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IDENTITY BY INJUNCTION: WHY INDIA NEEDS A STATUTE FOR PERSONALITY AND PUBLICITY RIGHTS

~ Aanya Singh

ABSTRACT:

Even though there is no specific law in India concerning either personality or publicity rights, nevertheless the Delhi High Court has issued orders preventing Amitabh Bachchan and Anil Kapoor from having their names, images, and voices mis used. This paper argues that while the court orders are valid, the issue of grant of injunctions is different from just a right. Judge made restrictions are celebrity-oriented, confused in terms of doctrine, and conflict with freedom of speech and expression. It is proposed that a narrow law protecting personality rights should be enacted by Parliament instead of leaving it to the courts. In 2022, the Delhi High Court ordered a number of unknown and known defendants not to use Amitabh Bachchan's name, and image, as well as his voice for the sake of profit without his permission.[1] In September 2023 it ordered the same for Anil Kapoor, forbidding the use of his likeness and voice, including via artificial intelligence, face morphing, and GIFs, and obliging those who have not been identified in any way.[2]

This article raises an important question: is it possible for a right that exists only in injunctions to be enough for the protection of a person's identity? My answer is yes. Court-created protection is fast and effective for those able to get to the High Court, but it is focused on the celebrities, lacks doctrinal stability, and is struggling with the issue of free expression.

A RIGHT ASSEMBLED FROM BORROWED PARTS

Because there is no legal provision regulating personality rights, courts rely on three sources of law in this regard. The first source is the legal principle of passing off, which still exists as

[1] *Amitabh Bachchan v Rajat Nagi* CS(COMM) 819/2022(Delhi HC, 25 November 2022).
[2] *Anil Kapoor v simply Life India* CS(COMM) 652/2023(Delhi HC, 20 September 2023).

a common law remedy after the enactment of the Trade Marks Act 1999.[3] The claimant (a famous person) has to prove three elements in a passing-off claim: goodwill, misrepresentation that the public is likely to believe endorsed or associated with him, and damage. For example, in ICC Development v Arvee Enterprises, the Delhi High Court noted that publicity is a right that belongs to the person and is closely related to his identity.[4] In Titan Industries v Ramkumar Jewellers, the court allowed an injunction preventing the commercial exploitation of a celebrity's image.[5]

The second source is privacy and dignity. Article 21 has been interpreted in the case of R Rajagopal v State of Tamil Nadu as protecting privacy and later in a landmark case Puttaswamy.[6] However, Rajagopal has also pointed out that once the information is publicly available, it can be commented upon.[7]

The third source is copyright. Sections 38 and 38B of the Copyright Act 1957 grant performers rights in their performances and moral rights, however, they protect the performances, does not regard themselves with person's name or face as such.[8]

Each and every source cover a particular fragment. None of it was designed to protect identity as a whole, and none define the attributes which are protected, the harms which are recognised or limits which are imposed.

WHAT THE DELHI HIGH COURT HAS DONE

Both Mr. Bachchan and Mr. Kapoor's injunctions pull from all three legal sources. In the case of Mr. Kapoor, Prathiba M Singh J gave an interim omnidirectional injunction against specific defendants as well as others not yet known, ordered the transfer of infringing domain names, and joined the DoT and MeitY to help implement this order.[9] The Court saw damage to a celebrity's personality as causing harm and said that it would not disregard the technological abuse in question. Considering the capability of deepfake to go viral in a matter of hours, this is a remarkable achievement. While the order concerning Mr. Bachchan had already created a

[3] Trade Marks Act 1999 (India), s 27(2).
[4] *ICC Development (International) Ltd v Arvee Enterprises* (2003) 26 PTC 245 (Del).
[5] *Titan Industries v Ramkumar Jewellers* 2012 SCC Online Del 2382.
[6] Constitution of India 1950, art 21; *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632; *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.
[7] *Rajagopal* (n 6).
[8] Copyright Act 1957 (India), ss 38, 38B.
[9] *Anil Kapoor* (n 2).

precedent regarding the granting of an injunction over everyone unknown, the order in Mr. Kapoor's case applied this precedent to AI.[10]

Nevertheless, the same court has not presented a united front. In the case of Krishna Kishore Singh v Sarla A Saraogi, C Hari Shankar J refused to issue an injunction against the film based on the life of Sushant Singh Rajput, stating that privacy, publicity and personality rights were personal to the actor and perished with him, as well as mentioning that the additional rights existing solely because of one's celebrity status have not been recognised by law.[11] In Digital Collectibles v Galactus Funware, Amit Bansal J observed that, without proper legislation, publicity cannot be deemed an absolute right, that it yields to freedom of speech rights and does not apply to the information already in the public domain and applied the test used in passing-off cases.[12] Taken together, these rulings indicate that a living celebrity may obtain an injunction against the whole world, but that this right is limited, non-heritable and subordinate to expression rights. Such conclusions cannot be considered stable since, on one hand, one bench protects living celebrities even at the expense of mute speakers, while the other one provides protection to speakers and filmmakers to the detriment of the deceased.

