedies.

## **V. WHAT IS NOT PROTECTED UNDER PERSONALITY RIGHTS**

Under Section 52 of the Copyright Act, 1957, 'parodies' may not amount to copyright infringement in case they are a critic or review of an original work of other artist. Thus, parody and satire may be considered protected forms of expression even if they involve aspects of a person's persona. However, in *Civic Chandran v. Ammini Amma*, (1996) 16 PTC 670, the court laid down a three factor test to determine the validity of a parody :

- a. the quantum and value of the matter taken in relation to the comments or criticism;
- b. the purpose for which it is taken;
- c. the likelihood of competition between the two works.

In the case of *Jackie Shroff v. The Peppy Stores & Ors.*, CS(COMM) 3892024, The Hon'ble Delhi High Court has reviewed a video titled "JACKIE SHROFF IS SAVAGE (\*) JACKIE SHROFF THUG LIFE!". The Court observed that the term "Thug Life" which, according to dictionary.com and common internet usage, refers to a determined, resilient attitude, especially within the Black Hip-hop culture, and is often used in memes to highlight cleverness or boldness of an individual humorously. The video in question, featuring interview clips of Mr. Jackie Shroff with added "Thug Life" captions and visuals, was seen as a tribute to his assertive and charismatic persona rather than derogatory. The Court observed that the video's significant viewership underscores its popularity and the economic value of such content, which is an important livelihood source for many creators. Therefore, restricting such creative expressions could have negative implications for freedom of expression and the economic opportunities for the YouTube community. However, it is pertinent to note that this is not the final decision of the Delhi High Court and we will wait for the final decision to see how the Court balances the economic rights of YouTube creators and personality rights of celebrities.

## Impact of AI on Personality Rights

The rise of deepfakes and synthetic media, presents significant implications for individual privacy and reputation, as well as personality rights of celebrities. Deepfake technology, which involves the use of artificial intelligence to create highly realistic fake videos or audio recordings, poses a serious threat by allowing malicious actors to manipulate content to deceive or defame individuals. From a legal standpoint, holding creators and

distributors of deepfakes accountable raises important considerations regarding liability and responsibility for the dissemination of misleading or harmful content. Regulatory responses and ethical frameworks are crucial in addressing these issues, highlighting the need for comprehensive legislation that specifically targets AI-generated content and establishes clear guidelines for developers and content platforms to ensure ethical use of AI technologies. While AI regulations are currently absent in India, the existing Information Technology Act, 2000, addresses issues related to the dissemination of unauthorised electronic content, the same has been discussed further in the article.

## **PRACTICAL MEASURES AND LEGAL REMEDIES**

### 1. Regular Monitoring

In order to safeguard personality rights, regularly monitoring the usage of an individual's name and voice across various platforms is crucial to identify any unauthorised or misleading use of one's identity. When instances of unauthorised use are detected, it is crucial to take swift legal action by filing for injunctions to prevent further dissemination and potential harm to one's reputation.

### 2. Maintaining transparency in endorsements

Maintaining transparency in endorsements is equally important, particularly on social media platforms, where all authorized endorsements should be clearly labelled to avoid confusion. In cases where misleading unauthorised endorsements have already been made, issuing

public clarifications through press releases or social media can help mitigate the damage and set the record straight.

### Registration of celebrities' names as trademarks

A notable trend emerging in both Western countries and India is the proactive registration of celebrity names and associated marks as trademarks. This strategic approach aims to fortify legal defences against potential infringements of personality rights. By registering their names and marks, celebrities enhance their ability to combat unauthorised use and protect their brand identity in an era dominated by social media and intense brand competition.

### Legal remedies through social media intermediaries

A recent advisory from the Ministry of Electronics and Information Technology (MeitY)<sup>1</sup>, mandates social media intermediaries to regulate deepfake content, identify misinformation, and ensure the swift removal of such content once reported. Further, the IT (Intermediary Guidelines And Digital Media Ethics) Rules 2021, require social media intermediaries to prevent the publication or circulation of prohibited content on their platforms. If such content is not removed within the prescribed timeframe, intermediaries are held liable.

### Legal remedies against deep fakes

The Information Technology Act, 2000, provides legal remedies against AI generated voice used for fraudulent misrepresentation or impersonation under Section 66D2 and 66E3 of the IT Act, 2000. Section 66D prescribes punishment for cheating by personation using computer resources or communication devices, covering offences where an individual's voice or image is misappropriated through AI. Section 66E pertains to the punishment for violation of privacy, applying to cases where AI morphs images to create obscene content using a person's likeness.

