

Emojis for Sale: The Privatization of Human Emotion in AI Markets

Anshu Kumari¹, Bhaavya Jain², Mannat³

^{1,2,3}Student, National Forensic Sciences University

Abstract

This paper explores how emotions, which once were deeply personal and connected, are now gradually turning into commercial assets that can better be labelled as “Intimacy Economy”. But now with fast-paced innovation in technology, emotions are no longer felt; instead, they are surveilled, exploited, and commodified through algorithms, AI tools, and digital platforms. The so-called sacred space of conscience has been converted into analysable content.

To comprehend this shift better, this paper analyses information from different schools of legal thought, mainly the natural school of law, sociological, historical, and finally legal realism. From this vantage point, it evaluates the growing conflict between three forces: an individual’s right to emotional privacy, society’s interest in technological innovation, and the market’s hunger for prediction and monetisation. By providing tangible examples of Emotional Perception AI Ltd, the EU AI Act, the Cambridge Analytica Scandal, and Indian court cases involving emojis, the article seeks to reveal how unprepared current legal systems are in dealing with emotional data.

Despite the rising awareness and recognition of concepts like neurorights and cognitive liberty, existing laws still focus on external behaviour rather than inner experience. This paper puts forward the argument that we urgently need a legal framework that understands human emotions not as tradable data but as amplifications of dignity and individual liberty.

Introduction

Emotions are one of the most intimate and defining features of human identity. They shape how individuals perceive the world, interact with others, and construct meaning in daily life. For centuries, emotions were regarded as deeply personal and subjective, which were beyond the reach of commodification. Yet in the digital age, the boundary between private feeling and public expression has blurred. With the rise of social media, mobile communication and AI, emotions are captured, quantified and commercialised on an unprecedented scale.

The commercialization of emotions in the contemporary era is a manifestation of the sociological school of law, stemming from society's increasing capital market size of the intimacy economy, currently standing at a whopping \$100 billion. The Intimacy Economy, when looked back at, comes from the evolution of the attention economy evolved from the information economy, as one becomes easily available, society has shifted to other forms. The intimacy economy is an intersection of technology, law, and society. The theory of social engineering by Roscoe Pound comes into play here as we see balancing conflicting individual interests (privacy, autonomy), social interests (ethical use of data, morality), and community interests (collective trust, development of markets). This is reflected in the 2023 Chilean Supreme Court¹ ruling on neurological data privacy. The court illustrates the realist school

of law in action, where the court sets the legal boundaries between commercialization and privacy.

¹ Cornejo-Plaza, M. I., Cippitani, R., & Pasquino, V. (2024). Chilean Supreme Court ruling on the protection of brain activity: Neurorights, personal data protection, and neurodata. *Frontiers in Psychology*, 15, Article 1330439.

Research problem

The article aims to highlight the growing tension between the commodification of emotions in the market and societal individual interests of privacy and autonomy. Analyzed multidimensionally from sociological, legal, historical, and technical perspectives to establish their effect on society

Moreover, it analyses the growing impact of the commercialization of emotions on the rapid erosion of the fundamental right to privacy, along with the inadequacy of current national and international laws to keep pace with the rapidly evolving nature of Artificial Intelligence. This has also led to the erosion of state authority in the realm of technology, incapacitating the state from controlling the operations of private corporations in the technological sphere. On the other hand, another perspective is the growth of surveillance governance globally. Hence, the question: Whether the growth of AI and the commercialisation of emotions has diminished the authority of the state or exacerbated it to the extent that it breaches the citizens' right to privacy?

Therefore, the central problem can be termed as: **Do current privacy, personality, and data protection laws offer enough protection against the ethical, social, and legal issues from emotional data commercialization? Or is there a need for a more detailed legal framework that considers historical, sociological, and realistic viewpoints?**

Research methodology

The article has used a qualitative research methodology. It is doctrinal and theoretical methods that have been employed to analyze the research problem, which is interdisciplinary in nature. The study clearly states that qualification remains an essential tool for addressing the issue of commercialization of human emotions, due to the lack of formalization of the idea, thus quantification proving to be challenging. The whole study revolves around interpretation, cause, and effect. The School of Law, as a lens, has been used to analyze the intermingling of law and the research problem. Societal phenomena have been used to understand their relation to the research problem in question. The comparative method has been employed to look at the issue, when placed in different jurisdictions like the European Union, India, and Chile. The data sources used here are divided into primary Chile's landmark case, the EU AI Act, and India's DPDP Act. Secondary sources include foundational works on surveillance capitalism by Shoshana Zuboff, cognitive liberty by Nita Farahany, and the right to privacy by Warren and Brandeis.

Literature review

Adam Smith (1759) framed emotions as moral and social regulators, anticipating later recognition of the individual's inner life as a site of legal protection. Natural scholars such as Aquinas and John Locke attributed the protection of an individual's dignity as a moral duty. In the times of Aquinas and John Locke, the notion of privacy was tied only to the fact that human beings, as rational and moral beings, had certain inviolable liberties which could not be transgressed by the state or society.

Smith, A. (2010). *The Theory of Moral Sentiments* (R. P. Hanley, Ed.). Penguin Publishing Group.

Samuel D Warren and Louis Brandeis (late 1890s) coined the concept of “The right to be let alone”, representing a manifestation of “an inviolate personality”, a core of freedom and liberty from which the human being had to be free from intrusion. It justified the need to be left alone with the early developments in technology, photography, and newspaperization.

