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Personality as Property

Twinkle Maheshwary[1], Prof. Dr. C.J. Rawandale[2]

[1]Assistant Professor of Law, Kirit p. Mehta School of Law, SVKM's Narsee Monjee Institute of Management Studies (NMIMS) Deemed-to-be-University,Mumbai, Maharashtra India

[1]Ph.D. Scholar Symbiosis Law School, Pune, Maharashtra India

2Professor of Law, Director of Symbiosis Law School, Noida, Uttar Pradesh, India

[2]Symbiosis International University, Maharashtra, India

Abstract

The concept of personality has traditionally been associated with the physical human body. However, with the expansion of various forms of property, including Intellectual Property Rights (IPR), the notion of personality can no longer be confined solely to an individual's physical existence or right to privacy. Individuals invest substantial financial and temporal resources in cultivating a distinct personality, often with the objective of commercializing its unique attributes. Despite this, the legal definition of personality remains ambiguous, with different jurisdictions interpreting it through varying legal principles.

The most widely accepted understanding of personality is through the Right to Privacy and Bodily Integrity. However, Intellectual Property Law has facilitated the creation of property rights linked to specific attributes of personality, reflecting its intrinsic characteristics and granting individuals legal protection under IPR. This paper examines the concept of personality across various legal systems, analyzing its evolution through historical and legal frameworks. By doing so, it seeks to establish a concrete legal right to protect distinct attributes of personality within different jurisdictions.

Keywords

Personality, Property, Privacy, Civil Law, Common Law, Legal Person.

[1]Corresponding Author, email: twinkle.maheshwary15@gmail.com
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[2]Second Author, email: director@symlaw.edu.in

1. Introduction

The concept of a "Trans-Systemic Definition of Personality"[3] explores the possibility of formulating a comprehensive understanding of personhood or personality by bridging the rights protected under "personnalité" in civil law and "privacy" in common law. Traditionally, the distinction between these concepts is attributed to the emphasis on protecting the human body in civil law while Anglo-American jurisdictions supposedly give it less importance or no consideration within privacy.

However, this distinction might be questionable. For instance, the Supreme Court of Canada includes bodily integrity in its definition of privacy.[4] While some argue that personality rights only cover non-bodily aspects, the living human body is intrinsically linked to personhood. In civil law, personality rights include the right to life, bodily integrity, and inviolability. The right to one's image is also a pivotal aspect of personality rights in continental Europe but lacks recognition in English law.

The Canadian Supreme Court has expanded the common law definition of privacy to include protection of physical spaces and personal information, aligning with civil law's protection of private life. This includes safeguarding one's domicile and preserving personal information as secret. Both civil law and common law recognize the concept of personhood, or personality, as encompassing the living human body, its unique characteristics, and utilities. Personality meets utility and scarcity criteria, as advancements in biotechnology reveal its diverse uses and commercial value. In Canada, legislation prohibiting human cloning emphasizes the uniqueness of individual personalities.[5]

Personal attributes are often referred to as property, with Quebec courts recognizing a person's name and image as "property" and the Anglo-American "right of publicity" as a legitimate property right in personality. Both civil law and common law acknowledge immaterial property, including information, as a form of property in the present context.[6]

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[3] Stig Strömholm, Right of Privacy and Rights of the Personality. A Comparative Survey (Stockholm: P A Norstedt & Söner förlag, 1967)

[4] R v Spencer, 2014 SCC 43, [2014] 2 SCR 212 at para 35

[5] Amy M Conroy, "Protecting Your Personality Rights in Canada: A Matter of Property or Privacy" (2012) 1 Western J of Leg Studies at 18 ("The right to privacy has also been said to protect our right to control our bodies and decide what is done to them.").

