CHAPTER 3

THE CONSTITUTIONAL ASPECTS OF
THE LEGAL CONTROL OVER
THE ELECTRONIC MEDIA
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3.1.1 Introduction

Constitution is the backbone every law in India. In order to pass the constitutional test the law must be in accordance with the Fundamental Right mentioned in the part III of it. The telegraph laws, the powers of the Ministry and Information and the laws made by the Ministry must be in accordance to the Fundamental Rights. Of which freedom of speech and expression is the important one with regard to the electronic media. Justice Sawant, Secretary, Press Information Bureau said that the freedom of speech and expression includes right to acquire information and disseminate it. The monopoly of the state in the case electronic media itself is violation of free speech and expression. Section 38 of TRAI Act says that it shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 and in particular nothing in this Act shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority. The new statute is not repealing the old telegraph laws. In effect the TRAI Act is built on the edifice of telegraph laws which were formulated prior to the introduction of the branch of knowledge called the electronics. This also is violative of the constitutional provisions.

3.1.2 Freedom of speech and expression and the media regulation

The Regulatory systems are generally of two types: the Social and Economic. The constitutional regulations are basically three types: the social, political and economic. The foundation of the legal regulation is to secure justice. The objectives are

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228 “The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of Speech and expression is necessary, for self-expression, which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy.” Secretary Ministry of Broadcasting and Cricket Association of Bengal and others, AIR 1995 SC 1236
to attain liberty (of thought, expression, belief, faith and worship); equality (of status and of opportunity); fraternity and the unity and integrity of the nation. The Constitution of India Part III Fundamental rights and Part IV the Directive Principles are the two most significant parts relating to regulations. Every legal regulatory system in the country shall be in conformity to the fundamental rights. And every law in derogation to the fundamental rights is null and void to the extent of such inconsistency. At the same time all the legal regulations must be with a view to protect the Fundamental Rights. The types of Fundamental Rights relevant to the electronic media regulations are the right to equality, right to freedom right against exploitation, cultural and educational rights and rights for constitutional remedies. The Constitutional directives for the legal controls is paved on the foundation of social order for the promotion of welfare of the people with social order in which justice, social, economic and political, to minimise the inequalities in income, status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The principles of policy to be followed by the State include securing equal payment and means of livelihood for men and women, conservation of material resources of the community and distribution of the ownership and control over it to subserve the common good. The directives include the state shall endeavour to regulate the operation of the economic system in order to prevent the concentration of wealth and means of production to the common detriment. Further the legal control shall in the direction of protection of

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229 The constitution of India Preamble contains all these objectives which reads as follows:-We, the people of India, having solemnly resolved to constitute India into a (sovereign socialist secular democratic republic) and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation in our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution the constitution of India of 1950


231 Id Article 14

232 Id Article15, 21,22,23,24.

233 Id Article29, 30.

234 Id Article 32.

235 Id Article 38

236 Id Article 39

237 Id Article 39(d)

238 Id Article 39(c)
women and children and weaker sections. The economic and health condition of the citizen also are required to be accounted. The Constitution prescribes that the law shall consider that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Further the laws shall be intended to promote international peace and security, maintain just and honourable relations between nations; foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.

3.1.3 Electronic media constitutional remedy

The first exclusive legislation with regard to the television in India was the Cable Television Regulation Ordinance. Generally the power to make laws is vested with Parliament. But if the circumstances warrant an immediate action to create a law the President also can make laws in the form of Ordinances subject to the provisions of Article 123. An ordinance has all the effect and force of an enactment of the Parliament. Thus if the legislature fails to take step to control the media and an early action through law is required to be met with the constitution provides a technical remedy.

The major developmental change in the electronic media regulations was effected by virtue of judgments pronounced by the Supreme Court of India. By virtue of Article 129 Supreme Court of India is a court of record and as per Article 141 the law declared by the Supreme Court is bidding on all the courts within the territory of India. Since the matters relating to the electronic media comes within the Union list as item number 32 by virtue of Article 246 the parliament has exclusive power to make laws. The Cable Television Networks (Regulation) Act 1995, The Prasarbarathi

239 Id Article 39(e)
240 Id Article 39 (f)
241 Id Article 39(f)
242 After the advent of liberalisation introduced by GATT Agreement and in the light of the registering of several new private broadcasters from different part of the world and due to the booming up of the Cable industry an emergent situation arose which necessitated the creation of a new law for the Cable Television. Hence the Cable Television Networks (Regulation) Ordinance 1994 was passed along with the Cable Television Networks (Regulation) Rules 1994. Later the Cable Television Networks (Regulation) Act 1995 substituted it.
(Broadcasting Corporation of India) Act 1990, are the two significant laws made by the Parliament.

Apart from the laws made by the Legislature, the ordinances made by President and Ratio Decidendi by the Supreme Court of India the laws made by the competent erstwhile rulers in the pre independent India which also are a class of laws which are applicable to the media. The Constitutional validity of such laws is prescribed in Article 372 and 372 A. All such laws must be consistent with Article 13 which prescribes all the laws must be consistent with the Fundamental Rights mentioned in Part III of the Constitution of India. The Indian Telegraph Act 1885 and The Indian Wireless Telegraph Act 1933 are the two significant laws used for controlling the electronic media. 243

Article 261 prescribes that all the public acts; public record and judicial proceedings of the Union and of every State shall be given full faith and credit throughout India. The judgment pronounced by any civil court in India shall be executable anywhere within the territory of India.

The public acts include executive and legislative acts and public record include any official book, record made by a public servant in the discharge of his official duties or by any person in performance of a duty specially enjoined by the law of the performance of a duty specially enjoined by the law of the country in which book, register or record is kept. 244 The major aspect of the legal control over the electronic media is executed through the public acts.

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243 Even now the monopoly of State over the airwaves and authority to restrict the terrestrial broadcasting are controlled by virtue of the telegraph laws. The Broadcasting Bill of 1994 is still remaining in the cold storage. Even if the Bill is made an enactment it will not be capable of meeting the requirements of the present day needs of the broadcasting regulations. A thorough revamping off the Bill is needed.

244 Such Registering Authorities are prescribed in the Prasar Bharathi (Broadcasting Corporation of India) Act 1990, Cable Television Networks (Regulation) Act 1995, Telecom Regulatory Authority of India Act, 1997, and Information Technology Act 2000, Apart from these the Ministry of Information and Broadcasting, Department of Telecommunication etc are maintaining records on different technical aspects. Further the documents relating to incorporation maintained by Company and Industries Department, the fiscal documents maintained by the Taxation Department etc also are examples for such official activities of the State.
3.1.2 Freedom of speech and expression and the media regulation

“And ye shall know the truth, and the truth shall make you free” The immortal declaration in Holy Bible about the significance of right and duty of freedom of speech is acting as a beacon of guidance for truth even after centuries of the preaching. Freedom of speech and expression is a set of fundamental rights guaranteed by Indian Constitution. Basically it is designed to provide protection against state action other than in the legitimate exercise of its power to regulate private rights in the public interest. They are the basic right relating to the mass media of every kind including electronic media. Article 19(1) (a) of Indian Constitution assures the Freedom of Speech and expression as ‘All citizens shall have the right of freedom of speech and expression.’ The right is at par with Article 19 of Universal Declaration of Human Rights which says: ‘Everyone has the right to freedom of information and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’ Again the freedom for speech and expression by Article 19(2) of the International Covenant on Civil and Political Rights” which says: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, or in the form of art, or through any other of his choice.” In the context of these legal provisions it can be seen that the term speech and expression has different dimensions. In the context of electronic media or broadcaster it may the right of the broadcaster or the audience (or anybody at the receiving end) or a third party who is neither a broadcaster nor a member of the audience. The Fundamental Right is available to all these three groups and the restrictions are given under the Clause (2) of Article 19 itself. The fundamental rights are different from the legal rights, statutory rights customary rights etc. The legal rights (e.g. contractual rights) cannot be protected

245 John-8: 32, Holy Bible.
247 Article 19(1)(a) Constitution of India
248 Article 19 Universal Declarations of Human Rights.
249 Article 19(2) of the International Covenant on Civil and Political Rights. The provisions were applied by the Supreme Court in (1) Raghubar Dayal Jai Prakash v. Union of India AIR 1962 SC 263 and (2) State of Bihar v. Kameswar Singh, AIR 1952 SC 252.
as a fundamental right because it is not protected by the constitution. While a statutory right or right created by legislation can be taken away by the legislature, a fundamental right cannot be abrogated by legislation.

