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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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DIGITAL RESURRECTION WITHOUT RIGHTS: THE ABSENCE OF POSTHUMOUS PERSONALITY AND VOICE RIGHTS FOR DECEASED ARTISTS IN INDIA'S AI ERA

AUTHOR – SAMRIDHI MISHRA, STUDENT AT NARSEE MONJI INSTITUTE OF MANAGEMENT STUDIES (DEEMED TO BE UNIVERSITY), NAVI MUMBAI.

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ABSTRACT

Indian courts have, in a short but consistent line of cases, granted living celebrities injunctive relief against unauthorized AI voice-cloning by reading together the right to privacy under Article 21 and common-law passing-off principles. This jurisprudence rests on doctrinal foundations dignity, autonomy, ongoing commercial control that are inherently tied to a living plaintiff and do not obviously survive death. This paper asks a single, narrow question: when an AI platform clones a *deceased* Indian artist's voice for commercial gain, without consent from the artist's estate, does Indian law give that estate any cause of action at all? Using the viral AI-generated "Kishore Kumar" recordings of early 2026 as a live fact pattern, the paper maps six candidate doctrines constitutional privacy, authorial moral rights, performers' moral rights, performers' economic rights, trademark protection for the deceased, and passing-off against the specific harm of synthetic voice recreation. It finds that India's personality-rights framework, built entirely around living-plaintiff reasoning, offers no doctrine squarely fitted to this harm: the rights that do survive death (authorial moral rights, performers' economic rights, trademark) were drafted for different harms (distortion of an existing work, reproduction of a fixed performance, source confusion), while the doctrine most directly on point performers' moral rights under Section 38B of the Copyright Act, 1957 contains no express survival mechanism at all, unlike its authorial counterpart. Drawing on comparative material from California's amended postmortem right of publicity and Tennessee's ELVIS Act, the paper proposes a narrow, term-limited statutory right for India, distinct from and independent of its living-persons framework, calibrated to close the specific gap this fact pattern has exposed.

Keywords: posthumous personality rights, voice cloning, performers' rights, Copyright Act 1957, artificial intelligence, right of publicity

1. INTRODUCTION

In January 2026, an AI-generated recording of the late playback singer Kishore Kumar "performing" a song he never sang drew millions of views within days, reviving a debate that Indian law has not resolved: what happens to an artist's voice, legally, after the artist dies? The Kishore Kumar recordings are not an isolated curiosity. They sit alongside a fast-moving,

unresolved line of Indian litigation over AI voice-cloning of *living* celebrities Anil Kapoor, Arijit Singh, Amitabh Bachchan, and, as of late 2025, Salman Khan, whose interim injunction against an AI voice-generation platform is presently contested before the Delhi High Court. Each of these matters has been resolved, or is being litigated, on foundations specific to a living plaintiff: the constitutional right to privacy recognized in *K.S. Puttaswamy v. Union of India*, and the common-law tort of passing-off, both of

which presuppose an identity that its holder can presently exercise, protect, and control.

No Indian court has yet been asked, and no Indian statute squarely answers, what survives when that holder is dead. This is not a hypothetical problem. It is a live commercial phenomenon with no reported estate action to date.

Research question: Does any existing basis in Indian law constitutional privacy, copyright moral rights, performers' rights, trademark protection, or passing-off survive an artist's death and vest in their estate so as to restrain unauthorized AI voice-cloning; and if not, what narrow, time-bound statutory right should India adopt to close that gap?

Scope and limitations: This paper is deliberately narrow. It does not address living-celebrity personality rights (already extensively mapped by existing Indian scholarship), general deepfake or misinformation regulation, or rights in a deceased person's image/likeness as distinct from voice. Comparative analysis is limited to two American jurisdictions California and Tennessee chosen because both have recently amended their statutes specifically to address AI-generated vocal replicas, making them the most doctrinally proximate models available, rather than because they represent an exhaustive global survey.

Methodology: The paper is doctrinal and comparative. It examines primary legislative text (the Copyright Act, 1957; the Trade Marks Act, 1999; the Constitution of India), available judicial authority, and two foreign statutes, supplemented by secondary academic and practitioner commentary that has flagged without resolving this specific gap.

