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FROM R. RAJAGOPALAN CASE TO ANIL KAPOOR

VERDICT: EVOLUTION OF PROTECTION OF

CELEBRITY RIGHTS IN INDIA

AUTHORED BY - PALLAVI TIWARI

1. Introduction:

Celebrity rights is one such concept that has been evolving in India as well as across the globe with the help of landmark judgments and legal provisions. Although India does not have a law of its own relating to the protection of the rights of celebrities the Indian courts have relied upon the Copyright Law¹, Trademark Law², Right to Privacy³ under the Indian Constitution, principles of unjust enrichment, and common law remedies to fight against the violation of rights of celebrities. The ambit of Celebrity rights includes the Right to Privacy, Personality rights, and Right to Publicity. Right to Privacy as understood comes within the ambit of the Indian Constitution under Article 21 after the famous *Puttaswamy* Judgement.⁴ It aims to protect the privacy of the people of the nation including celebrities and concerning this a direct example can be the clicking of private pictures of celebrities in the balconies (case of Anushka Sharma or Alia Bhatt⁵) when they have already requested the paparazzi to not to capture them in their private and confidential moments or with their kids. Personality Rights are the outcome of the theory of Personality Rights by Hegel⁶ which aims to protect the intrinsic features of celebrities, their persona, their voice, and other physical attributes for example the way Mr. Amitabh Bachchan says “Hain” or “Jhakas” by Mr. Anil Kapoor. The right to Publicity is an interrelationship between personality rights and the right to privacy and commercialisation. It means that the physical features, private moments, and personalities of celebrities are something that they have developed over the years with a lot of

¹ The Copyright Act 1957.

² Trade Marks Act, 1999.

³ According to Article 21 of the Constitution of India: “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

⁴ Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors., AIR 2017 SC 4161.

⁵ “Alia Bhatt invasion of privacy: Karan Johar, Anushka Sharma say such behaviour is 'disgusting'”, <https://www.cnbctv18.com/entertainment/alia-bhatt-photo-invasion-of-privacy-controversy-karan-johar-anushka-sharma-paparazzi-16000921.htm>.

⁶ “Intellectual Property and Hegelian Justification”, NUJS LAW REVIEW 1 NUJS L. Rev. (2008), 359-366.

hard work and investment of time and money, and thus as per the Labour Law theory of Locke⁷ such attributes of celebrities which have resulted after years of efforts cannot be used by someone else commercially without the consent of celebrities.

2. Indian Judicial Pronouncements on Celebrity Rights Protection

The judicial pronouncements in India with respect to Celebrity Rights start with a discussion on the R. Rajagopalan verdict also known as the “*Autoshankar case*”⁸ where essentially it was Justice Kaul who gave a dissenting opinion and talked about Right to Publicity but not in commercial benefit perspective. Justice Kaul also only focused on the Right to Privacy and that every citizen has the right to protect his/her personal life from the public eye or any kind of tarnishment. In this case also the subject matter or discussion on ambit of celebrity rights was not exhaustive in nature. It was stated in this case that “*The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin — (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising — or non-advertising — purposes or for that matter, his life story is written — whether laudatory or otherwise — and published without his consent as explained hereinafter. We may now summarise the broad principles flowing from the above discussion: (1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone.”*”⁹

Although this judgment and the recent judgment of using attributes of sportspersons in Online gaming platforms also discuss that once information becomes part of the public record, it is generally considered open to comment by the press and media, as outlined in the statement. However, an exception is proposed for cases involving female victims of sexual assault, kidnapping, abduction, or similar offenses. The argument posits that in the interest of decency

⁷ “Property Rights, Lockean” <https://www.csus.edu/faculty/s/kyle.swan/docs/lockean%20property%20rights-revised.pdf>.

⁸ R. Rajagopal & Ors. vs. State of Tamil Nadu & Ors., AIR 1995 SC 264.

⁹ R. Rajagopal & Ors. vs. State of Tamil Nadu & Ors., AIR 1995 SC 264.

(Article 19(2)),¹⁰ these victims should be shielded from the additional indignity of having their names and incidents publicized in the press and media taking the benefit of the Freedom of Speech and Expression provided under the Indian Constitution. This exception underscores the priority given to protecting the privacy and dignity of individuals in sensitive situations, emphasizing a balance between the public's right to know and the need to safeguard the well-being of victims. A similar stand was taken in the *Phoolan Devi judgment* and protection of Right to Privacy.¹¹

After the Autoshankar case, very recent cases of protection of rights of celebrities have come to light. For example, usage of *PV Sindhu's image*¹² in Paan Bahar ads without her consent was a violation of her Right to Publicity. Another issue arose with respect to posthumous protection of Right to Publicity or Right to Privacy of celebrities like in the case of *Sushant Singh Rajput* where after his demise a movie "Nyaya"¹³ was made on his life without the consent of his legal heirs. It was thereby observed in this case that Right to Publicity cannot be separated from Right to privacy so no posthumous protection of right to publicity can be given. In *Veerappan case*,¹⁴ it was observed that personality rights cannot be protected for something which is already in public domain like SSRs life or *Veerappan's story* as nothing falls under the category of "Privacy" in such matters. But *Vempati Ravi Shankar*¹⁵ case was contradictory to SSR case as their posthumous protection of celebrity rights was recognised. If we cover personality rights under IP regime it should be covered posthumously as well.

