

Protection of Celebrity Rights and Role of Media: A study over conflicts in digital era

Shilpika Pandey
PhD. Scholar

Guru Gobind Singh Indraprastha University, Dwarka, New Delhi

Abstract: The jurisprudence of publicity and image rights is in its developing stage in India. Despite the fact that protection is accorded to celebrities through intellectual property laws, it has turned out to be insufficient. The paper focuses on the protection that has been granted for publicity rights under Constitution of India and other concerned laws to find out the conflicting areas of publicity rights protection, privacy rights, public interest and rights of media.. The very first instance of invasion in the privacy of celebrities is basically by media as considering everything about their personal life as public property and a great source for raising their channels Television Rating Point (TRP) whether by personal gossip about them or through defaming them and then by others by misusing their celebrated image without their permission, thus causing economic loss as well as loss to their reputation. The result of same in this digital world has not been only limited to the exploitation of celebrities personal rights but holds a broader perspective in regard to protection of interest of public as a consumer, so that they cannot be cheated through misleading advertisements. The paper is basically an elaboration on how the traditional regime of protection in India fails to protect rights of celebrity like publicity rights and thus there is need for enactment of a specific legislation.

I.INTRODUCTION

Publicity Rights have voyaged far from the time of being a branch of privacy right to a free independent right. The importance and the impact of the commercial part of the celebrity's identity can be gauged by the consistently expanding occurrences of their personality attributes. As the value of the celebrity expands, so do the occurrences of abuse of his/her persona. Therefore they have over and over communicated their longing for protection of different aspects of their identity. Origin of publicity rights in India has paved way through privacy rights. Recognition of celebrities and publicity rights has risen as a sui generis administration inferable from the increasing number of examples of their trespass.

The jurisprudence of publicity and image rights is in its developing stage in India. When compared with the worldwide situation, India has been lingering behind in perceiving the privilege of publicity and image rights. There is neither a significant collection of case laws, nor any exhaustive statute representing image or publicity rights of famous people. It is just the Emblems and Names (Prevention of Improper Use) Act, 1950, which to a constrained degree, secures unapproved utilization of couple of dignitaries' names by disallowing the utilization of the names given in its schedule.¹ Publicity and image rights are by and large recognized as property

¹ Emblems and Names (Prevention of Improper Use) Act, 1950,s 3 ("Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or

rights instead of as personal rights. Along these lines, publicity rights are assignable and licensable for business benefits. In present situation, the law identifying with publicity and image rights is as yet undeveloped in India, as there is no codified law representing this area.

Despite the fact that protection is accorded to celebrities through intellectual property laws, it has turned out to be insufficient. There has emerged a solid need of independent administration for publicity rights as no particular provision in the Trademarks Act, 1999 ensures publicity and image rights, in spite of the fact that the meaning of “mark” in section 2(m) of the Act does include names. Some Indian celebrities— including Baba Ramdev, Sanjeev Kapoor, Kajol, Sachin Tendulkar, Shahrukh Khan and Yuvraj Singh – have urged for protection under the Act by applying to enrol their names and images as trademarks. Thus the property right in one’s name is allowed to celebrities in the trademark law. But, the lacuna of not sketching out the guidelines on appointing and permitting such a right makes the trademark protection constrained in application.

The trend of celebrities using their name and image to market goods and services is on the rise. The Copyright Act, 1957 does not provide for the meaning of the word ‘celebrity’. Though, the definition of a ‘performer’ under section 2(qq) includes in its ambit an actor, singer, musician, dancer, acrobat, juggler, snake charmer, lecturer or any other person who delivers a performance. There is only minimal clarity under copyright laws as to what aspects of celebrity rights may be provided protection. With the exceptional development of the media, consumerism and celebrity endorsements, this field requires more prominent consideration and special enactment, particularly given that Indian law is not completely advanced in this respect.

The first authoritative case on publicity rights comes from the Delhi High Court, in *ICC Development (International) Ltd. v. Arvee Enterprises*.² The court held that the right to publicity has developed from the right to privacy and can inhere just in an individual or in any indicia of the person's identity like his name, identity quality, signature, voice and so on. This case demonstrates that improvement of publicity rights in India finds its way from privileges of human dignity and liberty as cherished in Articles 19 and 21 of the Constitution. With the increasing popularity of celebrities and increase in even greater pace their exploitation the awareness as to the requirement of protection of their rights has been formed to be the need of society not only to provide them with the rights but also to control the dominance of celebrities’ individual interest over interest of public at large, by providing the limitations over the rights of them as celebrity holds great responsibility towards the society.

It is rather a tussle between an individual’s right to privacy and the interest of the larger public to know.

II.CONSTITUTION OF INDIA & OTHER STATUTES SUPPORTING PROTECTION OF CELEBRITY RIGHTS IN INDIA

The Article 19 and Article 21 play a major role in recognition of Image and Publicity rights of Celebrities. As Article 19 and 21 enshrines in itself the rights to human dignity and liberty. The image and personality developed by an individual forms to be his/her persona and he /she has the full right to flaunt it or protect it from exploitation. As development of such personality traits that is recognised by others involves great labour and time devotion. The Hon'ble Delhi High Court, in *ICC Development (International) Ltd*

design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorised in this behalf by the Central Government”).

² 2005 (30) PTC 253 (Del) [hereinafter ICC Development].

v Arvee Enterprises,³ gave a statement on publicity rights, which is the only authoritative discussion of publicity rights in Indian legal jurisprudence.

