

Case Comment

The Role of Personality Rights in Indian Law: Lessons from Jackie Shroff's Legal Battle

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Abstract: Current research examines the landmark judgment of Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors. indicating the importance of developing personality rights jurisprudence in India, especially in digital content. Personality rights include both publicity rights and privacy rights. Right to control the commercial use of one's identity, i.e. publicity rights, is important for protecting personalities from unauthorized exploitation of their persona (name, image, voice, etc.). The case highlights the unauthorized use of Shroff's image for commercial gain without his consent, raising significant questions about the scope and enforcement of personality rights in India. The Court's decision to protect actor Jackie Shroff's identity from unauthorized commercial exploitation marks a pivotal moment in legal precedents safeguarding the identity of personality, especially for celebrities. This case underscores the evolving landscape of legal protections in the digital age, emphasizing the importance of recognizing and upholding personality rights amidst increasing unauthorized commercial use. As a result, it stands as a landmark decision, guiding the future of personality rights and reinforcing the legal safeguards necessary to personality identity in an increasingly digital world. By dissecting this case, the paper aims to explore the implications for the ongoing development of personality rights in India and the growing importance of safeguarding individual identity in the digital era. Also, the paper critically assesses the current legal framework, including statutory provisions and judicial precedents. It has been compared with international standards to detect loopholes and propose improvements, in the evolving regime of personality rights in the digital era.

Keywords: Jackie Shroff, digital media, commercial use, unauthorized exploitation, AI, personal identity, Indian Law

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1. Introduction

In India, the term personality rights is a bit ambiguous and differs from what publicity rights means. From a theoretical point of view, personality rights are always said to encompass privacy as well as publicity rights. This is because privacy rights guard all the non-commercial aspects of an individual's personality while publicity rights guard all the commercial aspects. Even with such distinction, Indian courts have used these terms interchangeably. The courts used the "personality rights and right to publicity," which confuses what constitutes personality rights (Augustian 2023).

Nowadays, protection of publicity rights, encompassing an individual's right to control the commercial use of their name, image, voice, likeness, and other unique personal attributes is quite important. Publicity rights help protect personality images to enable an individual or a personality, especially celebrities, to derive income from the persona and to stop anyone from earning income from exploiting their personality traits. Publicity rights provide individual rights within the commercial use of their personae. This protection is important in the current world because through the new technology, personality attributes such as name and image likeness can be used without permission. Social media, artificial intelligence, and e-commerce have further magnified the capability to instrumentalize celebrity personas. This indicates that the unauthorized use or depiction of a personality as an endorsement, in an advertisement and or for any exploitative commercial venture will cost the personality financially as well as socially. The Jackie Shroff landmark case relating to publicity rights in India has emphasized the requirement for better legislation to prevent individual rights from being exploited in the commercial sense, especially in the digital platform. In this case problems of celebrities such as the challenges of guarding one's image in today's society were depicted. The case highlighted the difficulties celebrities face in protecting their images in the new world of the web. The



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Jackie Shroff case is not very different from other high-profile cases involving Bollywood celebrities like Anil Kapoor¹ and Amitabh Bachchan.²

2. Origin And Evolution of Personality Rights in India

The concept of personality rights in India has its roots in common law principles, particularly those relating to the right to privacy and the right to be free from defamation. Early legal frameworks did not explicitly recognize personality rights, but principles of tort law provided some protection against the unauthorized use of a person's likeness or identity. Indian judiciary began recognizing the importance of personality rights more explicitly through various landmark cases. One of the significant early cases was *R. Rajagopal v. State of Tamil Nadu*³ (1994), where the Supreme Court of India recognized the right to privacy as an implicit right under Article 21 of the Constitution of India. This case laid the groundwork for future recognition of privacy aspects of personality rights⁴. Publicity rights, as a distinct subset of personality rights, gained prominence in India more recently. The judiciary's recognition of these rights has been influenced by the increasing commercialization of celebrity personas and the misuse of their likenesses in advertising and media. The landmark cases that led to the evolution of publicity rights are the *ICC Development (International) Limited v Arvee Enterprises*⁵ and *DM Entertainment Pvt. Ltd. v. Baby Gift House and Ors.*⁶ in these cases, the Court recognized the right of a celebrity to control the commercial use of their persona. This case underscored the importance of protecting celebrities from unauthorized exploitation of their identity for commercial gain.

