

Protection of Celebrity rights/Personality rights in India

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ABSTRACT: *Celebrity rights are the unique form of rights that are distinct from others. It is a kind of property that can be enjoyed by the celebrity himself. Being a property it often trespass by the way of privacy of celebrity being compromised for money or when the celebrity right to publicity is defeated by the unauthorised use, in both the cases the judiciary has to intervene in between to ensure justice. In this paper we will discuss the Celebrity rights as a bundle of rights along with the judicial stand on these matters.*

KEYWORDS: *Celebrity Rights, Personality Rights, Publicity, Intellectual Property Rights.*

INTRODUCTION

Celebrity is also seen as those in society who have achieved immense notoriety and fame that also makes it distinct from both the rest of the nation. It is a huge deal in a country like India with only a number of more than 133 main individuals to achieve the status of a celebrity. It is also linked to the community of individuals who recognise the accomplishment and respect the famous persons work and effort. Different advantages also come with celebrities success as the popularity of it's individual will lead himself to gain with it through sponsorship or endorsing of various products or services. With internet sites such as Instagram, YouTube, Twitter, Facebook, etc. It is also not difficult for celebrities to affect policy in the masses where user can participate with anybody and to gain tremendous goodwill and credibility with just a press of a button, so it is important to understand and control celebrity responsibilities and privileges. Celebrity rights are also split into the rights of appearance, the rights of privacy and the rights of publicity. That he would acquire her house. Section 382 "provides a custodial sentence of ten years for anyone who commits theft, who has made preparations for causing death or injury or restraint in order to commit fraud or to retain money confiscated by such embezzlement.

DISCUSSION

Moral and personality rights

Personality is a medium with which one individual recognises another and his place in society. The development of a characteristic also helps in the formation of its representation in the eyes of the public by means of its actions or some other easy to distinguish characteristics. Because of all the image he has generated in the minds of people, this also causes each person to act and go into a certain manner in society, the average person will also have different perceptions about diverse persons, from sportsmen to movie celebrities to spiritual gurus to politicians. Both of these personalities contributes to these abilities on a grander scale. There is no question that the individual has to put much effort into developing this individual personality as it requires a great deal of mental, government official and moral values and with a lot of effort.

Personality rights are still seen as an individual's creation and can also be viewed as regulating the commercial usage of his reputation, personality characteristics, image, likeness, and every other part of a persona that can be identified with by individuals at large.¹ Celebrities seem to be the most affected before it comes to the media affiliating celebrities without any consent or knowledge with various goods and services. As seen in the case of *Tolley v Fry*, where a famous amateur golfer's image was marketed on the Cadbury chocolate box. The *Tolley* complaint here is that it made the Cadbury appear like he had given his promotional permission. The court ruled that Tolly's feelings were hurt by the defendant and therefore he was awarded the damages. This situation has dramatically changed, though, and nowadays, celebrities need both right to rights such as the right to advertising.

Privacy rights

Sometimes, celebrities have a common profile, so viewers are still curious to know much about them. In turn, people are interested to learn the sites they have been, a kind of food they consume, the diet they adopt, what fashion houses they wear, someone they have a friendship with, etc., and in order to ascertain all may often cross the security line.² Thus the, celebrities often strive to keep their life the information connected with it as private in protecting them from both the embrace as well as from the security intent. It is also difficult to know every fan. In the storey of *Barber vs. Times Inc.* Where the photographer got a photo of Dorothy's barber having a baby boy for her approval nor agreement.. Dorothy filed the case two Times for "invasion of privacy" for unlawful entry into the emergency room and scrolling on images. Ms Barber was victorious in the case and was paid \$3000 worth of damages. "The court said, "The media can report correctly when reporting information of private affairs and yet may also be held liable for any damage, at first on certain occasions."³ Defamation cases would not proceed at which media have correctly recorded the evidence, but the media could still lose an appeal on the grounds of similar facts for violation of privacy. The reality sometimes cuts in such situations."

In India the remedies available to celebrities are available in two forms either in "invasion of privacy" or in article 21 right to privacy under constitution of India⁴.

Publicity/merchandising rights

The right to take advantage of the celebrity's named fame to obtain monetary value is also said to be the right of ads. In order to assert this right the celebrity really have to align oneself with the goods and services. The Publicity Right is also related to the Intellectual Property Right, that could be clarified by the Lockean Labor doctrine, what argues that a property generated by the labour and ability of a person belongs to that individual or because human himself has the right to use the object he creates because for some useful purpose he wants. In just the same way, it are well argued that even the celebrity's fame and image can also actually be considered the property he created because he placed his work and his efforts to cultivate it, so he still has

¹ *Tolley v Fry*, (1931) AC 333

² <http://www.mobar.org/>, visited 12th November 2019

³ *Ibid* 2

⁴ *R. Rajagopal vs State of Tamil Nadu*, 1994 SCC (6) 632

a complete right to take advantage of it, and then on the other hand it would be very unfair to him that anyone should have a control over it.