Warren, S. D., & Brandeis, L. (1890, December 15). The Right to Privacy. *Harvard Law Review*, 4. <https://www.brandeis.edu/library/archives/exhibits/ldb-100/career/privacy.shtml>

Ryan Calo (2014) introduced the concept of “digital market manipulation”. The intimacy products are not only selling you the ability to monetize on cognitive bias but also controlling your cognitive biases and may compel you to act against your own interests. It's against the very assumption of economics of reasonable consumer, how can one be reasonable when they are influenced and puppetized by corporations.

Calo, R. (2014). Digital Market Manipulation. *George Washington Law Review*, 58. <https://digitalcommons.law.uw.edu/faculty-articles/25/>

Shoshana Zuboff (2019) highlights in her book *The Age of Surveillance Capitalism*: (Zuboff, 2019, #)The Fight for a Human Future at the New Frontier of Power the term ‘instrumentarian power’ defined as the power to use and control human behaviour for profit. (Zuboff, 2019,)

Zuboff, S. (2019). *The Age of Surveillance Capitalism*. Hachette Book Group, Inc. <https://archive.org/details/the-age-of-surveillance-capitalism-shoshana-zuboff-z-library/page/n1/mode/2up>

Elizabeth Edenberg (2021) highlights that “epistemic injustice” becomes a consequence when algorithms, unable to compartmentalize human emotions, end up dismissing them. This system threatens the essential subjective state required to access emotions which is not possible for algorithms as machine learning works on patterns and quantifiable data to generate a set formula for different cases, but emotions can’t be compartmentalized.

Edenberg, E., & Wood, A. (n.d.). An Epistemic Lens on Algorithmic Fairness. *Association for Computing Machinery (ACM)*, 1-10. <https://philarchive.org/rec/EDEAEL>

Marcello Lenca (2021) proposed the idea of “Neurorights”, this concept in an amalgamation of Right to Mental Privacy, Right to Personal Identity and Right to Free Will.

Lenca, M. (2021). On Neurorights. *Frontiers in human neuroscience*, 15. <https://doi.org/10.3389/fnhum.2021.701258>

Nita Farahany’s idea of “Cognitive Liberty” comes perfectly into play. In her work, she has illustrated how cognitive privacy is the last bit we have to ourselves.

Farahany, N. A. (2023). *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology*. St. Martin's Publishing Group.

Montgomery et al. (2024) documented the application of technology in workplaces to increase productivity by deploying the concept of ‘empathetic surveillance’. Here AI-led monitoring and regulation of emotional well-being breaches into a worker's personal space in terms of social connection, autonomy and humane conditions. This ends up creating an ultimate cycle of invasion of privacy, causing a need for true social connection, ultimately fueling the intimacy economy.

Analysis

1. The Central Inquiry: Privacy in the Age of Emotional Commercialisation

The very idea of commercialisation of emotions stems from the fact that the Right to Privacy is a fundamental human right, which is globally recognised in statutes like the Indian Constitution (Article

21)², the Universal Declaration of Human Rights, 1948 (Article 12)³, and the International Covenant on Civil and Political Rights (ICCPR)⁴. Consequently, 144 countries recognise the Right to privacy⁵. The issue at hand can be phrased as: whether the current legal safeguards are sufficient to uphold the rights to privacy, dignity, individual autonomy, and personality rights in the realm of AI and commercialisation of emotions. The article shall cover a nuanced aspect of this issue: Does the historical evolution of privacy and personality rights support extending legal protection to emotional data, given that existing intellectual property and data protection regimes remain insufficient and risk legitimizing the commercial appropriation of inner emotional states? The question will be analyzed by understanding the historical evolution of these laws, an analysis of their position in the eyes of various schools of law, culminating in a contemporary evaluation of the issue.

2. The Unregulated Frontier: Technology of the Intimacy Economy

2.1 'Black Box' Technologies and Opaque Markets

The analysis examines how technologies that are being sold as products of the intimacy business sector lack legal regulations, which enables markets to exploit customers and eventually gives society ethical and autonomy challenges. One of the products of this sector is multi-modal neural analytics. This is a technology that works on the amalgamation of different forms of data from EEG data from the brain, facial micro-expressions, vocal tonality, and biometric signals, everything from general to specific.⁶ To determine the emotional state of a person. This data accumulation and integration happen in the backend, causing the phenomenon of a black box to occur. The algorithms work in an opaque manner, making it impossible to trace, and thus a lack of record, which causes a lack of legal regulation or even insights in the present time. *Emotional*

² Ambedkar, B. R. (n.d.). The Constitution of India. Ministry of Law and Justice, Government of India.

³ United Nations. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁴ United Nations. (1966). *International Covenant on Civil and Political Rights*. United Nations, Treaty Series, 999

U.N.T.S. 171. <https://www.ohchr.org/en/instruments->

⁵ International Association of Privacy Professionals. (2023, December 8). Data protection and privacy laws now in effect in 144 countries. <https://iapp.org/news/a/data-protection-and-privacy-laws-now-in-effect-in-144-countries/>

⁶ British Psychological Society. (2024). *Neurotechnology and emotional AI are creating a new kind of line manager*. The Psychologist. <https://www.bps.org.uk/psychologist/neurotechnology-and-emotional-ai-are-creating-new-kind-line-manager>

Perception AI Ltd v Comptroller-General of Patents (2023)⁷ highlights this very gap that the legal system fails to fill. Artificial Neural Network (ANN) is the core tech used by Emotion Perception AI Ltd to analyze music choices and recommend similar music to customers based on emotional choices. The UK patent law failed to identify the evolving nature of the intimacy economy by simplifying the product into mere data passing through layers, which was insufficient, as per the company, which stated that training of the ANN was what resulted in the product, and thus it created a novel effect. The court's

failure to identify the black box phenomenon.

