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AUTHORSHIP AND OWNERSHIP IN RESPECT OF CELEBRITIES AND CINEMATOGRAPHIC WORK

SAI SRINIVAS REDDY B

BBA LLB (HONS.)

INTELLECTUAL PROPERTY RIGHTS
ALLIANCE UNIVERSITY, BANGLORE

Abstract: This study has been undertaken to understand who celebrity is. What is need for protection of celebrity rights, and also explains the constitutes celebrity rights.

Index Terms – celebrity rights, copyright.

Research problem

The legal system including both the statutes and the case laws are not adequate to redress the issues pertaining to the rights of celebrities. This is an area that still remains under development. The modern phenomenon of endorsement advertising thus, remains far from being addressed and under protection. In India, the Copyright Act does provide protection to the interests of personalities and famous public figures by extending moral rights to them.

Research question

1. What constitutes celebrity rights and what may be protected under the ambit of it?
2. What's the need for protection of celebrity rights in India?

Hypothesis

India is required to start afresh for enacting a legislation that protects the celebrity rights.

Methodology

Doctrinal approach has been used in this Research paper and is explanatory in nature, secondary sources of data has been used i.e., books, online articles, journals etc.

Scope and objective

This paper will examine the need of the celebrity rights under IPR, which aims to foster the protection of celebrity rights and their privacy. It investigates the objectives of

1. What constitutes celebrity rights
2. What may be protected under the ambit of such rights
3. The need for protection of celebrity rights in India

Existing legal situation

The legal system including both the statutes and the case laws are not adequate to redress the issues pertaining to the rights of celebrities. This is an area that still remains under development. The modern phenomenon of endorsement advertising thus, remains far from being addressed and under protection. In India, the Copyright Act does provide protection to the interests of personalities and famous public figures by extending moral rights to them. There is lack of protection for 'substantial similarity' that forms an essential part of the protection of celebrity rights.

Literature review

Banerjee B, Celebrity rights: A legal overview

The author had defined the term celebrity as the perception of it as a popular honour or validation or reward for success. It earned through skill, wit or votes and can be acquired simultaneously or over a period of time or by birth or even through alliances like business or marriage. It can also be a matter of acquiring it by chance or participation in certain events

R Rajagopal v State of Tamil Nadu

The Supreme Court in R Rajagopal v State of Tamil Nadu (1994) 6 SCC 632, on a translation of the pertinent articles of the Constitution and on examination and interpretation of international judgement, held that however the privilege to protection isn't counted as a basic right, it can surely be construed from Article 21 of the Constitution (Para 26).

Sections 38, 38A and 38B -The Copyright Act, 1957

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 fluctuate in the existing legal framework penetrating for their rights in bits and pieces. Under section 2 (qq) of the Copyright Act, 1957 celebrity may find a protection or they may locate themselves, which defines "performer" is a person who have been vested with certain economic and moral rights¹. A performer has been described as an actor, acrobat, snake charmer, musician, singer, dancer, juggler, conjurer, 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.

INTRODUCTION

The celebrities' right to privacy has been a topic of contention and has usually been seen to be disrespected and misunderstood a number of times. There have been several cases of apparent abused of such rights through misappropriation in numerous ways. Celebrities are also construed to have rights such as those of publicity and to not have their identity infringed and abused. There is always a danger of misuse and leak of their data and privacy which is why their rights become an important issue of contention. There have been numerous reporting of misrepresentation, false representation, defamation and use of images and other data, often without permission. In fact, it is not just outsiders, but employers in most cases that are the cause of the problem, using surveillance systems and like instruments in order in the garb of maintenance of theft and harassment who cause intrusion into the privacy of the employees. This is often done by use of hidden cameras, monitoring computer systems, e-mail, website and other software and like devices. Given the dangers and problems involved, recognition of rights in respect of cinematographic work is essential in the realm of intellectual property rights.

¹ Section 2(n) in the Copyright Act, 1957

UNDERSTANDING WHO IS A CELEBRITY?

In order to understand the rights in respect of cinematographic work, the first essential step is to determine and outline what is a celebrity.² The word celebrity traces its origins in a Latin word '*celebritatem*' which literally means 'the condition of being famous'.³ Consequently, actors, authors, artists, politicians, models, athletes, musicians, singers, television personalities, well-known business executives, and anyone who is capable of and captures the attention of the public attention, including even cinema falls under the ambit of the definition of celebrities. The basic criterion to determine who a celebrity is public perception.

