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Need for a Comprehensive Indian Law Regulating Personality Rights

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ABSTRACT

Personality rights are the rights of a person in relation to their personality. These rights are mostly important to celebrities because it is their personality and popularity that is exploited for commercial gains, and if exploited without their consent, could cause harm to their reputation. Personality rights can be divided into right to privacy and right to publicity. In the absence of a pre-existing statute in the area, judicial activism has widened the scope of personality rights in India. So far only Article 19 and 21 of the Constitution of India afford protection. Aside from trademarks, patents, copyrights and designs, now individuals, especially celebrities seek to protect their personality rights, thanks to the dynamic nature of this area of law. The situation has turned more quizzical for the legal fraternity as the advent of Artificial Intelligence has begun to push boundaries of identity with technologies like GAI and Deepfake.

There is a huge lacuna in the Indian Laws since there is no recourse under Copyright Act, 1957 in the case of non-consensual commercial exploitation of a celebrity's features such as style, likeness or voice. Because these things when generated by AI neither fall under 'work' as defined under the Act, nor are they regulated by Performers' rights. This research paper seeks to delve into the nuances of existing law supporting celebrity rights, the lacunae and the necessary features that have to be included in a new, comprehensive law to fill the lacunae.

Keywords: *Personality, Privacy, Publicity, Celebrity.*

I. INTRODUCTION

Personality rights are broadly accepted as the rights available to individuals, especially celebrities – or other people know more widely in the public sphere to control the commercial use of their identity which could include features such as their voice, style, name, likeness, image, etc. A celebrity acquires their status through intellectual, physical or emotional efforts and hence become absolute owners of the personality they cultivate in the public. Here, personality refers to a facet of their identity that is familiar to the public which also earns them money and fame.

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In India Personality rights are recognized not distinctly as such, but instead as Right to Privacy and Right to Publicity. Right to Publicity arises from Right to Privacy and refers to the aspect of personality right that to restrict the commercial use of their personality. Right to privacy prohibits undue interference in celebrities' lives without their consent.

Intellectual Property Law in India is mostly underdeveloped and the personality rights of individuals are further threatened by the increase in use of Artificial Intelligence tools in marketing and cinema.

II. BACKGROUND

It was in *Amarnath Sehgal v Union of India*² that moral right of authors of works was first recognized by the courts which read this into section 57 of the Copyright Act, 1957. It states as follows:

'(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—1[(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—"

(a) to claim authorship of the work; and

*(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation: Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies. Explanation. —Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]'*³

The plaintiff, a world-renowned artist was commissioned by the Government of India to decorate the entrance wall of Vigyan Bhawan with a bronze mural sculpture which was later neglected and suffered from mutilation and damage after being removed. The plaintiff sought damages for the same, in response to which the Court decreed the suit in his favour and proposed that every author was entitled to four rights that arose from their work –

1. Paternity Right – or the Identity Right that enabled them to have their name on the work.

² CS(OS) 2074/1992

³ Copyright Protection Act, 1957

2. Dissemination Right – which enabled them to benefit economically from their work or sell it.
3. Integrity right – Right against having their work degraded or treated derogatorily.
4. Retraction Right – right to retract their work if they feel it is suitable with the passage of time to do so.

Except for the second right the court held that the other rights constituted a trinity of Moral Rights that arose as result of ‘privileged relationship between a creative author and his work’. It also pointed out the moral rights protection for authors afforded under the *Berne Convention for the Protection of Literary and Artistic Works*⁴. Article 6bis of the Berne Convention reads:

‘(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.’⁵

The Berne Convention ideals and the Moral Rights laid down by the High Court of Delhi formed the foundation for evolution of Personality Rights in India.

III. PUBLICITY RIGHTS

In *ICC Development (International) Ltd. vs. Arvee Enterprises*⁶ which was incidentally the first Indian case to recognize personality rights, the Delhi High Court gave an authoritative judgment

⁴ Berne Convention for the Protection of Literary and Artistic Works (adopted 14th July, 1967) UNTS 828 (p.221)

⁵ Berne Convention for the Protection of Literary and Artistic Works (adopted 14th July, 1967) UNTS 828 (p.221)

⁶ (2003) 26 PTC 245

on Publicity Rights. Dispute arose when the defendants (Arvee Enterprises) attempted to boost their sales by a marketing move that involved promising winners of the advertising campaign a ticket or tour package to see the world cup. The slogan said ‘Philips: Diwali Manao World Cup Jao’ – along with the picture of a ticket with a made-up seat and gate number saying ‘Cricket World Cup 2003’.

