

## THE BLURRED LINES: PROTECTION OF PUBLIC FIGURES IN THE INDIAN IP REGIME

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### ABSTRACT

*In a country like India, we commonly see pictures of celebrities outside a salon, roadside restaurant, or even at general stores. Does this mean that they advertised for those businesses? The answer is no! The reason that their pictures are being used is simply for the personal gains of those shopkeepers. Do these celebrities get to approve if they want their face on a shop's face? Most certainly, NO! Most of the time, these celebrities and famous people are unaware that their faces are being used in such a way. But if any famous and big company uses their face, voice, or even video, they can take action against them through different laws that protect these celebrities. The rights of these celebrities are protected by the personality rights governed by the Trademarks Act of 1999, the Copyright Act of 1957, and Torts and Passing Off. Also, their privacy is protected under our Supreme Law, the Constitution of India. Article 21 of the Constitution of India protects the right to privacy of these celebrities. Are these available to every person? The answer is No! These rights are provided only to famous people who are public figures and have an image to maintain in front of people, like our Indian actors/actresses. They are famous, they have an image to maintain, and they are a public figure as well. It is very common to witness paparazzi hovering like bees on these celebrities. There are numerous incidents where it is evident how these paparazzi violate the privacy of celebrities. They're often witnessed to be violating their privacy and not respecting their private space. The main objective of this article is to highlight the need and importance of Personality Rights in India.*

### INTRODUCTION

In the age of ubiquitous social media and a 24/7 news cycle, the line between public interest and individual privacy has become increasingly blurred. This phenomenon is particularly pronounced when it comes to public figures – individuals who, by their profession or position, occupy a space in the public consciousness. While the public has a legitimate interest in the

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lives and actions of those who hold influence, the question arises: where do we draw the line when public scrutiny infringes upon a public figure's intellectual property rights?

Recently, actor Jackie Shroff approached the Delhi High Court regarding the protection of his personality rights. In a country like India, we very often see pictures of celebrities outside a salon, roadside restaurant, or even at general stores. Does this mean that they advertised for those businesses? The answer is no! The reason that their pictures are being used is simply for the personal gains of those shopkeepers. Do these celebrities get to approve if they want their face on a shop's face? Most certainly, NO! Most of the time, these celebrities and famous people are unaware that their faces are being used in such a way. But if any famous and big company uses their face, voice, or even video, they can take action against them through different laws that protect these celebrities.

In India, there is no specific law or statute governing personality rights, however, such rights are recognized and protected under the Trademarks Act of 1999<sup>1</sup>; Copyright Act of 1957<sup>2</sup> And Torts. Also, their privacy is protected under the Constitution of India. Article 21 of the Constitution of India protects the right to privacy of these celebrities.

Are these personality rights available to every person? The answer is No! These rights are available only to famous people, who are public figures, who have an image to maintain in front of people, like Actors/Actresses. They are famous, they have an image to maintain and they are a public figure as well. They have a personality that could be utilized for commercial benefits. Such people have every right to exploit their image and likeliness for commercial benefits. At present time, it is very common to witness paparazzi hovering like bees on these celebrities. There are numerous incidents where it is evident how these paparazzi violate the privacy of celebrities. They are often witnessed to be violating their privacy and not respecting their private space. The main objective of this article is to highlight the need and importance of Personality Rights in India.

## **UNDERSTANDING PERSONALITY/CELEBRITY RIGHTS**

A celebrity is a person who is known for his well-knowingness. He is neither good nor bad, great or petty. He is the human pseudo-event. - Daniel Boorstin

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<sup>1</sup> The Trade Marks Act, 1999 (Act No. 32 of 1999, as amended up to Act No. 38 of 2013).

<sup>2</sup> [The Copyright Act, 1957 \(Act No. 14 of 1957\)](#).

The Collins Online Dictionary defines a 'celebrity' as "someone famous, especially in areas of entertainment such as films, music, writing, or sport." As there is no specific statute enacted for governing personality rights in India, no clear definition of Personality Rights is available. However, various courts and authors have tried to define such rights. Personality rights may be defined as special rights given to famous personalities. Since the topic of Personality Rights is yet to evolve, the court upheld it as a right arising out of the right to privacy, stating that "*personality rights are vested in persons who have attained celebrity status*"<sup>3</sup>.