‘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. Any effort to take away the right of publicity from the individuals, to the organizer /non-human entity of the event would be violative of Articles 19 and 21 of the Constitution of India - No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it.’

The image rights in India, as considered by the Delhi High Court, arise from the right of privacy which has emerged through case law development and flows from human dignity enshrined in Articles 19 and 21 of the Constitution.

Right to Privacy and Image Rights Protection

The right to privacy secures people against unlawful government intrusion. The Indian Constitution does not allow in express or particular terms, any right to privacy as such. It is not listed as a fundamental right in the Constitution. However such a right has been enshrined by the Supreme Court in the ambit of Article 21 through the following landmark cases:

***Kharak Singh vs. State of UP*⁴: Inclusion of ‘privacy’ under ‘personal liberty’**

Kharak Singh, the petitioner, was charged under dacoity and was released due to lack of evidence. Ignoring the release of Singh, the Uttar Pradesh police put him under surveillance which involved secret picketing of his house, night visits at home, periodical inquiries by officers and monitoring and verifying movements of Singh. The petitioner filed a writ petition for violation of his fundamental rights (Article 32). Extending the dimension of ‘personal liberty’, the apex court for the first time declared right to privacy to fall under the purview of Article 21. The court held that at the end of the day, a person’s house is his ‘castle’ where he lives with his family and it is ‘his rampart against encroachment on his personal liberty’. Nothing is more deleterious to a man’s physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Art. 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures.

***Govind vs. State of MP*⁵: ‘Right to privacy is not absolute’**

Despite agreeing that right to privacy is the emanation of Article 19 and 21 of the Constitution, the top court held that right to privacy cannot be made an absolute right. Subject to reasonable restrictions, the right to privacy could be made valid. Too broad a definition of privacy will raise serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. The right to privacy will, in this manner, fundamentally, need to experience a procedure of case by case improvement facts being similar to the Kharak Singh case, the court held that privacy and fundamental rights are present in Regulation 855 and 856 (surveillance) of the Madhya Pradesh Police, Regulations made by the Government under the Police Act, 1961, if read widely.

³ *ICC Development (International) Ltd v Arvee Enterprises* (1077) 433 US 562

⁴ AIR 1963 SC1295: (1964) 1 SCR 332

⁵ 1975 AIR 1378

Rajagopal vs. State of T.N⁶: Conflict between right to information and privacy – ‘Right to be let alone’

Freedom of press was put in question vis-a-vis right to privacy when publishers of Tamil weekly magazine Nakkheeran decided to publish the story of Gauri Shankar alias Auto Shankar. Auto Shankar was a prisoner in Madras convicted for six murders and sentenced to death by the Madras High Court in 1992. Shankar had become a popular figure at the time and had written an autobiography. Shankar wanted his story published and bagged Nakkheeran who showed their willingness to publish the same. The autobiography was a close nexus between a prisoner and IAS and IPS officers, several of whom were partners in the crimes the serial killer had committed. On gaining knowledge of such an autobiography ready to be published, the IAS and IPS officers mentioned in the book, cancelled the publishing making sure that Shankar backtracked from his writing the autobiography. Hence the publishers were not allowed to publish after receiving a letter from Shankar’s power of attorney forcing the publishers to approach the court.

Upholding the publisher’s stand, the court allowed the magazine to publish the autobiography as a work of fiction and defined privacy as part of Article 21 and as a right to be let alone. A native has a right to protect the privacy of his own, his family, childbearing, marriage, parenthood, procreation, and education among different issues. None can publicise anything concerning the above issues without his assent whether honest or generally and whether commendatory or basic. Further the court stated an exception in this case where a person voluntarily involves himself into a controversy or invites one, that person would not fall under the right to privacy.

Naz Foundation vs. Govt. of NCT Delhi⁷ – Interference with personal liberty must follow a procedure. Naz Foundation, a Non-Profit Organization (NGO), filed a public litigation challenging the constitutional validity of Section 377 of Indian Penal Code, 1860 (IPC) which penalizes ‘unnatural offences’ as mentioned in the Act.

The apex court cited Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights which define privacy as no arbitrary interference with home, family or honour and reputation. Relying on the above mentioned case laws and more, the apex court laid down three categories under which the term privacy must fall for an individual to avail the said right.

Any law interfering with personal liberty of a person must satisfy a triple test:

- (i) it must prescribe a procedure;
- (ii) the procedure must withstand a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and
- (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with the personal liberty must also be right and just and fair and not arbitrary, fanciful or oppressive. The court held that Section 377 of IPC discriminated a particular section of individuals solely based on their sexual orientation and condemned Section 377. But it did not decriminalise the provision stating that the power to amend or repeal the section lies with the Parliament and not the judiciary.

The above series of judgment clearly shows that how the right to privacy has been recognised under Article 21 of the Indian Constitution. Till these cases the status of Right to Privacy was established as its being part of Fundamental Rights under Part III of

⁶ 1994 SCC 632.

⁷ 2009 SCC OnLine Del 1762

the Constitution of India but the questions over the status of Right to Privacy as being part of Article 21 were made after the recent Aadhaar Card issue which has been raised in the Supreme Court involving important question of law as to Does Aadhaar infringe on people's privacy and whether privacy is a Fundamental Right? It has been claimed by many that Aadhaar infringes on the right to privacy of individuals. In past, the Supreme Court has ruled that privacy is not a fundamental right. The apex court has set up a nine-judge bench to settle this debate and examine its past judgements.⁸ With the final verdict of the case right to privacy has again acclaimed the status of fundamental right. Considering the importance verdict of the landmark case it further becomes a more vital issue to provide protection to rights of celebrities majorly based on exploitation of their privacy rights.

