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## **THE PRICE OF FAME: CELEBRITY PRIVACY RIGHTS**

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### **ABSTRACT**

All citizens have an equal right over the right to privacy. These rights are being properly served to common individuals but when it comes to celebrities, the protection of their publicity and privacy rights get narrower. The Right to publicity comes under the basic privacy rights to control and protect one's image from being exploited without taking prior and proper consent, one can be prosecuted for the same. These rights get openly exploited for monetary gains by the press and by the audience just because in some instances of their lives they had consented to this publicity. The trouble is to the extent that their lives are considered to be of "public interest" by the audience. Celebrity privacy infringement and violation of their publicity rights is a growing concern in India, where individuals in the public eye are frequently subjected to the unauthorised sharing of personal information and images. This article attempts to analyse the right to privacy of celebrities and tries to understand the boundaries of the paparazzi. The authors have adopted a secondary research methodology for this article and refer to international/national rules and laws in regard to the right to privacy of celebrities. Lastly, the author aims at identifying and understanding the period in which publicity rights gained special recognition under the law of torts in the international courts and the Indian constitution under Article 21. Over a period of time publicity rights came into greater recognition and with time it directly evolved "privacy rights" as protection against violation of personal space merely for monetary gains. The celebrities started to get a recovery in the form of damages under the publicity laws, which was a good sign to start with.

## **INTRODUCTION**

Privacy rights are an essential aspect of human dignity and individual freedom, it plays a vital role in promoting free expression and maintaining trust in society.

“All human beings have three lives: public, private, and secret.”

— **Gabriel García Márquez, *Gabriel García Márquez: a Life***

According to the Black Law Dictionary, “the right to privacy means the right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned.” All citizens have an equal right over the right to privacy which when compromised can be protected by a court of law. Privacy law deals with regulating the storage and usage of the personal information of an individual.

These rights are being indulged to the general public however it is about celebrities, the protection of their publicity and privacy rights gets narrower with the condition of fame and broad public recognition they build curiosity even about the trivial professional as well as the personal aspect of their lives, this not only violates their privacy rights but also has serious implications for their safety and security. Even though the major part of being called a celebrity constitutes implied consent to getting mass exposure and publicity nevertheless, celebrities have full authority to control the distribution and use of their personal information and images, and it's important to respect this right.

“A celebrity is someone who works hard all his life to be known, and then wears glasses to avoid being recognized.”- Fred Allen

The term "Celebrity" does not merely confine itself to an actor or actress, basically anybody who has attained popularity and is easily recognisable to the public. Celebrity privacy infringement of their publicity rights is a growing concern in India, where individuals in the public eye are frequently subject to the unauthorised sharing of personal information and images. In order to refrain any individual from the encroachment of celebrity rights and avoid serious implications for their safety and security there are various legal statutes and provisions making it more fundamental and justifiable for celebrities. Earlier the right to publicity was not considered and given much importance by the court however over a period of time their

publicity rights have been highly recognized by the judicial systems of countries across the world giving special protection to unlawful publicity of celebrities. In this Article, the statutes, rules, laws, judgements, etc., are being analysed to bring forth the laws regarding the right to privacy and publicity of celebrities along with where an infringer should draw a line. The article will also explore the role of the government and the legal system in combating privacy infringement and protecting the publicity and privacy rights of celebrities.

### **WHERE DOES THE RIGHT TO PRIVACY FOR CELEBRITIES STAND?**

Right to Privacy, according to theory should be followed equally for both private and public personalities. But in the real case scenario, the scope of privacy laws for celebrities is much narrower than for common citizens.

The Right to publicity comes under the basic privacy rights to regulate and protect one's image from being exploited for monetary gains without taking prior and proper permissions and one can be prosecuted for the same under the tort of passing off.

