

**“In The Name of National Importance Making Sharing of Sports  
Broadcasting Signals Mandatory in India: An Analysis”**

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**Abstract:**

With rapidly changing world along with technologies, and increasing business investments, the broadcast sector has become the site of contention between various interests – broadcast companies, the government, public interest groups, community radio and television channels, and an increasingly diverse audience that has been broadly categorized as ‘the public.’ An important aspect of this tussle is the legal regulation of both existing and emerging technologies. This paper attempts to examine the existing legal framework that applies to various broadcast technologies are being used in India. It also analyses the role of Prasar Bharati (INDIA’S PUBLIC SERVICE BROADCASTER). As it is the only public service broadcaster in the country, with Akashvani (All India Radio i.e. AIR) and Doordarshan with its two constituents. It came into existence on 23rd November 1997 with the mandate to organize and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television. The main purpose of this paper will be to relate sport law with media law. Further, the paper focuses on SC judgment on the Star Sports India Private Limited vs. Prasar Bharati and Ors. It ruled that broadcasters of ‘sporting events of national importance’ must share a ‘clean’ feed of the broadcast with Prasar Bharati, India’s national public broadcasting corporation, that not only excludes the broadcaster inserted advertising during breaks, but also is free of all forms of digital commercial inserts such as advertisements, sponsor logos and credits, even if these are being pre-inserted into the feed by the event organiser and not the broadcaster.

**KEY WORDS:** Broadcasting, public, technology, Digital, sports.

**1. INTRODUCTION**

The Indian legislators through the Constitution and other elaborate statutes have covered and substantiated a vast number of issues that required law to keep them in check. The Indian Legislators through various statutes and the prime example being the Constitution has proved that they know how to form laws with minimum deficiencies but there are some areas which still

require solid and water tight laws, one of them being the area of 'Broadcasting'. Factors such as lesser competition and the existence of Prasar Bharati (the national broadcaster) had discouraged the legislators earlier to form extensive laws for the issue of broadcasting. However, in current times, the tables have turned ever since the boom of the fanbase of sports like cricket, wherein every other broadcasting companies out there, both international and local, are fighting for the broadcasting rights due to its high commercial value. The area of broadcasting in recent times have started enveloping huge transactions and absence of sufficient laws have resulted into a huge rise in litigation, moreover the complainants are referring to international regimes to substantiate their claims. Hence, the judiciary has taken the control to fill in the gaps with multiple pronouncements.

The government was directed by the Supreme Court to form independent autonomous authority which might free Prasar Bharati from the government control strands and make certain of conditions in which the freedom of speech and expression could be meaningful and enjoyed by one and all<sup>1</sup>. The major objective and concern of the present paper is to analyze the international and national regime of broadcasting laws in the current digital age and to put forward fitting appropriate legal reforms for regulation of these broadcasting services.

'Neighboring rights' are a distinct form of intellectual property rights (IPR). It covers the rights of the performers and producers when their performances or recordings of their performances are played publicly, broadcasted, rented out or reproduced. The motive of these 'neighboring rights' is to safeguard the interests of persons or legal entities that either contribute to making creative works available to the public or subject matter deemed worthy of copyright-like protection, which is not original or creative enough to count as a work under a national copyright system<sup>2</sup>. The persons that are covered under the realm of 'neighboring rights' are usually the producers of phonograms, broadcasters and performers.

All around the world and especially in India broadcasting has taken the shape of one of the most important mechanisms for spreading information and knowledge to the society at large. Broadcasting and Informatics, Telecommunications and Interactive Development(multimedia), also referred to as the three pillars of the chain of communication, have intersected technologically and thus possessing a huge potential for an expansion in access as well as delivery of entertainment and information quicker. In order to promote the production of works and its circulation and diffusion to the public at large, India needs to create an appropriate national regulatory framework and also involve the process of revising existing regimes of laws. In recent times, a national broadcasting organization holding a monopoly on broadcasting in the state, and depending entirely on funding raised by the public, is no longer existing especially in

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<sup>1</sup> Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 S.C.C. 161, 224.

