

## **I. Introduction and Synopsis**

### **A. Background**

*“Fame is a fickle friend Harry. Celebrity is as Celebrity does. Remember that.”*

- J.K. Rowling in *Harry Potter and the Chamber of Secrets*.

It is almost a regular news item of late; and increasingly intriguing cases of unauthorised taking of “celebrity likeness” in this part of the world and in the West are being read about of late. In the US, a California court of appeal ruled that Facebook Inc. cannot be penalized for posting advertisements next to a user-generated page critical of the “country-rap” singer Mikel Knight, and had therefore in no way, misappropriated his name or image for commercial gain, thereby not violating his “right of publicity”.<sup>1</sup> In a similar matter of unauthorised use, the former wife of disgraced *Subway* spokesperson Jared Fogle— Ms. Katie McLaughlin, had brought an action against *Subway* in October 2016, on grounds that, *inter alia*, Subway didn’t have her authorization to use her *likeness* and those of the couple’s two children for an advertising campaign “Jared the Family Man”, which aired more than 2,300 commercials from March 2015 through July 2015.<sup>2</sup> Another celebrity personality rights matter from the American film industry, that caught revived attention of the intellectual property practitioners and academia alike, is the suit filed by two time academy award winner Olivia de Havilland who sought an expedited trial for the lawsuit<sup>3</sup> involving her right of publicity.<sup>4</sup>The urgency was needed because Ms. de Havilland’s statutory right of publicity (under the California Civil Code, S.3344) ceases at her death. She was 101 at the time of filing the lawsuit which claimed that FX misappropriated Olivia de Havilland’s name, likeness and identity without her permission and used them falsely in order to exploit their own commercial interests; and thus damages are sought for “emotional harm” and “harm to her reputation,” and is also pushes for an injunction against the use of her name and likeness; on the allegedly “gossipy” show “*Feud: Bette and Joan*.”<sup>5</sup> The matter came to be decided by the California Court of Appeals in March 2018, wherein the court delivered a significant victory for free speech by dismissing Olivia de Havilland's claims, holding that the First Amendment safeguards artistic expressions about celebrities, regardless of whether these works are factual, fictional, or a mix of both.<sup>6</sup> De Havilland expired on July 26, 2020.

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<sup>1</sup> Jason Cross v Facebook Inc, Decision of the First Appellate District court of the State of California, August 9, 2017 *available at*: <http://www.courts.ca.gov/opinions/documents/A148623.PDF>

<sup>2</sup> Jared Fogle’s ex-wife says Subway knew about his sexual interest in children, failed to take adequate action, CBS, October 24, 2016 *available at*: <http://cbs4indy.com/2016/10/24/jared-fogles-ex-wife-to-discuss-legal-action-against-subway/>

<sup>3</sup> Olivia de Havilland, DBE v. FX Networks, et al, BC667011 (Superior Ct. Calif., June 30, 2017)

<sup>4</sup> Tiffany Blofield, “Claim Is Gone With The Wind At Death”, Duets Blog, Sep 21, 2017, *available at*: <http://www.jdsupra.com/legalnews/claim-is-gone-with-the-wind-at-death-86903/>

<sup>5</sup> Peter Libbey, “Olivia de Havilland Files Lawsuit Over ‘Feud’ Portrayal”, NY Times, July 2, 2017 *available at*: <https://www.nytimes.com/2017/07/02/arts/olivia-de-havilland-files-lawsuit-over-feud-portrayal.html?mcubz=1> (Last visited Sep 23, 2017)

<sup>6</sup> De Havilland v. FX Networks, LLC; California Court of Appeal March 26, 2018

On the other hand, in an equally intriguing case of “celebrity versus celebrity”, Kanye West (now, Ye) called himself to attention (yet again), by releasing a massive billboard and also the video of his 2016 single *Famous* that features celebrity ‘look-alikes’ – including singer Taylor Swift, Amber Rose, Former US President George W Bush, Anna Wintour, Rihanna, Chris Brown, Donald Trump, Caitlyn Jenner, Bill Cosby and his own wife- Kim Kardashian – all naked. The visual was “debuted” in front of 8000 people on a 100-foot screen at the Los Angeles Forum on June 24, 2016, and the image has been admittedly “inspired” by American Realist Vincent Desiderio’s painting *Sleep* of 12 anonymous people in sleep poses. On June 26, 2016; *The Sun* reported that Kanye West had tweeted, and then deleted a message, goading anyone unhappy with this billboard and the utterly outrageous video, to “*sue me already.*”<sup>7</sup>

