
IMPACT OF PRIVACY LAWS ON BIOPICS

Bhavya Dixit, School of Law, Christ (Deemed to be University)

Ishita Anand Gurjalwar, School of Law, Christ (Deemed to be University)

ABSTRACT

This research paper will examine the complex relationship between biographical films-biopics- and privacy rights, focusing on the ethical and legal dilemmas filmmakers face in portraying real-life figures. The rest of this paper will also talk about the ethical implications of consent on issues of living subjects or their heirs and point to potential legal repercussions that filmmakers may face if they do not respect privacy and personality rights.

As for international frameworks, the study is done on the international legal framework governing privacy rights, which would include foundational human rights provisions and their implications for biographical storytelling. To that extent, it undertakes an analysis based on reflection in Indian law where there have been important legal developments respecting privacy as a constitutional right. Besides this, the paper explores the public interest as opposed to individual privacy rights in biopics. It emphasizes that filmmakers are also onus to reconcile public appetite with sensible personal information that is considered for presentation on the screen. As such, the discourse further entails media policy's impact on the public's perception of privacy rights in biographical stories, which dictates the mentality of the public regarding what is appropriate enough to be portrayed on the screen or not.

Additionally, the paper looks at the precedents established by such landmark cases in the law and assesses how these precedents guide filmmakers about the precautions and ethical considerations involved in making biopics.

Overall, this paper offers a multidimensional analysis of the intersection between biopics, privacy laws, and ethical filmmaking practices, thereby providing useful inputs to the existing debates within the borders of media law and ethics.

Keywords: Biopics, Consent, Ethical implications, Privacy rights, Public interest.

INTRODUCTION

Biographical films, or “biopics,” are admonitive or persuasive in the sense that they impact how the public views, for instance, historical celebrities and other influential people, hence culture. Such films also embody a way in which a society remembers and goes back to the past to make sense of certain events. However, as is common in this case, it goes down as the biography of that individual in the minds of present-day viewers. In this regard, for instance, it is valiant to note that the cinematic portrait of Martin Luther King Jr. featured in the biopic

Selma (2014) has been quite instrumental in shaping people’s memory of the Civil Rights Movement and its activities – including the people acting in the film itself¹. These films often walk a fine line between what the public considers the ‘right to know about everything’ and what the individual involved would call an ‘intrusion of privacy’.

Biographic films are usually based on the life of public personas where fame as well as privacy is considered to be family. However, in cases where films show individuals in a way that might breach their standard of decency and without that person’s consent, which can include but is not limited to, exposing one's relationships, health conditions, or even imposing one's struggles on the public, ethical issues start to come up.² In this context, they have attracted several cases where such actors or their relatives have complained that producers of these genres have crossed the privacy, personality, or more dangerously exhaust defamation zones. Such legal challenges are predominant, for example, in biographical narratives that feature more contemporary personalities, even in motion pictures that predominantly are history-oriented, because such persons are still alive or their relatives are present and are keen to protect their names.

PRIVACY LAWS: A LEGAL FRAMEWORK

1. OUTSIDE INDIA

As with any creation in a form of art, biopics too have some degree of privacy concerns that

¹ M. B. Prabha, Reel v. Real: Facts, Fiction, Privacy, Publicity, and Post-Mortem Rights, MONDAQ (Jan. 12, 2022), <https://www.mondaq.com/india/privacy-protection/1175314/reel-v-real-facts-fiction-privacy-publicity-and-post-mortem-rights>.

² Richard Hurowitz, Surviving Copyright Infringement: Fair Use of Protected Works in Biopics, 22 COLUM.-VLA J.L. & ARTS 247 (1998).

must be taken into consideration during the making of these films. Sound and borderline obscene as this may sound to a few, filmmakers sell lives and it aids and abets the uncovering of some personal information of public and even private individuals. In order to appreciate the influence of these protection laws on the process of producing biographic films, one must first examine the fundamental rights to privacy that are upheld by various supportive laws within certain jurisdictions, as well as key cases that have evolved the area of law.

