

The Evolution of Proprietary Personality Rights in the Era of Generative AI: A Critical Analysis of Publicity Rights Jurisprudence in India

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ABSTRACT

The emergence of generative Artificial Intelligence (AI) has significantly altered the manner in which a person's name, image, voice, likeness, and other elements of identity may be replicated and exploited. In India, this development has exposed important gaps in the existing protection of personality and publicity rights, particularly in the absence of a specific statutory framework. This paper examines the development of Indian jurisprudence on personality rights in the context of generative AI, focusing on the judicial approaches adopted in the cases concerning Amitabh Bachchan, Anil Kapoor, and Jackie Shroff. It considers the use of privacy, publicity, passing off, and injunctive remedies in addressing the unauthorized use of celebrity identity, while highlighting the difficulties these existing doctrines face in dealing with AI-generated content. The paper also undertakes a comparative examination of the American right of publicity framework and identifies key shortcomings in the Indian approach, including limited protection for non-celebrity individuals, inadequate remedial mechanisms, uncertainty surrounding AI-generated content, and the lack of clear boundaries between personality rights and freedom of expression. It argues for a balanced statutory framework capable of protecting individuals from unauthorized commercial exploitation while safeguarding legitimate forms of creativity, parody, commentary, and other expressive uses. The paper concludes that Indian personality-rights jurisprudence requires a more coherent and technologically adaptable framework beyond case-specific judicial remedies.

KEYWORDS

Generative Artificial Intelligence, Personality Rights, Right of Publicity, Celebrity Rights, Privacy, Passing Off, Indian Jurisprudence.

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I. INTRODUCTION

The migration of celebrity identity into the ecosystem of generative artificial intelligence has unsettled a body of Indian law that was, until recently, comfortable resting on analogies borrowed from privacy and trade mark doctrine. When a diffusion model can render Anil Kapoor's voice reciting a script he never spoke, or a chat bot can be trained to converse in Jackie Shroff's idiom, the question of who owns a persona stops being academic. It becomes a live commercial and dignitary concern that existing statutes were not drafted to answer. This paper traces the doctrinal evolution of personality and publicity rights in India, with particular attention to the wave of Delhi High Court orders issued between 2022 and 2024 that confronted generative AI misappropriation directly. It argues that Indian courts have built a workable, if doctrinal improvised, framework by fusing constitutional privacy jurisprudence with common law passing-off principles, but that this framework remains structurally incomplete: it is reactive, injunction-heavy, dependent on celebrity litigants with the resources to seek omnibus relief, and silent on harms to non-celebrities whose likeness can now be synthesized with equal ease.

The analysis proceeds in six parts. Part II locates the doctrinal foundations of personality rights within Article 21 privacy jurisprudence and the common law tort of passing off. Part III traces the jurisprudential arc from *Bachchan* through *Anil Kapoor* to *Jackie Shroff*, showing how courts have refined the test for actionable misappropriation while carving out space for parody and commentary. Part IV examines what generative AI specifically adds to this analysis, the collapse of the cost of imitation, and the consequent strain on injunctive remedies designed for a pre-AI world. Part V situates Indian jurisprudence against the American right of publicity to identify gaps, before the conclusion argues for calibrated statutory intervention.

II. DOCTRINAL FOUNDATIONS: PRIVACY, PASSING OFF, AND THE ABSENCE OF A STATUTE

India has no statute that names or defines personality rights. What exists is a composite doctrine assembled from three sources: the constitutional right to privacy, the common law tort of passing off, and scattered provisions of intellectual property statutes that were designed for other purposes. The Supreme Court's decision in *Puttaswamy*² supplied the constitutional

²K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.

anchor, holding that privacy, including the capacity to control how one's image and identity circulate in public, is an incident of the right to life and personal liberty under Article 21. Two decades earlier, the Court's ruling in *Auto Shankar*³ had already established that the right to be let alone extends to control over the commercial use of one's name and likeness, while permitting publication of matters of public record without consent. These two judgments, read together, gave Indian courts a constitutional vocabulary for personality rights well before generative AI made the question urgent.

