

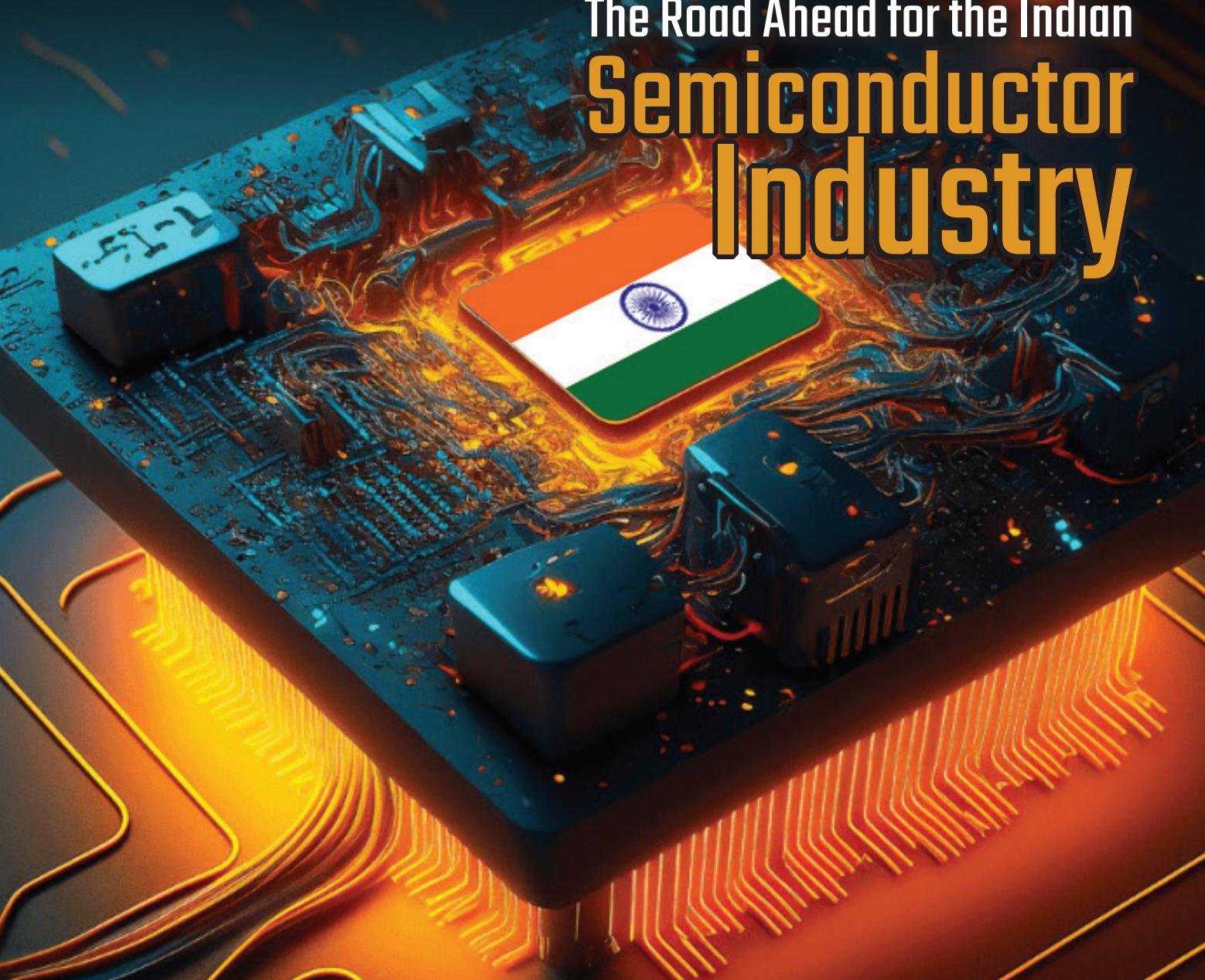


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Protection of an individual's PERSONALITY RIGHTS

Personality rights are an individual's right to prevent others from using specific attributes such as name, image, voice, or likeness without due permission and consent of the concerned individual





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In the era of technological advancement and easy accessibility to the internet, the commercial exploitation of an individual's personality per se image, voice, persona, similarity or likeliness has increased. The lack of full understanding of its potential and threats, along with a lack of legal awareness and stringent legal provisions has resulted in increased unauthorised use of someone's personality rights without consent, thereby infringing on one's rights. This also sabotages the guaranteed fundamental rights such as right to privacy, right of freedom and right to life. In India the recognition and enforcement of personality rights is still evolving. The courts are deriving principles from Article 21 (protection of life and personal liberty), and other specialised intellectual property rights. However the lack of direct statutes or legislation specifically safeguarding the Personality Rights of the citizens leaves them open to exploitation.

It is pertinent to understand what exactly personality right is and how it is related to one's personal liberty. Personality rights are an individual's right to prevent others from using specific attributes such as name, image, voice, or likeness without due permission and consent of the concerned individual (The Right). In the Indian legal domain, the closest protection corresponding to the personality right has been dealt under Article 21 of the Constitution (Right to life). However, considering the changing times, market space and growing competition it becomes pertinent to protect the commercial aspects related to one's personality in relation to the economic benefit one derives from the Rights and also balancing with one's right to privacy. In the absence of any specific right, the right to one's personality/publicity cannot be an absolute and only be a qualified right in India. The Indian Judiciary has taken sources from the statutory provisions of rights relating to Intellectual Property Rights such as Trademarks, Copyright laws. However the rights under these statutory provisions are also not absolute and carry exemptions.

