



PUBLICITY RIGHTS AND IT'S INCREASING IMPORTANCE

*By Harshit Singh and Ahmad Sulaiman
From Dr. Ram Manohar Lohiya National
Law University, Lucknow*

ABSTRACT

Media: Be it print, digital or social has experienced a massive boom in its usage and dissemination. The questions of property rights on the media; therefore, come to the forefront of today's India. What happens to a person if he is shown on a television advertisement without his consent or any documentary without his permission. What happens if a snippet of my conversation with you is recorded and casted in an advertisement? In today's vibrant social media, what happens if a screenshot of my conversation or a webinar; is turned into a meme, and gets massive popularity? This is where an individual's personality rights come into play. In this paper, we would like to take up this issue and look into the probable solutions to some of the issues of personality rights and how they are being enforced. We have tried to address the Personality Rights and their protection through a two-fold approach. Through the traditional approach of Intellectual Property and through the not so recent Judgment of KS Puttaswamy and the implications of Right to Privacy being a fundamental right. Individuals in India find themselves in such a situation where their right of publicity gets violated and due to lack of codified provisions it sometimes becomes difficult to come to a conclusion that their

right has been violated. Though we may find certain provisions relating to it in Intellectual property rights but upon deeper observation we may find that the provisions are just related to it and are not explicit provisions which exclusively talk about individual's right of publicity.

INTRODUCTION

On 3rd of July, 2020 an Indian-Telugu Film was released titled Bahanumathi & Ramakrishna. This particular film was advertised as Bhanumathi Ramakrishna initially but underwent a title change after the son of the prominent and veteran Telugu actress took offence to the name of his mother being used without his consent, in the film. The High Court of Madras ordered the makers to undergo a title change by inserting ampersand (&) between the name and a prominent disclaimer at the beginning of the film.¹

Each and every person of the society owns certain Intellectual Property Rights over his work, body, face, expression even voice. Let alone the privacy of the individual which is now guaranteed by the Indian constitution vide KS Puttaswamy Judgment². Though every person under the constitution of India has been granted right to privacy the dilemma of the celebrities comes to the fore. On the other hand, we also have the Right of expression and free speech under Article 19 of the Indian Constitution but it has to be balanced with the Right to Privacy of the individual. On 29th September 2019, the Delhi High Court in the case of Swami

¹ <https://www.indiatoday.in/movies/regional-cinema/story/bhanumathi-ramakrishna-undergoes->

[title-change-after-veteran-actress-s-son-files-case-1696180-2020-07-02](https://www.indiatoday.in/movies/regional-cinema/story/bhanumathi-ramakrishna-undergoes-title-change-after-veteran-actress-s-son-files-case-1696180-2020-07-02) (accessed on 07-09-2020)

² K.S.Puttaswamy v Union of India, (2017) 10 SCC 1.



Ramdev vs Juggernaut Books Pvt. Ltd.; upheld the right of the petitioner to his Privacy and dignity at a higher pedestal than the Right of the author and publisher vis a vis, Right of Expression under Article 19A of the constitution.³ The scope of right to privacy dwindles with a person's increase in popularity and public recognition.⁴

In order to protect their privacy and other rights they can claim publicity rights. Further what about us what if someone use our name or other personality traits for his own commercial benefit. Not only celebrities or public figures but a common man is also covered under its ambit because it protects a person name and personality from commercial exploitation.

This concept has emerged from western countries more specifically, it has emerged from the United States. It can be seen as early as in 1890 when Louis Brandeis⁵ and Samuel Warren⁶ wrote their early articles dealing another aspect of privacy rights. Further there are various landmark judgements delivered by the various courts of United States which laid down the principles of this right and finally sought the emergence of 'right of publicity' or 'publicity rights'. In United Kingdom, unlike US there is no clear concept of publicity rights there these kinds of cases are considered as a part of intellectual property rights and are dealt with their existing laws. Moreover, in United Kingdom the Law of Torts also plays a prominent role in addressing these rights.