Celebrities are more prone to violation of their privacy and personality rights as assumed to be personalities how have with their consent chosen to be a public property to earn name and fame through recognition by public. Right to privacy has been continuously outraged of celebrities through arbitrary exploitation of Right to Press which is been granted to media as fundamental right under Article 19(1) (a) with the right of people to know or to have information. Celebrities tend to become the alluring personality and source of inspiration for people with the passage of time. A sense of devotion forms with the passage of time with the well known personalities and in many circumstances people worship them like God and these personalities have great influential value as well as impact on the society helping to create awareness in differentiating between right and wrong aspects of life. "Individual's popularity is an extension of his property" similarly individual's corporation in the society is also extension of his/her personality. Celebrities personality is established by the goodwill that they have acquired through their continuous hard work and skill which forms to be their intangible property which they have freedom to flaunt and seek economic interest out of it by association in commercial market of advertisement, entertainment shows *etc.*

Basic idea is that the livelihood of celebrity depends on the goodwill or the image of the celebrity that has developed in the eyes of the people and their income depends on the popularity they attain through recognition by the people. That is the reason that being a celebrity protection of one's image is very important. As the importance of celebrities have increased in society exploitation of their privacy rights have also increased at greater pace by media as it tends to be the important interface between the public and celebrity. As people tend to be so much associated with the celebrities considering them as their friends or source of inspiration they take keen interest in every minute happening in lives of celebrities and on the other hand as celebrities do not know the public so there is no mutual exchange of information. Therefore celebrities try to control their personal information that can put them in situation of embarrassment and humiliation leading to exploitation of their image in public.

MMS (Multi Media Service) scandals have become new trend whether being original leak of videos or majorly through fake videos just to exploit the celebrity image and earn good monetary benefits out of it. These videos tend to form a matter of immense popularity among the public but becomes great source of exploitation and defamation for celebrities. Even Supreme Court reacted towards the MMS scandal of Shahid Kapoor and Kareena Kapoor while dealing with the constitutional validity of section 499 of Indian Penal Code and recognised that the Kareena-Shahid photograph was in bad taste and court additionally alluded to the requirement for setting up balance between general peoples' interest and dilution of image with the goal that freedom of expression of daily newspapers are not extended past the breaking points.⁹

⁸ [FE Online](#), "Aadhaar card case in Supreme Court: 5 important questions the case will seek to answer", New Delhi, July 19, 2017

⁹ Shahid-Kareena photo not in good taste SC, *available at* :[http://www.tribuneindia.com/2004/20041218/nation.htm#3\(last](http://www.tribuneindia.com/2004/20041218/nation.htm#3(last) visited on 24 July,2017).

Right to publicity is not absolute though it comes under the vibrant ambit of article 21 of the Constitution of India. For the protection of public interest reasonable restrictions can be placed on such right under article 19 of the Constitution. The right to acquire information and circulate the same has been held to be included under the article 19(1)(a) within the ambit of 'freedom of speech and expression'.¹⁰ The freedom to speech and expression holds an important aspect to have the freedom to receive and to disseminate information without interference as elaborated by the Supreme Court providing broader dimension to article 19(1)(a) of the Constitution.¹¹

Abuse of rights of celebrities on pretence of providing information in 'public interest' has been frequently challenged by the celebrities. The argument in contradiction holds that celebrities no further hold the right to privacy under any law as they themselves have devoted their lives to public at large and it is only the public who make them acquire the status of celebrity. Though the argument does not hold good stand as in any circumstances celebrities are also individuals and they have all the liberty to keep up the privacy of their personal life with the different aspects of their commercial lives and further the absolute waiver of any fundamental right is not possible. Unmistakably a right to privacy is a prized ownership of each person; it ought to be respected and ought not to be abused by the media on the ground of public interest.

Overall the Constitution of India provides for the general kind of protection to the Celebrity's rights. As The Publicity Right of celebrity cannot be solely protected as flowing from article 19 and article 21 of the Constitution of India as Stated by Delhi High court in *ICC Development (International) Ltd. v. Arvee Enterprises*¹²

- i) The first problem would be that fundamental rights are generally only enforceable against the state within the meaning of Art.12 of the Constitution. Even though a liberal approach has been followed in this regard a citizen might find it difficult to enforce his publicity rights against private entities.
- ii) Secondly, fundamental rights cannot be waived. So, a person would find it difficult to engage in commercial transactions with his publicity rights.
- iii) Thirdly, it has been held that the rights under Article 19 and 21 are extinguished once a person dies. One's personae may be a valuable property that a person might wish his successors to protect and commercially exploit just like any other intellectual property.

III. OTHER STATUTES RECOGNISING PROTECTION OF CELEBRITY RIGHTS:

- *Protection under the Emblems and Name (Prevention of Improper Use) Act 1950*

¹⁰ M.P. Jain, *Indian Constitutional Law* 988 (5th Ed. 2008).

¹¹ *State of Uttar Pradesh v. Raj Narain.*, AIR 1975 SC 865, 884, the apex court held that Art 19(1)(a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of citizens to know, the right to receive information regarding matters of public concern. Similar ratio was drawn in cases like *Secretary, Minister of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236 and *Association of Democratic Reforms v. Union of India*, AIR 2001 Del 126.