While the plaintiff contended that the defendant had willfully misrepresented their association with the plaintiff for the World Cup, and by promising distribution of World Cup tickets without express permission from the plaintiff, the defendant had prevented actual sponsors of the world cup from enjoying exclusive rights that they had been conferred with. Plaintiff claimed that the defendant had passed off their association with World Cup, and infringed on their publicity and personality rights. The court however held that there had been no passing off since the slogan only used the term ‘World Cup’ which was generic and not ‘ICC Cricket World Cup South Africa 2003’ and no reasonable person would have gotten the impression that the defendants were sponsors of the event. Further, the court held,

‘The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc... Any effort to take away the publicity right from the individuals to the organizer of the event would be violative of articles 19 and 21 of the Constitution of India. The publicity right vests in an individual and he alone is entitled to profit from it.’⁷

Thus, an individual may acquire the right of publicity by virtue of their association with an event, but non-living entities cannot. In *Titan Industries v M/s Ramkumar Jewelers*⁸ however, a suit was filed against the defendant for putting up an advertisement hoarding identical to the Plaintiff's featuring the famous celebrity couple Jaya Bachchan and Amitabh Bachchan. The Delhi High Court granted a permanent injunction while holding that since they were individuals, they had the right to control commercial use of their respective human identities which essentially constituted right to publicity. In this case their images were used in advertising without their consent, with the obvious intent to pass off as a brand endorsed by them.

Similarly in *Shivaji Rao Gaikwad v M/s Varsha Productions*⁹, the court passed an interim injunction against the defendants for the release of the movie ‘Main Hoon Rajnikanth’ because the movie sought to imitate Rajnikanth's unique mannerisms and style through its lead character

⁷ (2003) 26 PTC 245

⁸ CS (OS) No. 2662/2011

⁹ 2015 SCC OnLine Mad 158

and make a commercial success out of his persona without his permit. This went to show that the courts had begun to recognize personality rights wherein the ambit of personality rights was not limited to image, likeness, endorsement or passing off.

IV. EXISTING SAFEGUARDS UNDER OTHER INTELLECTUAL PROPERTY LAWS

There is no dedicated statute to deal with protection of personality rights in India so protection is sought under existing IP laws indirectly. Section 2(m) of the Trademarks Act of 1999 defines the term ‘marks’ such that it encompasses names, which makes it possible for celebrities to trademark their personal names to prevent misuse. This protection can also extend to their signatures. Examples abound of celebrities who have taken the trademark registration to safeguard their identities – Lionel Messi, Taylor Swift, Sachin Tendulkar, Paris Hilton, Jose Mourinho, Alia Bhatt and Shah Rukh Khan, to name a few. Messi secured the registration of his name "MESSI" with the European Union Intellectual Property Office (EUIPO) in various classes, including 3, 9, 14, 16, 25, and 28.

Meanwhile the Copyright Act of 1957 defines ‘performer’ under section 2(qq) as

“performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

But the problem arises from the fact that not all performers are celebrities and not all celebrities are performers. Since performance is defined under 2(q) to be

“performance”, in relation to performer’s right, means any visual or acoustic presentation made live by one or more performers

it implies that any person who performs temporarily for say, a cause or a school performance can also be defined as a performer.

(A) Ambiguity in Post Mortem Personality Rights

Personality rights have turned out to be significant even after an individual’s demise, but the existing framework has proven to be insufficient in addressing the intricacies of post mortem personality rights, leading to a significant gap in legal protection. This is especially seen to play out when a celebrity’s name, image, likeness and other identifiable characteristics continue to be commercially exploited or even tarnished after their death. There is a lack of legal recourse available to the deceased person’s family or estate.

In *Krishna Kishore Singh vs. Sarla A Saraogi & Ors*¹⁰. The parents of Sushanth Singh Rajput

¹⁰ C.S. (COMM) 187/2021

filed a suit seeking permanent injunction in the Delhi High Court when it was announced that a biopic on his life titled '*Nyay: The Justice*' would be released. While they contended that his personality rights had been inherited by them on account of being sole surviving heirs, the question brought up before the court was whether personality rights are inheritable. The defendant contended that the motion picture was not a re-enactment of the celebrity's life and persona but a creative story. The plaintiff's contention on inheritance of Sushanth Singh's personality rights was rejected since the film had been based completely off of publicly available information published throughout years and especially because there had been no objection to such media publications at the time.