Literature review, briefly: Existing Indian scholarship on AI and personality rights has concentrated almost exclusively on the living-celebrity line of cases, treating the Anil Kapoor and Arijit Singh orders as the frontier of the field. This body of work is analytically useful but structurally incomplete for present purposes: it

borrowes its doctrinal vocabulary dignity, autonomy, ongoing commercial control from a jurisprudence of the living, and largely does not ask whether that vocabulary has anything to say once the rights-holder is dead. A small number of practitioner blog posts have flagged the posthumous question in passing, typically as a closing "open question worth watching," without proposing statutory text, engaging with the s. 57/s. 38B asymmetry identified in Part II, or conducting a doctrine-by-doctrine survival analysis. Comparative literature on the American right of publicity is more developed but naturally does not engage with Indian statutory text at all. This paper's contribution sits at the intersection those three bodies of literature leave open: it is the first, to this author's knowledge, to trace the Indian doctrinal gap through each candidate statutory provision individually, identify the specific legislative asymmetry between authorial and performers' moral rights as the crux of the problem, and translate two recent, AI-specific American statutory amendments into a concrete legislative proposal for India.

2. MAPPING THE SURVIVING DOCTRINES

2.1. Privacy (Article 21): extinguished at death.

Puttaswamy located the right to control one's identity within Article 21's guarantee of "life" and "personal liberty" concepts India's constitutional jurisprudence has not extended to the deceased in any personality-rights context. Unlike the statutory moral-rights regime discussed below, there is no mechanism by which an estate inherits a decedent's Article 21 interest. The primary engine behind every living-celebrity order accordingly does not survive death.

2.2. Authorial moral rights (Copyright Act, 1957, s. 57): survives, but mismatched.

Section 57 confers the rights of paternity and integrity "independently of the author's copyright and even after assignment," and s. 57(2) expressly permits a deceased author's *legal representatives* to exercise these rights, the 2012 Amendment deleted the words tying the integrity right to the copyright term, rendering it

perpetual. This is the strongest express survival mechanism in Indian law but it is a poor fit here for two reasons. First, s. 57 protects an *existing* work from distortion or mutilation; an AI platform generating a wholly new recording is not altering anything that exists, it is fabricating something new. Second, under s. 2(d) "author" of a musical work means the composer, and of a sound recording the producer not the playback singer. Section 57 would inure to a composer's estate, not a singer, for most commercial recordings.

2.3. Performers' moral rights (s. 38B): the clearest gap. Section 38B, inserted by the same 2012 Amendment, gives a performer the right to be identified and to restrain distortion "prejudicial to his reputation" the performer's direct analogue to s. 57. Critically, **s. 38B contains no equivalent to s. 57(2)**. Parliament wrote survivability for authors into the same amending Act and did not do so for performers. Under the ordinary interpretive presumption that deliberate inclusion in one provision and omission in an analogous provision is intentional, this silence reads as a genuine legislative gap rather than an oversight curable by generous construction. Even if survivability were implied by analogy, s. 38B(b) protects "his performance" a specific, already-fixed performance not a newly synthesized one.

2.4. Performers' economic rights (s. 38): survives as property, but protects the wrong thing. Section 38 grants an economic right subsisting for fifty years from the performance, descending to heirs as ordinary property. But it protects against unauthorized exploitation of *the fixed performance itself*. A model trained on a corpus of recordings and used to generate a new, never-performed output does not reproduce any one fixed performance it is closer to unauthorized simulation than unauthorized copying, which is precisely the blind spot voice-cloning exposes in a reproduction-based right.

2.5. Trademark (Trade Marks Act, 1999, s. 14): real, but doubly narrow. Section 14 bars registration of a mark falsely suggesting connection with a person dead within the

preceding twenty years, absent estate consent. It is the one Indian provision explicitly calibrated to the interests of the deceased but it operates as a registration bar tied to *source confusion in trade*, not artistic replication, and its twenty-year window has already lapsed for Kishore Kumar (d. 1987).

