PETITIONER:
THE SECRETARY, MINISTRY OF INFORMATION & BROADCASTING,

Vs.

RESPONDENT:
CRICKET ASSOCIATION OF BENGAL & ANR.

DATE OF JUDGMENT09/02/1995

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
MOHAN, S. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1995 AIR 1236 1995 SCC (2) 161
JT 1995 (2) 110 1995 SCALE (1)539

ACT:

HEADNOTE:

JUDGMENT:
1. Leave granted.
2. It will be convenient to answer the questions of law that arise in the present case, before we advert to the factual controversy between the parties. The questions of law are:
[1] Has an organiser or producer of any event a right to get the event telecast through an agency of his choice whether national or foreign?
[2] Has such organiser a choice of the agency of telecasting, particularly when the exercise of his right, does not make demand on any of the frequencies owned, commanded or controlled by the Government or the Government agencies like the Videsh Sanchar Nigam Limited [VSNL] or Doordarshan [DD]?
[3] Can such an organiser be prevented from creating the terrestrial signal and denied the facility of merely uplinking the terrestrial signal to the satellite owned by another agency whether foreign or national?
[4] What, if any, are the conditions which can be imposed by the Government department which in the present case is the Ministry of Information and Broadcasting [MIB] for [a] creating terrestrial signal of the event and [b] granting facilities of uplinking to a satellite not owned or controlled by the Government or its agencies?
3. On answers to these questions depend the answers to the incidental questions such as [i] whether the Government or the Government agencies like DD in the present case, have a monopoly of creating terrestrial signals and of telecasting them or refusing to telecast them, [ii] whether the Government or Government agencies like DD can claim to be the host broadcaster for all events whether produced or organised by it or by anybody else in the country and can insist upon the organiser or the agency for telecasting engaged by him, to take the signal only from the Government or

Government agency and telecast it only with its permission or

4. To appreciate the thrust of the above questions and the answers to them, it is necessary first to have a proper understanding of what 'telecasting' means and what its legal dimensions and consequences are. Telecasting is a system of communication either audio or visual or both. We are concerned in the present case with audio-visual telecommunication. The first stage in telecasting is to generate the audio-visual signals of the events or of the information which is sought to be communicated. When the event to be telecast takes place on the earth, necessarily the signal is generated on the earth by the

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requisite electronic mechanism such as the audio-visual recorder. This stage may be described as the recording stage. The events may be spontaneous, accidental, natural or organised. The spontaneous, accidental and natural events are by their nature uncontrollable. But the organised events can be controlled by the law of the land. In our country, since the Organisation of an event is an aspect of the fundamental right to freedom of speech and expression protected by Article 19 [1] (a), the law can be made to control the Organisation of such events only for the purposes of imposing reasonable restrictions in the interest of the sovereignty and integrity of the country, 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 as laid down under Article 19 [2] of the Constitution. Although, therefore, it is not possible to make law for prohibiting the recording of spontaneous, accidental or natural events, it is possible for the reasons mentioned in Article 19 [2], to restrict their telecasting. As regards the organised events, a law can be made for restricting or prohibiting the Organisation of the event itself, and also for telecasting it, on the same grounds as are mentioned in Article 19 [2]. There, cannot, however, be restrictions on producing and recording the event on grounds not permitted by Article 19 [2]. It, therefore, follows that the Organisation or production of an event and its recording cannot be prevented except by law permitted by Article 19 [2]. For the same reasons, the publication or communication of the recorded event through the mode of cassettes cannot be restricted or prevented except under such law. All those who have got the apparatus of video cassette recorder [VCR] and the television screen can, therefore, view and listen to such recorded event [hereinafter referred to, for the sake of convenience, as 'viewers']. In this process, there is no demand on any frequency or channel since there is no live-telecast of the event. The only additional restriction on telecasting or live-telecasting of such event will be the lack of availability of the frequency or channel.

5. Since in the present case, what is involved is the right to live-telecast the event, viz., the cricket matches organised by the Cricket Association of Bengal, it is necessary to understand the various issues involved in live telecasting. It may be made clear at the outset, that there may as well be a file telecast [i.e., telecasting of the events which are already recorded by the cassette]. The issues involved in file telecasting will also be more or less the same and therefore, that subject is not dealt with separately. Telecasting live or file necessarily involves the use of a frequency or a channel.

6. The telecasting is of three types, [a] terrestrial, [b]

cable and [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 T.V. Centre which in turn relays it through its own frequencies to all the viewers who have T.V.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 T.V. 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
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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 T.V. suffers is that the programmes relayed by it can be received only by those viewers who are linked to the dish antenna concerned. The last type, viz., satellite T.V. 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. It is necessary to bear in mind the distinction between the frequencies generated, owned and controlled by the Government or Governmental agency and those generated and owned by the other agencies. This is so because generally, as in the present case, one of the contentions against the right to access to telecasting is that there are a limited number of frequencies and hence there is the need to utilise the limited resources for the benefit of all sections of the society and to promote all social interests by giving them priority as determined by some central authority. It follows, therefore, that where the resources are unlimited or the right to telecast need not suffer for want of a frequency, objection on the said ground would be misplaced. It may be stated here that in the present case, the contention of the MIB and DD against the right to telecast claimed by the Cricket Association of Bengal [CAB]/Board of Control for Cricket in India [BCCI] was raised only on the ground of the limitation of frequencies, ignoring the fact that the CAB/BCCI had not made demand on any of the frequencies generated or owned by the MIB/DD. It desired to telecast the cricket matches organised by it through a frequency not owned or controlled by the Government but owned by some other agency. The only permission that the CAB/ BCCI sought was to uplink to the foreign satellite the signals created by its own cameras and the earth station or the cameras and the earth station of its agency to a foreign satellite. This permission was sought by the CAB/BCCI from VSNL which is the Government agency controlling the frequencies. The permission again cannot be refused except under law made in pursuance of the provisions of Article 19 [2] of the Constitution. Hence, as stated above, one of the important questions to be answered in the present case is whether the permission to uplink to the foreign satellite, the signal created by the CAB/BCCI either by itself or through its agency can be refused except on the ground stated in the law made under Article 19 [2].

7. This takes us to the content of the fundamental right to the freedom of speech and expression guaranteed by Article 19 [1] (a) and the implications of the restrictions

permitted to be imposed on the said right, by Article 19 [2]. We will first deal with the decisions of this Court where the dimensions of the right are delineated.

8. In Romesh Thappar v. The State of Madras [1950 SCR 594] the facts were that the Provincial Government in exercise of its powers under Section 9 [1-A] of Madras Maintenance of Public Order Act, 1949, by an order imposed a ban upon the entry and circulation of the petitioner's journal 'Cross Roads'. The said order stated that it was being passed for the pur-

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pose of securing the public safety and the maintenance of public order. The petitioner approached this Court under Article 32 of the Constitution claiming that the order contravened the petitioner's fundamental right to freedom of speech and expression. He also challenged the validity of Section 9 [1-A] of the impugned Act. The majority of the Court held that the freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. In support of this view, the Court referred to two decisions of the U.S. Supreme Court viz., [1] Exparte Jackson [96 US 727] and [ii] Lovell v. City of Griffin [303 US 444] and quoted with approval the following passage therefrom: "Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value". Section 9 [1-A] of the impugned Act authorised the Provincial Government, "for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof or any document or class of documents". The question that the Court had to answer was whether the impugned Act insofar as it contained the aforesaid provision was a law relating to a matter which undermined the security of, or tended to overthrow the State. The Court held that "public order" is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of the internal regulations enforced by the Government which they have established. The Act was passed by the Provincial Legislature under Section 100 of the Government of India Act, 1935, read with Entry I of List II of the Seventh Scheduled to that Act. That Entry, among others, comprised "public order" which was different from "public safety" on which subject the Provincial Legislature was not competent to make a law. The Court distinguished between "public order" and "public safety" and held that public safety was a part of the wider concept of public order and if it was intended to signify any matter distinguished from and outside the content of the expression "public order", it would not have been competent for the Madras Legislature to enact the provision so far as it related to public safety. "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent danger to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. The Court then rejected the argument that the securing of the public safety or maintenance of public order would include the security of the State which was covered by Article 19 [2] and held that where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative actions affecting

such right, it is not possible to uphold it even insofar as it may be applied within the constitutional limits as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it may be held to be wholly unconstitutional and void. In other words, clause [2] of Article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment which is capable of being

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applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.

9. The above view taken by this Court was reiterated in Brij Bhushan & Anr. v. The State of Delhi [1950 SCR 6051 where Section 7 [1] (c) of the East Punjab Public Safety Act, 1949 as extended to the Province of Delhi, providing that the Provincial Government or any authority authorised by it in this behalf, if satisfied that such action was necessary for preventing or combating any activity prejudicial to the public safety or the maintenance of public order, may pass an order that any matter relating to a particular subject -or class of subjects shall before publication be submitted for scrutiny, was held as un-constitutional and void. The majority held that the said provision was violative of Article 19 [1] [a] since it was not a law relating to a matter which undermined the security of, or tended to overthrow the State within the meaning of the then saving provision contained in Article 19 [2]. The Court further unanimously held that the imposition of pre-censorship of a journal was a restriction on the liberty of the press which was an essential part of the right to freedom of speech and expression declared by article 19 [1](a).

10. In Hamdard Dawakhana [Wakf] Lal Kuan, Delhi & Anr. v. Union of India & Ors. [(1960) 2 SCR 671], the Court held that the object of the Drugs and Magic Remedies [Objectionable Advertisements] Act, 1954 was the prevention of self-medication and self-treatment by prohibiting in-struments which may be used to advocate the same or which tended to spread the evil. Its object was not merely the stopping of advertisements offending against morality and decency. The Court further held that advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It is only when an advertisement is concerned with the expression or propagation of ideas that it can be said to relate to freedom of speech but it cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of the freedom of speech guaranteed by the Constitution. The provisions of the Act which prohibited advertisements commending the efficacy, value and importance in the treatment of particular diseases of certain drugs and medicines did not fall under Article 19 [1] (a) of the Con-stitution. The scope and object of the Act, its true nature and character was not interference with the right of freedom of speech but it dealt with trade and business. The provisions of the Act were in the interest of the general public and placed reasonable restrictions on the trade and business of the petitioner and were saved by Article 19 [6]. The Court further held that the first part of Section 8 of the impugned Act which empowered any person authorised by the State Government to seize and detain any document article or thing which such person had reason to believe,

contained any advertisement contravening the provisions of the Act imposed an unreasonable restriction on the fundamental rights of the petitioner and was unconstitutional. According to the Court, the said operation of Section 8 went far beyond the purposes for which the Act was enacted and failed to provide proper safeguards in regard to the exercise of the powers of seizure and detention as had been provided by the legislature in other statutes. However, if this operation was ex-
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cised from the section the remaining portion would be unintelligible and could not be upheld.

11. In Sakal Papers [P] Ltd. & Ors.. v. The Union of India [(1962)] 3 SCR 842] what fell for consideration was the Newspaper [Price and age] Act, 1956 which empowered the Central Government to regulate the prices of newspapers in relation to their pages and size and also to regulate the allocation of space for advertising matters and the Central Government order made under the said Act, viz., the Daily Newspaper [Price and Page] Order, 1960 which fixed the maximum number of pages that might be published by the newspaper according to the price charged and prescribing the nature of supplements that could be issued. The Court held that the Act and the Order were void being violative of Article 19 [1] (a) of the Constitution. They were also not saved by Article 19 [2]. The Court asserted that the freedom of speech and expression guaranteed by Article 19 [1] (a) included the freedom of the press. For propagating his ideas a citizen had the right to publish them, to disseminate them and to circulate them, either by word or mouth or by writing. The right extended not merely to the matter which he was entitled to circulate but also to the volume of circulation. Although the impugned Act and the Order placed restraints on the volume of circulation, their very object was directed against circulation. Thus both interfered with the freedom of speech and expression. The Court held that Article 19 [2] did not permit the State to abridge the said right in the interest of general public. The Court also held that the State could not make a law which directly restricted one guaranteed freedom for securing the better enjoyment of another freedom. Freedom of speech could not be restricted for the purpose of regulating the commercial aspect of the activities of newspapers. In this connection, the following observations of the Court are relevant:

> "Its object thus is to regulate something which, as already stated, is directly related to the circulation of a newspaper. Since circulation of a newspaper is a part of the right of freedom of speech the Act must be regarded as one directed against the freedom of speech. It has selected the fact or thing which is an essential and basic attribute of the conception of the freedom of speech, viz., the right to circulate one's views to all whom one can reach or care to reach for the imposition of a restriction. It seeks to achieve its object of enabling what are termed the smaller newspapers to secure larger circulation by provisions which without disguise are aimed at restricting the circulation of what are termed the larger papers with better financial strength. The impugned law far from being one, which merely interferes with the right of freedom of speech incidentally, does

so directly though it seeks to achieve the end by purporting to regulate the business aspect of a newspaper. Such a course is not permissible and the courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved. No doubt, the law in question was made upon the recommendation of the Press Commission but since its object is to affect directly the right of circulation of newspapers which would necessarily undermine their power to influence public opinion it cannot but

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be regarded as a dangerous weapon which is capable of being used against democracy itself.

