

Right of Publicity

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GETTING THE
DEAL THROUGH 

India

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Sources of law

1 Is the right of publicity recognised?

Yes, the right of publicity is recognised both as a tortious right and as a fundamental right guaranteed under article 21 (right to life and personal liberty) of the Indian Constitution. The decision of a nine-judge bench of the Supreme Court in the case of *Justice KS Puttuswamy (Retd) v Union of India* discussed and found publicity to be an element of privacy that is protected as a fundamental right.

The right does not find any express statutory mention; however, expression of some of the intellectual property elements of publicity such as likeness of character, name, setting and event may be protected under various statutes such as the Copyright Act 1957 and the Trade Marks Act 1999. Indian courts (at the High Court level) have explicitly recognised the right to publicity and laid down the essential components for its infringement, as discussed below.

2 What are the principal legal sources for the right of publicity?

There is no specific legislation in India to protect publicity rights. Through various judgments, the Indian courts have read right to publicity into articles 19 and 21 of the Constitution by calling it an inherent part of right to privacy, which is an established constitutional right. The judgement in *Justice KS Puttuswamy (Retd) v Union of India* recognised the concept of 'inviolable personality of an individual' as an integral part of the right to privacy, which is now constitutionally recognised as a fundamental right and upholds the judgment in *R Rajagopal v State of Tamil Nadu* that recognises the right of publicity for individuals.

A celebrity's profile can be used for the purposes of advertising or promotion only after ensuring appropriate authorisation. In a jurisprudential sense, right of publicity can be found within a person's right and autonomy to allow or prohibit the commercial exploitation of his or her likeness or some characteristics of his or her personality. This right emanates not only from common law jurisprudence, but also find protection under the Copyright Act 1957 in the form of adaptation rights, and under the Trade Marks Act 1999 for protection of name or likeness of individuals in the course of trade and commerce.

However, the Right to Privacy Bill 2011, which is still under consideration in the Indian parliament, makes no mention of publicity rights and gives no remedy for false endorsement or use of a person's identity for commercial purposes.

3 How is the right enforced? Which courts have jurisdiction?

All civil courts within the territorial limits of India have the requisite jurisdiction to try cases relating to the right to publicity. The general rules and procedure pertaining to civil suits (as stated in the Code of Civil Procedure 1908) are applicable.

4 Are there other rights or laws that provide a claim based on use of a person's name, picture, likeness or identifying characteristics?

Yes. The Trade Marks Act 1999 provides for protection of names, pictures, images, etc so long as they can satisfy the criteria for being considered a 'trademark'. In brief, this statute stipulates that names, signatures, devices, labels, etc qualify.

Furthermore, common law remedies such as tort law are widely enforced in India and provide for protection against defamation, injury to one's reputation, goodwill, etc.

Existence of right

5 What aspects of a person's identity are protectable under the right of publicity?

The aspects of a person's identity that find protection in India depend upon various statutory provisions. For instance:

- the constitutional recognition of the right to privacy allows individuals to assert their consent for use of any information pertaining to the individual including home, family, marriage, procreation, parenthood, child-bearing and education, which is not available as a matter of public record;
- information and aspects of personality that are available in public records are subject to the limitation that their reporting must not be with reckless disregard for the truth;
- the Trade Marks Act 1999 (which also recognises common law principles) extends protection over one's name, image, likeness, taglines, mottos, unique and exclusive characteristics, etc; and
- the Copyright Act 1957 provides for protection against one's artistic, literary, dramatic, photographic, musical works, etc. If a claim can be brought to show that the wrongdoer has not only infringed copyright, but also violated one's personality and publicity rights, then protection can be afforded to such categories as well.

6 Do individuals need to commercialise their identity to have a protectable right of publicity?

The right to publicity has been deemed to be an extension of the right to privacy by the Indian courts and hence non-commercialisation of the right is not a ground for its abrogation.

In case certain aspects of an individual's persona are protected under the Trade Marks Act 1999, then the provisions regarding non-use of said trademark apply.

