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Intellectual Property Rights in Sports and Personality Rights among Sportspersons

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Sports have always been an integral part of our society. Right from an ancient era to the current life of the twenty-first century, everyone loves sports. Everything has remained as it is 'last from the past'. The thing which has been changed is the area of development of this particular field. For a very long time, sports are considered a venture of enjoyment but glancing at the past ten to fifteen years, the whole scenario has changed. Now sports are seen much as a mode of business than as a combination of physical or skilled activities. Due to commercialization and the marketing industry squeaking in, the major part of this field flows from the activities like branding and merchandising, and licensing, and this results in the business in sports. For any advertisement on organizing sports events, introducing a sports team or sports club, there is a certain need for Intellectual Property Rights (IPR). Hence, it created an interesting relationship between the business of sports and Intellectual Property rights. This branding and business sometimes include the exploitation of one's image or personality in the name of branding even then as a sports team or as an individual sportsperson. To protect these sportsperson's rights from defamation and getting used in a wrong way, the concept of personality rights intruded under Intellectual Property Rights. This paper highlights various aspects of Intellectual Property Rights associated with sports and sportspersons, personality rights of sportspersons, exploitation of their rights, and laws related to the infringement of rights of sportspersons' personalities.

Keywords: *sports, branding, intellectual property rights (IPR), personality rights.*

INTRODUCTION

Sports comprise a huge part of our society. It can be considered as one of the fields which include competition, popularity, money, and power. It also comes in the list of career options for the youngsters and upcoming generations. Many sports such as cricket, football, tennis, basketball, have made people extremely fond of sports and tournaments. Considering generations, from senior citizens to children, everyone loves and admires sports. Nowadays, teenagers are considering sports as an alternate career option and indulging their selves in classes for the sports like football, swimming, shooting; also, in self-defense sports such as judo and karate. In ancient times, people discover sports as a mode of entertainment. Soon, in the era of kings and sultans, they also continue to compete with each other in the sports like Chess (Shatranj), horse riding, etc. After the independence, sports like cricket and football made their place in the world, and sports like rifle shooting and swimming also came into existence. Sportspersons like Michael Jordan and Kapil Dev seized a lot of popularity and took sports to the next level. In short, sports have always been a popular field across the world, bringing together so many sports, entertainment, competition, culture, and definitely to an extent of monetary business. Sports were started as a hobby or physical activity, but now are no longer confined to entertainment or competition and have gained a lot of commercial importance and become a mode of business. Advertising and brand building of sports as well as sportspersons for the purpose of marketing and promotions have gained huge importance and faded all other traditional values of sports. This marketing and branding involve a large amount of Intellectual property. Many popular sports like football which is organised by FIFA, cricket by IPL, basketball by NBA, etc.¹ manage the events that wise they can abstract large amount for the people who are willing to promote and advertise the events according to the offers. For the sports franchises and records for the same, it is an obvious truth that this creates various Intellectual Property Rights (IPR). These rights are used in the form of advertisement and branding to gain huge profits. For instance, in the Indian Premier League (IPL), teams Chennai Super Kings, Mumbai Indians, and Kolkata Knight Riders are organised and

¹ Deborshi Sarkar, 'Commercialization of Sports Industry through IPR' (*Manipal Law Review*, 10 May 2020) <<https://mujlawreview.wordpress.com/2020/05/10/commercialization-of-sports-industry-through-ipr/>> accessed 05 March 2022

marketed as great brands worth millions. This sometimes may lead to the exploitation of one's image and personality, whether as a sports team or as an individual sportsperson. This paper deals with the different types of personality rights among sportspersons. And if talking about rights and property, it is obvious that there will be the involvement of legal issues and case laws. Hence in this paper, some attempts are made to understand to the readers how personality rights help to protect the image of sportspersons.

