

CELEBRITY RIGHTS PROTECTION THROUGH INTELLECTUAL PROPERTY IN MODERN INDIA

SHIVAM KUMAR PANDEY

ABSTRACT

In the age of technology and social media, anyone may be considered a celebrity if they have become widely known to the general public, not just for their vocation but also for their personality. These celebrities have privacy and publicity rights, which are protected by intellectual property law due to their intangible nature. This research paper demonstrates the economic perspective of such publicity rights as merchandising rights, while also highlighting the Indian context. The right of celebrities to determine the volume of publicity they desire to accept and to benefit from publicity if they so choose is a well-known idea in the West. However, in India, the right to privacy established via court declarations is insufficient to guarantee celebrity rights. In this study, we examine the grounds for protecting celebrity rights as well as the techniques used by Indian legal systems to preserve these rights. The study proposes an intellectual property-based approach to celebrity rights protection that may be implemented in India through legislative enactments.

The researcher follows the mode of doctrinal research. The researcher in this paper will examine the loopholes in regulating the celebrity rights and their protection under IPRs. Lastly, provide conclusion and suggestions.

Keywords: Celebrity, IPR, Publicity, Personality, Privacy

1.1 INTRODUCTION

Every person leads a private life and has a right to be left alone. This right is referred to as the “right to privacy” and has been given the status of a fundamental right under the Constitution of India”. While everyone has the “right to privacy”, extent of that right diminishes as a “person prominence and public awareness grows”. Eventually such rise in popularity reaches a degree where the public feels entitled, without any risk of legal repercussions, may interfere into some elements of a renowned person’s or celebrity’s life. The dictionary definition of a celebrity is “a widely known person; one popularly honored for some signal achievement.” Intellectual property rights, according to experts and academicians, are meaningless unless they are enforced.

Because intellectual property is intangible, it could move relatively freely across borders, which makes it crucial to create law for international intellectual property enforcement. However, there is no such thing as international intellectual property law; instead, IPRs are subject to the territoriality principle.¹

1.2 RESEARCH OBJECTIVES

- To examine the current position of celebrity rights under IPR.
- To analyze the legislation regulating the celebrity rights under IPR in India.
- To analyze the loopholes in the current scenario with respect to celebrity rights.

1.3 RESEARCH METHODOLOGY

The researcher has followed the mode of doctrinal method of research. The researcher has reviewed both primary and secondary sources to arrive at a conclusion of the study. The research methodology which will be involved in the study is descriptive research. To achieved the aim of the study the researcher has analyzed various statutes of criminal laws as well as family laws and also relied upon books, newspapers, articles, journals, judgments and other sources. Also, the researcher has used a variety of internet outlets, including SCC online, Lawoctopus, and Manupatra to support with the cases. The researcher has also relied upon the decisions of Supreme Court in order to have concrete proposals for improving the provisions for celebrity rights in the Indian scenario which have been thoroughly analyzed.

1.4 WHO IS CELEBRITY

A individual who is well-known is known as a celebrity. In our modern society, a celebrity can be an author, an actress, a model, an athlete, a singer, a politician, or anyone else who attracts the attention of the public. They are deemed to be celebrities by the audience or public, according to “how the audience or public perceives and views them. They have a sizable following”, and as a result of their profession as well as their activities in other spheres, a great number of people are influenced by them.²

¹ Dr. B.L Wadera, “*Law relating to Intellectual Property Rights*”, 789 (Universal Publications, New Delhi, 5th edn., 2016).

² *supra* note 1 at 1

1.5 POSITION OF CELEBRITY RIGHTS

The celebrity rights are not statutory rights in the traditional sense because they are not included in or addressed in any separate laws. As individuals, and also in their capacity as public figures, they are entitled to a variety of various rights. Existing laws, which include a number of rights collectively, are the ones in charge of enforcing application and jurisdiction over these rights. When someone offers their wares or services to the general public while purposefully or unintentionally representing the trademark or brand of another person, this behavior is referred to as "passing off." "Personality rights, privacy rights, reproduction and distribution rights, character rights, rental rights, performance rights, lending rights, and a variety of other rights are accessible to them". Both trademark law and copyright law provide provisions that can be used to safeguard a celebrity's financial and creative interests. "The Right to Privacy³ has evolved into a basic right in India, and the Right to Publicity may be found in statutes such as The Trademarks Act⁴ and The Copyright Act.⁵ In addition, India has enacted The Trademarks Act 1999".

