



BALANCING PRIVACY AND PUBLICITY: A LEGAL ANALYSIS OF PERSONALITY RIGHTS

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Abstract

Personality Rights involve the evolving jurisprudence that addresses the protection of an individual's identity and personality traits. The Right to Publicity involves the right to protect one's identity, right to existence, and likeness from getting imitated and commercially exploited. This aspect of the law has existed in society for some time. However, recently, the Right to publicity has gained the spotlight through the development of Artificial Intelligence. Through precedents, Personality Rights have come to be considered as a facet of the Right to Privacy. The judiciary has been depending upon the existing statutes of Intellectual Property Rights such as Trademarks and Copyrights and the Constitution to render judgments and provide relief to the complainants. In this paper, we attempt to understand the current status of Personality Rights in India. However, the primary focus is to understand whether India needs a statute for personality rights. In this paper, we also analyze the current challenges and discuss potential solutions to address and resolve them. This paper states that even though the Indian Judiciary has attempted to include Personality Rights as a facet of intellectual property and the Right to Privacy, a significant gap is present which still requires adequate attention.

Keywords: Personality Rights, Intellectual Property, Right to Privacy, Commercial Exploitation, Statute.

Introduction

The concept of personality rights has started to develop through the rise of digital platforms and social media. In today's fast-paced world revolving around technology, personality rights have skyrocketed as a legal concept. In society, the legal rights associated with protecting one's personality define personality rights. It includes recognizing an individual as a physical and moral being, ensuring that their sense of existence is being protected. It becomes important for

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every individual to protect their lives from getting copied and marketed. Scholars claim that classical natural law embedded the roots of personality rights. Scholars claim that classical natural law embeds the origins of personality rights, making it important for every individual to protect their life from being copied and marketed.

Personality Rights encompass various factors, including the right to control and use one's name, voice, style, personality, and likeness. In order to safeguard such rights from being imitated and commercially exploited, it provides a shield. It helps protect an individual's dignity and expression in the society. It plays a role in preserving their sense of belonging and existence within society without having the fear of being imitated and thus exploited. Initially, these rights were not much in play because of the lack of media and digital power. However, with modernization and the development of technology, the personalities of others are being imitated and created differently, which can lead to defamation and further abuse. In the modern era, media can both distort and misinterpret information easily. Hence, the need to protect personality rights is currently on the rise.

Infringing upon one's personality rights can lead to the deprivation of one's fundamental rights as well. The constant development of technology, media presence, and popularity of the same, has led to the development of personality rights across the world.

How Did the Question of Personality Rights Gain Attention?

Recently, Artificial Intelligence has introduced dynamic transformations into the world. It has made changes that can leave long-lasting impressions. However, the world has suffered various negative repercussions as well. One such repercussion is using AI to create 'deep fakes'. Deep fakes are defined as 'digital forgeries' created through 'deep learning' by Artificial Intelligence.³ Deep fakes can generate completely new content by using the existing features of a certain person.⁴ They are continuously being used with malicious intent to defame personalities.⁵ This aspect gave rise to the need for protection of an individual's existence from being defamed.

In May 2024, Scarlett Johansson, a known personality in Hollywood, had accused OpenAI of imitating her voice in its latest GPT model.⁶ OpenAI introduced *Sky*, a voice model as a part of GPT-4o where the voice being used was 'eerily similar' to the voice of Scarlett Johansson from

³ Hannah Smith, Katherine Mansted, "What's a Deep Fake?" 6 *Weaponised deep fakes: National security and democracy*, 1 (2020).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Scarlett Johansson v. Open AI: What are personality rights and how are they protected?, India, available at: <https://indianexpress.com/article/explained/explained-law/scarlett-johansson-vs-openai-voice-personality-rights-9347952/> (last visited on August 17, 2024).

the movie 'Her.'⁷ This was a matter of grave concern for the actress herself and she moved on to emphasize the negative consequences the society was facing because of the origin of deep fakes. She further emphasized the need for immediate action to address this issue. She focused on protecting intellectual property rights as deep fakes posed a growing concern worldwide.

