

AN ANALYSIS OF CELEBRITY RIGHTS IN INDIA

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“A celebrity is someone who works hard all his life to be known and then wears glasses to avoid being recognized”

- Fred Allan

Abstract

Celebrities are the group of individuals who are recognized and appreciated owing to their talents, achievements, history or other various reasons. The set of laws that protect the rights of celebrities can be called celebrity rights. The rights of a celebrity include his right to merchandise and gain commercial benefits, publicize his actions, gain attention, and represent himself among others. This paper discusses the rights available to celebrities in India. The paper analyses the lack of consensus and agreed definition of ‘celebrity’ in India. A three-umbrella method to deduce celebrity rights is presented. The three umbrella includes Publicity rights, privacy rights and personality rights. Unlike popular opinion, the author argues that the personality right is different from publicity right. The legal recourse available under the intellectual property is also discussed. The paper is concluded with the proposal to introduce the dedicated legislation to govern celebrity rights. The necessity and ideas about the same are also presented.

INTRODUCTION

Indian constitution provides the right to life and liberty to every citizen as well as a non-citizen.¹ Over the years through the form of a number of constitutional judgements the ambit of right to life and liberty has taken various provisions such as the right to privacy², right to sleep³ and right to dignity⁴ under its broad constitutional umbrella. The supreme court’s interpretations suggest that right to one’s own self and business holds no bar and no entity can interfere with the same. Every individual has an absolute right to lead his private life, protect his name and goodwill in the society

¹ INDIA CONST. Art 21.

² People’s union for civil liberties (PUCL) v. Union of India, (1997) 1 SCC 301.

³ Re Ramlila Maidan Dt v. Home secretary & ors, 2012 (5) SCC 1.

⁴ DK Basu v. State of West Bengal, 1994 (4) SCC 260.

and to commercialize and earn profits by the ability of his recognition. This brings us to a unique set of people who face immeasurable hurdles to lead a normal life owing to the social recognition- The celebrities. The rights of the celebrity dwell into various legal provisions like intellectual property rights, constitutional safeguards, property rights among others. With the rise of social media, the rights of celebrities are being constantly threatened. Private details of celebrities are routinely leaked to the public and their privacy is encroached upon. Misrepresentation, defamation, use of photographs in advertisements, depiction in false light etcetera have put the rights of celebrities in serious jeopardy.⁵ There are evident lacunae in Intellectual property laws and the constitutional provisions are unable to set clear boundaries to protect the fundamental rights of the celebrities. The case of celebrities gives us a classic example of violation of privacy rights and publicity rights, two seemingly different yet identical concepts that govern the protection of celebrity rights. Indian laws to protect the celebrity rights are almost non-existent with much to be desired. Absence of specific legislations, provisions and definitions have made it extremely challenging to pursue suits against violation of celebrity rights in India. Due to the requirement, the celebrity rights are being formed through precedents and court rulings. With herculean changes in entertainment industry, a full-fledged law is the need of the hour.

THE IDEA OF “A CELEBRITY”

In order to determine the rights available to a celebrity, a fundamental requirement is a clear definition of the same. A thorough investigation of Indian legislations makes one realize that there isn't any definition of a 'Celebrity'. The definition is most likely to be imbibed in any intellectual property codes. The definition that can be used as a parameter to understand 'Celebrity' would be that of a 'Performer'.⁶ The copyrights act, 1957 defines a performer as “*an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person “who makes a performance.”*” The above-mentioned definition has been used by scholars and students on varied occasions to analyze the non-existing definition of celebrity.⁷ The

⁵ Tabrez Ahmed & Sathya Ranjan Jain, *Celebrity rights: Protection under IP laws*, 16 JIPR 7,9 (2011).

⁶ The copyrights act 1957 Act no 14, Acts of the parliament, § 2qq (India).

