

# From Privacy to Publicity: The Development of Personality Rights in India

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## Abstract

Over the last few decades in India, as other parts of the world too, there has been significant movement towards codifying laws regarding the recognition of personality rights. This paper examines the development, current legal frameworks, and emerging challenges concerning personality rights in the context of IPR within India. The study especially seeks out how the protection of personality as an IP right co-exists with its commercialisation. The paper also examines the effects of new advancements in technologies on these legal rights and their enforcement. The results highlight how such IP Law needs also to consider the marketing aspects of such IP and which will help in maintaining the priorities of these IP Laws on a global level.

**Keywords:** rights, privacy, personalities, intellectual property rights (IPR), artificial intelligence (AI)

## Introduction

personality rights. The rights were established in 2015, but between 2017 and 2021, outstanding court decisions as well as legislative measures have impacted their interpretation and application to a great extent. The availability of various media outlets and a long list of new media products and content present the need for well-developed legal processes that will shield individuals from any unauthorized commercial use of their personas. Over the last decade, many personalities have taken to court to protect what is known as the ‘right of publicity,’ which allows a person to decide how and if their name, image, voice, and other physical characteristics can be used publicly on affairs such as trade, forenders, or otherwise. Considering the concrete case of personality, human rights Personality is arguably one of the basic aspects of human rights where individuals’ dignity, identity and personal integrity are safeguarded. Contrarily, the intellectual property rights are intended with the purpose of protecting work of the mind with the view of rewarding talents and creative works. The combination of these two fields gives rise to important questions of how rights of unique (or limited) resources and individuals are protected, particularly in today’s paradigm of information abundance and perfectly copyable digital goods.

## Historical Context

The roots of the right to personality could then be located already in early liberal tradition focused on personal freedom and worth of the individual. Such papers of political and social philosophy using such political ideas as liberal democracy have been written with an input of John Locke among other great philosophers like Immanuel Kant.<sup>1</sup> The legal status of personality rights is traced back to the 19th and

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<sup>1</sup> 1 Kant, I. (1785). Groundwork of the Metaphysics of Morals.

20th century and belong to the civil law tradition of countries in Europe. The development on the other hand of IPR followed the necessity to protect the creators and encourage innovation which started with Statute of Anne 1710, Berne convention 1886.<sup>2</sup>

### International Legal Mechanisms

Right to personality is safeguarded by a number of international instruments. The Universal Declaration of Human Rights operate to recognize personality rights though relegating it to the background by focusing on dignitary interests and individual privacy.<sup>3</sup> These rights are realized in the European Convention on Human Rights (ECHR) in article 8 stating regard to private and family life.<sup>4</sup>

International protection of IPR is done through trade agreements and other treaties as Trade Related Aspects of Intellectual Property Rights (TRIPS) which outlines the ground minimum for the protection of IPRs worldwide.<sup>5</sup> The World Intellectual Property Organisation (WIPO) is also significant in the process of standardising IPR laws all over the world.<sup>6</sup>

### National Legal Frameworks

Some of the nations have extended personality rights under the civil law or in the Constitution. For example, Art. 1 of the Basic Law of Germany guarantees the right to personality; similarly, according to Art. 9, section 6 of the French Civil Code, one kind of protection is offered to individual dignity and privacy.<sup>7</sup> Intellectual property refers to legal rules governing the use of certain products and includes copyrights, trademarks patents and designs even though these laws differ from country to country in a way that encourages growth of the economy.<sup>8</sup>

### Personality Rights vis-à-vis Industrial Property Rights

- **Right to One's Image**

We have election person rights interfere with IPR in several aspects, but one of the most important aspects of Personality rights is the right to one's image. This right bars anyone from using an individual's image without his/her permission and has large consequences in areas such as advertising, entertainment and social media.<sup>9</sup> Disputes in law come when picture belonging to a certain person is planned for commercial use in products or services or when one defames another's image in a certain way. The free speech and property rights continue to fuel many legal controversies. • To rename or combine data sets based on a consent from the owner's Industrial Property Rights Intersection of Personality Rights and IPR

- **Right to One's Image**

One of the critical areas where personality rights intersect with IPR is the right to one's image. This right prevents the unauthorized use of an individual's likeness, which can have significant implications for

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<sup>2</sup> Statute of Anne, 1710; Berne Convention for the Protection of Literary and Artistic Works, 1886.

<sup>3</sup> Universal Declaration of Human Rights, United Nations, 1948.

<sup>4</sup> European Convention on Human Rights, Council of Europe, 1950.