It is interesting to see that this *drama* has unfolded parallel to the powerful speech delivered by actor Jesse Williams at the BET Awards on June 26, 2016. He spoke out on being a black actor, on the *Black lives matter* movement and standing up for African Americans and against racism in the court and every form as a whole, accepting the “Humanitarian of the year” award. He also spoke out against cultural appropriation by the “whites” and against the “gentrifying of our genius” – attracting several thousands of tweets and re-shares within less than a couple of hours.<sup>8</sup>

In the UK, another noteworthy legal case has unfurled last year – throwing light upon the differences in privacy and free speech law in the US and UK. In mid-May, 2016, Britain’s Supreme Court upheld a ban on identifying a celebrity involved in an extramarital relationship, even though the man’s name had been published in other countries, including the United States. The man, is reportedly an entertainment figure who is married to another celebrity, had approached the court earlier this year to stop the *Sun on Sunday* newspaper publishing interviews with two former sexual partners, including details of what the judges called “a three-way sexual encounter.” The newspaper on the other hand, is continuing to seek the quashing of the injunction, and argues publication bans are untenable in the Internet age, as the injunction applies only to England and Wales right now.<sup>9</sup>

Meanwhile in our part of the world, the social networking app – *SnapChat* began seeing increasing usage amongst all age-groups. While the app’s intended use was to have plain old fun (*SnapChat* is an application for iPhones, iPads and Android devices that allows subscribers to send photos to other subscribers. However, unlike sending photos or text messages in other ways, *SnapChat allows users to set a 1 second to 10 second expiration of the photo. So, users can send time limited photos that might be embarrassing or just silly without a significant fear that it will find its way to other social media sites where it might live forever.*) in May 2016, comedian Tanmay Bhat went from *SnapChat* hero to *Snapchat* villain in the span of just a week

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<sup>7</sup>See further, Ashley Iasimone, “Kanye West Explains 'Famous' Video Concept”, *Billboard.com*, June 25, 2016, available at: <http://www.billboard.com/articles/columns/hip-hop/7416571/kanye-west-famous-video-concept>

<sup>8</sup> See further, Jem Aswad, “Here is Jesse Williams’ Full Speech from the 2016 BET Awards”, June 26, 2016 available at: <http://www.billboard.com/articles/news/7416612/jesse-williams-bet-awards-2016-speech->

<sup>9</sup>*Celebrity injunction: PJS cannot be named, says Supreme Court*, *BBC News*, May 19, 2016 available at: <http://www.bbc.com/news/uk-36329818>

when he shared his, now infamous *Sachin v Lata Civil War* video, where ‘Sachin Tendulkar’ and ‘Lata Mangeshkar’ (Bhat using the face swap option on Snapchat and mimicking their inimitable voices) diss each other. This video drew plenty of criticism on Twitter, and other celebrities. Anupam Kher, Riteish Deshmukh were among those who tweeted against sports icon and “God” to Indian cricket fans – Sachin Tendulkar and “Nightingale of India” – Lata Mangeshkar being mocked. Things took a turn for the worst with political parties like the Shiv Sena and MNS jumping into the fray. MNS Chitrapat Sena president Ameya Khopkar asked for the video to be taken down and later the MNS even filed an FIR against Tanmay. The Shiv Sena and the NCP also said that they would be filing a police complaint against Tanmay Bhat. The incident got even more interesting when self-styled tyrannical news-host Arnab Goswami devoted his *Newshour* debate segment that night to a debate on Free Speech and SnapChat face swapping videos!<sup>10</sup> The debate surrounding the *right of publicity* of a celebrity found renewed fervour and gusto amongst entertainment law practitioners and intellectual property academia in India<sup>11</sup>, in the aftermath of the Pierce Brosnan pan-masala advertisement.<sup>12</sup> Questions that arose, related more to the kind of claim that Brosnan may have against Pan Bahar<sup>13</sup>, as well as some speculation over the degree of consent given by Brosnan and extent of knowledge that he had about the product being endorsed.<sup>14</sup> As trolls and memes began to take over the social networking web-space,<sup>15</sup> several dailies and websites came to also report widespread “shock” and “disappointment” expressed by his fans.<sup>16</sup> Further, in early February 2017, film news across

