

Personality Rights and Real Person Fictions: Do The Real Person Get a Say?

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Abstract

In this rapidly evolving world individuals have found various ways to express themselves and share that part of them with the world. In this modern age anyone with smart device and an internet connect can become a celebrity and with the same items anyone can create fictional works that are based on those and other celebrities. These creations are generally referred to as Real Person Fictions (RPFs). RPFs can be short stories, poems, artworks and even full length novels. These works help creators practice their craft, bond with a community and break the bounds of reality but what happens if this right of the author to express themselves starts interfering with the real person's right to publicity and privacy? Celebrities have expressed the implication of harmful portrayals in these RPFs which have had real life implications. The growing trend of commercializing RPFs on a big scale adds an incentive to look into this issue and address it as a bud.

The concept of personality right is well established in India however the lack of codification of the same has led to contradictory judgments and blurred lines of boundaries. In this regard this article attempts to address the issue of personality right or the right to publicity when it comes to real person fictions. This paper is divided in three parts. The first part deals with definition of real person fictions and how it differs from the existing classifications of fictional creations. The second part analyzes the efficiency of existing Indian laws when it comes to governing RPFs and the implication of the same. The third chapter provides informed suggestions for an enactment to govern personality right in India.

INTRODUCTION

Have you ever wondered what the singer/actor Harry Styles thought about the movie series "After," which was an adaptation of a fan fiction written based on him? British singer Louis Tomlinson stated, "It just felt a little bit. No, I'm not going to lie, I was pissed off. It annoyed me that a big company would get behind it,"¹ when a scene in the HBO series "Euphoria" contained an erotic fan fiction about him. Recently, singer Taylor Swift's fans expressed their disdain when an author released an erotic e-book titled "Roughing the Princess" about

¹ Emine Saner, "Louis Tomlinson on loss and love: 'The dark side I've been through gives me strength,'" The Guardian, September 25, 2019, available at: <https://www.theguardian.com/music/2019/sep/25/louis-tomlinson-one-direction-dark-side-gives-me-strength> (last visited on May 20, 2024).

the singer and her real-life relationship. The author, at the time of publishing the book, stated that she wrote it in three days after getting multiple requests to write about that relationship². People have opined that there is a difference between real person fiction and fiction inspired by real-life people and situations. Which brings us to the main focus of this paper which is do the person who the work is based on gets a say in what is being written based on them?

It is vital to differentiate these works from fictional works that are created based on other fictional works. The authors of "The Chronicles of Narnia," C.S. Lewis, and the Harry Potter franchise, J.K. Rowling, are some of the authors who have actively encouraged the creation of fan fiction based on their original works. On the other hand, authors such as Anne Rice (The Vampire Chronicles), Diana Gabaldon (Outlander), and George R.R. Martin (Game of Thrones) disapprove of fan fiction, some even going to the extent of taking legal action against those who create the same³.

Real person fiction, shortly known as RPF, refers to fictional creations based on real people themselves rather than other works such. The crucial difference between RPF and inspired works is copyright infringement. For example, a work that is based on the popular Harry Potter book series can be taken down for copyright infringement if it is infringing in nature. However, RPF does not necessarily implicate copyrights; in fact, they themselves are works for which the authors can enjoy copyright.

The above-mentioned fan fiction titled "After," which was published on Wattpad, used the name and physical appearance of the singer Harry Styles. It has been viewed more than a billion times. The book series was later adapted into movies, changing the name from Harry Styles to Hardin Scott. The movie adaptation of the first book in the series

grossed a worldwide total of \$69.7 million⁴. "House of Cards," an RPF about the BTS band member, at this time of writing, has exactly 1,779,624 views⁵. Another one of Harry Styles-inspired fictions that has turned into a movie is titled "The Idea of You"⁶. It won't be an understatement to state that the realm of fan creations is a complex one that is growing rapidly and becoming more mainstream. With the increasing popularity of these RPF and the conversations surrounding them, it is crucial to examine the capabilities of Intellectual Property Laws to regulate and govern the same.

