



Protection of Celebrity Rights under IPR Regime in India

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With the emergence of the numerous forms of mass media, various social platforms, and the ever-increasing trend of advertisements have led to the invasion of the privacy of celebrities and the exploitation of their goodwill.¹ The celebrity possesses various rights such as the right to privacy, personality rights, merchandising rights, and publicity rights. Celebrities hold goodwill in the market and are granted to make wealth out of their identity.² Celebrity endorsements are the most common way of earning riches by celebrities using their name and fame. Therefore, the rights of the celebrities are unique and are more like a property of the celebrity which can be exclusively enjoyed by them. As there is a property, there can be cases of unapproved trespass³ using misappropriation of their goodwill and the privacy breach of the celebrities. Such unapproved trespass demands legal protection to protect celebrities' unique and intangible rights. The protection for the rights of the celebrities is at a nascent stage in India, also the statutory provisions under the intellectual property rights (IPR) regime are inadequate to grant complete protection to the celebrities. Accordingly, the present study aims to analyse various rights granted to celebrities and determine the legal means to protect those rights.

Keywords: Celebrity Rights, Publicity Rights, Personality Rights, Privacy Rights, Moral Rights

In the modern era, the media acquires a pertinent section of the society. It helps in educating, informing, and entertaining. In our everyday lives, it plays an essential role in forming the opinion about the concerned issues. It also acts as a medium to influence the judgment of the general public by the use of various mass media and social media platforms. Hence, the utilization and the impact of the media on the public are magnificent and need to be regulated through efficacious rules and regulations before it is exploited. One such legal rights that regulate the affairs of the media are intellectual property rights (IPR). IPR protects those rights which are intangible and are the outcome of creation by human intelligence. One such emerging issue in the field of IPR is the protection of celebrity rights. The rights of the celebrities are unique and are more like a property of the celebrity which can be exclusively enjoyed by them. Celebrities hold a name, fame, rights, and popularity that they earn after a lot of hard work; so ample protection has to be necessitated to them. These name and fame and their hard work in creating an individual personality is what makes them recognizable in society among the general public. The celebrity possesses various rights such as the right to privacy, personality rights, merchandising rights, and

publicity rights. Celebrities hold goodwill in the market and are granted to make wealth out of their identity.² There are various ways by which they can earn riches out of their identity and celebrity endorsements are one of those. They can use their voices, faces, names, and fame to earn wealth but the rights of the celebrities have been abused and misused in numerous ways. There have been cases of breach of privacy, name misappropriation, and illegal commercial use of their names or photographs on goods. Although, in India, there is a profusion of celebrities whose names and resemblance have been misused once in a while, there is not enough protection that has been granted to the celebrities to protect their rights. Only a few countries across the globe have unequivocally acknowledged the rights of celebrities in their national laws.

In India, the protection of the rights of celebrities' is still in its infancy. India is prominent for boosting the culture, and rich art and has an eminent film industry which produces celebrities now and then. However, the protection that has been granted to them is minimal to protect their rights in society. The components of celebrity rights are still a source of debate. In India, there is no universal definition of what constitutes a 'celebrity.' A simple definition of the term celebrity and the rights associated can be obtained by studying legislation relating to celebrity rights in various jurisdictions.

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The rights of celebrities comprise Economic Rights, Moral Rights, Personality Rights, Publicity Rights, and Privacy Rights which are the most common types of celebrity rights. The fact that elements of such rights are recognized demonstrates why they are essential and need to be protected. "The principle of the rights is that a celebrity's reputation can be useful in the marketing of goods, and the celebrity has an interest that can be shielded from the illegal commercial use of that identity," according to Leggett LJ.⁴

The concept of celebrity rights was first discussed in Samuel Warren and Louis Brandeis' essay, "The Right to Privacy,"⁵ which established a novel doctrine of privacy. They claimed in 'Right to Privacy' that the fundamental principle of personal rights applied to all people is the right 'to be let alone.' The concept of an individual's constitutionally protected right to privacy, which is now widely recognized, was a bold statement in the late 1800s. This formulation, according to Ruth Gavison, often fails to recognize that the traditional privacy argument is a claim for state interference in the form of legal defense against other persons, not a claim for state non-interference. Although words like "inviolable personality" and "right to be alone" were too vague and ambiguous, these definitions discussed the origins of the right to privacy and clarified how a right could be determined from within those broad concepts.⁶ In *Pavesich v New England Life Insurance Company*⁷, the Supreme Court of Georgia became the first court to embrace a judicial cause of action for breach of privacy, fifteen years after Warren and Brandeis' essay. The case concerned a lawsuit against an insurance firm that had used the plaintiff's image in an advertisement without her permission. The Pavesich court granted the plaintiff's claim without requiring evidence of special damages, acknowledging that one's liberty requires freedom not only from physical restraint but also from the intrusion of undue attention into one's life.⁸ Regardless of the early recognition of the right of publicity in the US, the idea of 'celebrity rights' has failed to establish a systematic, predictable approach to celebrity rights that would enable creators and proprietors of intellectual property to compete more effectively in global markets. A well-defined right of publicity will provide much-needed clarity in legitimate commercial transactions involving celebrities, advertisers, and entertainment companies, while also preventing overreach and limiting public

