
EVALUATING THE REGULATIONS CONCERNING THE RIGHT TO PUBLICITY IN THE CONTEXT OF INDIA

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ABSTRACT

This research paper takes a deep look at the Right to Publicity, which is all about how to protect a person's image and identity. It doesn't just focus on one country's rules; it explores both local and international laws. It looks closely at India's laws, as well as the laws in the United States and the United Kingdom. By doing this, the paper shows how these different places handle the idea of protecting people's images. In this effort, the paper uses information from various Indian laws, including ones that deal with competition, copyrights, trademarks, and more. These laws are like puzzle pieces that come together to create a picture of what the Right to Publicity means in India. Additionally, the paper takes inspiration from the legal systems in the US and the UK to get a complete understanding of this concept.

The research also dives into how a person's public image interacts with the rules that protect them. It looks at how the Right to Publicity relates to the rights of people from other countries and what happens when someone dies. But this paper goes further than just exploring these ideas. It also figures out ways to fix things when this important right is violated. It examines different options, like going to court, making official requests, or even suing someone for harming a person's reputation. This shows that there are many ways for people to stand up against others who might misuse their image.

In a simpler sense, this research paper carefully examines all the parts of the Right to Publicity. It breaks down the complicated rules to help us understand how this important right works. By doing this, the paper not only teaches us about the Right to Publicity but also shows why it's important in today's world.

INTRODUCTION

In recent years, there has been a noticeable surge in the acknowledgment and acknowledgment of publicity rights, commonly known as celebrity rights. These rights revolve around the attributes linked to an individual's distinct persona. They can be succinctly described as an individual's prerogative to regulate the commercial utilization of their distinctive identity. The public persona of a celebrity holds substantial intrinsic worth, often entailing substantial financial implications. Consequently, it becomes imperative for such individuals to safeguard these rights, ensuring that no external entity capitalizes on or illicitly capitalizes from their identity for unauthorized gains.

The concept of the common law right to publicity acknowledges the substantial commercial significance attached to notable individuals, such as celebrities or performers or company. It serves to safeguard their proprietary interests, thereby enabling them to derive financial gains from their public image or persona. In essence, this legal principle seeks to protect and facilitate the exploitation of their well-established reputation for economic benefit.

The liability attributed to the violation of the right to privacy encompasses two fundamental components. The first element pertains to the *validity* of the claim, emphasizing that the plaintiff possesses a legally enforceable entitlement to the identity or distinctive persona of a human being. The second element, *identifiability*, underscores the necessity for the celebrity to be discernible or recognizable in the unauthorized use undertaken by the defendant. Notably, establishing the infringement of the right to publicity does not necessitate the demonstration of falsehood, confusion, or deception, particularly when the celebrity's identity remains evident.¹

This right of publicity transcends the conventional confines of laws governing false advertising. Additionally, addressing the question of identifiability is facilitated through a straightforward comparison between the identifying attributes of the celebrity and the manner in which the defendant's utilization occurs.

The global landscape concerning the recognition of publicity rights has been undergoing a transformative evolution. While certain countries like France, Russia, the United Arab Emirates (UAE), and select states within the United States of America - including California, Florida, New York, and Washington - provide explicit safeguards through codified legal frameworks, others such as the United Kingdom, Hong Kong, and specific U.S. states like

¹ MANU/DE/2902/2012.

Georgia, Massachusetts, Michigan, and New Jersey, extend protection through the common law doctrine of passing-off.

In the Indian context, the Supreme Court's initial acknowledgment of the right of publicity surfaced within the framework of the right to privacy, as evident in **R.R. RajaGopal v. State of Tamil Nadu**², the Court highlighted that the violation of this right occurs when an individual's name or likeness is utilized without consent for advertising, non-advertising purposes, or any other context.

Prior to delving further into this discourse, a fundamental grasp of the term 'celebrity,' as defined by Indian courts, is essential. In the case of **Titan Industries Ltd. v. M/s. Ramkumar Jewellers**³, the Delhi High Court offered insights into the concept of celebrity rights, characterizing a celebrity as a widely recognized or distinguished individual. The Court emphasized that the crux of the matter is not the preclusion of commercializing their identity, but rather vesting the eminent personality with the prerogative to dictate when, where, and how their identity is employed. This resonates with the overarching notion that the right to manage the commercial exploitation of an individual's identity constitutes the essence of publicity rights.

Further substantiation of publicity rights emerged in **DM Entertainment v. Baby Gift House and Ors.**⁴, wherein the Delhi High Court emphasized the jurisprudential essence of these rights. The Court elucidated that the right of publicity finds its roots within an individual's autonomy to authorize or withhold the commercial utilization of their likeness or specific attributes of their persona.