INTELLECTUAL PROPERTY RIGHTS AND SPORTS

Sports, the word itself contains lots of branding, marketing, as well as emotions if comes to the people who follow and admires the journey of sportspersons like Sachin Tendulkar and M.S. Dhoni for cricket and Cristiano Ronaldo and Lionel Messi for football, and so on. Right from ancient times to the life of the twenty-first century, sports have always been a popular field with respect to competition, entertainment, and of course the extent of business and marketing. Historically, it is known for the purpose of entertainment involving physical cum leisure activities for competing and sometimes pass the time. It is an arena where one can achieve awards, money, success, even more specifically "fame". If you are in the sports such as cricket, football, tennis, badminton, basketball, etc. then you can be one of the most famous personalities all over the world. These sports have gained a huge following all over the world with their international events by establishing gigantic marketing and promotions for the event arrangers or organizers. As a sportsperson or a sports team, it gets into the advertisements and branding and sponsorship even off the field. This made the need for protection so that their taglines and logos can hold high commercial values and prevent them from third-party infringements. On the same side, sponsorship, character merchandising and other important factors may involve the rights of the sportsperson i.e., personality rights. However, all these rights do not come into a single package, it consists of several laws and acts regarding various factors, like the rights relating to logos and taglines, trademarks and patents laws followed, also for the rights of a sportsperson, personality, or publicity rights are there as mentioned above.

TRADEMARKS

Trademarks play a significant job in the sports and business of sports. With the beginning of marking of sports through the presence of highlights like logos, slogans, taglines, mottos, team names and so (on the whole, alluded as brand names), brand esteem is made in wearing teams, clubs, players, merchandise, licensed and so on; teams names, symbol, and images make a degree of relationship with the general population and fan following aiding the prominence appraisals of some random team, club, sportsperson and so forth indeed, even the names of the players have gained the status of trademarks because of their superstar status. This prominence and brand picture ultimately change over into financial benefit through commercials, brand diplomats, generosity and image and reputation of the sponsors, and so forth. According to the Trademarks act, 1999, "if any infringement of law and rights of a sports team or sportsperson violated, there is both civil and criminal proceedings are available." It is also stated in law, that for seeking protection for the same, it is not compulsory to have the registration of the trademark in Indian laws, that is one can obtain rights before the court without even having registered for the same. Section 29 of the Trademarks Act, 1999 talks about when does a trademark is infringed, and as stated "A registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trademark in relation to goods or services in respect of which the trademark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trademark."² Violation of trademarks is a cognizable offense in India and may lead to criminal proceedings against the accused. As per Section 103 of the Trademarks Act, "Any person falsifies any trademark or falsely applies to goods or services any trademark shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 3 years and with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 2,00,000."³

There's a case of *Mahendra Singh Dhoni and Rhiti Sports Management Private Limited v David Hanley*, where well-known cricketer, M.S. Dhoni filed a suit against the defendant,

² Trademarks Act, 1999, s 29

³ Trademark Act, 1999, s 103

regarding the domain name <msdhoni.com>. The Panel, deciding in favor of M.S. Dhoni, held that *“While the UDRP does not specifically protect personal names as such, in situations where a personal name unregistered as a trademark is being used for trade or commerce, the complainant may be able to establish common law or unregistered trademark rights in that name. In order to do so, proof of use of the person’s name as a distinctive identifier of goods or services offered under that name would normally be required. A trademark-equivalent basis has been found in the common law action of passing-off. Given the relevant facts, the Panel finds that the Complainants have clearly established unregistered trademark rights in the name MS Dhoni.”*⁴

COPYRIGHTS

Copyright in sports may vest in different segments of sports remembering for the work of art associated with the logos and brand names, advancements, mottos, image or personality of a sportsperson or occasion, and so forth, which might be secured in India under the arrangements of the Copyright Act, 1957.⁵ The enlistment of copyright likewise not being obligatory and the equivalent is relatively simple to ensure under the Indian laws. Regardless of the way that *“The enrolment of copyright isn’t required in India, and worldwide copyrights are protectable in India; as India is a signatory to Berne Convention of 1906 for the Protection of Literary and Artistic Works and the International Copyright Order, 1999.”* It is also prudent to enlist the copyright in India as the copyright enrolment authentication is acknowledged as a *“proof of proprietorship”* in courts and by Police specialists and followed up on easily by them. ⁶ The law of copyright in India not just accommodates common cures as a perpetual directive, harms or records of benefits, conveyance of the encroaching material for decimation and cost of the legitimate procedures, and so forth, but also makes a case of encroachment of copyright, a cognizable offense culpable with a term which *“will not be under a half year yet*

