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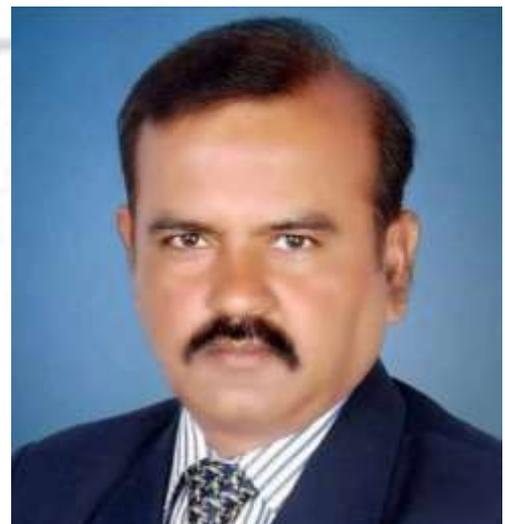
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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

A CRITICAL ANALYSIS OF DIVERGENT JUDICIAL APPROACHES TO PUBLICITY RIGHTS IN INDIA

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ABSTRACT

The right of publicity, which allows individuals—particularly celebrities—to control the commercial use of their name, image, likeness, or other personal attributes, is increasingly significant in the digital and media-driven era. In India, however, the legal recognition and enforcement of publicity rights remain inconsistent due to the absence of a comprehensive statutory framework. This paper critically analyzes the divergent judicial pronouncements by Indian courts on publicity rights, highlighting the lack of uniformity in interpretation and application. Through an examination of landmark cases such as *ICC Development (International) Ltd. v. Arvee Enterprises* and *Tata Sons Ltd. v. Greenpeace International*, the research explores the judicial reliance on principles from privacy, intellectual property, and personality rights to resolve publicity claims. The paper further assesses the implications of such inconsistent judicial reasoning on legal predictability, celebrity rights protection, and commercial media practices. By identifying gaps and overlaps in existing rulings, this study advocates for a clearer doctrinal basis and legislative intervention to ensure coherent recognition and protection of publicity rights in India.

INTRODUCTION

At the outset, the concept of privacy v property right has to be delineated in further understanding the concept of celebrity rights. In protecting the celebrity rights under Intellectual property regime, the need to classify the publicity and privacy rights plays an essential role. The privacy right is defined as right to be left alone and it cannot be precisely defined in adequate terms this was the difficulty faced by various scholars. Now, analysing both the privacy and property rights they have difference of views³. Where, the privacy right

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³Bhoomika Singh, *The Right of Publicity in India*, Available at [Right to Publicity in India \(theipconundrum.com\)](http://Right to Publicity in India (theipconundrum.com)), (Last visited on April 2 2022, 10.00Am).

is opposed to property right because the privacy right is intricated in every human being and it majorly concerns with the personal autonomy and personal liberty of human beings. Black stone conception about property right is very popular and he states that property right as sole and despotic dominion which means that one man has the right to claim over the external things and he/she can exclude the other human beings in interfering his/her right. The property right has been inserted in right to privacy that was first appeared in the article by Warren and Brandies in 1890⁴. They stated that property right also includes right to inviolate personality and it is granted alone. The concept of property and its foundation has been laid down in privacy influences the United States law to make the publicity rights would apply to celebrities and this public right is not applicable to all the public because they have only less interest in protecting their personality and celebrity have high interest in their personality and it holds significant commercial value than others.

In Indian courts while deciding the celebrity rights it has contradictions in deciding whether the publicity rights assignable and heritable or not. The contradictions have been routinely and repeatedly affirmed in various Indian Courts and this was not resolved till now. The series of cases that has been dealt with the compendium of rights of celebrities and the contradictions occurs and case by case the decision was different⁵. The contradiction occurs because one side the publicity rights must be connected with privacy rights. On the other side, the publicity right is a purely commercial right and it should not be connected with privacy right because when it is connected with privacy means then it cannot be assignable or licensable.

In India, the tort of publicity has been discussed in below cases and these have been protected under claim of passing off. Passing off is a remedy to protect any form of property and it usually protects the goodwill associated with the plaintiff in doing business in goods and services. The law of passing off provides remedy against the misrepresentation of goods and services by the defendants in deceiving the public and spoiling the public. From this aspect, we may come to causing confusion among the minds of consumers in misrepresenting the identity means then the celebrities can claim the action of passing off this has been provided in the notable cases in India below.