[6] Frédéric Zenati-Castaing & Thierry Revet, Manuel de droit des personnes (Paris: Presses Universitaires de France, 2006) at 242; Also see Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 21

Personhood, or personality, encompasses the living human body, its various facets, and its unique characteristics. This concept satisfies the criteria for identifying objects of ownership or property rights in civil and common law traditions. Personality meets the utility criterion, as advancements in biotechnology reveal the diverse uses of the human body and its tissues for therapeutic, scientific, and educational purposes. It fulfils the scarcity criterion, as each individual's personality is unique and resistant to interchangeability.

In legal discourse, personal attributes are often referred to as "innate property" or "biens innés" in civil law and "fundamental property" in Quebec. However, the living human body is not inherently disqualifying as an object of ownership or property rights. Both civil law and common law acknowledge the concept of immaterial property, including information, as a form of property in the present context.[7]

The "no-property rule" governs the legal status of the human body and influences the treatment of other aspects of personality, such as medical information. The Supreme Court of Canada in McInerney v. MacDonald[8] regarded medical information as highly private and under the patient's fundamental control, acknowledging the patient's equitable interest arising from the physician's fiduciary duty to disclose medical records upon request.

1.1 Legal Philosophy

Self-ownership, the idea that individuals possess "property" in themselves, has been a long-standing concept in Western political philosophy. It emphasizes the extensive rights individuals have concerning themselves, including exclusive claims against interference, the ability to enforce or waive these rights, and protection against their loss. Libertarian thinkers, such as Nozick[9] and Rothbard[10], support this concept, recognizing it as a special place among

[7] Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 22

[8] McInerney v MacDonald, [1992] 2 SCR 138 at 148- 151

[9] James W Harris, "Who Owns My Body" (1996) 16:1 Oxford J Leg Stud 55 at 69 and 71. As pointed out by Harris, it must not, however, be supposed that the self-ownership argument for a natural right to property is the exclusive province of the political right: Karl Marx deploys it in volume 1 of *Das Kapital* as part of his immanent critique of capitalist production (*ibid* at 70, citing Karl Marx, *Das Kapital*, vol 1, trans from the 4th German ed by Eden & Cedar Paul, J M Dent, Everyman's Library, 1972, 155).

[10] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) (employing the idea of "self-ownership" to argue that the individual possesses the sole right to dispose of himself and to direct his actions, free from interference by others); Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands: Humanities Press, 1982); Eric Mack, "Welf-Ownership, Marxism, and Egalitarianism, Part I: Challenges to Historical Entitlement" (2002) 1 Politics, Philosophy, and Economics 75; Eric Mack, "Self-Ownership, Marxism, and Egalitarianism, Part II: Challenges to the Self-Ownership Thesis" (2002) 1 Politics, Philosophy, and Economics 237

original property rights. However, the concept of owning one's body may not equate to absolute ownership in its fullest sense. In civil law systems, the "no-property rule" excludes personality rights from a person's patrimony, emphasizing their extra patrimonial nature.

Personality rights, like privacy rights, are considered inalienable and not transferrable, forming a category of rights connected intimately to an individual's identity. In common law systems, this differentiation is less systematic and is framed around the distinction between "personal rights" and property rights. In today's world, elements of personhood are increasingly subject to commercialization, leading to the recognition of the "right of publicity" alongside the "right of privacy."

1.1.1 In Civil Law Jurisdiction[11]-

The right to one's image, a legal concept in France, has evolved over time. Initially focused on property rights, it later became extra patrimonial, allowing for commercial exploitation. This led to a dualistic approach in French law, recognizing both extra patrimonial rights and a new exclusive patrimonial right for commercial exploitation. This shift was influenced by historical approaches to copyright, where moral rights coexisted with commercial copyright, and German law, which treats privacy, identity, and 'publicity' as facets of a single hybrid personality right. The Supreme Court of Canada in Quebec acknowledged the duality of the right to one's image, recognizing both extra patrimonial and patrimonial aspects.[12]

1.1.2 In Common Law Jurisdiction-

In France, the concept of the right to one's image has developed over time. It was originally extra patrimonial, allowing for commercial exploitation, and centred on property rights. As a result, French law adopted a dualistic stance, acknowledging both extra patrimonial rights and a brand-new exclusive patrimonial right for use in commerce. Historical approaches to copyright, in which moral rights and commercial copyright coexisted, and German law, which views identity, privacy, and "publicity" as components of a single hybrid personality right, had an impact on this change. In Quebec, the Supreme Court of Canada recognised the