The intricate dynamics surrounding publicity rights are undergoing a multifaceted evolution on the global stage. While some jurisdictions adopt codified laws, others rely on common law doctrines. India's judicial landscape has recognized the underlying essence of publicity rights within the broader framework of privacy, affirming the individual's authority to oversee the commercial usage of their distinct identity.

INCLUSION OF REFERENCES ACROSS DIVERSE LEGAL INDIAN STATUTES

As such there is no specific statute which directly deals with the issue related to the Right to

² MANU/SC/0056/1995.

³ MANU/DE/2902/2012.

⁴ MANU/DE/2043/2010.

Publicity. But we can derive this right from various other sources such as Competition law, Trade Mark Act, Copyright Act, Emblem and Names (Prevention of Improper Use) Act, Constitutional Law, etc.

CONSTITUTIONAL LAW

The foundation of the right to publicity is closely intertwined with the right to privacy, as enunciated in Articles 19 and 21 of the Constitution of India. This intrinsic interrelation empowers individuals to protect both their public image and personal details. This prerogative can be invoked through the issuance of a court-issued writ, functioning as a safeguard against governmental encroachment into an individual's personal sphere.

Nevertheless, it is crucial to recognize that harnessing the constitutional right to publicity primarily pertains to instances involving government actions. Consequently, enforcing this right against private individuals poses intricate challenges.⁵

COMPETITION LAW, 2002

According to the provisions of the Competition Act, the unauthorized utilization of an individual's name or likeness, which creates a false or misleading impression for consumers of an affiliation with or endorsement of a product, can be subject to limitations.

THE EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT, 1950

The Emblems and Names (Prevention of Improper Use) Act 1950, commonly known as the Emblems Act, offers a measure of safeguarding against the unauthorized utilization of the names of specific national dignitaries and institutions enumerated within the Act. This protection is specifically geared towards preventing commercial exploitation without obtaining prior consent from the government.⁶

THE TRADE MARK ACT, 1999

Section 14 of the Trade Marks Act 1999 (TMA) stipulates that if an application is submitted for the registration of a trademark implying an association with a living individual or a person who has been deceased for 20 years before the application date, the registrar of trademarks holds the authority to request the applicant to secure the consent of the relevant living person

⁵ Anoop Narayana, 'India' [2013], ANA Law Group <https://www.anaassociates.com/> accessed 17th August, 2023.

⁶ Ibid.

or the successors of the deceased. Failure to obtain such consent may result in the refusal of trademark registration.

Consequently, within the purview of the TMA, it becomes impermissible for an individual to register a trademark that pertains to a celebrity, whether they are currently alive or have passed away, without obtaining the explicit consent of the celebrity or their rightful successors.

Furthermore, the inclusion of a celebrity's name as an integral part of a domain name can similarly be subject to limitations under the provisions of the TMA.⁷

THE COPYRIGHT ACT, 2000

Sections 38 and 57 of the Copyright Act 1957, which pertain to the entitlements of performers and the moral rights of authors respectively, serve as effective tools for shielding against the unauthorized exploitation of a performer's or author's marketing rights and reputation.

Moreover, the Copyright Act extends its protective embrace to various creative expressions, encompassing an individual's photographs, images, paintings, and similar derivatives. While the matter of copyright ownership for a photograph could pose complexities, given that the photographer typically holds the copyright for the image they capture, other elements such as an individual's signature might also fall within the scope of protection afforded by the Copyright Act.⁸

THE ADVERTISING STANDARDS COUNCIL OF INDIA

The Advertising Standards Council of India has established a set of guidelines aimed at regulating the content of advertisements. This code specifies that advertisements must refrain from making any reference to individuals or institutions or incorporating the likeness of well-known or celebrated personalities. Such references or uses, if likely to belittle or tarnish the reputation of the individual or institution, necessitate explicit permission from the concerned party. It is important to note that while the code is not legally obligatory, adherence to it relies on a self-regulatory approach.

STATUS OF RIGHT OF PUBLICITY IN USA & UK

UNITED STATE OF AMERICA

⁷ Ibid.

⁸ Ibid.

Within the United States, celebrities have a variety of avenues at their disposal when it comes to asserting their publicity rights. Firstly, they can opt to utilize the Lanham Act of 1946, a federal statute that governs the nation's trademark laws. Alternatively, they can seek redress through state-specific legislations that pertain to the domain of publicity rights. The Lanham Act assumes a dual role, serving to shield consumers from deceptive practices while also offering protection to trademark owners against any misconceptions that might imply their association with or endorsement of a particular product.