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The legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; for even if the end is desirable and permissible, the means employed must not transgress the limits laid down by the Constitution, if they directly impinge on any of the fundamental rights guaranteed by the Constitution it is no answer when the constitutionality of the measure is challenged that apart from the fundamental right infringed the provision is otherwise legal.

Finally it was said that one of its objects is to give some kind of protection to small or newly started newspapers and, therefore, the Act is good. Such an object may be desirable but for attaining it the State cannot make inroads on the right of other newspapers which Art. 19 [1] (a) guarantees to them. There may be other ways of helping them and it is for the State to search for them but the one they have chosen falls foul of the Constitution.

To repeat, the only restrictions which may be imposed on the rights of an individual under Art. 19 [1] (a) are those which cl. [2] of Art 19 permits and no other".

12. In Bennett Coleman & Co. & Ors. v. Union of India & Ors. [(1972) 2 SCC 788], the majority of the Constitution Bench held that newspapers should be left free to determine their pages, their circulation and their new edition within their quota which has been fixed fairly. It is an abridgment of freedom of expression to prevent a common ownership unit from starting a new edition or a new newspaper. A common ownership unit should be free to start a new edition out of their allotted quota and it would be logical to say that such a unit can use its allotted quota for changing its page structure and circulation of different editions of same paper. The compulsory reduction to ten pages offends Article 19 [1] (a) and infringes the freedom of speech and expression. Fixation of page limit will not only deprive the petitioners of their economic viability, but will also restrict the freedom of expression by reason

of the compulsive reduction of page level entailing reduction of circulation and including the area of coverage for news and views. Loss of advertisements may not only entail the closing down, but will also affect the circulation and thereby impinge on freedom of speech and expression. The freedom of press entitles newspapers to achieve any volume of circulation. It was further held that the machinery of import control cannot be utilised to curb or control circulation or growth or freedom of newspapers.The news print control policy was in effect a newspaper control policy and a newspaper control policy is ultra vires the Import Control Act and the Import Control Order. The majority further held that by the freedom of press is meant the right of citizens to speak and publish and express their views. The freedom of the press embodies the right of the people to read and it is not ante-thetical to the right of the people to speak and express. The freedom of speech and expression is not only in the volume of circulation but also in the volume of news and views. The press has the right of free publication and their circulation without any obvious restraint on publication. If the law were to single out press
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for laying down prohibitive burdens on it that would restrict circulation, penalise freedom of choice as to personnel, prevent newspapers from being started and compel the press to Government aid. This would violate Article 19 [1] (a) and would fall outside the protection afforded by Article 19 [2]. The First Amendment to the American Constitution contains no exception like our Article 19 [2]. Therefore, American decisions have evolved their own exceptions. The American decisions establish that a Government regulation is justified in America as an important essential Government interest which is unrelated to the suppression of free expression. The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. The object of the law or executive action is irrelevant when it is established that the petitioner's fundamental right is infringed.

13. In Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors. [(1985) 1 SCC 641], the Court held that the expression "freedom of the press" has not been used in Article 19, but it is comprehended within Article 19 [1] (a). This expression means a freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which democratic electorate cannot make responsible judgments. Freedom of the press is the heart of social and political intercourse. It is the primary duty of the Courts to up-,,hold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. The freedom of expression has four broad social purposes to serve: [i] it helps an individual to attain self fulfilment, [ii] it assists in the discovery of truth, [iii] it strengthens the capacity of an individual in participating in decision-making and [iv] it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of the society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should,

therefore, receive a generous support from all those who believe in the participation of people in the administration. It is on account of this special interest which society has in the freedom of speech and expression that the approach of the Government should be more cautious while levying taxes on matters concerning newspaper industry than while levying taxes on other matters.The Courts are there always to strike down curtailment of freedom of press by unconstitutional means. The delicate task of determining when it crosses from the area of profession, occupation, trade, business or industry into the area of freedom of expression and interferes with that freedom is entrusted to the Courts. In deciding the reasonableness of restrictions imposed on any fundamental right the Court should take into consideration the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the disproportion of the imposition and the prevailing conditions including the social values whose needs are sought to be satisfied by means of the restrictions. The imposition of a tax like the custom duty on
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news print is an imposition of tax on knowledge and would virtually amount to a burden imposed on a man for being literate and for being conscious of his duty as a citizen to inform himself of the world around him. The pattern of the law imposing custom duty and the manner in which it is operated, to a certain extent, exposes the citizens who are liable to pay the custom duties to the vagaries of executive discretion.

14. In Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana and others [(1988) 3 SCC 410], it was held that the right of citizens to exhibit films on Doordarshan subject to the terms and conditions to be imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19 [1] (a) which can be curtailed only under circumstances set out under Article 19 [2]. The right is similar to the right of citizen to public his views through any other media such as newspapers, magazines, advertisement hoarding etc. subject to the terms and conditions of the owners of the media. The freedom of expression is a preferred right which is always very zealously guarded by the Supreme Court. However, on the question whether a citizen has a fundamental right to establish a private broadcasting station or T.V. centre, the Court reserved its opinion for decision in an appropriate case. The matter had come up before this Court against an interim injunction order issued by the High Court as a result of which 12th and 13th episodes of the film "Honi-Anhoni" could not be telecast on the scheduled dates. The Court held that it was not the case of the writ petitioners before the High Court that the exhibition of the said serial was in contravention of any specific law or direction issued by the Government. They had also not alleged that the Doordarshan had shown any undue favour to the appellant and the sponsoring institutions resulting in any financial loss to the public exchequer. The objection to the exhibition of the film had been raised by them on the basis that it was likely to spread false or blind beliefs among the members of the public. They had not asserted any right conferred on them by any statute or acquired by them under a contract which entitled them to secure an order of temporary injunction. The appellant before this court had denied that the exhibition of the serial was likely to affect prejudicially the wellbeing of the people. The Union of

India and Doordarshan had pleaded that the serial was being telecast after following the prescribed procedure and taking necessary precautions. The writ petitioners had not produced any material. apart from their own statements to show" that the exhibition of the serial was prima facie prejudicial to the community. This Court held that the High Court had overlooked that the issue of an order of interim injunction would infringe the fundamental right of the producer of a serial. In the absence of any prima facie evidence of gross prejudice that was likely to be caused to the public generally by the exhibition of the serial, it was not just and proper to issue an order of temporary injunction.

15. In S. Rangarajan v. P. Jagjivan Ram & Ors. [(1989) 2 SCC 574], it was held that the-freedom of speech under Article 19 [1] (a) means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and,their right to propagate or

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publish opinion. The communication of ideas could be made, through any medium, newspaper, magazine or movie. But this right is subject to reasonable restriction in the larger interests of the community and the country set out in Article 19 [2]. These restrictions are intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 [2]. This is the difference between the First Amendment to the U.S. Constitution and Article 19 of our Constitution. The decisions bearing on the First Amendment are, therefore, not useful to us except the broad principle and purpose of the guarantee. The Court, in this connection, referred to the U.S. decisions in Mutual Film Corporation v. Industrial Commission [236 US 230 (1915)], Burslyn v. Wilson [343 US 495] and Schenck v. United States [249 US 47]. The Court further held that there should be a compromise between the interest of freedom of expression and social interests. The Court cannot simply balance the two interests as if they are of equal weight. The Court's commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg". Though movie enjoys the guarantee under Article 19 [1] (a), there is one significant difference between the movie and other modes of communication. Movie motivates thought and action and assures a high degree of attention and retention. In view of the scientific improvements in photography and production, the present movie is a powerful means of communication. It has a unique capacity to disturb and arouse feelings. It has much potential for evil as it has for good. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free marketplace just as does the newspaper or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary. But the First Amendment to the U.S. Constitution does not permit any prior restraint, since the guarantee of free speech is in unqualified terms. Censorship is permitted mainly on the

ground of social interests specified under Article 19 [2] with emphasis on maintenance of values and standards of society. Therefore, censorship with prior restraint must necessarily be reasonable that could be saved by the well accepted principles of judicial review. The standard to be applied by the board or courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man. The board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. The path of right conduct shown by the great sages and thinkers of India and the concept of 'Dharam' [righteousness in every respect], which are the bedrock of our civilisation, should not be allowed to be shaken by unethical standards. But this does not mean that the censors should have an orthodox
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or conservative outlook. Far from it, they must be responsive to social change and they must go with the current climate. However, the censors may display more sensitivity to movies which will have a markedly deleterious effect to lower the moral standards of those who see it.

16. However, the producer may project his own message which the others may not approve of it. But he has a right to 'think out' and put the counter-appeals to reason. It is a part of a democratic give and take to which one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies. Everyone has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means. The democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government.

17. Dealing with the film in question, the Court further observed that the film in the present case suggests that the existing method of reservation on the basis of caste is bad and reservation on the basis of economic backwardness is better. The film also deprecates exploitation of people on caste consideration. This is the range and rigours of the film. There is no warrant for the view that the expression in the film by criticism of reservation policy or praising the colonial rule will affect the security of the State or sovereignty and integrity of India. There is no utterrance in the film threatening to overthrow the government by unlawful or unconstitutional means or for secession; nor is there any suggestion for impairing the integration of the country. Two Revising Committees have approved the film. The members thereof come from different walks of life with variegated experiences. They represent the cross-section of the community. They have judged the film in the light of the objectives of the Act and the guidelines provided for the purpose. There is nothing wrong or contrary to Constitution in approving the film for public exhibition. The producer or as a matter of fact, any other person has a right to draw the attention of the government and people that the existing method of reservation in educational institutions overlooks merits. Whether this view is right or wrong is another matter altogether and at any rate, the Court is not concerned with its correctness or usefulness to

the people. The Court is only concerned whether such a view could be advocated in a film. To say that one should not be permitted to advocate that view goes against the first principle of our democracy. If the film is unobjectionable and cannot constitutionally be restricted under Article 19 [2], freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. Freedom of expression which is legitimate and constitutionally protected cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19
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[1] (a) can be reasonably restricted only for the purposes mentioned in Article 19 [2] and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting ex-pression.
18. The views taken by this Court in the aforesaid decisions have thereafter been repeated and reproduced in the subsequent decisions.
19. In Printers (Mysore) Ltd. & Anr v. Asst. Commercial Tax Officer & Ors. [(1994) 2 SCC 434], it is reiterated that the special treatment given to the newspapers has a philosophy and historical background. Freedom of press has been placed on a higher footing than other enterprises. Though freedom of press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of press has always been a cherished right in all democratic countries. Therefore, it has rightly been described as the Fourth Estate. The demo-cratic crede is of a State are judged today by the extent of freedom the press enjoyed in that State. This decision quotes from the. opinion of Douglas, J. in Terminiello v. Chicago [93 L.ed 1131: 337 US 1 (1949)] that "acceptance by Government of a dissident press is a measure of the maturity of the nation".
20. In Life Insurance Corporation of India v. Professor Manubhai D. Shah [(1992) 3 SCC 6371, the respondent-Ex-ecutive Trustee of the Consumer Education and Research Centre [CERC], Ahmedabad, after making research into the working of the Life Insurance Corporation [LIC], published a study paper portraying the discriminatory practice adopted by the LIC by charging unduly high premia from those taking out life insurance policies and thus denies access to insurance coverage to a vast majority of people who cannot afford to pay the high premium. A member of the LIC wrote a counter article and published it in the daily newspaper "Hindu". The respondent replied to the same in the said newspaper. The member of LIC then published his counter-reply in LIC's house magazine. The respondent requested the LIC to publish his rejoinder also in the said magazine. That request was turned down. On these facts, the re-spondent filed a writ petition before the High Court challenging the action of the LIC, among other things, on the ground that his fundamental right under Article 19 [1] (a) of the Constitution was violate by LIC by refusing to publish his reply. The High Court held that under the pre-text and guise of publishing a house magazine, the LIC cannot violate the fundamental rights of the petitioner.

