170859336 less than any other person on earth

Design, Fashion

170859336ANSWER 1 –05 January 2018The right to privacy was never protected as a standaloneright under English Law and whenever there was a dispute concerning the misuseof private information regarding someone's life the doors of other common lawremedies such as copyright, confidentiality, defamation etc. were ringed. Thefirst recognition of legal protection of right to privacy can be traced to anarticle authored in the 1980's by Sameul Warren and Louis Brandeis. Celebrities, as we tend to call famous people in the public eye, are humans, noless than any other person on earth and are entitled to the same degree ofprotection as any other person, in law. The media has always been interested ingetting juicy gossips about their professional and personal life and get it tothe likes of common people, readers like us. For a fair balance, and to curtailthe right to freedom of expression, the freedom of expression has to bebalanced against the right to privacy. However, as we see the turn of cases anddevelopment, the balancing bar with respect to celebrities has sometimes beenseen tilting towards the direction of protection of celebrity life and theirimage damage control. As much as courts have tried to rule on the importance offreedom of expression, celebrities do end up getting some privilege, which mayalso be rightly seen as being a celebrity is also at a disadvantage as much on anadvantage, as most their information, which they don't even want should gopublic, goes to the public through the media.

The English breach of confidence tort, which etched thestepping stone for a hidden privacy action was seen in the case of Prince Albert v Strange in 1849. Therewas an outright rejection to the right of privacy by the courts in Kaye v Robertson in 1991. The European Convention of Human Rights(ECHR)

was what granted express protection to very important rights being rightto privacy and right to freedom of expression. Article 8 of ECHR protects the right to respect for one’s privateand family life and Article 10 ofECHR protects the right of freedom and expression. Until 2000, these principleswere not legally binding in the UK and it was only after the enactment of theHuman Rights Act, 2000 (HRA) that these two rights got statutory protection. TheStratsbourg Court and UK Courts have tried to maintain balance between thesetwo rights in celebrity cases.

After the passing of the HRA, there werenumerous cases being filed before the courts for the protection of private lifeand information and for the passing of super injunction to limit the publicationof private information. In AmericanCynamid v Ethicon Ltd. the courts stated the test to determine whether ornot to grant an interim relief which was that that injunction must be grantedwhere there existed a serious question to be tried and the claimant also neededto establish a balance of convenience. This test was altered by the enactmentof Section 12 of the HRA, which was enacted to safeguard press freedom and keepa check on unreasonable and irrational injunctions order being passed tocurtail the freedom of speech and expression and publications. This sectionstated that such relief should not be granted until the court is satisfied thatthe publication should not be allowed. The courts have been careful of thissection while striking a balance between Article 8 and Article 10, as we will seefurther.

The very first controversial celebrity case was, Douglas v Hello! Ltd. This case waspartly heard related to the breach of confidentiality but Sedley LJ

primarily recognized the law of privacy and stated thatthe law of privacy is intended to protect those who are subjected to anunwanted intrusion into their personal lives. The Court also considered thesignificance of Section 12 and all the convention rights. The lower courtsdenied the grant of an injunction but the Court of Appeal was in favor that aninjunction should have been granted. In re S (a Child FS), 2004case, the concept of proportionality and balance between Article 8 and Article10 was laid down which stated that; firstly, neither article 8 or article 10has such precedence over the other, secondly, where the values under the twoarticles are in conflict, an intense focus on the comparative importance of thespecific rights being claimed in the individual case is necessary.

Thirdly, thejustifications for interfering with or restricting each right must be takeninto account and lastly theproportionality test must to applied for each case. The trilogy of cases footing and testing proportionality testwere Campbell v MGN Ltd. (Campbell), Von Hannover v Germany (Von) and Mosely v NGN Ltd. (Mosley). In Campbell, the circumstances of the cases and level of intrusion into Campbell’s publiclife was such that the Courts considered it as a case of misuse of privateinformation and analyzed stages for approaching the balance of Article 8 andArticle 10 rights. The first stage involved assessing the reasonableexpectation of privacy, owing to the circumstances in which the information wasdisclosed publicly. In Murray v ExpressNewspapers (Murray), it was heldthat the court must take into account the circumstances like, nature ofactivity the claimant was engaged in, place, purpose of intrusion, absence ofconsent etc., personal relationships and sexual encounters and how far can theybe protected.