3.1.3 Freedom to broadcast and observation of the courts.

The broadcaster’s freedom is not the mere freedom from governmental intervention, freedom from pre-censorship etc. It includes the freedom to protect the right for freedom of speech and expression of all the people without the State hegemony or private dominance. In that dimension the broadcaster himself may act as a facilitator of the free speech. The Primary right in the case of electronic media is the right to broadcast itself. Whether the state has the right to exclude all others from the broadcasting activities is a much-debated question. Supreme Court of India has unambiguously held that “Broadcasting is a means of communication and, therefore, a medium of speech and expression. Hence in a democratic polity, neither any private individual, institution organisation nor any Government or Government organization can claim exclusive right over it. Our Constitution also forbids monopoly either in print or electronic media.” Further in the same case the court observed, “The freedom of speech and expression includes right to acquire information and disseminate it.” As per the present nature of the ‘lex loci’ (at least in theory) anyone who satisfies the prescribed legal conditions can operate the broadcasting activities. Exceptions to this are that the right to start Terrestrial Broadcasting is not yet opened to the general public. The term broadcasting needs an elaboration in the context of proliferation of electronic media. The present day broadcasting systems are Radio Broadcasting (both

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251 Ebrahim Sulaiman Sait v. Muhamed M.C. AIR 1980 SC 354
252 Pannalal Binraj (M/S) v Union of India AIR 1957 S.C. 397.
254 “The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of Speech and expression is necessary, for self-expression, which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything, since it is only through it that the widest possible range of ideas can circulate.? It is the only vehicle of political discourse so essential to democracy.” Secretary Ministry of Broadcasting v Cricket Association of Bengal and others. AIR 1995 SC 1236
255 Section 2 of the Broadcasting Regulation Bill which relates to the granting of license mentions the following seven categories of broadcasting: 1. Terrestrial radio broadcasting 2. Terrestrial television broadcasting 3. Satellite radio broadcasting 4. Satellite television broadcasting 5. Direct to home broadcasting or DTH 6. Local delivery services and 7. Such other services as may be prescribed
Terrestrial and Satellite), Television Broadcasting (including Terrestrial and Satellite, Cable TV and DTH or Direct To Home Broadcasting) and Webcasting or broadcasting through internet. As per the observation of the Supreme Court the broadcasting is terrestrial cable and satellite.\textsuperscript{256} As per the Prasar Bharathi Act broadcasting means in addition to the above it includes the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds\textsuperscript{257}.

The Copyright Act has defined the term broadcast as: Communication to the public by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or by wire, and includes a re-broadcast.\textsuperscript{258} In general parlance\textsuperscript{259} the term speech and expression covers all these elements. The umbrella protection available under the trio Articles relating to the speech and expression are

\textsuperscript{256} The Supreme Court has observed that the telecasting is of three types:

“The telecasting is of three types, - (a) terrestrial, (b) cable (c) satellite. In the first case, the signal is generated by the camera stationed at the spot of the event and the signal is then sent to the earthly telecasting station such as the TV centre which in turn relays it through its own frequencies to all the views who have TV screens/sets. In the second case, viz., cable telecasting, the cable operator receives the signals from the satellite by means of the parabolic dish antenna and relays them to all those TV screens which are linked to his cable. He also relays the recorded file programmes or cassettes through the cable to the cable-linked viewers. In this case, there is no restriction on his receiving the signals from any satellite to which his antenna is adjusted. There is no demand made by him on any frequency or channel owned or controlled by the national Government or governmental agencies. The cable operator can show any event occurring in any part of the country or the world live through the frequencies if his dish antenna can receive the same. The only limitation from which the cable TV suffers is that only those viewers who are linked to the dish antenna concerned can receive the programmes relayed by it. The last type, viz., satellite TV operation involves the use of a frequency generated, owned or controlled by the national Government or the governmental agencies, or those generated, owned and controlled by other agencies.” Secretary Ministry of Broadcasting and Information v Cricket Association of Bengal and others. AIR 1995 SC 1236 Para 13.

\textsuperscript{257} “Broadcasting” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all it's grammatical variations and cognate expressions shall be construed accordingly

\textsuperscript{258} Section 5((dd) "broadcast" means communication to the public-

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or(ii) by wire, and includes a re-broadcast;

Broadcasts may be audible only, as in radio, or visual or a combination of both, as in television. Sound broadcasting in this sense may be said to have started about 1920, while television broadcasting began in the 1930s. With the advent of cable television in the early 1950s and the use of satellites for broadcasting beginning in the early 1960s, television reception improved and the number of programmes receivable increased dramatically.

\textsuperscript{259} 'Programme' is defined in Section 2 (g) of The Cable Television (regulation) Act as a means of any television broadcast and includes- Exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players;
available to all these audio-visual means and the ancillary activities appurtenant to it. The deep-rooted opinion about the electronic media is that it is totally different from the print media. Hence the rules and regulation relating to the print media cannot be adopted for the broadcasting. Broadcasting as a significant media has been analysed under different doctrines and dogmas. For example as per the school of liberalism, the media shall be provided with access to the general public both at transmission and receiving ends. The liberals themselves are of different categories that approach the matter in different ways to attain the same goal. Positivists are another group. To them the media shall be under the control of the positive commands of the sovereign. That is essential according to them, for providing equitable access to the media to the general public. In other words if the media is not controlled or regulated by the state the chances of private monopolization and abuse are larger than in a situation of absolute liberalisation. Bagwathi, J. in the Express Newspapers case speaking for the Court said that “The freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that the liberty of the press consists in allowing no previous restraint upon publication”

It is indisputable that by the term the freedom of the media is meant the right of all citizens to speak publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express. The Bombay High court held in a case that: "True democracy can thrive only in a free clearing house of competing ideologies and philosophies, political, economic and social. In this the press has an important role to play. The day this clearing houses closes down would toll the death knell of democracy." The constitution of India provides regulatory provisions to protect both the side of the electronic media venture. The broadcaster as well as the beneficiary of the media is brought within the umbrellas of protection well as the regulation. Article 13 prescribes that any law in derogation to the principles of fundamental rights are void

260 Binod Rao v Minocher Rustom Masani (1976) 78 Bombay L.R. 125. The Bombay High Court decided this case.
Indian Constitution does not specifically mention the liberty of mass media. But the word ‘speech and expression’ covers the rights relating to broadcasting. The decision in Maneka Gandhi’s case reinforces this view. In this case the court held that: “It is not a correct view that the right which is not specifically mentioned by name can never be a fundamental right within the meaning of Art 19(1) (a). The test is whether the right claimed is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.”

The significance the Article 19(1) (a) was observed in several cases by the Supreme Court. In the words of Justice Patanjali Sastri it is the foundation of all democratic organisations. Without free political discussion public education is not possible. The free media is essential for the proper functioning of the government. But the Judge gave a hint of warning by saying ‘a freedom of such amplitude might involve risks of abuse’. Justice Das held that there must be a balance between the freedom of speech guaranteed by Article 19(1) and ‘the exigencies of State which is the custodian of the interest of the general public, public order, decency or morality and other public interests which may compendiously be described as social welfare.’ The Supreme Court is generally against the ‘pre censorship’ of the media. In Brij Bhushan v. State of Delhi the apex court held that pre censorship is restriction of the liberty

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261 The Constitution of India Article 13. Laws inconsistent with or in derogation of the fundamental rights.- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3) In this article, unless the context otherwise requires,- (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. 4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.1


guaranteed by the Article 19(1) (a). Justice Das held in another case that if the mass media is prevented from publishing its own view or the views of its correspondents ‘it is certainly a serious encroachment on the valuable and cherished right to freedom of speech’. The restriction upon the media content as well as the material used for it comes within the ‘objectionable restriction’ by virtue of the observation of Supreme Court. In Sakal News paper Case the restriction upon the pages and the size imposed by Government on a newspaper was held as against the freedom secured by the Constitution. In Brij Bhushan's case Patanjali Sastri, J. speaking for the majority judgment said that "Every free man has undoubted right to lay what sentiments and pleases before the public; to forbid this, is to destroy the freedom of the press".

Justice Mudholkar held that ‘the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen’. At the same time the mass media do not have special immunity from the operation of general laws. If the application of general laws is calculated to curtail the freedom of speech it can be challenged. The freedom is not a totally uncontrolled one. Justice Hidayathulla observed in the ‘tale of four cities case’ that the censorship of a cinema is constitutionally valid but it should not cause unreasonable restriction upon the citizen and even treating sex as obscenity without a proper evaluation of the circumstances may amount to a restriction. In Rangarajan v. Jagjivan Ram the Supreme Court held that even in a situation the publication of the content of the media may cause violence the government cannot restrict the freedom of speech and expression. The court said that “it is the duty of the state to protect freedom of expression since it is a liberty guaranteed against the state. The state cannot plead its inability to handle the hostile audience problem. It is the obligatory duty of it to prevent it and protect the freedom of expression”. In Prabha Dutt’s case when a group of newspaper reporters sought

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270 Express Newspapers (p) Ltd. v. Union of India, A.I.R 1958 SC 578.
271 K.A. Abbas v. Union of India A.I.R 1971 SC 481.
273 Prabha Dutt v. Union of India. A.I.R 1982 SC 6; (1982) 1 SCC 1
permission to interview convicts sentenced with death penalty at Thihar jail the court observed that Article 19(1)(a) is not an absolute right nor indeed does it confer any right on the press to have an unrestricted access to means of information. This position has been upheld in Sheela Barse\textsuperscript{274} case and Charulatha Joshi\textsuperscript{275} case. The most significant case in this context is Secretary Ministry of Information and Broadcasting v. Cricket Association Bengal. Broadcasting comes under Article 19(1) (a). Since the air wave is a public property an inherent restriction exists on it. This restriction is over and above the restrictions given in Article 19(2). To mitigate the problems caused by the monopoly of the state the court had directed to constitute a regulatory system as an independent autonomous public authority. As a consequence the Prasar Bharathi (Broadcasting Corporation of India) has been constituted.