This Court endorsing the view taken by the High Court held that the LIC is 'State' within the meaning of Article 12. The LIC Act requires it to function in the best interest of the community. The community is, therefore, entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the LIC. The respondent's efforts in preparing the study paper was to bring to the notice of the community that the LIC had strayed from its path by pointing out that its premium rates were unduly high when they could be low if the LIC avoided the wasteful indulgences. The endeavour was to enlighten the community of the drawbacks and shortcomings of the LIC and to pinpoint the area where improvement was
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needed and was possible. By denying to the policy-holders, the information contained in the rejoinder prepared by the respondent, the LIC cannot be said to be acting in the best interest of the community. There was nothing offensive in the rejoinder which fell within the restriction clauses of Article 19 [2]. Nor was it prejudicial to the members of the community or based on imaginary or concocted material. On the basis of the fairness doctrine the LIC was under an obligation to publish the rejoinder. The respondent's fundamental right to speech and expression clearly entitled him to insist that his views on the subject should reach those who read the magazine so that they have complete picture before them instead of a one-side or distorted picture The Court also pointed out that the attitude of the LIC in refusing to publish the rejoinder in their magazine financed from public funds, can be described as both unfair and unreasonable unfair because fairness demanded that both view-points were placed before the readers and unreasonable because there was no justification for refusing publication. The monopolistic State instrumentality which survives on public funds cannot act in an arbitrary manner on the specious plea that the magazine is an in-house one and it is a matter of its exclusive privilege to print or refuse to print the rejoinder. By refusing to print and publish the rejoinder', the LIC had violated respondent's fundamental right. The Court must be careful to see that it does not even unwittingly' aid the effort to defeat the parties' right. Every free citizen has an undoubted right to lay what sentiments he pleases before the public. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. This Court has always placed a broad interpretation on the value and content of Article 19 [1] (a), making it subject only to the restrictions permissible under Article 19 [2]. Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled, more so when public authorities have betrayed autocratic tendencies. The Court then went on to observe:

> broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media i.e., periodicals, magazines or journals or through any other communication channel e.g. the radio and the television. The right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him.

> The print media, the radio and the tiny screen play the role of public educators, so vital to growth of a healthy democracy. These communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Modem communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19 [2].This freedom must, however,be exercised with
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> circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest.
> A constitutional provision is never static, it is ever-evolving and ever-changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. The Constitution-makers employed broad phraseology while the fundamental tights so that they may be able to cater to the needs of a changing society. Therefore, constitutional provisions must receive a broad interpretation and the scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach, unless the context otherwise requires.

21.The facts in the other case which was disposed of simultaneously by the same judgment were that the Doordarshan refused to telecast a documentary film on the Bhopal Gas Disaster titled 'Beyond Genocide' produced by the respondent Ciment Foundation on the grounds that [i] the film was outdated, [ii] it had lost its relevance, [iii] it lacked moderation and restraint, [iv] it was not fair and balanced, [v] political parties were raising various issues concerning the tragedy, [vi] claims for compensation by the victims were sub judice, [vii] the film was.likely to create commotion in the already charged atmosphere and [viii] the film criticised the action of the State Government and it was not permissible under the guidelines. The respondent filed a writ petition in the High Court on the ground of violation of his fundamental right under Article 19 [1] (a) and for a mandamus to the Doordarshan to telecast the film. The High Court held that the respondent's right under Article 19 [1] (a) obliged the Doordarshan to telecast the film and directed the Doordarshan to telecast the film at a time and date, convenient to it keeping in view the public interest, and on such terms and conditions as it would like to impose in accordance with the law. In the appeal against the said decision filed in this Court, the Court held that once it has recognised that the film maker has the fundamental right under Article 19 [1] (a) to exhibit the film, the onus lies on the party which claims that it was entitled to refuse enforcement of this right by virtue of

law made under Article 19 [2] to show that the film did not conform to requirements of that law. Doordarshan being a State-controlled agency funded by public funds could not have denied access to screen except on valid grounds. The freedom conferred on a citizen by Article 19 [1] (a) includes the freedom to communicate one's ideas or thoughts through a newspaper, a magazine or a movie. Traditionally, prior restraints, regardless of their form, are frowned upon as threats to freedom of expression since they contain within themselves forces which if released have the potential of imposing arbitrary- and at times direct conflict with the right of another citizen. Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill-effects that a motion picture may produce if unrestricted exhibition is allowed. Censorship is thus permitted to protect social interests enumerated in Article 19 [2] and Section 5-B of the Cinema to graph Act. For this reason, need for prior restraint has been recognised and our laws have assigned a specific role to the censors, as such is the need in a rapidly changing societal structure. But since permissible restrictions, albeit reasonable, are all the same restrictions, they are bound to be viewed as anathema, in that, they are in the nature of

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curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law. Such censorship must be reasonable and must answer the test of Article 14.

22. In this connection, it will be interesting also to know the content of the right to freedom of speech and expression under the First Amendment to the American Constitution where the freedom of press is exclusively mentioned as a part of the said right unlike in Article 19 [1] (a) of our Constitution. Further, the restrictions on the right are not spelt out as in our Constitution under Article 19 [2]. But the U.S. Supreme court has been reading some of them as implicit in the right. In principle, they make no difference to the content of the right to the freedom of speech and expression under our Constitution.

23. In National Broadcasting Company v. United States of America [319 US 190238 : 87 L ed 1344], it was held, inter alia, that the wisdom of regulations adopted by the Federal Communications Commission is not a matter for the courts, whose duty is at an end when they find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress.

24. In Joseph Burstyn v Lewis A. Wilson [343 US 495: 96 L ed 1098] a licence granted for the exhibition of a motion picture was rescinded by the appropriate New York authorities -on the ground that the picture was "sacrilegious" within the meaning of a statute requiring the denial of a licence if a film was "sacrilegious". The statute was upheld by the State courts. The Supreme Court unanimously reversed the decision of the State courts. Disapproving a contrary theory expressed in Mutual Film Corp. v. Industrial Com. of Ohio [236 US 230: 59 L ed 442], six members of the Supreme Court in an opinion of Clerk, J. held that the basic principles of freedom of speech and press applied to motion pictures, even though their production, distribution, and exhibition is a large-scale business conducted for profit. The court recognised that

motion pictures are not necessarily subject to the precise rules governing any other particular method of expression, but found it not necessary to decide whether a State may censor motion pictures under a clearly drawn statute, and limited its decision to the holding that the constitutional guarantee of free speech and press prevents a state from banning a film on the basis of a censor's conclusion that it is " sacrilegious". Reed, J. in a concurrent opinion emphasised that the question as to whether a state may establish a system for the licensing of motion pictures was not foreclosed by the court's opinion. Frankfurter, J. with Jackson and Burton, JJ. held that the term "sacrilegious" as used in the statute was unconstitutionally vague.

25.In Red Lion Broadcasting Co. etc. el. al. v. Federal Communications Commission et. al. and United Slates et. al. v. Radio Television News Directors Association et al. [395 US 367: 23 L Ed 2d 3711 which two cases were disposed of by common judgment, the facts were that in the first case, the Broadcasting Company carried as a part of "Christian Crusade" series, a 15-minute broadcast in which a third person's honesty and character were at-

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tacked. His demand for free reply time was refused by the broadcasting station. Federal Communications Commission [FCC] issued a declaratory order to the effect that the broadcasting station had failed to meet its obligation under the FCC's fairness doctrine. The Court upheld the FCC's directions.

26.In the second case, the FCC after the commencement of the litigation in the same case made the personal attack aspect of the fairness doctrine more precise and more readily enforceable. The Court upheld the FCC's rules overruling the view taken by the Court of Appeals that the rules were unconstitutional as abridging the freedom of speech and press.

27.The Court dealing with the two cases held:

> "Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Govenrnment limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound track, or any other individual does not embrace a right to snuff out the free speech of others.
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> for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all because there was room for only a few.
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> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast licences but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First

Amendment, aimed at protecting and furthering communications, prevented the government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations... No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech.

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizenis. There is nothing in the First Amendment which prevents the Govenunent from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.

This is not to say that the First Amendment is irrelevant to public broad-

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casting. On the contrary, it has a major role to play as the Congress itself recognized, which forbids FCC interference with "the right of free speech by means of radio communication.

Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favour of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amenchnent. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount...

It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee... It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC...

right on licensees to prevent others from broadcasting on t 'their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use.

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Nor can we say that it is inconsistent with the First Amendment goal of producing an informed public capable of conducting its own affairs to require a broadcaster to permit answers to personal attacks occurring in the course of discussing controversial issues, or to require that the political opponents of those endorsed by the station be given a chance to communicate with the public. Otherwise, station owners and a few networks would have unfettered power to make time available only to the highest bidders, to communicate only their own views on public issues, people and candidates, and to permit on the air only those with whom they agreed. There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all. "Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.

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licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern. To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people or to exclude from the airways anything but their own views of fundamental questions....

Licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them."

28.Referring to the contention that although at one time the lack of available frequencies for all who wished to use them justified the Government's choice, of those

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who would best serve the public interest by acting as proxy for those who would present differing views, or by giving the latter access directly to broadcast facilities, the said condition no longer prevailed to invite continuing control, the Court held:

"Scarcity is not entirely a thing of the past. Advances in technology, such as microwave transmission, have led to more efficient utilisation of the frequency spectrum, but uses for that spectrum have also grown apace. Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft-and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting n-ddair collisions through radio warning devices. "Land mobile services" such as police, ambulance, fire department,

public utility, and other communications system have been occupying an increasingly crowded portion of the frequency spectrum and there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the "citizens' band" which is also increasingly congested. Among the various uses for radio frequency space, including marine, aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole with an even smaller allocation to broadcast radio and television uses than now exists.

Comparative hearings between competing applicants for broadcast spectrum space are by no means a thing of the past. The radio spectrum has become so. congested that at times it has been necessary to suspend new applications. The very high frequency television spectrums, in the country's major markets, ahmost entirely occupied, although space reserved for ultra high frequency television transmission, which is a relatively recent development as a commercially viable alternative, has not yet been completely filled.

The rapidity with which technological advances succeed one another to create more efficient use of spectrum space on the one hand, and to create new uses for that space by ever growing numbers of people on the other, makes it unwise to speculate on the future allocation of that space. It is enough to say that the resource is one of considerable and growing importance whose scarcity impelled its regulation by an agency authorised by Congress. Nothing in this record, or in our own researches, convinces us that the resource is no longer one for which there are more immediate and potential uses than can be accommodated, and for which wise planning is essential. This does not mean, of course, that every possible wavelength must be occupied at every hour by some vital use in order to sustain the congressional judgment. The substantial capital investment required for many uses, in addition to the potentiality for confusion and interference inherent in any scheme for continuous kaleidoscopic reallocation of all available space may make this unfeasible. The allocation need not be made at such a breakneck pace that the objectives of the allocation are themselves imperiled.

Even where there are gaps in spectrum utilization, the fact remains that existing broadcasters have often attained their present position because of their initial government selection in competition with others before new technological advances opened new opportunities for further uses. Long experience in broadcasting, confirmed habits of listeners and viewers, network affiliation, and other advantages in program procurement give existing broadcasters a substantial

> advantage over new entrants, even where new entry is technologically possible. These
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> advantages are the fruit of a preferred position conferred by the Government. Some present possibility for new entry by competing stations is not enough, in itself, to render unconstitutional the Government's effort to assure that a broadcaster's programming ranges widely enough to serve the public interest.
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> In view of the scarcity of broadcast frequencies, the Government's role in allocating those frequencies, and the legitimate claims of those unable without governmental assistance to gain access to those frequencies for expression of their views, we hold the regulations and ruling at issue here are both authorized by statute and constitutional."

29. In Columbia Broadcasting System etc. etc. v. Democratic National Committee etc. etc.[412 US 94 : 36 L Ed 2d 772], in separate decisions rejecting the contentions that the general policy of certain radio and television broadcast licensees of not selling any editorial advertising time to individuals or groups wishing to speak out on public issues violated the Federal Communications Act of 1934 and the First Amendment, such contentions having been asserted in actions instituted by a national Organisation of businessmen opposed to United States involvement in Vietnam and by the Democratic National Committee, the US Court of Appeals for the District of Columbia Circuit reversed the Commission. However, the US Supreme Court reversed the Court of Appeals. Burger, C.J. expressing the views of the six members of the Court held:

> "...[1] the First Amendment issues involved in the case at bar had to be evaluated within the framework of the statutory and regulatory scheme that had developed over the years, affording great weight to the decisions of Congress and the experience of the Federal Communications Commission, and [2] under the Federal Communications Act and the Commission's "fairness doctrine," broadcast licensees had broad journalistic discretion in the area of discussion of public issues.
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> It was also held, expressing the views of five members of the court [Part IV of the opinion], that [3] neither the public interest standards of the Federal Communications Act nor the First Amendment, assuming that there was governmental action for First Amendment purposes, required broadcasters to accept editorial advertisements, notwithstanding that they accepted commercial advertisements, and [4] the Commission was justified in concluding that the public interest would not be served by a system affording a right of access to broadcasting facilities for paid editorial advertisements, since such a system would be heavily weighted in favor of the financially affluent, :would jeopardize effective operation of the Commission's "fairness doctrine", and would increase government involvement in broadcasting by requiring the Commission's daily supervision of broadcasters' activities..... a broadcaster's re-

> fusal to accept any editorial advertisements was not governmental action for purposes of the First Amendment, since private broadcasters, even though licensed and regulated to some extent by the government, were not instrumentalities or "partners" of the government for First Amendment purposes, and since the Commission, in declining to reject the broadcasters' policies against accepting editorial -advertisements, had not fostered or required such policy".

