



## Candid Infringement: Unraveling the Paparazzi Culture and Copyright Laws in India - A Legal Perspective

Upankar Chutia, Nupur Adawadkar and S Chakravarthy Naik<sup>†</sup>

Alliance School of Law, Alliance University, Bangalore – 562 106, India

Symbiosis Law school, Hyderabad, Symbiosis International (Deemed University), Pune – 411 014, India

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In the glitzy world of fame, where every click of the camera holds value, who truly owns a celebrity's image, the photographer or the star? This paper delves into the high-stakes clash between paparazzi culture and copyright law in India, unraveling the legal maze that pits creative freedom against privacy rights. Through a meticulous analysis of the Indian Copyright Act, 1957 and landmark judgments, this research debunks the glaring gaps in legislation that leave both photographers and celebrities vulnerable. What happens when a paparazzi shot goes viral? Can a celebrity claim ownership of their own likeness? And where does "fair use" end and exploitation begin? The findings reveal an urgent need for reform from clearer licensing norms, co-authorship possibilities, to legal recognition of the economic worth embedded in celebrity images. By proposing amendments to the Indian Copyright Act, 1957, this paper charts a path toward a fairer, more balanced system that could better harmonize the interests of paparazzi and celebrities. In an era where a single snapshot can make or break reputations, this research is instrumental.

**Keywords:** Celebrity Rights, Copyright, Fair Use, Paparazzi, Privacy Rights

Photography, often known as the “art of light” has undergone a transformation, over the years to become an influential art form. The practice of visually capturing and preserving knowledge has evolved significantly through the ages, with a parallel found in the domain of photography. The modern man has embraced photography as a potent tool for recording exact details and communicating engaging visual narratives, much like the ancient man used cave paintings to encapsulate the essence of their reality. Photography may be conceived as both science and an art that facilitates documenting not only special occasions but also mundane activities of the day. It skillfully combines precision with expression making it a truly unique medium for capturing moments and weaving narratives thereby enabling the recording of important milestones in history and culture, just like cave paintings did in the prehistoric era.<sup>1</sup>

With a camera as brush and light as paint, photographers have the ability to create images that stir emotions, convey stories, and explore the world's beauty. Through the composition of skillful manipulation of lighting and post-processing techniques photographers elevate scenes into

something extraordinary by revealing hidden details in our surroundings.<sup>2</sup> The true power of photography lies in its ability to freeze moments in time, preserving memories while also provoking contemplation. It serves as a bridge between reality and artistic expression by providing individuals with a canvas to express their perspectives.

Photography, as an art form, has been a part of contemporary human existence since its birth, and it has revolutionized our perceptions of the world. It plays a pivotal role in shaping human perception of reality by capturing unique moments and enabling observers to notice details that may have been missed in person. As a visual form of art, it influences human perception and emotions more than any other art form which is more real than any other representation. Photography has a grave impact on human perception of reality by influencing aesthetics, consciousness, and attention, expanding visible knowledge and power techniques, and reshaping the very relationship with nature, time, and space. It has a profound impact on human perception by enabling us to discover hidden aspects of reality, providing subjective interpretations, and enhancing the powers of observation and understanding. It is the craftsmanship of the photographer, which makes the photograph

<sup>†</sup>Corresponding author: Email: chakravarthyayak@gmail.com

creative in nature and involves unique techniques and methods to capture the image. Additionally, the ability of a photograph to capture the recollection of a certain event or a subject has made it more popular and significant.

Photography has the ability to unveil obscure details and elements in reality, furthermore, creative photography directs light, framing, lenses, and point of view to create meaningful and representative photographs. Undeniably photography's impact on both the world of art and society at large is profound.

Ascribing the significance and inherent value linked with photography, it is today considered a serious career. The evolution of photography from a leisurely activity to a venerated and esteemed profession has been a truly extraordinary journey. The art and profession of photography have undergone a remarkable transformation since its nascent stages, progressing from a laborious, time-consuming, and expensive process to a refined and nuanced art form. Professionals in this field have long aspired to capture unique photos to demonstrate their creativity, and the majority have been handsomely compensated, attracting an increasing number of people to pursue this as their daily bread and butter.<sup>3</sup>

Advancements in technology and techniques have facilitated photographers with the ability to capture moments with unparalleled precision and artistic ingenuity. The fixed format of photo film has been a limitation for photographers, however digital photography has opened up possibilities for creating larger, high-definition images by merging multiple shots. With these technological advancements, photography is no longer limited to traditional versions of photos; the digitalization of photographs has greatly revolutionized and popularized photographs.