³ Swami Ramdev v. Juggernaut Books Pvt. Lt ..., 2018 SCC OnLine Del 11549

⁴ Kalyan C. Kankanala; Sandeep Hegde M., Publicity Rights in India, 39 N. Ky. L. Rev. 247, 266 (2012)

⁵ Brandeis, L. D. (1913). What Publicity Can Do. [http://3197d6d14b5f19f2f440-](http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcd)

[5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcd](http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcd)

The concept of publicity rights has not completely emerged in India it is still incomplete like an unfinished story. The story of India, like the UK, does not have specific codified laws for protection of individual's right of publicity and the Indian Courts are still evolving these rights. Though as discussed earlier its various perspectives are present in different acts.

The paper has discussed the concept of publicity rights in various aspects. Initially paper deals with the emergence of concept of Publicity Rights in the United States. Secondly the paper deals with the concept of publicity rights vis a vis right to privacy in India. Further, the paper deals with the position of concept in India and how the concept has taken shape throughout the years with the help of various judgements, bills and in pursuance of this various laws which deals with the concept are discussed. The last part contains conclusion and a discussion on which type of model can be adopted which would be better than existing models in dealing with publicity rights.

THE JOURNEY IN UNITED STATES

The question that should rise here, is Why USA? More or less all the major common law countries have evolved this 'Publicity Rights' from the Intellectual Property Law. The terms Celebrity Rights, Publicity Rights and Personality Rights are more or less understood as the same thing. In Indian

[n.com/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf](http://www.supremoamicus.org/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf)

⁶ Warren, S. D., & Brandeis, L. D. (1890). The right to privacy. Harvard law review, 193-220. https://www.jstor.org/stable/1321160?seq=1#metadata_a_info_tab_contents



context, the focus is usually on Celebrity Rights and Personality Rights in most of the judgments of the various High Courts. A single term referring to these has not evolved yet.

For the first time Right of publicity was talked of when Louis Brandeis and Samuel Warren wrote articles on privacy with a new perspective in 1890⁷. This new perspective fructified into an altogether new approach on Personality Rights, centered on the Right to Privacy of the individual.

In the American context, the courts there evolved these Personality rights through the Privacy Rights of individuals and the argument that the Privacy of an individual should be respected.

Therefore, the Right of Publicity may be defined as the right to prohibit the commercial exploitation of one's identity and identity includes all the personality traits of a person such as his name, voice and other skills. In United States Publicity rights are, state-based rights and therefore each state can determine the limits of recognition of the Right of Publicity. For example, according to Indiana's statute, the Right of Publicity refers to the property interest inherent in an individual's "name, voice, signature, photograph, image, likeness, distinctive appearance, gestures or mannerisms."⁸

Clearly, a more expansive view has been taken by the jurisdiction of Indiana for dealing with right of publicity though the views differ from state to state in the United States. By getting familiar with publicity

rights we may seek that these rights are available to every individual but looking into it more practically we will find that these are very often claimed by celebrities because they live quite closer to the camera and more importantly media.

Economic Incentive Theory:

The earliest instance of incentivizing the right of publicity in the case of Zacchini v. Scripps-Howard Broadcasting⁹ in 1977. The facts of the case were Zacchini was a performer and used to perform human cannonball act at various venues which charged the viewing audience. While performing an act on August 30 of the year 1972 at the Geauga County Fair in Burton, Ohio he noticed a reporter who had brought a recording camera and he was from Scripps-Howard Broadcasting. He (reporter) was asked by Zacchini to not to film the act. The reporter did not film the act on that day, but the reporter filmed it the following day on 31st August. The footage which was taken by the reporter was about fifteen seconds long and was sufficient to capture Zacchini's entire act. Later Zacchini filed a suit against Scripps Howard broadcasting in Ohio state court alleging that the film recorded by the reporter was unlawful and misappropriation of his property. The court gave decision in Zacchini's favor that press cannot show entire act without compensating him. The case further moved to Supreme Court of Ohio where the court reversed the judgement in the favor of Scripps Howard Broadcasting and the court stated that-

'A TV station has a privilege to report in its newscasts matters of legitimate public

⁷ Ibid.

