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Celebrity Rights in the Contemporary World: IPR Protection and Way Forward

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ABSTRACT

Several people all around the world are termed as celebrities for their accolades, lifestyle or different factors affecting public perception. These celebrities are said to possess several rights relating to their attributes, commercial viability and privacy. With progression in technology and mass media such celebrities are often subjected to violation of their rights and misappropriation of their attributes. The development of Celebrity rights all around the world is at a nascent stage with no codified laws. Celebrity rights are a bundle of rights having several allied rights such as personality rights, privacy rights, publicity rights etc. and the statutory framework in India has not been able to provide for sufficient protection of these rights. Nonetheless, the IPR regime specifically the trade mark and copyright framework is of relevance to some extent. These laws however, have limitations in providing adequate protection to celebrity rights. The paper discusses an intellectual property centered attempt towards the protection of celebrity rights, the judicial precedents, the recent trends and suggests the way forward.

Keywords: - Celebrity rights, IPR, attributes, privacy, nascent stage.

I. INTRODUCTION

In the contemporary age, media has secured itself a relevant share in the society. Today, media holds the power to influence the minds of a major segment of people and the society is in a regular interface with media owing to various sources such as newspapers, internet, television, radio etc. In the present day world, any person, whether he is an actor, singer, dancer, politician, professional or any other person capable of attracting and has been able to attract attention of the public is perceived to be a celebrity. A celebrity may be defined as “an individual who, by his accomplishments, repute or style of living, or by take up of a profession which gives the public a legitimate interest in his actions, his affairs, and his character, has become a public figure”.² The Jurisprudence on celebrity rights is at a nascent stage all around the world and not much protection is accorded to them. The rights of celebrity have not been provided with

¹ Author is a student at Vivekananda Institute of Professional Studies, India.

² Daniel J. Boorstin, “The Image: A Guide to Pseudo-Events in America” 57 Harper and Row Publication, New York (1961).

adequate statutory protection. Judicial activism has although assisted with several precedents to forward the jurisprudence on celebrity rights. The Intellectual Property Rights regime is developed to provide some protection to celebrity rights. The IPR regime has progressed with the growing innovations in the field of art, technology, science etc. The intangible character of intellectual property permits it to flow freely across the borders and this nature of IP becomes an important aspect for advancing protection to celebrities. India has a fleet of successful celebrities in the field of art, films and sports industry, who contribute to the society and nation in different ways. However, the protection accorded to them is insufficient and there is an evident need for a codified framework on celebrity rights covering several allied rights and facets.

II. CELEBRITY AND RIGHTS OF CELEBRITIES

“Celebrity is a person who is known for his well- knownness”

- Daniel Boorstein

A celebrity is an individual, who has a well-known profile and commands some degree of prominence in the eyes of public and influence in everyday media. The term “celebrity” is frequently adapted to be synonymous with fortune, enormous popularity, eminence in some specific field, and easy recognition by the general public domestically or internationally. The term celebrity has been derived from a Latin maxim ‘celebritatem’, which means and translates to ‘the condition of being famous’. Public Perception is one of the vital factors in establishing whether an individual is a celebrity or not. The definition of the term celebrity as found in the Oxford Dictionary is “a famous person, especially in entertainment or sport”. The term celebrity has not been defined by the Indian legislature in any of its statutes. The judiciary has made a passive attempt at defining the term “celebrity” in the case of Titan Industries Ltd. v. Ramkumar Jewellers³ where the Hon’ble single Judge of the Delhi High Court observed that “A celebrity is defined as a famous or a well-known person. A ‘celebrity’ can be said to be simply an individual who ‘many’ people talk about or know about”.

The celebrities certainly carry several rights and sufficient protection of such rights is required. Instances of privacy breach, misuse of their names and unsanctioned commercial use of their names or images for merchandising and advertisement have been increasing beyond ignorance. Broadly the rights of celebrities can be contemplated upon based on three major categorizations and heads which are:-

³ (2012) 50 PTC 486.