The common law recognizes the commercial value ascribed to the fame or popularity of a celebrity, due to which various rights are attained and enjoyed by them<sup>4</sup>.

Personality rights are generally associated with people who are famous, or with people who are celebrated by the general public, and so they are also referred to as Celebrity rights. As per the Cambridge dictionary, the term celebrity is defined as, "*someone famous, especially in the entertainment business*".

Personality rights, or celebrity rights, encompass a set of legal protections that safeguard an individual's control over the commercial use of their identity. These rights become particularly relevant for public figures – celebrities, athletes, politicians, and other individuals who occupy a prominent space in the public consciousness. These rights ensure that a person's name, image, likeness, voice, or other unique identifiers are not exploited for commercial gain without their consent. A celebrity is defined as a famous or well-known person. A "celebrity" is merely a person who "many" people talk about or know about.

While commenting on Celebrity rights, the Court in *Ali v. Playgirl* pointed out that "A distinctive aspect of the common law right of publicity is that it recognizes the commercial value of the picture or representation of a prominent person of the former and protects his proprietary interest in the profitability of his public reputation or persona."<sup>5</sup>

Nimmer has commented on celebrity rights by stating that, "what a celebrity needed was not protection against unreasonable intrusions into privacy, but rather a right to control the commercial value of their identity."<sup>6</sup> Hence, protection has to be granted to famous

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<sup>3</sup> Titan Industries Ltd. v. Ramkumar Jewell 2012 SCC OnLine Del 2382.

<sup>4</sup> Krishna Kishore Singh v. Sarla A. Saraog 2021 SCC OnLine Del 3146.

<sup>5</sup> Ali v. Playgirl 447 F Supp 723.

<sup>6</sup> Melville B. Nimmer, "The Right of Publicity" 19 Law and Contemp. Probs. 203 (1954).

personalities to deter other people from exploiting their personality rights. No one should be allowed to have commercial gain from someone's image or likeness without his or her consent. Such rights need to be protected allowing the celebrity to exploit these rights in her/his own will.

### **PERSONALITY RIGHTS OR CELEBRITY ARE GENERALLY CLASSIFIED INTO TWO ASPECTS**

- a. **Right of Publicity:** These rights grant individual the exclusive right to control the commercial use of their name, image, likeness, voice, and other unique identifiers. Imagine a famous singer's voice being used in a commercial without their permission – this would be a violation of their right to publicity. The right of publicity protects public figures from unauthorized commercial exploitation of their identity.
- b. **Right to Privacy:** This right protects individuals from unwanted disclosure of private information and protects their autonomy over their personal lives. While public figures cede some degree of privacy due to their fame, the right to privacy ensures a measure of control over their narratives. For example, the unauthorized publication of private photos of a celebrity would be a violation of their right to privacy.

### **INTERNATIONAL JURISPRUDENCE**

- **TRIPS:**

The TRIPS Agreement<sup>7</sup> Is considered an exemplary milestone in intellectual property as it is the cornerstone of India's path to economic growth and global recognition. Signed in 1994, the agreement revolutionized India's intellectual property policy, especially patent law, and created a new approach for India to protect and promote innovation. On January 1, 1995, the TRIPS Agreement, regarded as the most comprehensive multilateral agreement on intellectual property rights ever, came into force as a landmark step by the World Trade Organization (WTO). The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement has three key missions: to support trade in knowledge and innovation, to eliminate trade disputes between member countries, and to provide flexibility to allow member countries to adhere to their intellectual property and WTO policies. TRIPS is a set of intellectual property rules that

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<sup>7</sup> World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights. Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