[11] Jean Carbonnier, *Droit civil: les personnes, la famille, l'enfant, le couple* (Paris: Presses Universitaires de France, 2004) at para 285

[12] Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 44

dual nature of the right to one's image, taking into account both patrimonial and extra patrimonial elements.[13]

In its 1960 paper "Privacy," William Prosser[14] contended that four "distinct sorts of invasion of four different interests of the plaintiff" had emerged from American case law in the seventy years that had passed since the landmark work by Warren & Brandeis. Prosser outlined these four privacy torts as follows: (1) invasion of the plaintiff's privacy, seclusion, or private affairs; (2) public disclosure of the plaintiff's embarrassing personal information; (3) publicity that casts the plaintiff in an unfavourable light in the public domain; and (4) theft of the plaintiff's name or likeness for the defendant's benefit. These four torts are currently recognised by law in and are part of the Second Restatement of Torts ("Restatement").[15]

The disclosure and false light torts protect an interest in reputation, similar to defamation, involving mental distress. The right to privacy allowed the law to recognize an injury even if the damages were solely mental anguish. The Restatement defines "Appropriation of Name or Likeness" as a proprietary interest in the exclusive use of the plaintiff's name and likeness as an aspect of their identity. The right created by appropriation is considered a property right, with an exclusive license allowing a third person to maintain an action to protect it.

In contrast, Harper & James stated that they believed that "cases involving financial consider ations and instances involving simply emotional problems such as grief, shame, and loss of p ersonal dignity should be suitably distinguished by the law."[16]

Ultimately, striking a balance between "a right to privacy and a right to prevent the illegal co mmercial exploitation of fundamentally economic elements in personality" proved to be quite challenging. Due to these challenges, "a separate right of publicity" was created.

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[13] Robert C Post, "Rereading Warren and Brandeis: Privacy, Property, and Appropriation" (1991) 41:3 Case W Res L Rev 647 at 663-664, Also see Giorgio Resta, "Personnalité, Personlichkeit, Personality" (2014) 1:3 European J of Comparative L & Governance 215 at 225 (explaining that the right to privacy is generally presented as a right "modeled on the paradigm of personal rights, not property rights")

[14] William L Prosser, "Privacy" (1960) 48 Calif L Rev 383 at 389. See Robert C Post, "Rereading Warren and Brandeis: Privacy, Property, and Appropriation" (1991) 41:3 Case W Res L Rev 647 at 648 ("Wiliam Prosser magisterially divided the privacy tort into four distinct causes of action").

[15] William L Prosser, "Privacy" (1960) 48 Calif L Rev 383 at 392. See H Beverley-Smith, A Ohly & A Lucas-Schlötter, *Privacy, Property and Personality. Civil Law Perspectives on Commercial Appropriation* (Cambridge, 2005) at 55.

[16] H Beverley-Smith, A Ohly & A Lucas-Schlötter, *Privacy, Property and Personality. Civil Law Perspectives on Commercial Appropriation* (Cambridge, 2005) at 57. See Harper & James, *The Law of Torts* (Boston, 1956) at 689- 90.

The tort of appropriation gave rise to the "right of publicity." This tort right was developed "as a property right that would defend the goodwill created by celebrities in their public persona". Celebrities who "lived on publicity" began claiming protection by the 1950s, but also demanded payment "for the use of their identity for marketing operations." At that point, it was believed that the tort remedy based on the right to privacy was an imprecise notion for offering relief. "The emergence of a private right labelled the right of publicity" was ultimately the result of this circumstance. The right of publicity is unique in that it safeguards an individual's "proprietary intellectual property" and acknowledges "the commercial worth of the picture or portrayal of a prominent person or performance."[17]