### Suit for trademark infringement and/or passing off

Under trademark law, the common law principle of passing off refers to misrepresenting one's goods or services as those of another, and it can apply to unregistered trademarks. Using an individual's likeness without authorization can be considered passing off if the person's persona has

become a brand carrying public goodwill. This is because the unauthorized use can mislead the public into believing there is an association between the user and the individual, causing harm to the individual's reputation and goodwill. To establish passing off in such cases, the individual must prove that their persona has acquired a

secondary meaning in the minds of the public, that the unauthorized use is likely to cause confusion, and that it has caused or is likely to cause damage to their goodwill. While trademark infringement requires the use of a registered mark, passing off can be invoked for unregistered marks or personas that have acquired distinctiveness through use and reputation. Further, if someone uses a celebrity's name illegally or in a misleading manner, it can be restrained under trademark infringement if the names are registered.

#### Legal remedies under Copyright Act, 1957

In instances where copyrighted content is used or altered to create deepfake audio-visual material without the permission of the copyright owner, the provisions related to infringement under Section 51 of the Copyright Act, 1957 becomes applicable. Section 51 of the Copyright Act defines what constitutes copyright infringement, such as reproducing the work, issuing copies to the public, or making an adaptation without the copyright owner's permission. Therefore, if a deepfake or infringing work incorporates a substantial portion of a copyrighted work without transforming it in a way that qualifies as fair dealing under Section 52 of the Copyright Act, 1957, it may be deemed an infringement under Indian law. The copyright owner can then seek civil and criminal remedies provided in Sections 55 and 63 of the Copyright Act.

Protection of personality rights begins with becoming aware of the scope of protection under Indian law. Various practical steps can be taken to prevent the violation of personality rights by regularly monitoring the usage of a celebrity's name and content across various platforms. It is also important to clearly label authorised endorsements and issue public clarifications if unauthorised endorsements have been made. Another proactive legal step is to register the celebrities name as a 'trademark' under the Trademark Act, 1999, so that action can be taken under trademark infringement in case of instances of unauthorised use of the celebrities' name. When instances of unauthorised use are detected, it is crucial to take swift legal action by filing for injunctions to prevent further dissemination and potential harm to one's reputation. With the rise of AI-generated content, there will also be need of ethical frameworks/ guidelines need to ensure that AI is used in a responsible and legal manner for generating content.



#### **Srishti Singhania**

##### **Guest Author**

Senior Associate at K Singhania & Co., Advocates and Legal Advisors (formerly Singhania & Co. Mumbai)



#### **Krrishan Singhania**

##### **Guest Author**

As a seasoned professional with comprehensive experience covering more than 20 years, Mr Krrishan Singhania has provided legal expertise in the areas of commerce, arbitration, shipping, oil and gas, power and aviation laws to national and international clients around the globe. As an expert in this field, he regularly presents lectures on Indian law and regulations in international conferences and fora.



**Manas Adhangle**  
Guest Author



**Shikha Ved**  
Guest Author

Share    

### Also Read



MISCELLANEOUS Jun 08, 2024  
**SEBI's Rumour Verification Requirement Seeks To Achieve Information Symmetry: Abhishek Dadoo, Partner, Khaitan & Co**  
⌚ 7 mins read



MISCELLANEOUS Jun 06, 2024  
**Intellectual Property Licensing In The Software Industry: Best Practices And Pitfalls**  
⌚ 5 mins read



MISCELLANEOUS May 27, 2024  
**CJI DY Chandrachud Casts His Vote In Delhi, Says "Fulfilled My Duty As Citizen"**  
⌚ 3 mins read



MISCELLANEOUS May 22, 2024  
**In Conversation With Shilpa Nautiyal, Vice President - Legal, HDFC Bank**  
⌚ 4 mins read



MISCELLANEOUS May 20, 2024  
**Reliance Of General Counsel On Artificial Intelligence**  
⌚ 4 mins read



MISCELLANEOUS May 20, 2024  
**CAM Advises Motilal Oswal Financial Services And Lead Managers In Issuance Of Secured, Rated, Listed Redeemable...**  
⌚ 2 mins read



#### FEATURED

#### POPULAR



Law Firm Jun 08, 2024  
**Impact Of Delays In Insolvency Resolution On The Economy**



Miscellaneous Jun 06, 2024  
**Intellectual Property Licensing In The Software Industry: Best Practices And Pitfalls**