⁴ See Supra 23 Pg 19

⁵Vikalp Wange, *Publicity Rights: Protecting exploitation of Sports Personalities*, Available at Publicity Rights: Protecting exploitation of sports personalities (ipleaders.in), (Last visited on April 5 2022 10.00 Am)

JUDICIAL RECOGNITION OF PUBLICITY RIGHTS AND THE SCOPE OF PERSONALITY RIGHTS IN INDIA

In India, even though intellectual property laws did not explicitly mention the publicity rights but it has been authoritatively and explicitly mentioned by Delhi High Court in the case of *ICC Development v Arvee Enterprises*⁶, this was the first ruling related to publicity and personality rights related to sports. This judgement was given by Honourable Justice Agarwal. Before analysing the judgement of the case, we can understand the facts of the case the ICC Development is the plaintiff and it was founded by the International Cricket Council members and they had full control over their media rights, intellectual property rights and other events that are connected with ICC events. On march 2003, IDL was the organiser of ICC world cricket cup in South Africa, Kenya. For conducting this world cup as the organiser, they initiated few steps by creating a distinctive logo and they also filed for trademark applications in several countries for registering the logo that is ICC Cricket World Cup South Africa 2002. After some time, defendants Arvee Enterprises, an authorised dealer under the Philips India Ltd that promotes sales and services of electronic products. They started a sale for electronic products and they maintained a promotion strategy by selling the electronic products by using the slogans “*Philips; Diwali Mano world cup jao*” and by adding a picture which consists of ticket to world cup match and by also offering Philips audio system with world cup match ticket. After this promotion strategy takes place, the plaintiff comes to know about the unauthorised posting of advertisements related to world cup and they also asked injunction related to prevent the defendant from unauthorisedly posting the advertisement related to cricket championship.

Here the ICC plaintiff argued that it had already acquired a persona of all the cricket championship events. Philips had unauthorisedly use their persona in their advertisements and it tries to commercially exploit their identity or persona in trying to selling their goods. The argument made by the plaintiff was the personality rights with respect to the ICC event and they had created the identity and they transfer their rights to sponsors⁷. They also contended that defendants who were trying to commercially exploit the publicity and personality rights of

⁶ICC Development v Arvee Enterprises 2003 VIIAD Delhi 405, 2003 (26) PTC 245 Del, 2004 (1) RAJ 10, Available at Icc Development (International) ... vs Arvee Enterprises and Anr. on 1 January, 2003 (indiankanoon.org), (Last visited on April 5 2022 10.00Am)

⁷ Kshiti Shetty, *ICC Development v Arvee Enterprises*, (Last visited on April 5 2022 10.00Am), Available at ICC Development (International) Ltd. v. Arvee Enterprises & Anr. - Black n' White Journal (bnwjjournal.com)

plaintiff that is to commercially exploit their identity and create monetary benefits by them.

The Delhi High Court in its judgement rejected this argument and said that the personality rights cannot be associated with non-living entities that is it can be only associated with the living entities and non-living things cannot be entitled to personality rights based on two reasons the first reason is the non-living things are already adequately protected under the other laws and enactments. Secondly, the non-living things or entities cannot have persona that is personality. In Black law dictionary it was stated that only living entities are entitled to personality.

The Delhi High Court held that the publicity right that has been developed from the right to privacy and it can be present or inherits only in the individual's personality and it can exist in the forms of name, traits, image, signature, photograph and voice etc. If any person tries to take the publicity rights from individuals only then it can be termed as violative of publicity rights. Here, taking the rights from the event holder that is collection of individuals can be violative of Article 19⁸ and 21⁹ of the constitution. No personality can be monopolised means the publicity right that holds by an individual will only be able to entice the profit from his identity and no person cannot be able to take profit out of it. The court established that publicity rights is intersected with personal rights, it implies that it cannot be alienated to non-living entities.

Therefore, India does not have valid statute regarding the personality rights and the personality rights system is not clear and does not have well settled approach till now. The closest statute that protects the personality rights is Article 21 of the constitution under which the right to publicity and right to privacy also has been interconnected. India started to recognise these modern rights of celebrities through their significant judgements because of absence of legal statute. Therefore, this ICC case made an important conclusion that the dignitarian foundations will hold the publicity right as their personal right and they will not alienate and it cannot be owned by non-living entities. This case holds an approach that publicity rights cannot be property right and it can be of privacy right. This insisted different High Courts to approach the publicity rights issue under the privacy right.

⁸Article 19(1)(a) states "Protection of certain rights regarding freedom of speech, all citizens shall have the right to freedom of speech and expression"

⁹ Article 21 states "Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law".

In the same year 2003, there was another case *Manisha Koirala v Shashilal Nair*¹⁰ there was a claim of injunction by famous actress Manisha Koirala against the release of a new film portraying actress Manisha in a nude manner. Basically, this film plot was agreed by the actress but she objected subsequently. But the objectionable shots, were showcased in the movie. Therefore, actress alleged that the film was resulting violation of her privacy right, malicious falsehood and defamation because even though she agreed earlier but she later objected to the shots in expressing her body. Here, the plaintiff did not invoke the publicity rights under the copyright act, she focusses on invoking her right to privacy and reputational anxieties raised.