If the answer to the first stage was yes then the second stagewas to balance the right of privacy against the right to freedom of speech andexpression assessing in terms that (i) the seriousness of the intrusion withthe privacy with respect to the photographs and (ii) how serious an intrusionwould it be to freedom of expression if claim to privacy succeeded. Thisbalance will tell if the claim should succeed or fail. Thus, since the photosrelated to her health and her treatment, court considered it right to protecther right to privacy. The media went too far as per the courts in printing herpictures while coming out of the therapy. In Mosley's case, which related toinformation about his sexual encounters being made public, UK courts concludedthat there was no genuine public interest in the story.

If media had to writethe story, they could have done it without necessary publishing the video orpictures and probably then the freedom of expression could have prevailed. Thecourt in Strasbourg granted damages to Mosely but refused to grant anyinjunction. The Stratsbourg court's decision in Von's case was greatlycriticized that it went a step back in protecting the freedom of expressionright and went a step ahead in protecting famous persons privacy right andgrant them injunction. The media accused the court of inexorably bringing in anew privacy law by the back door, which is leading to greater restrictions onthe freedom of the press to publish stories about the rich people.

This caserelated to a royal persons photos being published. Balancing the right, Stratsbourg refused injunction in Von Hannover 2 case where the images relatedto princess' ailing father were published as the public wanted

to know aboutthe royal and were equally worried about this health. Another important factor which the courts consider whilegranting an injunction, under privacy is the children aspect. Two importantcases in this are Murray and PJS v NGNLtd. Murray related to Harry Potter series writer's kids photos beingpublished while she took her out for a walk. She was successful in getting aninjunction to stop the publication. InPJS, a famous celebrity couple tried to hide their threesome by asking foran injunction from the courts to protecttheir child from reading about their parents at a later stage.

The Courtbalanced the rights granted under Article 8 and Article 10 and the SupremeCourt re-instated injunction stating it was necessary to protect their familylife and such level of intrusion was not needed, however famous celebritiesthey may be. Celebrities have also often tried to restrict the publication ofvarious kiss and tell stories of theirs and rightly so because if they were notwho they are no one would have been interested in their stories. In a few casescelebrities have also been refused injunctions such as John Terry's case, asthe Court stated that the claimant was more concerned about protecting his commercialreputation rather than protecting his private and family life. Likewise RioFerdinand and Steve McLaren have all suffered in privacy cases, the price theyhad to pay for being a public figure. Thus, it is rightly so that the number of celebrity privacyinjunction cases have increased in recent few years but the courts havecarefully calculated the risks involved of being a celebrity and thedisadvantage associated with that and have only after that tried to strike abalance between Article 8 and Article 10. ANSWER 4 -05 January 2018In our daily lives, we often come across advertisements, celebrity pictures and endorsements with respect to

some products of necessityand luxury, which may at times influence our decision to purchase that product.

This persona is created and flows from the personality of that person and thesubsequent rights that emanate from it. Personality rights simply means theright of a person to control the use of a person’s image, name, likeness, signature and things that are synonymous with his persona for the purposes ofpreventing any misuse of the same and to monetize the same for commercialpurposes. Celebrities have often been using this right by way of contracts andtapping economically through it.

However, personality rights have not beencategorically recognized in the United Kingdom (UK) and celebrities do not haveany monopoly and protection over the use of their personality, in law. In theabsence of any clear right to exercise this right celebrities have often fallenback to other remedies and actions available under various heads of law such asconfidentiality, passing off, copyright, defamation, law of privacy under theHuman Rights Act, 1988, trademark and others. Some of the most common heads forbringing an action for personality rights are under the head of privacy andconfidentiality. Because the person is famous is the reason people wish tocopy, or use their style or bank on the goodwill of a celebrity and thus, I amof the view that personality and image right of celebrities must be recognizedunder English Law.

However, I oppose for the protection of personality right ofeach and every individual. Before defending and providing explanation for thestand of opposing protection for every individual’s personality right I wouldlike to

explain passing off and study the legal development of de factopersonality right in the UK and the reasons given by the courts in each ofthese cases. One of the oldest cases where a celebrity wanted to protect hisimage right was Tolley v JS Fry Ltd, in 1931, where in the absence of a concrete protection right inthe UK, the claimant filed a case under the head of defamation and won thecase. However, it was recognized that there is no right of publicity to aperson in the UK. Passing off refers to the tort of preventing one person frommisrepresenting someone's else goods as being his own goods for the purpose offinancial gains. It is a common law tort and has not been codified in UK statute. As the law developed, the classical trinity on passing off was laid down incase of Reckitt & Coleman v Borden, in 1990, which laid down thefollowing three tests for assessing passing off: (1) goodwill or reputationmust be attached to the products or services of the claimant (2)misrepresentation must lead to the confusion as to the source of the goods andservices, and (3) this confusion must cause damage to the claimant. Some of the earlier cases, such as McCulloch v Lewis A May which related to false endorsement and Lyngstadv Anabas Products Ltd.

