

Synopsis

On

PUBLICITY RIGHT: AN INTELLECTUAL PROPERTY PERSPECTIVE

Submitted towards the partial fulfilment of grading for the 1st semester of LL.M
Degree.

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PHAGWARA – 144411, INDIA

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CERTIFICATE

I hereby certify that this synopsis entitled “**Publicity Right: An Intellectual Property Perspective** ” submitted for the award of Degree of Master of Laws (LL.M) is a record of research work done by the candidate “Divya Jain” during the period of his/her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India, and that the synopsis has not formed the basis for the award of any Degree, Diploma, Associateship, fellowship or other similar titles to the candidate. I further certify that this synopsis represents the independent work of the candidate.

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- Divya Jain

Table of Contents

1. Certificate.....	1
2. Declaration.....	2
3. Acknowledgement.....	3
4. Introduction.....	5
5. Subject of research.....	20
6. Area of research.....	20
7. Research topic.....	20
8. Research objectives and research questions.....	20
9. Hypothesis.....	22
10. Research Methodology.....	22
11. Scope of Study.....	23
12. Literature Review	
a. Articles.....	23
b. Cases.....	24
c. Book.....	35
13. Proposed Chapterisation.....	35
14. Bibliography.....	39

1. Introduction

“A celebrity is a person who is known for his well-knownness...

He is neither good nor bad, great or petty. He is the human pseudo-event.”

- Daniel Boorstin¹

Today the TV's, internet, mobile, etc. are all bombarded with advertisements, either for the sale of a product² or for the purpose of knowledge, even for the promotion of movies etc. all these advertisements signs famous people whom we call as “celebrities.” They can be actors of movies, sportsman, education, politicians, business man, scientist, novelist, comedians, etc. These are all those famous people, who due to their hard work have reached at that level. These are those celebrated personalities where the people, just from their voice, or from their signature, or just from a picture of their eyes, or likeness (eg. Robots or mannequins dressed and potrated like them), can identify who they are.

The persons who have become “celebrity” have put in a lot of their labour, many sleepless nights, to gain that status. We all know how Shahrukh Khan, who came from nothing, is now a face recognized by all and have reached at such a level where most of the people want to be like him. M.S. Dhoni, again, a child having no background in cricket, purely through his hard work, skill in cricket, now plays for Indian Team, and have also lead them to many victories, being the captain of the India Team.

Right of publicity is also been recognized as a part of intellectual property right. A person gets the protection under the intellectual property right, as they have done the labour, used their body and mind and produced something which is unique and the same thing is done by the Celebrities, they put in efforts, their

¹ Garima Bhdhiraja, “Publicity Rights Of Celebrities: An Analysis Under The Intellectual Property Regime” *NSLR* 85-108.

²Should we have publicity right in the U.K. Available at: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjz87e1uM_XAhXLN48KHcu9DWsQFggnMAA&url=https%3A%2F%2Fwww.kent.ac.uk%2Fflaw%2Fip%2Fresources%2Fip_dissertations%2F2005-06%2FE_McGuckin.doc&usg=AOvVaw1cELifLkDOtCsYFZZpO-8Z (Visited on November 10, 2017).

mind and body and as a result of it, produce something which is unique, because of which they get recognition and the status of “celebrity” or “famous person”.

The names like Shahrukh khan, Kajol, Selena Gomez, Taylor Swift, Tom Cruise, Amitabh Bachchan, Aishwarya Rai, Chetan Bhagat, Annie Leibovitz (photographer), Rohit Shetty, etc. all their names, work as a trademark for them. Whenever their names are in use, we are able to associate the names to them directly. How are we able to do that? We are able to do it because we are familiar with their names, images, voices, as we have seen them many times in films, TV shows, etc. Nobody is allowed to use their images, or to imitate their famous moves. But their image, name, likeness, voice are sometime used without their permission, or without proper compensation, and thereby the celebrities are arguing that they should have “legal control” over their own image, voice, name, likeness³, as the unauthorized use can lead to deception or degradation in their value, as their image, name voice are intangible from them. There are many people who are opposing such thought, as according to them, they have voluntarily entered into such profession, the nature of the work is such it invites publicity, and hence when they enter into such a contract all their rights, that is, on the use of their name, image, voice, etc. are submitted to the contractor and their legal control over it exhausts.

The problem of their likeness being misuse can be protected under Torts as passing off. The companies who have entered into contract with the celebrities demand that they surrender all their rights in their name, voice, signature, image, etc. to them. But what if they misuse such authority, then the celebrities have the remedy to approach the court under the breach of contract. But all these remedies are not proper remedies, these remedies are not able to protect the celebrities to a greater extent, and hence the demand for the recognition of “right

³ Should we have publicity right in the U.K. Available at: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjz87e1uM_XAhXLN48KHcu9DWsQFggnMAA&url=https%3A%2F%2Fwww.kent.ac.uk%2Fflaw%2Fip%2Fresources%2Fip_dissertations%2F2005-06%2FE_McGuckin.doc&usg=AOvVaw1cELiLkDOtCsYFZZpO-8Z (Visited on November 10, 2017).

of publicity” arises. Right of Publicity gives a legal control to the celebrities over the use of their name, voice, image, signature, likeness etc.

The right of publicity when first recognized, was recognized as a part of right to privacy. In the case of *National Medical Ltd. V Jooste*⁴, Justice Harms defined right to privacy as:-

“Privacy is an individual condition of life characterised by exclusion from the public and publicity. The condition embraces all those personal facts which a person concerned has determined him to be excluded from the knowledge of outsiders and in respect of which he has the will that they be kept private” or can be described as a right to be let alone.

The Supreme Court in the case of *Justice K.S.Puttaswamy (retd.)...V Union of India and Ors. (2017)* on the ambit of right to privacy held that:-

“A right to privacy encompasses the competence to determine the destiny of private facts... The individual concerned is entitled to dictate the ambit of disclosure ...”

According to this, an individual has the right to control what information should be disclosed to the public. A celebrity or an individual has a right to protect their reputation from being harmed and such protection is not only need against false information being leaked but in some cases even against truthful information being made public. Anyone cannot pass an accurate judgment just because they know some private details of the celebrities or an individual’s life. People have a habit of making judgements in haste, they judge people badly out of context, without hearing the whole truth. Privacy in these cases lets people to protect themselves from these types of judgments. This dissertation will analyse how right of publicity is a part of intellectual property right, and at the same time how it can be different from them and hence should be recognized as a separate right.

⁴ 273 (1996).

