PERSONALITY RIGHTS – CURRENT TRENDS

News & Updates • November 9, 2026

'First published on Chambers'

By: Dhruv Anand, Dhananjay Khanna and Bhavya Verma

It will not be an exaggeration to say that there has been an explosion of sorts when it to comes to the frequency with which publicity/personality rights suits are being filed in India. It has become the *zeitgeist* of IP litigation in India.

Of late, we have seen a surge of personality rights suits due to the impactful nature of such suits. By means of John Doe, Dynamic and Dynamic+ orders, individuals are successful in taking down large volumes of infringing content being circulated over the Internet with one single order. This creates a deterrent effect thereby preventing resurgence of such content at least a while.

Personality rights are the rights of an individual to exploit the commercial value of his or her persona.

It is well recognised that a publicity right inheres in every individual.[1] In a practical sense, it is mostly enforced by a celebrity since their persona is more vulnerable and likely to be misused.

The first well-known authoritative judgment in this field was that of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc. (202 F.2d 866)* decided by the U.S. Court of Appeals for the Second Circuit which came in 1953. The expression 'right of publicity' was used in this case for the first time. In the said case, as also the seminal case of *Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)*, which is the only authoritative US Supreme Court case on publicity rights till date, the Courts stated that the object for justification of grant of these rights was analogous to that of Patent, Trademark and Copyright Law.

In such cases it is the goodwill, fame and reputation of the individual's identity and likeness that is the commercial asset being protected. The commercial value of the persona which has been built and cultivated through hard work and labour is what the law seeks to protect against unlawful commercial misappropriation.

The right of publicity incentivizes individuals to develop talent, create more works and render performances by preventing the unlawful commercial appropriation of their identity which amounts to unfair competition.

It is distinct from other wrongs such as the tort of invasion of privacy where the primary concern is that of dignity and the right to be left alone. A violation of Publicity rights need not be confined to

reputational harm. To the contrary, most cases involve misappropriation of identity in a benevolent or favourable setting like in false endorsement cases.

The more straight forward cases are those involving the sale of merchandise using the likeness of a celebrity. Unquestionably, these do not involve any kind of free-speech considerations and need to be restrained to prevent free riding. However, there are certain categories of cases that are more subtle. For instance, the use of the caricature of a celebrity, which identifies the celebrity, but also involves artistic expression by the author. These may constitute satire, parody, lampooning etc. which are recognised forms of legitimate expression. Moreover, use of a celebrity's name or image in a film or other expressive medium where the depiction is necessary to portray a historical event which is in the public domain.

In such cases, a Court is likely to examine how transformative the work is.[2] In other words, does the work use the identity and persona of the celebrity as a primary vehicle to promote or sell the work or is the use of the persona merely incidental with the work being imbued with the authors creative expression to make it a new work with a transformed meaning and purpose. There are other tests such as whether the predominant purpose[3] of the use is commercial exploitation or whether the use of the identity of the celebrity has artistic relevance[4] to the underlying work and if so, does it explicitly mislead consumers into thinking that the celebrity has endorsed the product or service.

There are also certain wrongs which did not historically give rise to much litigation since they were not fully contemplated at the time of formation of this tort, for instance, AI, deepfakes and morphing through sophisticated algorithms, by which the attributes of the identity of the celebrity can be easily duplicated and misappropriated to the point where it is impossible to distinguish between what is true and what is not.

India does not have a codified law relating to publicity or personality rights and the decisions and the orders that have been passed by the Courts apply international principles through common law.

The first well-recognized case which substantively dealt with personality rights in India was the case of *D.M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors., reported in MANU/DE/2043/2010*. In this case, the famous Punjabi folk singer, Mr. Daler Mehndi filed a suit before the Delhi High Court alleging that the Defendant was misappropriating his persona by selling dolls that were made to look like him and also rendered a song that the Plaintiff had sung and was associated with.

Then came *Titan Industries Ltd. v. M/s Rajkumar Jewellers*, reported in *(2012) 50 PTC 486*, wherein, Mr. Amitabh Bachchan and Mrs. Jaya Bachchan had assigned their personality rights to an entity which brought an action against a party who was using their name and likeness to sell jewellery as part of their advertising campaign. The Court restrained such use and laid down the essential elements of a cause of action for publicity rights:

(i) ▯ Validity: The Plaintiff must prove an enforceable right in his/her identity or persona; and

(ii) Identifiability: The Plaintiff must prove an enforceable right in his/her identity or persona. The Court stated that the Plaintiff must be identifiable from the Defendant's unauthorised use.

