

Legal Issues in 'Digital Identity'

Issue: Whether Digital Identities are Accorded Protection under Law?

Concepts & Definitions

❖ Digital Identities -

- The World Bank defines ‘digital identities’ as *a set of electronically captured and stored attributes and credentials that can uniquely identify a person.*
- This would further extend the scope to social media accounts, email accounts, digital signatures, among others, that leaves behind a footprint of a person’s identity on the internet.

❖ Privacy -

- The Oxford Dictionary defines ‘privacy’ as *the state of being alone and not watched or disturbed by other people.*
- In the context of the digital age, privacy relates to one’s own space in the digital environment, viz. on digital platforms, and includes personal indica which facilitates connectivity and/or visibility.

Concepts & Definitions (Contd.)

❖ Right to Privacy -

- Right to privacy is a fundamental right that only extends to the acts in one's personal space but also extends to one's movement through a public space. This was observed in the landmark judgment of *K.S. Puttaswamy (retd.) v. Union of India* [AIR 1995 SC 264].
- In the above case, an observation on a related aspect of this recognized right was made Rohinton F. Nariman, J. – *“informational privacy which recognizes that an individual may have control over the dissemination of material which is personal to him. Recognized thus, from the right to privacy in this modern age emanate certain other rights such as the right of individuals to exclusively commercially exploit their identity and personal information, to control the information that is available about them on the ‘world wide web’ and to disseminate certain personal information for limited purposes alone”*.

Questions Arising from the Legal Issue

❖ Questions:

- a. Whether a person's identity is recognized and protected under law?
 - b. How should protection be afforded to digital identity?
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- ❖ In light of the rising instances of fraud, identity theft and various other cyber crimes, and given the lack of a solid legislation in place, it becomes imperative that every person's identity is protected, whether physical or digital.
 - ❖ Indian jurisprudence for protection of identity has been developed in light of personality and celebrity rights. Can this protection be extended to an ordinary person's identity in the digital space?

Relevant Provisions

❖ Section 2(d), The Copyright Act, 1957 –

- *““author” means, — (i) in relation to a literary or dramatic work, the author of the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist; (iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematograph film or sound recording, the producer; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.”*

❖ Section 13, The Copyright Act, 1957 –

- *““Works in which copyright subsists— (1) Subject to the provisions of this section and the other provisions of this Act, **copyright shall subsist throughout India in the following classes of works,...**— (a) **original** literary, dramatic, musical and artistic **works** (b) cinematograph films; and (c) sound recording.”* [Emphasis supplied]

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Relevant Provisions (Contd.)

❖ Section 14, The Copyright Act, 1957 –

- ““Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (a) in the case of a literary, dramatic or musical work, not being a computer programme,— ...**(iii) to perform the work in public, or communicate it to the public;** ...”. [Emphasis supplied]

❖ Section 2(ff), The Copyright Act, 1957 –

- ““communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion ... whether simultaneously or at places and times chosen individually, **regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.**
- *Explanation.— ...communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;”* [Emphasis supplied]

Relevant Judicial Decisions

- ❖ ***R. Rajagopal v. State of Tamil Nadu*, [AIR 1995 SC 264]**
 - “*The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.*” [Emphasis supplied].

- ❖ ***D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.*, [MANU/ DE/2043 /2010]**
 - The Court held that *no one was free to trade on another's name or appearance* and claim immunity. Accordingly, the Court granted the decree of permanent injunction sought by the plaintiff.” [Emphasis supplied]. This was also considered in *Super Cassettes Industries Private Limited and Ors. v. Nandi Chinni Kumar and Ors.* [2021 (85) PTC 435].

Relevant Judicial Decisions (Contd.)

❖ *ICC Development (International) Ltd. v. Arvee Enterprises and Anr.*, [2003 (26) PTC 245 (Del)]

- The Court effectively held that “the right to control one’s identity solely vests in the individual”.
- Personality rights can “*inhere only in an individual or in any indicia of an individual’s personality like his name, personality trait, signature, voice, etc.*” [Emphasis supplied]
- “*An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event.*”

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Conclusion

- ❖ Right to Privacy extends to all persons and not just public figures.
- ❖ The increasing commercial value of data leads to commercial exploitation of digital identity of persons.
- ❖ Recognition of digital works under copyright law facilitates this protection to digital identities which does fulfil the pre-requisite of originality by virtue of it being unique to each person.
- ❖ Remedies under copyright law including civil and criminal remedies which will provide legal recourse to the aggrieved parties.

- ❖ **Recommendation:**
 - This may be facilitated by adoption of the two-step authentication of (a) *validity* and (b) *identifiability*, which has been adopted in respect to the right to publicity.

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THANK YOU!

Questions?

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