It is said that the process of separating private from publicity is "protracted and complicated." The "measure of damage" is the "essential aspect" that separates the proprietary right of publicity from the individual right of privacy. The former "focuses upon the business injury to the plaintiff," whilst the latter is more concerned with "indignity and emotional suffering." Stated differently, "an harm to the wallet infringes on the right of publicity, while an injury to the psyche invades the appropriation branch of the right of private." Famous persons "did not suffer any hurt to feelings from having their name or likeness exploited without their authorization," according to Frank J. in *Haelan Laboratories Inc v. Topps Chewing Gum Inc* (1953); rather, they "felt dreadfully robbed from not receiving any money for such exploitation." The right to publicise was established.[18]

After that, the majority of jurisdictions' courts progressively came to recognise "that the right of publicity was a clearly autonomous tort and not an application of the misappropriation concept, and that the right of privacy and the right of publicity were separate claims." The United States Supreme Court first examined the freedom of publicity in *Zacchini v. Scripps- Howard Broadcasting Co. (1977).*[19] The Court distinguished

[17] Robert C Post, "Rereading Warren and Brandeis: Privacy, Property, and Appropriation" (1991) 41:3 Case W Res L Rev 647 at 666. See also Ellen E Whitehorn, "Publicity, Privacy, and Fame: A Comparative Analysis of the Right of Publicity in the United States, Canada, and the U.K., through the Lens of Kanye West's Famous" (2017) 27:1 Transnat'l L & Contemp Probs 201 at 203-04 ("[the] right [of publicity] has roots in the right of privacy and the misappropriation prong of William Prosser's famous invasion of privacy tort test").

[18] H Beverley-Smith, A Ohly & A Lucas-Schlötter, *Privacy, Property and Personality. Civil Law Perspectives on Commercial Appropriation* (Cambridge, 2005) at 65.

[19] (1977) 433 US 522.

between violations of a right of publicity and violations of a right of privacy in that particular case.[20]

The "right of publicity" was initially created as a tort right to protect the goodwill created by celebrities in their public persona. However, by the 1950s, celebrities sought compensation for using their persona for merchandising activities. The tort right of privacy was deemed inaccurate, leading to the development of a proprietary right called the right of publicity. This right recognizes the commercial value of a prominent person's image and protects their interest in the profitability of their public reputation. Eric H. Reiter[21] explains that this right is a celebrity right, not accessible to all persons.[22]

The defendant may be held accountable for both the plaintiff's "pecuniary loss" and, in the event that the plaintiff's identification is proven to have been used without authorization for commercial purposes, the defendant's own "pecuniary gain." While the plaintiff is allowed to show "any or both measures of relief," they are only entitled to "the greater of the two amounts" in compensation. The claimant may receive compensation "purely for the deprivation of his right to control the use of the commercially valuable asset in his name or likeness," in which case any award of damages is "likely to be minor," as the establishment of responsibility does not require proof of monetary loss. Under any case, "in proper circumstances" the defendant may be entitled to complete restitutionary remedies in the form of an accounting of his gains, as well as punitive damages.[23]

2. Personality as Property

Originally, the term "persona" in Roman law referred to a real, corporeal human being. But over time, the interpretation shifted to one that was more abstract, particularly as a legal person. Natural lawyers like Hugo Grotius and Samuel Pufendorf have since contributed to

[20] See H Beverley-Smith, A Ohly & A Lucas-Schlötter, *Privacy, Property and Personality. Civil Law Perspectives on Commercial Appropriation* (Cambridge, 2005)

[21] Eric H Reiter, "Rethinking Civil-Law Taxonomy: Persons, Things, and the Problem of Domat's Monster" (2008) 1:1 J of Civ L Studies 189. See also, generally, Donald R Kelley, "Gaius noster: Substructures of Western Social Thought" (1979) 84 Am Hist Rev 619; Roberto Esposito, *Persons and Things: From the Body's Point of View* (Cambridge, MA: Polity Press, 2015).