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<sup>10</sup> Medha Chakrabarty, *Roasting it Right : Arnab Goswami's Snapchat vs Drought Scale*, The Quint, May 31, 2016, available at: <http://www.thequint.com/social-buzz/2016/05/31/roasting-it-right-arnab-goswamis-snapchat-vs-drought-scale-tanmay-bhat-controversy>

<sup>11</sup> Inika Charles, Brosnan's ‘Pan’demonium – The Right of Publicity and a Possible Contractual Breach, SpicyIP (October 24, 2016) <https://spicyip.com/2016/10/brosnans-pandemonium-the-right-of-publicity-and-a-possible-contractual-breach.html>.

<sup>12</sup> Pierce 'James Bond' Brosnan's retirement planning: Pan Bahar Pan Masala!, Economic Times (October 7, 2016) [http://economictimes.indiatimes.com/articleshow/54731555.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/54731555.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst); Alexia Fernandes, Pierce Brosnan Responds to Controversial Indian Breath Freshener Ad: ‘I Am Deeply Shocked and Saddened’, People Magazine (October 20, 2016) <http://people.com/celebrity/pierce-brosnan-responds-controversial-indian-breath-freshener-ad/>; Distressed by Pan Bahar's ‘deceptive use’ of image: Pierce Brosnan, Hindustan Times (October 21, 2016) <http://www.hindustantimes.com/business-news/distressed-by-pan-bahar-s-deceptive-use-of-my-image-pierce-brosnan/story-oEU1P65zlpT0Guo4186dM.html>; Pan Bahar ad leaves a bad aftertaste, Pierce Brosnan is ‘shocked and saddened’, Economic Times, (October 21, 2016) [http://economictimes.indiatimes.com/articleshow/54970284.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/54970284.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

<sup>13</sup> Inika Charles, *supra* note 11.

<sup>14</sup> Pierce Brosnan says Pan Bahar violated contract, claims he didn't know what he was selling, Indian Express (October 21, 2016) <http://indianexpress.com/article/india/india-news-india/pierce-brosnan-pan-bahar-ad-contract-violation-3093841/>; Pierce Brosnan knew what he was endorsing, claims Pan Bahar, Indian Express (October 24, 2016) <http://indianexpress.com/article/india/india-news-india/pierce-brosnan-knew-what-he-was-endorsing-pan-bahar-3099828/>.

<sup>15</sup> Sonam Joshi, Pierce Brosnan Starred In A Pan Bahar Ad And Twitter Can't Deal With It, Huffington Post (October 7, 2016) <http://www.huffingtonpost.in/2016/10/06/pierce-brosnan-starred-in-a-pan-bahar-ad-and-twitter-cant-deal/>

<sup>16</sup> Amrita Kohli, Pierce Brosnan In Pan Bahar Ad Has Everyone Talking, Bond Fans Shaken, NDTV (October 7, 2016) <http://www.ndtv.com/offbeat/twitters-having-a-meltdown-over-pierce-brosnans-pan-masala-ad-1471329>; Indian fans shocked at ex-Bond star Brosnan's ad for unhealthy 'mouth freshener', UCNews.in (October 8, 2016)

the nation carried the same news item – that Hrithik Roshan was mightily miffed at Tommy Hilfiger, and in fact “tweeted” out his displeasure to them, for having made *unauthorised use* of an image of himself with his sons, for their Spring/Summer 2017 kids apparel collection.<sup>17</sup>