<sup>5</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

<sup>6</sup> World Intellectual Property Organisation, WIPO Overview

<sup>7</sup> Basic Law for the Federal Republic of Germany, 1949; French Civil Code.

<sup>8</sup> World Intellectual Property Organisation, Understanding Copyright and Related Rights.

<sup>9</sup> Barendt, E. (1999). Freedom Of Speech. Oxford University Press.

fields like advertising, entertainment, and social media. Legal conflicts often arise when an individual's image is used for commercial purposes without consent, leading to debates about the limits of free expression and property rights.<sup>10</sup>

- **The right to privacy and data protection**

The digital age has brought questions of privacy and security into a whole new level. Personal data, a part of personality rights, enjoys high protection based on legislation such as GDPR of the European Union.<sup>11</sup> Ongoing cases of unlawful use of personal data by the tech firms and a rising trend of identity frauds and computer crimes add strength to strengthen the legal protection of these rights.

- **Moral Rights and Copyright**

Personality rights include moral rights within the discipline of copyright. Among them it is possible to attribute right of attribution and the right to integrity according to which authors have a right to determine how their works are going to be represented and used.<sup>12</sup> Such rights are well stipulated in international agreements like the Berne Convention because it is also legal to honour the direct relationship of authors and their creations.<sup>13</sup> Nevertheless, the protection of moral rights for works has been an ongoing problem when trying to weigh it against economic rights and public domain.

### **The Personality Rights: Legal Protection in Indian Context**

Personality rights in India has a hybrid nature of law. The Right to Privacy, set up in Justice K.S. Puttaswamy v. Union of India<sup>14</sup> is an importunate right under Article 21 of the Constitution for protection from unauthorised commercial use. Under the Indian law, performers and authors are protected from the reproduction and public communication of their work through section 14 of the Copyright Act 1957 and consequently this law indirectly protects certain aspects of the personalities associated with those performances and works.<sup>15</sup> The Trademark Act, 1999 empowers one to register a trademark, to prevent anyone from using a persona commercially without authorization.<sup>16</sup> The tort of passing off is a right for the public to be protected from being misled about the origin of products or services and get an opportunity to seek legal action against persons who wish to be associated with one's brand.<sup>17</sup> It indicates the legal advancement of personality rights in India and the intention of this paper is to discuss the Evolution and Legal Framework of Personality Rights in India.

The legal term personality rights exist in the legal regime of India since the time when the entertainment industry and the media came into existence. Before 2017, the legal regulating personality rights of the Indian legal system was a patchwork solution for problems using privacy, defamation, and property rights. With regards to the legal background of right to privacy in India, the landmark case is one of R. Rajagopal vs State of Tamil Nadu<sup>18</sup> where the privacy right was recognized in a Right to life and personal liberty as envisaged under Article 21 of the Constitution of India. This decision recognised that

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<sup>10</sup> McCarthy, J. T. (2021). *The Rights of Publicity and Privacy*. Thomson Reuters.

<sup>11</sup> General Data Protection Regulation, European Union, 2018.

<sup>12</sup> Prosser, W. L. (1960). *Privacy*. *California Law Review*, 48(3), 383-423.

<sup>13</sup> Berne Convention for the Protection of Literary and Artistic Works, 1886.

<sup>14</sup> (2017) 10 SCC 1

<sup>15</sup> The Copyright Act, 1957. Sections 38–38A.

<sup>16</sup> The Trade Marks Act, 1999. Sections 18, 29

<sup>17</sup> The Trade Marks Act, 1999. Section 27(2)

<sup>18</sup> (1994). SCC On Line Mad 39281

a person, irrespective of whether he is a celebrity, has an interest to protect himself against the use of his personality image for the purpose of making a buck.

Argued and enumerated the Delhi High Court that personality rights are assertions of personal rights and cannot be availed by corporate bodies or individuals of the demise. Right of publicity originates from the right to privacy and it even only concerns people not events, or those that are planning such. As it will be further mentioned, such transfer contradicts the Indian constitution, articles 19 and 21 of the constitution of India. The Delhi High Court in the case of D.M Entertainment Pvt Ltd v Baby Gift House<sup>19</sup> recognized the common law tort of right to publicity particularly for celebrities and restrained the defendant's unauthorised commercial use of image of Singer Daler Mehndi. Doctrine of Publicity Right was encountered for the first time by the Indian legal system in 2011 in Titan Industries Ltd. v. Ramkumar Jewellers<sup>20</sup>, the case where the Delhi High Court ventured into the domain of personality right and defined Publicity Right as means the "right to control commercial use of human identity". The legal precedent for this case spread some rules regarding who among the parties is legally liable for violation of this right.