<sup>2</sup>Viviana Munoz and Andrew Chege, The proposed WIPO Treaty on the Protection of Broadcasting Organization: Are New Rights Warranted and will Developing Countries Benefit, SOUTH CENTRE, Sep. 3, 2006.

the developing countries. Due to international investment treaties and neo-liberal policies, a whole new market for broadcasting has been created. In addition to creating a market, a new competitive environment has emerged out offering numerous choices. It is believed that in an open market, individuals can fully express their preferences and the commercial broadcasters due to competition will adhere to their needs. In this market setup involving giant multinational broadcasting companies, the viewers have now become consumers.

## **1. BROADCASTING OF SPORTS**

At present, ‘sports from a sofa’ is a huge business being an intrinsic constituent of professional sporting events.<sup>3</sup> Here, programming is the one element which paves the path to the fans, the networks, and, much recently, to internet providers<sup>4</sup>. Sports Broadcasting obtains huge revenue, growing to be the prime revenue source and crucial to the sports authority’s well-being. For a growth in revenues, leagues are looking to the possibility of coming up with their own network companies. Furthermore, these leagues are presented with the possibility to license their rights, including broadband and wireless internet or digital channels through newer technologies.<sup>5</sup> Now, the dilemma lies that ‘who has the actual power to sell broadcasting rights?’. Does the sports authority have it or the Central Government or any other state controlled authority has the power to sell?

Broadcasting companies have been provided with certain economic rights to safeguard their huge investments. Per se the rights of the broadcasters are not on the basis of any original creative work but dependent on a derivative work of others’ performances. Based upon the current scenario, the protection given to the rights of the broadcasters is rather restricted and thus need to be protected adequately. Earlier, the Copyright Act (the older act) had no provision which accorded protection to the rights of the broadcasters and live performers. However, Sections 37 and 38 were substituted as a result of an amendment in 1994, to include new laws which provided for broadcasting reproduction rights and rights of the performers.

### **1.1. Broadcasting**

According to Section 2 (dd) of the Copyright Act, 1957, broadcast denotes communication to the public through wired or any other ways of wireless diffusion, also including a re-broadcast.<sup>6</sup>

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<sup>3</sup> See Ivy Ross Rivello, Sports Broadcasting in an Era of Technology: Superstations, pay-per-view, and Antitrust Implications, 47 DRAKE LAW REVIEW 177, 178 (1998).

<sup>4</sup> See Steve Bornstein, Coplin, Margulis join NFL Network lineup, NFL NEWS, Jun. 27, 2003, <http://www.nfl.com/news/story/6476362>.

<sup>5</sup> See The Global Business of Sports Television, <http://corporate.findlaw.com/local.html>.

<sup>6</sup> The Copyright Act, 1957, §2 (dd)

## 1.2. Live Performance

Section 2 (q) of the Copyright Act, 1957 explains “performance” in context to the performer’s right, meaning any visual or acoustic presentation made live by one or more performers.<sup>7</sup>

Before producing or broadcasting any work, it is compulsory for these broadcasting authorities to obtain a license from the owners of the copyrighted content. Producing or broadcasting without the permission of the owner amounts to violation of law under Section 51 of the Copyright Act, 1957.

## 1.3. Special Rights conferred to Prasar Bharati

Section 3 of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 have made it mandatory to share the broadcasting signals of all the sporting events of national importance without any advertisements by all the content rights owners with Prasar Bharati to be able to equip them to re-transmit these signals on its terrestrial networks and other DTH networks. The said law was purely enacted to break the shackles of commercialism on all sporting events of national importance, to provide access to a larger group of people.

In *Star Sports India Private Limited vs. Prasar Bharati and Ors*<sup>8</sup>, the Supreme Court of India held that Prasar Bharati must be given access to the broadcast feed by the broadcasters of ‘sporting events of national importance’ without any digital commercial inserts including advertisements, logos of the sponsor and credits.<sup>9</sup>

Now, the fact that should be considered here is that there is no definition for ‘sporting events of national importance’ in the Act. With respect to this fact, the Ministry of Information and Broadcasting in consultation with Prasar Bharati and the Ministry of Youth Affairs and Sports have compiled and announced a list of sporting events of ‘national importance’. According to the notification by the government, the term ‘national importance’ also includes sports irrespective of the Indian team participation. This includes all sports such as Tennis, Football, Olympics, Asian Games, Commonwealth Games, etc. and not just limited to cricket.<sup>10</sup>

