

## LAWS ON PERSONALITY RIGHTS IN INDIA

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### ABSTRACT

*In a country like India, where there is a huge fan following of the movie stars, and the actors, it becomes essential to put light on the rights and protections they enjoy from a legal perspective. The concept of Personality rights is not very popular however it is still growing. The laws do not exist which directly deal with the matter but there are certain laws which indirectly deal with it. The courts however have no shied away from taking about the rights that are enjoyed by the celebrities in the country. This paper aims at discovering the concept of personality right, the indirect laws that exist in the country with deal with such rights and also the foreign laws on this subject matter. A comparison would be made with the laws of the other country and suggestions about implementation of the law on the subject matter would be given.*

### INTRODUCTION

The Delhi high court in a recent judgement passed an interim order where it restricted the use of the voice, name as well as Image of Mr. Amitabh Bachchan. The reasoning behind this order was the violation of personality rights of the actor.

#### What are Personality Rights?

The personality rights find its source from the Right to Privacy. These are rights which are used by celebrities to protect their personality and prevent the unlawful use of their voice, name etc for marketing and to increase their sales. This right is protected under Article 21 of the Indian Constitution.

#### Why are they important?

India as a country has always looked up upon its celebrities. Whether it's their dressing sense or their way of taking or walking. The celebrities have always been in the limelight. This was the reason that they began featuring in advertisements. For instance, when Mr. Bachchan said that Navratan Oil gave "Thanda Thanda cool cool" sensation and caused relaxation, the Indian masses believed it. This led to increasing its sales and resulting in commercial benefit to both the company and the celebrity.

Therefore, it is not very difficult to understand that celebrities have a lot of foot following and everything that they say is believed to be true, everything that they endorsed is linked with their name.

The Indian brands have to pay a lofty sum to these celebrities to represent their brand. However, there are many notorious brands/ people who use celebrity's personality, including their face, voice etc., and associate it to their brand without their permission. This is the unlawful usage of the personality rights that a celebrity possesses.

Therefore, in order to protect this, the concept of personality rights becomes very important.

#### Who is a celebrity?

The term "Celebrity" has not been defined in any law in India. For the application of the personality rights, it's important to recognise who has these people .

There have been various judgements in which the meaning of the word *celebrity* has been discussed.

*Titan Industries Ltd. v. Ramkumar Jewelers 2013, Delhi High Court*<sup>1</sup> explained the concept of celebrity as a person who is well known and a person that many people are aware of or talk about.

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<sup>1</sup> 2012 (50) PTC 486 (Del)

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A corporate body, however cannot be a celebrity. No matter how famous it is. For instance, in a case before the Delhi High Court, ICC Cricket contended that it has created a “celebrity like persona” and should be entitled to the personality right. It is this when the court said that a corporate body has many remedies in case its identity is illegally used by someone, like violation of copyright etc. the court also observed that designating a corporate personality as a “celebrity” would go against the concept of “lifting the corporate veil.”<sup>2</sup>

What have the courts said about it?

The Indian courts have been very successful in interpreting the meaning of Personality rights. In multiple cases the courts have explained this concept. Let us go through the judicial pronouncements where the court has made an attempt to explain the concept of personality rights.

The case of *Titan Industries Ltd. Vs. M/S Ramkumar Jewellers. 2012*<sup>3</sup> is very important to understand the concept of personality rights. In this case the plaintiff company has entered into an agreement for service with the famous Bollywood actor Mr. Amitabh Bachhan and Mrs. Jaya Bachhan to be the face of their brand. All the Intellectual property rights were reserved with the plaintiff company. The defendant company used the photograph of Mr. Amitabh and Mrs. Jaya Bachhan over which the plaintiff had the exclusive right. The defendant contended that it was done by a 3<sup>rd</sup> person and not by him and he would be okay with removing the poster with the image of the celebrity couple.

The court in this case explained the concept of personality rights as follows: -

The elements for the infringement of personality/publicity rights are: -

1. **Validity:** The plaintiff owns rights of personality of a human being
2. **Identifiability:** The celebrity whose personality rights are in question should be widely identifiable,

The court also explained the method of identification of a celebrity:

There should be unaided identification i.e. the identification of plaintiff’s identity with that represented by the defendant is strong.

