

# JUDICIAL CONTRIBUTION TOWARDS STRENGTHENING PERSONALITY RIGHTS VIS-A-VIS AMITABH BACHCHAN VS RAJAT NAGI AND OTHERS, 2022

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## Abstract

*People in India are heavily influenced by celebrity-endorsed products. So it is not surprising that their consumption in regular households occurs, whether the product is an affordable daily-use item like an energy drink promoted by Indian cricketer Virat Kohli or an expensive one like gold or diamonds. In a country like India people worship celebrities like actors, cricket players, or even politicians as “larger than life” figures. A person’s right to their personality and image is their ability to manage how their persona in the form of their voice, signature, likeness, appearance, silhouette, feature, face, expression, gesture, mannerism, and distinctive character etc is used and commercialised.*

*Personality rights are the rights of a person related to his or her personality which can be protected under the right to privacy or as property of a person. An individual’s personality is a means by which one individual recognizes other and identifies his place in the society. These rights are important to celebrities as their names, photographs or even voices can easily be misused in various advertisements by different companies to boost their sales. A large list of unique personal attributes contributes to the making of a celebrity. All of these attributes need to be protected, such as name, nickname, stage name, picture, likeness, image and any identifiable personal property, such as a distinctive race car. This paper is an attempt to study the judicial contribution towards the protection and strengthening of personality rights and at the same time what new challenges may occur in protecting them.*

**Keywords:** Amitabh Bachhan, Celebrity, Personality, Rights.

## I. Introduction

People in India are heavily influenced by celebrity-endorsed products.<sup>1</sup> So it is not surprising that their consumption in regular households occurs, whether the product is an affordable daily-use item like an energy drink promoted by Indian cricketer Virat Kohli or an expensive one like gold or diamonds.<sup>2</sup> In a country like India people worship celebrities like actors, cricket players, or even politicians as “larger than life” figures.<sup>3</sup> A person’s right to their personality and image is their ability to manage how their persona in the form of their voice, signature, likeness, appearance, silhouette, feature, face, expression, gesture, mannerism, and distinctive character etc is used and commercialised.<sup>4</sup> Personality rights refer to a right of a person related to his or her personality which can be protected under the right to privacy or as property of a person.<sup>5</sup> An individual’s personality is a means by which one individual

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<sup>1</sup> What are personality rights <https://www.dnaindia.com/explainer/report-explained-what-are-personality-rights-and-why-amitabh-bachchan-filed-plea-in-delhi-hc-over-them-3005470>

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

recognizes other and identifies his place in the society.<sup>6</sup> These rights are pertinent because the various attributes of their personality like their names, photographs, voices etc can be misused for financial gains. There can be unique personal attributes such as name, nickname, stage name, picture, likeness, image that contribute to the making of a celebrity. Such attributes need to be protected. Personality rights consist of two types of rights; First: The right of publicity, or the right to keep one's image and likeness from being commercially exploited without permission or contractual compensation, which is similar (but not identical) to the use of a trademark.<sup>7</sup> Second: The right to privacy or the right to not have one's personality represented publicly without permission. However, under common law jurisdictions, publicity rights fall into the realm of the 'tort of passing off.'<sup>8</sup> Such misrepresentation damages the goodwill of a person or business, resulting in financial or reputational damage.<sup>9</sup>

### **Celebrity**

A celebrity can be defined as "a person who, by his accomplishments, fame or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a public personage."<sup>10</sup> He is, in other words, a celebrity." The roots of the word celebrity come from the Latin word "celebritatem" implying "the condition of being famous."<sup>11</sup> The idea of being a celebrity requires an attribute of being famous and every person performing live may not be famous.

The recent personality right dispute that has arisen is of the megastar Amitabh Bachhan whose images and voices are being used to endorse the products without the consent of the actor. The problem is not limited to one megastar only. Another recent example is that of Tamil superstar Rajinikanth. His advocate S. Elambharathi has issued a public notice warning of civil and criminal action against those who infringe the personality rights of his client through unauthorised use of the actor's name, image, voice or any other distinctive elements uniquely associated with him.<sup>12</sup> The notice stated that "Shivaji Rao Gaekwad, alias Rajinikanth, was one of the most celebrated, acclaimed and successful actors in Indian cinema, particularly in south Indian cinema. He had a humongous reputation, having acted in many films across different languages for

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<sup>6</sup> Anurag Pareek and Arka Majumdar, *Protection of Celebrity Rights- The Problems and the Solutions*, 11 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 415 (2006).

