

CELEBRITYAGONY: ESTABLISHING PUBLICITY RIGHTS UNDER THE EXISTING IPR FRAMEWORK

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Abstract

With the advent of various forms of mass media and over activism, also the ever-increasing trend of advertisements, the celebrities are very often exploited by invasion of their privacy and misappropriation of their names. The celebrities possess privacy and personality rights along with a unique right of publicity. The right to publicity initially sprouted in the USA. UK also recognized this right of celebrities' through judicial pronouncements. Many civil law nations like Germany and France have acknowledged this right through statutory enactments. Disappointingly, India is lagging far behind in recognition of this right of celebrities', despite having plethora of celebrities', whose names and likeness been misappropriated every now and then. Though trademark and copyright laws can be relied upon to protect celebrity rights to some extent, these laws have their own shortcomings in protecting publicity rights completely. This article attempts to point out all the variety of rights celebrities possess, and the legal means to protect them. The trademark, copyright and tort of passing off along with the lacunae in them, have been discussed in the relevant context. The paper finally reveals the judicial trend while considering publicity rights in India, along with some suggestions.

I. Introduction

II. Defining Celebrity and their Rights

III. Protection of celebrity rights under intellectual property rights

IV. Celebrities right of publicity in India- trends and developments

V. Rights' under international conventions

VI. Conclusion

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I. Introduction

CELEBRITIES AS we know have been made ubiquitous in our contemporary culture by the mass media. The inquisitive urges of the fans of celebrities' and the pecuniary gluttony of the traders have further led even the personal affairs of celebrities aired in public.¹ A celebrity name and likeness holds a great deal of economic potential, which can be seen being misappropriated far and wide. Particularly in the rural areas of India, the names of celebrities' can be seen on a wide range of merchandises ranging from detergent powder to tobacco products, which is vindictive to the celebrity's reputation too. In the event of such breaches, the celebrities' have to undergo the excruciating plight of locating this unique right of theirs in the existing legal framework.

Since the celebrities' hold a great deal of rights, ample protection to them is thus necessitated. Instances of their privacy breach, misappropriation of their names and unauthorized commercial use of their names or images on products are too common to be ignored. The media houses violate rights of celebrities' by leaking their personal affairs, or by derogatory use of their names to incidents, or by unscrupulous use by the traders and manufactures etc. Despite plethora of incidents of encroachments on the celebrities' rights, only a few nations have explicitly recognized their rights in a statute. Majority of countries have protected it under the realm of fundamental or human rights, moral rights, trademark and copyright. Due to absence of an appropriate legal framework for protection of celebrity's right, even the courts remain obfuscated in applying such principles.² India boasts of its rich art, culture and a massive film industry thereby producing a large number of celebrities' in diverse fields. However, the protection accorded to them is

¹ David Tan, "Beyond Trademark Law: What the Right of Publicity Can Learn from Cultural Studies", 25(3) *AELJ* 914 (2007). See also Greame Turner, *Understanding Celebrity* 4 (Sage Publications, London, 2nd ed., 2013) (author argues that the pervasiveness of celebrity exists because modern mass media has expanded the celebrity's contemporary cultural visibility).

² Nishant Kewalramani and Sandeep M. Hegde, "Character Merchandising", 17 *JIPR* 454 (2012).

far less than enough. The paper seeks to point out the various existing legal framework under which protection can be bestowed to the celebrities.

II. Defining Celebrity and their Rights

Celebrity

A celebrity can be defined as “a person who, by his accomplishments, fame or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a public personage. He is, in other words, a celebrity.”³ The roots of the word celebrity come from the Latin word “*celebritatem*” implying “the condition of being famous.”⁴ The list of people who qualify as a celebrity therefore becomes endless. A succinct definition by one commentator describes a celebrity as an “actor, author, artist, politician, model, athlete, musician, industrialist, executive, playboy or any other of a hundred types who wish to be in the public eye for any of a hundred reasons.”⁵ A large list of personal attributes, contributes in the making of the unique personality of a celebrity.⁶ All of these attributes need to be protected, like—name, nickname, stage name, picture, likeness, image, identity, act, traits, walk, habits, style, reputation, history, statistics, facts concerning professional careers, signature, and any identifiable personal property, such as a distinctive race car.⁷ While declaring lifetime exploitation requirement for projection of celebrities’, the Supreme Court of Georgia in

³ Richard B. Hoffman, “The Right Of Publicity-Heirs’ Right, Advertisers’ Windfall, Or Courts’ Nightmare?” 31 *De-Paul L. Rev.* 1 (1981-1982). See also Daniel J. Boorstin, *The Image: A Guide to Pseudo-Events in America* 57 (Harper and Row Publication, New York, 1961) (the author rendered a broader definition to celebrity as a celebrity is a person who is known for his well-knowingness...He is neither good nor bad, great or petty. He is the human pseudo-event.)

⁴ Morgan Piers, “The Power of Celebrity”, available at: <http://www.arabianbusiness.com/the-power-of-celebrity-122473.html> (Visited on June 28, 2019), as quoted in Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Rights: Protection Under IP Laws”, 16 *JIPR* 7 (2011).

⁵ Alice G. Donenfeld, “Property or Others Rights in the Names, Likenesses, or Personalities of Deceased Persons”, 16 *Bull. Copyright Soc’y* 17-26 (1968).

⁶ Unlike this obvious conception some authors like David Tan believe that a celebrities’ personality is achieved not only by one’s own efforts or attributes but also the audience (the people who consume the product or service related to the celebrity), and the producers (e.g., mass media or cultural intermediaries who propagate the personality of the celebrity).

⁷ Richard B. Hoffman, “The Right Of Publicity-Heirs’ Right, Advertisers’ Windfall, Or Courts’ Nightmare?” 31 *De-Paul L. Rev.* 4 (1981-1982)..