Consequently, professionals have emerged, each specializing in distinct genres such as portrait and fashion photography, photojournalism, and fine art. Furthermore, due to digital media and social media at their peak, circulation is faster and wider than ever before, in contrast to traditional publication, which was limited to print media, books, magazines, and other forms of publication. The infamous paparazzi culture emerged alongside the evolution of photography as an art form to a booming industry. As a result, freelancing celebrity photography, commonly known as paparazzi, has become a popular profession today, fetching huge profits. Media houses are increasingly willing to pay any

amount for exclusive grabs of well-known celebrities, making it more lucrative.

India's paparazzi culture has undergone dramatic transformation in the past decade, driven by social media's demand for instant content. Viral Bhayani, a leading celebrity photographer, observes this shift: "Earlier we waited hours for one shot. Now images go viral instantly." This digital acceleration prioritizes speed over privacy considerations.<sup>4</sup> Interestingly, an emerging paradox while celebrities frequently protest intrusive photography, they simultaneously recognize media coverage as essential for relevance, "If they're not covered, they'll be forgotten."<sup>4</sup> This reveals an uncomfortable symbiosis between stars and paparazzi in India's attention economy.

Figure 1 illustrates the allocation of different categories of celebrity photography. The largest segment, accounting for 40% of the total, comprises 1876 photos classified as 'Paparazzi photography'. Immediately following, the category of 'Red carpet photography' makes up 37% of the total, consisting of 1774 photographs. The remaining 23%, which consists of 1087 photos, are categorized as 'Others'. This segment comprises a wide range of photographic material, including official press photographs, images from press meetings and magazine covers, informal appearances on talk shows and award performances, a few exterior shots of celebrities' estates, and self-portraits from social media platforms such as Twitter and Facebook.<sup>5</sup> The chart emphasizes the notable prevalence of paparazzi and red-carpet photography in the media industry.

As the market for candid celebrity photos has exploded, some photographers have put sensationalism over ethics, resulting in intrusive and often illegal tactics. The rise of paparazzi culture in

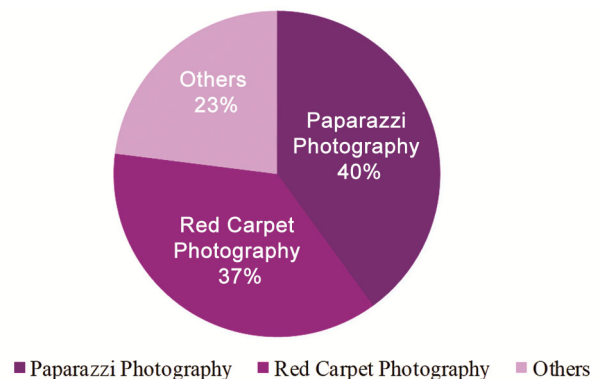


Fig. 1 — Categorization of celebrity photography<sup>5</sup>

India underscores a pressing challenge in balancing the creative aspects of photography with privacy rights under the Copyright Act, 1957. While Section 14 of the Act grants photographers exclusive rights over their works, this protection extends to paparazzi who capture candid images of celebrities in public settings. However, these photographs raise significant legal concerns regarding privacy and consent, as articulated under Article 21 of the Indian Constitution, which recognizes the right to privacy.

Further, Indian copyright law lacks clarity on the intersection between fair use and privacy, particularly when paparazzi images are published without the subject's consent. Although Section 52(1)(a) allows the use of copyrighted works for private purposes, its applicability to news reporting of paparazzi photographs remains contentious.<sup>6</sup> Furthermore, when celebrities repost such images on social media, they may face copyright infringement claims, as demonstrated by similar disputes in other jurisdictions.<sup>7</sup>

This legislative gap fails to address how consent, privacy, and fair use interplay in the context of paparazzi culture. The absence of explicit statutory guidance leaves Indian courts to rely on broad interpretations, leading to inconsistent rulings. For example, in *Puttaswamy v Union of India (2017)*<sup>8</sup>, the Supreme Court recognized privacy as a fundamental right, yet its implications for copyright disputes remain unclear. This calls for a nuanced framework to reconcile photographers' rights with individual privacy, ensuring equitable protection for both parties.

### Copyright and the Paparazzi Predicament

The interplay between copyright law and paparazzi photographs of celebrities poses significant challenges in India. Under Section 2(c)(i) of the Indian Copyright Act, 1957, the paparazzi, as the original creators, hold copyright over the photographs they take. This grants them exclusive rights to reproduce and monetize such images. However, celebrities may assert their publicity rights, claiming unauthorized commercial use of their likeness harms their reputation. For instance, if a paparazzi image is used in advertisements without consent, it may violate personality rights, as upheld in *ICC Development (International) Ltd. v Arvee Enterprises (2003)*.<sup>9</sup> These complexities highlight the legal tension between protecting photographers' rights and addressing the exploitation of celebrities' personas in India.<sup>10</sup>

### Copyright Protection Regime for Photographs

The Copyright Act, 1957 governs the protection of original artistic works, including photographs, recognizing their intellectual and creative value. Photographs qualify as copyrightable under Section 2(c)(i) of the Act, provided they exhibit originality in composition, perspective, or creative effort.<sup>11</sup> This protection incentivizes creation, ensures exclusive economic rights to authors, and deters unauthorized exploitation. While safeguarding authors' rights, the regime also balances public interest through provisions like fair use. The copyright framework underscores the dual objectives of fostering creativity and enabling access to cultural works.

