

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 6

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# An Explication Dual Facets of Personality Rights in India

---

BARGAVI S.<sup>1</sup> AND SETHULAKSHMI N.K.<sup>2</sup>

## ABSTRACT

*This paper explores the concept of Personality Rights, focusing on the dual aspects of Right to Privacy and Right to Publicity. While there is no exact legislative definition of Personality Rights, the paper aims to provide a comprehensive definition and identify the scope of these rights. The authors have analysed the key legal precedents, emphasizing the absence of specific legislation governing Personality Rights. From the review of various literature, the paper identifies a research gap in the lack of a clear distinction between publicity rights and personality rights in existing literature. It highlights the need for a statutory definition and scope determination for Personality Rights. The authors also discuss the concept of Character Merchandising within the broader context of Personality Rights. Different perspectives on Personality and Personality Rights are explored, including the common man's perspective and the legal perspective. The paper discusses the importance of personality in individual identity and the legal recognition of Personality Rights as a form of intellectual property. The authors propose that Personality Rights constitute a single body with two heads – Right to Privacy and Right to Publicity. The right to privacy is explored in terms of freedom from unwanted interference, with reference to judicial interpretations and landmark cases such as K.S. Puttaswamy v. Union of India. The right to publicity is defined as the control over the exploitation of one's name, image, or personal characteristics for commercial purposes, limited to celebrities. The paper concludes by addressing the misconception that the right to publicity is intrinsic to the right to privacy and emphasizes the need for legislative intervention to provide clear guidelines and laws governing Personality Rights. The advent of social media and the evolving nature of fame highlight the urgency of addressing this legal issue.*

**Keywords:** *personality rights, publicity rights, privacy, celebrity, commercial gain, identifiability, persona, character.*

## I. INTRODUCTION

Each person is identified by the physical or mental capacities to which he had a direct access

---

<sup>1</sup> Author is a student at Sastra University, Thirumalaisamudram, Thanjavur, India.

<sup>2</sup> Author is a student at Sastra University, Thirumalaisamudram, Thanjavur, India.

and this identification affords him a normative sense of self.<sup>3</sup> Appropriation of the Commercial Value of a Person's Identity : The Right of Publicity” which essentially states “One who appropriates the commercial value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability for the relief appropriate.<sup>4</sup> The origin of the publicity right lies in the understanding of the right to privacy. The publicity rights or personality rights developed over time when there was a need for the recognition of the commercial value of celebrities. Publicity rights simply put, are those rights which protect the interests of celebrities in their images and identities. The object of the publicity right is not merely to protect the celebrity rights but to give pecuniary remedies to the celebrities when images, videos or likeness of the celebrities in any manner is used without their consent by any third party. There has been various attempt made to identify personality rights, Appropriation of the Commercial Value of a Person's Identity: The Right of Publicity” which essentially states “One who appropriates the commercial value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability for the relief appropriate. The publicity rights have evolved through precedents since there is no exact legislation to govern the subject. The first case which expressly recognized the publicity right was Haelan Laboratories Inc v. Topps Chewing Gum Inc In this case the court recognised right in publicity value of photograph of a baseball player independent to right to privacy. The right of publicity originated as a prohibition against misappropriating a person's name or likeness, thus creating the idea of a protected persona.

In the absence of an exact definition to the personality rights this paper works on to give a proper and meaningful definition to the personality rights along with that, the authors have also tried to identify the scope of personality rights. The lacuna of a Statutory definition of personality rights it has been mainly focusing on publicity rights alone but in this paper, authors have identified that personality rights is a single body of two heads namely : Right to privacy and Right to Publicity.

### **(A) Literature Review**

*Halsbury's Laws of India*<sup>5</sup> has mentioned the personality rights as an exclusive intellectual property of right of each person. It has differentiated the personality rights from publicity rights by the factor that the personality rights do not have financial right. In Australia and Canada misuse of personality is recognised as a tort of misappropriation of personality with a difference

---

<sup>3</sup> David Gauthier, *Morals by Agreement*, 210 (1986)

<sup>4</sup> Restatement (Third) of Unfair Competition Act, 2005; § 46.