Center for Social Changes v. American Heritage Products Inc.,⁸ maintained that the “right to control, preserve and extend status and memory and to prevent unauthorized exploitation of likeness in a manner they consider unflattering and unfitting” and the same subsists upon or “rests upon the family or the estate of the death person.”⁹

Having said this, none of the legislations dealing with intellectual property laws (IPLs) in India have cared to define the celebrities’ and their rights specifically or separately. Celebrities are, thus, left but to oscillate in the existing legal framework searching for their rights in bits and pieces. A provision where they may find a refuge or where they may locate themselves is section 2 (qq) of the Copyright Act, 1957 which defines “performer” is a person who have been vested with certain economic and moral rights.¹⁰ A performer has been defined as an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person “who makes a performance”. Further, a “performance” as defined in section 2 (q) of the said legislation means any audio or visual presentation made live by one or more performers. Thus, one may notice that the definition of a performer is too narrow to cover the concept of celebrity adequately as defined in the last paragraph. The weakness of the provision in identifying celebrities lies in the fact that firstly, only the visual and acoustic presentations are covered by the section. Secondly, only the presentations that are made live can qualify to be a performance. The definition of a performer may therefore only cover those celebrities who have made live presentations, that too either visual or acoustic. The definition by and large omits those persons who do not work in public appearance or the likes of authors or lyricist who do not make acoustic or visual performances. Thus, the painters, sculptors, authors, programmers, politicians etc. who despite being famous, work in isolation or in enclosed spaces are conspicuously been left out. Lastly, every performer can also not be assumed, as a celebrity as the idea of being a celebrity requires an attribute of being famous and every person performing live may not be famous. Therefore, it would be a big folly and too simplistic to identify celebrities in the definition of performer.

Various Rights of Celebrities

⁸ 694 F.2d 674 (11th Cir. 1983).

⁹ *Id.* at 683.

¹⁰ The Copyright Act, 1957, sections 38, 38A and 38B.

Having considered who celebrities are and their potential to influence the market of a product, it becomes quintessential to understand that the celebrities are vulnerable to frequent violations of their rights. The celebrities have been accorded a bundle of rights, personal, proprietary, physical, intangible, moral, economic, positive and negative. In the event of a broader classification resorted to, one may convincingly, to much extent, concede that celebrity rights may be extensively categorized into i.e. moral rights/personality rights, publicity rights and privacy rights.¹¹

Personality Rights.

The personality rights of a celebrity are much of civil law origin that got its cradle in France and Germany.¹² Others perceive a person in a peculiar way depending upon his/her occupation, social status, fashion and other endeavors of life. These endeavors are considered as an extension of their personality. Thus, an individual's personality exemplify an emotional, dignitary, human and moral values attributed to it.¹³ Sir John Salmond opined that "persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality received legal recognition."¹⁴ The contention of private property rights in one's personality has also got support from Hegel and Kant reason being it advocate for self-expression and human development and thus contribute to the society.¹⁵

¹¹ See Tabrez Ahmad and Satya Ranjan Swain, "Celebrity Rights: Protection under IP Laws", 16 *JIPR* 7 (2011); Garima Budhiraja, "Publicity Rights Of Celebrities: An Analysis under the Intellectual Property Regime", 7 *NALSAR Student L.Rev.* 85 (2011).

¹² In France, though the first law review article on the matter can be traced back to 1909, written by H.E. Perreau, who used the term *droits de la personnalite*, meaning personality rights, the Germans and the Swiss were the first to propound on this right using the word *Personlichkeitsrecht* during the nineteenth and twentieth centuries. See Adrian Popovic, "Personality Rights -A Civil Law Concept", 50 *Loy.L.Rev.* 349 (2004).

¹³ Garima Budhiraja, "Publicity Rights Of Celebrities: An Analysis under the Intellectual Property Regime", 7 *NALSAR Student L.Rev.* 86 (2011).

¹⁴ P.J. Fitzgerald, *Salmond on Jurisprudence* 298 (Universal Law Publishing, Delhi, 2002). Sir John Salmond being a judge of the Supreme Court of New Zealand was not only influenced by the positivism and utilitarianism of Austin and Bentham but also by Maitland and the German jurists of the late Nineteenth century.

¹⁵ Hegel maintained that one's private property is the extension of one's personality. Drawing analogy from this statement one may say that an individual's contribution to the society is also the extension of his personality. See Robert C. Bird and Lucille M. Ponte, "Protecting Moral Rights in United States and United Kingdom: Challenges and Opportunities Under U.K.'s New Performance Regulations", 24 *B.U. Int'l L.J.* 213 (2006).

The personality rights can further be divided as the right to bodily integrity, the right to physical liberty (i.e. functionally two features of *corpus*), rights in family life and moral sexual relations, at least one aspect of informational privacy, and specific aspects of dignity and reputation.¹⁶ However, much to one's dismay, various media houses and traders and manufacturers often encroach upon these personality rights of celebrities.¹⁷ Such instances are numerous. Misappropriation of Amitabh Bachchan's voice to advertise a tobacco brand and unauthorized use of Rajnikants' persona¹⁸ are only a few famous instances of such violations of celebrities' personality rights. In *McFarland v. E & K Corp.*,¹⁹ the court held that "a celebrity's identity, embodied in his name, likeness, and other personal characteristics, is the 'fruit of his labor' and becomes a type of property entitled to legal protection."

Privacy Rights

The celebrity rights got its inception from the concept of privacy, as was put forward by Samuel Warren and Louis Brandeis, argued that the basic concept of personal freedom extended to all persons the right *to be let alone*.²⁰ The celebrities often face situations where their celebrity personality eclipses their real selves. World-renowned celebrities would have every moment of their lives open to media and public scrutiny as the audience desire to "possess" the celebrity personality has resulted in "the colonization of the veridical self by the public face."²¹ David Tan considers a modicum of privacy for celebrities as fundamental human requirement.²² Braudy puts it as:²³

Fame is desired because it is the ultimate justification, yet it is hated because it brings with it unwanted focus as well, depersonalizing as much as individualizing

¹⁶ John Blackie, "Doctrinal History of the Protection of Personality Rights in Europe in the *Ius Commune*: General Actions or Specific Actions?", 13 *EJCL* 4 (2009), available at: <http://www.ejcl.org> (Visited on June 30, 2019).

¹⁷ Anurag Pareek and Arka Majumdar, "Protection of Celebrity Rights-Problems and Solutions", 11 *JIPR* 415 (2006).

¹⁸ *Ibid.*

¹⁹ 18 U.S.P.Q.2d (BNA) 1246 (D. Minn. 1991).