2.6. Passing-off: theoretically available, practically untested. Passing-off protects commercial goodwill from misrepresentation, and Indian courts have treated a living celebrity's persona as a form of tradeable goodwill. Goodwill is, in principle, an estate asset. But no reported decision has tested whether a deceased performer's estate can maintain a passing-off claim grounded in voice alone, decades after death, absent ongoing commercial trading by the estate. This remains a live but untested litigation route, distinct from the legislative gap this paper primarily addresses.

Integrated analysis. None of the doctrines that survive death (ss. 57, 38, and 14) was designed for synthetic, never-fixed vocal recreation; the doctrine structurally closest to the harm (s. 38B) is the one Parliament left without any survival mechanism at all. The result is not merely gaps at the margins, but a doctrinal architecture with no provision squarely built for this fact pattern. It is worth being precise about what kind of gap this is, because Indian copyright scholarship sometimes treats "gap" loosely, as shorthand for any unresolved question. This is a narrower and more specific claim: it is not that courts have not yet decided the question, but that the *statutory raw material* from which a favorable decision could be constructed does not exist in coherent form. A sympathetic court presented with an estate's claim against an AI voice-cloning platform would have to either strain s. 57 past its "existing work" limitation, strain s. 38B past its textual silence on survivability, or fall back on the untested and doctrinally thin passing-off route discussed below none of which offers the kind of statutory certainty that would deter platforms operating at commercial scale, or give an estate confidence that litigation is worth the cost. That

distinction between an unresolved question and an unanswerable one on present statutory text is what separates this paper's claim from the more general observation, already made elsewhere, that "AI and personality rights raise unresolved issues" in India.

3. THE LIVING-PLAINTIFF COMPARATOR

The contrast with living plaintiffs is instructive. In the Anil Kapoor and related matters, Indian courts granted broad injunctive relief restraining the unauthorized use of name, voice, image, and persona including AI-generated and morphed content reasoning from personality as an extension of the constitutionally protected self. The reasoning in these orders typically proceeds in three steps: first, identifying the celebrity's name/voice/likeness as possessing independent commercial value; second, treating unauthorized exploitation of that value as an infringement of a personality right rooted in privacy and dignity; and third, extending relief pre-emptively restraining not merely a specific infringing use already identified, but any future AI-generated or GIF/meme-based use of the plaintiff's persona that might emerge, a form of anticipatory injunction unusual outside this specific line of cases. Each step in that reasoning chain depends on the plaintiff being a legal person currently capable of holding dignity and privacy interests and presently exercising commercial control none of which an estate straightforwardly possesses on the plaintiff's behalf.

The pending Salman Khan matter, in which an AI voice-platform is seeking to vacate an interim injunction, will likely turn on familiar living-plaintiff terrain: balancing personality/privacy interests against the platform's free-speech or fair-use defenses. Whatever the outcome, the reasoning available to the court dignity, ongoing autonomy, continuing commercial control is simply unavailable once the plaintiff is dead. The living-plaintiff cases therefore illustrate not a template that extends naturally to the deceased, but the precise doctrinal resources that vanish at the point of death, sharpening rather than

softening the gap identified in Part II. Put differently: the more robust India's living-persons jurisprudence becomes, the more conspicuous the absence of any equivalent for the dead a disparity that is difficult to justify once one appreciates that the underlying *harm* to the artist's legacy, audience, and commercial estate is, if anything, less contestable for a deceased artist who can offer no contemporaneous consent or objection at all.

4. COMPARATIVE ANALYSIS: THE AMERICAN STATUTORY MODELS

India is not alone in confronting this challenge, and the experiences of certain American jurisdictions provide valuable, though not directly transplantable, guidance for legislative reform. States such as California and Tennessee have enacted specific statutory frameworks recognizing posthumous publicity rights, including protection against the unauthorized commercial exploitation of a deceased individual's identity and, more recently, AI-generated voice replicas. While these models operate within a distinct constitutional and legal context, they illustrate how legislatures have responded to technological developments by balancing commercial interests, freedom of expression, and innovation. Although India's legal system differs significantly from that of the United States, these comparative approaches offer useful principles that can inform the development of a tailored statutory framework addressing posthumous digital voice rights.