The Madras High Court expanded on this stand in 2015 and that personality rights are closest related to celebrities. The court said that on the face of it, the basic discovery that the plaintiff gets in cases of an infringement is a favourable order.<sup>21</sup> As India now prepares for the challenges that persona rights present into this new world with newer technologies and media, personality rights in this new and media saturated India, as part of the globalising world, will continue to evolve and grow. Get recent cases for the right to personality

Over the past couple of years, undoubtedly, the Indian legal regime of personality rights has witnessed some radical transformations due to some landmark judgments. This time in the development of common law can therefore be seen as positive activity on the side of the judiciary to grant proper protection to the business associations which are linked to personality of an individual. Some of these judicial interpretations are as follows:

### **Gautam Gambhir V. D.A.P & Co. & Anr.**<sup>22</sup>

Gautam Gambhir is an ideal case in point of India's change in personality rights. The cricketer Gautam Gambhir got legal action against a restaurant working in Delhi under the slogan, 'By Gautam Gambhir'. The Indian legal perspective as to the right to publicity and the protection of celebrities' identities stemmed from the use of his name by D.A.P. & Co. The court dismissed the suit to the effects that it did not find proof that the defendants deceived the people in the business that they were part of the plan by the plaintiff. The court was also aware that the defendants have been running their restaurants since the year 20-14 without anyone raising an alarm over infringement of the plaintiff's trademark and had complied with all the necessary formalities including applying for trademark registrations. As will be recalled, however, the court was categorical that the defendants employed their own images and not the plaintiff to unwittingly deceive the audience. It is important because no compelling evidence pointed to the fact that the reputation of the plaintiff in cricket was damaged by the existential threats posed by restaurant businesses run by the defendants. The judgement in Gautam Gambhir v. In the case "D.A.P &

<sup>19</sup> (2010). SCC On Line Del 4790

<sup>20</sup> (2012) 50 PTC 486 ,Delhi.

<sup>21</sup> Mr. Shivaji Rao Gaikwad vs. M/S. Varsha Productions ] 2015 (62) PTC 351 (Madras)

<sup>22</sup> 2017 SCC On Line Del 12167

Co. & Ors” there is a good demonstration on how the courts exercise caution when it comes to protect personality rights and at the same time to afford adequate space for honest use of the name by traders.

### **Rajat Sharma Vs Ashok Venkatraman**<sup>23</sup>

Pakistan based Zed Media Corporation recently launched a new anchor-free news channel and supported it through an advertisement campaign that verbally abused famous news reporters including Chairman and Editor-in-Chief of India TV, Rajat Sharma. Sharma sued for invasion of his right of publicity (PR) and that the words in the statement were otherwise defamatory and abusive. The Delhi High Court held that the ever use of the said statement in the advertisement was derogatory and a violation of Sharma’s PR. Taking cue from cases deals with similar facts and controlling precedents the principles regarding the PR were reinstated by the court with reference to the cases Titan Industries vs. M/S Ramkumar Jewellers and Shivaji Rao Gaekwad vs. M/s Varsha Productions.

The court emphasised two key criteria: that the plaintiff had a maintainable right and that the plaintiff, as a celebrity media personality, could be readily identified by his persona used in the advertisement by the makers of the advert. It also held that Sharma’s right of publicity transcends conventional legal confines of doing so under the banner of false advertising laws. For these reasons, the Delhi High Court concluded that Zed’s advertisement campaign was in legally tolerable in principal.

In the judgement it discusses how the legal concept of right of publicity (PR) where celebrities have the right to control use of their image, likeness and identity for business use. Sharma uses the rights of publicity as the crux of personality rights, as the court ruling emphasized the importance of PR in protecting celebrities from nuisance or derogatory portrayal by stranger.

### **Deepa Jayakumar versus A.L. Vijay and Others**<sup>24</sup>

The applicant, who is the niece of the former Chief Minister of Tamil Nadu Dr. J. Jayalalithaa, sought an interim injunction to restrain the production, broadcast and exploitation of a film and web series based on the life and times of his aunt. The court asked if her standing as the relative of the former CM let her protect her late aunt’s posthumous privacy and personality rights. To some extent, the court also acknowledged the applicant’s personal interest but still noted that she had no access to enforcing the rights without stronger grounds. The case shown the importance of the protection of the privacies rights as far as the deceased is concerned, but it also pointed to the fact that there is needs for a lit level of judicial analysis. This case forced a more moderate approach which takes into consideration both personal rights and freedom of speech as enjoined in Indian law to flow to other similar cases in the future.