The idea that he or she is a natural creature who just happens to be famous gives rise to the rights, which state that the individual is entitled to the same degree of freedom as an average citizen. It is reasonable to argue that the cost of becoming a celebrity shouldn't include the "commercialization" of a persons creativity or intelligence as well as the exploitation of their personal space.

1.6 CLASSIFICATION OF CELEBRITY RIGHTS UNDER IPR

There are three distinct classifications that can be used to celebrity rights. They are as follows-

1.6.1 Personality Rights

A means through which "one entity is feted by another is through the use of a personality". An individual representation of himself and the manner in which he is expected to behave in the world through the development of his personality. Each personality, in and of itself, makes a distinct contribution to society that

³ The Constitution of India, 1950, art 21

⁴ The Trade Mark Act, 1999 (Act 47 of 1999)

⁵ The Copyright Act, 1957 (Act 14 of 1957)

is in accordance with the unique geniuses they possess. The personage of an item is a method by which one individual can recognise another and identify his “place in the society”.⁶

An individual establishes both an expectation of himself in the eyes of other people and a pathway along which it is anticipated that he would behave in the community as a result of the formation of his persona. This expectation is known as one's persona. For instance, each individual that is a part of the community will have their own distinct personal. An individual lays out both an assumption for himself according to others and a pathway along which it is guessed that he would act locally because of the development of his persona. This assumption is known as one's persona. For example, every person that is a piece of the local area will have their own particular. Expectations from “a sports person, actor, spiritual high priest, politician, or management” regarding their contributions to society awaited. These individuals' benefactions were what the society awaited.⁷

The distinctive abilities that each of these individuals have allow them to make distinctive contributions to the community. According to the “Hegelian metaphysical idea of property”, which states that “An individual's property is the extension of his personality,” such persona prerogatives are also supported by the fact that an “individual contributions to society” are similarly a drawing out of his persona. There is no reason to doubt that an individual must put in a lot of effort and considerate care in order to create a personality that is similar to another. The passionate, dignified, and moral standards that are affixed to an individual's personality can be said to constitute a significant portion of that person's total personality. There's a good chance that these celebs have a soft spot in their hearts for this personage.⁸

In spite of this, “the media frequently violates the personality rights of celebrities by associating them” with activities or products that are diametrically opposed to the image that they have cultivated for themselves in the “public eye, and in some cases, this goes against the celebrity's social class”. For instance, the 'personality and moral rights' of a “well-known spiritual high priest who has always preached against the consumption” of alcoholic beverages and tobacco to the general public and whose image is placed on packs of Biri or Khaini cigarettes in order to encourage smoking and drinking among the priest's followers would be gravely violated if someone were to put that priest's image on those products.

⁶ Elizabeth Verkey, “*Intellectual Property Law and Practice*”, 678 (Eastern Book Company, New Delhi, 7th edn., 2015).

⁷ *Ibid*

⁸ *supra* note 2 at 6

1.6.1.1 The Right to Privacy

People have a tendency to manifest celebrities as their friends because they hold a popularised image in society. As a result, people are curious about every private aspect of celebrities' lives, ranging from their “private romances in lives to something as inconsequential as the clothes that they wear, the cosmetics that they refer to, and the places that they visit”. Since celebrities hold a “popularized image in society, people commonly tend to manifest them as their amigos”. Despite this, the public does not know the celebrities, and as a result, there is no natural exchange of information between the two groups. I

ndividuals tend to show VIPs as their companions since they hold a promoted picture in the public eye. Thus, individuals are interested about each confidential part of VIPs' lives, going from their “confidential sentiments in lives to something as unimportant as the garments that they wear, the beauty care products that they allude to, and the spots that they visit”. Since VIPs hold a “promoted picture in the public eye, individuals usually will quite often show them as their amigos”. In spite of this, general society doesn't have the foggiest idea about the famous people, and accordingly, there is no regular trade of data between the two gatherings. As a result, “public figures make an effort to maintain control over their personal information”, as the disclosure of such details could put them in a position where they are humiliated and humiliated, as well as make them feel uneasy.⁹

There have been an uncountable number of spells back rainbow MMS scandals involving a multitude of famous people, and this topic has become extremely popular among the general public. “The videotapes that showed teenage phenomenon Sania Mirza changing her clothing in the restroom and movie actress Kareena Kapoor getting into some intimate moments with Shahid Kapoor, the latter of which was put out in an internet Blog, were among the most recently popular ones”.