⁷ Prakash Sharma Devesh Tripathi, “*Celebrity agony: Establishing publicity rights under existing IPR framework*” *ILILR* 41 44 (2019); See also Garima Budhiraja, “*Publicity rights of celebrities: An analysis under Intellectual property regime*” 6 *NLSR* 85 88 (2011).

comparison with the definition of ‘performer’ from the 1957 act in the contemporary world will not serve the purpose. The idea of a celebrity has grown beyond imagination in the modern day. With the advent of social media, anybody can become an overnight sensation. Yohani, a Sinhalese singer gained thousands of followers and largescale recognition after a song of hers went viral on the internet.⁸ Back in 2018, Malyalam actress Priya P Varrier also turned out to be a national darling while a clip of her wink from a song went viral on the internet.⁹ There are many other cases like Priya and Yohani where individuals have turned out to be overnight celebrities in real life. We need to understand these common instances can give rise to tremendous legal embargos for the celebrities as well as people around them. Personality right, Publicity right, Privacy right of the individual, copyright or trademarks of producers/ directors, companies or agencies are all in line and might face serious risk of violation. There is an urgent need of a dynamic definition of the term ‘celebrity’ that copes up with the modern idea of celebrity and helps effective implementation of the same.

Around 1980’s the idea of a celebrity started changing. In an American case it was said, It is accepted that in the modern day, the term ‘celebrity’ should be interpreted in a broader sense to encompass more than the traditional categories of movie actors, rock stars and ball players.¹⁰ Richard B Hoffman gave a definition of celebrity 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. He is, in other words, a celebrity.*’¹¹ This definition is desirable and close to needs of the modern day. A person to become a celebrity the primary requirement is the legitimate public interest in his or her doings, affairs and his character. This interest in itself plays a major role in possible violation of rights of the celebrity. India needs to adopt a more dynamic, flexible and modernized definition of

⁸ ‘*Manike Mage Hithe*’ Srilankan song that stole Indian hearts’ The tribune (20th September 15.22)
<https://www.tribuneindia.com/news/entertainment/manake-mage-hithe-the-sri-lankan-song-that-stole-indian-hearts-310115>.

⁹ G Krishnakumar, ‘*A viral wink, throbbing heart & a controversy*’ The Hindu (20th September 15.43)
<https://www.thehindu.com/news/national/kerala/priya-prakash-varrier-a-viral-wink-throbbing-hearts-and-a-controversy/article22755780.ece>.

¹⁰ *Martin Luther Jr Centre for social change v. American Heritage Products Inc*, c, 694 F.2d 674 (11 Cir 1983).

¹¹ Richard B Hoffman, “*The right of publicity -heirs’ Rights, advertisers’ windfall, or courts’ nightmare?*” 31 De-Paul LR 46 49 (1982).

‘celebrity’ that can help in decreasing uncalled incidents. Now let us analyze the current rights available to celebrities in India.

THREE UMBRELLA ANALYSIS OF CELEBRITY RIGHTS

The rights available to celebrities are varied and multi-dimensional. For better understanding and analysis, I present three umbrella analyses of celebrity rights. This includes Personality rights, Privacy rights and Publicity rights. These rights are close and similar in nature to each other. One needs to remember that there has never been set a determined boundary to differentiate these rights. While personality rights protect the right per se of the individual, privacy rights and publicity rights deal with the choices and commercial interests of the celebrity. Let us now understand these rights in detail. –

Personality Rights- Germany and France pioneered the origin and development of personality rights in the early 20th century majorly as a civil law concept.¹² Personality rights are developed as the society considers the potential of a celebrity as an extension of their personality¹³ Hegelian concept of Meta-physical property is often used to elaborate upon the idea of personality rights. It says *“An individual’s property is the extension of his personality. Similarly, an individual’s contributions to the society are also an extension of his personality”*¹⁴

The application of personality rights remains ambiguous. One can conclude that the right of persona includes an individual’s emotional, dignitary, human and moral values attached to it. This has made scholars argue that doctrine of moral rights could be extended to constructed personas to protect personality and reputational aspects of celebrities.¹⁵ One’s belief, morals and ideologies are his own and cannot be commercialized or used for any propaganda purposes. At this juncture, I would like to reiterate that the concept of personality right and publicity right intermingle and

¹² Adrian Popovic, *“Personality Rights- A Civil law concept”*, 50 Loy LR 349 350 (2004).

¹³ Garima Budhiraja, *“Publicity rights of celebrities: An analysis under intellectual property regime”* 6 NLSR 85 88 (2011).