Contrasting to the ICC judgement, Delhi high court in *D.M Entertainment v Baby House*¹¹ judgement laid down a contrasting view. The facts of the case that is Daler Mehndi who was the famous lyricist, music composer and singer in India. Daler has been involved in making many numerous music albums across the world. These albums were superhit and sold across the world. Therefore, Daler mehndi consolidated a company that is D.M Entertainment. In this case, D.M Entertainment company stands for Daler Mehndi. The main notion of this company is to manage and arrange the Daler's career related things and also this company helps in finding charities to poor people. This company also helps in helping the project Green Drive. Here the Daler Mehndi not only incorporated the company but also, he assigned the publicity rights, commercial rights and related rights to the company. The defendant in this case is Baby house, they were holding toys and gift shop in several places in Delhi. They were selling the dolls around the Delhi that is imitating the Daler Mehndi because the dolls were made up identically to his likeness. Though the dolls were not manufactured by him, it has been imported from China and it has been widely sold in the Indian market. The dolls were not only made up of Daler's features but also the dolls will sing like Daler that too from his compositions.

The DM entertainment company claimed that the defendants are liable for imitating the likeness of plaintiff that is false commercial endorsements and they claimed for passing off and injunction to be made permanently against the defendants to not to use the plaintiff's likeness

¹⁰*Manisha Koirala v Shashilal Nair*, 2003 (2) Bom CR 647, Available at [Manisha Koirala-Ii vs Shashilal Nair and Ors. on 17 October, 2002 \(indiankanoon.org\)](#), (Last visited April 5 2022 10.00Am)

¹¹*DM Entertainment v Baby Gift House*, CS(OS) No. 893/2002, Available at [D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors. | Indian Case Law](#), (Last visited on April 5 2022 10.00 Am)

without their consent. The Delhi High Court after analysing this case stated that the defendants that is Baby gift house to be liable for the violation of publicity rights that is there is an unauthorised commercial exploitation of personality of Dalmer has been made and the defendants earned more monetary benefits. Therefore, the Delhi High Court granted permanent injunction along with damages against the defendants. This case the Delhi High court made a new view while determining the infringement of publicity rights by defendants by considering some factors. The factors can be firstly, the popularity and public recognition that has been gained by Dalmer. Secondly, identifiability of Dalmer from unauthorised usage of his likeness. Thirdly, to identify that there is sufficiency, substantiality of the user must be present in identifying the appropriation of personality of Daler Mehndi or his essential attributes.

The Court by analysing both side arguments and agreed that Dalmer is famous and well-known personality. He had many albums and almost every album was massive hit and many awards has been achieved by him. Due to the popularity attained by the Dalmer through his works, and he tried to bring his talent in the form of trade that can be easily reached in the minds of public. This has been achieved through high quality entertainment services by incorporating a company. The main conclusion made by the Delhi High Court in this case was the Dalmer's personality has major significance and it needs to be protected. His personality is said to be the quasi-property right that means it should protect the commercial value that is associated with the identity of an individual.

The Court also find out that the defendants were selling the dolls based on the goodwill and publicity value hold by the artist personality. Here the defendants infringed the publicity rights of the Daler mehndi. The court also made an analysis that publicity right can be present in the individual's autonomy and it is upon the individual to permit or not permit the commercial exploitation of attributes associated with his personality. The court held that every individual has right to freedom of speech and expression means then the publicity right of a famous personality can degrade the fundamental rights that is invaluable democratic right.

The Delhi High Court also stated that lampooning, parodies and Caricature does not amount to the infringement of publicity rights because it indeed highlights the personality of the celebrities in a humorous way. The court stated that parody, lampooning and caricatures can be done in different ways and it can be expressed in multiple forms such as music, mime, theatre, songs, in newspapers etc. These forms of expression cannot be coming under the ambit

of commercial exploitation. If any celebrity finds out that the view expressed about him defames him, then the defamation suit can be made and the damages for libel and slander can be available to him. But regarding to the false endorsement, the court stated that using of Dalmer's likeness in the dolls and selling in the market will likely mislead the consumers and it tends the consumers to believe that Dalmer is only endorsing the product. It clearly mishandles the uniqueness of the personality and misled the consumers by thinking that Dalmer only licensed his rights to use his likeness in the dolls and will misrepresents the consumer that Dalmer has some connection with the defendants because of the likeness has been used in the dolls.

This judgement laid down a contrasting view to the Arvee Entertainment judgement because in this DM Entertainment, the Delhi High Court held that Dalmer has transferred his personality to DM entertainment which means he has transferred the publicity rights, personality rights and other related rights to the DM Entertainment in the form of incorporating the company as a legal entity.