²⁰ Louis D. Brandeis and Samuel D. Warren, "The Right to Privacy", 4 *HLR* 193 (1890).

²¹ David Tan, "Beyond Trademark Law: What the Right of Publicity Can Learn from Cultural Studies", 25(3) *AELJ* 951 (2007).

²² *Id.* at 952.

²³ Leo Braudy, *The Frenzy of Renown: Fame and Its History* 578 (Oxford University Press, Oxford, 1986).

Then, when the public image threatens to become overpowering, privacy seems to be a retreat.

The intrusions of media into the personal space of people close to the celebrities i.e. partners, children, parents, and other friends and relatives, has even extended the loss of privacy to these celebrity individuals. In *Pavesich v. New England Life Ins. Co.*,²⁴ the publication of plaintiff's likeness in advertisement without his consent held to be libelous invasion of plaintiff's right to privacy. In the classic case of *Barber v Times Inc.*,²⁵ a suit for violation of right to privacy was filed by Dorothy Barber when despite her protest the Time Corporation had made an unauthorized and forceful entry into her hospital room for photographing her during her delivery. The suit was successful and she was awarded damages for such intrusion upon her right to privacy. Recently, the Supreme Court of India in *Justice K. S. Puttaswami (Retd.) v. Union of India*,²⁶ while acknowledging economic justification, rightly assigned individual autonomy and personal dignity for protection of privacy rights.

Publicity Rights

The right of publicity is the right to control uses of one's identity that protects the commercial value of the celebrity personality; it is broadly defined as the "*inherent right of every human being to control the commercial use of his or her identity.*"²⁷ It prevents the unauthorized commercial use of an individual's identity, giving a celebrity the exclusive right to license the use of his or her identity for commercial promotion. The celebrity right also incorporates a right to get

²⁴ 122 Ga. 190, 50 S.E. 68 (1905).

²⁵ 159 SW 2d 291, 295 (1942), the court opined, "In publishing details of private matters, the media may report accurately and yet - at least on some occasions - may be found liable for damages. Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurts."

²⁶ (2017) 10 SCC 1.

²⁷ *Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 127-30, 134 (2d Cir. 1984); see also Melville B. Nimmer, "The Right of Publicity", 19 *L&CP* 203 (1954), (Nimmer, like many other authors, argued that right of publicity developed from right to privacy, but he also contended that publicity right was way much opposite to privacy right. For celebrities who actively seek fame through the attention of the media, it was a tenuous argument to extend the traditional right of privacy to prevent the unauthorized commercial uses of their identities).

compensated for misappropriating his name or likeness for commercial purposes.²⁸ The very first case of USA where this right was recognized was *Harlan Laboratories, Inc. v. Topps Chewing Gum, Inc.*²⁹ where the court recognized a baseball player's right to grant an exclusive license for his picture on a bubble gum card and the grantee's right to exclusivity after the license was granted.

During 1950s the publicity right of celebrities came into existence due to the practice of advertising using celebrities had increased to such an extent that the commercial value of celebrity became apparent.³⁰ Moreover, the increased access to media and a weak familial ties during 1900s has accelerated advancement in the popularity of entertainment and sports figures, with a concomitant premium placed on their use in advertising.³¹ Due to such new advancement of their commercial value the celebrities now needed a new legal privilege in order to protect them. The prevailing narrative, therefore, intimately links the right of publicity with the commodification of celebrity. It must be appreciated that once something is considered to have some market value, the legal system will always step into protecting that.³² In *Zacchini v. Scripps-Howard Broad. Co.*,³³ plaintiff's entire human cannonball performance was broadcast by the defendant without his consent. The US Supreme Court held that³⁴ *"The State's interest in permitting a 'right of publicity' is in protecting the proprietary interest of the individual...the protection [afforded by state right of publicity laws] provides an economic incentive for [the artist] to make the investment required to produce a performance of interest to the public. This same consideration underlies the patent and copyright laws."*

²⁸ Gary S. Stifleman, "Community Property Interests in the Right of Publicity: Fame and/or Fortune", 25 *UCLA L. Rev.* 1102 (1978).

²⁹ 346 U.S. 816 (1953).

³⁰ See George M. Armstrong, Jr., "The Reification of Celebrity: Persona as Property", 51 *LLR* 443 (1991) (discussing how opportunities to market personas were practically nonexistent in the nineteenth century); Steven Semeraro, "Property's End: Why Competition Policy Should Limit the Right of Publicity", 43 *Conn.L.Rev.* 753 (2011) (When the right of publicity arose in the 1950s, "the needs of Broadway and Hollywood" were far different from the use of celebrity in popular culture in earlier times.").

³¹ Kirsten Rabe Smolensky, "Rights of the Dead", 37 *Hofstra L.Rev.* 763 (2009).

³² George M. Armstrong, Jr., "The Reification of Celebrity: Persona as Property", 51 *LLR* 443 (1991).

³³ 433 U.S. 562 (1977).

³⁴ *Ibid.*

In the latter half of the twentieth century, legal opinion was split on whether the right of publicity should be descendible.³⁵ In *Martin Luther King, Jr. Center for Social Change, Inc. v. American Heritage Products, Inc.*³⁶ while answering the question whether the right of publicity of a celebrity exists even after death, the court held that³⁷ “if the right of publicity dies with the celebrity, the economic value of the right of publicity during life would be diminished because the celebrity's untimely death would seriously impair, if not destroy, the value of the right of continued commercial use”. Thus, the court emphatically made it clear that the publicity right is transferable and inheritable too.

California State of USA has recently transformed the right of publicity into an assignable and descendible right i.e. the family will get the right upon the death if there is an exploitation of the celebrity's name and image.³⁸ The California Civil Code also transformed the nature of the right by creating it assignable and descendible. Thereafter a number of states made it a discernible right by mentioning it in their respective statutes.³⁹

Reflecting upon preserving right to publicity as an inherent right Professor Thomas J. McCarthy argued for granting every human being right to “control the commercial use of his or her identity”.⁴⁰ In fact on careful analysis the elements for the infringement of right to publicity are perhaps not that difficult to realize. The complainant tested the infringement on three grounds i.e. enforceable right, without permission and damage to the commercial value of that person. Having said this over the years the right of publicity is gaining much of an interest in India and elsewhere. Though the momentum in India is in nascent stage compared to other countries, nevertheless there appears to be a strong push for the recognition of this right. Thus, it becomes although more important to discuss the rationale for protecting a common zone wherein people's feeling (not just for individuals) from public intrusion must remain protected.