- Personality rights
- Privacy rights
- Publicity rights

(A) Personality Rights

Personality rights also known as Moral rights of celebrities have a direct impact on public perception, formation of an image of the person and his popularity. The society is ought to perceive an individual in a particular way and personality is the means by which a person shall be recognized in the society. Through the creation of one's personality, an individual builds an impression for himself along with his anticipated conduct in society. Each person intrinsically contributes in his own way to the society and in accordance with his distinctive talents. An individual's contribution to society is his right, and such personality rights should be protected. Such personality rights are also rationalized by the Hegelian Meta-physical concept of property which articulates that - "*An individuals property is the extension of his personality*" similarly the contributions by an individual to the society is also an extension of his personality. The personality rights however, not codified can still be said to be an umbrella to several rights such as the right to bodily integrity, rights in family life and moral sexual relations, distinctively facets of dignity and reputation etc.⁴

In the case of Mr. Shivaji Rao Gaikwad v. M/s Varsha Productions⁵, the Hon'ble court acknowledged the personality rights of the plaintiff and subsequently granted relief. The Plaintiff is a famous and highly admired actor of India identified by the name "Rajinikanth" in India. The Defendant, in this matter used the name and caricature of plaintiff without any authorization and also titled their movie as "Main Hoon Rajinikanth". The title of the movie is similar and identifiable with no other person but the plaintiff. The movie was also alleged to contain few scenes of immoral nature. The Hon'ble Court observed that though there is no definition of celebrity rights in any statute of India; the Hon'ble Courts of India had nevertheless acknowledged such rights in several judgments. The Hon'ble Court in this case affirmed that personality rights are bestowed in those people who have acquired fame and recognition amongst the public and community.

The personality of a celebrity has embedded in it an immense amount of emotional, personage and moral values. However, instances have been seen when personality rights of celebrities have been violated on media platforms by linking them to or with products/events that have

⁴ 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).

⁵ 2015 (62) PTC 351 (Madras).

subsistence entirely conflicting to the impression of them in the society and thus occasionally it works contrary to the propriety of the celebrity.

(B) Privacy Rights

"Civilization is the progress towards a society of privacy."

Given that celebrities are perceived to be notable persons, they carry a well-known image in the society. The people of the society tend to look up to these celebrities and are seldom curious about the private facets of their life. However, these individuals might not be privy to any kind of personal interaction with these celebrities. The celebrity rights are said to have their origin from the concept of privacy, as was advanced by Samuel Warren and Louis Brandeis, who discussed that the rudimentary and fundamental concept of personal freedom covered the right to be let alone for all people.⁶ There can be many connotations to define privacy but as a concept privacy, has constantly been strongly linked with the human kind, hence the development of the concept of privacy can be said to have its foundation from the evolution of civilization. As a concept, privacy in the social context can be said to have subsisted in all civilizations. The privacy rights are standing strong with utmost recognition being accorded by the Indian Judiciary and are evidently an umbrella for celebrities in protecting their privacy. The right to privacy also now expressly acknowledges the "right to be left alone" and "right to be forgotten".⁷

The growth of the concept of privacy as a fundamental right was not plainly given out in the Constitution of India or in legal models in India. It was in the case of *K. S. Puttaswamy (Retd.) v. Union of India*⁸, where a bench consisting of 9 (nine) judges of the Hon'ble Supreme Court of India, in this landmark and historical judgment acknowledged the right to privacy to be a fragment of fundamental rights and protected in the under Part III of the Constitution of India. The Article 19 of the Indian constitution offers protection to citizens of specific rights concerning to the freedom of speech and the Article 21 affords for "protection to life and personal liberty" as fundamental right. This is where the right to privacy appears into play.

Just for the reason that an individual is well-known and has lakhs of fans is not justified to insist that s/he is not entitled to privacy or further rights. Furthermore, the simple fact that the person is celebrated and has a huge amount of following puts such people in a crucial place in terms of expressing their opinions on any specific issue or in promoting any product. The right

⁶ Samuel D Warren & Louis D Brandeis, "Right to Privacy" 4 Harv. L. Rev. 193 (1890).

⁷ *Jorawer Singh Mundy v. Union of India*; W.P.(C) 3918/2021.

⁸ (2015) 8 SCC 735.

to privacy once it was absorbed as a fundamental right is adequately broad to encroach into any domain of rights and acts. The protection of the right to privacy has become very problematic with the progression in technology and with the boom in social networking websites. Also on the other flank of the depiction is that right to privacy of an individual embraces the right to seclude personal facts.