⁴ ‘MS Dhoni and Rhiti Sports evict cybersquatted from using his name in website’ (*The Indian Express*, 31 October 2016) <<https://indianexpress.com/article/sports/cricket/ms-dhoni-and-rhiti-sports-evict-cybersquatter-form-msdhoni-com-3730886/#:~:text=Mahendra%20Singh%20Dhoni%20and%20Rhiti,www.msdhoni.com>’> accessed 06 March 2022

⁵ Copyright Act, 1957

⁶ Christine Chiramel, ‘Intellectual Property Rights in Sports-Indian Perspective’ (*Mondaq*, 17 February 2012) <<https://www.mondaq.com/india/trademark/164974/intellectual-property-rights-in-sports-indian-perspective#:~:text=Copyright%20in%20sports%20may%20vest,of%20the%20Copyright%20Act%2C%201957>> accessed 06 March 2022

which may reach out to three years with a fine which will not be not as much as Rs. 50,000/- yet may stretch out to Rs. 2,00,000/-.”⁷ Section 64⁸ of the Indian Copyright Act, 1957 also offers “The capacity to the police specialists to enlist the Complaint (First Information Report, i.e., FIR) and follow up on its own to capture the charged, search the premises of the denounced and hold onto the encroaching material with no mediation of the court”, as decided in the case *Anurag Sanghi v State and Ors.*⁹

PATENTS

Like trademarks and copyrights, patents also play a significant role in sports. With the development in science and technology, numerous inventions have been made in sports. Patent rights protect technological innovations. Patent rights enable the patent owner to have security and protection against copycats from indulging in marketing and provide sports companies to establish authority for the same. The protection under patent law is given to the training equipment, sporting goods, and services, stop-watches, clubs, etc. Sports patents also include sports drinks, nutritional supplements, and all. According to the WIPO, various patents are filed frequently for equipment like gym and training equipment.¹⁰

PERSONALITY RIGHTS

Personality or publicity Rights in sports play a significant part in the brand making of individual sportspersons and sports teams. Big-name status prompts different types of brand creation, brand support, and income age benefiting from popularity. It is attractive that “The alliances, coordinators, team owners, and athletic equipment producers should pick enrolment of their team names, logos, scenes, inscriptions, slogans, and mottos, etc.”, enlisted as brand

⁷ ‘Sport and Branding’ (WIPO) <<https://www.wipo.int/ip-sport/en/branding.html>> accessed 07 March 2022

⁸ Copyright Act, 1957, s 64

⁹ Andri Shukla, ‘Copyright Infringement Re-affirmed As Being A Non-Cognizable Offence’ (ALG India Law Offices LLP, 20 December 2019) <<https://www.algindia.com/delhi-high-court-reaffirms-that-copyright-infringement-is-a-non-cognizable-offence/>> accessed 07 March 2022

¹⁰ ‘Sports and Fitness – Role of Patents and Technology’ (Patent Business Lawyer)

<<https://patentbusinesslawyer.com/sports-and-fitness-role-of-patents-and-technology/#:~:text=Sports%20Patents,sport%20drinks%20and%20muscle%20enhancers>> accessed 07 March 2022

names under the Indian Trademarks Act 1999,¹¹“which will make their life simple for ensuring their brand names in Indian courts. Activity with respect to the players to enlist their names, photos and exaggerations as trademarks and brands should likewise be the standard of the day. A simple relationship of the name of a team, their logo, or a cooperative person, could offer phenomenal mileage to the individual or substance utilizing such name or logo. It is a misfortune to the team, team proprietor, the player and an unjustifiable addition for the substance partner such name or logo for their own business benefits, without taking any consent, or paying any permit charge or sovereignty.” Unapproved utilization of the brand names by an outsider without the assent or permit of the separate proprietors of such brand names may likewise bring about harm to the generosity and notoriety of the partners, additionally adding up to unjustifiable exchange practice, unreasonable rivalry, and weakening of generosity and reputation.