⁸ Jonathan Faber, Adapted from Indiana: A Celebrity Friendly Jurisdiction, <http://rightofpublicity.com/brief-history-of-rop>.

⁹ Zacchini v. Scripps-Howard Broadcasting, 433 U.S. 562, 576 (1977).



interest which would otherwise be protected by an individual's right of publicity, unless the actual intent of the TV station was to appropriate the benefit of the publicity for some nonprivileged private use, or unless the actual intent was to injure the individual.¹⁰ The case further reached the US Supreme Court. *Zacchini's Right of Publicity* where the court upheld *Zacchini's* Publicity Rights and rejected the Broadcasting Company's defenses.

In so doing, the Court noted that "the decision was not merely to ensure compensation for the performer; rather, it was to provide an economic incentive for him to make the investment required to produce a performance of interest to the public".

Can a person's Voice sample be protected as Personality Right?

Yes, In *Midler v. Ford Motor Co.*¹¹ also referred to as impersonator's case where Ms. Bette Milder, a famous American singer was to lend her voice for the promotional campaign introduced by Ford Motor Co.. On a later date, she refused to lend her voice. So, the motor company found an impersonator who could duplicate her voice. The court gave judgement that "the appellate court ruled that the voice of someone famous as a singer is distinctive to their person and image and therefore, as a part of their identity, it is unlawful to imitate their voice without express consent and approval. The appellate court reversed the district court's decision and ruled in favor of Midler, indicating her voice was protected against unauthorized use."

¹⁰ Ibid

¹¹ *Midler v. Ford Motor Co*, 849 F.2d 460.

¹² *Hoffman v. Capital Cities/ABC, Inc*, 33 F.Supp. 2d 867 (C.D. Cal. 1999).

Protection of the Images:

In *Hoffman v. Capital Cities/ABC, Inc.*¹² a magazine created a feature photo using a variety of celebrity images from famous movie still shots without obtaining any authority from the celebrities. The images depicted in magazine were digitally manipulated so that it appeared celebrities were wearing designer clothing designed by their sponsor. In this case Dustin Hoffman's character in "Tootsie" was dressed in a Richard Tyler's gown and Ralph Lauren heels. Though Hoffman did not endorse the article or the designers in which he was depicted wearing designer dresses, Hoffman was awarded \$3,270,000 for the violation of his publicity rights.

In another case *White v. Samsung Electronics America, Inc.*¹³ An advertisement was run by Samsung electronics which portrayed Plaintiff for the purpose of selling Samsung's VCR. Plaintiff sued Defendant for appropriation. The court held that the usage or portrayal of plaintiff for the purpose of selling VCR was an infringement of plaintiff's publicity right because Samsung had deliberately used the image and popularity of White and because White was readily identifiable from the context of the use.

In view of the above-mentioned cases we can say that a person's right of publicity is infringed when someone tries to use a person's identity for commercial purposes either for advertising or a reporter recording for a news channel or there is infringement of

¹³ *White v Samsung Electronics America*, 971 F.2d 1395.



someone's privacy. There are various things which are protected under this right such as a person's voice, her appearance, her act, etc. because these are the skills possessed by her and her only, she is entitled for the rightful use of these things. If someone tries to use such things without the consent of the person then he is said to have infringed a person's right of publicity. If a person's voice act or any other skills are used, then the person using those skills for his own benefits is liable to pay for the same.