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<sup>7</sup> The Copyright Act, 1957, §2 (q)

<sup>8</sup> S.L.P. (Civil) No. 8988 OF 2014

<sup>9</sup> Mandatory Sharing of Sports Broadcast Signals in India: Part 1- A review of *STAR Sports v. Prasar Bharati* by Roshan Gopalakrishna. Available at <https://www.lawinsport.com/topics/item/mandatory-sharing-of-sports-broadcast-signals-in-india-part-1-a-review-of-star-sports-v-prasar-bharati>

<sup>10</sup><https://mib.gov.in/sports-broadcasting-signals-0>

In continuation to the same, a settlement agreement between Prasar Bharati and Star India establishes that DD Sports shall air live specific IPL matches of importance being delayed by an hour.<sup>11</sup>

Violation of the above mentioned law by the broadcasting channels shall call for penalties, such as revocation or suspension of license or registration. The amount of pecuniary penalty shall not exceed one crore rupees.<sup>12</sup>

#### **1.4. Broadcasting in Public Places**

Every other private entity mandatorily needs accrued permission from the content owner before broadcasting the content in any medium, except Prasar Bharti.

#### **1.5. Live Screening of Cricket Matches**

In the case of Star India Pvt. Ltd. &Anr. V. HaneethUjwal&Ors., The Delhi High Court granted an injunction against the defendant (i.e. John Doe) and websites hosting, transmitting, broadcasting and infringing content, the sole exclusive rights of which belongs to the plaintiff.

The division bench of Delhi High Court held that the websites that primarily are involved in hosting infringing content could be blocked entirely rather than a single blocked URL, in context to the live telecasts of cricket matches.<sup>13</sup>

Furthermore, as per Section 65B of the Copyright Act, 1957, any person without any authority consciously distributes, imports for distribution, broadcasts or communicates to the people, copies of any work, or performance in awareness to the fact that electronic rights management information has been dismissed or changed without authority shall be punishable with imprisonment which may extend to two years with an liability of fine.<sup>14</sup>

The sole rights of screening IPL matches commercially in India is with the Valuable Media Ltd. (VML). Recently, a hotel had to pay a hefty penalty for screening an IPL match without taking the permission from VML.

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<sup>11</sup><https://www.hindustantimes.com/india-news/star-india-and-dd-to-broadcast-some-matches-of-the-ipl-together/story-qEEJsIcsWjrmJmgsa4EnvJ.html>

<sup>12</sup> The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, §4

<sup>13</sup> Department of Electronics and Information Technology v. Star India Pvt. Ltd. [R.P. 131/2016 in FAO(OS) 57/2015 decision dated 29<sup>th</sup> July, 2016]

<sup>14</sup>The Copyright Act, 1957, §65B

### **1.6. Public Screening of ICC 2019 World Cup**

For the purpose of screening of ICC 2019 World Cup, The International Cricket Council (ICC) propounded an unique way of public screening of ICC World Cup, it made an online portal for entities interested in the public screening of the match both for commercial as well as non-commercial purposes. For staging such a public screening event, ICC laid down certain guidelines, permissions and license fees. . ICC has identified these public screening events classed as any commercial or non-commercial event where the ICC Cricket World Cup 2019 matches are made available for viewing by an audience, at locations such as beaches, parks, recreational areas, army bases, embassies and oil rigs, which do not normally broadcast sporting events.<sup>15</sup>

According to the recent trend, the organizations have recognized the increased competition for broadcasting rights, for which they have increased the broadcasting fees. For instance, Nimbus Communications had paid \$612 million for obtaining the broadcasting rights of Indian Cricket from 1<sup>st</sup> March,2006 to 31<sup>st</sup> March,2010 to the Board of Cricket Control in India (BCCI).