The law within that context, however, is not yet fairly established, especially in India. Different methods have been followed by courts in different international countries to explain this right and no uniform rationale has so far been crystallised. The authors would therefore attempt to examine this specific right of the celebrity and would aim to provide recommendations on challenging risks.

Protection of celebrity right Indian judiciary

In order to cope mostly with modern phenomenon of increasing personality rights, publicity rights and privacy rights, the Indian legal system is very inefficient. Yet price controls are not waiting for legislation to catch up.⁵ Possible violations are likely to occur in the near future, at either the pace with which advertising with celebrities has risen as well as an uptick in monetary interest in the entire process. The Hon'ble Delhi High Court has made a launch in ICC Creation Ltd v Arvee Enterprises, where there has been authoritative examination of advertisement rights in Indian case law.

"The right of publicity has evolved from the right of privacy and can 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. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. 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 monopolised. 'The right of Publicity' vests in an individual and he alone is entitled to profit from it. For example if any entity, was to use Kapil Dev or Sachin Tendulkar's name persona/indicia in connection with the World Cup without their authorization they would have a valid and enforceable cause of action."⁶

Similarly in case of Bala Krishnan v R Kanagavel Kamaraj ⁷ Similarly, the conflict was over copyright over the life history of Mr. Kamaraj, who used to be a well-known national leader, mostly in instance of Bala Krishnan v R Kanagavel Kamaraj and others. Kamaraj's grandson and legal heir protested that whenever a TV series suggested that it be developed on the basis of Kamaraj's life. The TV show's producers believed that no one can retain a copyright on a political leader's life history. In addition, they claimed that the documentation was publically available and that the consent of legal heirs and representative was not required. As the image of the leader was never at stake, the judge would not let any restraint or subpoena to stop the release of the film or series. Additionally in Phoolan Devi v Shekar Kapoor and some others. Phoolan Devi herself has objected that there are skewed details mostly in film. ⁸ As if she had given up her past illegal activities and also had begun her new life as a married woman, she pursued an injunction but was also a political figure serving the public. Before allowing the

⁵ ICC Development Ltd v Arvee Enterprises, 2003 (26) PTC 245 Del

⁶ Ibid 5

⁷ Bala Krishnan v R Kanagavel Kamaraj, 1999 (3) CTC 247

⁸ Phoolan Devi v Shekar Kapoor, 57 (1995) DLT 154

release of all such films, the court held that the issue had to be closely examined and the impact from such an exhibition on an organism's private life had to be examined. ⁹ The parties to either the case would need to appear at just the 2013 Mirchi Awards in Sonu Nigam v. Amrik Singh and could be seen, with their right consent, though photographs on the official posters including its event. In order to boost himself, Mika Singh displayed hoardings and posters that were specific from official inflorescence and event posters, bearing, without their approval and authorization, big photographs of of myself along with smaller pictures of those artists.

"The court considered in Justice K. S. Puttaswamy v. Union of India that "Every person should be entitled to exercise control over his or her own life and image as presented to the universe and to control the advertising utilization from his or her name. This also implies that, without his/her permission, an adult can be allowed to prohibit us from using his/her image, name and other aspects of his/her personal life and identity for commercial purposes.". "In addition to the economic rationale for a really right, the defence of personal freedom and personal integrity is also justified. The right preserves the private, intimate conception of the 'self' of an individual. The right on publicity implies the interest of a person in autonomous self-definition, which prohibits anyone from interfering with the definitions and concepts identified with her through the public."

CONCLUSION

Because of its distinctive existence, the rights are the specific right that needs special attention. Therefore, the legislature is expected to consider the economic and properties dimensions of rights and to fill the holes in law and stay competitive with and when doing the same with the ever-changing commercial viability of identity. A person must balance the celebrity's selfish interests and advertising interests. The dual aspects of both recognising human dignity and indeed the approach to property should answer the question of where to put advertising rights. There is a difficult yet essential compromise between several public and private interests. Any regulatory provisions that aim to support and promote the interests of celebrities should aspire to achieve this balance. In my view, it is appropriate for lawmakers to enact clear legislation on celebrity rights that will clarify, introduce and protect celebrity-related rights from violation and provide them with privacy at the same time.

⁹ Sonu Nigam v. Amrik Singh (alias Mika Singh), SUIT NO. 372 of 2013 Bombay High Court