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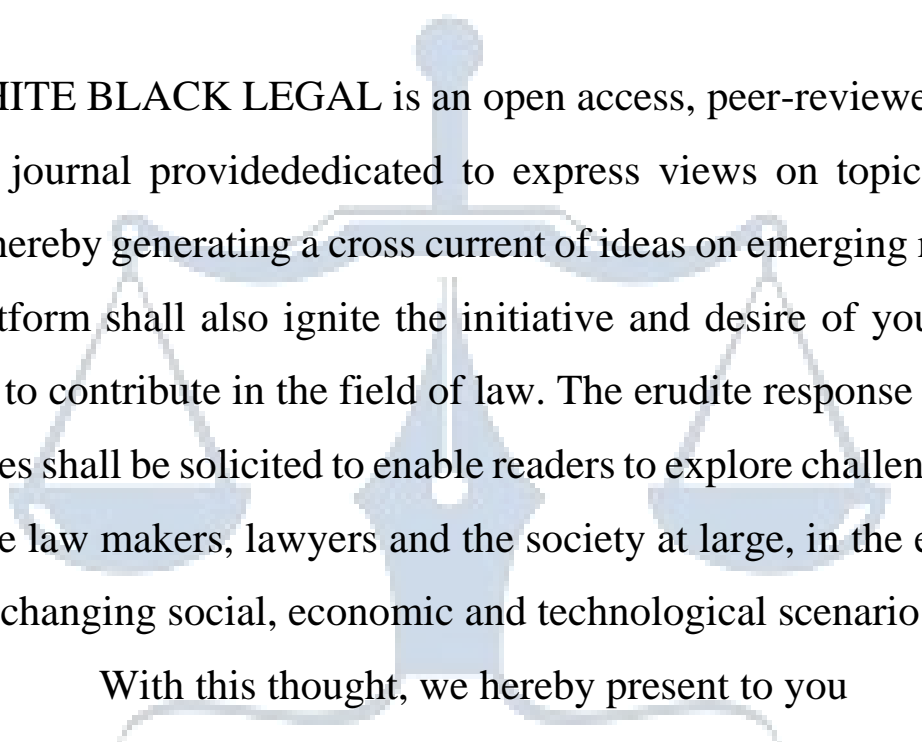


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

TOPIC: CELEBRITIES RIGHT UNDER IPR

AUTHORED BY - ANANYAA RAGHUVANSHI¹

ABSTRACT

Celebrity as defined by Oxford, is “A famous person, especially in entertainment or sports”. An individual who became famous because of his ability to perform certain work like acting, singing, dancing, or sports and many more things. The word celebrity is derived from the Latin word “celebritatem” referring to the state of fame. Celebrities lead radically different lifestyles than the general population since every action and emotion is monitored and broadcast to the world. This also means that both your personal and professional lives are affected by the public's ongoing scrutiny of their actions. As a result, the rights of celebrities are more frequently violated than those of the general population. The protection provided by celebrity rights under intellectual property laws is one such right that establishes the limits of how much one can meddle in the lives of celebrities. It serves as a thin barrier between their real lives and the life they portray on screen. This paper will explore the various aspects of IPR that apply to celebrities, including copyright protection for their works, trademark protection for their names and brands, and the challenges they face in enforcing these rights. Additionally, it will discuss the impact of social media and technology on celebrity rights and the evolving legal landscape in this area. This paper discusses a variety of rights, including the right to privacy, the right to publicity and marketing, the right to morality, the right to one's personality, and the right to pass off. These rights are described in light of Indian law and practices.

Keywords: Celebrity rights, intellectual property laws, copyright, trademark, brand protection

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INTRODUCTION

Celebrity as defined by Oxford, is “A famous person, especially in entertainment or sports”². An individual who became famous because of his ability to perform certain work like acting, singing, dancing, sports, and many more things. The word celebrity is derived from the Latin word “celebritatem” referring to the state of fame. Celebrities lead radically different lifestyles than the general population since every action and emotion is monitored and broadcast to the world. This also means that both your personal and professional lives are affected by the public's ongoing scrutiny of their actions. As a result, the rights of celebrities are more frequently violated than those of the general population. The protection provided by celebrity rights under intellectual property laws is one such right that establishes the limits of how much one can meddle in the lives of celebrities. It serves as a thin barrier between their real lives and the life they portray on screen. A key development in the area of intellectual property rights is the protection of celebrity rights under IP laws. Celebrities are free to display their fame and are allowed to profit financially from their reputation. Although celebrities frequently provide their voices, faces, and names for free to numerous commercial and nonprofit endeavors, Celebrity images have occasionally been used for advertising and other purposes without the subject's consent without getting consent, which creates a situation where celebrities are powerless to choose the exposure that is acceptable to them as well as the financial advantages they hope to obtain.

