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LIGHT, CAMERA & LEGAL RIGHTS: RE-IMAGING PERFORMER AND CELEBRITY RIGHTS UNDER THE COPYRIGHT LAW

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ABSTRACT

The copyright laws that have been established in different jurisdictions have changed dramatically to cover a wide range of aspects of intellectual creation. The acknowledgement and defense of performers' and celebrities' rights is one such important aspect. Performers—actors, singers, dramatists, and others—who express creative works through live or recorded performances often find themselves entangled in legal conflicts, particularly within the realm of cinematography. A reoccurring weakness in current legal systems is exemplified by the ongoing struggle between actors and producers over who owns and controls performance rights. The shortcomings of the current copyright rules in protecting the interests of artists are brought to light by cases affecting international and Indian superstars, such as Manisha Koirala and Taylor Swift. Furthermore, the unapproved commercial exploitation of a celebrity's persona—for example, using their image in offensive ads or having content creators mimic their voice for financial gain—highlights the need for reform even more. The brittle enforcement of celebrity rights in the digital age is highlighted by recent court cases involving Amitabh Bachchan and Anil Kapoor, which show clear abuses of the right to privacy and publicity. Performers are granted moral rights, but their applicability is still restricted and they do not provide complete, immediate protection. The research undertaken highlights important legal gaps in the current structure of performers' rights under the Indian Copyright Act. It also examines progressive legal approaches and suggests improvements that could be modified for the Indian context by drawing comparisons with foreign copyright systems, especially in Western-influenced jurisdictions.

Keyword: Copyright, Performers, Neighbouring rights, celebrity rights, legal loopholes and

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INTRODUCTION

“When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should commercialise their identity but that the right to control when, where and how their identity is used should vest with the famous personality.”³

A legal tool for preserving the unique ways in which ideas are expressed that come from intellectual labor is copyright. It gives authors and artists the sole right to use and distribute their creations, including sound recordings, cinematograph motion pictures, musical compositions, theatrical works, and literary and creative works.⁴ The Copyright Act, 1957, which has undergone several revisions and been impacted by numerous international agreements and treaties, governs safeguarding copyright in India. The importance of copyright has grown dramatically in a time when content can be shared and altered instantly. This is particularly true for performers' and celebrities' rights, which were formerly disregarded but are now receiving more legal recognition and emphasis.

Original works that are the result of human ingenuity and intellectual effort are protected by copyright law. The manifestation of ideas is the only thing that is legally recognized, not the ideas themselves. Significant international agreements including the TRIPS Agreement, the Berne Convention, and WIPO activities helped India's copyright structure evolve, leading to the passage of the Copyright Act, 1957.⁵

This Act has been amended several times throughout the years to reflect changes in the field of intellectual property. The idea of Performer's Rights is one of the notable additions. Despite the fact that the word "celebrity" is not specifically stated in the law, judicial interpretations have driven celebrity rights to become a unique and developing aspect of copyright protection.⁶ The purpose of this piece is to conduct a comparative legal examination of the extent and constraints of performers' rights in India and its comparison, to Western-influenced jurisdictions. The existing system has a serious flaw in that it frequently denies performers complete copyright protection for

³ *Titan Industries Limited vs. M/s Ramkumar Jewellers*, 2012 SCC Online Del 2382.

⁴ Urvashi Sharma, “Varied Facets of Copyright Law: Special Reference to Performers and Celebrity Rights” 7 *International Journal of Law and Social Sciences* 108 (2021).

⁵ Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Rights: Protection under IP Laws” 16 *Journal of Intellectual Property Rights* 14 (2011) available at: SSRN: <https://ssrn.com/abstract=1940926>.

⁶ Pooja Gautam, “Analysis of Existing Celebrity Rights” 4 *International Journal of Law Management and Humanities* 1481 (2021).

their artistic creations. Third parties frequently continue to use these performances for profit, frequently without the performer's permission, which raises grave concerns regarding the applicability and enforcement of current regulations.

This study also explores how celebrity rights are still at risk and regularly infringed upon, especially because of their unclear and unmodified legal status. Significant legal issues still surround the unauthorised use of a celebrity's voice, likeness, or identity in commercials, offensive material, or monetised digital media.⁷ The scope of copyright has been widened with the introduction of Moral Rights of the Performers. These Performers, as per *Section 2(qq) of Copyright Act*⁸, consist of actor, dancer, musician, singer, acrobat, conjurer, snake charmer, juggler, a person delivering a lecture or any other person who makes a performance.⁹ Later Performers were granted moral rights over their work, in case they assign their work to the third party for monetary benefits.¹⁰ But here the contention arises that in cinematography, the actors' rights of performance are not well protected or there are some drawbacks in it. The question arises to what extent the actors right of performance can be protected through present copyright regime? Are these moral rights enough to protect one's intellectual labour when the economic rights are assigns to the third party?

This paper provides the comparative study from Indian as well as western context through various case laws, case studies and real-life scenarios. Lastly, the object is to get some conclusive analysis in order to strengthen the present copyright regime for protection of rights of performers and celebrity.

⁷ Shreyasi Bhattacharya and Aparna Madhu, "An Overview of Celebrity Rights in India" 5 *RGNUL Fin. & Mercantile L. Rev* (2018).

⁸ The Copyright Act, 1957 (14 of 1957).

⁹ Explained: Rights of Performers Under Indian Copyright Law, *available at*: <https://lexlife.in/2021/06/03/analysis-rights-of-performers-under-indian-copyright-law/> (last visited on 18 April 2025).

¹⁰ Performers Rights in India, *available at*: <https://lawby26.com/performers-rights-in-india/> (last visited on 18 April 2025).

