ABSTRACT: Right to privacy and right of Personality are the important aspects of individual's life but have been consistently been abused as not recognized to be absolute right and in the era of globalization and Information Communication Technologies, it is seen more as commodity to be exchanged for perceived benefits and services. Right to privacy though seems to covers various aspects one's life may be right to protect person's body, property and even intellectual property, the overall personality of a person which is natural and inalienable but infringement of personality rights especially of public figures/celebrities is more common and requires a separate legal framework to deal with. In this paper an attempt has been made to study the legal discourse on right to privacy and right of personality with special emphasis on India.

Key Words: Rights, Privacy, Personality, celebrities, public figures

Introduction:
The Right to privacy as basic human rights has always remained a debatable issue among various scholars. The Ronald Dworkin (1977), in his work titled "Taking Rights Seriously" stated that "Individual rights are political trumps held by individuals- Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them."

The concept of Privacy:
Privacy relates to the identity of a person as an individual, groups, or institutions and is considered as a fundamental right of all being a natural and inalienable right, though difficult to define in absolute term, it encompasses the right to be 'let alone' as coined by Cooley, Thomas M in Treatise on the Law of Torts (1888), 2nd edition; or Seclusion and attempts to safeguards one's attitude, behaviors, reputation and personal intimacies of family life, marriage, procreation of child and other intimacies of home, health from being communicated to others. Samuel Warren and Louis Brandes in 1890s recognizes that invasions upon the persons privacy is to be identified with the injury to the feelings, a legal injury inflicting mental pain and distress to the person.Normatively the concerns were relating to the emergence and justification behind privacy and personality rights; towards casting of responsible for the protection of these rights (Schoeman,1984; Milberg et al2000). However Chicago School scholar like Posner (1981) finds it somewhat odd within the “legal, societal or cultural frameworks” therefore considered that right to privacy may not be treated as absolute right. The concept of market-based economic or commodity perspective of privacy which can be exchanged for perceived benefits seems to be aroused in the writings of Bennett 1995; Cohen 2001 Campbell and Carlson 2002; Davies 1997, Garfinkel 2000 as a result Right to privacy can be considered as of individual and societal value but not an absolute right.

Right of personality:
The celebrities, famous personalities worldwide have certain exclusive rights characterized as right to persona (personality right), that makes them identifiable in public due to their contributions or special prominence in the society as an the sportsperson, actor, politician etc. They also have 'right of publicity' evolving from the general privacy rights due to their engagement with particular profession maybe as an poet, actor, writer or a sports person etc. entitling them to control and earn profit from it as that right being inhered in the particular person as a indica of his/her personality like his name, signature, voice or any other personality trait. These famous personalities are also considered as the 'public figures' but the term shall not be restricted to include artists, athletes, business people, dilettantes and also includes anyone who is famous or infamous because of who he is or what he has done as per the Black's Law Dictionary especially in the cases of defamations.
The notion of “rights of the celebrities” as the part of privacy rights has never been contextualized outside the spheres of constitutional or administrative law but is now gaining attention. The Greek philosopher, Aristotle opined of the division between the polis-public sphere of political affairs and the oikos -personal sphere of human life that forms basis for reservation of private reflections, familial relations and self-determination as activities in the private realm and restricting the governmental authority to the activities falling within the public realm”(Michael C. James, 2014). Austin in his Lectures on Jurisprudence (1869) also spoke of the distinction between the public (jus publicum) and the private realms (jus privatum). Rights in one's own person, or rights of personality, must be the starting point of every legal system. The concerned raised here is how to protect celebrities’ legitimate interest to being remain in seclusion defending their private sphere of life against intrusions committed by others. Gierke (1895) has spoken for right to be recognized as a personality in "DeutschesPrivatrecht", postulating that “rights to a person's body and life, liberty, honour, social position, free activity, commercial sphere of activity, name and marks and finally intellectual property though separate rights were emanations of a general right of the personality". In German law, Joseph Kohler, contributions to the development of the "rights of the personality" goes back to about 1880 (see Das Autorrecht, 1880) which proclaims like Gierke, the general right of personality which entitles every individual to claim recognition as such including its further expression, the various limited rights like right to to-a sphere of intimacy, the name and the likeness of a person. Kohler, in his great work on literary copyright, published in 1907 as cited by StigStromholm (1967) defines the 'right of secrecy' as a “protection against the publication of letters, even such as do not fulfill the conditions of originality required for copyright” but also includes protection against the disclosure of private facts in general through the use of living persons as recognizable models for works of fiction; moreover, the right of secrecy comprises a protection of a person's name and likeness”.