This case paved the way for the importance of personality rights in the digital age. It highlighted the need for statutes to protect the different facets of personality rights. Following this, it brought up the concern various personalities including celebrities and political figures were facing about how dangerous copying someone's voice, or images, can be in creating something different from the original. How else can the evolution of Artificial Intelligence violate the fundamental rights of every human being? It discredits the creativity of the artist and simultaneously poses threats to the personalities of being imitated as well. This case led to various personalities demanding their intellectual property rights in different corners of the world.

Status Of Personality Rights in India

One can consider Personality Rights as a relatively additional aspect. Currently, it does not possess any statutory position in India. However, it is being considered as a part of the common law. Personality Rights, or Publicity Rights, have strengthened in India through judiciary interpretations. Indian Courts have applied various parts of different existing statutes to protect the personalities in India. Art 21 of the Constitution of India, 1950 plays the most recognizable role in this domain.⁸ The Right to Privacy under Art 21 helps protect such infringements. However, Art 21 could not cover the commercial aspect of publicity rights.⁹ To overcome the gap present regarding the commercial aspect, the judiciary has applied the provisions related to Intellectual Property Rights existing currently in India. For example, courts have interpreted the different provisions of the Trademarks Act, of 1999 and the Copyright Act, of 1957 to grant protections regarding Publicity Rights. In some cases, passing off is being granted as a protection of personality rights as well.

Evolution of Personality Rights in India, Through Judicial Precedents:

The judiciary encountered the question of personality rights for the first time in the case of *D.M Entertainment v. Baby Gift House*.¹⁰ In the given case; the plaintiff sued Baby Gift House as they were selling dolls that resembled closely to Daler Mehndi and were being marketed under

⁷ *Ibid.*

⁸ *R. Rajagopal v. State of Tamil Nadu*, (1995) AIR SC 264.

⁹ Agnes Augustian, "Protection of Personality Rights in India: ISSUES AND CHALLENGES", 1 *IPR Journal of Maharashtra National Law University, Nagpur*, 45 (2023).

¹⁰ MANU/DE/2043/2010.

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his name. The dolls in question looked like the singer and could sing in tunes similar to the singer. It led to the claims related to the commercial exploitation of Daler Mehndi's persona. The plaintiff requested a permanent injunction against the defendant because they infringed his publicity rights. DM Entertainment received a favorable ruling from the Delhi High Court, which granted a permanent injunction to the plaintiff. The court stated that the dolls being sold were imitating the persona of the singer. They were infringing on his publicity rights. The court relied on the principle that no one can trade in another's name or likeness without permission, to deliver the judgment. Here, the court referred to the common law of intellectual property rights while delivering the judgment.

In this case, the Delhi High Court observed,

“The right of publicity can, in a jurisprudential sense, be located with the individual’s right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality.”

This judgment for the first time highlighted the issue of introducing an individual’s name, likeness, and identity within the ambit of protection apart from physical property and body.

The case of *Arun Jaitley v. Network Solutions Private Limited & Ors.*¹¹ can be considered one of the most notable legal judgments in the domain of personality rights. In this case, the court has interpreted the protection of Publicity Rights like that of well-known trademarks.¹² One issue that was addressed by the Delhi High Court involved the issue of Commercial Exploitation of domain names regarding a public figure. The theory of publicity rights revolved around this issue. Here, Arun Jaitley was a prominent Indian politician who held a positive reputation within the country. He wanted to obtain a public domain with his name. However, upon application, someone had already registered a domain with the name www.arunjaitley.com. The plaintiff claimed that the domain was registered in bad faith and was being used to exploit him commercially. He claimed the same to infringe upon his personality rights. The Delhi High Court held that the domain name was indeed created in bad faith. The plaintiff is a world-known personality in India. Arun Jaitley was not merely a public figure. People also recognized him as a distinctive character who had goodwill. Hence, the court emphasized the protection of the plaintiff’s name under the trademark law. The court emphasized that only the plaintiff is allowed to use the name ‘Arun Jaitley,’ and not anyone

¹¹ 2011 (47) PTC 1 (Del).

¹² *Supra* note 10.

else, including those with intentions of commercially exploiting the public figure. Hence, the Delhi High Court imposed an injunction on the defendants on the selling of the domain.

