

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 6**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This Article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of any **suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Analysis of Existing Celebrity Rights

---

POOJA GAUTAM<sup>1</sup>

## ABSTRACT

*The digitalization is changing the creative landscape by generating opportunities for some and challenges for others. This new media is such a rapidly developing area that new terms are produced almost every day. Generally, traditional intermediaries such as film studios, record labels etc. are far less scalable than online Intermediaries and have been substituted by them, for example Spotify and Netflix. Although both Spotify and Netflix still works with record labels and studios and this is because it takes heavy investment to bring a new artist or film to market. Keeping in pace with the rapid development in Digital media there is another urging issue for discussion i.e. need to protect celebrities and famous personalities from unfair scrutiny. The public image of a celebrity is of great value but there right of publicity and the right to commercial use of their identity are always infringed for that reason a celebrity enjoys a unique right called as celebrity right. Celebrity rights may be protected using trademark law, copyright law and passing off action. So, there is an urgent need to recognize celebrity rights within the realm of intellectual property rights and to secure them against any harm.*

## I. INTRODUCTION

It Celebrity status is usually a reward for success which is earned by skill or wit. With these new online mediators, celebrities' privacy rights are constantly violated in various ways through third parties. The right of publicity and the right of commercial use of their identity are constantly violated. Private details of the celebrity are disclosed to the public and are also sometimes defamatory and misleading, portraying him in a false light. There have been incidents where photos of celebrities are used in unauthorized advertising. Therefore, it is urgent to recognize celebrity rights within the realm of intellectual property rights (IPR) and to secure them against any harm. There are a bundle of rights to protect IPR infringement of celebrities which includes publicity rights, reproduction rights, distribution rights, rental and lending rights, making available rights, personality rights, privacy rights and so on but majorly rights of a celebrity can be categorized under three kinds:

- (i) Personality/ Moral Rights

---

<sup>1</sup> Author is an Assistant Professor at UPES, dehradun, India.

(ii) Privacy Rights

(iii) Merchandising/ Publicity Rights

## II. WHO IS A CELEBRITY?

While discussing celebrity rights, we must first understand what the term celebrity means. In addition, it is also important to remember that celebrities have the exclusive right to harness the value of their existence. Today, actors, creators, artists, politicians, models, athletes, musicians, singers, television personalities, well-known business leaders and those who are trying to attract public attention, to determine the celebrity, public opinion is the main criterion for determining whether a person is a celebrity or not. In the case of *Martin Luther King Jr Center for Social Change v American Heritage Products Inc*<sup>2</sup>, it was enunciated that the term celebrity should be interpreted in a broader sense to encompass more than the traditional categories of movie actors, rock stars and ball players. Under the ‘direct commercial exploitation of identity’ test, when an unauthorized use of a person’s identity is made that is both in nature and commercial in motivation, the person whose identity has been misappropriated has by definition become a celebrity for right of publicity purposes.<sup>3</sup> Indian copyright law does not define the word ‘celebrity’; however, reference may be made to Article 2 (qq) of the law defining the artist. An artist can be anyone such as an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer and speaker. Basically, everyone who puts on a show is an artist. An artist is not always a celebrity, and a celebrity may not be an artist at all. Section 38 of the Copyright Law grants a special right called enforceable right to any artist who performs or participates in a performance in connection with this performance and this right remains valid for up to fifty years from the start of the following calendar year in which the return is realized. Clause 3 of the section 38 states that during the continuance of a performer’s right in relation to any performance, any person who, without the consent of the performer, makes a sound recording or visual recording of the performance or reproduces a sound recording or visual recording of the performance etc, shall subject to the provisions of section 39, be deemed to have infringed the performer’s right.<sup>4</sup>

---

<sup>2</sup> *Martin Luther King Jr Center for Social Change v. American Heritage Products Inc*, 694 F.2d 674 (11th Cir 1983).

<sup>3</sup> Hetherington Lee, *Direct commercial exploitation of identity: A new age for the right to publicity*, Columbia-VLA Journal of Law and the Arts, 17 (1992) 1.