¹⁴ Robert C Bird & Lucille M Ponte, *Protecting Moral rights in United States & United Kingdom: Challenges & Opportunities under UK’s new performance regulations*, 24 B.U Intl LJ 213, 216 (2006).

¹⁵ See for detailed discussion on constructed personas, Robert Rosenthal Kwall, *Preserving personality rights & reputation interests through constructed personas through moral rights: A blue print for twenty first century*, 6 U. ILL.LR 151 152 (2001).

DROIT PENALE: INDIAN LAW JOURNAL ON IPR

(A UNIT OF DROIT PENALE GROUP)

ILJIPR, ISSN: 2582-8762

VOLUME 2 ISSUE 1

deal with similar domains. Often the two terms are used alternatively. However, this author would like to disagree with the same as the two concepts are slightly different than each other. All publicity rights can be a personality rights but all personality rights cannot be a publicity right. Personality rights deal with the idea of *persona* while all publicity right does deal with *persona*. A hypothetical example of Baba Ramdev shall be taken to prove the same. It is well known that Baba Ramdev deals with Ayurvedic products (Patanjali). If his picture is put up on an allopathic medicine while advertising, it is not put to increase the publicity, but simple to misguide the public. Here Baba Ramdev's personality rights are violated as the morale and ideology are not inconsonance of with the product. If the same think was done by an ayurvedic company then that would have been a violation of Publicity right. The American case of *Lothar Motschenbacher v. Reynolds Tobacco co (1974)*¹⁶ is an example to my contention. In the said case the plaintiff, Motschenbacher, a racing driver, was known to drive a very distinctive racing car. The defendant used a picture of his car in advertisement without his consent. Motschenbacher was successful in his claim even though he himself was not featured in the advertisement.¹⁷ In another case relief was granted to a famous comedian film maker when a look alike was used to advertise a chain of video rental stores. The court held that there was high likelihood of consumer confusion.¹⁸ These instances clearly suggest us that one's *persona* is a valuable property and a person might wish his successors and next generation to protect it commercial exploitation just like any other intellectual property.

The cases of violation of personality rights are evident even in India. There was a recent instance of a Gutka company imitating Amitabh Bachhan's voice in its advertisement for endorsement of its product without his permission. Also, Sunny Deol issued legal notice to Big 92.7 FM because the latter aired audio fillers 'So Sunny' mimicking him and his family.¹⁹ Saurav Ganguly was returning Indian after scoring a magnificent hundred at Lords during India tour of England. He found out that his employer Tata Tea were promoting their tea by giving an opportunity to

¹⁶ *Lothar Motschenbacher v. Reynolds Tobacco co*, No 72 -1419 (1974) US App. LEXIS 8275.

¹⁷ Raman Mittal, *Licensing one's persona: Analysing the practice of personality merchandising*, 52 JILI 16 19 (2010).

¹⁸ *Woody Allen v. national Video Inc v. Ron Smith celebrity look alike*, (1985) 610 F Supp 612.

¹⁹ Garima Bhudhiraja, *Publicity rights of celebrities: An analysis under the intellectual property regime*, 6 NLSR 85 88 (2011).

congratulate him through a postcard which was included with their tea. Even though Ganguly was their employer he had not given his consent or authorized the company for the same. The court granted relief as his fame and popularity was his personality right and included under intellectual property.²⁰ Through these examples we can understand that personality rights are crucially different in application of laws. While publicity rights involve privacy and defamation along with intellectual property rights, personality rights are restricted only to intellectual property rights.²¹ Now that we have understood the distinction and application of personality rights, let us look at the publicity rights that are available to celebrities.

Publicity Rights- Unlike right to personality, Publicity rights mostly deals with the violation of commercial rights of the individual and cases of fraud in merchandizing. The only case in India that closely dealt and analyzed publicity right was the case of *ICC Development (intl) ltd v. Arvee enterprise and others*²² The Delhi high court held 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/non-human entity of the event would be violative of Articles 19 and 21 of the Constitution of India”

While delivering the landmark privacy of judgement of *Justice Puttaswamy v. Union of India*, the supreme court also emphasized on the point of publicity. The court explained²³-

“Every individual shall have the right to exercise control and protection on their own life and reputation as presented to the world and monitor the commercial usage of their name. It also

²⁰ ‘Personality rights in India’ Lex Life India, Retrieved on (21st September 21, 2021 16.31.) Available at <https://lexlife.in/2021/04/06/personality-rights-in-sports/>.