The operative legal test, however, comes not from constitutional law but from the Delhi High Court's articulation of passing off in *Titan Industries v. Ramkumar Jewellers*⁴, which held that a celebrity plaintiff must establish three elements: a legitimate proprietary interest in their own identity or persona, that the identity is readily identifiable to the public, and that the defendant's use creates a likelihood of association or endorsement that did not exist. This test was sharpened in *D.M. Entertainment v. Baby Gift House*⁵, concerning the unauthorised use of the singer Daler Mehndi's persona in a novelty doll, where the court held that the right of publicity vests in any individual whose identity has acquired commercial value, irrespective of whether that individual is, strictly, a celebrity in the cinematic sense. Earlier still, in *ICC Development v. Arvee Enterprises*⁶, the court had distinguished publicity rights from event-organisier rights, holding that the right of publicity vests in the individual personality and not in the entity that stages an event in which the personality appears. Taken together, these cases established personality rights in India as a hybrid: constitutionally legitimated by privacy jurisprudence, but doctrinally enforced through the private law of passing off, dilution, and unfair competition.

This hybrid structure has a significant consequence for the AI context: because the cause of action sounds in passing off rather than property, the remedy a court grants is calibrated to consumer confusion and commercial exploitation, not to the act of synthetic generation itself. A deepfake that is never monetised, monetised anonymously, or generated for private use sits awkwardly within a doctrine built around protecting endorsement value.

³R. Rajagopal v. State of T.N., (1994) 6 S.C.C. 632 (the "Auto Shankar" case).

⁴Titan Industries Ltd. v. Ramkumar Jewellers, 2012 (50) P.T.C. 486 (Del.).

⁵D.M. Entertainment Pvt. Ltd. v. Baby Gift House, 2010 SCC OnLine Del 4790.

⁶ICC Development (International) Ltd. v. Arvee Enterprises, 2003 (26) P.T.C. 245 (Del.).

III. THE JURISPRUDENTIAL ARC: FROM BACHCHAN TO ANIL KAPOOR TO JACKIE SHROFF

A. Amitabh Bachchan: The First Omnibus Injunction

The actor Amitabh Bachchan's 2022 suit ⁷was the first instance in which the Delhi High Court granted relief *in rem*, that is, against the world at large rather than named defendants, to protect personality rights against a fraudulent lottery scheme that used his name, image, and voice without authorisation. The order drew on the earlier endorsement-protection logic of *Sourav Ganguly v. Tata Tea Ltd.*⁸, where the Calcutta High Court had recognised that a cricketer's celebrity and popularity constituted a form of intellectual property that a commercial entity could not exploit without consent, even through an ostensibly innocuous promotional gesture such as a congratulatory postcard scheme. *Bachchan* thus established the procedural innovation, the John Doe or Ashok Kumar order, that would become the template for every subsequent celebrity suit against anonymous online infringers.

B. Anil Kapoor v. Simply Life India: The First AI-Specific Order

The order of Justice Prathiba M. Singh in *Anil Kapoor v. Simply Life India*⁹ is the first Indian judicial articulation to confront generative AI tools by name. The defendants had used the actor's name, voice, dialogue delivery, and likeness across multiple platforms producing unauthorised merchandise, fraudulently endorsing him as a motivational speaker, and, most troublingly, generating sexually explicit deepfake imagery using AI face-morphing tools.¹⁰ The court's injunction restrained the defendants from using the actor's persona "using technological tools such as Artificial Intelligence, Machine Learning, deep fakes, face morphing, GIFs" for commercial gain or otherwise.¹¹ Three features of the order are doctrinally significant. First, the court explicitly named AI and machine learning as means of infringement, rather than treating them as a generic species of "misuse", acknowledging that the technology itself altered the scale and realism of the harm. Second, the court relied on American right-of-publicity

⁷Amitabh Bachchan v. Rajat Nagi, CS(COMM) 819/2022, order dated 25 November 2022 (Del. H.C.).

⁸Sourav Ganguly v. Tata Tea Ltd., 2018 SCC OnLine Cal (Cal. H.C.).

⁹Anil Kapoor v. Simply Life India & Ors., CS(COMM) 652/2023, order dated 20 September 2023 (Del. H.C.) (Singh, J.).