³⁵ See Roberta Rosenthal Kwall, “Is Independence Day Dawning for the Right of Publicity?”, 17 *U.Ill.L.Rev.* 207 (1983) (stating that some courts refused to grant recovery for a decedent's relatives, even when the defendants appropriated the deceased's name and likeness for commercial purposes); see also *Memphis Dev. Found. v. Factors Etc.*, 616 F.2d 956 (6th Cir. 1980).

³⁶ 694 F.2d 674 (11th Cir. 1983).

³⁷ *Ibid.*

³⁸ Stuart B. Walzer and Jan C. Gabrielson, “Celebrity Goodwill”, 2 *AAML* 39 (1986).

³⁹ For e.g. Kentucky, California, Tennessee and Oklahoma were the first to provide for such recognition, see Mark Bartholomew, “A Right Is Born: Celebrity, Property, and Postmodern Lawmaking”, 44 *Conn.L.Rev.* 316 (2011).

⁴⁰ Thomas J. McCarthy, “The Human Persona as Commercial Property: The Right of Publicity”, 19 *Colum.-VLA J.L. & Arts.* 129, 130 (1995).

Rationale for Protection of Celebrity Rights

The need for publicity right protection arises most commonly when a commercial advertiser uses a celebrity's name, picture, or likeness to promote a particular product or service.⁴¹ The specific attributes draw the public's attention to any commercial products with which the celebrity is associated.⁴² The fame and desirability of a celebrity is the outcome of his own efforts, sacrifice and relinquishment of his own privacy.⁴³ In other words, a celebrity's unique act, special recognized skill, or particular cultivated look is solely the product of his or her own labors, talents, energy, time, efforts, and expense.

The celebrities' attributes possess tremendous economic potentials, which he has developed over years due to some uncommon sacrifices. The celebrity, therefore, becomes entitled to protection by virtue of theory of unjust enrichment too. In other words he should be free to enjoy the fruits of his own labors free from unjustified interference.⁴⁴ This justification has been enforced by the use of state property law. In *McFarland v. E & K Corp.*,⁴⁵ the court held that "a celebrity's identity, embodied in his name, likeness, and other personal characteristics, is the 'fruit of his labor' and becomes a type of property entitled to legal protection."⁴⁶ It would also be unjust to the celebrity if he were not able to control any tasteless exposure, which might affect his public image. It is because of these reasons that courts grant the celebrities relief in case their

⁴¹ Richard B. Hoffman, "The Right Of Publicity-Heirs' Right, Advertisers' Windfall, Or Courts' Nightmare?" 31 *DePaul L. Rev.* 4 (1981-1982).

⁴² *Ibid* (the author argues that the use of a celebrity's personal features, whether authorized or not, is intended to and does make a company's product or service more desirable.)

⁴³ James M. Treece, "Commercial Exploitation of Names, Likenesses, and Personal Histories", 51 *TLR* 637 (1973).

⁴⁴ *Palmer v. Schonhorn Enters., Inc.*, 96 N.J. Super. 72, 79, 232 A.2d 458 (1967) (court spoke in terms of right of privacy; however, the issue was the use of data for commercial profit and thus more appropriately characterized as an infringement of the right of publicity).

⁴⁵ 18 U.S.P.Q. 2d (BNA) 1246 (D. Minn. 1991).

⁴⁶ *Id.* at 1247.

rights are impinged.⁴⁷ Moreover some individuals like Professor Madow are of the opinion that by association of the celebrities' name with products which do not match their personality the respect, economic value and reputation of the celebrity may be jeopardized.⁴⁸ To illustrate, if Amitabh Bachchan's voice is misappropriated for the endorsement of a tobacco brand, his clean image would be spoiled.⁴⁹

A celebrity should be able to entirely capitalize his name, image, and likeness; the celebrity will lack the incentive to create a valuable persona.⁵⁰ Another justification is that argument contends that if celebrities are not given the right to control their name, images and likeness then it is obvious that traders would easily be able to persuade the public to believe that the celebrity whose photo is pictured on the product is endorsing their product. This argument concerns the theoretical foundation of trademark law seeking to avoid confusion as to which manufacturer the goods come from.

III. PROTECTION OF CELEBRITY RIGHTS UNDER INTELLECTUAL PROPERTY RIGHTS

Protection *via* Trademark

A trademark is a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others.⁵¹ Like goodwill, it is also a property, which can be bought and sold by way of authorized assignment and licensing, and is protected under the law. Since a trademark is essentially a mark, a variety of features can be reg-

⁴⁷ See *Lombardo v. Doyle, Dane & Bernbach, Inc.*, 58 A.D.2d 620, 622, 396 N.Y.S.2d 661(1977) (there is no doubt that celebrities have a legitimate proprietary interest in their public personalities); *Ettore v. Philco Television Broadcasting Corp.*, 229 F.2d 481 (3d Cir.) (Television station broadcasted prize fight without one of the fighters' consent), *cert. denied*, 351 U.S. 926 (1956); *Hicks v. Casablanca Records*, 464 F. Supp. 426 (S.D.N.Y. 1978) (famous writer sought to enjoin movie producers and publishers from distributing a movie and book about her life); *Groucho Marx Prods. v. Playboy Enters.*, No. 77 Civ. 1782 (S.D.N.Y. Dec., 30, 1977) (magazine used comedian's likeness in pictorial satire without his consent); *Gautier v. Pro-Football, Inc.*, 198 Misc. 850, 99 N.Y.S.2d 812 (animal trainer's act televised at halftime of football game without approval).

⁴⁸ Michael Madow, "Private Ownership of Public Image; Popular Culture and Publicity Rights", 81 *CLR* 125 (1993).

⁴⁹ *Supra* note 17.

⁵⁰ *Supra* note 33 ("...to protect the entertainer's incentive in order to encourage the production of this type of work").