access to popular culture.⁹ The right to publicity is "the natural right of every human being to regulate the commercial use of his or her identity."¹⁰

The case of *Haelan Laboratories v Topps Chewing Gum, Inc.*¹¹ was the foremost case to appreciate and acknowledge the value of a celebrity's name or likeness in addition to their right to privacy. People, especially famous people, have a "right to the publicity value of their images" and the right to privacy is in addition to and apart from their image right according to this case. This right may be licensed or delegated, with the licensee or assignee having the authority to apply it to third parties. As stated by "Judge Frank", this privilege may be referred to as a "right to publicity." Melville B. Nimmer, who was influenced by the 1954 ruling, researched and described the conditions of the right to publicity.¹² He observed that, as the advertising and entertainment industries have evolved, the use of a celebrity's name, picture, signature, and likeness has a monetary value. As a result, different aspects of his appearance have been commercialized, and it is this part of his identity that he should be allowed to monitor.

Due to the rising number of instances of celebrity trespass, the recognition of celebrities' privacy rights paved the way for publicity rights in India and has emerged in the current regime. In comparison to the rest of the world, India has been slow to recognize the right to publicity and image. There isn't much in the way of precedent or any detailed law covering celebrity image or advertising rights in India. In *ICC Development (International) Ltd. v Arvee Enterprises*,¹³ the Delhi High Court handed down the first authoritative case on publicity rights. According to the court, the right to publicity arose from the right to privacy, which can be exercised in several ways that are unique to an individual or that person's personality, such as a person's name, personality trait, signature, expression, and so on. The establishment of publicity rights in India can be traced back to human dignity and liberty rights enshrined in Articles 19¹⁴ and 21¹⁵ of the Constitution. With the rise of celebrity exploitation, society has recognized the need to protect celebrities' rights, not only by providing them with rights but also by putting limits on their rights to regulate the domination of celebrities' interests over the interests of the general public.

Celebrity and Their Rights

A celebrity is anyone well-known for their accomplishments, they are certainly 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. He is, in other words, a celebrity.”¹⁶ Celebrity is derived from the Latin word “celebritatem” which means “the state of becoming popular.”¹⁷ As a result, the number of people who count as celebrities grew indefinitely. A celebrity was described as an “actor, author, artist, politician, model, athlete, musician, industrialist, executive, playboy or any other of a hundred types who wish to be in the public eye for any of a hundred reasons.”¹⁸ A significant portion of the population views the term “celebrity” as an honor and recognition for achievement. A long list of personal characteristics adds to a celebrity’s distinct personality such as his “Name, nickname, stage name, photo, likeness, photograph, identity, act, traits, walk, habits, style, reputation, and any recognizable personal property, and all needs to be protected.”¹⁶ In the case of *Martin Luther King Jr Center for Social Change v American Heritage Products Inc.*,¹⁹ the term ‘celebrity’ was articulated to be used in a wider context to enclose not just the actors in films, famous rock stars, and athletes but others as well.²

The term “celebrity” is not specified in the Indian Copyright Act of 1957. Having said that, none of India’s intellectual property laws (IPLs) have taken the time to describe celebrities and their rights separately or directly. As a result, celebrities are left with no choice but to juggle their interests within the current legal system. Section 2 (qq) of the Copyright Act of 1957, describes “performer” as an individual who has been granted certain economic and moral rights, maybe a place where they may seek refuge or locate themselves.¹ The meaning of the word performer as per the Indian Copyright Act, 1957 includes “an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance”²⁰ As a result, it’s possible that the description of a performer is too limited to properly cover the idea of fame and grant complete protection.

Celebrity Rights

The privileges that celebrities are granted can be categorized into three categories: personality rights, publicity rights, and privacy rights.