The right to Privacy spreads equally for all individuals but in the case of celebrities, privacy rights are compromised a lot, as their lives are considered to be of "public interest".<sup>1</sup>

Privacy rights under the tort law is divided into protecting the citizens from four main types of intrusions:

1. Invasion into solitude
2. Unlawful and unreasonable disclosure of private facts in public
3. Depiction of a person's character in a false light in front of the audience
4. Exploitation of a person's name in public.

The rights of celebrities are mainly compromised because of the position they had once consented themselves to be in. The current structure of the law gives no special protection to the rights of celebrities. The public further considers all the affairs in an actor's life as "public" in nature and thus in most of the incidents, the limit of privacy that should be maintained is crossed. Due to the constant exposure received by celebrities, the press and the public tend to

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<sup>1</sup> Howard I. Berkman, *The Right of Publicity--Protection for Public Figures and Celebrities*, 42 BROOK. L. REV. 527 (1976).

think that celebrities are physiologically more tolerant of their behaviour. The growing interest of the fans to know more about their celebrities leads to the direct invasion of their personal lives by the press.<sup>2</sup>

## **BOUNDARIES TO THE INVASION OF PRIVACY BY PAPARAZZI**

Paparazzi are freelancers photographers who target celebrities for their candid pictures and share those pictures in public for monetary gains.

It is often argued by people saying that celebrities have agreed to such a life of limelight and that is what they enjoy, however, every individual has the right to the most essential right to be let alone in some instances of life. All individuals need some level of privacy to be maintained in their life. Any collection and disclosure of private information from someone's life is illegal and has been clearly put up by the court in the "Pavesich v. New England Life Insurance Co."<sup>3</sup>, wherein the court recognised a certain amount of privacy rights vested with the plaintiff and decided the verdict in his favour. Celebrities understand and consent to some amount of public exposure but there needs to be a limit to the events that do not concern third-party interference and cannot be termed as events of "public interest".<sup>4</sup>

When it comes to the privacy of celebrities, it is taken in a broader sense and hence all the confusion arises in the existing laws. The right of publicity, in recent years has been seen more flashing in many of the courts judgements legally speaking, Article 21 of the Indian Constitution protects the right to privacy by stating that no one may be deprived of their life or personal freedom unless doing so follows a process set forth by the law. This right includes protection from unreasonable searches and seizures, as well as the unauthorised disclosure of private information. In addition to the constitutional provisions, the Indian Penal Code (IPC) includes criminal penalties for offences involving invasion of privacy, such as voyeurism, stalking, and defamation. The Information Technology (IT) Act of 2000 also includes privacy protection provisions, such as criminalising unauthorised access to and sharing of personal information, now it has been also included in the privacy laws and is punishable in the tort law by recovery of damages. Many claims in the court were that it is the choice and interest of the celebrities to get

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<sup>2</sup> Jamie E Nordhaus, 'Celebrities' Rights to Privacy: How Far Should the Paparazzi be Allowed to Go' (1999) 18 Rev Litig 285

<sup>3</sup> *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190 (Ga. 1905)

<sup>4</sup> L Lee Byrd, 'Privacy Rights of Entertainers and Other Celebrities: A Need for Change' (1988) 5 Ent & Sports LJ 95

publicity and public attention but the court decided that it was unlawful of the intriguer to earn benefits and recognition from the false news procured by them in front of the audience. The press has its job to portray the celebrity's life in front of their fans but it is wrong and unethical to depict a ill image of anyone in front of the spectators.