7 May a foreign citizen protect a right of publicity under the law of your jurisdiction?

The Supreme Court has read right to privacy into article 21 of the Constitution. Further, the courts have stated that the right of publicity has evolved from right to privacy. Therefore, since in India article 21 is also applicable to non-citizens, the right of publicity can be made available to foreign citizens.

8 Is registration or public notice required or permitted for protection of the right? If so, what is the procedure and what are the fees for registration or public notice?

As there are no statutes governing the right of publicity in India, there are consequently no registration procedures or fee structure for registration and public notice.

Individuals may apply for the protection of their name, likeness and nicknames, among other things, with the Indian Trademarks Registry in order to obtain statutory protection against misuse. The procedures and fee structure stated in the Trade Marks Act 1999 are applicable in these circumstances.

Other rights, such as copyrights and rights in common law, do not require registration or a fee.

9 Is the right protected after the individual's death? For how long? Must the right have been exercised while the individual was alive?

As stated above, there is no specific legislation that governs right of publicity in India. Claims are initiated under varying legislations. It is unclear whether such rights extend after an individual's death, since no precedent or case law in India discusses this aspect yet.

However, if a dispute can be brought under the Copyright Act 1957, then one can protect and safeguard such rights after an individual's death as well. This is because the term of copyright protection over works in India extends for a stipulated period, even after the demise of the author. Furthermore, moral rights are perpetual and do extend beyond one's death.

It remains to be seen whether a dispute over the right of publicity can be initiated alleging strictly infringement of copyright, even after the demise of the concerned individual.

Ownership of right

10 Can the right be transferred? In what circumstances?

The commercial right that a person acquires through intellectual property protection is transferable as per the provisions of the Trade Marks or Copyright Act. The right in intellectual property is transferable by way of either assignment or licensing. However, the position of transferability of the right in itself is ambiguous. The discussion on transferability of the right is restricted to the judgment in *ICC Development (International) v Arvee Enterprises and Anr* wherein the court stated that 'any effort to transfer the right of publicity from an individual to the organiser (non-human entity) of the event would be a violation of the Indian Constitution'.

11 Can the right be licensed? In what circumstances?

If the name, image or the likeness of a person is registered, or used as a trademark or has been copyrighted then said trademark or copyright can be licensed. There are no statutory pointers as to the circumstances that need to be fulfilled for licensing.

The reputation associated with an individual's likeness or traits is deemed as valuable consideration for the purposes of a contract and may be licensed or assigned. The transactions would be valid and enforceable under law.

12 If the right is sold or licensed, who may sue for infringement?

In the case of licensing under the Copyright Act 1957, only an exclusive licensee or the copyright owner can sue for infringement. However, in the case of trademarks, a normal licensee can also sue once he or she has bought the infringement to the attention of the trademark owner and no step towards filing of an infringement suit has been taken by the owner in two months.

13 If post-mortem rights are recognised, are they limited to natural heirs or can they be enforced under a contract by an assignee or left to an entity?

As stated above, it is unclear whether post-mortem rights are available in India. Therefore, their extension to natural heirs, enforcement through contractual assignment, etc remains to be decided either by judicial precedent or appropriate legislation in India.

14 Are there any actions that rights owners should take to ensure their rights are fully protected?

To make sure that the right of publicity of a person is fully protected, the individual while making contractual agreements with third parties must ensure that:

- in the case of commercial benefit to the third party, written and signed consent must exist for every sponsorship, endorsement or marketing;
- the consent agreement must be specific with respect to details such as media, time frame, permitted uses, etc; and
- images that cannot be published or used in a certain manner must be specified in writing.