The issue arises due to the contrasting views made by the Delhi High Court that on the one side it was held that the transfer of rights can be made in order to promote the commercial interest of the creator¹². On the other side, the publicity right has been rooted in every personal autonomy and it cannot be transferable which means the publicity right arises from the individual personality and it cannot be assignable or licensable. Where it has been accepted that the personality rights in the celebrity allowed to be transferrable in order to protect their commercial interest.

This issue was again reiterated in the case of *Titan Industries v Ramkumar jewellers*¹³, the facts of the case are plaintiff established a company in the year 1987 and it introduced a joint venture company between TATA group and Tamilnadu Industrial Development Corporation. This company was engaged in the manufacturing of watches, clocks and jewellery. Plaintiff had the brand name that is TANISHQ in relation to the jewellery items. The endorsement of brand has been made by the two Bollywood famous personalities Mr. Amitabh Bachan and Mrs. Jaya

¹²*Right of Publicity in India*, Available at [Right of publicity in India - Lexology](#), (Last visited on April 8 2022 10.00Am)

¹³*Titan Industries v M/S Ramkumar Jewellers*, CS (OS) NO. 2662/2011, Available at [Titan Industries Ltd. vs M/S Ramkumar Jewellelrs on 26 April, 2012 \(indiankanoon.org\)](#), (Last visited on April 8 2022 10.00 Am)

Bachan for the diamond jewellery collections. Here comes the transferability of the rights by the actors to the company. Amitabh Bachan and Jaya Bachan entered into an exclusive service agreement with the plaintiff. The terms and conditions of the agreement states that all the intellectual property rights that is publicity rights, personality rights and privacy rights attached with these two prominent personalities will be vested with the plaintiff. Due to the exclusive agreements made between the parties, the plaintiff that is Titan Industries created many advertisements. These advertisements reach the people through newspapers, televisions and hoardings etc.

The defendant also reproduced and recreated the artistic work of the advertisement for his own advertisement purpose. Therefore, the plaintiff sued the defendant for using the same advertisement for their business purpose states that misappropriation of personality rights for using in commercial purpose. They claimed for the passing off, damages and infringement of copyright. The plaintiff company owned Mr. Amitabh Bachan and Jaya Bachan as brand ambassadors in promoting their product. The advertisements that were put by the defendants as hoardings represents the same plaintiff's hoardings. Here, the defendant uses the advertisement for his own commercial benefit and it misleads the consumers to believe that public that this company has connection between these two famous personalities. As the court said in DM entertainment case, it reconsiders the three factors and analysed without authorisation from the personalities or from the Titan Industries allegedly using the advertisements and they no one has the right to commercialise the identity without their permission and they have their right to control, when and how their identity should be used is vested in the personality.

The right to control the commercial use of how to use their personal human identity defines the publicity rights. The elements that comprise the infringement of publicity rights are validity and identifiability. The plaintiff must prove that he/she is well known and his/her identifying features must be sufficient to prove the strong identifiability. In the present there is a strong connection between the defendant state of mind and the plaintiff's personality¹⁴. The unauthorised usage of personality of plaintiff by the defendant that misleads the consumers and their reputation will get affected.

¹⁴Ankit Rastogi, Titan Industries v Ramkumar Jewellers, (Last visited on April 8 2022 9.00Pm), Available at [Titan Industries Ltd. v. M/s. Ramkumar Jewellers | Indian Case Law](#)

The contrasting opinions has been made, in the above case both the celebrities Mr. Amitabh Bachan and Mrs. Jaya Bachan had assigned their personality rights to the Titan Industries. Therefore, the plaintiff appears behalf of the celebrities because of the exclusive licensing agreement with the celebrities. The Delhi High Court referred to the publicity rights case in United States that is *Haelan Laboratories v Topps Chewing Gum*¹⁵, this case recognised that publicity right is independent of privacy rights in order to protect the commercial interest in the personality rights of celebrities. This case created a common law that is the publicity rights to validate the exclusive licensing agreement between the celebrity basket players and the plaintiff licensee where the product was promoted through celebrities. The Delhi High Court drew its path from US. As already mentioned, the Haelan case stated that in its essence that property interest in the personal rights without expressing distinguishing the publicity rights from privacy rights that was expressed in Halen case. Hence this case does not involve in the aspect of publicity rights as a facet of privacy rights. It involves in to the key elements that are to be identified when there is an infringement of publicity rights that is explained as right holds by an individual to control the commercial use of an identity.

