



SPORTS BROADCASTING LAW: EVOLUTION AND THE ROAD AHEAD

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ABSTRACT.

India is one of the few countries in the world where a particular sport encompasses everyone, even those divided by culture. In the modern era, it has transformed into a media spectacle, targeting million-sized viewers and trillion-dollar marketing contracts. But, throughout the cycle, sports have become commercialized and commodified. The potency of the mix of media and sports has led to controversy, precipitating judicial interference. The audiovisual sports equally troubled the minds of the legislators and the academics. This article traces the evolution of sports broadcasting law through the help of major cases. It also reviews the areas of sports news and data and whether it comes under the purview of Sports Broadcasting while ending with a brief look at the road ahead.

EVOLUTION AND TRANSFORMATION OF SPORTS BROADCASTING IN INDIA.

Sports broadcasting can be traced all the way back to the time when India first began to flourish in the audiovisual and television market. India's first public service sports broadcaster was Doordarshan which was established in the year 1976.¹ Initially the vision of the television market was the

spread of information and education and it wasn't interested in commercial interests. However, with all the revenue there, the Indian Government decided to accept sports tournaments and programs that were backed by sponsors.² Slowly but surely, Doordarshan was becoming a monopoly in the broadcasting department and was fully state owned. This came to fruition when India hosted in New Delhi, the ninth edition of the Asian Games which was for the first time in the country, an event broadcasted in full colour.³

Thus, before the introduction of economic and liberalization reforms by the Indian Government, the sports broadcasting industry was budding and one that was still developing. In fact, until the year of 1984, simply watching and owning a television set required a license which had to be renewed on a timely basis.⁴ This fee was used to operate and fund the state owned Doordarshan corporation. This model of licensing changed completely in the 1980s with the commercialization of cricket. Initially, with cricket being almost equal to any religion in India, the government enjoyed a large monopoly towards its broadcasting. However, it wasn't until 1983 when the Indian cricket team shocked the cricketing world and won the world cup till broadcasting and commercialization really started booming. The 1983 world cup was solely broadcasted by Doordarshan. Therefore, the 1983 world cup not only lead

¹ Sevanti Ninan, 'History of Indian Broadcasting Reform', *Cardozo Journal of International & Comparative Law*, Vol. 5, Fall, 1997, pp. 341-364.

² Ambivalence in a STAR-ry Eyed Land: Doordarshan and the Satellite TV Challenge, available at http://asnic.utexas.edu/asnic/pages/sagar/spring2994/1.1TEST_fn.html#fnI63

³ Sumanta Dutta, 'Pricing of TV time', available at <http://www.etstrategicmarketing.com/sp/art7.htm>

⁴ K. Unhikrishnan, 'Doordarshan: India's National Broadcaster' (2010) 18 *Online Journal of Space Communication* <https://spacejournal.ohio.edu/issue18/kunhikrishnan.html>



to the explosion of cricket watchers but also the expansion of the audiovisual media. Doordarshan was continuously gaining and benefitting from these tournaments and the revenue was helping its monopoly get even stronger. However, things were about to take a turn with the introduction of day and night cricket as well as cricketers wearing coloured jerseys which would make the world not only see them as cricketers but also as superstars. This model was begun by a media tycoon from Australia named Kerry Packer. Being credited with this model wasn't enough for Packer and he wanted the exclusive rights to broadcast these events but conclusively failed in this regard. He was frustrated and therefore started his own tournament, one which would match the allure of the world cup called as the World Series Cricket (WSC) where the best players were offered extraordinary amounts of money to play.⁵ This was a real challenge to and angered all the cricket boards around the world. Although, the establishment started by Packer was shutdown, it not only changed cricket forever but also its broadcasting and had a trickledown effect in India.

Doordarshan unaffected dictated terms and conditions to sports organizers without paying them and in reportedly cases charged the BCCI fees in order to broadcast events⁶ which was completely illogical. With their being no real competitor out there BCCI had no alternative but to agree with the terms of the BCCI, but things were about to take a turn with the introduction of economic reforms by the government and a huge influx

of investment from outside India that ultimately lead to the Hero Case.

THE HERO CUP CASE.