These scenarios from both the west and especially India, highlighted a major point that formed the trigger point to undertaking this dissertation research – that of the strong grip a “celebrity” has on public it interacts with and the public it apparently chooses to be a representative of. The contemporary celebrity today has emerged from mostly the entertainment and sports industries, they are highly visible through the media and mostly, their private lives attract great public interest than their professional lives. And celebrities today comprise increasingly of not just those people by whom this special position is got by their true achievements, but also of those to whom the celebrity status is “ascribed” – either from relationships with other celebrities or otherwise from just plain old attraction of public attention and sustained public visibility (e.g.: Sofia Hayat and her recent claim to fame through declaration of “nun”-hood; Kim Kardashian and leaked sex tapes, contestants on reality shows like *Big Brother/Big Boss*, *Swayamvar*, *Splitsvilla* etc.). This recent increase in the matters, especially in India, is further clear to another fact, as most succinctly put by Patricia Loughlan: “Celebrity is a serious business. It has enormous impact; generating spectacular incomes in both production and consumption...celebrities are the object of their audiences’ hopes, fears, desires and obsessions...”<sup>18</sup> Thus, the response to the Pan Bahar ad is also no surprise, especially more so in the internet age. This is the era of *celebrity culture*. The celebrities the public chooses to follow, then become carriers of values – they begin to encode these values and their celebrity personality is understood then as a semiotic sign. What they do in then in their public and private spheres both, begins to define the values the majoritarian public chooses to see encoded in them – they thus then are careful of what they wear, what they say, who they are seen with, and most importantly, the brands and products they endorse. As early as in 1985, Richard Schickel described celebrities as the “*chief agents of moral change in the United States*” in his work “Intimate Strangers: The Culture of Celebrity”.<sup>19</sup> Their images thus, are important and expressive resources – they enhance the commercial values of commodities they are associated with. And celebrities today not only sell cultural commodities – movies, records, videos etc, but also endorse other consumer and luxury commodities. Those who choose to put their celebrity status to better use choose then to endorse social causes – viz Emma Watson and the UN’s HeforShe campaign, Angelina Jolie as the face of UNICEF and women’s rights, Farhan Akhtar

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<http://www.ucnews.in/news/301-2218120934526348/indian-fans-shocked-at-ex-bond-star-brosnan-s-ad-for-unhealthy--mouth-freshener-.html>

<sup>17</sup> Prajakta Hebbar, Hrithik Roshan Slams Tommy Hilfiger For Using His Sons' Photos In Ad Without Permission, Huffington Post (February 10, 2017) [http://www.huffingtonpost.in/2017/02/10/hrithik-roshan-slams-tommy-hilfiger-for-using-his-childrens-pho\\_a\\_21711225/](http://www.huffingtonpost.in/2017/02/10/hrithik-roshan-slams-tommy-hilfiger-for-using-his-childrens-pho_a_21711225/)

<sup>18</sup> Patricia Loughlan, Barbara McDonald, Robert Van Krieken, *CELEBRITY AND THE LAW 1* (The Federation Press, New South Wales, 2010)

<sup>19</sup> Richard Schickel, *INTIMATE STRANGERS: THE CULTURE OF CELEBRITY* 29 (1985) in Michael Maddow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 Cal. L. Rev. 125 (1993)

for MARD in India, *etc.* Thus, as Prof. David Tan has pointed out, the “*economic associative value*” that a celebrity brings to a brand is the transfer of the perceived attributes of the celebrity – for example, success, glamour, beauty and talent – directly to the brand he or she is associated with.<sup>20</sup> Also, the more well-known - and more well-liked - an individual, the greater will be the potential commercial value of that identity.<sup>21</sup> He thus, has a celebrity persona that can be commercially exploited, i.e. his identity has ‘pecuniary worth.’<sup>22</sup> Further, the example of Kanye West highlights another aspect : that of celebrities at war with each other over their own personality rights. This war too isn’t new : Rihanna’s famed settlement with celebrated photographer LaChapelle<sup>23</sup>, Sonu Nigam and Mika Singh’s legal battle over unauthorised use of Sonu Nigam’s image,<sup>24</sup>*etc.* are also attempts by celebrities to prevent just that – misappropriation of their pecuniary worth.

