

PERSONALITY RIGHTS IN INDIA AND THE NEED FOR A CODIFIED PROVISION

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Abstract

The impending issue of adequate rights still lies in the grey area of a developing country like India. In today's world of modern technology, almost anything can be tampered with use of social media, which might affect the goodwill of a person. People have been facing various violations in the shadow of the absence of any personality rights. Forging voices and using photographs of people without their permission has been a frequent affair which is one of the few concerns. Many competent courts in the world have pronounced various judgements which can be used as precedents. However, it is a well-known fact that India has a written constitution and statutes; therefore, a codified provision in the Indian Copyright Act is necessary for ease of courts to surround themselves with a legislative framework while giving a judgement. The authors have made a comparison of the Indian position on the subject with that of the United States of America and the United Kingdom. However, an absence of this codified procedure in India has led to open interpretations by the courts to deal with personality rights from the purview of fundamental rights to various unrelated statutory provisions. This paper shall mainly focus on the need for statutory provisions of personality rights for the people, its importance and analysis of judicial pronouncements by Indian Courts on this subject in the absence of any statutory provision and its scope, keeping in mind contradicting precedents.

Keywords: Comparison, Copyright, Personality rights, Precedents, Statutory Provisions.

1. Introduction

Scarlett Johnson, a celebrated Marvel universe actress quote: "Your face is your own, and nobody has the right to use it for profit without your permission" reinforces the

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significance of personality rights associated with protecting ones' individuality.¹ Personality rights are rights which recognise a person as a physical and spiritual-moral being and ensure their own sense of existence.² It can also be termed as a right to protect the likeliness of an individual.³

Furthermore, when well-known figures are mentioned, their creative endeavours are perceived as an extension of their personalities, which is based on the theories of Kant and Hegel, who considered private property to be the pinnacle of character. They support the idea that one's individuality includes private property rights, because they promote human development and self-expression, hence increasing the interest of the populace at large.⁴ These individual interests are also called as "natural rights" suggesting that these rights are inherent to the individuals by virtue of humanity and are not created or bestowed upon by the state.⁵

In the modern world, an individuals' personality becomes a valuable asset in both legal as well as commercial contexts. They safeguard persons' ability to control and profit from their distinctiveness, likeness and other characteristics. With the technological advancements, these rights face challenges pertaining to freedom of expression, commercial needs etc. This right to personality includes the right to privacy as well as the right to publicity as two dimensions. They allow the individuals, particularly public figures, to protect themselves from invasion into their private life as well as unauthorised commercial exploitation. This discourse tries to explore the dimensions of personality rights with the help of key judicial decisions tracing their development in India, also looking at the key developments in the United States of America. The study also emphasizes the areas in legislation that need to be focussed on while making a place for personality rights.

¹ Veena Chandra and Kriti Sood, "Personality Rights: Protection under IP laws" *Lakshmikumaran & Sridharan Attorneys*, February 15, 2024, available at: <https://www.lakshmisri.com/insights/articles/personality-rights-protection-under-ip-laws/#> (last visited March 15, 2025).

² Johann Neethling, "Personality Rights: A Comparative Overview" 38(2) *The Comparative and International Law Journal of Southern Africa* 210–45 (2005).

³ *Estate of Presley v. Russen*, 513 F Supp 1339, 1353 (DNJ 1981) (U.S.).

⁴ Garima Budhiraja, "Publicity Rights of Celebrities: An Analysis Under the Intellectual Property Regime" 7 *Nalsar Student Law Review* 86 (2011).

⁵ Roscoe Pound, "Interests of Personality" 28 *The Harvard Law Review Association* 346 (1915).

2. Trends and Developments Incorporating Personality Rights

By virtue of being a human, every person has a definite individuality of his own in contrast to brute animals which are considered to be lower creatures. This definite individuality or feature of a person can be called as his/her personality. It includes bodily appearance, habits, character *etc.*⁶ The rights to protect, control, and profit from one's appearance, name, and likeness are known as personality rights.⁷ This includes two facets of rights: firstly, protecting the right to privacy, and the other one is the right to publicity. The former aims at protecting the individual from non-economic damage, and the latter aims to protect the individual from being commercially exploited.⁸

2.1. Balancing Privacy and Publicity Rights: The Celebrity Paradox

The word “celebrity” is perceived by many as an honor or reward for success. Some earn it through skill like sportspersons and artists, some by votes like politicians and some by birth like princes.⁹ The celebrities are often placed on a pedestal where their lives become a matter of national interest with intense public scrutiny surrounding them. Especially in India, celebrities are seen as more than just life figures. Fans start idolizing them and such an obsession often leads to the celebrities struggling with privacy breaches due to intense media attention and public curiosity. There are instances where private family moments of a celebrity are being widely circulated.