Further, the court held that any rights related to his persona had died with him and were not inheritable and that since celebrity right is a subset of right to privacy, there cannot be any additional rights granted apart from the right to privacy. The same position was maintained by Madras High Court in *Deepa Jayakumar vs. AL Vijay*¹¹ while depending on the legal maxim '*actio personalis moritur cum persona*' – a personal right of action dies with the person.

In *Vadlapadla Naga Vara Prasad v Chairperson, Central Board of Film Certification*¹², Bharat Bhavan, Mumbai, where the famed actor Silk Smitha's brother filed a writ petition stating that the movie 'The Dirty Picture' had been shot to depict her in a bad light, the court held that it was not a biopic and that anybody was entitled to make a movie on the life story of a person provided they entirely relied on facts and events in public records. In such a case they would not be impinging on the privacy of such person or their heirs.

V. CHALLENGES OF THE AI AGE

The surge in advancement of Generative Artificial Intelligence has brought new challenges to the fore. With the rise of social media and digital platforms, there are new challenges related to the misuse of personal attributes online. Deepfake is one of them. This tech uses AI to make realistic fake videos of persons using their likeness or voice. In a recent landmark judgment, the Delhi High Court in the case of *Anil Kapoor vs. Simply Life India and Ors*¹³ issued an injunction to the defendants against the use of Anil Kapoor's likeness, name or signature characteristics without his approval. The plaintiff had filed a suit seeking the injunction after deepfake videos of him emerged online, and also because domains were being registered under his name without his prior consent. The case of *Amitabh Bachchan v. Rajat Nagi and Ors*¹⁴ marked a significant

¹¹ OSA No.75 of 2020

¹² Writ Petition No.30376 of 2011

¹³ CS(COMM) 652/2023

¹⁴ CS(COMM) 819/2022

development, with the court granting a blanket John Doe order, a first in India for the protection of personality rights.

The judgments in both Mr. Bachchan's and Mr. Kapoor's cases are pivotal in establishing a precedent against the unauthorized commercial exploitation of an individual's persona. The use of Generative AI has gained attention in the entertainment industry globally, raising concerns about its potential impact on actors and celebrities. Grimes, the Canadian singer, took a different route by tweeting to the public that anybody was free to make a song out of her voice using AI and that she would split 50% royalties on any successful song.

Personality rights as a domain of law, will also raise workperson protection questions. The recent WAG (Writers Guild of America) and SAG–AFTRA (Screen Actors Guild–American Federation of Television and Radio Artists) strike in the United States is a testament to that. Both communities have everything to lose if unregulated use of AI is allowed for screenwriting and screen performance. This issue is not confined to Hollywood, as AI-generated voices, deepfake videos, and 3D-generated "life-like" figures pose challenges to the entertainment industry worldwide. Actors are advocating for regulations on AI usage to prevent potential threats to their roles and livelihoods.

VI. CONCLUSION

The recognition of personality rights in India has primarily stemmed from judicial activism, with courts relying on constitutional provisions such as Article 19 and 21 to afford protection. However, the absence of a specific statute addressing personality rights leaves room for ambiguities and gaps in legal protection, especially in the rapidly evolving digital landscape.

There is a need for legislative reforms to encompass post-mortem personality rights.

A dedicated legal framework would not only protect the reputation and legacy of the deceased but also provide a clearer path for legal action against unauthorized use, defamation, or false narratives. When authors can have a post mortem right to ownership of copyrights of their work for 60 years in India, a similar extension can be granted for personality rights as well. At the same time, there is a delicate balance between protecting personality rights and ensuring freedom of expression. Courts must navigate this balance carefully to avoid stifling artistic expression, journalism, or other legitimate uses of personal attributes.

In the appropriate context, with proper authorization, artificial intelligence (AI) presents diverse opportunities for celebrities. Utilizing AI tools for branding and image creation offers a convenient alternative for celebrities, easing the process of marketing without the need for

extensive filming or photoshoots. Recent instances include Lionel Messi granting permission for Pepsico to feature a deepfake version in their advertisement and Paul McCartney using John Lennon's vocals from an old demo track to finalize a Beatles song, even 40 years after Lennon's passing. However, there exists a potential downside, as malevolent individuals may exploit AI technology without consent, posing a threat to celebrities by using it for unauthorized purposes. One of the appropriate solutions would be to include provisions protecting the right to publicity and privacy of celebrities in an amendment to the recent Digital Personal Data Protection Act 2023.

As the global landscape of celebrity endorsements, branding, and image rights evolves, there is an increasing imperative to refine and enhance the legal mechanisms in place to protect the interests of celebrities in the intellectual property domain.
