Chapter V

Judiciary and broadcasting rights: Towards Corporatisation

The statutory provisions enshrined in law provide only a modicum of direction vis-a-vis the nature of remedies and the procedure for safeguarding them, leaving a large extent of freeplay within the province of judges. In India, the judiciary has had rather few occasions to address the issues surrounding the rights of broadcasting organisations. Nonetheless, some cases decided by courts in India have settled many questions related to broadcasting rights. Through the judgments in these cases, the judiciary has endeavored to balance the right of the people to inform others and to be informed of the broadcasters’ exclusive rights. Initially the judgments show that the judiciary has viewed broadcasting in the larger perspective of community or public interest rather than as a mere commercial activity. In cases involving sports broadcasts, where exclusivity is of utmost importance, the courts have granted exclusive rights to the broadcasters only for the protection of the signal of the program that they desire to broadcast. As already noted, the Court’s odysseys with broadcasting rights begin in 1995, when the Court held that airwaves are public party. It is based on this judgment that the Parliament of India passed acts, which made sharing of signals with Doordarshan mandatory for private broadcasting companies. Using court as a fora, the adept legal
moves by private companies like Star Sports, and ESPN, with the support of BCCI ensured a shift in Court’s perception, eventually leading to gradual corporatisation of broadcasting rights. This was also supplemented by the process of decentralization that has seen the development of television at an infra-national level and the expansion of the international television trade and the growth of transnational media corporations or what Thussu calls ‘Murdochisation’ of Indian television broadcasting (Thussu: 2000).

In this chapter we will be having a look at some of the landmark judgments and their impact on certain broader and substantive issues related to broadcasting.

5.1 Broadcasting rights and Freedom of expression

In the landmark judgment in the Ministry of Information and Broadcasting v. Cricket Association of Bengl (Supreme Court: 1995), the Supreme Court has unequivocally established that freedom of speech and expression includes the right to acquire and disseminate information. The right to communicate includes the right to communicate through any means available, including electronic media.

On March 15, 1993, the Cricket Association of Bengal (CAB) wrote a letter to the Director General of Doordarshan that as part of CAB’s Diamond Jubilee celebrations, it proposed to hold a six-nation international cricket tournament in November of that year. CAB offered Doordarshan two alternatives - (i) Doordarshan would create host broadcaster signal and undertake live telecast of all the matches that would be played in the tournament, or (ii) any other
party could create the host broadcaster signal and Doordarshan would purchase from that party the rights to telecast these signal in India. In either case, the foreign TV rights would remain with CAB. The letter concluded by asking CAB to indicate the royalty it would like to pay in either case.

To that, on March 18, 1993, Doordarshan replied by asking in turn the amount of royalty that CAB expected if the rights were given to it exclusively for India, without Star TV being given the same. To this letter, CAB wrote on March 19, that they would charge Doordarshan US$ 8 lakh for the right to create the host broadcaster signal and also for granting it exclusive rights for India. CAB, however, said that it would reserve the right to sell/license the right of broadcasting worldwide, excluding India and Star TV. CAB further added that Doordarshan would be under an obligation to provide a picture and commentary, subject to payment of Doordarshan’s technical fees.

To this, on March 31, 1993, Doordarshan sent its bid as host broadcaster for a sum of Rs. 1 crore (US$3.33 lakh), stating inter alia, that CAB should grant signals to it exclusively for India without Star TV getting it. Doordarshan also stated that they would be in a position to create the ‘Host Broadcaster Signal’ and offer live telecast of all the matches in the tournament. Following this, on May 4, 1993, Doordarshan via fax message reminded the President of the CAB of its offer of March 31, 1993. To this, CAB replied on May 12, of that year, that since a Committee of CAB had decided to sell/allot
worldwide TV rights to one party, they would like to know whether Doordarshan would be interested in the deal and, if so, to send their offer for worldwide TV rights latest by May 17, 1993, with regard to (i) outright purchase of TV rights, and (ii) sharing of rights fee.

However, to this Doordarshan replied on May 14, 1993, it was committed to its earlier bid of Rs. 1 crore, namely, exclusive TV rights in India alone. Following these developments, according to the Ministry of Information and Broadcasting, CAB entered into a pact with the World Production Establishment, representing the interests of TWI for telecasting all the matches. However, it did not obtaining clearance from the Government for the telecast. Moreover, it granted TWI sole and exclusive rights to sell or otherwise exploit all exhibition rights of the tournament. Under the terms of the agreement, CAB was to receive US$ 5.5 lakh as guaranteed money. Additionally, if any rights fee income was received, that was to be split in the following ratio: 70 per cent to CAB and 30 per cent to TWI.

When Doordarshan learnt of this development, it informed CAB that it would not telecast the matches played in the tournament by paying TWI TV rights fee and also, that it would not enter into negotiations with TWI for the purpose. Again on October 18, 1993, CAB sent a letter to Doordarshan, reminding it of its earlier offer of rights for telecasting and pointed out that the offer of Rs. 1 crore made by Doordarshan was uneconomical. CAB pointed out that in view of the enormous organisational costs involved, they were looking for a minimum offer of Rs. 2 Cr. They pointed out that the
offers received by them from overseas companies, including from TWI, were for amounts higher than Rs. 2 crore. Moreover, the payment was to be received in foreign exchange. CAB went on to add in the letter that they were given to understand that Doordarshan was not interested in increasing their offer and hence they had entered into a contract with TWI for telecasting the matches. In spite of all this, CAB was keen that Doordarshan telecast the matches, for otherwise people in India would not be able to view the matches. They had, therefore, made TWI agree for co-production with Doordarshan. They, therefore, requested DD to agree to such co-production. CAB also stated in the letter that in a joint meeting with Doordarshan, details of such arrangement were worked out, including supply of the equipment list by the respective parties and it was decided in principle to go in for joint production. In the meeting, it was further agreed that DD would not claim exclusive rights and CAB would be at liberty to sell the rights to Star TV.