Under the purview of the Lanham Act, individuals hold the authority to initiate legal actions against those who employ words, terms, names, symbols, or devices in a manner that generates confusion or misrepresentation regarding their affiliation, connection, or endorsement of goods or services. This is particularly relevant in cases where there exists an intention to mislead individuals about one's affiliations. The Act provides a basis for claims related to false endorsement or the infringement of an unregistered mark. While the primary intention of the Lanham Act revolves around the safeguarding of consumer interests, its expansive interpretation also furnishes celebrities with a robust platform to shield their publicity rights. This becomes evident in instances such as a case where a plaintiff successfully argued that a parody song imitated their voice.⁹

It is pertinent to acknowledge that historically, the domain of publicity rights existed as a subset within the broader realm of privacy rights. An instrumental case, **Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.**¹⁰, brought about a significant differentiation between publicity rights and privacy rights. This legal precedent established that individuals possess an inherent entitlement to the "*publicity value of their photographs*," thereby granting them the authority to exclusively license the publication of their images. Claims rooted in the State Right of Publicity concept often prove more straightforward to substantiate, as they prioritize the safeguarding of an individual's entitlement to recompense and seek to prevent unjust enrichment arising from the unauthorized exploitation of their goodwill.

While the extent of claims based on State Right of Publicity may fluctuate across different states, certain foundational elements remain consistently applicable. A successful pursuit of a common law right of publicity claim necessitates a plaintiff to demonstrate: (1) the defendant's

⁹ Harshada Wadkar, 'India: Publicity Rights and Its Scope in Intellectual Property Laws' [2020], Mondaq <<https://www.mondaq.com/>> accessed 17th August, 2023.

¹⁰ 202 F.2d 866 (2d Cir. 1953).

utilization of the plaintiff's identity; (2) the appropriation of the plaintiff's name or likeness for the defendant's gain, whether in commercial or non-commercial contexts; (3) the absence of consent; and (4) demonstrable harm stemming from the actions.¹¹

Despite its inherent imperfections, the United States' approach to the Right of Publicity typically empowers celebrities to exert substantial control over the commercial use of their identities. This is, in part, attributable to the courts' expansive interpretation of the Lanham Act and the states' willingness to directly address and adjudicate this crucial right. As a result, celebrities are afforded avenues for robust protection and legal recourse.¹²

UNITED KINGDOM

Similar to India, the United Kingdom (UK) doesn't have clear rules specifically for protecting the rights of famous people to control how they're seen by the public. This means that celebrities in the UK need to use different legal methods to make sure their interests are looked after. One of these methods involves the Trade Marks Act of 1994, but this law doesn't directly focus on protecting these rights. It mostly cares about safeguarding trademarks that are officially registered. This becomes a problem when celebrities' names aren't registered as trademarks. Even if they try to register their names, it's often tough because when they become really famous, their names might not be seen as unique anymore.

There's a specific case, called "**Re: Elvis Presley Trademarks, Inc.**"¹³, that shows this challenge. In this situation, the court decided not to let the name "Elvis Presley" be registered as a trademark. They thought that since it was so well-known, it couldn't be seen as a unique name for products.

Another option for protecting their likeness or image is **the Copyrights, Designs and Patent Act of 1988 (CDPA)**. This law gives people a way to protect how they look, especially in pictures or videos. But there's a condition – they need to be the ones who "commissioned" the work. Even if a celebrity owns the copyright for a picture or video of them, the law only stops others from copying a big and important part of the original work. This can be difficult for people to prove, which makes it tough for them to assert their rights.

¹¹ Harshada Wadkar, 'India: Publicity Rights and Its Scope in Intellectual Property Laws' [2020], mondaq <<https://www.mondaq.com/>> accessed 17th August, 2023.

¹² Ibid.

¹³ [1997]. R.P.D.T.M.C. 543 (Ch.) (Eng.).

All of this shows that famous people in the UK face complicated situations when they want to make sure their rights to control their public image are protected. Because there isn't a clear law just for this, they have to rely on different laws, each with their own rules and requirements.

APPLICABILITY TO THE FOREIGNERS

Protecting the right of publicity for people from other countries in India is a complex matter, and it comes with a set of clear limitations. While there are ways to offer protection, these ways are restricted due to certain factors. It's important to understand that people from other countries can't use the special privacy rights in the Indian Constitution's Articles 19 and 21 – those are only for Indian citizens.