30.It may be mentioned here that unlike in this country, in United States, the private individuals and institutions are 141
given licences to have their own broadcasting stations and hence the right of the private broadcasters against the right of others who did not own the broadcasting stations but asserted their right of free speech and expression were pitted against each other in this case and the decision has mainly turned upon the said balancing of rights of both under the First Amendment. It was in substance held that any direction to the private broadcasters by the Government to sell advertising time to speak out on public issues violated the protection given by the First Amendment to the private broadcasters against Government control.

31.In Federal Communications Commission et al. v. WNCN Listeners Guild et al. [450 Us 582 : 67 L Ed 2d 521], a number of citizen groups interested in fostering and preserving particular entertainment formats petitioned for review of the Policy Statement of Federal Communications Commission [FCC] in the US Court of Appeals for the District of Columbia Circuit. The Court held that the Policy Statement was contrary to the Communications Act of 1934. The US Supreme Court reversed the decision of the Court of Appeals by majority, holding, inter alia, that the Policy Statement was not inconsistent with the Communications Act since the FCC provided a rational explanation for its conclusion that reliance on the market was the best method of promoting diversity in entertainment formats and that the FCC's judgment regarding how the public interest is best served was entitled to substantial judicial deference and its implementation of the public interest standard, when based on a rational weighing of competing policies was not to be set aside. Marshall and Brennan, JJ., however, held that in certain limited circumstances, the FCC may be obliged to hold a hearing to consider whether a proposed change in a licensee's entertainment programme format is in the public interest and that the FCC's Policy Statement should be vacated since it did not contain a safety valve procedure that allowed the FCC the flexibility to consider applications for exemptions based on special circumstances and since it failed to provide a rational explanation for distinguishing between entertainment and non-entertainment programming for purposes of requiring Commission review of format changes.

32.In City of Los Angeles & Department of Water and Power v. Preferred Communications, Inc. [476 US 488: 90 L ed 2d 480], a cable television company asked a public utility and the city of Los Angeles's water and power department for permission to lease space on their utility poles in order to provide cable television service to part of the city. The respondent-company was told that it must first obtain franchise from the appellant-City which refused to grant one on grounds that the company had failed to participate in an auction that was to award a single franchise in the area.

The respondent sued claiming violation of his right under the free speech clause of the First Amendment. It was alleged in the complaint that there was sufficient physical capacity and the economic demand in the area at issue to accommodate more than one cable company and that the city's auction process allowed it to discriminate among applicants. As against this, the appellant argued that lack of space on public utility structures, the limited economic demand, and the practical and aesthetic disruptive effects on the public right of way justified
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its decision. The District Court dismissed the complaint. On appeal, the US Court of Appeals reversed and remanded ',or further proceedings. The US Supreme Court affirmed the Court of Appeals. Rehnquist, J. expressing the unanimous decision of the Court held:

> "...[1]that the cable television company's complaint should not have been dismissed, since the activities in which it allegedly, sought to engage plainly implicated First Amendment interests where they included the communications of messages on a wide variety of topics and in a wide variety of formats, through original programming or by exercising editorial discretion over which stations or programs to include in its repertoire, but [2] that it was not desirable to express any more detailed views on the proper resolution of the First Amendment question without a more thor-oughly developed record of proceedings in which the parties would have an opportunity to prove those disputed factual assertions upon which they relied."

33.The position of law on the freedom of speech and press has been explained in [16 Am Jur 2d 3431 as under:

> "The liberty of the press was initially a right to publish without a license that which formerly could be published only with one, and although this freedom from previous. restraint upon publication could not be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the First Amendment. It is well established that liberty of the press historically considered and taken up by the Federal Constitution, means principally, although not exclusively, immunity from previous restraints or censorships. Stated differently, the rule is that an essential element of the liberty of the press is its freedom from all censorships over what shall be published and exemption from control, in advance, as to what shall ap-pear in print....
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> The freedom of speech and press embraces the right to distribute literature, and necessarily protects the right to receive literature which is distributed. It is said that liberty in circulating is as essential to the freedom as liberty of publishing, since publication without circulation would be of little value.
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> The right or privilege of free speech and publication, guaranteed by the constitutions

> of the United States and of the several states, has its limitations and is not an absolute right, although limitations are recognised only in exceptional cases.
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> The question of when the right of free speech or press becomes wrong by excess is difficult to determine. Legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct, active conduct are not presumptively bad because they interfere with and in some of their manifestations restrain the exercise of the First Amendment rights. The issue in every case is whether the words used are used hi such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils which the federal or state legislatures have a right to prevent; it is a question of proximity and degree.
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> The freedoms of speech and press are not limited to particular media of ex-
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> pression. Verbal expression is, of course, protected, but the right to express one's views in an orderly fashion extends to the communication of ideas by handbills and literature as well as by the spoken word. Picketing carried on in a non labor context, when free from coercion, intimidation, and violence, is constitutionally guaranteed as a right of free speech."

34. In "Civil Liberties & Human Rights" authored by David Feldman, the justification for and limits of freedom of expression are stated in the following words.

The liberty to express one's self freely is important for a number of reasons. Firstly, self-expression is a significant instrument of freedom of conscience and self-fulfillment. Second justification concerns epistemology. Freedom of expression enables people to contribute to debates about social and moral values. The best way to find the best or truest theory or model of anything is to permit the widest possible range of ideas to circulate. Thirdly, the freedom of expression allows political discourse which is necessary in any country which aspires to democracy. And lastly, it facilitates artistic scholarly endeavours of all sorts.

35. The obvious connection between press freedom and freedom of speech is that the press is a medium for broadcasting information and opinion. Firstly, media freedom as a tool of self-expression is a significant instrument of personal autonomy. Secondly, as a channel of communication, it helps to allow the political discourse in a democracy. Thirdly, it helps to provide one of the essential conditions in scholarships making possible the exchange and evaluation of theories, explanations and discoveries, and lastly, it helps to promulgate a society's cultural values and facilitates the debate about them, advancing the development and survival of civilisation.

36.Referring to the reasons for regulating the broadcasting media, the learned author has stated that, first, the Government realises the potential of channels of mass communication for contributing to democracy or undermining

it. They hoped to foster a public service ethos in broadcastings so that it would be a medium for educating and improving the population. Secondly in order to do this its was necessary to keep the media of mass communications from having programme policy dictated entirely by market forces. A strong pubic sector and regulation of the independent sector when one started to operate, were called for. Thirdly, when commercial broadcasters appeared on the scene, 1 and a regulatory scheme was being developed for them, it was thought to be important to preserve a diversity of ideas by preventing oligopolistic concentrations of power in the hands of a few, usually rich and conservative media magnates, and to ensure that licences were granted only to people who could be expected not to abuse the privilege. The need to preserve propriety has been a motivating factor in the regulation of commercial broadcasting over much of the world. Fourthly, government hoped to ensure that civilised standards were maintained, to uphold social values. Fifthly, wave lengths for broadcasting were limited. This purely technical consideration sharply distinguishes broadcasting from newspapers, and justifies a higher level of regulation. In theory, if not in practice, there is nothing to prevent any number of newspapers being pub-

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lished simultaneously. The only controlling mechanism needed is that of market forces. This is not true of broadcasting. Some control over the allocation of wavelengths is 'needed in order to ensure that there are sufficient for all legitimate broadcasters. Lastly, another legitimate object of national regulation is to protect the intellectual property rights of programme makers and broadcasters. It is permissible on this ground for an Organisation to prevent people from getting access to programmes without paying proper licence fees. One way of preventing this is to encode programme transmissions and to restrict access to decoders to people who pay the fee.

37. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression. We may in this connection refer to Article 10 of the European Convention on Human Rights which states as follows:

> " 10.1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
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> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are -prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals. for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

38.The next question which is required to be answered is

whether there is any distinction between the freedom of the print media and that of the electronic media such as radio and television, and if so, whether it necessitates more restrictions on the latter media.

39. Eric Barendt in his book titled " Broadcasting Law [1993 Edn.] which presents a comparative study of the law in five' legal systems, viz., Great Britain, France, Germany, Italy and United States of America, has dealt with the subject succinctly. He has referred to a number of reasons which are generally put forward to justify broadcasting regulations and has dealt with each of them. The first reason advanced is that because the airwaves are a public resource, the Government or some agency on its behalf, is entitled to license their use for broadcasting on the terms it sees fit. A similar argument can now be deployed in respect of cable broadcasting where an authority must give permission before roads can be dug up for laying cable. The learned author states that the case is unconvincing for it infers that it is right for the Government to regulate broadcasting from the fact that it has opportunity to do this. It would be perfectly possible for Government to allocate frequencies for cable franchises without programme conditions on the basis of a competitive tender and allow the resale by the purchaser. The argument, according to the author, therefore, does not work. It does not justify broadcasting regulations but almost explains how it is feasible. The author, however, does not accept the objection to this

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reason for regulation that thereby Government acts improperly by using their licensing power to purchase broadcasters' constitutional right to speech. According to the author, this argument is less persuasive as it assumes that broadcasters enjoy the same constitutional rights of free speech as individuals talking in a bar or leafletting in a high street. The author then deals with the second reason given for regulation of broadcasting, viz., scarcity of frequencies and points out that this argument referred to in Red Lion Broadcasting case [supra] is less clear than appears at first sight, since it is not clear whether the scarcity of frequencies refers to the limited number allocated by the Government as available for broadcasting or to the actual numerical shortage of broadcasting stations. If it is the former, the scarcity is an artificial creation of the Government rather than a natural phenomenon since it reserves a number of frequencies for the use of the army, police and other public services. The Government is then not in a good position to argue for restrictions on broadcasters' freedom. The author then points out that as far as the actual scarcity of broadcasting stations is concerned, there has been an increase in the last 20 years in the broadcasting stations in the United States while there are fewer newspapers than there used to be. Similar developments have occurred in European countries in the same period, especially, since the advent of cable and satellite. Further the scarcity argument cannot be divorced from economic considerations. The shortage of frequencies and the high cost of starting up broadcasting channel explain their dearth in comparison with the number of newspapers and magazines in 1961. However, it is now probably as difficult to finance a new newspaper as it is a private television channel, if not more so. Lastly, the author points out that the scarcity argument is much less tenable than it used to be. Cable and satellite have significantly increased the number of available or potentially available channels so

that there are more broadcasting outlets than there are national or local daily newspapers. Dealing with the third reason advocated for giving differential treatment to the broadcasting, viz., the character of the broadcasting media, the author points out that it is said that television and radio, are more influential on public opinion than the press, or at least are widely thought to be so. The majority of the US Supreme Court in FCC v. Pacifica Foundation [438 US 726] said that they intrude into the home and are more pervasive and are more difficult to control than the print media. In particular, it is hard to prevent children from being exposed to broadcast while it is relatively easy to stop them looking at magazines and papers which in any case they will not be able to read or purchase. These grounds underpin the extension of legal control in Britain over violent and sexually explicit programmes through the establishment of Broadcasting Standard Council and the strengthening of the impartiality rules. In Third Television Case [57 B Verf GE 295, 3 22-3 (198 1)] the German Constitutional Court dealing with a different version of this argument has held that regulation is necessary to guarantee pluralism and programme variety, whether or not there is a shortage of frequencies and other broadcasting outlets. The free market will not provide for broadcasting the same variety found in the range of press and magazine titles. Hence programme content should be regulated and the media monopolies should be cut down by the application of anti-trust laws. Thus both the

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US and the German arguments lay stress on the power of television and its unique capacity to influence the public. According to the learned author, the arguments are difficult to assess. Broadcasting does not intrude into the home unless listeners and viewers want it to be. From the point of view of constitutional principles it is not easy to justify imposition of greater limits on the medium on the ground that it is more influential than the written words. It cannot be right to subject more persuasive types of speech to greater restraints than those-imposed on less effective varieties. The author, however, accepts the view of the majority of the US Supreme Court in Pacifica case [supra] which regarded broadcasting, particularly television, as a uniquely pervasive presence in the lives of most people. More time is spent watching television than reading. The presence of sound and picture in any home makes it an exceptional potent medium. It may also be harder to stop children having access to 'adult material' on television than to pornographic magazines. This may not apply to subscription channels, enjoyment of which is dependent on a special decoder. He also agrees that experience in the United States and more recently in Italy suggests that a free broadcasting market does not produce the same variety as the press and book publishing markets do. However, the author states that these three justifications for broadcasting regulation are inconclusive and it is doubtful whether the case is powerful enough to justify the radically different legal treatment of the press and broadcasting media. A separate question, according to the author, is whether it is appropriate to continue to treat radio in the same way as television since there is generally a large choice of local, if not national radio programmes and it is hard to believe that it exercises a dominating influence on the formation of public attitudes. The same question arises In respect of cable television. Although a licence has to be obtained from a licensing

authority, several franchises may be physically accommodated and a wide band cable system may be able to carry upto 30 or 40 or even more channels. The scarcity rational, therefore, seems inapplicable to cable, and further it is hard to believe that this mode of broadcasting exercises such a strong influence that stringent programme regulation is justifiable. Dealing with the last reason advocated by a leading American scholar, Lee Bollinger in his article "Freedom of the Press and Public Access" and his essay "The Rational of Public Regulation of the Media" and in "Democracy and the MassMedia" [Cambridge (1990)] for the divergent treatment of the press and broadcasting media, the author points out that Bollinger accepts that there is no fundamental difference in the character of the two mass media, but argues that broadcasting being still relatively new means of mass communication, it is understandable that society has wanted to regulate it just as it has treated the cinema with more caution than it has the theater. This argument of Bollinger is based on the history of the two media. Bollinger's second argument is that society is entitled to remedy the deficiencies of an unregulated press with a regulated broadcasting system which may be preferable to attempting to regulate both sectors... According to Bollinger, regulation poses the danger of Government control, a risk which is reduced if one branch of the media is left free. The author attacks this reason given by Bollinger and states that it is an unsatisfactory compromise. If the regulation of the press is al-

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ways wrong and perhaps unconstitutional and if there is no significant difference between the two media, it follows that the latter should also be wholly unregulated. The author also points out that Bollinger's argument attempts to justify the unequal treatment of the liberties of the broadcasters and newspaper proprietors and editors when in all material respects, their position is identical.