Personality Rights

Personality rights emerge from an individual who is seen by society in a certain light. Celebrities’

creative efforts are seen as an extension of their identities when they are involved in activities that a common man does not carry out. Intellectual property theorists attained this approach from Kant and Hegel’s ideas about private property as a representation of personality. They uphold the assertion of personal property rights because they encourage self-expression and human growth, as well as contributing to society.²¹ As a result, a person’s personality embodies emotional, dignitary, human, and spiritual principles. Professor Kwall proposes that moral rights be applied to created personalities to protect celebrities’ personalities and their reputations.²² The celebrity’s public persona is the fruit of his labor, and his life is dependent on its protection and dignity. Based on their unique abilities, each individual makes a unique contribution to society. “Hegel’s metaphysical concept of property”, states that expresses that an individual’s property is an expansion of his character which likewise upholds individual rights. An individual’s commitments to society are, comparably, an expansion of their character. “The right to bodily integrity, the right to physical liberty, rights in family life and spiritual sexual relations, at least one element of informational privacy, and basic aspects of dignity and reputation are all part of the personality rights.”²³

Privacy Rights

The most difficult to describe are privacy rights. They have diverse and ambiguous personalities. The right to privacy has been described as the most extensive and highly respected of modern society’s rights.²⁴ Scholars have established various definitions of ‘privacy,’ some of which are too wide and others which are too narrow.²⁵ The privacy doctrine of Warren and Brandeis has had a major effect on the growth of celebrity rights. They said that everyone’s right to “be let alone” was a fundamental concept of personal liberty.⁵ Individuals tend to customize superstars and fixate on everything about their lives. People tend to personalize celebrities as their friends and become curious about any personal aspect of their lives, ranging from their personal affairs to anything as insignificant as the clothes they wear, the cosmetics they use, and the locations they visit because celebrities have a common image in society. However, since celebrities are unfamiliar to the general public, there is no normal exchange of knowledge. As a result, celebrities try to keep their details under wraps because disclosing them could

result in embarrassment, humiliation, and a sense of insecurity.² Celebrities often find themselves in positions where their public image overshadows their true self. The urge of the viewer to "possess" the celebrity identity has led to "the colonization of the veridical self by the public face," which involves world-famous celebrities having every detail of their lives scrutinized by the media and the general public.⁵

Publicity Rights

The right to profit from an individual's name and fame is referred to as a right of publicity. To assert this right, you must prove that fame is a type of merchandise, i.e., an act done to encourage the selling or popularity of a product or operation. As a result, misappropriating a celebrity's intellectual property and using their fame to market a product without their permission is considered an unfair trade practice. The right to regulate the use of one's name for commercial purposes is known as the right to publicity; it very well may be extensively characterized as the "inherent right of every human being to control the commercial use of his or her identity."²⁶ It shields an individual's character from unapproved business use by giving a big name the elite option to permit the utilization of their picture for business purposes.¹ The celebrity right also includes the right to be paid as compensation if his name or likeness is used for commercial purposes without his permission.²⁷ Therefore, this right differs from the protections against "invasion of privacy" and "adverse portrayal of one's name," or, in other words, celebrities' moral rights over their character. The publicity right is an intellectual property right based on Lockean labour which lays down that whoever sows would only be entitled to reap the fruits, according to this theory.²⁸

The importance of recognizing this right in favor of celebrities is to provide them with a kind of Intellectual Property that is intended to provide them with economic benefits from the use of the property, which is commonly understood to be justified as compensation or motivation for the claimant's work in creating the intellectual property.

Celebrity Rights under International Conventions

With the continued development of the entertainment industry across the world, celebrity strength and recognition are transcending conventional social and cultural boundaries. The cross-cultural influence of celebrities has fueled the development of other industries as well. As a result,

the importance of celebrity recognition in the international arena has grown. Celebrity rights do not have a common level or a uniform law for their protection.²⁹ Most countries' laws on publicity rights are still in the early stages of growth. Various aspects of publicity protection conflict with the right to privacy. Each move, from characterizing the expression "celebrity" to allowing rights, presents its own set of challenges.³⁰ To locate advertising rights in international conventions, they must be derived from the different rights granted to "performers." It is reiterated in this respect that actors are just a subset of celebrities; a celebrity will exist without becoming a performer. Intellectual property rights have been discussed time and again and have been laid down under international conventions such as WPPT, TRIPS Agreement, and Berne Convention. These international conventions focus on laying down the provisions to protect various intellectual property and the legal rights of the owner of that intellectual property. Nonetheless, these conventions have had a significant impact on the development of local legislation governing copyright and related rights, as well as the resulting advertising rights.¹ Some of the most important conventions are discussed below:

Berne Convention

Due to the international urge to "harmonize the defense of cultural intellectual property in the world," the concept of moral rights has always been a significant driving force behind the enactment of the Berne Convention.³¹ The Berne Convention is "animated by the desire to protect, in as effective and as possible, the rights of authors in their literary and artistic works"³² thereby protecting moral rights. This is similar to certain forms of personal autonomy in the context of publicity rights. The problem with protecting celebrity attributes under the Berne Convention of 1886 is that it is not deemed to be the subject matter of authored work under copyright, as a face or some other body part cannot be considered authored original work. Another issue with publicity rights is the fixation on jobs. The name's copyright protection only covers the words in the name, not the character behind it. If advertising rights are protected by international copyright, it must be shown that they are an extension of a copyrightable work of authorship.²⁹

Rome Convention

It is the first international instrument to discuss the rights of artists, record companies, and broadcasting

organizations. Actors have not been given secondary use rights in the same way that films have been granted under Article 19.³³ The right to secondary use is conditional on equal remuneration. For the first time, the Rome Convention acknowledged "neighboring rights," such as 'performers', 'phonogram manufacturers', and 'broadcasting rights.' However, the membership in this convention was limited to UN member countries who were already members of the 'Berne Convention for the Protection of Literary and Artistic Works, 1886.' The concept of moral rights is not covered by this convention; therefore, this convention does not protect the moral rights of celebrities.

Trade-Related Aspects of Intellectual Property Marks (TRIPS Agreement)

The TRIPS Agreement³⁴ is a legal agreement among all the member nations of the World Trade Organization (WTO).³⁵ TRIPS Article 14(1)³⁶ mandates that "performers be given 'the possibility of avoiding' the following acts: fixation of their performance on a phonogram, replication of such fixation, and live broadcasting of their performances". The term may be extended from 20 to 50 years under Article 14(5). Under the TRIPS structure, the right to publicity in trademark law is adequately protected against misappropriation of marks, including in non-competing products or services.³⁷ Celebrity marks are often misappropriated about consumer products and services, rather than the entertainment industry, which is where the marks originated. As a result, the TRIPS Agreement against misappropriation of non-competing products or services becomes an effective and efficient tool for celebrities to exploit trademarks.³⁷ Unlike other intellectual property conventions, TRIPS has a stringent compliance mechanism and Member States face sanctions via the WTO's dispute settlement procedure.²

The WIPO Performances and Phonograms Treaty, 1996 (WPPT)

The WPPT of 1996³⁸ was a significant move forward in the protection of performers' allied interests. The WPPT was primarily concerned with shielding performers' and phonogram producers' rights from encroachment in the digital age, as there had previously been a legal vacuum in this region. The treaty primarily acknowledged the recording of performances on digital media, as well as their publishing and dissemination to the general public.¹ However, only aural works were protected, while

visual works were ignored. In terms of performers' rights, they were granted some economic rights, such as the right to reproduce, distribute, and rent their work, as well as moral rights. The treaty aimed to establish and preserve the most comprehensive and uniform defense of the rights of performers and producers of phonograms possible. It acknowledges the need for new international rules to address the issues raised by modern development, the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms, and the need to strike a balance between the rights of performers and producers of phonograms.² The concept of moral rights has been recognized under the WPPT and legal protection has been granted to protect the moral rights of the performers.

On critically analyzing the measures undertaken by the government of India to implement the landmark conventions and treaties for the protection of the rights of celebrities, in 1961, India signed the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the "Rome Convention"). The Rome Convention protects performers in plays, manufacturers of phonograms in phonograms, and broadcasting organizations in broadcasts. India is also a signatory to both the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, both of which aim to protect copyrighted works. The Government of India passed the International Copyright Order, 1958, which grants the same treatment to any work first published in any country that is a member of any of the above conventions as if it were first published in India. The WIPO Copyright Treaty of 1996 (WCT) and the WIPO Performances and Phonograms Treaty of 1996 (WPPT) are two treaties signed by the World Intellectual Property Organization (WIPO) also known as 'Internet Treaties'. They were created to update and complement the current WIPO treaties i.e. the Berne and Rome Conventions. This revision was deemed important because both the Berne and Rome Conventions were last revised over a quarter-century ago and did not adequately cover technological and market changes. Surprisingly, the Copyright Amendment Act of 2012 made amendments to put Indian copyright law in line with the Internet Treaties, but the Indian government only accepted treaty accession on 4 July 2018. Since the Copyright Amendment Act already provided the rights and obligations under the Internet Treaties, the

accession does not necessitate a new law amendment. While it is thought that the delayed accession was done mainly to strengthen India's international ties, it now means that Indian copyright holders would have reciprocal rights in countries where foreign work protection was contingent on WPPT accession.