WHERE THE APPROACH STRAINS

The first issue is the uncertainty of the foundation. If publicizing is treated as a right similar to property, it can be transferred, leased, and inherited. On the other hand, if it falls under the aspect of dignity as per Article 21, it's perceived as a personal right that ceases upon death. However, if it's a right that needs to be enforced, it should cover everyone, not just those who have commercial value. The orders confuse the terms "personality rights" and "publicity rights," which makes a number of key questions unclear (only the famous can sue, which particular individual inherits rights, whether the licensee is entitled to use them, and so on). As a result, the issue cannot be dealt with in an academic way.

The second problem is that the protection is absolutely biased in favor of the famous. Omnibus orders can only be obtained by parties who can hire senior counsel and go through the proceedings in the Delhi High Court. A simple woman whose face is used in a fake video does not have a chance to defend her rights. The new amendments to IT Rules will help, but they will only define the meaning of synthetically generated information and duties of takedown,

[10] *Bachchan* (n 1); *Anil Kapoor* (n 2).
[11] *Krishna Kishore Singh v Sarla A Saraogi* 2023 SCC OnLine Del 3997 (Delhi HC, 11 July 2023).
[12] *Digital Collectibles Pte Ltd v Galactus Funware Technology Pvt Ltd* CS(COMM) 108/2023 (Delhi HC, 26 April 2023).

they also regulate intermediaries.[13] They don't create any sort of cause of action against the creator or define what is protected.

Lastly, freedom of speech is threatened. A standard injunction applies to unnamed individuals in all forms of communication; however, it has been issued without the parties concerned being heard. Article 19(2) allows for reasonable restrictions on speech, however, this one fails to provide any clear exceptions for news, criticism, or parody.[14] A satirist or journalist will have to act first and go to court later on, trusting that the judge will determine the Digital Collectibles limitations.[15] When a court de facto enacts laws for the whole world, the benefits of law making such as definition, discussion, and identification of the exceptions are missing.

MY VIEW

I don't suggest that the court was wrong. A judge who chose to wait for Parliament, faced as it was with a deepfake that had begun circulating within hours, in effect denied relief to the genuine aggrieved people. Hence, a fear of interim judicial protection settles it as the necessary stopgap procedure. My point is that it cannot now remain the final architecture. Parliament has to bring into play a sharply drawn statutory right, which must have four features.

First, this right must be rooted in dignity, and not in commerce. Each individual must be able to claim the unauthorized use of recognizably identifiable attributes, including but not limited to name, image, voice, and signature, and minimum damage redress must be available where the interference is therefore structured in some commercial manner. This remedy would cure the celebrity slant without denying the economic worth that famous people legitimately seek to protect. Second, the exceptions should be specified within the Act: news reporting, criticism, parody and satire, biography, documentary, and public record information already in the public domain, as enunciated in Rajagopal.[16]

To secure posthumous protection with certainty, the heirs must have the right to exploit the deceased's commercial interests for a specified period, as in California where such a period is determined at time period of 70 years, although dignity claims like defamation of the dead are clearly personal.[17] Regulation of the procedure is also important: blanket injunctions should

[13] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026, GSR 120(E) (10 February 2026).
[14] Constitution of India 1950, arts 19(1)(a), 19(2).
[15] *Digital Collectibles* (n 12).
[16] *Rajagopal* (n 6).
[17] California Civil Code, s 3344.1(g).

include a precise description of accounts and mechanisms, but keeping confidentiality of the claim should be allowed.

Of course, one may raise the following objection: a statute may appear to be too vague thus stifling the freedom of speech. This is indeed a threat, however, it is much better dealt with in the case of the law with clearly stipulated exceptions subject to parliamentary and judicial scrutiny than in the case of ban orders, which become apparent in the course of their violation. Second, courts adapt more quickly than the legislature. While this is true, the flip side of adaptability is unpredictability, which makes creators, platforms and performers more likely to take advantage of regulation than to seek flexibility.

CONCLUSION

It was a question of whether a right that can only be enforced through injunctions can offer proper protection of identity. With the orders given to Mr. Bachchan and Mr. Kapoor, the Delhi High Court has shown how courts can step in and render help, where there is no law to guide them. It has acted swiftly to prevent identity theft and applied existing principles of law effectively to meet new challenges posed by modern technology. But this discussion has also highlighted the shortcomings of such an approach. It is based on a principle that is incomplete and contradictory, as this right is available only to those who can approach the High Court, while it is assumed that its scope can differ depending on the specific situation. Although this flaw can be traced back to the inadequacies of the statute, rather than the judges themselves, the right solution is necessary instead of evaluating what is wrong with the judges' decisions.