TRACING INDIA'S COPYRIGHT LAW FROM INK TO IDENTITY

Over the years, the Indian copyright law has undergone a substantial transition, moving from a colonial import to a full legal structure based on both domestic and international commitments. The law, which has its roots in the 1957 Copyright Act, protects authors of creative works by granting them the sole right to copy, distribute, communicate, and modify their creations. Copyright protects intangible expressions, not ideas in and of themselves, but rather how they manifest in a set form, in contrast to tangible property.¹¹

Copyright laws in India came into existence with the advent of Copyright Act 1957. This reform took place with the development of Copyright regime in international arena. India became the signatory of Berne Convention and TRIPS agreement. With the ratification of these international conventions India has amended its Copyright law in 1994 in order to insert Section 38, 39 and 39A,¹² which recognizes performer's rights.¹³ Under Indian law there is the concept of Neighbouring Right or Related Rights. This category consists of three kinds of Rights, firstly, right of the artist, those who perform on the stage, secondly, right of the producers of phonogram and lastly, radio and television broadcaster.¹⁴ Along with neighbouring rights there are other rights such as Economic and Moral rights. Economic rights are prime rights associated with the author or creator of the work. When the author of the work assigns his/her copyright to any other person for monetary gains per se, then automatically all the economic rights are transfer to that new owner. On contrary to this author is left with his/her Moral rights. Though earlier these moral rights are only gives to author of the literary work but in 2012 Copyright Act of 1957 was again amended to insert *Section 38A and 38B* which provides the moral right protection to performers as well.¹⁵ In

¹¹ What is Idea-Expression dichotomy under copyright law, available at: *What is Idea-Expression dichotomy under copyright law?* (last visited on 18 April 2025).

¹² The Copyright Act, 1957 (14 of 1957).

¹³ Sam Ricketson, and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, (Oxford Academic, 3rd online eds. 2022) available at: <https://doi.org/10.1093/oso/9780198801986.001.0001>.

¹⁴ About Copyright and Neighbouring rights, available at: https://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/About_copyright_and_neighbouring_rights (last visited on 18 April 2025).

¹⁵ VK Ahuja, *Law Relating to Intellectual Property Rights* 119 (Lexis Nexis, Haryana, 3rd edn. 2017).

this paper we are going to specifically analyse the neighbouring or related rights and moral rights of the performer and Celebrity rights in India and other developed nations.

Furthermore, the idea of publicity rights or celebrity rights has developed through court interpretations even though it is not expressly stated in Indian copyright law. These rights acknowledge that a celebrity has authority over how their identity, appearance, voice, and likeness are used for profit. In view of Article 21 of the Constitution,¹⁶ courts have started to recognise this right as being fundamental to the right to privacy.

In *Titan Industries Ltd. v. M/s Ramkumar Jewellers*,¹⁷ for instance, the Delhi High Court ruled that the unauthorised use of Amitabh Bachchan and Jaya Bachchan's photos amounted to the commercial exploitation of their personalities. Likewise, in 2022, the Delhi High Court granted Amitabh Bachchan temporary relief to stop his voice and image from being used in deceptive commercials.¹⁸ The legal void in addressing AI-generated content and deepfakes was brought to light in 2023 when Anil Kapoor also petitioned the court to limit the exploitation of his digitally altered videos.¹⁹

The current copyright structure urgently needs to be reevaluated in light of the increasing significance of digital media, social media, and artificial intelligence. Although moral and economic rights are protected by the law, there are important gaps since there are no explicit laws on celebrity rights, contracts that renounce performers' rights, and no enforcement procedures. These gaps must be filled immediately, maybe by a new law that acknowledges publicity rights or by changing the current legislation to strike a compromise between artistic freedom and business needs.

Even while India's copyright legislation has made great strides in acknowledging new forms of artistic expression and adjusting to international standards, there are still significant obstacles in defending the rights of celebrities and performers. Building an inclusive and forward-thinking

¹⁶ The Constitution of India.

¹⁷ 2012 SCC Online Del 2382.

¹⁸ Personality rights – An Examination of Amitabh Bachchan v. Rajat Nagi and Ors, available at: <https://www.khuranaandkhurana.com/2023/01/14/personality-rights-an-examination-of-amitabh-bachchan-v-rajat-nagi-and-ors/> (last visited on 18 April 2025).

¹⁹ Aman Sen, “Anil Kapoor v. Simply Life India & Ors.: Protection of Celebrity Rights in India” 5 *Indian Journal of Integrated Research in Law* 429 (2023).

copyright system requires bolstering moral rights, making sure contracts are fair, and legally protecting an individual's identity online.²⁰

NEIGHBOURING RIGHTS: A SCOPE BEYOND BOUNDARIES

The spectrum of neighbouring rights is very wide, these are also called related rights. These are the special rights typically granted to three categories of users, which we will discuss in later part. As per *Indian Copyright Act 1957*, this reformation came in the year 1994, with the inclusion of *Chapter VIII, Section 37*, which provides the protection to the broadcasting organisation.²¹ *Section 38*,²² is dedicated to the rights of the performers. Additionally, *Section 39*²³ was also included to have extra protection and prevention from the misuse. Later, in 2012 the shield was strengthened with the advent of 38A and 38B, which grants exclusive moral rights to performers.²⁴

These related rights usually protect the legal interest of certain individual or entities those who disseminate the work of the author or creator to the masses at large following they gained profit out of it. For instance, the work of scriptwriter, helps in formation of movie, that movie indulge actors or performers, composers, musicians, singers etc. But in order to gain profit out of that one need the production team or broadcasting organisation. These entities enjoy the immunity from copyright infringement, as they all are protected under neighbouring rights. There are primarily three categories protected under this;

- **Rights of Broadcasting organisation**

²⁰ Association of European Performer's Organisation, "Performers Rights Study" (updated on 2022) available at: https://www.aepo-artis.org/wp-content/uploads/2022/11/AEPO-ARTIS_Performers_Rights_Study_2022_digital.pdf (last visited on 18 April 2025).