We all know that the definition of the word "celebrity" now encompasses a larger range of people, including both renowned and despised figures like actors, politicians, athletes, magicians, songsters, cotillion, all types of artists, as well as defamed individuals, scam artists, terrorists, etc. Although the term "celebrity" is not used in India, section 2(qq) of the Copyright Act of 1957 defines the term "performer."³

It says all artists who make performances are "performers"⁴. Celebrities have not yet been officially recognized by our laws or any Act, therefore it is unclear at this time if imitations qualify as celebrities. It's pronounced at multitudinous times imitators may not be a celebrity or a celebrity

² Oxford definition celebrity

³ Copyright Act (1957), s. 2 (qq).

⁴ Copyright Act (1957), s. 2 (qq).

may not be an imitator.⁵ The Indian Copyright Act Section 38 outlines the rights of celebrities, although it excludes a celebrity's or personality's numerous ancillary rights.

The right to one's personality is the freedom to be a person, even if that person isn't well-known for their contributions to society. In reality, the scope of personality or celebrity rights is rather broad. Sequestration and puffery rights are among the privileges that come with being a public person. The famous person wants to prevent exploitation of his or her privacy and puffery.

The idea behind the rights is that the person is a natural individual, separate from being a celebrity and that they desire the freedoms enjoyed by other people. It is justifiable that exploiting someone's privacy and making their talent or intelligence a commodity shouldn't be the price of being a celebrity. Employers are breaching and violating the privacy of their employees by utilizing hidden cameras, and monitoring computer programs, e-mail, websites, and other software under the name of preventing theft, harassment, etc. There is therefore a pressing need to acknowledge celebrity rights as part of intellectual property rights (IPR) and to protect them from any harm.

WHO IS A CELEBRITY?

While discussing celebrity rights, it is first necessary to understand what the term celebrity means. Besides, it is also important to remember that celebrities have the sole right to exploit the value of being a celebrity.⁶

A celebrity today is anyone who aspires to gain public recognition, including reality TV stars, authors, artists, politicians, models, sportsmen, musicians, singers, television personalities, well-known corporate leaders, and others. The first criterion for assessing whether a person is a celebrity or not is public perception. The word celebrity comes from the Latin word 'celebritatem' which means 'the condition of being famous'.⁷ In the case of Martin Luther King Jr. Center for Social

⁵ Copyright Act (1957), s. 2 (qq).

⁶ *White v. Samsung Elec Am Inc*, 971 F.2d 1395, 1397 (9th Cir 1992), cert denied, 113 S. Ct. 2443 (1993).

⁷ Morgan Piers, *The power of celebrity*, <http://www.arabianbusiness.com/the-power-of-celebrity122473.html> (23 January 2010). (Last Visited on October 6, 2023).

Change v American Heritage Products Inc,⁸ The argument was made that the term "celebrity" should be used liberally to refer to more than only the traditional categories of athletes, musicians, and movie actors. The victim has automatically become a celebrity for the purpose of the right to publicity when an illegal use of their identity is made that is both direct in nature and motivated by business interests, according to the "direct commercial exploitation of identity" test.⁹

'Celebrity' is not defined under the Indian Copyright Act. However, it is permissible to make reference to the definition of a performer found in Section 2(qq). It's not always the case that a performer is also a celebrity, and vice versa. An actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, person giving a lecture, or any other individual who puts on a performance, are all considered performers. Any performer who performs or acts in any performance in relation to such performance is granted a special right, known as a performers' right, under Section 38 of the Act. This right lasts for fifty years from the start of the calendar year following the year in which the performance is made. Clause 3 of the same section states that anyone who, without the performer's consent, makes a sound recording or visual recording of the performance; or reproduces a sound recording or visual recording of the performance, etc., shall be subject to the provisions of Section 39, shall be deemed to have infringed the performer's right during the continuance of the performer's right in relation to any performance. The terms "creative artistry" and "interpretive artistry" are frequently used in discussions of performers' rights. In the former, the artist creates an object that is distinct from him or her, but in the latter, the artist creates a performance that is inseparable from him or her.