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Prakash Sharma and Devesh Tripathi, *Celebrity Agony: Establishing Publicity Rights Under The Existing IPR Framework*, I.L.I LAW REVIEW Summer Issue (2019).

<sup>11</sup> Ibid

<sup>12</sup> <https://www.thehindu.com/news/national/tamil-nadu/actor-rajinikanths-advocate-issues-public-notice-against-infringement-of-his-personality-rights/article66444370.ece>

the last few decades. His charisma and nature as an actor and a human being has earned him the title ‘Superstar’ called upon by millions of his fans worldwide. The sheer proportion of his fan base and his respect across the film industry is unmatched and indisputable. Any damage to his reputation or personal would entail a great loss to our client.”<sup>13</sup> The use of celebrity’s image etc cause huge losses to them. In addition to this the public is also misled which further create new issues and challenges to cope up. This paper is an attempt to analyse the legal and judicial perspectives and to offer suggestions to overcome the limitations or at least mitigate the problems.

### **I. Legal Materials and Methods**

The study is mainly doctrinal and the data has been collected from judicial decisions, websites and journals. Focus of research is primarily observational and descriptive.

### **II. Legislative Perspective on Personality Rights in India**

In India there is no comprehensive statutory framework on personality rights. It is only The Emblems and Names (prevention of improper use) Act, 1950, which to a limited extent, protects the unauthorized use of few dignitaries’ names by prohibiting the use of names given in its schedule.<sup>14</sup> Protection of personality rights is one of the facets of Article 21 under the Constitution of India. In addition to it, under the Copyright Act, 1957 moral rights are only granted to authors and performers, including actors, singers, musicians, and dancers.<sup>15</sup> Section 38 of the Act recognizes performers’ rights and this can be effectively used to prevent the unauthorized marketing of one’s performance. The provisions of the Act mandate that the Authors or the Performers have the right to be given credit or claim authorship of their work and also have a right to restrain others from causing any kind of damage to their work. Section 57 of the Act which recognizes the moral right of the author, can also be used to protect the reputation of the author. The Indian Trademarks Act, 1999 also protects personal rights<sup>16</sup> restricting the use of personal names and representations.

### **III. Judicial Contribution towards protection of Personality Rights**

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<sup>13</sup> Ibid

<sup>14</sup> Pareek, *supra* note 6.

<sup>15</sup> Copyright Act, 1957 Section 38 B.

<sup>16</sup> The Indian Trademarks Act, 1999 Section -14 provides that where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the registrar with such consent.

The case of **Shivaji Rao Gaikwad v Varsha Productions**<sup>17</sup> was brought by renowned Indian actor Mr Rajinikanth. The plaintiff sought grant of interim injunction restraining the defendant from using the plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infiltration of the plaintiff's personality rights by such unauthorised use, pending disposal of the suit. The court observed that although "Personality Rights" is not defined in any Indian statute, Indian courts have recognised it in a number of judgments. Since a prima facie case for granting interim injunction was made out hence relief was granted to the plaintiff. The Court further observed that personality rights vest on those persons, who have attained the prestige of a celebrity and no proof of falsity, confusing or deception is required when the celebrity is identifiable. Hence, the Defendant was restrained from using the title, '*Main Hoon Rajinikanth*'.

In **ICC Development (International) Ltd., v Arvee Enterprises and Another**<sup>18</sup> the plaintiff was organizer of Cricket World Cup 2003 and had filed a suit for injunction against the defendant who had created and aired an advertisement with the tagline- "buy a Philips audio system and win a ticket to World Cup". It was contended that ICC has their persona or identity of their own and has registered their trademark and mascot in several countries. The Delhi Court did not agree that ICC is a celebrity and thus it has not created any persona of their own. In case it would have been a celebrity there must have been infringement or passing off of celebrity rights. It was held that the right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organiser (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised. The right of Publicity vests in an individual and he alone is entitled to profit from it. For example if any entity, was to use Kapil Dev or Sachin Tendulkar's name/persona/indicia in connection with the 'World Cup' without their authorization, they would have a valid and enforceable cause of action.