<sup>5</sup> *Halsbury's Laws of India (IPR-II, Vol 23)*, 2<sup>nd</sup> Edition

being that the establishment or test of likelihood of public deception or confusion is not required under Canadian law. The personality rights were given to the persons who have attained the status of celebrity and he should be an identifiable person from the unauthorised use of his personality. Even in the absence of legislative definition the Indian courts have recognised the concept of personality rights in the country.

*Lucy Rana, Shilpi Sharan* has explained the position of personality rights in India and other jurisdictions. According to the authors the right of publicity is also known as personality rights and they have used both the terms interchangeably. The authors have explained how the personality rights are protected in India through the Copyright Act of 1957, Trade Marks Act of 1999, The Emblems and Names (Prevention of Improper Use) Act of 1950 and Code of Self-Regulation in Advertising in India- ASCI. For the comparative analysis the authors have analysed the position of the subject in United States, United Kingdom, German and Canada.

*Samarth Krishnan Luthra & Vasundhara Bakhru (2019)*<sup>6</sup> discussed the development and treatment of privacy and publicity rights in India, the USA, and the UK. It outlines the historical background and legal precedents related to these rights, as well as their recognition within the legal frameworks of these countries. In India, the right to publicity has been primarily addressed within the scope of Intellectual Property Rights, and the right to privacy has been a topic of debate with evolving developments. The document highlights the lack of a guaranteed right to privacy under the Indian Constitution, but also presents exceptions and opposing views. It also delves into the treatment of publicity rights of celebrities and the establishment of the basic elements for infringement of the right to publicity. They have elaborated the historical roots of privacy and the recognition of individuality and protection from intrusion, as well as the development of the right to be left alone. It also touches upon the legal recognition given to the right to privacy, protecting personal privacy against unlawful governmental invasion.

From the above literature review it is clear that the existing articles did not attempt to define the personality right and often used the term personality rights and publicity rights interchangeably which is not right in the practical aspects. Further, they have opined that publicity right is a part of right to privacy under Article 21 of the Indian Constitution. In this paper the researchers have made an attempt to shed light on these research gaps.

---

<sup>6</sup> Publicity Rights and the Right to privacy in India, NLSIR, volume 31, Issue 1.

## II. DIFFERENT PERSPECTIVES PERSONALITY AND PERSONALITY RIGHTS

### (A) Common Man's Perspective

An individual who is not known by his name is usually identified by his personality. We often introduce a person to others by referring to their personality. *I am what is mine. Personality is the original personal property*, says Norman O. Brown. Personality for a layman refers to different characteristics of a person by which he will be identified or by which he will be appreciated. It is directly attributed towards an individual's character. Oxford Learner's Dictionaries defines the personality as "*various aspects of a person's character that combine to make them different from other people and that quality of a person's character that make them interesting and attractive*".<sup>7</sup> It is important to have a good personality to maintain good impression among the society. The society will label a person only through his personality or in other words a person will be labelled by what he does. Therefore, peers were always under a pressure to maintain good personality as it will define them who they are.

### (B) Legal perspective

The term 'Personality' is used in a different sense from how it has been used by a layman. Personality can be defined as a personal property of an individual. It is something more than an element which is used by the common people to ascertain the character of a person. The personality right is recognition given to a person as a physical spiritual and moral being to enjoy his own existence.<sup>8</sup> This means that a person is having right over how his personality can be used and only he is having exclusive right to exploit his personality. Personality is something inherent in every individual though only the personality rights of the celebrities get recognition in the court of law. An artist or performer has exclusive right to publicity in combination with personality rights and have exclusive control over the economic exploitation of the same.<sup>9</sup>

### (C) Character Merchandising

The term Character Merchandising denotes the process of associating a person or his character with a product with an aim to gain commercial advantage through such character. The commercial advantage here includes increase in demand for the product, increased sales, popularity of product among people and other similar advantages. In the concept of character merchandising, unlike the personality rights which are attributed only for human individuals,

---

<sup>7</sup> Oxford Learner's Dictionaries, <https://www.oxfordlearnersdictionaries.com/definition/english/personality> (last visited Oct. 30, 2023)

<sup>8</sup> Christian von Bar, *The Common European Law of Torts*, vol 2 (CH Beck 2000) 61.