A sizable portion of the populace views the term "celebrity" as a distinction and a prize for achievement. Sportspeople and artists gain it via talent, businesspeople and TV personalities through wit, politicians earn it through votes, and for some people, like princes and princesses, who acquire it by marriage or birth, it comes naturally. Certain others may acquire it by their chance of involvement in newsworthy events.¹⁰

⁸ *Martin Luther King Jr Center for Social Change v. American Heritage Products Inc*, 694 F.2d 674 (11th Cir 1983).

⁹ Hetherington Lee, *Direct commercial exploitation of identity: A new age for the right to publicity*, Columbia-VLA Journal of Law and the Arts, 17 (1992) 1.

¹⁰ Banerjee B, *Celebrity rights: A legal overview*, <http://www.legalserviceindia.com/article/1139-CelebrityRights.html> (2 January 2010). (last visited on October 6,2023).

CELEBRITY RIGHTS

A variety of rights, including publicity rights, reproduction rights, distribution rights, renting and lending rights, making available rights, personality rights, privacy rights, and more, are enjoyed by celebrities. However, these rights can be generically categorized into three groups: personality rights, publicity rights, and privacy rights.

PERSONALITY RIGHTS

One way for people to recognize one another is through personality. An individual establishes an image of themselves and their expected behavior in society through the development of their personality. Each personality, on its own, makes a particular contribution to society in accordance with its unique talents. The Hegelian metaphysical idea of property, which states that "An individual's property is the extension of his personality," likewise supports such personality rights. In a similar vein, a person's contributions to society are an extension of his or her character.¹¹ In the case of *Tolley v. Fry*,¹² criticism surrounded the use of a photograph of a well-known amateur golfer to promote Cadbury chocolates. Tolley claimed that the defendants had taken advantage of his status as an amateur golfer by portraying him as having agreed to appear in the advertisement in exchange for money or other benefits. The court decided that the defendant's actions could constitute libel and awarded damages. However, the situation has radically altered, and now, superstars assert rights that contradict each other, such as the right to privacy and the right to publicity.

PRIVACY RIGHTS

Celebrity rights have largely been shaped by the doctrine of privacy espoused by Warren and Brandeis. They believed that the fundamental idea of personal freedom included everyone's right to "be left alone."¹³

¹¹ Datta A, *Celebrity rights: A legal overview*, <http://www.goforthelaw.com/articles/fromlawstu/article31.htm> (21 January 2010). (last visited on October 6,2023).

¹² *Tolley v. Fry* [1931] AC 333; (1931) 1 All ER Rep 131.

¹³ Louis Brandeis D & Warren Samuel D, *The right to privacy*, *Harvard Law Review*, 4(5)(1890), http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html (11 January 2010). (last visited on October 6,2023).

In general, people have a tendency to humanize celebrities and develop a curiosity about every intimate detail of their lives. Celebrities, on the other hand, make an effort to control their personal information because it could expose them to ridicule or embarrassment, which would leave them feeling insecure.

An image of the plaintiff and her daughter appeared on the label of a cosmetic product in *Cohen v. Herbal Concepts Inc.*¹⁴ without their permission. The defendants claimed that the two people's faces could not be made out in the picture. However, the court accepted the plaintiff's husband's testimony and granted damages to the plaintiff in acknowledgment of her right to privacy.

Photographs of Dorothy Barber during her birth were taken in the case of *Barber v. Times Inc.* Ms. Barber accused Time Inc. of violating her privacy when they forced their way into her hospital room and took pictures of her despite her protests. Ms. Barber was victorious in her lawsuit, and the judge stated the following while awarding her US\$3000 in damages:

“In publishing details of private matters, the media may report accurately and yet - at least on some occasions – may be found liable for damages. Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurts.” Therefore, celebrities have two options for redress in these situations: they can file a lawsuit for "invasion of privacy" or they can assert their "right to privacy."