1.1 Publicity Right:-

Right of publicity as defined in Black Law's Dictionary: "The right to control the use of one's own name, picture, or likeness and to prevent another from using it for commercial benefit without one's consent."⁵ The Right of publicity also known as personality right can be defined as "the right to control the commercial use of one's identity⁶ or the right to control the use of one's name, voice, image and likenesses for the commercial purposes."⁷

Right to publicity basically have three elements:- "name, image and likeness"⁸ and the right of publicity is also referred as property rights, as the individual has control over commercialization of his own name, image, voice, signature, photograph, likeness, distinctive appearance, gestures or mannerism⁹. If one wants to commercialize the above, they have to pay revenue for the same. The same thing happens with property, when one wants to sell it or even rent it, they get a price for the use of that property. The right of publicity has evolved from the right of privacy. To understand the connection between the right of publicity and the right of privacy, we need to understand what right of privacy is? Right to privacy in broader senses can be understood as, a person's personal life is left alone and is not a part of the public scrutiny.¹⁰ In the similar sense right of publicity is not the commercialisation of one's name, image, voice, likeness, etc. that is preventing the public to use their name, image and likeness for gaining unauthorized profit. The right of publicity for the first time was defined by Samuel Warren and Louis Brandeis, in 1890 in an article of Harvard Law Review as the right to "to be left alone." Following their lead William Prosser

⁵ Bryan A. Garner, *Black's Law Dictionary* (St. Paul, Minn, 1999).

⁶ A Brief History of the Right of Publicity, available at: <http://rightofpublicity.com/brief-history-of-rop> (Visited on November 07, 2017).

⁷ Stacey L. Dogan and Mark A. Lemley, "What the Right of Publicity Can Learn from Trademark Law" 58 *SLR* 1161-1220 (2006).

⁸ Right of Publicity and the Intersection of Copyright and Trademark Law, available at: <https://digitalcommons.law.ggu.edu/pubs/484/> (Visited on October 12, 2017).

⁹ A Brief history of the right of publicity, available at: <http://rightofpublicity.com/brief-history-of-rop> (Visited on November 07, 2017).

¹⁰ Right to privacy: constitutional rights and privacy laws, available at: <https://www.livescience.com/37398-right-to-privacy.html> (Visited on November 07, 2017).

[Privacy 48 CAL.L.Rev 383 (1980)] has enunciated the personal right of privacy into four categories:-

- 1- Protection against invasion into one's private affairs
- 2- Non disclosure of one's embarrassing private facts.
- 3- Protection against false publication before public.
- 4- Remedies for misuse of one's name or likeness for commercial purposes.

The first three rights tends to protect a person's right to privacy but the fourth right doesn't seem to fit well with that concept, rather it is more a protection of personal right. The basic difference between the right of privacy and the right of publicity can be termed as, the right to privacy is not a statutory made law but a right which the courts at various levels have recognized, were as right to publicity has found its way in various state statutory laws as well as many case laws.¹¹

In India the right of publicity was for the first time recognized as the right of privacy by the Supreme Court in the case of *R Rajagopal vs. State of Tamil Nadu*, the court held that, "*the first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent.*"¹²

Right of publicity has evolved as a separate branch rather than being a part of right to privacy, because these two rights are different in nature, were the right of publicity gives to an individual a right of property in his/her identity. The right of privacy protects an individual from all the emotional anguishes that one faces if any false facts especially private in nature are displayed before the public.¹³

The right of publicity was for the first time coined by Judge Frank in the case of *Haelan Laboratories vs. Topp Chewing Gum, Inc.* 202 F 2d 866 (second circuit

¹¹ Right of Publicity and the Intersection of Copyright and Trademark Law, available at: <https://digitalcommons.law.ggu.edu/pubs/484/> (Visited on October 12, 2017).

¹² Right of Publicity in India- an Unfinished Story, available at: <https://spicyip.com/2016/01/right-of-publicity-in-india-an-unfinished-story.html> (Visited on November 11, 2017).

¹³ Right of Publicity, available at: <http://corporate.findlaw.com/litigation-disputes/right-of-publicity.html> (Visited on November 14, 2017).

court) (1953), no judicial rationale was offered for the new right except that without it, prominent persons would be denied image revenues and would thus feel “sorely deprived.”¹⁴

Justice White cemented the foundation of right of publicity in the case of *Zucchini vs. Scripps-Howard Broadcasting*¹⁵, in this case Zucchini was a famous “Human Cannonball” and his whole 15 second act was shown in a local news. His contention was that, the public came to see his performance, and if the same is shown on the television then the public won’t be interested in coming and watching the performance live and hence he will face losses. The Supreme Court recognized Zucchini’s right of publicity and rejected the Broadcasting Company’s First and Fourteenth Amendment defences. The court also said that, the decision is not just to provide compensation for the performance but also to provide “an economic incentive for him to make the investment required to produce a performance of interest to the public.”

*ICC Development (international) Ltd. V. Arvee Enterprises*¹⁶ was the only authoritative case on publicity right in India, which came for Delhi High Court. The Delhi High Court held that “*The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual’s personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event...*”¹⁷

¹⁴ Garima Bhdhiraja, “Publicity Rights Of Celebrities: An Analysis Under The Intellectual Property Regime” *NSLR* 85-108.

¹⁵ 433 U.S. 562, 576 (1977).

¹⁶ 2005 (30) PTC 235 (Del.).

¹⁷ Right of publicity in India- An Unfinished story, available at: <https://spicyip.com/2016/01/right-of-publicity-in-india-an-unfinished-story.html> (Visited on November 11, 2017).

A Celebrity can object on the use of her name and/or likeness in the commercial field, if such use is likely to cause confusion of such a nature that they believe that the celebrity was recommending the product.¹⁸

The Right of Publicity is often confused with the intellectual property family, copyright and trademark.¹⁹ Publicity right in the form of performers' right or celebrity right, producers of Phonograms and Broadcasting Organizations are given protection at international form as well, within different conventions and treaties to which India is also a part of. Some of the conventions and treaties are Rome Convention, Trade related aspect of Intellectual Property Rights (TRIPS) under Article 14(5) and the WIPO Performances and Phonograms Treaty, 1996 (WPPT).²⁰

1.2 Intellectual Property Right and Right of Publicity:

Intellectual property rights as defined under Black Law's Dictionary:-

“1- A category of intangible rights protecting commercially valuable products of the human intellect.

2- A commercially valuable product of the human intellect, in concrete or abstract form, such as a copyrightable work, a protectable trademark, a patentable invention, or a trade secret.”²¹

Intellectual property rights have been made a statutory law in the modern era, but the concept of using of the marks for recognition purposes, giving of monopoly rights to the inventors, and artists, etc. was prevalent in the ancient times as well. Even the scientist have found proof of the use of the different

¹⁸ The right of publicity: A doctrine gone wild?, *available at:* <http://www.ipwatchdog.com/2010/03/11/the-right-of-publicity-a-doctrine-gone-wild/id=9647/> (Visited on November 07, 2017).