The question then arises is when there is so much economic value to a celebrity persona, how is it that the law protects the celebrity? Moreover, it is at this juncture, also noteworthy, that the Indian film industry, especially is one of the largest and oldest (it celebrated its centenary in 2013 and is coming up to being over a hundred and ten years old) in the world. India is also one of the largest democracies in the world, and continues to see its holders of public office in public eye. It also continues to produce entertainers and high achievers in other fields like sport, medicine, law, engineering, writing *etc.*; that continue to go on to accumulate acclaim for themselves. Further questions that then arise are - is the individual person protected, or are his attributes protected as dissociated from the individual? Is this protection to be guaranteed under the public law realm with a right of “privacy” that is absolute to the celebrity? Or is it a value that is “privately” held, with a right of publicity? And how do the otherwise present common law remedies and statutory remedies under the intellectual property legislations deal with the rights of celebrities? Further, a counter to encoded ideals may be then available by using the same signs in a “recoded” manner, and such use can therefore be categorized as “political speech,” protected by the Constitutional guarantee of freedom of speech and expression. What are then the limits of the right the celebrity enjoys due to his personality? Are these rights enjoined to him because of his celebrity status really absolute? It does appear morally wrong to allow someone else to take pecuniary benefit of a celebrity’s unique personality traits. However, does that entitle them to legally pre-empt others from using similar voices/looks/mannerisms for any purpose whatsoever? These are some of the many myriad questions, that the researcher seeks to take up and address in the course of this work.

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<sup>20</sup> David Tan, ‘Beyond Trademark Law: What the Right of Publicity Can Learn From Cultural Studies’ (2008) 25 Cardozo Arts & Entertainment Law Journal 913 at 959

<sup>21</sup> *Vanna White v. Samsung Electronics America Ltd.*, 971 F.2d 1395, 1399 (9<sup>th</sup> Cir, 1992) (‘Vanna White, 1992’); David Tan , “Affective Transfer and the Appropriation of Commercial Value: A Cultural Analysis of the Right of Publicity” (2010) 9 Va. Sports & Ent. L.J. 272 at 278.

<sup>22</sup> *Haelan Laboratories Inc. v Topps Chewing Gum*, 202 F2d 866, 868 (1953).

<sup>23</sup> *LaChapelle v Rihanna* 11 Civ 0945, SDNY July 20, 2011

<sup>24</sup> *Mr. Sonu Nigam vs. Mr. Amrik Singh (alias Mr. Mika Singh) & Anr.*, MANU/MH/0517/2014, Bom HC decision of April 26, 2014

## **B. Statement of Problem and Central Argument of the Dissertation Work**

In light of the above description of the Indian scenario specifically, it is a cause of concern, that the law protecting a celebrity's as well as an individual's personality: both in the private and public sphere remains largely inadequate and under-developed. This is in comparison to the regimes in place in countries like the USA, UK, Australia - to name a few. India, while like the UK, does not have an independent legislative provision protecting an individual's right of publicity, a similar right has been largely enforced in India under the common law tort of misappropriation – *unfortunately conflated* with misrepresentation tort of passing off instead, the case law development of which has also been sporadic and lacking. Moreover, the contours of the *private horizontally* enforceable right to Privacy tort – and its *commercial* protection prong too remains under – developed and thus case law increasingly has unfortunately misapplied the right and its existence – and repeated claims for right to privacy enforcement *post mortem* are also on the rise. Further, the intellectual property legislations in India, do not make any specific provision, giving recognition to *Right of Publicity* specifically or *Personality Rights* more broadly.

However, call for a very robust publicity right in an entertainment industry structured like India is not what the researcher is aiming at. Instead, the researcher proposes to undertake an attempt to fill two gaps in the Indian regime:

- i. that of recognising for a celebrity [and non celebrity individual, as applicable], the contours and limits of his right(s), proposing a nomenclature course-correction and identifying the most appropriate subject matter “buckets” of rights under the larger *Personality Rights Umbrella* and identifying the *PROPRIETARY INTEREST IN PERSONA*;
- ii. defining the scope of the right retained by the public vis-a-vis a celebrity/non celebrity individual when his persona is appropriated without consent i.e. the extent of the “free-speech” defence. This dissertation work shall then attempt to cull out a comprehensive guideline/policy/legislative framework for India moulded on and adapted from the study of these jurisdictions.