However, since subsequently CAB had learnt from newspaper reports that Doordarshan had decided not to telecast the matches, through their letter dated September 15, 1993, CAB asked Doordarshan to confirm the authenticity of the news items. Doordarshan, however, did not respond to this letter. Meanwhile, other networks repeatedly approached CAB for permission to telecast the matches to the Indian audience. Some of these offers were on exclusive basis. But CAB kept the matter pending since they did not wish to deprive Doordarshan’s viewers of the matches. They further added that they had also learnt that DD would be interested
in acquiring rights of telecast provided it was allowed to produce some matches directly and the matches produced by TWI were made available to it live without payment of any technical fee. CAB, therefore, under the circumstances, suggested a fresh set of proposals for Doordarshan’s consideration and requested response before October 21, 1993.

On October 27, 1993, DD responded to the letter in the negative, stating that the offer was not acceptable to it. The letter said that Doordarshan would not take any signal from TWI. Doordarshan further denied that they had agreed to any joint production with TWI. In response to this letter, on October 29, 1993, CAB replied saying that since they had also suggested production of live matches by Doordarshan, the question of taking signals from TWI did not arise, and as to Doordarshan’s sensitivity about taking signals from TWI, CAB would be quite happy to allow Doordarshan to produce its own picture of matches and Doordarshan may buy rights and licences from it at a mutually agreed price. From the above correspondence, it is brought out that the controversy between the parties was with regard to the terms for telecasting of the matches.

Following this stalemate, on November 8, 1993, CAB filed a writ petition in the Calcutta High Court pleading, inter alia, that the respondents should be directed to telecast and broadcast all the matches and also make all arrangements for telecasting and broadcasting of the matches by the agency appointed by CAB, viz.,
TWL. The petition also sought interim reliefs. On the same day, the High Court directed the advocate of the Union of India to obtain instructions in the matter and in the meanwhile, passed interim orders making it clear that they would not prevent Doordarshan from telecasting any match without affecting the existing arrangements between CAB and TWI. On November 9, 1993, a single judge confirmed the interim order passed on November 8, 1993, and the respondents were restrained from interfering with the frequency lines given to TWI. On November 10, 1993, VSNL advised INTELSAT at Washington seeking cancellation of its request for booking. On November 17, 1993, the learned judge partly allowed the writ by directing All India Radio to broadcast the matches. On November 12, 1993, in the appeal filed by the Union of India against the aforesaid orders of the Division Bench, the High Court passed an interim order to the effect that:

(1) CAB would pay Doordarshan a sum of Rs. 5 lakh per match and the revenue collected by Doordarshan on account of sponsorship will be kept in a separate account.

(2) Doordarshan would be the host broadcaster.

(3) The Ministry of Telecommunications would consider the question of issuing a license to TWI under the Indian Telegraph Act and decide the same within three days.

On November 12, 1993, Doordarshan asked CAB to provide various facilities at each match venue as this was a pre-requisite for creating host broadcaster signals in India. CAB sent a reply on the
same day, calling upon Doordarshan to telecast the matches within India pursuant to the High Court order. On the same day, the Committee of Secretaries decided that the telecast of all sporting events would be within the exclusive purview of DD/MIB. It was also decided that for the purpose of obtaining necessary clearances for telecasting different types of events for the country, a single window service would be followed where the concerned administrative Ministry would be the ‘nodal’ Ministry to which the application will be submitted and it would thereafter be the function of the ‘Nodal’ Ministry to obtain permissions from the concerned Ministry/ agencies.

On November 14, 1993, the High Court in clarification of its order of November 12, 1993, directed, inter alia, as follows:

(a) Where the signal is required to be separately generated by TWI, necessary permission should be given by Doordarshan and/or other competent authorities.

(b) The differences with regard to the placement of cameras, etc., if any, between the cricket authority and Doordarshan should be mutually worked out, and if this cannot be done, the dispute should be decided by the Head of the Police in the place where the match was being played.

(c) The equipment of TWI which had been seized by the Customs Authority should be released upon undertaking that it would not be used for any other purpose, and
(d) VSNL should take proper steps for uplinking, and should not take any steps to defeat the orders of the Court. TWI should comply with all financial commitments made to VSNL.

On November 15, 1993, CAB filed the writ petition in the apex court and on the same day TWI was permitted to generate its own signals. On the same day, Doordarshan filed a contempt petition in the High Court against CAB and another for non-compliance with the orders of the High Court. It filed special leave petitions.

The court framed core questions of law relating to this case. These were:

(1) Has an organiser or producer of an event the right to get the event telecast through an agency of his choice, whether national or foreign?

(2) Does such an organiser have a choice of agency for telecasting, particularly when the exercise of his right does not make demand on any of the frequencies owned, commanded or controlled by the Government or Government agencies like VSNL or Doordarshan?

(3) Can such an organiser be prevented from creating the terrestrial signals and denied the facility of merely uplinking the terrestrial signal to the satellite owned by another agency, whether foreign or national?