This article is divided into three parts. The first part attempts to define and determine the scope of creations that are based on real people. This allows us to effectively navigate the broad realm of fictional works by delving into the technical and ethical aspects of the same. The next part attempts to determine how exactly these fictionalized creations are treated by Intellectual Property Laws with a specific focus on Indian laws. The final chapter addresses the need for reform in laws to ensure that these "real persons" are legally protected and provides informed suggestions.

Fictionalizing Real Persons

For ease of navigation, this part of the paper divides fictional works into three main categories: (1) Original fictional works, (2) Fictional works inspired or derived from other fictional works, and (3) Fictional works that use real persons. Original works here refer to creative works created by authors without using any direct source materials. The second category refers to works that are derived or inspired by already existing works. The last category refers to works that use some or all characteristics of a real person, such as name, physical appearance, or occupation.

Categorization of Works

4 "After (2019)," Box Office Mojo, available at: <https://www.boxofficemojo.com/release/rl2030536193/> (last visited on May 20, 2024).

5 orphan_account, "House of Cards," Archive of Our Own, May 22, 2016, available at: <https://archiveofourown.org/works/5293532> (last visited on May 20, 2024).

6 Lucy Ford, "The Idea of You, Anne Hathaway's new romcom, is based on Harry Styles fanfic," GQ, September 15, 2023, available at: <https://www.gq-magazine.co.uk/article/the-idea-of-you-film> (last visited on May 20, 2024).

2 Jessica Roy, "The Taylor and Travis Fan Fiction That's Tearing TikTok Apart," The New York Times, October 25, 2023, available at: <https://www.nytimes.com/2023/10/25/style/taylor-swift-travis-kelce-book.html> (last visited on May 20, 2024).

3 Monique Jacobs, "Approve or Disapprove: What 8 Famous Authors Think of Fanfiction," Winter is Coming, July 4, 2021, available at: <https://winteriscoming.net/2021/07/04/8-famous-authors-think-fanfiction-george-rr-martin-anne-rice-jrr-tolkien/> (last visited on May 20, 2024).



Under the Indian Copyright Act, original creative works are protected if they fulfill the required conditions. These conditions are originality, fixation, and a modicum of creativity⁷. There is no formal procedure that needs to be carried out for a work to be granted copyright. As soon as an original work is fixed or published in some tangible medium of expression, it obtains copyright protection, but of course, there are added benefits to works that are registered for copyright protection.

Fictions that are derived from other works are in a grey area. These works can escape copyright infringement if they fall within the ambit of fair use for transformative work under copyright law. For a work to obtain the defense of being a transformative work, it must first be proved that the purpose of the work was not to take away from the original work but instead to add to it⁸. The majority of fan fiction creators create such works for various reasons, such as to experiment with their favorite characters or the fictional world in their own imagination, improve their writing, and satisfy the requests of their reader base. Well-recognized authors such as E.L. James (*Fifty Shades of Grey*), Meg Cabot (*The Princess Diaries*), Naomi Novik (*Temeraire*), and Marissa Meyer (*The Lunar Chronicles*) all started out as fan fiction authors or have dabbled in the world of fan fiction at least once in their lives. Author C.S. Lewis (*The Chronicles of Narnia*), who actively encouraged fans to write fiction based on the world he had created, is of the opinion that it is a nurturing habit that will help them practice and become better writers⁹.

Secondly, the work created must not be profit-motivated. To earn monetary benefit from others' intellectual property is unfair enrichment, which is prohibited by law. If the work is a word-for-word copy of the original work or adversely affects the original work through competition, then it would amount to copyright infringement. Authors such as Anne Rice (*The Vampire Chronicles*), Diana Gabaldon (*Outlander*), and George R.R. Martin (*Game of Thrones*), who are against fan fiction, are

often worried about this monetary aspect, and some have even raised the concern that authors would be wasting their time and effort on works that they cannot truly benefit from¹⁰.

What are Real Person Fictions?