²¹ Neighbouring Rights to Copyright or 'Related Rights', available at: <https://www.copyright.eu/docs/neighbouring-rights-to-copyright-or-related-rights/> (last visited on 18 April 2025).

²² The Copyright Act, 1957 (14 of 1957), s. 38

²³ The Copyright Act, 1957 (14 of 1957), s. 39

²⁴ The Copyright Act, 1957 (14 of 1957), s. 38A and 38B

Live performance of the performer can be broadcasted with the consent of the performer. In case no consent of performer is taken while broadcasting the performance it will result in infringement. But in case of cinematography all the rights are rest with producer of the film.²⁵ If the performance is used for any other commercial purpose than for the film then performer has right to take royalty for the same.

- **Live- Performance**

No one has the right to record the live- performance for the commercial purpose unless given the consent to do so. In the case of *Neha Bhasin v. Anand Raj Anand*²⁶, court has defined what constitute the live-performance? The performance which recorded in studio or on the stage for the first instance is known as live- performance.²⁷ And if any person uses this recording for profit without the consent of the said performer is said to be infringing the performer's right.

- **Sound- Recording**

Performers also have right to do sound and visual recording. They can also give consent to the other person to record their live-performance. Without the consent no other person can use that recording.²⁸ But in the case of cinematography if anyone transfer his right of sound recording to any music company or producer of the film then they have no exclusive right over that whether he is an actor or a singer.

The reach of neighbouring rights across national borders has increased with the rise of digital platforms, AI-generated material, and international broadcasts. One example of a cross-border infringement is when an actor's performance in an Indian web series is dubbed, cut, or utilised on a worldwide streaming platform without permission.²⁹ The traditional geographical paradigm to copyright and associated rights is inadequate in these situations.

²⁵ Delia Lipszyc, Copyright and Neighbouring Rights (UNESCO, Paris 1999).

²⁶ 132(2006) DLT196

²⁷ VK Ahuja, *Law Relating to Intellectual Property Rights* 120 (Lexis Nexis, Haryana, 3rd edn. 2017).

²⁸ Alka Chawla, *Law of Copyright Comparative Perspectives* 163 (Lexis Nexis, Haryana, 1st edn. 2013).

²⁹ Kyle Wiggers, DeepMind AI can Generate Convincing Photos of Burgers, Dogs, and Butterflies, *available at*: <https://venturebeat.com/2018/10/02/deepmind-ai-can-generate-convincing-photos-of-burgers-dogs-and-butterflies/> (last visited on 18 April 2025).

Furthermore, additional risks have been brought about by deepfake use of performer photos, voiceovers using celebrity tones, and unapproved AI voice cloning.³⁰ Stricter domestic laws and a wider international legal agreement are necessary since these tactics take use of the performer's character without permission and frequently result in financial or reputational loss. Neighbouring rights must be considered not as peripheral benefits, but as fundamental foundations of the copyright ecosystem, particularly in today's setting of multinational media consumption. Legal frameworks must change as material becomes more technologically sophisticated and cross-border in order to fairly and effectively protect the rights of broadcasters, producers, and performers.³¹ To fully fulfil the promise of neighbouring rights, India still needs a strong institutional and legal framework notwithstanding its legislative efforts. Protecting these stakeholders in the fast-paced digital age requires a coordinated worldwide strategy supported by technology protections and clear legislative guidelines.

PERFORMER'S MORAL RIGHTS IN INDIA

The idea of moral rights originates from the understanding that a performance embodies the individuality and personality of the person who created it; as a result, any exploitation or distortion of that performance may constitute a violation of their public image and dignity. *The Copyright (Amendment) Act, 2012*, which brought Indian law into compliance with international norms established by the *WIPO Performances and Phonograms Treaty (WPPT), 1996*, was a key piece of the country's relatively recent legal growth that acknowledged the moral rights of performers.³²

Moral rights are eternal and non-transferable by nature; they continue to exist even after the performance has been exploited financially. This guarantees that commercial agreements do not compromise the artists' reputations or personal interests. It gives performers the right to pursue redress for unapproved editing, deception, or any connection between their performance and anything that could damage their reputation.³³ Nonetheless, Indian jurisprudence has yet to

³⁰ Dirk J.G Visser, Deepfakes under a neighbouring right available at: SSRN: <https://ssrn.com/abstract=5046493> (last visited on 18 April 2025).

³¹ *Ibid.*

³² George H. C. Bodenhausen, "Protection of 'Neighbouring Rights.'" 19 *Law and Contemporary Problems*, 77 (1954) available at: JSTOR, <https://doi.org/10.2307/1190485>. (last visited on 18 April 2025).

³³ Akshat Agrawal, "Interpreting "Performers Rights" in The Indian Copyright Act to Appropriately Provide For Singers Rights" 26 *Journal of Intellectual Property Rights* 7 (2020).

adequately address the extent of these rights in practice. The majority of performance conflicts are contractual or economic in origin, and courts seldom examine moral rights.

