

ANIL KAPOOR v. SIMPLY LIFE INDIA AND ORS.- Vanshika Gupta¹**ABSTRACT**

Anil Kapoor, an Indian actor, has filed a lawsuit seeking protection of his name, image, likeness, persona, and other personality attributes from being misused over the internet. Mr. Kapoor alleges that the defendants are using artificial intelligence to create derogatory images and videos of him. He seeks protection of his right to publicity. The Delhi High Court established prerequisites for determining the plaintiff's burden of proof in cases of right of publicity infringement in Titan Industries Ltd. v. Ramkumar Jewellers. These prerequisites include that the plaintiff possesses a legitimate and enforceable entitlement to their own identity or persona, the individual is easily distinguished in public, and identifying characteristics of the plaintiff alone may suggest their identifiability. The presence of direct or circumstantial evidence indicates the defendant's intention to exploit the plaintiff's identity, leading to the presumption of identifiability. In the case of Shivaji Rao Gaikwad v. Varsha Productions, the Madras High Court elaborated further on this right. The court stated that if a person uses the name of a celebrity without the celebrity's authorization, the celebrity has the right to an injunction, provided that the celebrity could readily be recognized by the use of their name by other people. Hence, the Court recognising the right to publicity of celebrities ruled in the favour of the plaintiff and held that this name, likeness, image, persona, and other elements must be protected. In conclusion, the note also addresses the issue of statutory ambiguity surrounding this right.

FACTS - Mr. Anil Kapoor, the plaintiff, has filed a lawsuit seeking protection of his name, image, likeness, persona, voice, and other personality attributes from being misused over the internet. The plaintiff alleges that all the defendants are misusing various features of his persona, including using

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artificial intelligence to create derogatory images and videos not only of him but also of other actresses. The plaintiff seeks protection of his personality rights, publicity rights, and all elements associated with his persona.

RATIO -The court emphasised that a person's reputation and fame can sometimes harm their rights, such as their right to make a living, to privacy, and to live with dignity within society. Relying on the landmark judgment of *R. Rajagopal v. State of T.N., (1994) 6 SCC 632* which ruled against any misuse or commercial exploitation of a celebrity's name, voice, persona, or likeness. *“The right to privacy has two aspects which are but two faces of the same coin — (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising — or non-advertising — purposes or for that matter, his life story is written — whether laudatory or otherwise — and published without his consent. The second aspect of this right is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”.*

The court observed that the availability of technological tools has made it possible for anyone, including illegal and unauthorized users, to use, produce, or imitate the persona of any celebrity, using tools such as Artificial Intelligence. However, celebrities have the right to privacy and do not want their image, voice, or likeness to be portrayed negatively or inappropriately, such as on porn websites. Therefore, it cannot ignore the misuse of a personality's name and other elements of their persona. The court has held that the plaintiff's name, likeness, image, persona, and other elements must be protected, not only for the plaintiff's sake but also for the sake of their family and friends who would not want to see their image, name, and other elements being misused in a negative way.

ANALYSIS - In *Ali v. Playgirl*² it was observed *“A distinctive aspect of the common law right of publicity is that it recognizes the commercial value of the picture or representation of a prominent person or performer, and protects his proprietary interest in the profitability of his public reputation or persona”*. The Copyrights Act, 1957 defines a "performer" under Section 2(qq). Hence, Sections 38

²Ali v. Playgirl 447 F Supp 723

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and 57 of the Copyrights Act, 1957 which deal with performers' rights and authors' special rights can cover publicity rights under its umbrella. Elements of personality rights are also evident in Section 14 of the Trade Marks Act, which prohibits an applicant from registering a trademark that falsely implies a connection with a living individual. The Registrar has the authority to reject such applications unless the applicant can provide the necessary consent.

Mr. Arun Jaitley, a prominent politician and lawyer, filed a lawsuit against Network Solutions Private in the Delhi High Court. The suit aimed to restrain the defendants from unlawfully exploiting and transferring the domain name 'www.arunjaitley.com'. The Court concluded that the prestige or recognition of an individual or company holds equal significance in the digital realm as it does in the physical world. Therefore, it is essential to protect the names of companies or individuals that are distinctive in the market to avoid being acquired by unrelated individuals. In the case of **D.M. Entertainment (P) Ltd. v. Baby Gift House**³, the Delhi High Court emphasised that the right of publicity directly affects the essence of a person's identity. This case pertained to the improper use of Daler Mehndi's trademark and his right to publicity. As a result, the Court interpreted the violation of the right of publicity as a form of passing off.

