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DUA ASSOCIATES

IN BRIEF - INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW

PERSONALITY RIGHTS, USE AND DEEPFAKES

I. PERSONALITY RIGHTS

Personality Rights have no statutory basis under Indian Law but have evolved through judicial pronouncements.. Personality Rights can be traced through a series of court decisions under the realm of Copyrights and Trademarks, and have also been woven into the constitutional fabric under the 'Right to Privacy' emanating from Article 21 of the Constitution of India.

The rights of celebrities that emerge from their personality, name, signatures, voice, popularity or likeness are known as ‘Personality Rights’, Celebrity Rights or 'Publicity Rights'.

Personality Rights bestow upon the Celebrities, a right to control the commercial exploitation of their images, persona, name, voice and other features associated with their personalities.

Consequently, any unauthorized and unethical breach of these rights would undoubtedly infringe upon the Personality Rights of Celebrities.

In the famous case of *Titan Industries Ltd. vs. M/s. Rajkumar Jewellers*, the Delhi High Court has stated that "*.....a celebrity is defined as a famous or a well-known person a person who 'many' people talk about or know about*." The Delhi High Court has further highlighted the elements comprising the liability for infringement of the right of publicity i.e., validity (the Celebrity owns an enforceable right in the identity or persona of a human being) and identifiability along with methods to identify i.e. the Celebrity should be identifiable.

The Bombay High Court, in the case of *Sonu Nigam vs. Amrik Singh (Mika Singh)*, had directed the Defendant to pay damages to the tune of Rs. 10 lakhs to the Plaintiff. The parties, in the case, are very popular playback singers for Indian movies. The Defendant used the photographs of the Plaintiff on posters for promotional activities, which posters contained a larger picture of the Defendant and smaller pictures of Sonu Nigam and some other artists. The Plaintiff argued that the posters depict a comparison of fame and popularity between Mika Singh and others in the posters including the Plaintiff to the detriment of the Plaintiff. Agreeing with the Plaintiff’s contention, Mika Singh was restrained by the Court, from further using those posters, in addition to being asked to pay damages.

Most recently, the Delhi High Court has taken contrary positions on the subject of Publicity Rights: In the case of *Amitabh Bachchan vs. Rajat Nagi,* the Delhi High Court has granted an “ad-interim ex-parte” injunction in favour of Mr. Amitabh Bachchan protecting the misuse of the Plaintiff's personality rights against the named defendants, effectively restraining them from infringing his publicity or personality rights by misusing his name, without his consent.

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In the case, however, of *Digital Collectibles Pte. Ltd. & Ors. vs. Galactus Funware Technology Pvt. Ltd. & Anr.*, the Delhi High Court has taken a contrary position and has held that "*Use of celebrity names, images for the purpose of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses would be permissible as facets of right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India and would not fall foul to the tort of infringement of the right of privacy.*"

This judgement is important as it, in a manner dilutes the absolute rights of Celebrities especially in the context of digital media.

The Delhi High Court stated that the player names and performance data used by Striker (a fantasy cricket application), which includes information about a player's real-world match performance, are publicly accessible in the public domain and can be used by anybody. This includes the players themselves. As a result, the player cannot grant a third party an exclusive license to use such publicly available information.

This dilution is a very important development in law especially in the age of digital media.

II. POSTHUMOUS PERSONALITY RIGHTS

It is important to note that personality rights cannot be protected posthumously.

Posthumous Personality Rights cannot be delved into without considering the judgement in the case of *Krishna Kishore Singh vs. Sarla A. Saraoge.* The Plaintiff is the father of the renowned actor Sushant Singh Rajput, who passed away under suspicious circumstances. The Plaintiff had issued a statement that no book or movie should be made on his son, without obtaining the consent of the family. The Defendant had made a film to pay tribute to the late actor. The Plaintiff, while seeking to protect the rights of his son, had sought to distinguish 'celebrity rights' from the 'right to privacy' and that the right to privacy would remain after the death of the celebrity.

Celebrity rights, as noted earlier, are a bundle of rights, including publicity, personality, and privacy and in some cases, intellectual property rights, and in the opinion of the Court, any assertion of such rights (except those claimed through Intellectual Property Rights for which special statutory protection is provided), cannot be appreciated or divorced from the concept of the right to privacy.

In the absence of a statutory acknowledgement of such rights, the fountainhead of such rights would be the right to privacy emanating from Article 21 of the Constitution of India. The Plaintiff claimed that the deceased celebrity has a posthumous privacy right. Since it is inextricably interlinked to and birthed from the right of privacy, the Court *prima facie* found merit in the submission of the Defendants that posthumous privacy rights are not permissible.

The right of privacy was recognized by the Hon'ble Supreme Court of India in the case of *K. P. Puttaswamy vs. Union of India*, which held that the same cannot extend posthumously.

In the recent judgment of *Deepa Jayakumar vs. AL Vijay* , the Madras High Court framed a specific question regarding posthumous enforceability of privacy rights, and after considering the law on the subject, held that the right of privacy of an individual cannot be inherited after his death by his legal heirs and that personality rights, reputation or privacy enjoyed by a person during his lifetime, come to an end after his lifetime.

III. DEEPFAKES

Another evolving area in law related to the issue of personality rights has come about on account of Artificial Intelligence.

Deepfakes are images created using a form of artificial intelligence based on technology that uses generative algorithms to create synthetic media such as audio-visual content. A few examples of deepfakes are provided below:

The question of the legality of Deepfakes is still open though they are widely used nowadays and several offences can be caused using deepfakes such as identity threat, virtual forgery, misinformation against governments, hate speech, online defamation, violation of privacy/ obscenity and pornography.

The answer to this question cannot be found in the current Indian Law, which does not provide any redress for the harm caused by deepfakes. While, however, there is no direct legislation Section 66 (computer-related offences) and Section 66C (punishment for identity theft) of the Information Technology Act, 2000 (as amended) can be drawn and used in relation to the creation of Deepfakes as well as Sections 420 (cheating and dishonestly inducing delivery of property, in this case Intellectual Property) and 468 (forgery) of the India Penal Code, 1860. The law on this aspect, it must be noted is still evolving.

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