Right to Privacy in India:
In India genesis of protecting privacy in general may be derived from its international obligations being signatory to the International Covenant on Civil and Political Rights (ICCPR), where Article 17 states about the right to privacy that "No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation. Everyone has the right to privacy that "No one shall be subjected to interference with his privacy, family, home, correspondence or to attacks on his honour and reputation" and from Universal Declaration of Human Rights (UDHR), 1948. Article 12 of UDHR provides for the similar protection for one's privacy. Further Article 8 of European Convention on Human Rights provides that “Everyone has the right to respect for his private and family life, his home and his correspondence— There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

An article 19 of the Constitution of India provides for protection of certain rights regarding freedom of speech and Article 21 provides for “protection of life and personal liberty” as the fundamental rights. The evolution of general privacy as a fundamental right was not clearly spelled out in the Indian Constitution or in legal and political theories in India. The legal protection accorded towards privacy rights in India can be seen to be initially addressing the specific issues in the specific context and situation only like in M.P. Sharma and Ors. V. Satish Chandra, District Magistrate, Delhi and Ors (1954), an eight-Judge Constitution Bench did not recognize right to privacy as fundamental right and also, in Kharak Singh V. The State of U.P. and Ors (1963), a six-Judge Constitution Bench did not accept the right to privacy as a constitutional guaranteed fundamental right under part III. However in the Gobind V. State of Madhya Pradesh(1975), the three Judge Constitution Bench case; Subba Rao, J. writing for the minority was of the opinion that though the Constitution does not expressly declare a right to privacy as a fundamental right but the term 'personal liberty' can be construed to include privacy under Article 21 of the Constitution. In R Rajagopal V. State of Tamil Nadu (1995) and People's Union for Civil Liberties V. Union of India (1997), Judiciary recognized the right to privacy as implicit in the “right to life and liberty” and considered it as the constitutionally protected fundamental right.

The concern relating to status of general privacy as a fundamental right was resolved by the Nine Judge constitutional bench vide order dated on 24 August, 2017 in Justice K.S.Puttaswamy (Retd.) and anr V. Union Of India and Ors, WP(C) 494/2012 by overruling the decision in M P Sharma V. Satish Chandra, which holds that the right to privacy is not protected by the Constitution and the decision in Kharak Singh V. the State of U.P. to the extent it holds: that the right to privacy is not protected by the Constitution. The
subsequent decisions to Kharak Singh’s case giving protection to the Right to privacy under Article 21 (Right to life and personal liberty) of the constitution as fundamental right guaranteed by Part III of the Constitution is laid down as the correct position in law. In the cases like State of Karnataka v Krishnapp (2000 CriJ 1793); Sudhansu Sekhar Sahoo v State of Orissa (DOJ: 18/12/2002) and the State of Madhya Pradesh V. Babulal (DOJ: 03/12/2007) Judiciary further expanded the scope of the right to privacy and recognizes that the Sexual violence amounts to unlawful invasion of the right to privacy, it invades unlawfully the sanctity of a women besides being a humiliating and degrading act.