(4) What, if any, are the conditions that can be imposed by the Government department, which in the present case is the
Ministry of Information and Broadcasting, for (a) creating terrestrial signals of the event, and (b) granting facilities of uplinking to a satellite not owned or controlled by the Government or its agencies?

Here, in order to answer these questions, the court considered two incidental questions: (i) Whether the Government or Government agencies like DD have a monopoly of creating terrestrial signals and of telecasting them or refusing to telecast them, and (ii) whether DD can claim to be the host broadcaster for all events whether produced or organised by it or by anybody else in the country and can insist upon the organiser or the agency for telecasting engaged, to take the signal only from the Government or Government agency and telecast it only with its permission or jointly with it.

This case had raised, inter alia, grave constitutional questions touching upon the freedom of speech and expression guaranteed by Article 19(i)(a) of the Constitution, the interpretation of Section 4(1) of the Indian Telegraph Act, and the right to establish private broadcasting and telecasting facilities/stations, etc. In short, these issues dealt with the whole gamut of the law on broadcasting and telecasting.

In this case involving the right to live-telecast an event, that is, the cricket matches organised by CAB, the court considered the various issues involved in live telecasting. Telecasting is a system of communication, either audio or visual or both. The case at hand concerned audio-visual telecommunication. The initial step in
telecasting is to generate the audio-visual signals of the event or of the information which is sought to be communicated. When the event to be telecast takes place on the ground, the signal is generated on the ground by the requisite electronic mechanism, such as the audio-visual recorder. This stage can be described as the recording stage. The events may be spontaneous, accidental, natural or organised. Spontaneous, accidental and natural events are by their nature uncontrollable. But organised events can be controlled by the law of the land. No law can be put in place to prohibit the recording of spontaneous, accidental or natural events. However, for the reasons mentioned in Article 19(2), it is possible to restrict their telecast. And as for the organised events, a law can be made for restricting or prohibiting the organisation of the event itself, and also for telecasting it, on the same grounds as mentioned in Article 19(2). Thus, the organisation or production of an event and its recording cannot be prevented except by law permitted by Article 19(2).

In the case at hand, the contention of MIB and Doordarshan against the right to telecast claimed by CAB/BCCI was raised only on the ground of the limitation of frequencies, ignoring the fact that CAB/BCCI had not made demand on any of the frequencies generated or owned by MIB/Doordarshan. CAB desired to telecast the cricket matches organised by it through a frequency not owned or controlled by the Government but owned by some other agency.

The only permission that CAB/BCCI sought was to uplink to the foreign satellite the signals created by its own cameras and the
earth station or the camera or cameras and the earth station of its agency to a foreign satellite. This permission was sought by CAB/BCCI from VSNL, which is the Government agency controlling the frequencies. The permission again cannot be refused except under law made in pursuance of the provisions of Article 19(2) of the Constitution. Hence, as stated above, one of the important questions to be answered in the present case was whether the permission to uplink to the foreign satellite, the signal created by CAB/BCCI, either by itself or through its agency, could be refused except on the ground stated in the law made under Article 19(2).

The Apex court referred to a slew of decisions, including Odyssey Communications Pvt. Ltd. v. Lokvidayansnnghatana and Ors (Supreme Court:1988), wherein it was held that the right of the citizen to exhibit films on Doordarshan subject to the terms and conditions to be imposed by Doordarshan is a part of the fundamental right of freedom of expression guaranteed (Article 19(1)(a)), which can be curtailed only under circumstances set out under Article 19(2). This right is similar to the right of the citizen to publish personal views through any other media, such as newspapers, magazines, and advertisement hoardings, among others. subject to the terms and conditions of the owners of the media.

Freedom of expression is a preferred right which is very zealously guarded by the Supreme Court. However, it is pertinent to note that on the question whether a citizen enjoys the fundamental right to establish a private broadcasting station or TV centre, the
Court reserved its opinion for a decision in an appropriate case. Further, a reference was made to *Life Insurance Corporation of India v. Professor Manubhai D. Shah (Supreme Court: 1992)*, which held that: “The words ‘freedom of speech and expression’ must be broadly construed to include the freedom to circulate one’s views by word of mouth or by writing or through audio-visual instruments. It, therefore, includes the right to propagate one’s views through the print media, i.e., periodicals, magazines or journals or through any other communication channels, e.g. radio and television. The right extends to the citizen being permitted to use the media to answer the criticism leveled against the view propagated by him/her”.

5.2 Broadcast Reproduction Right

In *ESPN Stars Sports v. Global Broadcast News Ltd*) the Delhi High Court decided a string of cases dealing with the exception of fair dealing and news channel reporting. This case seems to be a chance to take advantage of the favourable attitude of the Delhi High Court towards broadcasters, especially in light of the earlier decisions of the concerned court in *PrasarBharti v. Sahara TV Network Pvt. Ltd. and Ors* (Delhi High Court: 2005) and the injunction suit filed by PrasarBharti against news channels in relation to infringing broadcast by the latter of the Beijing Olympics.