PUBLICITY RIGHTS

Prof J Thomas McCarthy stated, ‘The right of publicity is not a kind of trademark. It is not just a species of copyright. And it is not just another kind of privacy right. It is none of these things, although it bears some family resemblance to all three.’¹⁵ The inherent right of every person to manage the commercial use of their identify is known as a publicity right.¹⁶ This right, which is also sometimes referred to as a "merchandising right," allows one to profit financially on the

¹⁴ *Cohen v. Herbal Concepts Inc* (1984) 63 NY.2d 379.

¹⁵ McCarthy J Thomas, The Spring 1995 Horace S Manges Lecture: *The Human Persona as Commercial Property: The Right of Publicity*, Columbia-VLA Journal of Law and the Arts, 19 (1995) 131.

¹⁶ Keller Bruce P, *Condemned to repeat the past: The reemergence of misappropriation and other common law theories of protection for intellectual property*, Harvard Journal of Law & Technology, 11 (2) (1998) 401.

renown and notoriety of another person. It is required to prove that celebrity is a type of commodity in order to assert this privilege. Therefore, it would be considered unfair trade conduct, misappropriation of intellectual property, or an act of passing off if someone used the fame of a celebrity to promote their wares.

In *Midler v Ford Motor Co & others*,¹⁷ A Bette Midler song was intended to be used in a Ford car commercial by the advertising firm. The song's license was accessible, but Ms. Midler refused to grant permission to use her rendition. The Agency then got in touch with Ula Hedwig, a musician who had backed up Ms. Midler vocally, and requested her to record the song with the directive to "sound as much as possible like the Bette Midler record." When the advertisement ran on television, Ms. Midler filed a lawsuit. The defendants claimed that they were acting in accordance with Section 3344 of the Civil Code since they had used Ms. Hedwig's voice rather than her "name, voice, signature, photograph, or likeness." The court found that the common law right of publicity protected against "an appropriation of the attributes of one's identity" even though Section 3344 did not invalidate the common law on privacy and publicity and claimed that the right of publicity of living individuals was also one of the property. The defendants' use of a soundalike in these circumstances was plainly intended to create a commercial relationship with "a characteristic of Midler's identity," the court further found. In light of this, the right of publicity gives entertainers or other public people sole authority over the economic exploitation of their names, likenesses, or other facets of their personae.

However, regulations governing celebrities' publicity or merchandise rights are still in their infancy, particularly in India. Furthermore, despite the fact that courts in numerous foreign nations have used varied strategies to defend this privilege, no consistent defense has yet to emerge. However, this kind of right is different from the rights against "invasion of privacy" and "adverse portrayal of one's personality." Prior to the sound and video recording processes, a performer's sole personal rights—the right of publicity, right of voice, right of likeness, and right to privacy—were those related to his or her performance. However, the development of recording technology made it possible capture fixate performances, which created the issue of bootlegging—the unlawful recording of live performances. Additionally, because to advancements in animation,

¹⁷ *Midler v. Ford Motor Co & others* (1988) 849 F.2d 460 (9th Cir).

it is now possible to produce human-like, computer-generated lookalikes of celebrities or performers, including deceased movie stars.

NEED TO PROTECT CELEBRITY RIGHTS

Celebrity rights can primarily be licensed and assigned for business purposes. The public image of a celebrity is extremely valuable in the modern setting, where publicity requires huge sums of money. This priceless item would be subject to taxation as a capital asset, just like any other intellectual property, if it were recognized as a property. Due to their moral claim on the money that results from their popularity, celebrities themselves are also suitably compensated, creating an economic incentive for the general public.

Second, the privilege of publicity is transferable. Therefore, a celebrity's offspring may benefit from the fame the star enjoyed while still alive.

Thirdly, to safeguard artists by (i) easing their sense of insecurity caused by the worry of "technological unemployment," which includes the replacement of musicians by recorded music; (ii) preventing bootlegging; and (iii) limiting exploitation of artists who are unable to handle the situation on their own.