Infringement

15 What constitutes infringement of the right?

According to the Indian judiciary, the following criteria constitute the elements of a violation of the right to publicity:

- From *DM Entertainment v Baby Gift House and Ors* (CS(OS) 893/2002):
 - whether the person is a celebrity by virtue of his or her popularity;
 - whether the alleged usage of such person's identity is for commercial advantage; and
 - whether the usage is covered under any recognised exceptions.
- From *Titan Industries Limited v Ramkumar Jewellers* (CS(OS) 2662 (Delhi High Court, decided on 26 April 2012)):
 - validity: the plaintiff owns an enforceable right in the identity or persona of a human being; and
 - identifiability: the celebrity must be identifiable from defendant's unauthorised use.
- From *Shivaji Rao Gaikwad v Varsha Productions* (2015 (62) PTC 351 (Madras):
 - the fact that the general public solely associates the caricatures etc of the defendants with the celebrity only; and
 - the immoral or unethical portrayal of the celebrity.
- From *Tata Sons Limited & Anr v Aniket Singh* (CS (OS) 681 of 2012 (Delhi High Court, decided on 17 November 2016)):
 - the reputation enjoyed by a particular personality and the loss of reputation due to defendants' attempt at piggybacking on that reputation itself; and
 - use of names (as a trademark or as a domain name) of a particular personality by the defendants.

Infringement of the right to publicity requires no proof of falsity, confusion or deception, especially when the celebrity is identifiable. The right of publicity extends beyond the traditional limits of false advertising laws.

For statutory rights that protect the subject matter of the right to privacy such a trademark rights, rights in tort (infringement by way of passing off) and others, the respective criterion for infringement of each mode of protection is applicable.

16 Are certain formats of intellectual property excluded from claims based on the right of publicity? What is the legal basis of the exclusions?

Yes. Intellectual property formats such as patents, designs, semi-conductors, geographical indications, traditional knowledge, etc do not cover the aspect of right of publicity. This is because publicity rights do not fit under the very definition of intellectual property subtypes as are defined in statutes governing these formats.

On the other hand, statutes such as the Copyright Act 1999 and the Trade Marks Act 1999 (even more so) contain definitions that are broad enough to encompass publicity and personality rights.

17 Is knowledge or intent to violate the right necessary for a finding of infringement?

Intent is not an essential component of the infringement of the right of publicity, although it is relevant for the purposes of determining the quantum of damages to be awarded to the injured party.

18 Does liability extend to media publishing content created by an advertiser and website operators publishing posts by third parties? Does republishing or retweeting or other social media propagation of existing content give rise to liability?

The law in India on this aspect is very nascent and under development. Liability can be evaded by 'intermediary' websites and platforms under the Information Technology Act 2000 (section 66A), if they can establish that they:

- did not exercise editorial control over the content published;
- observed due diligence while discharging their duties; and
- take such content down if they receive 'actual knowledge' that the content is in contravention of the law.

The Supreme Court, in the recent landmark judgment of *Shreya Singhal v Union of India*, further relaxed liability standards for such third-party

intermediary platforms and requires them to take down 'unlawful' content when, inter alia, a court order specifically requires the intermediaries to delist the content in question.

Remedies

19 What remedies are available to an owner of the right of publicity against an infringer? Are monetary damages available?

Injunctions (permanent, ex parte and interlocutory) have been granted to parties in numerous cases, along with damages. Remedies for the tort of passing off, as prescribed in the Trade Marks Act can be granted as well. Moreover, the remedy of claiming damages is always available to persons claiming loss of reputation.

20 Is there a time limit for seeking remedies?

There is no specific time limit for seeking remedies, as the right of publicity is not a statutory right.

21 Are attorneys' fees and costs available? In what circumstances?

Attorneys' fees and costs have been granted to litigants at the discretion of the courts, based on the facts and circumstances of each case. The intent of the infringing party plays a major part in determining whether costs are to be awarded, although no such rule has been explicitly laid down by a court.

22 Are punitive damages available? If so, under what conditions?

Punitive damages have been awarded to injured parties where their right of publicity has been infringed. Courts tend to look at whether the accused deliberately infringed the rights of the owner to determine the nature of damages awarded to the plaintiff. Furthermore, any action against the defendants (accused) aimed at continuing the violation of one's personality rights, despite being aware of such rights accruing to an individual, is an important factor in the grant of punitive damages.