In the case of *Shivaji Gaikwad v. Varsha Production*<sup>4</sup> the famous superstar, Rajnikanth sued the defendant company for copying his mannerism, style and charisma along with his acting style in the movie titled “*Mera Naam Rajnikanth*”

According to the plaintiff, he has worked very hard and has created a name for himself in the movie world. His acting, mannerism, charisma and personality is very unique to him which has made him stand apart from others. The defendant in his movie titled “*Mera Naam Rajnikanth*” has copied his personality without his consent and thus it is resulting in the violation of his personality rights.

In reply of this the defendant said that his movie is neither a biopic of Mr. Rajnikanth nor is putting him in a bad light. According to this, the defendant had not taken up the superstar’s style, image, caricature in his upcoming film. They argued that there is no cause of action as the suit is based on mere apprehension of the plaintiff which he has developed after watching the content available on the internet which cannot be the basis of this present suit.

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<sup>2</sup> ICC Development (International) Ltd. v. Arvee Enterprises and Ors, 2003 SCC OnLine Del 2

<sup>3</sup> 2012 (50) PTC 486 (Del)

<sup>4</sup> 2015 SCC OnLine Mad 158

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The defendant also argued that the plaintiff can seek injunction only in the case of violation of any rights which has been protected by a statute. Since personality rights have not been mentioned in any statute, plaintiff cannot seek injunction on this ground.

The defendant also relied on an Article in the Missouri Law Review, Volume 55, Issue-I, Winter-1990, in which the cases related to illegal use of celebrities' names/ other aspects of their personality was explained in USA. It mentioned that *just because a celebrity's name was mentioned in a movie title, he could not get the relief of injunction against such an action. The celebrity will have to show that the title is not at all related to the movie, and also that the title of the movie is a way of advertisement of commercial nature in order to sell their goods or the services.*

*Court's judgement:* The court granted the injunction and the defendant was not permitted to use the name of his upcoming movie as "Mera Naam Rajnikanth"

*Court's Analysis:* The court gave the reason for granting the injunction as the following:

1. The court said that personality rights though have not been mentioned in any statute but they do vest in people who have attained the status of "celebrity"
2. It is not important that the movie is not a biopic of the defendant however the name of the plaintiff is present in the title of the movie and the public will obviously think about Mr. Rajnikanth after reading the title of the film as there is no one else who is a celebrity with the same name.
3. Therefore, it is important for the defendant to take permission of the plaintiff before using his name or any other aspect of his personality in his movie or movie title, otherwise he would be held liable for violating the personality rights of the plaintiff.
4. Thus, in the present case the court went ahead and passed an injunction against the defendant

However, in the case of *D.M Entertainment Pvt. Ltd. vs. Baby Gift House and Ors.*, <sup>5</sup> the court stated that if too much emphasis is given on protecting the right of a celebrity, i.e. his personality rights in that case it might lead to hampering the democratic rights of the citizens.

Seven years later in the case of *Gautam Gambhir v. D.A.P & Co. & Anr.*,<sup>6</sup> Mr. Gautam Gambhir, who is a very popular cricketer in India approached the court as his personality rights were being violated. He claimed that his name was being used by a food chain without seeking his permission. He also claimed that this is a violation of his right of trademark as he is a famous personality. This led to his name being associated with this food chain even when he did not consent for any such association. This was in turn leading to deceiving the customers of the food chain.

*Court's decision:* The court refused to grant injunction against the food chain.

*Court's analysis:* The court said that even though the name of Mr. Gautam Gambhir was being linked to the tag line of this food chain, there was no commercialisation or any kind of unjust enrichment happening to the food chain. The court also said that neither the name nor the image of Mr. Gambhir was used on any social media platform by the defendant food joint and therefore there is not violation of personality rights.

### Existing law governing Personality Rights in India

Personality rights has been explained in elaboration by the courts, but do we have any legislation to guard the rights of a celebrity, is something that needs to be explored.

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<sup>5</sup> 2010 SCC OnLine Del 4790

<sup>6</sup> 2017 SCC OnLine Del 12167

### 1. Constitution of India

Article 21 of Indian Constitution talks about right to life and personal liberty. Very recently in 2017, the controversy related to the right to privacy was settled. The publicity rights or personality rights are derived from a person's right to privacy. Therefore, the basis of personality rights is found in this very fundamental principle enshrined in Article 21 of the Indian Constitution.