RIGHT TO PRIVACY AND ITS RELATION WITH PUBLICITY RIGHTS

As we have tried to illustrate above, the approach that Right to Privacy covers a persons, Personality Rights since they are of the nature of work inherently private and exclusive to the individual concerned; we should also look upon the Indian position on Privacy. The ambit of Article 21 of the constitution of India which states that "No person shall be deprived of his rights and personal liberty except according to procedure established by law." broadly covers that Publicity rights can also be protected under the Right to Privacy derived from the aforementioned Article.

Now dealing with concept of privacy, privacy can be regarded as "A person's right to control access to his or her personal information". According to Black's Law Dictionary right to privacy can be understood as "right to be let alone; the right of a person to be free from unwarranted publicity; and

the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned."¹⁴

For the first time the issue of privacy came into lime light in Maneka Gandhi vs Union of India¹⁵ where Supreme Court of India in seven judge bench gave the verdict that "there are various rights covered under 'Personal Liberty' of article 21 of the constitution of India and some even have the status of fundamental right and are given additional protection under article 19 of the constitution. Also the concept of triple test was laid down where it was held that a law interfering with personal liberty of a person must prescribe a procedure and the procedure laid down by law must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and it must withstand test of Article 14." Further the third condition of test stated that any law interfering with Personal Liberty must just and fair and should not be arbitrary.

The Draft Privacy Bill¹⁶ of 2011 provided citizens right to privacy for regulation of the collection, maintenance, use, and dissemination of their personal information and provide for penalization if such a right has been violated. Also, the privacy protection bill of 2013 lays down various conditions with respect to protection of individual's privacy further lays down conditions for protection of his personal. Delhi high court in Phoolan Devi v. Shekhar Kapoor and Others .,¹⁷ a recent judgement

¹⁴ Privacy Right of, page1358, Black's law dictionary

¹⁵ Maneka Gandhi vs Union of India, 1978 AIR 597,

¹⁶ The Privacy Bill; Third Working Draft; dated 19-04-2011 (accessed on: 09/07/2020)

¹⁷ Phoolan Devi v. Shekhar Kapoor and Others, 1995(32) DRJ142.



dealing with aspects of personal life of celebrities ruled that ‘though a person is a celebrity or a public figure privacy must prevail over coverage of his aspects of personal life and held that the right to privacy must encompass and protect the personal intimacies of the home, family, marriage, motherhood, procreation and child rearing, irrespective of whether the person is a public figure’.

THE INDIAN POSITION

As discussed earlier there are no specific legislation or acts for publicity rights in India but there are various other Laws which cover some aspect of publicity rights. The Copyright Act of 1957¹⁸, contains performer’s¹⁹ right though act mainly provides the protection of acts performed by performer²⁰ from further copying but it also states that his act must not be recorded and further produced without his consent.

The Trade Marks Act²¹ in its section 2(1)(m) defines ‘marks’ which include names within its ambit meaning thereby the act has made a provision for protecting one’s name from

commercial exploitation but the act has not made any special provisions for right of publicity or publicity rights.

Intellectual Property as a means to Publicity Right:

When it comes to provisions related to publicity rights, but not explicit provisions which exclusively talk about individual’s right of publicity. Further we find that the copyright act only talks about individuals who are performers or a person who has done some work based on his knowledge and skills. Here these individuals can be vaguely referred as celebrities and public figures.

So basically if we look at this particular section in the context of an individual’s right of publicity or day to day activities where individual involved is an artist or a public figure and his right of publicity is under question we may find that a person who is an artist or a public figure who might have given lecture, speech or a sermon all of them are protected under Indian Copyright Act.

The copyright act in its section 2(m)²² recognizes performer’s right and it also protects lectures dramatic, works etc.,

¹⁸ The Copyright Act, 1957, No.38, Act of Parliament, 1957.

¹⁹ Ibid, S.2(q) “performance”, in relation to performer’s right, means any visual or acoustic presentation made live by one or more performers;

²⁰ Id, S.2 (qq) “performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

²¹ Trade Marks Act, 1999, No.47, Act of Parliament, 1999.