Protection of Celebrity Rights – Judicial Trends and Development

Unlike its Western counterparts, India has a long way to go in terms of recognizing and granting complete protection to celebrities. There has been a conspicuous lack of legislation on the issue up to now. The jurisprudence of celebrity rights has been unable to develop because the Supreme Court of India has yet to rule on the matter. Furthermore, celebrities have been remiss when it comes to protecting their advertising, publicity, and privacy rights. However, several events and cases have surfaced in the last decade that have shed light on the issue of various celebrity rights in India.

Publicity Rights

By expanding the common law right to publicity in various situations, Indian courts have been able to adjudicate cases where the Personality Rights of public figures were in question or were incidental to the event. Since terms like "celebrity," "famous personality," and "publicity rights" aren't defined by statute, deciding who is a celebrity and whether a person is entitled to have their publicity rights enforced is a subjective decision that differs from case to case. Personality rights are a general concept that has been used by courts to recognize celebrity rights in a variety of situations. One such landmark judgment that resolved the issue of acknowledging publicity rights in India is *ICC Development (International) Ltd. v Arvee Enterprises*,³⁹ the Delhi High Court recognized that the right to publicity evolves from the right to privacy in India. Furthermore, it was determined that such a right exists solely in "an individual or in any indicia of the individual's personality, such as his name, personality attribute, signature, voice, or any other indicia of the individual's personality that a person may obtain as a result of his association with an event, sport, or movie." However, such a right does not in any way vest in any event or association that made an individual famous. The Court held that:⁴⁰

"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. No persona can be monopolized. The right of Publicity vests in an individual and he alone is entitled to profit from it."

Any attempt to transfer the right of publicity from a citizen to an organizer/non-human entity would be a violation of Articles 19 and 21 of the Indian Constitution. This case demonstrates how the development of publicity rights in India stems from Articles 19 and 21 of the Constitution, which protect human dignity and liberty. It's more of a battle between an individual's right to privacy and the public's need to know. When viewed through the lens of intellectual property, the development of this right as a commercial property is severely limited.⁴¹

In *Titan Industries Ltd. v M/S Ramkumar Jewellers*,⁴² the photograph of Indian actors Mr. Amitabh Bachchan and his wife Ms. Jaya Bachchan, which was taken specifically for the endorsement of plaintiff's jewelry product, was used unauthorizedly by defendant in the instant case for his jewelry product. The Court explained that the identity of a famous personality or celebrity may be used in advertising for commercial purposes, but only with the permission and consent of the respective personality regarding the time, place, and essence of the use, while granting defendant a permanent injunction. The Court also observed that:

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

The Court has provided two elements that must be considered – "Validity: The plaintiff owns an enforceable right in the identity or persona of a human

being and Identifiability: The celebrity must be identifiable from the defendant's unauthorized use. Infringement of the right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable. The right of publicity extends beyond the traditional limits of false advertising laws”, the plaintiff was issued an interim injunction by the court, which expressly recognized the plaintiff's right to privacy.

Similarly, in *Sonu Nigam v Amrik Singh*,⁴³ the parties to the case were scheduled to appear at the Mirchi Awards 2013, and their photos were used on the event's official posters with their permission. Mika Singh promoted himself with hoardings and posters that were not official event hoardings and posters, including large photographs of himself and smaller photographs of other artists, including Sonu Nigam, without their consent or permission. It was claimed that the aforementioned hoardings and posters misled the public about Mika Singh's success with other artists. Sonu Nigam sued Mika Singh for defamation and violation of his personality rights, and the Bombay High Court, while imposing a hefty fine on the defendant, ruled that “no third person should make any commercial profits by using celebrity images unless they have consented to it”. The Court also stated that imposing a large fine would serve as a deterrent to those who want to earn profit from misusing the celebrity's rights.⁴⁴

In *Sourav Ganguly v Tata Tea Ltd*,⁴⁵ Sourav Ganguly, who had just returned from Lords after scoring magnificent centuries, was disturbed to learn that Tata Tea Ltd., where he worked as a manager, was promoting its 1-kilo tea packet by allowing customers to congratulate Sourav through a postcard included in each packet. In several ways, the company was attempting to promote the sale of its tea packets in India, where Sourav had amassed a large following. By admitting that Sourav's reputation and popularity were his intellectual property, the Court ruled in his favor. However, the laws in India are not adequate to safeguard the publicity and merchandising rights of celebrities and we are currently at a nascent stage to grant complete protection to celebrities in India.