Copyright laws have evolved significantly over time to adapt to technological advancements. However, photographs were not always considered as a subject matter of copyright as there was a debate surrounding the originality and creativity aspects of a photograph and photography as an art form. Two key aspects that set photography apart from other art forms are: 1) the camera's automatism, and 2) the verisimilitude (truthfulness) of the image.<sup>6</sup> These aspects led critics to argue that photographers were not true artists, and that photographs were not genuine works of art.

The history of photographs being considered as artistic works eligible for copyright protection is rooted in the broader evolution of copyright law, which initially did not explicitly recognize photography as a protected medium. The first significant milestone in the history of photographic copyright was in the mid-19th century. In the United States, the 1865 amendment to copyright law extended protection to photographs, recognizing them as creative works deserving of copyright protection.<sup>12</sup> This development marked the beginning of a legal framework that acknowledged the artistic value of photographs.

A landmark case that further cemented the status of photographs as artistic works eligible for copyright protection was *Burrow-Giles Lithographic Co. v Sarony (1884)*.<sup>13</sup> In this case, the U.S. Supreme Court ruled that photographs are indeed original works of authorship and thus protected by copyright. The case involved a photograph of Oscar Wilde taken by Napoleon Sarony, and the court's decision underscored that photographs could embody the personal expression and creativity of the photographer. Internationally, the Berne Convention

for Protection of Literary and Artistic Works, first adopted in 1886, played a pivotal role in extending copyright protection to photographs. The Convention recognized photographs as artistic works, ensuring that they received the same level of protection as other creative works under international copyright law. Aligning with the Berne Convention, the Indian Copyright Act, 1957 explicitly included photographs under the category of artistic works, providing them with copyright protection from the moment of their creation.

The Indian Copyright Act, 1957 provides a comprehensive framework for protecting photographs as artistic works. Section 2(c)(i) defines “artistic work” to include photographs, regardless of their artistic quality. This broad definition ensures that all photographs, including those taken by paparazzi, with the quality of the photos being considered immaterial to qualify for copyright protection.<sup>12</sup> Section 2(d) of the Act identifies the “author” of a photograph as the person who takes it,<sup>14</sup> while Section 17 establishes that the author is generally the first owner of the copyright.<sup>15</sup> These provisions, when read together, grant paparazzi photographers exclusive rights over their celebrity photographs, including the right to reproduce and commercially exploit them.

Adhering to these provisions, the Paparazzi has right over the photograph of the celebrities he clicks. It also recognizes them as author or owner of the photographs to solely and exclusively reproduce them and showcase them to the public. As the copyright laws in India does not mandate registration, once a Paparazzi clicks a photograph, he owns it and can exclusively sell it to print and/or digital media or he can share it to his social media account, or he can commercially exploit it in all potential manner.

On the flip side of the coin, looking at the perspective of the celebrities, there has been always a sense of dissatisfaction as they contend that their photographs are being clicked without prior approval and Paparazzi trading it is unfair. Furthermore, there have been cases of unfair use, being filed against celebrities even if they have shared their photos on their official social media account. A photographer called Steven Mitchell filed a lawsuit against Lebron James, an American basketball star, alleging the player had published a photo where the player is seen dunking a basketball, which is owned by the photographer on social media.<sup>16</sup> In another similar kind of scenario, famous singer Jennifer Lopez was

accused of infringement when she published a photo of herself on social media without acknowledging the photographer who captured the photo.<sup>17</sup> These are among the few reported incidents where the definition of fair use is at the question where celebrities are restricted from using their own images.

### **Rights of Celebrity vis-à-vis the Paparazzi Right over the Photograph**

As the contradiction of rights over fair use of the photograph is in question, it will be unfair to hear only one side, i.e., paparazzi owning the holistic right over photograph as conferred under the Copyright Act, 1957. It is also important to look at the rights associated with the celebrity or the personality whose photo is being commercially exploited without any prior approval.

When it comes to celebrities, they have inherent value in themselves as personalities, and they frequently commercialize themselves through various ads, which is another major industry.<sup>18</sup> According to the inherent value of the celebrity’s personality, paparazzi capturing photos without prior approval and transferring them for financial gain to any third party can be considered an infringement of the rights relating to the celebrity’s intangible assets, i.e., the celebrity’s personality as an asset. Thereby, going by the same logic, the celebrity can also sue for infringement of his property rights if he finds his photos which are much valued are being traded by the paparazzi.