In this dissertation thus, the attempt is to cull out a comprehensive *right of publicity* framework for India moulded on and adapted from the study of the actions available and proposes a limited property-type personality right that is transferable and “recode-able” such that commercial speech may also get protected under the Article 19 guarantee under the Constitution of India.

### **C. Research Objectives**

1. To identify “who” comprises a celebrity, the difference between celebrity status and fame and the attributes of an individual’s personality that are legally protectable.
2. To study the theoretical foundations of an individual’s right to commercial exploitation of one’s personality attributes and the distinction between individuals and celebrities.
3. To study the operation of the six prominent causes of action in the United States, United Kingdom, Australia – with selected references to other jurisdictions [Mostly EU and some South East Asian cases as relevant], brought by celebrities and rights owners in the entertainment industry:
  - i. copyright infringement;
  - ii. trademark infringement/dilution;
  - iii. passing off;
  - iv. right to privacy tort(s);
  - v. breach of confidence; defamation and malicious falsehood (as distinct torts)
  - vi. right of publicity statutory protection v distinct recognition as a tort;
4. to further study the desirability of a distinct, stand alone, “right of publicity” for individuals; and to study and define its contours.
5. To identify the “right of publicity” claims made in India and attempt to situate the same in the common law or statutory rights regimes
6. To understand “fair use” in light of right of publicity and the protection for “commercial speech”
7. To propose a regime for protection of personality rights in India under the stand alone right of publicity tort; with a fair use defence for even commercial speech based in the Article 19(1)(a) free speech guarantee.

### **D. Research Questions**

(Evolved since synopsis approval in April 2018, due to better, in-depth research)

1. Who is a celebrity? Whether the literature from cultural studies, marketing and legal theory provides guidance for a definition of celebrity? How is celebrity different from fame? Are there different types of celebrities?
2. What are the attributes of celebrity that require legal protection? Can these attributes be protected as dissociated from the individual persona or does the attribute and the individual have to present itself as a “package” for claiming any legal protection? is a celebrity’s personality an extension of “intellectual property” of the individual? Further, are these rights assert-able only by celebrities, or by other individuals and inanimate beings alike?
3. What are the existing rights available for celebrities to assert these rights? Is the existing statutory protection under the copyright and trademark regime enough to protect the

commercial value of personality attributes? How do celebrities use the common law tort actions of passing off, privacy tort, misappropriation and breach of confidence, to assert economic rights in personality attributes?

4. What has been the experience of the UK, USA, Australia (predominantly) with respect to celebrity and individual personality protection? Which of the above the actions used by the celebrities in these nations and are they adequate? If not, is the right of publicity action as used in the USA, the appropriate regime to follow for protecting the commercial value of a celebrity's persona? Is the right extendable to all individuals?
5. Is this *economic associative value* encoded in a celebrity value open to being "re-coded"? What must be the purpose of this re-coding for it to be permitted and publicised, and moreover, commercialised without consent of the celebrity whose image was appropriated?
6. How does the Indian legal regime cater to the rights of celebrities? Is there a distinction in the manner in which publicity right and privacy right of celebrity is treated? How does the existing statutory regime provide remedies in this regard? Further, can (if any) judicial enunciation be used to create a policy framework for the *fair use* of celebrity personality? Has the Indian system at present proven to be comprehensive or whether a reform is needed in the existing law to fix the loopholes?
7. What is the alternative that can be proposed for an effective and comprehensive legal regime for the economic value of celebrity and individual personality protection in India, that is balanced for all stakeholders?

### **E. Research Methodology**

The researcher proposes to undertake an extensive doctrinal research based on both primary sources, i.e.: legislations and case law from the chosen jurisdictions, as well as secondary sources i.e.: Books, articles, essays, news items and case studies *etc.* during the course of the PhD dissertation work. Both the physical library resources and web databases and resources shall be relied on. Additionally, for the portion that will look at filling the legislative and policy gap in India, the researcher undertook a small empirical research work<sup>25</sup>— to only gauge the extent of the problem and the response to the loopholes from practitioners, academics, advising counsel, content creators etc. While this work has not be undertaken to prove or disprove any hypothesis, the purpose of the empirical work has been further assist the researcher in quantifying the problem, to incorporate a wider-view policy proposal as the outcome.