<sup>4</sup> B. Banerjee, *Celebrity rights: A legal overview*, <http://www.legalserviceindia.com/article/1139-Celebrity-Rights.html>.

### III. REQUISITE TO SAFEGUARD CELEBRITY RIGHT

Primarily, celebrity rights can be granted and licensed for commercial purposes. In today's environment, advertising is associated with an enormous amount of money and the public image of a celebrity is of enormous value. Recognition of this valuable asset as property means that, like any other intellectual property, it would be subject to tax as an asset. This creates a financial incentive for the public and the celebrities themselves are sufficiently rewarded for their moral right to the money they earn from their reputation. Secondly, the right to advertise is hereditary. Therefore, a celebrity's descendants can benefit from the popularity that the celebrity created during his lifetime and third, to protect the performers by following:

- (i) Reduce the feeling of insecurity of performers due to fears of technological unemployment, including replacing musicians with recorded music
- (ii) Preventing Bootlegging
- (iii) Control the exploitation of artists who cannot manage the situation alone

### IV. OBLIGATIONS AND REMEDIES

Celebrity rights can be protected by trademark law, copyright law and passing off action. Any violation of an actor's property or recording rights therefore constitutes a violation of the legal obligation.

#### **Trademark –**

Trademark registration has two meanings when it comes to celebrity rights. Firstly, the registration of a mark of an aspect of a celebrity's personality indicates that the celebrity is open to the transfer or authorization of his personality for commercial purposes in the class of goods and services for which the registration is requested. Secondly, celebrity can protect these aspects of his personality from unauthorized use. In contrast to the tort or Trade Practices Act of 1974, trademark registration is unique in that it offers a potential form of protection for the personality of celebrities.<sup>5</sup> In India, celebrities and business partners may enjoy some protection from trademark law, but this protection may be limited in scope. Section 2 (1) of the Indian Trademarks Act 2000 allows the registration of any sign that distinguishes one person's goods and services from another, each word including the personal name, the design, the number and form of the products or their packaging as a trademark. Indian courts have

---

<sup>5</sup> Black Hilary May, *The role of Trademark law in the protection of celebrity personality*, Media & Arts Law Review, 7(2) (2002) 105, 106.

protected film titles, characters and names under trademark law.<sup>6</sup> The first case in which characters were marketed in India was *Star India Private Limited v. Leo Burnett India Pvt. Ltd.*<sup>7</sup>, but case law is still emerging and character merchandising is an area that needs to be developed in India.

### **Copyright –**

There is little clarity as to the characteristics of celebrity rights that can be protected under copyright law. In *Sim v. Heinz & co. ltd.*<sup>8</sup> the court said copyright is not granted for a person's voice, similarity or other identifications. Copyright grants exclusive, albeit limited, property rights and enables celebrities to authorize the reproduction, creation of a derived image, sale or display of, for example, a photo commissioned by others.<sup>9</sup> To file a copyright claim, a person must be able to prove ownership of the copyright in the image and the copy of that image. In celebrity photography, the biggest problem facing celebrities is ownership. In the case of books by famous authors, any adaptation, provided that it is original, can always be protected by copyright. Indian intellectual property law since 1957 protects sketches, drawings, etc that fall into the category of works of art. Section 14 of the Copyright Law reserves the exclusive right to authorize third parties to reproduce the work in any form whatsoever, including the conversion of a two-dimensional work into a work in three dimensions and vice versa. The courts have extended this protection to fictional persons who fall into the category of artistic work. In the case of *Raja Pocket Books v. Radha Pocket Books*<sup>10</sup>, Nagraj - the snake king, a popular character in the children's comic, is said to be protected by copyright. However, the name or image of the celebrity in India is not copyrighted.

