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Celebrity Rights under IPR Law

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Introduction

Every other individual aspires to be a celebrity, and why not? A Celebrity is a popular person who has the power to influence and who's status comes with fame and wealth. Most people assume 'Celebrity' to be someone from the show business, which is fair since no law in India defines the word 'Celebrity' but the closest term to it under Indian law happens to be 'Performer' under the Section 2(qq) of the Indian Copyright Act. The fact remains that a Celebrity can be anyone of any profession who is famous through the perspective of the people in general. Derived from the Latin word 'celebritatem', the English word 'Celebrity' though an achievable term, comes with its own challenges. The challenges can be through infringement of their right to privacy or use of their name or character or identity or speciality for endorsements or publicity. It's difficult to categorise a person as a Celebrity, the general criterion being public judgement or public opinion. Nonetheless, a Celebrity being a human and as acknowledged under law as a 'Person' has certain rights essential for its protection.

According to WIPO, 'Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.' Celebrity rights are primarily transferable and commercially available for marketing gain. In today's world, publicity costs a lot of money, and a celebrity's public face is quite valuable. Recognizing this valuable item as a property implies it will be taxed as a capital asset, just like any other intellectual property. This generates a monetary advantage for the general population, while superstars are sufficiently paid owing to their moral claim to money deriving from their celebrity. Also the right to publicity can be passed down across generations. As a result, the heirs of a celebrity might benefit from the celebrity's success throughout their lifetime. These rights are essential to safeguard performers. According to the WTO, property Rights are the rights given to persons over the creations of their minds. they typically give the creator an exclusive right over the use of his/her creation for a certain period of time.

Rights under IPR

There are various Celebrity Rights and most of them fall under the umbrella of the following three major rights:

1. Personality Rights

Also called as Moral Rights, these rights safeguard the intellectual property of a person that reflects his/her personality. 'Personality is the representation of an extension of an Individual's Property' (Hegelian meta-physical concept of property). How a person or

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individual conducts oneself or contributes to the society is also a representation of its personality.

The scope of the Personality Rights in the Indian Copyright Act is defined in Section 13 (1), stipulates that it applies to creative literary, dramatic, musical, aesthetic works, films and sound recordings. Furthermore, Section 14 of the Act grants them the sole right to perform or allow the reproduction of their artistic work. Identity does not have copyrights, and the copyrights of a person's image are owned by the photographer, not the person. As a result, the abuse of any such image breaches the photographer's copyrights and fails to preserve the photographer's personality right. However, Section 38 of the Act grants the performer ownership of the performance, as well as exclusive rights to record and reproduce the performance.

In the case of ***Sourav Ganguly vs. Tata Tea Limited***[1], the famous Indian cricketer Sourav Ganguly was upset to learn that Tata Tea Ltd had included postcards in their tea packets for an opportunity to congratulate him after scoring hundreds in Lords, via those postcards, without his approval or consent,. The tea became well-liked. Because Sourav Ganguly's fame and popularity were seen to be a component of his intellectual property, the court decided in his favour.

In ***Tolley v Fry***[2], there was a dispute over the use of a photograph of a popular amateur golfer to promote Cadbury chocolates. Tolley's objection was that the defendants made it look as though he had agreed to appear in the advertisement for benefit or reward, and thereby exploited his amateur golfing reputation for promotional purposes. The court ruled that the defendant's actions amounted to libel and awarded damages. However, the situation has significantly altered, and celebrities now claim paradoxical rights which include the right to privacy and the right to publicity.

2. **Privacy Rights**

According to the Supreme Court in Kharak Singh v. State of U.P., a person's right to privacy encompasses every aspect of him or her, from body and intellect to social conduct and political preferences. The right to privacy includes an individual's expression, personality, identity, data, information, knowledge, and many more expressions. But in the historic case of Puttaswamy v. Union of India, a 9-judge panel of India's Supreme Court established privacy as a basic right, making it the most significant verdict in the history of privacy. The Supreme Court ruled that the right to privacy will fall within Part III of the Constitution, and that it will be enshrined in the basic right to life and liberty under Article 21.

Right to Privacy was founded in a paper titled ‘The Right to Privacy’, 4 Harvard L.R. 193 published by Samuel Warren and Louis Brandeis (1890). According to Black’s Law

[1] WP 3137(W) of 2013
[2] [1931] AC 333

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Dictionary, 'The right that determines the non-intervention of secret surveillance and the protection of an individual's information'. Warren and Brandis have very vividly stated, "Once a civilization has formed dissociation between the 'outer' and 'inner' man, between the life of the spirit and life of the body, the private capacity in which man may become and be himself". This suggests that privacy encompasses more than just the body and also includes integrity, individual autonomy, data, communication, assent, dissent, movement, thought, and identity (true). As a result, there is no unwanted or intrusive interference or violation of personal liberty in the connection between individuals, organisations, or individuals.