The legal standing of works that are original, derivative, and transformative has been made clear by the Indian legislature and judiciary. However, there is a type of work that does not fit any of these above-mentioned labels but is growing in popularity and concern. These works are Real Person Fictions (RPFs). Generally, the term RPF is used to refer to a genre of writing featuring celebrities or other real people¹¹. Fan art can also be a subset of RPF. These fan arts refer to drawings and other modes of visual portrayal of real persons. The reception towards these RPFs is mixed at best. The debate surrounding RPFs revolves around the concepts of creative expression, appreciation, love, and obsession.

RPFs play a significant role in every fan base. RPFs, *prima facie*, can be seen as a form of artistic expression that allows fans to explore their creativity and interpretations of real people's lives and relationships. It creates a sense of bond and familiarity with the personality beyond the line of practical feasibility. These works can also help foster a sense of community among fans, creating spaces for discussion, collaboration, and shared creative endeavors. Additionally, celebrities have fans. Creating works based on people who already have an existing fanbase allows the creator to be discovered easier¹².

Ethical dilemma of creation and consumption of RPFs

The biggest argument in favor of the creation and consumption of RPFs uses self-awareness as its focal point. Those who create and consume RPFs are well

¹⁰ Id.

¹¹ Judith Fathallah, "Reading real person fiction as digital fiction: An argument for new perspectives," *Convergence* 24(6): 568–586 (2018).

¹² Sanna Lehtonen, "Writing Oneself into Someone Else's Story – Experiments With Identity And Speculative Life Writing in Twilight Fan Fiction," 2(2) *Fafnir: Nordic Journal of Science Fiction and Fantasy Research*, 7-18 (2015).

⁷ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957

⁸ Mary W. S. Wong, "Transformative User-Generated Content in Copyright Law: Infringing Derivative Works or Fair Use," 11 *Vanderbilt Journal of Entertainment & Technology Law* 1075 (2009).

⁹ Jacobs, *supra* note 3.

aware that they are fictional and have nothing to do with the person's real life¹³. When reading the story "Stay Awake When I'm Asleep," by harriet_vane, readers and the writer are well aware that actors Jesse Eisenberg and Andrew Garfield did not fall in love on the set of the movie "The Social Network" and raise a baby together¹⁴. The readers who read the book "After" when the main love interest was called Harry Styles were well aware of the fact that the signer had nothing to do with the book¹⁵. Does this aspect of self-awareness means RPFs should be treated the same as other mainstream fictional works?

Initially, RPFs were treated as guilty pleasures that were not meant to see the light of day and were supposed to stay hidden away. Later on, with the popularity and ease of usage of sites such as Wattpad and Archive of Our Own, RPFs broke the taboo and became a normal thing that exists in every fan base. The release of the movie series "After" and "The Idea of You" has taken the status of fan fiction to a whole new level. It is not appropriate to state that RPFs are different from other fictional works just because they are created by fans or people on the internet. The movie "Soorarai Pottru," released in 2020, received good reviews and awards. This movie is based on the 2011 autobiography of Captain G.R. Gopinath, who established Air Deccan in 2003. When asked, director Sudha Kongara asserted that the film is not a biopic of Gopinath but was inspired by events in his life¹⁶. Does this movie fall under the

scope of RPF?

Regarding the Mary Kom biopic released in 2014, the Olympic bronze medallist M.C. Mary Kom stated, "I hope they consult me more if they make a Mary Kom Part 2," and further pointed out that "My biopic had shown me falling inside the ring after a hard punch, which never happened in my career. I think they did it to add some masala (dramatic effect)"¹⁷. Similarly, Mark Zuckerberg commented on the movie "The Social Network" that was inspired by his life, stating, "I think the reality is that writing code and then building a product and building a company is not a glamorous enough thing to make a movie about, so you can imagine that a lot of this stuff they had to embellish or make up"¹⁸. The streaming platform Netflix came forward to clarify that the series "The Crown," which portrays the life of the British royals using their real names and a cast that closely resembles the real-life royals, is a "fictional dramatization"¹⁹.

It is a well-known and widely accepted fact that biopics are often dramatized to captivate the audience and provide them with entertainment while simultaneously telling the story of a person. Would these works be considered RPFs? No. Not really. The works are mostly based on the real life of a person with some fictional aspects to them. On the other hand, RPFs are predominantly fictional works with some reality to them. In brief, RPFs are fictional works that use the name, image, and/or other life details about a person that may or may not be used for commercial purposes.

