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PERSONALITY RIGHTS UNDER COPYRIGHT AND TRADEMARK LAW

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Introduction

There is a pioneered principle of common law which expresses that remedies arise from the foundation of rights, that is, '*Ubi Jus Ibi Remedium*' which interprets into "where there is a right, there is a remedy". Whenever an individual endeavours for human rights, it extends beyond just the right to freedom of speech. Celebrities and other sportsperson especially in a representative or democratic country like India, are frequently at the receiving end of certain misappropriation and violations of their personal rights. This development has given rise to an important or you may even say a vital concept known as "Personality rights", which highlights the pressing need to protect an individual's identity and dignity. Personality rights are crucial for safeguarding the identity of individuals within the realm of private property, privacy rights and personal freedom. With the advent of digitalization of all forms of media, the rights of celebrities, including their name, voice, signature, and persona, are increasingly vulnerable to infringement these days. Celebrities place great importance on these rights, as they may get exploited in advertisements without their consent. Interestingly, these rights, also in a way associate themselves with the Article 21 of the Constitution of India, which protects an individual's right to life and personal liberty. They are often recognized in various other jurisdictions across the globe and frequently serve as a defensive safeguard, ensuring that individuals have a control over the commercial use of their name, image, voice and other distinctive personal traits or attributes. This blog emphasizes the troubling actions of paparazzi, who frequently violate the rights of celebrities by capturing photos and videos of them without their permission for commercial gain and also explores the intricate landscape of personality rights, highlighting the fine balance between the rights of public figures and the public's demand for information and amusement, while also dwelling into the complex laws associated with it.

A brief overview on copyright and trademark law

Before diving right into the intricacies of personality rights, it's important to first understand the laws accompanying it. In India, copyright law grants the creator an exclusive right to their original literary, artistic, musical, and dramatic works. These rights include the limited and private right to reproduce, adapt, distribute, perform, and communicate the work to the public. Copyright protection is automatically granted upon the creation of a work in a fixed form. Registration with the copyright office is highly recommended as it offers valuable legal benefits. Copyright protection typically lasts for the lifetime of the creator plus 60 years after their death. In instances of joint authorship, it extends for 60 years from the death of the last surviving author and for anonymous or pseudonymous works, copyright protection extends for 60 years from the date of publication.¹ Creators or performers also have moral rights, including the right to claim authorship of the work and the right to object to derogatory treatment of their work and only they have the right to profit from it. On the other hand, a trademark is a sign capable of distinguishing goods or services of one entity from those of others. Its key function is to give an "Identification" to a particular entity. A registered trademark offers monopoly rights in a particular territory, whereas unregistered trademarks do not possess such legal benefits. However, the owner of an unregistered trademark can prevent use by another party pursuant to common law tort of passing off (no one has the right to represent his/her goods in the name of another person).² Therefore, copyrights and trademark laws are crucial for safeguarding the personality rights of individuals and fostering a sense of safety for them.

What are personality rights and their types

We frequently encounter deceitful online ads promoting unhealthy products like pan masala and tobacco. Moreover, some ads exploit famous celebrities' images or voices without permission to draw more views and generate profits. In India, the concept of personality rights gained fame along with the right to privacy. In 1995, the emergence of personality rights was catalysed by one prominent case which is known as R. Rajgopal v. State of Tamil Nadu, more famously recognized as the auto Shankar case.³ In this case, the Supreme Court of India recognized a person's right to control the commercial use of their identity. This marked a significant shift which established that individuals, including celebrities and sports persons, possess a legitimate interest in controlling the exploitation of their "Persona" for commercial

¹ Copyright Act, 1957

² Trade mark Act, 1999

³ R. Rajgopal v. State of Tamil Nadu (1994) (6SCC 632)

or financial gain. The primary idea behind personality rights is to grant the individual entity, the exclusive right to derive economic benefits from these distinctive features. Exclusivity is a very critical factor in enticing commercial opportunities for celebrities, so unauthorized use by third parties can result in tangible financial losses. There are two noticeable aspects when a celebrity wants to protect their personality rights: first, the right to protect one's image from being commercially exploited without permission by treating it as a tort of passing off, mainly termed as publicity rights which comes under the ambit of IP laws, and second, the right to privacy, which entails one's right to be left alone. The primary right is the most noteworthy among personality rights because using an actor's image on a specific product without their consent would violate their right to publicity. This right is not only about compensation but also about maintaining the individual's brand value. Although unlike some of the western countries which have an organised or explicit laws prevailing personality rights, our country, India lacks a legal structure committed solely for these rights. However over the years, our judicial system has played a substantial role in upholding personality rights by passing favourable judgements and has established certain precedents revolving around these rights.

Cases which concern personality rights and their outcomes

The notion of personality rights is explained with the help of various High Court and Supreme Court judgments, which lead to the formulation of a much more developed concept. In 2015, the Madras High Court in Shivaji Rao Gaikwad, also known as Mr. Rajnikanth v. Varsha Productions, opined that the personality rights vest in those persons who have attained the status of celebrity.⁴ It further added that infringement of the right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable and adjudicated that prima facie the plaintiff is liable to receive an order in its favour. Another question came before the Honourable Delhi High Court regarding whether the personality rights shall be vested in a corporation or not. In a landmark case of ICC Development (International) Ltd v. Arvee Enterprise, the court stated that the right to publicity emerged from the right to privacy and only pertains to a specific person or any indication of their personality.⁵ Hence, non-living things do not come under the ambit of publicity. It also stated that any attempt to transfer a person's right to publicity to the event's organizer would be a violation of Articles 19 and 21 of the Indian Constitution. Also, in the famous case of the Bollywood actor Anil Kapoor, who appeared as a plaintiff in the case of Anil Kapoor v. Simply Life India & Ors before the High

⁴ Mr. Rajnikanth v. Varsha Productions (2015) (62) PTC 351 (Madras)

⁵ ICC Development (International) Ltd v. Arvee Enterprise (2003) (26) PTC 245

Court of Delhi,⁶ the court examined the areas which were not discussed before, which consisted of a person's name, sound, voice, image, manner of speaking, etc. According to the Delhi High Court, although the media have an inherent right under Article 19 of the Indian Constitution's "Freedom of the Press" to gather and publish any material on celebrities that is related to "public interest" or "public concern", the court ruled in favour of the plaintiff (Anil Kapoor) carefully and diligently, stating that a person's reputation and fame, particularly of a celebrity, can transcend into damaging various rights of that person, in particular, including his right to livelihood, right to privacy, right to live with dignity within a social structure, and various other fundamental rights. As earlier stated by the High Court of Delhi, free speech in respect of a well-known person is protected in the form of the right to information, news, and parody, but if that line is crossed by the people or media, then it can severely tarnish or defame a person's personality or identity.

Conclusion

I would like to conclude by stating that personality rights have been gaining importance day by day as they have been recognized in many countries. It is a right of every citizen of a country to prevent the financial exploitation of their persona, as personality rights are not just about legal protection, but also include a person's respect, self-esteem, and personal autonomy. Certain barriers have to be put against the paparazzi, and laws should be made and enacted to ensure that if someone tries to interfere in another's life, there will be a strict course of legal action. It is time for our country to make the required laws to protect these rights and also recognize the fact that they are an integral part of intellectual property. Such a legislative tactic would also promote awareness and significance of these rights.

⁶ Anil Kapoor v. Simply Life India & Ors CS (COMM) 652/2023 and I.A. 18237-18243/2023