Justice Ravindra Bhat (as he then was) in the DM case (supra) while granting an injunction added a note of caution:

"14 . The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality. However, a word of caution has to be expressed here. In a free and democratic society, where every individual's right to free speech is assured, the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning, parodies and the like, which may tend to highlight some aspects of the individual's personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise, an entire genre of expression would be unavailable to the general public. Such caricature, lampooning or parody may be expressed in a variety of ways, i.e. cartoons in newspapers, mime, theatre, even films, songs, etc. Such forms of expression cannot be held to amount to commercial exploitation, per se; if the individual is of the view that the form of expression defames or disparages him, the remedy of damages for libel, or slander, as the case may be, would then, is available to him."

Thereafter, there was a hiatus after which the next prominent suit came in the year 2022 i.e., *Amitabh Bachchan v. Rajat Nagi & Ors.; CS (COMM) No. 819 of 2022*. Mr. Amitabh Bachchan filed a suit against multiple parties who were infringing his personality rights and was granted an injunction.

From 2022 to 2026, there have been approximately 60 orders passed primarily by the Delhi and Bombay High Courts that have protected the publicity rights of various individuals including actors, actresses, business tycoons, politicians, sportsmen, professionals, influencers and even godmen.

Some of the enforcement patterns that have emerged from these suits are:

(i) The wrongs are normally categorized into the following distinct heads, namely:

a. Impersonation of the Plaintiff;

b. Pornography and unsavory content involving the Plaintiff; and

c. Merchandizing by using the Plaintiff's name, image and likeness.

(ii) In most of these suits, intermediaries were made parties on whose platforms the infringing content was hosted, displayed or communicated to the public and the intermediaries cooperated with the

Court in removing the infringing content and disabling its access after a Court order. The intermediaries due to their neutral stand did not oppose the Plaintiff's rights in substance but on occasions, pointed out that certain Plaintiffs were seeking to enforce the rights in an over expansive manner by going beyond the ambit and scope of the suit as also the law on personality rights.

(iii) The Court passed Orders for take down of the infringing content not only against identified parties but also John Doe parties whose identity remained anonymous.

(iv) In cases where parties were anonymous, the intermediaries were directed to disclose Basic Subscriber Information (BSI) to the Plaintiff so that the Plaintiff could thereafter take steps to implead the parties whose identity was not known.

(v) The Plaintiffs were also given liberty to approach the intermediaries if they found additional evidence of infringement or links and the intermediaries were to evaluate such requests as per their respective policies and also in consonance with the scope of the Orders passed by the Court. If the intermediaries had any reservation regarding the Plaintiffs' request, they were directed to notify the Plaintiffs who were at liberty to approach the Court to agitate their grievance.

(vi) In some of the aforesaid cases, it was noticed that the Plaintiffs were seeking to restrain wrongs which do not fall within the scope and ambit of personality rights and under the guise of violation of personality rights, other content involving distinct causes of action such as defamation were being sought to be taken down. This conflation obviously was a matter of concern, since this could have a chilling effect on stifling legitimate expression and artistic freedom which is well protected and recognized under Article 19(1)(a) of the Constitution of India.

At the time of writing of this Article, the Hon'ble Delhi High Court is hearing a batch of publicity rights matters wherein, it is deciding what is the true scope of this tort and what kind of actionable wrongs it is meant to prohibit. The Court has also appointed Amicus Curiae to assist the Court in understanding the jurisprudence surrounding publicity rights since these cases have become a regular feature before the Delhi High Court.

It is expected that the Delhi High Court is going to pass a detailed Judgment laying down the exact contours of the right as also its exceptions.

There are a few decisions that would need to be reconciled. For instance, in the *Rajnikant* case as also the *Titan* case, it was held that there is no necessity of confusion, falsity or deception to invoke the right of publicity. As opposed to this, another Bench of the Delhi High Court in the case of *Digital Collectables* gave a narrow interpretation of the right stating that it should be viewed through the prism of the principles of Passing Off and only in cases where the public is likely to be deceived or confused into thinking that the Plaintiff has endorsed the particular good/service in question that the right will apply.

