



PERSONALITY RIGHTS AND COPYRIGHT CHALLENGES FOR STAND-UP COMEDY IN INDIA

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Abstract

In India stand-up comedy has transformed the scenario of the entertainment industry. It developed a platform where an artist expresses his/her expression, humour, and criticism. For a stand-up comedy, an artist has a unique personality, and a style of performing their expressions, and gestures among the public. All these elements give recognition to the comedian. The digital platforms raise the popularity of stand-up comedy among the youth generation, as it grab attention towards the legal and social issues of the country.

Personality rights are the exclusive rights granted to famous individual personalities to protect their distinctive characteristics such as name, image, style, and voice. Stand-up comedians who have acquired such fame in the public. The Copyright Act protects the originality of the jokes, their expressions, and their performances. But still, stand-up comedian faces challenges such as joke theft, and copying their style, and performances due to unclear legal provisions. The judiciary emphasises the importance of protecting the personality rights of individuals when there are infringements of famous personalities through its various judgments. The idea-expression doctrine and the principle of originality under the copyright law always protect the creativity of an artist. But stand-up comedian faces challenges while protecting their art because they perform live which is oral.

In this research paper, the author raises concerns regarding the challenges faced by stand-up comedians in the digital world. It tries to develop a bridge between the protection of stand-up comedian's personalities, their IP rights, and freedom of expression.

Keywords: Standup comedy, personality rights, originality, idea expression, joke theft.

Introduction

Stand-up comedy has opened a new dimension in the entertainment industry where comedians can show their creative skills through their expressions, performance, and gestures which gives them a unique identity. In India, stand-up comedy is growing as a powerful entertainment and social criticism tool. The comedians use their comic style to highlight the major social-legal issues of the country without violating any rights. Their style not only entertains the public but also represents the intellect of an individual personality. With the rapid growth in the popularity of stand-up comedy among youth, it has become a tool for comedy and criticism. Comedians highlight the major issues of the national or worldwide in a sarcastic manner but on the other hand, it creates conflicts between the individual's personality and the freedom of expression.

Personality rights are the rights of an individual celebrity whose name, identity, images, and other distinctive traits can be used for commercial purposes. The celebrity has the right to control the commercial use of their name and reputation. Any person who uses the name, image, signature, style, and other traits without authorization, is a violation of the personality rights of the individual. A celebrity's name which is aligned with any good or service will boost the sale and marketing of the good and services. Personality rights are two

types right to publicity and right to privacy. The right to publicity is used to protect the commercial use of the celebrity's name, image, voice, signature, and other traits. Whereas the right to privacy ensures that an individual can enjoy their own life without unnecessary attention and disturbances.

In the case of *K.S Puttaswamy v. Union of India*¹, judges held that “Everyone should have the freedom to manage how their life and image are presented to the outside world, as well as how their identity is used for profit. It means that a person may be able to stop others from exploiting his or her name, image, and other features of their identity and personal life for profit without that person's permission.”

Meanwhile, their original works such as jokes, routines, and performances are protected from unauthorised use by copyright law. However, comedians seeking to protect their copyrighted content and personality rights face numerous challenges due to the legal system in India. Comedians face challenges negotiating the boundaries of their creative freedom and legal protection due to issues like plagiarism, unapproved commercial exploitation of personalities, and uncertain legislative restrictions.

Objective of the Paper

This paper deals with personality rights and copyright challenges in the context of stand-up comedy. It has the following objectives:

1. To explore how personality rights and copyright law intersect in the context of stand-up comedy in India.
2. To identify the legal challenges on personality rights and copyright law in the context of stand-up comedy in India.

Research Problem

The present paper based on personality rights and copyright law in the context of stand-up comedy in India tries to highlight the legal challenges faced by stand-up comedians.

1. What role do personality rights and copyright law play in safeguarding stand-up comedy in India?
2. What are the legal challenges on personality rights and copyright law in the context of stand-up comedy in India?

Research Methodology

The methods adopted by the researcher are doctrinal. The researcher has used secondary sources like books, and articles by different eminent authors and data is also collected from reliable online sources.

Personality Rights in India

Personality rights are crucial for protecting comedian's unique personalities and characteristics, which are important to their profession and financial success. Personality rights are the rights of an individual to control how their name, likeness, voice, and other distinctive characteristics are used for commercial purposes. In India, there is no specific statute for personality rights however it can be protected by judicial interpretations.

