# Balancing individual liberties and commercial exploitation: Indian personality rights jurisprudence

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**Tusha Malhotra and Tanvi Bhatnagar of Anand and Anand say technological advances such as those in AI are presenting new challenges in protecting the personality rights of celebrities in India and necessitate a delicate balancing act**

One of the ongoing issues that continues to garner the attention of many celebrities in India is the protection of various attributes of their personalities – such as their voice, image, signature, and likeness – that are commercialised and exploited by others. This urge to protect personality attributes has risen with the advent of AI and the creativity of the human mind producing wonders using – or misusing – this new technology.

Various attributes of the personality of a famous person are together referred to as 'personality rights' and popularly known as 'celebrity rights'. The concept of these rights evolved when certain entities started misusing the persona of celebrities for their commercial gain and without the celebrity's prior permission or compensation.

These rights are twofold and comprise an individual's right to privacy and the right of publicity. With the advent of social media and AI, we can clearly see increasing exploitation of the personality rights of celebrities in our day-to-day life.

**Protection of personality rights under the Indian statutes**

The world has become conscious of the personality rights of a celebrity and countries such as the US, France, Germany, Canada, and Denmark have laws under which these rights can be protected. In India, there is no express legislation that recognises and protects a celebrity's personality rights. However, these rights can be claimed under articles 19 and 21 of the Constitution of India, which provide for the right to freedom of expression and speech, and protection of life and personal liberty respectively. Both these fundamental rights preserve the personal integrity of an individual.

Furthermore, personality rights can also be protected under Section 38 of the Copyright Act, 1957, which grants a performer two types of rights:the exclusive right of performers, in Section 38A, and the moral rights of a performer, in Section 38B.

Under the Trade Marks Act, 1999, there are several provisions through which a celebrity can take charge of various attributes of their personality. A name is protected under the very definition of 'trademark' and celebrities such as Shah Rukh Khan, Priyanka Chopra, Ajay Devgn, and Amitabh Bachchan, on account of their goodwill and reputation, are registered proprietors of their respective names. Nonetheless, it is important to mention there are a lot of caveats to such a protection and the courts may not necessarily be willing to indulge in same until a very strong case is made out.

The most formidable shield under the Trade Marks Act, 1999 comes from the common law tort of passing off provided under Section 27 of the act. Under the concept of passing off, an individual is entitled to claim protection in case their reputation or goodwill is harmed and in cases of misrepresentation and unfair competition. Personality rights can be a nook within the spacious canopy of passing off.

**Right of expression vis-à-vis personality rights**

One of the questions that comes to mind is that since personality rights vest in celebrities and are now being recognised by courts, does this right restrict the rights of the citizens to express their views about these celebrities, criticise their work, or make jokes?

Before we delve into the above question, it is imperative to state that Article 19 of the Constitution of India grants citizens of the country a crucial fundamental right; i.e., the right of expression. The right to express oneself includes an individual's creative freedom to express themselves through various means and media. However, this freedom is not absolute and comes with its own limitations.

Today, we are living in the world of social media, and it is through this medium that most people express themselves, be it through memes, YouTube videos, mimicry, parody videos, etc. All the videos available on social media are a form of artistic expression and sometimes these videos include famous persons and throw light on some of their 'attributes' or criticise their work, or even make a joke or two about it.

In the *Jackie Shroff* case (2024), the High Court of Delhi, while refusing a grant of injunction in favour of one of the defendants who posted a video on YouTube containing snippets from the actor's life, held that it is essential to balance the legitimate interests of artistic and economic expression against the actor's rights to personality, publicity, and moral integrity.

Another instance where the court highlighted the importance of maintaining the balance between freedom of expression and personality rights was *DM Entertainment Pvt. Ltd. v Baby Gift House & Ors.* (2010). In this case, the High Court of Delhi, while granting an injunction and protecting the personality rights of the famous Daler Mehndi, also held that in a free and democratic society, where every individual's right to free speech is assured, an over-emphasis on a famous person's publicity rights can tend to negate the exercise of this invaluable democratic right. Thus, caricature,

lampooning, parodies, and the like, which may tend to highlight aspects of an individual's personality traits, may not constitute infringement of the individual's right to publicity. If the same is allowed, an entire genre of expression would be unavailable to the public.

Furthermore, in the *Anil Kapoor*case(2023),the High Court of Delhi also made observations highlighting the need to secure free speech and held that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and genuine criticism. However, when the same crosses a line, and results in tarnishment or blackening, or jeopardises the individual's personality, or attributes associated with the individual, it would be illegal.

Therefore, from the above instances, we can infer that not every action where a person uses attributes of the personality of a celebrity will amount to infringement. The courts in India have chosen to find a balance between a person's creative expression and a celebrity's right. For example, making a video on YouTube containing images of an actor will not necessarily constitute infringement; however, if the video is derogatory or tarnishes the reputation of a celebrity, then it might constitute infringement.

**Judicial interpretation of personality rights in the era of AI**

AI has impacted every facet of our lives. AI is a world of endless possibilities and is shaping the way we live, work, and interact with technology. However, this has also led to a lot of legal ambiguity and the need for stricter laws. With the advancement of AI, we are also witnessing various attributes of a celebrity's personality being portrayed without their permission and authorisation. One of the many 'cons' of this new technology is the creation of deepfake videos, which has led to a lot of fraud-related activity and the tarnishment of several celebrities' hard-earned goodwill and reputation. Many celebrities – such as Rashmika Mandanna, Katrina Kaif, Alia Bhatt, and Anil Kapoor – have been the victim of these AI tools and are now approaching courts to assert their rights.

In Kapoor's case before the High Court of Delhi, the defendants, among many infringing activities, were publishing, and collecting a fee by using, Kapoor's photographs on the pretext that he will be attending an event; using a morphed image of him, with his voice, dialogue, and names from his movies in his voice as ringtones; using AI to produce images and videos that are extremely derogatory; squatting on domain names such as www.anilkapoor.in, www.anilkapoor.net, and www.anilkapoor.com; and creating fake pornographic content. The High Court of Delhi, while protecting the personality rights of Kapoor, observed that fame comes with its disadvantages and held that courts cannot turn a blind eye to misuse of a personality's name and other elements of their persona. Dilution, tarnishment, and blurring are actionable torts that a celebrity would have to be protected against.

In the *Jackie Shroff* case,some defendants were selling infringing merchandise, whereas others

were involved in creating and publishing videos. One of the defendants created an unlicensed AI chatbot featuring the actor. The High Court of Delhi, while granting an ad interim injunction in favour of Shroff, restated the principle that the right of publicity protects individuals against unauthorised use of their personality, which includes their name, image, voice, and other distinctive attributes. Such unauthorised use can lead to unearned commercial gain for another party, thereby infringing the individual's personality rights.

**Final thoughts on personality rights**

The law concerning personality rights is still at an early stage and has been developing predominately through judicial interpretations. The courts have understood the significance and value of these rights and have time and again provided protection to various celebrities.

From the above, it can be easily inferred that striking a balance between creative expression, individual liberties, and commercial exploitation is crucial. With the advancement of technology, new challenges are being faced in the laws concerning intellectual property rights and it has become the need of the hour to have a statutory authority in place that expressly covers this dynamic component of intellectual property rights.

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