23 Is preliminary relief available? If so, what preliminary measures are available and under what conditions?

Yes. As stated above, preliminary relief is frequently granted by the Indian judiciary in the form of ex parte ad interim injunctions, temporary (preliminary) injunctions, etc.

The conditions of the grant of temporary (preliminary) injunctions are as follows:

- that the plaintiff has made out a prima facie case of violation of his or her rights;
- that the plaintiff would suffer irreparable harm and injury if the injunction is not granted by the court; and
- that the balance of convenience tilts in favour of the plaintiff - in other words, the harm caused to the plaintiff in the absence of an injunction would far outweigh the benefits conferred upon the defendants, if they were allowed to continue with their activities.

24 What are the measures of damages?

There is no standard measure of damages since the grant of damages in civil suits is not regulated by statute. The quantum of damages granted depends upon the discretion of the judge. The award of damages usually contains two elements, namely:

- actual damages: the damages actually suffered by the plaintiff; and
- punitive damages: the damages that are payable by the defendant, should the judge be of the opinion that the quantum of damages (actual) awarded are not proportionate to the wrongful conduct of the defendants.

25 What significant judgments have recently been awarded for infringement of the right?

Phoolan Devi v Shekhar Kapoor & Ors (57 (1995) DLT 154)

This case was one of the earliest instances of the explicit recognition of the right to one's personality and privacy by the Indian judiciary. The defendants had produced and released the feature film 'The Bandit Queen' showcasing several aspects of the plaintiffs' personal life, including her involvement in alleged criminal acts as well as graphic depictions of sexual abuse faced by her, among others.

While the plaintiff and the defendants had entered into an agreement regarding the development and production of such a feature film, the plaintiff was aggrieved since the defendants had incorrectly portrayed her involvement in criminal actions, besides depicting several incorrect and false instances of sexual abuse. Furthermore, the defendants had not shown the film to the plaintiff before its release and had proclaimed the film to be a true story. Therefore, the plaintiff pressed her claim for violation of her right to privacy, in addition to the defendants' injuring her life, liberty and dignity.

In order to decide the dispute effectively, the Delhi High Court first decided the preliminary question of the plaintiff being a 'public figure', since such determination was a prerequisite for a right of privacy allegation, especially when details regarding the personality were otherwise available on the public domain as well. The court decided in favour of the plaintiff, holding that she was indeed a public figure as far as the legal requirement was concerned. Furthermore, the court proceeded to restrain the defendants from exhibiting the film in any format, since the depictions in the film regarding several aspects of the plaintiffs' personal life were injurious to her reputation and has far-reaching consequences.

The court's restraint on the film's exhibition was also inspired from the defendants' failure to show the film to the plaintiff herself, despite her repeated requests, her constant denial of the events depicted in the film and the defendants' depiction of the film being a true story amid such contradiction.

DM Entertainment v Baby Gift House and Ors (CS(OS) 893/2002)

In 1996, Daler Mehndi started DM Entertainment, where 'DM' came from the initials of his name. Mr Mehndi assigned all his publicity rights, which included commercial endorsements and other related rights, to the company after its incorporation. Baby Gift House (BGH), the defendant, owned toy and gift shops. It sold dolls that were allegedly imitations of, and identical to, the likeness of Daler Mehndi. Moreover, the dolls could make moves and sing lines from some of his compositions. The plaintiff filed a suit alleging that the BGH's products were infringing upon Daler Mehndi's 'right to control the commercial exploitation of his persona' and hence it was claimed that the defendants were liable for false endorsement and passing-off.

The court held that Daler Mehndi was extremely famous and has an instinctive association in the public's mind and trade alike due to the entertainment he provided and the products he created. Therefore, according to the court, his persona had attained great importance as a quasi-property right, which was meant to protect the economic value associated with his identity. Since Daler Mehndi's celebrity persona was used in a commercial product without any authorisation, the High Court held that Daler Mehndi's right to publicity had been infringed. The Delhi High Court held the defendants liable for false endorsement and for passing-off as they were in violation of Mr Mehndi's right to publicity. A permanent injunction was granted and Mr Mehndi was awarded token damages.