which related tomerchandising of a famous character, refused to recognize personalityrights based on the criteria that there is no common field of activity and allactivities like in the present case can co-exist. It was in Irvine vTalksport, in the year 2002, that the courts indirectly recognized imageright of a famous person which was being used without authorization through afalse advertisement. The Courts held that to prove a false endorsement claimthe claimant had to prove that the claimant had a substantial goodwill and thegoods appeared to have been associated and approve by the

claimant. Courtconsidered the numerous endorsements of Eddie Irivne, his goodwill and themoney he makes through his image and the loss which had been caused to him. Though, courts made it clear there is no image right, however, if the same casewould been bought by any common man and not a celebrity the court would havedismissed the case as there would have been no loss as such as the person wouldreally not have been able to monetize through his image or prove his goodwillin the eyes of the public.

Major decision in terms of merchandising came in 2015, with Fenty v Arcadia, where Rihanna was successful in preventing the sale of a t-shirt by Topshop which had her imageon it, without her authorization. Owing to the facts of this case, the Court ofAppeal (COA) acknowledged the fact she is herself a fashion icon, she has agoodwill attached to her name, looked at the numerous endorsements she does, considered the fact that she runs her own fashion line. The COA also agreed tothe fact that people must have thought that she had approved the clothing. Thus, here again she won the case but the COA clarified that there is no image right. Pressing on the previous point again, if the same t-shirts were being sold withthe image of a common man on it, the courts would not have interfered with thesale because as a common man there is no goodwill attached to that image orpersonality and the market would not even be one percent of what it was for asale like that of Rihanna’s face image t-shirt because it is again thecelebrity status that matters which she has earned over years.

We now go on to see the moral and economic justification forprotection of celebrity personalities rights and why there should not beprotection to

prevent use and each and every individual’s personality. Locke’s labour theory, as stated in Savan Bains in hisarticle on Personality Rights can be applied to celebrity’s protection of theirpersonality rights. The main tenet of this theory is that every person isentitled to the fruits of his labour and in this case, celebrities invest a lotof time and energy to develop the kind of personality they have and to evoke aparticular kind of awe of themselves in the public eye. This view has also beensupported in Eastwood v Superior. Thus, as per me when a common man, invests the time and energy which a celebrity doesinvest to get that kind of status and earn a goodwill then even he can beentitled to that level of protection but before that it is wrong to grant eachindividual which a celebrity demands.

What makes Rihanna, what she is today isher hard work, her talent, the time, money and energy she puts to make her thebrand she is. Another justification can be provided by Hegel’s personalityjustification theory, where he argues that there are certain fundamentalcharacteristics of a person which cannot be taken from him and are the universalessence of a person’s self- consciousness and those are inalienable. We can additionally provide the following economicjustifications talked about by Bains, in his article on personality rights. Thefirst argument is the incentive argument and the second argument is theallocative efficiency argument. The former states that providing legalprotection for the financial value in one’s identity against commercialexploitation of personality without consent creates a powerful incentive for investingtime and resources to develop the skills or achievements which are necessaryfor public recognition. The latter is the more effective argument which isrelated to competition law. It states that

celebrity must have the exclusiveright to control over the distribution of their personality and it’s feature’s sothat they maximize the gains they can get through their doing and there are no downfall in their returns due to any externalfactors. Any other individual will have to first invest economically to buildsomething in the market which is worth reaping returns to be able to beprotected under any of the economic justifications.

On a joint reading of the moral and economic justifications, it only right if the celebrity has a right to control the use of personality intoday’s day and age when they are constantly under the scanner with respect toeach and every activity they do. It is only time that UK takes inspiration fromthe legislative scenario in US and Germany who have recognized the personalityrights of celebrities and have provided legal remedies to them when theirpersona is being used without their authorization. To conclude, a celebrity has a bankable imagewhich they have built on and worked on for years to protect, which theyotherwise also exploit then they enter into contracts with companies. Even whenUK had not recognized the presence of this right, litigations kept on pouring in and one thing is clear, even ifthe judiciary and legislation do not recognize this right, this phenomenon isonly going to increase under one or the other head.