## **2. INDIAN REGIME OF LAWS ON BROADCASTING OF SPORTS**

In terms of broadcasting, India is the third largest market in the world (after China and U.S.A.)<sup>16</sup> as it comprises a very large segment of mass media. These changing times have attracted certain changes in the standard way of broadcasting rights from the orthodox forms which are live, delayed, highlights, clips based on content, platform and territory. It is not astonishing that the previously provided proposition has resulted in questions related to the ownerships, basic principle, sale and acquisition of such rights which included a variety of legal issues. The important statutes that administers the broadcasting regulations in India are –

- The Copyright Act, 1957.
- The Prasar Bharati Act, 1990.
- Indian Telegraph Act, 1885.
- Cable Television Network Act, 1995.
- Sports Broadcasting Signal Ordinance, 2007.
- Information Technology Act, 2000.

The scope of copyrights or in other words ‘neighboring rights’ dealing with the broadcasting rights, essentially falls under the ambit of the Copyright Act, 1957. The Copyright regime of India is the outcome of its colonial past. The U.K. Copyright Act of 1911 and 1956 greatly

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<sup>15</sup> The International Cricket Council, ICC opens online portal for public screening requests of ICC Cricket World Cup 2019, available at <https://www.icc-cricket.com/media-releases/975578>

<sup>16</sup>TRAI Annual Report 2011-12. Available at [http://www.trai.gov.in/Content/Annual\\_Reports.aspx](http://www.trai.gov.in/Content/Annual_Reports.aspx)

influenced the Indian Copyright Act of 1914 and 1957 respectively. Due to the advancements in technology and the international legal regime, it became unavoidable to update the copyright laws in India. A new section was inserted in the amendment of 1994 that expressly provided the broadcasting reproduction rights. The latest amendment being of 1999, it enables broadcasting organizations with 'broadcast reproduction rights' to be their intellectual property. This is a special right encompassing certain unique and exclusive rights including the broadcasting to be heard or seen by the people for a term of 25 years or re-broadcasting of a broadcast. However, the before mentioned right is distinct from the copyrights held by the content owners for the contents of the broadcast. In accordance to these before-mentioned rights, if the following acts are done in the continuation of a broadcast reproduction without the permission or consent of the broadcaster, it would then lead to an infringement of the given right. Such acts are as follows-

- Broadcasting, that is seen or heard by the public on payment of certain charges.
- Re-broadcasts.
- Act of reproducing any sound or visual recording in which the original recording was done without any licensing or permission.
- Any act that includes making any sound or visual recording of a broadcast or selling to the public.

Further, protection of broadcasting rights can also be sought under Section 43 of the Information Technology Act, 2000. The Section makes a person liable to pay damages in form of compensation of up to Rs. 1 crore for unauthorized downloading. According to the Constitution of India, "all citizens shall have the right to freedom of speech and expression"<sup>17</sup>. Further in this regard, the Supreme Court held that, "the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained."<sup>18</sup> Further, in the case of **Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (CAB)**<sup>19</sup>, the Supreme Court considerably widened the scope of 'Freedom of speech and expression' and held that the State has no monopoly over the electronic media and under Article 19 (1)(a), a citizen very well has the right to broadcast content to the public via electronic media. The State can only impose restrictions on such rights on the basis of the grounds specified in Article 19(2) and not on any other ground and Government monopoly on electronic media is nowhere mentioned in Article 19(2). The Supreme Court observed that the, 'airwaves are public property'<sup>20</sup>. Being a public property, a public authority should regulate and control the use of the airwaves for the well-being of the public and also to avert any violation of rights. To simplify, the State cannot be the owner of the electronic media but has the legitimate

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<sup>17</sup>Constitution Of India, Art. 19(1)(a).

<sup>18</sup> Secretary, Ministry of Info. & Broad. v. Cricket Association of Bengal, (1995) 2 S.C.C. 161, 224.

<sup>19</sup>Ibid.

<sup>20</sup> Supra note 18.

role of a trustee. The Supreme Court held in line with the order of the Calcutta High Court that, monopoly over electronic media is inconsistent with the right to freedom of speech and expression<sup>21</sup>. But according to Article 19(6), the Constitution has allowed monopolies in business activities. To this, the Court provided the rationale that ‘Broadcasting’ is a medium of expression and covered under Article 19(1)(a), hence neither the state nor private companies can monopolize it.