²¹ Mittal, *supra* 17 at 19.

²² *ICC development (intl.) v. Arvee enterprise and ors*, 2003 (26) PTC 245.

²³ *Justice KS Puttaswamy v. Union of India*, 2017 10 SCC 1.

ensures that an individual will be allowed to prevent anyone from using his/her photograph, name and other personal information for commercial usage, without his / her permission.”

In the case of *Manisha Koirala v. Shashilal Nair*²⁴ the petitioners claimed an injunction against the release of a film that was depicting nude images of her. The defendant argued that the plot was initially agreed upon and subsequently the respondent objected to the same. While the petitioners did not invoke *copyrights act*, the court ruled in her favor due to the existence of reputational anxieties. The Delhi High court in the case of *D.M. Entertainment (P) Ltd. v. Baby Gift House*²⁵ explained that the right of publicity in a jurisprudential sense is located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality.

The courts once again dealt with the publicity rights of celebrities in the case of *Titan Industries Ltd. v. Ramkumar Jewellers*²⁶. The court observed that the basic elements comprising the liability for infringement of the right of publicity are (1) Validity, that is, the Plaintiff must own an enforceable right in the identity or persona of a human being and (2) Identifiability of the 'celebrity' in question.” It is important to observe that the Indian courts have on numerous occasions dealt with publicity rights, image rights and personality rights in a plethora of cases. But the pronouncements and the developments have come in an isolated state owing to the underdevelopment of a full-fledged jurisprudence of publicity rights. It is of no doubt that the development of publicity rights in India flows from rights of human dignity and liberty as enshrined in Articles 19 and 21 of the Constitution.²⁷ But a detailed legislation is much needed. Now that we have analyzed publicity rights, let us move on to its counter-part – The privacy rights.

Privacy Rights- The 'right to privacy' was conceptualized for the first time by Warren and Brandeis. Their essay is hailed by legal scholars as the foundation of privacy law especially in the U.S. Warren and Brandeis defined privacy as 'right to be let alone', a phrase adopted from Judge

²⁴ *Manisha Koirala v. Shashilal Nair*, 002 SCC Bom. 827 (2003).

²⁵ *D.M. Entertainment (p) Ltd v. Baby Gift house*, CS (OS) No. 893 of 2002.

²⁶ *Titan Industries ltd v. Ramkumar Jewellers*, 2012 SCC Del 2382.

²⁷ Samarth Krishna Luthra & Vasundhara Bakru, *Publicity rights and the rights to privacy in India*, 31 NLSI Rev 125 129 (2019).

Cooley's famous treatise on torts in 1880.²⁸ According to the law of torts, right to privacy is developed to protect against four main types of interventions. These include (1) Intrusion into solitude (2) Public disclosure of private parts (3) Depiction in a false light (4) commercial appropriation of a person's name or likeness, also called appropriation.²⁹ The violation of privacy of any individual is a wrong and is an offense. But given the nature of the act, the rights to privacy of celebrities are threatened more than any other commoner.

One of the most important case of privacy right of celebrities is the case of *Barber v Times Inc*³⁰ In the given case a photographer took pictures of Dorothy Barber during her delivery. A suit of 'invasion of privacy was filed against the Times Inc for unauthorized and forceful entry into hospital room and for photographing the petitioner despite her protests. The petitioners were successful in their suit and damages of 3000 \$ was provided. India is not alien to the violation of privacy rights of the celebrities. Even before the advent of social medias, privacy rights of celebrities were hampered. As early as 2006, then teenage star Sania Mirza's video of changing clothes in bathroom and intimate moments of actress Kareena Kapoor with Shahid Kapoor had gone viral via MMS.³¹ This clearly suggests that privacy has always been an issue in India. Indian courts over the years gave varied judgements and took multiple stands regarding the existence of right to privacy within the constitution of India.³² In the year 2017, a nine-judge bench of the Supreme Court of India while giving 6 different opinions, unanimously held the right to privacy to be a Fundamental Right under Part III of the Constitution of India.³³ Through this judgement of *Puttaswamy*, the right to privacy took a proper shape and attained constitutional value. Today Right to privacy is very much the part of right to life under article 21 of the constitution and celebrities as well as every individual can claim this as a part of her right to life. There have been arguments that given the stature of a celebrity and fan following they have, there is a public interest in knowing the details of the life of the celebrity and hence their right to privacy is not unlimited.

