



## THE GROWING NEED FOR REGOGNITION AND REGULATION OF PERSONALITY RIGHTS UNDER INTELLECTUAL PROPERTY LAW

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### INTRODUCTION

In the beginning, Intellectual Property Law (IPR) protected developments in art, technology, artistic works, inventions etc. However, in the contemporary times, the scope of IPR has now expanded to unconventional rights like the right to personality. We are well known with the concept of right to privacy. The right to privacy is an inherent part of right to personality and cannot be separated from each other. It is also known as “publicity rights” and is mostly associated with celebrities.

Personality of an individual includes their names or photographs, image etc. They are the result of the hard work and labor of these individuals and becomes a part of the identity of a person.<sup>1</sup> The personality helps individuals create an image or identity for themselves in the society. Being associated with celebrities, these rights are easy to abuse and infringe. People use the image or photo or names of celebrities to influence their trade and sales, of which celebrities are generally unaware of. By this, they create a link between their products and the celebrities, thereby giving off the wrong idea that the brand/ product is endorsed by them. Consumers are tricked into believing that the

goodwill and trust of the celebrity is attached to the brand/product and will consequently be cheated and made to suffer monetary or physical loss.<sup>2</sup> Commercialization of the personality of celebrities, without their permission results in the undue exploitation of these rights. Additionally, celebrities are the target of contemporary culture and the inquisitive urges of fans and media have resulted in the breach of their privacy and routine infringement of their rights. With the growing relevance of celebrities in society, media, manufacturers, producers, and vendors have intensified their exploitation of their goodwill at a faster rate.

Personality rights are the intellectual property of an individual, as the image and personality created by them, is the result of their hard work, and labor for a long period of time. It is the product of their creativity and the personal attributes of their identity like their image, their voice, signature etc. and thus is an intellectual property of the person. Personality rights have become more important in the area of intellectual property since they are established not only to protect an individual from harm, but also to ensure that they receive some financial benefits from the use of such property.

However legal protection of these rights from infringement and abuse is not very stringent. It is for these reasons that personality rights should be adequately protected to prevent the commercialization of celebrities’ name, image and goodwill. Some countries have proper laws regulating the protection of personality rights, whereas

<sup>1</sup> [https://www.researchgate.net/profile/Lisa-Lukose/publication/334279364\\_PROTECTION\\_OF\\_CELEBRITY\\_RIGHTS\\_A\\_COMPARATIVE\\_ANALYSIS\\_OF\\_RELEVANT\\_IPR\\_LAWS\\_IN\\_US\\_UK\\_AND\\_INDIA/links/5d20e6a5458515c11c18cdd0/PR](https://www.researchgate.net/profile/Lisa-Lukose/publication/334279364_PROTECTION_OF_CELEBRITY_RIGHTS_A_COMPARATIVE_ANALYSIS_OF_RELEVANT_IPR_LAWS_IN_US_UK_AND_INDIA/links/5d20e6a5458515c11c18cdd0/PR)

OTECTION-OF-CELEBRITY-RIGHTS-A-COMPARATIVE-ANALYSIS-OF-RELEVANT-IPR-LAWS-IN-US-UK-AND-INDIA.pdf

<sup>2</sup> Id.



others lack in this area. Especially in the present day, when the infringement and exploitation of these rights are constantly increasing due to a lack in proper regulation, the need for establishing strict legislations, particularly in IPR law is imperative. While USA has recognized this right, jurisdictions like UK and India is still lagging behind in this aspect. Although they have been recognized through some judicial precedents in India through the right to privacy, there is no specific legislation for the same. This paper will discuss this right in detail and also the existing protection offered to celebrities with regard to this right and finally highlight the growing need for the much-needed protection for the same.

