Personality Rights in India

Mains: *GS-II – Government policies and interventions for development in various sectors | GS-III – Issues relating to intellectual property rights.*

Why in News?

Recently, the Delhi High Court has issued a series of orders protecting the personality rights of Bollywood celebrities from unauthorized commercial use.

What are personality rights?

- **Personality rights** – It is also called publicity rights and refer to a person's right to benefit, commercially or otherwise, from their identity or persona.
- **Key components** – This includes the person's name, image, voice, mannerisms or even a catchphrase or gesture that's unique to them.
- These rights also protect a person's identity from being misused or commercially exploited, and do not extend beyond the individual.
- **Categories** – It can be further categorized into two -
    - **Right of publicity –** Prevents the unauthorized commercial use of an individual's name, likeness, or other recognizable aspects of one's persona.
    - **Right to Privacy –** Violation of right to privacy, which in turn leads to undermining right to live with dignity.

What are the provisions related to personality rights in India?

- **Copyright Act, 1957 –** It grants performers both exclusive rights under Section 38A and moral rights under Section 38B, allowing them to control how their performances are reproduced and to object to any distortion or misuse.
- **Trade Marks Act, 1999 –** It permits individuals, particularly celebrities, to register distinctive attributes of their persona, such as names, signatures, or even catchphrases, as trademarks.
- **Article 21 of the constitution –** In India, personality or publicity rights are linked to privacy rights included under Article 21.
- **Article 19(1)(a) of the Constitution –** It guarantees every citizen the right to freedom of speech, which includes the creative freedom to criticize, parody, or satirise public figures.
- **Information Technology Act, 2000 –** Section 66C of the act addresses the punishment for identity theft, specifically using someone else's electronic signature, password, or unique identification feature fraudulently or dishonestly.

What are the related judgements so far?

- **R. Rajagopal v. State of Tamil Nadu, 1994 –** The Supreme Court ruled that the press can publish factual information from public records without consent, but cannot infringe on the right to privacy or publish private details without authorization.
- **DM Entertainment Pvt. Ltd. v. Baby Gift House, 2010** – The Delhi High Court ruled that using a celebrity's likeness without permission for commercial gain is illegal and amounts to unfair competition.
- **Shivaji Rao Gaikwad v. Varsha Productions, 2015 –** The court recognized and protected personality rights, holding that celebrities are entitled to an injunction against the unauthorized use of their identity and a form of passing off.
- **Sushant Singh Rajput's case, 2021 –** The Court refused to stay filmmakers from making movies about his life and death and,
- Held that right to privacy, publicity and personality rights were not heritable, that is privacy dies with an individual, so do personality rights.
- **Digital Collectibles PTE Ltd. v. Galactus Funware Technology Pvt. Ltd. (2023) –** The Delhi High Court refused to issue a temporary ban on the use of Indian cricketers' names and images in a fantasy sports game.
- The Court held that the use of information already in the public domain could not reasonably mislead the public into believing there was an endorsement.

India does not have a dedicated law *protecting personality rights, so judges defer to common law to decide on cases.*

What are some of the global examples of recognition and protection?

- **United States –** Recognizes and protects identity and persona under the right to publicity.
- **Germany –** Recognizes personality rights, protecting individuals from unauthorized commercial exploitation of their persona.
- **United Kingdom (UK) –** Does not have a general personality law but provides remedies for specific breaches of personality rights through existing laws.
- **Denmark –** Recently, proposed amending its copyright laws so that every citizen owns the rights to their own face, voice and body.

What are the concerns of personality rights?

- **Lack of comprehensive law –** India lack a dedicated law for personality rights, forcing support on common law, privacy, defamation, and trademark laws, which can complicate enforcement.
- **Rise of AI –** The rise of AI has led to sophisticated deepfakes and voice cloning, allowing unauthorized use and commercial exploitation of a person's identity in a complex ways.
- **Commercial exploitation without consent –** Individuals, especially celebrities have raised concerns about their identities being misused for unauthorized merchandising, creation of fake profiles and websites, etc.

- **Damage to reputation –** The unauthorized use of a person's name, image, voice, especially through digital manipulation or AI, can harm their reputation and dignity.
- **Not an exclusive one –** Personality rights are not the exclusive privilege of celebrities, since all individuals enjoy the right to privacy.
- **Women targeted –** Ordinary citizens, especially women, are increasingly targeted through deepfakes and revenge pornography.

What can be done to improve personality rights in India?

- **Enact a specific law** – India requires a comprehensive law on personality rights instead of relying solely on court decisions.
- **Enhance awareness –** Greater public awareness about personality rights, coupled with continued judicial efforts to define and enforce them, is vital.
- **Address the issues with existing laws** – The copyright and trademark law can offer some protection, especially regarding publicity rights, a dedicated law would provide more specific safeguards that are currently lacking.

References

1. The Hindu | Personality rights in India
2. BBC | Celebrities fight for personality rights amid deepfake surge
3. National Law School of India| Publicity Rights and the Right to Privacy

SHANKAR IAS PARLIAMENT
Information is Empowering