With the amendment in Copyright Law, India has given certain rights to the performers as well. Performance is a medium through which one can express his/her ideas by performing on the stage before the large masses. People used to perform certain drama or act, singing in a concert, performing any form of dance, or reciting any poem, giving speeches etc. these all can be included in the wide spectrum of performance.³⁴ These performers have exclusive rights on their performance. One such category of performance is in the form of cinematography, where the actors used to play their parts but eventually the whole rights go in the hands of producer. Eventually, these actors still retain certain say in their work in the form of Moral Rights. Before 2012 amendment there was no protection available to the performers if they assign their work wholly or partly to the third party. But due to the insertion of *Section 38B*,³⁵ performers now have moral rights associated with their work even after they assign the work to producer in cinematography. They can identify their work, if there are any distortion, mutilation or modification results in damage of the reputation they can claim damages with respect to it. The incorporation of moral rights for performers into Indian copyright law is an enormous leap forward in acknowledging the artistic individuality, integrity, and dignity of those who create works of creation.³⁶ However, without strong implementation, judicial recognition, and industry knowledge, the protection's reach remains constrained. India must make sure that its legal framework takes into account not only economic reasoning but also the cultural and human sensitivities ingrained in moral rights as performance-based material becomes more common and international.

PERFORMER'S RIGHT IN CINEMATOGRAPHY

One of the most intricate and dynamic aspects of the copyright legislation is the intersection between performers' rights with cinematographic works. The contradiction results from the fact

³⁴ Dr. Rohan Cherian Thomas, "The Background Performer Paradox in India" *Journal of Intellectual Property Studies National Law University Jodhpur*; available at: SSRN: <https://ssrn.com/abstract=4176632> (last visited on 18 April 2025).

³⁵ The Copyright Act, 1957 (14 of 1957), s. 38B

³⁶ Sanjna Pramod, "Performers' Rights: The Need for a Sui Generis Regime" *available at*: SSRN: <https://ssrn.com/abstract=2604814> (last visited on 18 April 2025).

that movies are by their very nature cooperative, including the participation of several parties, including producers, directors, screenwriters, and actors. Actors and performers have always had a lower status, especially when it comes to rights and recognition, while producers are regarded as the original owners of the copyright in a cinematographic film under *Section 17(b) of the Copyright Act, 1957*³⁷.

In the above-mentioned section, we have looked that though with the evolution in law, Moral Rights are also granted to the performer for protection of their performance. To make it wider these rights not only protect live performance but also protect the performance in the film. Now the question was to what extent these moral rights can be effective in protecting the intellectual labour of performer in the film when he or she transfer all their rights to producer.

In the case of *Fortune Film International v. Dev Anand*³⁸ where rights of the performer came into question. Though in this case the rights were denied to the actors and court has stated that in cinematography actors have no rights over their work in the film. The division bench of Bombay High Court held that acting doesn't come in the purview of work.³⁹ The reason given behind this is that actors get their pay for their performance in the film afterwards they have no say on it and producers have all the rights with regard to the film. Producers are free to use the performance of the actors in the film the way they want.

Even while performers' rights are now formally recognised under Indian copyright law, there is still little enforcement of these rights in relation to cinematographic works. In order to prevent actors and performers from being marginalised in the name of production control, it is difficult to strike a balance between the need to acknowledge and reward individual efforts and artistic cooperation.⁴⁰ India must work to reinterpret the performer's function as a legitimate participant in the cinematic experiences rather than as a tool in light of changing legal precedent, technological developments, and international inspiration.

³⁷ Shubham Shakti and Vanshika Jhakhnadia, "Copyright and Entertainment Industry: An Overview" 4 *International Journal of Law Management and Humanities* (2021).

³⁸ AIR 1979 BOM17.

³⁹ Performer's rights under copyright law, available at: <https://blog.ipleaders.in/performers-rights-under-copyright-law/> (last visited on 18 April 2025).

⁴⁰ Raju Narayana Swamy, "Performers Rights in India: Rebirth or False Dawn?" available at: SSRN: <https://ssrn.com/abstract=4016343> (last visited on 18 April 2025).

CASE STUDY: MANISHA KOIRALA CASE

Manisha Koirala, who is a well-known name in Bollywood industry, she knocked the doors of the court for granting the injunction on a release of a film named “*Ek Choti Si Love Story*”. This case came to be known as *Manisha Koirala v. Shashilal Nair*⁴¹

In this case, body double was used in four shorts, while filming there was some bodily exposure. The actress contended it under libel and slander in the tort law, as scope of protection of moral right under Copyright Act 1957 was very limited. The moral rights of an actor in a film have no specific mention under the said act. This is a concerning issue which needs to be addressed, as an actor one needs to be totally depend upon producer for the identity of their work. In case there is any distortion and damage of reputation of an actor, there is very limited relief for the same.

In Copyright Act 1957, actors are considered as performers under Section 2(qq). Though the term acting is mentioned under *Section 2(h) of Copyright Act*⁴², but is only associated with acting as dramatist not in the field of cinematography. Performers Right includes economic and moral rights as well. Under *Section 38(4)* of the said Act, states, “*Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of Sub-sections (1), (2) and (3) shall have no further application to such performance.*”⁴³ This shows that in cinematography they cannot claim any protection because they get royalty out of their performance. Hence, all rights related to film rests with producers. Another amendment happened in order to widen the scope of performer’s right in the year 2012. This inserted *Section 38B(b)*, which states that performers have independent right over their performance even after assignment of their work wholly or partly.⁴⁴ They can claim damage of reputation mutilation, modification of their performance. This has widened the scope and gave protection to actors as well. Though the level of protection which the author gets of his work is more than the actor in a film.

Even today actor’s efforts and intellectual level has not been recognised once the film releases and starts earning the profit. The commercial gain and all the rights associated with that particular

⁴¹ 2003 (I) AIIMR 426

⁴² The Copyright Act, 1957 (14 of 1957), s. 2(h).