Another landmark judgment came with the *Daler Mahendi*¹⁶ controversy, where dolls were made depicting the personality rights of famous singer Daler Mahendi and were being commercialised which was considered a violation of Right to Publicity of the celebrity. *Titan Industries v. Ramkumar Jewellers*¹⁷ was one landmark judgment for protection of celebrity rights and their interests where it was observed that right to control commercial use of your own personality is right to publicity and there should be another factor of likelihood of confusion as well to establish

¹⁰ Article 19(1)(a), The Constitution of India, "Freedom of Speech and Expression" and Article 19(2) The Constitution of India "Exceptions"

¹¹ *Phoolan Devi vs State Of M.P. & Ors.*, AIR ONLINE 1996 SC 1038.

¹² Ritesh Kumar, "PV Sindhu and interplay of moment marketing, and IP rights", <https://www.theippress.com/2021/08/24/pv-sindhu-and-interplay-of-moment-marketing-and-ip/>.

¹³ *Krishna Kishore Singh v. Sarla A Saraogi*, 2023 SCC OnLine Del 3997, decided on 11-7-2023.

¹⁴ *Makkal Tholai Thodarpu Kuzhumam Ltd. v. Mrs. V. Muthulakshmi*, (2007) 6 MLJ 1152.

¹⁵ <https://www.ipthink-tank.com/post/the-kuchipudi-style-and-copyright-a-new-friendship>.

¹⁶ *D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.*, MANU/DE/2043/2010.

¹⁷ *Titan Industries v. Ramkumar Jewellers*, 2012 (50) PTC 486 (Del).

a prima facie case of infringement of right to publicity. This test of likelihood of confusion and unauthorised use of someone else's identity for commercialisation is also indirectly put to use in the recent case of Amitabh Bachchan and Anil Kapoor which the author will address in the last part of the chapter.

“*Main Hoon Rajnikanth*”,¹⁸ a show made using the character traits and personality of famous actor “Rajnikanth” also fell under the category of violation of celebrity rights where the factor of “identifiability” was considered the most essential factor and that if any depiction of any personality directly correlates to a celebrity it is an infringement.

But as major setback with respect to protection of celebrity rights was the *Gautam Gambhir case*¹⁹ where the famous cricketer had filed a suit when he got to know that some eateries in Delhi were running their businesses on this name and he had no connection or association with these eateries. The defendant stated that they had only used it to develop their goodwill in the market. The Court here did not take the side of the celebrity on the other hand made it clear that the defendant had clearly stated that there was no association of the eateries with the cricketer and even on their websites they had used their own images and names and not of the celebrity.

“Taking as an instance the case of *Sourav Ganguly v. Tata Tea Ltd.*²⁰ wherein Sourav Ganguly who returned from Lords after scoring magnificent centuries found himself extremely disturbed when he realized that Tata Tea Ltd., in which he was employed as a manager, was promoting its 1 kilo tea packet by offering the consumers a chance to congratulate Sourav through a postcard which was there inside each packet of tea. In a way indirectly what the company intended was to promote the sale of its tea packet in the Indian market where Sourav had earned considerable amount of popularity. The court ruled in favour of Sourav by accepting that his fame and popularity is his intellectual property.”²¹

In the case of *Mr. Arun Jaitley vs. Network Solutions Private*,²² the late prominent politician and advocate, Mr. Arun Jaitley, filed a suit in the Delhi High Court seeking to prevent the defendants from misusing and transferring the domain name 'www.arunjaitley.com'. The court's decision

¹⁸ Mr. Shivaji Rao Gaikwad v. M/s. Varsha Productions, 2015 SCC OnLine Mad 158

¹⁹ Mr. Gautam Gambhir vs D.A.P & Co. & Anr. on 13 December, 2017.

²⁰ Sourav Ganguly v. Tata Tea Ltd.(Calcutta High Court CS.No 361 of 1997).

²¹ <https://spicyip.com/2009/12/publicity-rights-sourav-ganguly-vs-tata.html>

²² Arun Jaitley v. Network Solutions Pvt Ltd and others, cs (os) 1745/2009.

emphasized that the popularity or fame of an individual or company holds equal significance in the digital realm as it does in reality. Therefore, it is crucial to safeguard the names of individuals or companies that have distinct recognition in the market. This is to prevent such names from falling into the hands of individuals who have no legitimate connection with them. The court underscored the necessity of protecting these names to maintain their integrity and prevent unauthorized usage or transfer.