The case of *Shivaji Rao Gaekwad v. Varsha Productions*¹³ is a recognizable legal precedent regarding the personality rights of a well-known celebrity in India. After 11 years, this case remoulded the issue of personality rights in India. This case revolved around the publicity rights of the infamous actor 'Rajinikanth' who sued Varsha Productions to prevent them from using his name and style in the upcoming movie titled 'Main Hoon Rajinikanth'. In this case, the court acknowledged the importance of publicity rights, especially for a well-established celebrity in India. The Madras High Court held that a cause of action might only arise when the person in question is identifiable and reputable in the society. Additionally, the court pointed out that the use of the name and persona of such a personality can misrepresent the individual among the public and harm their reputation. Likewise, the Delhi High Court, in the case of *Titan Industries v. Ramkumar Jewellers*,¹⁴ incorporated the jurisprudence that had become more robust in the present case. The court primarily focused on identifying the celebrity in question. The status and the presence of the celebrity become an integral part of deciding whether they can seek protection under personality rights. It was in the case of *Selvi J. Jayalalithaa v. Penguin Books India*¹⁵ that the principle of identifiable personality was initially enunciated in jurisprudence.

Another notable precedent that is relevant in this domain is the infamous case of *K.S. Puttaswamy v. Union of India*.¹⁶ The given case highlighted the importance of privacy. Finally, on 24 August 2017, a nine-judge bench by the Supreme Court of India unanimously held the Right to Privacy as a fundamental right under Part III of the Constitution. Hence, one can establish the importance of the Right to privacy for the citizens. This fundamental right is a predominant factor in personality rights as well. Foremost, every citizen has the right to exist and survive with privacy in their lives. This landmark judgment has significant implications regarding the protection of an individual's identity and persona. The Supreme Court affirmed that privacy is an intrinsic part of an individual. This recognition provided a constitutional basis for the protection of one's personality. This case played a major role in laying the groundwork to help individuals protect their names, identities, and persona from being commercially exploited. It proposed that one can view Article 21 as the basis for acquiring personality rights.

¹³ 2015 SCC OnLine Mad 158.

¹⁴ 2012 (50) PTC 486 (Del).

¹⁵ 2012 SCC OnLine Mad 3263.

¹⁶ (2017) 10 SCC 1.

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However, only Justice Sanjay Kishan Kaul had introduced publicity rights as a part of the right to privacy in his concurring opinion.

The recent landmark case that addressed a different dimension of personality rights was in the case of *Krishna Kishore Singh v. Sarla A Saraogi*.¹⁷ The case revolves around the right to privacy, personality rights, and commercial exploitation of a deceased celebrity. The concerned actor is the late Sushant Singh Rajput. His father wanted to prevent the production that was exploiting the late actor's demise. Here, the court held that a personality can avail the rights of publicity during their lifetime. However, the same rights might not necessarily extend to after the death of the concerned personality. This case is considered important as it attempts to strike a balance between the right to privacy and creative expression in the media. It also brought up the question regarding the personality rights of a deceased person in India.

What are the Kinds of Personality Rights?

In India, the judgments indicate the classification of personality rights, also known as publicity rights, into two components. The two components are:

1. Protection From Commercial Exploitation:

Commercial exploitation is defined as the act of exploiting a certain kind of physical property or intellectual property belonging to someone else to gain financially. Various personalities or celebrities are being subjected to commercial exploitation. Their identities, voices, names, and persona are being imitated for financial purposes. Their status and goodwill in the public are being exploited either by the public or by artificial intelligence. Hence, it is crucial to consider the integral aspect of Personality Rights, which involves safeguarding individuals from commercial exploitation. One can also consider it as a Right to Publicity. This aspect is used to protect individuals from being commercially exploited without their consent or permission.¹⁸ It allows the personalities to protect their work, their artistic characteristics, and their aura from being abused and misused. It protects their Right to Publicity and helps them carry on their kind of legacy within the society. This protection can be seen as a form of passing off. Personalities are required to establish significant goodwill in society through their charisma and persona. A shield of protection is required to prevent such a persona from being imitated and misrepresented either for commercial purposes or other purposes.

2. Right To Privacy:

¹⁷ CS (COMM) 187/2021.