(C) Publicity Rights

Publicity rights of a celebrity can be comprehended as rights to control the commercial significance of their persona. The right to publicity is popularly known as merchandising rights and in plain sense is the right to safeguard, control, and profit from a person's image, name, or likeness. A right perceived to be sophisticated though nascent; a critical argument in counter to their recognition is the restraint of their applicability. Formerly advanced from the concept and right to privacy, in the present publicity rights have transpired as a sui generis regime due to the rising instances of breach. Melville B. Nimmers advocated for "right to publicity" by challenging the dynamism of the article on privacy as advocated by Brandies and Warren.⁹ Melville through his observation opined that anything which celebrities required was not safeguard against irrational invasion into privacy, but a right and structure to command commercial value of identity.

*Haelan Laboratories v. Topps Chewing Gum, Inc.*¹⁰ was the first case in which it was observed that name or likeness of celebrity has a value beyond the right of privacy. In this case, Haelan Laboratories and Topps Chewing Gum were rival companies manufacturing chewing gum. The companies, in order to increase the sales of their chewing gum, marketed and sold chewing gum with cards displaying the faces and names of sports stars, mostly baseball stars. Haelan Laboratories with the help of a third party had put together exclusivity agreements with a bundle of players and Topps Chewing Gum Inc. was also continuously issuing their own cards having the players who also had signed up for the Haelan Laboratories cards. Haelan Laboratories subsequently filed an infringement suit against Topps for infringing its 'exclusive rights' to the players' images. The Court although held that the Plaintiff is not entitled to recover damages as per privacy law, ruling was passed in the favor of the Plaintiff founded on a new common law right that it labeled as the "right of publicity". It was held that individuals, particularly well-known ones, have a 'right in publicity value of their photographs' in addition to their right of privacy.

⁹ Melville B. Nimmer, "The Right of Publicity", 19 *Law and Contemp. Probs.* 203 (1954).

¹⁰ 202 F 2d 866 (2nd Cir.) (1953).

III. RATIONALE AND REASONING FOR PROTECTION OF CELEBRITY RIGHTS

In the contemporary world, there are various individuals who because of their exceptional skills and efforts have been able to accomplish a big name for themselves in the society. Their reputation and fame must not act as an obstruction for them, thus, appropriate measures to protect their rights should be present. It is said that fame and desirability of a celebrity is the product of his own personal efforts, sacrifice and relinquishment of his own privacy.¹¹ The framework ought to be such that it also allows the celebrities to profit in appreciation of their hard work. The following are the reasons to protect celebrity rights: -

- The rights of celebrities can be further licensed and assigned for commercial utilization. Owing to the skill, labor and costs put in by the celebrities to achieve such great status in the society, protection of their rights should be prioritized and they should have the absolute right of exploitation for commercial purposes.
- These rights are also subject to be inherited by the members of family consequently to be enjoyed and benefited from the popularity and status of the celebrity.
- An appropriate framework of laws can aid in averting technological redundancy and piracy i.e. the clips of audio or video of a celebrity shall not be sold in an unauthorized way or be unlawfully solicited on portals.

The necessity for protection of publicity right mainly surfaces when a commercial advertiser uses the name, picture, or likeness of a celebrity for the purpose of promoting any product or service.¹² In *McFarland v. E & K Corp.*¹³, the Hon'ble court observed that "a celebrity's identity is personified in its name, likeness, and other personal characteristics, is also the 'fruit of his labor' and develops as a kind of property eligible to legal protection".

The rationale can be said to be broadly based on two faceted justifications in the nature of Moral and Economic justifications. The moral justifications are based on the John Locke's labor theory which asserts that every celebrity merits the rewards and profits for the reason that he invested labor and had work to create a persona that has value. The theory states that certain rights relevant to celebrities are the reason for them to work hard and strive. The society as a whole will suffer if people are deprived of the fruits of their labor. A further justification is the view of unfair enrichment which says that an enterprise is not supposed to be the recipient of

¹¹ James M. Treece, "Commercial Exploitation of Names, Likenesses, and Personal Histories", 51 TLR 637 (1973).