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<sup>25</sup> A first phase of this work has been completed during PhD Coursework in January 2017.

**F. Chapterisation (Broad headings and tentative sub-topics as approved vide Pre-Submission presentation, content inclusion re-structured with more in-depth research)**

1. Introduction: This chapter introduces the idea of the PhD research work, the synopsis, the scope, research problem, central themes under study and scope and set out the foundation for the substantive chapters
2. Understanding Celebrity and the Value of Celebrity: Meaning of celebrity (Cultural, Business, Marketing, Legal); Means of creating and communicating celebrity and the “commodification” of celebrity, The Legal structure of celebrity : why protect and “what to protect”, and “who is protected”
3. Copyright over personality traits: Nature and subsistence of copyright – i.e. what is “copyright”, what material may be the subject of copyright protection, idea-expression dichotomy(comparative study), Copyright and personality traits: celebrity and actors’ rights over authorship in fictional characters they bring alive on screen, copyright over bodyparts and Tattoos over bodyparts as potential copyright subject matter, Appropriation of Celebrity Personality traits that may be potentially copyrightable – especially *Voice, Sports Celebration Moves and Actor-Character Appearance*.
4. Trade Mark over Personality Traits: Celebrity traits and trademark – defeating the specific ‘class of goods or services’ requirement, Protection of celebrity names, Protection of catch-phrases associated with celebrities, Can ‘actions’, ‘Gestures’ and sounds – especially distinctive singing voices and baritones be protected as celebrity marks if not protectable in copyright law?, Infringement actions for ‘celebrity marks’, Trademark dilution, parody and “fair-use” in celebrity trade-marks, domain names and cybersquatting over famous names as a method to enforce personality rights in famous names – are discussed.
5. The right against “Passing-Off” and unauthorised use of celebrity personality: Actions brought under the claim of passing off or for engaging in misleading and deceptive conduct, and the three key elements in a passing off action – judicial decisions from the chosen jurisdictions [UK, Australia are looked at in this chapter, to then become lessons for India in Chapter 7] shall be analysed to find similarities/ differences in the test(s) employed, in celebrity personality cases.
6. The Right to Privacy and Breach of Confidence actions: Celebrity Status and diminishing private lives: Privacy as a legal right in the United States, UK: tort of privacy v the breach of confidence action, right of privacy guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in UK law by the Human Rights Act 1998) are looked at in this chapter, to then become lessons for India, discussed in Chapter 7
7. The Right of Publicity of the celebrity personality: theoretical justifications for treating persona as having a significant proprietary interest protectable under a stand alone right –

subject to a MISAPPROPRIATION CLAIM and not a confusion-style misrepresentation claim, types of personality indicia that may be protectable under such a right [here, emerging concerns on deepfakes, NFTs, generative AI voice sound alike and the proposed new legislations in USA and elsewhere are also brought up and discussed], difference between right to privacy and right of publicity, key elements of the claim in, defence to commercial appropriation of celebrity personality and countering the right of publicity via the free speech First Amendment Right in USA and the Article 19 guarantee right in India and the different tests employed in different jurisdictions to allow appropriation of celebrity personality. The USA Standards are then compared with the evolving regime for right of publicity in India, alongside looking at how celebrities use the torts of defamation, malicious falsehood and the privacy tort to enforce non-economic and economic interests in persona; an analytical critique shall also be attempted, of the tendency of courts to conflate *passing off* with *right of publicity tort* and offer some solutions.

8. Conclusions and Suggestions: This chapter shall attempt to offer the final culled-out policy/legislative suggestions for a comprehensive “celebrity personality rights law” in India, with a balanced approach – for both the celebrities to protect their personality attributes as well as for those who thrive on appropriating celebrity personality from appropriating to make relevant public commentary/ debate *etc.* The attempt shall be to not only lay down a substantive framework, but also identify a framework for enabling effective enforcement of the said rights. This framework ideally shall be a comprehensive substantive and procedural model for the enforcement of rights of celebrities in India, that are nonetheless balanced against legitimate claims of stakeholders. This proposal shall be based in an in depth comparative study of the parallel celebrity rights regimes present in the other countries chosen for this research work.

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