The main concern however appears to be the clubbing of multiple causes of action in one suit against disparate wrongs without proving the necessary ingredients of each cause of action.

There are other principles that are so well-entrenched that they are not likely to be disturbed, for instance, the use of any attribute of the persona of a celebrity has been held to be actionable so long as it is identifiable with the celebrity.

Voice, mannerisms and dialogues can all be evocative of the celebrity and the use can be through any medium such AI chatbots that simulate voices of celebrities or generative AI platforms that can create images and videos of a celebrity.

The other well recognized principle is that the right is not eclipsed by another intellectual property right if both rights are infracted through one wrong. For instance, the copyright in a photograph is an artistic work which may belong to the photographer and a magazine may have permission from the photographer to publish the same. However, if the photograph contains the image of a celebrity who has not authorized its use in a commercial manner, the celebrity will have a cause of action for publicity rights and copyright in the photograph will not eclipse this.[5] Similarly, if a sound recording contains the voice of a celebrity which is associated and identifiable with the celebrity, the permission to use the song in a certain context may not necessarily mean that the celebrity will not have a cause of action for publicity rights violation since his voice is contained in a song.

The Courts have been particularly strict about pornography. Deepfakes and morphing technologies have enabled certain unscrupulous parties to create videos which appear realistic. Celebrity Plaintiff's find these most troublesome since they have the effect of causing them immense reputational harm including affecting their livelihood.

There have been some observations that pornography may be better categorised as a privacy or defamation violation but irrespective of the nature of the wrong, there appears to be unanimity that such type of content needs to be restrained expeditiously since it can cause immense reputational damage to the celebrity. There are specific provisions in the criminal statutes penalising such wrongs. Also, parties post such user generated content on intermediary platforms leading to their widespread dissemination and therefore the intermediary guidelines impose strict due diligence and grievance redressal obligations on platforms including expeditious removal of such content on being notified. The latest amendment to the Rules has made such obligations stricter.

There is also some clarity needed on one aspect namely whether publicity rights should be viewed as inseparable from privacy rights or whether it is a free-standing independent right. This distinction is of significance since if it is viewed through the prism of privacy rights, it may have consequences as seen in the case of *Krishna Kishore Singh v. Sarla A Saraogi & Ors.; CS (COMM) No. 187 of 2021* (known as *Sushant Singh Rajput* case). In that case, the dead celebrity's father brought a case against the makers of a docu-drama that utilised and identified the persona of the deceased

celebrity without his permission as also the permission of his family. In that case, the Court held that any grievance relating to the right of privacy was not maintainable since the tort of privacy died with the celebrity and since publicity rights emerged from privacy, they too would stand extinguished with the privacy right.

This would mean that posthumous rights of celebrities may not be enforceable. This trend does not appear to be in consonance with international jurisprudence, particularly that of America where posthumous rights are well-recognized.

The finding of the Court appears to be due to the fact that in the absence of specific legislation governing publicity rights, they would have to conceptually understood as emanating from privacy rights[6] and therefore extinguish with the death of the individual.

While the origin of the right may have been the right of privacy, over time, it has acquired the character of a separate right. If the right is therefore considered as a standalone distinct right, it would be freely assignable, transferrable and licensable and not be dependent upon the right of privacy which only subsists during the lifetime of an individual celebrity.

Interestingly, in the *Sushant Singh Rajput* case, there are two orders that are noteworthy. The aforesaid view was of Justice Hari Shankar. Justice Sanjeev Narula, who had passed an earlier Judgement in the same case had stated that whether the right of publicity would survive the death of the celebrity requires a deeper probe. Additional questions kept open include whether the right can be viewed as a property right or harmonised with privacy from which it originated.

A reading of the case shows there was no authorisation from the deceased celebrity given to his family members to bring a suit for the violation of his personality rights upon his demise. This leaves room for arguing that in cases where such permission is given, a suit would be maintainable, but this may not affect the larger legal question that publicity rights also die with the individual celebrity and only enforceable while the individual is alive.

Another question that has often come up in these cases is who the beneficiary of these rights should be. A celebrity or any Individual whose persona maybe used for a commercial purpose without his/her authorisation? Who is a celebrity and does the degree of fame decide that? Can fame also include infamy? An authoritative judgment is likely to decide these issues.