THE GENESIS OF PUBLICITY RIGHTS JURISPRUDENCE IN INDIA

Indian Courts till now did not answer regarding the question of assignability in publicity rights. As already mentioned, the ICC development case was the first case that Delhi High court particularly mentioned about the publicity rights in India. This case holds an important point that non- living entities cannot hold publicity rights and only human beings can hold the publicity rights. And this case states that publicity rights are an important facet of privacy. However, in the subsequent cases the Delhi High Court made contrasting opinions in Titan Industries and Daler Mehndi case. While analysing the cases, the judgement of the two cases is contradictory and conflict with ICC case. As the contrary begins, when the Delhi High court states that the publicity rights cannot be granted to non-living entities. But on the other hand, the same Delhi High Court states that a non-living entity can be the assignee of publicity rights and it is entitled to claim the protection in the place of celebrities.

¹⁵*Haelan Laboratories v Topps Chewing Gum*, 202 F.d 866 (2d Circuit 1953), Available at [Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc, 202 F.2d 866 \(2d Cir. 1953\): Justia](#), (Last visited on April 8 2022 10.00 Am)

In *Sonu Nigam v Amrik Singh*¹⁶, both the parties such as Sonu Nigam and Amrik Singh were appeared in the Mirchi Awards 2013 and the photographs of the celebrities has been posted on the event, and it was made with their authorisation. In order to promote himself, certain activities are made by Mika Singh, where the display hoardings were set by him and it consists of small pictures of other celebrities and his picture was in the big form, where Sona Nigam picture was posted without their authorisation. The contention was made that the said hoardings gave bad impression on public and the Mika Singh created the bad impact to other artists. The Bombay High Court stated that the defendant had unauthorisedly created the bad impact in the society and the defendant has been ordered to pay 10 lakhs as damages.

This is one of the notable cases that explicitly mentions the importance of publicity right of celebrity. The notable case in India is *Shivaji Rao Gaikwad v Varsha productions*¹⁷, South Indian famous film star Rajinikanth filed a case against the defendants for using his name, style, way of dialogue delivery and caricature in their upcoming movie “*Main Hoon Rajinikanth*”. Rajinikanth stated there is an infringement of personality rights and sought injunction in restraining the use of his name, style, behaviour. There is another issue that has been severely exploiting the celebrity Rajinikanth was the defendant in their movie use his images in immoral scenes and that ultimately affect the reputation of celebrity. In the angle of privacy rights, there is a need to understand that article 21¹⁸ of constitution states that every individual is entitled to have a well dignified life and no person has the right to interfere in their peaceful life and every individual has right to let them live alone. The Madras High Court grants injunction against the release of film *Main Hoon Rajinikanth* because the name in the title has been used without the authorisation of Rajinikanth. The Court said that before analysing there is infringement of rights happened or not. The court reaffirmed that there is a need to understand the person is to be celebrity. As already mentioned, the two factors have to be considered that is validity and identifiability. The celebrity must be easily identifiable and here Actor Rajinikanth is known as superstar of kollywood industry and he is easily identifiable by the public.

¹⁶*Sonu Nigam v Mikah Singh*, Suit no 372 of 2013, MANU/NH/0517/2014, Available at [Bollywood Music Awards and Personality Rights: Sonu Nigam v. Mika Singh and Ors. | SpicyIP](#), (Last visited on April 11 2022 10.00Am)

¹⁷*Shivaji Rao Gaikwad v Varsha Productions*, CS(OS) No. 598 of 2014, Available at [Mr.Shivaji Rao Gaikwad vs M/S. Varsha Productions on 3 February, 2015 \(indiankanoon.org\)](#), (Last visited on April 11 2022 10.00 Am)

¹⁸See Supra 32 Pg24

The significant issue that raised the Madras High Court in this case was the defamatory title “*Hot Kavita Radhey Shyam as Sex Worker for Rajinikanth*”, this directly intruding the privacy right of Rajinikanth. But Court said that privacy was not an issue and the issue is related to the publicity right that is exclusively present in the name Rajinikanth was an issue because the publicity right of celebrity indicates that the name, image, likeness, pseudonym and signature etc of celebrity holds commercial value in the market. Here the Court stated that publicity right of Rajinikanth should be protected and the property value behind his name must be protected of actor Rajinikanth i.e., Shivaji Rao Gaikwad. This evidently shows that publicity right as property right that protects the commercial value of pseudonym Rajinikanth.

In *Chitra Jagjit Singh v. Panache Media*¹⁹, the Telangana High court also favoured and stated that assignability can be done in publicity rights and also the court acknowledged that the sports man named Mr. Akhilesh Prakash Paul, a soccer who has assigned his personality right of publicity to the plaintiff. Thereby, showing an individual who is celebrity assigning the publicity rights to a private limited company. Therefore, due to the continuous judgements by different High courts favouring that assignability of publicity rights induces that publicity right in the favour of right being in property and not the privacy right. Because, the privacy is inherent in every human being and cannot be assigned to any companies, but the property right can be vested in the celebrity’s identity. On the one side, the Courts grounded the publicity right under property right and in the other side it was grounded under the privacy right. This leads to unending contradictions.