The dispute in *ESPN Stars Sports v. Global Broadcast News Ltd* (*Delhi High Court: 2008*) hinges on the plaintiff’s allegation about its exclusive broadcast reproduction rights¹. The plaintiff, ESPN Star

¹ Broadcast reproduction right (Indian Copyright Act 1994)
Sports, which is engaged in the production and telecast of sports channels, sought permanent injunction against the defendants to restrain them from utilising the footage of the plaintiff, in the matches played, and to be played during the India-Australia test matches, T20 series and the tri-series one day internationals involving Sri Lanka, India and Australia, without obtaining its prior permission and in violation of the plaintiff’s terms and conditions and from utilising the footage from the television for any television programme, except for regularly scheduled news bulletin in excess of 30 seconds per bulletin and a total of two minutes per day and from carrying any advertisements before, during and after such footage. An ad-interim injunction to the same effect was also sought.

The plaintiff averred that it has obtained the sole and exclusive rights from various sports bodies, including but not limited to Cricket Australia to televise sporting events, including the

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(1) Every broadcasting organization shall have a special right to the know as "broadcast reproduction right" in respect of its broadcasts.
(2) The broadcast reproduction right shall subsist until twenty five years from the beginning of the calendar year next following the year in which the broadcast in made.
(3) During the continuance of a broadcast reproduction right in relation to an broadcast, any person who, without the license of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,-
   a. rebroadcasts the broadcast, or
   b. causes the broadcasts to be heard or seen by the public on payment of any charges, or
   c. makes any sound recording or visual recording of the broadcast, or
   d. makes any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was license, for any purposes not envisaged by such license, or
   e. sells or heirs to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (C) or clause (d), shall, subject to the provisions of Section 39, be deemed to have infringed broadcast reproduction right.

Various broadcasters running several news channels, including CNN-IBN, NDTV 24x7, etc.
India versus Australia cricket test matches, one day international (ODI) matches and the solitary T20 cricket match to be played in Australia from December 26, 2007, to March 8, 2008. Therefore, no other person or entity can broadcast/telecast those cricket matches in India without license from the plaintiff or its sole and exclusive distributor ESPN Software India Private Limited. The plaintiff claimed that the defendants were unauthorisedly telecasting the signals of matches, which was inconsistent with their primary obligation of being news-based channels(s), and they have allegedly used, without authority, substantial portions of the plaintiff’s footage of its Star Cricket channel, which had telecast the test matches exclusively from December 26, 2007 to January 28, 2008. It was also alleged that the defendants used the footage for creating programmes, which they commercially exploited. In short, the entire case hinged on the plaintiff’s allegation about its exclusive broadcast reproduction rights.

As per the plaintiff, broadcast reproduction rights are a special class of rights, recognised under Part VIII of the Copyright Act. As Section 37(3) provides, in Clauses (a) to (e) acts deemed to be infringement of broadcast reproduction rights, unauthorised telecast of footage belonging to the plaintiff by the defendants amounted to re-broadcast under Section 37(3)(a) and also reproduction of the event under Section 37(3)(d). The only exception recognised under Chapter VIII of the Act was the use, consistent with fair dealing, excerpts of any programme, in the broadcast of current event or bonafide review for teaching and research, embodied in Section
39(b). It was submitted that the use of footage for between 10 to 15 hours in a span of 3-4 days, as alleged by the defendants, can never be considered as fair dealing and was in any event not bona fide. Two cases, PrasarBharti v. Sahara TV Network Pvt. Ltd (Delhi High Court:2005) where the Court had approved the seven minute cap in 24 hours for exhibition of footage and also directed that use of such time shall be only for giving cricket news without any commercial programmes and advertisements during and after the cricket news and Hubbard and Anr. v. Vosper (1972), which held that if extracts or footage are used as a basis for comment, criticism or review, that may be a fair dealing, whereas if they are used to convey the same information as the copyright owner’s right, for a rival purpose, that may be unfair, were relied upon in support of their arguments.

On the other hand, the defendants argued that as per Section 61(1) of the Copyright Act, in every action claiming infringement, the owner of the copyright should necessarily be made a party to the proceedings. The plaintiff deliberately chose to exclude the owner of the copyright, i.e., ACB from the proceedings (Frito-Lay India & Ors. vsRadesh Foods &Anr: 2009). In the circumstances, the suit is not maintainable and had to be rejected at the threshold. The defendants also objected to the extent of the license. The plaintiff failed to produce a copy of the entire license. The crucial sections of the agreement, particularly, those dealing with the content of the license, and exceptions to the exclusive rights, have been withheld from the Court. It was, therefore, submitted that the suit does not
disclose the plaintiff’s cause of action to maintain a claim for infringement.

It was pleaded that the defendant’s conduct was not consistent with fair dealing; it was not bona fide. The defendants, on the other hand, urged that there is no universal standard in this regard; each case has to be judged on its merits. It was additionally urged for them that the plaintiff’s claim for relief amounted to seeking an injunction incapable of supervision, which the court should desist from granting.