¹² *Supra* note 2

This statute prohibits the use for commercial purposes of the names of certain personalities (including Mahatma Gandhi, Pandit Jawaharlal Nehru, Chhatrapati Shivaji Maharaj and the Indian Prime Minister) and the name, logo or symbol of institutions listed in its schedule,

except with permission of the government. Individuals who are not listed in the schedule may also invoke the provisions of the act.¹³

In a unique yet important case, in late 2009 Montblanc's "Mahatma Gandhi Limited Edition 241" and "Mahatma Gandhi Limited Edition 3000" luxury pens engraved with Mahatma Gandhi's portrait on the nib were launched in India with the prior approval of Tushar Gandhi (Gandhi's great grandson) but on account of the Protection under the Emblems and Names (Prevention of Improper Use) Act 1950 the launch was immediately opposed by large number of people. Under this act, unless the government permits it, names and images of nationally important personalities cannot be used for any trade, business or professional purpose. As a result, Montblanc was forced to withdraw its advertisements and the pens in question from the market. While the aforesaid act was brought into force to ensure that people of Mahatma Gandhi's stature are not treated with disrespect, it allows for the inference that personality rights have long been recognised in India.

Further the other controversy relating to the transfer of right to use the name of Mahatma Gandhi for the purpose of advertising has indeed perturbed the general public when the great grandson Mr Tushar Gandhi, intended to grant CMG, a multinational company, exclusive marketing rights to use Mahatma Gandhi's name for advertising their products. But this was considered as blasphemy and an offence as it hurt the sentiments of the people who have great regard for Mahatma Gandhi. In defence, Mr Gandhi justified his action by stating that his intention was 'to secure the name of Mahatma Gandhi and not allow it to be used in an irreverent manner'. His argument was that 'the Indian legal system does not provide effective measures to protect the name and image' of Mahatma Gandhi. He cited a previous situation wherein he was unable to serve summons to Nikki Bedi or to Rupert Murdoch when the gay activist, Ashok Row Kavi had made defamatory statements against Mahatma Gandhi. He stated that he had entered into the contract with the purpose of protecting the name of Mahatma abroad. The facts, however, were that he had neither copyright on the name nor on the works of the Mahatma. Moreover, the use of the name Mahatma Gandhi is specifically prohibited under the Emblems and Names (Prevention of Improper Use) Act 1950. Mr Gandhi ultimately yielded to public pressure and withdrew the permission given to CMG.

The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted to protect the improper use of certain emblems and names for professional and commercial purpose. Section 3 categorically states that : Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or, any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.

Section 4 provides

1) Notwithstanding anything contained in any law for the time being in force, no competent authority shall,-

¹³ Surbhi Mehta and Teesta Hans , "Publicity and image rights in India",⁷⁴ *Anand And Anand Advocates*

- (a) Register any company, firm or other body of persons which bears any name, or
- (b) Register a trade mark or design which bears any emblem or name, or
- (c) Grant a patent in respect of an invention, which bears a title containing any emblem or name, if the use of such name or emblem is in contravention of Section 3.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or in colourable imitation thereof, the competent authority may refer the question to the Central Government, and the decision of the Central Government thereon shall be final.

Section 5 provides for the penalty with fine which may be extended to Rs. 500.

The problem with the present act in regard to the protection of celebrity rights are that it only protects the name not the image or the persona of an individual further such protection is only granted to the names mentioned in the schedule of the Emblems and Names (Prevention of Improper Use) Act 1950. The amount of penalty provided for exploitation of rights is also not justifiable in regard to the rising rate of violation of rights.

- *Protection under Advertising legislation*

Notwithstanding the various regulations as analyzed above, in India the Advertising Standards Council of India (ASCI) was built up for ensuring the interests of the consumers while bserveing and controlling the business correspondence. It goes for convalescing the image, dependability of advertising and reprimand untrustworthy practices embraced by advertisers.¹⁴ History of ASCI Traditionally, in 1982, the Advertising Club, Mumbai arranged a workshop on “Code for Self-Regulation in Indian Advertising”, in organization with the International Advertising Association (IAA). Experts from different Indian Advertisers & Advertising Agencies, the World President Emeritus of the IAA and the Director General of the Advertising Standards Authority attended the workshop. The fundamental goals of the workshop were:

I. To survey the self – regulation on advertising in different nations with specific reference to the base as set up in the U.K.

II. To advance a code for self – regulation in advertising in India as an arrangement for a powerful framework for enforcing it.¹⁵

The transactions brought about setting up of an advisory group on self regulation code in India. This was basically embarked to ensure that the buyers are secured against bogus advertising and by and large acknowledged standards of ethical quality are maintained. Subsequently the Advertising Standards Council of India (ASCI) was built up to check deceptive and exploitative commercials. This affiliation is shaped in accordance with Advertising Standards Authority of U.K. and National Advertising Division of America (NAD).¹⁶

Object of ASCI

To monitor, regulate and advance measures of advertising practices in India with a perspective to;

I. Ensuring the honesty and trustworthiness of representations and claims made through advertising and shielding against misleading advertising

II. Ensuring that advertising is not hostile to usually conventional standard and principles of public civility.

¹⁴ Shubhra Deepa Moitra, “The Code of Self-Regulation in Advertising”, available at <http://www.legalserviceindia.com/article/I275-The-Code-For-Self---Regulation-In-Advertising.html> (Last visited on Apr. 13th 2013)

¹⁵ Mukesh & Ranju Trehan, “Advertising and Sales Management”, Ed.2006-7, V.K. Enterprises Publication, pp.63

¹⁶ Id at 64

III. Defending against the unpredictable utilization of advertising for the endorsement of products or services which by and large viewed as perilous to society or to people or which are unsuitable to society in general.