40. The author then refers to the rights of viewers and listeners which is referred to in Red Lion Broadcasting case [supra] by White, J. of the US Supreme Court in the following words:

> "But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of viewers and listeners, not the right of the broadcasters, which is paramount".

41.The author concludes by pointing out that the cases from a variety of jurisdictions show that the broadcasters programme freedom when exercised within the constraints imposed by the regulatory authority, has priority over the rights claimed by viewers to see a particular programme or to retain a particular series in the schedule. On the other hand, the interests of viewers and listeners justify the imposition of programme standards which would not be countenanced for the press or publishing. It is recognised by the constitutional courts of European countries that viewers and listeners have interests, and they should be taken into account in the interpretation' of broadcasting freedom. But the balancing of the rights of the broadcasters and viewers is done by regulatory authority. Courts are understandably reluctant to contemplate the interference with administrative discretion which would result from their recognition of individual rights.

42.Dealing with the right to access to broadcasting, the

author points out that the theoretical argument in this connection is that freedom of speech means freedom to communicate effectively to a mass audience and nowadays that entails access to the mass media. The rights to access provide some compensation for the expropriation by the public monopoly of the freedom to broadcast. In the absence of a justification for that monopoly, there would be a right to broadcast in the same way that everyone has a right to say or write what he likes in his own home. This would justify the recognition of access to both public and private channels. The -author states that these arguments are unacceptable. Freedom of speech does not entail any right to communicate effectively in the sense that a citizen can call upon the State to provide him with the most effective means for the purpose. He points out that no legal system provides its citizens with the means and opportunities to address the Public in the way each considers most appropriate. Moreover, to grant everyone a right to use an access channel, even if available all the time, would be to give every adult a worthless right to use it for a second a year. Limited access rights, enjoyed only by important political and social groups may be more valuable. But even their recognition would involve some interference with the editorial freedom of channel controllers and programme schedulers and it may be more difficult as a Consequence to achieve a balanced range or programmes. Further, a channel might find it hard to create any clear identity for
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itself, if it had to devote a substantial amount of time to relaying the programmes made by pressure groups. There are also practical objections to access rights. It may be very difficult to decide, for example, which groups are to be given access, and when and how often such programmes are to be shown. There is a danger that some groups will be unduly privileged. These points weigh particularly heavily against the recognition of constitutional rights, for courts are not competent to formulate them with any precision. Dealing with the constitutional rights of access to the broadcasting media, the author concludes that individuals and groups do not have constitutional rights of access to the broadcasting media. Access rights can only be framed effectively by legislature or by specialist administrative agencies. It does not mean that statutory or other access rights do not have a constitutional dimension. The courts may lay down that some provisions should be made for access as a matter of constitutional policy. This, however, does not mean that there are individual constitutional rights to access.

43. In this connection, the author also points out that the development of cable poses new access problems. Operator of the cable may himself have rights of free speech which would be infringed by a requirement to honour access claims. The scarcity and economic arguments which are employed to justify broadcasting regulation and, therefore, access provision, may be less applicable in the context of cable.

44. We may now summarise the law on the freedom of speech and expression under Article 19 [1] (a) as restricted by Article 19 [2]. The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self expression which is an important means of free conscience and self fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find a 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. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country as well as abroad as impossible to reach.

45. This fundamental right can be limited only by reasonable restrictions under a law made for purpose mentioned in Article 19 [2] of the Constitution.

46. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions 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 Article 19 [2] of our Constitution. Hence no restrictions can

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be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19 [2].

47. What distinguishes the electronic media like they television from the print media or other media is that it has both audio and visual appeal and has a more pervasive presence. It has a greater impact on the minds of the viewers and is also more readily accessible to all including children at home. Unlike the print media, however, there is a built-in limitation on the use of electronic media because the airwaves are a public property and hence are owned or controlled by the Government or a central national authority or they are not available on account of the scarcity, costs and competition.

48. The next question to be answered in this connection is whether there can be a monopoly in broadcasting/telecasting. Broadcasting is a means of communication and, therefore, a medium of speech and expression. Hence in a democratic polity, neither any private individual, institution or Organisation nor any Government or Government Organisation can claim exclusive right over It. Our Constitution also forbids monopoly either in the print or electronic media. The monopoly permitted by our Constitution is only in respect of carrying on a trade, business, industry or service under Article 19 [6] to subserve the interests of the general public. However, the monopoly in broadcasting and telecasting is often claimed by the Government to utilise the public resources in the form of the limited frequencies available for the benefit of the society at large. It is Justified by the Government to prevent the concentration of the frequencies in the hands of the rich few who can information to suit their interests and thus in fact to control and manipulate public opinion in effect smothering the right to freedom of speech and expression and freedom of information of others. The claim to monopoly made on this ground may, however, lose all its raison d'etre if either any section of the society is unreasonably denied an access to broadcasting or the Governmental agency claims exclusive right to prepare and relay programmes. The ground is further not available when those claiming an access either do not make a demand on the limited frequencies

controlled by the Government or claim the frequency which is not utilised and is available for transmission. The Government sometimes claims monopoly also on the ground that having regard to all pervasive presence and impact of the electronic media, it may be utilised for purposes not permitted by law and the damage done by private broadcasters may be irreparable. There is much to be said in favour of this view and it is for this reason that the regulatory provisions including those for granting licences to private broadcasting where it is permitted, are enacted. On the other hand, if the Government is vested with an unbridled discretion to grant or refuse to grant the license or access to the media, the reason for creating monopoly will lose its validity. For then it is the government which will be enabled to effectively suppress the freedom of speech and expression instead of protecting it and utilising the licensing power strictly for the purposes for which it is conferred. It is for this reason that in most of the democratic countries an independent autonomous broadcasting authority is created to control all aspects of the operation of the electronic media. Such authority is represen-

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tative of all sections of the society and is free from control of the political and administrative executive of the State.

49. In this country, unlike in the United States and some European countries, there has been a monopoly of broadcasting/telecasting in the Government. The Indian Telegraph Act, 1885 [hereinafter referred to as the "Telegraph Act"] creates this monopoly and vests the power of regulating and licensing broadcasting in the Government. Further, the Cinematograph Act, 1952 and the Rules made thereunder empower the Government to pre-censor films. However, the power given to the Government to license and to pre-censor under the respective legislations has to be read in the context of Article 19 [2] of the Constitution which sets the parameters of reasonable restrictions which can be placed on the right to freedom of speech and expression. Needless to emphasise that the power to pre-censor films and to grant licences for access to telecasting, has to be exercised in conformity with the provisions of Article 19 [2]. It is in this context that we have to examine the provisions of Section 4 [1] of the Telegraph Act and the action of the MIB/DD in refusing access to telecast the cricket matches in the present case.

50. The relevant Section 4 of the Telegraph Act reads as follows:

> "4.(1) Within India the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
> Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India
> Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working -
> (a) of wireless telegraphs on ships within India territorial waters and on aircraft within or above India or Indian territorial

waters and
(b) of telegraphs other than wireless telegraph within any part of India.
(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers wider the first proviso to sub-section (1).
The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions the Central Government may, by the notification, think fit to impose."

51. Section 3 (1) of the Act defines 'telegraph' as under:

"3. (1) "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves Hertzian waves, galvanic, electric or magnetic means.
Explanation.- "Radio waves" or "Hertzian waves" means electromagnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in
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space without artificial guide."

52. It Is clear from a reading of the provisions of Sections 4 [1] and 3 [1] together that the Central Government has the exclusive privilege of establishing, maintaining and working appliances, instruments, material or apparatus used or capable of use for transmission or reception of signs, signals, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio wayes or Hertzian waves, galvanic, electric or magnetic means. Since in the present case the controversy centres round the use of airwaves or hertzian waves [hereinafter will be called as "electro-magnetic waves"], as is made clear by Explanation to section 3(1), the Central Government can have monopoly over the use of the electromagnetic waves only of frequencies lower than 3000 giga-cycles per second which are propagated in space with or without artificial guide. In other words, if the electromagnetic waves of frequencies of 3000 or more giga-cycles per second are propagated in space with or without artificial guide, or if the electro-magnetic waves of frequencies of less than 3000 give-cycles per second are propagated with an artificial guide, the Central Government cannot claim an exclusive right to use them or deny its user by others. Since no arguments were advanced on this subject after the closure of the arguments and pending the decision, we had directed the parties to give their written submissions on the point. The submissions sent by them disclosed a wide conflict which would have necessitated further oral arguments. Since we are of the view that the present matter can be decided without going into the controversy on the subject, we keep the point open for decision in an appropriate case. We will presume that in the present case the dispute is with regard to the use of electromagnetic waves of frequencies lower than 3000 giga-cycles per second which are propagated in space without artificial guide. 53. The first proviso to Section 4 (1) states that the Central Government may grant licence on such conditions and in consideration of such payment as it thinks

fit, to any person, to establish, maintain or work a telegraph within any part of India. We are not concerned here with the permission to establish or maintain a telegraph because in the present case the permission is sought only for operating a telegraph and that too for a limited time and for a limited and specified purpose. The purpose again is non-commercial. It is to relay the specific number of cricket matches. It is only incidentally that the CAB will earn some revenue by selling its right to relay the matches organised by it. The CAB is obviously not a business or a commercial organisation nor can it be said that it is organising matches for earning profits as a business proposition. As will be pointed out later, it is a sporting Organisation devoted to the cause of cricket and has been organising cricket matches both of internal and international cricket teams for the benefit of the sport, the cricketers, the sportsmen present and prospective and of the viewers of the matches. The restrictions and conditions that the Central Government is authorised to place under S. 4 [1] while permitting non-wireless telegraphing can, as stated earlier, only be those which are warranted by the purposes mentioned in Article 19 [2] and none else. It is not and cannot be the case of the Government that by granting the permission in question, the sovereignty and integrity of India, the security of the State,

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friendly relations with foreign States, public order, decency or morality or either of them will be in jeopardy or that the permission will lead to the contempt of court, defamation or incitement to an offence. On the other hand, the arguments advanced are specious and with them we will deal a little later.

54. It is then necessary to understand the nature of the respondent Organisation, namely, CAB. It cannot be disputed that the BCCI is a non-profit making Organisation which controls officially organised game of cricket in India. Similarly, Cricket Association of Bengal (CAB) is also non-profit making Organisation which controls officially organised game of cricket in the State of West Bengal. The CAB is one of the Founder Members of BCCI. Office bearers and Members of the Working Committees of both BCCI and CAB are all citizens of India. The primary object of both the organisations, amongst others, is to promote the game of cricket, to foster the spirit of sportsmanship and the ideals of cricket, and to impart education through the media of cricket, and for achieving the said objects, to organise and stage tournaments and matches either with the members of International Cricket Council (ICC) or other organisations. According to CAB, BCCI is perhaps the only sports-organisation in India which cams foreign exchange and is neither controlled by any Governmental agency nor receives any financial assistance or grants, of whatsoever nature.

55. It cannot be disputed further that to arrange any international cricket tournament or series. it is necessary and a condition-precedent, to pay to the participating member countries or teams, a minimum guaranteed amount in foreign exchange and to bear expenses incurred for travelling, boarding, lodging and other daily expenses for the participating cricketeers and the concerned accompanying visiting officials. A huge amount of expenses has also to be incurred for organising the matches. In addition, both BCCI and CAB annually incur large amount of expenses for giving subsidies and grants to its members to maintain, de-velop and upgrade the infrastructure, to coach and train players and umpires, and to pay to them when the series and

matches are played.

