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Personality Rights in the Era of Artificial Intelligence

Twinkle Maheshwary¹, Prof. Dr. C. J. Rawandale²

¹Assistant Professor of Law, Kirit P. Mehta School of Law, SVKM's Narsee Monjee Institute of Management Studies (NMIMS) Deemed-to-be-University, Mumbai, Ph.D. Scholar, Symbiosis Law School, Pune.

²Professor of Law, Director of Symbiosis Law School, Noida, Symbiosis International University, Maharashtra.

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doi: [10.33472/AFJBS.6.Si4.2024.6150-6158](https://doi.org/10.33472/AFJBS.6.Si4.2024.6150-6158)**ABSTRACT:**

With the emergence of artificial intelligence, personality rights—which had not yet been granted independent status under the purview of intellectual property rights—face more serious threats to their preservation. As AI has developed, creating procedures that protect people's rights has presented a number of difficulties. Advancements in technology such as Deep Fake enable individuals to perpetrate identity theft, which can result in several offenses under both the IT Act and the criminal laws that are in place in most other nations. The truth is that a large number of manufacturers, almost all ISPs, and online service providers use proprietary software and artificial intelligence systems in one way or another to mine, gather, analyze, and arrange user-generated content that is hosted on their own web platforms, on servers run by private third parties, or on platforms used by their advertising partners. How can people legally control and/or profit from the commercial use of their own works that are protected by intellectual property rights, as well as their own name, image, voice, and other personally identifying characteristics, in user-generated content created by them and used by private companies using proprietary machine learning systems, also known as artificial intelligence software? It is commonly known that AI, with enough data and the right training, may produce effortlessly effortful near-perfect clones of a celebrity's persona; an almost ideal replacement for the persona of an author; and content that is hard for customers to distinguish from endorsements or official appearances. The present paper critically examines the protection of personality rights under the umbrella of privacy and publicity rights, highlighting the challenges posed by the growth of technology, especially with the artificial intelligence at the stage of general and super artificial intelligent machines. It further delves into the criminal acts being committed using the artificially intelligent systems that defies the concept of privacy and personality resulting from the lack of legislative framework for its governance.

KEYWORDS: Personality Rights, Copyright, Artificial Intelligence, Publicity Rights, Privacy Rights, Performer's Right.

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1. Introduction

An individual is recognized by the manner in which they build their personality. The identity in today's world is not limited to the social security number of an individual but the impact the person created in his or her surroundings. Building a personality takes time and the majority of celebrities work on it throughout their lives to keep it alive in their audience. When a person works on their personality and can commercialize it using the available means, it transforms the personality into property that is owned by its creator. However, at times, personality like other properties may persist even after the death of the individual and may be put to use even after the demise. The personality rights find miniscule of protection in the existing legal framework. They find protection majorly under the-

1. Privacy,
2. Performers, and
3. Publicity Rights.

There is no separate protection attributed to the personality rights under the legal frameworks of majority of the countries. With the coming/ advent of technology, the challenges to protect an individual's Personality have multiplied. Issues of piracy and lacunae in protection were not even resolved as of now, with continuous growth in technology with each passing day i.e. with the coming/emergence of Artificial Intelligence, the challenges have further increased with the increase in the threat to celebrity rights.

There was a time when only humans had the ability to create and apply brains in creation, but with Artificial Intelligence coming to surface; it has become a routine affair for machines to practice. AI has already become an internal part of humans day-to-day functioning, from cleaning the house to creating codes; it is now ingrained in our basic life functions. The role of AI in the Human life is profound and so will be the impact of AI based technologies.

