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DIGITAL RESURRECTION AND THE LAW: REGULATING AI CLONES OF THE DEAD THROUGH PERSONALITY RIGHTS, PRIVACY AND POST-MORTEM IDENTITY IN INDIA



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Abstract

Generative artificial intelligence can reproduce a deceased person's voice, appearance, mannerisms, writings and other elements of identity with increasing realism. These technologies create a new legal problem: the digital resurrection of a person who can no longer consent to the creation or commercial use of an artificial replica. Indian law does not presently contain a comprehensive statutory framework specifically governing AI-generated replicas of deceased persons. This paper examines the relationship between personality rights, publicity rights, privacy, dignity, intellectual property, data protection and freedom of expression in the context of post-mortem digital identity. It analyses the constitutional foundations of privacy and dignity under Article 21, the emerging Indian jurisprudence on personality and publicity rights, and the possible application of the Copyright Act, Trade Marks Act, Information Technology Act and Digital Personal Data Protection Act, 2023. Comparative approaches from the United States, United Kingdom and European Union are also considered. The paper argues that existing remedies are fragmented and largely reactive. It proposes a dedicated post-mortem digital personality framework based on consent, limited duration, estate administration, transparency, labelling of synthetic content, exceptions for legitimate expression and effective remedies against unauthorised commercial exploitation.

Keywords – Artificial Intelligence; AI Clones; Digital Resurrection; Personality Rights; Publicity Rights; Privacy; Post-Mortem Identity; Generative AI; Digital Persona; India.

I. INTRODUCTION

Artificial intelligence has transformed the way human identity can be represented in digital environments. Generative AI systems can synthesise speech, images, video and text from comparatively small amounts of publicly available material. When these capabilities are applied to deceased persons, an individual who has died may appear to speak, sing, advertise, act or communicate through a synthetic representation. The phenomenon is commonly described as an AI clone, digital resurrection or post-mortem digital avatar.

The technology has legitimate applications. Families may preserve memories, museums may reconstruct historical personalities, filmmakers may recreate performances, and estates may authorise carefully controlled commercial uses. At the same time, unauthorised cloning can cause reputational harm, deception, emotional distress and commercial exploitation. A synthetic performance may also falsely attribute statements or conduct to a person who cannot correct the record.

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The central legal difficulty is that Indian law recognises several related interests privacy, dignity, reputation, copyright, trademarks and publicity/personality rights but these interests do not form a single comprehensive regime for post-mortem digital identity. The question is therefore not simply whether AI should be regulated. It is whether the law should recognise a distinct interest in controlling the commercial and representational use of a deceased person's digital persona.

II. STATEMENT OF THE PROBLEM

Indian courts have increasingly protected the names, images, voices and distinctive attributes of public figures against unauthorised commercial exploitation. However, AI cloning creates a more complex form of appropriation. A clone may not reproduce a single photograph or recording; it may generate new material that merely imitates the person's identity. Existing intellectual-property doctrines may therefore provide incomplete protection.

A second difficulty concerns death. Privacy is traditionally associated with living individuals, while property rights may pass to heirs or estates. Personality and publicity rights are also not governed by a single comprehensive Indian statute. Consequently, uncertainty exists regarding who may authorise an AI replica, how long control should last, and what remedies should be available.

III. OBJECTIVES OF THE STUDY

1. To examine the legal concept of personality and publicity rights in India.
2. To analyse whether existing Indian law can protect a deceased person's digital persona from unauthorised AI cloning.
3. To study the relationship between post-mortem identity, privacy, dignity and intellectual property.
4. To examine relevant Indian judicial decisions.
5. To compare selected foreign approaches to post-mortem personality and publicity rights.
6. To propose a suitable legal framework for India.

Research Questions

1. Does Indian law presently recognise an enforceable post-mortem right over a person's digital persona?
2. Can existing personality, publicity, privacy and intellectual-property doctrines regulate AI clones of deceased persons?
3. Who should control the commercial use of a deceased person's AI-generated identity?
4. How should the law balance post-mortem identity interests with freedom of expression and artistic freedom?
5. Should India enact a specific statutory framework for post-mortem digital personality rights?

Hypothesis

The existing Indian legal framework provides fragmented protection against unauthorised exploitation of a deceased person's identity and is insufficient to address AI-generated digital replicas comprehensively. A dedicated, rights-based framework recognising limited post-mortem control over commercial digital identity, while preserving legitimate expression and public-interest uses, would provide greater legal certainty.

Research Methodology

This is a doctrinal and comparative legal study. It relies primarily on statutes, constitutional provisions, judicial decisions and secondary legal literature. The study examines Indian legal principles relating to privacy, dignity, publicity and personality rights and compares them with selected approaches in the United States, United Kingdom and European Union. The paper does not rely on primary empirical interviews or surveys.

IV. CONCEPT OF AI CLONES AND DIGITAL RESURRECTION

An AI clone is a synthetic representation generated or manipulated through artificial intelligence to resemble a particular person. It may reproduce a person's face, voice, speech patterns, gestures or stylistic characteristics. Unlike traditional imitation, generative AI can create entirely new material that appears authentic.