⁵¹ The Trade Marks Act, 1999 (Act 47 of 1999), section 2 (1) (zb).

istered.⁵² Thus a celebrity's name and the likeness can also be easily registered and used as a trademark.⁵³ Having registered the name or likeness as trademark, the celebrity gets the benefit of licensing and assigning it too.⁵⁴ Trademark protection in this way lets the celebrity to have control over his name, image and the likeness. The protection offered by trademarks is the best amongst the various forms of IPR protection. The registered proprietor of a trademark can not only prevent others from using an identical mark, but also one which is deceptively similar to the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.⁵⁵ Moreover, a non-deceptive dilution can also constitute infringement. This includes tarnishing of a trade mark or blurring of its distinctiveness. This can be understood to be intended to protect the image of a trade mark and so to support the advertising or merchandising function of the trade mark, but it is also explicable in terms of origin function, i.e., in terms of effect in hindering communication with consumers.⁵⁶

A number of celebrities have started registering their name and likeness as trademarks to prevent others from misappropriating them. Mallika Sherawat, Baba Ramdev, Sachin Tendulkar, Naresh Trehan, Kajol, Shahrukh Khan, A.R. Rehman, Sanjeev Kapoor and many others have registered their names as trademark.⁵⁷ In an unreported case, *Sourav Ganguly v. Tata Tea Ltd.*, When Sourav Ganguly returned to India after the tour of England he found that Tata Tea Ltd. was promoting its tea by offering consumers an opportunity to congratulate him through a post-card which was included in each one kilo packet of tea. Even though he was an employee of the Company, he did not authorize the company to market its tea by using his name. The court while

⁵² *Id.*, section 2 (1) (m), ("mark includes device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging and combination of colors or any combination thereof.").

⁵³ *Id.*, section 14 (the section specifically allows the use of name of person living or dead to be used as a trademark, provided the consent of the person if alive, or representatives if dead, is obtained by the applicant. However, the trademark sought to be registered has to qualify the basic requirements of sections 9 and 11, which provide for absolute and relative grounds for refusal of trademark.).

⁵⁴ *Id.*, sections 37 to 45 (assignment and transmission); and sections 46 to 56 (licensing trademarks as permitted use).

⁵⁵ *Id.*, section 29.

⁵⁶ *Id.*, section 29 (8).

⁵⁷ Surabhi Mehta and Teesta Hans, "Publicity and Image Rights in India", available at: http://asklegalmart.com/yahoo_site_admin/assets/docs/article.356121953.pdf (Visited on July 8, 2019).

granting relief to former Indian captain Sourav Ganguly held that his fame and popularity constitutes intellectual property right (IPR).⁵⁸

However, the protection accorded by trademarks is not absolute or flawless, for the simple reason that if the mark is used for unrelated merchandising or souvenir purposes by a well-known artist, the registration would be difficult. It is also likely to be more difficult to register as a trademark the name of a deceased artist rather than of a living artist.⁵⁹ In *Re: Elvis Presley Enterprise*,⁶⁰ there was a dispute regarding registration of the company's name, Elvis Presley Enterprises, wanted to register 'Elvis Presley' in the United Kingdom, however another British company that used the same name 'Elvis' in its mark contested the registration.

It was held that Elvis Presley Enterprises cannot register their company in United Kingdom with the name 'Elvis Presley' as there is already a company registered with the same name 'Elvis' and it was well known by the public and therefore, was not distinctive. When Elvis Presley Enterprises claimed that the public would be confused, the court stated that ⁶¹"When a fan buys a poster or a cup bearing an image of his star, he is buying a likeness, not a product from a particular source....when people buy a toy of a well-known character because it depicts that character, I have no reason to believe that they care who made, sold or licensed it."

Despite some difficult issues surrounding merchandising and trademark protection, a practical matter, celebrities are advised to consider carefully protecting their logos, names and other brands through trademarks, where appropriate and available. Also any use made of their brands by others, for example for merchandising purposes, should be strictly controlled by license in their appropriate form, in order to seek to preserve and maintain rights in the brands.

⁵⁸ Garima Budhiraja, "Publicity Rights Of Celebrities: An Analysis under the Intellectual Property Regime", 7 *NALSAR Student L. Rev.* 85 (2011).

⁵⁹ In these circumstances the name is more likely to be seen by consumers as merely a historical reference to the subject matter of goods and services, rather than to the trade source of goods and services. See Simon Stokes, *Art and Copyright* 217 (Hart Publishing, Oxford, 2012).

⁶⁰ (1999) R.P.C. 543.

⁶¹ *Id.* at. 554.

In *Star India Private Limited v. Leo Burnett India Pvt Ltd*,⁶² court was of the opinion that production by another person of even the same cinematographic film does not constitute infringement of a copyright in a cinematograph film.⁶³ The test adopted in the case that plaintiffs has to prove that the characters had become famous as to be capable of being merchandised (state of mind of public), reflects an indifferent approach and does not serve well with the standards followed elsewhere. This reflects a narrower approach and reveal how jurisprudence with respect to character merchandising remains an emerging concept in India.

Protection via Copyright

Copyright protection is available to original literary, dramatic, musical and artistic works; cinematograph films; and sound recordings.⁶⁴ A copyright grants the owner an exclusive right of reproduction, issue, performance, adaptation, translation and storing the work so copyrighted in any form.⁶⁵ Therefore, a variety of celebrities' work can be protected under the copyright regime. All the manifestations of a celebrity in the form of an original literary, dramatic, musical and artistic work; or in cinematograph/ sound recording receives an automatic protection under the copyright law. A famous character fictional or otherwise if appropriated with a merchantable product can produce huge economic benefits. Over the years, the avenues of character merchandising have increased in such varied forms that what was seen as a secondary source of commercial exploitation by the entertainment industry, has become the forerunner in terms of revenue.⁶⁶

In *Raja Pocket Books v. Radha Pocket Books*,⁶⁷ It was contended by the plaintiff that they were doing the business of publishing and distributing the comic series title 'Nagraj' in which the

⁶² 2003 (2) Bom CR 655.

⁶³ *Ibid* (Interestingly, the court held it as using mechanical contrivance that it falls under section 14(d)(i), Copyright Act, 1957).