Basically Broadcasting is an audio visual media. Cinema is the most popular form of audiovisual media in India. In broadcasting the cinema or cinema based programmes are dominating in the entertainments. The virtues and vices of the media are largely depended upon the movie based programmes. Justice Krishna Iyer has pointed out that: “No doubt cinema is a good instrument of public good if geared to social ends and can be a public curse if directed to anti social objectives”\textsuperscript{276} The impact of the audio visual media is multiple fold comparing to the other forms of art. Of the different types the cinema is accounted as the most popular category. Television programmes also can be considered as akin to cinema. In K.A. Abbas Case Justice Hidayathulla observed about cinema that: “The treatment of motion picture must be different from that of other forms of Art and expression, the motion picture is able to stir up emotions more deeply than any other product of art.”\textsuperscript{277}

In Ramesh v. Union of India Justice Sabyasachi Mookharji made a significant observation in the matter: “It is no doubt that the motion picture is a powerful instrument with a much stronger impact on the visual and aural senses of the spectators than any other medium of communications, like wise it is also true that the television, the range of which has vastly developed in our country in the past few years, now

\textsuperscript{274} Sheela Barse v. State of Maharashtra (1987) 4 SCC 373
\textsuperscript{276} Rajkapoor v. Lakshman A.I.R 1980 SC 604
\textsuperscript{277} K.A. Abbas v. Union of India A..I.R 1971 SC 481.
reaches out to the remotest corners of the country catering to the not so sophisticated, literary or educated masses of people living in distant villages.” In Lakhanpal v. Union of India the Delhi High court had observed that television as a medium of expression is entitled for constitutional protection. The court said that: “A closer examination of the concept of freedom of speech and expression would reveal that freedom of speech and expression is not merely the right to speech or the right to express, but it implies also the right of communicating that speech and expression to others by all available means. It can be a news paper, it can be a loud speaker, it can be a pamphlet, it can be a book it can be a drama or it can be through television or a broadcasting station”

The right to participate in broadcasting through televising a cinema also is accounted as part of the freedom of secured by Article 19(1) In Odyssey communications case the Supreme court held that: “A citizen’s right to exhibit films on television is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements etc.” In Indira Jaisingh v Union of India the Bombay High Court had observed that:” The right of freedom of speech and expression has been considered by our courts as including freedom of the press. The right equally covers other media. A citizen cannot enjoy freedom of speech and expression if he is not permitted to express his views freely through mass media even when he is invited to use these media.” Justice V.R. Krishna Iyer said ‘Despite evil legislation some life still survives in the Press because the Court has pumped in some oxygen.’ In the context of electronic media we may read that despite a legislative vacuum some life still survives in the electronic media because the Court has

279 Lakhanpal v. Union of India A.I.R 1982 DELHI 167
281 Indira Jaisingh v. Union of India A.I.R 1989 Bom 25 (Per Sujatha Manohar. J)
282 V.R.Krishna Iyer -Freedom of Information, Eastern Book Company. Delhi 1990 (p 14)- The author has quoted F.S. Nariman “Happily it is by constitutional interpretation—particularly by Supreme Court of India—that he right to know, the right of information, the rights of free press, have been established precedent after precedent …fortunately judges stature and caliber have done by interpretation what the constituent assembly omitted to do by enactment. By carefully chosen diktat -brick by brick the content of Article 19(1)(a) has been enriched - it now stands exalted as a preferred freedom as in the U.S.”
pumped in some oxygen. The highest vitalising judgment came in the Cricket broadcasting case.

3.1.4 Constitutional restrictions on freedom of speech and expression

Article 19(2) of the constitution has prescribed eight specific grounds for the regulating the freedom of speech and expression. As per the Article the state can impose ‘reasonable restrictions (I) in interest of ‘sovereignty and integrity of India’, (ii) in the interest of unity of the state’ (iii) in the interest of friendly relations with foreign States, (iv) in the interest of public order (v) in the interest of decency or morality (vi) in relation to contempt of court (vii) in relation to defamation and (viii) in relation to incitement to an offence.

The operation of the ‘reasonable restriction’ may be through any existing law or the laws to be made by the State. That means it covers (i.) Any law in the country (including (a) the past law adopted for the present purpose, (b) the present law and (c) the laws which may be made in the future) (ii) It is applicable to the laws made by the state and (iii) The validity of such restrictions is to be accepted in so far as such law imposes reasonable restrictions only on the basis of the eight specific categories. The Constitutional protection is available to natural persons who are citizens. A corporation is not a natural person hence cannot claim protection under the Article 19. The fact that the Shareholders of a corporate body are citizens is not a factor to be considered in the case. But other fundamental rights like Article 14 are applicable to corporate bodies also. The principle is applicable against an unincorporated society also.

In the Cricket Broadcasting Case the Supreme Court made two significant observations with regard to Article 19(2). One is that: “The burden is on the authority

\[\text{\textsuperscript{283}}(2) \text{Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India,) the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.) (3) Nothing in sub-clause (b) of the said clause shall\]


\[\text{\textsuperscript{285}}\text{Tata Engineering ad Locomotive Company v. State of Bihar, A.I.R 1965 SC. 40 (48)}\]

\[\text{\textsuperscript{286}}\text{All India Bank Employees Association v. N.I Tribunal A.I.R 1962 SC 171.}\]
to justify the restrictions. Public order is not the same thing as public safety and hence no restriction can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution limitations on fundamental rights are specifically spelt out under Art 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Art.19(2).\(^{287}\) The second observation was that: “A look at the grounds in Art. 19 (2) of the Constitution, in the interest of which law can be made placing reasonable restrictions upon the freedom of speech and expression goes to show that they are all conceived in the national interest as well as in the interest of the society. The first of the grounds viz. the sovereignty and integrity of India, the security of the state, friendly relations with foreign states and public order are grounds referable to national interest whereas the second set off grounds viz., decency, morality, contempt of court, defamation and incitement to offence are conceived in the interest of the society.”\(^{288}\)

Unlike the observations in Maneka Gandhi Case (where the court held that the appurtenant rights which are not specifically mentioned in the Article 19 can be elucidated by interpretation) the restrictions are not permitted to be supplied by interpretation. Further the restriction can be imposed by any of the authorities who are included in the definition of Article 12, who are competent to make ‘laws’\(^{289}\) either principal or subordinate laws. Another most significant aspect of ‘reasonable restriction’ is that without legislative authority, the Executive cannot impose any restriction upon the fundamental rights guaranteed by Article 19(1)\(^{290}\). This aspect is

\(^{287}\) Secretary Ministry of Broadcasting and Cricket Association of Bengal and others. A.I.R 1995 SC 1236 (Per Justice P.B.Sawant (for himself and on behalf of Justice S. Mohan)- Para 11)

\(^{288}\) Secretary Ministry of Broadcasting and Cricket Association of Bengal and others. A.I.R 1995 SC 1236 (Per Justice B.P. Jeevan Reddy- Para 83) In the matter court made it clear that “The interconnection and interdependence of freedom of speech and the stability of the society is undeniable. They indeed contribute to and promote each other. Freedom of speech and expression in a democracy ensures that the change desired by the people, whether in political, economic or social sphere, is brought about peacefully and through law. That change desired by the people can be brought about by in an orderly, legal and peaceful manner is by itself an assurance of stability and an insurance against violent upheavals which are the hallmark of societies ruled by dictatorships, which do not permit this freedom”.

\(^{289}\) Oudh Sugar Mills v. Union of India. A.I.R 1970 SC 1070.

very much significant in the case of broadcasting for the reason that since there is no comprehensive legislation with regard to the electronic media the State control over it is exercised through executive orders. The regulatory legislation may be a general one and no specific legislation is required.291

3.2.1 Restrictions in the interest of sovereignty and integrity

Electronic media plays a crucial role in maintaining the sovereignty and integrity of every nation in the contemporary world. Sovereignty means the supreme authority of the State.292 By virtue of the provisions in the Preamble India is a Sovereign Socialist Secular Democratic Republic. India can make or unmake decisions with respect to the country without the authority or interference of any other country293. Woodrow Wilson said ‘A state is a people organised for law within a definite territory.’294 Salmond said that sovereignty is an essential element for state. ‘Sovereignty or supreme power is that which is absolute within its own sphere. ‘It is in and through the State that law exists.’295 That means the very existence of the State with absolute sovereignty for the very survival of the legal system... Sardar K.M. Munshy said that sovereignty has two aspects: one external, that is in relation to other states enjoying sovereign powers and the other internal that is in relation to its own citizens.’ Further ‘India, in spite of being a sovereign Republic is limited in its external relations by its membership of the United Nations Organisation, by the express and implied alliances which it maintains with several nations, by the financial and military difficulties which preclude every nation in the world from doing what it likes, and above all, by the increasing pressure of international opinion.’

