

**TATTOOS: A VIEWPOINT FROM INDIAN COPYRIGHT REGIME WITH
SPECIAL REFERENCE TO WHITMILL V. WARNER BROS. ENTERTAINMENT,
INC.**

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ABSTRACT

When you get a tattoo on your body or any part of it, you could expect every time that it is yours and you are the owner of it. Looking at the whole picture, the pattern is tattooed on your skin, and you pay an artist to have it done. To be honest, regardless of how near and personalized a body change is, ink ownership is extremely rare. Taking everything into account, the question that comes to mind is who genuinely does have a 'tattoo'? Are you the owner of the tattoos, or is it someone else's? You purchased the tattoo after bearing just too much pain in your skin; is it lawful to claim ownership?

This paper talks about the background of laws on the rights of Tattoo Artists. It discusses in detail the relevant Copyright law provisions in India while also analyzing case laws that have a significant bearing on this developing arena of intellectual property law. Further, the researcher would try to figure out some famous cases of the US Supreme Court and the researcher will compare them with India and how India can adopt those principles and observations of the US Supreme Court here in India

Keywords: Tattoos, Copyright, Personality Rights, Ink Ownership, Body Art

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1. INTRODUCTION

The copyright legislation in India, for instance, might place a person in unusual positions. If Virat Kohli decides to get a tattoo on his hand with the name “Anushka” in Hindi, then besides his wife, could he suffer an action from the artist too who made that tattoo? With the evolution of a person's modes of expression through time, the law of copyright must simply incorporate and solve any concerns that arise. The Indian Copyright Act, of 1957 does not address areas such as tattoo creation, product design, comic composing, and so forth. There seems to be a complete lack of legal statements resolving the quandaries that arise from such domains.

Discussing tattoos, many entertaining questions come to mind, for example, where would you place a tattoo in between the categories of works under Section 2 (c) of the Indian Copyright Act? Another question that comes to mind is what if a celebrity just has a tattoo on his skin and then he or she appears in society at large? Can we consider that that amounts to the communication of the tattoo to the public? Or can we say that it would come under Section 17 proviso (b) or Section 17 proviso (c)? This paper will look forward to addressing some issues like the questions mentioned above while considering the environment which comes with the Indian Copyright Act.

The Copyright Act protects the artistic thinking of others. Yet, are tattoos considered inventive enough to warrant their unique copyright? Very often, people may turn up unique designs as a method of motivation before obtaining their skin permanently tattooed, and occasionally, the very same idea might be reproduced in the person.

According to Section 17 of the Indian Copyright Act, of 1957, an author of works is generally believed to be the primary copyright owner. Under the Copyright Act of 1957, ink is defined as a creative work, so therefore regard the tattoo craftworker is the owner of the tattoo rather than the tattoo bearer. Section 14(c) (ii) of the Indian Copyright Act, 1957 simply states that the owner of the copyright does have the right to communicate the creation to others.

Body art was only permitted in the United States in 2006. Tattoos have traditionally functioned in Intellectual Property space, in nations where tattooing was allowed, such as New Zealand, where the tattoo profession was governed by strict societal standards. For instance, if a tattooist replicated someone else's tattoo, the copier would've been shunned by the body art community. Furthermore, tattooists have always recognized that their customers were allowed to do whatever they wanted with their inks, such as duplicating photos of their tattoo bodies and changing the tattoo designs, as far as the pattern of the tattooing was not reproduced in some other pieces of art.

One of the remarkable US cases is *Whitmill v. Warner Bros.*¹ which is the foremost example on copyright in tattoo infringement in today's world. There are other examples of various cases like *Solid Oak sketches v. 2K games*², etc.

2. THE CONNECTION BETWEEN COPYRIGHT AND TATTOO ART

The Indian Copyright Act recognizes six kinds of works: literary, dramatic, musical, artistic works, cinematograph films, and sound recordings.³ The first issue is 'What is the position of tattoos under the Indian Copyright Act, 1957, and if tattooing can be covered under Indian Copyright Law?'