Any individual who is aware of an illegal copy of the programme on a computer is liable for infringement under Section 63B of the Indian Copyright Act. An individual's right to intellectual property is founded on the factors 'effort, competence, and judgement.' The protection of the owner's right to that work is vital in the case of legislation on particular works of literature, fiction, music, art, and cinema. However, the Copyright Act makes it impossible to discern between data privacy and database security. Data protection is designed to preserve people' privacy, whereas database security is intended to protect the creativity and investment made in the gathering, verification, and display of databases.

Sakshi Malik v. Venkateshwara Creations Pvt. Ltd.[3] And Others1 was a recent case in which the plaintiff sought an injunction against the creators of the film 'V.' The complainant is a model and actor with different promotional agreements. The defendants in this case improperly utilised a still picture of the plaintiff in their 2020 Telugu film 'V.' The plaintiff's image was obtained from a privately commissioned portfolio on her Instagram account, and it was utilised in reference to a female escort/commercial sex worker in the film. "The fact that the photograph has been illicitly exploited is terrible enough," said Hon'ble Justice G. S. Patel. When used in a clearly disparaging and insulting manner, it just makes problems worse. As a result, if photographs are to be used without permission, they must be protected by a legally enforceable and tenable licensing scheme, whether with or without a royalty. Simply utilising another's image, particularly a private photograph, without permission is prima facie improper, unlawful, and completely illegal.

A photographer documented Dorothy Barber while she was in labour during the birth of her child in the case of ***Barber v Times Inc***[4]. Ms Barber launched a privacy claim against Time Inc for unlawful and aggressive entrance into her hospital room and photographing her despite her objections. Ms Barber's claim was successful, and the court granted her $3000 in damages.

3. **Publicity Rights.**

The right of publicity is an intellectual property right that protects against the misuse of a person's name, likeness, or other indicia of personal identities—such as a nickname, alias,

[3] Commercial IP Suit (L) No. 3510 of 2021
[4] 159 S.W. 2d 291 (Mo. 1942)

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voice, signature, likeness, or photograph—by any other person for the purpose of financial gain. John Locke believed that a celebrity should get the economic worth of their identity because it is their labours that have created that value in the first place. Identity theft is equated to goodwill theft in the theory of unjust enrichment consideration. The publicity right is intended to give people an economic incentive for their initiative, inventiveness, and success.

In ***R. Rajgopal v. the State of Tamil Nadu*** [5](Auto Shankar Case), the petitioners sought to prohibit the defendants from interfering with the publishing of Auto Shanker's autobiography in Nakkheeran. The offender was found guilty of six murders and sentenced to death. While in prison, Shanker penned his memoirs and stated his desire for it to be published in the petitioners' magazine. Nakkheeran announced the publishing of his memoirs prior to its release. Prison officials, i.e. the respondents, subsequently compelled Shanker into writing to the petitioners, demanding that the publication be halted. The petitioners subsequently filed a lawsuit to prohibit the respondents from infringing the Freedom of Expression of the magazine and the prisoner.

According to Section 14 of the Act, if a trademark registration application is filed implying a relationship with any living person or with any person who died 20 years prior to the date of filing such application, the Trademark Registrar may require the applicant to provide the consent of such living person or the consent of the legal heirs of the deceased, and the Registrar may deny the registration in the absence of such consent. Thus, under the Trade Marks Act of 1999, an individual cannot register a trademark linked with a celebrity, whether living or dead, unless such celebrity or his/her legal successor provides approval to the applicant.

Sections 38 and 57 of the Copyright Act 1957, which apply to a performer's and an author's moral rights, respectively, are enforceable for protection from illegal use of such performer's or author's marketing rights and reputation. Furthermore, an individual's photograph, image, painting, or other similar derivatives may be protected under the Act.

Conclusion

A celebrity's works, names, and likeness would be taken away and used against them if their right to privacy, right to publicity, and personality rights were not safeguarded. These rights protect them against any financial gains that infringers may get from utilising such property. It may be time for our legislators to enact particular celebrity rights legislation that will introduce, illustrate, and protect celebrities against misuse of their rights while also providing them with privacy.

[5] 1994 SCC (6) 632