¹⁹ A Brief History of Right of Publicity, *available at:* <http://rightofpublicity.com/brief-history-of-rop> (Visited on November 07 2017).

²⁰Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Right: Protection under IP law”*16 JIPR* 7-16 (2011).

²¹ Bryan A. Garner, *Black's Law Dictionary* (St. Paul, Minn, 1999).

marks on the articles during the evacuation in Egypt.²² In the 500 BCE a Greek state, Sybaris, made it possible to get one year patent protection for “any new refinement in luxury.”²³ Since then intellectual property rights have grown in different fields, such as geographical indication, integrated circuits and even designs have been recognized as a part of intellectual property rights and monopoly rights are given to the owners for the same. Intellectual property rights are protected at international forum as well as at domestic level of different countries in the form of statutory laws enacted by the legislatures.

Publicity rights are emerging as a part of the Intellectual property rights. It cannot be argued that the celebrities invest a lot of their energy and time to nurture their public image, and to use their image without giving proper compensation or without their permission should be considered as wrong, as it is not that only in one day a celebrity gets famous, it takes lot of time on the part of the celebrity to get to the position where his name, image, voice is given recognition by the public.²⁴ It can be agreed that the celebrities should be given protection for the same. In some of the states the protection and remedies are provided in relation to publicity right are given under the Trademark law, the Copyright law or the Passing off action.

The right to publicity is comparatively a new concept as compared to copyright and trademark. The term ‘right to publicity’ came to be known in the latter half of the 20th century. Publicity right have some similarities with the copyright law and the trademark law. The trademark law basically protects the general public by not allowing the use of the confusing and similar trademarks and also provides protection to the owners of the famous brands from the dilution of their marks.²⁵ The main aim for providing publicity rights to the celebrities is to give them control on the unfair use of their name, image, voice, likeness, etc. in this way right to publicity is similar to the trademark law. Trademark registration

²² History and Development of Trademark law, *available at:* https://www.iip.or.jp/e/e_publication/ono/ch2.pdf (Visited on November 06, 2017).

²³ History of Patent Law, *available at:* <http://altlawforum.org/publications/a-history-of-patent-law/> (Visited on November 06 2017).

²⁴ Right of Publicity and the Intersection of Copyright and Trademark Law, *available at:* <https://digitalcommons.law.ggu.edu/pubs/484/> (Visited on October 12, 2017).

²⁵ Lynne M.J. Boisineau, “Intellectual Property Law: The Right of Publicity and the Social Media Revolution” 30 (3) *vacation law* 66-67 92013).

provided to the celebrities work in two ways, first, by giving them registration, the celebrities can give authorized assignment or licensing for the use of their name, voice, likeness, image etc. for the merchandising purpose. Secondly, the celebrities get a means to protect the unauthorized use of their name image voice likeness, etc. by way of suit for infringement of trademark under the Trademark Act.²⁶ In India section 2(1) of the Indian Trademark Act, 1999 allows registration for ‘any sign capable of distinguishing goods and services of one person from another, any word (including personal names), design, numerical and shape of goods or their packaging’ as trademark. *Star India Private Limited v. Leo Brunett India (Pvt) Ltd.*²⁷ was the first case in India that dealt with character merchandizing.

Right of publicity and copyright law are not much similar in nature, but the connection can be found by way of section 38 of the Indian Copyright Act 1957: “to prevent unauthorized marketing of one’s performance.”²⁸ The images in the print form can get registered under The Copyright Act 1957. In the case of *Titan Industries Limited vs. M/s Ramkumar Jewellers*, the defendant was making unauthorized use of a picture of Amitabh and Jaya Bachchan on the billboards. The same picture was owned by Titan. The defendant had not taken the permission of the plaintiff or the Couple for the use of the Picture. The Delhi High Court held that the defendant had not only infringed the plaintiff’s copyright but has also defrauded the couple’s personality rights or their publicity right. The court said: “when the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialise their identity but that the right to control when, where and how their identity is used should vest with the famous personality.”²⁹ In *Sim v. Heinz*

²⁶ Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Right: Protection under IP law”16 *JIPR* 7-16 (2011).

²⁷ (2003) 2 B C R 655.

²⁸ Celebrities’ rights, available at: https://www.slideshare.net/altacitglobal/celebrity-rights?qid=e26c35cc-a0d0-4ed5-9119-94a608762d7e&v=&b=&from_search=4 (Visited on November 13 2017).

²⁹ Right to publicity and possible contractual breach, available at: https://www.slideshare.net/altacitglobal/right-to-publicity-amp-possible-contractual-breach?qid=e26c35cc-a0d0-4ed5-9119-94a608762d7e&v=&b=&from_search=12 (Visited on November 13, 2017).

& Co Ltd,³⁰ the court held that copyright is not granted to voice, likeness nor other identifiers of a persona. The Indian Copyright Act, 1957 gives protection to sketches drawings, and others which form a part of the artistic work. Section 14 of the Copyright Act, 1957 gives exclusive rights to authorize others to reproduce the work in any form whether in two dimension or three dimension, it also allows the conversation of a three dimension work into a two dimensional work and vice versa. This protection has been extended to the fictitious characters which fall under the category of artistic work, by the courts. In *Raja Pocket Books v Radha Pocket Books*,³¹ Nagraj (the snake king) a popular children comic book character, was considered to be protected under the copyright law.³²

Another question in regard to right of publicity arises, whether publicity right exceeds after the death of a celebrity (also known as post-mortem right)? And if yes, then for how long can the right be extended? To some an extent this question can be answered with the help of Copyright law, as copyright law after registration, in India, gives the protection to the registered owner for a period of life time+ 60 years.

Publicity Right	Trade Mark	Copyright
<p>“The right to control the use of one’s own name, picture, or likeness and to prevent another from using it for commercial benefit without one’s consent.”³³</p>	<p>"Trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and</p>	<p>“A property right in an original work of authorship (such as literary, musical, artistic, photographic , or film work) fixed in any tangible medium of expression,</p>

³⁰ 1 WLR 313, 1959.

³¹ (1997) (40) DRJ 791.

³²Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Right: Protection under IP law”16 *JIPR* 7-16 (2011).

³³ Bryan A. Garner, *Black’s Law Dictionary* (St. Paul, Minn, 1999).

	combination of colours." ³⁴	giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work." ³⁵
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A table with the definition of Publicity right, Trademark and copyright.