**Invasion of privacy and personality rights:**

William L. Prosser (1960) while analyzing the American concept of privacy detailed out four kinds of invasion into plaintiffs right to privacy: "Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; Public disclosure of embarrassing private facts about the plaintiff; Publicity which places the plaintiff in a false light in the public eye and lastly the appropriation, for the defendant's advantage, of the plaintiff's name or likeness".
The advancement in technology and digital economy though have also impacted the traditional notion of privacy leading towards the sacrifice of privacy by the individuals while doing online activities but it may depend upon the benefits derived from usage of services any social or economic cost. In the context of celebrities, the famous personalities recognized by public at large, it is often seen that people want to know more about them and the media, press, internet plays an important role trying to bridge gap between well known persons and the common people and in the process tends to invaded the privacy and also the right of publicity from the individuals or celebrities amounting to infringement of fundamental rights provided under Articles 19 and 21 of the Constitution of India on the pretext of freedom of expression for example no entity should use names of sports person for example Rahul Dravid or Mahendra Singh Dhoni in connection with the 'World Cup' without their authorization as it will lead to unauthorized intrusion into his publicity rights leading to disturbance and violation of their privacy rights.

There is a complex relationship between the freedom of speech and expression, Rights to privacy and Rights of personality. The press in exercising its freedom of speech and expression acts as a powerful medium that can shape the demand for accountability, transparency and good governance in any democratic polity being the access point of latest information's, views, political discussions and public opinions but some of the reported events "related to the news media, such as the proliferation and subsequent curbing of social media, the paid news phenomenon, fake sting operations, trial by media, breach of privacy, etc. pose a set of anxieties" as per the Law Commission of India (2014).

In the context of Famous personalities the freedom exercised by media seems to be most unregulated on the pretext of public or social interest and it often tends to publish private and confidential information's about the celebrities leading to conflicts and unnecessary invading into their private affairs, further manipulated and shared extensively by the usage of Internet and other digital communication devices and thereby negatively impacting the celebrity or a particular person by causing harm to his/her dignity, reputation, popularity leading to changed, divergent perception of the individual's personality over the public at large.

The acknowledgment of celebrities or public figure’s the right to security in practicing control over individual information and the insurance of personality rights in India is very mind baffling and requires detailed study and investigation. The public figures are often thrust in front line in a specific raised open debate and therefore where open consideration is engaged upon them, they can’t escape feedback, criticism and the inferences to their liking or detesting by the communication media, yet it brings up the issue whether such identities or open figures have no privilege to shield when some individual encroaches in to domain of his/her private life broadening the unpleasant actualities, delineating the living individual in such a way that brings disgrace, embarrassment and also the recollections of past events that will continue frequenting them, Whether they have no right on their life.

**Remedies for infringement:**
The violation of personality right may give rise to a claim for damages under the provisions applicable to torts in India for example abuse of persons name and reputation causing loss or injury by putting him/her in false light shall fall under tort of defamation. Certain provisions in Criminal law (Indian penal code) intended to protect privacy will also be applicable.

The copyright law, patent and trade-mark law can also be resorted to provide protection against all forms of appropriation of property. Copyright may be considered as remedy for breach of right to privacy and personality as section 55 of the copyright Act provides for certain remedies where there is infringement of
copyright; Section 56 provides for protection of separate rights comprising the copyright in any work and section 57 of copyright act gives Special Rights to Author's, where even after the assignment either wholly or partially of the copyright, the author of a work shall have "the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of any distortion, mutilation or other modifications of the said work; or any other action in relation to the said work which would be prejudicial to his honour or reputation". The above special right other than the right to claim authorship of the work can also exercised by the legal representatives of the author. Depending upon the facts of the case one may look for remedies under Representation of Women (Prohibition) Act, Juvenile Justice (Care and Protection of Children) Act 2000 and Protection of Human Rights Act 1993. The Cable Television Networks (Regulation) Act 1995, Press Council Act, 1978 which provides for the inquiry by the Council against a newspaper, an editor or a journalist, if it is reasonably believed that they have not followed the recommended standards and ethics and have committed any professional misconduct.