PERSONALITY RIGHTS AMONG SPORTSPERSONS

Sport is a platform where everything there isn't actually intended for privacy various factors are meant to be publically available for the people to maintain the popularity of any particular sport, plus the team and especially of an individual sportsperson, and so personality rights are there to protect the name and image of sportspersons. India has laws for the infringement of trademarks, laws for copyrights and patents are also there, but lacks if it comes to personality rights, however in some cases, judgments have been passed on in the favor of sportspersons, yet there is a need for proper provisions.

Normally, the situation is that personality right is overseen by a team that works for the sportspersons. Like if there should be an occurrence of Tiger Woods, his permitting specialist, ETW Corporation, and his administration, International Management Group (IMG), handle his profession and cases identified with personality rights, and so forth. Also, the famous football player David Beckham 2019, employed a team explicitly to deal with his value of the brand and to manage claims over it. This has been finished by a ton of people in the sports club these days as this secures their picture and different sorts of rights. The case turns out to be totally

¹¹ Trademarks Act, 1999

different with regards to competitors in team activities, who are as yet dynamic. Associations and team establishments hold the utilization of players' names and resemblances to advance the sport, the alliance, and the brands spoke to. Team competitors have various showcasing jobs. The competitor plays the sport so he has an agreement with a sports brand for a stock like spikes, shoes, sneakers, and so on, contingent upon the sport they play, further they are diplomats of a city in which the team is found. Further, the team additionally has some power over their personality rights and oversees it with their establishment of the executives, which causes them to the advancement of the association and the establishment itself. The benefits are divided among the two and the competitor gets his offer from the establishment as pay and match charges.

For instance, NBA has an altogether different way to deal with its item and benefits from the ability of its sportspersons. The agreement which is done between the player and the team for the most part incorporates a gathering authorizing understanding. The understanding causes the alliance to utilize player resemblances to advance the class, its teams, and the players themselves. The returns acquired are shared similarly by NBA teams. A comparative agreement is finished by the Indian Cricket League (IPL) franchises and the players essential for the events. However, the lone distinction is that there is an extra agreement with the BCCI,¹² the board that deals with Indian cricket in India. Indeed, even the IPL teams and the association profit from the players and there is an equivalent portion of benefit between them. These are the agreements that manage personality rights directly in the USA it is expressed that the personality right is given to the franchise and the league and then again in India there is no particular law on the personality right, however, the manner in which the agreements are done in IPL also show that there is a similitude in the agreements. However, this section makes readers understand more about personality rights and why it is important in sports with respect to intellectual property.¹³

¹² The Board of Control for Cricket in India

¹³ Eshwars, 'Personality Rights and its protection in India- A Statutory and Judicial analysis' (*Lexology*, 20 April 2020) <<https://www.lexology.com/library/detail.aspx?g=0759e39a-7803-4d67-95fa-f54624e99951>> accessed 08 March 2022

WHAT IS A PERSONALITY?

