

THE PERSONA PARADOX

How Indian Courts shaped Personality Rights

As digital protection laws in India prepare to take center stage, the call for recognizing and safeguarding personality rights grows louder. In an era dominated by artificial intelligence, the meta-verse, and rapid digital advancements, the scope of personality rights has transcended traditional boundaries of print media and human rights violations. These rights now face a pressing need for comprehensive legal protection to address emerging concerns in a technology-driven world.

Despite the rising commercial and cultural value of personal identity, Indian law continues to lack clear statutory protection for personality rights. Courts have recognized these rights in various cases, but without codification, the legal framework remains inconsistent and ambiguous. As public personas are increasingly exploited in the digital age, this gap presents a pressing challenge for safeguarding individual autonomy and image.

Personality Rights Under Intellectual Property Laws in India

In the contemporary digital paradigm, Personality Rights have taken on increasing importance, particularly in India, where celebrities are deeply ingrained in the cultural fabric and hold a special place in the daily lives of the public.

Although Indian Intellectual Property Laws do not explicitly recognize personality rights, several legal provisions indirectly address and protect these rights. The *Copyright Act of 1957* provides certain protections for creators and performers, ensuring their original works are safeguarded. Section 57 of the Act grants authors special personal rights, while Section 38 confers complete ownership of a performance to the performer, including the right to reproduction. Other relevant sections include Sections 17, 39, and 52, which offer additional protections to creators. Similarly, the *Indian Trade Marks Act, 1999* includes "names" in its definition of "trademark" under Section 2(m). This has allowed numerous celebrities, such as Shah Rukh Khan, Alia Bhatt, Kajol and Baba Ramdev to trademark their names and prevent unauthorized commercial exploitation. Section 14 specifically addresses the use of the name or likeness of both living and deceased individuals. It prohibits the association of a deceased person's name or likeness within 20 years of their death to protect their personality rights, with an exception provided under Section 35.

In the case of *Arun Jaitley v. Network Solutions Private Limited & Ors. (2011)*ⁱ, the Delhi High Court highlighted that internet-famous celebrities are not treated differently from traditional celebrities. Their reputations are equally important, and they have developed their own distinct identities that warrant legal protection.

The evolution of personality rights in India before 2017 was marked by judicial efforts to recognize and protect individuals against unauthorized commercial

exploitation of their persona. While not explicitly acknowledged under Indian law, these rights began to take shape through interpretations of privacy, defamation, and intellectual property laws. A significant milestone in this journey was the Supreme Court's ruling in *R. Rajagopal v. State of Tamil Nadu (1994)*ⁱⁱ, also known as the Auto Shankar case. The Court recognized the right to privacy as inherent in Article 21 of the Constitution, underscoring the need to safeguard individuals' autonomy from unauthorized exploitation and explained that the '*Freedom of the press flows from the freedom of speech and was subject to reasonable restrictions provided in Article 19(2), and that it was important to strike a balance between the freedom of press and the right to privacy*'. The Court held privacy to be a 'Right to be let alone'. It ruled that private matters could not be published without consent unless derived from public records, balancing press freedom and privacy.

The Delhi High Court further advanced this understanding in *ICC Development (International) Ltd. v. Arvee Enterprises (2003)*ⁱⁱⁱ, where it held that personality rights, including the right to publicity, are exclusive to individuals and cannot be attributed to corporations or non-living entities. The court emphasized that transferring such rights to non-human entities would contravene Articles 19 and 21 of the Constitution. This was reaffirmed in *D.M. Entertainment Pvt. Ltd. v. Baby Gift House (2010)*, where the Delhi High Court recognized the right to publicity for celebrities, ruling against the unauthorized use of singer Daler Mehndi's persona for commercial purposes.

In *Titan Industries Ltd. v. Ramkumar Jewellers (2011)*^{iv}, the Delhi High Court formally established the concept of the "Publicity Right," defining it as the right to control the commercial use of one's identity. This decision laid down guidelines on liabilities for infringing such rights, further strengthening the legal framework. Building on these principles, the Madras High Court, in *Shivaji Rao Gaikwad v. Varsha Productions (2015)*^v, clarified that personality rights primarily belong to individuals with celebrity status. The court ruled that infringement of such rights does not require proof of falsity, confusion, or deception if the celebrity is readily identifiable and acknowledged that a prima facie case of infringement warrants legal protection.

India's legal landscape for personality rights has undergone significant changes in recent years, with courts playing a key role in recognizing and protecting the commercial value of individual identities. The case of *Gautam Gambhir v. D.A.P & Co. & Anr. (2017)*^{vi}, involved cricketer Gautam Gambhir suing a Delhi-based restaurant for using the tagline "By Gautam Gambhir" without his consent. While Gambhir claimed his publicity rights were violated, the court dismissed the case, stating there was no evidence of public confusion or misrepresentation. The defendants had used their own images in promotional materials and obtained the necessary permissions, including trademark registrations. This case highlights the court's balanced approach, where public figures are encouraged to protect their identities, but commercial uses of common names are not restricted without clear evidence of harm.

