# WHAT ARE PERSONALITY RIGHTS? THE LAW MUST NOT OVERPROTECT FAME

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**ABSTRACT**

Personality rights sit at an interesting crossroad between intellectual property rights, privacy, commerce. They are not defined in any single statute but have gradually evolved through various court decisions overtime that recognize fame as something that can be protected. With the rise of the misuse of one's persona through illegal merchandise, fraudulent endorsements, and even deepfake technology, there has been an increase in protection provided by courts through injunctions to unknown offenders. The increase should come with a warning that the personality rights should not be stretched so far as to override our right under Article 19(1)(a).

It is well-settled in India that parody, critique, satire, artistic work, and academia remain protected speech in the absence of any misleading representation, false endorsement, or commercial exploitation of an individual's persona despite unauthorized use of his identity.

In this article, the core issue of personality rights in India is seen not in acknowledging the existence of such rights, but in defining their limits. There should be continued distinction drawn by the courts between cases of true commercial appropriation that have a negative impact on the person's economic interests and reputation, and instances where the personality is used for literary or artistic purposes, it plays an important role in the functioning of democracy also culture.

**Keywords:** Personality Rights, Right to Publicity, Article 19(1)(a**)**, Article 21.

## INTRODUCTION

Before a famous person can be protected from having their face sold the person must first be someone whose faces marketable. That odd starting point is the beginning of personality rights. Personality rights started to protect a person's dignity and privacy. Today they function mainly as a shield for commercial value. Indian courts have accepted personality rights basis creating a body of law that evolves faster than Parliament or the public can follow.

In India personality rights protect a person's identity name, image, voice, likeness, signature mannerisms from use without consent. Personality rights have two aspects. One aspect is privacy anchored in Article 21 after [1]*Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1* and earlier [2]*R. Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632*. The other aspect is publicity, the right to control and profit from one's persona. India has no statute covering either aspect. Personality rights have been built from doctrines of passing off privacy and performer's rights in the Copyright Act, 1957. Delhi High Court rulings such as [3]*Titan Industries v. Ramkumar Jeweler's (2012)* and recently [4]*Anil Kapoor v. Simply Life India (2023)* have shaped personality rights. The Kapoor ruling addressed content and deepfakes and subsequent orders for Amitabh Bachchan, Jackie Shroff and others followed the same pattern.

This expansion has largely gone unquestioned. It should not. Each new injunction removes something from the domain a catchphrase, a mannerism a way of speaking. Parody, satire, biography, criticism and news reporting all rely on the freedom to use another person's identity.

The Delhi High Court acknowledged this in [5]*Digital Collectibles v. Galactus Fun ware (2023)* separating exploitation from lawful public discourse. In [6]*Krishna Kishore Singh v. Sarla A. Krishna Kishore Singh v. Sarla A* concerning the film about Sushant Singh Rajput the court refused to allow personality rights to block a work that draws on a person's life. These decisions protect speech. They remain exceptions. Without a statute the boundary between protection and censorship is drawn by judges often at the interim stage and frequently against "unknown" defendants.

[1] Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1
[2] R. Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632
[3] Titan Industries v. Ramkumar Jeweler's (2012)
[4] Anil Kapoor v. Simply Life India (2023)
[5] Digital Collectibles v. Galactus Fun ware (2023)
[6] Krishna Kishore Singh v. Sarla A Krishna Kishore Singh v. Sarla A

## WHAT PERSONALITY RIGHTS ARE?

In cases involving personality rights in India, the name, picture, voice, and persona of the celebrity are secured against any kind of misuse by an AI, despite there being no separate legislation on personality rights. These rulings base their legality on Articles 21, 19(1)(a), Trademarks Act, 1999 and the Copyright Act, 1957. In Salman Khan v. Ashok Kumar/John Doe & Ors., decided in 2026, the Delhi High Court has barred the film producer from using the persona of the actor, which includes the actor's name, traits, etc., in the film "Kala Hiran: The Battle for Legacy". Further, Justice Jyoti Singh has ordered that all teaser posts and other posts be deleted within 24 hours and further asked X, Meta, and Google to take down all the URLs related to these posts within 24 hours, in case the uploaders failed to do so.

### The right to publicity

However, the larger notion of right to publicity has a somewhat unclear status in India. There is no statutory right to publicity per se, though there are some recent jurisprudence that implies that there is a tortuous remedy where there are commercial aspects to the matter. The theory of right to publicity is one that allows the individuals with fame to be able to control the commercial usage of their identity. However, there is no test as to what constitutes the elements of the identity that are protected or even how long the said protection lasts. Nevertheless, it is difficult to claim the right in question as the individual's identity needs to have a commercial appeal.

Most of the celebrity plaintiffs who have instituted such lawsuits are Bonafide celebrities. These celebrities have adopted three principal arguments. First, that the unauthorized use of their personal identity amounts to an act of false endorsement and false advertising which has misled the public to believe that they have endorsed or sponsored such merchandise, audio-visual material, websites and even events. Second, the unauthorized use of their personal identity through the making of unpleasant videos and images using the AI tools (morphed images, deepfakes and GIFS etc.) has resulted in tarnishment of their reputation. Third, these uses are a violation of their right to privacy as well as their right to earn a living.