When one talks about personality rights, it is necessary to understand the meaning of the term “Personality”. However, every popular personality has the right to abstract the value of being so popular. Nowadays, actors, singers, artists and authors, famous television celebs, politicians, business tycoons, and all who are keen to have public attention for what they do, what they admire, what they talk about, are personalities. The people’s perception of a person makes them a personality. It requires the condition of being popular. While discussing personality, the Indian Copyright Act, 1957 have defined Performer under section 2(qq)¹⁴ that is “A performer includes ‘an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.”¹⁵ It is also provided in section 38(3) that “During the continuance of the performer’s right in relation to any performance, any person who, without the consent of the performer, makes a sound recording or visual recording of the performer, or reproduces a sound recording or visual recording of the performance, etc., shall subject to the provisions of section 39 of the same act, and be deemed to have infringed the performer’s right.”^{16,17}

In the case of *Tolley v Fry*, it was held that “Because of the controversy relating to the use of a picture of a popular amateur golf player to advertise Cadbury chocolates. Tolley’s complaint was that the defendants made it appear as if he had consented to appear in the advertisement for gain or reward, and thereby misused his reputation as an amateur golf player for advertising purposes. The court held that the conduct of the defendant was capable of amounting to libel and subject to award the damages.” This judgment has made several sportspersons claim privacy rights as well as the right of personality.¹⁸

¹⁴ Copyright Act, 1957, s 2(qq)

¹⁵ Nandita Saikia, ‘The Performer’s Right under the 2012 Act’ (*In Content Law*, 14 June 2012)

<<https://copyright.lawmatters.in/2012/06/the-performers-right-under-2012-act.html#:~:text=This%20particular%20provision%20%E2%80%94%20Section%2038B,other%20modification%20of%20his%20performance>> accessed 08 March 2022

¹⁶ Copyright Act, 1957, s 38

¹⁷ Copyright Act, 1957, s 39

¹⁸ *Tolley v Fry* [1931] AC 333

ROLE OF PERSONALITY RIGHTS IN SPORTS BRAND CREATION

Personality rights in sports brand creations play an important role both as a sports team and as an individual sportsperson. Many sportspersons like Cristiano Ronaldo, Virat Kohli, Tiger Woods are recognized as international brands because of their popularity. This status of being popular helps the sportspersons to expand their popularity globally and results in a lot of profit by doing commercial activities such as branding and advertisements and by becoming the brand ambassadors for a specific brand. Having personality rights with the sportsperson stimulates various types of advantages in brand creation and advertisements. The requirements to have personality rights are, the organizers, team owners, and federations must register their team names, logos, taglines, as trade names under the Indian Trademarks Act, 1999, which makes them eligible to have personality rights with them. These trademarks result in the benefit of the sportsperson because if any person or association, without taking any permission or authorization or without paying a license fee to the players, misuses or misrepresents their brand names may consequences to civil or criminal proceedings against them under the same act.

REGISTRATION OF SPORTSPERSONS NAME AS TRADEMARKS

There are several sportspersons who have registered their name as a trademark. Of course, being a popular and well-known personality may have the privilege to do so. For example, Sachin Tendulkar has registered a trademark over his name under the Indian Trademark Act, 1999. Also, some English footballers like David Beckham, Alan Shearer, Paul Gascoigne, etc., have registered their names as a trademark. This makes them eligible for remedies over the infringement of their personality rights. However, it is possible that one can obtain rights before the court even if they did not have registration of trademark in Indian laws.¹⁹

COMMERCIAL EXPLOITATION OF SPORTSPERSONS NAME

While discussing the commercial exploitation of sportspersons, it is also necessary to know about social media and its exploitation with it. Nowadays, with the advancement of digital

¹⁹ Christine Chiramel (n 6)

media, people through social media exploits the name of famous personality the most. Social media apps such as Twitter, Facebook, and especially Instagram. According to the surveys, it is known that Instagram is the most used app for being social, this has established the concept of “memes”. A meme is defined as “An image, video, piece of text, etc., typically humorous in nature, that is copied and spread rapidly by internet users, often with slight variations”, these slight variations are sufficient to spoil the name of a sportsperson. On a recent note, sportspersons like Virat Kohli, Hardik Pandya, Cristiano Ronaldo, and many more have been victims of the same. Similar is the thing with commercial exploitation, advertisement of commercial products sometimes leads to the exploitation of one’s image. It also includes the voice dubbing of players and mimics like them. Thus, there is a need to introduce personality rights with proper provisions to control them.²⁰