2.2 Societal Consequences: Digital Panopticism and Social Cooling

This simplification of the concept of black box merely to data processing is what causes a full industry to thrive in an unregulated space under the tag of ‘passing data through multiple layers,’ the layers of which there is no legal record. Digital twin is one of the many products that emerged as a result of this, which can simply be described as a digital voodoo doll.⁸ It is one of the most technically advanced situation technologies present today, and this situation also extends to our emotional state. This lack of data and tech oversight has resulted in ‘social cooling,’ a state where society has generalized and accepted corporations invading and exploiting their intimate data.⁹ The conformist behaviour is not a sign of evolution but rather devolution in the society that law must ensure doesn't happen. This is a state of digital panopticism that today threatens society's highly treasured idea of freedom extended into the cognitive sphere. The law serving its duty thus came up in the form of the EU AI Act, where the act started by acknowledging the previously dismissed AI systems performing emotional recognition in workplaces and educational institutions as ‘high risk’ and also safeguards individuals against social scoring by the state, and the panopticon is not just limited to corporations but also extends to the state.¹⁰ But this mere recognition doesn't certainly regulate the issue of innovations in the intimacy economy, outpacing the law still exists. The law still fails to regulate affective feedback loops. An example of this technology could be Replika: a chatbot that responds based on the emotional state of the user.¹¹ This shows that law acts in multiple phases, including legal recognition, legal provision, and legal regulation. Thus, the fundamental of the intimacy economy raises the issue of privacy in an extended sphere that still requires legal insights and legal regulation.

⁷ Emotional Perception AI Ltd v Comptroller-General of Patents, [2023] EWHC 2948 (Ch) (U.K.).

⁸ Verbeek, P. P. (2021). *Digital twins and moral responsibility: A new frontier for ethics of technology*. Philosophy & Technology, 34(3), 589–606.

⁹ Privacy International. (2018). Social cooling: How the hidden effects of surveillance restrict your freedom. <https://privacyinternational.org/news-analysis/2048/social-cooling>.

¹⁰ European Union. (2024). Artificial Intelligence Act. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

¹¹ Replika. (2024). AI companion who cares. <https://replika.ai/>

At the heart of this transformation lies the emojis, commonly defined as the small pictorial icons that function as shorthand for emotional expression in digital communication. Since their emergence in Japan in the late 1990s, when designer Shigetaka Kurita developed the first set of 176 icons for NTT DoCoMo's mobile messaging service,¹² emojis have become a universal language enabling billions of users to convey feelings instantly across platforms and cultures.

This began as a regional communication, and soon became a global phenomenon, particularly as mobile phones and internet communication spread rapidly in the early 2000s. By the 2010s, emojis had been standardised through the Unicode Consortium, ensuring that the same set of characters could be used across platforms, devices, and languages. Their number expanded dramatically; by 2024, Unicode included over 3,600 emojis, ranging from traditional smiley faces to symbols for cultural diversity, gender identities, and political issues.¹³

Emojis are not only tools of self-expression but are also forms of data. What was once an auxiliary

feature of mobile messaging has become a critical component of digital culture, raising the stakes for how emotions are represented and controlled in the global communication landscape.

3. A Case Study: The Journey of the Emoji from Symbol to Data Point

3.1 Cultural Shift and Legal Ambiguity

The widespread adoption of emojis reflects a broader cultural transition from text-based communication to image-driven and affect-rich expression. In messaging platforms, emojis allow brevity while still conveying tone. A thumbs-up emoji can replace a sentence of agreement, while a heart can convey affection without words. Yet their impact extends beyond casual conversation. The “thumbs-up” emoji was put to the test before the Madras High Court in *Director General, Railway Protection Force vs. Narendra Chauhan*¹⁴. An employee of the Central Railway Protection Special Force was dismissed from service for putting a thumbs-up symbol as a reply to a message in a WhatsApp group where a video of a constable murdering the Assistant Commandant was shared. This was construed by the Railway Force that the employee/petitioner was in moral support of the accused and was celebrating the murder. Disciplinary proceedings were conducted, and he was removed from service over his emoji remark. The Division Bench of the Madurai Bench of Madras High Court considered the thumbs up emoji and observed that thumbs up could also be construed to be an alternative for the word “OK”. Thus, the Hon'ble Court in this case held that sharing of the said emoji symbol did not

¹² Designerly. (n.d.). History of Emojis. <https://designerly.com/history-of-emojis/>

¹³ Unicode Consortium. (2024). Full emoji list, v15.1. <https://unicode.org/emoji/charts/full-emoji-list.html>

¹⁴ Director General, Railway Protection Force v. Narendra Chauhan, (Madras High Court)

amount to celebrating the murder, but an acknowledgement of the fact that he had seen the message and thus, directed the reinstatement of his service without back wages.¹⁵