Right to personality has been recognised being derived from right to privacy in India as culled out from few judicial decisions. In the matter of Amar Nath Sehgal (2005), the government pulled down the sculpture created by Mr. Amar Nath Sehgal who is the world-renowned sculpturist from the walls of ‘Vigyan Bhavan' and dumped it in the storeroom. Mr. Sehgal offended with this ill treatment, made representations to the government authorities for "restoration of the mural claiming the same as a part of the national heritage and being valuable for him and the entire country and the mutilation of the work was prejudicial to his reputation as it reduced the volume of the corpus of his work". The Court passed mandatory injunction against the UOI directing it to return the mural to Mr. Sehgal. The Court held that Mr. Sehgal has the “right to recreate his work and therefore has the right to receive the broken down mural. He also has the right to be compensated for the loss of reputation, honor and mental injury due to the offending acts of UOI”.

Times Global Broadcasting Co. Ltd. v. Parshuram Babaram Sawant, (2014). In this case P.B. Sawant, the plaintiff now respondent, stated to have an impeccable reputation amongst the world and in the legal fraternity in particular as he was the former: - chairman of the Press Council of India, president of the World Association of Press Councils and the telecast of his photograph in news relating to the 'Provident Fund Scam 'allegedly involving some Judge of the Calcutta High Court which gave false impression among viewers that the plaintiff was involved in the scam. The said channel stopped publishing the photograph, when the mistake was brought to their notice, but took no corrective or remedial steps to undo the damage on their own. Initial suit filed by the plaintiff for damages and compensation was decided on 26.04.2011 by the Court of 6th Jt. Civil Judge Senior Division, that the plaintiff is entitled to the damages along with the costs of the suit, as prayed for. The matter was later placed before Supreme Court which held that discretion is validly exercised by High Court and is in consonance with settled principles.

Titan Industries Ltd V. Ramkumar Jewelers (2012) - Plaintiff has an exclusive license from Mr. Amitabh Bachchan and Mrs. Jaya Bachchan titled "Agreement For Services" dated 17th March 2011 for the endorsement of TANISHQ Diamond jewellery for a specified period and therefore claimed to be the owner of copyright in all works/material conceived, created, reduced to any medium of expression and/or produced pursuant to this Agreement. The High Court passed an order of permanent injunction restraining the defendant M/s Ramkumar Jewellers, its servants, agents, directors and employees from (i) infringing the plaintiff's copyright in the advertisement for Tanishq diamonds titled "True Diamonds" (by putting up hoardings all over the city of Muzaffarnagar in Uttar Pradesh depicting Mr. Amitabh Bachchan and Mrs. Jaya Bachchan as the endorsers of defendant's jewellery. And (ii) misappropriating the personality rights of the celebrities: - Mr. Amitabh Bachchan and Mrs. Jaya Bachchan.

In the case of Mr. Shivaji Rao Gaikwad V M/S. Varsha Productions (2015). The plaintiff was well known and has global recognition but has chosen not to authorise any biopic featuring him or create any work based upon his personal self/personality. He is personally against such gross commercialization of his name and reputation. The original suit was instituted to restrain the M/S Varsha Productions from using the plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming film project titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infiltration of the applicant's/plaintiff's personality rights by such unauthorized use, pending disposal of the suit. The argument raised was that "the plaintiff being a well known celebrity, has the right to command and control the use of his name, image, likeness or other unequivocal aspects of his distinctiveness". Further "any use/misuse of the Plaintiff's name/image/caricature/style of delivering dialogues amounts to infringement of his personality right and copyright arising thereof." It may also amount to acts of passing off. The defendant's contention was that the contents in the website pages and the contents in the movie do not refer the plaintiff. The Madras High Court did not accept the contention of defendant and held that "if any
person uses the name of a celebrity without his/her permission, the celebrity is entitled for injunction, if the said celebrity could be easily identified by the use of his name by the others". Later appellant (defendant) consented to remove to change title of the film to any other title not having the name 'Rajinikanth', being used in the title. Further any reference to the respondent (plaintiff)/ his family will be deleted and accordingly the appeal was disposed of as compromised.