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<sup>17</sup> Shivaji Rao Gaikwad v Varsha Productions Civil Suit No.598 of 2014 Decided by High Court of Madras on 3 February, 2015

<sup>18</sup> ICC Development (International) Ltd., v Arvee Enterprises and Another 2003 (26) PTC 245 (India).

In **Titan Industries Ltd v. Ramkumar Jewellers**<sup>19</sup> it was observed that no one was free to trade on another's name or appearance and claim immunity. The Delhi High Court recognized Mr. Amitabh Bachchan and his wife, Mrs. Jaya Bachchan's personality rights. An advertisement by Titan Industries Ltd., featuring the renowned couple, was infringed by the defendant. The court observed that the defendants' advertisement itself contained a clear message of endorsement and the message was false and misleading as the plaintiffs had not consented to the same. The court passed an order of permanent injunction against the defendants thereby recognising the personality rights of the celebrities.

In **Ms. Barkha Dutt v Easyticket, Kapavarapu, Vas**<sup>20</sup>, it was held by the Work Intellectual Property Organizations (WIPO), (the international agency governing internet domains), that an unauthorized use of a famous person's name is not a bonafide use and if such name is used to lure users, it does not confer rights or legitimate interests on the infringer. The right to commercially use or exploit one's own name, vests with the person who has worked to create the fame and can lawfully restrict any other third party from exploiting that fame for commercial purposes.

In **Mr. Gautam Gambhir v. D.A.P & Co. and Another**<sup>21</sup> the defendant was running the restaurants with the tag line 'by Gautam Gambhir' while the plaintiff had absolutely no connection with the said restaurants. The plaintiff, an international cricket player alleged that his name has attained a special distinctive character by virtue of extensive use and has attained the status of a well known mark. He sought protection of his personality rights. The court held that "celebrity status of the plaintiff is not disputed. However, there is no material on record to infer if any time in running the said restaurants with the tagline 'by Gautam Gambhir', the defendant ever represented to the public at large in any manner that the said restaurants were owned by the plaintiff or he was associated with them in any manner. The law is that no one is entitled to carry on his business in such a way as to represent that it is the business of another, or is in any way connected with the business of another. Of course, an individual is entitled to carry on his business in his 'own' name so long as he does not do anything more to cause confusion with the business of another and if he does so honestly/bonafide. In the instant case, the plaintiff is not associated with the

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<sup>19</sup> Titan Industries Ltd v. Ramkumar Jewellers MANU-DE/2902/2012.

<sup>20</sup> Ms. Barkha Dutt v Easyticket, Kapavarapu, Vas, Case No. D2009-1247 before Administrative Panel, WIPO Arbitration and Mediation Centre Decided on 30<sup>th</sup> October, 2009.

<sup>21</sup> Mr. Gautam Gambhir v. D.A.P & Co. and Another Civil Suit (Commercial) 395/2017 Decided by High Court of Delhi on 13 December, 2017.

restaurant business. Nothing has come on record if any time, the plaintiff was invited for any inauguration or function of the restaurants in question. No overt act has been attributed to the defendant whereby he at any time attempted to make representation to any individual or the public at large that the restaurants were owned by the plaintiff. The plaintiff has given only one instance of an individual who had some confusion with the said restaurants to be owned by the plaintiff. No ‘disclaimer’ was ever issued by the plaintiff to dispel the so-called confusion in the public who recognized the plaintiff only to be associated with Cricket. The said restaurants are being run by the defendant after getting necessary permission from the authorities. When the logo ‘Hawalat Lounge and Bar by Gautam Gambhir’ was registered by the Trademarks Registry in Class 43 in respect of restaurant service, there was no objection before the Trademark Registry. It is categorically claimed by the defendant that inside or outside the restaurants, he had never displayed any picture/photo/poster of the plaintiff to cause confusion in the public. In all the webpages/online platforms i.e. facebook, WhatsApp, etc. and at all his displays otherwise, viz. stationery, wall pictures, merchandises, etc. the defendant has very prominently put numerous of his ‘own’ pictures to associate his ‘own’ identity with his ‘own’ restaurant business. Apparently, plaintiff’s name was not commercialized by the defendant. Nothing has emerged on record if there was any loss to the goodwill of the plaintiff in his field i.e. Cricket because of running of the restaurants by the defendant with the tag line in his ‘own’ name. In view of the above discussion, the suit fails and is dismissed with no orders as to costs.”