In the field of Sports Broadcasting Law, the Hero Cup case⁷ or the Cricket Association case is the most historic and landmark case. Pluralist telecast equality has been a developing plant throughout the constitutions of the world. Only in the last two decades have the developed countries seen the dawning of this freedom; as its constitutions were in place for centuries. To name just a few, the United Kingdom and the United States, including Austria, France, Germany, Italy, the main European Constitution have either adopted the radio broadcasting law of judicial decisions against the monopoly and the diversification of Doordarshan chain services of a single authority or individual. India did not witness such a long gestation cycle because of the long delays in television shows, news and developments in foreign soil.

When it comes to the facts, the present case has travelled to the Supreme Court of India from the Calcutta High Court Single Judge Bench, Division Bench. It saw a number of letters exchanged between the respondents and the appellants. The brief facts were that the petitioners, the Bengal Cricket Association (CAB) and the Cricket Control India (BCCI) Board, non-profit sports organizations dedicated to promoting cricket and its ideals, decided to organize the 1993 Hero Cup tournament matches. TWI, an international corporation, had entered into an

⁵ The Cricket Portal available at <https://en.wikipedia.org/wiki/Portal:Cricket>

⁶ Boria Majumdar, 'How a cash-strapped BCCI in the early 90s became the world's wealthiest board', (The Economic Times, 4 September 2017) <https://blogs.economictimes.indiatimes.com/et-commentary/how-a-cash-strapped-bcci-in-the-early-90s-became-the-worlds-wealthiest-board/>

⁷ Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161



agreement to telecast the matches. They also wanted INTELSAT to uplink facility through the government agency VSNL for this. The Ministries of Home, Defense, Human Resource Development and Telecommunication granted them permission for telecasting. This angered the Doordarshan and the Ministry of Information and Broadcasting, which protested against such a decision and eventually denied the permission, and this was the bone of contention, attracting Article 19(1)(a).

The issues in the case were twofold:-

- ❖ Whether the organisation of a cricket match was a form of speech and expression protected by Article 19(1)(a);
- ❖ If the right to broadcast that event was also included in the right to free speech and speech.

Once both questions were answered in the affirmative then whether the rejection was protected by Article 19(2) remained the matter. Unanimously, the Supreme Court held that the right to entertain was part of freedom of speech and expression and, in addition, it also included the right to broadcast the case. Instead, referring to the justification of the refusal to grant permission, Justice Sawant took the view that Article 19(2) envisaged another exception "in the interests of the national interest and society which is not another term for the general public's interest." Justice Sawant settled the controversy by not upsetting the Calcutta High Court order which allowed the events to be telecast.⁸ As regards the revenues, the court ordered the High Court to divide between CAB and DD the revenues generated by the TV

advertisements. This way the deadlock was eliminated, created for the millions of viewers inside and outside the world.

The case of the Hero Cup is therefore a case relating to Article 19(1)(a) and the applicable limitations set out in Article 19(2). The decision also included consideration of the difference in the impact of 19(1)(a) and 19(1)(g)⁹ as well as 19(2) and 19(6). However, some inference can be drawn which will allow us to continue this discussion. Next, the court rejected in this case the point that 'airwaves / frequencies are a public property' and must be used in the best interest of the public.

In addition, the court observed that Doordarshan has the monopoly of the national telecasting network, thus failing to show the tournament would harm the interests of the majority of people who cannot afford to subscribe to pay channel. Thus, in this court remark, the need for a free service broadcaster other than Doordarshan held. Doordarshan is the sole free service network, in the absence of alternatives. Therefore, rules are needed to ensure Doordarshan is unable to abuse its monopolistic status arbitrarily. The statement from the MIBs explained the concern. In explanation of Doordarshan's negative stance, it was affirmed that, since sport is one of the main sources of revenue,' there is nothing illegitimate or unreasonable in Doordarshan that seeks to earn some money in the matter of telecasting such events.'

The Hero Cup case for the first time emphasized the need for an independent public authority to regulate the broad

⁸ Ibid

⁹ Constitution of India, Article 19(1)(g): Every citizen has a right to practice any profession, or to carry on any occupation, trade or business



spectrum of broadcasting issues. Furthermore, it was also explained that 19(1)(a) does not include 'the right to establish, retain or operate broadcasting, stations or broadcasting facilities' within its scope. This is important from the perspective of the present discussion in the sense that conflicts relating to sports broadcasting are not an issue to be resolved by recourse to constitutional provisions alone.