### **3. REFORMS REQUIRED IN THE CURRENT INDIAN BROADCASTING REGIME**

It is a confirmed notion that the current Indian Broadcasting regime requires certain reforms. As per my study and rationale, the legislature should keep in mind the following aspects while reforming the existing laws-

- Clarity about what exactly is a ‘broadcast organization’ in the present times, as the term broadcast is broadly defined. Broadcast is described as ‘any entity communicating anything to the public by wither wireless means or through wire is qualified to be a broadcaster under the copyright act’
- It will help in fighting piracy of signals as the cost of broadcasting industry in India was US \$565 Million in the year 2005.
- It will also provide an additional layer of protection in the creative works which are being transmitted by broadcasting.
- It will create equal platforms for the Indian broadcasting signals, it will get equality in the treatment overseas for the Indian broadcasting signals. As a result of which the broadcasting which have hitherto been pirated without necessary protection and for international commit.
- There will be a better investment available for the broadcasting industry in India.
- Prasar Bharati being a public broadcaster is the creator of a number of broadcasts, mostly in ‘free to air’ mode of content of sports events, news, serials and other copyright contents. Pirates include indulging in simulcasting, delayed broadcasting, re-broadcasting of Doordarshan broadcasts and misuse of the recordings of its archival treasure with an intention of making money.

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<sup>21</sup> Ibid.

#### **4. EVOLUTION OF SPORTS BROADCASTING LAWS THROUGH JUDICIAL PRONOUNCEMENTS**

##### **4.1. Primary phase**

Through the interpretation of Indian Courts, an order passed by the Delhi High Court in 2004, exclusively with regards to the sports industry, accorded the recognition of broadcasting rights. Through the order, the Court granted the first open-ended Anton-Piller injunction to the India-Pakistan cricket series involving Taj Sports India Pvt. Ltd. and Ten Sports in context to TV broadcasting rights. The order was against the unauthorized transmission of cricket matches by the rival cable TV channels. The Court under this injunction ordered 36 cable operators to stop the illegal reproduction of the broadcasting rights. The time at which this order stormed the sporting legal fraternity, India was gearing up for achieving full compliance with the TRIPS agreement. To the Intellectual Property owners, the Ten Sports order proved to be a boon, especially for those who owned rights for a limited time. For a legal domain which remained untouched before, this order worked as a catalyst in the growth of Sports law in India. Due to the increasing revenue and other formalities in context to the broadcasting rights involving sports, many inquiries and issues came up between the privately-owned channels and the national broadcaster i.e. the Doordarshan regulated by Prasar Bharati. A new policy guideline was provided by the Ministry of Information and Broadcasting related to the down-linking of the TV channels in the year 2005 which were related to the broadcasting of a variety of sporting events, and particularly cricket. The clauses of this before mentioned policy made it compulsory for all the channels to give Doordarshan the access to live telecasts of international and national sporting events of national importance held in India or overseas (the events of national importance have been discussed in the paper earlier). The policy further made it clear that the private channels acquiring the exclusive telecasting rights would have to share 25% of the generated revenue with Doordarshan.

Based on the above mentioned guidelines, Ten Sports filed a petition in Supreme Court alleging that the policy has no authority of law and is detrimental to the channel owners' business and rights and this all came up right before the momentous India-Pakistan series. In response, the Government of India submitted that for the first three tests against Pakistan, the Government would not force Ten Sports to comply with the down-linking guidelines before the Apex Court. As a result of this submission, Doordarshan was only permitted to air the 90 minutes daily highlights of the Test series with the Ten Sports and not the entire series. Progressing from this situation, an agreement was signed between Prasar Bharati and Ten Sports which gave Doordarshan the right to telecast the cricket matches for which Ten Sports provided the live feed. On 30<sup>th</sup> January 2006, the Court finally held that the 'uninterrupted feed' of the matches

provided by the Ten Sports shall be carried out by Doordarshan. It was not allowed to telecast its own programs during the lunch breaks or should show any advertisements of its own.