3.2 The Monetization of Affect

Businesses, marketers, and even governments increasingly employ emojis in campaigns to connect with audiences, leveraging the emotional resonance of these symbols to humanise their messages. Twitter often uses emojis to signal friendliness and relatability, while non-profit organisations adopt emojis in digital advocacy campaigns to generate empathy and support. Social media platforms depend on engagement metrics to sustain their advertising-driven business models. Emojis, likes, shares, and reactions are key tools in this economy, serving as visible signals of user sentiment. Each emoji clicked is more than a personal expression. It is a data point that feeds algorithmic systems designed to maximise engagement. Facebook's 2016 introduction of “reactions” expanded the emotional repertoire available to users, from anger to love to sadness, providing the platform with deeper insight into the affective states of its audience. Similarly, YouTube's like/dislike buttons feed into recommendation systems, steering viewers toward content that maximises watch time and advertising revenue.¹⁶ This process has been further intensified by the rise of sentiment analysis. Using natural language processing and affective computing, AI systems can now detect emotional tones in text, emojis, images, and even speech.¹⁷ These techniques are employed not only by tech giants but also by political campaigns, law enforcement, and corporations seeking to anticipate consumer mood.

3.3 From Targeting to Manipulation

Among these platforms, TikTok stands out as a powerful example of emotional targeting. TikTok's

algorithm monitors micro-behaviours such as watch time, replays, pauses, and scrolling speed to infer users' emotional states. Investigations have shown that TikTok can identify vulnerabilities such as interest in depression-related content and then feed users streams of emotionally charged videos, often amplifying distress and deepening engagement. This design demonstrates how emotional data is not only captured but also actively manipulated to sustain attention and maximise profit. The Cambridge Analytica controversy¹⁸ profoundly impacted the world of data privacy, political campaigning, and social media. Internationally, too, the

¹⁵ Ganju, A., & Raj, H. R. V. (2024, August 30). *The legal impact of emojis: Interpretation and implications in courtrooms around the world*. Bar & Bench. <https://www.barandbench.com/view-point/legal-impact-of-emojis-interpretation-implications-courtrooms>

¹⁶ Babu, J., Joseph, D., & Sasi, R. (2023). Emotional AI and the rise of pseudo-intimacy: Are we trading authenticity and algorithmic affection? *Journal of Socio-Legal Research*. <https://www.jsr.org/hs/index.php/path/article/view/1373/634>

¹⁷ American Bar Association. (2024, September). *The price of emotion: Privacy, manipulation, and bias in emotional AI*. *Business Law Today*. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-september/price-emotion-privacy-manipulation-bias-emotional-ai/

¹⁸ Bipartisan Policy Center. (2024, March 18). The Cambridge Analytica controversy. <https://bipartisanpolicy.org/blog/cambridge-analytica-controversy/>

governments have enacted laws and regulations to protect consumers,¹⁹ and now the companies are required to adjust their practices in response. Facebook has also followed in the footsteps of protecting the rights of consumers, but it has come with a great sacrifice for the company. Some of these steps also hindered the ability of researchers to access data from the company for academic analysis, which could have some effects on transparency measures. In employment, companies such as HireVue use emotion-recognition AI to evaluate job candidates' micro-expressions, raising concerns about bias and fairness.²⁰ In retail and customer service, bots equipped with sentiment analysis tools adapt their responses to users' moods, embedding affective manipulation into consumer interactions

4. The Jurisprudential Bedrock: A History of Privacy and Autonomy

4.1 Natural Law Foundations

Emotions and individual autonomy have, for centuries, been integral to the legal discourse on human dignity. Adam Smith's *Theory of Moral Sentiments* (1759)²¹ framed emotions as moral and social regulators, anticipating later recognition of the individual's inner life as a site of legal protection. However, the historical notion of privacy and individual autonomy has been different from what can be interpreted in the contemporary era. Natural scholars such as Aquinas and John Locke attributed the protection of an individual's dignity as a moral duty. In the times of Aquinas and John Locke, the notion of privacy was tied only to the fact that human beings, as rational and moral beings, had certain inviolable liberties which could not be transgressed by the state or society. In this context, privacy was understood as safeguarding the integrity of conscience, individual freedom, and the capacity to make moral choices, rather than controlling data or information. While these early ideas laid the groundwork for modern dignity theories, their primary aim was to protect individuals from external pressures and

interference.

4.2 The Emergence of the 'Right to be Let Alone'

Over the passage of time, the concept of the right of privacy and individual autonomy broadened to include the concept of “The right to be let alone”. This concept was coined by Samuel D Warren and Louis Brandeis in the late 1890s²², representing a manifestation of “an inviolate personality”, a core of freedom and liberty from which the human being had to be free from intrusion. It justified the need to be left alone with the early developments in technology,

¹⁹ Article 19. (2024, February 22). Emotion recognition technology: A human rights analysis. <https://www.article19.org/emotion-recognition-technology-report/>

²⁰ British Psychological Society. (2024, April). Neurotechnology and emotional AI are creating a new kind of line manager. <https://www.bps.org.uk/psychologist/neurotechnology-and-emotional-ai-are-creating-new-kind-line-manager>

²¹ Smith, A. (2010). The Theory of Moral Sentiments (R. P. Hanley, Ed.). Penguin Publishing Group.