### **WHAT ARE PERSONALITY RIGHTS?**

Before delving deep into the meaning of personality rights which is mostly associated with celebrities, it is important to understand who a “celebrity” is. The term “celebrity” is derived from a Latin term, “celebritatem” which translates to being famous. A celebrity can be defined as

*“a person who, by his accomplishments, fame or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage’.”*<sup>3</sup>

The Delhi High Court in **Titan Industries Ltd v Ramkumar Jewellers**<sup>4</sup>, had defined a celebrity to be,

*“a famous or a well-known person and is merely a person who “many” people talk*

<sup>3</sup> Sharma, Prakash and Tripathi, Devesh, Celebrities’ Agony: Locating the Publicity Rights in the Existing IPR Framework (August 1, 2019). Available at SSRN: <https://ssrn.com/abstract=3430422> or <http://dx.doi.org/10.2139/ssrn.3430422>

*about or know about... The right to control commercial use of human identity is the right to publicity.”*

There is no definition of ‘celebrity’ in any statute with regards to intellectual property in India. A mere reference can be made to section 2(qq) of the Indian Copyrights Act, 1957 which defines a performer. However, this definition does not entirely cover the term ‘celebrity’ as performers include actors, singers, musicians and any other person who makes a performance. Thus, some performers can be celebrities, and vice versa while some performers may not be celebrities at all.<sup>5</sup>

The common man narrows down the scope of the term ‘celebrity’ to include actors, singers, musicians, artists, politicians, tv personalities etc. However, in the case of **Martin Luther King Jr Center for Social Change v American Heritage Products Inc.**<sup>6</sup> it was held that the term ‘celebrity’ cannot be interpreted narrowly and must be given a broader scope to include not just *“traditional categories of movie actors, rock stars and ball players”*.

Personality rights of celebrities comprises two contradicting rights – the right to privacy and the right to publicity. While everyone, including celebrities is entitled to their right to privacy, celebrities in particular are also entitled to prevent or restrain others from commercializing on their identity and has the sole power to decide who can commercialize on their personality with consent.

The right to publicity/personality thus entitles the celebrity to control the exploitation of his

<sup>4</sup> 2012 (50) PTC 486 (Del)

<sup>5</sup> Tabrez Ahmad, Satya Ranjan Swain, Celebrity Rights: Protection under IP Laws, 16 JIPR 7 7-8 (2010)

<sup>6</sup> 694 F.2d 674 (11<sup>th</sup> Cir 1983)



personality by free riders. A celebrities personality arises from their occupation, their fashion, their creativity and other attributes of their lives. This right of publicity is the right of the celebrity to exploit the economic value of his own name and fame. In **McFarland v E & K Corp.**,<sup>7</sup> it was held that a celebrity's identity like his name and other characteristics is the "fruit of his labor" and thus is his private property which also makes him entitled to legal protection.<sup>8</sup>

As per Lockean labor theory, the person who gives the labor, is the sole person entitled to bear the fruits of such labor.<sup>9</sup> If looked at closely, personality/publicity rights are the embodiment of this theory.

Right to privacy entails the basic freedom of every person it is the right to be left alone. When discussing celebrity rights, the right to privacy cannot be left behind as they are always exposed to public scrutiny and their privacy is often, breached by fans, media houses, employers etc. Not only are their privacy compromised, but their families are also often at the receiving point of such public scrutiny and privacy breach. A perfect example of the breach of privacy of a celebrity is the case of Barber v Times Inc.<sup>10</sup> where Dorothy Barber was photographed in her hospital room by media who forcefully without authorization had entered during her delivery.

Thus, only for the sake of public demand, a celebrity's dignity, comfort, and convenience should not be jeopardized. Unauthorized commercialization of a celebrity's name/photo/identity/personality will this violate their privacy and right to publicity.

### PERSONALITY RIGHTS UNDER INDIAN LAW

#### CONSTITUTION:

In India, there is no legislation with regards to personality rights as an intellectual property *prima facie*. There is an absence of codified law on this subject however, it is regulated through judicial precedents and through the right to privacy under Article 21 of the Constitution of India.

In an important judgement, **ICC Development v Arvee Enterprises**<sup>11</sup>, the courts dealt with the question of personality rights for the first time in India. The court stated that this right to privacy is rooted in the right to privacy and that it can "...rise only in an individual or any indications of an individual's individuality, such as his name, personality attribute, signature, or voice." They also held that to take away or violate this right will be violative of articles 19 and 21 of the Constitution, as it is only the celebrity who is entitled to profit from his name or identity. The landmark Puttaswamy Judgement<sup>12</sup>, which gave right to privacy, constitutional status by making it a fundamental right, dealt with the personality

<sup>7</sup> 18 U.S.P.Q.2d (BNA) 1246 (D. Minn. 1991)

<sup>8</sup> Supra, at 3

<sup>9</sup> Vijaylakshmi Suresh, Scope of Personality, Celebrity or Image Rights in India in the light of Landmark Judgement of Justice Puttaswamy's Case 2017,