Sourav Ganguly v Tata Tea Ltd (Calcutta High Court CS No. 361 of 1997)

Sourav Ganguly, one of the most celebrated sportsman in India, had returned from India's tour of England where he had displayed phenomenal skill and had scored splendid centuries. The defendant had employed Mr Ganguly as his brand manager. Subsequently, the defendant had launched an advertising scheme whereby it was offering consumers an opportunity to congratulate Mr Ganguly through a postcard contained inside each tea packet. Upon learning of this development, the plaintiff instituted a suit before the High Court of Calcutta, claiming that such an advertisement misrepresented to consumers that he had endorsed this particular scheme. While the dispute ended in an amicable settlement, the Calcutta High Court had found in favour of the plaintiff by holding that his fame, popularity etc were his intellectual property.

Arun Jaitely v Network Solutions Private Limited & Ors 181 (2011) DLT 716

Indian political leader Arun Jaitely filed a suit for permanent injunction to restrain the defendants from misusing the domain name arunjaitely.com, and to get the domain name transferred as he wished to register the domain name, which the defendants had already

registered. The court stated that names of celebrities have been put on a higher footing than well-known marks as they have been recognised as distinctive and famous under Indian trademark law. The court granted an injunction restraining the transfer or offer for sale of the domain name arunjaitley.com to any third party and the creation of any third-party interest therein.

Titan Industries Limited v Ramkumar Jewellers (CS(OS) 2662, Delhi High Court, decided 26 April 2012)

Amitabh Bachchan and Jaya Bachchan were approached by the plaintiff to advertise their brand name Tanishq for a range of diamond jewellery. Amitabh Bachchan and Jaya Bachchan assigned all the rights in their personality to the plaintiff for use in any form of media for the purposes of the advertisements. The plaintiff had put in a huge amount of money for the promotional campaign. The defendant was dealing in goods identical to those of the plaintiff.

The defendant put up a hoarding very similar to the plaintiff's, which included the same picture of the celebrity couple as displayed on the plaintiff's hoarding. As the defendant had neither received permission from the couple, nor had the plaintiff authorised them to use the picture, the court held the defendant liable for infringement of the plaintiff's copyright with respect to the advertisement and also for misappropriation of the personality rights of Amitabh Bachchan and Jaya Bachchan. The court, therefore, gave an interim injunction in favour of the plaintiff while also recognising the couple's rights in their personalities.

Kajal Aggarwal v The Managing Director, M/s VVD & Sons P Ltd (2012 (1) CTC 812)

The plaintiff was a popular figure in the South Indian film industry. She had signed a contract with the defendant to endorse hair oil and coconut oil products. It permitted the use of Kajal's profile in photographs, videos, print, internet content and other media to promote the products for the span of a year, although the defendant continued using aspects of her profile after the expiry of the agreement, which resulted in the plaintiff filing a suit for infringement of her right of publicity.

The Division Bench held that copyright ownership does not permit the defendant to use the video for advertising or promotional purposes and the defendant did not possess the right to use her persona for these purposes as it could injure her publicity rights and reputation and gave rise to the possibility of causing confusion among the public, which would have an adverse and direct impact on Kajal's advertising and endorsement prospects. With respect to the plaintiff's application for an interim injunction, the court stated that since the balance of convenience favoured the plaintiff and because it was difficult to assess damages caused to her, irreparable harm would be caused to her if the interim order was not passed and granted the injunction.