⁴³ The Copyright Act, 1957 (14 of 1957), s. 38(4)

⁴⁴ The Copyright Act, 1957 (14 of 1957), s. 38B(b)

movie is in the hands of producer. If later producer wants to provide licence to other production house of that particular film for its remake adaptation, and earn licence fee out of it then the actor has limited say in it. Though copyright regime has undergone paradigm shift to include the moral rights of an actor but still in reality this has very limited scope. Even WPPT has denied any kind of moral right to audio-visual performance of an actor in a film. This is due the lobbying of the powerful Hollywood and Bollywood producers.⁴⁵ Even India has supported this decision on international level.⁴⁶ Thus, we can say that in India actors are not given the protection of moral rights as per Section 57 which only talks about moral rights of authors but it excludes the actors.⁴⁷

More than just a private legal battle, the Manisha Koirala case served as a catalyst for reform by bringing attention to the precarious position of actors in the Indian film industry. The case made clear how urgently moral rights must be recognised by law, not only for writers and filmmakers but also for actors whose work frequently serves as the public face of cinema.

CASE STUDY: TAYLOR SWIFT'S CASE

An iconic figure in the current conversation over performers' rights and moral rights is Taylor Swift, a well acclaimed singer and performer. The ownership dynamics, contractual injustices, and restrictions imposed by copyright law in protecting performers' rights over their own creative work have been clarified by her highly public legal fights, particularly those involving Big Machine Records.

This case study will provide another stance of limited rights of the performer over his work, one that is assigned to the third party. As we all know, performers also include the singer. And when these singers make their songs, in order to get the monetary benefits out of it they eventually transfer all the rights associated with it to the song company.⁴⁸ This company enjoys the exclusive rights over the songs, whose lyricist is different and is sung by another person. Now, with these exclusive rights, the company can use the song the way they want. They can even license some

⁴⁵ Monika Verma, "Actors in India: Asking to bestow their Morality Rights" available at: <https://docs.manupatra.in/newslines/articles/Upload/65D12761-88D2-45EA-8DDF-00E328058849.pdf> (last visited on 18 April 2025).

⁴⁶ *Ibid.*

⁴⁷ The Copyright Act, 1957 (14 of 1957), s. 57.

⁴⁸ Taylor's Version of copyright, available at: <https://hls.harvard.edu/today/how-taylor-swift-changed-the-copyright-game-by-remaking-her-own-music/> (last visited on 18 April 2025).

other entity or an individual and can earn the licensing fee. Unfortunately, the real singer does not get any protection in case of any damage or mutilation while making the cover version of the said song and earning profit out of it.

Taylor Swift who is an American singer and song writer, her old music records were sold to Mega manager Scooter Barun in the year 2019.⁴⁹ Now Barun got all the right associated with that Swift's old music records. If anyone wants the licence of playing these songs in TV shows, movie or in advertisement need to seek permission from Barun. The case became worst when Barun started negotiating and working with Swift's rival Kanye West. Thus, she decided to rerecord her all old songs to get control over her work. She can somewhat retain the ownership on the new recorded version. Those who wants to take licence can either directly contact her through her team for seeking permission rather than meddling with Barun.⁵⁰

The fundamental issues with copyright contracts, particularly those signed early in an artist's career, were brought to the attention of the world by Taylor Swift's public dispute. It brought attention to the discrepancy between ownership models based on performance and performance as creative labor.⁵¹ Through public pressure, customer loyalty, and calculated re-creation, her case pushes the limits of how moral and performer's rights can be claimed outside of the law.

CELEBRITY RIGHTS: A NEW PARADIGM OF COPYRIGHT REGIME

Celebrity personas, voices, styles, and images have become important intellectual assets in the era of digital media and global branding. The necessity to acknowledge and defend celebrity rights under the copyright law has become urgent as a result of the monetisation of personality.⁵² The current world necessitates that conventional copyright law be expanded to encompass publicity

⁴⁹ C. Grady, "Why Taylor Swift is rerecording all her old songs" available at: <https://www.vox.com/culture/22278732/taylor-swift-re-recording-1989-speak-now-enchanted-mine-master-rights-scooter-braun> (last visited on 18 April 2025).

⁵⁰ *Ibid.*

⁵¹ "Why Taylor Swift Doesn't Own Her Own Songs" You Tube, uploaded by Insider, 31 August 2019 available at: <https://www.youtube.com/watch?v=VOgW868LKRE>.

⁵² Being famous: a boon or a bane?, available at: <https://www.lexology.com/library/detail.aspx?g=18f54340-1b40-4391-a616-ca89b1e42728> (last visited on 18 April 2025).

rights, personality rights, and image rights—elements that are frequently utilised in commercial endeavours without the celebrity's consent—even though it was created to protect manifestations of creative works.

Celebrity Right is a new emerging concept in the present era. This kind of right is mostly associated with the right to privacy of a celebrity. Nowadays one can find the blatant infringement of celebrity rights. Their identity is being used by several platforms and individuals to earn profit out of it. Publicly the commercials contained their photos and some of the advertisements also copy their signature marks, which resemble the particular celebrity without seeking their prior permission.

Before we move forward to understand the intricacies behind the celebrity rights under copyright protection regime, we first need to understand Who is Celebrity?

The word Celebrity has its root in Latin terminology 'Celebritatem' which means 'condition of being famous'. It is the perception of the public which makes the man a celebrity.⁵³ Today all the actors, politicians, artists, authors, Journalist, singer, musician etc. come under the category of celebrity. There was the case of *Martin Luther King Jr Centre for Social Change v. American Heritage Products Inc.*⁵⁴ In this case the scope of term 'celebrity' has been widened to include all those individuals whose identity has been subject to commercial exploitation; this identity misappropriation of an individual gives him the status of celebrity for publicity purposes. As per Copyright Act 1957, there is no definition of the word 'celebrity' explicitly mentioned. But the court has interpreted the definition of performer in *Section 2(qq)* of the said act to accommodate celebrity rights in it.