As observed in Vosper (Hubbard and Anr. v. Vosper), whenever a court has to see whether a particular conduct is ‘fair dealing’ or not, the context, the length of the original work borrowed, and the purpose, can never be ignored. No universal rule or standard exists; cases have to be decided on the peculiar facts. What may be unfair in one context maybe perfectly fair in another and vice versa. There is a certain amount of elusiveness in evolving a thumb rule. Judged from this standpoint, the court finds it difficult to accept that a 30 second limit or seven minute cap can apply across the board in all contingencies. Similarly, the court cannot universalise that recourse to advertisements before or after broadcast of such clippings would be unfair. In the circumstances of this case, the plaintiffs have not shown sufficient material, barring the aggregate length of the clippings used by the defendants in their news programmes and sports reviews, to say that it amounted to unfair dealing. In any case, there is no imminent threat or danger of legal injury of such
kind that damages or a claim for money cannot compensate. Even if the defendant’s use of the clippings were, or partly were to be found as unfair use, the plaintiff can be adequately compensated in damages. On the other hand, the nature of injunction sought is of such a broad nature that the court would well be drawn into details while attempting to supervise it; a course of action hardly desirable if not entirely unfeasible. For the above reasons, the plaintiff cannot be granted the ad-interim injunction sought for. The defendants questioned the maintainability of the suit on the ground that the plaintiff’s cause of action has not been disclosed and also that in the absence of the owner of the copyright, under Section 61(1) the suit has to fail... the mandate of Section 61(1) applies in case of claims for infringement of broadcast reproduction rights; the non-impleadment of the owner of copyright is fatal to the maintainability of the suit. Similarly, the non-joinder of owner of the copyright renders the suit liable to be rejected. The proviso to Order 1, Rule 9 of the Civil Procedure Code says that a suit can fail for non-joinder of a necessary party.

5.3 Mandatory Signal Sharing – Towards Corporatisation?

The Delhi high court recently held *(BCCI v PrasarBharati Broadcasting; 2015)* that PrasarBharti can air the feed it gets from private sports broadcasters only on its terrestrial network. This benefits companies such as Star India Pvt. Ltd. The Court ruled that PrasarBharti cannot share the signal on Doordarshan channels that have to be compulsorily carried by cable and DTH operators. The
origin of the dispute dates back to 2007. The litigation was between PrasarBharati Broadcasting Corp. on the one side, and private sports broadcasters - Nimbus Communications Ltd, ESPN Software India Pvt. Ltd, Star India Pvt. Ltd. and BCCI on the other side. It may be noted that the position taken by BCCI always supported the private broadcasters, leading further to the commercialization of Cricket and Broadcasting.

The case arises from the conflict in implementation of two separate laws. One is the Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati) Act, 2007, which requires a broadcaster to compulsorily share the signals of sporting events of national importance with PrasarBharati and the other is section 8 of the Cable Television Networks Act 1994 which makes it mandatory. As a result of the signal sharing with DD, cable operators got access to the broadcasting of sporting events through two different channels, one through the channels of ESPN/Star, for which they have to pay subscription fees and the other via DD which is free, leading to a loss in subscription and advertising revenue for media right holders (ESPN/Star).

The writ petition had been filed by the BCCI and Nimbus Communications. BCCI and Nimbus had sought a direction to be issued to respondent Nos. 1 & 2 (PrasarBharati Broadcasting Corporation and Union of India) to encrypt Doordarshan’s Satellite Transportation Feed of live broadcasting signals of cricket matches organized by BCCI to the DoordarshanKendras and transmission
towers throughout India for subsequent broadcasts on Doordarshan’s terrestrial networks. A declaratory writ was also sought for declaring that no person other than PrasarBharati had the right to transmit, relay or offer for exhibition, the live broadcasting signals of sports events shown by PrasarBharati under the Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati Act, 2007 (hereinafter referred to as the Sports Act). A declaration was also sought that no cable television network, DTH Network, multi-system network or local cable operator could broadcast such sports events without a licence from the content owners. Finally, a direction was also sought against the respondent No.1 for notifying that the Doordarshan signals relayed live in respect of the sports event, including cricket matches notified under the Sport Act, should be carried on cable television networks, DTH Broadcasting networks, Multi- System Cable Networks, etc. pursuant to (Sec.8) of the Cable Television Networks (Regulation) Act 1995.

The Court, by virtue of the judgment rejected each of the prayers and, as aforesaid, dismissed the writ. The Judge after analysing various provisions of the PrasarBharati Act, 1990, CTN Act, the Sports Act and the Guidelines for Downlinking of TV Channels Guidelines for Uplinking from India, concluded that Parliament had consciously chosen not to prescribe encryption for transmission of the feed received by Doordarshan to its Kendras. Carrying of sporting events in the designated Doordarshan Channels was a matter of policy with which the court could not interfere (Section 8 of the CTN Act). He, however, observed that if non-encryption resulted in the
violation of any copyrights, which the appellants held as content owners, they were free to seek redressal. The Court, however, refrained from giving any opinion as to whether the non-encryption of Doordarshan’s Satellite Transportation Feed of Live Broadcasting Signals of cricket matches to Doordarshan Kendras and transmission towers for subsequent broadcasting on Doordarshan’s terrestrial networks, resulted in any violation of the copyrights of the appellants. In view of the above, the Court dismissed writ petition.

The BCCI and Nimbus Communications Limited preferred an appeal (LPA No.1327/2007) against judgment. During the pendency of the appeal ESPN Software India Pvt. Ltd and Star India Pvt. Ltd. were also added as appellants. Star India Pvt. Ltd, on the termination of the agreement by the BCCI and Nimbus, entered into a Broadcasting Rights agreement with BCCI with effect from April 2012 to March 2018. ESPN Software India Pvt. Ltd is responsible for the distribution of the sports channels, including ESPN, STAR Sports, STAR Cricket, STAR Sports 2, STAR Cricket HD and ESPN HD. Because of the events taking place during the pendency of the appeal, ESPN Software India Pvt. Ltd and Star India Pvt. Ltd have been added as appellant (Nos. 3 & 4).