<sup>9</sup> Tabrez Ahmed and Satya Ranjan Swain, '*Celebrity Rights : Protection under IP Laws*' (2011) 16 JIPR 7-16.

the 'character' is extended to cover fictional humans, real humans and also non-humans. The WIPO has defined the Character Merchandising as secondary exploitation of essential exploitation of a character in relation with goods or services.<sup>10</sup> There are different types of Character Merchandising recognised by the WIPO in its report and for the purpose of this paper the authors have restricted the subject matter with *personality merchandising* alone. The Personality Merchandising refers to the use of character or personality like name, photos, voice and other similar features of a real person for promoting a new product or service. This form of advertising is often referred as *reputation advertising* as it is using the reputation gained by a person for marketing its product.

### III. PERSONALITY RIGHT – A RIGHT OF AN INDIVIDUAL

It is a well-known fact that in law we have recognised personality not only of human but also of body corporates. A *person* under law always includes not only persons having physical existence but also includes any company, or association or body of individuals irrespective of the fact whether they are registered or not.<sup>11</sup> Any association of persons who were joined together for a common object like carrying on business or engaging in some lawful trade activities they are treated as a body corporate. When such a body corporate is registered under a specific Act for example Companies Act, 2013, then it gains status of a legal person. As a legal person it has right to sue and be sued in its own name, it can carry on business in its own name and even it can hold property.<sup>12</sup> But the regime of intellectual property law is showing hesitant to extend the personality rights to the legal persons.

Extending the use of personality rights to legal persons or legal entities will violate Article 19 and 21 of Indian Constitution as they have their origin from fundamental right to privacy.<sup>13</sup> Legal persons can protect their brand through trademark registration, which provides exclusive rights to use certain marks in connection with specific goods or services. This protection is more about preventing confusion in the marketplace and protecting the goodwill associated with the brand. Companies may seek protection for their corporate image and reputation through laws governing defamation and unfair competition. This, however, is distinct from an individual's right to control the commercial use of their personal identity.

---

<sup>10</sup> WIPO, Report on Character Merchandising, [https://www.OMPI.int/export/sites/www/copyright/en/docs/w\\_o\\_inf\\_108.pdf](https://www.OMPI.int/export/sites/www/copyright/en/docs/w_o_inf_108.pdf), (last visited Nov. 21, 2023)

<sup>11</sup> General Clauses Act, 1897; §2(42).

<sup>12</sup> Companies Act, 2013; §9.

<sup>13</sup> ICC development International Ltd v. Arvee Enterprises; 2003 SCC OnLine Del : (2003) 26 PTC 245.

#### IV. PERSONALITY RIGHTS – SINGLE BODY OF TWO HEADS

The growing area of personality rights is so far governed only through precedential rules rather than legislations. The absence of a statute dealing with personality rights created a great impediment in implementing and dealing with the problems arising out of personality rights. A classic example of this could be seen in *Kapil Dev v. Parle (Exports) Pvt Ltd*<sup>14</sup> the Delhi High Court has refused to grant interim injunction against the defendant from using the photograph of Kapil Dev to advertise his products on the ground that the defendant has obtained copyright to the photograph under the Copyright Act, 1957. The court has further added that since personality rights of the Plaintiff has not been asserted, even though the factual circumstances of the case is more associated with infringement of personality rights. Thus, it is clear that in the absence of any guidelines as to what can or cannot be considered as personality or personality rights or what amounts to infringement of personality rights the law governing the subject cannot be made clear. Therefore, it is important to define the personality rights and also necessary to ascertain the scope of the personality rights. Another incident would be a case where the defendant counsel has made a submission that since the personality right does not have a statutory definition and not recognised as a property right either under any of the statute, the plaintiff's case needs to be rejected.