Citizen, Consumer and Civic Action Group & Anr. v. Prasar Bharati & Ors.¹⁰

The decision in the case of Cricket Association of Bengal by the Supreme Court was considered to be a bit redundant with Doordarshan becoming more and more non-competitive which ultimately resulted in private players having majority of the concentration of sports broadcasting rights. This was felt when two of the biggest cricket tournaments, the Cricket World Cup, 1999 and the one in 2003 were broadcasted by Star Sports and Set Max respectively. Doordarshan was only able to ensure that the matches concerning team India were able to be telecasted by it, but this was more of a temporary arrangement rather than one by law and compulsion. In 2004, India were headlining probably the most lucrative tour in their small cricketing history with them touring Pakistan. The broadcast rights to both the test matches as well as the one-day internationals were bought by Ten Sports. Both Ten Sports and the Doordarshan Network were unable to agree on terms regarding what matches would be telecasted by the latter. This was because Ten dismissed Doordarshan's contention to retransmit the feed which led to this decision being regarded as one which was against

public interest and thus ultimately led to the filing of legal proceedings in the High Court of Madras. The High Court's judgment was three-fold. Firstly, Ten sports was required to share its transmission to the Doordarshan network; secondly, the Ten sports logo as well as the advertisements would be retained in the Doordarshan network's retransmitted feed; thirdly, both the parties would agree for a fixed remuneration that Doordarshan would pay to Ten sports.

AN ANALYSIS.

All sports broadcasters who acquire the rights were required to share their feed with Prasar Bharati when it came to 'national and international sporting events of national importance' in India according to the 'Policy Guidelines for Downlinking of Television Channels 2005' issued by the Ministry of Information and Broadcasting after the above decision. This was in the news when during the broadcast of the series between West Indies and India in 2007 when the official broadcaster Nimbus refused to abide by and follow the above guideline requiring the feed to be shared by Prasar Bharati. This ultimately led to the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 by the Government of India but was repealed when the parliament in 2008 passed the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Bill. This act was enacted and passed with the intention of providing access free of cost to a huge number of viewers when it came to events concerning of national importance. Thus, it arbitrarily provided that all sports broadcasters who had acquired the content rights legally would not be able to telecast

¹⁰ W.P.M.P. Nos. 6375 and 6376 of 2004



unless and until the feed was shared and simultaneously telecasted on the Prasar Bharati feed as well. All the Sports broadcasters would get some sought of relief in the form of revenue from advertisements in the 50:50 ratio and 75:25 in radio and television broadcasting and coverage respectively.

CAN NEWS CHANNELS BROADCAST SPORTS EVENTS IN THEIR PROGRAMMES?

New Delhi Television Ltd. v. ICC Development (International) Ltd. & Anr.¹¹ The Cricket World Cup, 2011 was probably the biggest event that India has ever hosted. The ICC, before the start of the world cup issued the 'ICC Cricket World Cup-2011 News Access Guidelines for India' according to which bona fide news channels in India could broadcast live as well as past footage of the world cup in limits for the sole purpose of reporting along with strict terms and conditions regarding the issue of commercialization concerning match footage. These guidelines and rules were severely overlooked by all the news channels and were violated multiple times. The Ministry of Information and Broadcasting had to intervene the ICC from banning the media coverage of the knockout matches. However, the ICC did not completely ignore the violations and just before the start of the twenty-twenty world cup in 2012, initiated legal proceedings against the news channel NDTV. The ICC's contention was that NDTV had during the 2011 world cup violated multiple provision of the guidelines issued by the ICC and thus infringed upon multiple rights of its sponsors and partners.

The ICC wanted to ban NDTV from broadcasting any part of the 2012 world cup that was held in Sri Lanka. The High Court while deciding the case held that a news channel could not show numerous minutes of footage of the sports programme where it ultimately led to a commercial profit but could only show important events such as a hundred or a five wicket haul which would be considered as fair use and therefore ruled in favour of the ICC. NDTV appealed in the Supreme Court contending that it did not violate any proprietary rights but broadcasted under the concept of fair dealing mentioned in the Indian Copyright Act, 1957. According to NDTV, the telecasting of current events would fall under the category of fair dealing. The court while deciding ruled that if a news channel created special programmes for covering a sports event, it would be considered as news analysis and not news reporting. The Supreme Court also held that if the news channel created special programmes, it could show the footage but then not commercialize it by showing advertisements or advertise it but not show any of the footage of the sporting event.

AN ANALYSIS.