With the increase in use of Artificial Intelligence (AI) and deepfakes, the need for legal protection against their privacy intrusion is also increasing. This culture of celebrity idolization continues to evolve with time and technology. Since this admiration remains high, it is likely that the debate over privacy and publicity rights will intensify to find a balance between the personal space and public image of the celebrity. Awarding huge damages and multi-million dollar settlements may stop the infringement of privacy of celebrities. The legislature should take up the task to recognize commercial aspects of celebrity and fill up the lacunae in law accordingly.¹⁰

⁶ Paul Carus, “Person and Personality” 20 *Oxford University Press* 364 (1910).

⁷ Samarth Krishan Luthra and Vasundhara Bakhru, “Publicity Rights and the Right to Privacy in India” 31 *National Law School of India Review* 129 (2019).

⁸ *Ibid.*

⁹ Tabrez Ahmed and Satya Ranjan Swain, “Celebrity Rights Protection under IP laws” 16 *Journal of Intellectual Property Laws* 7 (2010).

¹⁰ *Ibid.*

2.1.1. *Right to privacy*

Privacy can be said to draw boundaries on how far society can invade into one's personal affairs. The rights that aim to protect privacy are thus known as the right to privacy. This right was not expressly recognized by the Constitution of India. Several judgments have led the Constitution to recognize the right to privacy as an implied right. The first case in which the Supreme Court accepted the right to privacy as a fundamental right was *R. Rajagopal v. State of T.N.*¹¹ In this case, a publisher sought to publish an unauthorised depiction of the life of Auto Shankar, a convicted criminal. This piece of work also included allegations against public officials. The court held that an individual's personal details cannot be published without permission and that even a notorious individual has the right to privacy.

Another case was *Kharak Singh v. State of U.P.*,¹² which concerned the violation of personal liberty under Article 21 of the Constitution. In this case, Kharak Singh had challenged police visits at night as their surveillance methods, as an infringement of his fundamental rights. The court, by acknowledging this act as an unauthorized intrusion into individual's personal space, laid the early foundation of the right to privacy in India.

Another landmark case in this regard was the *K.S. Puttaswamy v. Union of India*,¹³ which recognized the right to privacy as a fundamental right under Article 21 of the Constitution. The Court laid down the foundation of privacy protection in India, including issues like data protection. It also observed that the right to privacy is a right that protects the inner sphere of the individual from the interference of both state and non-state actors. The right to privacy was held to be an intrinsic part of Article 21, guaranteed in the Part III of the Constitution.¹⁴

2.1.2. *Right to publicity*

Celebrities like film actors, sportspersons, singers, *etc.*, often generate significant income through merchandising their personalities and brand endorsements. The right of publicity, thus, forms the basis of licensing personality rights¹⁵ so that the

¹¹ (1994) 6 SCC 632.

¹² 1963 AIR 1295.

¹³ (2017) 10 SCC 1.

¹⁴ *Supra* note 7.

¹⁵ Raman Mittal, "Licensing Ones' Persona: Analysing the Practice of Personality Merchandising" 52 *Journal of the Indian Law Institute*, 16 (2010).

celebrities are not exploited without their consent. Personality merchandising, in simple sense, refers to making the popularity of a celebrity into a marketable asset. It means cashing in on the persona to sell anything. The persona of a person can be anything like his/her signature, physical attributes, mannerisms, characteristics, phrases, *etc.*¹⁶

In *Waits v. Frito-Lay Inc.*,¹⁷ Tom Waits, a singer sued for violation of his right to publicity as his voice was used for a commercial purpose without his permission. He argued that by doing this act, they had misappropriated his distinctive voice for a commercial gain, given Waits was known for not doing advertisements. The court recognized the act as a violation of his rights to publicity and, thus, awarded substantial damages to Waits. Similarly, the celebrities endorse a brand using their name and ability to attract an audience. This is the commercial investment that a celebrity makes that primarily relies upon public goodwill.¹⁸ Thus, the infringement upon celebrities' rights is not limited to them but indirectly affects the public as well, who look up to celebrities while purchasing a product and using a celebrity's persona deceptively can mislead the public.