<https://poseidon01.ssrn.com/delivery.php?ID=31202511612211412110912500007412212011703501900903409007402612208106708411709706610109603402>

3121015125114118020107079068078092059082053065068070078006003117082078025066040076112004074015000110016095028012029085075102110070105116006070020127096101003000&EXT=pdf&INDEX=TRUE

<sup>10</sup> 159 SW 2d 291, 295 (1942)

<sup>11</sup> 2003 VIIAD Delhi 405

<sup>12</sup> Justice K. S. Puttaswamy(Retd) And Anr v. Union of India And Ors WP( civil )NO 494 OF 2012.



rights of celebrities, among others. While opining that celebrities do have a price to pay for being a public figure and cannot always have the luxury of privacy. However, they also observed that the scrutiny that they have to go through must be tolerable and should not unnecessarily cause inconvenience to them as even they desire certain parts of their lives to be private. This judgement discussed both the rights- the right to publicity and the right to be left alone or the right to privacy with respect to celebrities. While both are contradicting rights, they cannot be separated from each other. The right to publicity entitles the public figure to reap the benefits of their personality and identity by commercializing them. What it does not allow is, entitling anyone else to commercialize the public figure's personality for their own trade or business without the prior consent of the celebrity in question. Thus the most important factor here is, the consent of the celebrity. On violation of the same, the celebrity can seek legal remedy for infringement of their right to privacy and publicity s under Articles 19 and 21 of the Constitution.<sup>13</sup>

The case of **R Rajagopal v State of Tamil Nadu(1994)**<sup>14</sup> was the first case to recognise personality rights of celebrities in the light of the right to privacy. Here the court had held that a person's personality right will be violated when his name or likeness has been used without his consent for purposes like advertising or others. This right is a right in perpetuity, meaning this right can be enforced even after the death of the celebrity.

For example, the kin of the deceased actress Silk Smita had challenged how she was portrayed in *The Dirty Picture* claiming that her personality was not shown in the right light. This is called post-mortem Right to publicity.<sup>15</sup>

In the *Titan Industries Case*, the Delhi HC ruled in favour of actors, Mr. and Mrs. Bachchan observing that the identity (photos) of celebrities cannot be used for advertising without their permission. In this case, the defendant had used their photographs without their permission or authorization.

In *Shivaji Rao Gaikwad v Varsha Production (2015)*<sup>16</sup>, the actor Rajnikant had sued the defendant for copying his signature style of walking and dialoge delivery in their movie 'Mai Hoon Rajnikant'. He also claimed that some immoral visuals in the film could negatively portray his personality. The court ruled in his favour.

In *Phoolan Devi v Shekhar Kapoor*<sup>17</sup>, where the personality of Phoolan Devi was publicized badly only for commercialization, the court had held that no one has the right to degrade the personality of anyone or damage the image or reputation of such person even when consent to publicize was present.

These cases did not recognise the right to privacy but after the *Puttaswamy* judgement, the right to personality was seen as emerging from the right to privacy itself.

<sup>13</sup> Supra at 8

<sup>14</sup> 1994 (6) SC 514

<sup>15</sup> Personality Rights in India-Part I, Bananaip, <https://www.bananaip.com/ip-news-center/personality-rights-india/>, July 23, 2019

<sup>16</sup> 2015 (62) PTC 351

<sup>17</sup> (1995) 57 DLT 154



### TRADEMARK LAW:

Although there is no specific law relating to the personality rights of celebrities, they are indirectly protected to some extent under the existing IP laws of the country. The Trademarks Act, 1999 under section 2(m), defines the term 'marks'. This definition of 'marks' covers 'names', which includes within its ambit, personal names too. Celebrities have been trademarking their names as a prevention for future misappropriation. One can also trademark their signatures.

In India examples of celebrities trademarking their names include, Sachin Tendulkar, Shah Rukh Khan, Baba Ramdev etc to protect against misuse of the same. Even in other countries, celebrities and known personalities trademark their names. For example, Jose Mourinho, the Portuguese football coach has trademarked JOSE MOURINHO in seven categories. Lionel Messi has also registered his name MESSI with the EUIPO in classed 3.9.14.16,25 and 28.<sup>18</sup>

### COPYRIGHT LAW:

The rights of a celebrity which are protected under the Copyright Act, 1957 is vague. The protection available under this statute is minimal and cannot effectively protect the rights of celebrities. The Act does not define 'celebrity' but defines the word 'performer'. As discussed above in the paper, it is difficult to bring the meaning of celebrity under the definition of performer. Performers include actors singers, musicians, dancers, snake charmers etc. However, performers cannot rightly be called celebrity as a student giving a dance performance on the streets is a

performer, but he is not a celebrity. Some celebrities can be performers but not all performers are celebrities. Similarly, it is not necessary for celebrities to be performers at all.