Sonu Nigam v Amrik Singh (alias Mika Singh) (Civil Suit No. 372 of 2013, Bombay High Court, 26 April 2014)

This case saw the plaintiff, one of Bollywood's renowned singers, file an injunction claim against another popular singer Mika Singh and the recording label OCP Music. The dispute revolved around the advertisement and promotion of popular music awards titled the Mirchi Music Awards. The defendants had put up hoardings and billboards containing the plaintiff's photographs as advertisements for the awards. However, the defendants had not sought the plaintiff's permission before putting up these hoardings. While bringing the claim for an injunction, the plaintiff also contended that the hoardings portrayed the defendant as being larger than life in comparison with the plaintiff. The court ultimately granted a permanent injunction to the plaintiff on the basis of a compromise agreement between the parties. As a result of the settlement, not only were the defendants restrained from advertising such hoardings in public, but they were also restrained from indulging in any such publicity from their Twitter accounts as well. Interestingly, the defendants were also ordered to pay monetary compensation to 10 separate charitable organisations.

Sampat Pal v Sahara One Media and Entertainment & Ors (Civil Suit No. 638 of 2014)

The plaintiff, a social activist had started an organisation in 2006 called the Gulabi Gang, which is a women's movement operating in the poorer section of India dedicated to the improvement of women

in rural India. The movement, also called the Pink Gang, derived its name from the pink sarees worn and the bamboo sticks wielded by its women members. The plaintiff claimed that significant literature and other documentaries were inspired from the plaintiff's organisation. Upon learning that the defendants were releasing a film titled 'Gulab Gang', the plaintiff brought a suit for permanent injunction as regards, inter alia, her personality rights.

Among other contentions, the plaintiff had contended that the central character in the defendant's film was extremely similar to that of the plaintiff, as the character also played the role of the commander-in-chief in addition to portraying the members of the gang in the film in a similar manner as those of the plaintiff's organisation. The plaintiff's grievance was also aggravated because the lead character was portrayed in a manner that was detrimental to her reputation and in violation of her privacy rights.

The sole judge in the Delhi High Court had restrained the defendants temporarily from releasing their film 'Gulab Gang' upon being prima facie satisfied of the plaintiff's claims. However, the defendants appealed the judge's order. The Appellate Court subsequently allowed the defendants to release their film subject to the condition that the defendants give a clear disclaimer stating that they have no association whatsoever with the plaintiff or her organisation.

Shivaji Rao Gaikwad v Varsha Productions (2015 (62) PTC 351 (Madras))

This case represented one of the more interesting developments linking the Indian film industry and intellectual property. Shivaji Rao Gaikwad, more popularly known as Rajnikanth, brought an injunction claim against the release of the film 'Main Hoon Rajnikanth', which used the plaintiff's name, caricature, dialogue, delivery style, etc without his permission. The film contained certain acts that were alleged to be immoral in nature.

Moreover, it was the treatment and immoral promotion of the film by third parties on the internet that also brought into disrepute the plaintiff's celebrity image. The plaintiff enjoys superstar status among millions of Indians as well as among those abroad and establishing that was no challenge before the court. The court held that the very fact that third parties on the internet associated only the plaintiff with the title of the film affected the celebrity image and consequent rights of the plaintiff. Moreover, the court held that the defendant had no right to use the plaintiff's name, image, caricature, etc without his permission, especially when immoral scenes and taglines were incorporated both in the film as well as in its advertisements.

Tata Sons Limited & Anr v Aniket Singh (CS (OS) 681 of 2012, Delhi High Court, 17 November 2015)

This case saw the Delhi High Court address the issue of cybersquatting as well as infringement of the right of publicity. The defendant had registered the domain names www.cyrusmistry.co.uk and www.cybermistry.co merely one month after the Tata Group appointed Cyrus Mistry (a plaintiff in the suit) as its deputy chairman in 2011. Mr Mistry further took over as the group's chairman in 2012.

The defendant, well aware of the reputation of Mr Mistry, had registered these domain names and had written to the plaintiff's informing them that several entities had approached him for purchasing these domain names. Therefore he requested the plaintiffs contact him since the ownership of these domain names in the wrong hands could result in misuse and harm to the reputation and goodwill of the plaintiffs' Tata Group, in addition to subsequently offering to sell the domain names to the plaintiffs.