However, even though there are these limitations, foreign citizens do have other options to explore when they want to make sure their right to control how they're seen publicly is respected. They can take different paths, and one common option involves laws related to intellectual property. These laws are like a complicated structure that helps shield various aspects of how a person is seen by the public.

In simpler words, when foreign citizens want to make sure their right to control how they're portrayed in India is protected, it gets a bit tricky. It needs a deep investigation that goes beyond basic rights mentioned in the constitution. Even though they might not have access to certain rights, there's still a way through the laws about intellectual property to protect how they're shown to the public.

The way these legal aspects work together shows that protecting the right of publicity for people from other countries in India is quite complicated. The mix of basic rules in the constitution and the considerations of intellectual property creates a need for a broad approach. This approach should handle the unique challenges and possibilities that come with this ever-changing situation. In simpler words, it's really important to have a complete and well-thought-out plan to make sure that the right of publicity for people from other countries is respected in India.

In essence, when we look closely at how to safeguard the right of publicity for foreign citizens in India, it's like solving a puzzle with many pieces. While foreign citizens can't use certain parts of the constitution that protect privacy, they do have other roads they can take. These paths often involve using laws that deal with intellectual property – these laws help shield different parts of how someone appears to the public.

Think of it this way: Imagine you're a foreign citizen who wants to keep control over how your image is used in India. Even though you can't use some of the specific rules in the constitution, you can still find ways to protect yourself. It's like following a map where the roads are made up of intellectual property laws. These laws might seem complex, but they're like a toolkit that helps keep your public image safe.

The relationship between these legal ideas shows that protecting the right of publicity for foreign citizens in India isn't simple. It's like a dance between the basic rules in the constitution and the more intricate considerations of intellectual property. This all points to the need for a well-rounded plan that can handle the tricky challenges and exciting possibilities that come with this changing situation. In simpler words, making sure that people from other countries have their right of publicity respected in India requires a smart and complete strategy.

PUBLICITY ENDURING BEYOND DEMISE

In many countries, the right to control how your name and likeness are used usually ends when you pass away. But in some places, this right can continue even after death. This means that if someone uses the image or name of a famous person without permission, their family or the people they left behind can take legal action to stop it. California is one of these places where even after a famous person dies, their family can control how their name and likeness are used. For example, if a famous celebrity lived in Los Angeles and passed away, their family could decide how their name and image are used.

In India, there isn't a specific law that talks about protecting a person's right to control their image after they die. But because this right is seen as a kind of property, it can be passed down to the family or the people who are legally responsible for the person who passed away. This means that if someone uses the image or name of a deceased person without permission, their family or legal representatives can take action against it. How long this protection lasts after death can vary. It depends on how valuable the person's image still is even after they're gone. Courts decide this on a case-by-case basis.

The interesting thing is that a famous person's image can still make a lot of money even after they're no longer alive. For instance, even seven years after Michael Jackson passed away, he made a huge amount of money – \$825 million – in just one year, 2016. This was more money than any other celebrity, whether alive or dead, made in a single year. This shows that a celebrity's image can continue to be valuable long after they're gone.

To show this trend, you can look at a list that Forbes makes of the celebrities who still make a lot of money even though they're not alive. In 2021, the total earnings of the top thirteen celebrities on that list tripled, reaching almost \$1 billion altogether. This means that even though these famous people are no longer with us, their image and name are still really important and valuable.

So, in simple terms, in some places, a famous person's family can keep control over their image even after they're gone. This is true in places like California. In India, there isn't a special law for this, but the family or legal representatives of a person who has passed away can still protect their image from being used without permission. And it's surprising how much money a famous person's image can still make, even years after they've died. This is a clear sign that a celebrity's image is still really powerful and important, even after they're not around anymore.

REMEDIES

A. Initiation of Civil Action for Unjustified Interference: In situations where an individual's entitlement to their right of publicity or right to privacy is violated, they maintain the prerogative to commence a civil lawsuit against the responsible party for the infringement. For instance, if someone exploits another person's likeness for commercial advantages without procuring proper authorization, this action could be seen as an unwarranted intrusion into the person's right of publicity. Similarly, if personal information is disclosed without consent, thus intruding into an individual's private realm, it could amount to a violation of their right to privacy. In these circumstances, the aggrieved party possesses the legal authority to seek remedies such as financial reparation, legal orders to prevent further infringement, and even an official apology. All these avenues can be pursued through the civil court system.