In India, there are two prerequisites for getting a work covered under copyright law;

- Originality but where cinematographic films and sound recording are exceptions in this domain.⁴
- Expression of the work

2.1 Originality

Originality is the primary criterion used among judges around the globe to evaluate whether a work is protected under copyright law. Even However, the test for determining originality has not been established by the lawmakers, as well as the word "original" specified anywhere in the Act. Different jurisdictions have achieved varying levels of creativity. For example, one of the most established copyright regimes in the world, the United States of America, encourages a "Modicum of innovation." This approach was initially articulated in the fundamental case of *Feist Publication Inc. v. Rural Telephone Service*⁵, in which the decision recognized the importance of minimum intellectual innovation in the work's development. The Court emphasized that to be eligible for copyright protection, a work must possess a minimal degree of creativity and originality. It stated that the creative spark or intellectual effort must be present in the work.

There also seem to be two prominent views on originality:⁶

The first one is when it is determined if the person expended a certain amount of intensity, talent, and judgment in the development of a work. From such a vantage point, every speech resulting from certain initiatives, regardless of criterion, can be covered by copyright law. This is a remarkably low threshold.

¹ 811 F. Supp. 2d 798 (E.D. Mo. 2011)

² 148 F. Supp. 3d 412 (S.D.N.Y. 2015)

³ The Copyright Act, 1957, s. 2(y), No.14, Acts of Parliament, 1957

⁴ The Copyright Act, 1957, s. 13, No.14, Acts of Parliament, 1957

⁵ 499 U.S. 340 (1991)

⁶ Howard B Abrams, 'Originality and Creativity in the Copyright Law' (1992) 55 Law and Contemporary Problems 4

Some other points of view might be to consider if this expression would have any literary or artistic value. This is a notably higher bar. The objective evaluation of sensibility is taken into consideration but in reality, it is a subjective criterion, as what is artistic to one individual could not be to another. As a result, distinguishing aesthetic versus factual sensibility is a difficult process.

2.2 Expression

Thoughts are not protected by copyright. It is an expression. As a result, to obtain copyright protection above a work of copyright, it must be fixed in a concrete form. Of that kind fixation is necessitated to be shown, duplicated, and conveyed to the world at large. Because India is a TRIPS member, one of the fundamental conditions of copyrighted material is the "expression" of a concept, method, technique, or function, making the fixing criterion a mandatory duty. Likewise, the WIPO Copyright Treaty of 1996, also called the WCT, outlines the extent of copyright protection and maintains fixation as the primary criterion.⁷

Except if the concept is fixed in expression, hardly a copyright is given to it. The dilemma arises in this case so because the source of this artistic work is the person's skin, which is worthy of demanding rights, as opposed to paper, which the artist has entire sovereignty over through the work. It should be emphasized, nevertheless, that neither TRIPS nor WCT defines the form of fixation for copyright law, as provided that the work is fixed. Therefore, a person's skin may well be deemed a legitimate means because the work's fixation doesn't require any criterion other than the competence to be fixed in an either physical medium for an indefinite amount of time.

The Indian legislation makes no clear reference to this requirement, other than the fact that musical work representations might or might not be fixated. Nevertheless, in the case of artistic works, it must be fixated naturally.

Tattoos are thereby fastened over onto skin, and so the fixation criterion is met as in the instance of tattoos. In the United States, fixation is required⁸, and the judges have acknowledged that tattoos are eligible for copyright protection in the renowned Whitmill judgment⁹. In this matter, the tattooist sued Warner Bros. Entertainment Inc. for allegedly copying the unique tattoo he created on Mike Tyson's face on the faces of film stars in the new movie "The Hangover 2." The court issued a court injunction prohibiting the inclusion of the tattoo in the film. However, there is no similar occurrence in India.

⁷ *The WIPO Copyright Treaty* (1996) Art. 2

⁸ Copyright Law of United States, 1976, s. 101, 17 U.S.C., Acts of Parliament, 1976

⁹ *Whitmill v. Warner Bros. Entertainment, Inc.*, 2011 (WL 2038147)

Then comes the issue of temporary tattoos, where the fixation is not perpetual. In the United States, the fixing must be perpetual¹⁰, although there is no such condition in India under the Copyright Law. As a result, in India, permanent and temporary tattoos must be considered equal.

As a result, because both prerequisites are satisfied, tattooing is eligible for copyright protection within Indian Copyright law. Artistic work is a kind of work under which tattoos would fall. Artistic work under the Indian Copyright Act comes under *section 2 (c) sub-clause (i)* which states that;

“Artistic work means”,

i) a sculpture, a painting, a drawing (including a diagram plan or chart), a photograph, an engraving, whether or not any such work possesses artistic quality;”¹¹

If we look deeper into the words used and utilize the procedure of exclusion, the art of tattoos can be included under "engravings" within the concept of creative work or artistic work.