In **Rajat Sharma v. Ashok Venkatramani and another**<sup>22</sup>, the Plaintiff filed a suit for ex-parte injunction against the defendant as the latter had used the phrase “INDIA ME AB RAJAT KI ADALAT BAND” in their advertisement. The Delhi High Court upheld the celebrity rights of the plaintiff and also recognized the publicity rights over the show “Aap Ki Adalat.” Holding advertisement as prima facie illegal, the court restrained the Zee Media from issuing any advertisements in the print media, which contains the name of Rajat Sharma. Recognizing that Rajat Sharma had an unassailable right in his public persona and identity as a famous television show host, the court viewed that the use of the statement in the advertisement amounts to false advertising

In **Arun Jaitley v. Network Solutions Pvt. Ltd and Others**<sup>23</sup> the court observed that the popularity/fame of a person will be no different on the internet than in reality. Jaitley had filed a suit seeking permanent injunction against the defendants from misuse and immediate transfer of the domain name www.arunjaitley.com. By passing the judgement in favour of the petitioner, the

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<sup>22</sup> Rajat Sharma v. Ashok Venkatramani and another Civil Suit (Commercial) 15/2019.

<sup>23</sup> Arun Jaitley v. Network Solutions Pvt. Ltd and Others Civil Suit (OS) 1745/2009 and I.A. No. 11943/2009 and 17485/2010 decided by Delhi High Court on 4 July, 2011.

court observed “the said name due to its peculiar nature/distinctive character coupled with the gained popularity in several fields whether being in politics, or in advocacy, ...has become a well-known personal name/mark under the trade mark law which ensures him the benefit to refrain others from using this name unjustifiably in addition to his personal right to sue them for the misuse of his name”<sup>24</sup>.

In **Krishna Kishore Singh v. Sarla A Saraogi and Others**<sup>25</sup> the plaintiff, (father of late actor Sh. Sushant Singh Rajput) sought ad-interim ex-parte injunction against the named and unnamed defendants from using his son’s name, caricature, lifestyle or likeness in forthcoming films and other ventures, contending that any such publication, production, or depiction would be an infringement of personality rights, right to privacy which includes right to publicity, cannot be undertaken without the prior approval of his legal heir; and a violation of right of fair trial under Article 21 of the Constitution of India. The Plaintiff submitted that since an FIR has been lodged on account of unnatural death of his son and the matter being investigated by the CBI, and there being no conclusive report submitted as yet, the restriction was hence sought. The Plaintiff pleaded that the defendants are trying to exploit this media frenzy and public curiosity surrounding SSR’s life and the circumstances surrounding his death, for their commercial gain. The Plaintiff’s counsel had made a widely circulated statement that no movie(s), book(s) or series based on the Plaintiff’s son should be made without obtaining the prior consent of his family. Despite that, without approaching the family, defendants were making a movie titled ‘Nyay: The Justice’ claiming it to be a “tribute to Sushant Singh Rajput”. The court summarised the following broad principles:

- (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

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<sup>24</sup> *Personality Rights* <https://byjus.com/free-ias-prep/personality-rights-upsc-notes/>.

<sup>25</sup> *Krishna Kishore Singh v. Sarla A Saraogi and Others* Civil Suit(Commercial) 187/2021 Decided by Delhi High Court on 10 June, 2021.