¹² Richard B., Hoffman "The Right Of Publicity-Heirs' Right, Advertisers' Windfall, Or Courts' Nightmare?" 31 DePaul L. Rev. 4 (1981-1982).

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

profits flowing from the image, goodwill or likeness of a celebrity without sufficient compensation to the celebrity. Another moral justification in support of celebrity rights relates to the privacy laws. It endorses that a celebrity should not have any fear of privacy infringement while being associated with whomsoever he wants. However, all of these aforesaid justifications have been subjected to criticism by people like Professor Michael Madow.¹⁴ Professor Micheal opines and asks if it is actually the celebrity solely, who creates an image for himself or whether it is the community that is responsible for giving meaning and then value to a celebrity and his attributes. The economic justification advocates that the celebrity shall be freely able to exploit the commercial benefits of his name, fame and goodwill with utmost protection to his merchandising and alike rights.

IV. INTERFACE BETWEEN CELEBRITY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

The rights of celebrities can be protected under the trademark law, copyright law, and passing off action. Celebrity rights such as the right to publicity and personality rights shall be greatly related and understood with reference to the IPR framework. In the contemporary times the sphere of Intellectual Property Rights (IPR) has been developed to provide protection to the rights such as the ‘right to publicity’, which is a consequence of the right to privacy and the other bundle of rights that stem from ‘celebrity rights’. However these rights of celebrity still do not have a satisfactory established framework and approach that can have a universal recognition. The intangible characteristic of intellectual property, which permits it to exert presence moderately freely transversely the borders, offers a requirement for international enforcement of intellectual property rights in relation to celebrity rights. Intellectual property laws should hit a suitable balance among exclusivity and ownership, and also permitting an unrestricted flow of originality and ingenuity into the public sphere.

(A) Trademark law

A trademark is said to be a mark which is capable of being represented graphically and which is also capable of differentiating the goods or services of one person from that of others.¹⁵ The primary purpose of a trademark is one significant to the identification of the origin of the product or service to which it is associated. A trademark conveys to a consumer about the quality and other characteristics of a product which bears the mark. Due to this reason the

¹⁴ Michael Madow, Private Ownership of Public Image; Popular Culture and Publicity Rights, 81 CAL. L. REV. 125 (1993).

¹⁵ The Trade Marks Act, 1999 (Act 47 of 1999), S. 2(1)(zb).

consumers are able to infer the source of that product and get subtle idea about the quality and features associated with the product. Further, the law on trademark infringement forbids the deceptive use of the registered trademark. Since a trademark is basically a mark, a diversity of characteristics can be registered. Thus the name and the likeness of a celebrity can also be registered and used as a trademark, provided it fulfills certain conditions placed by the legislation in the S.14 of the Trademarks act, 1999.¹⁶

In a colossal international instance boasting the relevance of IPR for celebrities, very recently on 16th June 2021, the famous pop-star Miley Cyrus after a long fought litigation battle was successfully able to acquire a trademark registration for her name resulting from the judgment given by the EU general court (Tenth chamber).¹⁷

Distant from the above and much relevant to the India context, several Indian Celebrities professionalizing in different fields have been able to register their names and/or nicknames in India. Celebrity star chef, Mr. Sanjeev Kapoor has successfully obtained a registered trademark for his name in the mark “Chef Sanjeev Kapoor”. Mr. Kapoor applied for registration for the said trademark on 09/04/2001 vides TM application no. 1002057 in class 16. The same was granted by the registry on 06/04/2005.

Apart from these discussed above, India has long list of Celebrities such as Mr. Sachin Tendulkar, Mrs. Kajol, Mr. Amitabh Bachan, Mr. Akshay Kumar, Ms. Sunny Leone, Mr. Shah Rukh Khan etc. who have registered trademarks in connection with their name initials, nicknames or attributes. The reason behind registering a person’s name as a trademark in any class is to avert abuse of the name for business of any other item by anyone else within that class. This not only gives an opportunity to the person to safeguard his name from being linked wrongfully with a plethora of products, but also guarantees that he shall be paid each time he associates his name with a product.