Recognising the well-known personality and status of Mr Mistry (in addition to its inherent distinctiveness) and the fact that his popularity had spread across many fields, the Delhi High Court recognised the plaintiffs' right to restrain the defendant from misusing his personal name and the reputation associated with his personality and image. Moreover, the court also recognised that Mr Mistry had a constitutional right under article 21 of the Constitution to safeguard himself from an invasion or violation of his right to privacy or publicity. Therefore the Delhi High Court restrained the defendants from using the name Cyrus Mistry, thereby restraining infringement and passing-off, in addition to awarding punitive damages and costs of 500,000 rupees.

Litigation**26 In what forum are right of publicity infringement proceedings held?**

All civil and commercial courts within the territorial jurisdiction of India can entertain right of publicity infringement proceedings. Proceedings are no different from those of a normal suit, which is governed by the Code of Civil Procedure 1908 and the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts Act 2015. The rules and procedures for standard civil and commercial suits mentioned therein are applicable in disputes regarding the infringement of this right.

27 Are disputes decided by a judge or a jury? Are damages determined by a judge or a jury?

The Indian legal system does not recognise the concept of trial by jury and therefore, all disputed issues are disposed by a single judge and the various benches of judges. Consequently, judges decide the issue of damages as well.

28 How is the choice of applicable law determined?

As stated above, suits regarding the right of one's publicity are governed by different statutes, which also determine the choice of applicable law. This applicable law is of course that of the Republic of India. However, the categorisation of these disputes under specific legislation determines the applicable rules. The differing statutes are as follows:

- the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts Act 2015. This statute comes into play when a suit alleges violation of one's, inter alia, intellectual property rights, contractual rights, etc. This statute follows an amended Code of Civil Procedure aimed at catering specifically to disputes having a commercial nature;
- the Constitution of India 1950. The Constitution recognises the right of publicity as a subset of the fundamental right to privacy under article 21. Disputes brought under these provisions come into play when an entity (or person) faces a violation of his or her fundamental right to privacy, and usually sees actions brought against the union or the state; and
- the Code of Civil Procedure 1908. The bedrock statute of all civil disputes in India, this legislation governs disputes alleging commission of tort against one's publicity rights. However, in the event

that such tort disputes also allege a violation of one's intellectual property rights, then the provisions of the Commercial Courts Act (above) will come into play.

29 To what extent are courts willing to consider, or bound by, the opinions of other national or foreign courts that have handed down decisions in similar cases?

The dearth of Indian jurisprudence regarding the right of publicity has led to national courts giving higher persuasive value to judgments from other jurisdictions, although they are in no way bound by any of them. The system of precedents and hierarchy of courts followed by the Indian judiciary in all civil and commercial matters is applicable in cases pertaining to this right.

30 What avenues of appeal are available in main proceedings or preliminary injunction proceedings? Under what conditions?

According to section 96 of the Code of Civil Procedure 1908, an appeal is based on all the original decrees passed by a court of original jurisdiction. Moreover, the Code of Civil Procedure 1908 also provides for the relief of an appeal against all interim injunctions passed by a lower court.

31 What is the average cost and time frame for a first-instance decision, for a preliminary injunction, and for appeal proceedings?

The introduction of the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts Act 2015 has hastened the process of disposal of disputes in India manifold. Under this new regime and the timelines prescribed against different stages in a suit, a temporary injunction (first instance) can be granted anytime between the first days until a period of roughly one year. Furthermore, a final decision in a suit awarding permanent injunction can be secured within a period of two years from the initiation of a suit. An appeal from such a final decision has to be preferred within 90 days of the judgment, taking between three to six months for its resolution.

The cost of a first-instance decision may range between US\$20,000 and US\$25,000, whereas an appeal can be wrapped up for between US\$5,000 and US\$10,000. Such costs and timelines for disposal of the suit are, of course, subject to the level of contest from the other party.

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