⁶⁴ The Copyright Act, 1957 (Act 14 of 1957), section 13.

⁶⁵ *Id.*, section 14.

⁶⁶ *Supra* note 2 at 455. (For example, the famous cartoon character 'Tintin' became so popular that a number of movies have been made around him and also an all in all merchandising world has developed around this character). See Savvy Verbauwheede Lien, "Marketing: Merchandising of Intellectual Property Rights", available at: <http://www.wipo.int/sme/en/documents/merchandising.htm> (Visited on July 12, 2019).

⁶⁷ 1997 (40) DRJ 791.

character Nagraj is normally attired in green colour body stocking giving the impression of serpentine skin and red trunks with a belt that appears to be a snake. A copyright infringement case was filed by the plaintiff for publishing comic books bearing a character 'Nagesh' which is having an identical characteristic and look to their own comic character 'Nagraj'. It was held by the court that the plaintiff are the copyright owner of Nagraj character and any attempt by the defendant to use an identical character in stickers, posters or any other advertising material will consider to be a copyright infringement.

Sometimes a fictional character is played by a real life celebrity, which becomes very popular amongst the audience.⁶⁸ In such cases the public is easily able to associate the character with the celebrity playing the role. A number of international conventions⁶⁹ have been formed in this regard to protect the performer's right. The inclusive definition of performer⁷⁰ includes actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance⁷¹. Following the various conventions, the performers have been accorded with various economic rights in the digital age like the right of making a sound recording or a visual recording of the performance including the right of reproduction, issuance of copies, communication to public, selling or giving it on commercial rental and to broadcast the performance to public.⁷² They have also been accorded some moral rights. In India, for example, the moral rights available to the performer are right of attribution and right of integrity of work.⁷³

In the case of *Indian Performing Rights Society v. Eastern India Motion Pictures Association*⁷⁴ it was held by the Supreme Court of India that a person composing music and lyric will have the right of performing it in public for profit purpose and he cannot be refrained from doing

⁶⁸ *Supra* note 2 at 455. (James Bond played by various actors, Munna Bhai played by Sanjay Dutt, Sherlock Holmes by Benedict Cumberbatch etc., can be said as examples of such works.)

⁶⁹ The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (Rome Convention), Trade Related Aspects of Intellectual Property Rights, 1994 (TRIPS) and the WIPO Performances and Phonograms Treaty, 1996 (WPPT), are some of the landmark conventions in this regard.

⁷⁰ The Copyright Act, 1957, section 2 (qq).

⁷¹ *Id.* section 2 (q) defines performance in relation to performer's right, as any visual or acoustic presentation made live by one or more performers.

⁷² The Copyright Act, 1957, section 38A.

⁷³ *Id.*, section 38B.

⁷⁴ AIR 1977 SC 1143. (Krishna Iyer J. remarked that: "...the composer alone has a right in a musical work. The singer has none, although the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician.").

so even though that music or lyric is a part of the cinematograph film, though the film producer may have the copyright in the music and lyric, if the producer has commissioned for valuable consideration a composer of lyric and music.

Similarly, in *Fortune films v. Dev Anand*,⁷⁵ the court held that ‘doing an act in films’ will not fall into any category of ‘work’. As section 38(4) expressly excludes performer’s right by stating that ‘once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.’

The photographs or paintings also qualify to be an “artistic work”⁷⁶, which can be copyrighted. However, where a photograph is taken, or a painting or portrait drawn, or an engraving for valuable consideration at the instance of any person, such person (in the absence of any contrary agreement) will be the first owner of the copyright therein.⁷⁷ Moreover, a person can have copyright only in the particular photographs or paintings in which he owns copyright, but has no right to prevent the reproduction or exploitation of any myriad of photographs in which one does not own copyright.⁷⁸

In *Associated Publishers v. K. Bashyam*⁷⁹, the court while deciding upon the issue of whether a portrait photo of Mahatma Gandhi created by combining two photos will amount to copyright infringement. The court held that the photo was produced through the skill and labour which is required to join the parts of two other photos of Mahatma Gandhi and therefore it will not amount to copyright infringement. However, this position is not same in United States, the court there usually apply the test of ‘Commercial aspect v. Public interest’, i.e. if the digitally altered photo has some social significance as a work of art the protection of the first amendment will granted to them.⁸⁰

⁷⁵ AIR 1979 Bom. 17.

⁷⁶ The Copyright Act, 1957, section 2 (c).

⁷⁷ *Id.*, section 17.

⁷⁸ *Supra* note 59.

⁷⁹ AIR 1961 Mad 114.

⁸⁰ *Hoepker v. Kruger*, 200 F Supp 2d 340 (S D N Y 2002) (the first amendment of the Constitution of USA provides for freedom of speech and expression).

Having analyzed the various forms of protection under the legal regime of copyright, one would agree that the protection available thereunder is inadequate. The exceptions very often outweigh the principles in case of copyright. The reason for this is the underlying principle of copyright, i.e. the idea-expression dichotomy.⁸¹ In addition, there are a plethora of fair use exceptions in the copyright law, which further deteriorates the strength of protection.

Protection via Tort of Passing-off

The passing off is a tort which is considered to be actionable under common law, the object is to protect the goodwill of the plaintiff attached to his business or his goods or his services. Passing off action can be brought by the plaintiff in order to protect such goodwill of his business which is mainly represented by a mark, name, etc. The remedy provides under passing off action is to preclude the defendant from making a false representation so as to deceive customers and thereby making them believe that the goods, which the defendant is selling, are really the plaintiffs. Celebrities may well use this common law tort for false attribution of ownership or misappropriation. This right extends beyond the artist to successor owners of this right.⁸²

In *Erven Warnick v. Townend*,⁸³ Lord Diplock gave five essential requirements for claiming an action of passing off, i.e. *firstly* misrepresentation, *secondly* done in course of trade, *thirdly* done to prospective or ultimate consumers of the goods, *fourthly* done to injure the goodwill of another trader's business and *lastly* that it should have caused actual damage to the plaintiff's goodwill or business. In the case of *Irvine v. Talksport*,⁸⁴ the defendant had used a manipulated photo of the plaintiff who was a famous sportsman in a fashion as if were endorsing the defendant's radio station.