The petitioners sought the striking down of Sec. 3 of the Sports Act insofar as it relates to cricket test matches. The notification dated 13.09.2000 issued by PrasarBharati Broadcasting Corporation (Respondent No.1) under the CTN Act, inter alia, mandating that
DD1 and DD be carried compulsorily by cable operators. Order dated 29.05.2007 issued by the Government of India. By virtue of the said order, clause 7.9 was added to the Schedule to the Licence Agreement for DTH services which ideas: "The licencee shall carry or include in his DTH services the TV Channels which have been notified for mandatory and compulsory carriage as per the provisions of Sec.8 of the Cable Television Networks (Regulation) Act, 1995 as amended, failing which the licensor shall be at liberty to take action’ as per clause 20.1 of this agreement" (Clause: 7.9).

It Notification dated 03.07.2007 issued by the Central Government and the Notification (19.10.2007) by the Ministry of Information and Broadcasting be struck down.

The notification enabled the government to use Sec. 2(1) of the Sports Act, which declared the following sporting events in respect of cricket to be of national importance:-

(1) All official one-day and Twenty-20 matches played by the Indian Men’s cricket team and such test matches as are considered to be of high public interest by the Central Government;

(2) Semi-finals and Finals of Men’s World Cup and International Cricket Council Championship Trophies;

According to the petitioner, constituted the offending portion "such test matches as are considered to be of high public interest by the Central Government". made for commanding the respondents
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(Union of India and PrasarBharati). In essence, this writ petition seeks that all test matches being played by the Indian Men's Cricket Team with any other test match playing country should be mandatorily telecast live only from the feed provided by the content holder. The petitioner challenged the discretion of the Central Government to specify as to which test matches are to be considered of high public interest.

From the provisions of PrasarBharati Act, it is clear that PrasarBharati has the primary duty to organise and conduct public broadcasting service with the object of informing, educating and entertaining the public and to ensure a balanced development of broadcasting on radio and television. One of its objectives is to provide adequate coverage on sports and games so as to encourage healthy competition and the spirit of sportsmanship. In order to realize this goal, the PrasarBharati has been empowered to negotiate for purchase, or otherwise acquire programmes and rights or privileges, inter alia, in respect of sports.

The preamble to the CTN Act indicates that it is an Act "to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto" (Section 3) CTN Act stipulates that no person shall operate a cable television network unless he is registered as a cable operator under the Act (Sec.3). The most important and material provision of the CTN Act, is Sec.8. This section is on Compulsory transmission of certain channels.- Central Government to specify the names of Doordarshan
channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and re-transmission of such channels.

In areas where digital addressable system has not been introduced the prime band shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language channel of the State in which the network of the cable operator is located. Thus Sec.8 does permits the Central Government to specify the Doordarshan channels or the channels operated by or on behalf of the Parliament to be mandatorily carried by the cable operators.

The petitioner submitted that the issue at hand related to the interplay between the provisions of Sec.3 of the Sports Act and Section 8 of the CTN Act. He submitted that Sec.3 of the Sports Act required a content rights owner to mandatorily share simultaneously the live broadcasting signal of sporting events of national importance, without advertisements, with PrasarBharati to enable PrasarBharati to re-transmit the same on PrasarBharati’s terrestrial networks and DTH networks. He submitted that the mandatory sharing of the live broadcasting signals was only for the purposes of enabling PrasarBharati to re-transmit the said signals on PrasarBharati’s terrestrial networks and PrasarBharati’s DTH Networks and did not extend to cable operators. This is so, because cable operators cannot be regarded as part of PrasarBharati’s terrestrial networks or PrasarBharati’s DTH Networks. He submitted that while the provisions of Sec.3 are clearly mandatory, the provisions of Section 8
of the CTN Act are not compulsory on the Central Government. While it was compulsory for the cable operators to carry the specified Doordarshan channels and channels operated by or on behalf of Parliament, it was not compulsory on the Central Government, inasmuch as the Central Government could choose which channels were to be mandatorily carried by the cable operators.

It can hardly be denied that sport is an expression of self. In an athletic or individual event, the individual expresses himself through his individual feat. In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Art.19 (1)(a) is an expression of thought and feeling and not of the physical or intellectual process or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free speech element is absent from his right. The degree of the element will depend upon the character of the telecaster who claims the right.
An organiser such as the BCCI or CAB in the present case which are indisputably devoted to the promotion of the game of cricket, cannot be placed in the same scale as the business organisations whose only intention is to make as large a profit as can be made by telecasting the game. Whereas it can be said that there is hardly any free speech element in the right to telecast when it is asserted by the latter, it will be a warped and cussed view to take when the former claim the same right, and contend that in claiming the right to telecast the cricket matches organised by them, they are asserting the right to make business out of it. The sporting organisations such as BCCI / CAB which are interested in promoting the sport or sports are under an obligation to organise the sports events and can legitimately be accused of failing in their duty to do so. The promotion of sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio and TV are the most efficacious methods, thanks to the technological development, the sports organisations like BCCI / CAB will be neglecting their duty in not exploring the said media and in not employing the best means available to them to popularise the game. That while pursuing their objective of popularising the sports by electing the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organisations or the right claimed by them to explore the said means, into a commercial right or interest. It must further be remembered that sporting
organisationssuch as BCCI / CAB in the present case, have not been established only to organise the sports events or to broadcast or telecast them. The organisation of sporting events is only a part of their various objects, as pointed out earlier and even when they organise the events, they are primarily to educate the sportsmen, to promote and popularise the sports and also to inform and entertain the viewers.