While India does not have a legal provision for publicity rights, this right is recognized in principle. Despite this, the principles of privacy and publicity are slowly evolving. Though constitutional rights are only enforceable against the government, the courts have acknowledged that in the private sector, a

violation of privacy case could be brought under tort law.

Privacy Rights

In India, there is a long line of jurisprudence on the subject of the right to privacy. The Supreme Court heard several cases that eventually gave rise to the evolution of the right to privacy as a constitutional right guaranteed by the Indian Constitution. The evolution of general privacy as a fundamental right in India was not explicitly stated in the Indian Constitution or legal and political theories. In India, the legal security afforded to privacy rights can be defined as follows: “As in *M.P. Sharma and Ors. v Satish Chandra*,⁴⁶ an eight-judge Constitution Bench seemed to be discussing the particular problems in the specific context and circumstance only at first but refused to acknowledge privacy as a fundamental right. In *Kharak Singh v The State of Uttar Pradesh*,⁴⁷ a six-judge Constitution Bench held that the Indian Constitution does not have a fundamental right to privacy and refused to recognize privacy as a constitutionally guaranteed fundamental right under part III. However, in the three-judge Constitution Bench in the case of *Govind v State of Madhya Pradesh*,⁴⁸ Subba Rao J, writing for the minority, held that while the Constitution does not specifically declare a right to privacy as a fundamental right, the word "personal liberty" can be construed to include privacy under Article 21 of the Constitution.”⁴⁹

The Supreme Court also held in *M.P Sharma v Satish Chandra* that, although our Constitution does not explicitly mention the right to privacy, it can be traced back to the "Right to Life" enshrined in Article 21 of the Constitution, and that this right is open to all people unless prohibited by constitutional prohibitions. In India, the defense of celebrities' rights is still in its infancy. A person's right to privacy, as well as the privacy of his or her family, marriage, procreation, motherhood, childbearing, and education, is protected. Without his permission, no one can publish anything about the above topics, whether true or false, laudatory or critical. If he does so, he may be infringing on the person's right to privacy and could be held liable in a damages action. In *Justice K. S. Puttaswamy (Retd.) v Union of India*,⁵⁰ the Court observed 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 consent."

Apart from the economic reasons for such a right, it is also justified as safeguarding individual autonomy and integrity. The right safeguards a person's right to a free and personal self-concept. The right to publicity protects a person's right to self-definition by preventing others from interfering with the definitions and beliefs that the public identifies with her. Although the right to publicity is covered by Article 21 in its broadest sense, this right isn't unrestricted; fair limitations can be imposed on it in the public interest as defined by Article 19(5). Article 19 of the Constitution guarantees freedom of the press. In addition, the term "freedom of speech and expression" as used in Article 19(1)(a) has been interpreted to include the right to obtain and disseminate information.⁵¹ The Supreme Court has provided that in Article 19(1)(a), a broad interpretation has to be taken into consideration, holding that the right to freely obtain and share information and ideas is an integral feature of freedom of speech and expression.⁵²

In the case of *Indu Jain v Forbes Incorporated*,⁵³ the complainant argued that the defendant had violated her privacy rights by publishing her name in the Forbes list of Indian billionaires without her permission. The plaintiff's only objection, according to the court, was to the publication's erroneous valuation of wealth, even though the methodology for measuring this wealth had not been challenged previously.⁵⁴ The plaintiff failed to prove irreparable harm as a result of the publication, according to the court. However, the evidence on file showed that there was enough public interest to justify releasing the details on her. Celebrities have repeatedly argued that the media has abused their independence in the name of providing information in the "public interest".³ Some claim that since celebrities devote their lives to the public, they are no longer protected by the rule of privacy. However, this waiver is not unconditional, and the celebrity retains the right to protect his personal and professional life. It is self-evident that everyone's right to privacy is a cherished possession; it should be safeguarded and not exploited by the media in the name of the public good. The

intellectual property regime in India contains legislative provisions for the defense of image rights, but they are insufficient to grant complete protection to celebrities.