¹⁸ Samarth Krishan Luthra and Vasundhara Bakhru, "Publicity Rights and the Right to Privacy in India" 31 *National Law School of India Review*, 145 (2019).
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The fundamental right to privacy intertwines with Personality Rights. As discussed, the Supreme Court has established as a fundamental right through Art 21 the Right.¹⁹ It plays a significant role in preventing the exploitation of the identities and personal information of individuals. It provides a veil to segregate private information from the information available in the public domain. Art 21 played a further role in laying the groundwork for the development of Personality Rights. It helped one understand how important it is not to invade and profit from someone else's privacy. The right to Privacy is another such integral part of personality rights that is required to be maintained and followed.

Recent Developments of Publicity Rights in India

The judiciary has been utilizing the Copyrights Act and Trademarks Act to render judgments to protect the aspect of personality rights. Although these legislations do not directly address the issue of personality rights, they have helped the judiciary to resolve such disputes. The judiciary relied on the facets of the existing legislation to provide adequate sanctuary under this domain. Through the development of judiciary and awareness in this given area, actors and other such identities have approached the court to protect themselves from such exploitation and to be able to maintain their uniqueness and personality. Famous people can currently trademark their voices, names, acting styles, and other factors under the Trademarks Act, of 1999. The use of first names and misrepresentations regarding the same is given protection under S. 14 of the Trademarks Act, 1999. Furthermore, S. 2(qq) of the Copyrights Act, 1957, which defines a performer addressing the issue of whether personality rights will fall under the ambit will also be applicable. S. 38 also plays a prominent role in effectively prohibiting commercial exploitation of the works of a performer.

In 2023, the renowned actor Anil Kapoor asserted his personality rights against his defendant prohibiting from commercial exploitation of his name, walking style, dialogue style, and persona.²⁰ He claimed that his interests, right to livelihood, family life, and right to live with dignity are being affected. In this case, the court has emphasized the constant use of Artificial Intelligence to create deep fakes and by the public to imitate his person, infringement of personality rights is a constant growing issue.

The Delhi High Court passed an interim order on May 14, 2024, protecting the publicity rights of the actor, Jackie Shroff.²¹ He claimed that his voice, his dialogues, and his images are being

¹⁹ *Supra* note 17.

²⁰ *Anil Kapoor v. Simply Life*, Manu/Deor/248558/2023.

²¹ *Jackie Shroff v. The Peppy Store*, CS(COMM) 384 of 2024.

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used by e-commerce platforms, social media, and artificial intelligence for commercial purposes without his consent. This case brought up the jurisprudence currently in existence and how safeguarding personality rights is a growing concern in today's age of technology and digital media.

The Bombay High Court recently granted relief to Karan Johar against the violation of his personality rights.²²

Is There a Need for Statute in India?

The digital media age has been proliferating in the society today. Constant technological and digital changes are positively revolutionizing the world; however, they are subjecting society to various negative repercussions at the same time. It has ushered in various unparalleled challenges that have subjected the Indian Judiciary to focus on another vital aspect. The legal question that was brought up in this domain is posing a challenge for scholars, the legislative, and the judiciary to address the issue of whether a statute is required for publicity rights in India. As it has already been established, the judiciary attempted to use the existing legislation to provide relief to the complainants. Whereas the Constitution has played an efficient role in helping to provide a constitutional perspective, it has, however, lacked in providing a commercial perspective. The Indian courts have relied on the Trademarks Act of 1999, and the Copyrights Act of 1957 for a commercial perception. In certain cases, the court has also relied on the tort of passing off to render judgment to such legal questions. However, these facets of law are fragmental in playing a role in providing relief in the domain of personality rights. Hence, they are proving to be inadequate in resolving such issues.

Justice Sanjay Kishan Kaul is the first judge to include 'publicity rights' within the domain of the right to privacy in his concurring opinion.²³ It indeed introduced the scope of publicity rights within the ambit of privacy, but it failed to establish the same as a constitutional right. In such situations, a major concern arises regarding whether considering the Right to Personality as a fundamental right is possible or not. To date, no judicial precedent has dealt with this question of law. This question arises from the fact that personality rights arise out of the right to protect commercial exploitation from one person's likeness and existence.²⁴

Another such concern which primarily is required to be asked is whether this right is available to everyone or only to such notifiable identities who have left an impression on the society.

²² *Karan Johar v. Indian Pride Advisory Pvt. Ltd.*, 17863 of 2024.

²³ *Supra* note 17.

²⁴ *Supra* note 19.