The organisation of such events involves huge costs. Whether surplus is left after defraying all the expenses, is ploughed back by them in the organisation itself. It will be taking a deliberately distorted view of the right claimed by such organisations to telecast the sporting event to call it an assertion of a commercial right. Yet the MIB has chosen to advance such contention which can only be described as most unfortunate. It is needless to state that we are, in the circumstances, unable to accept the ill-advised argument. It does no credit to the Ministry or to the Government as a whole to denigrate the sporting organisations such as BCCI / CAB by placing them on par with business organisations sponsoring sporting events for profit and the access claimed by them to telecasting as assertion of commercial interest.

The petitioner claimed that the right to freedom of speech and expression under Art.19 (1)(a) includes the right to disseminate information by the best possible method through an agency of one's choice so long as the engagement of such agency is not in contravention of the Constitution and does not amount to improper or
unwarranted use of the frequencies. Hence the choice of BCCI/CAB of a foreign agency to telecast the matches, cannot be objected to. There is no suggestion in the present case that the engagement of the foreign agency by the BCCI/CAB is violative of the provisions. On the other hand, the case of MIB, as pointed out earlier, is that the BCCI/CAB want to engage the foreign agency to maximise its revenue and hence they are not exercising their right under Article19(1)(a) but their commercial right. While asserting the said right, it is incidentally going to earn some revenue. In the circumstances, it has the right to choose the best method to earn the maximum revenue possible.

The Objects and Reasons of the Sports Act states that the distribution of broadcasting signals of sporting events of public interest in India is characterized by a few dominant exclusive rights holders or broadcasters and distribution platforms. They acquire exclusive rights for all the available platforms including satellite and cable, terrestrial, Direct-to-Home and radio. Terrestrial platform, is exclusively owned by PrasarBharati as of now and sports commentary has not yet been opened up for private FM broadcasters. The end result is that large numbers of listeners and viewers in India specially those who do not have access to satellite and cable television and most of which are in rural areas are denied access to these events. Hence the Government in its Downlinking and Uplinking Policy guidelines issued with the approval of the Cabinet, provided for mandatory sharing of sports signals of national importance with PrasarBharati in order to provide access to the largest number of
listeners and viewers, on a free to air basis, of sporting events of national importance whether held in India or abroad.

The object was to ensure that the citizens right to be informed freely, truthfully and objectively Sec. 12 (2) (b) PrasarBharati Act ensuring adequate coverage to the countries diverse culture and of catering to the various sections of the society. This was in consonance of the citizens fundamental rights enshrined under Article 19(1)(a) of the Constitution to receive information. Section 12(2)(n) was referred to inasmuch as it emphasizes the objective of PrasarBharati of providing a comprehensive broadcast coverage through the choice of appropriate technology and the best utilization of the broadcast frequencies available and ensuring high quality reception (Para:43).

With reference to Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (supra), MrKuhad submitted that Article 19 (1)(a) of the Constitution was a two-fold right. It entailed a right to express as also a right to receive information / to be informed. He submitted that media, including the television, is the mechanism to effectuate this right. He further submitted that the rights of citizens were sacrosanct and that the right of the citizens as viewers and listeners is paramount and not the rights of the broadcasters. He submitted that the Sports Act was enacted to effectuate these constitutional rights of the citizens. Furthermore, the expression appearing in Section 3 - "to enable them to retransmit the same on its terrestrial networks" - was aimed at
stipulating that the said live broadcasting signal could be carried only over free-to-air channels.

Section 3 of the Sports Act was to make available the telecast of the sporting events of national importance to such subscribers who had no access to such events. These were those subscribers, who had no cable or DTH connection and only had a Doordarshan’s terrestrial or DTH connection which was free in the hands of the subscribers. By carrying the shared signals on channels, which are compulsorily carried on private cables and DTH platforms, PrasarBharati is making available the shared signals on platforms where they are already available and is thereby offering the content to subscribers in direct competition to the broadcaster, who is the owner of that content. It was submitted that Section 3 of the Sports Act is not about creating of a competing entity but about availability of live broadcast signals to those subscribers, who had no access. It was, therefore, contended that the live broadcast signals, which were mandatorily to be shared under Section 3 of the Sports Act ought not to be permitted to be carried by cable operators.

The right of the private broadcasters, but only with the limited right for telecasting particular cricket matches for particular hours of the day and for a particular period. It is not suggested that the said right is objectionable on any of the grounds mentioned in Article 19(2) or is against the proper use of the public resources. The only objection taken against the refusal to grant the said right is that of the limited resources. That abjection is completely misplaced in the
present case since the claim is not made on any of the frequencies owned, controlled and utilised by the DD. The right claimed is for uplinking the signal generated by the BCCI/CAB to a satellite owned by another agency. The objection, therefore, is devoid of any merit and untenable in law. It also displays a deliberate obdurate approach." (Para: 49).

There is no quarrel with the proposition advanced by the learned ASG that a citizen has not only a right to expression, but also a right to receive information. If, in any manner, this right to receive information is curtailed, the centre can always step in to protect the same. It is for this reason that by virtue of Section 3 of the Sports Act, content owners in respect of sporting events of national importance are mandatorily required to simultaneously share the live broadcasting signal of sporting events of national importance with PrasarBharati to enable them to re-transmit the same on its terrestrial networks and DTH networks. At the point of time when the CTN Act came into being, PrasarBharati, through the medium of Doordarshan, had the widest coverage insofar as television networks were concerned. Cable operators had recently entered into the field. And, by virtue of Section 8, they were compulsorily required to carry DD1 and DD (News channels). The idea behind that was that programming of national importance should be carried to the maximum number of persons. There is also no dispute with the proposition that a public right cannot be changed by a private agreement, but, in the present case, it is not a private agreement that
is in question. But, a provision of the statute, namely, Section 3 of the Sports Act (Para:51).