Looking over the meaning of engravings in Section 2 (i),

“engravings” include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs”¹²

Neither of the words included in the definitions appears to relate to tattoos; nevertheless, the meaning is expanded by the inclusion of the term "other similar works." So, whereas engraving is lines and shapes on the substance of crystal, metals, etc.¹³, lithographs are crafted on a plane as well as a flat texture using colored inks, timber cuts are designs on the substance of bamboo, and print is the use of inks on plain surfaces¹⁴, we understand that it is only the means of the tangible format that changes in each of these techniques. According to the “Principle of Ejusdem generis”, we can deduce that lines, patterns, and sketches on the tangible manner of skin fall within the category of "other similar works."

The lawmakers did never want to incorporate tattoos into the concept; nevertheless, they wanted to include any physical art form to be safeguarded there under meaning. As a result, the second question, i.e., whether tattooing can be secured under Indian copyright law, within which subject area does that belong, is answered.

¹⁰ The Copyright Act 1957, s 13, No 14, Acts of Parliament 1957

¹¹ The Copyright Act, 1957, s. 2(c), No.14, Acts of Parliament, 1957

¹² The Copyright Act, 1957, s. 2(i), No.14, Acts of Parliament, 1957

¹³ Oxford Learner’s Dictionary, (2017)

¹⁴ *ibid*

3. RIGHTS OF THE TATTOO HOLDER

The Indian Copyright Act grants the artist of work two types of privileges:

1. Economic Rights

2. Moral Rights

Who will benefit from these privileges? Should it be the tattooist whose abilities and talents have resulted in the ink looking as it does, or the individual on which one quite a tattoo has indeed been done, as claiming ownership over the section of another individual will lead to irrationality? The following is a discussion of why the difficulty arises concerning both rights:

3.1 Economic Rights

A person who possesses economic rights, namely, the first person of copyright, has just been specified in Section 17, which states that "the author of the work shall be the first owner of the copyright."¹⁵

As previously stated, the issue with tattooing is determining who the initial owner was. Section 17 also specifies where an author and the first owner are not the same person. Proviso (b) of Section 17 of the Indian Copyright Act, says;

“Where a photograph is taken or a painting or a portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person, in the absence of any agreement to the contrary, shall, be the first owner of the copyright therein.”¹⁶

As a result, in India, the individual who has the tattoo crafted on his body, i.e., the human upon whose request the artwork is decided to make; in return for a specific amount of cash i.e., for something like a valuable consideration; is the primary holder of the artistic work of something like the tattoo- in the lack of a contract declaring otherwise- whereas the tattooist is the author.

However, if this approach be taken, the consequence would be bizzare; since the individual who just receives the ink on his body would then be entitled to economically utilize this artwork in a variety of methods, as stipulated in Section 14.

If such kind of approach is not taken, even then the result could be absurd since an individual who has a tattoo on his face would not seek permission from that tattoo artist. Then it would come under “communication of work to the public at large” which is an exclusively individual right of the first

¹⁵ The Copyright Act, 1957, No.14, Acts of Parliament, 1957

¹⁶ The Copyright Act 1957, No. 14, s 17 proviso (b)

owner of that kind of work and then the individual will also get a proportion of his skin or body where someone else's right or claim lies.

Section 14 of the statute provides for economic rights. In the situation of artistic work, the author, i.e., the tattoo artist, has the sole right to carry out or allow others to perform the following activities:¹⁷

- “Reproduction of the work in any form or storing of the work which includes electronic medium also;
- Issuance of the copies to the public; however, copies that are already in circulation are struck by the Doctrine of Exhaustion;
- Performance of the work in public or communication of the work to the public;
- To make a cinematograph film or sound recording of the work;
- Translation;
- Adaptation;
- Concerning the translation or adaption of any work acts done which are specified in the points given.”

3.2 Moral Rights

Section 57 of the Copyright Act of 1957 expresses moral rights in conformity with Article 6bis of the Berne Convention. They are indeed the special rights of the author or creator including the right to paternity as well as the right to integrity.

The author's right to paternity is the ability to claim authorship of his creation and have it credited to him. The right to integrity, on the other side, allows the author to stop or seek damages if his creation is distorted, mutilated, modified, or subjected to any additional unsavory conduct. Nonetheless, the action in question must not jeopardize the creator's or author's honor or reputation, and it must be performed first before the term of copyright on the work expires.