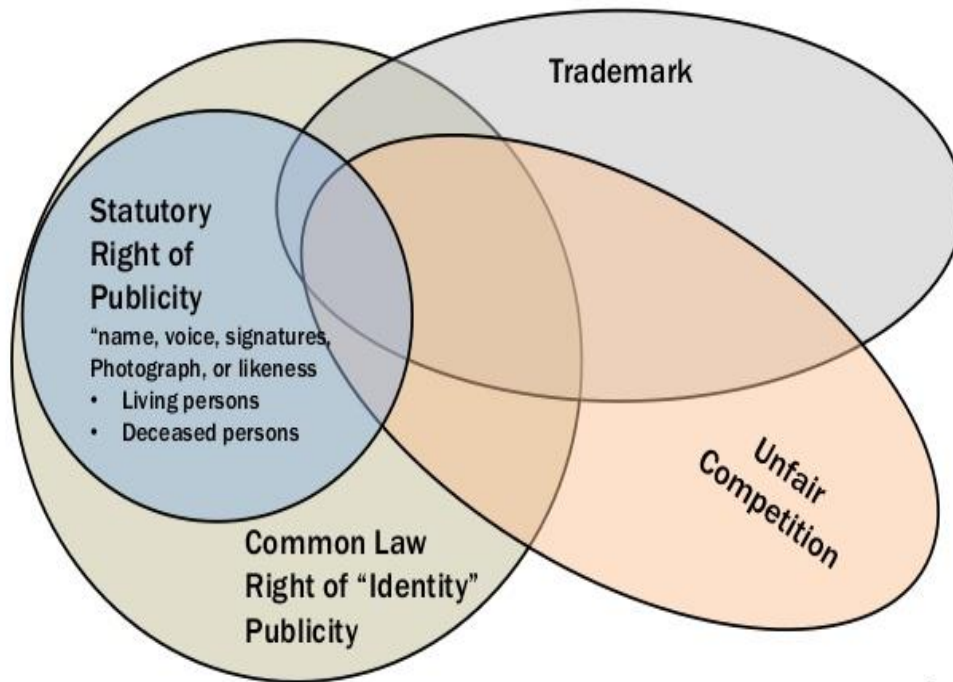
The definition of Mark as given under Sec. 2 (m) of the India Trademark Act, 1999, is “Mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.”³⁶ Trademark gives the protection to the marks which include names, signature, etc. if registered as a trademark, which is an exclusive right given to the registrar on the use of one’s name, signature, etc. the same way Copyright gives protection and exclusive right over the use of one’s photograph, film work, etc. no one is allowed to reproduce, adapt, distribute, perform and display the work without the permission of the owner. Publicity right is a right which works at giving legal control to the owner over their use of name, image voice, likeness etc. from being misused. Thereby publicity right has good ground for getting protection under the Trademark Act and the Copyright Act.

³⁴ Section 2 of the Trademark Act, 1999, available at: <https://indiankanoon.org/doc/117176/> (Visited on November 20, 2017).

³⁵ Bryan A. Garner, *Black’s Law Dictionary* (St. Paul, Minn, 1999).

³⁶ Section 2 of the Trademark Act, 1999, available at: <https://indiankanoon.org/doc/117176/> (Visited on November 20, 2017).

Doctrines Protecting “Publicity” Interests



5

The picture depicts how publicity right is interlinked and protected by trademark law, unfair competition and common law right of “identity” (torts).

The need to recognise the right to publicity has arisen, as it is a right which plays a major role in regards to the celebrities, that is, their name, image, voice and likeness should not be misused or it can be said that there should not be any unfair trade going on, such as, if anyone uses the name image, likeness, or voice of a celebrity without their permission, then it amounts to unfair trade because that use is done without paying any due and correct compensation. Some of the states have recognised such need and have also acted upon it, by enacting proper laws for the protection of the celebrity’s right to publicity.

1.3- Right to Publicity Recognised in different states:-

Different states have their own understanding as to what amounts to the violation of Right to Publicity.³⁷ Some of the states that have recognized right to publicity either as a common law principle or as a statute law.³⁸ Some of the states which has recognized right of publicity are as follows:-

1.3.1: United States:-

In United States of America, many states have recognized the Right of Publicity either as a Common law or as a statute law. In the United States the right of publicity is in consonance with the right of privacy. Mrs. Roberson was the first to raise the right in the case of *Robertson v Rochestor Folding Box*³⁹ before a New York court, though the court rejected the claim. In this case the claimant has made allegations on the defendant saying that the defendants company had use her likeness as a decoration for the flour bags and had used them for commercial advertisement. Courts have excluded celebrities form claiming that a misuse of their identity have violated their 'right to be left alone' by interpreting right to privacy in a narrower senses. Finally, a few years later a court in Georgia separated the right of publicity from the right of privacy by portraying the right of publicity as a property right on the bases of commercial deliberation.

The right of publicity has evolved, the celebrities in U.S legal system basically has to ways of protecting the commercial use of their likenesses, name, etc. First way of protection is through the Lanham Act, which is the law regulating trademarks in U.S. The other option is the states recognized right of publicity laws.⁴⁰ Right of publicity in United States is a state based law. Currently 38

³⁷ State law: Right of Publicity, available at: <http://www.dmlp.org/legal-guide/state-law-right-publicity> (Visited on November 14, 2017).

³⁸ Statutes and Interactive Map, available at: <http://rightofpublicity.com/statutes> (Visited on November 14, 2017).

³⁹ (1902) 171 N.Y 538; 64 N.E 442; N.Y. LEXIS 881.

⁴⁰ Publicity Right in the U.K and the U.S.A; it is time for the United Kingdom to follow America's lead, available at: <http://www.law.gonzaga.edu/law-review/2016/04/07/publicity->

states with some form of common law precedent have recognized the right of publicity and 22 states have right of publicity statutes.⁴¹

1.3.2: United Kingdom:-

United Kingdom does not recognize the right of publicity to provide protection to a person's image, make likeness, or vice from any unauthorized use. There is no direct way by way of which a celebrity can protect their personality rights from being misused for commercial purposes, even though there is a common practice of merchandising and endorsement within the United Kingdoms. But a person can find remedies in other laws imbedded in United Kingdom such as the ECHR (European Convention on Human Rights) Article 8, Intellectual Property Rights laws (Trademark and Copyright law) and Torts law (Passing off).⁴²

1.3.3: India:-

In India common laws govern right of publicity and is incurred by the celebrities. Thus India is lacking behind when the case of dealing with the modern phenomena for validation of advertisement arises. It is a right by way of which a celebrities characteristics, behaviour, image, features, likeness or other aspects can be distinguished. These right can be transferred and are in general used for the purpose of gaining profit from the commercial use of their name, image, likeness and voice.⁴³ Though there is no law made exclusively to deal with the right of publicity, but still the celebrities are getting protection against the unauthorized use of their name, image, voice or likeness under the Copyright law, Trade mark law and the Passing off act under Torts.