²² S.2(m) “infringing copy” means, —”

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;



Though if we look into main purpose of copyright act it prohibits one from presenting other individual's work as his own work. But Indian copyright act also protects and individual's work or performance form being presented with any form of distortion, manipulation, mutilation or with any form of distortion.

From here we can infer that a performer or any person who has performed or presented any sort of work in public and for the most part the work is based upon an individual's knowledge and skills then such work cannot be reproduced without the individual's consent and if produced with any form of distortion or manipulation then it would be violative of performer's moral right and to an extent it can be said that it would be violative individual's right of publicity in a situation where his work hi reproduced with any sort of distortion without the individual's consent.

In reference to The Copyright Act, 1957:

There have been various instances where personal life of various people who were famous in their particular field of work formed part of the script. Which eventually was to be projected on the screen. In today's terminology the word is referred to as 'Biopic'. But the most prominent question which arises out of such depiction is whether an individual has a right over his personal life an whether he can claim copyright over it. There have been two important instances in the past relating to this issue. In given facts and circumstances of a particular case if the court allowed the production of a tv serial where the reputation of a particular individual was not at stake²³. If we look into another case²⁴(discussed in detail later)

²³ A. Balakrishnan vs R. Kanagavel Kamaraj And Another, 1999 (3) CTC 247.

where the individual claimed that the movie depicts her past and she had left all the activities of past and is leading a fresh life where she is married and has a political career and where such depiction can affect both. The court in this particular case held that the issue should be examined all the implications made must be scrutinized before the release of films.

In reference to The trade Marks Act, 1999:

Apart from copyright act Trademarks act 1999 also has relevant provisions for individuals to protect their name from being falsely used. Section 14 of the Trademark Acts provide that Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trademark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the registrar with such consent. Thus, within a basic framework, celebrities can protect their name and image in India and this right can be claimed by their legal heirs, when the reputation and image of the deceased is at stake.

In spite of having these Acts which implicitly grant certain property rights to the performers and celebrities; a substantive amount of people are unaware of these rights. Moreover, these legislations only restrict a

²⁴ Phoolan Devi v Shekhar Kapoor and Others, 1995(32)DRJI42.



person from copying one's name or his act without the consent of the respective person whose name or act he is using. This is only one aspect of the personality rights in India. What we have come to understand after looking into the concept and its development in the United States is that not only these aspects are present but aspects related to infringement of one's privacy further the ambit of personality rights.

The courts in India have stuck to the position of granting Publicity Rights to only Celebrities; a pretty basic concept in development of these Rights. On the other hand, the American courts have started recognizing an individual (non-celebrities') publicity in Rights. This maybe because of the comparatively developed Jurisprudence of Privacy Right in American diaspora.

Post the nine-Judge bench Judgment of the Hon'ble Supreme Court in Justice K.S. Puttaswamy vs. Union of India²⁵, Right to Privacy has been recognized as a Fundamental Right under the ambit of Right to Life accorded through Article 21²⁶ of the Indian Constitution. Consequently, the ambit of Publicity Rights in India is extended to be protected under the Right to Privacy of an individual. Maybe at a later date, we may see courts protecting the publicity rights through the Privacy rights.

Celebrity's Personality Right

A celebrity is defined as a famous or a well-known person. A "celebrity" is merely a

person who "many" people talk about or know about.

The Hon'ble Delhi High Court has observed that "When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity."²⁷

In the above case Titan had contracted Mr. Amitabh Bachchan and Ms. Jaya Bachchan for the purposes of advertising Tanishq's diamond line, 'True Diamonds'. The photographs of the couple were edited and used to advertise Ramkumar Jewellers without consent. The Court held that the violating hoardings be removed and misappropriation of the Bachchans' personality rights be stopped.