India's legal system currently lacks a dedicated law to addressing personality rights, but courts are increasingly recognizing and protecting the rights of personalities through different laws. Currently, personality rights in India are safeguarded by a combination of constitutional provisions, statutory laws, and various judicial pronouncements. Article 21 of the Constitution protects the right to privacy, a fundamental aspect of personality rights⁷, while Article 19(1)(a) ensures freedom of speech, balanced against these rights. The Copyright Act of 1957, states that if an individual's name or image is used in a commercial context, and that use can be considered a "work" under copyright law (e.g., a photograph, a video, a literary work), then copyright protection may apply. Under Section 57, grants moral rights to authors, and the Trade Marks Act of 1999, under Section 14, protects personal names in trademarks, requiring consent for their use. These laws collectively aim to protect individuals' personal and commercial interests, although gaps remain compared to international standards as these laws do not comprehensively address the diverse aspects of personality rights.

In judicial precedents such as *ICC Development (International) Limited v Arvee Enterprises*⁸ and *DM Entertainment Pvt. Ltd. v. Infant Gift House*⁹, and *Titan Industries v. Rajkumar Jewellers*¹⁰ cases, courts have recognized that personalities have a "proprietary interest" in their persona as it holds a commercial value that helps to control the unauthorized use of their image, name, or likeness for commercial gain can be considered an infringement of their rights, like violating a property right. While Indian courts have acknowledged the existence of personality rights in specific cases, they haven't established a definitive legal definition of what constitutes these rights or who possesses them. A critical examination of various cases in India suggests that personality rights are predominantly

¹ *Anil Kapoor vs Simply Life India & Ors* CS(COMM) 652/2023 and I.A. 18237/2023-18243/2023

² *Amitabh Bachchan vs Rajat Nagi & Ors* .CS(COMM) 819/2022-Delhi High Court

³ *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632

⁴ *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632 -“9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognized. This right 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 as explained hereinafter [...] 26. We may now summarise the broad principles flowing from the above discussion: (1) The right to privacy 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”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing, and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. (2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offense should not further be subjected to the indignity of her name and the incident being publicized in press/media. (3).....”

⁵ *ICC Development (International) Ltd. vs Arvee Enterprises And Anr.* 2003VIIAD(DELHI)405, 2003(26) PTC245(DEL), 2004(1) RAJ10.

⁶ *DM Entertainment Pvt. Ltd. v. Baby Gift House and Ors* CS(OS) 893/2002.

⁷ Personality Rights as a Fundamental Right: In the case of *K.S.Puttaswamy(Retd) vs. Union Of India, Writ Petition (CIVIL) NO. 494 OF 2012* -the right to privacy was recognized as a Fundamental Fight under Article 21 of the Constitution.

⁸ *ICC Development (International) Ltd. vs Arvee Enterprises and Anr.* 2003VIIAD(DELHI)405, 2003 (26) PTC245(DEL), 2004(1) RAJ10.

⁹ *DM Entertainment Pvt. Ltd. v. Baby Gift House and Ors.* CS(OS) 893/2002.

¹⁰ *Titan Industries v. Rajkumar Jewellers* 2012 (50) PTC 486 (Del).

considered an exclusive right of celebrities.¹¹ Whereas in other countries like the US and Europe, personality right is as an exclusive right of every individual. Theoretically speaking, the core principle of personality rights is that everyone has a right to his or her identity, reputation, and dignity, regardless of fame or status. Hence, personality rights are designed to protect individuals from unauthorized use of their name, image, or likeness that could cause them harm, embarrassment, or financial loss. Celebrities may indeed have more reasons to pursue personality rights due to increased exposure and commercial value; although these rights belong to everyone. The law should protect the individual's right to their identity, reputation, and dignity, regardless of their fame. But in India, this right is considered an exclusive right of celebrities only which proves that the Indian court lacks conceptual clarity on personality rights. The courts are showing a willingness to adapt legal frameworks to protect the unique rights of individuals in the digital age, particularly those who have built a public profile and reputation. But to some extent, the digital age presents unique challenges, as the line between personal and public personas can often blur. User-generated content, viral memes, and the ease of sharing and altering images and videos contribute to this complexity. By updating and refining the legal definitions and protections around personality rights, the judiciary is responding to the evolving nature of identity and reputation in the digital era.