The concept of *Personality Rights* in its essence has two essential rights namely (i) Right to privacy and (ii) Right to Publicity. The term Publicity rights and Personality Rights have often been used interchangeably but in practice they are not the same. Following part of this paper will explain in detail two different rights that can be covered under the *Personality Rights* in order to ascertain and understand the definition and scope of personality rights.

##### **(A) Right to Privacy**

In wider sense privacy can be defined as a state of being free from unwanted interference or intrusion by others. It is also considered to be crucial for the autonomy, dignity and individual freedom of individuals allowing them the space and control to make choices without undue influences or surveillance. Privacy is not defined nor is right to privacy not directly envisaged in the constitution of India. But this right to privacy has been secured a place in the constitution under Art 21 by various judicial interpretations. Out of which the landmark case which upheld the validity of Right to privacy is *Justice K.S. Puttaswamy (Retd.) & Another v. Union of India & Others*<sup>15</sup>. In the case court held that privacy is an intrinsic part of the right to life and personal

---

<sup>14</sup> IA No 2560 of 1991 in Suit No 941/1991.

<sup>15</sup> Justice K.S. Puttaswamy (Retd.) & Another v. Union of India & Others, (2017) 10 SCC 1

liberty guaranteed by Article 21.

Therefore, while Article 21 explicitly guarantees the right to life and personal liberty, the Supreme Court has held that the right to privacy is an essential element within the scope of this provision, ensuring protection for individuals' privacy rights in India. Even when someone is in a public place, they still retain a reasonable expectation of privacy concerning certain aspects of their personal life, behaviour, and information. Individuals have a right to control the dissemination of their personal information, make decisions about their private affairs, and maintain boundaries regarding their personal space and autonomy. The right to privacy is not contingent on whether an individual is in a private or public setting but is an inherent and essential aspect of human dignity that deserves protection and respect. However, the restrictions on fundamental rights are subject to certain conditions, such as being lawful, reasonable, and proportionate. Any law that limits the right to privacy must satisfy these criteria and align with the constitutional framework. These restrictions might be imposed for purposes such as national security, public order, protecting the rights of others, or other legitimate state interests.

### **(B) Right to Publicity**

Every person has a right to control where and how his personality can be published or made known to the public. In other words, the Right to Publicity refers to the right of an individual to control the manner of exploitation of his name, image or similar personal characters. Every person who wants to protect their privacy is indirectly aiming to protect the publicity rights but not vice versa. The *publicity right* is an economical or financial right as the use of the personal character or personality of a person is intended to attain commercial advantage and often the person is getting paid in the form of remuneration or compensation in cases of infringement. It is pertinent to mention here that unlike the *privacy rights* which is available to everyone, the *publicity right* is limited only for a celebrity or a well-known person.

Even in the absence of the absence of statutory recognition for the publicity rights its recognition can be inferred from various instances like in Actor Rajinikanth issued legal notices to prohibit the use of the character baba for commercial gain.<sup>16</sup> Character of Opera soap were used for a detergent advertisement.

The *publicity rights* have been defined as an exclusive right of a celebrity to the profits to be made through the exploitation of his fame and popularity for commercial purpose.<sup>17</sup> Jerome

---

<sup>16</sup> Business News; The Economic Times; <https://economictimes.indiatimes.com/news/new-updates/rajinikanth-issues-notice-to-prevent-unauthorised-use-of-his-name-and-image-warns-of-legal-action-against-violators/articleshow/97415615.cms>; (last visited Dec. 06, 2023).

<sup>17</sup> Douglas v. Hello! Ltd and Ors (No3) [2005] EWCA Civ 595.