The term celebrity was stated to be requiring a broader definition and understanding in the case of *Martin Luther King Jr. Center for Social Change v. American Heritage Products Inc.*,⁴ wherein its ambit was held to be broad enough to encompass more than the mere traditional categories of movie actors, rock stars and ball players. In fact, as per the 'direct commercial exploitation of identity' test- when a person's identity both direct in nature and commercial in motivation is being use unauthorized, by definition the person whose identity has been misappropriated become a celebrity for right of publicity purposes.

There is no absolute and direct definition of a celebrity found under the Indian Copyright Act; however, there is a reference to a performer under Section 2(qq). However, a performer is not a celebrity always and a celebrity may not be a performer at all. As per the Section 2 (qq), the word performer includes 'an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance'. Even Section 38 of the Act provides for special rights for performers. It provides for a special right of performers who appear or engage in any performance in relation to such performance and that right was extended in 1999 to continue for a period of fifty years from the beginning of the calendar year to the next year in which the performance is made. Clause 3 of the same section entails 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 performers' right. In respect of performers' rights, two terms find frequent mention them being- creative artistry and interpretative artistry. Creative artistry is when the object is separate from the artist and interpretative artistry is when the artist produces a performance that cannot be separated from the artist.

Another understanding of the term celebrity is the perception of it as a popular honour or validation or reward for success. It earned through skill, wit or votes and can be acquired simultaneously or over a period of time or by birth or even through alliances like business or marriage. It can also be a matter of acquiring it by chance or participation in certain events.⁵

² White v. Samsung Elec. Am Inc, 971 F.2d 1395, 1397 (9th Cir 1992), cert denied, 113 S. Ct. 2443 (1993).

³ Morgan Piers, The power of celebrity, available <http://www.arabianbusiness.com/the-power-of-celebrity122473.html> (26 October 2020)

⁴ Martin Luther King Jr. Center for Social Change v. American Heritage Products Inc, 694 F.2d 674 (11th Cir 1983)

⁵ Banerjee B, Celebrity rights: A legal overview, available at-<http://www.legalserviceindia.com/article/1139-CelebrityRights.html> (25 October 2020).

WHAT CONSTITUTES CELEBRITY RIGHTS?

While numerous rights are enjoyed by celebrities such as publicity rights, production rights, distribution rights, rental and lending rights, personality rights, privacy rights and so on. The major rights can be categorized under three categories. These include-personality rights, publicity rights, and privacy rights which have been detailed as follows-

1. Personality Rights

The contribution of each personality in a society is very different and done differently. It is one of the means by which an individual is recognized by others. It gives every individual a distinct identity and entails separate features and aspects. It is a tool by which an individual creates an image or perception of him or herself and the expected conduct from him or her in the society. Personality also influences the contribution of each member to the society. An influence of personality is also found on the property owned or possessed by an individual which has also been explained by Hegel in his meta-physical concept of property in which he says that – ‘An individual’s property is the extension of his personality’. Consequently, an individual’s contributions to society are also an extension of the individual’s personality.⁶

While the situation pertaining to the rights of celebrities has evolved over a period of time from the past and have been extended to include rights of privacy and publicity both, there has been a case of *Tolley v. Fry* wherein a controversy relating to the use of a picture of a popular amateur golf player to advertise came into the forefront.⁷ The Court here held the use of the picture of the golf player to advertise Cadbury chocolates as amounting to libel. The complaint by the plaintiff here was pertaining to the appearance of his image as indicating his consent to appear in the advertisement for gain or reward. Ruling it as libel, the court granted damages to the plaintiff.

2. Right to Privacy

Warren and Brandeis have put forth a doctrine of privacy which has helped in shaping celebrity rights extensively. They extended the personal freedom of an individual to the right ‘to be let alone’.⁸ Considering the glamour surrounding the lives of celebrities, the right of privacy becomes essential for them as most people wish to intrude into the lives of these celebrities and gain access and knowledge of the happenings therein.

The case of *Barber v. Times Inc.*, is an example wherein a photographer had taken pictures of Dorothy Barber during her delivery. Due to this invasion of her privacy, she filed a suit against the defendant who was held liable and damages were granted. The court also stated in the case that “in publishing details of private matters, the media may report accurately and yet - at least on some occasions – may be found liable for damages. Claims for defamation won't stand where the media have precisely detailed reality, however the media all things considered could lose an activity for invasion of celebrity's privacy dependent on comparable facts circumstances. In such instances the truth sometimes hurts.”