²² Warren, S. D., & Brandeis, L. (1890, December 15). The Right to Privacy. Harvard Law Review, 4. <https://www.brandeis.edu/library/archives/exhibits/ldb-100/career/privacy.shtml>

photography, and newspaperization. Subsequently, the invention of new technologies like telephones and the camera significantly exacerbated the need for legal recognition and institutions for protecting privacy and preventing identity theft.²³ Technology, whether contemporary or not, has always led to issues related to personal autonomy of the people. The concerns regarding state control over communications and individual privacy also surfaced. Laws like the Indian Telegraph Act, 1885²⁴, were introduced to regulate emerging forms of communication. Under Section 5(2), the government was empowered to intercept messages in the “interest of public safety” or to prevent “suspicion of an offense,” while Section 25 imposed penalties for unauthorized disclosure. These provisions highlight a fundamental tension: the need to safeguard private communications while simultaneously enabling state oversight, which is a tension that continues to shape contemporary debates around data privacy and individual autonomy. The act also reflects the spirit of the historical school of law, as advocated by Savigny, who asserted that law evolves in coherence with customs, practices, and needs of a society at a given time. The new realities of the 19th century demonstrated a need for legislation in the aspect of communication and surveillance. From a sociological perspective, as explained by Roscoe Pound, the Act tries to strike a balance between individual freedom (the right to private communication) and broader social interests like public safety and law enforcement. This enduring tension between individual liberty and state authority laid the groundwork for later judicial recognition of privacy as an essential component of human dignity.

4.3 20th-Century Developments and Their Realist Critique

The issue of individual autonomy, as in its current sense (which embodies a complex interplay of privacy, personality rights, industrial innovation, etc), could be seen as evolving from the 20th century, when the concepts of the internet, smart devices, etc. started entering the mainstream markets. Concerns about privacy, informed consent, and the scope of government surveillance emerged as the use of the internet and electronic communication became widespread in the bulk of society. These developments led to new laws and legal disputes. One of the groundbreaking pieces of legislation in this context was

the German Basic Law (Grundgesetz, 1949), which was one of the pioneering laws in protecting personality rights and dignity through Article 2(1): Right to free development of personality.²⁵ It was followed by the *Lüth Case* (1958), in which the German constitutional court laid down the concept of *Allgemeines Persönlichkeitsrecht* (General Personality Right). Similarly, in *Caroline von Monaco Cases* (1999 & 2004)²⁶, the European Court of Human Rights upheld strong privacy protections for public figures against intrusive press photography. Simultaneously, in India, through cases like *Kharak Singh V. State of UP*²⁷,

²³ LawBhoomi. (2023, August). Evolution and historical development of human rights. <https://lawbhoomi.com/evolution-and-historical-development-of-human-rights/>

²⁴ Government of India. (1885). The Indian Telegraph Act, 1885.

²⁵ Basic Law for the Federal Republic of Germany. (1949). Grundgesetz [German Basic Law], art. 2(1). Free development of personality. European Union Agency for Fundamental Rights. <https://fra.europa.eu/en/law-reference/basic-law-federal-republic-germany-1>

²⁶ Von Hannover v. Germany, no. 59320/00, 2004-VI ECHR 294

²⁷ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295, 1964 SCR (1) 332. Supreme Court of India.

the Supreme Court of India also laid down landmark judgments which progressed the recognition of privacy rights. In the international fora, the Universal Declaration of Human Rights (1948): Article 12²⁸, International Covenant on Civil and Political Rights (ICCPR, 1966): Article 17 emerged.²⁹

However, the issue lies in the question of whether such acts were sufficient or not. A realist scholar would partially support the legal advancements in this era, as the scholars argue that true law is made by jurists through judgments and precedents. Since the legislative measures taken to protect digital privacy remained scarce, the courts played a major role in interpreting the law as per the needs of society. However, the alignment of this practice to the realist school of law remains to be partial, since the Realist School would argue that the true sufficiency of these laws is determined not by their text, but by how courts and regulators apply them in practice. The actual implementation of these laws was scarred by various vulnerabilities to political and economic pressure. Surveillance programs, big tech data monopolies, and AI emotion tracking tools often transcend the barriers of legal protection, rendering the laws insufficient. From a sociological perspective, as advanced by Roscoe Pond, these judgments and statutes were attempts to balance competing social interests. The collective interest in security, commerce, and innovation had to be weighed against an individual's autonomy and right to self-expression. The insufficiency of these protections, however, lies in the fact that they often favored state or industrial interests over the safeguarding of emotional and psychological integrity.

Another legal issue concerning the legal developments of this time was the fragmented nature of laws and judgments, along with their being contradictory to some level. For example, the Indian Supreme Court in *Kharak Singh State of UP* (1963)³⁰, held that the violation of privacy did not infringe the fundamental rights of the individual under Articles 19 and 21. On the other hand, in the United Kingdom, the Data Protection Act of 1984³¹ showed a contradictory progressive stance. This issue lies in the lack of a global binding law on data privacy. However, the enforceability of international laws has always been a matter of contention in the legal community. Hence, the consent-based nature of International Law has further amplified the vulnerability of data privacy laws.

5. The Contemporary Legal Landscape: Gaps, Rights, and the Path Forward

5.1 Fragmented Frameworks and the Challenge of Consent

²⁸ United Nations. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²⁹ United Nations. (1966). International Covenant on Civil and Political Rights. United Nations, Treaty Series, 999

U.N.T.S. 171. <https://www.ohchr.org/en/instruments->

³⁰ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295, 1964 SCR (1) 332. Supreme Court of India.