4.1. California. Civil Code § 3344.1 grants a postmortem right of publicity lasting **seventy years** after death, available to any "deceased personality" whose identity had commercial value at death, and expressly covering voice. The right is a freely transferable, descendible property right, distinct from the living person's right under § 3344. Most significantly for this paper, California's statute was **amended specifically to address AI digital replicas**: a person who produces or distributes an unauthorized digital replica of a deceased

personality's voice or likeness in an expressive audiovisual work or sound recording is now liable for the greater of \$10,000 or actual damages. This is the single closest comparative provision to the Kishore Kumar fact pattern anywhere surveyed a statute that, unlike anything in the Indian framework, was drafted with generative AI voice replication specifically in mind.

4.2. Tennessee. The Ensuring Likeness, Voice, and Image Security Act, 2024 ("ELVIS Act") was the first American state law drafted specifically to address AI voice-cloning. It added *voice* as an independently protected property right (not merely an element of "likeness"), created liability for developers and distributors of cloning tools not merely end users and provided both civil and criminal (Class A misdemeanor) enforcement. Its postmortem term is markedly shorter and more conditional than California's: rights vest in heirs for an initial **ten years** after death, extendable indefinitely thereafter only if the identity continues to be commercially exploited, lapsing after two consecutive years of non-use.

4.3. What India can take from each. California demonstrates that a long, flat, property-style postmortem term is administrable and critically that legislatures are now amending *existing* publicity statutes specifically to reach AI replicas rather than treating this as covered by older reproduction-based doctrine, which is exactly the retrofitting Part II shows Indian law has not undergone. Tennessee demonstrates an alternative, narrower design: a shorter guaranteed term coupled with continued-exploitation-based extension, plus liability reaching the AI platform itself, not only the immediate infringer directly relevant to the Kishore Kumar fact pattern, where the AI tool provider, not merely the uploader, is the more meaningful target. Neither model can be imported wholesale: both nonetheless demonstrate that a workable postmortem voice right can be built (i) as *sui generis* and separate from ordinary copyright/performer's-rights machinery, and (ii) with damages calibrated to be more than nominal.

5. CRITICAL ANALYSIS

5.1. Why the gap matters. The absence of a remedy is not merely an academic curiosity; it has immediate distributive and cultural consequences. Playback singers, who form the backbone of the Hindi film-music industry, typically hold performer's rights rather than authorial rights over the songs they made famous, precisely the category (Part II.C, II.D) least protected once dead. A legal architecture that protects composers' and lyricists' estates (via s. 57) more robustly than singers' estates, for identical exploitation of the same underlying recording, is difficult to justify on any coherent policy basis it is an accident of categorization, not a considered legislative choice.

5.2. Counterarguments to a new right. Any proposal for a new postmortem right must confront three serious objections. *First*, a broad postmortem voice right risks chilling legitimate tribute, parody, biographical, and archival uses an "AI Kishore Kumar" cover could plausibly be framed as homage rather than exploitation, and any statute must carve out non-commercial, critical, and artistic uses, as both California and Tennessee do. *Second*, vesting a durable commercial right in "the estate" of an artist who died decades ago invites the same succession disputes that already complicate Indian IP administration who counts as the estate is frequently unsettled where succession is governed by differing personal laws and no will exists. *Third*, a lengthy term (California's seventy years) risks locking cultural material out of the public domain for generations, a concern with particular resonance in India's parallel debates over copyright term length and access to cultural heritage.

5.3. Weighing the objections. These concerns argue for *scope-limiting design choices*, not against legislating at all. A right confined to *commercial* exploitation (mirroring California's and Tennessee's advertising/merchandising/commercial-recording focus, and excluding news, criticism, biography, and non-commercial fan work)

answers the first objection. A rule presuming the right vests in the nearest identifiable legal heir under existing succession law, with registration required to enforce it as California requires answers the second by placing the burden of establishing a clear chain of title on the party seeking to enforce, rather than leaving it undefined. A shorter, Tennessee-style term tied to continued exploitation, rather than California's flat seventy years, answers the third by ensuring the right lapses where no one is actually using it.