Personality Rights

A person's personality is more than just a trade symbol; it also contains elements of personal identity that others cannot manipulate. It is concerned with an individual's emotional and dignitary beliefs, whether he is a celebrity or a common man. With the intersection of the right to privacy and the right to publicity, a new right protecting an individual's identity has emerged. In the case of *Phoolandevi v Shekar Kapoor & others*,⁵⁵ Phoolan Devi the plaintiff secured a temporary injunction preventing the defendants from showing the film *Bandit Queen*, which was based on her life, and objected, claiming that the respondent's film misrepresented the truth. She requested an injunction because she had stopped all of her previous illegal activities and begun a new, respectable life. The court ruled that the following concern has to be thoroughly investigated, and the impact on an individual's private life as a result of the screening of such a film should be thoroughly explored before the film is released. As a result, a celebrity's name and image may be protected as a constitutional right. The Court emphasized the right to privacy and fair restriction, concluding that allowing the defendants to make a film about the plaintiff's life without her consent did not entitle them to infringe on her privacy rights, as this would be a violation of Article 21 of the Constitution.⁵⁴

In the other case of *Sampat Pal v Sahara One Media and Entertainment Ltd. and Ors*,⁵⁶ the plaintiff filed a suit in the Delhi High Court seeking a permanent injunction and damages, claiming to be a social activist who runs a group known as the "Gulabi Gang." The lawsuit was filed to prevent Sahara One Media & Entertainment & Ors from releasing "Gulaab Gang," which she said was a film adaptation of her life story. She argued that the film's depiction of the characters defamed and degraded her, as well as the other members of the organization. She also said that the movie defames her and depicts her work in a negative light, with swords and sickles. The Delhi High Court's Single Bench issued an order prohibiting broadcasting, distribution, and promotion of the film "Gulaab Gang" in its censored or uncensored prints until the next date of hearing. Following that, the Producers, Sahara One Media & Entertainment &

Ors, filed an appeal. The Division Bench then approved the film's release on the condition that Sahara Media and Entertainment state in the Disclaimer that they have no connection to Sampat Lal's life or work, as well as her organization.⁴⁴

In the case of *Shivaji Rao Gaikwad v Varsha Productions*,⁵⁷ actor Rajnikant filed an injunction in the Madras High Court to prevent the release of a film titled "Main hoon Rajnikanth", which violated his personality rights. "A large section of the public across India is, therefore, likely to be misled into viewing such project/film on the mere belief that the said project/film has been approved by their matinee idol," he wrote in his application.⁵⁸ The Court "denied the defendant's argument that the plaintiff's case should be dismissed because personality right has no meaning and is not recognized by any Indian law." While there is no meaning for the personality right under any law in India, the Court wrote, the personality right has been recognized in the name, in various judgments.' The Court issued an injunction prohibiting the defendants from using the plaintiff's name, picture, caricature, or style of delivering dialogues in their upcoming project/film." This movie was a complete breach of his right to privacy as well because it was based on his name, picture, and other personal information, as well as the fact that it was made without his permission and that he had no control over the content. The Court stated that under modern legislation practiced by all developed countries, intellectual property rights are a recognized valuable right that cannot be contested. The Copyright Act, Trade Marks Act, and other relevant laws are adequately safeguarding the rights. According to Article 21 of the Constitution, everyone has the right to live a dignified life in society, which means that no one can damage a person's dignity or fame without breaking the law.

On critically analyzing the judicial pronouncements, it was seen that there is no separate codified law in India that deals with personality or celebrity rights (personality rights), as well as their status and advancement, and laws are still in their infancy, largely regulated by judicial pronouncements. The most important constitutional provision regulating personality rights, on the other hand, is regulated as part of the fundamental right to life provided by Article 21 of the Indian Constitution. Apart from this, other legislative provisions regulating and protecting Personality Rights can be seen in the IPR regime, such

as the Copyright Act 1957, which only grants moral rights to writers and performers (actors, singers, musicians, dancers, and so on). According to the applicable provisions of the Copyright Act of 1957, Writers or Performers have the right to be granted credit or assert authorship of their work, as well as a negative right to prevent anyone from causing any kind of harm to their work, resulting in a reputational disruption. Under the terms of the Intellectual Property Law, 'personality rights' are defined as the property of well-known public figures that cannot be misused or misappropriated by anyone. Personality rights can also be partially protected by relying on Section 14 of the Indian Trademarks Act, 1999, which prohibits the use of personal names in trademarks. Apart from that, the common law remedy of passing off and the tort of disparagement, libel, or slander under the Law of Torts protect Personality Rights.