³¹ Data Protection Act 1984, c. 35. (UK). Retrieved from <https://www.legislation.gov.uk/ukpga/1984/35/contents/enacted>

Issues of consent and privacy are central. Most users are unaware that their emotional reactions are systematically harvested, analysed, and sold. Even when consent is formally obtained through terms and conditions, it is often neither informed nor meaningful. This undermines autonomy and creates power asymmetries between individuals and corporations. Internationally, legal frameworks remain fragmented. GDPR (Article 9)³² explicitly protects sensitive data, including biometric data used for uniquely identifying a natural person. India's DPDP Act (2023)³³ similarly focuses on personal and sensitive personal data, leaving gaps in regulating affective information. Broader digital rights frameworks, such as the UN's discussions on the right to privacy in the digital age, have yet to fully address the commodification of emotion³⁴.

In India, while emojis have not yet been at the center of major court cases, their use in legal evidence is on the rise as digital communication becomes more prevalent in everyday life. As more legal disputes arise from online interactions, the Indian judiciary will likely face similar challenges in interpreting emojis within the context of legal evidence. However, there is still a notable lack of direct legal precedent where emojis themselves have been extensively examined. In cases of online harassment and defamation in India, digital evidence such as WhatsApp messages, emails, and social media posts has already been introduced in court. Emojis, while present in these digital communications, have not yet been the primary focus of interpretation. However, considering the growing role of emojis in conveying threats, harassment, or defamation on social media platforms like Twitter and Instagram, Indian courts will soon need to address how to interpret these symbols. In *Shreya Singhal v. Union of India* (2015)³⁵, the Supreme Court of India dealt with the issue of online speech and the constitutionality of Section 66A of the Information Technology Act, which criminalized certain types of offensive online communication. While this case did not involve emojis, it highlights the broader legal challenges India faces in regulating digital communication and determining what constitutes illegal speech in online platforms.

5.2 The Inadequacy of Positivism and the Rise of Personality Rights

Finally, in the contemporary world, the problems of data privacy and individual autonomy have become more complex than ever with the advent of AI, blockchain technology, and machine learning. By now, although most legal systems recognize the digital nature of protection of privacy, the actual implementation of it remains conflicted. The will of the society is fragmented, with the essence of conflict being: Whether individual freedoms, or innovation and commerce, should be given primacy. Data is collected not just from the active participation of users on online platforms, but also from

their intimate actions. In the current era, there are multiple

³² General Data Protection Regulation (GDPR), Regulation (EU) 2016/679, Art. 9. <https://gdpr-info.eu/art-9-gdpr/>

³³ The Digital Personal Data Protection Act, 2023, No. 22 of 2023.

<https://www.meity.gov.in/static/uploads/2024/06/2b1f0e9f04e6fb4f8fef35e82c42aa5.pdf>

³⁴ United Nations Office of the High Commissioner for Human Rights. (n.d.). International standards on the right to privacy. <https://www.ohchr.org/en/special-procedures/sr-privacy/international-standards>

³⁵ Shreya Singhal v. Union of India, (2015) 5 SCC 1. <https://indiankanoon.org/doc/150548548/>

legislations and judgements concerning the protection of the right to privacy, such as the *Justice K.S. Puttaswamy (Retd) vs Union of India* case³⁶, Information Technology Act, 2000³⁷, and Digital Personal Data Protection Act, 2023³⁸ in India, General Data Protection Regulation (GDPR, 2018)³⁹, EU AI Act (2024) in the European Union⁴⁰, Data Protection Act, 2018⁴¹ in the United Kingdom, and so on. However, the issue lies not in the creation of laws but in their effective implementation. With the digital space ever-evolving, a positivist approach will not be effective; society must take a realist approach to address the dynamic nature of legal disputes.

A new segment of laws, Personality Rights, has become of pivotal importance in the past decades. Personality Rights refer to the Legal rights safeguarding a person's name, image, likeness, signature, and voice from unauthorised commercial exploitation. Famous Indian celebrities in cases such as *R. Rajagopal v. State of Tamil Nadu* (1994)⁴², *Rajinikanth case* (Madras HC, 2015)⁴³, *Anil Kapoor v. Various Entities* (Delhi HC, 2023)⁴⁴, *Jackie Shroff case* (Delhi HC, 2024)⁴⁵, and *Arijit Singh v. Codible Ventures* (Bombay HC, 2024)⁴⁶, wherein the issue became the overreach of unauthorized commercialisation and misuse of celebrity attributes. This trajectory highlights a deeper jurisprudential question: can human traits themselves be subject to Intellectual Property Rights (IPR)? The discourse concerning this question highlights the conflict between innovation through progressive use of AI and individual freedoms ensured in Articles 21 and 19.

6. Conclusion: A Call for a Nuanced Jurisprudential Approach

Balancing innovation with the preservation of personality rights calls for a jurisprudentially nuanced approach that draws from natural-law doctrines of dignity, incorporates sociological balancing of competing interests, and embeds realist mechanisms of accountability. In the absence of such safeguards, technological progress risks normalising the commodification of emotions, eroding the very autonomy and dignity that the law has historically sought to secure.

³⁶ Justice K.S. Puttaswamy (Retd) v. Union of India, (2017) 10 SCC 1. <https://indiankanoon.org/doc/150105378/>

³⁷ Information Technology Act, 2000. <https://www.indiacode.nic.in/handle/123456789/1999>

³⁸ The Digital Personal Data Protection Act, 2023, No. 22 of 2023.

<https://www.meity.gov.in/static/uploads/2024/06/2b1f0e9f04e6fb4f8fef35e82c42aa5.pdf>

³⁹ General Data Protection Regulation (GDPR), Regulation (EU) 2016/679, Art. 9. <https://gdpr-info.eu/art-9-gdpr/>

⁴⁰ European Commission. (2024). Proposal for the EU Artificial Intelligence Act.