### 2. Intellectual Property Rights

No specific provisions have been enshrined in the IPR laws of India for the protection of personality rights, however many celebrities do take the help of these laws to get protection. Let us have a look at what these laws are:

#### ❖ The Trademark Act, 1999

- This act defines the term "Marks" which includes within its ambit "names" also.<sup>7</sup>
- Trademarking signature: Many celebrities opt this mode to protect themselves as well as the misuse of their personality rights. So that they have a way to defend their right.
- The Trade Marks Act, 1999 expounds the importance of consent when it comes to registration of trademarks.

#### ❖ The Copyright Act, 1957

- In the copyright act the moral rights are attributed only to the authors and performers and not to anyone else. These rights are given to the singers, actors and musicians.
- Also, according to this act the authors or the performers have the right to take credit for their work.

### Right to Privacy and Personality Rights.

The right to privacy as a fundamental right has developed very recently in India. Initially the court did not recognise the right to privacy as a fundamental right, in the case of *MP Sharma*<sup>8</sup> as well as in *Kharak Singh case*<sup>9</sup>. However, this approach of the court changed in the year 1994 in the case of *R. Rajagopal v. State of T.N.*<sup>10</sup> and finally the law was laid two decades later in the year 2015 by the *Puttaswamy judgement*<sup>11</sup> where the court recognised right to privacy as a fundamental right under Part III of the constitution.

As the law of privacy is a new law therefore interpretation of publicity rights through the rights of privacy is to be done by considering the judgements given by various high courts.

#### 1. Delhi High Court:

*Phoolan Devi v Shekar Kapoor*<sup>12</sup> 1995, in this case an objection was raised against the release of the film as it was based on the real life of Phoolan devi. It also contained a scene of Phoolan devi getting raped which as alleged by her was false. She contended that portraying this would be violation of her right against privacy.

The Delhi High Court in this case said that right to privacy should protect the personal and intimate life of a person, irrespective of their celebrity status. The court thus did not permit the defendant to show the rape scene in the movie.

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<sup>7</sup> Section 14 of The Indian Trademark Act 1999, prohibits the use of personal names.

<sup>8</sup> M. P. Sharma And Others vs Satish Chandra, 1954 AIR 300

<sup>9</sup> Kharak Singh vs The State Of U. P. & Others, 1963 AIR 1295

<sup>10</sup> AIR 1995 SC 264

<sup>11</sup> Justice K.S. Puttaswamy Vs. Union of India (2017) 10 SCC 1

<sup>12</sup> 57 (1995) DLT 154, 1995 (32) DRJ 142

The Delhi High Court also gave few exceptions of right to privacy:

- a. Legitimate interest of the general public
- b. Information not related to the personal and private life of the celebrity.
- c. No commercial intent behind sharing such information.

In this case the Delhi High Court while dealing with the right to privacy hinted towards the personality rights when it talks about the commercial aspect of the information being shared about the celebrity, which shows that it is an aspect of right to privacy.

## 2. Delhi High Court

In the case of *ICC Development (International) Ltd. v. Arvee Enterprises*<sup>13</sup>,

The court elaborated on the concept of personality rights and mentioned that the right to publicity falls under the rights of privacy. Any attempt to violate this right results in the violation of the fundamental rights ensured under Article 19 and 21 of the Indian Constitution. No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it.

## 3. Madras High Court

In the case of *Selvi J. Jayalalithaa v. Penguin Books India*<sup>14</sup>, the court was facing a question that whether publication of private information of a famous person would violate his right of privacy or not. The court held that it would be violation of rights of privacy of the celebrity. This case dealt with right to privacy without specifically dealing with the personality rights however an inference can be made from this case about the approach of the courts when a question regarding violation of rights of celebrity is done.

## Personality Rights: An International Perspective

Concept of Personality Rights in The U.S.

In The United States of America, the celebrities have dual options to get their rights protected.

1. **The Lanham Act, 1946:** This act Governs the Trademark Law. It protects the consumers from any kind of misrepresentation at the hands of the companies and protects the owner of trademark and prevents and unlawful representation or association to any advertisement. This act provides civil liability in case of any unlawful association, deception relating to the goods and services<sup>15</sup> which means a civil action lies in case any violation of the provisions of this act are done. This act was majorly implemented to protect the rights of the consumers and protect them from any kind of mis representation. However, this act is also used by the celebrities to protect their personality rights. In the case of *Waits v. Frito-Lay, Inc*<sup>16</sup> the contention of the plaintiff was that his name was falsely associated with an endorsement without his permission. The plaintiff succeeded in his claim by arguing that the imitation of his voice was used in a parody song by Tom Waits.