In the Indian context, the right of publicity was first time discussed in *ICC Development (International) Ltd. v. Arvee Enterprises*.¹⁹ In this case, Arvee Enterprises, the authorised dealer of Phillips India Ltd., offered free tickets to the ICC Cricket World Cup in South Africa while running a promotional campaign. This was done without any agreement with the ICC. Thus, issues related to misuse of publicity arose, to which the court examined the rights of artificial juridical persons and the framework of the tort of passing off. The tort of passing is for protecting a person from having their goodwill getting misused by another party who attempts to create confusion among the public. The court held the unauthorised commercial use of ICCs' goodwill as the tort of passing off, responsible for misleading the public into believing that there was a formal agreement between the two. Also, ICC's name or association cannot be used without their permission.

¹⁶ *Ibid.*

¹⁷ 978 F.2d 1093, 9th Cir.

¹⁸ *Supra* note 15 at 17.

¹⁹ 2003 (26) PTC 245 (Del). T.

In another case, *Manisha Koirala v. Shashilal Nair*,²⁰ the Bombay High Court dealt with the unauthorised use of the actress's image. The actress had initially agreed to her nude scenes (through a body double) but subsequently objected to it. The filmmaker released the parts without her consent, which allegedly misrepresented her image. Here, the court recognised the significance of publicity rights and their relationship with a person's privacy. The court restrained the filmmaker from releasing or using any material that the actress had not consented to be shown. Thus reinforcing her publicity rights.

Due to lack of legislative provision and the matters being dealt by the courts based on precedents, the topic of personality rights is yet unknown in Indian law. But the litigation protecting the personality rights is not lacking. Unlike US states, India would not be able to safeguard personality rights through legislation, but rather, it would be done by common law. As in the instance of the rock group "No Doubt"²¹ another method of protection may be to include user limitations in a license agreement.

2.2. Contrasting Approaches in United States of America and United Kingdom

To have a better understanding of the topic, the authors will take contrasting examples of the United States of America (USA) and the United Kingdom (UK).

2.2.1. Position in USA

Privacy and publicity rights, as we understand them today, have largely stemmed from the American understanding and interpretation of the same. Thus, to dig deeper into these rights, it is essential to understand the development of these rights in USA in relation to their history. These rights have developed by judicial precedents, which ultimately made them distinct rights.²² The first court to accept these rights was the Supreme Court of Georgia in the case of *Pavesich v. New England Insurance Co.*,²³ which established the principle of personality rights, specifically the right to privacy. In this case, an artist named, Paolo Pavesich had sued New England Life Insurance Co. for violation of his right to privacy. The latter had used his images in an advertisement without the former's permission. The advertisement portrayed that the artist had endorsed their insurance policy, which, in reality, he did not. The Supreme Court of Georgia ruled in favour of

²⁰ 2002 SCC OnLine Bom 827; (2003) 2 Bom CR 136.

²¹ *No Doubt v. Activision*, 122 Cal. Rptr. 3d 397 (Cal. Ct. App. 2011).

²² *Supra* note 7.

²³ 122 Ga. 190 (Ga. 1905).

Pavesich and awarded him damages. This case, thus, solidified the concept of individuals having personality rights in American jurisprudence.

In *Halean Laboratories Inc. v. Topps Chewing Gum Inc.*,²⁴ the court held that the right to publicity is not just a subset of the right to privacy but an independent right as well²⁵ and cause of action can arise out of it. *Zacchini v. Scripps- Howard Broadcasting Co.* further clarified the distinction between the right to privacy and publicity in a better way. In this case,²⁶ Hugo Zacchini, a professional stunt performer performed an act which was recorded by Scripps Howard Broadcasting Co. and aired on television without his permission. Zacchini argued that this harmed his ability to earn from his performance. This case clearly stated that though the First Amendment (guarantees freedom of the press), but it does not allow infringement on his economic interests. This case clearly did not centre on Zachchini's privacy but on the commercial exploitation of his act.