Although there is unquestionably a need to safeguard celebrities, how far should that protection go? Many people demand an answer to the topic of whether celebrities deserve exclusive rights in a situation where they are accountable for submitting to the public, looking for patronage, and thriving on public acclaim.

PROTECTION OF CELEBRITY RIGHTS

LIABILITIES AND REMEDIES

The use of trademark law, copyright law, and passing off lawsuits may be used to safeguard celebrity rights. Therefore, any violation of a performer's non-property or recording rights becomes a statutory duty violation.

TRADEMARK

In terms of celebrity rights, trademark registration has two important implications. First of all, the trademarking of any component of a celebrity's persona indicates that the celebrity is amenable to the approved assignment or licensing of their persona for commercial purposes in the category of goods and services for which registration has been requested. Second, the celebrity gains the ability to prevent illegal usage of certain facets of their personality. Trademark registration is exceptional in that it offers a potential kind of protection for famous personality, unlike legal action under the tort of passing off or the Trade Practices Act of 1974.¹⁸

A limited amount of trademark law protection may be available in India for public figures and business partners. Any "sign capable of distinguishing goods and services of one person from another, any word (including personal names), design, numeral and shape of goods or their packaging" may be registered as a trademark, according to Section 2(1) of the Indian Trade Marks Act, 2000. In India, courts have upheld trademark regulations that protect movie names, characters, and titles.¹⁹

The first case that dealt with character merchandising in India was *Star India Private Limited v Leo Burnett India (Pvt) Ltd*,²⁰ However, Jurisprudence is continually developing, and character merchandising is still a new field.

COPYRIGHT

What components of celebrity rights may be protected by the Copyright Act is not entirely clear. The court ruled in *Sim v. Heinz & Co. Ltd*.²¹ that Voice, likeness, and other materials are not given copyright. additional persona identifiers. Copyright provides. limited yet exclusive rights of protection and enables public figures to approve invention and reproduction sale or display of, say, a derivative image, a Others were paid to take a picture of them.²² To bring about a copyright

¹⁸ Black Hilary May, *The role of trademark law in the protection of celebrity personality*, *Media & Arts Law Review*, 7 (2) (2002) 105, 106.

¹⁹ Titus & C Advocates 2008, *India guide: Character merchandising in India*, <http://www.asialaw.com/Article/1970665/Channel/16681/India-Guide-Character-merchandiingin-India.html> (18 January 2010). (last visited on October 6,2023).

²⁰ *Star India Private Limited v. Leo Burnett India (Pvt) Ltd* (2003) 2 B C R 655.

²¹ *Sim v. Heinz & Co Ltd* [1959] 1 WLR 313 1959.

²² Prather M, *Celebrity copyright law*, http://www.ehow.com /about_6461739_celebrity-copyright-law.html (7 August 2010). (last visited on October 6,2023).

infringement claim, A person must be able to demonstrate ownership of the image's copyright and restrictions on copying it. In the setting of celebrity pictures, the most difficulty celebrities face is their lack of ownership of the image being misused. Any adaptation of a book by a famous author, even if it is unique, is nonetheless eligible for copyright protection. Sketches, drawings, and other types of artistic work are protected by the Indian Copyright Act, 1957. According to Section 14 of the Act, the work may be reproduced in any medium, including the conversion of two-dimensional works into three-dimensional works and vice versa. The courts have expanded this protection to include fictional characters that are considered works of art. In the court case *Raja Pocket Books v. Radha Pocket Books*²³, it was decided that the well-known children's comic book character Nagraj-the Snake King was covered by copyright laws. However, no copyright is granted to the name or image of the celebrity in India.

PASSING OFF ACTION

When a person's name, likeness, or performance traits are misappropriated in personality retailing situations, the activity of passing off is pertinent. A passing off action, in general, is a remedy against harm to a person's goodwill or reputation brought on by another person's deception while attempting to pass off his goods or services as the goods of another. Any unlawful use of a celebrity's "goodwill" or "fame" by fraudulently claiming endorsement of products by the celebrity may be considered passing off. The celebrity may be regarded to have a proprietary interest in the exclusive sale of his personality for profit, making "wrongful appropriation of personality" equivalent to passing off.²⁴

PROVISIONS IN INTERNATIONAL CONVENTIONS

The idea of publicity rights has been progressively developing across the globe in various jurisdictions. The rights of performers are protected by a variety of international conventions and treaties. Some of the important agreements in this area include TRIPS, the WIPO Performances and Phonograms Treaty of 1996 (WPPT), and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations of 1961 (Rome

²³ *Raja Pocket Books v. Radha Pocket Books* (1997) (40) DRJ 791.