IV. Ensuring that advertisements examine reasonableness in opposition and the standard of commonly acknowledged competitive behavior Main objective behind formation of the ASCI was to ensure that there is a fair competition among all the players.¹⁷

Organizational Structure of ASCI have been enlisted as a non-profit Company under section 25 of the Indian Company Act¹⁸ initially with 43 members. Presently there are 250 members in this association. It comprises of a Board of Governors and a Consumer Complaints Council (CCC). The Board of Governors contains four members from each of the four sections associated with the advertising industry including: Advertisers, Advertising Agencies, Media (owners of press, television, radio etc.) and the related sectors (e.g. outdoor agencies, PR, market researchers, ad producers, business schools).¹⁹ The Board of Governors is a body which makes strategies. The treatment of grievance is dealt with by a Consumer Complaints Council (CCC) which has 21 individuals. Out of which, 12 are non-advertising experts representing civil society who are well-known citizens and perceived assessment pioneers The CCC is totally autonomous and gives its own particular principles to ponder and settle on complaints. These civil society members are from various disciplines such as medical, law, engineering, human resources and consumer interest groups. The remaining nine members are from member firms, advertising practitioners. The Board of Governors meets once every month. The CCC likewise meets once per month and all the more regularly if required.²⁰

Self Regulation and Advertising Agencies

The ASCI is a self administrative organization in India and is roused from its western partners. The issue which emerges is the reason why regulation of advertising is required in any case. Commercial build rivalry, buyer decision and advancement in the business sector, however, in the event that the advertisings are not honest then people in general's confidence in them will hamper and it will influence the entire business and in this way. Therefore some sort of regulation is required in light of a legitimate concern for the ad business itself. Regulation can be either by enactment or the business can go for self regulation. Along these lines, the following inquiry which emerges is why self regulation? Self regulation as the expression itself proposes is not an outer but rather it's a sort of inward regulation whereby the business makes strategy for controlling its own players. In the event that there is no administration, there will be heaps of deceiving commercial in the business sector and keeping in mind the end goal to check this, the legislature will

¹⁷ Anita Patil, "A critical comparative study of Misleading advertisements in India: with special reference to Food, Drugs and cosmetics", available at <https://researchersclub.wordpress.com/2014/06/15/a-critical-comparative-studyof-misleading-advertisements-in-india-with-special-reference-to-food-drugs-and-cosmetics/>(Last visited on Apr. 13th 2013)

¹⁸ Indian Company Act, 1956, Section 25 incorporate those companies which are formed for the sole purpose of promoting commerce, art, science, religion, charity or any other useful object and have been granted a licence by the central government recognizing them as such.

¹⁹ Hemant Goel, "India: Advertising and Marketing Advertising Law", Global Jurix, Advocates & Solicitors, India, available at <http://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf>(Last visited on Apr. 13th 2013)

²⁰ Chapter three of Advertising Standard Council available at <http://www.ascionline.org/index.php/mission.html>(Last visited on Apr. 13th 2013)

need to think of strict regulations which will hamper the enthusiasm of the fair individuals from the group too. To put it plainly, self regulation depends on this straightforward equation 'self manage or another person will do that for you'.²¹

A Code for self regulation in Advertising has been adopted by the Advertising Council of India (ASCI)(1985). Honest advertising and fair competition in market place is the commitment which code provides. It stands for the assurance of the real interests of consumers and all concerns about Advertising - Advertisers, Media, Advertising Agencies and other people who help in the creation or positioning of commercials.²²

ASCI have divided its code into four chapters. It has been drawn up by individuals in professions and commercial ventures in or joined with promoting, in counsel with delegates of individuals influenced by advertising, and has been acknowledged by people, corporate bodies and affiliations occupied with or generally worried with the act of advertising. With a view to achieve the acceptance of fair advertising practices in the best interest of the ultimate consumer, the Council prescribed the following basic guidelines:

- I. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
- II. To ensure that advertisements are not offensive to generally accepted standards of public decency.
- III. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type, this is unacceptable to society at large.
- IV. To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market-place and the canons of generally accepted competitive behavior in business is both served.

The Code's standards frame the premise for judgment at whatever point there might be clashing perspectives about the adequacy of an endorsement, whether it is tested from inside or from outside the advertising business. Both the general public and an advertiser's rivals have an equivalent right to expect the substance of advertisement to be introduced reasonably, understandably and dependably.