[22] See Ellen E Whitehorn, "Publicity, Privacy, and Fame: A Comparative Analysis of the Right of Publicity in the United States, Canada, and the U.K., through the Lens of Kanye West's Famous" (2017) 27:1 Transnat'l L & Contemp Probs 201 at 205

[23] H Beverley-Smith, A Ohly & A Lucas-Schlötter, *Privacy, Property and Personality. Civil Law Perspectives on Commercial Appropriation* (Cambridge, 2005) at 68-69. See *Rogers v Grimaldi*, 875 F 2d 994 (2nd Cir 1989)

the development of a technical legal understanding of personality,[24] with Hugues Doneau being seen as the pioneer in this regard.[25] Grotius's impact allowed Gottfried Leibniz to create a private law system by connecting legal personhood to "right-holding" and "duty-bearing," based on the Roman classification of people, objects, and behaviours.[26]

Savigny coined the term "Rechtssubjekt" to mean "legal person," and the civil law tradition accepted it. Positive law permits the extension of legal capacity to fictional entities such as corporations, even if natural beings are the original identity of legal personhood. As such, the concept of "legal person" refers to the ability to have rights and responsibilities and includes both "natural persons" and "juristic persons."[27]

The legal term "person" has two different meanings with regard to natural persons: the tangible, physical human and the abstract, legal person. Whereas the latter is the subject of a right, the former is its object. Even though the legal person is derived from the human person, the two are conceptually separate and should not be confused.

An argument against the concept of self-ownership, which maintains that there is a confusion between the subject and object of a right, is refuted by this approach. In response, Kant emphasises that the legal person, a subject of rights, is the "owner," whereas the "owned" thing is the human person, an object of rights. It is thought that the common law and civil law traditions are sophisticated enough to recognise this distinction.

3. Analysis

It is possible to draw the conclusion that, given personality's status as a right, there ought to be no obstacle to its recognition as a property right. But the designation of (human)

[24] Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford, UK: Oxford University Press, 2019) at 36. See J R Trahan, "The Distinction between Persons and Things: An Historical Perspective" (2008) 1 Journal of Civil Law Studies 9 at 11-12.

[25] Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford, UK: Oxford University Press, 2019) at 35. See also Ernst Holthöfer & Johanna M Baboukis, 'Doneau, Hugues' in Stanley N Katz, ed, *The Oxford International Encyclopedia of Legal History* (Oxford University Press, 2009); Peter Stein, 'Systematization of Private Law in the Sixteenth and Seventeenth Centuries' in Jan Schröder, ed, *Entwicklung der Methodenlehre in Rechtwissenschaft und Philosophie vom 16. bis zum 18. Jahrhundert* (Franz Steiner Verlag 1998) at 122-23.

[26] Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 65

[27] Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 66-68

personhood as "extra patrimonial" presents a challenge to civil law, since the terms "property" and "ownership" are typically connected to "patrimony."[28]

Personality is extra patrimonial property, in my opinion. It is not transferable, even in situations when the heirs of the deceased may receive rights of action in their own right. It is also not reversible (since it cannot be exchanged for money, as I shall further emphasise below). In the language of common law, personality is not a commodity.[29]

The principle of accession extends beyond merely elucidating the acquisition of domicile or personal information through doctrines of creation or specification. It functions as a legal mechanism that attributes ownership of one entity (A) to the proprietor of another entity (B) by virtue of their pre-existing ownership of B. This doctrinal framework represents a specific manifestation of a broader legal principle, wherein ownership is determined based on a significant connection to an already established property interest.