B. Utilization of Writ Petition Mechanism: In particular legal jurisdictions, individuals are bestowed with the opportunity to safeguard and uphold their right to privacy by submitting a writ petition. A writ, emanating from a higher court, is an official directive compelling a lower court or a public authority to undertake specific actions or refrain from particular courses of action. Writ petitions are especially relevant when fundamental rights are violated, encompassing the right to privacy. This avenue becomes particularly pertinent in cases involving actions by governmental entities that jeopardize an individual's privacy. Instances such as government surveillance, breaches of data security, or other situations where public or state actions encroach upon privacy can be challenged effectively through writ petitions.

C. Exercising Tort Action Remedies: Tort law addresses legal wrongs or harm inflicted by one party upon another. In the context of rights of publicity and privacy, tort actions span a spectrum of claims including defamation, intrusion upon seclusion, public exposure of private information, and more. These tort claims empower individuals to pursue recompense for the harm they've suffered due to violations of their privacy or publicity rights. For instance, in cases where false information is propagated, resulting in damage to an individual's reputation, they have the option to initiate a defamation lawsuit. Similarly, if someone intrudes into another's personal space without consent, as exemplified by intrusive paparazzi coverage of celebrities, the victimized party can take legal steps to recuperate damages inflicted by such invasions.

D. Defamation Lawsuit: Safeguarding Reputation: Individuals who hold rights have the legal recourse to institute a defamation lawsuit against any party that deliberately disseminates false statements about them, with the knowledge or reasonable belief that such statements would tarnish their reputation. This course of legal action includes the flexibility of pursuing either a civil or a criminal case, given that defamation is acknowledged both as a violation of civil law and a criminal offense within the legal framework of India.

E. Passing Off: Defending Against Misleading Associations: It is within the realm of possibility to initiate a passing-off claim against a third party that seeks to forge an untrue connection between their product and a celebrity. This can occur through unauthorized representations that misleadingly suggest the celebrity's endorsement of the product.

CONCLUSION

This in-depth analysis delves into the intricate terrain of the Right to Publicity, spanning a diverse array of legal sources within India and extending its purview globally to the USA and the UK. In the absence of a dedicated statute directly addressing this right in India, the exploration requires a nuanced investigation of its derivation from a mosaic of legal frameworks, encompassing Constitutional Law, Competition Law, the Emblems and Names Act, the Trade Marks Act, the Copyright Act, and the Advertising Standards Council of India. The foundational principles of Constitutional Law, particularly enshrined in Articles 19 and 21, lay the groundwork for safeguarding an individual's public image and personal information against government intrusion, while presenting unique challenges when applied to private entities.

The study meticulously dissects the nuances of legal instruments such as the Competition Act, which aims to curb deceptive utilization of an individual's likeness in commercial realms, and the Emblems Act, designed to prevent unauthorized use of specific national dignitaries' names. Additionally, the Trade Marks Act establishes stringent requirements for trademarks linked to living individuals or those deceased for less than two decades, serving as a robust shield against undue exploitation of celebrities' identities. Sections 38 and 57 of the Copyright Act extend protection to performers' rights and authors' moral rights, encompassing creative expressions, photographs, and likenesses. In parallel, the Advertising Standards Council of India introduces guidelines to ensure ethical advertising practices.

Venturing into international terrain, the paper meticulously examines the status of the Right of Publicity in the USA and the UK. In the United States, the Lanham Act empowers celebrities to challenge deceptive practices and guard their affiliations with products, covering claims of false endorsement and infringement of unregistered marks. This Act offers a potent platform for protecting publicity rights. Conversely, the UK presents challenges due to the absence of specific publicity rights in statutes like the Trade Marks Act and the CDPA, yet it emphasizes intricate legal avenues for safeguarding.

Addressing the applicability of the right to foreign nationals within the Indian jurisdiction, the study outlines their limitations in invoking constitutional entitlements to privacy and explores alternative remedies within intellectual property laws. The paper reveals the multi-layered strategies foreign citizens must employ to secure their publicity rights and delves into the intriguing concept of posthumous publicity rights, where certain jurisdictions extend protection beyond death. The US provides avenues for maintaining these rights, while the UK's approach is tempered by its emphasis on registered trademarks.

The paper delves comprehensively into remedies available in cases of publicity right infringements, encompassing civil actions, writ petitions, tort claims, defamation lawsuits, and more. The effectiveness of these remedies is context-dependent, but they collectively underscore the legal arsenal individuals possess to shield their public image and identity from unauthorized exploitation. In essence, this research paper meticulously navigates intricate legal landscapes, systematically tracing the evolving concept of the Right to Publicity. Spanning its origins in various Indian statutes to its interpretation in the USA and the UK, the study unveils the multi-dimensional facets of this crucial right. It illuminates the nuanced remedies that

contribute to a comprehensive understanding of its role within the contemporary legal framework.