In the case of *Anil Kapoor v Simply Life India & Ors*², the Delhi High Court emphasised “how crucial it is to protect an individual's personality, especially in the age of advanced technological tools like artificial intelligence. The court underlined that although free speech is permitted, including acceptable criticism, satire, and parody, it should not harm someone's reputation.”

In *Amitabh Bachchan v. Rajat Nagi and Ors*³, the defendant used the plaintiff's celebrity profile to advertise their products and services without his consent. The honourable court granted an ad-interim ex-parte injunction to prevent the defendants in rem from infringing the actor's personality rights.

In *Shivaji Rao Gaikwad vs Varsha Production*⁴, the defendant used the Plaintiff's name, image, caricature, and style of delivering dialogues in the forthcoming film titled ‘Main Hoon Rajinikanth’ without the prior consent of the plaintiff. The plaintiff filed an injunction suit against the defendant to restrain him from

¹ K.S. Puttaswamy v. Union of India, (2018) 1 SCC 809.

² Anil Kapoor v Simply Life India & Ors, CS(COMM) 652/2023.

³ Amitabh Bachchan v. Rajat Nagi and Ors, CS(COMM)819/2022.

⁴ Shivaji Rao Gaikwad vs Varsha Production, 2003 (26) PTC 245.

infringing his personality rights. The courts recognised personality rights and ruled that because the celebrity in this case is easily identifiable, the public would be misled into believing that the movie was about Rajnikanth or had anything to do with him. The Court granted an interim injunction to the plaintiff and restrained the defendants from utilising Rajnikanth's name, appearance, caricature, or delivery style in conversation.

In the case of Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors⁵, the defendants had used the plaintiff's personality for their commercial purpose without his consent. The plaintiff argued that such exploitation not only benefited third parties but also harmed his reputation and created confusion.

The Delhi High Court acknowledged that the personality rights of celebrities are protected. It emphasised how Jackie Shroff's rights were violated and his reputation was adversely harmed by the unauthorised commercial use of his character. The court issued an ex-parte injunction against them to prevent many defendants from using his personality for commercial purposes without permission. However, the court refused to take down some of the content, like the YouTube video "Jackie Shroff is Savage, Jackie Shroff Thug Life," because it is an artist's expression of individuals. The court established a balance between freedom of expression and personality rights.

In the recent case of Karan Johar v. India Pride Advisory Private Ltd⁶, the plaintiff filed a lawsuit against the defendants for using his name and character without permission in the title and marketing of the movie "Shaadi Ke Director Karan Aur Johar." He claimed that by relating him to a movie in which he had no role, the defendants were exploiting his name and reputation without his consent. The Bombay High Court ruled that the defendants violated the plaintiff's rights to privacy, publicity, personality, and brand name by exploiting his name and personal characteristics in the film's title without permission. The court issued an interim injunction to prevent the defendants from utilising Karan Johar's name or any other aspect of his character in the movie. The film's release was also put on hold to highlight how crucial it is to get permission before using a public figure's identity for profit.

The existing IPR regime in India does not provide such provisions which directly deal with the personality rights. Whereas, the judiciary has interpreted the meaning of personality rights and addressed its challenges. The above-mentioned case laws highlighted the importance of personality rights and their protection in India. With the rapid growth of AI-generated content a strong specific legal mechanism is vital to be enforced. Balancing freedom of expression and personality rights is still one of the major challenges. Therefore, it is necessary to emphasise emerging issues and challenges in this area by promoting freedom of expression and strong legal protections.

The Intersection Between Personality Rights and Copyright Law

Personality rights protect the rights of an individual personality's name, image, style, signature, and other distinctive traits. It is also known as the 'right of publicity.' These rights grant rights to stand-up comedians to restrain others from using their personalities for commercial use without authorization. It provides legal protection against the violation of economic and moral interests. The Indian judiciary has also recognised personality rights and its protection and in this growing technological world the significance of personality rights has been increased. The celebrity's personality has an economic value and associating a brand name with the celebrity's image will increase the sale and demand of the product. Therefore, many brands struggle to associate with any big personality.

The increasing cases of personality rights infringement seek attention to the necessity of a strong legal mechanism that deals with such issues. These cases highlighted the need for legal protection and the monetary value of a person's identity.