The cases of *Rajat Sharma v. Ashok Venkatraman (2019)* and *Deepa Jayakumar v. A.L. Vijay & Others (2019)*^{vii} reflect the judiciary's evolving stance on personality rights. In the *Rajat Sharma* case, the Delhi High Court ruled in favor of the media personality, holding that Zee Media's advertisement, which disparagingly implied

Sharma's obsolescence, infringed his right of publicity. The court emphasized that celebrities have a valid and enforceable right over their persona and that the infringement of this right does not require proof of falsity, confusion, or deception when the identity is clearly recognizable. In contrast, in the *Deepa Jayakumar* case, the court ruled against granting an injunction to prevent the release of productions based on the life of Dr. J. Jayalalithaa. It held that the applicant, as her niece, lacked sufficient legal standing to enforce her late aunt's posthumous privacy and personality rights. However, the court acknowledged the importance of balancing posthumous rights with freedom of expression, especially in cases involving fictionalized portrayals of public figures. These rulings underscore the judiciary's nuanced approach, protecting individual reputations while respecting creative and commercial freedoms.

The cases of *Ramgopal Verma & Ors. v. Perumalla Amrutha* (2020)^{viii}, *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.* (2021)^{ix}, *Amitabh Bachchan v. Rajat Nagi & Ors.* (2022)^x, and *Anil Kapoor v. Simply Life India Pvt. Ltd.* (2023)^{xi} highlight the judiciary's approach to balancing personality rights, artistic expression, and privacy in the digital and media landscape. In *Ramgopal Verma*, the court conditionally allowed the appellants to release their film, emphasizing that once events are in the public domain, the right to privacy diminishes. However, restrictions were placed on using real names and a disclaimer was mandated, safeguarding the respondent's privacy to some extent. Similarly, in *Krishna Kishore Singh*, the court ruled that personality rights are not inheritable and dismissed claims of posthumous infringement based on publicly available information.

Conversely, in *Amitabh Bachchan vs. Rajat Nagi and Ors.*^{xii}, the court granted an ex-parte injunction to protect Bachchan's publicity rights from unauthorized commercial exploitation, directing telecom authorities to block infringing websites and numbers. This marked a pivotal moment in recognizing the inherent value of a celebrity's persona. Likewise, in *Anil Kapoor vs. Simply Life India & Ors.*^{xiii}, the court protected Kapoor's image, voice, and associated domain names from misuse, granting him control over infringing domain names and prohibiting the unauthorized use of phrases like "Jhakaas." These rulings collectively underscore the judiciary's evolving stance on personality rights, balancing creative freedoms with the need to safeguard individuals' reputations and identities in the age of digital and AI advancements. Justice Prathiba M. Singh's in this ruling emphasized that celebrities have the right to legal protection against such unfair practices, which can violate their rights and affect their earnings.

In *Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors.* (2024)^{xiv}, the court upheld Jackie Shroff's right to control the commercial use of his name, image, likeness, and other attributes, reinforcing his right of publicity as an integral aspect of personality rights. The case arose after The Peppy Store sold merchandise featuring Shroff's likeness without his consent, constituting an unauthorized use of his persona for commercial purposes. The court granted an injunction against the store and awarded damages to Shroff, emphasizing the importance of respecting an individual's autonomy over their public image, even for public figures. This ruling reinforces the protection of personality rights in India, highlighting the necessity for explicit consent in the commercial exploitation of a person's likeness, especially in the

digital age, and establishes a strong precedent for future cases involving unauthorized commercial use of a celebrity's persona.

A Cross-border analysis vis a vis Indian Law

The development of personality rights has varied across different jurisdictions. In United States, the concept emerged as a distinct legal doctrine, recognizing an individual's right to control the commercial use of their identity. A landmark case in this regard was *Haelan Laboratories, Inc. v. Topps Chewing Gum Inc.* (1953)^{xv}, which established a key precedent for personality rights. The U.S. courts ruled that individuals have the right to the public value of their images, separate from their right to privacy. In contrast, the recognition of personality rights in the United Kingdom has been a more recent development. Historically, English law, particularly in defamation cases, placed less emphasis on privacy as a defense for reputation. However, this began to shift with the case of *Douglas v. Hello! Ltd*, where the issue of protecting individuals' privacy from media intrusion was first addressed. Subsequently, the incorporation of the *European Convention on Human Rights* into UK law further strengthened the protection of private and family life, solidifying privacy rights within the framework of UK legislation.

In jurisdictions like Spain (Article 7.6 of Ley Orgánica 1/1982) and California (§3344, California Civil Code), personality or publicity rights are explicitly recognized and protected by statute. However, Indian law does not provide such direct protection. Without legislative intervention, Indian courts have had to rely on common law or constitutional principles for recognizing personality rights, though this approach leaves numerous questions unresolved. For instance, should personality rights be seen as an extension of privacy rights? The *Zaccchini v. Scripps-Howard*^{xvi} case in the U.S. clarified that personality rights are distinct from privacy rights, focusing on the commercial value of a person's identity. This decision indicates that personality rights should not be considered a mere extension of privacy rights due to the commercial angle involved. Furthermore, the question of how publicity rights interact with free speech, particularly in creative or editorial contexts, remains complex. U.S. courts in cases like *Havilland v. FX Networks*^{xvii} and *Guglielmi v. Spelling-Goldberg Prods*^{xviii}, have emphasized that free speech in creative works may take precedence over publicity rights, although this is not necessarily true for commercial speech.