Although no famous incidents have been recorded in India, the incidents cited before, such as the ones involving Lebron James and Jennifer Lopez, raise major issues about celebrity rights even in India, as one could see huge paparazzi involvement and publication of the celebrity photographs on news media as well as social media. Looking into the incidents of Lebron James it was counter-argued by the celebrity that the photographer has tried to use this photo for commercial advantage which is against the right to publicity under the common law.<sup>16</sup> Despite the arguments, the case was settled by paying compensation to the photographer according to the current legal system. The same was the scenario of Jennifer Lopez’s case, which too ended with paying compensation.<sup>17</sup>

If one looks at the celebrity’s other rights, it is clear that their right to privacy is violated if paparazzi capture their image without their consent or prior

approval. Every person has the fundamental right to life and personal liberty, which includes the right to privacy, as stated in Article 21<sup>19</sup> of the Indian Constitution. In this case, the paparazzi capturing images of the celebrities and trading them is a clear incidence of violation of the fundamental rights of the celebrity. The tension between celebrities and paparazzi often manifests in public confrontations, as seen when actor Ranbir Kapoor confronted photographers for invading his privacy during a family outing.<sup>20</sup> It is seen that a celebrity's public life is surrounded by paparazzi waiting for the best click, ignoring the fact of the privacy right being infringed, leaving with no options but to employ a huge security setup to protect its rights. These conflicts underscore the urgent need to balance journalistic freedom with respect for personal boundaries in India's evolving media landscape.

Presently, due to the absence of court precedents in this respect, the problem persists, emanating as a grey area in law where both rights are involved. As popularly seen, the celebrity in order to protect its public life, defamation or backlash from the public, settles these issues through compensation. Now the question is fair use of the photograph, where the first and foremost question that arises is the rightful holding of the photograph by the paparazzi if taken without consent of the celebrity and does the privacy right at any scenario infringed. Secondly, a celebrity owing to its inherent personality value and sharing or utilizing its photograph on social media is regarded as fair use or not. The present regime of copyright protects the paparazzi, as the work has been a part of the creativity of the photographer and Copyright promotes creativity, enables the original creator to enjoy the limited monopoly right over others, and can have an exclusive commercial right over the work.<sup>21</sup>

It is due to these unprecedented questions, which leads to the claims of celebrities towards unjust claims of unfair use of their photograph. With celebrity photography turning into a hefty commercial industry, there needs to be legal intervention to evaluate the jurisprudence of fairness or unfairness towards the end of justice. Some of the suggestions toward the same can be, paparazzi licensing the photograph from the celebrity to commercially exploit the photograph. But in reality, why would he license or pay royalty as he already holds the exclusive copyright over that photograph which rules out the option of licensing.

Another option to put forth both the party's rights in a win-win situation is the grant of co-authorship to the celebrity. The concept of co-authorship under Section 2(z) of the Copyright Act presents a theoretically balanced solution, recognizing both the paparazzi's creative labor according to Locke's Labor Theory and the celebrity's indispensable contribution through their persona.<sup>22</sup> However, its practical implementation faces substantial hurdles. First, the valuation of respective contributions becomes inherently subjective while the photographer's technical and artistic input is tangible, the celebrity's likeness often drives the image's commercial worth, creating an asymmetry difficult to quantify legally. Second, the spontaneous nature of paparazzi photography conflicts with co-authorship's requirement of collaborative intent under Section 2(z), as celebrities rarely consent to or participate in the creative process.<sup>23</sup> Third, administrative complexities would arise from negotiating rights for countless candid shots, potentially stifling timely dissemination and undermining the industry's economic model. These challenges suggest that while co-authorship philosophically aligns with equitable rights distribution, it requires either legislative reinterpretation of 'collaboration' or supplementary frameworks to function effectively without disrupting existing practices.

## Celebrities' Rights and their Inherent Value

### Celebrities as Commercial Personalities

In the 21st century, celebrities have transcended their status as mere public figures and have become commercial personalities of substantial market worth.<sup>18</sup> Their image, identity, and persona are transformed into commodities and strategically leveraged across many forms of media to generate profit. The financial viability of celebrities encompasses not only sponsorships and commercials but also permeates every facet of their public image. The legal structure in India that governs the protection of commercial personalities is centered on the Indian Copyright Act of 1957. This act establishes a strong mechanism to ensure the rights of authors, performers, and celebrities are safeguarded. According to the Indian Copyright Act, the concept of an "author" extends to performers, thus providing celebrities with certain exclusive rights over their performances. In accordance with Section 2(d) of the Act, the author of a photograph is defined as the

person who captures the photograph. Section 2(q) covers performers who hold rights to their performances. This includes individuals in the entertainment industry, such as actors, musicians, and other prominent figures, whose artistic performances are documented or transmitted through various mediums.<sup>24</sup> These provisions reinforce the recognition of celebrities as authors of unique works, thereby providing them with judicial authority to regulate the utilization of their image and performances.