Complaint Handling Procedure at ASCI

ASCI and CCC manage complaints got from Consumers and Industries, against ads which are considered as false, deceptive, repulsive, unlawful, prompting dangerous practices, or out of line to rivalry, and thus in negation of the ASCI Code for Self-Regulation in Advertising. At the point when a grievance is gotten around a commercial, ASCI gives a chance to the sponsor to audit the advertisement for its conceivable effect on the sensibilities of individual viewers of TV, or readers of press publications. The advertiser is given a notice of a complaint got at ASCI with the points of interest as above and is requested to reply inside of a brief timeframe. Upon the receipt from the advertiser, the Consumer Complaints Council, of ASCI, is in a position to think definitively on the issues included, and to touch base at a reasonable and target conclusion, which would stand the scrutiny of all anxious with the

²¹ Anita Patil, "A critical comparative study of Misleading advertisements in India: with special reference to Food, Drugs and cosmetics", available at <https://researchersclub.wordpress.com/2014/06/15/a-critical-comparative-studyof-misleading-advertisements-in-india-with-special-reference-to-food-drugs-and-cosmetics/>(Last visited on Apr. 13th 2013)

²² The Advertising Standards Council Of India, available at: <https://ascionline.org/index.php/ascicodes.html> ,(last visited July 27.2017)

right to freedom of expression, and the opportunity of consumers to choose the products /services made accessible to them in the commercial place.

ASCI gets and processes complaints against commercial, from a cross segment of buyers, the general public and industry, in light of a legitimate concern for each one of the individuals that depend on publicizing as a commercial communication, and this covers people, experts in advertising, advertiser firms, media, advertisement agencies, and subordinate administrations associated with advertising. ASCI converse with the advertiser when a grievance is maintained and it is important that in around 90% of the situations where the complaints are maintained, the advertisements are either changed or pulled back.²³

As regard to rights of celebrity's is concerned chapter 1 of the code provides that: To ensure the Truthfulness and Honesty of representations and claims made by advertisements and to safeguard against misleading advertisements: "Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by The Advertising Standards Council of India, the advertiser and the advertising agency shall produce explicit permission from the person, firm or institution to which reference is made in the advertisement".²⁴

Chapter 16 of the Code provides for the Guidelines for Celebrities in Advertising. Celebrities, for the purpose of this guideline, are those people who are from the field of entertainment and sports and would also include other well-known personalities like doctors, authors, activists, educationists, etc. who get compensated for appearing in advertising. All advertisements featuring celebrities should ensure that it does not violate any of the ASCI code in letter and spirit. Celebrities are expected to have adequate knowledge of these codes and it is the obligation of the publicist and the organization to ensure that the celebrity they involve is made aware of them.

Endorsements or portrayals and testimonials of suppositions or inclination of celebrities must mirror the honesty, sensible opinion of the individual(s) making such portrayals, and must be founded on sufficient data about or involvement with the item or administration being publicized. Celebrities should do due diligence to ensure that all description, claims and comparisons made in the advertisements they appear in or endorse are capable of being objectively ascertained and capable of substantiation and should not mislead or appear deceptive.

Celebrities should not participate in any advertisement of a product or treatment or remedy that is prohibited for advertising under: The Drugs & Magic Remedies (Objectionable Advertisements) Act 1954 as updated from time to time or The Drugs & Cosmetic Act 1940 and Rules 1945: (Schedule J) as updated from time to time or A product which by law requires a health warning, "...is injurious to health" on its packaging or advertisement.

If the celebrity either directly or through the concerned advertiser/agency chooses to seek advertising advice from ASCI on whether the advertisement potentially violates any provisions of the ASCI code or not and if the advertisement is developed fully following the

²³ History and Profile of ASCI available at http://shodhganga.inflibnet.ac.in/bitstream/10603/3434/7/07_chapter%203.pdf (Last visited on Apr.12th2013)

²⁴ Code for Self-Regulation in Advertising, Chapter 1, clause 3

advertising advice provided by ASCI, then the celebrity would be considered as having completed due diligence. However, ASCI's advertising advice will not be construed as pre-clearance of the advertisement.

Commenting on the new guidelines, Srinivasan K. Swamy, Chairman, ASCI,²⁵ says, “Celebrities have a strong influence on consumers and are guided by the choices they make or endorse. It's important that both celebrities and advertisers are cognisant of the impact and power of advertising and therefore make responsible claims to promote products or services. It is in the interest of advertisers / ad agencies as well as celebrities to be aware of these guidelines and be sensitised to this issue to avoid violations”.

ASCI's rules help in guaranteeing that cases made in advertising are not deceiving, false or go unverified Advertisers following these guidelines will protect the interests of the consumers, especially for products or services which can cause serious financial loss or physical harm. While the ASCI have possessed the capacity to guarantee a sensible level of adherence to its standards from individuals, a trouble emerges when complaints are recorded as to the activities of non-members.²⁶ Also these rules don't have the power of law; they are just recommendatory in nature. It is having no enforcement instrument to guarantee consistence with its orders. Though outstandingly, the code gives that it is not in rivalry with any law, its rule, or the machinery through which they are implemented; in this way the ASCI code is outlined just to supplement lawful controls under such laws and not usurp or supplant them.

IV RIGHT TO PRIVACY OF CELEBRITY AND ROLE OF MEDIA

Celebrities are more prone to violation of their privacy and personality rights as assumed to be personalities how have with their consent chosen to be a public property to earn name and fame through recognition by public. Right to privacy has been continuously outraged of celebrities through arbitrary exploitation of Right to Press which is been granted to media as fundamental right under Article 19(1) (a) with the right of people to know or to have information.