56.Against this background, we may now examine the questions of law raised by the parties. The contention of the Ministry of Information and Broadcasting (MIB) is that there is a difference between the implications of the right conferred under Article 19 [1] (a) upon [i] the broadcaster i.e. the person operating the media, [ii] the person desiring access to the media to project his views including the organiser of an event, [iii] the viewer and [iv] a person seeking uplinking of frequencies so as to telecast signals generated in India to other countries. The contention of CAB that denial of a license to telecast through a media of its choice, based [according to NM] upon the commercial interests, infringes viewers' right under Article 19 [1] (a) is untenable. It is further contended that the commercial interests of the organizer are not protected by Article 19 [1] (a). However, the contention of the CAB results indirectly in such protection being sought by resort to the following steps of reasoning : [a] the, Board has a right to commercially exploit the event to the maximum, [b] the viewer has a right to access to the event through

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the television. Hence the Board has the right to telecast through an appropriate channel and also the right to insist, that a private agency including a foreign agency, should be allowed all the sanctions and permissions as may be necessary therefor.

57.According to NUB the aforesaid contention is untenable because even if it is assumed that entertainment is a part of free speech, the analogy of the right of the press under Article 19 [1] (a) vis-a-vis the right under Article 19 [1] (g), cannot be extended to the right of sports associations. The basic premise underlying the recognition of the rights of the press under Article 19 [1] (a) is that the economic strength is vitally necessary to ensure independence of the press, and thus even the 'business' elements of a newspaper have 'to some extent a 'free speech' protection. In other words the commercial element of the press exists to subserve the basic object of the press, namely, free dissemination of news and views which enjoys the protection of free speech. However, free speech element in telecast of sports is incidental. According to the MIB, the primary object of the telecast by the CAB is to raise funds and hence the activities are essentially of trade. The fact that the profits are deployed for promotion of sports is immaterial for the purpose.

58. It is further urged that a broadcaster does not have a right as such to access to the airwaves without a license either for the purposes of telecast or for the purposes of uplinking. Secondly, there is no general right to a license to use airwaves which being a scarce resource, have to be used in a manner that the interests of the largest number are best served. The paramount interest is that of the viewers. The grant of a license does not confer any special right inasmuch as the refusal of a license does not result in the denial of a right to free speech. Lastly, the nature of the electronic media is such that it necessarily involves the marshaling of the resources for the largest public good. The state monopoly created as a device, to use the resource is not per se violative of the right of free speech as long as the paramount interests of the viewers are subserved and access to the media is governed by the fairness doctrine. According to the MIB, the width of the rights under Article 19 [1] (a) has never been considered to be wider than that conferred by the First Amendment to the

U.S. Constitution. It is also urged that the licensing of frequencies and consequent regulation of telecast/broadcast would not be a matter covered by Article 19 [2]. The-right to telecast/broadcast has certain inherent limitations imposed by nature, whereas Article 19(2) applies to restrictions imposed by the State. The object of licensing is not to cast restrictions on the expression of ideas, but to regulate and Marshall scarce resources to ensure their optimum enjoyment by all including those who are not affluent enough to dominate the media.

59.It is next urged that the rights of an organiser to use airwaves as a medium to telecast and thereby propagate his views, are distinct from his right to commercially exploit the event. Although it is conceded that an organiser cannot be denied access on impermissible grounds, it is urged that he cannot further claim a right to use an agency of his choice as a part of his right of free speech. In any event no person can claim to exercise his right under Article 19 [1] (a) in a manner which makes it a device for a non-citizen

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to assert rights which are denied by the Constitution. According to MIB, it is the case of the BCCI that to promote its commercial interest, it is entitled to demand that the Government grants all the necessary licenses and permissions to any foreign agency of its choice and a refusal to do so would violate Article 19 [1] (a). According to MIB, this is an indirect method to seek protection of Article 19 [1] (a) to the non-citizens.

60. It is then contended that a free speech right of a viewer has been recognised as that having a paramount im-portance by the US Supreme Court and this view is all the more significant in a country like ours. While accepting that the electronic media is undoubtedly the most powerful media of communication both from the perspective of its reach as well as its impact, transcending all barriers in-cluding that of illiteracy, it is contended that it is very cost-intensive. Unless, therefore, the rights of the viewers are given primacy, it will in practice result in the affluent having the sole right to air their views completely eroding the right of the viewers. The right of viewer can only be safeguarded by the regulatory agency by controlling the frequencies of broadcast as it is otherwise impossible for viewers to exercise their right to free speech qua the electronic media in any meaningful way.

61.Lastly, dealing with the contention raised on behalf of the CAB and BCCI that the monopoly conferred upon DD is violative of Article 19 [1] (a), while objecting to the contention on the ground that the issue does not arise in the present proceedings and is not raised in the pleadings, it is submitted on behalf of NM that the principal contentions of the CAB/BCCI are that they are entitled to market their right to telecast event at the highest possible value it may command and if the DD is unwilling to pay as much as the highest bidder, the CAB/BCCI has the right not only to market the event but to demand as of right, all the necessary licences and permissions for the agency including foreign agency which has purchased its rights. According to MIB these contentions do not raise any free-speech issues, but impinge purely on the right to trade. As far as Article 19 [1] (g) is concerned, the validity of the monopoly in favour of the Government is beyond question. Secondly, in the present case, the DD did not refuse to telecast the event per se. It is then submitted that the CAB/BCCI are not telecasters. They arc only organisers of the events

sought to be telecast and when the agency like DD which has access to the largest number of viewers agrees to telecast the events, their right as well as the viewers' right under Article 19 [1] (a) is satisfied. No organiser, it is contended, can insist that his event be telecast on terms dictated by him and refusal to agree to his term constitutes, breach of his right under Article 19 [1] (a). If it is accepted that the Government has not only the, right but the duty to regulate the distribution of frequencies, then the only way it can be done is by creating a monopoly. A mere creation of the monopoly-agency to telecast does not per se violate Article 19 [1] (a) as long as the access is not denied to the media either absolutely or by imposition of terms which are unreasonable. Article 19 [1] (a) proscribes monopoly in ideas and as long as this is not done, the mere -fact that the access to the media is through the Government-controlled agency, is not per se violative of Article 19 [1] (a).

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It is further urged that no material has been placed before the Court to show that the functioning of the DD is such as to deny generally, an access to the media and the control exercised by the Government is in substance over the content on the grounds other than those specified in Article 19 [2] or a general permission to all who seek frequencies to telecast, would better subserve the principle underlying Article 19 [1] (a) in the socioeconomic scenario of this country and will not result in passing the control of the media from the Government to private agencies affluent enough to buy access.

62. As against these contentions of the MIB, it is urged on behalf of CAB and BCCI as follows:

The right to organise a sports event inheres in the entity to which the right belongs and that entity in this case is the BCCI and its members which include the CAB. The right to produce event includes the right to deal with such event in all manner and mode which the entity chooses. This includes the right to telecast or not to telecast the event, and by or through whom, and on what terms and conditions. No other entity, not even a department of the Government can coerce or influence this decision or obstruct the same except on reasonable grounds mentioned under Article 19 [2] of the Constitution. In the event the entity chooses to televise its own events, the terms and conditions for televising such events are to be negotiated by it with any party with whom it wishes to negotiate. There is no law, bye-law, rule or regulation to regulate the conduct of the BCCI or CAB in this behalf. In the event. BCCI chooses to enter into an agreement with an agency having necessary expertise and infrastructure to produce signals, and transmit and televise the event of the quality that BCCI/CAB desires, the terms and conditions to be negotiated with such an entity, are the exclusive privilege of BCCI/CAB. No department of the Government and least of all, the MIB or DD is concerned with the same and can deny the BCCI or CAB same, the benefit of such right or claim, much less can the MIB or DD can insist that such negotiation and finalisation only be done with it or not otherwise.

63. In the event the BCCI or CAB wishes to have the event televised outside India, What is required is that the required cameras and equipments in the field send signals to the earth station which in turn transmits the same to the appointed satellite. From the satellite, the picture is beamed back which can be viewed live by any person who has a TV set and has appropriate access to receive footprints

within the beaming zone. In such case DD or the Ministry of Communications is not to provide any assistance either in the form of equipments or personnel or for that matter, in granting uplinking facility for televising the event.

64. It is further that the right to disseminate information is a part of the fundamental right to freedom of expression. BCCI/CAB have the fundamental right to televise the game of cricket organised and conducted by them for the benefit of public at large and in particular citizens of India who are either interested in cricket or desire to be educated and/or entertained. The said right is subject only to the regulations and restrictions as provided by Article 19(2) of the Constitution.

65. 65. At no other stage either the DD or

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MIB stated that reasonable restrictions as enumerated in Article 19 [2] arc being sought to be imposed apart from the fact that such plea could not have been taken by them in the case of telecasting sports events like cricket matches. It is urged that the sole ground on which DD/MIB is seeking to obstruct and/or refuse the said fundamental right is that the DD has the exclusive privilege and monopoly to broadcast such an event and that unless the event is produced, transmitted and telecast either by DD itself or in collaboration with it on its own terms and conditions and after taking signal from it on the terms and conditions it may impose, the event cannot be permitted to be produced, transmitted and telecast at all by anybody else.

66. It is also urged that there is no exclusive privilege or monopoly in relation to production, transmission or telecasting and such an exclusivity or monopoly, if claimed , is violative of Article 19 [1] (a).

67 The BCCI and CAB have a right under Article 19 [1] (a) to produce, transmit, telecast and broadcast their event directly or through its agent. The right to circulate information is a part of the right guaranteed under Article 19 [1] (a). Even otherwise, the viewers and persons interested in sports by way of education, information, record and entertainment have a right to such information, knowledge and entertainment. The content of the right under Article 19 [1] (a) reaches out to protect the information of the viewers also. In the present case, there is a right of the viewers and also the right of the producer to telecast the event and in view of these two rights, there is an obligation on the part of the Department of Telecommunication to allow the telecasting of the event.

68. It is then contended that the grant of a licence under section 4 of the Act is a regulatory measure and does not entitle MIB either to deny a license to BCCI/ CAB for the purposes of production, transmission and telecasting sports events or to impose any condition unrelated to Article 19 [2]. If such denial or imposition is made, it would amount to a prohibition. Hence the NM is obliged and dutybound in law to grant licence against payment of fees related to and calculated on the basis of user of time only, as has been standardized and not otherwise. Any other method applied by MIB/DD would be violative of Article 19 [1] (a). The grant of license under section 4 of the Act has thus to be harmoniously read with the right of the citizen under Article 19 [1] (a). The Constitution does not visualize any monopoly in Article 19 [1] (a). Hence DD cannot claim the same nor can the commercial interest of DD or claim of exclusivity by it of generation of signals be a ground for declining permission under section 4 of the Act. Hence the following restrictions sought to be imposed fall outside the

ambit of Article 19(2) and are unconstitutional. The restrictions are:

(a) That unless BCCI or CAB televises the matches in collaboration with DD, a license shall not be granted.

(b) The DD alone will be the host broadcaster of the signals and BCCI/CAB or its agency must take the signal from DD alone and

(c) Unless the BCCI or CAB accepts

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the terms and conditions imposed by DD, the production of signal and transmission and telecast thereof shall not be permitted.

69. It is further contended that there is no monopoly in relation to what viewer must today view and the American decisions relied upon on behalf of MIB have no bearing on the present state of affairs. Satellite can beam directly on to television sets through dish antenna, all programmes whose footprints are receivable in the country. Further, any one can record a programme in India and then telecast it by sending the cassette out as is being done in the case of several private TV channels. Various foreign news organizations such as the BBC and the CNN record directly Indian events and then transmit their own signals after a while to be telecast by their organizations.

70. Further, the non-availability of channel is of no consequence in the present days of technological development. Any person intending to telecast/broadcast an event can do so directly even without routing signal through the channels of DD or MIB. What is required to ensure is that the secured channel are not interfered with or overlapped. On account of the availability of innumerable satellites in the Geo-Stationary Orbit of the Hemisphere, the signals can directly be uplinked through any of the available transponders of satellite whose footprints can be received back through appropriate electronic device. As a matter of fact, beaming zone of only 3 satellites parked 3000 Kms. above the surface of the earth can cover the entire Hemisphere. Moreover, due to technological developments, frequency is becoming thinner and thinner and as a result, availability of frequencies has increased enormously and at present there are millions of frequencies available. In order to ensure that none of the footprints of any satellite overlaps the footprint of other satellite, each and every satellite is parked at a different degree and angle. Hence, there is no resource crunch or in-built restriction on the availability of electronic media, as contended by MIB. In this connection it is also pointed out that there is a difference in the right spelt out by Article 19 [1] (a) of our Constitution and that spelt out by the First Amendment of the American Constitution.