The country of India has several celebrities who happen to share either the same name or surnames with other celebrity; one might speculate how the trademark regime operates in order to establish who has a better right to the trademark? The case of *Gautam Gambhir v. D.A.P & Co. & Anr.*¹⁸ clarifies this issue relating to who happens to have a favorable title to use his/her personal name as a trademark. In this case, the plaintiff and the defendant have the same name

¹⁶ *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.).

¹⁷ *Smiley Miley, Inc. v. European Union Intellectual Property Office (EUIPO)*; T-368/20.

¹⁸ 2017 SCC OnLine Del 12167.

i.e. Gautam Gambhir. The plaintiff is an international Indian cricketer. On the other hand, during the defendant's business of various restaurants, defendant achieved success and popularity in hospitality industry. The defendant used his name as a catchphrase for his restaurant business. In this case, no record was established showing that the defendant created a "false connection" with the plaintiff or used the plaintiff's reputation to transact. The court found that as long as an individual did nothing more to cause confusion with the transactions of others, he could actually claim that he used his own name in his business.

Notwithstanding some problematic issues encircling merchandising and trademark law, in a practical sense, celebrities are recommended to deliberate carefully on protecting their signs, names and further brands through trademarks, where suitable and accessible. Also any usage of names, trademarks etc. by others, for instance just for merchandising intentions, should be sternly and meticulously controlled by appropriate licenses in correct manner, for the purpose to pursue, safeguard and retain rights in the marks.

(B) Copyright Law

Protection under the Copyright regime is available to original literary, dramatic, musical and artistic works; cinematograph films; and sound recordings.¹⁹ A copyright accords with the holder an exclusive right of reproduction, adaptation, translation and storing of the copyrighted work in any form. Therefore, a diversity of work of celebrities' can be protected by way the copyright framework. All the work expressed by a celebrity in the mold of an original literary, dramatic, musical and artistic work; or in cinematograph/ sound recording may acquire an automatic protection under the copyright framework.

Copyright subsist only in original works because they are the result of the effort and intellect of the creator/author. The attractive dynamism attached with the image of a celebrity may or may not be the result of original ideas. Artistic works though, are said to include photographs, sculptures etc. But, the Copyright in relation to photographs are usually owned either by the person who clicked the photograph (photographer) or the person paying him (his employer).²⁰ This does not provide an effective modus for those looking to safeguard their rights in images as there exist no copyright attached to the mere face, name or other attributes of a celebrity.

The term celebrity does not find a definition for itself in the existing legal framework. However, a provision where they may find some relevance is the section 2 (qq) of the Copyright Act,

¹⁹ The Copyright Act, 1957 (Act 14 of 1957), s. 13.

²⁰ Justin Hughes, "The Photographer's Copyright – Photograph as Art, Photograph as Database". *Harvard Journal of Law and Technology*, Vol. 25, 2012, Cardozo Legal Studies Research Paper No. 347(2011).

1957; which defines the term “performer” as an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person “who makes a performance”. The definition of a performer is relatively narrow and shall only qualify as a subset of celebrities. Thus, a performer may or may not be a celebrity. In a recent judgment delivered by the Hon’ble Delhi High Court in the case of Krishna Kishore Singh v. Sarla A. Saraogi & Ors.²¹ Dated 10th June, 2021, The Hon’ble bench of the DHC observed that the Copyright Act, 1957, comes in relevance, but again, it does not define the term ‘celebrity’ and the most applicable and close knitted definition seen thereunder, is of the terms ‘author’ and ‘performer’ and their associated rights, who may or may not be celebrities certainly.

The concept of copyright shall also extent to cater the work in fictional form. Famous characters portrayed at real life celebrated actors in films shall find protection under the copyright regime. Such characters tend to become popular and the public is seldom clearly able to relate the character with the celebrity playing the role. In Arbaaz Khan v. Northstar Entertainment Pvt. Ltd.²², The Hon’ble bench of the Bombay High Court granted copyright to the famous character named Chulbul Pandey played by celebrity actor Mr. Salman Khan, from the movie Dabangg. The Hon’ble court was of the opinion that the character in issue is very unique and has its own style. This makes it one of a kind, exceptional and distinctively recognizable in the entire structure of the film.