13 Stacey M. Lantagne, "When Real People Become Fictional: The Collision of Trademark, Copyright, and Publicity Rights in Online Stories about Celebrities," 7 Case Western Reserve Journal of Law, Technology & the Internet 39 (2016).

14 harriet_vane, "Stay Awake When I'm Asleep," Archive of Our Own, January 16, 2012, available at: <http://archiveofourown.org/works/321694> (last visited on May 20, 2024).

15 Dan Kois, "How One Direction Superfan Anna Todd Went From Waffle House Waitress to Next-Big-Author With Erotic Fan-Fic Series 'After'," Billboard, July 17, 2015, available at: <https://www.billboard.com/music/features/anna-todd-after-one-direction-fan-fiction-book-deal-movie-rights-profile-6634431/> (last visited on May 20, 2024).

16 TNN, "Suriya's 'Soorarai Pottru' is not a biopic," Times Entertainment, June 3, 2019, available at: <https://timesofindia.indiatimes.com/entertainment/tamil/movies/news/suriyas-soorarai-pottru-is-not-a-biopic/article->

[show/69633486.cms?from=mdr](https://www.show/69633486.cms?from=mdr) (last visited on May 20, 2024).

17 Subhayan Dutta, "A movie on me must have more fights, less masala: Mary Kom," Olympics, August 10, 2020, available at: <https://olympics.com/en/news/indian-boxer-mary-kom-movie-biopic-masala-drama-bollywood-true-story> (last visited on May 20, 2024).

18 Poppy Bilderbeck, "Mark Zuckerberg reveals hilarious detail The Social Network movie got right about him," UNILAD, December 10, 2023, available at: <https://www.unilad.com/film-and-tv/news/mark-zuckerberg-social-network-accuracy-revealed-827631-20231210> (last visited on May 20, 2024).

19 K.J. Yossman, "Netflix Clarifies 'The Crown' Is a 'Fictional Dramatization' by Adding Logline to Trailer Description," Variety, October 21, 2022, available at: <https://variety.com/2022/tv/global/the-crown-disclaimer-fictional-1235410708/50> (last visited on May 20, 2024).

Are Real Persons Protected From Unwanted Fictionalization?

The ethical aspect of the creation and consumption of RPFs is under debate, with a loud minority expressing their adverse opinions while the silent majority continues to create and consume the same²⁰. The protection offered to these real persons by the current laws governing intellectual property is also debatable.

Freedom of speech and expression vs. right to privacy and publicity

As mentioned above, the debate revolving around RPFs mainly involves the topics of freedom of artistic expression and the right to privacy and publicity. The increase in public fascination with the lives of public figures, along with the easy and very convenient access to online platforms that foster active fan engagement, has led to the drastic increase in the number of RPFs created, consumed, and commercialized. From the creator's point of view, they see these real persons as a source of inspiration and explore their potential beyond their public personas. The issue lies with the fact that those real persons often do not get a say in these creative endeavors that use their image and likeness. In India, individuals have the right to publicity derived from their fundamental right to privacy. This right grants them the negative right to prevent people from commercially exploiting their likeness. How exactly is this right enforced and protected in fictional works when they themselves are being fictionalized?

It is not new for authors, filmmakers, and artists to draw inspiration from real life and real persons. By fictionalizing these real people, creators challenge perceptions and push the boundaries of artistic imagination. However, as the saying goes, "your right ends where my right begins."

The right to privacy and publicity²¹ is enshrined in the same constitution that provides for freedom of expression²². When real persons are, without any say

20 Paul Kallenbach & Anthony Middleton, "50 shades of infringement: fan fiction, culture and copyright," 20 Australian Intellectual Property Law Bulletin, 238 – 245 (2015).