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292 In political theory, the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order. The concept of sovereignty, one of the most controversial ideas in political science and international law, is closely related to the difficult concepts of state and government, of independence and democracy. Originally, as derived from the Latin term superanus through the French term souveraineté, sovereignty was meant to be the equivalent of supreme power. 1994-2001 www.britannica, Inc last visited on 12.2.2011.
294 Woodrow Wilson was the 28th American President
295 Salmond-Jurisprudence. Sweet and Maxwell 1945 (pp 1-45)
3.2.2 Sovereignty explained

Henri Maine said ‘the existence of vast mass of influences which we may call, for shortness, moral, that perpetually shapes limits or forbids the actual direction of the forces by its sovereign.’ Maine reached into the conclusion that “the entire history of the community determine of its historical antecedents which in each community determine how the sovereign shall exercise or forbear from exercise or forbear from exercising his irresistible coercive power”. In short the very existence of the sovereignty depends upon the popular opinion and the experience of the society especially in democratic countries like India. Thus the balance of the freedom of speech and supreme power of the sovereign is to be maintained by law. Socialism is a system of social organization in which property and the distribution of income are subject to social control rather than individual determination or market forces some socialists insist that only strong centralized state direction and a command economy will suffice. Others advocate a "market socialism" in which the market economy would be directed and guided by socialist planners. Here exists a dilemma in the modern society. If the market determines the standard, need, values etc of the State then a question arises what is the role of the State. If the answer is the States responsibility is to control the market then another query comes how far the State can proceed with the control measures in a ‘free market economy’. The riddle continues. In order to thwart the negative impact of the market upon society especially in the broadcasting media the provisions in the Art 19(2) of the Constitution of India is useful.

3.2.3 Sedition and related matters

Sedition, conspiracy, espionage, publication programmes and advertisements having seditious contents etc are the types of acts which a broadcaster may involve and for which some strict legal control is required. With the development of technology and clubbing of Information Technology and Telecommunication system and advance electronics like satellite communication the protection of sovereignty and integrity of the nation has become a very big challenge. The modern broadcasting system goes

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296 Henri Maine, Ancient Laws for a free reading
http://archive.org/stream/ancientlaw030840mbp#page/n13/mode/2up last visited on 1-3-20011

297 For the details on the subject -
http://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf Last visited on 1-1-2012
beyond the boundaries of nations. Similarly the surveillance and the espionage satellites are more or less common things in the international scenario. If an organisation or an enemy nation intend to air a programme detrimental to the nation there is very little effective law to thwart such an act.\footnote{298} In fact the ground for the legal regulations on the ground of sovereignty and integrity of India was added by the sixteenth amendment of the Constitution of India in 1963 with a view to empower the parliament to make laws for the protection of the state and to protect the existing laws from being challenged by Article 19 (1)(a).

Section 124.A of Indian Penal Code relates with the offence of sedition applicable to electronic media also.\footnote{299} the section says that whoever by words, either spoken or written, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished for life, to which fine may be added or with imprisonment which may extend to three years or with fine.

### 3.2.4 Contempt and electronic media

Any broadcasted material containing any contemptuous or hatred breeding or capable of exciting disaffection material which may detrimentally act against the state it will attract the penal provisions. In a case the Bombay High Court had observed that: ‘Hatred is explained as a passion which every wise and good man endeavours to check in himself. Hatred did any good. It can only do harm and if unchecked would tend to disruption of social ties and return of barbarism. With feeling of hatred the law can do nothing because it cannot see into the heart and cannot reform it, but law does step in when any attempt is made to excite that feeling in others, and it does so as much for protection of the individual as for the protection of the state. If it is the individual against whom hatred is excited the offence is described as defamation, and the law extends similar protection to the collective body which is called the Government and which represents community as a whole; and whose duty it is to perform the functions of preserving order and peace, which are essential to the beneficent co-operation of


\footnote{299} The Constitution of India Preamble
human beings and to the enjoyment and safety of life and property. The term disaffection means a feeling contrary to affection and includes disloyalty and all feelings of enmity. The term came for discussion in Kedar Nath v. State of Bihar the court held: The security of the State, which depends upon the maintenance of law and order, is the very basic consideration upon which legislation with a view to punishing offences against the state s undertaken. Such legislation has on the one hand fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of the democratic form of Government that our Constitution has established. But, the freedom has to be guarded against becoming a license to vilification and condemnation of the Government established by law, in other words which incite violence or have a tendency to create public disorder. A citizen has right to say or write whatever he likes about the Government or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder”

3.3.1 Constitutional remedies on bureaucratic exegesis

Criticism of a particular Government or campaigning against the ruling party or comments against bureaucracy will not attract the provisions relating to sedition. The contemporary trend in the broadcasting is that the more political views can be pumped through the media, the strong the foundation of the political parties. Some political parties have their own channels. Those parties cannot own a channel used to buy air time from the broadcasters for their propagations. Side by side to this there used to emerge programmes in the form of satire, comedy shows, and talk shows etc, which contain dense criticism upon the action, or inactions of the state, the activities sometimes even the mannerisms of the politicians. Often such criticism used to be so mean and per se defamatory to the persons involved. There were instances in which the governments crumbled down due to the media propaganda. In this instances it is to be noted that such criticism will not affect the ‘State’ and the State is different from the bureaucracy and political parties. The difference between a State and the Government

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established by law is different from the officialdom as explained by Lok Manya Bal Gangadara Tilak. He said while the State is the house the officialdom is like rooms. Arranging and re-arranging or repairing of the rooms and pulling down the house are entirely different. The seditious acts amounts to pulling down the house. The criticism based on truth and values will only protect the state. If the criticism is vicious it amounts to defamation. Even if such wrongful programme will not attract provisions relating to sedition an action on the basis of defamation will prevail.

3.3.2 Restrictions in the interest of security of the state

The communal riots, class hatred and terrorism are the curse of every modern State including India. The electronic media can be utilised for instigating and fomenting such crimes. The protection of the fundamental rights shall not be given to such programmes Section 153A of Indian Penal Code deals with promoting class hatred. The section says whoever either by spoken words or by written words or by signs or by visible representations or otherwise promotes or attempts to promote on grounds of religion, race, place of birth, residence, language, caste or community, or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional grooves or cast or communities or disturbs public tranquillity or organises any activity to cause fear or alarm or insecurity amongst members of the community shall be punished with imprisonment up to 3 years or with fine or with both. In the broadcasting media there is a likelihood of airing programmes containing vicious matters detrimental to the social labyrinth will attract the penal provisions of this section. The terms ‘the words spoken or written, signs, visible representations or otherwise’ covers all the possible types of broadcasting materials. In article 19(2) limitation upon the freedom of speech and expression in case of violation of public tranquillity will attract the penal provisions in S.153.A of Indian Penal Code.

In Valentine Chirol Case in 1915 preferred by Lok Manya Bal Gangadara Tilak during the cross examination by Sir Edward Carson the freedom fighter answered to the question that how a Government can be differentiated from its officials, he said ‘A house consists of rooms but a room does not mean a house’
Section 153 B of Indian Penal Code which is against imputations and assertions prejudicial to national integration is applicable to the media. If a broadcasting item contains any imputations that any class of persons cannot by reason of their being members of any religious, racial, language or regional group or cast or community bare true faith and allegiance to the constitution of India as by law established or uphold the sovereignty of India or publishes such a propaganda that a member of particular class will be denied protection under the constitution of India and the rights of citizens or causes disharmony or feelings of enmity or ill will between such classes of people shall be punished with imprisonment up to three years or with fine or with both. If a broadcasting item contains any statement or programme which may cause class or communal hatred will attract the provisions of Sec.153B. The terms ‘signs visible representations or otherwise is applicable to broadcasting also.

3.3.3 Electronic media and religious feeling

Section 295 A of Indian Penal Code injuring religious feelings is applicable to electronic media also. The section says that whoever with deliberate and malicious intention of outraging the religious feelings of any class of India by words, signs, visible representation or otherwise insults or attempts to insult the religion or religious beliefs of that class shall be punished with imprisonment of 3 years or with fine or with both.