²⁴ Haque Azmul, 2003, *India: Face value: Personality rights and celebrity endorsements*, <http://www.mondaq.com/article.asp?articleid=22487> (12 October 2010). (last visited on October 6, 2023).

Convention).

ROME CONVENTION

It is the first international instrument to address the rights of artists, phonogram manufacturers, and media companies. Performers do not have the same rights to secondary use as films do under Article 19. Only fair compensation is permitted as a secondary use right. Moral rights are not protected by this convention.

TRIPS

According to Article 14(1) of TRIPS, performers must be given "the possibility of preventing" the following acts: fixing their performance to a phonogram, reproducing such fixation, and broadcasting their live performances. The term may be increased from 20 to 50 years under Article 14(5). Unlike previous intellectual property agreements, TRIPS has a robust enforcement mechanism, and Member States may face sanctions through the WTO's dispute resolution process.

WIPO PERFORMANCE AND PHONOGRAMS TREATY (WPPT)

This Treaty was signed with the intention of advancing and maintaining the most standard and effective feasible protection of the rights of phonogram producers and performers. It acknowledges the need for new international regulations to adequately address the issues brought on by contemporary development, the significant influence that the advancement and convergence of information and communication technologies have had on the creation and consumption of performances and phonograms, and the necessity of maintaining a balance between the rights of performers and producers of phonograms and the broader public interest, particularly in the areas of education, research, and access.²⁵ According to Article 5 of the Treaty, excepting specific circumstances, the performer shall have the right to assert his claim to be recognised as the performer of his act (moral rights), independent of economic rights. In addition to their moral rights, actors have the following legal privileges: the right to unfixed performances (Article 6), the right to reproduction (Article 7), the right to distribution (Article 8), the right to distribution by

²⁵ The Preamble, *The WIPO Performances and Phonograms Treaty (WPPT)*, http://www.wipo.int/export/sites/www/treaties/en/ip/wppt/pdf/trtdocs_wo034.pdf (2 December 2010). (last visited on October 6, 2023).

rental (Article 9), and the right to making fixed performances available (Article 10). As a result, the performer has the "exclusive right to authorize" rather than just the "possibility of preventing".

INDIA

In India, neither sufficient case law nor a specific act that addresses celebrity rights exist. As a result, India's legal system is currently quite unprepared to address the contemporary phenomenon of endorsement advertising. The market, however, operates on its own forces and doesn't wait for the legislation to take effect.

The sole definitive examination of publicity rights in Indian legal doctrine was made by the Hon'ble Delhi High Court in *ICC Development (International) Ltd v Arvee Enterprises*²⁶.

‘The right of publicity has evolved from the right of privacy and can be 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 right of publicity from the individuals, to the organizer /non-human entity of the event would be violative of Articles 19 and 21 of the Constitution of India - No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it.’

According to the Delhi High Court, the right to privacy, which has developed through case law development and derives from the principle of human dignity inherent in Articles 19 and 21 of the Constitution, is the source of image rights in India. The method of treating publicity rights as commercial property must be contrasted with this one.²⁷

As opposed to the Delhi High Court's solely constitutional approach, India needs a dual strategy. Recognition of one's personae as property is urgently needed in India. Anything has the status of property if and only if the law so declares, and the right to property is a creation of the law.

²⁶ *ICC Development (International) Ltd v. Arvee Enterprises* (1077) 433 US 562.

²⁷ Pareek A et al., *Protection of celebrity rights-The problems and the solutions*, Journal of Intellectual Property Rights, 11 (6) (2006) 420.

Consequently, now that the Hon'ble Delhi High Court has acknowledged publicity rights as an individual right, it is up to the legislature to enact legislation recognizing the commercial and ownership aspects of publicity rights. Additionally, the legislation needs to strike an appropriate balance between the general welfare and the celebrity's personal interests. In other words, just as the Copyright Act provides enough exceptions for free speech and other legitimate purposes, the Congress should do the same when allowing celebrities the right to exposure.