Frank, J. has defined it as the right to grant the exclusive privilege of publishing his picture.<sup>18</sup> But this definition is so narrow as the persona of an individual cannot be restricted to his pictures alone but also include his name, voice, style, signature, facial expressions and many more. However, most of the cases of infringement was revolving around name, image and voice or the style in which the celebrity speak or sing. Melville B. Nimmer can be regarded as a person who first introduced the concept of *publicity rights* in his book and he considered it as a right to control the commercial value of their(celebrity's) identity.<sup>19</sup>

The *right of publicity* as recognised in the case of *ICC Development (International) Ltd v. Arvee Enterprises*<sup>20</sup> has two elements namely validity and identifiability. The plaintiff should have an enforceable right in his identity and he must be identifiable by the unauthorised use of the defendant. The right to publicity is said to be violated or an infringement has been made can be inferred from four elements namely taking, identification, benefit to the appropriator and lack of consent.<sup>21</sup>

The Indian Courts have made a great emphasis on the *status of celebrity* as a *sine quo non* for the enforcement of the publicity rights. It was defined in *Shivaji Rao Gaikwad v M/s. varsha Productions*<sup>22</sup> that a celebrity must be identifiable from defendant's unauthorised use. In this case the film titled 'Main Hoon Rajinikhanth' was disputed as an infringement of publicity rights as the title name is *prima facie* attributed to the famous Actor Rajinikhanth. No other aid is required in such attribution. Further the court has made an observation that proof of confusion or falsity or deception is not a requisite condition when the individual is an easily identifiable person. But a different view has been expressed recently by the Delhi High Court that the right to publicity cannot be decided solely based on the unauthorised use of personality being used for a commercial gain rather it also depends on whether such use is misleading the targeted consumer group that the person whose persona is used has given his endorsement to the use of their personal traits.<sup>23</sup>

The word 'celebrity' refers to a person about whom many people know or talk about.<sup>24</sup> But this does not mean that everyone should know about that person. It is enough if it is proved that the particular person is well-known in the field in which he belongs to. In a case were the domain

---

<sup>18</sup> Haelan Laboratories Inc v. Topps chewing Gum Inc., 202 Fd 866 (2<sup>nd</sup> Cir) (1953)

<sup>19</sup> Melville B. Nimmer, 'The Right of Publicity' (1954)

<sup>20</sup> ICC development International Ltd v. Arvee Enterprises; 2003 SCC OnLine Del : (2003) 26 PTC 245.

<sup>21</sup> Henry L. Zuckerman: Modern Communications Law (1999)

<sup>22</sup> 2015 AIR CC 1459, 2015 SCC OnLine Mad 158.

<sup>23</sup> Digital Collectibles Pvt. Ltd. and Ors v. Galactus Funware Technology Pvt. Ltd. and Anr., 2023 SCC OnLine Del 2306.

<sup>24</sup> Titan Industries Ltd. V. Ramkumar Jewellers, MANU/DE/2902/2012.

name [www.arunjaitley.com](http://www.arunjaitley.com) was attacked for it being directly denoting the name of famous politician Arun Jaitley. The court has observed that the name due to its peculiar character coupled with the gained popularity in several fields like politics, advocacy or as a leader has attained the status of well-known personal name.<sup>25</sup> It need to be noted that even though in this case the court has not discussed personality rights directly it has indirectly given priority to the persona of an individual over the right of using trade mark. And accordingly, it held that use of a personal name is superior to that of the commercial right of using the trade mark or domain name.

But the Courts have neither laid down any test to determine whether the celebrity is an identifiable person nor enumerated any factors that need to be considered in such a situation. Rather it always depends upon the factual circumstances of each case. A similar instance as that of *Shivaji Rao Gaikwad*<sup>26</sup> happened in the case of *Gautam Gambhir v. D.A.P &Co. & Anr.*,<sup>27</sup> Here the cricket player Gautam Gambhir claimed that his personality rights were violated by the defendant as he is running restaurants in the name of Gautam Gambhir and it amounts to unauthorised use of his persona, his name, and it cause confusion among people. But notably the court has rejected the contentions made by the Plaintiff Gautam Gambhir and observed that every person has right to carry on 'his' business 'in his own name'. In order to prove unauthorised use and intention to cause confusion it must be proved that the proprietor of the business has represented the persona, here the name, in such a way that it belongs to some other person. And moreover, it was mentioned by the court that the restaurant is no way connected with Plaintiff's profession and the defendant in all the displays of his hotel and also in his websites published his own picture to associate his own identity to the business. In both cases the disputed persona was *name of the celebrity* but the impact it has created, the degree of confusion it caused and the interlink between the celebrity's profession and the usage of his persona turned the judgment in two opposite directions. Thus, the mere use of name of the celebrity or well-known person *ipso facto* cannot hold as an unauthorised use made for confusing the people to make an impression that the product or business in which the name was used belong to that celebrity.