3.3.4 Violation of public mischief

Section 505 of Indian Penal Code deals with the public mischief related to the electronic media. If any broadcasting item causes incitement to mutiny, causes or likely to cause fear or alarm to the public or any section of the public thereby they are induced to commit an offense against the State or public tranquillity shall be punished with imprisonment for three years or with fine or with both. The Official Secrets Act 1923 is another statute intended to protect the sovereignty and integrity of the nation. It is intended to prevent espionage and any act prejudicial to the safety or interest of the state.
3.4.1 Restrictions in the interest of friendly relations with foreign states

Restrictions in the interest of friendly relations with foreign states also mentioned in the Article 19(2) of the constitution\textsuperscript{304}. Section 125 of Indian Penal Code has prescribed a punishment with imprisonment for 7 years with fine in case anybody wages war against any Asiatic power in alliance or at peace with the Government of India or attempts to wage such war or abets the waging of such war shall be punished with imprisonment for life and fine. Sec 126 says that whoever commits depredation or makes preparations to commits depredation on the territories of any power in alliance or at peace with India shall be punished with imprisonment for 7 years and forfeiture of any property. If any broadcasting programme contains any items which are detrimental to the friendly relationships with any friendly country the wrong doer may be imposed with the punishment and along with that broadcasting materials including equipments used for it may be seized.\textsuperscript{305}

3.4.2 Restrictions in the interest of public order

The term public order means public safety and tranquillity and absence of public disorders of local significance as distinguished from national upheavals, such as revolution, civil strife, war which would affect the security of the State.\textsuperscript{306} Anything which disturbs public tranquillity disturbs public peace and thereby public order.\textsuperscript{307} The test to see any programme or publication is objectionable on the ground of disturbance to the public order is that whether the language used\textsuperscript{308} and the atmosphere in which

\textsuperscript{304} Article 19(2) in The Constitution Of India 1949 says that(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

It was held by the Supreme Court that ‘Once it is recognised that a film-maker has a fundamental right under Article 19(1) (a) to exhibit his film, the party which claims that it was entitled to refuse enforcement of this right by virtue of law made under Article 19(2), the onus lies on that party to show that the film did not conform to the requirements of that law, in the present case the guidelines relied upon’. In LIC vs. Manubhai per Justice Ahamed 1993 AIR 171, 1992 SCR (3) 595.


\textsuperscript{307} Om Prakash V. Emperor. A.I.R. 1948 Nag 109.

\textsuperscript{308} Devisaran v. Emperor

\textsuperscript{309} Kalicharan v. Emperor A.I.R. 1927 49 All 856.
the incriminating material is published is likely to rouse communal or class hatred. The truth or untruth in the programme is immaterial.\textsuperscript{310} But a mere sensational headline may not come within this category\textsuperscript{311}. Any programme in the media which may cause internal disorder, inducing the members of police to withhold their services\textsuperscript{312} or to commit breach of discipline or inducing public servants engaged in services essential to the life of the community to withhold their services\textsuperscript{313} also include within the category offence against public safety. But a scurrilous attack upon a Judge or raising slogans against ministers will not come within the purview of the violation public order. Hence broadcasting of a strike demonstration which contains such type of incidences will not attract the said penal provisions.

3.4.3 Restrictions in the interest of decency or morality

Broadcasting media is more susceptible for the influence of obscenity and pornography of different grades. India is believed to be having a society with strong ethical and moral foundation and hence assumes itself to be more dutiful to ward of the evils of unbridled sex and sex related media propagation. The constitutional protection of freedom of speech is subject to legal regulations in the interest of decency and morality. The substantive law relating to obscenity is given in Sections 292 to 294 of the Indian Penal Code. Section 292 deals with sale of obscene or lascivious printed or written materials paintings representations figure or any other objects. Hence the application of the same upon the electronic media is dubious. The test of obscenity given in Indian Penal Code is based upon the decision in Hickline Case. In this case Lord Cockburn held that “…the test of obscenity is whether the tendency of the matter charged as obscene is sufficient to deprave and corrupt those whose minds are open to such immoral influences, and into whose hand a publication of this sort may fall. It is quite certain it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.”\textsuperscript{314} Justice Mookerjee in Skanta Halder’s\textsuperscript{315} case had held that “The idea as

\begin{footnotesize}
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\item \textsuperscript{310} Rajagopal Prov. of Madras A.I.R. 1948 Mad 326.
\item \textsuperscript{311} Ramjilal v. State of UP 1957 AIR 620, 1957 SCR 860
\item \textsuperscript{312} Dalbir Singh v. State of Punjab A.I.R. 1963 S.C. 1106
\item \textsuperscript{313} State v. Ramanand A.I.R. 1956 Pat 188.
\item \textsuperscript{314} R. v. Hickline (1868) LR 3 QB 360, 371
\item \textsuperscript{315} In Skanta Halder v. The State(1952) Cr. L.J 575.
\end{itemize}
\end{footnotesize}
to what is deemed to be obscene has varied from age to age, from region to region, depend upon particular social conditions. There cannot be an immutable standard of moral values.”

3.4.4 Scope of Comstockery in electronic media

In U.S. the moralistic censorship is known as ‘Comstockery’ after Anthony Comstock who made a crusade against obscenity. Comstock observed: “From the first impure thought till the close of loathsome life of the victim of lust, there is a succession sickening offensive, and disgusting scenes before the mind, until life to such a one must be made up of disease, wounds, and putrefying sores. Suicide dances before his vision in his moments of despondency as the only means by which to hide his shame, and sole cure for his wretched condition.” 316 Comstock law was rather an orthodox law. The significance of it in the present context is that when a legislation to check obscenity is to be enacted in the contemporary world the Comstockery principles are not sufficient to substantiate the law. One significant reason is that the present day legislations are founded on the ‘hedonistic calculus’ or utilitarian theory as prescribed by Jeremy Bentham and not on orthodox puritan principles. In Utilitarianism the objective of legislation is to generate maximum pleasure for maximum number of people for maximum time and the wrath of God has nothing to do with it. In 1934 in U.S. v One Book Entitled "Ulysses," 317 a New York circuit court of appeals held that the criterion for obscenity was not the content of isolated obscene passages but rather "whether a publication taken as a whole has a libidinous effect." In 1957, in Roth v. U.S., 318 the U.S. Supreme Court tendered a basic redefinition of obscenity: "whether, to the average person, applying contemporary community standards, the dominant theme of the material taken as whole appeals to prurient interest." In 1966, however, the Supreme Court, in a ruling on the book Fanny Hill, declared a work pornographic only if it was "utterly without redeeming social value." In Miller v. California (1973) 319 the court abandoned the 1966 ruling and declared that it would be no defence for a work to have

319 Miller v. California (1973) 413 US 15
"some redeeming social value" and that the states might therefore prohibit the printing or sale of works "which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political or scientific value."

In Ranjith Udeshi Case\(^{320}\) the Supreme Court of India held that: “… it can be hardly be said that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it …This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of the public decency and morality. Section 292, manifestly embodies such a restriction because the law against obscenity … seeks no more than to promote public decency and morality.” The Supreme Court of India adopted this test with an observation that the judiciary should evolve to set a standard test to meet the current day problems than adopting the test formulated in the 1860’s.\(^{321}\) But in Samaresh Bose v. Union of India\(^{322}\) the Supreme Court held that: “In judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey has any literary and artistic value” Justice A.N. Sen made it clear in the case that the objectionable material must be looked into in its entirety. The Court observed that: “If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and will have to read which are purely religious” Another significant observation in the same case was that: “A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the

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\(^{321}\) The prohibition of purely sexual material became statutory in Great Britain for the first time with the Obscene Publications Act of 1857. This act, however, did not contain a definition of obscenity. Such a definition was forthcoming in 1868, in Regina v. Hicklin, in which the test of what was obscene was its tendency "to deprave and corrupt those whose minds are open to such immoral influences,” and it was understood that this test need apply only to isolated passages of a work. This view was a precedent for anti obscenity legislation in the United States, beginning with the Comstock Law of 1873, which broadened the 1865 Mail Act essentially to its present form by providing fine and imprisonment of any person mailing or receiving "obscene," "lewd," or "lascivious" publications 1994-2001 Encyclopædia Britannica,

\(^{322}\) Samaresh Bose v. Union of India A.I.R. 1986 S.C. 967.
novel, whereas obscenity has the tendency to deprave and corrupt those whose minds 
are open to such immoral influences” The courts have observed that obscenity is not 
mere sex stuff, sex education, sex science, sex and religion, sex in other departments 
per se will not be obscene .It was held in Sree Ram Saksena a picture of a woman in the 
nude is not per se obscene

In U.K. the Hicklins test was rejected. In the Martin Seckers Case Stable J observed that all those publications containing sex materials cannot be prohibited on 
the ground that it is harmful to youngsters; it may have readable materials for adults. In 
1959 the U.K. Government passed the obscene Publications Act which prescribed that 
the challenged article as a whole is to be taken and it must be such as to tend to deprave 
and corrupt persons, who are likely, having regard to all relevant circumstances, to read 
to see or hear the matter contained in it. Another aspect is that if a matter containing 
obscene item but the same has been previously granted permission through another 
authorised forum the same cannot be challenged in criminal court. In Raj Kapoor v. 
Laxman and others the Supreme Court of India held that the cinema Sathyam Sivam 
Sundaram which was granted certificate for exhibition under Section 5A of the 
Cinematograph Act 1952 cannot be challenged again on the grounds of obscenity.