It was held by the court that the sports star's name and image is a fundamental of a brand along with several economic and other rights conjoined with that status. Moreover, court accentuated

⁸¹ The doctrine enunciates that only the expression of an idea can be protected under copyright, and not the idea *per se*. Providing copyright on an idea would tend to monopolize the idea itself, which would be inimical to creativity.

⁸² *Supra* note 59 at 186-189.

⁸³ (1980) RPC 31, see also *Reckitt & Coleman Products Inc. v. Borden Inc.* (1990) 1 WLR 491 (in this earlier case 'classical trinity' of requirements of passing off were propounded, which are reputation acquired by the plaintiff for his goods; misrepresentation by the defendant, and damage to the plaintiff.).

⁸⁴ (2002) WLR 2355.

that even if endorsements do not pertain to their field of expertise, the cases related to ‘passing off’ will be maintainable.⁸⁵ This case came as a big weapon for protecting the celebrities’ right of publicity.

Similarly, in *Henderson v. Radio Corporation Pvt Ltd*,⁸⁶ court was of the opinion that any wrongful appropriation of personality and professional reputation is an injury on professional reputation. The court agreed with the plaintiff’s contention of passing off, and agreed that the plaintiff’s name in relation to the matter in question and being within the same field, creates confusion in a manner that give rise to plaintiff’s connection with the goods in question. In this case the plaintiffs being professional ballroom dancers, claimed injunction and other relief sought against the defendants from printing, selling or distributing to retail traders the gramophone record cover entitled “Strictly for Dancing: Vol. 1”. In *Alan Clark v. Associated Newspapers Ltd*,⁸⁷ the facts were in the context of parodies. The issue in this case was whether a considerable number of readers of the defendant’s newspaper, in which the parodied articles appeared, are deceived or were potentially be misrepresented pertaining to the authorship of the articles, although that deception had to be more than momentary and inconsequential. The court, here, in order to protect the author’s right applied passing off action against the defendant reason being the plaintiff’s goodwill and reputation as an author was in peril, and it could have further impacted the prospective sales of his published works and the market value of his rights to exploit his works.

IV. CELEBRITIES RIGHT OF PUBLICITY IN INDIA- TRENDS AND DEVELOPMENTS

Unlike the western counterparts, India is lagging far behind in acknowledging publicity rights of the celebrities. Legislation on the matter has been conspicuous by its absence hitherto. The jurisprudence of publicity rights also could not develop owing to lack of any ruling on the subject by the Supreme Court of India. Moreover, the celebrities’ too have been very un-attentive in pro-

⁸⁵ *Id.* at para 112.

⁸⁶ (1969) RPC 218.

⁸⁷ (1998) RPC 261.

protecting their publicity rights. However, in the last decade some instances and cases have come about throwing light on the publicity rights.

The Emblems and Names (Prevention of Improper Use) Act, 1950, which to a certain extent, protects unauthorized use of few dignitaries' names and symbols by prohibiting the use of the names given in its schedule.⁸⁸ Such a mark is prohibited to be registered as a trademark as an absolute ground for refusal of registration.⁸⁹ However, only the above-mentioned law protects the celebrities and symbols of national importance. The celebrity right of publicity, thus, only can be inferred from some of the IPLs in India, owing to lack of any specific reference in any of the laws. Thus, India does not offer an adequate protection to the publicity rights.

The only case making a special reference to the celebrity rights in India is *ICC Development (International) Ltd. v. Arvee Enterprises*,⁹⁰ in this case the Delhi High Court while acknowledging the right of publicity in India, observed that such a right has been developed from right of privacy. Further, it was held that such a right exists solely in an individual or it exist in any indicia of the individual's personality like his name, personality trait, signature, voice etc. which a person may obtain in due to his association with an event, sport, movie etc.⁹¹ However, it was also held that such right in no case vest in any event or the organization which made a person famous. The court held:⁹²

The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the

⁸⁸ Emblems and Names (Prevention of Improper Use) Act, 1950 (Act 12 of 1950), section 3 ("Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colorable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.").

⁸⁹ The Trade Marks Act, 1999, section 9 (2) (d).

⁹⁰ 2005 (30) PTC 253 (Del).

⁹¹ *Ibid.*

⁹² *Id.* at para 14

event. Any effort to take away the right of publicity from the individuals, to the organizer {non-human entity} of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolized. The right of Publicity vests in an individual and he alone is entitled to profit from it.

In *Sonu Nigam v. Amrik Singh*,⁹³ a suit pertaining to defamation and infringement of personality right was filed by Sonu Nigam against Mika Singh, the Bombay High Court while imposing a heavy fine upon the defendant clearly stated that “ *no third person should make any commercial profits by using celebrity images unless they have consented to it*”. The court further observed that imposing heavy fine would act as a deterrent against those who intend to exploit the personality rights of celebrities..

In *Titan Industries Ltd. v. M/S Ramkumar Jewellers*,⁹⁴ it was observed by the court that:

“When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity.”

Similarly, actor suit of injunction was filed by actor Rajnikant at Madras High Court in order to restrain the release of a movie titled *Main hoon Rajnikanth*, allegedly violating his personality rights.⁹⁵ In his application he stated that that “a large section of the public across India is, therefore, likely to be misled into viewing such project/film on the mere belief that the said project/film has been approved by their matinee idol.”⁹⁶ The High Court of Madras has ordered an interim injunction and also put a stay on the release of that movie. This movie was a sheer violation of his right to privacy as it was based upon his name, image etc. and also the movie was made without his approval and also he has no control over the content of this movie

⁹³ MANU/MH/0517/2014.

⁹⁴ 2012 (50) PTC 486 (Del).

⁹⁵ *Shivaji Rao Gaikwad v. Varsha Productions*, 2015 (62) PTC 351(Mad).

⁹⁶ Zoya Nafis, “India: Personality Rights—Need for a Clear Legislation” available at: <http://www.mondaq.com/p/1248280/Zoya+Nafis/LexOrbis>(Visited on July 12, 2019).