3. Publicity Rights

The right of publicity is a kind of copyright. It is one of the rights that bears aspects of all the three rights that have been detailed above.⁹ To control the commercial use of his or her identity is the inherent right of every human being.¹⁰ This right is also called the merchandising right and has been used as a right to exploit the economic value of the name and fame of an individual or an entity. For the same, it is essential to prove that the fame is also a form of merchandise. Therefore, the use of the fame of a public figure or a celebrity in order to promote one’s goods and can be termed as an unfair trade practice or misappropriation of intellectual property, or even an act of passing off.

⁶Datta, A., Celebrity rights: A legal overview, available at-
<http://www.goforthelaw.com/articles/fromlawstu/article31.htm> (28 October 2020).

⁷*Tolley v Fry* [1931] AC 333; (1931) 1 All ER Rep 131

⁸ Louis Brandeis D & Warren Samuel D, The right to privacy, *Havard Law Review*, 4(5)(1890), available at-
http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html (26 october 2020).

⁹ 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.

¹⁰ Keller Bruce P, 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.

The case of *Midler v. Ford Motor Co & others*,¹¹ involved an advertising company that wanted to use a song by Bette Midler, the plaintiff in a commercial for Ford cars. The defendant was not granted a license for the song which was available and procured using the back-up vocalist of the song Ula Hedwig who sang the song again with the directives “to sound as much as promising like the Bette Midler record”. Due to this, Ms. Midler sued the defendant when the commercial was aired on television. The defendants took the defence under Section 3344 of the Civil Code stating that they hadn’t used the “name, voice, signature, photograph or likeness” of Ms. Midler. The court reasoned stating that Section 3344 involved the publicity right of living people was as one of the property and held that the “common law right of publicity was protected against an appropriation of the attributes of one’s identity”. Given the use of similarity to Plaintiff’s voice, the defendants were held liable. This established that the right of publicity granted entertainers or other public figures the exclusive control over the commercial exploitation of their name and other aspects of their personality as interpreted in this case.

In India the evolution of rights in this regard is still at a nascent stage. The personality rights have not been crystallized in the form of any theories and are distinct and separate from the right against “invasion of privacy” or right against “adverse portrayal of one’s personality”. Earlier, the performers possessed only a personality right over their performances including the right of publicity, right to voice, right to likeness and right to privacy. But given the pace of technological growth, now recording of live performances and live streaming is possible making the unauthorized recording of live performances an easy task. Similarly, in the field of animation the possibility to create humans through computer generated look-alikes has also become possible. This has prompted development of issues, for example, unapproved imaging of famous people i.e. celebrities and computerized control so as to make new pictures and film of actors. This is also leads to concerns pertaining to defamation.

THE NEED FOR PROTECTION OF CELEBRITY RIGHTS

After an analysis of the kinds and categories of the rights in respect of cinematographic work and the work of celebrities, it is important to understand the need to protect their rights. These rights are usually assignable and can be given access to through use of licenses for commercial gains. Given the monetary advantages and benefits associated with the commercial use of such rights, the recognition of them as a property would also require their treatment as any other property for tax purposes, such as intellectual property. This enables the creation of an incentive for the celebrities as well as the public that gains access to them. It is to be also noted that the right to publicity can be inherited and so the descendants can gain from the popularity of celebrities during their lifetime.

The following means have been described as ways of providing the requisite protection to the rights of celebrities.

Ways of providing protection to these rights in the realm of intellectual property

1. Trademark

The recognition of trademark has two aspects of its significance in context of these rights. First and foremost the registration of trademark in respect of any aspect of a celebrity’s personality indicates the fact that the celebrity can authorize assignment or licensing of his or her personality for the merchandising purposes in respect of goods and services for which registration has been sought. Second, through this, the celebrity obtains a means of defending certain aspects or features of their personality which can be prevented from unauthorized use. The trademark protection is separate from the tort of passing off or the Trade Practices Act 1974.¹²

In India the protection can be sought by celebrities and commercial partners under the Indian Trade Marks Act, 2000, even though the same is limited in its scope. Section 2(1) of the Indian Trade Marks Act, 2000, provides for the registration of any ‘sign capable of distinguishing goods and services of one person from

¹¹Midler v. Ford Motor Co. & Others (1988) 849 F.2d 460 (9th Cir).