According to Justice Sanjay Kishan Kaul's opinion, he believes that this right is to be available to all the citizens of India. However, in various precedents, the High Courts have explicitly stated it is important to note whether the plaintiff has left a positive impact on society or not. In the case of *Indian Young Lawyers Assn. v. State of Kerala*²⁵, Justice Dhananjay Chandrachud, in his separate opinion has stated that,

“The Constitution postulates every individual as its basic unit. Part III of the Constitution guarantees rights aimed at recognizing every individual as its basic unit. The individual is the bearer of rights under Part III of the Constitution.”

We can deduce, based on the wise words of Justice Sanjay Kishan Kaul and Justice Dhananjay Chandrachud, that we should extend the right to publicity to all citizens as a part of their fundamental rights. However, the issue has not received direct attention.

Thus, we can understand that a statute completely dedicated to establishing the rules and regulations of personality rights is essential for distinct reasons:

1. Till date, neither the judiciary nor the citizens can follow a particular statute to receive protection regarding the violation of publicity rights. The complainants needed to rely on other legislations which directly do not deal with the issue of personality rights. Similarly, the judiciary also had to rely on other facets of legislation rather than having a uniform statute to rely on to pass orders or grant reliefs. A uniform statute will provide a proper legal framework for everyone to follow and maintain.
2. With the help of a uniform and dedicated legal framework, the citizens will be able to navigate their rights in this domain of personality rights and take appropriate action when someone violates them. They will understand their rights and obligations and will respond accordingly when someone violates their rights.
3. Currently, the absence of any law has led to inconsistent judgments and legal uncertainties. Inquiries have raised various questions for the judiciary, including the applicability of personality rights for a deceased person. A uniform law dealing with such aspects will provide an understanding as to how such issues are to be resolved.
4. A statute can render this right as a fundamental right and provide it to all citizens in India. It will play a significant role in resolving further problems and queries arising in this domain.
5. A statute can address the constantly strengthening jurisprudence in this domain, ranging as to what kind of person will avail such rights and to what extent should they provide

²⁵ (2017) 10 SCC 689.

resolutions. Currently, digital media and artificial intelligence have played a prominent role in infringing the personality rights. New laws will resolve such questions where the traditional laws have fallen short.

6. A dedicated statute in the realm of personality rights will provide for a robust legal mechanism for the protection of the publicity rights of celebrities and other such personalities in the country. Along with them, it will also help the common person in fighting any legal violations of this right. Their way of working is always being violated either and a uniform law will help to provide more powerful protection to them.

Conclusion

The realm of personality rights is a dynamic field that is growing important day by day. Nowadays, technology is being used to bring about various changes and developments in the world. The enhancement of technology and the development of Artificial Intelligence has brought the subject of personality rights to light today. This is one such field that intersects with various other domains, including Intellectual Property Rights, commercial exploitation, the right to privacy, and the right to livelihood. The field of personality rights has subjected everyone to various challenges and complexities. It has presented us with several questions as to how such issues are to be dealt with, and to what extent such protection should exist. Another primary concern that has emerged is whether we can consider personality rights as a fundamental right. These complexities and questions have brought up another major question whether India needs an independent statute in this domain of intellectual property.

An understanding of personality rights is important for policymakers, the judiciary, businesses, and individuals. A comprehensive understanding of this field will carve out a uniform path that will provide the aid individuals and the judiciary require. To date, the precedents have been inconsistent. Adequate laws have been established to protect innovations, protect the work of performers, and protect brand names. These legislations have been instrumental in guiding the way to address such issues. While the existing legal framework has made noteworthy progress in guiding such cases, the absence of a uniform statute in this realm leaves a prominent gap. The lack of a statute has put various questions in front of the judiciary on several aspects of personality rights. After a few more years, a new ground apart from commercial exploitation and privacy might arise.

Challenges might keep arising and society might face much more severe consequences regarding the same. Personality rights are a timid legal issue that requires no statute. With deep

fakes arising and the constant evolution of Artificial Intelligence, much more complexities, and harsh consequences are waiting across the horizon, waiting to prey on individuals. It has grown into a fundamental part of human livelihood and dignity. Recognizing these rights in such a crucial age will provide people with a sense of relief and the right direction they must follow to protect themselves. Upholding personality rights allows a society to create an environment that protects personal livelihood.