Judith Jarvis Thomson posits that certain fundamental rights, such as the "right not to be observed" and the "right not to be heard," are integral components of an individual's overarching right to personal autonomy.[30]

Richard Parker conceptualizes privacy as the ability to regulate when and by whom different aspects of an individual—such as their physical presence, voice, and bodily outputs—can be perceived.[31] Merrill characterizes the right of publicity as a collection of accession rights, emphasizing that a celebrity retains control over their public persona.[32]

The principle of accession is a longstanding doctrine in both civil and common law, encompassing various legal concepts, including the doctrine of increase, the rules governing crops or *fructus*, the doctrine of accretion, the *ad coelom* doctrine, and the doctrine of fixtures. This principle was well established in Roman law, where it was applied to three key

[28] Meredith Render, "The Law of the Body" (2013) 62 Emory LJ 549 at 585 ("when we speak of a person who 'owns' (or who 'counts' as an owner), we are referring to the legal concept of 'person' (i.e., the entity upon which rights are conferred in a a particular legal context) and not the conventional concept of 'person', which is illustrated by the fact that owners of property can be non-natural persons. The fact that in the specific context of body- ownership the owner is always a natural person does not undermine the fact that when we are speaking of 'owners' as a class and 'people' as a class of owners, we are referring to the legal concepts of 'owner' and 'people'.")

[29] Édith Deleury & Dominique Goubau, *Le droit des personnes physiques*, 4th ed (Cowansville, QC: Yvon Blais, 2008) at para 83; Édith Deleury & Dominique Goubau, *Le droit des personnes physiques*, 4th ed (Cowansville, QC: Yvon Blais, 2008) at para 75; Henri de Page, *Traité élémentaire de droit civil belge*, t 2, vol 1, 4th ed (Bruxelles: Bruylant, 1990) at para 33.

[30] Judith Jarvis Thomson, "The Right to Privacy" (1975) 4:4 Philosophy & Public Affairs 295 at 304-05.

[31] Richard B Parker, "A Definition of Privacy" (1974) Rutgers Law Review at 281.

[32] Thomas W Merrill, "Accession and Original Ownership" (2009) 1:2 J of Leg Analysis 459 at 469.

doctrines: accession (the integration of two individuals' personal property into a single entity), specification (the transformation of one person's property through the labor of another), and confusion (the merging of two individuals' property in a manner that renders their respective contributions indistinguishable).[33]

The principle of accession extends beyond merely explaining the acquisition of domicile or personal information through doctrines of creation or specification. It establishes ownership of an entity (A) by attributing it to the owner of another entity (B) based on their existing ownership of B. This legal doctrine represents a broader principle within property law, wherein ownership is assigned based on a significant connection to pre-existing property.

Judith Jarvis Thomson contends that rights such as "the right to not be looked at" and "the right to not be listened to" are integral components of an individual's overarching rights over their person. Similarly, Richard Parker conceptualizes privacy as an individual's ability to control when and by whom various aspects of their identity—such as their body, voice, and bodily products—are perceived by others.

Despite critiques from eminent jurists, the notion of subjective rights remains a cornerstone of civil law. In contemporary legal scholarship within Québec and France, personality rights are widely regarded as a subset of subjective rights. However, there is no unanimous agreement on this classification. While some scholars categorize personality rights within the broader framework of subjective rights, others argue that these rights do not possess the characteristics necessary to be considered as such.[34]

Friedrich Carl von Savigny notably rejected the notion that individuals possess an inherent or natural right over their own person.[35] Paul Roubier similarly rejected the concept of a *right in se ipsum*, contending that such a notion is conceptually flawed as it conflates the subject and object of rights. While some scholars regard the right to personal inviolability as a legitimate subjective right, others interpret it as merely a form of individual liberty.[36]

These debates arise from the ambiguity surrounding the very definition of subjective rights. In analytic jurisprudence, two predominant theories of rights exist: the minority perspective,

[33] Thomas W Merrill, "Accession and Original Ownership" (2009) 1:2 J of Leg Analysis 459 at 469.

[34] In Québec, see, e.g.: Édith Deleury & Dominique Goubau, *Le droit des personnes physiques*, 4th ed (Cowansville, QC: Yvon Blais, 2008 at para 73

[35] Friedrich Carl von Savigny, *System des heutigen Römischen Rechts* (Berlin: Veih und Comp, Ier Band, 1840) at § 53.