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. In the interest 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 offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

- (3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and the Parliament and Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.
- (4) So far as the government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.
- (5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.
- (6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

However, in this case the court held that since the plaintiff failed to satisfy the three-pronged tests of; a) non-establishing of prima facie case; b) belated action by plaintiff and c) on the aspect of irreparable loss, the suit was not premised as a tortious action for defamation, for grant of pre-emptory injunction to restrain exhibition of the films, the application was dismissed.

In, **Amar Nath Sehgal v. Union of India**<sup>26</sup>, the Delhi High Court had observed that “many rights flow from a creation, which includes the paternity right in the work, i.e. the right to have his name on the work. It may also be called the

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<sup>26</sup> Amar Nath Sehgal v. Union of India 117 (2005) DLT 717.



identification right or attribution right. The second one is the right to disseminate his work i.e. the divulgation or dissemination right. It would embrace the economic right to sell the work or valuable consideration. Linked to the paternity right is the third right, the right to maintain purity in the work. The Court further held that the right to assert authorship also includes a right to object to distortion, mutilation or modification in a work, if it is prejudicial to the honour or reputation of the author. The contours, the hue and the colours of the original work, if tinkered, may distort the ethos of the work. Distorted and displayed, the viewer may form a poor impression of the author. Plaintiff's right to be compensated for loss of reputation, honour and mental injury due to the offending acts of the defendants, was also upheld by the Court."

In **Justice K. S. Puttaswamy (Retd.) v. Union of India**<sup>27</sup> the court held that "every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent".

In **Sonu Nigam v. Amrik Singh (alias Mika Singh) and Another**<sup>28</sup> the Bombay High Court, on 26<sup>th</sup> April, 2014 granted an injunction in favour of singer Sonu Nigam, restraining the singer Mika Singh and the recording label OCP Music from publishing an advertisement that impinged on Sonu's personality, image and civil rights.<sup>29</sup> The dispute was regarding the publicity of the Mirchi Music awards. The defendants had put up billboards and hoardings containing Sonu Nigam's image advertising the awards ceremony, without Sonu's consent. These hoardings were different from the official hoardings put up by Mirchi Music Awards itself. The official hoardings had also contained pictures of Sonu, but Mirchi Music Awards had not obtained Sonu's permission who therefore filed a suit for unauthorised infringement of his personality rights. The court only took cognizance of the argument based on personality rights, and restrained the defendants from publishing, displaying or reproducing the advertisement through hoardings and also through Mika's account on Twitter.<sup>30</sup>

In **D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Others**<sup>31</sup> plaintiff company was incorporated in 1996, in which the letters 'DM' stand for the initials

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<sup>27</sup> Justice K. S. Puttaswamy (Retd.) v. Union of India Writ Petition (Civil) No. 494 of 2012 Decided by Supreme Court on 26 September, 2018.

<sup>28</sup> Sonu Nigam v. Amrik Singh (alias Mika Singh) and Another Civil Suit 372/2013 Decided by Bombay High Court.

<sup>29</sup> <https://spicyip.com/2014/05/bollywood-music-awards-and-personality-rights-sonu-nigam-v-mika-singh-and-ors.html>.

<sup>30</sup> Ibid.

<sup>31</sup> D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Others Civil Suit (OS) No. 893/2002 Decided by High Court of Delhi on 29 April 2010.