Celebrity rights are the bundle of rights, which includes publicity rights, reproduction rights, distribution rights, rental and lending rights, making available rights, personality rights, privacy rights and so on. But it is broadly categorised into three kinds of rights i.e. ; Personality Rights, Publicity Rights, Privacy Rights.

⁵³ 694 F.2d 674 (11th Cir 1983).

⁵⁴ 250 Ga. 135, 296 S.E.2d 697, 1982 Ga.8 Media L. Rep. 2377.

Personality Rights: Personality consists of the way people perceive your identity. This creates the image of a person in front of the large masses.⁵⁵ There are innumerable cases that happened in the past, which led to the infringement of personality of an individual by advertising or using their images or their voices to create the misconception in the mind of a large audience.

Privacy Right: As the court has also observed through the precedents over the period of time, that privacy of the celebrity needs to be protected. Celebrities also have the right to live a low profile within their private space. No one has the right to interfere and intrude in their privacy. There are instances when the images of the celebrity have been used on various illegal websites and online portals for pecuniary gains. There is the case of *Emily Ratajowski*, she is an American model, she won a US lawsuit against the paparazzi, who took her and other models for posting their candid photos on Instagram clicked by them.⁵⁶ But eventually her lawyer contended that these pictures were taken without her permission. This led to infringement of her right to privacy.

Publicity Right: This right is related to other rights as well. But it is not only associated with the famous personality, rather it is an inherent right which is associated with every human being. This provides the shield protection to the individual from the exploitation of their individual identity through commercial use.⁵⁷ But for this one needs to prove the fame of celebrity to promote merchandise. Hence, if somebody is using one's image or identity to promote his goods without seeking the prior permission of that person is said to do unfair trade practice, misappropriation of intellectual property.

As per Indian context Celebrity right or publicity right is still evolving phenomena. One can hardly find any jurisprudential aspect and legal precedents which can back up the idea of publicity right in India. Though we can find certain issues regarding the same concern which has again ignited the debate on recognizing property right to personae under IPR laws. One such landmark case named *ICC Development International Ltd v. Arvee Enterprises*⁵⁸ In this case Hon'ble Delhi Court

⁵⁵ Anurag Pareek and Arka Majumdar, "Protection of celebrity rights-The problems and the solutions" 11 Journal of Intellectual Property Rights, 416 (2006).

⁵⁶ Emily Ratajowski's copyright infringement case over paparazzi photo settles in court, *available at*: <https://www.republicworld.com/entertainment/hollywood/emily-ratajowskis-copyright-infringement-case-over-paparazzi-photo-settles-at-court-articleshow> (last visited on 18 April 2025).

⁵⁷ Arindam Datta, "Celebrity rights: A legal overview" *available at*: <http://www.goforthelaw.com/articles/fromlawstu/article31.htm> (last visited on 18 April 2025).

⁵⁸ 2003 (26) PTC 245

discussed publicity right but here the idea revolves around the constitutional set up of violation of *Article 19 and 21*.

But still the personality of an individual didn't get recognition as an intellectual property. Later, another question arose that whether an individual can claim copyright over their own life story? Now this is also an intrinsic argument related to one's right to publicity and privacy which is inherent in celebrity rights. As we all are aware of various biopics like Sanju, Mary Kom, Neerja etc. these all films involve the real life of famous individuals. One such biopic related to Phoolan Devi was challenged in case named *Phoolan Devi v. Shekhar Kapoor*⁵⁹ In this it was alleged that some distorted information has been shown in the movie which is far from reality, hence, the injunction order should be passed. Though it is a well developed idea that anything which is in public domain cannot obtain copyright protection under IPR laws. But the court has given the new direction in this regard by stating that the film makers while working on the biopics used to get the information from public records like newspapers or some articles. The authenticity of these records needs to be examined. And every individual has the right to protect his/her name, identity or image as per the Constitution of India.⁶⁰

Celebrity rights represent a new frontier in copyright and IP law, where the intangible elements of a person's identity gain legal and commercial protection. As celebrities continue to influence culture and commerce alike, it becomes essential to equip them with enforceable rights that safeguard their persona against unauthorised and exploitative use.⁶¹ The Indian copyright regime must now embrace this new paradigm and evolve accordingly to remain relevant in a digitised, image-driven world.

⁵⁹ 57 (1995) DLT 154, 1995 (32) DRJ 142

⁶⁰ Analyzing the scope of personality rights under Indian Copyright Law, available at: <https://www.legalserviceindia.com/legal/article-8401-analyzing-the-scope-of-personality-rights-under-indian-copyright-law.html> (last visited on 18 April 2025).

⁶¹ Dr. Rohan Cherian Thomas, The Background Performer Paradox in India, *Journal of Intellectual Property Studies* National Law University Jodhpur, available at: <https://ssrn.com/abstract=4176632> (last visited on 18 April 2025).

CASE STUDY: AMITABH BACHCHAN' CASE

After a thorough examination of the evolution of celebrity rights in India, the *Amitabh Bachchan v. Rajat Nagi & Ors.*⁶² the case stands out as a seminal ruling that profoundly influenced the country's publicity rights jurisprudence. Legendary actor Amitabh Bachchan filed the lawsuit, claiming that the defendants were violating his publicity rights by utilising his voice, name, appearance, and likeness, among other distinguishing features, for illegal commercial gain.⁶³ The primary grievance was that the defendants were profiting commercially on Mr. Bachchan's celebrity without his consent by disseminating his photos and utilizing his persona on their websites and mobile applications to encourage and persuade others to download them.⁶⁴ The experienced actor sought immediate legal action as a result of this unapproved exploitation.