<https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence>

⁴¹ Data Protection Act, 2018. <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

⁴² R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

⁴³ Rajinikanth Case, Madras High Court (2015). <https://www.barandbench.com/>

⁴⁴ Anil Kapoor v. Various Entities, Delhi High Court (2023).

⁴⁵ Jackie Shroff Case, Delhi High Court (2024).

⁴⁶ Arijit Singh v. Codible Ventures, Bombay High Court (2024).

1. Technological and Legal Gaps: Findings

- The intimacy economy takes advantage of the lack of legal oversight on black-box AI technologies that assess emotional states.

- Social cooling and digital ponopticism reveal societal effects where the acceptance of constant monitoring restricts personal freedom and choice.

2. Cultural and Commercial Implications:

- Emojis, which were earlier considered as an expression of one's feelings, are now used as data tools in the capitalist AI market, where emojis are used as a means to commercialise emotions, undermining the sanctity of human intimacy

- Cases like Director General, Railway Protection Force v. Narendra Chauhan indicate that courts are beginning to recognize emojis in legal matters. However, broader guidelines for interpreting them have not been decided.

- Companies use emotional data to influence behaviour in job settings, marketing, and social media, raising ethical and legal issues. Hence, Emotional data is now used by companies to influence human behaviour at multiple platforms like marketing, social media, job settings, etc. This raises significant legal and ethical issues

3. Fragmentation and Limitations of Contemporary Law:

- Current legal systems on privacy include India's DPDP Act (2023), GDPR (2018), EU AI Act (2024), and UK Data Protection Act (2018), which provide protection to the people, but only to a limited extent. They fail to address the ever-evolving nature of digital markets and AI, calling for a more realistic and dynamic nature of regulations.

- Consent-based approaches fall short, since users often give uninformed consent to companies for collecting emotional data.

4. Personality Rights and Commercial Exploitation:

- Court rulings in India, including R. Rajagopal v. State of Tamil Nadu (1994) and cases involving celebrities like Rajinikanth, Anil Kapoor, Jackie Shroff, and Arijit Singh, reflect newfound recognition of personality rights in the contemporary era.

- These cases showcase the conflict between technological advancement, intellectual property claims over human characteristics, and the need to protect individual dignity.

5. Need for a Nuanced Jurisprudential Approach:

- Enough regulation must include natural law rules regarding dignity, take account of balancing various interests, and have a realistic perspective on accountability.

- Without this, commercialization of emotional data may erode fundamental human rights and individual autonomy in our digital age.

Conclusion

The process of manipulating emotional currency indicates a key milestone in how humans relate to machines, markets, and even to themselves. Emotions that once blossomed quietly in our depths are now scrutinised, assessed, and traded. Affective AI, mood-detecting wearables, and behavioural tracking tools are gradually dissolving the line between consent and surveillance, expression and extraction.

Legal reforms like GDPR, India's DPDP Act, and the EU AI Act are significant measures, but they only approach the surface details. They regulate data, not inner life. They protect personal information but not personal experience. The true challenge lies in acknowledging the fact that emotions are not just signals but parts of the self, which, once taken, cannot truly be returned.

Law must be shaped from merely regulating transactions to protecting identity, and to truly achieve this, it must take inspiration from natural law's emphasis on inherent dignity, sociological emphasis on public balance, and legal realism's insistence on enforceability. Stronger consent mechanisms and explicit recognition of emotional data as sensitive, combined with international cooperation, are the need of the hour.

If society fails to draw boundaries now, Human emotions may soon become the most profitable and also the most exploited commodity on earth. The future of dignity depends on how boldly the law responds today.

Citations

1. Ambedkar, B. R. (n.d.). The Constitution of India. Ministry of Law and Justice, Government of India.
2. American Bar Association. (2024, September). The price of emotion: Privacy, manipulation, and bias in emotional AI. Business Law Today. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-september-price-emotion-privacy-manipulation-bias-emotional-ai/
3. Anil Kapoor v. Various Entities, Delhi High Court (2023).
4. Article 19. (2024, February 22). Emotion recognition technology: A human rights analysis. <https://www.article19.org/emotion-recognition-technology-report/>
5. Arijit Singh v. Codible Ventures, Bombay High Court (2024).
6. Babu, J., Joseph, D., & Sasi, R. (2023). Emotional AI and the rise of pseudo-intimacy: Are we trading authenticity and algorithmic affection? Journal of Socio-Legal Research. <https://www.jsr.org/hs/index.php/path/article/view/1373/634>
7. Bar & Bench. (2024, August 30). The legal impact of emojis: Interpretation and implications in courtrooms around the world. <https://www.barandbench.com/view-point/legal-impact-of-emojis-interpretation-implications-courtrooms>
8. Basic Law for the Federal Republic of Germany. (1949). Grundgesetz [German Basic Law], art. 2(1), Free development of personality. European Union Agency for Fundamental Rights. <https://fra.europa.eu/en/law-reference/basic-law-federal-republic-germany-1>
9. Bipartisan Policy Center. (2024, March 18). The Cambridge Analytica controversy. <https://bipartisanpolicy.org/blog/cambridge-analytica-controversy/>
10. British Psychological Society. (2024, April). Neurotechnology and emotional AI are creating a new kind of line manager. The Psychologist. <https://www.bps.org.uk/psychologist/neurotechnology-and-emotional-ai-are-creating-new-kind-line-manager>
11. Designerly. (n.d.). History of emojis. <https://designerly.com/history-of-emojis/>
12. Data Protection Act 1984, c. 35 (UK). <https://www.legislation.gov.uk/ukpga/1984/35/contents/enacted>
13. Data Protection Act, 2018. <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted> Digital Personal Data Protection Act, 2023, No. 22 of 2023. <https://www.meity.gov.in/static/uploads/2024/06/2bflf0e9f04e6fb4f8fef35e82c42aa5.pdf> Director General, Railway Protection Force v. Narendra Chauhan, Madras High Court.
14. Emotional Perception AI Ltd v Comptroller-General of Patents, [2023] EWHC 2948 (Ch) (UK).