Defences allowed in India:
There have been cases wherein the individual existences of prominent identities shaped the contents of numerous movies. The debatable issues were whether legendary personalities or public figures could have guarantee copyright over their own particular life? Whether distortion, mutilation or modification in original work of author is permitted and to what extent? Can liability be fixed on press for defamation? In these cases generally the defence of consent and fair comment, truth has been allowed.

In the matter of Subhas Chandra Bose (1928), the defendant claimed privilege and fair comment in the matter of public interest where the Subhas Chandra Bose sued for defamation upon an article published in the Defendant's newspaper imputing that he was a member of a terrorist organization. In the case of MithaRustomjiUrzban v. NussenvanjiNowroji Engineer (1941), it was held that a publication in a newspaper commenting upon an individual must be made 'fairly'. If the comment is defamatory the defendant is required to 'prove the truth' and the Plaintiff need not prove malice. The journalist has right to hold his views and express them. Whether or not his views are correct or just or moderate, but he cannot go beyond the limits which the law calls "fair". The principles of fair comment as, laid down by the judicial decisions is that the right of fair comment is not a special right of a newspaper but is available to every person but to exercise this right it must pass three criteria that is the comment must be fair; on a matter of public interest and based on a true statement of facts or on inferences. (see TusharKantiGhose v. Bum Bhowmick, 1952).

In Auto Shankar judgment(1994), the Supreme Court considering right to privacy implicit in the "right to life and liberty" guaranteed to the citizens observed that "a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters". Further no one can distribute anything concerning the above issues without his consent, whether honest, general, commendatory or basic and if he does so, he would disregard the "right to privacy" of the individual concerned and would be liable in an action for damages but this will not apply in situations where individual purposely propels himself into exchange or stubbornly invites or raises a dispute. "The consent of the person, a public record including court records is exceptions in contravening the right to privacy and thereby becomes a legitimate subject for comment by press and media among others".

Therefore in this case court allowed editors of Tamil week magazine to distribute the asserted to be the biography, a collection of memoirs of Auto Shankar in so far as it shows up from the open records, even without his assent or approval being a legendary figure; however they can’t go beyond that and distribute or publish his life story that will amount to attacking his entitlement to privacy and make the petitioner liable for the consequences in accordance with law.

Similarly, the State or its officials cannot prevent or restrain the said publication. However in Phoolan Devi V ShekharKapoor and Ors (1995), the supreme court opined that the above exception of consent shall not be applied in the interests of decency and must be carved out in cases where a female is the victim of a sexual assault, kidnapping, abduction or a like offense as she ought, not to be further subjected to the insult or indignity of her name and the incident been advanced in press/media.

In the case of Frank Finn Management V. SubhashMotwani&Anr, High Court of Delhi (2008) held that in Suit for damages for libelous (derogatory) article composed and published by the defendants in their Magazine despite the fact that the segments of the article culled out might be defamatory per se yet in the event where the plaintiff (offended party) fails to demonstrate that the same were defamatory to his reputation, the suit for damages is not maintainable as One should have right to free discourse in public interest and that it could be practiced without deterrent in as much as no wrongful demonstration or act is done. Bennett Coleman and Co. (2011), Bombay High court took the view that: No wrong could be said to be committed except if the criticism was false; the protection of fair comment exists to encourage opportunity of articulation upon matters of public interest. This is as per the protected assurance by the constitution providing for right to freedom of speech and expression.

In the cases of civil action for defamation justification by defense of "truth" is generally accepted with the presumption that all defamatory statements are false and the onus lies on the defendant to rebut this presumption but this cannot said to be applicable in the cases of criminal proceedings. The cases like Sewakram Sobhaniv. R.K.Karanjia(1981); Harbhajan Singh v. State of Punjab(1966) ; ChamanLal v.
The State of Punjab (1970) provided that "the public good is a defense under the ninth exception to section 499 of the Indian Penal Code, 1860 but it has to be proved that the publication is based on reliable sources with due care and attention in good faith and for public good". Though, citizens need to know subjects and occasions of public interest but the above does not anyway go to the degree of knowing the name of the sexually assaulted or rape victim (State of Punjab v. Gurmit Singh, 1996) or to family issue of an open/public figure. These informations don't fall inside the class of newsworthiness of the news.