The monetary valuation of a celebrity's character is substantial, frequently exceeding the income generated from their primary source of income. Celebrities promote merchandise, partake in advertising campaigns, and engage in other commercial activities that capitalize on their celebrity status. The commercial exploitation indicated here is safeguarded by IPR, which guarantees that celebrities have the authority to manage and profit from their public image. The Indian legal system, as outlined in the Copyright Act, aims to strike a balance between safeguarding these rights and serving the public interest. It ensures that the commercial image of celebrities is not arbitrarily executed without appropriate consent and remuneration.

### **Infringement of Intangible Assets: The Celebrity's Personality**

Celebrities' personality rights include their name, appearance, likeness, voice, and other discernible characteristics. These intangible assets are vulnerable to unauthorized usage, resulting in infringement. The Indian Copyright Act, 1957 offers a structure to tackle such violations by granting copyright protection to the artistic works connected with famous figures. Section 38A of the Act confers performers with exclusive entitlements over their performances, encompassing the authority to permit or forbid the recording and broadcasting of their performances. This guarantees that any unauthorized utilization of a celebrity's performance can be legally contested.

Indian courts have grappled with the delicate balance between paparazzi rights and celebrity interests, with landmark judgments shaping the legal landscape. Legal precedents in India have played a crucial role in establishing and upholding these rights. In *Titan Industries Ltd. v M/s Ramkumar Jewellers* (2012), the court explicitly prohibited the unauthorized commercial use of celebrities' images, ruling in favour of Amitabh Bachchan and Jaya

Bachchan.<sup>25</sup> The judgment reinforced the principle that celebrities retain control over the exploitation of their likeness, establishing a precedent against unconsented commercial appropriation. However, while this case underscores judicial protection of personality rights, its applicability to paparazzi photography remains debatable. Unlike staged endorsements, candid images often intersect with public interest and journalistic freedom, raising critical questions about whether existing rulings adequately address the complexities of unauthorized yet newsworthy celebrity photography. A deeper jurisprudential analysis is necessary to reconcile these competing interests.

Violating a celebrity's personality rights not only leads to monetary damages but also impacts their reputation and public perception. Utilizing a celebrity's likeness without their explicit consent in circumstances that they do not support can result in the public forming misconceptions and causing injury to their personal brand.<sup>26</sup> Protecting intangible assets is essential for preserving the authenticity and market worth of a celebrity's public image.

### **The Right to Sue for Infringement**

According to the Copyright Act, celebrities in India possess a right to initiate legal proceedings for the violation of their personality rights. Section 55 of the Act grants copyright owners the authority to pursue remedies, including injunctions, damages, and accounts of profits, against those who infringe on their copyright. Celebrities can initiate legal actions against any unauthorized exploitation of their image, resemblance, or performances. The remedies provided by the Act are intended to discourage potential infringers and provide compensation to the aggrieved parties for any incurred losses.

The case of *Daler Mehndi v Take India Ltd.* (2021)<sup>27</sup> serves as a relevant precedent where the court affirmed the singer's entitlement to his performance and provided redress against unauthorized utilization. Further, in the case of *Sholay Media and Entertainment Pvt. Ltd. v Parag Sanghavi* (2015)<sup>28</sup>, the court affirmed the legal rights of the producers and stars of the film "Sholay" in relation to unauthorized adaptations and broadcasts. Additionally, celebrities are granted further protection through the concept of moral rights as outlined in Section 57 of the Indian Copyright Act. These rights grant authors and performers the ability to assert their

authorship and safeguard their work from any alteration or defacement that may damage their dignity or reputation. This is especially pertinent for celebrities whose image and performances are essential components of their personal and professional identity.<sup>29</sup> By enforcing moral rights, celebrities can safeguard the authenticity of their public image and avoid any distortion or misinterpretation.

The dynamic digital environment presents novel obstacles to the enforcement of celebrity rights. The prompt dissemination of content via social media and digital platforms heightens the likelihood of unauthorized utilization and infringement. In response to these issues, the Indian judiciary has modified the meaning of copyright laws to encompass digital infringements. The court's ruling in the matter of *Star India Pvt. Ltd. v Leo Burnett (India) Pvt. Ltd. (2002)*<sup>30</sup> showcased its readiness to broaden copyright protection to digital work, thereby affirming the relevance of current legislation to emerging media.