### **Ram Gopal Verma & Ors. Vs Perumalla Amrutha**<sup>25</sup>

Before the respondent sued the appellants for invading her privacy by releasing a movie of her real life and actual incidents of her life such as marriage, murder of her husband, and family mishaps. The appellants there on stated that all the events were in the public domain and therefore the appellants had privilege to produce a fictional movie without infringing the respondent right of privacy. The court observed that these occurrences had already been disclosed and/or published in the media or other public fora and it has been settled law that the right to privacy is exercises restrictively where the facts form

<sup>23</sup> (2019). SCC On Line Del 12167

<sup>24</sup> 2019 SCC On Line Mad 39281

<sup>25</sup> 2020 SCC On Line TS 3018

part of the public domain. The court weighed the respondent's interest against appellants rights to freedom of expression, speech, art and creation and freedom of art from censorship, saying that the film was a creative work of the events of the public arena, rather than a violation of her privacy.

While allowing the appeal and thereby, vacating the injunction granted by the lower court, the court placed legal restrictions and held that the appellants cannot use respondent's name, her deceased husband's name or her deceased father's name in the film or in any matter related with the film. The court also ordered the appellants to include a disclaimer note which reads in this manner: 'The above tags are part of a film which is a purely fictional work and any resemblance to the real life is purely coincidental'. The case reveals aspects of their conflict of interest between privacy rights and such concerns as freedom of speech and art to set statutes for future controversies regarding unearthing of personal tragedies in the media/entertainment.

### **Sarla A Saraogi & Ors Vs. Krishna Kishore Singh** <sup>26</sup>

The plaintiff said that a film on life of Sushant Singh Rajput was made without family consent and contained defamation without the consent of the plaintiff and this violated the right to privacy. The court also pointed out that personality rights like privacy, right of publicity and personality itself are no long characterized as inalienable and equally cannot be transferred to the heirs or next of kin. The court considered information in the film and whether it was invading on Singh personality rights after his death and it was agreed that it was not. The court dismissed the distinction between celebrities and ordinary people by stating that anyone has the rights to personality rights under the law. This decision affirmed the relevance of personality rights made them legal posthumously, and provided equal vigilance on all individuals.

### **Amitabh Bachchan Vs. Rajat Nagi And Ors.** <sup>27</sup>

Kaun Banega Crorepati lotteries scam and other fraudulent activities: Bollywood actor Amitabh Bachchan had taken the roll and filed a case against the defendants involved in Kaun Banega Crorepati lottery scam and other fictitious fraudulent practices. The defendants abused Bachchan persona in that they employed his name, picture and voice, as well as persona attributes to mislead the public for business advantages without Bachchan's consent or license. The Delhi High Court also issued an interim ex-parte injunction in the favour of Bachchan understanding the fact that use of such unauthorised mark could lead to certain irreparable loss to the goodwill and reputation of Bachchan. The court ordered telecom and IT authorities to remove any site and link; restrained domain name registrants from creating third-party rights to domains connected to Bachchan; and also ordered telecom service providers to disable the telephone numbers containing the infringing messages.

Amitabh Bachchan v. Rajat Nagi & Ors. is an extremely significant legal issue in the context of personality right's protection in India and the wider implication of innate worth and control celebrities should enjoy over their public identity and image. The case highlights the weakness of our current intellectual property laws to prevent infringement against personality rights and the need for strengthened statutory formulation to protect celebrities against the wanton commercial exploitation of their personas.

### **Anil Kapoor Vs. Simply Life India Pvt Ltd** <sup>28</sup>

<sup>26</sup> 2021 SCC On Line Del 3146

<sup>27</sup> 2022 SCC On Line Del 4110

Famous Indian actor Anil Kapoor moved the Delhi High Court after his image, voice, likeness, and domain names were being used without his consent. Ex parte interim relief was granted by the court halting use of his image, voice, likeness, and domain names, without his consent. It also ordered the transfer of control over the domain name, 'anilkappor.in', 'anil Kapoor.com' and 'anil Kapoor.net', to Kapoor, subject to the payment of fees. The court also passed an injunction restraining third parties from using the word '**Jhakaas**' in the manner in which Kapoor used it in his YUDDH film and the name had association with his person and using the name would cause confusion among the public. It's a case that underscores the need for digital age protection of personality rights, and specifically where Artificial Intelligence (AI) tools are concerned. Additionally, it establishes a precedent in identifying cuts per issue of the number of various phrases or expressions that should be used by individuals or entities who use (or "squat") domain names neglectfully or with the intention of misuse. The ruling reiterates the persistence and credibility that courts stand for protecting public figures' rights and the implementation of their own persons by those who fear their personae.