In the case of Balakrishnan V. R. KanagavelKamaraj and another (1999), Plaintiff/ first respondent, grandson of late Perunthalaivar Kamaraj, National Leader filed a civil suit for injunction limiting petitioner/first defendant from delivering TV Film or Video movie or normal motion picture in any language without the assent and knowledge of the offended party in any manner and in any capacity whatsoever about late Kamaraj but no claim was made under Copyright Act. The court found that plaintiff is not in position to give any definite instance which shows that the reputation of the family is affected, on the other hand, petitioner/first defendant has got a definite case that he is taking a film or broadcasting a serial just based on different reports which were at that point distributed in journals, weeklies and daily papers as a result injunction application filled by plaintiff was dismissed.

Conclusion:
It is seen that the defense of public interest, public good, fair comment, truth have been generally taken as a defense in cases of violation of personality rights of the public figure but it is equally important to respect in parallel the rights of privacy of an individual who may be a public figure or an ordinary citizen. In cases involving public figures like Dr. J.V. Vilanilam, S. Nambi Narayanan, S. Sreesanth, the public images of the persons were tarnished, they suffer their repute and confidence quilted with hard work though no allegations were proved against them. There is need of change in approach by the legislator and judiciary which should reconcile the privacy rights of individual and components of public interest in a harmonious way. The enactments Indecent Representation of Women (Prohibition) Act, 1986; Juvenile Justice (Care and Protection of Children) Act, 2000; Protection of Human Rights Act, 1993 and various sections of the Indian Penal Code, 1860, viz; sections 499, 500, 501, 502, 509 deals with obscene publications, defamation and outraging the modesty of women but are not sufficient to expressly demonstrate or enabling the direct protection of right to privacy or right to persona of an individual but are restricted to few of its attributes. The Cable Television Networks (Regulation) Act 1995, Press Council Act, 1978 is also not sufficient to stop the violations of rights to privacy and the personality. There was no legislative effort to codify and protect privacy expressly till date neither in the Constitution nor in any legislation and the victim's concern and remedy for invasion of his right to privacy and right of personality depends on the court's discretion and interpretation of the concept of privacy in the light of defense of fair comment, truth or public interest. Privacy is still considered as an individual and to some extent having societal value but not as absolute right. The concept of general privacy is linked with 'control, per se' and multifaceted interests of the individuals in the specified contexts rather than as a single, unambiguous concept. It is the duty of government to protect and do not violate the fundamental rights of the persons and this protect further mandates that the government must protect it against interference by private parties. With the enhanced use of communication technologies, multimedia's, forums, it has become emergent to protect information, data Privacy of the subjects. The problem is aggravated in cases where statement may injure the reputation of a person and he has no remedy in case publication is truth creating situation of public rejection and may impact the fulfillment of basic needs of the person and family. A man's reputation, his personality is his intangible wealth and should not be open to all for judgment to character assassination as some times the statement even if true ought not to suffice to justify its publication, unless there is a counter-balancing element of larger public interes or good. The defense of 'truth', fair comment should not be sole justification for violation of privacy unless it is proved beyond reasonable doubt that the publication of the statement is for the public good. Generally the only action taken against the press, Newspaper, in cases of violation of privacy and personality rights is to take apology, if found guilty. The right to privacy has fared poorly in India and the criminality in breaches of privacy is not given adequate or due consideration to reduce vulnerabilities despite the fact that the protection of such interests are conducive to human flourishing. The privacy interests and rights of public figures, celebrities may in some circumstances be protected as Intellectual property rights but the need of the hour is to have strong legal and regulatory mechanism for protecting privacy and personality rights.
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