### **Passing off action –**

The passing off action is important in cases of personality merchandising, in which the name, similarity or performance characteristics of a person are used. In general, a measure of disclosure is an action against the goodwill of a person or damage to reputation caused by a false declaration by another person attempting to transfer his assets or his business as property of another person. A redistribution action can lead to an unauthorized exploitation of the goodwill or reputation of a celebrity, indicating an incorrect approval of the products by the celebrity. Likewise, illegal possession of personality could result in crime, as celebrity has exclusive marketing to acquire personality. Indian law recognizes personality rights only when

---

<sup>6</sup> Titus Advocates 2008, *Indian guide: Character merchandising in India*, <https://www.asialaw.com/> .

<sup>7</sup> *Star India Pvt. Ltd. v. Leo Burnett India (Pvt.) Ltd.*, (2003) 2 B C R 655.

<sup>8</sup> *Sim v. Heinz & Co. Ltd.*, 1 WLR 313 1995.

<sup>9</sup> M Prather, *Celebrity copyright law*, [http://www.ehow.com/about\\_6461739\\_celebrity-copyright-law.html](http://www.ehow.com/about_6461739_celebrity-copyright-law.html) .

<sup>10</sup> *Raja Pocket Books v. Radha Pocket Books*, 1997(40) DJR 791.

the character or person has obtained independent public recognition. In the *Mirage Studios v. Counter Feat Case*, also known as *Ninja Turtle case*<sup>11</sup>, the court referred to the Australian cases of *Children's Television Workshop v. Woolworths Ltd.*<sup>12</sup> & *Fido Dido Inc v. Venture Store*<sup>13</sup>, stated that disclosure would apply when the public was misled about a characteristic or the quality of the goods sold. In the case of the *ninja turtle*, the first applicant was the copyright holder of the fictitious anthropogenic characters known as the *Teenage Mutant Ninja Turtles* and part of their activity consisted in allowing the reproduction of these characters on sold goods by others. The first defendant wrote drawings of figurines of human turtles, which resembled the figures of the first applicant, using the concept of turtle instead of turtle drawing. The court ruled against the accused. In *Hogan v. Koala Dundee*<sup>14</sup>, the plaintiff, who was the author and star of the film *Crocodile Dundee*, has filed an action against two tourist shops that sell clothing and other accessories that are particularly Australian in nature. The complainant's complaint was that the accused had used the name *Dundee* and images of a koala who, like the hero of the applicant's film, wore a sleeveless shirt, hat and knife. In this case, the court granted an acquittal on the basis of a false representation of a reputation or the generally illegal return of goods in an image normally belonging to a claimant. Likewise, in *Hogan v. Pacific Dunlop*<sup>15</sup>, the applicant made a shoe advertisement which refers to a specific scene in the movie *Crocodile Dundee*. In the present case, the court held that the false statement must involve the use of this image to arbitrate the existence of a commercial relationship between the applicant and the goods and services of the defendant, which did not happen. In *Henderson v. Radio Corporation Pvt Ltd*<sup>16</sup>, the applicants were professional ballroom dancers. The defendants submitted a 'Strictly for Dance' entry using a photo of the applicants in the illustration of the title. The applicants maintain that this is an exit. The court found the applicants' personality and professional standing insufficient. In addition to these remedies, breaches of data protection procedures are now covered by insurance policies in the 'Advertising damage' category. The term advertising harm includes defamation, including defamation, defamation and product despair, copyright infringement, trademarks, slogans and advertising ideas, or any type of commercial activity, and may include other violations, such as unauthorized use of the name, voice or image. A breach of the right to privacy is also covered by insurance policies,

---

<sup>11</sup> *Mirage Studios v. Counter Feat Clothing Co. Ltd.*, (1991) FSR 145.

<sup>12</sup> *Children's Television Workshop v. Woolworths (NSW) Ltd.*, (1981) RPC 187.

<sup>13</sup> *Fido Dido Inc v. Venture Stores (Retailers) Pty Ltd.*, (1988) 16 IPR 365.

<sup>14</sup> *Hogan v. Koala Dundee*, (1988) 12 IPR 508.

<sup>15</sup> *Hogan v. Pacific Dunlop*, (1989) 12 IPR 225.