Inherent Conflict between Celebrity Rights and Constitution of India

According to Article 19 of the Indian Constitution, which also includes freedom of the press, the media claims that it is their fundamental right to publish any matter that affects the public or is of public interest. Similarly, according to Article 19, the public has a right to know any details. Celebrities, on the other hand, have long contested this right, claiming that the media has abused their freedom by invading their privacy to deliver news of public interest.³

Courts have constrained celebrities' privacy rights in cases where events are deemed newsworthy or of legitimate public interest, signaling a nuanced balance between individual privacy and public concern. While some argue that celebrities forfeit privacy rights due to their public lifestyles, such waivers are not absolute, and celebrities maintain the right to safeguard personal and professional aspects of their lives. Protection of privacy rights is crucial within the intellectual property framework, although existing legislative provisions in India may not provide comprehensive coverage.

For instance, in *Montano v San Jose Mercury News*,⁵⁹ Montano sued the publication, claiming that his right to privacy had been abused and that his celebrity image had been misused. This suit was dismissed based on the 1st Amendment, and the California Court of Appeal reached the following conclusion:

"The First Amendment protects the posters complained about for two reasons: First because the poster themselves report newsworthy items of

public interest, and second because a newspaper has constitutionally protected right to promote itself by reproducing its originally protected articles or photographs. Our conclusion on the First Amendment makes it necessary to discuss the claim that the applicable statute of limitation bars recovery."⁵⁹

In another case *Ann Margaret v High Society Magazine*,⁶⁰ the plaintiff was a well-known movie star who sued the publication for using her photograph for commercial purposes without her permission, thus infringing on her publicity rights. The judge ruled in this case that, "Ann Margaret who has occupied the fantasy of many moviegoers over the year, chose to perform unclad in one of her films; that was a matter of public interest." The Court also described the word "newsworthiness," which celebrities may use to defend themselves against the media when their privacy rights are violated, and stated that⁶¹:

"And while such an event may not appear overtly important, the scope of what constitutes a newsworthy event has been afforded a broad definition and held to include even matters of "entertainment and amusement", concerning interesting phases of human activity in general".

Consequently, celebrities possess limited publicity rights, with a key determinant being the differentiation between issues of public interest and those impacting the public's genuine concerns.

Conclusion

The protection of celebrity rights, encompassing publicity rights, is integral to intellectual property law. The convergence of human dignity and property perspectives offers a unique framework for addressing the nuanced nature of celebrity rights, especially regarding the placement of publicity rights. Utilizing a property-based approach facilitates effective management of commercial aspects like transferability and licensing while recognizing the importance of human dignity in legal precedents. Striking a balance between public interest, including free speech, and private celebrity interests is paramount, necessitating comprehensive legal protection that upholds this equilibrium. Despite the absence of specific legislation in India addressing publicity rights, the burgeoning presence of electronic media underscores the urgency for regulatory measures to safeguard celebrity rights, which may entail legislative or judicial intervention, ensuring alignment with societal interests.

With the debate over Article 21 of the Constitution in *Justice K. S. Puttaswamy (Retd.) v Union of India*, it has been inferred that the right to publicity has been given constitutional protection. However, because the case did not focus on the subject of celebrity rights, the lower courts can dismiss this as merely obiter. The jurisprudence of this branch of IPR is still in its infancy. In this expanding subject of IPR, even court interpretations have been limited.

The Indian legal system faces a significant gap in addressing modern celebrity endorsement issues, particularly concerning the protection of publicity rights amidst commercial activities like endorsements and merchandising. Establishing legislation to safeguard these rights is imperative, requiring judicial involvement and careful differentiation between personality rights and property rights. While Indian celebrities have sought to protect their rights, legislative action is overdue to recognize publicity rights as statutory and address the growing commercialization of celebrity status. Legislation should balance celebrity rights with freedom of speech, expression, and economic considerations, while also preserving human dignity and posthumous property rights. Legislative intervention is crucial to provide comprehensive protection against rights abuse and ensure privacy for celebrities, reflecting the evolving legal landscape and societal impact of celebrity influence. The researcher believes that it is past time for legislators to introduce particular legislation on celebrity rights that will introduce, illustrate, and protect celebrities from the abuse of their rights while also providing them with privacy.

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