3. The Case of Jackie Shroff

Well-known Indian actor Jackie Shroff wants to protect his name, image, looks, personality, and voice from being exploited. He alleges that he is the owner of the trademark "BHIDU" and accuses several defendants of intentionally employing his identity for unlawful business and without his consent. Shroff claimed that the various defendants exploited his persona in trade, business, commerce, and communication by exploiting his name, image, and attributes for commercial advantage to sell their merchandise, producing and putting up video content besides using Shroff's persona as AI chatbots. Shroff claims that these activities create confusion, bring disrepute to him, and produce unjustified revenues. He claims personality rights/publicity rights, copyright on photographs and films, the common rights against passing off and unfair competition, and trademark infringement to "BHIDU" and "Bhidu Ka Khopcha."

The Court recognizes Shroff as a celebrity and has his fundamental rights expedited particularly by referring to the case of *D. M. Entertainment Pvt. Ltd. v. Baby Gift House & Ors.* The decision, in this case, strengthens the argument that an unauthorized use of a celebrity's personality may result in the appropriation of undeserved opportunities for the unauthorized user. Although the Court did not specifically direct the defendant from creating YouTube videos, the Court awarded an ex-parte injunction against other individuals, thereby restraining them from various unlawful conduct. This court also issued orders for blocking the infringing URLs to the Department of Telecommunications and the Ministry of Electronics and Information Technology.

This order strengthens the multiple personality rights in India, provides a portrayal of the difficulty of protecting such rights as more and more content is created and consumed digitally, and is a great case for future judgments where celebrity personas are being used in content without their consent. More hearings and answers of defendants will follow, and such precedents will be laid as will eventually safeguard celebrity rights in a new information environment. Similarly, in Anil Kapoor's case, Advocate Pravin Anand, who stood for the actor, pointed out the manipulation of image and persona by using AI technology. He highlighted the exploitation of AI in creating misleading and potentially harmful content. Even the most recent case *Arijit Singh v. Codible Ventures LLP*¹² dealt with protecting artists' personality rights against the unauthorized use of their voices by artificial intelligence (AI) tools (Kaushal 2024). All these new digital technological misuses have raised significant concerns within Indian law concerning protecting personality from unauthorized exploitation of celebrity persona. It's necessary to have broader rules in dealing with the impacts of content produced as a result of artificial intelligence, for the good or the bad.

In Jackie Shroff's case, he sought an injunction to restrain any person from using his name, voice, or image on calls, through social media, an e-commerce portal, or even an AI chatbot. The Court's interim order shows that it is ready to tackle this new phenomenon, stressing in particular the requirement of consent to the use of someone's identity for commercial purposes. The protection of personality rights is complicated by such aspects as the internet, social media, and artificial intelligence. The ability to copy and edit images and voices has become simpler with technologies so hence it's easy for them to be exploited. The case shows that personas of public figures should be shielded from commercialization by using AI technologies to do so. This case raises important questions about the evolving landscape of AI, personality rights, and free expression. (Pigna 2024) As technology progresses, legal precedents such as this will be crucial in defining the boundaries of individual rights and the responsibilities of content creators and distributors. Proactive measures are needed to prevent harm caused by deep fakes and other AI-driven content (Tyagi 2022, Othman 2023, Koski 2024).

As India does not have a proper law for protecting personality rights, it may be beneficial to look to solutions from other countries, such as the US, in cases of misuse of personality attributes due to technological developments. Currently, in the US, at the federal level Section 230 of the Communications Decency Act (CDA)(Communications Decency Act (CDA)-47 U.S.C. 230)¹³ addresses liability for the right of publicity violations stemming from user-generated content (Sesek 2011, Purcell 2020). However, this law is not very effective, and also there are inconsistencies in state-specific laws for publicity rights (Vick and Jean-Paul 2011, Drinkwater 2013, Durkin 2024) even though they are using this to protect publicity rights to some extent. Furthermore, there is a movement in the US towards

¹¹ *Titan Industries Ltd. v. Ramkumar Jewellers*-2012 (50) PTC 486 (Del), defined the term "celebrity" and held that a celebrity is "a famous or a well-known person and is merely a person who "many" people talk about or know about" while also opining that "the right to control commercial use of human identity is the right to publicity."