[36] Étienne Cossette-Lefebvre, "Personality, Privacy, and Property: Trans-Systemic Perspectives on Self-Ownership", University of Toronto (2020) at 81

which supports an interest-based approach to rights, and the majority perspective, which upholds the will-theory of rights, rooted in Kantian principles of freedom and autonomy.

In civil law traditions, "rights of personality" grant individuals the ability to exclude others from their body, image, voice, and private life, thereby aligning them with the concept of subjective rights under will theory. This notion is closely linked to the idea of ownership, as subjective rights inherently involve an element of control.

Within common law, multiple interpretations of the "right to privacy" exist, with a predominant emphasis on privacy as a right to exclude. Proponents of the limited-access-to-the-self theory, such as Ernest Van Den Haag, conceptualize privacy as an individual's exclusive control over their personal domain, defining it as the right to prevent others from observing, utilizing, or intruding upon their private sphere.[37]

The concept of privacy is often grounded in the theory of control over personal information, frequently equated with a form of ownership. Alan Westin argues that personal information should be recognized as a property right. However, this perspective may extend beyond the realm of informational privacy.[38]

The conceptual frameworks of property and privacy intersect in safeguarding the same fundamental interests—namely, the right to possess one's own body and to prevent unauthorized access by others. Bruce Ackerman characterizes both privacy and property as being fundamentally rooted in the right to exclude third-party interference. This emphasis on exclusion is central to a trans-systemic understanding of ownership, which encompasses the rights of exclusive use and control over disposition.

In the case of United States Life Ins. Co. v. Hamilton[39], an insurance company sent letters to clients requesting signatures on behalf of the plaintiff, who was identified as the "manager," after the plaintiff had departed the company. "The illegal use of his signature and name in the promotion of defendant's business" is what he claimed was appropriated in his lawsuit. The plaintiff had not filed a lawsuit because the plaintiff's privacy had been violated, so the court took the issue of whether or not the plaintiff's privacy had been violated into consideration. It

[37] Ernest Van Den Haag, "On Privacy" in J Roland Pennock & J W Chapman, eds, *Nomos XIII: Privacy* (1971) 149 at 149. See also Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (1983) at 10-11 (defining privacy as "the condition of being protected from unwanted access by others – either physical access, personal information, or attention").

[38] Alan F Westin, *Privacy and Freedom* (New York: Atheneum, 1967) at 324.

[39] 238 S.W.2d 289 (Tex. Civ. App. 1951).

concluded that this was unimportant because using a person's signature for business purposes "constitutes the exercise of a valuable right of property in the broadest sense of that term."

Christian Dior, the well-known dress designer whose name and designs had been appropriated, also had a cause of action for the "misappropriation for the commercial advantage of one person of a benefit or 'property right' belonging to another," the court found in a suit for damages, accounting, and injunction as a relief.[40] In a New York case[41], the rights of an entertainer at a televised public event were in question. The plaintiff, a well-known theatrical performer, was hired to present his animal act between the halves of a professional football game. The trial court found a violation of the New York statute and entered a judgment for $5,000. The plaintiff's contract provided that he was not required to perform directly or indirectly for television. However, the judgment was reversed in the Appellate Division, where the court interpreted the statute as providing primarily a recovery for injury to the person, not their property or business. The court distinguished the Franklin and Redmond decisions on the basis that the comment of the announcer was merely descriptive and reportorial with injection of "no extraneous comment." The court declared that the "property" element could then be taken into consideration. The Court of Appeals, in affirming the Appellate Division, pointed out that privacy was the one thing the plaintiff did not want or need in his occupation. The statute grew out of the Roberson decision and aimed to forbid and punish the exploitation, for gain, of a man's individual personality, that is, invasions of his right to be let alone. The court recognized this element but rejected its application in a suit brought under the statute. This decision has been criticized for not restricting recovery to plaintiffs whose feelings had been injured but encompasses appropriations for commercial exploitation. The failure of courts in New York to distinguish causes of action involving such appropriations from those involving injured feelings has been aptly termed a "legal schizophrenia."