The identification can be proved even by simple comparison of defendant's use and the celebrity's feature.<sup>28</sup> For instance, where the persona or feature used is image of the celebrity it can be proved if from the image used by the defendant people can identify it to be a celebrity.

---

<sup>25</sup> Arun Jaitely v. Network Solutions Pvt. Ltd. And Ors., MANU/DE/2483/2011.

<sup>26</sup> 2015 AIR CC 1459, 2015 SCC OnLine Mad 158.

<sup>27</sup> Gautam Gambhir v. D.A.P &Co. & Anr, 2017 SCC OnLine Del 12167.

<sup>28</sup> Titan Industries Ltd v Ramkumar Jewellers 2012 SCC OnLine Del 2382

An instance in this regard will drag us to the case where the image of famous Actor Mr. Amitabh Bachchan and his wife Mrs. Jaya Bachchan were used by the defendant without any authorization in his jeweller hoardings. The court has granted a permanent injunction in this case as the Actor and his wife were directly identifiable from the unauthorised use of the defendant by mere comparison of such hoardings with Plaintiffs images.

## V. DEMARCATING THE LINE BETWEEN PUBLICITY AND PRIVACY

A great misconception prevalent among us is that the *right to publicity* is a part of *right to privacy* and it was recognised in one of the celebrated judgments of right to privacy.<sup>29</sup> The majority of the judgment dealt with the aspect of right to privacy and recognised only right to privacy as an inherent part of Article 21 of the Indian Constitution. The judgment has mentioned how Prosser has classified the invasion of privacy into four types of torts which includes appropriation of another's name or likeness. From this tort the US has adopted a right to publicity. It was nowhere mentioned that publicity right is a part of privacy rights. While discussing the test of privacy in para 422 of the judgment it was mentioned that privacy may be understood as the antonym of publicity as one of the ways to determine a core constitutional idea would be to consider its opposite.

The Hon'ble Madras High Court has held that the right of publicity has evolved from right to privacy and an attempt to take away the right of publicity from individuals would be violative of Article 19 and 21.<sup>30</sup> But such an interpretation will lead to throw unwanted and additional absurdity over the concept of publicity rights. In India the right to publicity has been granted only to the persons or individuals who have attained the status of celebrity. He should be a well-known person or the unauthorised usage should pass the identifiability test. While the right to privacy enshrined in Article 21 of the Indian Constitution guarantees privacy for each and every person, the publicity right is only offered to the celebrities. This creates a question whether ordinary person even if he is not a celebrity can claim damages for the infringement of his publicity rights. If the answer is affirmative whether the interpretation made by various High Courts that publicity right is vested only with a celebrity is erroneous or if the answer is negative, does it mean that Courts are violating the constitutional mandate as they held that the publicity right is inherent in the right to privacy which is available to every person irrespective of his social or economic status.

Even though the right to publicity has not been explicitly upheld to be a part of Article 21 there

---

<sup>29</sup> K. S. Puttaswamy v. Union of India., (2017) 10 SCC 1.

<sup>30</sup> K. Ganeshan v. Film Certification Appellate Tribunal (2016) 7 Mad LJ 608. See also ICC development International Ltd v. Arvee Enterprises; 2003 SCC OnLine Del : (2003) 26 PTC 245.

are judicial pronouncements where the court have connected the *personality rights* with different aspects of the said Article. The courts at various instances have related the personality with dignity. Human personality will blossom when dignity is sustained.<sup>31</sup> Dignity is considered as quintessential quality of personality and dignity and reputation are underlying constituents of Article 21.<sup>32</sup> Different facets of personality include privacy, dignity, identity and reputation.<sup>33</sup>

When there is an infringement of publicity right it does not mean that their privacy is also violated as the publicity rights violation is majorly dealing with unauthorised use of the individual's identity and reputation for commercial exploitation leading to false endorsement. Where a person is claiming for protection of publicity right, he is not asking the court to restrain others from publishing or using his name, images or likeness rather it should not be done without his consent. The purpose for which the individual's identity or characteristics is misused will decide whether the said act is an infringement of privacy right or publicity right. Where the purpose is to deceive the consumer or public in general to make them believe that the representation made is endorsed by the individual, it will fall under the domain of publicity rights. On the other hand, where the intention behind such publication is to interfere with the individual's privacy, their autonomy or making public unnecessarily the private details of an individual, causing harm to the dignity, it will fall under the category of infringement of right to privacy.