The Copyright Act further protects the interests of famous personalities by extending “*moral rights*”. Moral rights attain position in the Section 57 of the Copyright Act, 1957. Moral rights are the special rights provided to the authors or creators which include the right to integrity and the right to paternity. The right to paternity is basically the right of an author to assert authorship over his original work and have it accredited to him and the right to integrity authorizes the author to restrict misappropriation or demand damages in the instance of occurrence of any kind of distortion, mutilation, modification or any other unfitting act done to his original work. Primarily the moral rights were envisioned to safeguard only literary works. The model of moral rights was later extended to cover works relating to artistic, dramatic, musical, and cinematograph films as well. Moral rights are bestowed over the creator of a work automatically entitled to which, no one else can claim. The moral right for an expression of work is deemed to persist with the creator even after their death. Moral rights subsist in tandem with and at a higher footing that copyright in certain categories of work. In general, the moral rights remain with the author of a work or pass with the author’s estate upon his demise.

²¹ CS(COMM) 187/2021.

²² 2016 SCC OnLine Bom 1812.

Distinct from copyright in a work, moral rights cannot be assigned i.e. legally transferred. Nevertheless, they can be waived. The moral rights shall be of relevance to the celebrities in protecting the integrity of their work which falls under the specified and limited ambit. However, the ownership of such work is something to be always considered.

The copyright regime in totality does not adequately provide absolute protection to celebrities as it could be seen in the case of *Miss Kajal Aggarwal v. The Managing Director, M/s. V.V.D. & Sons*²³, the appellant in this case, Miss. Kajal Aggarwal, a well-known actress of India was contacted by the respondent to promote their goods by way of commercial advertisements. The Appellant decided to do the advertisement film for the promotion of the respondent's goods and did photo sessions for the advertisement. According to the appellant, the respondent continued to misuse her profile even after the expiration of the prescribed time-period in the agreement. The agreement was only for one year. The Hon'ble HC of Madras construed the section 17(b) and (c) of the Copyright Act which pertains to the ownership of copyrighted works and observed that the respondent, being the creator, author and employer for the work became the first owner of the copyright in the cinematographic work. Ensuing to be the first owner of the said work, the statute bestows copyright on cinematographic work for a total statutory time-frame of sixty years. Hence, it was held that the respondent is eligible to the exclusive use of the said work for sixty years and not for a limited one year time period as per the clauses of the agreement.

(C) Goodwill and tort of Passing off

The tort of passing off is considered to be actionable under the common law; the objective is to safeguard the goodwill of the plaintiff accorded to his goods or services or to his business.²⁴ Celebrities may appropriately use this common law tort in case of wrongful attribution of rights or any misappropriation. The action of passing off is highly pertinent to instances of unlawful personality merchandising in which a person's name, image or other characteristics are exploited. In general, the action of passing off is a remedy against any damage to the goodwill or repute of an individual. Thus, a claim of passing off shall lie against any unsanctioned exploitation of a celebrity's 'goodwill' or 'fame' by wrongfully representing endorsement of products by a celebrity. Correspondingly, the 'wrongful appropriation of personality' can result in passing off as the celebrity is said to possess proprietary rights in the exclusive promotion for gain. The law in India identifies personality rights only in the case where the character or

²³ (2012) 1 CTC 812 (Mad) (DB).

²⁴ Arpan Banerjee, "Spill-Over Reputation in Passing Off Actions: Indian and English Law Compared", 14 Oxford univ. Comm. L.j. 21 (2014).

the individual has independently acquired public acknowledgment.

In the case of *Henderson v. Radio Corporation Pvt. Ltd.*²⁵, the plaintiffs were professional-ballroom dancers. The defendants created a record by the name of 'Strictly for dance' in which they utilized an image of the plaintiffs on the cover. The plaintiffs contended that this resulted to passing off. The court held it as unlawful appropriation of personality and professional repute of the plaintiffs. Further observed that the name of plaintiff's in regards to the material in question and belonging to the same field shall create misunderstandings in a way that the plaintiff is in connection with the goods in question.