## **SITUATION OF PRIVACY RIGHTS IN INDIA**

In India, until 2017 there was no rigid law which could directly fall under the protection of the right to privacy of individuals. For the first time in 2017 in the case, "Justice K.S. Puttaswamy (Retd.) v Union of India"<sup>5</sup>, the basic privacy rights of every citizen in regard to the use of WhatsApp users were brought up in front of the court. The court in this case extracted the privacy rights mainly from the "tort of passing off". The tort of passing off prevents any picture or any private information of the celebrities from being misused by the photographers or press. Every individual has complete control to decide the pictures or information posted about him/her in front of the public for monetary gains. Without any prior and complete consent of an individual, any part of his/her private life should not be portrayed in front of the public.<sup>6</sup>

Privacy rights or Publicity rights of individuals has constantly been upgrading in India in the recent times. In 2014, in the case "Shivaji Rao Gaikwad v Varsha Production"<sup>7</sup>, the High Court of Madras rejected the plea of the defendant to dismiss the case because there was nothing stated as "personality rights" in the Indian law. But the court instead levied an injunction on the defendant's from using the plaintiff's dialogues/name/voice in their upcoming film.

The court clearly stated that the plaintiff had the right to exercise complete control over the usage of his name/voice/signature of dialogues. Individuals can support celebrity privacy rights by doing the following:

Increase awareness: Share information and educate others about celebrity privacy violations and the importance of respecting the privacy of others. Support privacy laws: Advocate for tougher data protection and privacy laws and regulations to protect celebrities and others.

- i. Eliminate disclosure of personal information: Do not share or spread personal

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<sup>5</sup> K.S. Puttaswamy (Aadhar-5J.) v. Union of India, (2018) 1 SCC 809

<sup>6</sup> Luthra, S., & Bakhru, V., PUBLICITY RIGHTS AND THE RIGHT TO PRIVACY IN INDIA. *National Law School of India Review*, (2019) 31(1), 125

<sup>7</sup> Shivaji Rao Gaikwad v. Varsha Productions 2015 (62) PTC 351 (Madras)

information concerning celebrities or others without their consent.

- ii. Boycott media outlets that infringe privacy: Refrain from supporting media outlets that engage in unethical behaviour, such as intrusive paparazzi photography or the unauthorised release of personal information.
- iii. Take a stand against intrusion: If you see instances of celebrity privacy invasion, speak up and encourage others to do the same.
- iv. Maintain and respect privacy: Treat others, including celebrities, with respect and dignity, and acknowledge their right to privacy.
- v. By taking these actions, individuals can play a role in promoting privacy rights and creating a culture that values and protects personal privacy.

In 2019, the Delhi High Court levied an injunction against Zee TV for printing, posting or putting up hoardings of the news personality Rajat Sharma. Zee TV had used his name under false light in their advertisement trying to defame the news TV personality in front of the audience and instigating them to no longer watch his show. In the case “Raja Gopal v State of Tamil Nadu”<sup>8</sup>, the Indian Court recognised the tort aspect of the right to privacy resulting in payment of damages for unlawful invasion of privacy.<sup>9</sup>

## **BEGINNING OF RECOGNITION OF PRIVACY RIGHTS**

The right to Publicity grew at the same time as the Right to Privacy. It was initially considered as a subset of privacy rights in the USA however later on got its own recognition. In England, too there were claims of publicity rights in the early times out of which there were further amendments in the tort law passing off, defamation, unlawful intrusion of privacy, etc.

In the United States of America, over a period of time publicity rights although being the subset of privacy rights have received a separate recognition in the courts. Publicity rights have developed by the judiciary to such an extent that now it has received a unique and special status.

For the first time the Supreme Court of Georgia the case, “Pavesich v. New England Life Insurance

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<sup>8</sup> R.rajagopal & Ors. Vs. State of Tamil Nadu & Ors (1994) 6 SCC 632)

<sup>9</sup> Mudita, ‘Protection of Celebrity Rights/ Personality Rights in India’, (Monday.com, 30 April, 2019), <https://www.mondaq.com/india/privacy-protection/801764/protection-of-celebrity-rights-personality-rights-in-india>, 15 January, 2021

Co.”<sup>10</sup>, accepted the right to publicity. The New England Life Insurance Co. had unlawfully used a picture of the plaintiff for the advertisement of its insurance company. The Supreme Court ordered an injunction over the use of the pictures of the plaintiff by the defendant’s insurance company under the publicity rights of individuals. Thereafter, in many judgements have been made by different courts on the same lines and gradually publicity rights gained its recognition over different states in the USA.