The above analysis shows that whilst there has been serious concerns for protecting the personality rights of an individual under the privacy statute, the courts have relied on the property aspect of personality to grant damages. Further, we have seen at various occasions under civil and criminal statues where a trait of personality is considered gravely in deciding

[40] Dior v. Milton, 9 Misc. 2d 425, 155 N.Y.S.2d 443 (Sup. Ct.), aff'd, 2 App. Div. 878, 156 N.Y.S.2d 996 (1956). The suit was based upon unfair competition and the court decided that it was unnecessary to allege or prove that the defendants were "actual competitors."

[41] Gautier v. Pro Football, Inc., 198 Misc. 850, 99 N.Y.S.2d 812 (N.Y. City Ct), aff'd, 199 Misc. 598, 106 N.Y.S.2d 667 (Sup. Ct. 1950).

on the outcome of the case. In insurance cases where we do protect the intangible aspects of a personality-like voice etc., where there is a huge amount of financial risk involved in case of tampering with it in any manner, thereby realizing the commercial gains associated with it. Hence, it may be safe to state that personality could be considered as property at least for cases of misappropriation.

4. Concept of Property and Personality in India

In India, property is classified into two categories: movable and immovable property, as per the Transfer of Property Act, 1882. The Act does not explicitly define "movable property"; however, Section 3(36) of the General Clauses Act, 1897, defines movable property as any property other than immovable property. In contrast, immovable property refers to property that is permanently attached to the land and is capable of being transferred to another individual. This includes land, benefits arising from land, and objects affixed to the earth. The definition of immovable property is provided under Section 3 of the Transfer of Property Act, Section 3(26) of the General Clauses Act, 1897, and Section 2(6) of the Registration Act, 1908. A key requirement for property transfer under the Transfer of Property Act, as per Section 5, is the tangibility of the property and the rights associated with it.

The Insurance Regulatory and Development Authority Act, 1999 (IRDAA) empowers companies to provide insurance for life, health, movable property, immovable property, and other forms of property, including intangible assets. In the context of intellectual property rights (IPR) in India, protection is granted to intangible assets that are the result of a legal person’s creative efforts. However, for such protection to be recognized under traditional IPR law, the creation must exist in a tangible form. Intellectual property protection is accorded to personality attributes that can be materially fixed, such as an individual's image in a photograph or voice in a recording. However, the law does not extend protection to intangible aspects of personality, such as an individual’s voice or style, in the absence of a tangible fixation. Remedies under the law are available for the violation of personality rights when they are captured in a tangible form, but protection does not extend to mere imitation of an individual’s personality.

Post 2017, the judiciary has played an important role in

5. Conclusion

A convergence between common law and civil law viewpoints is evident in the trans-systemic approach to personality rights, which acknowledges the proprietary aspects of

personality. In contrast to common law, which increasingly recognizes personality's proprietary aspects through rights to privacy and publicity, civil law has historically viewed personality as extra-patrimonial and unalienable. Both legal traditions uphold individual control over personal attributes, regardless of the historical "no-property rule," which strengthens their legal and economic significance. The recognition of personality as a type of immaterial property is becoming increasingly relevant as technological developments continue to put traditional legal frameworks to the test. This change emphasizes the need for a unified legal strategy that strikes a balance between individual liberty and new business and technological realities.

The legal framework in India distinguishes between movable and immovable property, with specific statutes governing their classification and transfer. While tangible properties are well-defined under the Transfer of Property Act, 1882, and related legislation, the recognition and protection of intangible properties, particularly in the realm of intellectual property rights, require a tangible manifestation. The Insurance Regulatory and Development Authority Act, 1999, acknowledges the insurability of both tangible and intangible assets, yet traditional intellectual property laws extend protection only to those aspects of personality that can be materially fixated. Consequently, while the law recognizes the commercial value of an individual's personality, it does not provide remedies for the mere imitation of personal attributes unless they are recorded in a tangible form. This highlights the evolving nature of personality rights in Indian law and the need for a more comprehensive legal approach to address the complexities surrounding intangible personality attributes.

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