Artificial Intelligence has been applied to almost every possible sector, from protecting the security of a nation to providing entertainment and education to an individual. Although scholars have defined Artificial Intelligence in various ways, it lacks a concrete definition, due to its ever-evolving nature. In general, it can be defined as development of a machine that is able to perform functions that require human intelligence (Franke Ulrike & Sartori Paola, 2019). This implies that if a question is asked, and you cannot differentiate whether a machine or a human provided the answer, it could be considered that Artificial Intelligence is achieved (ETZIONI, AMITAI, and OREN ETZIONI, 2017). In the broadest sense, it can be stated that when there is automation of intelligence, it can be considered as Artificial Intelligence (De Spiegeleire, Stephan, 2017).

Scholars have divided AI into three major categories depending/based on the functions they perform: Narrow AI, General AI and Super AI. The technology that is currently present is the Narrow AI gradually moving towards the General AI. Narrow AI can perform individual tasks without human intervention based on the information fed into the system. It can also be defined as the intelligence that is equivalent to or exceeds the human intelligence for the specific tasks for which it is created, for instance the IBM's Deep Blue. General AI can perform any intellectual task successfully, equivalent to the human brain in any sphere. The time when the AI will be able to learn and create new things without any human intervention and without any pre-fed information, it will be considered as Super AI. In other words, when it would exceed the human intelligence, it would reach the stage of artificial super intelligence. While Narrow AI has seen significant development in recent times, we are yet to witness the emergence of General and Super AI.

Many challenges have been faced in the regime/realm of law with the advent of Artificial Intelligence, such as the establishment of the liability of these machines in civil and criminal

matters, the concerns related to determining the element of *mens rea* of in such machines. As highlighted by Chatterjee & Fromer in their work, machines can be made liable for certain acts that do presume presence of *mens rea*; however, the law is yet silent on the same (Chatterjee Mala & Fromer Jeanne C., 2019). Similarly, issues with respect to ownership and exercise of moral rights and the related rights under the copyright law has faced challenges post the creation of AI. The debate has been ongoing from/for a very long time and in the meanwhile, AI has started performing tasks once performed only by humans with much better accuracy and outcome avoiding the human errors. Further, recently, it has seen a huge recognition as an Inventor and an AI has been granted a patent right for the first time (Global Legal Post). It made headlines when South Africa became the first country to recognize AI (Dabus) as the inventor, while granting the patent rights to the owner of the AI, making him the patent owner. This has sparked further debates on the impact of Artificial Intelligence on the Intellectual Property Rights.

1. What Is Artificial Intelligence?

Alan Turing gave the Turing Test was designed to provide satisfactory operation of intelligence i.e. if tested with some questions; the interrogator is not able to determine whether the responses are from a person or a machine. To determine whether the machine satisfies the Turing Test, It should be capable of processing natural language, representing the knowledge, automating the reasoning and learning, and adapting to the new circumstances. The second approach to defining AI is the Cognitive Modelling Approach that brings together machine techniques and human cognition i.e. if the machine is capable of thinking like the humans. Thinking logically and Acting Rationally is another approach to determining the definition of Artificial Intelligence. All the skills required under the Turing's test allow the machine to act rationally. So to say, the different definitions bring about different types of AI (Stuart J. Russell and Peter Norvig). Stanford's Formal Reasoning Group defined intelligence as the, '*computational part of the ability to achieve goals in the world.*' (John McCarthy, 2007) Hence, Artificial intelligence can also be considered as the automation of intelligent behavior (George F. Luger and William A. Stubblefield, 2008). Nils J. Nilsson defined Artificial Intelligence as; "Artificial intelligence is that activity devoted to making machines intelligent, and intelligence is that quality that enables an entity to function appropriately and with foresight in its environment (Nils J. Nilsson, 2010)."

The major private sector players like Apple, Google, Byju, Amazon, Facebook, IBM, Microsoft etc., have enormously benefited from the huge boom in the technology sector with the developments in the field of Artificial Intelligence. In true sense today majority of these enterprises have now included AI so much in their systems that it has become the heart of the enterprise's business model (Stephan De Spiegeleire, 2017).