These tape recording clips were a “subject topic that was of extreme interest to the common members of the society”, but they were extremely unsettling and “mentally traumatic for these celebrities, and they gave them a feeling of instability about their activities” even when they were in their closed private apartments. Even the Supreme Court agreed that the photograph of “Kareena and Shahid did not reflect well on society while it was deciding whether or not to rule on an appeal brought by Hindu over the constitutionality of Section 499 of the Indian Penal Code”.¹⁰

⁹ Dr. Rajeev Babel, *Laws relating to Intellectual Property Rights*, 690 (Eastern Book Company, New Delhi, 14th edn., 2019).

¹⁰ The Indian Penal Code, 1860 9Act 45 of 1860), s 499.

The Court also made a passing reference to the necessity of striking a balance “between the public interest and blackening in order to ensure that the newspaper's right to freedom of expression was not exceeded beyond reasonable limits”.

There is no question that this is an extreme violation of the celebrity's right to privacy, which is one of the inherent rights to which every human being is entitled. Moreover, there is a “legal remedy” available in the form of an action for "invasion of privacy" of an individual. In contrast to situations of defamation, an individual cannot use the truth as a defence in an action for "invasion of privacy."¹¹

1.6.2 Publicity Rights

The legal term for the privilege of capitalising on an individual's name and reputation for financial gain is known as their publicity right. In order to exercise this privilege, you are required to provide evidence that notoriety is a type of merchandise, which can be defined as an action designed to advance the commerce or popularity of an individual or an endeavour. Therefore, it would be considered unethical business conduct, a misuse of the intellectual property of the celebrity, an act of passing off, and other similar offences if a person used the notoriety of a celebrity to enhance the value of the item he or she was selling.¹²

Therefore, the celebrity has complete leeway to exploit his image for the sake of financial gain while simultaneously discouraging others from doing the same thing. It would be extremely unjust if another person were permitted to capitalise on the celebrity's good name or favour in order to get advantages that would go to him rather than the celebrity. One case that took this approach was “*Edison v. Edison Polyform Mfg. Co.*,”¹³ in which the court ruled that if a man's name is his own property, there's no reason for not understanding that the cast of one's differentia is also his property, along with the financial benefit that can be extrapolated from it. This approach was visible in that case”.

¹¹ *supra* note 3 at 9

¹² Trisha Agrawal, “Celebrity Rights Infringement under IPR”, 6 *International Journal of Law Management and Humanities* 31 (2019)

¹³ [1907] 67 A. 392

1.7 CURRENT SCENARIO ON CELEBRITY RIGHTS

The Indian Trademark Act,¹⁴ has provisions for the protection of a single aspect of a person's personality, namely names, in “Section 14,¹⁵ but it makes no mention of the guidelines for assigning and approving parallel rights”. Because the law on trademarks provides restricted insurance without any clarity of thought, it is more difficult for courts to execute the law regarding trademarks.

Due to the fact that it only addresses the actors' live performances, the Copyright Act ¹⁶classifies actors as entertainers and grants them entertainers' rights. Despite this, the Act does not recognise acting in “cinematographic flickers as a subject matter worthy of entertainer's right protection”. As stated by the “Delhi High Court in *ICC Development (International) Ltd. v. Arvee Enterprises*,¹⁷ the celebrity's right to publicity cannot be solely safeguarded as a flow from articles 19¹⁸ and 21¹⁹ of the Constitution of India”. This was the conclusion reached by the court in the case.