### The right to expression

It is an established principle that fact-based, informational, or any other form of communicative

speech including news reportage, literature, parody, satire. In such claims, the celebrity cannot claim his/her publicity rights, but he/she can sue for defamation. It must be noted here that the Delhi High Court, which is one of the most popular courts for filing personality right claims, is sensitive to the needs of freedom of expression.

- **D.M Entertainment v Baby Gift House in 2010 stated that:**

"In a free and democratic society, where every individual enjoys his or her rights to speak freely, overemphasis on the publicity rights of famous persons tends to chill the exercise of such important democratic freedoms. Otherwise, an entire category of expression would be closed to the people."

- **The Delhi High Court reiterated the same principle in 2023 in the case of Digital Collectibles v Galactus Funware Technology:**

"… the use of celebrities' names/images for the purposes of parody, satire, caricature, art, scholarship, music, academics, news, and other such purposes would be permissible as part of the under Article 19(1)(a) of the Constitution of India and will not attract the tort of infringement of the right of publicity."

In Jaikishan Saraf v Peppy Stores (2024), even after recognizing the proprietary right of the actor Jackie Shroff with respect to his persona, the High Court of Delhi did not pass an injunction which might have been applicable to all the defendants in all cases. For instance, an injunction was not granted to the YouTuber, who created an edit of the "Thug Life" video incorporating footage of the actor. "The representation in the video does not contain any falsehood but only enhances the prevalent "the perception of people regarding Mr. Shroff as an influential and praise-worthy individual." The Court expressed its desire to listen to an explanation from the YouTuber before making any comments on the issue. The reasons for such a decision are:

"More importantly, it will establish a precedent which curtails the freedom of expression, possibly discouraging people from exercising their right to free speech due to apprehensions about the possible ramifications under law. It is very important for this court to strike a balance between the proper rights of Defendant No 5 for the exercise of freedom of artistic and commercial expression and the rights of the plaintiff of personality, publicity and morality."

Many courts, including the Delhi High Court and the Supreme Court of India, have favored freedom of speech where the mode of expression has been criticism. However, most of the judgments that have dealt with this issue fall within the domain of trademarks rights as opposed to personality rights.

For example, in Tata Sons v Greenpeace International (2011), the High Court of Delhi declined to issue an injunction on behalf of the corporate applicant considering the non-profit's claim that its activities were in the public interest. The litigation stemmed from a Pac-Man game created by Greenpeace, where the Tata logo was shown "eating up" the Olive Ridley turtle, a rare species. The Court accepted that the objective of this game was to draw attention to the environmental consequences of the Dharma Port project in Odisha.

**The right to livelihood**

In this case, some of the celebrities are arguing that their means of income have been affected using their image without their permission. This reason for the suit is strange because in most cases, this does not affect the celebrity but the business owner who sells their products.

## PROPOSED FRAMEWORK FOR LIMITING PERSONALITY RIGHTS

The development of personality rights in India highlights the need to shield individuals from commercial exploitation. In the absence of legislation, there would be no clear boundary how much protection a person requires. Hence, courts would have to adopt a balancing act approach that distinguishes between unauthorised commercial exploitation and public expression of facts about a person's identity.

1. The use of the identity of the person is for commercial gains. Any unauthorized use of the identity, likeness or voice of a person would be prohibited. This would especially be the case where the person's consent is misrepresented. Unlicensed and misleading commercial endorsements of a product or service is one of the mains for prohibiting any use.

2. Consideration should be given to the purpose of use. Commercial use of any of these elements is more likely to be banned but it becomes even more relevant when the use creates impression of an endorsement and approval by the individual. Misleading consumers and false endorsement are what needs to be prohibited. Insufficient

permission is not sufficient reason by itself.

3. The courts should analyze the nature of the expression. Any use made in connection with journalism, biography, criticism, parody, satire, art or academic writings, should enjoy protection within Article 19(1)(a). The Delhi High Court already stated that incorporation of name or image of celebrity in any of those categories does not per se constitute an infringement on the right of publicity.

In this manner, personality rights can achieve their intended purpose without converting fame into an absolute individual right. It is neither necessary nor desirable that every mention of a particular individual be prevented. What is necessary is to distinguish between exploitation/deception and genuine expression.

## CONCLUSION

So, in my conclusion it seems to me that the issue in the field of personality rights is not the existence of this right, but rather where this right comes to an end. The courts were quite justified in acting against endorsements, deceptive deepfakes, and unauthorized merchandise. However, being famous is not enough for someone to have the power of controlling how the person is talked about by the people. The freedom of parody, satire, criticism, biographies, and scholarship cannot be restricted when they use a face or a voice, even in cases of celebrity faces and voices. The courts must consider deception or potential harm from commercial exploitation to issue an injunction.

## REFERENCES


### Constitution and statutes

- Constitution of India 1950, arts 19(1)(a) and 21
- Copyright Act 1957, s 38 (performer's rights)
- Trademarks Act 1999

### Supreme Court cases

- *R. Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632
- *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1

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