World Trade Organization (WTO) member countries must adhere to. These provisions cover a wide range of intellectual property protections, including patent protection, copyright protection, trademark protection, geographical indication protection, industrial design protection, and trade secret protection. TRIPS establishes some minimum standards for the protection and enforcement of intellectual property rights. It aims to promote innovation, technology transfer, and the public welfare. Some guidelines stipulate how WTO member countries should protect and enforce intellectual property rights within their territories. These guidelines aim to ensure that intellectual property rights are respected and protected in global trade and that the public is not disadvantaged by intellectual property trade. The TRIPS Agreement provides a clear plan for the global harmonization of intellectual property laws and the promotion of international trade by providing many provisions, such as the right to prevent others from making, selling, or importing copies of patented inventions, and ensures that Member countries have uniform rules and obligations to protect intellectual property, thereby promoting fair competition and supporting innovation and creativity.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a cornerstone of the World Trade Organization (WTO), plays a significant role in the global framework for protecting intellectual property. However, TRIPS offers limited protection for personality or celebrity rights. TRIPS primarily focuses on traditional forms of intellectual property like copyrights, trademarks, and patents. While it does not explicitly address personality rights, certain articles can be indirectly relevant.

Article 10(2)<sup>8</sup> Mandates member countries to provide performers with the right to prevent unauthorized fixation of their performances. This could offer some protection to public figures whose performances are captured without consent. Article 16(2)<sup>9</sup> Requires member countries to provide the right of performers to prevent the marketing of a fixation of their performance without their authorization. This could be relevant for public figures who want to control the distribution of recordings of their performances.

Article 14(1)<sup>10</sup> TRIPS requires performers to be granted ‘the possibility of preventing’ the

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<sup>8</sup> Article 10(2), World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights. Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

<sup>9</sup> Article 16 (2) World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights. Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

<sup>10</sup> Article 14, World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights. Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

following acts, namely, fixation of their performance on a phonogram, reproduction of such fixation, and broadcasting of their live performances. Under Article 14 (5), the term can be extended from 20 years to 50 years<sup>11</sup>.

- **USA:**

The United States legal system offers a multifaceted approach to protecting personality or celebrity rights, relying on a combination of common law principles and, in some cases, state-specific statutes. Unlike some other countries, the US doesn't have a single, unifying federal law dedicated solely to personality rights. The US legal system protects an individual's control over their public image through a concept known as publicity rights. This right encompasses the ability to control the commercial use of a person's name, image, likeness, or other recognizable aspects of their identity.

There is no single federal statute governing publicity rights in the USA. Protection primarily arises from state common law. However, some states have enacted specific statutes to address publicity rights. California (Civil Code § 3344) grants a statutory right of publicity, while New York recognizes a right of publicity under common law but also has the Right of Privacy Act (Civil Rights Law § 51) that can be relevant in some cases.

In the case of, *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*<sup>12</sup> The Court Established the right of a celebrity to control the commercial use of their image. The case of *Ettore v. Philco Television Broadcasting Corp.*<sup>13</sup> Highlighted the tension between publicity rights and First Amendment protections for free speech. In this case, a public figure's comedic portrayal on television was deemed transformative and protected speech. *The Estate of Elvis Presley v. RDU Shopping Mall, Inc.* reaffirmed the right of publicity's applicability even after death. The court ruled that a mall's use of Elvis Presley's image without permission violated his estate's publicity rights<sup>14</sup>.

The right of publicity is not absolute. Courts balance it against other interests, including news reporting, commentary, and artistic expression might be protected even if they use a person's name or likeness. Use of a person's image for educational or informational purposes might be

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<sup>11</sup> Celebrity Rights: Protection under IP Laws, Tabrez Ahmad† and Satya Ranjan Swain, *Journal of Intellectual Property Rights* Vol 16, January 2011, pp 7-16.

<sup>12</sup> *Haelan Laboratories Inc v Topps Chewing Gum Inc*, (1953) 202 F.2d.866 (2d cir).

<sup>13</sup> *Ettore v. Philco Television Broadcasting Corp.* 229 F.2d 481.

<sup>14</sup> *The Estate of Elvis Presley v. RDU Shopping Mall, Inc* 513 F. Supp. 1339.

allowed. Public figures generally have a weaker right to publicity regarding newsworthy events. A California court in *White v. Samsung Electronics America, Inc.*<sup>15</sup> Reiterated that the right of publicity exists to shield celebrities' financial stake in their image. It recognizes that a celebrity's identity holds commercial value and protects them from unauthorized use of that identity for commercial gain. Even if a celebrity's name or likeness isn't directly used, exploiting their identity for commercial purposes still infringes on this right.