The learned counsel appearing on behalf of the ESPN / STAR and BCCI are, in our view, correct in submitting that Section 3 is an expropriatory provision and that the same has to be construed strictly and in such a manner that it places the least burden on the expropriated owner. If one were to interpret Section 3 in this manner, it would be evident that the object of simultaneous sharing of the live broadcasting signal with PrasarBharati is only to enable them (PrasarBharati) to re-transmit the same on its terrestrial networks and DTH networks. Strictly speaking, these networks have to be those of PrasarBharati and not of private players, such as the cable network operators. Section 2(1) of the Sports Act does give an indication, when it defines "terrestrial television service" that a terrestrial network carries signals over the air using land based transmitters which are directly received through receiver sets by the public. It is obvious that the expression "terrestrial networks" used in Section 3 of the Sports Act must be read in this context. It does not involve the carrying of the signals through a cable network. In the same fashion, the meaning of DTH networks can be discerned from the definition given to "DTH broadcasting service" in Section 2(j) of the Sports Act. Read in this manner, DTH networks would entail multi-channel distribution of programmes directly to the subscribers" premises without passing through an intermediary, such as a cable operator by uplinking to a satellite. In other words, DTH network also does not entail the signals passing through a cable operator. Thus, in either eventuality, that is,
in the case of a terrestrial network or a DTH network, the intervention of a cable operator is specifically ruled out (Para:52).

BCCI is the content rights owner. It has sold these rights to ESPN / STAR, which, in turn, sends the live feed in an encrypted form to its satellites. From the said satellite, the feed is sent to its own channels for distribution either through their own DTH networks or through cable operators. In either eventuality, they are subscribed services. Along with signals sent through their own distribution channels, ESPN / STAR shares the signals with PrasarBharati, which is sent to PrasarBharati in an encrypted form. PrasarBharati retransmits the signals in an encrypted form to its satellite, which, then streams that signal to three different networks. The three networks being the DTH network of PrasarBharati, the DD Kendras and private cable operators through the must carry obligation stipulated under Section 8 of the CTN Act. Thus, cable operators have access to the broadcast of the sporting events through two different channels. One through the channels of ESPN / STAR and the other through the channels of Doordarshan. While, the former is to be paid for, the latter is free.

From the above, it is evident that what ESPN / STAR and BCCI are objecting to is not the transmission of the signals through the DTH and terrestrial networks of PrasarBharati, but the free transmission of the signals by PrasarBharati through cable operators. This, according to ESPN / STAR, has hit them in two ways. The first being by reduced advertisement revenue and the second being by
reduced subscription revenue. Those homes, which were connected via cable networks would have paid for receiving the live broadcast signals had PrasarBharati through Doordarshan not provided the same free of cost to the cable operators. Although there is an argument that by virtue of Section 3(2) of the Sports Act, the advertisement revenue received by Doordarshan in respect of the shared content was also to be shared in the ratio of not less than 75:25, it still does not cater to the loss of subscription revenue. Furthermore, it has been pointed out that the advertisement revenue, which ESPN / STAR would have made on its own, would not be matched by PrasarBharati and, therefore, the provision of Section 3(2) of the said Act was no consolation for providing the feed free to the cable operators.

As a result of the foregoing discussion, the interplay between the provisions of Section 3 of the Sports Act and Section 8 of the CTN Act have to be read in such a manner that the shared live broadcasting signal, which PrasarBharati receives from ESPN / STAR, should not be placed in the channels of Doordarshan which are to be compulsorily carried by the cable operators under Section 8 of the CTN Act. We do not agree with the view taken by the learned single Judge in PW(C) 7655/2007, which forms the subject matter of LPA No.1327/2007, that carrying sports in a designated Doordarshan channel is a matter of policy. In our view, it is a matter of administration. But, even if we regard it as a matter of policy, such policy cannot override the statutory provisions contained in Section 3 of the Sports Act in the manner which we have interpreted. The
appeal as well as WP(C) 8458/2007 are allowed to the extent that the live broadcasting signal shared by ESPN / STAR by virtue of Section 3 of the Sports Act with PrasarBharati, shall not be carried in the designated Doordarshan channels under the must carry obligation cast by Section 8 of the CTN Act on cable operators. This shall operate prospectively.

The court observed that “it would be evident that the object of simultaneous sharing of the live broadcasting signal with DD is only to enable them to re-transmit the same on its terrestrial networks and DTH networks. Strictly speaking, these networks have to be those of DD and not of private cable network operators.” A bench of justices held that “the simultaneously shared live broadcasting signal can only be re-transmitted by PrasarBharati without the intervention of a cable operator”. Explaining the purpose of mandatory signal sharing with PrasarBharati, the court said that it “is to provide access to the largest number of the viewers, on a free-to-air basis on sporting events of national importance” (Para: 33). It is essentially directed towards those citizens who do not have access to cable television and only have access to the terrestrial and DTH networks of PrasarBharati, the judgment adds. The court also took into account the huge media/broadcast rights amount that private broadcasters pay to BCCI.