71. It is also contended that in no other country the right to televise or broadcast is in the exclusive domain of any particular body. In this connection, a reference is made to various instances in other countries where the host broadcaster has been other than the domestic network, which instances are not controverted. It is also urged that there is no policy of the Government of India as urged on behalf of the MIB that telecasting of sporting events would be within the exclusive domain and purview of DD/MIB who alone would market their rights to other authorities in whole or in part. It is pointed out that the extract from the minutes of the meeting of the Committee of Secretaries held on 12th November, 1993 relied upon by the MIB for the purpose is not a proof of such policy. The said minutes are

'executive decision' of a few Secretaries of the various departments of the Government.

72.It is also urged that even public interest or interest of general public cannot be a ground for refusal or for the imposition of restrictions or for claiming exclusivity in any manner whatsoever.

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Such restriction, if imposed will be violative of Article 19 [1] (a). To suggest that power to grant a license shall not be exercised under any circumstances because of the policy of the Government, is arbitrary inasmuch as the power conferred is not being used for the purpose for which it has been conferred.

73.It is then contended that both BCCI and CAB are non-profit making organizations and their sole object is to promote the game of cricket in this country and for that purpose not only proper and adequate infrastructures are required to be erected, built and maintained, but also huge expenses have to be incurred to improve the game which includes, amongst others, grant of subsidies and grants to the Member Associations, upgradation of infrastructure, training of cricketeers from school level, payments to the cricketeers, insurance and benevolent funds for the cricketeers, training of umpires, payments of foreign participants, including guarantee money etc. The quantum of amount to be spent for all these purposes has increased during the course of time. These expenses are met from the amounts earned by the BCCI and CAB since they have no other continuous source of income. The earnings of BCCI and CAB are basically from arranging various tournaments, instadia advertisements and licence fee for permitting telecast and censorship. At least 70 per cent of the income earned through the advertisements and generated by the TV network while telecasting of the matches, is paid to the organizer apart from the minimum guaranteed money as is apparent from the various agreements entered by and between BCCI/CAB as well as by DD with. other networks. The DD in effect desires to snatch away the right of telecast for its own commercial interest through advertisement, and at the same time also demand money from the organizers as and by way of production fee.

74.Merely because an organization may cam profit from an activity whose character is predominantly covered under Article 19 [1] (a), it would not convert the activity into one involving Article 19 [1] (g). The test of predominant character of the activity has to be applied. It has also to be ascertained as to who is the person who is utilizing the activity. If a businessman were to put in an advertisement for simpliciter commercial activity, it may render the activity, the one, covered by Article 19 [1] (g). But even newspapers or a film telecast or sports event telecast will be protected by Article 19 [1] (a) and will not become an activity under Article 19 [1] (g) merely because it earns money from advertisements in the process. Similarly, if the cricket match is telecast and profit is earned by the licensing of telecasting right and receipts from advertisements, it will be an essential element for utilization and fulfillment of its object. The said object cannot be achieved without such revenue.

75.Rebutting the argument that the Organisation of sports is an industry and, therefore, monopoly under Article 19 [6] is permissible, it is pointed out that even if, in matters relating to business and profession, the State can create monopoly under Article 19 [6], it can still not infringe Article 19 [1] (a). While the State may monopolise the

textile industry, it cannot prohibit the publication of books and articles on textiles.

76.It is also contended that the exercise of right claimed in the present case is

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by BCCI/CAB and its office bearers who are citizens of India. Merely because foreign equipment and technical and personnel are used as collaborators to exercise the said right more effectively, it does not dilute the content of Article 19 [1] (a) nor does it become an exercise of right by a non-citizens. In this connection, it is emphasised that the DD is also using Worldtel, a foreign agency. Most of the newspapers in India are printed on machines imported from abroad. A newspaper may also have a foreigner as its manager. However, that does not take away the right of the newspaper under Article 19 [1] (a). They are only instances of technical collaboration. Apart from it, every citizen has a right to information as the same cannot be taken away on grounds urged by the NEB.

77.It will be apparent from the contentions advanced on behalf of MIB that their main thrust is that the right claimed by the BCCI/CAB is not the right of freedom of speech under Article 19 [1] (a), but a commercial right or the right to trade under Article 19 [1] (g). The contention is based mainly on two grounds viz., there is no free speech element in the telecast of sports and secondly, the primary object of the BCCI/CAB in seeking to telecast the cricket matches is not to educate and entertain the viewer but to make money.

78.It can hardly be denied that sport is an expression of self In an athletic Nor individual event, the individual expresses himself through his individual feat. In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19 [1] (a) is an expression of thought and feeling and not of the physical or intellectual prowess or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free speech element is absent from his right. The degree of the element will depend upon the character of the telecaster who claims the right. An organiser such as the BCCI or CAB in the present case which are indisputably devoted to the promotion of the game of cricket, cannot be place in the same scale as the business organisations whose only intention is to make as large a profit as can be made by telecasting the game. Whereas it can be said that there is hardly any free speech element in the right to telecast when it is asserted by the latter, it will be a warped and cussed view to take when the former claim the same right, and contend that in claiming the right to telecast the cricket matches organised by them, they are asserting the right to make business out of it. The sporting organisations such as BCCI/ CAB which are interested in promoting the sport or sports are under an obligation to

organise the sports events and can legitimately be accused of failing in their
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duty to do so. The promotion of Sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio and TV are the most efficacious methods, thanks to the technological development, the sports organisations like BCCI/CAB will be neglecting their duty in not exploring the said media and in not employing the best means available to them to popularise the game. That while pursuing their objective of popularising the sports by selecting the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organisations or the right claimed by them to explore the said means, into a commercial right or interest. It must further be remembered that sporting organisations such as BCCI/CAB in the present case, have not been established only to organise the sports events or to broadcast or telecast them. The organisation of sporting events is only a part of their various objects, as pointed out earlier and even when they organise the events, they are primarily to educate the sportsmen, to promote and popularise the sports and also to inform and entertain the viewers. The Organisation of such events involves huge costs. Whatever surplus is left after defraying all the expenses, is ploughed back by them in the Organisation itself It will be taking a deliberately distorted view of the right claimed by such organisations to telecast the sporting event to call it an assertion of a commercial right. Yet the MIB has chosen to advance such contention which can only be described as most unfortunate. It is needless to state that we are, in the circumstances, unable to accept the ill-advised argument. It does no credit to the Ministry or to the Government as a whole to denigrate the sporting organisations such as BCCI/CAB by placing them on par with business organisations sponsoring sporting events for profit and the access claimed by them to telecasting as assertion of commercial interest.

79.The second contention of NM is based upon the propositions laid down by the US Supreme Court, viz., there are inherent limitations imposed on the right to telecast/broadcast as there is scarcity of resources, i.e. of frequencies, and therefore the need to use them in the interest of the largest number. There is also a pervasive presence of electronic media such as TV. It has a greater impact on the minds of the people of all ages and strata of the society necessitating the prerequisite of licensing of the programmes. It is also contended on that account that the licensing of frequencies and consequent regulation of telecasting/broadcasting would not be a matter governed by Article 19 [2]. Whereas Article 19 [2] applies to restrictions imposed by the State, the inherent limitations on the right to telecast/broadcast are imposed by nature.

80.In the first instance, it must be remembered that all the decisions of the US Supreme Court relied upon in support of this contention, are on the right of the private broadcasters to establish their own broadcasting stations by claiming a share in or access to the airwaves or frequencies. In the United States, there is no Central Government-owned or controlled broadcasting centre. There is only a Federal Commission to regulate broadcasting stations which are all owned by private broadcasters. Secondly, the American Con-

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stitution does not explicitly state the restrictions on the right of freedom of speech and expression as our Constitution does. Hence, the decisions in question have done no more than impliedly reading such restrictions. The decisions of the U.S. Supreme Court, therefore, in the context of the right claimed by the private broadcasters are irrelevant for our present purpose. In the present case, what is claimed is a right to an access to telecasting specific events for a limited duration and during limited hours of the day. There is no demand for owning or controlling a frequency. Secondly, unlike in the cases in the US which came for consideration before the US Supreme Court, the right to share in the frequency is not claimed without a license. Thirdly, the right to use a frequency for a limited duration is not claimed by a business Organisation to make profit and lastly and this is an important aspect of the present case, to which no reply has been given by the MIB, there is no claim to any frequency owned and controlled by the Government. What is claimed is a permission to uplink the signal created by the organiser of the events to a foreign satellite.

81. There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. What is further, the electronic media is the most powerful media both because of its audio-visual impact, and its widest reach covering the section of the society where the print media does not reach. The right to use the airwaves and the content of the programmes therefore, needs regulation for balancing it and as well as to prevent monopoly of informa-tion and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters. That is why the need to have a central agency representative of all sections of the society free from control both of the Government and the dominant influential sections of the society. This is not disputed. But to contend that on that account the restrictions to be imposed on the right under Article 19 [1] (a) should be in addition to those permissible under Article 19 [2] and dictated by the use of public resources in the best interests of the society at large, is to misconceive both the content of the freedom of speech and expression and the problems posed by the element of public property in, and the alleged scarcity of, the frequencies as well as by the wider reach of the media. If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19 [2] and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures. It is further difficult to appreciate such contention on the

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part of the Government in this country when they have a complete control over the frequencies and the content of the programme to be telecast. They control the sole agency of telecasting. They are also armed with the provisions of Article 19 [2] and the powers of pre-censorship under the Cinematograph Act and Rules. The only limitations on the said right is, therefore, the limitation of resources and, the need to use them for the benefit of all. When, however, there are surplus or unlimited resources and the public interests so demand or in any case do not prevent telecasting, the validity of the argument based on limitation of resources disappears. It is true that to own a frequency for the purposes of broadcasting is a costly affair and even when there are surplus or unlimited frequencies, only the affluent few will own them and will be in a position to use it to subserve their own interest by manipulating news and views. That also poses a danger to the freedom of speech and expression of the have-nots by denying them the truthful information on all sides of an issue which is so necessary to form a sound view on any subject, That is why the doctrine of fairness which is evolved in the U.S. in the context of the private broadcasters licensed to share the limited frequencies with the central agency like the FCC to regulate the programming. But this phenomenon occurs even in the case of the print media of all the countries. Hence the body like the Press Council of India which is empowered to enforce, however imperfectly, the right to reply. The print media further enjoys as in our country, freedom from pre-censorship unlike the electronic media.

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

83.The third contention advanced on behalf of the MIB is only an extended aspect of the fist contention. It is based on the same distorted interpretation of the right claimed. It proceeds on the footing that the BCCI/CAB is claiming a commercial right to exploit the sporting event when they assert that they have a right to telecast the event through an agency of their choice. It is even contended on behalf of the MIB that this amounts to a device for a non-citizen to assert rights under Article 19 [1] .(a) which are not available to him.

84.It is unnecessary to repeat what we have stated while dealing with the first contention earlier, with regard to the character of BCCI/CAB, the nature of and the purpose for which the right to access to telecast is claimed by them. As pointed out, it is not possible to hold that what the BCCI/CAB are in the present cast claiming is a commercial right to exploit the

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event unless one takes a perverse view of the matter. The

extent of perversity is apparent from the contention raised by them that to engage a foreign agency for the purpose is to make it a device for a noncitizen to assert his rights under Article 19 [1] (a). It cannot be denied that the right to freedom of speech and expression under Article 19 [1] (a) includes the right to disseminate information by the best possible method through an agency of one's choice so long as the engagement of such agency is not in contravention of Article 19 [2] of the Constitution and does not amount to improper or unwarranted use of the frequencies. Hence the choice of BCCI/ CAB of a foreign agency to telecast the matches, cannot be objected to. There is no suggestion in the present case that the engagement of the foreign agency by the BCCI/CAB is violative of the provisions of Article 19 [2]. On the other hand, the case of NUB, as pointed out earlier, is that the BCCI/CAB want to engage the foreign agency to maximise its revenue and hence they are not exercising their right under Article 19 [1] (a) but their commercial right under Article 19 [1] (g). We have pointed out that that argument is not factually correct and what in fact the BCCI/CAB is asserting is a right under Article 19 [1] (a). While asserting the said right, it is incidentally going to earn some revenue. In the circumstances, it has the right to choose the best method to earn the maximum revenue possible. In fact, it can be accused of negligence and may be attributed improper motives, if it fails to explore the most profitable avenue of telecasting the event, when in any case, in achieving the object of promoting and popularising the sports, it has to endeavour to telecast the cricket matches. The record shows that all applications were made and purported to have been made to the various agencies on behalf of CAB for the necessary licences and permissions. All other Ministries and Departments understood them as such and granted the necessary permissions and licences. Hence, by granting such permission, the Government was not in fact granting permission to the foreign agency to exercise its right under Article 19 [1] (a). If, further, that was the only objection in granting permission, a positive approach on the part of the NM could have made it clear in the permission granted that it was being given to CAB. In fact, when all other Government Departments had no difficulty in construing the application to that effect and granting the necessary sanctions/permissions at their end, it is difficult to understand the position taken by the MIB in that behalf. One wishes that such a contention was not advanced.