Digital resurrection raises a distinctive legal issue because the representation can continue to evolve after the person's death. A deceased actor's face could be placed into a new film; a singer's voice could be used to generate a new song; or a historical figure could be made to deliver a speech that never occurred. The law therefore confronts both appropriation and authenticity.

The legal focus should not be limited to whether a particular photograph or recording was copied. It should also consider whether the overall identity of the person has been appropriated for a purpose that falsely suggests endorsement, association or participation.

V. CONSTITUTIONAL DIMENSIONS IN INDIA

Article 21 of the Constitution has been interpreted to protect privacy and dignity. In Justice K.S. Puttaswamy (Retd.) v. Union of India, the Supreme Court recognised privacy as a constitutionally protected right.¹ The judgment provides an important conceptual foundation for considering informational and decisional interests connected with identity.

However, extending constitutional privacy directly after death raises difficult questions because fundamental rights are generally framed around persons who are legally alive. A stronger approach may be to distinguish constitutional values from a statutory post-mortem property or personality interest. The dignity rationale can inform legislative policy without automatically creating an unlimited constitutional right surviving death.

Article 19(1)(a) also matters.² Films, documentaries, satire, historical reconstructions and artistic works may legitimately refer to or depict deceased persons. Any regulation must therefore be carefully designed so that protection against commercial exploitation does not become a general censorship mechanism.

VI. PERSONALITY AND PUBLICITY RIGHTS IN INDIAN JURISPRUDENCE

Indian courts have recognised protection against unauthorised commercial exploitation of a person's identity through a developing body of personality and publicity-right jurisprudence.

¹ Constitution of India art. 21; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

² Constitution of India art. 19(1)(a).

In *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*, the Delhi High Court considered the unauthorised use of the persona of a well-known entertainer and recognised the commercial significance of personality.³

In *ICC Development (International) Ltd. v. Arvee Enterprises*, the Delhi High Court discussed publicity rights as an aspect associated with an individual's identity and persona.⁴

In *Titan Industries Ltd. v. Ramkumar Jewellers*, the Delhi High Court addressed unauthorised commercial use of celebrity images. The decision illustrates how personality-related interests can intersect with passing off and commercial misappropriation.⁵

More recent litigation involving celebrity names, images and voices demonstrates that Indian courts are willing to restrain unauthorised commercial exploitation in appropriate cases.⁶ Nevertheless, judicial development does not amount to a comprehensive statutory post-mortem personality regime.

VII. PRIVACY, DIGNITY AND POST-MORTEM IDENTITY

Privacy is closely connected with control over personal information and identity during life.⁷ After death, the legal position becomes more uncertain. Personal data may remain online through photographs, videos, recordings, social-media posts and news reports. AI systems can use this material to reconstruct an artificial persona.

The important distinction is between historical information and synthetic representation. Merely preserving a person's publicly known history should not ordinarily create liability. The problem arises when technology converts historical material into a new representation that appears to speak or act as the deceased.

A future Indian framework should therefore focus on misuse rather than imposing a blanket prohibition. Relevant factors could include commercial purpose, false endorsement, deception, reputational harm, the deceased person's expressed wishes, consent given during life, and the interests of heirs or the public.

VIII. INTELLECTUAL PROPERTY AND EXISTING STATUTES

The Copyright Act, 1957 may protect particular recordings, photographs, films, scripts or other copyright works incorporated into an AI system,⁸ but copyright does not necessarily provide a complete remedy for imitation of a person's identity. A new AI-generated voice or image may not reproduce a particular protected work even though it unmistakably evokes the deceased person.

The Trade Marks Act, 1999 may become relevant where names, marks or commercial identifiers are used in trade.⁹ Passing-off principles can also be relevant where a representation creates a false suggestion of endorsement or association.

³ *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*, 2003 (27) PTC 81 (Del.).

⁴ *ICC Development (International) Ltd. v. Arvee Enterprises*, 2003 (26) PTC 245 (Del.).

⁵ *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del.).

⁶ *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 6914.

⁷ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

⁸ Copyright Act, 1957.

⁹ Trade Marks Act, 1999.

The Information Technology Act, 2000 and related rules may provide remedies in particular circumstances involving unlawful online content, impersonation or misuse.¹⁰ However, these provisions are not designed specifically for post-mortem AI identity.

The Digital Personal Data Protection Act, 2023 is also relevant to the broader policy discussion,¹¹ but a specialised analysis is necessary because data-protection frameworks generally focus on identifiable living individuals and the statutory definition and operation of personal data must be applied carefully. It should not be assumed that every post-mortem digital representation automatically falls within the Act.

IX. COMMERCIAL EXPLOITATION AND ESTATE RIGHTS

Commercial exploitation is the clearest context in which a post-mortem personality right could provide legal certainty. A deceased celebrity's voice could be licensed for an advertisement, a film studio could commission an AI performance, or a company could create a digital spokesperson resembling a deceased individual.