The situation preceding to the case was one in which there was exploitation in a rampant manner by the news channels under the category of fair dealing while covering sports events. All the sports broadcasters who spent crores on acquisition of rights of broadcasting from the BCCI lost out on their privileges which they felt were exclusive to these news channels. When it came to the case of electronic media, there was a sense of ambiguity regarding what constituted fair dealing in the context and situation of news

¹¹ CS (OS) No. 2416/2012



reporting of footage of a match of a sporting event. The courts only had accepted the concept of fair dealing but were yet to legally form a definite test regarding what constituted under it. Therefore, the accepted practice, instead of a definite test of what was and wasn't fair dealing, was that there would be contracts and agreements between the official broadcasters of the sporting events and the body that represented the broadcasting aspect of news in India News Broadcasters Association in India. The contracts included specific guidelines as to the limits and extent of the match footage that could be broadcasted as well as the revenue structure. Although, these agreements covered the parts of the sports broadcasters and the news organizations, the interests of the investors of the sponsors were considerably ignored. This judgment took into purview all the important aspects of copyright, broadcasting and commercialization by tangibly defining and fixing the exact limits and structure for reporting of a sporting event for the first time.

DO ORGANIZATIONS WHO PROVIDE LIVE STATISTICS AND COMMENTARY VIOLATE THE RIGHTS OF SPORTS BROADCASTERS?

In the year of 2012, Star India filed a suit against the organizations IdeaCellular, OnMobile and Cricbuzz.¹² Star India who at the time was the broadcaster for cricket in India had the support from the BCCI who according to them had proprietary rights over the information of the cricketing events organized by them as they were the sole organizer and promoter of international cricket in India. According to Star, the three

corporations had violated multiple rights due to the agreement that Star had with BCCI whereby it had acquired mobile rights from the BCCI. The Court decided against Star ruling that as the information was already in the public domain, its use was allowed with a lag of two minutes. This decision was set aside because of a large number of flaws in the procedural part. In 2013, the Delhi High Court granted an interim injunction according to which the corporations could display the information including live scores and commentary with a fifteen-minute lag but anything under that, they would need to require to obtain a licence from Star. This injunction was then subsequently set aside by the Delhi High Court. The Court ruled that the agreement between BCCI and Star regarding quasi property rights was in contravention of the copyright law. This decision was appealed by Star in the Supreme Court. The Supreme Court's judgment was not very clear but simply ordered the three corporations to follow certain conditions while disseminating the information including a small deposit for which Star had exclusive rights.

AN ANALYSIS.

The real issue regarding the use of sports data is still pretty unclear even after the judgment. There are many unsolved questions including the main one whether in a cricket match or sporting event there exists quasi property rights over its news and facts. It still remains unclear if the restrictions mentioned in the judgment apply only to the internet or to mobile updates as well. In many jurisdictions, data rights are generally not recognized but the efforts and investment of organizers need to be regarded. If the mobile

¹² STAR India Private Ltd. v. Akuate Internet Services and Ors. CM APPL. 4665/2013



updates are not legal, then what about the consumers who post statistics in the social media.

THE FINAL RESULT AND THE CURRENT SITUATION THROUGH UNION OF INDIA v. BCCI.

The Supreme Court of India finally addressed the issue of whether there should be mandatory sharing of signals that contain sports content in 2017 in the case of Union of India v. Board of Cricket Control in India¹³. The Supreme Court, in the case, addressed two laws that were different but had to be applied harmoniously and together. According to the Supreme Court, if and where the private broadcasters who acquire the rights are compulsorily required to share the broadcast with the public broadcaster, then the retransmission so in effect must be only limited to the public broadcaster's network and cannot be in any way be retransmitted on any other private networks. The current situation of how exactly sports broadcasting works in India can be explained through the following points:-

1. The controlling authority of any sport makes available the media rights for that particular sporting event.
2. The media rights made available by the controlling authority are then acquired by a broadcaster from the same authority. This is on an extremely exclusive basis.
3. The Multiple System Operators who act basically as simple television networks get the sporting event available to them by the broadcaster after the payment of a fee.
4. The final customers can subscribe to the sporting event through various Local Cable

Operators who get the feed from the respective television networks.

However, this is not always the case. Sometimes certain legislations of India require sports content exclusively acquired by the broadcaster to be made available publicly to all television providers and networks. This is the concept of mandatory sharing. These legislations are mentioned below:-

- A. Cable Television Networks (Regulation) Act, 1993- Section 8¹⁴.