²⁸ Dr, Gurmeet Kaur, *Right to privacy & Right to personality: Legal discourse in India*, 6 IJRAR 758 762 (2019).

²⁹ William L Prosser, *Law of Torts*, 812 (4th Ed. 1971).

³⁰ *Barbara v. Times Inc*, 159 S.W 2d 291.

³¹ Anurag Pareek & Arka Majumdar, *Protection of celebrity rights- The problems & the solutions*, 11 JIPR 415 416 (2006).

³² Luthra & Bakru, *Supra* 27 at 140.

³³ *K.S Puttaswamy v. Union of India*, (2017) 10 SCC 1.

However, in an American case of *A v B plc*³⁴ the Court of Appeal acknowledged and upheld that that a public figure is entitled to a private life. But the court went on to state that public figures should expect and accept that their actions will be more closely scrutinized by the media, and that “Whether you have courted publicity or not you may be the legitimate subject of public attention. If you have courted public attention then you may have less ground to object to the intrusion which follows” Now that we have analyzed the rights available to the celebrities under the three-umbrella analysis, I shall proceed to deal with the protections available to celebrities under the Indian Intellectual property laws.

CELEBRITY RIGHTS AND INTELLECTUAL PROPERTY –

Intellectual property rights govern many of the rights available to celebrities through copyrights and trademarks. The Indian Copyright Act, 1957 provides protection to sketches, drawings, etc., which fall within the category of artistic work. Section 14 of the act provides exclusive rights to authorize anyone to reproduce the same in any form.³⁵ In the case of *Raja Pocket Books v Radha Pocket Books*³⁶, a popular character in children’s comic book, *Nagraj-the Snake King*, was deemed to be protected under copyright law. However, no copyright is granted to the name or image of the celebrity in India. But the possibility is very much presented through the case of *Raja Pocket books*. Celebrities are also protected to a limited extent under the trademark laws in India. Section 2(1) of the Indian Trade Marks Act, 2000, allows registration of *any ‘sign capable of distinguishing goods and services of one person from another, any word (including personal names), design, numeral and shape of goods or their packaging’ as a trademark*. The same trademark right can be used by celebrities in necessary and exceptional circumstances. Apart from the Copyright act and the trade mark act, there isn’t any other intellectual property regime that has provisions that specifically deal with or protect the rights of celebrities.

CONCLUSION

³⁴ *A v. B plc*, (2003) QB 165.

³⁵ Ahmed & Jain, *Supra* 5 at 10.

³⁶ *Raja Pocket books v. Radha Pocket books*, (1997) 40 DRJ 791.

We have observed that the rights of celebrities can be violated in multiple manners. The more striking observation that was presented was the paucity of legislation that is presented to govern the rights of celebrities. The intellectual property regime does not deal with the idea of celebrity and neither does the constitution. The rights available to the celebrity have mostly been developed by precedents. With the rise in social media and global interaction, the possibility of an individual becoming a celebrity overnight is very high. This possibility of global recognition puts numerous legal rights of an individual at risk. It is high time to bring a dedicated piece of legislature that deals with the rise of celebrities. Indian laws need to adopt an accepted definition of celebrity. The proposed legislation should be a blend of intellectual and constitutional values. Right to privacy, publicity and personality should be determined and efficient remedies should also be provided. The introduction of a single legislature will only improve the efficiency of justice delivery and the protection of individual rights. India should take a leaf out of American laws in developing jurisprudence on celebrity rights. Overall celebrity rights are extremely important in upholding human rights and human dignity and most importantly in the development of access to justice and legal discourse.