As discussed earlier in this paper the right to publicity is not guaranteed as part of fundamental right of privacy and therefore is not a constitutional right either. The right can be claimed only by those individuals who have attained the status of celebrity or in other words a well-known person. This is because the individual's persona is used only to gain profit for his business in such a case only the identities of famous persons can be used for that purpose as it will easily attract the consumers. But it is quite common that shops like beauty parlours or saloon using the celebrity images in their name board. And answer to whether such a use can be claimed as an infringement to publicity right is yet to be decided on the basis of facts and circumstances. If the parlour or saloon have acquired a goodwill among most of the population in the concerned locality, for instance Greentrends, Naturals etc., and if they use a famous person's name or image or voice or other similar personal traits it is quite easy to misconceive people that the particular person have consented for such an endorsement. On the contrary if a proprietor of a local saloon or parlour use celebrity's identity it is not misleading in itself as people are aware

---

<sup>31</sup> Mehmood Nayyar Azam v. State of Chhatisgarh and Ors., MANU/SC/0615/2012.

<sup>32</sup> Charu Khurana and Ors. V. Union of India and Ors., MANU/SC/1044/2014.

<sup>33</sup> Kenya Human Rights commission v. communications Authority of Kenya and Ors., MANU/KEHC/7104/2018.

that it is just a local saloon and endorsement by a celebrity to such a saloon is visibly impossible.

## VI. CONCLUSION

The concept of personality rights does not have statutory recognition in our country. Even in the absence of statutory recognition Indian courts at various instances have recognised the personality rights infringement and offered compensation and appropriate remedies to the plaintiff. However, all the precedents related to the subject were decided by the High Courts of various states and not by the Apex court. In such a scenario it creates a question as to the admissibility of the decisions made by these Courts in other States. A broad definition of the *personality rights* can be thus put as “*the entitlement of each individual to safeguard their character and its concomitant attributes from unauthorized misuse, misrepresentation, or exploitation, without explicit consent, in a manner that impinges upon either the individual's prerogative to disseminate personal life information or their right to derive economic benefits from their personality. The concomitant attributes can qualities which are unique to a particular individual or any quality which can be attributed to or identified as that individual*” From the definition it is evident that the personality right infringement can either be the infringement of privacy or infringement of the publicity rights. Thus, the right to privacy and right to publicity are two different sides of the same coin the personality rights. The right to privacy as a fundamental right is available to everyone irrespective of their societal position or his popularity. On the other hand, the right to publicity is not a fundamental right as it is neither recognised as such under the constitution nor in the precedents. The misconception that publicity rights is intrinsic in the right to privacy should be straightened out as both are different concepts having a same root, personality.

The right of publicity is not a kind of trademark. It is not just a species of copyright. And it not just another kind of privacy right. It is none of these things, although it bears some family resemblance to all three.<sup>34</sup> Difference in interpretation and absence of concrete guidelines for governing the personality rights will put the individual's persona at stake. With the advent of the social media platforms, it is possible for anyone to become a famous person or a celebrity. Apart from this the right to publicity is sometimes connected with the property rights which now is creating a separate cadre of personality rights. For the ease of rendering justice, it is for the legislature to provide for appropriate laws and guidelines to address the matter as further delay in this regard will hamper the confidence reposed by the individuals in the law system of the country and it is also important to advance the country in the regime of the intellectual

---

<sup>34</sup> J. Thomas Mccarthy, 'The Spring 1995 Horace S.Manges Lecture: The Human Persona.

property laws.

\*\*\*\*\*