¹² Black Hilary May, The role of trademark law in the protection of celebrity personality, Media & Arts Law Review, 7 (2) (2002) 105, 106.

another, any word (including personal names), numeral, design, and shape of goods or their packaging' as a trademark. Courts have also granted protection to film titles, characters and names under the trademark laws.¹³ One of the cases to have dealt with this first was *Star India Pvt. Ltd. v. Leo Burnett India (Pvt.) Ltd.*,¹⁴ however the jurisprudence in this regard involving character merchandising has not evolved and developed completely yet.

2. Copyright

While there does not exist much clarity with regard to protection of rights in respect of cinematographic work and celebrities under copyright, there exist some scope of protection. In *Sim v. Heinz & Co. Ltd.*,¹⁵ the court ruled that "copyright is neither granted to voice, likeness nor other identifiers of a persona". It stated further that the protection under copyright provides exclusive, though limited rights of protection and provides celebrities with a right to authorize the production, creation of a derivative image, sale or display of (for instance, a commissioned photograph of themselves by others).¹⁶ In order to succeed in an action or suit with regard to copyright infringement, the individual must prove his or her ownership of the copyright in respect of that image and its copying. This proof is the major area where the maximum problems are faced by celebrities.

Similarly, with regard to books and literature where celebrity authors are involved an adaptation, when it is original can also be given protection under the copyright law. The Indian Copyright Act, 1957 also bring within its ambit and grants protection to sketches, drawings, etc., that can be called artistic work. Further, Section 14 of the Act also grants an exclusive right to be able to authorize the reproduction of their work to others to reproduce in any form that includes the conversion of a two dimensional work to three dimensional works and vice versa. The courts have further broadened the protection in this regard to include even fictitious characters that are covered within the ambit of artistic work. An example to understand the protection under copyright can be seen in the case of *Raja Pocket Books v. Radha Pocket Books*,¹⁷ wherein Nagraj-the Snake King a the popular character of a children's comic book, was deemed to be protected under the copyright law however, no such protection was extended to the name or image of the celebrity in India.

The International scenario and protection therein

Across the globe as well, the concept of publicity rights has evolved. This is witnessed in numerous jurisdictions through various treaties and conventions and laws. The protection of performers' rights is seen in most of these instruments and covenants. Some of these have been briefly outlined below in order to gain a holistic view of the situation internationally.

1. Rome Convention

This Convention has been one of the earliest and the first instruments to be deal with the rights of performers, producers of phonograms and broadcasting organizations. Under Article, the performers have not been granted rights regarding the secondary use such as in the case of films. The protection of moral rights is not available under this Convention and the right to secondary use is also limited to equitable remuneration.

2. TRIPS

As per Article 14(1) of TRIPS requires that performers be granted 'the possibility of preventing' the acts such as fixation of their performance on a phonogram, reproduction of such fixation and broadcasting of their live performances. Clause 5 of the Article also provides for the extension of the term from 20 years to 50 years. The distinguishing feature about this Convention is the powerful enforcement mechanism that it has and the linkages with the WTO dispute settlement mechanism which provide for its compliance and abeyance.

¹³ Titus & C Advocates 2008, India guide: Character merchandising in India, available at <http://www.asialaw.com/Article/1970665/Channel/16681/India-Guide-Character-merchandiingin-India.html> (3 November 2020).

¹⁴Star India Private Limited v. Leo Burnett India (Pvt) Ltd (2003) 2 B C R 655.

¹⁵Sim v. Heinz & Co Ltd, [1959] 1 WLR 313 1959.

¹⁶ Prather M, Celebrity copyright law, available at http://www.ehow.com/about_6461739_celebrity-copyright-law.html (28 october 2020).

¹⁷ Raja Pocket Books v. Radha Pocket Books (1997) (40) DRJ 791.

3. *WIPO Performance and Phonograms Treaty (WPPT)*

This treaty came into existence for the protection, maintenance and development of the protection of the rights of performers and producers of phonograms in an effective and uniform manner. It recognizes the need for introduction of new international rules so as to provide for adequate solutions to the questions raised by modern development, the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms, as well as the ability and need to maintain a balance between the rights of performers and producers of phonograms keeping in mind the larger public involved. Here, in particular, education, research and access to information are given emphasis.¹⁸ Article 5 of the Treaty also extends the provision of rights in the moral sense by allowing a performer to be identified as the performer of his performance except under certain conditions, thus, the rights are not limited to merely those in economic terms.

Additionally, performers are also given the rights such as the economic rights of performers in their unfixed performances (Article 6), right of reproduction (Article 7), right of distribution (Article 8), (Article 9) define right of rental, and right of making available of fixed performances has been defined under (Article 10). Therefore, the Treaty provides not just the prevention of the possibility of misuse and infringement but in fact grants an exclusive right to authorize.