of the name, Daler Mehndi. The company was originally incorporated to manage Mr. Daler Mehndi's career. Subsequently, Mr. Daler Mehndi assigned all his rights, title and interest in his personality inherent in his rights of publicity along with the trademark 'DALER MEHNDI' as well as goodwill vested therein to the Plaintiff. Defendants were engaged in the business of selling dolls, which were cheap imitations of and identical to the likeness of the Mr. Daler Mehndi. Such dolls were imported from China and sold by each defendant. The dolls were being sold as 'DALER MEHNDI' dolls. Plaintiff filed a suit seeking permanent injunction against the defendants restraining them from infringing his right of publicity and against false endorsement, leading to passing off. Plaintiff claimed damages and rendition of accounts. The court observed that the commercial use of an individual's identity is intended to increase the sales of product by fusing the celebrity's identity with the product and thereby the defendants were selling those dolls, on the basis of publicity value or goodwill in the artist's persona into the product i.e. doll. It was held that no one is free to trade on another's name or appearance and claim immunity because what he is using is similar to but not identical with the original. The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality. However, a word of caution has to be expressed here. In a free and democratic society, where every individual's right to free speech is assured, the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning, parodies and the like, which may tend to highlight some aspects of the individual's personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise, an entire genre of expression would be unavailable to the general public. Such caricature, lampooning or parody may be expressed in a variety of ways, i.e. cartoons in newspapers, mime, theatre, even films, songs, etc. Such forms of expression cannot be held to amount to commercial exploitation, per se; if the individual is of the view that the form of expression defames or disparages him, the remedy of damages for libel, or slander, as the case may be, would then, is available to him. An individual claiming false endorsement must prove that the use of the identity likely misled consumers into believing the concerned personality endorsed the product at issue. In this case, it has been seen that the use of Mr. Mehndi's persona for the purpose of capitalizing upon his name by using its conjunction with the commercial product is not proper or legitimate; it amounts to a clear dilution of uniqueness of such personality and gives rise to a false belief that, plaintiff has either licensed or the defendants have some connection with them (i.e. the plaintiff or the artist), to use its exclusive right to market images of the artist. In a passing off action, one has to see as to whether the defendant is selling goods/service so marked to be designed or calculated to lead purchasers to believe that they are plaintiff's goods. Even if a person uses another's well-known trademark or trade mark similar thereto for goods or services that are not

similar to those provided by such other person, although it does not cause confusion among consumers as to the source of goods or services, it may cause damage to the well-known trade mark by reducing or diluting the trademarks power to indicate the source. Further, where a person uses another person's well-known trade mark or trademark similar thereto for the purpose of diluting the trade mark, such use does not cause confusion among consumers but takes advantage of the goodwill of the well-known trade mark, it constitutes an act of unfair competition.<sup>32</sup> Injunction was granted in favour of the plaintiff.

#### **IV. Amitabh Bachchan v Rajat Nagi and Others Delhi<sup>33</sup>**

Bollywood legend and veteran actor Amitabh Bachchan had filed a civil suit in the Delhi High Court in 2022 demanding a ban on the commercial use of his name, image, voice and personal characteristics without permission. The renowned actor also sought a restraining order against book publishers, T-shirt vendors, and various other businesses.<sup>34</sup> In addition to it, he also demanded rupees two crore as damages for loss of reputation and goodwill of his personality rights. The Delhi High Court passed an interim order preventing the unlawful use of Amitabh Bachchan's name, image and voice. Through its order, the court restrained persons at large from infringing the personality rights of the actor. In this case, from Bachchan, Big B and AB to his "unique style of addressing the computer as Computer *ji* and saying *Lock kiya jaaye*" - the actor had demanded protection of his personality rights.<sup>35</sup>

#### **Brief Facts**

Mr. Amitabh Bachchan, the plaintiff, sought protection of his publicity/personality rights on the ground that his name, voice and images were being misused by unscrupulous third parties. The suit was filed against the named defendants, as well as unknown 'John Doe' defendants, seeking an injunction against the world at large. The Defendants were involved in activities misappropriating the Plaintiff's photographs and characteristics by running fake 'Kaun Banega Crorepati' (a famous Indian game show hosted by the Plaintiff) lottery scam, operating websites and mobile apps, publishing general knowledge books bearing the image of the Plaintiff, dealing in clothing items and posters bearing the Plaintiff's images and likeness, and registering domain names containing the name of the Plaintiff. The Plaintiff also sought directions to be issued to the Department of Telecommunication, the Ministry of Electronics and Information Technology and the telecom service providers to pull down all the

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<sup>32</sup> <https://www.indiancaselaws.wordpress.com/2015/07/19/d-m-entertainment-pvt-ltd-v-baby-gift-house-and-ors/>

<sup>33</sup> Civil Suit (Commercial) 819/2022 Decided by High Court of Delhi on 25 Nov 2022 .