The Hon'ble Madras High Court has further laid down the following conditions:-

"Identifiability : The Celebrity must be identifiable from defendant's unauthorized use. Infringement of right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable. The right of publicity extends beyond the traditional limits of false advertising laws. ... A celebrity must be identifiable from defendant's unauthorized use. Infringement of right of publicity requires no proof of falsity, confusion, or

²⁵ ibid

²⁶ Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law (Article 21 in The Constitution Of India 1949)

²⁷ Titan Industries Limited v. Ramkumar Jewellers, MANU/DE/2902/2012 : 2012 (50) PTC 486.



deception, especially when the celebrity is identifiable.”²⁸

Now coming to when a person in India can claim publicity rights. It can be said that if someone uses his any name or records his any personality trait for example a video without his consent and uses it in an advertisement or movie then he can seek remedy under publicity right. In the situation taken as example here a person’s personality is used without his consent further it may lead to commercial exploitation of it also. Further we may find that recording a video without his consent is an infringement of right to privacy. The most important part of publicity right is the act done by the defendant must the plaintiff recognizable or identifiable socially it does not matter whether he is recognized in a negative way or a positive way. So after looking at various cases we can infer that, a person seeking remedy or claiming his publicity rights must satisfy the following conditions. Firstly, he must show that his name or any personality trait is used without his consent. Secondly there was also commercial exploitation of the same. Finally, the act of the defendant has made him recognizable in the society.

Can, Freedom of Speech be used to justify the encroachment of Publicity Rights?

One of the most prominent feature of publicity rights is that it leaves the right of publicity to a person’s discretion. It is up to him whether he decides to claim under publicity rights. In *Indu vs Forbes*

Incorporated²⁹ court held that if a person chooses to keep his life personal then there cannot be any exception in freedom of speech³⁰. Further we may find a clearer situation in Delhi High Court’s judgement in *D.M Entertainment v Baby Gift House and Others*³¹ in which the court held that the right of publicity can, in a jurisprudential sense, be located within the individual’s right and autonomy to permit or prohibit the commercial exploitation of his likeness or some attributes of his personality. With this we can conclude that it is totally up to individual whether to permit or prohibit the commercial exploitation of his personality.

There are various exceptions to the violation of publicity right. Caricature, lampoon, parody, drama, poem and other manifestations are said to be not violate one’s publicity rights and are included in free speech. This was given in *Tata Sons Limited v/s Greenpeace International & Another*³². It was a case where Tata’s logo was used in a game and was showed in a bad character. So, the court ruled that “Free speech includes caricature, lampoon, mime, parody, drama, poem and other manifestations of wit and, therefore, the game, which parodied Tata’s trademark, was an exercise of free speech”.

Can a doppelganger be used to evade Publicity Rights?

Further as we have discussed earlier the first aspect of right is said to have been violated if any of the personality traits is used without the consent of person. It was laid down in R

²⁸ Shivaji Rao Gaikwad vs. Varsha Productions (03.02.2015 - MADHC) : MANU/TN/0189/2015

²⁹ *Indu vs Forbes* Incorporated High Court of Delhi, at 86 (Oct. 12, 2007).

³⁰ Article 19. Protection of certain rights regarding freedom of speech etc

(1)All citizens shall have the right

(a)to freedom of speech and expression;

(g) to practise any profession, or to carry on any occupation, trade or business

³¹ *Entertainment v Baby Gift House and Others*, High Court of Delhi (Apr. 29, 2010).

³² *Tata Sons Limited v/s Greenpeace International & Another*, 178 (2011) DLT 705.



Raja Gopal v State of Tamil Nadu³³ “the first aspect of this right must be said to have been violated where, for example, a person’s name or likeness is used, without his consent implying that use of name of person violates his or her personality rights.” In this case the court observed that a person’s name cannot be used without his consent for commercial purpose.