21 INDIA CONST. art. 21.

22 INDIA CONST. art. 19, cl. 1.

whatsoever pushed into these fictional narratives, their private lives risk becoming a public spectacle. These portrayals can at times distort their image, misrepresent their character, and expose them to unwanted scrutiny and potential harm. These unwarranted intrusions may impact their sense of control and dignity. Fans of the band One Direction started "shipping" the bandmates Harry Styles and Louis Tomlinson and created numerous fictional works about the two. The artists have reported that this impacted how they interacted in public and affected their real-life relationship²³. These artists' real-life partners often got targeted harassment to the extent of death threats because of this fictionalized relationship²⁴. It is pretty obvious that some of these RPFs are causing real life harm to the real persons. The question now is what can be done?

Personality rights and RPFs

Personality right refers to the right of an individual to their own identity, reputation, and integrity²⁵. The concept of the "right to publicity" originated in the US, granting individuals the exclusive right to control the commercial exploitation of their name, likeness, or other personal attributes. In the Indian legal framework, the basis of this right is rooted in the concept of individual rights and liberties. Article 21 of the Constitution reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This article has expanded in its scope over time and has extended the realm of privacy and publicity, owing to continuous judicial interpretations. In the case of *Maneka Gandhi v. Union of India*²⁶, it was held

23 Noelle Devoe, "Louis Tomlinson Confirms That Larry Shippers Ruined His Deep Friendship With Harry Styles," Seventeen, July 24, 2014, available at: <https://www.seventeen.com/celebrity/a10350811/louis-tomlinson-confirms-that-larry-shippers-ruined-his-deep-friendship-with-harry-styles/> (last visited on May 20, 2024).

24 Aja Romano, "Larry Stylinson, the One Direction conspiracy theory that rules the internet, explained," Vox, April 18, 2016, available at: <https://www.vox.com/2016/4/18/11384118/larry-stylinson-one-direction-conspiracy-theory> (last visited on May 20, 2024).

25 Simon Chesterman, "Artificial intelligence and the limits of legal personality," 69(4) International & Comparative Law Quarterly, 819-844 (2020).

26 *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

that privacy is an intrinsic part of “personal liberty” protected by Article 21 of the Constitution. This landmark judgment marked a paradigm shift where the right to privacy was recognized as a fundamental right independent of state control.

Further, in the landmark case of *R. Rajagopal v. State of Tamil Nadu*²⁷, the court recognized the right to privacy as a fundamental right. This judgment reinforced the idea that individuals have the right to control their personal information and protect their identity from unwarranted intrusion.

Protection of one’s image is a concept that can be directly extracted from Article 21 of the Constitution; however, the commercialization of the same had a rather gradual development. In the case of *Shivaji Rao Gaikwad v. Varsha Productions*²⁸, the court prevented the release of a movie titled “Mein Hoon Rajinikanth,” stating that the release of the same would violate the actor’s reputation and goodwill. This gradual development and clarity in jurisprudence, along with concepts such as defamation, invasion of privacy, and publicity rights, have evolved to protect the commercialization of an individual’s personality.

Freedom of speech and expression, similar to the right to privacy, is a fundamental right that is guaranteed to allow citizens to express their opinions regarding any topic or anything happening to them. This expression includes word of mouth, writing, printing, or any other manner. The Supreme Court, over time, has interpreted the freedom of speech and expression envisaged under Article 19(1)(a) of the Constitution to include the right to propagate one’s views, freedom of the press, freedom of commercial advertisement, etc²⁹.

However, as always, this right is not absolute and is subject to reasonable restrictions as prescribed by Article 19(2) of the Constitution. The grounds for these reasonable restrictions include the security of the state, public order, morality and decency, contempt of court, defamation, incitement to an

offense, and friendly relations with foreign states³⁰.

Defamation is a possible route that can be taken to deal with the issue of harmful real-life fictions. The ingredients for a defamation lawsuit are a false statement, publication, made against the person filing the lawsuit, and real-world harm³¹. However, this would not be an ideal route to address this issue as the harm caused by real person fiction is different from malicious harmful statements. This route is complex as it would require the differentiation between the terms false and fiction. In the general sense, the term false refers to something that is not true or accurate and something that is misleading, incorrect, or contrary to fact. While the term fiction, on the other hand, refers to creative works that are invented or imagined and are not intended to be factual. Hence, while defamation is a possible route that can be taken, it is a long shot.