Section 2(d), Section 38A, Section 55, and Section 57 collectively institute measures that allow celebrities to have authority over the use of their personal image, pursue legal actions for infringements, and safeguard their dignity and reputation. The Indian judiciary's interpretation and implementation of these statutes in different cases highlights the significance of a comprehensive legal structure to tackle the changing difficulties in safeguarding celebrity rights. Ultimately, safeguarding the rights and intrinsic worth of celebrities is a crucial component of the Indian Copyright Law. Celebrities, being prominent figures in the commercial realm, own substantial market worth that must be protected from unauthorized exploitation. Violating intangible assets, such as a celebrity's persona, can result in monetary harm and impairment to their standing. The dynamic digital environment poses new obstacles, but the judiciary's aggressive stance in interpreting and enforcing copyright rules guarantees the sufficient safeguarding of celebrities' rights.

### Privacy Rights and Violations

#### Fundamental Right to Privacy under the Indian Constitution

The right to privacy in India has witnessed substantial development through judicial interpretation, even though it is not directly stated in

the original text of the Constitution. The right to privacy has been broadly construed to be encompassed within Article 21 of the Indian Constitution, which provides the right to life and personal liberty. The Supreme Court affirmed this significant interpretation in the case of *Justice K.S. Puttaswamy (Retd.) v Union of India (2017)*, ruling that the right to privacy is inherent in the right to life and personal liberty as stated in Article 21 and is included in the freedoms protected by Part III of the Constitution.<sup>8</sup> While the right to privacy is fundamental, it is not absolute. Indian courts have recognized scenarios where public interest may override individual privacy rights. In *R. Rajagopal v State of Tamil Nadu (1994)*, the Supreme Court held that privacy rights could be superseded when matters of public record are involved. However, the application of this principle to paparazzi photography of celebrities remains ambiguous.<sup>31</sup> Unlike jurisdictions such as the UK, which have developed specific tests for balancing public interest and privacy as seen in cases like *Campbell v MGN Ltd*<sup>32</sup>, Indian law lacks clear guidelines for determining when celebrity photographs serve a legitimate public interest. This gap in the legal framework leaves both paparazzi and celebrities in a state of uncertainty, potentially chilling free press while also failing to adequately protect privacy rights.

The concept of privacy involves a broad range of protections, such as the safeguarding of personal data, individual control over one's physical appearance, and the inviolability of one's personal environment.<sup>33</sup> The expansive comprehension of this concept has substantial ramifications for multiple facets of law and life, encompassing the oversight of surveillance, safeguarding of data, and preservation of human autonomy in the face of government intervention.

#### Paparazzi's Infringement of Privacy Rights

The emergence of paparazzi culture, characterized by the relentless pursuit of celebrities by photographers in order to acquire candid and frequently invasive photos, presents substantial obstacles to the protection of an individual's privacy rights. Paparazzi frequently encroach onto the personal boundaries of celebrities, recording moments that are intended to be private and not intended for public consumption. This approach poses significant legal and ethical inquiries regarding the equilibrium between the public's entitlement to knowledge and an individual's entitlement to privacy.

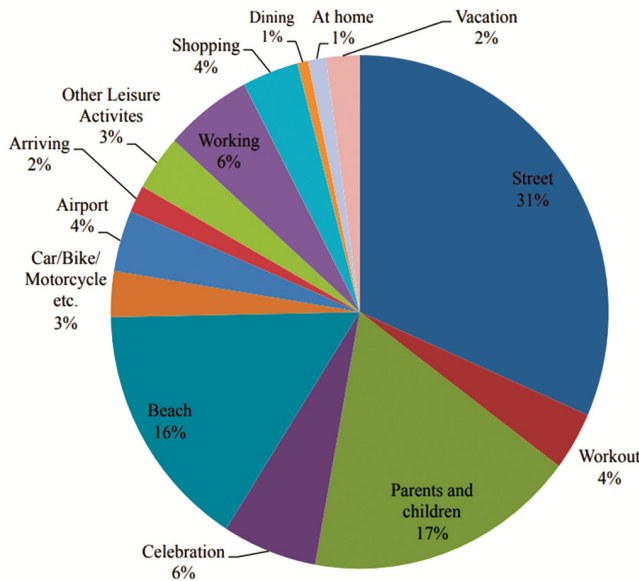


Fig. 2 — Categories of paparazzi photographs

Figure 2 depicts the allocation of paparazzi images that capture different facets of celebrity life. The most significant portion, accounting for 32%, comprises 550 photographs captured on the street, showcasing both recreational and consumer activity. The category containing the second highest number of photographs, totaling 307 (18% of the total), showcases celebrities alongside their children, highlighting the growing trend of ‘parents and children’s. The collection consists of 273 images, which account for 16% of the total, and primarily feature beach scenes showcasing leisure activities and physically fit individuals. Minor categories comprise of ‘exercise’ (4% with 64 images), ‘miscellaneous recreational activities’ (4% with 61 images), and various other activities such as festivities, work, and appearances at airports.<sup>5</sup> The pie chart clearly illustrates the intrusive nature of paparazzi in infringing upon the private of celebrities by capturing intimate and frequently non-consensual moments, particularly those involving their children and personal leisure activities, so constituting a substantial breach of their right to privacy.