V. ISSUES AND TRENDS VIS-À-VIS CELEBRITY RIGHTS

The celebrities in the present have to go through various problems in respect to their privacy and allied commercial rights. People, in different ways have been taking a toll over the rights of celebrities. There have been several different issues arising in this age of technology. The name and other attributes of a celebrity can be seen to be in danger because of acts such as unsanctioned merchandising, misuse of names for domains of websites, paparazzi trying to inquire into the private life of celebrities etc. To discuss, the issues glaring on celebrity rights the following aspects will be covered: -

- Character Merchandising
- Domain names vis-à-vis celebrities

(A) Character Merchandising

Character merchandising is a multi-billion dollar profit making avenue. It is defined as the use or secondary exploitation by the creator of a fictional character. Such secondary use of the subject matter can also be done by one or more of the authorized third parties. Such use can be in relation to the elemental personality characteristics of the character. The features which can be further exploited for further usage are the name, picture, appearance etc.²⁶ Character merchandising is mainly done to establish a link between the goods and the personality traits picked from the character. This helps in creating a want in the minds of the purchasers to buy such goods or avail the service exploiting the attachment a customer shall have with the character. Correspondingly, such secondary exploitation is a different manner of putting the character to use than the primary object for which it was created. Though, secondary exploitation is highly dependent on the success derived from the primary usage. Hence, it can

²⁵ (1969) RPC 218.

²⁶ Terry Andrew, "Exploiting Celebrity: Character Merchandising and Unfair Trading", 12 U.N.S.W.L.J. 204 1989, Heinonline.

be rightly said that in a way it is impossible to profit from secondary exploitation without a popular response derived from the primary use.

The term “character” can be said to include both fictional characters and real persons. In the case of real persons, there subsists an issue of dual repute. In this regards, it is seen that an individual carries repute of his own along with that derived from the character that is portrayed by him. Such portrayal of characters can be said to leave a long lasting impression on the minds of the audience at large.²⁷ Thus, it includes both celebrities as well as the traits of the character portrayed. When it extends to the aspect of commercial utilization, fictional characters can have “publicity, advertising and recognition characteristics”. These features may be put to use as the primary function or secondary function subsequently. But on the other hand and in case of real persons, the aspect of commercial value attached with the real person as a celebrity and also that of the character portrayed by him can be subject to further commercial use.

The IPR regime in relation to character merchandising plays an important part. The merchandising of characters shall not be possible if the creator of such character is not accorded with certain rights upon its creation for primary use. There shall be misappropriation of such framework without any mechanism. When a fictional character is presented in a literary work or as an artistic work, it is controlled by the copyright law and rules. In the case when a fictional character is a part of a film or a series, the producer of such movie/series shall hold the copyrights over the character. Since the basic personality characteristics of real persons and fictional characters are used in the goods, the principles of trademark law are also of relevance in the case of character merchandising. The attributes that can be protected within the scope of trademark law are the character’s name, his /her signature, character design, phrases he/she uses, etc. The case of *Arbaaz Khan v. Northstar Entertainment Pvt. Ltd.*²⁸ is of relevance here. Another case of relevance is *Chorion Rights Limited v. Ishan Apparel and Ors.*²⁹ The plaintiff in this case, claimed to be the owner of the universal trademark and secondary exploitation of the fictional character named NODDY, a cartoon character which was broadcasted on channel Pogo, and sought to stop the defendant from marketing apparel in the same trade name NODDY. Although the Court accepted the significance of protection from ill effects of character merchandising, it held that the registration for the mark was established by the defendant successfully in 1995 whereas the plaintiff’s claim on the mark was from 1997. Hence, though the plaintiff was the rightful owner of all merchandising rights in most

²⁷ Leslie A. Kurtz, “The Independent Legal Lives of Fictional Characters”, *Wis. L. Rev.* 429, 440 (1986).

²⁸ *Supra* at note 22.

²⁹ *ILR* (2010) 5 Del 481.

jurisdictions, the defendant was first party to get registration in India.