[*rights-in-the-u-k-and-the-u-s-a-it-is-time-for-the-united-kingdom-to-follow-americas-lead/*](#)
(Visited on November 20, 2017).

⁴¹ Statues and Interactive Map, available at: <http://rightofpublicity.com/statutes> (Visited on November 20, 2017).

⁴² The Right of Publicity in the United Kingdom, available at: <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1368&context=elr> (Visited on November 14, 2017).

⁴³ Entertainment law: India and Right of Publicity, available at: <https://www.bananaip.com/ip-news-center/india-and-right-of-publicity/> (Visited on November 14, 2017).

The researcher in this dissertation will explore the connectivity of publicity right and IPR while doing a comparative study in the following way:

Scheme of Chapterisation:-

Chapter one: Introduction

The introduction familiarizes the reader with the subject on which the researcher will be working on in this dissertation.

Chapter Two: Intellectual Property Overview

This chapter will give a detailed view on the subject of Intellectual Property Rights, how it evolved and discussions on the different branches of the Intellectual Property Rights.

Chapter Three: Right of Publicity

This chapter will discuss in details the concept of right of publicity, its evolution at three different levels, International, USA and India and discussion on the need of the right of publicity.

Chapter Four: Right of Publicity in Copyright

Discussion on the concept of publicity right and copyright and its evolution at International, USA and India and do a comparative study of the same.

Chapter Five: Right of Publicity in Trademark

Discussion on the concept of publicity right and trademark and its evolution at International, USA and India and do a comparative study of the same.

Chapter Six: Right of Publicity and Unfair Trade Practices.

In this chapter a detail discussion on the unfair trade practices done in regards with publicity right will be done. How can publicity right can be better protected and how is it currently been protected, a comparative study will be carries on this subject matter.

Chapter Seven: Conclusion and Suggestions.

Cumulative analysis of the research conducted and possible suggestions will be done in this chapter.

2. Subject of Research

The subject of research in this dissertation is to find out the relation between Publicity right and Intellectual Property Right in the light of Copyright and Trademark laws and developing jurisprudence in that reference in the first and second world country.

3. Area of Research

Present research work falls within:- IPR laws of India particularly Trademark Act, 1999, Copyright Act, 1957, Constitution of India, Law of Torts, Indian Penal Code, 1860 and Law of Media, Law of Press and Cyber Law.

4. Research Topic

Publicity Right: An Intellectual Property Perspective.

5. Research objectives and Research Questions

- 1) To study and identify the concept of publicity right and its position under the IPR.
 - What are the constituents of publicity rights?
 - Is there any relationship between Intellectual Property Right and Publicity Rights?

- 2) To understand and appraise the legal framework governing the publicity right in India.
 - What is the legal framework governing of publicity rights in India?
 - How Trademark and Copyright law under IPR are connected with Publicity right?

- Whether publicity rights can be protected better under IPR or under law of contract?
- 3) To study and identify the international treaties, convention, protocol, draft and working papers which regulates the legal protection of publicity rights.
- How Publicity right is protected at the International level?
 - Which treaties, convention, protocol, draft and working papers regulate the legal protection of publicity rights?
- 4) To identify and compare the Publicity rights given in USA and India.
- What is the legal framework of governing of publicity rights in USA?
 - Which country protect the publicity rights better?
- 5) To study and Scrutinize the issue of Ownership under the Publicity right.
- Who are the better owners under the publicity right?
 - How the issues of ownership to be resolved?
- 6) To study and identify the post-mortem rights of celebrities and compare the protection given by the USA and India.
- How post-mortem rights are recognised and protected in USA?
 - How post-mortem rights are recognized and protected in India?
- 7) To study and scrutinize the Unfair Trade Practice happening in relation to publicity right.
- How lack of protection of the publicity rights can cause the unfair trade practice?
 - What kind of remedies to be awarded in case of unfair trade practice involving publicity rights?

6. Hypothesis

Existing IPR legislation in India is not adequate to ensure protection to the publicity rights of an individual.

7. Research methodology

The researcher has used the method of Doctrinal Legal Research. As apprehended in the legal research domain the Doctrine legal research, is research about what the prevalent state of legal principle, legal doctrine or legal rule is. A legal scholar doing the doctrinal legal research takes legal propositions, principles, rules or doctrines as a preliminary point and centre of his study. He 'locates' such a principle, rule or doctrine in statutory instruments, judicial opinions, discussions of the same in legal treaties, commentaries,, textbooks, encyclopaedias legal periodicals, and debates, if any, that took place at the foundation stage of such a rule, doctrine or proposition. Thereafter, he 'reads' them in a complete manner and makes an 'analysis' of the material as well as of the rules, doctrines and expresses his 'conclusions' and writes up his study. ⁴⁴

The researcher has identified the statutory provisions dealing with the publicity rights at different states and legal principles involved therein. Due emphasis has been given to the substantive rules, doctrines, concepts and judicial pronouncements.

The researcher has compared the Indian law dealing with the publicity rights and the Intellectual Property rights with that of USA laws and International treaties, conventions, protocols, draft and working papers, as our Indian Intellectual property laws are primarily based on the International treaties, conventions, protocols, draft and working papers, and is quite different from that prevailing in USA.

⁴⁴ Prof (dr) Khusal Vibhute and Filipos Aynalem, *Legal Research Methods (teaching material)*, 71 (2009).

8. Scope of Study

The study will focus on the right of publicity in relation to the Intellectual Property Rights. The researcher will highlight how the different intellectual properties can define, identify and provide protection to the right of publicity. The researcher in the present study will also study the English jurisprudence on the issue of right of publicity and the protection provided at international level. The researcher will focus on the changing dimensions of the right of publicity. The researcher aims to do a comparative study of the same and highlight the lacunas prevailing therein and suggest countermeasures.

The scope of study is limited to the relationship between the publicity right and the Intellectual Property Rights, available case laws, the right recognized by way of international conventions, treaties, drafts, and the right of publicity recognized by USA.

9. Literature Review

a. **Articles:-**

- 1- Stephen R. Barnett, "The right to one's own image': publicity and privacy rights in the US and Spain." 47 *AJCL* 555-582 (1999).

In this article the author, Stephen R. Barnett, has compared the right of publicity in US and the use of one's image under the Spain's Law. The Author has discussed some of the current issues in relation to right of publicity such as the Commercial use, use of one's image or identity, etc., post-mortem rights have also been discussed in this article and the author has discussed the duration for which the right can be protected in different laws, such as in Spain the post-mortem rights are with the family members and it lasts up to 80 years after the death.