Further, in 2006 on the same lines it was held by the Delhi High Court in **Prasar Bharati v. Sahara TV Network Pvt. Ltd. &Ors**<sup>22</sup> that news channel has to be regulated along the lines of the same clause as stated in the rules of the Prasar Bharati on record except to the extent that the maximum cap-limit of two minutes shall extend to seven minutes in 24 hours, despite not being regarded as equal to the other commercial channels. Nevertheless, in addition to it, it was also held that the time will not be made use of for providing any business program or commercials previously, during or after the cricket news. Nonetheless, any news or notable events during that period can be displayed by them. Doordarshan released an ordinance in the same year through its clout with the Ministry for Information and Broadcasting, making it necessary to share the live feed of the official one day international matches, the 'Twenty20' ties and some other test matches with Doordarshan (DD) by the private television channels. As opposed to the fact, huge amount of money was used to secure telecasting rights of all of those matches by the private channels.

In January 2007, a dispute between **Nimbus Sports and DD** came to light regarding the broadcasting rights over the second ODI between India and West Indies. A petition before the High Court in Delhi was filed by Nimbus in order to avert Doordarshan from utilizing the footage of their exclusive right. However, the court instructed DD to be given access to the feed by Nimbus which will be telecasted on DD International and its DTH service in its provisional order. The cricket action on DD was, however, to be at a delay of seven minutes. The judiciary and government always administers enforcement of sharing the signal of these private broadcasters with DD because of the popularity of sports events in India and especially cricket. In order to get away from the persistent conflict over the distribution of these signal, DD made it mandatory for private television channels to share their live feed of all one day international (ODI) cricket matches and the Twenty20 ties and some other test matches using its dominion with the ministry for Information and Broadcasting (I&B), citing public interest abroad<sup>23</sup>. The live television and radio feed without the advertisements, is to be shared with DD and All India Radio for events of national importance as addressed by the Union Government, as per the Broadcasting Signals Ordinance, 2007.

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<sup>22</sup> 2006 (32) PTC 235 (Del).

<sup>23</sup>Way cleared for sharing Sports live feed with DD, BUSINESS LINE, Feb 02, 2007 <http://www.thehindubusinessline.com/2007/02/02/stories/2007020204020100.html>.

## 4.2. Contemporary Phase

The contemporary phase of broadcasting of sports in India can be explained by the following landmark judgements-

### 4.2.1. Prasar Bharati v. Board of Control for Cricket in India and Ors.<sup>24</sup>

According to the provisions of Section 3 of the Sports Act, the court interpreted that it is obvious that the concurrently shared live broadcasting signal be exclusively re-transmitted by Prasar Bharati, without the cable operator's interference. It signifies that the cable operator cannot carry out such a joint live broadcasting signal. This limitation is by way of a statutory provision and not by way of a private treaty.

The connection between the provisions of the Sports Act, Section 3 and the Cable Television Networks (Regulation) Act 1995, Section 3 have to be interpreted in the context that the shared live broadcasting signal received from ESPN/STAR, by Prasar Bharati should not be positioned in the compulsorily carried out channels of Doordarshan by the cable operator under Section 8 of the Cable Television Networks (Regulation) Act. In a designated Doordarshan channel, carrying sports is not a topic of policy but of administration. In accordance with the Sports Act, Section 3, it was conclusively held that the live broadcasting signal shared with Prasar Bharati by ESPN/STAR, shall not come under the obligation bestowed on cable operators casted by Section 8 of the CTN Act in the designated Doordarshan channels.

### 4.2.2. Star Sports India Private Limited V Prasar Bharati and Ors.<sup>25</sup>

Prasar Bharati (INDIA'S PUBLIC SERVICE BROADCASTER). Prasar Bharati is the only Public service broadcaster in the country, with Akashvani (All India Radio i.e. AIR) and Doordarshan as its two constituents. It came into existence on 23rd November 1997 with the mandate to handle the public broadcasting services in order to inform and entertain the public and ensure a balanced development of broadcasting on radio and television.

In the following case under Media and Entertainment sector and Cable Television Networks(Regulation) Act,1995, It was demanded to share Sports Broadcasting Signals with Prasar Bharati under Prasar Bharati Act, 2007 under section 3 and 3(2) i.e. Validity of notification and Encryption of channels.