Section 57(1) of the Indian Copyright Act grants Moral Rights there under the heading of "Author's Special Rights."¹⁸ Relying on this stipulation, we discover something: Initially, moral rights are not synonymous with copyright, as stated in the initial statement, "independently of the author's copyright," and thus, simply because it was decided that under Indian Copyright, the very first owner of the tattoo artist is the individual on who it was made, somehow doesn't imply that moral rights would also reside in him.

¹⁷ Dr M K Bhandari, *Law Relating to Intellectual Property Rights* (Central Law Publication, 2019)

¹⁸ The Copyright Act 1957, s 57, No 14, Acts of Parliament 1957

Furthermore, there seem to be two moral rights granted by the Copyright Act. The first is the right of paternity, which is protected by Section 57(1)(a), as well as the latter is the right of integrity, which would be protected by Section 57(1). (b).

An artist has a right to paternity which enables him to claim authorship over the work. A second moral right is the right of integrity, which gives the author of the work to ability to prevent anybody or claim redress if indeed the art is "distorted, mutilated, or modified." This signifies that an individual cannot artistically modify his tattooing, replace it with color, alter designs, or erase it without obtaining the permission of the tattooist; each of these restrictions applies to one's skin. As a consequence of this perspective, the tattooist has a twisted authority so over the product.

4. CONNECTION BETWEEN PERSONALITY RIGHTS AND TATTOOS

Issues elaborated above somehow get complex when that tattoo made by the tattoo artist is seen on a celebrity's body. In such a case it may somehow get mixed with the personality rights of that celebrity who has a tattoo because the tattoo on the celebrity becomes linked with the personality of a dead celebrity and it could then be used in several movies' songs or even video games too etc.

The question which comes to mind is what happens when some kind of tattoo artist becomes the holder of the copyright of that tattoo would you be that celebrity who has a tattoo for infringing or violating the rights of that tattoo list over that tattoo under copyright laws?

Under Indian Copyright law, personality rights are not recognized. However, the courts of law managed to recognize it sometimes. In the year 2003 the High Court of Delhi gave a decision that privacy rights include publicity rights too as that is a person's inherent right in it.¹⁹

Moving further there was another case when the court of law in India give a decision that exploiting commercially any individual's personality even without his permission comes under the right of publicity and it is against the right of its publicity.²⁰ Recently in 2017, the Supreme Court of India in the judgment of K.S. Puttaswamy brought a notable observation regarding privacy is that, "The publicity rights shows or indicates that a person's interest in identification of self which stops those other people from interfering or infringing or violating with the values and meanings that the public associates basically with her."²¹

As a result, if a celebrity's tattoo is identified with him in such a way that it evolves into one of the citizenry's traits of his identity, this also implies personality rights in there. Here is where the

¹⁹ ICC Development v Arvee Enterprises, 2003 (26) PTC 245

²⁰ D.M. Entertainment v. Baby Gift House, (MANU/DE/2043/2010)

²¹ K.S. Puttaswamy v. Union of India, 59, 2017 (10) SCALE 1

extremely perplexing world of tattoos and their accompanying rights becomes even more confusing.

4.1 *Reed v. Nike*²²

Reed, the tattoo artist, filed a lawsuit in the year 2005 versus Nike Inc., Rasheed Wallace, an NBA player, and a celebrity with such an arm tattoo, and Weiden & Kennedy, advertising firms. The claims and demands of the parties were;

First and foremost, Reed claimed that his copyrighted art or work got commercially and economically exploited by the opponents without his consent.

He alleged that the exploitation of his work was done by;

- The Nike Company
- The advertising agency: Weiden & Kennedy.

For exploiting the tattoo with a very close look in the advertisement owned and directed by Nike and by this, they are making copies of his art and work, displaying and showing it to people in public, and circulating it.

Wallace was also fined for violation of the act for using tattoos in a commercial advertisement. A contention was made for a part of the profits produced by Wallace's Nike advertising. As a result, Reed requested an injunction, compensation, distribution, and other relief. The claim, though, was concluded through a confidential legal settlement.