“Internationally, privacy is also recognized as an important human right in some legal regimes. Thus, for instance, Article 8³ of the European Convention on Human Rights (ECHR) provides for the right to respect private and family life which has been relied on to block biopics which without consent expose the privacies of individuals to the public. This right has to be balanced with the provisions of Article 10⁴ of the ECHR which allows for freedom of expression including art. Moreover, Article 17⁵ of International Covenant on Civil and Political Rights (ICCPR) also provides for a right to respect for privacy free from arbitrary or unlawful interference, obligating state parties to ensure that domestic legislation affords protection to every person against such interference, which is relevant to biopics that could cross such lines.

2. WITHIN INDIA

Indian jurisprudence has also progressed in favor of privacy rights after the Constitutional bench ruling in Justice *K.S. Puttaswamy (Retd.) v. Union of India*,⁶ (2017) which recognized the right to privacy under Article 21⁷ of the Constitution. In biopics where it deals with the living subject or his heirs, consent forms the very basis of the movie. Without prior agreement from the person or the inheritors of the person, any filmmaker dealing with such a subject under privacy, defamation, and personality rights may get into some serious legal problems. Consent matters even more in sensitive biopics that involve personal issues, like a relationship, health issues, or criminal activities. However, sometimes, the right of free speech under Article 19(1)(a)⁸ of the Indian Constitution, guaranteeing freedom of expression, may permit

³ European Convention for the Protection of Human Rights and Fundamental art.8 Nov. 4, 1950, 213 U.N.T.S. 221.

⁴ European Convention for the Protection of Human Rights and Fundamental art.10 Nov. 4, 1950, 213 U.N.T.S. 221.

⁵ *International Covenant on Civil and Political Rights* art. 17 Dec. 16, 1966, 993 U.N.T.S. 3.

⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁷ INDIA CONST. art.21

⁸ INDIA CONST. art. 19(1)(a)

filmmakers to circumvent consent, mainly when the biopic is on a public figure or relates to matters of public concern.

The Information Technology Act, 2000⁹ governs digital platforms and online material, which includes biopics distributed on OTT, under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁰. These regulations impose an obligation on the platform to behave morally and safeguard user privacy and personal information. This does suggest that when producing and distributing biographies, filmmakers and distributors should exercise caution about the personal information of people whose lives will be brought to life on film, particularly when real people are involved, and make sure that privacy regulations are followed. Additionally, it allows impacted parties to file complaints if they believe their right to privacy has been infringed; as a result, filmmakers will need to use their artistic license

Personality rights include the right to impose restrictions on using one's image, likeness, or persona commercially in India. While personality rights find no explicit codification under Indian law, they are recognized through judicial precedents. Personality rights would be in action in any biopic situation wherein the film uses a celebrity's image or likeness without permission for commercial purposes. Personality rights in India correspond to the rights of an individual that keep his look, name, photograph, or identity away from free use by others, especially in such cases as biopics¹¹. Since there is no direct definition of personality rights in Indian law, these can be inferred to exist from principles like the right to privacy, defamation, and copyright. Such rights of personality are safeguarded from the following sources.

Section 57¹² of the Copyright Act, 1957, gives an individual the right against the use of his photograph without consent and provisions against the offense of defamation in the Indian Penal Code (IPC). These rights have been upheld by the courts also in cases like *Ratan Tata v. Union of India*¹³, where the Supreme Court justified that no person shall be allowed to

⁹ Information Technology Act, No. 21 of 2000, Acts of Parliament, 2000 (India).

¹⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Pt. II, Sec. 3(i) Feb. 25, 2021

¹¹ Mark Conrad, A New First Amendment Goal Line Defense - Stopping the Right of Publicity Offense, 40 OHIO N.U. L. REV. 743 (2014)

¹² Copyright Act, No. 14 of 1957, § 57 (India).

¹³ *Ratan Tata v. Union of India*, (2018) 1 SCC 191.

monopolize the right to represent him without his authorization.

The courts have held in India that the identity of individuals is entitled to protection against unauthorized commercial use of their identity, such as was offensive to their personality rights, as in *ICC Development (International) Ltd. v. Arvee Enterprises*¹⁴ (2003). Such a case deals with the commercial use of a cricket player's image without his consent and establishes the framework to recognize celebrity personality rights in India.