The judiciary has interpreted the meaning of personality rights and tries to balance personality rights and freedom of expression. In this digital era enforcement of personality rights becomes very essential to maintain a balance between public and private life. These rights protect personal dignity and economic interests by prohibiting unauthorized commercial use. The deepfake videos, AI-generated content, and unauthorized use of images are tarnishing the personality of the celebrities and they must fight a legal battle for their rights. Therefore, the comprehensive legal reform will address these challenges.

⁵ Jaikishan Kakubhai Saraf alias Jackie Shroff v. The Peppy Store & Ors, CS(COMM) 389/2024.

⁶ Karan Johar v. India Pride Advisory Private Ltd, 2024 SCC Online Bom 2444

Under the Copyright law all types of original artistic work⁷ is protected including performances in public. It grants intellect protection for literary, artistic, and dramatic works. Section 2(qq)⁸ of the Copyright Act protects certain aspects of personality rights, especially when there is unauthorised use of celebrity performances. Sec14⁹ of the act granted exclusive rights to the artist for their creativity. An artist has the right over their work he/she can use it, reproduce, distribute, modify it, and perform it among the public. The owner has full control over how the work would be used by any third party.

An original literary work must be protected by the copyright. The work which is independently created and has the minimum amount of creativity is considered as the original work. It guarantees that the work was produced with talent, wisdom, or originality. By focusing on originality, the creator's intellectual contribution is acknowledged and rewarded. The Indian Copyright Act is crucial for encouraging respect for intellectual property and an expanding creative economy because it protects the rights of artists and performers. It provides legal safeguards against the unapproved use or exploitation of creative works while also promoting artistic expression. The Indian Copyright Act does not define the term 'originality' in the statute but Section 13(1)¹⁰ says that the copyright only subsists to the original literary, dramatic, musical, and artistic works. To determine whether a work is eligible for copyright protection, the principle of originality is essential. There is a common belief that being unique requires more than labour or effort.

In *RG Anand v. M/S Deluxe Films and Ors.*¹¹ R.G. Anand wrote a theatre drama that became very famous. A Film producer Mohan Sehgal asked for a script of the screenplay and indicated interest in turning the play into a movie. However, Sehgal did not follow up after the first meeting. Later, Anand learnt that Sehgal had made a movie which was based on his play. He filed a copyright infringement lawsuit after becoming certain that his work had been copied. The Supreme Court held that the play and the movie were not significantly like one another. This case established the 'idea-expression doctrine' in Indian copyright law by this judgement, stating that originality is found in the unique expression of ideas rather than in the ideas themselves. A substantial and material reproduction of the copyrighted work is required for infringement to occur. Unless the expression of those ideas is copied, a mere similarity in concepts or ideas does not constitute copyright infringement.

In the case of *Feist Publications, Inc. v. Rural Telephone Service Co.*¹², Feist Publications used the names, addresses, and phone numbers from a telephone directory issued by Rural Telephone Service Co. without authorisation for their directory. Rural claimed that its directory was protected by copyright law and filed a lawsuit for copyright infringement. However, the Court stressed that originality is a constitutional requirement for copyright protection and decided against Rural.

The Court explained that independent creation and a certain amount of creativity are two essential components of originality. Names, locations, and phone numbers are examples of facts that are not original as they are found rather than created.

In *Eastern Book Company & Ors. v. D.B. Modak & Ors.*¹³ Eastern Book Company, published court judgements in their Supreme Court Cases (SCC) law report series. To make the judgements easier to read, the company added formatting, headnotes, footnotes, and paragraph numbers. The defendants manufactured software products that allegedly copied SCC content without authorisation which initiated a copyright infringement suit. The Supreme Court ruled that for a derivative work to be eligible for copyright protection, it must have a "modicum of creativity," which means that it must contain enough originality, skill, and judgment to turn the source material into something new. The Court acknowledged that Eastern Book Company's editorial contributions satisfied the originality criteria and qualified for copyright protection, even though the judgements themselves could not be protected because they were in the public domain.

⁷ Indian Copyright Act, 1957, Sec.2(c).

⁸ Indian Copyright Act, 1957, Sec.2(qq).

⁹ Indian Copyright Act, 1957, Sec.14(c).

¹⁰ Indian Copyright Act, 1957, Sec.13(1).

¹¹ *RG Anand v. M/S Deluxe Films and Ors.*, 1978 AIR 1613, 1979 SCR (1).