- 2- Tanyon Boston, "...And bring you playbook: who owns the intellectual property created by college coaches?" 19 *VJLT* 105-194 (2014).

The Author discusses the relationship between different IPR's and the coaches that is the relationship between the Trademark, The Copyright, Trade secret and right of publicity with the coaches. In the case of O Bannon vs. NCAA, the use of name, likeness, image, voice of the coaches for the commercial purpose is to be done only after due payment and consent. In the end the Author has raised the issue of ownership, that is, who should get better ownership, whether it should be the students- atheleaths who had equally contributed towards the success or should it be with the coaches?

- 3- Margaret Graham Tebo, "Crying in their Beers: Cheers actors argue character robots violate their publicity rights" 86 *ABAJ* 30 (2000).

This article has discussed how now a days the robots are being used as lookalike of the celebrities and even their voice is modified to such an extent that if you hear the robot speaking you will get the feeling as if the celebrity himself is sitting there and speaking. In the case of Cheers brother, the same thing happened, their lookalike robots have been set up in various airport bars. Wendt and Ratzenberger (the celebrities on whom the robots are based) sued Host and Paramount, contending that the robots are infringing their 'right of publicity'. The 9th Circuit court in US, passed the degree in favour of Wendt and Retzenberger, based on San-Francisco, which recognizes/found that the state-law right of publicity is not always pre-empted by federal trademark law.

- 4- Garima Bhdhiraja, "Publicity Rights Of Celebrities: An Analysis Under The Intellectual Property Regime" *NSLR* 85-108.

The author, Garima Budhiraja, in this article has talked about the different dimension of the celebrities' right. The author has recognized three dimensions were the celebrity right can be protected or divided for identification purpose: - a) Moral, b) Privacy and c) Publicity. The author has analysed how right of publicity is given protection in India under the Constitution of India, The Trademark law and the Copyright Law. The

celebrities are starting to recognize their publicity right and trying to protect the misuse of their name, voice, likeness, and image. Some of the actors who have registered their names as Trademark are Rajnikant, Kajol, Malika Serawat, Chef Sanjeev, etc. The author has discussed the well laid down publicity right laws in US, UK and other countries.

- 5- Tabrez Ahmad and Satya Ranjan Swain, “Celebrity Right: Protection under IP law”¹⁶ *JIPR* 7-16 (2011).

In this article the authors have recognized the different rights which the celebrities should get such as the privacy right, personality right and publicity right. The authors have also recognized different law where by such rights can be protected at national level (such as at India, US, UK, Canada, France) and at the international level by way of International conventions and treaties such as the Rome Convention, TRIPS, WPPT. The Authors have also recognized some of the laws where the celebrities can shout protection and remedies like the Trademark law, The Copyright Law and the Passing off action under torts. The authors have also tries and identified some of the areas where the celebrity’s right are required to be protected such as performance, digital image and digital merchandising.

- 6- Sanhita Ambast, “Protection Performer’s Right: Does India Need Law Reforms?” 13 *JIPR* 574-582 (2008).

The author in this article have recognized different aspects of performers right which also include publicity right. The author have pointed out some lacunas that are present in the Indian laws, as they are not able to provide protection to the performers in the form of performer’s right. The author has also pointed out lacunas at the international level and in US laws and UK laws with regards to the same matter and have compared their laws with the laws in India. UK gives protection to the performers under the Copyright law and India tries to do the same. But the lacuna here is that the Copyright law is not able to give protection to the moral rights and the intangible rights/publicity rights of the performers.

- 7- Peter L. Felcher and Edward L. Rubin, “The Descendibility of the Right of Publicity: is there commercial life after death?” 89 *YLJ* 1125-1132 (1980).

The author in this article has used different types of analogies for determining the commercial use of the death celebrities (publicity rights), such as:- First analogy of publicity right is done with the privacy right as publicity right has evolved from it. The author believes that, like the right of privacy ends with the death of the person the same way, the right of publicity should also end with the death. Second analogy is done with the property right, an individual is getting commercial benefits from the use of his/her name, likeness, voice, image, etc. the same an individual gets the commercial benefit from the use of their property. Property rights are inheritable and hence the right of publicity should also be inheritable, that is, it should last even after the death of the celebrity. But all these analogies are some way or the other are coming in conflict with the First Amendment. To overcome such conflict the author has suggested another analogy and that is the copyright law. According to the author, both the publicity right and copyright law tries to avoid the conflict with the First Amendment, and the issue regarding the use of celebrities after death can also be solved through copyright. According to the copyright law the rights are inheritable until 50 years after the death of an individual.

b. Case review:-

- 1- *ICC development (international) ltd. Vs. Arvee Enterprises and Anr.* [2003 VIIAD Delhi 405, 2003 (26) PTC 245 Del, 2004 (1) RAJ 10]

FACTS:-

ICC development (international) Ltd. (IDL), plaintiff, was formed by the members of International Cricket Council (ICC) to own and control its commercial right including media rights, sponsorship and other intellectual property rights relating to ICC events. IDL is the organizer of ICC World

Cup to be held in South Africa, Zimbabwe and Kenya from Feb. 8, 2003 till March 23, 2003. IDL had created a distinct logo and a mascot for the event and had filed an application for registration of its trademark in several countries India being one of them. In India IDL has filed application for registration of the words “ICC Cricket World Cup South Africa 2003” and logo and the mascot “Dazzler.” IDL pleaded that ICC events have acquired a “persona” or “identity” of their own. Plaintiff has filed an injunction order against the defendants.

The defendants, Arvee Enterprises, an authorized dealer for sale and service of electronic goods manufactured by Philips India Ltd. were offering Cricket World Cup tickets as prizes, using the slogan “Philips: Diwali Mano World Cup Jao” and “Buy a Philips Audio System win a ticket to the world cup”, inserting a pictorial representation of a ticket with an imaginary seat and gate number saying “Cricket World Cup 2003.”

Arguments on behalf of the plaintiff:-

- IDL alleged that the defendant are misrepresenting their association with the plaintiff and the world cup, by advertising in media, including newspapers, television, internet and the magazines.
- The defendants by using the said slogans have intention to derive unlawful commercial benefits by piggyback riding on the reputation of the plaintiffs.
- The plaintiffs further alleged that the defendants have malafide and dishonest intention of damaging the reputation of the plaintiff and the sponsor of the event, who have been duly authorized by the plaintiff to associate themselves with the world cup and offer such schemes.
- The ticket condition of the world cup event prohibits such kind of distribution of the tickets unless authorized by the plaintiff, and the defendants have resorted to “ambush marketing” to take advantage of the World Cup Event without investing anything for its success.