Indian enactments and RPFs

The Copyright Act primarily governs the protection of literary, artistic, and musical works; however, it also provides creators with exclusive rights over their creations, including the right to reproduce, adapt, perform, and communicate their work to the public³². This act provides certain moral rights to authors, including the right to control the commercial exploitation of their works. Section 57(1) (b) of the act protects creations against distortion, mutilation, modification, or other acts which would adversely impact the reputation of the author³³. It can be seen that the act did not envisage a situation where real persons would be fictionalized, as the protection is only provided to authors and their works.

Similarly, the Trademarks Act provides the owners with exclusive rights preventing others from using identical or similar marks in a way that may cause confusion or dilute the distinctiveness of the mark³⁴. However, its scope is limited to commercial purposes. Both these acts can be used by individuals to protect their name, image, integrity,

27 *R. Rajagopal and Ors. v. State of Tamil Nadu*, AIR 1995 SC 264.

28 *Shivaji Rao Gaikwad v. Varsha Productions*, (2015) (62) PTC 351 (Mad).

29 Soli J. Sorabjee, “Freedom of expression and censorship: some aspects of the Indian experience,” 45 *Northern Ireland Legal Quarterly*, 327 (1994).

30 INDIA CONST. art. 19, cl. 2.

31 Abhinav J. Nair, “Defamation: A Dangerous Luxury in India,” 2 *Jus Corpus Law Journal*, 292 (2021).

32 *Supra* note 7.

33 *Id.*

34 *The Trade Marks Act, 1999*, No. 47, Acts of Parliament, 1999.

or reputation that are incorporated into a work and their names and images in general, respectively. Further, individuals can sue for defamation if their portrayal in fictional works is false and causes a certain level of reputational harm.

While real persons themselves are not subject matters that can be protected by intellectual property rights, the right to publicity refers to an individual's right to control the commercial use of their identity, including their name, image, voice, and likeness. This right plays a significant role in protecting personality rights by allowing individuals to safeguard their identity and reputation from unauthorized exploitation for commercial gain.

The Way Forward

In 2008, in the UK, a man named Darryn Walker was arrested and prosecuted for writing and publishing an RPF featuring various members of the band Girls Aloud. The prosecution was carried out under the Obscene Publications Act, and the RPF depicted the band members being kidnapped, raped, and murdered. However, he was acquitted on the basis that the intention of the work was not to frighten or intimidate the band members. Further, it was also argued that the website on which the work was published was not easily accessible unless people actively sought it out³⁵.

In the US, in the case of *White v. Samsung*³⁶, Samsung created an advertisement that depicted a robot dressed and posed similarly to Vanna White. Even though White's name or likeness was not used, it was held that Samsung had, without her consent, used a recognizable depiction of her persona for commercial purposes. On the other hand, in the case *ETW v. Jireh*³⁷, it was held that the transformative nature of a work featuring a real person can be exempted from infringement of the right of publicity.

In the case of *Parks v. LaFace*³⁸, the court stated that the defense of transformative work cannot be taken when the use of an individual's name and likeness was solely for the purpose of attracting attention to the work, which does not relate to the person except for the above-mentioned usage.

35 *R v. Walker*, [2008] 2 S.C.R. 245.

36 *White v. Samsung*, 971 F.2d 1395 (9th Cir. 1992).

37 *ETW v. Jireh, Inc.*, 332 F.3d 915.

38 *Parks v. LaFace*, 329 F.3d 437.

As discussed above, in India, in the case of *Shivaji Rao Gaikwad vs. Varsha Productions*³⁹, actor Rajinikanth filed a petition against the release of the movie titled "Main Hoon Rajinikanth". In this movie, the protagonist was supposed to be a CBI officer/contract killer named Rajinikanth who reproduced the caricatured style of Rajinikanth. Varsha Productions argued that except for the first name, the movie had nothing to do with the actor. Despite this, the court held that the movie would, without a doubt, be associated with the actor, which might affect his goodwill and reputation.

From these precedents, it can be observed that courts all over the world focus on accessibility, commercial nature, and the ability to identify and associate the real person with the fiction before taking actions against such works. It can also be seen that real person fictions do pose issues to publicity rights that have not been efficiently addressed yet.