In *Edison v. Edison Polyform Manufacturing Co.*,²⁷ Thomas Edison, a famous inventor sued Edison Polyform Manufacturing Co. for using his name to market their health related products without his permission. The court ruled in favour of Edison, affirming infringement on his rights. Thus, the personality rights extended to include one's name and pictorial representation as well.

The American Jurisprudence, with the judicial precedents, has laid down certain exception to the rights of privacy and publicity.

i. Written Consent²⁸

Written consent provides clear evidence that the person whose identity is being used has agreed to it and thus eliminates any kind of ambiguity. There are a number of cases where the material is publicized without consent. Like in *Barber v. Time Inc.*,²⁹ whereby Dorothy Barber sued Time Inc. since they published her photograph where she was lying on her bed and accompanied that by an article where she was referred to as "starving glutton." The court ruled in favour of Barber and this act of the Time Magazine

²⁴ 202 F.2d 866 (2d Cir. 1953).

²⁵ Melville B. Nimmer, "The Right of Publicity", 19 *Law and Contemporary Problems* 203 (1954).

²⁶ 433 U.S. 562 (1977).

²⁷ 73 N.J. Eq. 136 (Ch. Div. 1907).

²⁸ *Supra* note 7 at 131.

²⁹ 348 Mo. 1199 (Mo. 1942).

was seen as violation of her privacy. Here, Barber did not provide a written consent for the publication of her photograph, thus, a violation of her privacy rights.

ii. Must relate to the individual³⁰

The second exception is that the personality rights extend to individuals only. It does not extend to inanimate objects like buildings and structures. Non-human objects do not have such rights.

iii. The individual must be recognizable³¹

The individual must be recognisable to bring a claim in this regard. In *Pesina v. Midway Mfg. Co.*,³² Pesina, a martial artist and actor had sued Midway Manufacturing Company, claiming that his likeness was used in the game without his permission in the promotion materials. The court examined if Pesina was recognizable enough to an average person. It was held that Pesina's likeness was heavily stylized as a part of the character which rendered him insufficiently unrecognizable to support a claim of his personality rights violation.

2.2.2. Position in UK

UK has contrasting laws as compared to that of USA, which deals with the right to privacy in a different manner. The United Kingdom does not recognize the right to privacy or any right/statutory provisions to protect the physical attributes of a person or likeness from unauthorized use. In the case of *Kaye v. Robertson*³³ in 1991 the right of "right to privacy" was rejected.

The allegation started when actor Mr. Gordon Kaye's photos were published without permission while he was receiving medical attention for wounds. A journalist trespassed his hospital room to snap photographs of him and even taped his responses to their enquiries, according to the Sunday Sport. Kaye was deemed incapable of giving informed consent due to medical evidence. Lord Justice Glidewell emphasised that there is no privacy protection statute in UK. Therefore, he used the doctrine of intentional lie to shield Kaye and claimed that he had the right to profit from the narrative.

³⁰ *Supra* note 7 at 131.

³¹ 891 F Supp 381 (WD Ky 1995).

³² 948 F. Supp. 40 (N.D. Ill. 1996).

³³ 1991 FSR 62.

Certain clauses of the European Convention on Human Rights (ECHR) paved the ground for the recognition of privacy as a right. Article 8 of the Convention provides for the protection of private life. Additionally, it is required for the court to consider the Convention in accordance with Article 6 while establishing common law. The Human Rights function requires that a court be a public authority³⁴ in accordance with the Convention and function in a manner consistent with Articles 8³⁵ and 10³⁶ of the ECHR. To the greatest extent feasible, the courts must implement laws in a manner consistent with the rights outlined in the Convention.³⁷ Moreover, the judgements are also supposed to take into account European Court of Human Rights.³⁸

Presently, UK has also worked on its personality laws to some extent. The English courts advanced this law significantly in *Douglas v. Hello! Ltd.*³⁹ wherein Michael Douglas and Catherine Zeta-Jones, the claimants, who were both well-known actors, had agreed to an exclusive deal with OK! Magazine that gave them the only right to publish their wedding's pictures. Nevertheless, a visitor at the wedding was able to provide Hello! Magazine with a few photos. The pair sued Hello! for invasion of privacy and demanded damages. The defendant said that the couple had already used up their right to privacy since they had signed a contract with another publication. The Court disagreed with this viewpoint, concluding that the couple maintained editorial authority over whether or not to utilise any particular image.