¹⁰Anil Kapoor v. Simply Life India, *supra* note 9, at paras 29, 45-48.

¹¹*Id.* at para 48.

precedent (*Vanna White* and *Bette Midler*)¹² to support the proposition that even non-pictorial attributes such as a voice, a manner of speech could be appropriated unlawfully, signalling a willingness to draw on comparative jurisprudence where Indian precedent was thin. Third, the order extended beyond commercial merchandising to reach non-commercial reputational harms, holding that pornographic AI-generated content violated the plaintiff's dignity and privacy interests independent of any commercial gain to the defendants, a recognition that AI-enabled misappropriation can injure even where no endorsement value is being extracted.

C. Jackie Shroff: Refining the Boundary with Parody

Eight months later, Justice Sanjeev Narula's order in the suit brought by the actor Jaikishan Kakubhai Saraf, known professionally as *Jackie Shroff*,¹³ both extended and qualified the *Anil Kapoor* framework. The court restrained an unauthorised AI chatbot trained on the actor's persona, e-commerce merchandising, and pornographic content using his name and image, applying the same *D.M. Entertainment* test. But the order is most significant for what it refused to restrain: a YouTube video captioned "Jackie Shroff is Savage - Thug Life," which the plaintiff argued tarnished his persona. The court held that the video, read in the context of contemporary meme culture, functioned as a tribute to the actor's "assertive demeanour" rather than a derogatory portrayal, and declined an ex-parte injunction on the ground that restraining the creator would have "far-reaching consequences" for a vibrant community of parody, spoof, and commentary content.¹⁴ The court was explicit that creative and artistic expression deserved protection distinct from, and at times superior to, a celebrity's interest in controlling every portrayal of their persona.¹⁵

Read together, the three orders trace a doctrinal maturation. *Bachchan* established the procedural mechanism for relief against anonymous infringers. *Anil Kapoor* extended that mechanism to expressly cover generative AI tools and recognised dignitarian harm independent of commercial exploitation. *Jackie Shroff* then supplied the limiting principle that the same courts had not yet had occasion to articulate: that not all unauthorised algorithmic engagement with a persona is actionable, and that parody, commentary, and meme culture retain

¹²*Anil Kapoor v. Simply Life India*, *supra* note 9, at para 38 (citing *Vanna White v. Samsung Electronics America Inc.*, 989 F.2d 1512 (9th Cir. 1993) and *Bette Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988)).

¹³*Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors.*, CS(COMM) 389/2024, order dated 15 May 2024 (Del. H.C.) (Narula, J.).

¹⁴*Id.* at paras 39-42.

¹⁵*Id.* at para 41.

constitutional breathing room under Article 19(1)(a) even where they use a recognisable celebrity's name or image without consent.

IV. WHAT GENERATIVE AI SPECIFICALLY CHANGES

It is tempting to treat generative AI as merely a faster version of older infringement, doctored photographs, impersonation, or unauthorised merchandise to which existing passing-off doctrine simply applies with greater force. This understates three structural shifts.

First, generative tools collapse the cost of producing a convincing likeness from the realm of specialised forgery to the realm of a text prompt. The *Anil Kapoor* defendants did not need access to the actor or his production house; off-the-shelf face-morphing and voice-cloning tools sufficed. This changes the economics of enforcement: where forgery once required identifying a small number of capable infringers, AI-enabled misappropriation can originate from thousands of anonymous, low-resource actors simultaneously, which is precisely why the *in rem* John Doe order, rather than a conventional suit against named defendants, has become the dominant procedural form in this line of cases.

Second, generative AI produces synthetic content that is not merely unauthorised but often interactive and persistent, a chatbot trained on a celebrity's persona, as in *Jackie Shroff*, continues generating new infringing output indefinitely after deployment, unlike a single doctored image. Injunctive relief framed around restraining specific items of content is structurally mismatched to a generative system that produces unbounded output from a single underlying model. The Delhi High Court orders examined in this paper have grappled with whether the underlying trained model itself, as distinct from its outputs, should be subject to deletion or retraining orders, a gap that mirrors unresolved debates in copyright law over AI training data.