Celebrities tend to become the alluring personality and source of inspiration for people with the passage of time. A sense of devotion forms with the passage of time with the well known personalities and in many circumstances people worship them like God and these personalities have great influential value as well as impact on the society helping to create awareness in differentiating between right and wrong aspects of life. “Individual’s popularity is an extension of his property” similarly individual’s corporation in the society is also extension of his/her personality. Celebrities personality is established by the goodwill that they have acquired through their continuous hard work and skill which forms to be their intangible property which they have freedom to flaunt and seek economic interest out of it by association in commercial market of advertisement, entertainment shows *etc.*

Basic idea is that the livelihood of celebrity depends on the goodwill or the image of the celebrity that has developed in the eyes of the people and their income depends on the popularity they attain through recognition by the people. That is the reason that being a

²⁵ The Economics Times, Advertising Standards Council of India issues guidelines on celebrity advertising, *available at* :economictimes.indiatimes.com/industry/services/advertising/advertising-standards-council-of-india-issues-guidelines-on-celebrity-advertising/articleshow/58173475.cms ,(last visited 29 June,2017)

²⁶ Parth Gokhale &Shriyani Datta, “Comparative Advertising in India: Evolving a regulatory Framework”, 4 NUJS L. Rev. 131 pp 136-137 (2011).

celebrity protection of one's image is very important. As the importance of celebrities have increased in society exploitation of their privacy rights have also increased at greater pace by media as it tends to be the important interface between the public and celebrity. As people tend to be so much associated with the celebrities considering them as their friends or source of inspiration they take keen interest in every minute happening in lives of celebrities and on the other hand as celebrities do not know the public so there is no mutual exchange of information. Therefore celebrities try to control their personal information that can put them in situation of embarrassment and humiliation leading to exploitation of their image in public.

MMS (Multi Media Service) scandals have become new trend whether being original leak of videos or majorly through fake videos just to exploit the celebrity image and earn good monetary benefits out of it. These videos tend to form a matter of immense popularity among the public but becomes great source of exploitation and defamation for celebrities. Even Supreme Court reacted towards the MMS scandal of Shahid Kapoor and Kareena Kapoor while dealing with the constitutional validity of section 499 of Indian Penal Code and observed that the Kareena-Shahid photo was not in good taste and court further hinted at the need for establishing balance between public interest and defamation so that freedom of expression of newspapers are not stretched beyond the limits.²⁷

The media considers that it is their Fundamental Right to publish and inform the public all the matters that are of public interest on concern under Article 19, where we have the point of 'Freedom of Press'. "The liberty of the press, implicit in the freedom of speech stands on no higher footing than the freedom of speech and expression of a citizen and no privilege is attached to the press as such distinct from the ordinary citizen"²⁸ Right to publicity is not absolute though it comes under the vibrant ambit of article 21 of the Constitution of India. For the protection of public interest reasonable restrictions can be placed on such right under article 19 of the Constitution. The right to acquire information and circulate the same has been held to be included under the article 19(1)(a) within the ambit of 'freedom of speech and expression'.²⁹ The freedom to speech and expression holds an important aspect to have the freedom to receive and to disseminate information without interference as elaborated by the Supreme Court providing broader dimension to article 19(1)(a) of the Constitution. ³⁰

Abuse of rights of celebrities on pretence of providing information in 'public interest' has been frequently challenged by the celebrities. The argument in contradiction holds that celebrities no further hold the right to privacy under any law as they themselves have devoted their lives to public at large and it is only the public who make them acquire the status of celebrity. Though the argument does not holds good stand as in any circumstances celebrities are also individuals and they have all the liberty to keep up the privacy of their personal life with the different aspects of their commercial lives and further the absolute waiver of any fundamental right is not possible. Unmistakably a right to privacy is a prized ownership of each person; it ought to be respected and ought not to be abused by the media on the ground of public interest.

²⁷ Shukla's VN Constitution of India. Twelfth edition. Mahendra Pal Singh. Eastern Book Company

²⁹ *State of Uttar Pradesh v. Raj Narain.*, AIR 1975 SC 865, 884, the apex court held that Art 19(1)(a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of citizens to know, the right to receive information regarding matters of public concern. Similar ratio was drawn in cases like *Secretary, Minister of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236 and *Association of Democratic Reforms v. Union of India*, AIR 2001 Del 126.

³⁰ 40 Cal, Rptr. 2d 639 (1995)

In an American case *Montano V. San Jose Mercury News*³¹ - Montano's suit against the newspaper for invasion of privacy and misappropriation and celebrity persona, failed on 1st Amendment Grounds with the California Court of appeal saying, " The first Amendment protects the posters complained about for two reasons :- First, because the posters themselves report news worthy items of public interest and secondly, because a newspaper has constitutionally protected regard to promote itself by reproducing its originally article or photographs. The right to privacy often means the right to personal autonomy, or the right to choose whether or not to engage in certain acts or have certain experiences.

Several amendments to the U.S. Constitution have been used in varying degrees of success in determining a right to personal autonomy:

- The First Amendment protects the privacy of beliefs
- The Third Amendment protects the privacy of the home against the use of it for housing soldiers.
- The Fourth Amendment protects privacy against unreasonable searches
- The Fifth Amendment protects against self-incrimination, which in turn protects the privacy of personal information
- The Ninth Amendment says that the "enumeration in the Constitution of certain rights shall not be construed to deny or disparage other rights retained by the people." This has been interpreted as justification for broadly reading the Bill of Rights to protect privacy in ways not specifically provided in the first eight amendments.³²

In International Law, the privilege to privacy is extremely settled. The principle piece of privacy standard might be found in the Universal Declaration of Human Rights. In the age of the web also, the other quick supported, created method for correspondence, there has been included importance and subject matter. There is an open question which remains that whether the web will see a critical increment or lessening in protection. It is particularly significant that the Internet will usher a monstrous, reutilized observation. In the event that we again mull over the instance of the Indians, the individuals in the nation are interfacing with the media more than ever. Because of the expanded pace of the media, the picture of a superstar can be utilized for reputation or attack of security or chiefly for moral criticism in a simple way.