The Delhi High Court, in the *Anil Kapoor v. Simply Life India & Ors.*²³ case, ruled in favor of the Bollywood actor. The court issued an ex parte injunction, prohibiting the Defendants from using Anil Kapoor's name, likeness, image, voice, personality, or any other aspects of his persona to create merchandise, ringtones, ring back tones, or any other form of misuse through technological tools such as Artificial Intelligence, Machine Learning, deep fakes, face morphing, GIFs. This restriction applies to both monetary gains and other purposes, preventing the creation of videos, photographs, etc., for commercial use, as it was deemed to infringe on the personality and privacy rights of the Plaintiff.

The Court took a very strong stand and observed that *“Fame can come with its own disadvantages. This case shows that reputation and fame can transcend into damaging various rights of a person including his right to livelihood, right to privacy, right to live with dignity within a social structure, etc. There can be no doubt that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism. However, when the same crosses a line, and results in tarnishment, blackening or jeopardises the individual’s personality, or attributes associated with the said individual, it would be illegal.”*

Similarly in the *Amitabh Bacchan v. Rajat Negi*²⁴ case the Delhi HC again took a firm stand against violation of Personality Rights of Celebrities. Amitabh Bachchan, filed a lawsuit to safeguard his publicity rights in light of the fake Kaun Banega Crorepati (KBC) lottery scam and various other fraudulent activities. The suit addressed instances where the actor's name ('Amitabh Bachchan/Bachchan/BigB/AB'), image, voice, and other personal attributes were exploited to deceive the public.

²³ Anil Kapoor v. Simply Life India & Ors on 20 September, 2023.

²⁴ Amitabh Bachchan v. Rajat Negi and Ors., CS(COMM) 819/2022.

The plaintiff was displeased with the defendant's unauthorized utilization of his celebrity status to promote their own goods and services without obtaining his permission or authorization. The actor alleged a violation of his 'publicity rights as a celebrity,' a concept previously recognized in the *Titan Industries Ltd. v. Ramkumar Jewellers*²⁵ case. In response to Amitabh Bachchan's concerns, the Single Judge Bench of Navin Chawla, J. in the Delhi High Court granted an ad-interim ex-parte injunction. This legal order favoured the actor by restraining the defendants from infringing upon his personality rights.

But another setback was received with the judgment of *Digital Collectibles Pte Ltd And Ors v. Galactus Funware Technology Private Limited and Anr.*²⁶ where the Court observed that anything already in public domain cannot be protected by Right to Privacy of which the extensions are right to personality and publicity of celebrities. It can only be applied if there is tarnishment to the image of celebrities and if disclaimer is already given by defendants, it absolves them of the liability of infringement. This case relied more on US, UK judgments rather than Indian cases and used the protection of Freedom of Speech and Expression given to the people of India and thus no one can be stopped to use celebrity images for their own use whether be commercial in nature.

“The information used by Striker i.e., player name and data concerning a player’s real-word match performance, is freely available in the public domain and can be used by anyone. It is not the plaintiffs’ case that the defendants are using any personal information such as the height and weight of the players, which is not in the public domain. The information which is available in public domain cannot be owned by anybody, including the players themselves. Therefore, such publicly available information cannot be the subject matter of an exclusive license by the player in favour of a third party.”

3. Conclusion

The Indian Courts have had diverse opinions on the protection of the rights of celebrities, starting from the R. Rajagopalan Case, Phoolan Devi judgment, the case of Rajnikanth, or the recent cases of Amitabh Bachchan, Anil Kapoor or the case of usage of sportspersons images for Online

²⁵ Titan Industries v. Ramkumar Jewellers, 2012 (50) PTC 486 (Del).

²⁶ Digital Collectibles Pte Ltd And Ors v. Galactus Funware Technology Private Limited and Anr., CS(COMM) 108/2023.

Fantasy Sports. Due to these diverse opinions, there is still a lack of clarity regarding the subject matter of celebrity rights or the other core rights covered under it. The argument against the protection of such rights is the existence of a right to privacy, copyright law, trademark law, and in some of the judgments in India courts have relied upon the right to privacy to deal with the issues of infringement of celebrity rights violation and have upheld that since celebrity life is already in the public domain it falls beyond the scope of privacy rights. Due to a lack of legislation like in the US, Indian judges have been reluctant to look into the commercial perspective of celebrity rights. But the Amitabh Bachchan case and Anil Kapoor case have deviated from this norm and shown some light towards the protection of commercial aspects of celebrity rights which will be discussed in the next leg of the article.