In contrast, Indian courts have employed a combination of legal principles to assess the status of personality rights. For example, as discussed above in *Gautam Gambhir v. D.A.P & Co. & Anr.*, the court denied relief to the cricketer due to the absence of evidence showing consumer confusion, harm to reputation, or commercial misappropriation of his name. This decision highlights the uncertain status of personality rights in India. While in *Titan Industries* the Court suggested that evidence of falsity, confusion, or deception is not required, the *Gautam Gambhir* case placed a greater emphasis on proving these elements, demonstrating a potential inconsistency in judicial reasoning. The issue was also framed within the context of trademark law, where proving harm to reputation has limited applicability.

Similarly, in *Shivaji Rao Gaikwad v. Varsha Productions*^{xix}, the Madras High Court addressed the unauthorized use of Rajnikant's name but did not specify the legal

framework under which the ruling was made. The case blended elements of passing off, defamation, and privacy without clearly identifying the applicable law. More recently, in *DM Entertainment Pvt. Ltd. v. Baby Gift House*^{xx}, the Delhi High Court ruled in favor of the plaintiff by drawing on concepts of well-known trademarks, trademark dilution, false endorsement, passing off, and privacy. The court recognized the right of publicity as an individual's right to control the commercial use of their likeness or personality attributes. This ruling raised questions about whether a person's name, voice, or likeness can fall within trademark law. Additionally, Indian case law has yet to clarify the threshold required to exercise personality rights—specifically, how famous someone must be to prevent others from using their likeness for commercial purposes. In an era where social media influencers and other emerging celebrities gain fame through new avenues, defining personality rights is crucial.

Indian judgments on personality rights remain ambiguous, lacking clarity on the legal basis and scope of protection. This uncertainty hampers the development of a consistent and well-defined jurisprudence, making it difficult for appellate courts and lower courts to address similar issues in the future.

Conclusion

The growing significance of personality rights in the Indian legal system highlights the urgent need for a well-defined legal framework. While courts consistently affirm a celebrity's right to control the commercial use of their identity, the lack of statutory recognition leaves this right rooted in common law principles. Existing doctrines such as passing off, privacy, and defamation fail to fully encompass all aspects of personality rights, particularly in cases of commercial exploitation. The inconsistency in judicial rulings further underscores the absence of a clear legal foundation, making the jurisprudence on personality rights ambiguous and underdeveloped. With the advent of virtual reality boom, AI, Personality Rights should not remain a grey area in Indian Jurisprudence and must be codified for the coming times which is the age of digital marketing and influencing. Nations like the US, France and Germany^{xxi} have established their own statutory laws for the protection of personality rights in order to curb such unapproved use of others' personality.

ⁱ Mr. Arun Jaitley v. Network Solutions Private Limited. & Ors., 2011 SCC Online Del 2660

ⁱⁱ R. Rajagopal v. State of T.N., (1994) 6 SCC 632

ⁱⁱⁱ 2003 (26) PTC 245

^{iv} (2012) 50 PTC 486

^v 2015 (62) PTC 351 (Madras)

^{vi} 2017 SCC OnLine Del 12167

^{vii} 2019 SCC OnLine Mad 39281

^{viii} 2020 SCC OnLine TS 3018

^{ix} 2021 SCC OnLine Del 3146

^x 2022 SCC OnLine Del 4110

^{xi} 2023 SCC OnLine Del 6914

^{xii} Amitabh Bachchan vs. Rajat Nagi and Ors. S (25.11.2022 – DEOR) : MANU/DEOR/195516/2022

^{xiii} Anil Kapoor vs. Simply Life & Ors. Manu/Deor/248558/2023

^{xiv} 2024 SCC OnLine Del 3664

^{xv} Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 868 (CA2 1953)

^{xvi} Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)

^{xvii} *De Havilland v. FX Networks, LLC*, 21 Cal.App.5th 845, 230 Cal. Rptr. 3d 625 (Cal. Ct. App. 2018)

^{xviii} *Guglielmi v. Spelling-Goldberg Productions*, 73 Cal.App.3d 436, 140 Cal. Rptr. 775 (Cal. Ct. App. 1977)

^{xix} Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC OnLine Mad 158: (2015) 1 LW 701 : (2015) 2 CTC 113

^{xx} *DM Entertainment Pvt. Ltd. v. Baby Gift House* CS(OS) 893/2002

^{xxi} German Civil Code, section 12, Federal Law Gazette Germany, Act on Copyright in Works of Visual Arts and of Photography' (KUG), section 22 and 23, Federal Law Gazette Germany, 1907 Germany's Basic Law- article 1 and 2 - Federal Law Gazette Part III Germany, 1949. French Civil Code (1804)- article 9 and 1382, US state law of publicity right and Restatement (Third) of Unfair Competition, 1995(USA), Section 46, Lanham Act 1946 (A)(USA), section 43(1).