5.4. Why India's stakes are distinctive. The case for legislating is arguably stronger in India than in either comparator jurisdiction, for reasons specific to the structure of the Indian music and film industry. Playback singing is a uniquely Indian institution: a small number of voices – Kishore Kumar, Lata Mangeshkar, Mohammed Rafi among them became identified with entire decades of Hindi cinema despite rarely appearing on screen themselves, meaning the *voice*, detached from any visual likeness, carries disproportionate independent commercial and cultural value compared to Western popular music, where performer and visible persona are typically fused. This makes India's exposure to voice-specific AI exploitation, as distinct from face/likeness exploitation, arguably more acute than in the American markets that produced the California and Tennessee statutes and correspondingly makes the absence of any voice-specific postmortem doctrine a more urgent gap for Indian law to close than the comparative literature, focused on American facts, has had occasion to recognize. A second distinctive factor is the sheer commercial durability of India's film-music catalogue economy: songs recorded decades ago continue to generate substantial streaming and licensing revenue today, meaning the "no one is exploiting this anymore" justification for a short or lapsing term is empirically weaker in the Indian context than it might be for a Western performer whose catalogue has genuinely fallen out of commercial circulation.

6. PROPOSED STATUTORY FRAMEWORK FOR INDIA

Rather than amending s. 38B in place which would still leave the "existing work vs newly fabricated work" mismatch identified in Part II unresolved this paper proposes a **sui generis provision**, either as a new Chapter in the Copyright Act or a standalone statute, with the following features:

6.1. Right holder: The right should vest in the estate or legal heirs of a deceased performer whose voice possessed identifiable commercial value either at the time of death or acquired such value through posthumous exploitation. This approach mirrors California's "commercial value" threshold, ensuring that protection is confined to voices with demonstrable economic significance rather than extending to every deceased individual. By requiring evidence of commercial value, the provision balances the legitimate proprietary interests of estates with the need to prevent frivolous or speculative claims. It also recognises that a performer's voice may continue to generate substantial commercial revenue after death through licensing, digital reproduction, or AI-generated content, thereby warranting legal protection against unauthorised exploitation.

6.2. Protected conduct: The statute should prohibit the unauthorized creation, reproduction, or commercial distribution of any synthetic audio output that a reasonable listener would recognize as the voice of a deceased performer, irrespective of whether the output reproduces an existing copyrighted recording. This formulation is intentionally broader than the existing protection under Section 38B, which is confined to the distortion or modification of a fixed performance. By extending protection to newly generated AI-created vocal imitations, the provision addresses the legislative gap identified in Parts II.C and II.D, ensuring that estates can challenge the commercial exploitation of a performer's vocal identity even where no original recording has been copied. This approach better reflects the unique risks posed by generative AI technologies.

6.3. Term: a **twenty-five-year** initial term from death, renewable in ten-year increments upon proof of continued commercial exploitation by the estate shorter than California's seventy years (to answer the public-domain/cultural-access objection) but longer and more front-loaded than Tennessee's ten-year initial term (recognizing that Indian succession and estate-administration processes typically take longer to formalize than in a wrongful-death-averse American probate system).

6.4. Exemptions: The proposed framework should expressly exempt non-commercial, educational, journalistic, critical, biographical, and parody uses of a deceased performer's voice, provided such uses do not falsely imply endorsement or serve a predominantly commercial purpose. These exceptions are consistent with comparative legislative models, particularly those recognizing posthumous publicity rights while preserving freedom of expression and the public interest. They also align with India's existing fair dealing framework under Section 52 of the Copyright Act, 1957, ensuring that legitimate academic, artistic, historical, and news-related uses are not unduly restricted while preventing the unauthorized commercial exploitation of a deceased performer's vocal identity.