Third, statutory law adjacent to this field was not designed with synthetic likeness in mind and offers only fragmentary protection. The Information Technology Act's provisions on image privacy and obscenity¹⁶ were drafted for non-consensual photography and circulation, not algorithmic generation. The Copyright Act's performers' rights¹⁷ protect a recorded performance, not the underlying persona used to generate a never-performed one. The Trade

¹⁶Information Technology Act, No. 21 of 2000, §§ 66E, 67 (India).

¹⁷The Copyright Act, No. 14 of 1957, §§ 38, 38A, 38B (India).

Marks Act's bar on registering marks that falsely suggest a connection with a living person¹⁸ is confined to the registration context and does nothing for unregistered use. Even the Digital Personal Data Protection Act (DPDP), 2023, which regulates the processing of personal data by fiduciaries,¹⁹ is built around a consent-and-processing framework that maps poorly onto a generative model that produces synthetic, rather than processed, personal data. Indian courts have therefore been improvising a remedy through the residual category of passing off precisely because no other statutory hook fits.

V. COMPARATIVE PERSPECTIVE: THE AMERICAN RIGHT OF PUBLICITY

Indian courts have, somewhat unusually for a common law system without binding persuasive authority from the United States, drawn directly on the American right of publicity to fill doctrinal gaps. The *Anil Kapoor* order itself relied on *Bette Midler v. Ford Motor Co.*²⁰, where the Ninth Circuit held that the deliberate imitation of a singer's distinctive voice to sell a product, even without using her name or image, amounted to an actionable misappropriation, and on *Vanna White v. Samsung Electronics America*²¹, where a robot dressed and posed to evoke a television personality was held to infringe her right of publicity notwithstanding the absence of any literal likeness. These cases matter because they establish that the right of publicity protects an identity as a gestalt, voice, mannerism, stance rather than merely a photographic or nominal likeness, which is exactly the register in which generative AI operates: a diffusion model rarely reproduces an exact photograph, but it reliably reproduces the gestalt.

The deeper structural difference is that the American right of publicity, traced to *Haelan Laboratories v. Topps Chewing Gum*²², is recognised as a free-standing property right, distinct from privacy, and in several states is codified by statute²³ with defined remedies, statutory damages, and in some jurisdictions a descendible post-mortem right. The Restatement (Third) of Unfair Competition²⁴ consolidates this into a single doctrinal home. India has no equivalent codification. Indian personality rights remain doctrinally dependent on passing off, a tort

¹⁸The Trade Marks Act, No. 47 of 1999, § 14 (India).

¹⁹Digital Personal Data Protection Act, No. 22 of 2023, §§ 2(t), 4 (India).

²⁰*Bette Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988).

²¹*Vanna White v. Samsung Electronics America Inc.*, 989 F.2d 1512 (9th Cir. 1993).

²²*Haelan Laboratories Inc. v. Topps Chewing Gum Inc.*, 202 F.2d 866 (2d Cir. 1953).

²³See, e.g., Cal. Civ. Code § 3344 (statutory right of publicity); Cal. Civ. Code § 3344.1 (post-mortem right of publicity).

²⁴Restatement (Third) of Unfair Competition § 46 (Am. L. Inst. 1995).

historically concerned with protecting traders from unfair competition, not with protecting individual dignity or identity as such. This produces real friction: a passing-off claim conventionally requires some element of deception or likelihood of confusion as to the source of goods or services, a requirement that fits uneasily with deepfake pornography or a chatbot that never claims to be the celebrity but nonetheless trades on their persona. Indian courts have managed this friction by stretching the concepts of dilution and tarnishment well beyond their trademark-law origins, but the doctrinal seams remain visible, particularly in cases, unlike *Anil Kapoor*, where no commercial defendant and no recognisable goods or services are involved at all.