In *Campbell v. MGN Ltd.*,⁴⁰ pictures of supermodel Naomi Campbell were taken as she was leaving a drug treatment facility. These pictures were first, the caption "Therapy: Naomi outside Meeting" was added, and then the headline "Naomi: I am a drug addict" was added. The Court determined that the images did not qualify as journalistic since they included private, sensitive information about Ms. Campbell. According to the Court, a person's right to privacy is activated if there are circumstances that provide a reasonable expectation of privacy. As a result, in this instance, the tort

³⁴ The European Convention on Human Rights, 1950, s. 6(3)(a).

³⁵ *Id.*, s. 8.

³⁶ *Id.*, s. 10.

³⁷ *Id.*, s. 3.

³⁸ European Court of Human Rights, 1998, s. 2(1)(a).

³⁹ 2006 QB 125; 2005 EWCA Civ. 595.

⁴⁰ (2004) 2 AC 457.

remedy was abandoned in favour of the right to privacy, which was said to better reflect its core.

It can currently be stated that there is some degree of protection under English law for the commercial use of a person's picture and personal information, despite the fact that there is still a great deal of ambiguity. People are in charge of their personal data, which they may now safeguard or enforce through privacy.

Therefore, in view of UK, it is difficult to understand a provision on personality rights since the whole concept of privacy in itself is new to them. However, it is important to understand that UK does not have a constitution and is not entirely bound upon statutory provisions but judgements pronounced by the courts. Therefore, by the nature of the law, UK has moved towards better evolution of personality rights with aligned judgements as compared to India wherein, Indian judgements can get contradictory as a judgement of a high court holds only persuasive value on another high court due to its territorial jurisdiction.

3. Notable Rulings on Personality Rights

The Supreme Court stated, "The right to privacy, which may be extended to read as the right of personality, must be said to have been violated where, a person's likeness is used, without his consent, for advertising, or non-advertising purposes."⁴¹

Understanding the psychology of Courts on the subject is essential since, in the case of *Sandhya Organic Chemicals Pvt. Ltd. v. United Phosphorous Ltd.*⁴² the court observed that the principles of English common law can be used where statutory provisions are difficult to interpret without the aid of English law. Moreover, it has been seen repeatedly that the Apex Court has taken aid of English judgements in case of absence of Indian Statutory provisions.⁴³

Therefore, any scholar would suggest considering western cases to define a framework. However, it can be analyzed that Indian courts have not really consulted any foreign judgements when it comes to the issue of personality rights. The author of the

⁴¹ AIR 1995 SC 264.

⁴² AIR 1997 Guj. 177.

⁴³ *Aruna Ramchandra Shanbaug v. Union of India & Ors.*, AIR 2011 SC(CRI) 711.

article shall initially highlight the Western aspect of the problem and then move to the Indian aspect.

In the case of *Keller v. Elec. Arts Inc. (In re N.C.A.A. Student-Athlete Name & Likeness Licensing Litig.)*,⁴⁴ corresponding avatars of every player in the game had the player's actual jersey number, identical height, weight, build, skin tone, hair colour and home state. Invoking the right of publicity as enshrined under the State Law of California, the plaintiff sued the defendant. Basing its decision on the California statute, the Court held that the defendant's use of the likeness of a college athlete in its video games is not protected under the First Amendment. However, in arriving at this conclusion, the court took into account the fact that the defendant, while incorporating certain player information in its video games such as height, weight and the like, did not include the athletes' names along with their likeness and statistical data. It is also to be noted that this judgment dealt with the virtual video game and not an OFS game, which cannot function without a player's name, image and likeness. A video game, which is an interactive game, has nothing to do with factual information about real-world football games. Additionally, in *Keller*,⁴⁵ the defendant had used the personal attributes of the player, such as height, weight, hair colour and the like thus making Elec. Arts Inc. Liable.