In *Gautam Gambhir v. D.A.P. & Co.*,⁹⁷ the Delhi High Court while rejecting an interim injunction opined that *prima facie* the defendant has not made any use of the reputation of the plaintiff's name in his trade. Further court rested its opinion on three arguments, these are: (a) the defendant never claimed that the business is related to the cricketer, (b) he prominently displayed his own pictures everywhere to show his identity, and (c) there was no prior attempt to raise objection when the logo of the restaurants was being registered. It is humbly submitted that the personality right rest on two factors i.e. verifiability and identity. Therefore, when the identity of a famous personality is used in advertising (without their permission) the issue is not that no one can commercialize their identity but with the right to control when, where and how their identity can be used (which remains associated with the famous personality).

Recently, the Delhi High Court in an order passed in *Rajat Sharma v. Ashok Venkatramani*,⁹⁸ upheld the celebrity rights and also recognized the publicity rights over the show "Aap Ki Adaalat." Holding advertisement as *prima facie* illegal, the court restrains the Zee Media from issuing any advertisements in the print media, which contains the name of Rajat Sharma. Recognizing that Rajat Sharma had an unassailable right in his public persona and identity as a famous television show host, the court viewed that the use of the statement in the advertisement amounts to false advertising.

V. RIGHTS' UNDER INTERNATIONAL CONVENTIONS

An international convention or treaty on protection of the publicity rights is conspicuous by its absence till date. The reasons for the same are practical rather than political. The law on publicity rights is still in its developing stage in most of the countries. There are various facets of publicity rights that overlap with right of privacy and IPL. From defining the term celebrity to granting rights, each step has a challenge of its own.⁹⁹ Given the non-uniform structure of the municipal IPLs itself, it becomes a herculean task to come on a consensus on a model law on publicity rights. In the name of locating the publicity rights in international conventions one can but derive

⁹⁷ MANU/DE/5440/2017.

⁹⁸ CS (COMM) 15/2019.

⁹⁹ Eliana Torres, "The Celebrity Behind the Brand International Protection of the Right of Publicity", 6(1) *Pace. Intell. Prop. Sports & Ent. L.F.* 117-142 (2016).

them from the various rights conferred upon the “performers”. In this regard, it is again clarified that performers are only a kind of celebrities. A person may be a celebrity without being a performer. Still these conventions have played a major role in shaping municipal laws on copyright and allied rights and thus deriving publicity rights from them. Some of such major conventions have been discussed below.

The Rome Convention, 1961 was a breakthrough development in this regard. The Rome Convention for the first time recognized the “neighboring rights” i.e., performers’ rights, phonogram producers’ rights and broadcasting rights. However, since the membership to the convention was available only to the member nations of the United Nations also having membership in Berne Convention for the Protection of Literary and Artistic Works, 1886, it could not be availed by all the nations.

The TRIPS Agreement, 1994 in its articles 9 to 14 deals with copyright and allied rights. Article 14, particularly, secures certain rights of the phonogram producers, live performers and broadcast rights and covers a right to fixation, its reproduction, broadcast and re-broadcast by wireless means and communication to public. India is a signatory to the TRIPS Agreement, 1994 and covers all the elements of the aforementioned rights in its copyright laws.

The WPPT, 1996 was another major step in protecting allied rights of performers. The WPPT was focused more on protecting the performers’ and phonogram producers’ rights from the infringement of their rights in the digital era, as there were a legal vacuum in this direction, thitherto. The treaty chiefly recognized fixation of performances on digital medium and their publication and communication to public. However, the only aural works were afforded protection and visual works were sidelined. With regard to performers’ rights, certain economic rights, viz., right to reproduction, distribution and rental as well as moral rights were conferred on performers. Last year, on July 4, 2018, India became a signatory to WPPT, although the protection afforded therein had already been covered within the copyright laws (by virtue of amendment to the Indian Copyright Act, 1957 in the year 2012).

From the perusal of abovementioned international perspectives and cases, it would be suffice to hold that the development of publicity rights of the celebrities’ is thus at a very nascent stage. The legal protection accorded to the right is lagging far behind when compared with the

European countries and USA. However, the recent above-mentioned cases are harbinger of the jurisprudence of publicity rights in India and give a ray of hope for further expansion. Further as a proposal, the member nation of the World Trade Organisation should come forward and chalk out some uniform and minimum treatment to be granted in the form of publicity rights by inviting suggestions amongst themselves. After the final draft would have been accepted it may be inserted in TRIPs Agreement itself such that its salutary principles like national treatment, minimum standards agreement are extended for the cause.

VI. CONCLUSION

From the foregoing discussions we conclude that none of the IPR frameworks are equipped enough to protect the celebrities' right of publicity completely. The trademark, passing-off and copyright laws have their own lacunae. The publicity rights of the celebrity are *sui generis*, which cannot be positioned in any of the IPR laws in a wholesome way. Some European States like France and Germany have legislated special statutes for the protection of celebrity rights.¹⁰⁰ Many states in USA have also legislated to the effect, besides their courts actively recognizing this right.¹⁰¹ As of present, there is no statute which deals with the protection of right to publicity in India. Given the commercial endorsement and merchandising, India is required to start afresh for enacting a legislation that protects the publicity rights. The adoption of such a new form of IPR would definitely afford an appropriate level of protection to the legitimate interest of celebrities. The judiciary will have to play a major role in this direction, as it can legislate when there are interstices in the laws. The publicity rights would require to be elevated a higher level. However, Indian courts will have to be cautious enough not to equate the personality and publicity rights of celebrities with that of property. Doing so would impair the primacy of fundamental rights and the larger public interest. Also, under principle of territoriality, the domestic IPR regime demands enforcement. Therefore, international enforcement of IPLs is subject to State's

¹⁰⁰ Personality rights are protected under Article 9, French Civil Code. In Germany, Articles 1 and 2 of the German Constitution, provides for the human rights of persons read with section 823, of German Civil Code. Also, Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

¹⁰¹ *Supra* note 39.

enforcement and recognition. Having said this, the domain of IPRs, in other parts of the world has been expanded to afford protection to modern rights such as the right to publicity (a corollary of the right to privacy) along with the bundle of rights that emanate from celebrity rights, there incorporation has not been smooth and there has been much friction and conflict on the manner and content of such rights. With these cautions we just hope that India develops its own law for the publicity rights, keeping the larger public interest at a higher pedestal.