The privacy right breach has been encroached in *Selvi J. Jayalalitha v. Penguin Books India*²⁰, the Madras High court devolved in to the issue whether the information of celebrity is published without her consent would constitute breach of her privacy right. The Madras High court deals it with affirmatively by constituting this act as breach of privacy but the problem arises here this case does not deal with publicity rights. Here, the plaintiff seek injunction against the book on Jayalalitha, that is a biography of plaintiff which was written without her consent. The Madras High Court proposed a judgement in favour of plaintiff by granting an injunction against the publication of book about plaintiff. Here the important thing to be noted, is the

¹⁹*Chitra Jagjit Singh v. Panache Media*, Suit No. 111 of 2016, Available at [Mrs. Chitra Jagjit Singh Plaintiff/Applicant v. Panache Media & Ors.... | Bombay High Court | Judgment | Law | CaseMine](#), (Last visited on April 11 2022 10.00 Am)

²⁰*Selvi Jayalalitha v Penguin Books India*, O.A No. 417 of 211, Available at [Selvi J. Jayalalithaa v. Penguin Books India. | Madras High Court | Judgment | Law | CaseMine](#), (Last visited on April 12 2022 10.00Am)

plaintiff's life was not written based on the public activities and when the information is regarding public activities it can be come under exception as per judgement in Auto Shankar's case.

The development of the both privacy rights and publicity rights at the same time in India as similar to United Kingdom. The Indian courts accepted publicity rights come under the purview of intellectual property rights and publicity right is a facet of privacy rights. Therefore, the publicity right is in developing and at nascent stage. Until August 2017, there is a debate regarding privacy right as a fundamental right in India. The Puttaswamy judgement²¹ in 2018 follows the trajectory of ICC Development judgement and consider the right of publicity as a facet of right of privacy of celebrity. While analysing the crux of the judgement, it states the importance of privacy right that has been merged with the publicity right of celebrities. Though this case does not detaily explains about the publicity right as facet of privacy right of celebrity. But this case somehow depicts the importance of privacy right of celebrity that is interlinked with the other two rights of celebrity. In 2018, august month the Puttaswamy judgement by the nine-judge constitutional bench of Apex court stated right to privacy as fundamental right. Prior to the Puttaswamy judgement, the fundamental status of privacy right has been rejected in the *Kharak Singh*²² and *M.P Sharma*²³ judgements and it was overruled by the Puttaswamy judgement. The above-mentioned cases such as Kharak Singh and MP Sharma cases, there is a failure to recognise the privacy right as fundamental right. Justice Puttaswamy judgement creating a paradigm shift in the jurisprudence of India by recognising the privacy right as fundamental right. In the context of protecting celebrities, this judgement does a greater help by bringing any privacy claims against the Media that includes social media and when they sought the defence that the matter regarding the public figure has been posted for the public interest, it cannot be accepted.

After the emergence of this judgement, many media companies have been dragged into litigation for publishing the intimate and private details of the celebrities that is well known

²¹ Justice K.S. Puttaswamy (Retd) vs Union of India, Writ petition civil No. 494 Of 2012, Available at [Justice K.S. Puttaswamy \(Retd\) vs Union of India on 26 September, 2018 \(indiankanoon.org\)](#), (Last visited on April 12 2022 10.00 AM)

²² Kharak Singh vs The State of U. P. & Others, 1963 AIR 1295, 1964 SCR (1) 332, Available at [Kharak Singh vs The State of U. P. & Others on 18 December, 1962 \(indiankanoon.org\)](#), (Last visited on April 13 2022 10.00 Am)

²³ MP Sharma and others v Sathish Chandra, 1954 AIR 300, 1954 SCR 1077, Available at [M. P. Sharma and Others vs Satish Chandra, District ... on 15 March, 1954 \(indiankanoon.org\)](#), (Last visited on April 13 2022 10.00 Am)

personalities. This has been reiterated in the incident of Radia Tapes²⁴, this is related to 2G scam, in which the tapes which have been recorded between 2007 and 2009 and there were 5000 conversations that happened between lobbyist cum entrepreneur Radia with her clients and the clients were of politicians and top-notch businessmen. There were many legal hurdles raised to media outlets where the privacy of an individual must be respected and it is not necessary that individual is good or bad.

As we can see, the publicity right has been routed in privacy right which was continuously affirmed by the various Indian Courts. Indian Courts have been erroneously grounding the publicity rights under privacy, and this said in landmark case that is *Rajagopalan v State of Tamilnadu*²⁵. In Raja Gopal's case, the court reiterated that publicity right evolved from privacy right and para 26 of this judgement states that right to privacy is right to be left alone and every individual has the right to privacy and none can publish the personal matters that is of marriage, family, motherhood and child bearing without his consent. If done, it would violate the privacy right of the person and this judgement has been cited by the Madras High Court and erroneously grounding the publicity right as purely privacy right.