<sup>16</sup> *Henderson v. Radio Corporation Pvt. Ltd.*, 1969 RPC 218.

such as advertising or personal injury.<sup>17</sup> In the United Kingdom, apart from civil obligations, a criminal offence for a person without proper consent is to do the following on a record that he knows or has reason to believe is an illegal registration:

- (i) Hire or sell
- (ii) Import into the UK except for private or domestic use
- (iii) Possess such recordings with intention to commit an infringing act or deal in such recordings in the course of business

It is also a criminal offence, if an artist gives the right or plays the recording in a public place if he knows or has reason to believe that he is violating the right to record.<sup>18</sup>

### **MORAL/PERSONALITY RIGHTS**

A person is recognized by his personality. Through the construction of a person's personality, a person builds himself and his predictable behavior in society. Each personality affects society differently depending on the respective strengths of the individual. These personality rights are also justified by the metaphysical notion of property of Hegel, who says that the attribute of a person is an extension of his personality. Similarly, an individual's influences to the society are also an extension of his personality.<sup>19</sup> In a case *Tolley v. Fry*<sup>20</sup> there was controversy relating to the use of a picture of a popular golf player to advertise Cadbury chocolates. The plaintiff alleged that the defendants appeared to have consented to appear in the advertisement for consideration or remuneration and that; as a result, he had abused his reputation as a golfer for advertising purposes. The court found that the accused's conduct was likely to cause defamation and damage. However, this situation has radically changed today, with celebrities claiming paradoxical rights, the right to privacy and the right to publicity.

### **PRIVACY RIGHTS**

The doctrine of Warren and Brandeis' privacy has played a key role in shaping celebrity rights. They opined that the basic concept of personal freedom extended to every person's right to be let alone.<sup>21</sup> People usually personalize the stars and become interested in every personal aspect of their lives. On the other hand, celebrities try to control their personal data, because

---

<sup>17</sup> R.S. Gibson, *California and International celebrity and employee invasion of privacy*, <http://www.hg.org/article.asp?id=7567>.

<sup>18</sup> Hart, Linda Fazzani & Clark, *Palgrave Law Masters: Intellectual Property Law*, 4th edn, Palgrave MacMillan, Hampshire England, 2006.

<sup>19</sup> A. Datta, *Celebrity rights: A legal overview*, <http://www.goforthelaw.com/articles/fromlawstu/article31.html>.

<sup>20</sup> *Tolley v Fry*, (1931) 1 All ER Rep 131.

<sup>21</sup> Louis Brandeis & Warren Samuel, *The right to privacy*, *Havard Law Review*, 4(5) (1890), [http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy\\_brand\\_warr2.html](http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html).

disclosing them can embarrass or humiliate them, which create a sense of uncertainty. In *Cohen v. Herbal Concepts Inc*<sup>22</sup>, the photograph of the applicant and her daughter was used on the label of the cosmetic product without their consent. The defendant claimed that the faces of these two people were not recognizable in the picture. The court accepted the applicant's testimony and awarded her compensation in recognition of her data protection rights. In another case, *Barber v. Times Inc*<sup>23</sup>, a photographer photographed Dorothy Barber during her delivery. Ms. Barber launched a lawsuit for invasion of privacy against Time Inc because she had illegally and violently entered her hospital room and photographed her despite her protests. Ms Barber was successful and the court awarded damages. The court stated that the media may provide accurate information when disclosing the details of private matters, but at least occasionally they can be held liable for damages. There will be no defamation lawsuits where the media would tell the truth, but the media could still lose a similarly violated data protection lawsuit. In such cases, celebrities may take corrective action in the form of data breaches or claims for their right to privacy. Because celebrities have a popular image in society, people tend to personalize them as friends and become interested in every personal aspect of their lives, from personal problems in life to something as trivial as the clothes they wear. The cosmetics they use visit the places where they are. However, celebrities do not know the audience and therefore there is no natural exchange of information. That's why celebrities try to control their personal data, because disclosing this information can confuse and humble them and make them feel insecure. Various MMS scandals involving many celebrities have recently been very popular with the public. Among the most popular were the videos in which the tennis player Sania Mirza changing in the bathroom and video of Bollywood sensational Kareena Kapoor Khan from her past, where she went into intimate moments with her ex-boyfriend and Kabir Singh starrer Saheed Kapoor was published.<sup>24</sup> These films were extremely interesting among ordinary members of society, but extremely embarrassing, psychologically traumatic for these celebrities and made them feel uncertain about their actions, even in closed personal spaces. Even the Supreme Court found an Indian petition regarding the constitutional validity of section 499 of the IPC that the photo of Kareena-Saheed did not taste good. The Court also suggested the need to strike a balance between public interest and defamation, so that the freedom of expression of the newspaper does not extend beyond the limits.<sup>25</sup> According to Prosser, it can be argued that even press reports can be seen as a