Further, in the case “Haelan Laboratories Inc. v. Topps Chewing Gum Inc.”<sup>11</sup>, the chewing gum company used baseball trading cards with the images of certain players on them to boost the sale of its chewing gum. Haelan Laboratories had taken exclusive rights for printing images of baseball players on the trading cards. The Court did not give the plaintiff any recovery of damages under the “privacy law” but instead used the newly recognised “publicity law” for the recovery of damages from the defendant. The court clearly stated that even though the right to publicity was earlier a subset of right to privacy now it has been recognised as a separate law and damages can be recovered from the defendant under the tort law.

In the case “Multimedia WMAZ Inc. v. Kubach”<sup>12</sup> the plaintiff had signed an agreement to shoot an advertisement on how he overcame AIDS with the defendant. The agreement was based on an understanding that the face of the plaintiff would be blurred digitally and he would not be recognisable. But due to the carelessness of the employees of the defendant, the plaintiff’s face was clearly visible. The court under the tort of unlawfully and unreasonably disclosure of private facts held the judgement in the favour of the plaintiff.

This division was further clarified by the Supreme Court of the United States of America in the judgement of, “Zacchini v. Scripps-Howard Broadcasting Co.”<sup>13</sup> A famous act ‘The Human Cannon Ball’ was performed by an entertainer, Hugo Zacchini in which he would shoot himself from a cannon towards a net placed 200 metres away. The show was strictly available for only those with the ticket and photography and videography was strictly prohibited. The defendant’s camera man came to the show and without any consent from the plaintiff shot the entire show and later aired it over news. The court decided in favour of the plaintiff as under the publicity laws which prohibited the commercial use of someone else’s public event.<sup>14</sup>

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<sup>10</sup> Pavesich v. New England Life Insurance Co. 122 Ga. 190

<sup>11</sup> Haelan Laboratories Inc. v. Topps Chewing Gum Inc. 202 F.2d 866 (2d Cir. 1953)

<sup>12</sup> Multimedia WMAZ Inc. v. Kubach 443 S.E.2d 491

<sup>13</sup> Zacchini v. Scripps-Howard Broadcasting Co. 433 U.S. 562 (1977)

<sup>14</sup> Supra no. 4

## CONCLUSION

Privacy laws under the statute have been divided into four main subheadings: the unlawful and unreasonable intrusion of one's privacy, exploitation of an individual's name in front of the audience, portraying someone's false image in front of the public for monetary gain and invasion into the solitude of an individual.

According to the books of law, every individual has an equal right towards their privacy but in the case of celebrities often these rights are compromised. The public often considers celebrities' life as a life of 'public interest'. The fans are keen on knowing what their favourite celebrity is up to however one needs to understand the limit of lawful intrusion.

The special recognition of publicity rights was first recognised by the Supreme Court of the United States of America wherein the court ordered an injunction on the unlawful use of the celebrity's images for commercial benefit. The court even charged the defendant in some cases with a certain number of damages. The decision of the supreme court of Georgia was then quoted by several other states in the United States and many other countries also started to recognise certain publicity as well as privacy rights vested by the celebrities.

In India, there is a growing concern as the paparazzi culture and the obsession with celebrity lives continue to escalate. The current legal framework in India provides limited protection to celebrities, and the enforcement of these laws is weak. This has resulted in an increasing number of instances of privacy violations, including unauthorized access to personal information and intrusion into private spaces. To address this issue, it is crucial to strengthen existing laws and regulations and to create stricter penalties for those who engage in such behaviour. Additionally, the media and society as a whole must acknowledge and respect the importance of privacy, and avoid indulging in the glorification of invasion into the private lives of others.