4.2 *Whitmill v. Warner Bros. Entertainment, Inc.*

Throughout this dispute, Whitmill was the tattooist who claimed ownership of its unique and unusual piece of art, Mike Tyson's skull tattoo. In this case, the tattooist claimed that such a contract was inked between himself and Tyson and that any designs, paintings, and even photos of said ink were his copyright. The court rejected redress to the tattooist, stating that no remark or negative opinion was made just on tattooing and that any other art piece would have been enough.²³

What's been essential, though, was the Court's conclusion that tattoos can indeed be covered under copyright and that there is no explanation why it shouldn't be. Nevertheless, this doesn't imply that a person has copyright over another person's head or body, and hence a person is not barred from

²² 17 Civ. 7575 (LGS) (S.D.N.Y. May. 31, 2019)

²³ 2011 WL 2038147

being used their body or facial features simply because it has tattooed on it. The tattoo design was protected by copyright.²⁴

So, it is an essential and relevant judgment where a portion was drawn between the copyright of the tattooists and the right and privilege of a celebrity about his personality rights.

4.3 *Solid Oak Sketches, LLC v. 2K Games, Inc.*²⁵

The present case is a recent case in which game tattoos of three players of basketball were used basically in a computerized game that is 2K games. Solid Oak Skechers is the plaintiffs' game into a contract with the basketball players and owners exclusively and licensor of tattoos. The video game 2K games drafted and showed players that they exist in the real world and so do their tattoos. Before such a thing the 2K games and the company held the rights from the basketball players four around the money of 1.1 billion U.S. dollars.

The question which came in the case was dead such a depiction of the basketball players does include the tattoos or ink on their body find a justification of Fair use under it? The court in this case answered in a very easy manner and give some grounds for it that is,

4.3.1 Use like De Minimis

The court gives a decision that using tattoos or ink is just a part of the big and whole video game. And it does not seem to be clear in the game because in the game there are some fast movements of basketball players so the tattoos aren't seen clearly.

4.3.2 Implied Licence

Moving for the court of law observed that the tattoo artists were aware and they had a knowledge and idea did the tattoos they're making on the players are public figures and the players will go out in the public obviously and maybe some players will be coming into movies or some will come in the media so basically the tattoo made by them could be communicated to the world at large. The court also notices that the players for basketball players have a right to decide whether they want to appear in a video game or other places or not.²⁶

4.3.3 Fair Use

²⁴ *Id*

²⁵ 148 F. Supp. 3d 412 (S.D.N.Y. 2015)

²⁶ Sofia Gourgoulianni, 'The Copyrightability of Tattoos: A Practical Examination of Law Cases' (2020) 4 Journal of Education and Culture Studies 2.

The court gave an opinion that the using of tattoos or ink on the body and basically in this case was actually and in innocent use. The court said that using tattoos like this is a justification for the fair use doctrine.²⁷

Therefore, we can see that in the world there are no clear justifications or parameters where cases like these could be decided, and even though there are some cases in the present in US Courts that there is a dearth of clarity on the area like this for such use.

5. ANALYSIS OF THE WHITMILL V. WARNER BROS. ENTERTAINMENT, INC.²⁸

Facts: Mike Tyson has been questioned if he intended to act unique if he won his 3rd world championship bout against Lennox Lewis in the year 2002. "Oh, God," he said, "if I win the title, I might tattoo my face." Although Tyson was eventually defeated by knockout there in the eighth session, he continued with his tattoo plan after eight months. S. Victor Whitmill, a Las Vegas tattooist, drew and inked Tyson with an abstracted curved "warrior" motif. Whitmill describes the ink as an "American tribal" tattoo "influenced by some of the movement that you would see in a Maori piece."

The finished artwork extends over Tyson's left eye, has two circular shapes in the blank space between both the colored lines, and is composed of a combination of curved lines. Tyson accepted "Tattoo Release" paperwork at the point of sale, which verified Whitmill's copyright of something like the photograph.

Mike Tyson had a good identity as a public figure but in a controversial nature like in the starting object by many as much as the composition of tattoos or illegitimate use of Maori culture.²⁹ For example, the Maori politician and doctor Sharples stated in his own words that he did not like noticing such designs which are similar to their culture and their heritage, and that too to Tyson who has a criminal past. Then after the years gone, the tattoo became a kind of emblem in the global arena of Maori culture. Then victor whitmill filed a complaint of infringement on his copyright claim against the Warner Brothers in the year 2011 just a month before when the hangover Part two movie was about to come and about released in the theatres, The people of Maori culture had social appropriation was again frustrated which they expressed in the news that a foreigner for a person who resides outside that area good old protection under copyright laws in a photograph which belongs to the movie culture.

²⁷ *ibid*

²⁸ The Copyright Act 1957, s 13, No 14, Acts of Parliament 1957

²⁹ Marie Hadley, 'Whitmill v Warner Bros and the visibility of cultural appropriation claims in copyright law' (2020) European IP Review.