In the case of *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*,⁴⁶ Haelan labs had entered into a contract with professional baseball players which granted them exclusive rights to use players' photographs with its chewing gum products. Despite the knowledge of the petitioner's contract, Topps Chewing Gum, a competitor, deliberately induced the ball player to authorize the respondent to use the player's photograph in connection with the defendant's chewing gum. The court gave the plaintiff relief since it was held that using the picture without the permission of the actor was an infringement to his publicity rights which are exclusive. The court held that individuals possess the right to commercially exploit themselves and grant this right to someone else.

In the case of *Motschenbacher v. R. J. Reynolds Tobacco Co.*,⁴⁷ the plaintiff was a professional driver of racing cars. He filed a suit seeking injunctive relief and damages for the alleged misappropriation of his name, likeness, personality and endorsement in an

⁴⁴ 724 F.3d 1268.

⁴⁵ *Ibid.*

⁴⁶ *Supra* note 7.

⁴⁷ 498 F.2d 821.

advertisement. He sued R.J. Reynolds Tobacco Co. for using an image of his distinct car race in the advertisement. The defendant used the plaintiff's car in its commercial advertisement to promote its cigarettes. The court granted injunctive relief to the plaintiff as there was deemed a potential violation of his personality rights.

In the case of *Midler v. Ford Motor Co.*,⁴⁸ the famous singer Midler had declined to participate in the Ford Motor Co. advertisement. Thus, a singer was hired to imitate his voice and sing a song that the plaintiff had originally sung. United States Court of Appeals for the Ninth Circuit reversed the district court's decision, holding that the defendant used an imitation to convey an impression that the plaintiff was singing for them and held in favour of the plaintiff. Here, a distinctive voice identifiable with a particular individual was used for commercial purposes without their permission and their identity was thus, misappropriated.

However, if Indian precedents are analyzed, some of them clearly tend to violate the decisions of the foreign judgements on a standalone basis. In the case of *Digital Collectibles Pte Ltd. and Ors. v. Galactus Funware Technology Private Limited and Anr.*,⁴⁹ it was held by the High Court of Delhi that: "use of celebrity names, images for the purpose of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses would be permissible as facets of the right of freedom of speech and expression under Article 19(1)(a) and would not fall foul to the tort of infringement of the right of privacy." Moreover, the Hon'ble Delhi High Court also mentioned in the aforementioned judgement⁵⁰ that the player names and performance statistics utilized by Striker,⁵¹ which detail a player's actual match performance, are freely used by anybody and are available in the public domain. The major reason for such a judgement by the Delhi High Court was that the court did not deem it fit to order an infringement because, in that case, they would have to grant an Interim injunction as per the plaintiff's prayer, and that would have caused unemployment to a substantial number of people who worked for the defendant's company.

The author wishes to question the analysis of the Hon'ble Delhi High Court; since the order passed to prevent the interim order is also not in consonance with the

⁴⁸ 849 F.2d 460.

⁴⁹ CS(COMM) 108/2023.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

western judgement of *Keller v. Elec. Arts Inc.*⁵² It is evident that any court in India is not bound by any foreign judgment however, the authors contention is that under the circumstances as to that of Galactus funware⁵³ the court should have referred to a foreign precedent for a better judgement.

The reality of the fact is that the judgement mentioned above by the Delhi High Court does not align with some other precedents of the Delhi High court itself and also of other High Courts.

In the case of *Amitabh Bachchan v. Rajat Negi and Ors.*,⁵⁴ the Hon'ble Delhi High Court by way of ex-parte ad interim order, dated 25 November 2022, granted relief to actor Amitabh Bachchan since his voice was being misused without his permission and was being used in scam calls claiming them to be from a T.V. serial the actor works for and extracting money on that behalf.

In the case of *Arun Jaitley v. Network Solutions Private Limited and Ors.*⁵⁵ (2011), the court observed that the popularity or fame of an individual will be no different on the internet than in reality. Here, Arun Jaitley, a prominent politician, filed a case against Network Solutions Private Ltd. and other parties when he discovered that a domain name containing his name had been registered by a third party. He claimed it as a violation of his personality rights. The Delhi High Court held that unauthorized use of a personal name for commercial purposes without permission was an infringement of his personality rights.