THE INDIAN SCENARIO

The legal system including both the statutes and the case laws are not adequate to redress the issues pertaining to the rights of celebrities. This is an area that still remains under development. The modern phenomenon of endorsement advertising thus, remains far from being addressed and under protection.

This issue has been extensively discussed by the Hon'ble Delhi High Court, in the case of the *ICC Development (International) Ltd. v. Arvee Enterprises*,¹⁹ wherein it stated the following- "The right of privacy developed the concept of the right of publicity and can acquire just in a distinct person or in any distinguishing marks of a person's character like his personal characteristic, name, voice, signature and so forth. An individual may get right of publicity by uprightness of his relationship with a function, sport, film, and so forth. Any push to remove the right of publicity from the people, to the coordinator/non-human substance of the function would be violative of Articles 19 and 21 of the Constitution of India - No person can be consumed. The right of publicity vests in an individual and only he is qualified for benefit from it.

" This remains one of the most comprehensive discussions by the Indian courts on this subject.

From this judgment also flows the idea of image rights in India which have been inferred to be flowing from the right of privacy that has been recently recognized through developments and growth in interpretation of Articles 19 and 21 of the Constitution. This approach is in contrast to the approach involving the treatment of publicity rights as constituting commercial property.²⁰

However, there is felt a need to adopt a different approach than the constitutional one adopted by the Delhi High Court. Property rights must be seen as an aspect of an individual's personality. The rights with respect to property are themselves creation of law and the status of property is given based on the fulfilment of certain criteria. There is a need for the statutory recognition of the publicity rights as individual rights. There also exists a need for the recognition of the commercial and ownership aspects of the publicity rights. As with all rights, and further given the importance and stakes of public interest being high herein, there is a need for the balancing of these stakes with the publicity rights. There is also adequate attention and importance to be given to the individual celebrity's interest here. Further, to respect the comprehensive character of the right, there is a need to also provide for exceptions for freedom of speech expression and other bona fide uses such as those recognized in the Copyright Act.

¹⁸ The Preamble, The WIPO Performances and Phonograms Treaty (WPPT), available at http://www.wipo.int/export/sites/www/treaties/en/ip/wppt/pdf/trtdocs_wo034.pdf (28 October 2020).

¹⁹ *ICC Development (International) Ltd. v. Arvee Enterprises* (1077) 433 US 562.

²⁰ Pareek A et al., Protection of celebrity rights-The problems and the solutions, *Journal of Intellectual Property Rights*, 11 (6) (2006) 420.

The situation in India can be understood using the controversy associated with the name of Mahatma Gandhi. Mr. Tushar Gandhi, the extraordinary grandson of Mahatma Gandhi, planned to concede CMG, a worldwide organization, selective promoting rights to utilize Mahatma Gandhi's name for publicizing their items. However, given the national sentiment involved in the situation, the granting of these rights was considered as blasphemous and there were objections raised to the same. In his support, Mr. Gandhi made a reference to the instance of the previous situation where he was could not serve summons to Nikki Bedi or to Rupert Murdoch when the gay activist, Ashok Row Kavi had made certain defamatory statements against Mahatma Gandhi. He used this to state that his actions were guided by the intention to “secure the name of Mahatma Gandhi and not allow it to be used in an irreverent manner” due to the lack of laws to deal with the same. He also stated that this contract was also to protect Mahatma Gandhi's image abroad. The use of the name Mahatma Gandhi is specifically prohibited under the Emblems and Names (Prevention of Improper Use) Act 1950 and there was no evidence that he could prove of copyright with respect to the name and image. Consequently, due to the lack of law on his side and the severe amount of public unrest that this caused, he withdrew the contract altogether.