- IDL also pleads that the defendants have deprived the sponsors of the World Cup event from enjoying the exclusive rights granted to them and preventing IDL from performing its contractual obligations.
- The defendants are guilty of passing off indicia, mark and identity of the plaintiff and World Cup causing harm and injury to them.

Arguments on behalf of the defendants:-

- The defendants pleaded that the plaint has not been signed and verified by the authorized persons.
- The suit is bad for non-joinder of the party as International Cricket Council (ICC) the organizer of the World Cup Event and United Cricket Board of South Africa, the host, have not been made party to the suit.
- The defendants also pleaded that the plaintiff have no locus standi, in respect of the logo or the trademark, as the word “World Cup” is generic term, and generic term cannot get registered as trademark.
- The “World Cup” is a generic word and have been used to refer to several other international sporting events. It is also not protected by any international treaty or domestic law unlike the word “Olympic” and its logo, which is protected under the Emblems and Names (Prevention of Improper Use) Act 1950.
- The defendants have used the word “World Cup” in their advertisements in a generic manner and they have not used either the logo or the entire phrase “ICC Cricket World Cup South Africa 2003”.
- The slogan merely shows that the purchaser of their goods may win a ticket or a travel package to see the World Cup event and there is nothing in the advertisement to create any confusion in public mind that they are sponsors or licensees of the event. They have not sought to derive any association, relationship or affiliation with the Plaintiff.

- They had booked tickets and travel packages through the sole authorised tour operator and agent of the Plaintiff and the ticket conditions were never brought to their notice and the same are against public policy.

Court's Observations:

On Breach of Ticket Conditions

The IDI contention that Philips had breached the terms of sale of the tickets, which specifically prohibited use of the tickets for promotion or as prizes for competitions. The court rejected the view because Philips had purchased the travel packages from the Indian sub-agent of the official tour operator of IDI, for which the plaintiff has also paid Rs.25 lacks and these terms were never brought to the notice of Philips.

On Passing Off

The court held that Philips' slogans merely showed that the purchasers of its goods might win a ticket and travel package to see the World Cup and nothing more. In this case Philips had not used IDI's logo or mascot or any of their advertisements or promotional campaigns. The plaintiff's slogans and pictorial representation may have drawn the attention of the public to the event, but there was no likelihood of confusion in the mind of the purchasing public that Philips was a sponsor or licensee. Therefore, the basic criteria for a passing off action or for unfair trading were not met.

On Ambush Marketing

The court observed that the phrase "ambush marketing" is used by marketing executives only and is different from passing off. In a passing off action, there is an element of overt or covert deceit, whereas ambush marketing is opportunistic commercial exploitation of the event. The marketer does not seek to suggest any connection with an event, but gives his own brand or other insignia a larger exposure to the people attached to the event, without any

authorization of the event organizer. In such cases there is no deception, therefore the Defendants' conduct cannot be categorized as wrongful or against public interest. The court held that commercial advertising is commercial free speech and protected under Article 19 (1) (a) of the Indian Constitution. An advertisement campaign without using the logo or mascot of the Plaintiff cannot be held to be unlawful.

Thus, it is for the legislature to decide how far to curtail the legitimate fair competition and freedom of speech. In India no statutory or common law prohibits such an activity and the World Cup is not protected by any international treaty or domestic law, unlike the Olympic Games and its trademarks, which are protected under the Indian Emblems and Names (Prevention of Improper Use) Act, 1950.

On Right of Publicity

The court held that the right of publicity has evolved from the right of privacy and applies only to an individual or any indicia of an individual's personality. In the courts view, the non-living entities are not entitled to the protection of publicity rights in an event, because of the following reasons:- (1) the copyright law, the trademark law, dilution law and unfair competition law provides full protection against all forms of appropriation of property to such legal entity. (2) it would be against the concept of "persona." An individual may acquire the Right of Publicity by virtue of association with an event, however, that right does not apply to the event in question, nor the organizer behind the event. Any effort to take away the right of publicity from the individual to the organizer (non-human entity) of the event would violate Articles 19 and 21 of the Constitution of India.

The court ruled that "World Cup" is a dictionary term for an event or tournament in which several countries participate. Thus, the terms, "World Cup" and "Cricket World Cup" are generic and non-exclusive.

In view of the aforesaid, the Hon'ble Court declined to grant an interim injunction in favour of the Plaintiff.⁴⁵

Conclusion:-

The researcher is in affirmative with the court decision. Yes, the IDI does have the right of publicity over their slogans and mascot, but the defendants in no way have hampered their right, they in no way used their slogans, or the mascot, or tried to affiliate themselves with IDI to get any unfair gains, what they have done is just to give the ticket for watching the world cup along with their products, and they have already paid the prize of the ticket, it is not that they are selling the ticket in black market and gaining any profit from the tickets.

2- *Hugo Zacchini vs. Scripps-Howard Broadcasting Company* [433 U.S 562(1997)].

FACTS:-

Hugo Zacchini, petitioner, is an entertainer, who performs a "Human Cannonball" act, where the petitioner is shot from a cannon into a net some 200 feet away. The petitioner was performing his act on a regular basis at the Geauga Country Fair in Burton, Ohio, in a fenced area, surrounded by grandstands, at the fair grounds. On August 30, a freelance reporter from Scripps- Howard Broadcasting Company attended the fair while carrying a camera. The petitioner noticed the reporter and asked the reporter not to record the performance, the reporter did not record the performance on that day, but he came again the next day and recorded the whole 15 minutes act of the petitioner, which was later shown on 11 o'clock news program that night, along with a favourable commentary.

⁴⁵ ICC development (international) ltd. Vs. Arvee Enterprises and anr., available at: <https://indiancaselaws.wordpress.com/2015/10/15/icc-development-international-ltd-v-arvee-enterprises-and-anr/> (Visited on November 19, 2017).

Zacchini brought an action for damages, alleging that the respondent has shown his performance without his consent and hence, the respondents conduct is an action of 'unlawful appropriation of petitioner's professional property.'

The Court of Appeals of Ohio reversed. The majority held that petitioner's complaint stated a cause of action for conversion and for infringement of a common-law copyright, and one judge concurred in the judgment on the ground that the complaint stated a cause of action for appropriation of petitioner's "right of publicity" in the film of his act. All three judges agreed that the First Amendment did not privilege the press to show the entire performance on a news program without compensating petitioner for any financial injury he could prove at trial.

The Supreme Court of Ohio reversed the court of Appeals stating "a TV station has a privilege to report in its newscasts matters of legitimate public interest which would otherwise be protected by an individual's right of publicity, unless the actual intent of the TV station was to appropriate the benefit of the publicity for some non-privileged private use, or unless the actual intent was to injure the individual." The Supreme Court of the United States granted certiorari and reversed the Supreme Court of Ohio.