VI. CRITICAL ANALYSIS: STRUCTURAL GAPS AND THE CASE FOR CALIBRATED INTERVENTION

Three structural gaps in the current framework deserve emphasis. The first is access. Every reported AI-era personality rights order in India including Bachchan, Kapoor, Shroff involves a litigant with the resources to retain senior counsel, compile extensive evidentiary annexures identifying dozens of infringing URLs, and secure expedited ex-parte hearings. The cases identified in this paper do not include an instance of a non-celebrity individual obtaining comparable relief against AI-generated likeness misuse, despite the same generative tools being equally capable of targeting private individuals, often with more severe and less remediable consequences given the absence of any pre-existing public reputation to fall back on. The doctrine, built around protecting commercial endorsement value, structurally favours plaintiffs who already possess such value.

The second gap is remedial design. Every order discussed grants injunctive relief and platform-blocking directions to the Department of Telecommunications and the Ministry of Electronics and Information Technology. The orders discussed in this paper do not grant damages, address the underlying trained model, or establish a standing mechanism comparable to a takedown safe harbour that would allow ordinary individuals to seek relief without instituting a fresh commercial suit each time. The in rem injunction is a powerful but blunt instrument: it scales well against currently identified infringing URLs but does nothing to prevent the next deployment of the same underlying model by a different anonymous actor.

The third gap is the absence of a settled limiting principle outside the narrow parody carve-out recognised in *Jackie Shroff*²⁵. Indian courts have not yet had to decide harder cases: a documentary that uses synthetic voice recreation of a deceased public figure for narrative purposes, a political deepfake that is satirical rather than commercial, or an AI tool that allows ordinary users to generate likenesses of public figures for private, non-commercial use. The balancing exercise the Supreme Court has applied in other fundamental-rights contexts²⁶ between competing constitutional values will need to be extended explicitly into this space, rather than left to the residual judgment of a single judge on an ex-parte interim application, where the defendant is, by definition, absent and unable to advance the countervailing free-speech argument that *Jackie Shroff* happened to entertain only because the relevant defendant had appeared and argued the point.

These gaps argue for calibrated, rather than maximal, statutory intervention. A wholesale transplant of the American property-rights model carries its own well-documented costs, commentators have argued that an expansive, descendible right of publicity can chill legitimate biographical, satirical, and journalistic uses of a public figure's identity long after any privacy interest has lapsed.²⁷ A more defensible Indian path would supplement the existing passing-off framework with a narrow statutory provision, either within the Digital Personal Data Protection Act's processing framework or as a freestanding amendment, that (a) defines synthetic likeness generation without consent as a specific unlawful act regardless of commercial intent, addressing the dignitarian gap that *Anil Kapoor* recognised only through judicial improvisation; (b) extends standing to non-celebrity individuals through a low-cost takedown mechanism rather than requiring a full civil suit; and (c) explicitly preserves the parody, satire, and commentary exception that *Jackie Shroff* has so far supplied only through case-by-case judicial discretion. Such an approach would retain the dignitarian and privacy-rooted character of Indian personality rights jurisprudence, rather than importing the property-rights logic of the American model wholesale, while closing the access and remedial gaps that the current case law leaves open.

²⁵Jaikishan Kakubhai Saraf alias Jackie Shroff, *supra* note 13, at para 40.

²⁶*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 S.C.C. 603.

²⁷Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard Univ. Press 2018); see also Restatement (Third) of Unfair Competition § 46 (Am. L. Inst. 1995).

VII. CONCLUSION

Indian courts, in the space of two years, have built a recognisable and operative body of personality rights jurisprudence specifically addressed to generative AI, doing so without any legislative mandate and largely through the improvisational extension of passing-off doctrine and constitutional privacy law. *Anil Kapoor v. Simply Life India* stands as the doctrinal high-water mark of this development, the first Indian order to name AI tools as a distinct mode of infringement and to recognise dignitarian harm independent of commercial exploitation, while *Jackie Shroff* supplies the necessary corrective that protection of persona cannot be allowed to swallow legitimate creative expression. What remains unresolved is structural rather than doctrinal: the framework still depends on celebrity plaintiffs, blunt injunctive remedies, and the absence of any settled answer to harder cases involving political speech, biography, or non-commercial use. The next phase of this jurisprudence, whether legislative or judicial, will have to address those structural questions directly rather than continuing to extend a tort designed for nineteenth-century trade disputes to twenty-first-century synthetic media.