(B) Domain names vis-à-vis celebrities

When it comes to the Internet, celebrities are no different from any other e-business operators. Internet reputation is an important tool for marketing and increasing reach, providing channels for customer-related products, and providing fans with information about their favorite celebrities. The international domain name regulatory authority called Internet Corporation for Assigned Names and Numbers had accepted the Uniform Domain Name Dispute Resolution Policy subsequent to the domain name case of *McDonalds.com* that came into sight in 1994.³⁰ The policy framed subsequently provided for integration of terms for registration of disputes that might arise between the registrant and any other party over the registration and the usage of a domain name which is registered. According to the policy framed, the registration of a domain name shall be measured as abusive when the following conditions are satisfied: -

- a) If the domain name is identical or deceptively similar to a trademark, the rights of which subsist with the complainant;
- b) If the holder of the domain name has no rights or legitimate interests in regards to the domain name brought to use; and
- c) If the domain name was registered in bad faith.

Providing a celebrity with protection of his name in the form of a domain name for internet presence would prevent ill-faith website operatives from "reaping the fruits of what they have not sown". This shall prevent unlawful profits from advertising revenues and also in merely attracting attention to information on a web site that might not have been accessed if it did not use the name of the celebrity. Even non-commercial usage of a website would cause prejudice to the celebrity by not allowing him from enjoying the benefits. Due to its basic nature as a unique address, once a domain name is registered, it cannot be replicated and has exclusivity rights throughout the world. In general, domain names are considered "business identifiers" and are usually corresponding to the trademark of a company or a relevant variant of a trademark. Domain names enjoy the same protection as trademarks by law, and domain names may be subject to lawsuits for infringement and misappropriation. In the present time it can be seen that Cyber squatters often register multiple domain names containing known trademarks to sell these domain names to legitimate trademark owners for profit. Unauthorized domain names and non-descriptive registration and use of trademarks in the form of domain names or

³⁰ Jacqueline D Lipton, "Celebrity in Cyberspace: A Personality Rights Paradigm for Personal Domain Name Disputes" Akron Law Publications. (2014).

email addresses constitute trademark infringement.

In the case of *Arun Jaitley v. Network Solutions Private Limited*³¹ the defendants were wrongfully putting to use the domain name “arunjaitely.com”. Mr. Arun Jaitley, the plaintiff filed a plea before the Hon’ble court for the grant permanent injunction against the defendants so that the defendants are not able to misuse the domain name. The plaintiff also prayed for the immediate transfer of the domain name to him. Late Mr. Jaitley was a reputed advocate and also a politician. The plaintiff contended that upon the expiration of the domain name, the defendants did not transfer it to the plaintiff but transferred it to some other third party. Therefore, the Hon’ble court was pleased to pass an interim injunction and also held the domain name in dispute cannot be sold or transferred to the third party by the defendant.

VI. CONCLUSION AND WAY FORWARD

Celebrity rights are distinct, unconventional and require special attention due to its unique nature. The changing parlance and the modern techno legal world demands higher attention and protection to several aspects. The increasing commercialization is tainting the world with increasing instances of breaches and unlawful appropriations. The judiciary has repetitively identified subsistence of several facets of the celebrity rights; however, it is with the legislature to accord statutorily recognition to celebrity rights and the commercial aspects. This shall fill up the lacunae in legal framework to keep frequency with the rapid commercialization of celebrity status. While protection is afforded to celebrities through intellectual property laws, it has shown to be insufficient. There has been a sound need for a separate regime for celebrity rights. Harmonizing the societal and individualistic welfares, right of celebrities needs to be preserved independently from other species of intellectual property rights. The existing IP framework seems insufficient to absolutely accommodate all the celebrity related aspects; alternatively, any patchwork changes to the existing regime shall make more obstacles than it might remove. Any amendment in the copyright law or trade mark laws or even broadening privacy rights will not suffice but a distinct enactment with the combination of all three standpoints is needed to be undertaken by legislative authorities. It is important to recognize the various rights of a celebrity in way of adapting the dual approach as the commercial and dignitary aspect. A separate legislation shall be effective in placing a criterion for individuals to be eligible for protection of celebrity rights. The definition of celebrity rights and its ambit of protection should be very well specified. The document should be adequately placed and divided into different chapter so as to accommodate the scope of protection, what areas is

³¹ 2011 SCC OnLine Del 2660.

exactly protected, criterion to qualify for the protection and maybe also the duration of protection. Furthermore, certain limitations and exclusions should also be stipulated to celebrity rights so that undue advantage of such exclusivity right cannot be taken by any celebrity.