MAJORITY:-

The Ohio Supreme court distinguished the two types of torts (privacy right and the publicity right). First, the 'interest protected' in case of privacy right is 'clearly that of reputation' were as the right of publicity interest is in protecting the proprietary interest of the individual, in his act in part to encourage such entertainment. Second, in the right of privacy question, the only way to protect the interests involved is to attempt to minimize the publication of the matter which would be interpreted in false light, were as the question of 'right of publicity', involves in regards to who would get to widespread publication of his act as long as the person is able to gain commercial benefit from such publication. However, since the act, which was the source of the entertainer's income, was appropriated in full without compensation, the news privilege does

not immunize the reporter. The court concluded that where the press "appropriate" an act in its entirety, that is the source of one's livelihood and a product of their labour, and display it to the public without compensation to the performer, the first and fourteenth amendment do not require immunity for the press.

The majority goes on to support its holding with the policy reasons upholding a right of publicity. Similar to patent law, the right of publicity serves the foster investment in socially beneficial skills. The court further noted the underlying principal of the right of publicity is preventing unjust enrichment. Since the entertainer had expended time and energy to cultivate this skill, the value of which is derived from the entertainer's exclusive control, appropriating the act in full takes away the entertainers opportunity to charge an admission fee.

DISSENT:-

The dissent contends that majority opinion does not set a standard by which future decisions may comfortably rest their decisions. Additionally, the implications of the majority's holding will have the effect of stifling at least some reporting on newsworthy events, in which case, the public loses. The dissent concludes that, rather than making the quantity of appropriation determinative, if the appropriation is used for routine news program, the first and fourteenth amendments should immunize the station from right of publicity suits absent a showing of commercial exploitation.⁴⁶

Conclusion:-

The researcher sides with the majority, as the performer has put in his labour and has come up with an act to entertain people, which can also prove to be dangerous for the performer, in spite of all the protections and precautions taken. Hence, the Petitioner should get the right of publicity privileges, and the

⁴⁶Zachhini vs. Scripps-Howard Broadcast Co., available at: <http://www.casesofinterest.com/tiki/Zacchini+v+Scripps-Howard+Broadcast+Co>. (Visited on November 19, 2017).

respondents should not be allowed to get the protection of first and fourteen amendment because if the respondents are allowed to show the petitioners act on the TV. Then the general public won't be interested in coming and watching the live show, and hence this will hamper the livelihood of the petitioner.

3- *Haelan Laboratories, Inc. v. Topp Chewing Gum, Inc.* [202 F 2d 866 (1953)].

FACTS:-

Petitioner a chewing gum manufacturer entered into a contract with some baseball players, where by the petitioner got exclusive right to sell players photograph along with his chewing gums. The players were not to grant such right to any other party during such term and the petitioner had the option of extending such term. The respondent having the knowledge of such a contract, induced the players to come into contract with his company, for the use of their photograph along with the defendant's chewing gums.

COURT'S OBSERVATION:-

- The court held that the defendants are not liable for any breach of contract induced by a non-agent.
- The courts recognized the right of publicity as a separate entity from that of right of privacy. The right of publicity in photograph as understood by the court is that the owner has an exclusive privilege over the publication of his picture.

Conclusion:-

The court in this case for the first time introduced the concept of "right of publicity", where by this right gives the owner an exclusive right over the publication of his picture, i.e, the owner can decide where his picture can be published and when and proper payment has to be made for the same.

c. Book review:-

1. Iyengar, *The Trademark Act*, (Universal Law Publishing, Haryana, 5th edn., 2005).

In this book the author has discussed all the provisions of the Trademark Act 1999, as the Trademark Act is divided into 13 chapters the same way the author has divided the book into 13 chapters. The author has discussed all the sections in details along with judicial pronouncements. A summary of all the International Agreements, Treaties, and Conventions on the subject has also been provided to familiarize the readers with these treaties. Both Indian and foreign cases have been referred and discussed and it contains in full, the principle opinion of the courts. In addition to incorporating all statutory changes where applicable an all-important appendices relating to this field for easy reference undoubtedly renders the present book invaluable not only to the legal practitioners but also to the traders and buyers and administrative authorities connected with this Act.

10. Proposed Chapterisation

CHAPTER-1

INTRODUCTION

1.1 Research Objectives

1.2 Research questions

1.3 Hypothesis

1.3.1 Existing IPR legislation are not adequate to ensure protection to the publicity rights of an individual.

1.3.2 Existing IPR legislation in India are not sufficient to deal with the issue of publicity right.

1.4 Research methodology

1.5 Scope of the study

CHAPTER-2

Intellectual Property Right overview

- 2.1 What is IPR?
- 2.2 How IPR evolved?
- 2.3 Evolution of IPR at international level
- 2.4 Evolution of IPR in India
- 2.5 Different branches of IPR
 - 2.5.1 Patent
 - 2.5.2 Copyright
 - 2.5.3 Trademark
 - 2.5.4 Geographical indication
 - 2.5.5 Design
 - 2.5.6 Semiconductor
 - 2.5.7 Integrated circuit
 - 2.5.8 Software's

CHAPTER-3

Right of Publicity

- 3.1 Meaning and concept of publicity right
- 3.2 Evolution of Publicity Rights
 - 3.2.1 International level
 - 3.2.2 India
 - 3.2.3 USA
- 3.3 Need of publicity right

CHAPTER-4

Right of Publicity in Copyright

- 4.1 What is Copyright?
- 4.2 Copyright at International Level
- 4.3 Connection of Publicity right and Copyright

4.4 Protection given in India

4.5 Protection given in USA

4.6 Comparison and Lacunas

CHAPTER-5

Right of Publicity in Trademark

5.1 What is Trademark

5.2 Trademark at international level

5.3 Connection between Publicity right and Trademark

5.4 Protection provided in India

5.5 Protection provided in USA

5.6 Comparison and Lacunas

CHAPTER-6

Right of Publicity and Unfair Trade Practices

6.1 What are Unfair Trade Practices

6.2 Connection between the Unfair trade practices and Publicity right

6.2.1 What is the connection between the two

6.2.2 Identify the different types of unfair trade practices happening in connection with publicity right

6.2.3 How are they done?

6.3 Provisions for protection in India

6.4 Provisions for protection in USA

6.5 Comparison and lacunas.

CHAPTER-7

CONCLUSIONS AND SUGGESTIONS

7.1 Conclusion drawn from the research.

7.2 Suggestions of the researcher.

11. Bibliography