This allows the Government to require mandatory coverage by all television networks of certain specified channels through the following procedure:-

1. The services are run by India's public broadcaster, Prasar Bharati.
2. The channels are called "Doordarshan" channels, channels that are operated by or on behalf of the Indian parliament.
3. Accordingly, the Ministry of Information and Broadcasting (MIB) released multiple notifications ordering private cable operators to carry all Doordarshan channels compulsorily¹⁵.
4. Doordarshan channels are Free-to-air (FTA), meaning that no subscription fee has to be paid by a television network to carry it on its network.

¹³ Union of India v. Board of Control for Cricket in India and Ors., Supreme Court of India, SLP(C) Nos. 4574-4575 of 2015, para. 22.

¹⁴ Cable Television Networks (Regulation) Act, 1993

¹⁵ The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati Act), 2007.



B. The Sports Broadcasting (Mandatory Sharing with Prasar Bharati) Act, 2007¹⁶ (Sports Act)- Section 3.

According to the provision, It is mandatory that private broadcasters share with Prasar Bharati the signals of some exclusively acquired sporting events.

1. The Government may notify an event as a "nationally significant sporting event"¹⁷.
2. Even if a private broadcaster has acquired exclusively the rights to a notified event, it has to share its signals with Prasar Bharati.
3. The channels of Prasar Bharati shall be mandatory for all television networks in accordance with Section 8 of the CTN Act.

Therefore, the above two laws result in the access by public broadcasters to the content acquired on private broadcasters, with no fee payable to the private broadcaster directly. As a result, television networks stopped signing up for private broadcasters as the content could be easily viewed by the public broadcaster. In order to acquire exclusive rights to broadcast such activities, a private broadcaster usually pays a high fee. The failure to substitute their investment due to the non-subscribing service providers could result in significant revenue losses for broadcasters (and sports).

WHAT IS THE FUTURE AND THE ROAD AHEAD?

This is the social media stage and any or every news or sports event that isn't made accessible on it is pretty much considered irrelevant. The expansion of Internet and

mobile connectivity among the Indian population would change the nature of broadcasting and the way the Indian public consumes sports content. The involvement of Internet and digital platform operators (which are traditionally unable to be regarded as broadcasters) in the purchase and delivery of premium sport rights is part of a broader change in the media sport content market, which means a shift from the existing "broadcast model" to the 'networked model,' described by 'digital plenitude' of new technology, has significantly reduced the barriers to the marketing of sports content in companies and sporting organizations able to produce, manage and distribute popular sport content. Moreover, the smartphone's increase as the app used to handle most of our everyday activities has allowed us to always consume content irrespective of where we are in.

The focus for Indian sporting groups / federations, and broadcasters is currently on extending their events to the largest audience in India, including those population groups and regions that have been previously ignored, as the television penetration and Internet access continue to grow across the country. In this regard, it should be noted that certain Indian Sports broadcasters are trying to diversify the availability of live sports feeds with commentary and coverage to extend the audience's audience in the vernacular languages of the south and the east. In addition, licensing agreements of broadcasters, mobile networks and service providers will likely allow sports content to be widely disseminated through their mobiles and digital services to the broader

¹⁶ MIB notification dated 12 June 2015, available at: https://digitalindiamib.com/ADVISORY_for_mandatory_DD_Channels.pdf

¹⁷ Section 3, the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati Act), 2007.



audience as smart phones become the key and preferred source of view for consumers.

The role of sports governing agencies and event organisers is also to maintain a balance between the security of exclusive interests of the broadcasters against the interests of distribution of sport events and their content and broader public access. The significant investment in broadcasting rights from broadcasters is now underpinning the sustainability and profitability of most sports competitions and events. However, the continued absences in sporting events / competitions on free-to-air channels or state-owned public broadcaster channels, where multiple sports attempt to catch public attention at almost the same time, reduces fan interaction and such a sport's ability to attract fans and new audiences beyond the current fan circle. While this may not be a problem in India at the moment, particularly with cricket as an undisputed leader, and the current mandatory sharing system, it is a factor worth considering given the rapidly changing technology and consumer preferences among consumers and fans, as well as the increasing demand and availability of a more diverse range of sports and entertainment activities.

The Sport Broadcasting industry is invited to always focus its vision and practices on the sport enthusiasts and the viewer. In order to encourage and promote the priority given to the public interest, sport law and regulations must be aimed at a balanced blend of regulations, both visionary as well as the free market.