¹² *Arijit Singh v. Codible Ventures LLP* 6-ial-23560-2024.doc 26 July, 2024 Bombay High Court

¹³ Section 230 of the Communications Decency Act (CDA)-47 U.S.C. 230 - Protection for private blocking and screening of offensive material, *Hepp v. Facebook*, No. 20-2725 (3d Cir. 2021)- The court ruled that Section 230 of the CDA does NOT shield Facebook from liability in this case. It held that Section 230(e)(2)'s exception to immunity, which applies to "any law pertaining to intellectual property," extends to state laws, including Pennsylvania's right of publicity statute. The court's decision significantly limits the scope of Section 230 immunity, potentially opening the door for more right of publicity lawsuits against internet service providers.

creating a federal law on the right of publicity, which could provide greater clarity and consistency for businesses and individuals. (Congressional Research Service 2024, International Trademark Association 1998). This would create a more consistent and predictable legal framework for protecting publicity rights in the digital age, potentially solving the issues of fragmentation and inconsistency across states. Some states such as Tennessee, have introduced the ensuring likeness voice and image security ("ELVIS") Act (Tenn. Code Ann. §47-25-1101 et seq). This Act covers new, personalized generative AI cloning models and services that enable human impersonation and protection from the misuse of AI¹⁴. The ELVIS Act stands out as one of the earliest legislative attempts to address the right of publicity concerns arising from generative AI. Also, the No Artificial Intelligence Fake Replicas and Unauthorized Duplications Act of 2024 (or "No AI FRAUD Act") was introduced in the House of Representatives¹⁵. This Act highlights that the recent advancements in artificial intelligence (AI) technology and the development of deep fake software have adversely affected individual's ability to protect their voice and likeness from misappropriation. These US laws somehow helped control the unauthorized exploitation of personality rights through AI technology.

4. Interplay Between Personality Rights and The Right to Free Speech

This case focused on controlling AI technology's unauthorized use of personality attributes. However, this case also explores the complex interplay between personality rights and the right to free speech. In this case, the Court issued injunctions against unauthorized commercial exploitation, acknowledging the need for artistic expression and refusing to take down a YouTube video that used Shroff's name in a creative context¹⁶. This nuanced approach demonstrates the Court's commitment to protect both individual rights and freedom of expression. In the recent court rulings in *Digital Collectibles Pte Ltd & Ors. vs Galactus Funware Technology Private*¹⁷ the Court recognized that using celebrity names, images, or other attributes for lampooning, satire, parodies, art, scholarship, music, or news purposes is generally permissible under Article 19(1)(a) of the Indian Constitution. However, in the Daler Mehndi case (CS(OS) 893/2002) the Court emphasized that while individuals have publicity rights, these are not absolute and must be balanced against the right to free speech. Exceptions such as caricature, lampooning, and parody were noted, highlighting their importance in a democratic society. The Court also distinguished between legitimate expressions and commercial exploitation.

To some extent, Indian Court had laid down balancing the public's right to freedom of speech and expression with the exploitation of personality rights through different case laws. Even balancing these rights often becomes complex and requires courts to weigh various factors. Publicity rights aim to protect individuals from unauthorized commercial exploitation of their identity, whereas free speech rights protect expression, including artistic and journalistic works that might incidentally use someone's identity. When looking into the US court's decision they typically use a balancing test to decide which right should prevail based on factors like the nature of the speech or use, the importance of the public interest involved, and the impact on the individual's commercial interests. This approach helps maintain a fair balance between protecting personal rights and fostering free expression in society. The common tests by the U.S. court to balance the right are the transformative use test¹⁸, Rogers's test¹⁹, the predominant use test²⁰ U.S. Supreme Court's Central Hudson Test²¹, which assesses restrictions on commercial speech, providing more protection. Like this if the Indian Court has much clarity on what is to be protected and what should be left for the public help to avoid the conflict between public rights and private rights.