¹² *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

¹³ *Eastern Book Company & Ors.*, AIR 2008 SUPREME COURT 809.

Stand-up Comedians and Their Personality Rights

Standup comedy is a creation of the comedian's imagination; it must be protected by intellectual property rights. Even though standup comedy feels like stepping onto a stage and speaking to an audience, it requires a dedicated set of writing, editing, and presentation skills. The rights of comedians are safeguarded by the Copyright Act as their ideas are turned into specific expressions and their work is established concretely. To be eligible for copyright protection, a person must meet requirements for originality, fixation, and fulfilling of the idea-expression duality.

Stand-up comedy is a type of live entertainment that is becoming more and more popular and combines narrative, humour, and social criticism. To keep audiences interested, comedians use their personalities, delivery methods, and creativity. They frequently use their own experiences or intelligent insights to create routines and comics. Their physical expressions and styles not only represent their talent but also enhance their reputation and brand value. Their name becomes a brand hence; stand-up comedians are also entitled to have personality rights protection.

The Personality rights of stand-up comedians protect their identity from unauthorized commercial use. The comedians have exclusive rights over their name, image, style, and other distinctive traits. Without their consent, nobody has the right to use their name, or image for commercial purposes. Stand-up comedians can protect their personality and artistic expression under the copyright and personality rights. It protects comedians from exploitation and encourages their creativity

If a comedian's images, or style appeared in commercial advertisements without their permission, it is a violation of their personality rights. In the digital world, the unauthorized use of stand-up comedian's images on social media or other digital platforms is a very common issue.

Challenges faced by the Stand-up Comedian in India

When standup comedians are making most of the world laugh, their rights are extremely important, and they should have the right to protect their art. To restrict joke theft and uphold their rights, comedians must have a right to go to court. In India, stand-up comedy has become an effective tool of social criticism and entertainment, frequently touching on sensitive topics like politics, religion, and social mores. However, comedians usually face challenges that push the limits of free speech and artistic expression in this complex legal and cultural environment.

1. Unauthorised use of stand-up comedian's name, image, voice, or other traits for commercial use without their permission.
2. The rise of social media and digital platforms has increased deepfake videos, memes, and other digital infringements and it is very difficult to find the infringer.
3. Stand-up comedians also face joke theft, and unauthorised use of comedian's personalities on digital platforms, which is one of the major challenges. It is difficult for comedians to prove their originality and ownership because jokes are easily shared on social media platforms.
4. Another challenge for stand-up comedians is an idea-expression doctrine under the copyright, it only protects the expressions of the idea, not the original idea itself.
5. It is more difficult for comedians to obtain copyright protection because the stand-up comedian performs live which might not recorded. In the case of infringement, the comedians found it difficult to prove originality and ownership. In stand-up comedy, the performances are based on the humour and intellect of the individual comedians.

These challenges raise the need for strong legal statutes and preventive measures for comedians, like recording their work, to save the originality of their content.

Suggestions

Strong preventive measures are necessary to protect the personality rights and the copyright ownership of stand-up comedians. To address the challenges stand-up comedians face in India following are a few suggestions:

1. Amend the existing IPR laws to include the provisions for personality rights and their infringement which provide clear definitions and enforcement mechanisms to address these issues.
2. Many famous personalities are obtaining trademarks for their personality; stand-up comedians are also encouraged to trademark their traits.
3. Introduction of new laws which specially deal with digital challenges, such as deepfakes, and AI-generated content. The audience should be encouraged to report such content.

4. The comedians should mention written concrete proof of their content, and recording of their live performances to prove their originality and ownership.
5. There should be provisions for oral works and live performances under the Indian Copyright law to safeguard comedians' personality rights in the digital era.

Conclusion

Stand-up comedy is an art form in which a comedian entertains the crowd with his/ her humour and criticism by performing certain acts, styles, and signatures, which gives the comedian a unique identity. Stand-up comedians can protect their personalities under the personality rights and copyright law. Indian judiciary system has recognized the importance of personality rights and pronounced judgements which develop the regime of personality rights. A comprehensive legal system is required which mentions a balance between the protection of personality rights and freedom of expression. Establishing strong legal frameworks and preventative measures can help India promote the stand-up comedy sector and enable comedians to continue entertaining audiences while defending their creative and individual rights.

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