2. Personality Rights

The concept of property rights and ownership have been in existence since ancient Roman law. A property as understood and explained by various philosophers could be corporeal or incorporeal property. A.M Honore argues that there cannot be a rational distinction between material goods and incorporeal property (A. M. Honore, 1960) . There are further extremist approach taken by philosophers like Jeremy Bentham, who completely disagree with the existence and recognition of incorporeal property claiming it to be fictitious. This in the author's opinion cannot be accepted in today's world. From considering your image or reputation as your own property and making defamation as an offence under civil and criminal law to accepting the right to manage and exploit this reputation with the help of Intellectual Property laws, we have travelled a long road in accepting incorporeal property as a separate property. Yet it may not be denied that property is the creature of law and is dependent on law

(Francis S. Philbrick, 1938). It may be true to state that the concept of property changes with the changing circumstances.

A person owns certain property rights and is capable of exploiting the property to their own benefit. However, in the recent times, the term property is not restricted to tangible property i.e. land or goods, but have mean to include certain intangible properties as well, for instance the intellectual property rights. Similarly, when a person develops their personality traits in a manner that are capable of differentiating him/ her from the personality of the other and are unique; such a person is capable of making commercial gains using such a personality. This personality trait may not be a tangible property can therefore be considered as an intangible property of an individual.

Many celebrities today use their valuable attributes like image, name, likeness, persona and voice in advertisement and merchandising. In the recent times, commercial exploitation by the owners of these attributes have become a common practice, for instance, the voice of an individual. There are numerous studies to show that each human has a unique voice and no two people have the same voice, like fingerprints. Numerous studies show that each human has a unique voice, much like fingerprints. It is unique because the process of production of the voice involves multiple organs. When an individual exhales, an airstream is created in the trachea and across the larynx (voice box). Vocal folds (vocal cords) that are placed horizontally across the larynx vibrate very quickly when the air passes over them to produce sound. The pitch of an individual is also proportionate to the rate of vibration (frequency) and upon the length and tension of the vocal cords (Lavan, Nadine; Scott, Sophie K.; Mc Gettigan, Carolyn, 2016). Since all the organs involving the production of voice are unique to every individual, the voice of each individual is unique. Therefore, a voice is as unique as the fingerprints of a human being. That being said, there is still no protection for protecting this unique aspect of a personality under the Intellectual property law. The only way to protect your voice is through insurance. In essence, this claim can only be made when there is damage to the voice but cannot be invoked in cases of misuse. There are various cases for misuse, especially to avoid costs that are attached with commercial exploitation of the personality traits by legitimate means. This practice can be highlighted through the case of Bette Midler v. Ford Motor Company (Bette Midler, 1988), where the respondent, through the advertising firm hired by it, approached the well-known actress/singer plaintiff where he proposed juxtaposing "The Divine Miss M's vocals with visuals of its product, automobiles, in a television commercial (Abramovitch, S. H., 1991). When Ms. Midler refused, the respondent proceeded to enlist the services of an unknown singer. Ms. Midler's voice was imitated by this performer at the request of the respondent for the advertisement. The respondent, misused the voice of Ms. Midler by hiring a local singer and avoided the costs as well.

Misappropriation is not confined to avoiding costs but can also mislead people into believing the actual creator and/or performer of the work. Misappropriating Amitabh Bachchan's voice in a tobacco advertisement (Sharma, Prakash and Tripathi, Devesh, 2019) and the personality of Rajnikanth (Shivaji Rao, 2015) are just a few examples of it. Serious investment goes in cultivating and boosting a visible public personality (Abramovitch, S. H., 1991). High visibility, in the field of advertising and merchandising has become an asset that can be used for commercial and non-commercial exploitation such as to selling a product, or to generating charity donations (Huw Beverley-Smith, 2004).