- European Commission. (2024). Proposal for the EU Artificial Intelligence Act. <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence> European Union. (2024). Artificial Intelligence Act. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>
15. General Data Protection Regulation (GDPR), Regulation (EU) 2016/679, Art. 9. <https://gdpr-info.eu/art-9-gdpr/>
16. Ganju, A., & Raj, H. R. V. (2024, August 30). The legal impact of emojis: Interpretation and implications in courtrooms around the world. Bar & Bench. <https://www.barandbench.com/view-point/legal-impact-of-emojis-interpretation-implications-courtrooms>
17. Government of India. (1885). The Indian Telegraph Act, 1885.
18. Information Technology Act, 2000. <https://www.indiacode.nic.in/handle/123456789/1999> Jackie Shroff Case, Delhi High Court (2024).
19. Justice K.S. Puttaswamy (Retd) v. Union of India, (2017) 10 SCC 1. <https://indiankanoon.org/doc/150105378/>
20. Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295, 1964 SCR (1) 332. Supreme Court of India.
21. LawBhoomi. (2023, August). Evolution and historical development of human rights. <https://lawbhoomi.com/evolution-and-historical-development-of-human-rights/>
22. Rajinikanth Case, Madras High Court (2015). <https://www.barandbench.com/>
23. R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632. Replika. (2024). AI companion who cares. <https://replika.ai/>
24. Shreya Singhal v. Union of India, (2015) 5 SCC 1. <https://indiankanoon.org/doc/150548548/> Smith, A. (2010). The Theory of Moral Sentiments (R. P. Hanley, Ed.). Penguin Publishing Group.
25. The Theory of Moral Sentiments. https://www.researchgate.net/publication/318677047_The_Reflection_on_Western_Evolution_of_the_Right_of_Personality
26. [the Right of Personality](https://www.researchgate.net/publication/318677047_The_Reflection_on_Western_Evolution_of_the_Right_of_Personality)
27. United Nations. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
28. United Nations. (1966). International Covenant on Civil and Political Rights. United Nations, Treaty Series, 999 U.N.T.S. 171. <https://www.ohchr.org/en/instruments->
29. United Nations Office of the High Commissioner for Human Rights. (n.d.). International standards on the right to privacy. <https://www.ohchr.org/en/special-procedures/sr-privacy/international-standards>
30. Unicode Consortium. (2024). Full emoji list, v15.1. <https://unicode.org/emoji/charts/full-emoji-list.html>
31. Von Hannover v. Germany, no. 59320/00, 2004-VI ECHR 294
32. Warren, S. D., & Brandeis, L. (1890, December 15). The right to privacy. Harvard Law Review,
33. 4. <https://www.brandeis.edu/library/archives/exhibits/ldb-100/career/privacy.shtm>
34. Verbeek, P. P. (2021). Digital twins and moral responsibility: A new frontier for ethics of technology. Philosophy & Technology, 34(3), 589–606.
35. International Association of Privacy Professionals. (2023, December 8). Data protection and privacy laws now in effect in 144 countries. <https://iapp.org/news/a/data-protection-and-privacy-laws->

- [now-in-effect-in-144-countries/](#) Privacy International. (2018). Social cooling: How the hidden effects of surveillance restrict your freedom. <https://privacyinternational.org/news-analysis/2048/social-cooling>
36. LW.com. (2023). India's Digital Personal Data Protection Act, 2023 vs. the GDPR: A comparison. Latham & Watkins. <https://www.lw.com/admin/upload/SiteAttachments/Indias-Digital-Personal-Data-Protection-Act-2023-vs-the-GDPR-A-Comparison.pdf>
37. ArXiv. (2025). Emotional AI and sentiment tracking: Algorithmic manipulation in digital platforms. <https://arxiv.org/pdf/2506.12437>
38. Brill. (n.d.). Emotion recognition technology and international human rights law. Yearbook of Global Observations, 5(2), 271–304 https://brill.com/view/journals/yogo/5/2/article-p271_004.xml?ebody=Abstract%2FExcerpt#access-options2
39. Blom, J., & Patel, S. (2016). Face and emotion recognition on commercial property under EU data protection law. ResearchGate. https://www.researchgate.net/publication/303785161_Face_and_Emotion_Recognition_on_Commercial_Property_under_EU_Data_Protection_Law
40. Singh, R., & Kumar, A. (2022). Emotional AI: Legal and ethical challenges. ResearchGate. https://www.researchgate.net/publication/360210704_Emotional_AI_Legal_and_ethical_challenges
41. Harvard Business School Faculty. (n.d.). Emotional AI in practice: Implications for privacy and governance. Harvard Business School. <https://www.hbs.edu/faculty/Pages/item.aspx?num=56791>
42. Piiano. (n.d.). History of privacy and future predictions. <https://www.piiano.com/blog/history-of-privacy-and-future-predictions>