Sec 294 of Indian Penal Code says whoever to the annoyance of others does any 
obscene act in any public place or sings, recites or utter any obscene songs, ballad or 
words, in or near any public place, shall be punished with imprisonment of either 
description for a term which may extend to three months, or with fine or with both. 
This provision can be applied to any ‘annoying’ ‘obscene songs or other obscene acts’ 
in any ‘public place or near a public place’. The scope of application of this section in 
the broadcasting is limited. In case a broadcasted material contain an indecent song or 
indecent act whether the wrongful act can be punished on the basis of the broadcasting 
or on the basis of the original act. The second question is if there is no evidence as to

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323 Sreeram Saksena v Emperor A.I.R 1940 (1) Cal .581.
324 Martin Secker (1882–1978), born Percy Martin Secker Klingender, was a London publisher who 
was responsible for producing the work of a distinguished group of literary authors, including D. H. 
Lawrence, Thomas Mann, Norman Douglas, and Henry James. He began publishing just before the 
First World War. Secker lived at Bridgefoot House, Iver, Bucks.
325 Rajkapoor v Laxman, 1980 AIR 605, 1980 SCR (2) 51
326 Ibid
the annoyance whether any action will lie. The third question is that in case a
broadcasted material is proved as indecent whether each instance of the broadcasting of
such programme will attract the penal provision.

3.4.5 Protection of women

Another significant legislation for regulating the indecent or obscene matter is
the Indecent Representation of women (Prohibition) Act 1986. The term ‘indecent
representation of women’ means the depiction in any manner of the figure of a woman,
her body or any part thereof in such a way as to have the effect of being indecent, or
derogatory to or degenerating, women, or is likely to deprave, corrupt or injure the
public morality or morals. But the basic objectives of the statute is only to prohibit
Indecent Representation of women through advertisements or in publications writings,
paintings, figures or in any other manner and for matters connected therewith or
incidental thereto. The ‘article’ relating to the statute is defined any book, pamphlet,
paper, slide, film, writing, drawing, painting, photograph, representation or figure.
(Rule 2 (b)) In fact the definition does not fit into the picture of the electronic media.
Because the broadcasting media contain moving pictures and sound. But the definition
for advertisement in Section 2 (d) includes any visible representation made by means of
any light sound smoke or gas. In that aspect the definition can be implicated for the
advertisements in the broadcasting media. Section 3 of the Act prohibits the publication
or causing of the publication or arranging or taking part in the publication or exhibition
of any advertisement which contains indecent representation of women in any form.
The penalty prescribed for contravening the provision is imprisonment up to two years
and fine up to two thousand rupees for recurring offences the imprisonment must be
between six months to five years and fine between ten thousand to one lakh rupees. But
the provisions in the Section 5 of the Act regarding the search and seizure is not
practically applicable in the case of broadcasting media for the reason that the list of
items mentioned in the section does not cover the compact disc, video or audio
cassettes, the floppy discs or any other material used for broadcasting. Since the statute
is a penal statute the additional provisions cannot be supplemented by interpretation.
3.4.6 Morality in Programme Codes

The Programme Code given in Rule 6 (a) says that no programme should be carried in the cable service which offends good taste or decency clause (d) says it contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half-truth. The advertising Code in Rule 7(8) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisement. The Cable Television Networks (Regulation) Act 1995 prescribes that no person shall transmit or retransmit through cable service any programme unless such programme is in conformity with the prescribed programme and advertisement code. But the provisions are not applicable to programmes of foreign satellite channels which can be received without the use of any specialized gadgets or decoder. In short there is no effective regulation to control the broadcasting media with relation to offences based on indecency and obscenity. Neither the Prasar Bharathi (Broadcasting Corporation of India) Act 1990 nor the Broadcasting Bill of 1997 are silent about provisions regarding indecency or obscenity with regard to the terrestrial and satellite broadcasting especially broadcasting by foreign broadcasters. On many instances the foreign channels used to air indecent and obscene programmes under the guise of fashion shows music programmes, serials, telefilms etc. The Fashion TV, the Baywatch serial in Star plus channel and Bikini Destination serial in AXN channel midnight programmes in V channel, and MTV channel and the uncensored sex clippings in various English movies in various channels are some of the objectionable programmes containing indecent, obscene and lascivious matters which escapes the penal liabilities due to lack of effective laws. Venture must be made to bring all the channels within the purview of the legal system.

3.5.1 Cinema in the electronic broadcasting

Cinema is the most popular entertainment in India and is a significant category of programme in broadcasting media in the contemporary system. A pre publication censoring is essential to exhibit films in India. To broadcast also it is essential. It is to be certified by the Central Board of Film Certification (CBFC). The Cinematograph Act, 1952 and The Cinematograph (Certification) Rules, 1983 lays down the rules and regulations for certification of films by the board. The Cinematograph Act 1952 acts as
the pre censor in case of movies coming in the broadcasting. The Act established a Board of Film Censors and provided for Advisory Panels at Regional Centres. Every person desiring to exhibit any film has to apply for a certificate and the Board after examining the film or having the film examined can make, as per the Act, the following decisions regarding the film: a) sanctioning the film for unrestricted public exhibition, b) sanctioning the film for public exhibition restricted to adults c) directing such cuts and modifications as it thinks fit, before sanctioning the film for unrestricted public exhibition or for the public exhibition restricted to adults, or d) refusing to sanction the film for public exhibition.

Restrictions under the Cinematograph Act are the same as those mentioned under Article 19 (2) 1 of the Constitution of India. The government also has the power to issue further principles and guidelines for censoring films, and this has to be as per General Principles. These can be summarized as follows. A picture that lowers moral standards of those who see it, and garners sympathy for the side of crime, wrong doer

327 The basic principles of cinema censorship in India are given in the Act as follows. “5A. Certification of films (1) If, after examining a film or having it examined in the prescribed manner, the Board considers that- (a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or (b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, an "S" certificate; and cause the film to be so marked in the prescribed manner: Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).) (2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India. (3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.

5B. Principles for guidance in certifying films. (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of (the sovereignty and integrity of India) the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence. (2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.” Siby Mathew, Law Relating to Cinema, Christi Publication, India 2002.
evil or sin cannot be certified. A picture that shows standards of life, keeping in mind the standards of this country and people that tend to deprave or corrupt the morality of the audience cannot be certified.

A picture that ridicules the prevailing laws so that it can garner sympathy for those who violate such laws cannot be certified. Anything else that may be objectionable in a context in which it amounts to indecency, immorality, illegality or incitement to commit a breach of the law. The principles object to the glorification of crime and depicting how crimes are committed, encouraging vice and immorality, relations between the sexes, holding in contempt forces of law, police, administration, law etc. All of the above render the film unsuitable for exhibition. One wonders how one saw the movies that we have seen so far. The purpose of the principles are to help decide whether the material is obscene, to distinguish it from art and what needs to be safeguarded as freedom of speech and expression. These principles state clearly that sex and nudity are not enough to constitute obscenity. It also states that knowledge on the part of the person whether the material is obscene or not, is not relevant, and s/he is strictly liable. This means that if the person was not aware that the material may be considered obscene, or does not consider the material obscene, then it does not mean that the person is not liable for distributing or circulating the material. Obscene material must be considered in isolation from the rest of the material of which it forms a part, to determine whether on its own it has the tendency to deprave and corrupt all those whose minds are open to immoral influences. This is different from the laws of most other countries, where the law is that the material should be viewed as a whole, and not in bits and pieces. Judging the material in parts would not help the person deciding whether the material as a whole is obscene or is redeemed by a social message, or that it belongs and has a relevant context in the film.

3.5.2 The problems of pornography due to liberalisation

The liberalisation of the broadcasting media has resulted in the introduction of pornographic channels, pornographic programmes in other channels and popularization of soft porn programmes related to cinema and choreographs. In India despite the fact we boast about the well-knit moral fabric in the social structure the pornography in different degrees and forms are mushrooming in fast pace. We have never given a
serious consideration to this menace. Pornography has two aspects (1) Pornography as violence and (2) Pornography as representation.\textsuperscript{328} The common ground for these two categories is that ‘pornography eroticises domination’. A pornographic programme itself contains a sexual offence. Even if it is not broadcasted it is a wrong and basically it is a violation of law and causative factor for violence. The products as well as the boy products of obscene, indecent and pornographic works are detrimental to the society as well as the individuals involved in it. It acts as a causative factor for social unrest and even the increase of the AIDS cases. It is capable of creating broken families and juvenile and adult delinquents. The general approach against pornography at present is a kind of culpable negligence. The result is that immoral trafficking and violence against every sector of women are increasing. Thus an obscene, indecent or pornographic broadcasted programme acts as motivation of the people at large to commit such crime. This occurs especially when a cinema with a certificate is broadcasted through television. At theatre it can be checked at the entry door whether the viewer is an adult or not. But when the same cinema is broadcasted it is difficult to see whether it is viewed by adults only. Often adolescents and young persons of tender age is more interested in adult movies. In fact the impact of the indecent programmes has become visible in the life of young generation.

3.5.3 Humiliation in the electronic media

In advertisements on many occasion the female body is depicted in the pattern followed in pornography ‘such as “the pose” and “blocking”, i.e. slowly showing the body in discrete blocks as an object rather than a person.’ In Canada pornography is held as harmful to women not because it offended against morality and result in moral corruption but because it was perceived by public opinion to be harmful to society by portraying women in positions of subordination, submission or humiliation. The check on obscenity need not be total curtailment of freedom of speech. A sane or legitimate discussion on sex is to be protected and in this context the words of the U.S. champion of freedom of speech Theodore Schroeder’s words are worth quoting here: “Sexual morality has a rational foundation, then they are capable of adequate rational defence and there is no need for legislative suppression of discussion. If our sex ethics will not

\textsuperscript{328} Iain Ramsay, Advertising Culture and the Law, Sweet and Maxwell, London, 1996 P. 133.
be at critical scrutiny and discussion then to suppress such discussions is infamous because it is a legalized support of error.”