Recognition of personality rights in the Indian legal structure has not yet seen a proper legal framework, but is dealt with by the judiciary within the ambit of the two rights i.e. the right to privacy and the right to publicity as available to each individual (Kewalramani, N., & Sandeep, H. M., 2012). Right to privacy is a fundamental right as enshrined within the meaning of Right to Life under Article 21 of the Constitution. It provides that every individual has a right to be left alone, and there should be no intrusion into the private life of an individual without his or

her consent. The remedy for such intrusion is under the common law remedy of torts. This right is limited in its application, as it does not extend to any information that does not find place in the private life or family life of an individual. Even so, we still find intrusion in the lives of the celebrities every time by the media houses and people without proper consent. In majority of the cases, the courts also blur the line when it comes to the private lives of celebrities, as they are now subjected to public scrutiny being the role models (Delhi High Court, 1995). The right of publicity means the right to control the image and circulation of image in the market, so as to enable the owner to commercially exploit the image he/ she has created in the manner they like. For instance, to decide which advertisement they want to be associated with and how that advertisement may affect the reputation and image they have created. As an athlete will be most suitable to do advertisements promoting health drinks and food, rather than promoting aerated drinks or alcoholic beverages. Further, this publicity right also governs the exploitation of personality by an individual and does not protect them, from any misuse of the personality by using similar aspects or imitating personality traits of the celebrity.

From above, it is evident that there is dearth of protection to protect the personality rights of an individual. With the growth in the technological sector, it has rather become impossible to identify and hold responsible the wrongdoer, let alone provide protection to the personality of an individual. Misappropriation of personality has become easy with the available technology and in mediums where you are not able to see the creator.

3. Personality Rights And Artificial Intelligence

Everyone is aware of radio stations, where we hear people and are capable of identifying them without even seeing them visually. This shows, how voice of an individual acts as a demarcation between different individuals. We are also aware of so many mimicry artists who earn their living on mimicking celebrities. If a radio station calls a mimicry artist to have a conversation with and the artist imitates well-known celebrity A, the people hearing the station will be lead to believe that celebrity A has actually come for the interview or promotion. This is just one of the many ways in which personality rights are misappropriated.

Radios were 18th century, and today we have moved past that era to include Artificial Intelligence in majority of our creations and especially when it comes to interactive communications. From the age of the internet where problems arise in determining the person to use the personality trait, the only resort being tracking of the IP address for catching the wrongdoer; to creating machines that are capable of learning, adapting and applying their learnings to create something that was not the task for the machine, the journey has been fast. However, this has also led to many questions being put forth for the potential threats that artificial intelligence brings with itself.

In a game show of US, a high school student, Raymond Kurzweil, played a short musical composition, composed by the Artificial Intelligent machine that the kid built himself (Grossman, 2011). This shows the potential of the Artificial Intelligence and the learning mechanism. The problem does not arise if the machines are creating their own works by learning and following the same process as humans, since the threshold of originality and creativity is very low when it comes to copyright protection. The problem arises when the learnings are such that when they create something new they are actually imitating the thought process of the actual creator to create something new, so much so, that a reasonable man is not able to differentiate between the two works and associate it with the author. The problem arises when the learnings are such that they imitate the thought process of the actual creator to create something new, so much so that a reasonable person is not able to differentiate between the two works and associate it with the author In the case of Rembrandt paintings, the artificial intelligence from creating a painting to help restoring the paintings made 300 years back, have played a significant role. This could typically qualify under the action of passing off but the

issue is whether the Artificial Intelligence inbuilt machine or the creator of the machine be made liable for encroachment of the personality rights of the actual creator remains unanswered.

In a very recent new report where Amitabh Bachchan sold his voice for Amazon Alexa, where on a paid purchase, the customer will be capable of interacting with Mr. Bachchan and knowing more about his life etc. (Manish Singh, 2021) This is a way to monetize your personality trait and many other celebrities do similar things to commercially exploit their personality. However, when a person has not entered into a commercial transaction with the company but the artificial intelligence is still capable of accessing and imitating celebrities and their works, whether it would amount to violation of personality rights? Indeed, it should be considered as a violation, but, since the debate whether intellectual property rights should even be accorded to artificially intelligent machines is yet to be resolved, debate on protecting personality rights in the era of artificial intelligence is still at the nascent stage.