BALANCE BETWEEN PUBLIC INTEREST AND RIGHT TO PRIVACY

Since biopics involve the use of a person's likeness or his life, these need consent, especially when a person is living or a personality who has passed away; in any case, whether it is a public figure or a private individual may vary in terms of the requirement for consent. A filmmaker should first get explicit, written consent from a person to use his likeness or story. In some cases, implied consent will follow. Ethical considerations also come into play in the process of consent, as filmmakers need to respect a person's preferences and communicate openly about their portrayals. Generally, personality rights are vital to filmmakers in navigating the complexities of creating a biopic while respecting the lives portrayed while remaining legal to the standards.

With biopics, therefore, the ethical question arises from the balance between the public interest in such life stories and the right to privacy of the individual. The filmmaker, therefore, has to weigh public curiosity and the sense of responsibility that comes with showing privateness in drama, especially intimate and sensitive details for entertainment value.¹⁵ Public figures, whose lives are often matters of public interest, have a lower expectation of privacy but still have some ethical questions—particularly where aspects of their personal lives are exaggerated, fictionalized, or taken out of context.

A vivid impact on living subjects, who could suffer from psychological distress, harm to reputations, or legal prosecution if the subjects are misrepresented; while deceased individuals, particularly private citizens, can suffer posthumous harm to their reputation and families or

¹⁴ *ICC Development (International) Ltd. v. Arvee Enterprises*, (2003) 3 SCC 501.

¹⁵ Mark A. Lemley & Eugene Volokh, *Freedom of Speech and Injunctions in Intellectual Property Cases*, 48 DUKE L.J. 147 (November 1998).

estates may object.¹⁶ Moral rights of biopic subjects should also be respected in connection with not allowing misrepresentation, which can lead to distortion of public perception, either because a picture may be sent out that is historically inaccurate or for sensationalism. Ethical filmmaking draws on consent, thus being responsible and sensitive to the depictions and real implications on the subjects, dead or alive.

1. ROLE OF MEDIA

The media frames the public conceptions of privacy rights in biopics; it delimits the discourse and the direction whereby biopic issues are expressed. Generally, media coverage of biopics emphasizes artistic value, entertainment value, and public interest in the lifecords of real-life figures. Coverage through promotional material, interviews, or reviews within the media can either be the break of a biopic as a cultural contribution or criticize the overstepping of personal space. This, in turn, will affect the public perception of whether or not private lives are portrayed for any legitimate reason especially when celebrities or public individuals are involved. Depending on which narrative to be advanced, media framing can either support the preservation of the sanctity of privacy rights or promote the notion that public right supersedes individual privacy¹⁷.

Biopics generally serve public interest, especially when they document historically significant events or figures whose lives have come to have a bearing on the broader sphere of society. They could be documentaries in the manner of political leaders, social activists, or influential cultural icons that educate audiences and help preserve historical legacies. In many instances, the right of the public to know of such figures and the impact they had on society can outweigh the need to respect such privacy, especially if such details are factual and part of the remembrance of public service. But when biopics penetrate into more personal or intimate facets of a life, especially when dramatized or sensationalized, they actually land on the borderline of invading one's right to privacy.¹⁸ It is so in the situation where the subject happens to be a private citizen or where information previously not in the public domain becomes public without the consent of those involved.

¹⁶ *Supra* note 2

¹⁷ *Supra* note 1

¹⁸ Jack Langa, *Deepfakes, Real Consequences: Crafting Legislation to Combat Threats Posed by Deepfakes*, 101 B.U. L. REV. 761 (March 2021).

In controversies surrounding biopic content, especially on topics such as private versus public figures, it tends to become common for the media to perform both commentator and amplifier roles in relation to public reaction. Media may argue that the biopic meets a public interest because the movie reveals otherwise unavailable or valuable information in connection with public individuals. When private individuals are involved, it is ethics questions of consent and fair process that seem to dominate the media critiques. The headlines frequently focus on fights over libel or SLAPP suits, or public condemnation because media tend to dictate the terms of whether filmmakers acted responsibly. In many cases, media coverage on controversy over biopics has led to increased scrutiny of the application of privacy laws by entertainment institutions, furthering a discussion that extends to a larger extent concerning the balance between freedom of expression and the protection of personal privacy.