In critical analysis of the case of *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*⁵⁶ the Delhi High Court adjudicated the matter on the basis of precedents. In the aforementioned case⁵⁷ father of Late Sushant Singh Rajput (SSR) sued the producers and directors of the film titled "Nyay: The Justice," which was available on the platform "Lapalap Original." The plaintiff sought an interlocutory injunction on the grounds of the likeness, name and life details of the late actor without the family's permission.

⁵² *Supra* Note 41.

⁵³ *Supra* Note 7.

⁵⁴ CS(COMM) 819/2022.

⁵⁵ CS(OS) 1745/2009.

⁵⁶ CS(COMM) 187/2021.

⁵⁷ *Ibid.*

The plaintiffs majorly asked for the protection of the late actor's personality rights and his image, which was portrayed in a defamatory manner based on unverified news and negative reports, and sought to uphold personality rights and the right to privacy upon the death of an individual.

The Court noted that as the movie was based on publicly available news articles, SSR's rights were not infringed, especially since the stories were not contested or disputed when they were first published. It was believed that the movie infringed upon SSR's publicity rights or defamed him, even if it was "arguendo." These rights were personal to SSR and ended with his death. In the same vein, SSR owned the other rights mentioned in the plaint, such as the right to privacy and personality rights, which were not inherited. The Court used several case laws, notably the ruling in *Deepa Jayakumar v. AL Vijay and Ors.*⁵⁸ from the Madras High Court, to reach its determination. In the aforementioned case, Deepa had objected to the biopic of her aunt, Jayalalitha and argued that Jayalalitha's personality rights were being violated as her life story was adapted into a film without her family's consent. The defendant argued that since Jayalalitha's life was in the public domain due to her prominence in politics and cinema, the production of the film was justified. The Court ruled that personality rights are not inheritable and cease to exist after the individual's death. Similarly, in this case,⁵⁹ the Court stated that the defendants were not obligated to obtain the consent of the family before the release of any such film. Therefore, an injunction was denied.

In the judgement of *Mr. Shivaji Rao Gaikwad v. M/S. Varsha Productions*⁶⁰ the plaintiff is a famous celebrity, Mr. Shivaji Rao Gaekwad (Rajnikanth), who seeks to prevent the use of his name in the film titled "Main Hoon Rajinikanth". In the judgement, the court stated that since the name of the movie mentioned Rajinikanth and the plaintiff is famously known by that name, a film with such a title shall be misleading to the public. Therefore, the court concluded that an unauthorized use of the plaintiff's name without his consent is deemed unjustifiable and a violation of his personality rights. Thus, an interim injunction was granted to prevent the film's release.

⁵⁸ O.S.A.No.75 of 2020.

⁵⁹ *Supra* note 34.

⁶⁰ (2015) (62) PTC 351 (Mad).

In the case of *Titan Industries Ltd. v. Ramkumar Jewellers*,⁶¹ Titan Industries sued Ramkumar Jewellers for using Amitabh Bachchan's and Jaya Bachchan's pictures without their permission. Recognizing that celebrities have the right to control and monetize their image and persona and restrict or allow their use for commercial purposes ruled in the favour of Titan industries. Ramkumar Jewellers was thus held liable for misappropriating their image for commercial gain.

4. Conclusion and Suggestions

Thus from the above discussion, it can be concluded that Article 21⁶² of the Indian Constitution is the provision that comes closest to safeguarding personality rights in India as held in the case of *R. Rajagopal v. The State of Tamil Nadu*,⁶³ however the authors beg to differ from the same. Although it somewhat ignores the commercial side of personality rights, Indian courts used copyright and trademark statutes to provide protection for specific features of the right to individuality. Passing off has even been used to defend personality rights in certain situations. When considering some Indian instances pertaining to the protection of personality rights under current intellectual property laws, it could seem that these laws are sufficient to provide protection for personality rights. However, a more thorough examination that goes beyond the surface level indicates that the current IP rules are insufficient due to a number of nuances and elements that are left unresolved.