In the case of *Pavesich v New England Life Insurance Company*, where Paolo Pvesich claimed that the insurance company had used his photo for advertising without consent. The court held that this was a clear violation of Pvesich's privacy by the Insurance company to use his picture for commercial gains without consent<sup>16</sup>.

- **UK:**

Unlike the United States and some other countries, the United Kingdom does not recognize a distinct legal right of publicity for celebrities or public figures. This lack of a specific statutory framework creates a more uncertain environment for protecting personality rights in the UK. The UK has historically rejected the concept of a standalone right of publicity. This stems from concerns about stifling freedom of expression and the public's right to information. Public figures are generally expected to have a reduced expectation of privacy compared to ordinary citizens. In the case of *Campbell v. MGN Ltd.*<sup>17</sup> (which involved a model who successfully sued a tabloid for publishing nude photos taken without her consent. The court highlighted the tension between privacy and freedom of expression. Similarly, in *Douglas v. Hello! Ltd.*, a celebrity couple sued a magazine for publishing unauthorized photos of their wedding. While the case focused on copyright infringement, it also touched upon personality rights<sup>18</sup>.

One of the most recent cases, *Theakston v MGN Limited*<sup>19</sup>, concerned Mr Theakston's visit to a brothel and the subsequent sale of that information and photographs by the prostitute in question to the newspaper. The court refused to order publication of the text, arguing that special attention must be given to the freedom of expression and prostitutes. However, regarding the photographs, the Court found that it was likely that an injunction would be

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<sup>15</sup> *White v. Samsung Electronics America, inc.*, 971 f.2d 1395 (9th Cir. 1992).

<sup>16</sup> *Pavesich v. New England Life Ins. Co.* 122 Ga 190 50 SE 68 (1905).

<sup>17</sup> *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22.

<sup>18</sup> *Douglas v Hello! Ltd* [2005] EWCA Civ 595.

<sup>19</sup> *Theakston v MGN Limited* 9 [2002] EMLR 22.

obtained to prevent their publication. It was recognized that photographs can be particularly intrusive and that their publication could invade privacy and private life in a particularly humiliating and disturbing way. The Court found that publication of the photographs was not in the public interest and that no relevant material had been placed in the public domain. However, that the issue is not yet resolved is clear from other decisions made concerning the use of photographs.

On post-publication issues in *Holden v Express Newspapers*, Eady J awarded damages following the publication of topless photographs of Amanda Holden taken in the garden of a hotel in Tuscany. Anna Ford was not so lucky. She could not claim damages for the publication of photographs taken during her holiday on a beach in Mallorca. The court upheld the findings of the complaints against the press that the beach was a public place<sup>20</sup>.

## PERSONALITY RIGHTS IN INDIA

The TRIPS Agreement had a significant impact on Indian intellectual property laws and regulations. As a member of the WTO, India was required to align its intellectual property laws with the standards of the Agreement, which, among other things,

Personality rights encompass an individual's right to control the commercial use of their identity. These rights gain particular importance for celebrities whose names, images, and even voices hold significant commercial value. However, India lacks a codified law specifically for personality rights. Protection primarily comes through judicial interpretation of existing statutes and the Constitution.

India, with its burgeoning entertainment industry and growing public awareness of intellectual property (IP), presents a unique landscape for protecting personality or celebrity rights. The legal framework in India relies on a combination of existing IP laws, evolving case law, and the fundamental right to privacy enshrined in the Constitution.

### Types of Personality Rights:

**Right of Publicity:** The right of publicity represents the right of an individual to control the commercial value of his name and likeness and to prevent their unauthorized exploitation by

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<sup>20</sup> *Holden v Express Newspapers*. [2015] EWHC 3550 (QB).



others<sup>21</sup>.

This protects individuals from having their likeness or image used for commercial purposes without their consent or compensation. It functions similarly to a trademark, preventing unauthorized use that leverages a person's fame for another's gain.

Publicity rights have been defined as "An exclusive right of a celebrity to the profits to be made through the exploitation of his fame and popularity for commercial purpose<sup>22</sup>."