In India, invasions of privacy are dealt with by the legal framework, namely through the recognition of the right to privacy as outlined in Article 21. Just like any other person, celebrities have the right to safeguard their personal life from unjustified intrusion. The act of paparazzi taking and then profiting from images without permission might be regarded as a breach of this fundamental right. The legal issue is exacerbated by the fact that these images

are frequently captured without the consent of the individuals involved, thereby violating their autonomy and personal privacy.

While the Copyright Act, 1957 grants photographers, including paparazzi, ownership rights over celebrity photographs they capture, this entitlement is not absolute. The constitutional right to privacy serves as a critical limitation on photographic practices. This fundamental right protects individuals against unauthorized intrusion into their private spheres, thereby restricting both the capture and dissemination of personal images without consent. The legal framework thus establishes a necessary balance between creative rights and personal privacy protections.

To develop a more nuanced understanding of this issue, a comparative analysis of how different jurisdictions balance paparazzi freedoms against celebrity privacy rights proves instructive. The United States addressed this tension in *Galella v Onassis (1973)*, where the court ruled against photographer Ron Galella's aggressive pursuit of Jackie Kennedy Onassis, establishing that First Amendment protections for press freedom yield when conduct escalates to harassment.<sup>34</sup> This contrasts with the EU's stricter approach under GDPR provisions and Germany's *Recht am eigenen Bild*, which explicitly prohibit commercial use of personal images without consent.

India's framework, while recognizing personality rights under copyright law and the foundational right to privacy established in *Justice K.S. Puttaswamy v Union of India (2017)*<sup>8</sup>, lacks specific statutory mechanisms to address invasive paparazzi practices. Unlike the U.S. system of privacy torts or Europe's comprehensive data protection regime, India currently relies on ad hoc judicial interventions. A synthesis of these models suggests India might benefit from: (1) codifying clear boundaries for public-interest photography, (2) adopting limited injunctive remedies akin to *Galella*, while (3) drawing inspiration from EU-style image rights protections. Such calibrated reforms could help reconcile India's competing interests in press freedom, artistic expression, and privacy rights in our increasingly visual digital economy.

### Copyright and Privacy

The legal principles that form the foundation of copyright law and privacy protection are intricately connected. The purpose of copyright law is to

safeguard the rights of creators concerning their original works, providing them with exclusive rights to utilize and circulate their original creations. However, when these works entail the act of capturing the likeness of another individual, the issue of privacy rights arises to safeguard the subject's personal boundaries and self-governance from being infringed upon.

The Indian Copyright Act of 1957 establishes a comprehensive framework for safeguarding the rights of photographers and subjects through its many provisions. According to Section 17 of the Act, the person who creates a work is initially the owner of the copyright. Section 51, on the other hand, specifies the circumstances in which copyright infringement occurs. Nevertheless, the Act also tacitly recognizes that the exercise of these rights must not violate the fundamental rights of others, such as the right to privacy.

Considering paparazzi, the act of capturing and distributing images without authorization can be considered a breach of both copyright and privacy rights. In India, legal precedents, such as the Rajagopal case, have firmly established that privacy is a basic right that must be safeguarded against unjustified interference. The delicate balance between copyright and privacy rights necessitates a meticulous examination of the circumstances and the degree of intrusion.

The overlap between copyright protection and privacy rights emphasizes the necessity for a sophisticated approach that addresses the lawful concerns of both photographers and subjects. Conclusively, the Indian Constitution grants the right to privacy, which is particularly relevant when considering the interactions between celebrities and paparazzi. This legal scenario is intricate and multifaceted. The Indian judiciary's interpretation of the basic right to privacy offers strong safeguards against unjustified intrusion. The activities of paparazzi, who frequently violate this right, must be closely controlled to guarantee the protection of the privacy and reputation of persons, particularly celebrities. The Indian Copyright Act provides a legal framework that safeguards the rights of authors and performers, ensuring the preservation of their interests while maintaining a balance with the interests of creators and subjects. Adopting this subtle and sophisticated approach is crucial for preserving the authenticity of privacy rights and copyright safeguards in the ever-changing realm of media and entertainment.

## Conclusion

The complex interplay between paparazzi culture and copyright law in India underscores a critical legal dilemma that remains unresolved under the current framework. While the Copyright Act, 1957 safeguards photographers' economic rights, it inadequately addresses the ethical and privacy concerns arising from paparazzi practices, leaving celebrities vulnerable to exploitation. Judicial precedents like *ICC Development v Arvee Enterprises*<sup>9</sup> and *Titan Industries v Ramkumar Jewellers*<sup>25</sup> have affirmed personality rights and privacy protections under Article 21, yet gaps persist particularly regarding the commercial use of candid images and the ambiguity of "fair use" when celebrities share their own photographs. The absence of clear guidelines has created legal uncertainty, stifling both creative expression and the media industry's growth. As digital advancements blur the lines between public and private spheres, the urgency for reform cannot be overstated. India must reconcile these competing interests through a nuanced legal framework that balances constitutional principles of dignity, privacy, and economic justice while adapting to evolving technological landscapes. The path forward demands collaborative efforts to harmonize individual rights with the dynamism of media culture, ensuring equitable outcomes for all stakeholders.