MARKETING IN SPORTS EVENTS

Character Merchandising

Character Merchandising is considered one of the important aspects of Intellectual Property Rights in relation to sports and talking about the merchandising of a sportsperson, it includes personality rights as well. For a sportsperson, misrepresentation and defamation is an infringement of their personality and thus needs protection against it. Character Merchandising in simple words can be defined as “the marketing of name or image for monetary gain by using a celebrity’s persona”. Many brands have associated their selves with the sportsperson to gain monetary profit, like Michael Jordon and Nike, Sachin Tendulkar and Adidas, etc. There is some sportsperson like Sachin Tendulkar who have their own merchandising business which comprises Shoes, T-shirts, Caps, Knapsacks, and all. This expands in the sports team also; they use their team players' names to merchandise their

²⁰ Vikalp Wange, ‘Publicity Rights: Protecting exploitation of sports personalities’ (*Ipleaders*, 6 August 2020) <<https://blog.ipleaders.in/publicity-rights-protecting-exploitation-of-sports-personalities/#:~:text=The%20right%20of%20publicity%20has,%2C%20sport%2C%20movie%2C%20etc>> accessed 07 March 2022

business. however, it is necessary for the team owners and associations involved in this to protect the personality rights of the sportspersons individually.²¹

Ambush Marketing

Ambush Marketing is also an important aspect of Intellectual Property Rights in relation to sports. Ambush Marketing is defined as “The marketing strategy wherein companies try to free-ride over the privileges obtained by the company who are official sponsors of a particular sports event that is attacking from a hidden position.”²² This can be understood in the landmark judgment of *National Hockey League (NHL) v Pepsi-Cola Canada Ltd.* 1992 CanLII 2324 (BC SC), in the current case, it was decided that “NHL through an agreement, made Coca Cola its official sponsor for the sporting event. Coca-Cola eventually obtained the right to use NHL’s symbols for its promotional program in Canada amp; the USA but did not obtain any broadcasting rights on television. NHL has already sold this right to a company named Pepsi-Cola, which was a business rival of Coca-Cola. The controversy arose between Coca-Cola and Pepsi-Cola when Pepsi-Cola broadcasted an advertisement on television showing a well-known celebrity conveying a message that Pepsi is the official drink of the tournament. Following this, Coca-Cola did not grant a claim for passing off against Pepsi-Cola.”²³ However, these cases sometimes led downs the name of associations like the NHL. In the case of *Gautam Gambhir v D.A.P & Co. &Anr.*, an Indian cricketer has stated that his name was protected under the Trademark Law, yet used as a tagline for the defendant’s restaurant. After investigating, Delhi High Court held that “Neither did the cricketer’s name was commercialized, nor was there any loss of goodwill in his field and thus dismissed the suits and the applications.”²⁴ This case can be taken as the judicial recognition of personality rights

²¹ Dhruv Vatsyayan , ‘Sports Merchandising and Law in India: An overview’ (*Ipleaders*, 17 January 2020) <<https://blog.ipleaders.in/sports-merchandising-and-law/>> accessed 07 March 2022

²² Civan Acikalin, ‘Ambush Marketing in Sport: How Nike Ambushed the Olympics’ (*Academia*, 13 May 2011) <https://www.academia.edu/30129313/Ambush_Marketing_in_Sports_How_Nike_Changed_The_Game_Forever> accessed 07 March 2022

²³ *National Hockey League (NHL) v Pepsi-Cola Canada Ltd.* (1992) CanLII 2324 (BC SC)

²⁴ *Gautam Gambhir v D.A.P. and Co. and Ors.* (2017)

that is one cannot be punished by the law just because you are alleged by a “famous personality”. It is considered the good side of IPR.²⁵