Technological advancements like AI and deepfakes add to the existing concerns about unauthorized creations and use of real persons' likenesses, voices, and so on. Very recently, the Indian Supreme Court ruled in favor of Bollywood actor Anil Kapoor, protecting him against the unauthorized AI use of his likeness⁴⁰. The emerging trend of using a celebrity's voice or likeness to advertise a product or service poses several legal and liability issues. While an act governing AI or the incorporation of AI into existing law is the optimal solution for this issue, it must be noted that personality rights are intertwined with the issue of unauthorized AI creation replicating a person's persona.

RPFs can be flattering and even aid the celebrity in reaching a wider audience and increasing their popularity. However, the lack of a clear boundary between creative and harmful depiction poses several challenges. As seen above, RPFs do not explicitly violate any provisions of the IP acts in India. However, they do cause real-life harm, such as harm

39 *Supra* note 30.

40 Malavika Prasad, "Delhi HC Protects Anil Kapoor's Personality Rights: What They Are, How Have Courts Ruled," *The Indian Express*, January 7, 2024, available at: <https://indianexpress.com/article/explained/explained-law/delhi-hc-anil-kapoor-personality-rights-8951569/> (last visited on May 20, 2024).

to publicity, reputation, goodwill, and emotional harm, which needs to be addressed.

When an individual makes the choice to become a celebrity or a public figure, it does not mean that they are giving the public consent to be dehumanized or objectified. It is important to ensure that individuals have control over how they are portrayed to the general public. The first step in accomplishing this would be to clearly define the scope of copyright and personality rights protection in the context of RPFs. It is also important to ensure that there is a balance between protecting individuals' rights while not restricting artistic freedom too much. This artistic freedom must not harm others.

The unregulated growth of RPFs has led to obsessive fixations, stalker tendencies, blurred boundaries, digital tracking, dehumanization through fiction, targeted harassment, fabricated narratives, erosion of trust, and psychological harm⁴¹. These impacts can be prevented by holding the platform and creators accountable. The difference between "Mein Hoon Rajinikanth" and "House of Cards" is the accessibility and commercial nature of the same. The latter is available for consumption on a website that must be sought out by the reader, while the former was set to have a theatrical release. However, with the ever-evolving digital world, it can no longer be argued that accessing content online is harder than going to watch a movie in the theater. Further, RPFs hitting the big screen with modifications made is a fact that should be taken into consideration.

The ideal yet time – consuming solution to address the issues concerning RPFs would be to enact an act governing the "Right to Publicity". As of now, the right to publicity is exclusively applicable only to celebrities. However, with technological advancement, anyone with a smart device and access to the internet can be a celebrity, which must be taken into consideration and should be seen as a push to bring in such an act.

In Canada, the Privacy Act of 1985, which deals with personality rights, states that personality can be appropriated through the usage of a person's name,

⁴¹ Kathy Bowrey, "The New Intellectual Property: Celebrity Fans and the Properties of the Entertainment Franchise," 20 Griffith Law Review, 188 (2011).

likeness, or voice. This definition, on a case-by-case basis, may be used to govern RPFs, which often use the name and physical likeness of a person. It further states that there must be proof of damages for action to be taken against such appropriations⁴².

In Seoul, South Korea, owing to the absence of relevant law and consequential contradictory rulings, the justice ministry has announced its plan to revise the Civil Act to codify people's right to the commercial use of their names, images, and other identity traits⁴³. It can be seen that states are moving forward to codify laws governing personality to provide efficient protection and prevent contradictory judgments. India in recent times has seen multiple cases concerning personality rights in the cases of Amitabh Bachchan, Sushant Singh, Anil Kapoor, and so on⁴⁴. It is high time India considers the route of codification.

The impact of commercialization must be clearly established. From precedents, it can be seen that when someone's persona is being commercialized without prior permission, the judiciary takes action without hesitation compared to situations where the damage is non-monetary. While preserving artistic expression, priority must be given to preventing harmful portrayals that may cause emotional and reputational damage. The proposed "Right to Publicity" law can build upon existing legal frameworks to create a comprehensive legal framework for protecting individuals in the digital age.