---

<sup>22</sup> *Cohen v. Herbal Concepts Inc* (1984) 63 Ny.2d 379.

<sup>23</sup> *Barber v Times Inc*, 348 Mo. 1199 (Mo. 1942).

<sup>24</sup> Sex, lies and MMS: Bollywood talking, <http://www.digihelp.com/pub/indian-mms-scandals.asp>.

<sup>25</sup> *Kareena-Shahid photos not in good taste: SC*, <http://www.tribuneindia.com/2004/20041218/nation.htm#3>.

breach of confidentiality if they are isolated from blocking or if a shameful private person has been publicly disclosed who may be offensive and sensible to sensitive individuals. In this case, defamation, and not protection by intellectual property rights, would, however, be the most effective way. Certainly, a serious violation of the personal life of celebrities is that everyone has the right to human rights.

In *Justice K. S. Puttaswamy (Retd.) v. Union of India*<sup>26</sup> the court viewed that "Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent". "Aside from the economic justifications for such a right, it is also justified as protecting individual autonomy and personal dignity. The right protects an individual's free, personal conception of the 'self.' The right of publicity implicates a person's interest in autonomous self-definition, which prevents others from interfering with the meanings and values that the public associates with her."

## **PUBLICITY/MERCHANDISING RIGHTS**

The right to publish is not a trademark. It is not only one type of copyright and it is not only another type of data protection law. It is not one of these things, although it has some family resemblance to the three.<sup>27</sup> The right to publish is the inherent right of everyone to control the commercial use of their identity.<sup>28</sup> The merchandising rights or publicity rights are the rights to use the economic value of a person's name and reputation. To exercise this right, it must be established that fame is a form of goods. If someone uses a celebrity's fame to advertise their products, it is considered an unfair commercial practice, intellectual property embezzlement, or fraud. In *Midler v. Ford Motor Co & Others*<sup>29</sup> the advertising company wanted to use a Bette Midler song in an advertisement for Ford cars. The license for the song itself was available, but Ms. Midler refused the application for permission to use its version. The agency then contacted Ula Hedwig, a singer who had been a backup singer for Ms. Midler, and asked her to sing the song for a new recording with instructions to sound as much as possible Bette Midler's record. Ms. Midler continued when the advertisements were broadcast on television.

---

<sup>26</sup> (Civil) No 494 Of 2012

<sup>27</sup> McCarthy J Thomas, *The Spring 1995 Horace S Manges Lecture: The Human Persona as Commercial Property: The Right of Publicity*, Columbia-VLA Journal of Law and the Arts, 19 (1995) 131.

<sup>28</sup> Keller Bruce, *Condemned to repeat the past: The reemergence of misappropriation and other common law theories of protection for intellectual property*, Harvard Journal of Law & Technology, 11 (2) (1998) 401.

<sup>29</sup> *Midler v. Ford Motor Co & others*, (1988) 849 F.2d 460(9th Cir).