Publicity Right used interchangeably with Personality right has been dealt with by the Courts under multiple Jurisdiction. In countries such as the U.K. and Australia, the tort of passing off is sufficient to deal with wrongs relating to misappropriation of goodwill and reputation of a celebrity, including use of names and likeness of celebrities. For a party to establish the tort of passing off, there has to be a misrepresentation by other party of use of a celebrity's name/image in such a manner that consumers are misled to believe that the celebrity is endorsing the defendant's goods or services or is otherwise affiliated or associated with the other party's goods.

In the absence of any legislation, the basis for any action for violation of publicity rights has to be in relation to the tort of deceit, passing off, unfair competition, misuse.

It was in the case of **ICC Development v. ARVEE Enterprises and Anr.**, (2003) 26 PTC 245 (Del) when the case pertaining to Right of publicity/personality was before the Hon'ble High Court of Delhi. In the instant case, the International Cricket Council (ICC), which was organising the Cricket World Cup, filed a suit against the defendants restraining them from publishing any advertisement associating themselves with the ICC and Cricket World Cup on grounds of passing off, unfair trade practice

“ In the absence of any legislation, the basis for any action for violation of publicity rights has to be in relation to the tort of deceit, passing off, unfair competition, misuse

and misappropriation of publicity rights. The Hon'ble Court recognised that **'the publicity rights only vest with an individual and such an individual alone is entitled to profit from it. The Court also held that such a right cannot vest in an organiser of an event, such as the ICC'**.

It was then in the case of **D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.**, [MANU/DE/2043/2010], wherein the Hon'ble High Court of Delhi upheld the significance of personality/publicity rights in India. In the instant case, the defendants were in the business of selling dolls that were imitations of a famous singer/artist, Daler Mehndi, which also sang lines of the artist's famous compositions. The suit was filed on the grounds of misappropriation of the artist's persona and likeness and the invasion of his exclusive right to market his personality. The Hon'ble Court held that, **'to avail the right against the infringement of right to publicity, the plaintiff must be "identifiable"**.

'As a secondary consideration, it is necessary to show that the use must be sufficient, adequate or substantial to identify that the defendant is alleged to have appropriated the persona or some of its essential attributes. The right of publicity protects against unauthorised appropriation of an individual's very persona which would result in unearned commercial gain to another'.

Thus, we observe that, when the intent behind fusing the celebrity's identity with the product publicity value or goodwill in the artist's persona into the product is to gain such wrongful economic benefits or for the commercial exploitation then it may be said that, such practice infringes publicity right of such person. However, it is also pertinent to note the caution laid by the Hon'ble High Court of Delhi in the case **D.M. Entertainment Pvt [Supra]**, wherein it was ruled that, **'In a free and democratic society, where every individual's right to free speech is assured, the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning, parodies and the like which may tend to highlight some aspects of the individual's personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise an entire genre of expression would be unavailable to the general public'**.

Also it was in the case of **Digital collectives** wherein the Hon'ble Delhi High Court held **'that the violation of the right of publicity in India has to be considered on the touchstone of the common law wrong**

of passing off, as also weighed against the 'right to freedom of speech and expression' enshrined under Article 19(1)(a) of the Constitution. The Hon'ble court held that the fundamental principle behind passing off and violation of personality right would be similar as both lead to misleading the general public of the association of a person with a product by using his/her image, voice, without their consent. Mere identification of a celebrity or the commercial gain of the person using such public information would not take away one's personality right. there has to be misappropriation of goodwill and reputation of a celebrity in selling a good/service.

The Hon'ble Court observing the importance of Article 19(1)(a) of the Constitution of India, allowed the use of celebrity names, images for the purposes of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses/ purposes.

However, a strict observation was allowed in the case of **Anil Kapoor v Simply Life India & Ors** [CS(COMM) 652/2023] wherein Celebrity Actor Mr. Anil Kapoor filed the suit seeking protection of his own name, image, likeness, persona, voice and various other elements of his personality against any kind of misuse on internet. In the instant case, Hon'ble High Court of Delhi **'restrained the defendants from utilising the Plaintiff-Anil Kapoor's name, likeness, image, voice, personality or any other aspects of his persona to create any merchandise, ringtones, ring back tones, or in any other manner misuse the said attributes using technological tools such as Artificial Intelligence, Machine Learning,**

deep fakes, face morphing, GIFs either for monetary gains or otherwise to create any videos, photographs, etc., for commercial purposes'.

The instant case rightly places the importance of correct balance of right to freedom guaranteed under Article 19(1)(a) of the Constitution of India and the rights of a person to livelihood, right to privacy, right to live with dignity within a social structure, etc. Though the right of free speech in terms of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism however, such right shall not go surpass to an

extent of tarnishing, blackening or jeopardising someone's individual personality rights.

The case rightly argued about how the images, voice of celebrities has been morphed and uploaded on pornographic websites, and how they are prone to deep fakes. But then such protection should not only be restricted to celebrities but also to the general public. One such protection granted to the general public is under the recent **Digital Personal Data Protection Act, 2023** which ensures to protect the image, voice of any individual from any misuse against the free will of the concerned person. This has widened the scope of Right to Personality in the Indian domain.

Therefore, in the rapidly growing technology-driven world, it becomes even more important to protect the Personality Rights of the individual as people can be subjected to various losses including but not limited to commercial losses. It is often seen that, in the garb of freedom of speech and creativity, people take undue advantage and subject the victim to irreparable loss of reputation and livelihood. Therefore, the Legislature must find ways to bridge the lacuna in the existing legal system, until then it is left to the judiciary for interpretation of existing statutes for the protection of Personality Rights of the individual.

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Mr. K. Shravan is an engineer turned advocate with a profound ability to bridge technical and legal domains. Practicing before the Hon'ble High Court of Telangana, he represents matters pertaining to complex commercial, corporate litigation, constitutional matters and IBC laws.

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