Whitmill's Claim: In the year 2011 just a month then the movie hangover second was about to release the tattoo artist victor whitmill filed and launched a complaint for copyright violation against for Warner brothers because they used his art without his permission and unauthorizing and used the tattoo made by him for the Mike Tyson in the film the hangover part second.

In the film, the actor Ed Helms got a tattoo on his face during parting in the night office wedding. Victor Whitmill argued that Warner Brothers used the same design of tattoo on the face of Helms as he gave on the face of Tyson and they did so full film marketing and promotion without getting consent or license from him to use it.

Basically, whitmill wanted a permanent injunction against Warner Brothers for using such a tattoo in the movie and also wanted damages and compensation awards of profits and costs for the infringement and violation Warner Brothers did against him.³⁰

Warner Bros Defence: Warner Brothers gave a certain defense to oppose the claim of victor whitmill which included the fair use doctrine and doctrine of estoppel. The primary and foremost defense which Warner Brothers gave was that tattoos do not come under the copyright laws and victor whitmill cannot claim any compensation or injunction against him because it does not come under copyright laws. Warner Brothers also contended that there is no basic law or precedent of courts for who is the owner of a tattoo design and tattoo art. Warner Brothers also argued that the Body or skin on the body cannot come under copyright right now because one cannot give the right of ownership over the human body.³¹

Judgment: Judge Perry of the US Court held that, while Whitmill had such a good prospect of winning on the grounds of his action and had sustained undue hardship, the balance of burdens and interests of society supported Warner Bros. in issuing a temporary restraining order to block the distribution of The Hangover 2. A plaintiff must show the probability of success on the facts of the case, that they have been burdened with irreparable damage that now the balance of difficulties between both the litigants supports their cause, as well as the award of remedies serves the interest of the public. Temporary injunctions are provided to avoid the commission of infringement of copyright and demand the weighing of contradictory opinions both for and against security, comprising evaluation of the public good. In Ip rights issues, interim action is a common type of compensation for violations of property rights. Judge Perry hindered Whitmill's ability to control reproducing by dismissing her temporary restraining order motion even before the matter was considered at a court hearing.³²

³⁰ *ibid*

³¹ Travis Burchart, 'The Hangover II Must Go On: Tattoo Artist Denied Injunction in Mike Tyson/Tattoo Copyright Suit against Warner Brothers' (2011) Lexis Nexis

³² 2011 WL 2038147

Nonetheless, Judge Perry was largely supportive of Whitmill's copyright infringement argument. In evaluating Whitmill's chances of victory on the grounds, Judge Perry concluded that Whitmill had to have a “strong” chance of beating Warner Bros. She called Warner Bros.' contentions on copyright laws and precedents “silly”, and explicitly rejected Warner Bros.' contention that skins are unable to sustain copyright or its infringement:

“Of course, tattoos can be copyrighted. I don’t think there is any reasonable dispute about that. They are not copyrighting Mr. Tyson’s face, restricting Mr. Tyson’s use of his face, as the defendant argues, or saying that someone who has a tattoo can’t remove the tattoo or change it, but the tattoo itself and the design itself can be copyrighted and I think it’s entirely consistent with the copyright law”.

Notwithstanding the credibility of his copyright infringement case and the likelihood of irreparable harm, Judge Perry granted Whitmill's motion for an injunction to halt the publication of the picture for economic and interests of social considerations. Because that now the picture had already been released in cinemas by the time of the case, this ruling effectively limited Whitmill to a monetary remedy at trial only. Therefore, the case was quickly settled.

6. CONCLUSION

The Indian copyright act could be articulated in a manner so that tattoos would come under its arena and would get copyright protection under it. Since, tattoos qualify the criteria or novelty or originality and even fixation too and therefore can come under section 2 (c) of the Indian Copyright Act, 1957 with the first owner will be an individual who has got the tattoo on his body or skin under section 17 of the Act.

The Problem which comes while applying Sec. 17 of the Act is that in the case of celebrities or public figures, there are much higher chances of exploitation of their tattoo. So, resting all such rights in a single individual will increase the injustice. Tattoos may be considered a basic work of personality rights, with tattoo rights protected solely to the extent that personality rights are not violated. As a result, ownership remains with the tattoo holder, although royalties should be paid to the artists when it is exploited as part of a celebrity's character.