Landmark judgements on this front lay an important precedent for future biopic productions in India. Firstly, filmmakers have now to take surety that they seek explicit consent from the living or their estates before portraying sensitive aspects of their lives. Secondly, the courts have made a distinction between the official conduct of the public figure as subject to scrutiny and his private life that continues to remain protected. Lastly, these cases rely on the doctrine of public interest that governs such productions; filmmakers are expected to demonstrate the relevance of their work to some higher purpose in society as opposed to attracting sensationalized attention over personal lives for commercial gains.

The most significant biopic case filed in India to date is that filed by notorious "Bandit Queen" Phoolan Devi against director Shekhar Kapur¹⁹. Her life was the subject of the movie *Bandit Queen*, which chronicled her abduction, gang rape, and ascension as a leader among the bandit queens. Phoolan Devi filed a case against the filmmakers, contending that her privacy has been violated, and the portrayal made is false and scandalous. She has acknowledged that the court respected her right to privacy and her dissent regarding certain sensitive scenes. The legal system was evoked for the rights over portrayals of people's lives, particularly if such portrayals are private and intimate in nature.

Freedom of expression versus privacy has been one such sensitive issue the Supreme Court of India has wrestled with, particularly in a case known as the *Auto Shankar* case; *R. Rajagopal*

¹⁹ *Phoolan Devi v. Shekhar Kapur*, (1997) 1 MLJ 145 (SC).

vs. State of Tamil Nadu²⁰. Auto Shankar is a notorious criminal who brought an action for damages against the publisher of his alleged autobiography, claiming that the offending items in the book impaired his right to privacy since they dealt with criminal activity and his contacts and relations with state officials.

In this case, it is important to recognize that while public figures enjoy reduced expectation of privacy as respects their official conduct, their personal lives are still protected unless there is any overriding public interest. Right to Privacy: It was vindicated when the Supreme Court of Appeals had ruled to set precedent that personal details could not be published without consent except justified by public interest. This case has great importance for productions in the biopic genre because it clearly states the limits of creative freedom in dealing with private aspects of a person's life, even for those notorious individuals.

*The People v. Larry Flynt*²¹ is arguably the most well-known case in the United States involving biographical speaking and freedom of speech. Reverend Jerry Falwell sued Hustler Magazine editor Larry Flynt for defamation after a satirical story depicted him in an inaccurate and scandalous way. The First Amendment's protection of free expression was upheld by the US Supreme Court in Flynt's favour. According to the ruling made here, public individuals cannot be awarded damages for emotional distress caused by satire or parody unless their malice was demonstrated. As a result, it sets a significant legal precedent for how public officials are portrayed in the media, which will have an impact on the big screen as well. This case demonstrates the bias of the judiciary.

The case of Florence Foster Jenkins, an American socialite and amateur soprano from the 20th century, is another extremely relevant UK-based biopic. Meryl Streep starred in the film *Florence Foster Jenkins*,²² which depicted her life. Jenkins, of course, did not file a lawsuit, but this issue raises important questions about how persons are portrayed in biopics and is contextualised against the European Convention on Human Rights (ECHR) and the UK's Defamation Act 2013. Under Article 8 (right to privacy), public persons are somewhat protected from prying eyes, although courts balance that against Article 10 (protection of

²⁰ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

²¹ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

²² Elizabeth High, *Holding History Hostage: Fair Use in the Context of Historical Documentary*, 18 TEMP. POL. & CIV. RTS. L. REV. 753 (Spring 2009).

freedom of expression). If a deceased person's photograph seems to be damaging, several families or estates may file a lawsuit.

In conclusion, the intersection of biographical films and privacy rights is very complex and requires taking into account on one side ethical considerations and on the other side, legal frameworks. The best-known interest to portray historical figures to the public with balanced filming and on the side, the individual right of privacy demands informed consent from the living subjects or heirs. The present study rests its importance on international human rights provisions, Indian jurisprudence and landmark legal precedents in determining the accountability of filmmakers. It not only brings forth the dignity of individuals being respected but also responsible filmmaking that builds upon cultural narratives. Ultimately, this discourse culminates the fact that biopics, in light of being a very important historical narrative, tread very carefully to respect both artistic expression as well as the right to privacy of those concerned.