We can likewise remark about how in the present age, the idea of celebrity rights has ended up a great deal more logical and pertinent as a result of the accompanying two fundamental reasons:- an) expanding notoriety of media and b) quicker and less demanding worldwide correspondence through the web. Another address that emerges here is that whether the web will give more prominent privacy or less? Presently this remains an open question and at this point we need to see whether the web will see a huge increment or lessening in privacy. It is especially sure that the web will usher another period of huge, routinized observation. It is conceivable with the late conventions for web correspondence to record for all intents and purposes each action of a web client, the data he gets and so forth.

The Government is drawing out specific measures and some of them can be solid business exercises on the Internet to diminish privacy. In some ways our way of life is more uncovered and our big names have been reconstituted as overexposed people of contemporary life. Celebrity is an extremely open type of talk about what is private and open lastly what is close. One of the reasons that we have said here is that why celebrity rights have turned out to be more logical, the primary reason here is because of the

³¹ Right to Privacy: Constitutional Rights & Privacy Laws, available at < <http://www.livescience.com/37398-right-to-privacy.html> >

³² Right to Privacy: Constitutional Rights & Privacy Laws, available at < <http://www.livescience.com/37398-right-to-privacy.html> >

development of social media. The rise and improvement of cutting edge buyer society have carried on the twist of celebrity culture. Mainstream culture is brimming with the famous people's brilliance. The upside of innovation has changed individuals' regular day to day existence. The development of income and leisure time has turned individuals' consideration on the issue of utilization. Keeping in mind the end goal to fulfil customers' expanding yearning of material furthermore, social utilization, celebrity and its relative industry have developed and flourished in the ground of mainstream culture. At the same time, the development of social vote based system, decrease of religion power, and commodification of regular day to day existence has added to current position of famous people, they turn into the symbols to the mass populace in various angles.

Under the impact of these series efforts, the fan group have come out, and then, a new market serving fans has emerged, by which, the defied status of stars have established and consolidated day by day. Celebrities utilize media to complete self-propaganda, media reversely use them to create substantial commercial return. However, in general, partial celebrities distaste the close supervision coming from media; similarly, media dislike celebrities' arrogance as well. In this perspective, there is a kind indivisible and hostile relationship between media and celebrities.³³

A case of Julia Roberts was taken into consideration; wherein the defendant ran a website named 'Juliaroberts.com' and through the same website the defendant ran an online auction programme to sell his goods. Julia Roberts claimed that the defendant used her fame to promote his auction through the net. When the concept of celebrity rights came into question and when it is related to technology and the dawn of the internet, the concept of surveillance comes into play. Among the main characteristics of surveillance realm are primarily- amplification, routinization and sublimation. The part of privacy always comes to the scene and there is some sort of ambiguity whether the amount of privacy is less or more. Internet, as we know has a plethora of ways by which people can discover the ways of celebrity life. The main question is how it can be protected and prevented from getting infringed. We all know that media is a main source as to how people get resources and in turn the various websites also. The advent of social media has created an exposure as to how people will get to know about celebrities. An example of how through the media the protection was breached was seen in the case of *Sourav Ganguly V. Tata Tea Ltd.*¹ In this case when the sports star returned from the tour of England and after his magnificent show at lords, his photo was being used by Tata tea, his employer to sell their tea packets of 1 kilo. The court ruled in favour of Mr Ganguly stating that his fame was his property.

The part of as to why people want to know about celebrities is that of the status that they have earned. The internet is probably the way as to how the normal citizens get to know. Whether these new techniques for privacy will get the upper hand in the on-line world remains to be seen. There are government objections to these techniques as well as strong commercial incentives to minimize anonymous activity. But for the first time it is possible to conceive of a technological environment that properly designed could provide new levels of privacy protection.

V CONCLUSION

Celebrity rights are subservient to public interest, i.e., it essentially links the publicity rights as emanating from human dignity enumerated under Articles 19 and 21 of the Constitution of India but both have proved to be insufficient for the protection of celebrity rights. Though Advertising Code of Conduct Chapter 16 of the Code provides for the Guidelines for Celebrities in Advertising but fails in regard to the enforcement. It is having no enforcement instrument to guarantee consistence with its orders. Further the code

³³ Celebrity Rights available at <http://www.legalserviceindia.com/article/1139-Celebrity-Rights.html>

majorly talks about the duties of the celebrities ignoring the importance for protection of their rights in present era. Neither the present trademark law nor copyright regime provides an overall protection of the personality and image rights of the character.

In India Right to Privacy has acquired the status of absolute right and then too right of media guaranteed under Article 19(1)(a) is overpowering the rights of celebrity as to concern of their privacy. United States has very strict norms for protection of rights of celebrity and in comparison India lacks far behind. To address the issue of invasion of rights of celebrity by media, laws should be framed considering protection of rights that can be granted to celebrity as publicity rights, personality rights or image rights as these are the rights which have origin from the doctrine of privacy and thus when the image of the celebrity can get protection through legislative enactment automatically the invasion of privacy will get protection from unauthorized use of celebrity image in the society.

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