The scope of State regulation upon indecent and immoral materials under the constitutional provision was summarised in the K.A. Abbas case by Justice Hidayathulla as follows: “Whether we regard the State as the parent patriae or as guardian and promoter of general welfare, we have to concede, that these restraints on liberty may be justified by their absolute necessity and clear purpose …The larger interest of the community requires the formulation of policies and regulations to combat dishonesty, corruption, gambling, vice, and other things of immoral tendency and things which affect the security of the State and preservation of public order and tranquillity.”

3.5.4 Restrictions in relation to contempt of court

Power to punish for contempt of court is given in Articles 129 and 215, Section 228 of Indian Penal Code and in the Contempt of Courts Act 1971. Contempt of Court is classified into Civil Contempt and Criminal contempt. Civil Contempt refers to a wilful disobedience of any judgment, decree, order writ or other process of a court or a wilful breach of or undertaking given to the Court. This concept is very clearly defined and does not require much deliberation as opposed to Criminal Contempt. Criminal Contempt has been defined as “ the publication (whether by words, spoken or written or by signs, or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. Hence it is seen that as per the definition, whether or not an act or rather the publication of something can be called contempt of court depends a lot on the facts of the case and the discretion of the Court. Hence there have been numerous judgements that have interpreted the provisions.

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330 Contempt of Courts Act 1971.(Bare Act)

331 Durga Das Basu, Law of the Press, Wadhwa, Nagpur, India, 20020
3.5.5 Scandalisation in the electronic media

The provision in this regard states anything that ‘scandalises or tends to scandalise the court or lowers or tends to lower the authority of any court’. This Act of scandalising referred to herein may be of the Court or the Judges. Anything which is done that may undermine the confidence of the public in the administration of justice would qualify as contempt under this provision. What amounts to scandalising the court was discussed in the case of Brahma Prakash Sharma v State of Uttar Pradesh. The Court after examining various decisions of English courts observed that there were two important aspects in this regard. 332

The first aspect being that the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. Secondly, when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the judge is concerned does not necessarily make it contempt. The Court held that the position that emerged was that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libel or in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. The above judgement was passed in the year 1953, which was well before the Contempt of Court Act came in to force. However the case is important in order to interpret and understand the provisions of the Act. In contrast to the provisions of what constitutes contempt there

are lot more provisions in the Act that provide situations that do not amount to contempt. It is important to note from the point of view of the media that innocent publication and distribution of matter does not amount to contempt. The important exceptions are fair and accurate report of judicial proceedings and fair criticism of judicial act

3.5.6 Publishing in the electronic media contempt

The Act also provides that no person shall be guilty of contempt on account of publishing (whether by words, spoken or written or by signs, or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings pending at the time of the publication if at that time he had no reasonable grounds for believing that proceedings were pending. In this part it should be noted that it is important that the person who publishes the matter has an onus to show that she/he had no grounds to believe that there were proceedings pending. In contrast the latter part of the provisions provides that the publication of matter as defined above in connection with any civil or criminal proceedings which is not pending at the time of publication would not amount to contempt of court.

It is further provided that a person shall not be guilty of contempt on the ground that he/she has distributed a publication containing matter (whether by words, spoken or written or by signs, or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings, if at the time of publication he/she had no reasonable ground to believe that it contained or was likely contain any such matter as aforesaid.

For the purposes of the provisions judicial proceedings has been defined to be pending – in case of civil proceedings when it is instituted by the filing of a plaint or otherwise in case of criminal proceedings under the Code of Criminal Procedure or any other law where it relates to the commission of an offence when the charge sheet or is filed, or when the Court issues summons or warrant, as the case may be against the accused and in any other case where the Court takes cognizance of the matter to which
the proceedings relates and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in case where an appeal to revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred until the period of limitation prescribed for such appeal or revision has expired.

A judicial proceeding which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending. It may be noted that as in the other provisions, whether or not a report would come under the exceptions is to be arrived at from the facts of the case.

The Contempt of Courts Act also makes provision for publication of information relating to proceedings in chambers or in camera except in the following situations: where the publication is contrary to the provisions of any enactment for the time being in force; where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published where the court sits in chambers or in camera for reasons connected with public order or the security of the state, the publication of information relating to those proceedings where the information relates to secret process, discovery or invention which is an issue in the proceedings.

3.6.1 Restrictions in relation to defamation

The Freedom of Speech and expression is protected subject to the recognition of the reputation, goodwill and dignity of others. Defamation is a wrong against the reputation of others. Both Civil and Criminal liability will prevail over it. The chances of containing defamatory materials in the broadcasted programmes are very high. The news, the comments, ‘the jus for fun’ live programmes etc common areas where the problem used to arise. The ‘exclusives’, ‘media trials’, ‘investigative programme’ are yet another set of programmes vulnerable with the issue of defamation. Section 499 of Indian Penal Code says ‘whoever, by word either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any
person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said except in the cases hereinafter excepted to defame that person.’ The imputation concerning a deceased person company, an association of persons or collection of persons also will attract the provisions of defamation. It may be a direct or an alternative one or an ironic expression.

3.6.2 Exception to defamation

In order to attract the provisions relating to defamation the imputation directly or indirectly, in the estimation of others, should lower the morals or intellectual character of that person, or lowers the credit of that person or causes it to be believed that the body of that person is in loathsome state, or in a state generally considered as disgraceful. Ten exceptions are provided in the section against a legal action for defamation. The first is imputation of truth which public good requires be making or publishing. But whether or not it is for the public good is a question of fact. The second exception is the public conduct of public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. The third exception is the expressions made in good faith in the form of any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

The fifth exception is about adjudicatory proceedings. Making any opinion in good faith about any case, civil or criminal which has been decided by court of justice or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person as far as his character appears in that conduct, and no further. The sixth exception is relating to the criticism of literary work and public performance which is submitted for judgment of the public. This provision is applicable to the broadcasting also. The criticism should be fair and made in good faith. Good faith required due care and attention. The seventh exception relates to censure passed in good faith by person having lawful authority over another the authority must be conferred by law and must be within the ambit of its powers and was made in good faith. The eighth exception says that the accusations preferred in good faith against any person to any lawful authority. The ninth exception relates to
imputation made in good faith by person for protection of his or others interest or for the public good. With regard to the broadcasting defamation, publication of scandalous imputation is the most significant aspect. In fact there is no difference between journalists and non-journalists in cases relating to defamation. But the journalists as well as broadcasters do have a greater responsibility and should be cautious in publishing scandalous imputations.\footnote{T.G. Goswami. A.I.R. 1952 Pepsu 165.}

The Cable Television Networks Rules 1994 Rule 6 has prescribed that no programme should be carried in the cable service which i) Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths ii) Contains anything amounting to contempt of court, iii) Contains aspersions against the integrity of the President and Judiciary; iv) Criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of country v) – contains visuals or words which reflects a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups. The rules contain different aspects of defamation is covered in the Rules of Defamation based on (i.) indecency(ii) deliberate defamation(iii) defamation on falsehood (iv) suggestive innuendos (v) defamation based on half-truths (vi) defamation against court or contempt of court (vii) contempt of president (viii) slander of an individual (ix) slander of a group (x) defamation of segments of social, public and moral life of the country. (xi) indecent representation of women (x) denigration of children (xi) defamatory portrayal of ethnic, linguistic and regional groups; and (xii) defamatory advertisements. The punishment for defamation in The Cable Television Networks (Regulation) Act 1995 is imprisonment for a term up to two years or with fine which may extend to one thousand rupees or with both; Indian Penal Code prescribed a similar punishment for the offence as a general category of offence. It is imprisonment up to two years or with fine or with both.

In short any programme contains any defamatory statement it may attract any of these provisions. But in spite of the fact there are sufficient laws regarding the matter very little cases used to emerge against the broadcasters. The reason may be that the
private broadcasters are always immensely rich and it is very difficult to fight against the media tycoons.

3.6.3 Restrictions in relation to incitement to an offence

The provision for restriction on incitement to an offence was introduced in 1951. Freedom of speech and expression assured by the Constitution does not include speaking anything. Broadcasting may contain programmes which may incite to commit offences. The term offence is a wide one. It may be any offence mentioned in Indian Penal Code. In State of Bihar v. Sailabala Devi it was held that to murder or other violent crime would generally endanger the security of the State; therefore the restriction against such incitement would be a valid law under clause (2) of Article 19.

In fact the present day programmes contains several crime promoting instances. ‘the action movies’ are mainly related to depiction of brutal murders and massacres ‘glamour movies’ are mainly related to sexual performance which often goes up to the level of pornography. The several varieties of the ‘comedy programmes’ are often packed with slanderous materials with innuendos which is capable of breeding hatred and contempt which eventually will lead to communal violence.