Beyond the peripheral perspective, a more thorough examination reveals that the current IP rules are insufficient due to a number of nuances and issues that are left unresolved. However, the courts have disregarded these details and provided a fix. As mentioned in the introduction, only a small number of personality traits are thought to be covered by the current IP rules because the full topic of personality has been omitted.⁶⁴ Additionally, courts have occasionally construed the protection of personality rights similarly to that of well-known trademarks.⁶⁵

Trademark rules can assist control the unapproved use of personality traits to some degree. For instance, the main case in India that addressed the economic side of

⁶¹ 2012 (50) PTC 486 (Del).

⁶² The Constitution of India, art. 21.

⁶³ (1995) AIR SC 264.

⁶⁴ Trade Marks Act, 1999 (Act 47 of 1999), s.2(m); Copyright Act, 1957 (Act 14 of 1957), s.2 (qq).

⁶⁵ CS (O.S.) 893 of 2002 (Del.) (India); *Arun Jaitley v. Network Solutions Pvt. Ltd.*, (2011) 181 DLT 716.

personality rights for the first time was *D.M. Entertainment v. Baby Gift House*.⁶⁶ The plaintiff, Daler Mahendi, an Indian artist, founded D.M. Entertainment Pvt. Ltd. in 1996. The company was granted all the rights, including the right of publicity, commercial endorsement, and other related rights, and had a registered trademark for the letters DM, which stood for their name. as well as the defendants who run gift and toy shops in Delhi. The selling of dolls with Daler Mehndi-inspired designs, one of which had the defendant singing a few lines from his songs, was at the centre of the issue. The plaintiffs alleged infringement of the right to publicity, passing off, and fraudulent endorsement. Since there was no particular statute safeguarding personality rights, the court offered a remedy by referring to trademark law requirements such as fraudulent endorsements and passing off.⁶⁷

The Trademark Act 1999 under Section 2(1)(m)⁶⁸ defines the term mark: “mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.”

The terms, however, closely relate to personality rights issues; the definition and the provisions do not mention personality rights. Moreover, if it is debated that personality rights come under the purview of the Trademark Act of 1999, then it shall go contrary to the various judgements that take personality rights under the purview of Article 21 of the constitution, relying on various factors such as the right to privacy which in turn tends to cause confusions, to avoid which the authors suggest bringing the whole purview of personality rights under the Copyright Act.

All the aforementioned concerns give rise to confusion about the subject of personality rights, a solution to which the authors give in the suggestions below.

4.1. Suggestions

The authors of this paper reach to a contention that the term personality is not defined in statutes. Legal frameworks include name protection under the Trademark Act, 1999, wherein the prerequisites include Section 9(1), Section 12 and Section 14 of the Trademark Act.

⁶⁶ MANU/DE/2043/2010.

⁶⁷ *Ibid.*

⁶⁸ *Supra* note 64.

In the current scenario, celebrities can protect their name under class 41 of the Trademark Act, 1999, which is a measure to seek protection from misuse of their name, strengthening goodwill, however, the Trademark Act doesn't protect personality rights. Moreover, trademark is a tedious process and in a generation of deepfakes and un-encrypted data, it is practically not possible for any person to seek trademark protection for their name, considering that there is not enough legal literacy and not everyone is financially sound. Therefore, in order to protect personality rights in general, there needs to be a statutory provision.

Therefore, the authors suggest the term personality rights to be included in the Copyright Act through a definition in the Interpretation Clause and provision for punishment in case of criminal charges and pecuniary damages in case of civil cases shall be assessed by the courts based on goodwill and degree of harm to the image of the plaintiff.

The authors propose the following definition in Section 2(1)(c)(x) of the Copyright Act - "Personality rights refer to a right of a person on their name, image, signature, likeness, voice, special attributes which are exclusive only to the person holding such rights."

Another definition to strengthen the provision can be given under the Copyright Act as: "Notwithstanding any provision, usage of personality rights of a person shall result in the assessment of, including but not limited to, pecuniary damages based on the harm to goodwill and degree of damage caused to the plaintiff in any manner."

The authors have chosen the Copyright Act only to be considered since it will still allow minor usage of demonstration of public figures by means of the fair use doctrine and shall have a very wide range for coverage of human attributes as a basic protection that cannot happen in the case of trademark Act and Patent Act since not every person can register themselves as a trademark.