This perception will create a dispute in protecting the publicity rights of the celebrity. Particularly, it affects the celebrities in wide range. Celebrity is the position in which they will voluntarily thrusts themselves into the controversial matters or voluntarily invites the controversy. Then the action based on privacy right cannot be claimed because they voluntarily will be involved in the controversial matters and the celebrities cannot make a claim when the publicity rights grounded in privacy. Hence, the problem arises when the publicity right is only limited to celebrities and when it is erroneously grounded with the privacy right then the rights cannot claim because it is self-defeating each other. Due to this issue, the celebrity cannot easily claim the publicity rights. In India the publicity rights are confined only to celebrities and it should be evolved from the property rights and not from privacy right. In Canada, the publicity right has been granted to every citizen and so it has been perfectly grounded under privacy concerns. In India as said in Titan Industries case, for determining the tort of publicity the two factors will be tested whether the person is identifiable and test of validity from these aspects

²⁴Abhi Parmar, *Radia Tapes Controversy*, Available at [Radia Tapes Controversy \(slideshare.net\)](http://Radia Tapes Controversy (slideshare.net)), (Last visited on April 13 2022 10.00Am)

²⁵Raja Gopal v State of Tamilnadu, 1995 AIR 264, 1994 SCC (6) 632, Available at [R. Rajagopal vs State Of T.N on 7 October, 1994 \(indiankanoon.org\)](http://R. Rajagopal vs State Of T.N on 7 October, 1994 (indiankanoon.org)), (Last visited on April 14 2022 6.00Pm)

we may know that publicity rights is only confined to celebrities because they are identifiable and they can also prove that defendant made unauthorised use and earn gains over their identity.

The publicity right has been encroached under privacy right in many cases like *Akshaya creations v Muthu Lakshmi*²⁶ and *Khushwant Singh v Menaka Gandhi*²⁷. In the above-mentioned cases the Courts taken a stand of reasoning that not granting the pre-publication injunctions even when the case is related to privacy. The solution to the problem can be achieved only after the publication of material is made. This landmark Rajagopal case clearly states that right to privacy is not just a naturally associated right but it is a state of complete right in itself and it depicts that concept to let an individual alone to live his/her life without any interference of external and internal disturbances. It ensures starting from birth, death, personal and professional matters of a celebrity need not to be published in the public domain and even the celebrity is being popular in nature. He/she is also a human being and without any partiality every individual need to live like a common man without any interference and disturbance.

This view was reaffirmed in the case of *Rajagopal v Jayalalitha*²⁸, this case deals about the balancing of rights between right to privacy and right to freedom of speech and expression. This case signifies that right to privacy of being a public figure and the right to live in the peace by letting them alone with their family and closed ones in the public space. Up to some extent, the celebrity being a public figure have to grant price to the public and this was affirmed by UK, US Supreme Court and House of Lords. This case justifies that celebrity life is always in public domain and microscopic investigation of celebrity life will be made by public and as an individual the celebrities need certain amount of tolerance and interfering in their private affairs and torturing their family cannot be accepted. As the celebrities, they do need their private space they also wish to lead their life in peace without any interference that is complete privacy. Later the landmark Puttaswamy judgement has been arrived in the year 2018, it dealt with the celebrity rights. The significance of protecting celebrity rights has been in given in two aspects. firstly, it dealt with privacy right of celebrity that is right to peacefully live alone in free space

²⁶*Akshaya Creations v Muthu Lakshmi*, C.R.P(PD)Nos.3943 and 3944 of 2012, Available at [M/S Akshaya Creations vs V. Muthu Lakshmi on 1 February, 2013 \(indiankanoon.org\)](http://M/S_Akshaya_Creations_vs_V._Muthu_Lakshmi_on_1_February_2013_(indiankanoon.org)), (Last visited on April 15 2022 6.00PM)

²⁷*Khushwant Singh v Menaka Gandhi*, AIR 2002 Delhi 58, Available at [Khushwant Singh and Anr. vs Maneka Gandhi on 18 September, 2001 \(indiankanoon.org\)](http://Khushwant_Singh_and_An_r._vs_Maneka_Gandhi_on_18_September_2001_(indiankanoon.org)), (Last visited on April 15 2022 6.00Pm)

²⁸*Rajagopal v Jayalalitha*, AIR 2006 Mad 312, Available at [Rajagopal @ R.R. Gopal @ ... vs J. Jayalalitha on 6 April, 2006 \(indiankanoon.org\)](http://Rajagopal_@_R.R._Gopal_@_..._vs_J._Jayalalitha_on_6_April_2006_(indiankanoon.org)), (Last visited on April 16 2022 4.00PM)

and secondly the other right is publicity right. Since it dealt with both rights that is publicity and privacy rights. These two rights are emerging from the same right but they have distinctive features. The attempt to seek the publicity rights can be made by celebrities even their public and private life has been already available in public domain. Whenever any content or attributes related to the celebrities has been used by third party. The third party should seek the permission or consent from the concern celebrity and adequate decency should be maintained if not done then it may ultimately violate their privacy right.