The most cited definition of a publicity right can be found in section 46 of the 'Restatement (Third) of Unfair Competition Act (2005), Appropriation of the Commercial Value of a Person's Identity: The Right of Publicity which essentially states, "One who appropriates the commercial value of a person's identity by using, without consent, the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability for the relief appropriate."

In the case *Titan Industries Ltd. v. Ramkumar Jewell*, the court while discussing publicity rights stated that "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. When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should 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 the commercial use of human identity is the right to publicity.<sup>23</sup>"

**Right to Privacy:** This right, enshrined in Article 21 of the Constitution, protects individuals from unwanted disclosure of personal information and public portrayal in a way they find offensive.

In the landmark case of *K.S. Puttaswamy v. Union of India*, the Apex Court recognized that "Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control the commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name, and other aspects of his/her personal life and identity for commercial purposes without his/her

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<sup>21</sup> *Groucho Marx Productions, Inc. v. Day & Night Co., Inc.*, 523 F. Supp. 485, 487 (S.D.N.Y. 1981), rev'd, 689 F.2d 317 (2d Cir. 1982).

<sup>22</sup> *Douglas v. Hello! Ltd.*, 2006 QB 125.

<sup>23</sup> *Titan Industries Ltd. v. Ramkumar Jewell* 2012 SCC OnLine Del 2382.

consent.”<sup>24</sup>

**Trademarks Act, 1999:** Celebrities can register their name, voice, signature, etc. under the Trade Marks Act 1999. Section 14<sup>25</sup> The Trademarks Act restricts the use of persons' names and images. If anyone wrongfully uses or misrepresents the name of a celebrity, then that person is liable under this section. In the recent case of PV Sindhu, several brands posted congratulations and welcome messages on their social media after winning the bronze medal at the Tokyo Olympics. The case against these brands was filed by Baseline Ventures, the official representative of Olympian P.V. Sindhu. No action will be taken as the greeting messages contain any message or information; it is accepted because of the way it is presented. Brands post congratulations along with a picture of P.V. Sindhu along with their brands' logo and tagline indicating a false association with P.V. Sindhu when she is not around. Such posts violate P.V. Sindhu's rights to use her pictures for commercial purposes without her permission. The remedy of passing off under the Trademark law is also available for protecting personality rights.

**Copyright Act, 1957:** Copyright is useful when there is a conflict of interests and morals. The Copyright Act of 1957 protects moral rights. These rights are only available to authors and performers, i.e. actors, singers, musicians, dancers, creators, etc. The fame of a famous person belongs only to him or her and that person has the right to profit from it. No one can misuse his or her name or character traits for profit. This law not only protects the moral rights of the author but also protects the individual. In the case of Mr Gautam Gambhir v. D.A.P. & Co &Anr.<sup>26</sup>, Indian cricketer Gautam Gambhir filed a suit against the accused because he found that his name was used by the accused as a slogan for 'Gautam Gambhir' restaurants. The cricketer said his rights were violated as his name was used in a slogan with which he had nothing to do. The Hon'ble Delhi High Court has found evidence to show that the defendant is not commercializing the name of the plaintiff. It has also been found that the plaintiff has not suffered any loss in his field i.e. cricket for running a restaurant under the banner of 'Gautam Gambhir'.

It was noted by the Punjab and Haryana High Court in the case of T-Series v. Dreamline Reality Movies.<sup>27</sup> that the 'judge-made' law has recognized the 'celebrity rights' or the 'publicity rights'

<sup>24</sup> K.S. Puttaswamy v. Union of India (2017) 10 SCC 1.

<sup>25</sup> The Trade Marks Act, 1999 (Act No. 32 of 1999, as amended up to Act No. 38 of 2013), Section 14.

<sup>26</sup> Mr. Gautam Gambhir v. D.A.P. & Co &Anr. CS(COMM) 395/2017.

<sup>27</sup> T-Series v. Dreamline Reality Movies, 2024 SCC OnLine P&H 661.

as commercially exploitable even though such rights are not available under the Copyright Act.