The Hon'ble Delhi High Court responded by issuing an interim order that forbids the commercial use of Amitabh Bachchan's voice, appearance, name, likeness, and distinctive gestures.⁶⁵ Notably, this was the first occasion in Indian legal history that a court issued a general John Doe order to safeguard a person's personality rights, regardless of whether particular parties were found to be violating at the time of filing. This ruling was a significant turning point in the development of Indian celebrity rights because it relieved the plaintiff of the burden of identifying each individual infringer, which is nearly impossible in the current digital era where unauthorised use of celebrity identities is common across numerous platforms and domains. As a preventative measure, the John Doe injunction essentially barred future and anonymous defendants from abusing the celebrity's reputation.⁶⁶ By acknowledging the intrinsic commercial value of a public figure's personality and their right to regulate how their identity is used, especially in commercial contexts,

⁶² 25.11.2022 – DEOR) : MANU/DEOR/195516/2022

⁶³ Personality rights from Amitabh Bachchan to Sushant Singh to Anil Kapoor: Indian and Global ViewPoint, available at: <https://www.barandbench.com/law-firms/view-point/personality-rights-amitabh-bachchan-sushant-singh-anil-kapoor-indian-and-global-view-point> (last visited on 18 April 2025).

⁶⁴ Delhi High Court Restrain the Unauthorized use of Personality Attributes of Amitabh Bachchan, available at: <https://ssrana.in/articles/delhi-high-court-amitabh-bachchan-personality-rights/> (last visited on 18 April 2025).

⁶⁵ *Ibid.*

⁶⁶ History And Development Of John Doe Orders In India, available at: <https://www.livelaw.in/law-firms/law-firm-articles-/john-doe-order-fifa-world-cup-quia-timet-civil-procedure-code-delhi-high-court-non-fungible-token-220689> (last visited on 18 April 2025).

the order established a precedent.⁶⁷ It proved that the right to publicity is a real, enforceable right that merits strong legal protection rather than just being a theoretical concept.

Thus, this case marks a turning point in the recognition that, despite not being expressly stated in Indian law, celebrity rights are derived from the principles of intellectual property, personal autonomy, and the right to privacy guaranteed by the constitution.⁶⁸ In a rapidly media-driven and commercialised world, it has created the opportunity for future jurisprudence to expand on this framework and guarantee that celebrities have the legal authority to protect their identities from unapproved exploitation.

PERFORMER'S RIGHT AND CELEBRITY RIGHTS IN THE DEVELOPED NATIONS: A COMPARATIVE ANALYSIS

If we talk about the moral right of performer in Germany, under *Section 32(a) of German Copyright Act (Urhg)*⁶⁹ performers can be considered as authors. Here the performers include actors and dubbing actors. Their work has been recognised as a separate subject matter of the copyright. As according to German law acting is a creative work, hence, the moral rights of the performers are codified in nature. Thus, India should also bring the consensus to reform the copyright law to give due recognition to the actors as authors.⁷⁰ German law has a distinction between ordinary performer and top artist. These top artists are a less exploited category as compared to former.

As per the United States, the moral rights are only granted to visual arts under Visual Artist Rights Act (VARA).⁷¹ Hence, the US has taken a narrower view of moral rights even excluding the authors. Later in 2017 granted moral rights to authors as well. Furthermore, in China, the

⁶⁷ Position of Personality Rights in India: The Amitabh Bachchan vs. Rajat Nagi Case, available at: <https://www.jusip.in/position-of-personality-rights-india-amitabh-bachchan-v-rajat-nagi-case/> (last visited on 18 April 2025).

⁶⁸ *Ibid.*

⁶⁹ Act on Copyright and Related Rights (Urheberrechtsgesetz – UrhG) 2021.

⁷⁰ Monika Verma, “Actors in India: Asking to bestow their Morality Rights” available at: <https://docs.manupatra.in/newslines/articles/Upload/65D12761-88D2-45EA-8DDF-00E328058849.pdf> (last visited on 18 April 2025).

⁷¹ The Visual Artists Rights Act of 1990 (VARA; Pub. L. 101–650 title VI, 17 U.S.C. § 106A).

performance right is codified under *Article 38 of Copyright law in People's Republic of China*.⁷² Though under this act the word performer is not well defined. The definition of a performer is stated in *Article 5 of the Regulations on the Implementation of the Copyright Law of the People's Republic of China*, which states that a performer is an actor, a performance unit or other person who performs literary or artistic works, including performance units.⁷³ Subsequently, in 2014 there was a draft amendment which defined performers in very narrow terms restricted only to natural persons in literary, artistic work and literary folk art.

In the case of celebrity rights, in the United states the right of publicity is recognised under the right to privacy. This was the earlier stance where the court has interpreted the right to publicity very narrowly. This was first addressed in *Robertson v Rochestor Folding Box*⁷⁴. Later, many states in the US have recognised this by statutes, common law or by both. The right of personality has also very limited scope in Canada. As it only includes the marketing value in the likeness of the individual. Later, this right got expanded to include the name and image as the personality in the case of *Athans v Canadian Adventure Camps*⁷⁵. In the case of the United Kingdom there was strong resistance for recognising the celebrity or publicity right of an individual as it has primary focus to protect the right to freedom of speech and expression. It is a belief that this kind of right is negative in nature as it only provides benefits to certain sections of the society.⁷⁶

Though many of the developed nations are part of international agreements or conventions such as TRIPS, WIPO, Rome Convention etc. however, the idea behind the moral right granted to the performers and celebrity rights are the areas where different countries have their different interpretation. Some have taken a narrower view than the other. But still, this is an emerging and fluid concept under copyright protection regime. This evolves through various precedents over the period of time as well as from the various factors related to a particular nation. India also needs reformation in this regard to eventually broaden its scope to accommodate other elements in the Copyright law.