Under the 1995 Act, a notification was issued by Prasar Bharati (respondent no.1), that Doordarshan and DD (News Channel) be carried compulsorily by cable operators,(Appellant

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<sup>24</sup> (2015) 6 SCC 614

<sup>25</sup> AIR 2016 SC 2586

no.1,2) filed petition before the Single Judge's for direction issued to (respondent no.1,2) to encrypt Doordarshan Satellite Transportation. The Single Judge, rejected all of the claims of appellants and dismissed the petition. Hence the issue raised was if carrying sports is a matter of policy in a designated Doordarshan channel.

It was held that it is evident that ESPN / STAR and BCCI are against the free transmission of signals by Prasar Bharati through cable operators and not the ones through DTH and terrestrial networks. ESPN / STAR say that this has affected them in two ways, by reduced advertisement revenue and subscription revenue. Hence, if Prasar Bharati had not provided without any charge to cable operators through Doordarshan, these homes with cable networks would have paid for the live broadcast. According to the section 3(2) of 2007 Act, an argument that advertisement revenue received by Doordarshan in context to shared content was also to be shared in ratio of not less than 75:25, it still doesn't compensate the subscription revenue losses. Further, it has been noted that the revenue in advertisement by ESPN / STAR raised independently, would not be at par with Prasar Bharati and provision of section 3(2) of 2007 Act was no consolation for providing feed free to cable operators. As a result of the interplay between provisions of section 3 of 2007 Act and section 8 of 1995 Act have to be read in such a manner that shared live broadcasting signal should not be placed in channels of Doordarshan which are to be compulsorily carried by cable operators u/s.8 of the 1995 Act, received by Prasar Bharati from ESPN / STAR, Thus, the view taken by a single Judge that carrying sports in a designated Doordarshan channel is a matter of policy is correct and is a matter of administration, hence the appeal was allowed partly.

It was also held that the word 'its' under section 3 relates to all three categories viz:

- Contents holder
- Content rights
- Television or radio broadcasting service provider.

Accordingly, it was held by the Supreme Court that it is expected to remove all commercial content from the feed by Star India, despite it being included by ICC and Star Sports does not earn revenue from such content, before sharing it to Prasar Bharati.<sup>26</sup>

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<sup>26</sup>Supreme Court Decision in the Case of Star Sports India Private Limited v. Prasar Bharati and Ors. (n.d.). Retrieved November 24, 2020, from <https://www.azbpartners.com/bank/supreme-court-decision-in-the-case-of-star-sports-india-private-limited-v-prasar-bharati-and-ors/>.

## **5. SPORTS BROADCASTING SIGNALS (MANDATORY SHARING WITH PRASAR BHARATI) (AMENDMENT) BILL, 2018:**

The Ministry of Information and broadcasting in the year 2018, proposed a legislation in order to amend the Sports Broadcasting Signal Act, 2007 which would essentially overrule the Supreme Court's judgment of *Star Sports India Pvt. Ltd. v Prasar Bharati and Ors*<sup>27</sup>. The rationale provided by the ministry for such amendment was that the judgment given by the apex court extinguished the very purpose and objective of the aforementioned act. The proposed amendment bill was put on hold by the Ministry of Information and Broadcasting until January 15, 2019 initially but later was put on hold indefinitely.

### **5.1. Amendment proposed by the Legislature-**

In India, no private rights holder is allowed to telecast a '*Sporting event of national importance*' without sharing the signal with Prasar Bharati simultaneously and without any advertisements. Such sport events that are of national importance include **National Cricket Matches, Football World Cup finals and semifinals, the Summer Olympics, Commonwealth Games and Asian Games etc.** Further, the public broadcaster is allowed to re-transmit the same solely to its own direct-to-home platform DD FreeDish and terrestrial network. The Act provides that there is no obligation on the part of Prasar Bharati to display the rights holder's channel's logo. It is responsible for generating its own pre and post-match programs. Moreover, the act compels the to share television advertisement revenue of 25% with Prasar Bharati by the rights holders and 50% in case of radio.