The accused alleged that they did so in accordance with the Civil Code because they did not use Ms. Midler's name, voice, signature, photo, or likeness, but Ms. Midler Hedwig's voice. The court stated that the relevant article of the Civil Code did not repeal the common law on privacy and public relations, but argued that the right to public relations for living persons was also part of the property under consideration, that the right to public relations under general law prior to appropriation of the Properties of his identity is protected. The court also ruled that in these circumstances the defendants had clearly sought a trade association with an attribute of Midler's identity. The right to advertising therefore grants performing artists or other public figures exclusive control over the commercial exploitation of their names, similarities or other aspects of their personality. However, the laws related to celebrity's publicity or merchandising rights are still at a very young stage, especially in India. Although courts in different countries have taken different approaches to justify this right, no uniform justification has yet emerged. However, such a right differs from the right not to invade privacy or the right not to distort one's own personality. Before the sound and image recording process, a performer enjoyed the personality only in his interpretation, which included the right to advertising, the right to voice, the right to image and the right to image privacy. However, the inventions of recording technology helped improve performance, which led to the problem of bootlegging. In addition, thanks to the advancement of animation, it is now possible to create persuasive people, computer-generated doubles of artists or actors, including deceased movie stars. A real danger lies in the unauthorized imagery of celebrities and the subsequent digital manipulation to create new images and film sequences of the actor. The use of manipulated celebrity images on inappropriate websites has been a constant source of confusion and defamation. In addition, if someone uses the fame of a celebrity to promote their products, it would be called unfair commercial practice, diversion of the celebrity's intellectual property, disappearance act, etc. Advertising law is also a form of intellectual property. This can be justified by the Lockean Labour theory which states that an object created by the work and ability of an individual belongs to that individual and that individual has the right to exploit the object created by him for any lucrative purpose that tastes. Similarly, according to this theory, one can say that the fame and popularity that a celebrity has created is his property, because he has put in enough work, conscious efforts, time and abilities to collect such an image and popularity in society. Therefore, the celebrity has complete freedom to exploit their image for commercial benefit and to prevent others from doing so. It would be very unfair if someone else could exploit this fame or popularity to reap benefits that would suit them instead of celebrity. In

Edison v Edison PolyformMfg Co.<sup>30</sup> The court held that if a man's name is his property, there is no reason not to understand that the distribution of one's property is his property as well as the material benefit that can be gained from it. The cases of such cases in the media world are very common. In the Da Club, the 50 cent real name Curtis Jackson popular rapper accused Gary Barbera Enterprises of posting ads in Philadelphia, Pennsylvania, newspapers promoting his company with an image of the rapper and the words as 'Just like 50 says!' near a Dodge Magnum, according to the music site AllHipHop.com. 50 Cent, insisted he did not allow his image to be used in commercials.<sup>31</sup> The law in this regard, i.e. the celebrity advertising / marketing rights, is not yet sufficiently developed, especially in India. Courts in several foreign countries have adopted a different approach to justify this right and a uniform justification has not yet been crystallized. Therefore, the authors would endeavor to analyze this particular celebrity right and try to offer suggestions for emerging issues.<sup>32</sup> Every celebrity must have proprietary rights to their fame and popularity in society because they put time, effort, talent and finances to become popular. It is also in line with the working of Locke's labour theory property. Therefore, the celebrity has the absolute right of publicity. The concept of the right to publicity, as a right to control the commercial value of the identity, was introduced by Nimmer and William Prosser established it on a solid basis, which identified four types of rights associated with a person are as follow:

- (i) Intrusion upon one's seclusion or solitude
- (ii) Public disclosure of embarrassing private facts
- (iii) Publicity which places one in false light<sup>33</sup>
- (iv) Appropriation of one's name for the defendant's advantage<sup>34</sup>

## V. FEATURES AND CONSEQUENCE OF THE RIGHT TO PUBLICITY

In case Douglas v. Hello! Ltd<sup>35</sup>, wherein a famous actors have authorized OK Magazine to film their weddings and publish them in their magazines. However, another HELLO magazine penetrated and took photos in an unauthorized manner and published them in its magazine. The court defined the right of publicity as the exclusive right of a celebrity to benefit from the use of the reputation and reputation of a business. Therefore, this right is different from the right

---

<sup>30</sup> Edison v Edison PolyformMfg Co, (2005) 5 SCC (J) 5.