The Delhi High Court established the following prerequisites for determining the plaintiff's burden of proof in cases of right of publicity infringement in **Titan Industries Ltd. v. Ramkumar Jewellers**⁴:

1. The plaintiff possesses a legitimate and enforceable entitlement to their own identity or persona.
2. The individual is easily distinguished in public. In this case, the identifying characteristics of the plaintiffs alone may be enough to strongly suggest their identifiability.
3. The presence of direct or circumstantial evidence indicates the defendant's intention to exploit the plaintiff's identity, leading to the presumption of identifiability.

In the case of **Shivaji Rao Gaikwad v. Varsha Productions**⁵, the Madras High Court elaborated further on this right. The court stated that if a person uses the name of a celebrity without the

³D.M. Entertainment (P) Ltd. v. Baby Gift House#, CS (OS) No. 893 of 2002

⁴Titan Industries Ltd. v. Ramkumar Jewellers#, 2012 SCC OnLine Del 2382

⁵Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC OnLine Mad 158

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celebrity's authorization the celebrity has the right to an injunction, provided that the celebrity could readily be recognised by the use of his name by other people.

In the USA as far back as 1953, in **Haelan Laboratories Inc. v. Topps Chewing Gum Inc.**⁶, the plaintiff obtained an exclusive licence with basketball players to use their faces on their cards to increase their sales. Defendants used the same celebrity faces with the intention to deceive the public. The Court ultimately decided in favour of the Plaintiff under a newly established common law right it called the "right of publicity" and noted that it had evolved into its own separate right and legal basis for action

CONCLUSION -Since the celebrity's efforts are the primary source of the commercial value of their identity, it is only fair to give that value to the celebrity. This relatively new area overlaps with constitutional, tort, and intellectual property laws and requires further clarification. None of the current legislation explicitly defines publicity rights, for instance, people who do not work in public appearances, as well as authors and lyricists who do not make acoustic or visual performances, are not considered to be performers according to the definition of performer in the Copyright Act. Consequently, the artists, sculptors, authors, programmers, politicians, and other individuals who, despite their fame, work in solitary confinement or enclosed spaces have been conspicuously excluded from the discussion. Additionally, not every performer can be considered a celebrity; after all, fame is a prerequisite for being a celebrity, and not everyone who puts on a live performance might be famous. It is important to review the existing legislation or create new guidelines to protect an individual's celebrity rights, including their persona, name, and images, which should not be used without their consent. With the emergence of Artificial Intelligence and the growing popularity of Metaverse, where jurisdiction remains a fundamental issue, many instances of infringement of these rights are likely to occur if left unregulated. Therefore, it is essential to take necessary steps to prevent such occurrences.

With the emergence of Artificial Intelligence and to make realistic copies of people many instances of infringement of these rights are likely to occur if left unregulated. The emergence of deepfakes is a relatively new phenomenon, and it's becoming increasingly problematic and becoming a growing concern for policymakers, celebrities and entertainers. There have been viral videos of people,

⁶Haelan Laboratories Inc. v. Topps Chewing Gum Inc. 202 F 2d 866 at 870

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including PM Modi, singing popular Punjabi songs, and many celebrities' images being used in offensive ways. Surprisingly, even LinkedIn profiles are now being faked, with people creating false employment experiences to mislead others. Deepfakes can either transform existing content by replacing one person with another or create entirely new content where someone is represented doing or saying something they never did. The greatest danger posed by deepfakes is their ability to spread false information that appears to come from trusted sources. Currently, the proposed guidelines titled '*Prevention and Regulation of Dark Patterns 2023*' issued under *Section 18 of the Consumer Protection Act, 2019* by the Ministry of Consumer Affairs, are in the pipeline which seeks to protect consumers against what is termed as "*dark patterns*". Such dark patterns include practices on the internet that are deceptive in nature in order to somehow mislead and trick the consumers, and subvert or impair their decision-making skills, which is violative of consumer rights. These regulations attempt to address the issue at hand, but they do not provide the much-needed stringent penalties and clarity. The laws in India are still at a nascent stage and are distinctly working towards addressing this new issue but the road ahead is long.

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