3.6.4 Specific laws on electronic media in relation to incitement to an offence

The Programme Code in the Cable Television Network Rules 1994 R 6(1) (e) specifically prohibits airing of any programme which is likely to encourage or incite violence or contains anything against maintenance of law and order or which promotes anti national attitude. Rule 7 (2) (iii) the Advertising Code also says that no advertisement shall be permitted which tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way. The punishment for violation of these Rules are imprisonment up to two years and fine up to one thousand rupees and for subsequent offences it is imprisonment up to five years and fine up to five thousand. However the term offence is not defined in the

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334 (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of - (the sovereignty and integrity of India,) the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.) (3) Nothing in sub-clause (b) of the said clause shall
Constitution and Cable Television Programme Code contains limited categories of offences only. In this situation the definition given in the General Clauses Act is relevant. The Act says that an offence shall mean any act or omission made punishable by any law for the time being in force. By virtue of this definition incitement of offence under any statute may come within the purview of the constitutional restriction.

3.7.1 The state as mentioned in the fundamental rights

The legal control over electronic media in India is principally the Sovereign State control.³³⁵ The term 'State' as defined in the Article 12 of the Constitution of India covers four levels of the government; the parliament, the States, the local bodies and other authorities within the territory of India or under the control of the Government of India. The state authority is exercised through the three chambers of the government, the legislature, executive and judiciary. The state as a regulator over the media can act through any of these three branches of the state.³³⁶ Thus a restriction by Indian Penal Code or revenue laws or antitrust laws is valid laws.

3.7.2 Specific laws relating to the state and electronic media

At present the Central government's Ministry of Information and Broadcasting is the principal authority, which exercises the regulatory mechanism. The TRAI or Telecom Regulatory Authority of India, The Prasarbharathi Corporation,³³⁷ which now runs the Doordarsan and Akashvani.³³⁸ The Cable Television (Regulation) Authority has the two principal statutory authorities involved in registering and controlling the cable television operations.³³⁹ The Bureau of Indian Standards³⁴⁰ which prescribes the basic quality of electronic products used for the electronic media (like the minimum

³³⁵ It is by virtue of VIIth Schedule List I- entry 31.
³³⁶ The developed countries have a mixed system of control with voluntary, professional as well as state controls. The FCC of US, BBC of UK and TV5 of France are good examples
³³⁷ The Calcutta High Court has in its judgment dated 19.7.75 in Union of India v People's Union for Civil Liberties observed that the Central Government should take appropriate steps to give shape to the objectives and ideals of the Prasar Bharathi Act as early as possible. Government is at liberty to pass fresh legislation if it deems fit
³³⁸ Established under Telecom Regulatory Authority Act of India 1997 and The Prasar Bharathi (broadcasting Corporation of India) Act of 1990. The All India Radio or Akashvani and Doordarshan were in existence prior to the enactment of the statute. But they were running as government Departments.
³³⁹ Established under the provisions of Cable Television (Regulation) Act 1995.
³⁴⁰ Established under the Bureau of Indian Standards Act
requirement of Set Top Box in the DTH system) 341, the Copyright Registry 342 which protects the intellectual property rights relating to the content used for broadcasting and rebroadcasting, performers rights, neighbouring etc, the Cinema Sensor Board 343 etc are significant.

3.7.3 The term State in other laws

In several cases the Supreme Court has held that such appendages of government satisfy the test of the quality of state. Justice Bagwathi observed that the test for determining the status of state under the Article 12 is whether it is an instrumentality of or agency of government. 344 The status of the state is not limited to statutory corporations, government agencies alone but it is equally applicable to a company or society considering the relevant factors. 345 Justice K.K.Mathew in Sukhdev Singh's Case had held that even if in the eye of the government an instrument or agency is a separate entity it is subject to all the constitutional regulations. 346 In Indian Council of Agricultural Research case 347, Sainik school society 348 case and U.P State cooperative Land development Bank Ltd case 349 the Supreme Court had held that the societies registered under the Societies Registration Act will come within the purview of state.

341 Standing Advisory Committee for Frequency Assignment (SACFA) of Ministry of Communications and the Department of Space as per their SATCOM policy and task force on the Conditional Access System has prescribed that”( CAS Regulation)(c) The Technical parameters of the Set Top Box shall conform to the Indian standards, to be prescribed by the Bureau of Indian Standards, in accordance with the provisions of the Bureau of Indian Standards Act, 1986. While doing so, the Bureau of Indian Standards may take into account the internationally acceptable standards and obtain recommendations from technologists and manufacturers of equipment.(d) It shall be mandatory for the Equipment Provider/ Manufacturer to declare, in a transparent manner, the capability of the Set Top Box and its interoperability on other networks

342 Established under The Copyright Act 1957
343 Established under The Cinematograph Act of 1952.
345 Raman Dayaram Shetty V International Air Port Authority of India (1979) 3 SCC 489. air 1979sc 1628.
346 Sukhdev Singh v Bhagatram (1975) 1 SCC 421: AIR 1975 SC 1331
347 Dr.S.M. Ilyas v Indian Council for agricultural Research (1993) 1 SCC 182.
348 All India Sainik School Employees’ Association v Sainik school society, 1989 (1) SCC 205 ; AIR 1979 SC
349 U.P State Co-operative Land development Bank Ltd v Chandra Bhan Dubey AIR 1999 SC 753.
3.8.1 Reasonableness theory of regulation and restrictions

Regulations over the broadcasting media either through a specific statute or through a general statute is subject to the reasonable restrictions prescribed under Article 19(2) as well Article 13 of the Constitution. Restrictions are discussed by the apex court. The Supreme Court has examined the different aspects of reasonable restrictions in several cases. In Dwaraka Prasad Lakshmi Narain v State of UP the court has observed that the reasonable restrictions are the limitation upon the freedom. The restrictions should neither be arbitrary or excessive in nature. In Chintaman Rao v. State of M.P. the court held the character of reasonableness would seize to exist when restriction invades the freedom guaranteed by the Article 19(1). If the restriction imposed in Article 19 (2) does not strike balance with the Article 19(1) it must be held to want reasonableness. All the reasonable restrictions prescribed in the Article 19(2) are ‘social controls’.

3.8.2 Regulation of electronic media through law

Regulation is the promulgation, monitoring and enforcement of rules. Regulation creates, limits, or constrains a right, creates or limits a duty, or allocates a responsibility. Regulation can take many forms: legal restrictions promulgated by government authority, contractual obligations that bind many parties (for example, "insurance regulations" that arise out of contracts between insurers and their insured), self-regulation by an industry such as through a trade association, social regulation (e.g. norms), co-regulation, third, party regulation, certification, accreditation or market regulation. In its legal sense regulation can and should be distinguished from primary legislation (by Parliament of elected legislative body) on the one hand and judge-made law on the other. Regulation mandated by a state attempts to produce outcomes which might not otherwise occur, produce or prevent outcomes in different places to what

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350 Dwaraka Prasad Lakshmi Narain v State of UP AIR 1954 SC 224
351 Chintaman Rao v State of Madhya Pradesh AIR1951 SC 118
352 Some famous criminal cases that would have gone unpunished but for the intervention of media are Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case and Bijal Joshi rape case. The media however drew criticism in the reporting of murder of Aarushi Talwar, when it preempted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar were involved in her murder, thus reviving memories of JonBenet Ramsey murder, which was hauntingly similar. The following websites are visited on 1-10-2012 and www.indiakanoon.org, www.delhidistrictcourts.nic.in/

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might otherwise occur, or produce or prevent outcomes in different timescales than
would otherwise occur. In this way, regulations can be seen as implementation
of policy statements.

3.8.3 Conclusion

The Constitutional regulation says that anything against part III (Fundamental
Rights) of the Constitution is null and void. They are the human rights. The legal rights
are given in the VIIth schedule of the law. Item number 39 of first list of the schedule
says that the central government alone can make laws regarding wireless
communication. The Cable Television Networks (Regulation) Act, the Prasarbarathi
Act, the TRAI Act and the related rules, notifications, orders etc were made by these
laws are the present laws. In order to make the Constitutional mandate enforceable the
states also must be given some powers. But the law in the matter is yet to be made.

\[\text{Act Cable TV Act, Prasarbarathi Act, TRAI Act and the related rules, notifications, orders etc were made under these laws are based upon electronics. On the other hand the old telegraph laws are based upon electricity. The two are different as follows. Electronics is distinct from electrical and electro-mechanical science and technology, which deals with the generation, distribution, switching, storage and conversion of electrical energy to and from other energy forms using wires, motors, generators, batteries, switches, relays, transformers, resistors and other passive components. This distinction started around 1906 with the invention by Lee De Forest of the triode, which made electrical amplification of weak radio signals and audio signals possible with a non-mechanical device. Until 1950 this field was called "radio technology" because its principal application was the design and theory of radio transmitters, receivers and vacuum tubes. Today, most electronic devices use semiconductor components to perform electron control. The study of semiconductor devices and related technology is considered a branch of solid state physics, whereas the design and construction of electronic circuits to solve practical problems come under electronics engineering. This article focuses on engineering aspects of electronics. Whereas the wireless technology related to electrics the modern media is related to electronics.}\]