The proposal put forward by the government mandates the broadcasting of sporting events of national importance on Doordarshan on all terrestrial networks, DTH networks and other platforms facilitating Indian viewers to watch them. This is supposedly done in the backdrop of people who are watching the sporting events by giving exorbitant prices for sports channels in case they do not have either the terrestrial network of Doordarshan or DD FreshDish. Hence, the purpose of this amendment is to make certain the incorporation and affordability in sports viewership for which the Sports Act, 2007 was enacted by the parliament.

### **5.2. The concerns with respect to the proposed amendment**

In the recent past the Private Broadcasters faced a critical obstacle in the form of Cable Television Networks. Section 8 of the Act mandates to carry two Doordarshan channels by all cable operators. This simply meant that the cable companies procured access to vital sporting events through paid private broadcasting channels as well as via Doordarshan channels which are

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<sup>27</sup>*Star Sports India Pvt. Ltd. v Prasar Bharati and Ors*, AIR 2016 SC 2586

free of cost. This led to the formation of a lopsided playing field because it was very obvious that the viewers would not pay for events which they can view for free on Doordarshan. This provision was further misused by the pay TV operators as they gave free-to-air (FTA) channels to paying subscribers and charged money from them without sharing it with the broadcasting rights holder.

Ultimately this led to a reduction in the viewership of private broadcasting channels along with a reduction in their substantial revenue. In order to avoid this, the apex court passed a judgment stating that Doordarshan is allowed to air those feeds solely on its own terrestrial network, DTH (Direct-to-home) platform and Free Dish which further restricted the borrowed feeds to the homes with DD network signals provided via terrestrial or DTH network. This particular ruling was recently reverted back concluding that the homes which get Prasar Bharati (Doordarshan) channels on cable will also be getting free of cost access to the live broadcast. This proposal highly disappointed the Private broadcasters keeping in mind the considerable amount of money spent by them on media rights of sporting events which is exceptionally high in case of cricket.

The Act authorizes the government to notify a sporting event to be of 'National Importance' which would give an easy-pass to the government for arbitrary selection including the possibility of acquiring IPL within its ambit. Therefore, even though this proposed amendment includes a huge amount of corporate investment, the welfare instinct of the aforementioned amendment does not seem efficacious and strong.

### **5.3. What must be done?**

The amendment forsakes the paucity in understanding of the underlying business model in the broadcasting of sports. Since Doordarshan is available to almost every TV home in the country, it facilitates the people to get a good opportunity to view sports channels who cannot afford to pay exorbitant subscription fees. The amendment aims at ensuring a larger reach of sporting events of national importance on a free to air basis. Something else that should be kept in mind is that the private broadcasters by airing in television mode, earning their revenue and making money for their rights. As these broadcasters pay billions of rupees in order to bid for the rights for broadcasting these events, this pushed them to argue against the amendment. Therefore it should be ensured by the government that there is a proper balance between the interest of the common public and that of the investors.

## **6. CONCLUSION/ SUGGESTIONS**

Now the time has come that we let sports and other sporting events flourish for which Sports law needs to flourish in the country by the virtue of the intervention of the Legislature. Indians need to understand that sports is no more an insignificant phenomenon as it involves intricate legal

issues and enormous amounts of money. This has led to the emergence of a distinct legal system and should be given sufficient attention. A notion also comes in my mind that Sports law should become the part of the curriculum for the law students. The rising popularity and commercialism of cricket in the form of Indian Premier League and other Indian Cricket Leagues have raised very important legal issues regarding the sports broadcasting rights in India. These aspects have adequately proved that there is a need to improve Sports law and other related laws in India.

Numerous suggestions have been discussed throughout the paper, the most important being that the legislature should equally balance out the interest of the private players as well as the public at large. Enforcing various laws by keeping in mind only the public interest would discourage multinational companies and other local companies related to broadcasting, to invest in this sphere. A balance should be maintained and for it the high interference of the Government should be stopped. There should be a public funded autonomous organization that should govern all the sports related issues with minimal Government interference. The selection process of athletes for international as well as national competition should become transparent. The bidding procedure for the broadcasting rights should be also well defined and all the rights attached with the acquisition of such rights should be well informed to the owners and other authorities to avoid any sought of discrepancies.