The reason for reemergence of these lawsuits has been the advent of AI. With the proliferation and widespread use of AI tools and platforms, the identity of the celebrity can be easily duplicated or appropriated. Deepfakes and morphing technologies can propagate fake news and cause reputational harm apart from misleading consumers regarding sponsorship or endorsement.

Not all uses of a celebrity's persona are forbidden, and the law leaves ample room for legitimate artistic expression.

Given the above trends, it is imperative for the Courts to formulate tests to determine what amounts to a violation and define the contours of the right that will help in deciding cases that are more nuanced. This will help avoid inconsistencies and conflicts between orders.

The Courts are likely to assess whether the identify or persona being used by the Defendant is the main hook for promoting or selling products /services. In other words, is the persona which is appropriated without permission (and identifies the individual with specificity) being used as the very vehicle to carry on the infringement. It is also possible for the courts to borrow from the four-factor fair use analysis used in the copyright context or lay down a novel independent test to determine what is actionable and what is not. Ultimately each case would have to be decided given its unique set of facts.

One thing is clear that it would be in the interest of everyone that the contours of the rights are clearly established as also its exemptions. This is likely to lead to a coherent body of jurisprudence that is more predictable and dependable.

[1] Icc Development (International) Ltd. vs Arvee Enterprises And Anr. 2003(26)PTC245(DEL), 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.

[2] Comedy III Productions, Inc. v. Garry Saderup, Inc. 106 Cal. Rptr 2d 126

[3] Doe v. TCI Cable Vision 110 S.W. 3d. 363 (Mo 2003)

[4] Parks v. LaFace Records 329 F.3d 437 (6th Circuit 2003)

[5] This principal has been decided in a personality rights case namely *George Downing v. Abercrombie & Fitch*, which held as follows:

"The photograph itself, as a pictorial work of authorship, is subject matter protected by the Copyright Act. See 17 U.S.C. § 101 (providing that ''pictorial, graphic, and sculptural works include TTT photographs.''). However, it is not the publication of the photograph itself, as a creative work of authorship, that is the basis for Appellants' claims, but rather, it is the use of the Appellants' likenesses and their names pictured in the published photograph. The Nimmer treatise on copyright law states: [T]he ''work'' that is the subject matter of the right of publicity is the persona, i.e., the name and likeness of a celebrity or other individual. A persona can hardly be said to constitute a ''writing'' of an ''author'' within the meaning of the copyright clause of the Constitution. A fortiori it is not a ''work of authorship'' under the Act. Such name or likeness does not become a work of authorship simply because it is embodied in a copyrightable work such as a photograph.

Nimmer on Copyright § 1.01[B][1][c] at 1–23 (1999). The same point is made in McCarthy's Treatise on Right of Publicity and Privacy:

The ''subject matter'' of a Right of Publicity claim is not a particular picture or photograph of plaintiff. Rather, what is protected by the Right of Publicity is the very identity or persona of the plaintiff as a human being ... While copyright in a given photograph may be owned by the person depicted in it, the exact image in that photograph is not the underlying ''right'' asserted in a Right of Publicity case. To argue that the photograph is identical with the person is to confuse illusion and illustration with reality. Thus, assertion of infringement of the Right of Publicity because of defendant's unpermitted commercial use of a picture of plaintiff is not assertion of infringement of copyrightable ''subject matter'' in one photograph of plaintiff.

The cases of *Brown v. Ames, 201 F.3d 654, 661 (5th Cir.2000) and KNB Enterprises v. Matthews, 78 Cal. App.4th 362, 92 Cal.Rptr.2d 713 (2000)* clarified this position that a claim of copyright in a work does not pre-empt the right of publicity of the individual who forms part of such copyrighted work."

[6] *Justice K.S. Puttuswamy (Retd.) & Anr. v. Union of India & Ors. [2017] 10 S.C.R. 569 "Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent. [The Second Circuit's decision in Haelan Laboratories Inc. v. Topps Chewing Gum Inc., 202 F 2d 866 (2d Cir 1953) penned by Jerome Frank, J. defined the right to publicity as "the right to grant the exclusive privilege of publishing his picture".]"*

KEY CONTACT



Dhruv Anand

Partner

View Bio of Dhruv Anand

RELATED PRACTICES

PATENTS