<sup>31</sup> Warren Samuel and Brandies Louis, *The right to privacy*, Harvard Law Review, (4) (1890) 193.

<sup>32</sup> Jenifer Hill v NCAA, 865 P2d 633.

<sup>33</sup> SubhasiniNarasimham&Thriyambak J Kannan, Right of publicity: Is it encompassed in the right to privacy, [http://www.ebc-india.com/lawyer/articles/2005\\_5\\_5.htm](http://www.ebc-india.com/lawyer/articles/2005_5_5.htm).

<sup>34</sup> Douglas v. Hello!Ltd, (2001) 2 All ER 289.

<sup>35</sup> Supra note 71, pg. 48.

against invasion of privacy and the right against the adverse portrayal of one's personality. In other words, the moral right of celebrities to their personality. In addition, the court held that damage to personal reputation or violations of the right to privacy were generally not understood as a form of economic or financial loss. In *Associated Publishers v. K. Bashyam Alias 'Arya' and ors.*<sup>36</sup> the question before the court was whether a portrait of Mahatma Gandhi, which was made by combining two photos of Mahatma Gandhi, constituted a copyright infringement. The court held that this did not constitute a copyright infringement because of the skill and effort required to produce a photo that incorporated a portion of the other two photos. However, in a sense, the plaintiff will suffer losses because his reputation as a product that has been exploited through licensing and transfer will be less valuable. Therefore, the right to publicity refers to intangible or intangible damage and property of intangible assets. It has the form of property rights, not the right to damage. The importance of recognizing this right in favor of the celebrity is to assure them of a form of intellectual property that is not intended to protect them from harm, but to assure them of some financial benefits that will be obtained through the use of the property, and this is generally considered justified as a reward or incentive for the plaintiff's work in creating intellectual property. In addition, the law is important because it is assignable and licensed to players in the media world to obtain commercial benefits. Thirdly, the right to publicity is therefore hereditary, Celebrity descendants can also take advantage of the popularity that the celebrity has created during their lifetime. Fourth, avoid unfair enrichment and misleading commercial practices. That is why this right to publicity is a negative right, meaning that only a certain group can reap the benefits and the rest cannot use celebrity status. These protect the public against deception, but only protect the celebrity to the extent that the person does not want his name to be used to mislead the public.<sup>37</sup> In the US, The general test applied is the commercial aspect v. Public interest, which means that if the importance of the digitally modified photo, is primarily to be found in its social utility as a work of art, it would be protected by the first amendment.<sup>38</sup> The society has the following benefits in recognition of the right of publicity:

- (i) Today, publicity involves huge amounts of money and the public image of a celebrity is of great value. Recognizing this valuable property as property would mean that it would be taxed as a capital asset, just like any other intellectual property.<sup>39</sup>

---

<sup>36</sup> *Associated Publishers v. K. Bashyam Alias 'Arya' and ors.*, AIR 1961 Mad 114.

<sup>37</sup> Suvrajyoti Gupta, *Digital alteration of photographs & intellectual property right*, Journal of Intellectual Property Rights, 2005.

<sup>38</sup> *Hoepker v Kruger*, 200 F Supp 2d 340 (S D N Y 2002).

<sup>39</sup> *Zacchini v Scripps Howard Broadcasting Co*, 433 US 562, 576 (1976).

- (ii) This gives economic incentive to the public for carrying out socially enriching activities.<sup>40</sup>
- (iii) Entertainers and celebrities are provided with an economic incentive to continue to invest in creating performances.

## **VI. CONCLUSION**

Celebrity rights are very important aspect of an artist or personality as well as it comes under the ambit of IPR. On considering the influence of celebrities in life of a common man and the development of jurisprudence in our country. The author is of the opinion that it is time for lawmakers to introduce specific law regarding celebrity rights that will introduce, illustrate and provide protection from misuse of rights associated with celebrities and simultaneously provide privacy to them.

\*\*\*\*\*

---

<sup>40</sup> *Montana v. San Jose Mercury News, Inc.*, 34 Cal App 4th 790.