According to a Sensity AI analysis titled "The State of Deepfakes 2019: Landscape, Threats, and Impact," women made up 99 percent of the non-consensual sexual deepfakes, which accounted for 96 percent of all deepfakes (Sensity AI, 2022). Research indicates that 96% of deep fakes of non-consenting adults are sexual in nature, highlighting the fact that technology like deep fake have actually encouraged sexual abuse rather than just compromising an individual's persona. These pictures are also used to create adult and juvenile pornographic content. Artificial intelligence has been used to construct digital avatars that promote offensive and obscene content. There is, however, very little accountability since lawmakers have failed to enact strict regulations governing the development and dissemination of content through artificial intelligence. Instead, the victims bear the brunt of the consequences rather frequently. Instead, the victims bear the brunt of the consequences rather frequently. In a case involving an American teacher whose face appeared on that of a porn actress, the teacher faced expulsion from the school, despite the fact that the court eventually determined that her photo had been altered using deepfake.

Further, in the recent case of Anil Kapoor (Justice Pratibha Singh, 2023), where his picture was deep faked on a porn star where the court acknowledged that artificial intelligence (AI) and other contemporary technology tools allow any unauthorized user to create or mimic the identity of a celebrity while issuing an injunction. Celebrities value their privacy and do not want their voice, appearance, or likeness to be used in a depressing or gloomy way, as is the case with pornographic websites. The files provide proof that Anil Kapoor's image is being altered in films and pictures with other women in ways that are disrespectful or disparaging toward him and other celebrities and actresses from third parties. The court noted that Anil Kapoor's rights should be upheld for his personal benefit as well as the sake of his family and friends, who would prefer that his name, likeness, and identity not be utilized in such a derogatory and damaging way. As a result, the court barred the defendants from using any of Anil Kapoor's name, likeness, image, voice, personality, or other characteristics to produce any kind of product, including ringtones. Until the next hearing date, the court further prohibits the defendants from misusing the aforementioned features in any way by employing technical tools such artificial intelligence (AI), machine learning, deep fakes, face morphing, or GIFs, for financial benefit or commercial purposes.

To protect the personality rights in the age of artificial intelligence we need to primarily examine whether a legal personality can be attributed to the Artificially Intelligent machines. We have recognized attributing legal personality to different inanimate objects, as in India, we consider idols also as a separate legal entity apart from the general body corporates (Stone, 1987). After considering the reasoning behind the grant of legal personality to the body corporates and other inanimate objects, the question of accountability of such machines can be one of the major factors for not according them such legal personality. However, Davies,

disagrees to this proposition and clarifies that a legal personality could be accorded to the Artificially intelligent machines by establishing a deposit account or an insurance by the creator, to satisfy any violations and infringement claims against the machine (Davies, C.R., 2011).

2. Conclusion

The issue of governing Artificial Intelligence and recognizing the personality rights is yet to be resolved by the legislature and judicial bodies. However, looking at the commercial exploitation of the attributes of personality it needs to be addressed and protected within the Intellectual property law framework. Further, the legal system needs to be proactive rather than reactive and we should not wait for the infringements to happen before creating a legal structure for governing the same. The infringements to one's personality, privacy and identity have rather made space in the realm of artificial intelligence as seen above. There is a definite dearth of adequate legal protection for the different attributes of personality, not to mention the upcoming ways to infringe on personality. Therefore, taking into consideration the above-mentioned observations, a law needs to be proposed for protecting the different aspects of personality either by virtue of recognition of Artificial Intelligence as a legal person or by placing liabilities on the creator for the usage and exploitation of the computer program.

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