- i) The first difficulty would be that, according to Article 12 of the Constitution, fundamental rights can typically only be enforced against the state. This is the case in most cases. Even though a more permissive strategy has been adopted in this regard, a private man may nevertheless have a difficult time enforcing the publicity rights he possesses against private entities.
- ii) The second point is that fundamental rights can never be given up. Therefore, a person would have a tough time engaging in business transactions with his publicity rights because of the difficulty involved.
- iii) As a third point, it has been decided that once a person passes away, the rights guaranteed by Articles 19 and 21 are null and void. It is possible that a person's personae is a valuable property that he or she would like his or her successors to protect and economically exploit in the same way that they would any other form of intellectual property.

¹⁴ *supra* note 4 at 4

¹⁵ The Trademark Act, 1999 (Act 47 of 1999), s. 14

¹⁶ *supra* note 5 at 5

¹⁷ AIR 2003 Del 245

¹⁸ The Constitution of India, 1950, art 19

¹⁹ *supra* note 6 at 3

Additionally, the protections of trademark and copyright law offer some degree of protection to the celebrity's image, albeit to a much lesser extent. When an application is made for the registration of a trademark, it is against the law to use personal names in accordance with “Section 14 of the Trade Marks Act of 1999. This section prohibits the use of personal names that falsely suggest a connection with a living person or a person whose death occurred within 20 years prior to the date of the application for the registration of the trademark”.²⁰ As a result, the legal heirs of celebrities have the ability to prevent the usage of their names as well. The statute can be construed in such a way as to reveal the legislator's intention of recognising the transferability and licencing of the particular right. Therefore, according to the legislation governing trademarks, famous people are given the right to property in their own names. However, the fact that the procedures for assigning and licencing such a right are not outlined needs to be resolved as soon as possible.²¹

Although several international conventions, such as the International Convention for “Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961” (“Rome Convention”), “TRIPS, and the WIPO Performances and Phonograms Treaty, 1996”, have been recognised as relevant to the “protection of celebrity rights”, these conventions have still failed to provide for a universal “definition of celebrity” and further the “specific protection of celebrity rights”. As a result, the balance between “celebrity rights and public interest” has not been maintained, and in the United States, “celebrities are gaining more and more control over their images, while the public receives nothing in return”. Therefore, there is a need on a global scale to establish the definition of celebrity and to strike a balance between the interests of celebrities and the general public.

1.8 CONCLUSION & SUGGESTIONS

In India, there is no longer a single owner of the “exclusive right to authorise public performances and transmit them”. There is a simple provision for secondary rights that prevents “public performances, broadcasts, or recordings” from being made without the performer's permission and that allows for objective recompense. Therefore, even though economic rights can be exercised, moral rights are not something that can be claimed. There is no protection afforded against substantial similarity, which is a required component of celebrity rights protection. These rights are not protected.

²⁰ *supra* note 7 at 14

²¹ Dr. M.K Bhandari, *Laws relating to Intellectual Property Rights*, 789 (Lexis Nexis, New Delhi, 11th edn., 2020)

This ever-worsening issue can be reined in by merely carrying on with business as usual. Those who in the past have failed to comprehend the importance of protecting the privacy of celebrities and employers might be deterred from continuing their illegal act if they are had to pay a hefty fine or make a multi-million-dollar settlement. While the judiciary has interpreted with various judicial decisions in order to provide a new aspects to celebrity rights in the country. But it is not only the duty of judiciary but also the legislature should look over such issues and implement such stringent laws so that the celebrity rights cannot be infringed and it shall have protection under IPR. Thus, in this way, it will fill the loopholes in the rapid commercialization of celebrity industries in the country.

The legal status of rights to publicity is notably ill-defined as a result of the lack of widespread internal awareness of the existence of such a right. This is one of the main contributing factors. “The law dealing to like exclusivity rights is tutored by the kinks and whims of the numerous High Courts” that are working in the different areas because there is neither an enactment nor a definite decision by the Supreme Court. This is the case because of the absence of both. This results in a situation in which the application of the law is marked by a significant amount of discrepancy.

At this point in time, codification of the legislation is an extremely necessary step that must be taken. As soon as the guarantee is incorporated, the development of publicity rights in regard to the Indian network will begin to move in the direction that should be taken. It will no be necessary anymore to resort to the tortious of “passing off and fraudulent signature” for the enforcement of these “publicity rights” once the rights have been established. This will result in the destruction of the mystique surrounding the situation.