### **JUDICIAL DEVELOPMENT ON PERSONALITY RIGHTS.**

In the landmark case of *R. Rajagopal v. State of Tamil Nadu*<sup>28</sup>, a magazine planned to publish the autobiography of a death row convict, "Auto Shankar." Prison authorities pressured the magazine to stop, claiming Shankar did not write it and his privacy was violated. The Supreme Court ruled in favour of the magazine. It recognized the right to publish, even if the convict didn't consent. This case established the right of publicity in India.

Supreme Court stated that the right to privacy is an integral part of the right to life provided under Article 21<sup>29</sup> Of the Indian Constitution. It is a right to be left alone. No one can publish about someone without his consent. However, the rule is subject to one exception. One can publish over someone's life if the aspects of publication are available in the public domain or are part of public records or court records.

In, *D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors*<sup>30</sup>, Delhi High Court noted that the right of publicity protects a person's control over how their image or identity is used for commercial purposes. However, it is important to balance this right with freedom of speech. Activities like caricature, parody, or lampooning that use a famous person's likeness might not violate their publicity rights. These are considered forms of expression, not commercial exploitation. If a person feels such a portrayal is defamatory, they can sue for libel or slander.

In *Shivaji Rao Gaikwad, (also known as Mr Rajinikanth) v. Varsha Productions*<sup>31</sup> Movie star Rajinikanth sued the defendant to prevent the release of a film titled "Main Hoon Rajinikanth" (meaning "I am Rajinikanth"). Rajinikanth argued that using his name in the title would damage his reputation, violate his personality rights, and mislead the public. The Madras High Court ruled in favour of the Actor. The court's reasoning focused on the concept of "personality rights" for celebrities. They determined that celebrities have a right to control the use of their name and image, especially when it's easily identifiable. In this case, the court acknowledged Rajinikanth's celebrity status and the fact that the film title referred to him. The court stressed that infringement of this right doesn't require proof of confusion or deception, as the celebrity's

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<sup>28</sup> *Rajagopal and Ors. v. State of Tamil Nadu*, 1994 SCC (6) 632.

<sup>29</sup> Art. 21, Constitution of India.

<sup>30</sup> *D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors* MANU/DE/2043/2010.

<sup>31</sup> *Shivaji Rao Gaikwad, (also known as Mr. Rajinikanth) v. Varsha Productions* 2015 (62) PTC 351 (Madras).

identity is clear.

Bombay High Court in the case of *Chitra Jagjit Singh v. Panache Media*<sup>32</sup> Held regarding publicity rights that it allows people, particularly well-known ones, to control how their name, image, or likeness is used for commercial purposes. It essentially prevents others from using these aspects of their identity to make money without their permission. The abstract clarifies that this right is separate from the "right to privacy," although it originated from it. So, even though both rights are about protecting a person, the right of publicity specifically focuses on commercial use.

In the case of, *Krishna Kishore Singh v. Sarla A. Saraog*<sup>33</sup>, while dealing with celebrity rights, the Delhi High Court defined it and stated, "celebrity rights' is essentially a compendium of the other rights accrued by a person upon attaining the status of a 'celebrity', comprising of a bundle of rights which include certain intellectual properties rights, publicity, personality, and privacy rights".

Delhi High Court in *ICC Development (International) Ltd. v. Arvee Enterprise*<sup>34</sup> Discussed the right of publicity. The concept of "right of publicity" stems from the broader right to privacy. This right applies only to living people and protects aspects that make them unique, like their name, voice, signature, or even personality traits. Someone can become well-known by being associated with events, sports, or movies. However, the fame belongs to the individual, not the event itself or the people who organized it. It is unfair to take away this right from a person and give it to someone else. Why this Matters in India, the Indian Constitution under Articles 19 and 21 protects both freedom of expression and the right to privacy. These rights work together to ensure that no one can control how a person's image or identity is used for commercial gain.

In *Digital Collectibles (P) Ltd. v. Galactus Funware Technology Private Limited and Another*,<sup>35</sup>The court discussed that the right of publicity is protected in India similarly to how "passing off" is enforced. When a celebrity's identity or image is used to promote a product or service without their permission, it creates a misrepresentation and confuses consumers. This is because people might believe the celebrity endorses the product when they don't. However,

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<sup>32</sup> *Chitra Jagjit Singh v. Panache Media*, 2016 SCC OnLine Bom 2364.