In India, the Copyright Act does provide protection to the interests of personalities and famous public figures by extending moral rights to them. This issue has been dealt with by cases such as the *Smt. Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd and Another*²¹ and *Amar Nath Sehgal v. Union of India and Others*.²² There have been controversies when films have been made on celebrities' lives and personalities that have been publicly prominent as well as when historic facts have been used. As such the settled position of the law remains as to the historic facts being not subject to copyright. Two prominent cases in this regard include the *Bala Krishnan v. R Kanagavel Kamaraj and Others*²³ and *Phoolan Devi v. Shekar Kapoor and Others*²⁴. In the *Bala Krishnan case* the dispute arose pertaining to the copyright over the life history of a national leader called Mr. Kamaraj. There were objections raised by his grandson and the legal heir against the producing of a TV series on his life. The producers on the other hand contested against the claim over copyright on the life history of a national leader, i.e. the argument of the historical fact not being *per se* subject to copyright. They further used the argument of the information being in the public domain and thereby there arising no need of consent of the heirs. The court allowed the release and production of the film or the show in the matter as the reputation was not under threat or at stake. Akin to this case, in the *Phoolan Devi case* as well, the subject of the film, Phoolan Devi herself raised objections as to the use of distorted facts in the film. Here, given her concerns as to starting a new life and her image being at stake, the court stated that there was requirement of her consent and the thorough consideration of factors that could possibly affect her private life before the release of the film. The conclusion here was that the celebrity was allowed to protect their name and image as a constitutional right.

Even the Trademark Act of 1999 prohibits the use of personal names under Section 14. In an application pertaining to the registration of a trademark wherein there is a false suggestion as to a connection with a living person, or a person whose death took place within 20 years prior to the date of application for registration of the trademark, there are prohibitions as to the use. Consent of such living person in these cases may be required to be furnished by the Registrar. Further, some non registrable names include Sri Sai Baba, Lord Buddha, Sri Ramakrishna, Swami Vivekananda, Sri Sarada Devi, The Sikh Gurus and Lord Venkateshwara as per Sections 16(1) of 1940, 23(1) of the Trade and Merchandise Act 1958 and Section 159(2) of the Trademark Act, 1999. Overall, the protection in respect of their names and images is available to the celebrities in India which can also be claimed by their legal heirs when their reputation is at stake.²⁵

Justice Krishna Iyer has also opined in the case of *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association and others*,²⁶ that “an artist enjoys copyright in the musical work whereas, the film producer is the master of the combination of artistic pieces. The composer as opposed to the singer gets protection in musical work. He opined that both deserve recognition”.

²¹ *Smt. Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd. and another*, 1986(2) Arb. L. R. 151 (Delhi).

²² *Nath Sehgal v. Union of India and Others*, 2002 (2) Raj (Delhi) 248.

²³ *Bala Krishnan v. R Kanagavel Kamaraj and others* (2000) (3) Ar L R 622.

²⁴ *Phoolan Devi v. Shekar Kapoor and others* (1995) P T C 46.

²⁵ Kumari T V, *Celebrity rights as a form of merchandise- Protection under the intellectual property regime*, *Journal of Intellectual Property Rights*, 9 (2) (2004) 134.

²⁶ *Indian Performing Right Society Ltd v. Eastern Indian Motion Pictures Association and others*, (1977) AIR, SC 1443.

WHAT MAY BE PROTECTED?

Certain subjects that could be afforded protection include-

1. Performances

The coverage of performances under the realm of intellectual property remains under controversy as performances of actors are not considered as protected by copyright laws. Section 13(4) provides that the separate creative parts within a film are subject to copyright protection. The decision in *Manisha Koirala v. Shashilal Nair*,²⁷ decided upon the availability of protection to an actor's on-screen image the existence of the need for protection against distortion or dishonor. In the case of *Fortune films v. Dev Anand*,²⁸ it was held that acting in films does not fall under any category of work. In fact, the right of a performer is also expressly excluded under Section 38(4) wherein it is stated 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." Moral rights are also provided to only authors and not actors who are not afforded protection as an individual category, nor under the category of authors.

2. Digital Images

The other area of contention in realm of intellectual property continues to be the digital images. The existence of an author's copyright over digitally made graphics or cartoons, especially in the case of well known personalities leads to a conflict between the right of an actor in his or her image and the right of the author.

CONCLUSION

In India, there exists no exclusivity in respect of the right to authorize public performances and broadcast them. There is lack of existence of any moral rights, although economic rights are available. There exist provisions affording protection to the secondary rights to prevent public performance or broadcasting or recordings which are made without the performers' consent and to receive equitable remuneration. There is lack of protection for 'substantial similarity' that forms an essential part of the protection of celebrity rights. Given the growth in the field of cinema and commercialization of the glamorous celebrity status, it is essential that statutory protection is available to protect rights in respect of these celebrities and their work. While damages may be used to prevent infringement and violation, the judiciary and the legislature must recognize the various other aspects of the lives of celebrities and their work to provide for uniformity and adequate protection under the law.

²⁷ *ManishaKoirala v. Shashilal Nair* (2003) (1) AIIMR 426.

²⁸ *Fortune films v. Dev Anand* (1079) AIR, Bom 17.

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