<sup>34</sup> <https://www.mmnews.tv/indian-court-restrains-infringement-of-amitabh-bachchan-personality-rights/>

<sup>35</sup> <https://www.theprint.in/india/big-b-computer-ji-lock-kiya-jaaye-what-amitabh-bachchans-suit-for-personality-rights-means/1247185/>

weblinks and websites and block access to all phone numbers used by the defendants to circulate WhatsApp messages that unlawfully infringe the plaintiff's personality and publicity rights.

### **Order by Delhi High Court**

The Court opined that plaintiff had made out a prime facie case in its favour for the grant of an ad-interim ex-parte injunction and the balance of convenience was also in favour of the plaintiff and against the defendants. The Court noted that defendants were using plaintiff's celebrity status for promoting their own activities, without plaintiff's permission or authorization. Therefore, plaintiff would suffer irreparable harm and injury to defendant's reputation. Thus, the Court granted an ad-interim ex-parte injunction in favour of Amitabh Bachchan, thereby restraining defendants from infringing Amitabh Bachchan's publicity or personality rights by misusing his name 'Amitabh Bachchan/Bachchan/BigB/AB', voice, image or any other attribute that was exclusively identifiable with him, for any commercial or personal gain.<sup>36</sup>

The court restrained the defendants from infringing the plaintiff's publicity or personality rights by:

- a) misusing his name "Amitabh Bachchan/ Bachchan/ Big B / AB"; and
- b) his voice, image and any other attribute which is exclusively identifiable with him, for any commercial or personal gain.

The court also issued directions to (a) DoT and MeitY to ensure that respective internet service providers pull down the links and websites; and (b) the telecom service providers to block access to all phone numbers being used by the Defendants to circulate messages on WhatsApp and other mobile messaging apps, which infringe upon the Plaintiff's personality and publicity rights.

### **V. Challenges and Suggestions**

- a) Although the courts pass orders in rem restraining the world at large, the enforcement of such orders against a 'John Doe' i.e., unknown, pose their own challenges, making it incumbent upon the plaintiffs to keep a look out for errant parties. Celebrities have to keep a constant check on the violators for the protection of their personality rights.<sup>37</sup>
- b) It should become necessary for celebrities to register their names to save their personality rights. This may help in preventing to a certain extent, possible harm to the celebrities.
- c) At present, there is no comprehensive statutory law exclusively dealing with the protection of personality rights in India. The provisions are scattered in multiple statutes. Keeping in view the growing tendency of media and financial frauds, a comprehensive legislation is need of the hour.

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<sup>36</sup> <https://www.sconline.com/blog/post/2022/11/28/delhi-high-court-grants-ex-parte-ad-interim-injunction-to-amitabh-bachchan-protecting-his-publicity-rights/>

<sup>37</sup> <https://www.lexology.com/library/detail.aspx?g=00a2efa4-bebc-45fc-b134-68037969bac9>

- d) There is a high possibility of increase in misuse and abuse of personality rights due to the financial gains involved in the entire process. Hence a robust mechanism is required to detect such illegalities enabling the state agencies in preventing violation of personality rights.
- e) Where ever the laws are insufficient, judiciary can play an active role by legislating thereby filling the lacunae in the existing laws or in the absence of requisite laws.
- f) Indian courts will have to be cautious enough not to equate the personality and publicity rights of celebrities with that of property. Doing so would impair the primacy of fundamental rights and the larger public interest.<sup>38</sup>
- g) A balance between the public interest and the individual interest of the celebrity is to be maintained.
- h) The legal system in India is not adequate to tackle the modern prodigy of endorsement advertising. Hence a system is required in the contemporary digital era to handle such matters smoothly.

## V. Conclusion

According to advocate Niharika Kashyap, “A commoner without the assent of the individual should not use someone’s personality for their own benefit. This amounts to the offence of tort, inclusive of the Copyrights Act as well.”<sup>39</sup>

The judiciary has positively contributed towards recognizing the various aspects of personality rights. A detailed legislation would be an added advantage to fill up the lacunae in law and keep in pace with the rapidly changing aspects of commercialization of personality. Although judicial contribution is significant but still there are a lot many aspects to be catered to. The financial profits involved in the endorsements by incorporating celebrities without their consent is a magnetic ground to attract more violations. Hence a framework of stringent punishments and compensatory provisions must be proposed.

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