After this judgement comes into existence, there are many cases filed by the well-known personalities' allies' celebrities as defamation suits in infringing their reputation against various newspaper. This being acting as an additional ground in forming the violation of privacy right of well-known personalities. This Puttaswamy judgment being an end card in stopping the interference by third parties in intruding the privacy of the celebrities. Justice Sanjay Kaul in the Puttaswamy judgement presented his concurring opinion by bringing the publicity rights under the privacy rights. Therefore, in India the publicity rights have been unfortunately not protected and the judgements states about publicity rights are merely persuasive in a nature and not be a binding value. This leads the publicity rights in underminable and undeveloped state.

In several occasions, it has been misunderstood that right to privacy was offered an honoured position than other rights. Therefore, there is no proper reason that right to privacy is being more honoured than other rights in certain cases. But the problem arises when the privacy right is provided with no restrictions means then it leads to several problems, the major problem is individuals will act without a proportional responsibility²⁹. When privacy right is provided in too little form means then it leads to excessive state control over the private life of individual. The privacy right and public interest should be balanced. In the context of public figure, if they are allowed to follow their own interest without analysing the public welfare, due to the privilege they would exhaust all the development resources. The public figures position must be always subjected to the public scrutiny that is it must be subjected to reasonable restrictions. Therefore, the path adopted by the Indian Courts in deciding the privacy issue related to celebrities by following Puttaswamy judgement is similarly adopted in the United Kingdom.

²⁹Vandana Mahalwar, *Burgeoning Right of Publicity: An overview of Indian Experience*, the journal of World Intellectual Property, Available at [Burgeoning right of publicity: An overview of the Indian experiences - Mahalwar - 2021 - The Journal of World Intellectual Property - Wiley Online Library](#).(Last visited on April 12 2022)

In different jurisdictions, for claiming the publicity right the defendant must use his/her personality. This same criterion has been followed in India, and it is clear from the ample of case laws. Where the action can be brought under publicity rights, the concern personality must be a celebrity means, the essential factors in considering the celebrity must be his/her persona must be easily identifiable by the public. As there is no concerned statute regarding celebrity rights, an action can be made against the infringer party by tort of publicity and this was reiterated by Madras High court in the case where the family of deceased journalist claimed the publicity right as celebrity. But the court rejected their contention and states that a person could not be a celebrity when he is not easily identifiable by his name. The court handled this case with an approach that publicity right is rooted from privacy right. Even though, it appears to be acceptable to certain extent but the Indian cases allows the celebrities to assign their rights to non- living entities in other extent. Contrary to publicity right, privacy rights cannot be transferrable and it shows that privacy is interconnected with publicity rights but it is not discussed how it successfully supports the contention of publicity rights. Therefore, it leads to contraries in Indian cases.

The assignability of right to publicity favors when it has been grounded under the property right and it has been identified in Titan Industries and Daler Mehndi and Chitra Jaggit Singh cases, where the privacy inherited in individual is not transferred but the property interest in the celebrity's name can be transferred. Therefore, from the ample of case laws in India, we may conclude some judgements grounded publicity right under the privacy right in one side. On the other side, the publicity right has been grounded under property right. It is essential to know that grounding publicity right under privacy right will prevents transferring of rights that can be of assignment, licensing and it cannot be inherited as well. Because privacy right will subsist in only with particular individual and it cannot be transferred or inherited. This approach will weaken the celebrity rights claim under publicity rights because it connects with privacy right and the protection will be in limited in nature.

CONCLUSION

There this issue can be addressed by invoking the dual approach in separately recognizing the publicity rights as both property right and privacy rights of celebrities. This approach is totally opposite to the approach that has been given by the Delhi High court in the judgement of ICC

Development v Arvee Enterprises, that is purely based on constitutional approach³⁰. In India there is an urgent need in recognizing the property rights in one's personality. The celebrity's publicity right should be considered as property and it should be given as status of property for long. Even though, Judiciary has been flawed in recognizing publicity right from privacy rights. Here, the legislature has to recognize the commercial ownership rights associated with it and it should be balanced. The legislature should balance the public interest and celebrity interest by adequately providing the freedom of expression to the public.



³⁰Nina R Nariman, *A Causa Celebre Publicity Rights in India*, (Last visited on April 8 2022 10.00Am), Available at [A Cause Celebre: Publicity Rights in India | SCC Blog \(sconline.com\)](https://www.scconline.com)