### **V. Jaikishan Kakubhai Saraf, Alias Jackie Shroff. The Peppy Store & Ors**<sup>29</sup>

Indian actor Jaikishan Kakubhai Shroff has sued the Peppy Store for the use of his name, image, likeness, persona, voice and other attributes of his personality, without permission. It sues to stop exploitation of his persona or likeness without authorization. The court affirmed Shroff's right to control the commercial use of his personality rights due to publicity as a part of personality rights. The court found that remitting merchandise marketed with Shroff's likeness which is unauthorized use of Shroff's persona for commercial gain by The Peppy Store violated Shroff's personality rights. The court stressed that individuals have the right to regulate who can profit from their identities regardless of how much public footprint they have. The court ordered The Peppy Store and other defendants to cease selling merchandise featuring Shroff's likeness without his permission and ordered him to be compensated for unauthorised use of his personae.

This case is a milestone for the protection of personality rights in India, this is because the emphasis in this case is on preserving individual freedom to identify and becoming what they want to be, instead of whichever society chooses for them. On the other hand, it strengthens the legal framework for personality rights protection with the end of protection of personality right without the actual infringement. The importance of this case lies in the context of rights of individuals in the era of India, when they sacrosanct are in evolving landscape of individual rights and commercial interests.

### **New Legal Framework and Personality Rights Enforcement in an Age of the Digital**

Personality rights in India are still in its evolutionary stage and enforcing these rights online is a difficult task. There may be a need for further legal framework development as a result of ongoing development of technology. What however seems to show promise is the growing body of case law as individuals gain more control over the way they are identified and the way in which their identities are shaped and disseminated in the digital age.

Legislative reforms are required to enact comprehensive legislation which considers the nuances of personality rights in the digital age to fortify personality rights. In addition to enhancing existing protections to tackle emerging challenges like deep fakes, online impersonation and surreptitious data

<sup>28</sup> 2023 SCC On Line Del 6914

<sup>29</sup> 2024 SCC On Line Del 3664 .

harvesting, this should not only do that, but also. More clarity about what personality rights encompass and the scope and applicability of personality rights with respect to a range of mediums, including social media platforms, would help rights holders and users alike to know their rights.

Efficacious robust laws need strengthening of enforcement mechanisms. Regulators must have all the necessary tools and expertise to quickly stomp out incivility and create partnerships between law enforcement agencies, tech companies, and advocacy groups to beef up enforcement and respond quickly to abuse or exploitation.

Empowering people to assert their rights and navigate their way through the territory of personality rights requires promoting public awareness and education in that area and the promotion of legal literacy. These collaborative efforts in the media literacy programs, workshops and such, can help a more informed and vigilant society to distinguish and thwart cases of infringement and abuse.

### **Conclusion: Your Identity, Your Right**

It's a legal fight, yes, but more importantly it's a fight to control who can own what digital identities in a rapidly changing world. Through bridging legislative gaps, developing solutions where there is none, creating open policy and positive accountability in a democratic framework, India can find the path to lead the nation in secure implementation of citizens' digital persona and creation of complementary responsible digital ecosystem. A rights respecting future for generations to come requires upholding principles of justice, fairness and respect for human dignity.

An exploration of the interface of personality rights and intellectual property rights in India takes on an existence in the complex and important arena of present-day legal discourse. Now, with innovation in the area of technology and digital media all the more dynamic, personal rights must be safeguarded against unauthorized exploitation but at the same time creative and innovative ideas must be promoted. The recent case laws indicate changes in the judiciary's approach between competing interests since it now balances them in a nuanced view of individual autonomy as well as commercial realities.

With India continuing to move its way into the global digital economy it becomes essential that legal frameworks change and accommodate to the ongoing challenges. Maintaining a complete protection for personality rights within the IPR regime will also promote an atmosphere suitable to artistic and technological development and will enhance individual dignity. To strike this balance, ongoing legislative reforms, judicial activism and international cooperation will be important in protecting personality rights and IPR, not in conflict with the digital age. The emphasis on both of these will be vital in nurturing an equitable, innovative digital future that respects the distinctiveness of people and nurtures innovative ideas and technology.