The Copyright Act extends moral rights to safeguard the interests of well-known individuals. *Smt. Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd. and another*²⁸ and *Amar Nath Sehgal v. Union of India and others* are the significant cases that addressed this problem.²⁹ There have been instances where the personal histories of well-known people served as the basis for various film scripts. The question at hand was whether famous people may assert copyright over their own existence. Historical data itself is not protected by copyright. The cases of *Bala Krishnan v. R. Kanagavel Kamaraj and others* are two well-known ones in this area.³⁰ as well as *Phoolan Devi v. Shekar Kapoor and others*.³¹ In the instance of *Bala Krishnan*, the disagreement concerned the copyright for Mr. Kamaraj's life biography, a well-known national leader. When a TV serial based on Kamaraj's life history was suggested, his grandson, who is also his legal heir, objected. No one, according to the makers, has a copyright over a national leader's life story. Additionally, they stated that it was unnecessary to obtain the consent of legal heirs because the material was already in the public domain. The leader's reputation was not in jeopardy, so the court refused to allow any restrictions or injunctions to halt the release of the movie or television series. Similar to this, *Phoolan Devi* herself condemned the film's alleged distortion of the facts in the *Phoolan Devi* case. She requested an injunction because she had renounced her prior criminal activity and had made a fresh start as a married woman and political figure who would serve the general public. Before allowing the publication of such films, the court said that the problem needed to be carefully addressed and the effects of such showing on a person's private life needed to be carefully considered. As a result, a celebrity has a fundamental right to safeguard his or her name and reputation.

²⁸*Smt. Manu Bhandari v. Kala Vikas Pictures Pvt Ltd and another*, (1986) (2) Arb LR 151 (Delhi).

²⁹*Nath Sehgal v. Union of India and others*, (2002) (2) Raj (Delhi) 248.

³⁰*Bala Krishnan v. R Kanagavel Kamaraj and others*, (2000) (3) Arb LR 622.

³¹*Phoolan Devi v. Shekar Kapoor and others*, (1995) PTC 46.

WHAT MAY BE PROTECTED?

PERFORMERS RIGHT

Since performances are not covered by copyright laws, it is extremely debatable whether acting performances by movie actors are protected under IP laws in India. Separate creative elements contained within a film are copyrightable, according to Section 13(4). In the *Manisha Koirala v. Shashilal Nair* case, it was determined whether an actor's on-screen image could be safeguarded and whether it was necessary to guard against distortion or dishonor.³² According to the ruling in *Fortune films v. Dev Anand*,³³ acting in movies does not fall under any type of job. According to Section 38(4), "once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of subsections (1), (2) and (3) shall have no further application to such performance," the performer's right is specifically excluded. Only authors are granted moral rights, and a film actor is not considered to be an author under this criteria.

DIGITAL IMAGES

The author's copyright protection over digitally created images or cartoons is the other hotly contested topic in IP protection. Is there a contradiction between the actor's right in his image and the author's right in his invention if the digital image is of a famous person? There is still no clear answer to this query.

DIGITAL MERCHANDISING

If a computer-generated image in this situation meets the requirements for trademark protection, it will automatically be protected.

CONCLUSION

In India, there is no such thing as an exclusive right to sanction public performances and broadcast them. There is only protection for secondary rights, which allow performers to avoid unauthorized

³² *Manisha Koirala v. Shashilal Nair* (2003) (1) AIIMR 426.

³³ *Fortune films v. Dev Anand* (1079) AIR, Bom 17.

public performances, broadcasts, or recordings and to be fairly compensated. As a result, moral rights are nonexistent despite the existence of economic rights. A requirement for the defense of celebrity rights, "substantial similarity," is not covered by any protection. The only way to address this expanding issue is through lawsuit. Huge fines and settlements of millions of dollars may deter future infringers and violators from violating the privacy of celebrities and employers.

While the courts have frequently acknowledged the existence of various celebrity rights, it is up to the government to formally recognize commercial celebrity rights in order to close any gaps in the law and keep up with the rapidly growing commercialization of famous status.



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WHITE BLACK
LEGAL