Publicity Rights vis a vis Privacy and it’s recognition:

Another important case in this regard was Phoolan Devi v Shekhar Kapoor and Others³⁴ in which Delhi High Court ruled that that “the right to privacy must encompass and protect the personal intimacies of the home, family, marriage, motherhood, procreation and child rearing”. A third person is not allowed to interfere in the personal life of another person in the context of publicity. In this case court restricted any other person from interfering in someone’s privacy without his consent and person’s personal matters belonging to the family cannot be interfered.

In the case of Amarnath Sehgal v Union of India³⁵. Essential remedies were laid down by Hon’ble Delhi court that a party can seek when his or her image is misused. The court laid down that a party could bring a suit for violation of tort of privacy and seek compensation for misuse of image or he can approach court and he can contend it is an act of infringement. Further he can sue for breach of confidence and request for common damages. Finally, the party could bring a suit of defamation under common law or civil law and seek remedy from that.

Publicity Rights for non-human entity:

The judgement in in ICC Development (International) vs. Arvee Enterprises and Anr³⁶ opened a debate whether the rights of publicity are only available to individuals or they are also available for non-human entity also. The court ruled that “The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual’s personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organizer of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolized. The right of Publicity vests in an individual and he alone is entitled to profit from it”.

From the above two cases we can infer that where the depiction is of a kind which might tarnish the image of the individual such depictions must be scrutinized by appropriate authorities before the release of such works where depiction is made. Whereas in cases where the depiction does not harm the image of the individual and the information of the individual is already in public domain then such depiction of personal life cannot be challenged.

³³ R Raja Gopal v State of Tamil Nadu, AIR 1995 SC 264.

³⁴ Phoolan Devi v Shekhar Kapoor and Others, 1995(32)DRJI42.

³⁵ Amarnath Sehgal v Union of India, 2005 (30) PTC 253 (Del).

³⁶ ICC Development (International) vs. Arvee Enterprises and Anr, 2003 (26) PTC 245 (Del).



CONCLUSION

Though we may find that there are various provisions laid down by the courts regarding publicity rights in India but most of the judgements are from High Courts consequentially are not uniformly binding on the Union of India. When it comes to United States the position is more or less similar when it comes to a separate legislation, but US Supreme Court determined in the first amendment which deals with freedom of speech that the first amendment does not prevent state for providing a claim for commercial appropriation of person's identity. What we need is a proper legislation or at least its privacy aspects of the concept of right of publicity must be incorporated in privacy bills etc. The previous bills have dealt with how to protect an individual's personal life but they have not dealt with publicity rights.

Courts in India have laid down various principles of publicity rights in India. They even have laid down the exemptions in which drama, caricature, lampooning, poem and other manifestations are included in free speech. But they have not laid down how can we differentiate from things which are not exempted. There must be a test available to determine the exceptions. Another issue we are dealing in India is that whether this right can be claimed by a person who is a non-celebrity or not famous. Further whether a community can claim the publicity rights. Since, in most places the words mentioned are 'Celebrities' and 'Individuals'.

In United States as well as in India situation is kind of blurred regarding the status of privacy and publicity. Though there are various tests which the courts tried for the

determination of the rights but the conflicting decisions of other courts have led to the more trouble in understanding the situation. A test which could determine what leads to exploitation of one's privacy could be helpful. Further it must be able to tell when a person's image is commercially exploited and whether they fall within the exemptions laid down by the Delhi High Court. Though this was only held by Delhi High Court and we need a proper provision to deal with this issue in India which covers all aspects we have discussed so far in the paper.

Finally, we can say that the Indian legislation have room for the protection of publicity, celebrity and image rights the law in this field must be codified and it must be direct also. Our courts are also prepared to deal with this issue as they have already dealt with it in various cases and without the help of codified laws. Codification of laws would make things more appropriate and will also even lead to less time consumption while dealing with issues in this regard. The need for a codified system becomes more acute because social and digital media are getting bigger day by day which gives an infringer even more opportunities to misuse one's celebrity status and right to personality.