### LACUNAE IN THE EXISTING FRAMEWORK AND THE GROWING NEED FOR STRICT LEGISLATION

When compared to protection of personality rights regime in the world, India is fairly lagging behind. India lacks any specific legislation regarding the same and it is also not recognised in under the IPR laws of the country. Besides the protection of these rights through the Right to privacy under Article 19 and 21 of the Constitution and some indirect and inadequate protection by the Trademarks Act and Copyright Act, there is no legislation protecting the rights of celebrities against the unauthorized commercialization of their personalities by individuals. Additionally, there is no statutory definition of the term 'celebrity' and only judicial interpretations of the same is relied upon. Before the Puttaswamy Judgement, even the right to privacy of celebrities was not recognised. The protection offered by the Trademark and Copyright Act is insufficient as they merely protect a part of the rights and not the entire rights.

Copyright law protects the artistic works. Section 13 of the Copyright Act makes it applicable to original literary works, dramatic, musical and artistic works. As per section 14, copyright is an exclusive right of the owner of the categories mentioned above, to authorize or do the reproduction of the work or issuing copies or making a cinematographic film or sound recording of

<sup>18</sup> Celebrity Rights under Intellectual Property, Kashishipr,

<https://www.kashishipr.com/blog/celebrity-rights-under-intellectual-property/>



the same. The law safeguards the right of the creator. In the case of personality rights, the celebrity creates an identity or personality for himself in the society and it is the result of his hard work, efforts, time and labour. He is rightful creator of his personality; it is his property and thus he should be given copyright for his personality.

In the absence of such legislation, celebrities can only seek legal remedies under the right to privacy and misappropriation of his name, if trademarked. With regard to the right to privacy, it is a fundamental right, and it is enforceable only against the State. A celebrity can find it difficult to enforce his publicity rights against any individual or corporation under the provision of right to privacy. Moreover, the rights under Article 19 and 21 cannot be enforced once the person dies. However, personality rights can be enforced when after death as they are a right in perpetuity.

With the increase in digital social media, the need for protection of celebrity rights has also increased. Their personality rights are often misused and exploited without their consent for the advancement of trade or business. In India, celebrities are worshipped by the people and people attach a certain goodwill to them. When brands with poor quality products that are detrimental or dangerous to the public use the photos or names of famous personalities, people automatically regard them as good as having been endorsed by a celebrity. This is misleading and it compromises the trust and faith of the people in the celebrities. The celebrity's characteristics have enormous economic potential, which he has built over time through some unusual sacrifices. As a result, the celebrity is also entitled to protection under the notion of unjust enrichment. To put

it another way, he should be able to enjoy the results of his own labours without undue intervention.

Although it is at a very nascent stage, cases as above with regards to celebrity rights show the development in the protection of the same in India. Although India has a long way to go for the protection of the celebrity rights, reliance is placed on precedents and judicial interpretations.

### CONCLUSION:

Personality Rights is a unique right. Cases of exploitation of the same is quite high. Any attempt at commercialization of a celebrity's personality is a violation and exploitation of his personality rights which he has acquired with immense hard work. Thus, the need to enforce strict protection is imperative. Celebrity publicity rights linked to his or her personality are a unique type of intellectual property right that encompasses aspects of copyright and trademark protection, as well as human dignity protection through the inclusion of privacy rights protection. Strict and specific laws on the protection and infringement of personality rights should be introduced by the legislature as judicial pronouncements are not sufficient to regulate the constantly growing commercializing and exploitation of celebrity rights in India. Huge damages and multi-million-dollar settlements may deter future infringement or violation by individuals who have failed to respect the privacy of celebrities and employers in the past. It is also the duty of the legislature to effectively balance the individual interest of the celebrity and the public interest. It is only through statutory protection can the lacunae in the law relating to protection and recognition of personality rights be filled.