A lot of celebrities have succeeded is getting their personality rights protected under this act however the rights of a celebrity are not protected under this act under all the circumstances.

2. **The State laws governing Publicity:** different states have different laws in place for the protection of publicity rights. However, they are all based on the following common factors:

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<sup>13</sup> 2003 (26) PTC 245

<sup>14</sup> O.A. NO. 417 OF 2011 & APPLICATION NO. 2570 OF 2011 IN C.S. NO. 326 OF 2011

<sup>15</sup> Section 43 (a)(1) of the Lanham Act

<sup>16</sup> *Waits v. Frito-Lay, Inc*, 978 F.2d 1093

- a. Whether the defendant used the plaintiff's identity
- b. Whether the above use has created some commercial advantage for the defendant.
- c. Whether there was consent given by the plaintiff
- d. Whether such unlawful use has resulted in some injury to the defendant<sup>17</sup>

It is clear from the above that the personality rights of celebrities are protected in the US.

Concept of Personality Rights in United Kingdom

**Personality rights have not been acknowledged in the UK.**

- The Trademark law<sup>18</sup> also does not protect this right by providing any specific provisions. This is because, the trademark act of UK only provides protection against the registered trademark and therefore those celebrities who have not registered their names remain remediless under this law. Even when the actors want to get their names trademarked, they face a lot of hurdles as "the more famous the celebrities are the less distinctiveness their names possess"<sup>19</sup>.

In the case of *Re: Elvis Presley Trademarks, Inc*<sup>20</sup> the court rejected the request to trademark the name of the appellant which is "Elvis Presley" as the court thought it was too common and did not possess any distinct nature to include it under "goods"<sup>21</sup>.

- The law of Copyrights, Designs and Patent<sup>22</sup> protects the photograph or film of a celebrity only when it has been commissioned and not otherwise<sup>23</sup>. For the commissioned photos and films as well, the court will punish the offender only when the "substantial portion" of the original work is unlawfully used.

This leaves the celebrities in a struggling position to protect their personality rights.

**CONCLUSION AND SUGGESTIONS**

The personality of every person is unique to them. Many people build and base their livelihood on that personality and charisma. They become famous because of a certain train in their personality which is liked by everyone and thus they become popular for that. A lot of commercial value is also attached to this personality and charisma of a celebrity, because of their popularity among the people. However only they are entitled to be benefited from this popularity and not anyone else. In case anyone else uses the aspects of their personality including, name, acts,

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<sup>17</sup> Abdul-Jabbar v. GMC, 85 F.3d 407, 413-14 (9th Cir. 1996) (quoting Eastwood v. Superior Court for Los Angeles

County, 198 Cal. Rptr. 342, 347 (Cal. App. 1983)). The court, in Abdul-Jabbar, added that the appropriation was not limited to the name or likeness, but extended to the plaintiff's identity. Abdul-Jabbar at 414.

<sup>18</sup> The Trademark Act of 1994

<sup>19</sup> Hayley Stallard, The Right of Publicity in the United Kingdom, 18 Loy. L.A. Ent. L.J. 565, 569 (1998)

<sup>20</sup> ELVIS PRESLEY Trade Marks [1999] R.P.C. 567 (12 March 1999)

<sup>21</sup> Re: Elvis Presley Trademarks, Inc., [1997]. R.P.D.T.M.C. 543 (Ch.)

<sup>22</sup> Copyrights, Designs and Patent Act of 1988 (CDPA)

<sup>23</sup> Copyrights, Designs & Patents Act, 2003, c. 48 § 85 (Eng.). "A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have copies of the work issued to the public, the work exhibited or shown in public, or the work communicated to the public."



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method of dialogue delivery, photo etc., without their permission, results in the violation of their rights. These personality rights are not statutorily protected in India but only have been recognised by Courts. These rights have been associated with and believed to be derived from the Right of Privacy. The right of Privacy became fundamental right in 2017 therefore the development of Personality rights is still at a nascent stage and there is long way to go in this aspect

As seen from the abovementioned status of personality rights in US and UK, it is clear that The US has provided the celebrities with the protection of their personality rights.

Therefore, in India also there is a need for making of laws protecting the personality rights of celebrities so that they can express and represent themselves freely and without fear of their rights being violated.