Findings And Suggestions

From the above chapters several key findings underscore the complex interplay between freedom

⁴² Amy M. Conroy, "Protecting Your Personality Rights in Canada: A Matter of Property or Privacy?", 1(1) Open Journal System (2012).

⁴³ Korea Bizwire, "Justice Ministry to Codify Publicity Rights into Law," Korea Bizwire, December 26, 2022, available at: <http://koreabizwire.com/justice-ministry-to-codify-publicity-rights-into-law/236567> (last visited on May 20, 2024).

⁴⁴ Vikrant Rana, Nihit Nagpal & Akif Abidi, "Personality rights from Amitabh Bachchan to Sushant Singh to Anil Kapoor: Indian and Global View Point," Bar and Bench, November 3, 2023, available at: <https://www.barandbench.com/law-firms/view-point/personality-rights-amitabh-bach> (last visited on May 20, 2024).



of expression and the protection of individual identity and privacy. One of the primary findings being that unlike works derived from other fictional works, RPFs do not usually infringe on copyright laws since they are original creations using real-life individuals as inspiration rather than pre-existing fictional characters or settings. This causes RPFs to fall under a unique category that is yet to be regulated.

Further the ethical concerns surrounding RPFs stem from their potential to distort the public image of the individuals they portray. These works can misrepresent characters, attributes, and events, leading to reputational harm and invasion of privacy though technically they are fictional works. Legally, RPFs pose as a challenge as current intellectual property laws do not explicitly address the unauthorized fictionalization of real persons. While defamation, privacy, and publicity rights offer some protection, these are often inadequate or difficult to enforce effectively in this specific circumstance.

Judicial rulings in various jurisdictions, including India, have highlighted the complexities in dealing with RPFs. Courts have generally considered factors such as the commercial nature of the work, its accessibility, and the recognizable depiction of the individual in determining whether an RPF infringes on personality rights. However there is a concerning lack of uniformity or guidelines that poses threat to all the concerned persons when it comes to an RPF.

To address the identified gaps and challenges in the current legal framework regarding RPFs and personality rights, the best course of action would be the codification of Personality Rights. There is a pressing need for specific legislation that clearly defines and protects personality rights in India. This legislation should encompass the right to control the commercial use of one's name, image, likeness, and other personal attributes. Further the application of the statute must be made explicit as in this modern age the definition the term 'celebrity' has broadened in scope with the vast nature of the internet. The statutory protection provided in certain provinces in Canada as discussed in the above chapter can be used as an inspiration. Additionally such legislation

should balance the protection of individual rights with the freedom of artistic expression, ensuring that creative works do not cause undue harm to the subjects they portray.

In the mean time the judiciary should develop comprehensive guidelines for adjudicating cases involving RPFs and personality rights. These guidelines should ideally include criteria for assessing harm, distinguishing between permissible artistic expression and harmful portrayal, and determining appropriate remedies. At large there should be initiatives aimed at educating creators and the public about the ethical and legal implications of RPFs. This can include encouraging celebrities and public figures to engage in dialogue with their fan communities to set boundaries and express their preferences regarding RPFs, fostering mutual respect and understanding.

CONCLUSION

In this rapidly evolving landscape of creative expression and technological advancement it is necessary to dive into the complex yet fascinating realm of Real Person Fictions and its real life implications. Individuals who are in the public eyes find themselves taking different shapes and forms through fan created content. These creations might be flattering or even disturbing. It can be seen that RPFs does not necessarily fit an existing label making it a concept that must be addressed. The global nature of RPFs is an additional push to do so.

The proposed "Right to publicity" law has been a long time coming with the impact celebrities have on the society and vice versa. With the evolution of media and technology it is crucial to define who is a celebrity and what are their rights and liabilities. Drawing boundaries when it comes to freedom of speech and expression has always been tough yet crucial job and it is time this line is drawn. While unregulated creations of RPFs is an issue, unreasonable restriction of the same will also pose several other issues hence it is crucial to strike a balance. The basic idea is to give these real persons a say when it come to creations that use their name, image or persona.

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