<sup>33</sup> *Krishna Kishore Singh v. Sarla A. Saraog*, 2021 SCC OnLine Del 3146.

<sup>34</sup> *ICC Development (International) Ltd. v. Arvee Enterprise* 2003) 26 PTC 245.

<sup>35</sup> *Digital Collectibles (P) Ltd. v. GalactusFunware Technology Private Limited and Another* 2023 SCC OnLine Del 2306.

simply mentioning a celebrity or using their image isn't enough for a claim. There must be a misappropriation of their reputation or goodwill to sell something, not just identification or commercial gain by the defendant. In India, even if the right of publicity is strong, it can't override the freedom of speech and expression guaranteed by the Constitution. Similar to the US, where free speech rights limit publicity rights, India allows the use of celebrity names or images for purposes like satire, parody, news, or artistic expression. These uses are protected free speech and wouldn't be considered a violation of publicity rights.

Even if the use of a celebrity's identity is truthful and doesn't mislead anyone, it's still an infringement if done without permission<sup>36</sup>. This protection is especially strong when the celebrity is easily recognizable.

## CHALLENGES AND SOLUTIONS IN THE PROTECTION OF PERSONALITY RIGHTS

### Challenges

- 1) **Balancing Freedom of Expression and Right to Privacy:** Indian courts have recognized both freedom of expression and the right to privacy as fundamental rights. Striking a balance between these rights can be challenging, especially for public figures. For instance, publishing a true story about a public figure's personal life might be in the public interest but could also be a privacy violation.
- 2) **Lack of Specific Legal Framework:** India does not have a specific law dealing with image rights or publicity rights of public figures. This makes it difficult to determine what constitutes an actionable misuse of a public figure's image or persona. The current legal framework relies on a patchwork of laws like Trademark law, Right to Reputation under IPC, and common law principles.
- 3) **Paparazzi Culture and Social Media Intrusion:** The rise of paparazzi culture and social media has blurred the lines between public and private life. Public figures are constantly under scrutiny, making it difficult for them to control their image and the information disseminated about them.
- 4) **Moral vs. Legal Right:** Even if something is not illegal, it might still be morally wrong. For

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<sup>36</sup> Star India (P.) Ltd. v. Leo Burnett (India) Pvt. Ltd. 2003 (2) BomCR 655.

instance, publishing a private photo of a public figure might not be a crime, but it could be seen as a moral transgression. This can be a challenge as society grapples with the evolving concept of privacy in the digital age.

- 5) **Enforcing Rights Across Borders:** The internet is global, making it difficult to enforce public figures' rights against misuse of their image or persona happening online outside India.

### Recommendations

- 1) **Development of Specific Legislation:** Enacting a law recognizing image rights and publicity rights of public figures would provide much-needed clarity and legal protection. This law should balance freedom of expression with the right to privacy.
- 2) **Right to Reply and Takedown Mechanisms:** Public figures should have the right to reply to defamatory or misleading information published about them. Additionally, there should be mechanisms for them to request the takedown of content that misappropriates their image or persona.
- 3) **Self-Regulation by Media:** Media houses and social media platforms should develop and implement self-regulatory guidelines on how to report on public figures while respecting their privacy.
- 4) **Public Awareness Campaigns:** There is a need for public awareness campaigns to educate people about the right to privacy and the importance of responsible online behaviour.
- 5) **Strengthening Data Protection Laws:** A robust data protection law can help regulate the collection, storage, and use of personal data, including images and other information about public figures.

### CONCLUSION

The rise of social media and constant public scrutiny have blurred the lines between private lives and public personas for celebrities and public figures in India. While intellectual property (IP) law offers some protection, striking a balance between the right to privacy and the public's right to information remains a challenge. This article has explored the complexities of IP protection for public figures in India. It has highlighted the need for a nuanced approach that considers the evolving nature of privacy, the importance of freedom of expression, and the

growth of the Indian IP landscape. The protection of public figures in India requires a multi-pronged approach. By enacting legislative reforms, encouraging self-regulation, and promoting media responsibility, India can create a legal and ethical framework that safeguards the privacy of public figures while upholding the public's right to information. This will ultimately foster a healthier public discourse and a thriving creative ecosystem in India.