Athlete Marketing

Athlete marketing is defined as “The scientific, strategic and systematic execution of standing out, staying relevant and building value in the minds of current and potential fans, so as to maximize fan support (athlete brand equity)”. For example, Nike Women’s World Cup, which was sponsored by Nike in 2019, so as to promote, a few days before the Women World Cup, Nike celebrated women athletes in their marketing campaign which somewhere influences the audience a lot.²⁶ In the era of social media, where the support of the audience comes in the form of attention, athlete marketing and branding works to a great extent, for instance, sharing an athlete’s posts, reading their blogs, watching their reels and videos on Instagram, listening to their podcasts on YouTube and on other music apps. Joining their live sessions on social media platforms, etc, does attract fans’ attention, and they kind of get free marketing. This athlete marketing somewhere maximizes or maintains the marketing deals and other relevant stakeholders, and also promotes the teams and leagues as well. Thus, this helps everyone except the athlete or sportsperson, who sometimes aren’t willing to do the same.

DISTINCTION BETWEEN THE PERSONALITY OF A SPORTSPERSON AS A TEAM MEMBER AND INDIVIDUAL

For a sportsperson, being part of a sports team tends to be the representative of that particular team. Sometimes people forget the fact that that specific member of a team has their own individual personality. There should be a clear line drawn between the personality of a sportsperson as a team member and as an individual. The association has full right to monitor their team member to dress up in the team jersey, but an outsider cannot use their personality or image in the wrong way just because they are a part of a particular team. This thing has

²⁵ Francis Dumais, ‘Top 10 sponsorship ambushes’ (*Elevent*, 1 February 2014)

<<https://en.elevent.co/blogs/sponsorship/16644081-top-10-sponsorship-ambushes>> accessed 07 March 2022

²⁶ Taylor Dua, ‘Nike dominates Women's World Cup social media engagement with newest ad’ (*The Drum*, 8 July 2019) <<https://www.thedrum.com/news/2019/07/08/nike-dominates-womens-world-cup-social-media-engagement-with-newest-ad>> accessed 07 March 2022

been clarified in the case *ICC Development (International) Ltd. v Arvee Enterprises and Anr., 2003 VILAD Delhi 405*, 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. Any effort to take away the right of publicity from the individuals, to the organizer (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it. For example, if any entity, was to use Kapil Dev or Sachin Tendulkar’s name/persona/indicia in connection with the ‘World Cup’ without their authorization, they would have a valid and enforceable cause of action.”²⁷ Apart from this, when it is asked that an individual there are no specific laws to protect their personality, Indian courts have always acknowledged this question positively. In *Titan Industries v M/S Ramkumar Jewellers*,²⁸ the court observed that “When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity, but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control the commercial use of human identity is the right to publicity.”

CONCLUSION

In this paper, it is concluded that this commercialization has made sports nothing but a mode of business for making profits. This made Intellectual Property to another extent of business-like character merchandising, infringement of personality rights, and so on. Character merchandising can no doubt be considered a lucrative business in sports have a larger stake. It is important for the proprietors that before indulging in any sort of business of character merchandising in sports, pursue full and absolute knowledge of business plus understand the

²⁷ *ICC Development (International) Ltd. v Arvee Enterprises and Anr.* (2003) VILAD Delhi 405

²⁸ *Titan Industries Ltd. v M/s. Ramkumar Jewellers* (2012) 50 PTC 486 (Del)

laws and legislation provided in the IP acts. On the other hand, there are various cases of infringement of personality rights in sports all over the world. Thus, nowadays, sportspersons are very keen to protect their images. Famous sportspersons have been cautious about protecting their personality rights and advised to take a legal opinion. However, there are no such laws provided regarding personality rights among sportspersons exactly as acts or provisions, especially in India, for instance, section 3 of the Patents Act, 1970 talks about if a particular invention is patentable or not by following the criteria for patenting process, thus India doesn't permit sports equipment to be patented and this can make an adverse effect in the sports society. Hence, even if these sportsmen and women fulfill the criteria for procuring intellectual property rights, it seems unlikely that laws for such rights have their availability. But according to the decisions of high courts in several cases, restrictions have been made for the same, and in the future, it is expected that parliamentarians will definitely come up with proper acts and provisions.