⁷² WIPO, Copyright Law of the People's Republic of China 2020, available at: <https://www.wipo.int/wipolex/en/legislation/details/21065> (last visited on 18 April 2025).

⁷³ Fan Liu, "Research on the protection of performers' rights in the network platform" 5 International Journal of Frontiers in Sociology (2023) available at: <https://doi.org/10.25236/ijfs.2023.050917>.

⁷⁴ (1902) 171 N.Y. 538; 64 N.E. 442; N.Y. LEXIS 881.

⁷⁵ 1977 CanLII 1255, 17 OR (2d) 425, 80 DLR (3d) 583.

⁷⁶ Dr. Lisa P Lukose and Shilpika Pandey, "Protection of Celebrity Rights: A Comparative Analysis of Relevant IPR Laws in US, UK and India" 14 The Journal of Intellectual Property 90 (2019).

RECOMMENDATIONS

- **Indian Statute Law's The codification of Celebrity Rights**

In India, the lack of explicit statutory recognition of publicity or celebrity rights has resulted in uneven legal treatment and a dependence on tort principles like passing off and misappropriation. Although the *Amitabh Bachchan v. Rajat Nagi & Ors.*⁷⁷ the case is a significant development, there is uncertainty because it has not been codified. As interpreted in Justice *K.S. Puttaswamy v. Union of India* (2017) SCC 10, the legislature should establish a clear legal framework outlining the extent of publicity rights and bringing them into line with the right to privacy under Article 21⁷⁸.

- **The Copyright Act of 1957 was amended to increase the rights of performers:**

Although performers are granted certain rights under Sections 38 and 38A of the Act, these rights are still narrowly defined and primarily benefit producers, particularly in cinematographic works. A similar approach to that taken by the European Union under Directive 2001/29/EC and the WIPO Performances and Phonograms Treaty (WPPT), 1996, which provide for broader moral rights of performers, including the right to integrity, must be made to the Act to guarantee that performers maintain both moral and economic rights even after assignment.⁷⁹

- **Extension of Protection to Digital and AI-based Exploitation**

The emergence of deepfakes, AI voice mimicking, and digital replicas has complicated the protection of performer and celebrity rights. There is no statutory framework in India to deal with algorithmic impersonation. Laws must evolve to explicitly prohibit the unauthorized creation and use of digital avatars or voice models, following models like the EU Artificial Intelligence Act⁸⁰ and the US Right of Publicity State Laws (e.g., California Civil Code § 3344).

⁷⁷ 25.11.2022 – DEOR) : MANU/DEOR/195516/2022

⁷⁸ The Constitution of India, art. 21.

⁷⁹ WIPO, Performers' Rights – Background Brief, *available at*: <https://www.wipo.int/pressroom/en/briefs/performers.html> (last visited on 18 April 2025).

⁸⁰ Regulation (EU) 2024/1689

- **Institutionalising the Use of John Doe Orders for Mass Infringement**

Courts in India should continue to strengthen the jurisprudence around in rem John Doe orders, especially in cases involving mass online infringements. The decision in *Amitabh Bachchan v. Rajat Nag*⁸¹ rightly applied such a remedy, providing preemptive protection. Institutional mechanisms or specialised IPR courts or tribunals for resolving such personality-based claims could expedite justice and reduce litigation costs.

- **Acceptance of Personality and Publicity Rights as Separate Legal Rights**

Either under the more expansive definition of privacy or under the general heading of personality rights, publicity rights ought to be acknowledged as separate rights. Guidance can be obtained from the case law of countries such as the United States, where the right of publicity is recognized by the Restatement (Third) of Unfair Competition.⁸² Better judicial predictability would result from the scope and remedies of this right being clarified by legislation in India.

CONCLUSION

The evolving nature of copyright law and its interaction with performer's and celebrity rights reflects a growing recognition of intellectual labour, identity, and artistic contribution in the digital age. Performers—whether actors, dancers, musicians, or public figures—remain central to the creative industry, yet often face legal gaps when it comes to asserting control over their work and persona. The copyright regime has widened its ambit to include various other dimensions. This paradigm shift has ignited new debates and discussion over the modern subject matters of copyright. One such matter is related to the 'Rights of an Actor' in cinematography. This includes their moral as well as neighbouring rights. With the amendments in copyright law in India these rights were recognised over the period of time. The new phase of celebrity rights has started to gain prominence under the protection of the copyright regime. Though, developing countries like India still have a long way to go as we still don't have enough judicial precedents and academic exploration in this direction. This study correlates these new emerging ideas and its implementation at ground level. It gives a comparative analysis through international perspective, comparing other developed nations and their advancement under copyright regime to recognize these new ideas. It

⁸¹ 25.11.2022 – DEOR) : MANU/DEOR/195516/2022

⁸² Kumar Kunj Raman and Prof. Seema Yadav, "Protection of Performers Rights in India: A Critical Analysis" 9 Russian Law Journal 182 (2021).

also highlights the lacuna in these emerging concepts which needs wider interpretations. The legal system must proactively change to guarantee that the rights of those who bring creative works to life are not only acknowledged but also significantly protected as media continues to cross national boundaries and technology speeds up the replication and distribution of performances. In addition to being required by law, a fair and progressive copyright system is also morally necessary to protect the identity, hard work, and dignity of India's creative community.