## Proposed Solutions and Legal Interventions

### Co-Authorship and Joint Ownership as a Beneficial Solution for All Parties Involved

The concept of co-authorship and shared ownership provides a balanced approach that acknowledges both the photographer's creative labor and the celebrity's distinctive persona and commercial value in the resulting image. To implement this framework, legislative reforms should: (1) expand Section 2's definition of "author" to include celebrities as collaborators in photographs featuring their likeness, and (2) amend Section 17 on copyright ownership to formally recognize joint rights for celebrity images, thereby establishing a legal structure that equitably values both artistic creation and personality rights.

### Draft Provision

Section 2(d)(ii) recognizes co-authorship in images of celebrities by including both the photographer and the celebrity under the word 'author'.

Section 17(2), if an image includes a celebrity, the copyright will be shared by both the photographer and

the celebrity, unless they have agreed differently in writing.

### ***Correlation with John Locke's Labour Theory***

Drawing on John Locke's Labour Theory, which asserts an individual's right to the fruits of their labor, celebrities' substantial contributions to their public image's commercial value through sustained effort and persona development justify recognizing their stake in photographic works. To operationalize this principle, legislative amendments should: (1) revise Section 13 on copyrightable works to explicitly acknowledge celebrities' value-adding contributions to photographs, and (2) modify Section 14's definition of copyright to establish joint economic rights between photographers and celebrities over such images, thereby creating a legal framework that equitably recognizes both parties' labor inputs.

### **Draft Provision**

Section 13(2), images that include celebrities are likewise protected by copyright law. This acknowledges that the celebrity's presence in the photograph adds value due to their input and effort.

Section 14(3), the commercial rights to photographs that include celebrities will be divided between the photographer and the celebrity to acknowledge their combined contribution.

### ***Evaluation of the Economic Worth Associated with the Celebrity's Repute***

The commercial value of paparazzi photographs hinges predominantly on the celebrity's public persona, suggesting a compelling rationale for revenue-sharing agreements that acknowledge this economic contribution. Legislative reforms could operationalize this balance by amending Section 9 (Economic Rights) to mandate proportional revenue distribution tied to the celebrity's reputational capital, while Section 57 would continue to protect their moral rights against misuse. However, such a model faces formidable practical hurdles: (1) Valuation complexities, as quantifying the respective contributions of the photographer's skill and the celebrity's fame lacks objective metrics; (2) Implementation costs, requiring expensive infrastructure to track digital dissemination across platforms; and (3) Ethical risks, including perverse incentives for intrusive photography. Legally, the Copyright Act, 1957 lacks provisions for automatic

revenue-sharing, necessitating amendments to Section 19A on copyright assignment.

### **Draft Provision**

19A. (4) Special Provisions for Photographs of Identifiable Persons:

(a) Revenue-Sharing Mechanism:

Where a photograph derives commercial value primarily from the likeness of an identifiable individual (hereinafter referred to as the "subject"), the copyright assignee/licensee shall ensure equitable revenue-sharing with the subject, proportionate to their contributory value, subject to a minimum of 30% of net proceeds.

(b) Determination of Value:

The contributory value of the subject shall be determined by:

(i) Their degree of public recognition;

(ii) The context of the photograph (public vs. private settings); and

(iii) The intended commercial use (advertising vs. editorial).

(c) Consent Safeguards:

This provision shall not apply where:

(i) The subject has expressly objected to being photographed; or

(ii) The photograph intrudes upon reasonable expectations of privacy under Article 21 of the Constitution.

(d) Compliance Framework:

The Copyright Board shall establish:

(i) Standardized licensing agreements for revenue-sharing;

(ii) A centralized digital registry to track usage and payments; and

(iii) Expedited dispute resolution for valuation conflicts.

(e) Moral Rights Preservation:

Nothing in this subsection shall derogate from the subject's rights under Section 57, including protection against distortion or unauthorized use.

The proposed remedies and legal interventions seek to achieve a balance between the rights of photographers and celebrities, with the ultimate objective of ensuring equitable utilization and economic equity. Practical solutions to tackle contemporary issues in the usage of celebrity images include licensing agreements, co-authorship, recognition of labour contributions, and revenue-sharing based on fame. By revising pertinent

provisions of the Indian Copyright Law, the above measures can establish an equitable and transparent system that safeguards the interests of all stakeholders.

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