5. Drawbacks of the cases

Although the Court granted a remedy for personality rights infringement, this case hasn't provided any conceptual clarity on the concept of personality rights. The main drawback is that in India, personality rights are considered exclusive rights for celebrities²². (6-ial-23560-2024.doc26 July 2024 (Bombay High Court) in para 18). A critical examination of various cases in India suggests that personality rights are predominantly considered exclusive rights of celebrities (2012 (50) PTC 486 (Del)). Other countries, like the US and Europe, consider personality rights exclusive to every individual. Theoretically speaking, the core principle of personality rights is that everyone has a right to their identity, reputation, and dignity, regardless of fame or status (Hegel 1971). Hence, personality rights are designed to protect individuals from unauthorized use of their name, image, or likeness that could cause them harm, embarrassment, or financial loss. Celebrities may indeed have more reasons to pursue personality rights claims due to increased exposure and commercial value; however, it's important to understand that these rights belong to everyone. The law should protect the individual's right to identity, reputation, and dignity, regardless of fame. However, in India, this right is considered an exclusive right of celebrities, which proves that the Indian Court lacks conceptual clarity on personality rights. Even

¹⁴ *Main Sequence, Ltd. v. Dudesy, LLC*. No. 24-00711 (C.D. Cal. Filed Jan. 25, 2024); *Young v. NeoContext Inc.*, No. 23-02496 (C.D. Cal. Filed Apr. 3, 2023).

¹⁵ Available at <https://www.congress.gov/bill/118th-congress/house-bill/6943/text?s=1&r=9>

¹⁶ *Jaikishan Kakubhai Saraf Alias Jackie Shroff V The Peppy Store & Ors.*, High Court of Delhi, CS(COMM) 389/2024, para. 19-22. The Court reviewed the video "JACKIE SHROFF IS SAVAGE (*) JACKIE SHROFF THUG LIFE!" and determined that 'Thug Life' signifies resilience in hip-hop culture, portraying Shroff as tough and bold. The video's popularity underscores its humorous nature. The Court aims to balance creators' artistic and economic interests with the Plaintiff's rights.

¹⁷ *Digital Collectibles Pte Ltd and Ors. vs Galactus Funware Technology Private* 2023: DHC:2796 on 26 April, 2023 -para 45.

¹⁸ *Comedy III Prods., Inc. v. Gary Saderup, Inc.*, 21 P.3d 797 (Cal. 2001).

¹⁹ *Rogers v. Grimaldi*, 875 F.2d 994, 1004 (2d Cir. 1989).

²⁰ *Doe v. TCI Cablevision*, 110 S.W.3d 363 (Mo. 2003).

²¹ *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

though there are such clarity issues, the courts are showing a willingness to adapt legal frameworks to protect the unique rights of individuals in the digital age, particularly those who have built a public profile and reputation. But to some extent, the digital age presents unique challenges, as the line between personal and public personas can often blur. User-generated content, viral memes, and the ease of sharing and altering images and videos contribute to this complexity. The judiciary is responding to the evolving nature of identity and reputation in the digital era by updating and refining the legal definitions and protections around personality rights.

The other drawback, as mentioned above, is the lack of clarity on balancing the public's right to freedom of speech and expression and protecting personality rights. In the majority of cases, it is evident that there is a conflicting situation happening although the Court tries to lay down some limitations and exceptions, such as the use of personality in parody and satire may be considered protected forms of expression even if they involve aspects of a person's persona. However, a clear-cut clarification is not provided by Indian courts.

6. Conclusions

The Jackie Shroff case represents a new phase in personality rights legislation in India. The decision has created a clear reference point to defend celebrities against unlawful commodification online. It also considers freedom of speech as a very core aspect of the society. Besides, Jackie Shroff's case together with other legal cases involving Indian celebrities refers to the need to have strong legal measures that would guarantee an individual the right to privacy and thus protect him/her against exploitation of his/her persona for commercial purposes. When technology advances the need to be accorded protection for such rights also emerges as shown in the following development. This makes it imperative that the laws that protect personality rights are properly and sufficiently developed. Also, there should be checks on the other; the public interest in freedom of speech, and freedom of the press. As a legal crossroad of personality rights and First Amendment rights, the subject is significant in today's digital environment with its numerous opportunities for unauthorized use. While there has been a positive development in court decisions acknowledging and protecting these rights, the absence of satisfactory legislation contributes to the said gap, whereby celebrities can be commercially exploited. Therefore, there is a need for a strict legal regime that can prevent these interventions to protect one's personality in this developing technological era. The Jackie Shroff case is a good example of how this is taking place. It opens up the possibility of stronger legal protections for individual identity in the new age of online connectivity. The paper urges for a sui generis law to protect personality rights to bolster the legal safeguard of personalities. In addition, the paper notes that despite the protection of personality rights, there is a need to reconcile individual rights with commercial interests not to allow personality rights to limit creative and commercial activities.

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