6.5. Liability reaching platforms: Civil liability should extend beyond the individual who uploads or monetizes an unauthorized AI-generated voice output to include commercial AI voice-cloning platforms that knowingly facilitate or enable such infringement. This platform-inclusive approach, inspired by Tennessee's legislative model, recognizes that service providers often play a central role in the creation and dissemination of synthetic voices and are frequently better positioned to implement safeguards, licensing mechanisms, and takedown procedures. It is particularly responsive to scenarios such as the AI-generated Kishore Kumar voice controversy, where the platform operator may be a more identifiable and accountable defendant than an anonymous user. Extending liability in this

manner would enhance enforcement while encouraging responsible AI development without imposing strict liability on intermediaries acting in good faith.

6.6. Registration mechanism: A statutory registration mechanism should be established through the Copyright Office to maintain a dedicated registry of posthumous voice-right claims. Before enforcing such rights, the estate or legal heirs should be required to demonstrate a clear and documented chain of title establishing their legal entitlement. This would minimize succession disputes and provide legal certainty regarding the rightful claimant, thereby avoiding the need to litigate questions of heirship in every infringement action. By creating a transparent and publicly accessible record of ownership, the registry would streamline enforcement, facilitate licensing, and enhance certainty for AI developers, commercial users, and rights holders alike.

7. RECOMMENDATIONS

Firstly, Parliament should not wait for a s. 38B amendment alone; the doctrinal mismatch between "distortion of an existing performance" and "fabrication of a new one" requires new statutory language, not a patch to existing text.

Secondly, Indian provision should adopt Tennessee's platform-liability model rather than California's user-only focus, since the commercial AI voice-cloning tool, not the individual uploader, is the more identifiable and deterrable actor in cases like the Kishore Kumar recordings.

Thirdly, A registration requirement modelled on California's Secretary of State registry should be built in from the outset to pre-empt the succession-dispute risk that would otherwise burden every individual suit.

Fourthly, The Ministry of Electronics and Information Technology and the Copyright Office should be encouraged to issue interim guidance or a consultation paper on posthumous digital replicas, given that the underlying commercial pattern (the Kishore Kumar phenomenon)

already exists and is presently unregulated, rather than waiting for the pending Salman Khan litigation which concerns a living plaintiff to produce any spillover guidance on the posthumous question, which it structurally cannot.

Fifthly, Given that a significant share of India's legacy playback catalogue is administered by music labels and producers under assigned economic rights rather than by the performers' families directly, any statutory drafting exercise should explicitly address the relationship between a new postmortem voice right and existing contractual assignments clarifying, in particular, that the new right vests independently in the performer's estate notwithstanding any prior assignment of sound-recording copyright to a producer, in the same ways. 57(1) already ring-fences authorial moral rights from the consequences of assignment. Without this clarification, labels holding assigned economic rights could plausibly claim the new right for themselves, defeating the estate-protective purpose of the reform altogether.

8. CONCLUSION

This paper set out to answer a single question: when an AI platform clones a deceased Indian artist's voice for profit without estate consent, does Indian law give the estate any cause of action at all? The answer, doctrine by doctrine, is that Indian law offers fragments of relevant protection authorial moral rights, performers' economic rights, a time-limited trademark bar but no doctrine actually built for this harm, and the one doctrine structurally closest to it, performers' moral rights under s. 38B, is the one Parliament left without any mechanism for survival at all. This is not an abstract doctrinal curiosity: the Kishore Kumar recordings demonstrate that the commercial exploitation this paper describes is already occurring, at scale, without any reported estate response because, on the analysis above, there is little for an estate to plausibly assert. Drawing on California's AI-specific 2025 amendment and Tennessee's platform-inclusive ELVIS Act, this

paper has proposed a narrow, term-limited, registration-backed statutory right twenty-five years, renewable on proof of continued exploitation, reaching platforms as well as uploaders, and exempt for non-commercial and critical uses calibrated to close the specific gap identified, without importing the public-domain and succession-dispute costs of a broader or more permanent right. India's personality-rights jurisprudence has, so far, only ever had to answer for the living. The Kishore Kumar phenomenon shows that question can no longer be deferred.

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