The law should identify an authorised rights-holder. One possible model is to allow a person during life to specify whether and how their digital persona may be used after death. In the absence of instructions, a limited statutory right could pass to a designated representative or estate for a defined period.

Such a right should not become an unrestricted hereditary monopoly over every reference to a person's name or life. Historical reporting, criticism, education, satire and legitimate artistic expression should remain protected.

X. COMPARATIVE PERSPECTIVE

The United States provides the most developed example of publicity-right protection, although the law differs substantially among states. Some states recognise post-mortem publicity rights, while others provide weaker or different protection. This fragmented approach demonstrates both the value and difficulty of statutory recognition.

The United Kingdom does not have a single general personality right equivalent to a comprehensive publicity right. Protection may instead arise through passing off, copyright, trade marks, privacy-related doctrines and other causes of action. This model illustrates the possibility of protecting identity through existing legal doctrines without creating a broad proprietary right.

The European Union places strong emphasis on data protection and individual rights, but post-mortem treatment varies and national law can remain important. The European approach is particularly useful for examining consent, transparency and responsible data governance, even though its rules cannot simply be transplanted into Indian law.

XI. KEY LEGAL CHALLENGES

First, authenticity is difficult. An AI-generated video can look and sound genuine even though the deceased never made the statement.

¹⁰ Information Technology Act, 2000.

¹¹ Digital Personal Data Protection Act, 2023.

Second, ownership is uncertain. A digital persona contains elements that may include photographs, recordings, trademarks, memories and newly generated content.

Third, consent is problematic. A person may have consented to some digital uses during life but not anticipated generative AI.

Fourth, enforcement is difficult because synthetic content can be produced and distributed across jurisdictions.

Fifth, regulation may conflict with free speech. A broad right could be misused to suppress criticism, journalism, historical discussion or parody.

Proposed Legal Framework for India

India should consider introducing a statutory post-mortem digital personality right with the following elements:

- (a) Definition: define digital persona to include name, likeness, voice and other distinctive identity attributes capable of being digitally simulated.
- (b) Consent: allow individuals to record legally recognised instructions concerning post-mortem digital use.
- (c) Estate administration: where no instructions exist, give a limited right to a designated representative or estate.
- (d) Time limit: provide a reasonable and reviewable duration rather than perpetual control.
- (e) Commercial-use rule: require consent for advertising, endorsement and other uses that imply commercial association.
- (f) Transparency: require clear disclosure where an AI-generated representation depicts a deceased person in a manner that could reasonably be mistaken for authentic material.
- (g) Exceptions: protect journalism, scholarship, historical works, criticism, satire and legitimate artistic expression subject to ordinary law.
- (h) Remedies: provide injunctions, takedown procedures, damages and proportionate penalties for fraudulent or exploitative use.
- (i) Platform responsibility: create carefully limited duties for platforms after receiving legally sufficient notice, without imposing general monitoring obligations.
- (j) Cross-border cooperation: develop mechanisms for dealing with foreign platforms and international distribution.

Findings

The study finds that Indian law already contains several legal tools capable of addressing particular forms of unauthorised identity exploitation. Nevertheless, these tools operate through different legal concepts and do not clearly answer the central questions created by generative AI.

The strongest legal policy case exists where an AI clone is used commercially, falsely suggests endorsement, deceives the public or causes serious reputational harm. By contrast, historical, educational, journalistic and artistic uses require stronger safeguards for freedom of expression.

The study also finds that a post-mortem right should not be framed as an unlimited continuation of every privacy interest. A carefully limited statutory personality right would better balance individual autonomy, estate interests, technological innovation and public freedom.

XII. RECOMMENDATIONS AND CONCLUSION

From the perspective of the author, following are the recommendations. Parliament should consider a specific statutory framework for post-mortem digital personality. Individuals should be able to leave legally recognised instructions concerning AI use of their identity. Commercial AI replicas should generally require prior authorisation. Synthetic representations should be transparently labelled where deception is reasonably foreseeable. Courts should apply proportionality when identity protection conflicts with Article 19(1)(a).¹² Remedies should include urgent injunctive relief for viral synthetic content. Platforms and AI providers should adopt transparent complaint and provenance mechanisms. Any new legislation should distinguish commercial exploitation from legitimate cultural, historical and expressive uses.

Conclusion

AI cloning challenges the traditional assumption that death brings an end to the legal significance of personal identity. A person's digital footprint can continue to generate commercially valuable and socially influential representations long after death. Indian law has developed important protections for privacy, dignity, reputation and personality, but the existing framework remains fragmented when applied to generative AI.

The appropriate response is neither an unrestricted property right over identity nor complete legal freedom to reproduce the dead. India needs a balanced framework that recognises limited post-mortem control over commercial digital identity, respects the wishes of the deceased, provides a role for estates, protects consumers from deception and preserves legitimate freedom of expression. Such a framework would provide legal certainty while allowing beneficial uses of digital technology.

Ultimately, the question raised by AI clones is not merely whether technology can bring a person back to digital life. It is whether the law can determine who controls that digital life, for what purposes, and with what safeguards.

¹² Constitution of India art. 19(1)(a).