85.The fourth contention is that, as held by the US Supreme Court, the freedom of speech has to be viewed also as a right of the viewers which has a paramount importance, and the said View has significance in a country like ours. To safeguard the rights of the viewers in this country, it is necessary to regulate and restrict the right to access to telecasting. There cannot be any dispute with this proposition. We have in fact referred to this right of the viewers in another context earlier. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all

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equally create an uninformed citizenry which makes democracy

a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1-1/2 per cent of the population has an access to the print media which is not subject to precensorship. When, therefore, the electronic media is controlled by one central agency or few private agencies of the rich, there is a need to have a central agency, as stated earlier, representing all sections of the society. Hence to have a representative central agency to ensure the viewers' right to be informed adequately and truthfully is a part of the right of the viewers under Article 19 [1] (a). We are, however, unable to appreciate this contention in the present context since the viewers' rights are not at all affected by the BCCI/CAB, by claiming a right to telecast the cricket matches, On the other hand, the facts on record show that their rights would very much be trampled if the cricket matches are not telecast through the D.D., which has the monopoly of the national telecasting network. Although, there is no statistical data available [and this is not a deficiency felt only in this arena], it cannot be denied that a vast section of the people in this country is interested in viewing the cricket matches. The game of cricket is by far the most popular In all parts of the country. This is evident from the over-flowing stadia at the venues wherever the matches are played and they are played all over the country. It will not be an exaggeration to say that at least one in three persons, if not more, is interested in viewing the cricket matches. Almost all television sets are switched on to view the matches. Those who do not have a T.V. set of their own, crowd around T.V. sets of others when the matches are on. This is not to mention the number of transistors and radios which are on during the match-hours. In the face of these revealing facts, it is difficult to understand why the present contention with regard to the viewers' right is raised in this case when the grant of access to BCCI/CAB to telecast cricket matches was in the interest of the viewers and would have also contributed to promote their rights as well.

86.The last argument on behalf of the MIB is that since in the present case, the DD has not refused to telecast the event, its monopoly to telecast cannot be challenged and in fact no such contention was raised by the BCCI/CAB. We are afraid that this will not be a proper reading of the contentions raised by BCCI/CAB in their pleadings both before the High Court and this Court. Undisputed facts on record show that the DD claimed exclusive right to create host broadcasting signal and to telecast it on the terms and conditions stipulated by it or not at all. MIB even refused to grant uplinking facilities when the terrestrial signal was being created by the CAB with their own apparatus, i.e., the apparatus of the agency which they had engaged and when the use of any of the frequencies owned, controlled or commanded by DD or the Government, was not involved. Since BCCI/CAB were the organisers of the events, they had every right to create terrestrial signals of their event and to sell it to whomsoever they thought best so long as such creation of the signal and the sale thereof was not violative of any law made under Article 19 [2] and was not an abuse of the frequencies which are a public property. Neither DD nor any other agency could im-

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pose their terms for creating signal or for telecasting them unless it was sought through their frequencies. When the DD

refused to telecast cricket matches except on their terms, the BCCI/CAB turned to another agency, in the present case a foreign agency, for creating the terrestrial signal and telecasting it through the frequencies belonging to that agency. When the DD refused to telecast the matches, the rights of the viewers to view the matches were in jeopardy. Only the viewers in this country who could receive foreign frequencies on their TV sets, could have viewed the said matches. Hence it is not correct to say that the DD had not refused to telecast the events. To insist on telecasting events only on one's unreasonable terms and conditions and not otherwise when one has the monopoly of telecasting, is nothing but refusal to telecast the same. The DD could not do it except for reasons of non-availability of frequencies or for grounds available under Article 19(2) of the Constitution or for considerations of public interest involved in the use of the frequencies as public property. The fact that the DD was prepared to telecast the events only on its terms shows that the frequency was available. Hence, scarcity of frequencies or public interests cannot be pressed as grounds for refusing to telecast or denying access to BCCl/CAB to telecasting. Nor can the DD plead encroachment on the right of viewers as a ground since the telecasting of events on the terms of the DD cannot alone be said to safeguard the right of viewers in such a case and in fact it was not so.

87.Coming to the facts of the present case, which have given rise to the present proceedings, the version of MIB is as follows:

On March 15, 1993, the CAB wrote a letter to the Director General of Doordarshan that a Six-Nation International Cricket Tournament will be held in November, 1993 as a part of its Diamond Jubilee Celebrations and asked DD to send a detailed offer for any of the two alternatives, namely, (i) that DD would create 'Host Broadcaster Signal' and also undertake live telecast of all the matches in the tournament or (ii) any other party may create the 'Host Broadcaster Signal' and DD would only purchase the rights to telecast in India. CAB in particular emphasised that in either case, the foreign T.V. rights would be with CAB. The CAB also asked DD to indicate the royalty amount that would be paid by the DD. On March 18, 1993 the Controller of Programmes (Sports), DD, replied to the letter stating amongst other things that during the meeting and during the telephonic conversation, CAB's President Dalmia had agreed to send them in writing the amount that he expected as rights fee payable to CAB exclusively for India, without the Star TV getting it. On March 19, 1993, CAB informed DD that they would be agreeable to DD creating the Host Broadcaster Signal and also granting DD exclusive right for India without the Star TV getting it and the CAB would charge DD US $800,000 (US Dollars eight lakh] only] for the same. The CAB, however, made it clear that they would reserve the right to sell/license the right world-wide, excluding India and Star TV. The CAB also stated that DD would be under an obligation to provide a picture and commentary subject to payment of DD's technical fees. On March 31, 1993, DD sent its bid as 'Host Broadcaster' for a sum of Rs. 1 crore stating inter alia, that CAB should grant signals to it exclusively for India without-

out the Star TV getting it. The DD also stated that they would be in a position to create the 'Host Broadcaster Signal' and offer a live telecast of all the matches in the tournament. Thereafter, on May 4, 1993, the DD by a fax

message reminded the President of CAB about its offer of March 31, 1993. To that CAB replied on May 12, 1993 that as the Committee of CAB had decided to sell/allot worldwide TV rights to one party only, they would like to know whether DD would be interested in the deal and, if so, to send their offer for worldwide TV rights latest by May 17, 1993, on the following basis, namely, outright purchase of TV rights and sharing of rights fee. On May 14, 1993 DD by its fax addressed to CAB stated that it was committed to its earlier bid of Rs. 1 crore, namely, exclusive TV right in India alone. The DD also stated that as there was a speculation that Pakistan may not participate in the tournament, which may affect viewership and consequent commercial accruals, DD would have to rethink on the said bid also, in such an eventuality and requested CAB to reply to the said letter at the earliest.

88. On June 14, 1993, according to the NUB, without obtaining the required clearances from the Government for telecasting, the CAB entered into an agreement with the World Production Establishment (W/PE) representing the interests of TWI [Trans World International], for telecasting all the matches. The said agreement provided for the grant of sole and exclusive right to sell/licence or otherwise exploit throughout the world 'Exhibition Rights' in the tournament. CAB shall only retain radio rights for the territory of India. The CAB under the agreement was to receive not less than US $550,000 as guaranteed sum. If any income from the rights fee is received in excess of the guaranteed sum, it was to be retained wholly by WPE until it was eventually split into 70:30 per cent as per the agreement. If the rights fee/income received was less than guaranteed sum, WPE was to pay the difference to CAB. The WPE was to pay, where possible, television license fee in advance of the start of the tournament.

89. On June 18, 1993, DD sent a fax to CAB stating therein that from the press reports, it had learnt that CAB had entered into an agreement with TWI for the TV coverage of the tournament, and the DD had decided not to telecast the matches of the tournament by paying TWI, and that DD was not prepared to enter into any negotiations with TWI to obtain the television rights for the event. On June 30, 1993, DD also informed similarly to International Management Group, Hong Kong.

90. On September 2, 1993, the Department of Youth Affairs and Sports, Ministry of Human Resources Development, addressed a letter to the CAB informing it that the Government had no objection to the proposed visit of the Cricket Teams of Pakistan, South Africa, Sri Lanka, West Indies and Zimbabwe, to India for participation in the tournament. The Department further stated that no foreign national shall visit any restricted/protected/prohibited area of India without permission from the Ministry of Home Affairs. It was also clarified that the sanction of foreign exchange was subject to the condition that CAB would utilize only the minimum foreign exchange required for the purpose and shall deposit foreign exchange obtained by

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it by way of fee, sponsorship, advertisements, broadcasting rights, etc. through normal banking channels under intimation to the Reserve Bank of India. On September 17, 1993 on the application of CAB made on September 7, 1993, VSNL advised CAB to approach the respective Ministries and the Telecom Commission for approval (a) regarding import of earth station and transmission equipment and (b) for frequency clearance from Telecom Commission. The satellite

to be used for the transmission coverage, was also required to be specified. It was further stated that CAB should approach VSNL for uplinking signal to INTELSAT at Washington. The TWI was advised to apply VSNL for necessary coordination channels and DD phone facility covering each location. On October 9, 1993, TWI wrote to VSNL seeking frequency clearance from the Ministry of Communications. The TWI informed VSNL that they will be covering the tournament and that they were formally applying for its permission to uplink their signal as per the list attached to the letter. They also sought frequency clearance for the walkie-talkie .On October 13, 1993, the Ministry of Home Affairs informed the CAB that the Ministry had 'no objection' to the filming of the cricket matches at any of the places mentioned in the CAB's letter and that the 'no objection' pertains to the filming of the matches on the cricket grounds only. The Ministry also gave its 'no objection' to the use of walkie-talkie sets in the play grounds during the matches subject to the permission to be obtained from WPC.

91.On October 18, 1993, the CAB addressed a letter to DD for telecasting rights for telecasting matches mentioning its earlier offer of rights for telecasting and pointed out that the offer of Rs.10 million made by DD vide its fax message dated March 31, 1993 and on the condition the CAB should not grant any right to Star TV was uneconomical, and considering the enormous organizational cost, they were looking for a minimum offer of Rs.20 million. The CAB also pointed out that the offers received by them from abroad including from TWI, were much higher than Rs.20 million and that the payment under the offers would be made in foreign exchange. The CAB also stated that they were given to understand that DD was not interested in increasing their offer and hence they entered into a contract with TWI for telecasting the matches. However, they were still keen that DD should come forward to telecast the matches since otherwise people in India would be deprived of viewing the same. Hence they had made TWI agree to co-production with DD and they also prayed the DD for such co-production. The CAB's letter further stated that during a joint meeting the details were worked out including the supply of equipment list by the respective parties, and it was decided in principle to go for a joint production. The CAB stated that it was also agreed that DD would not claim exclusive right and CAB would be at liberty to sell the rights to Star TV. Thereafter CAB learnt from newspaper reports that DD had decided not to telecast the matches. Hence they had written a letter to DD dated September 15, 1993 to confirm the authenticity of such news, but they had not received any reply from DD. It was pointed that in the meanwhile they had been repeatedly approached by Star TV, Sky TV and other network to telecast matches to the Indian audience and some of them on an exclusive basis. But they

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had not taken a decision on their offers, since they did not want to deprive DD's viewers. It was further recorded that the CAB had also learnt recently that DD would be interested in acquiring the rights of telecast provided it was allowed to produce the matches directly, and the matches produced by TWI were made available to it live, without payment of any technical fees. After recording this, the CAB made fresh set of proposals, the gist of which was as follows:

1. TWI and Doordarshan would cover 9 (nine) matches each in the tournament independently, which are as follows:

Trans World International
November
08 South. Africa v. Zimbabwe (Bangalore)
11 India v. S. Africa (Delhi Chandigarh)
13 W.Indies v. S.Africa (Bombay, Brabourne)
16 Pakistan v. S.Africa (Cuttack)
19 S.Africa v.Sri Lanka (Guwahati)
21 India v. Pakistan (Chandigarh)
23 First Semi Final (Calcutta)
- Second Semi Final (Calcutta)
- Final (Calcutta)

Doordarshan
November
07 India v. Sri Lanka (Kanpur)
09 W.Indies v. Sri Lanka (Bombay,Wankhede)
15 Sri Lanka v. Zimbabwe (Patna)
16 India v. W. Indies (Ahmedabad)
18 India v. Zimbabwe (Indore)
21 W. Inidies v.Zimbabwe (Hyderabad)

2. TWI will do the coverage of thesematches with their own equipment, crew and commentators. Similarly, Doordarshan will also have their own crew, equipment and commentators for the matches produced by them.

3. Doordarshan will be at liberty to use their own commentators for matches produced by TWI for telecast in India. Similarly, TWI may also use their own commentators if they televised matches produced by Doordarshan in other networks.

4. TWI will allow Doordarshan to pick up the Signal and telecast live within India, free of charges. Similarly, Doordarshan will allow TWI to have the Signal for live/recorded/highlights telecast abroad, free of charges.

5. Doordarshan will not pay access fees to CAB, but shall allow 4 minutes advertising time per hour (i.e. 28 minutes in 7 hours). The CAB will be at liberty to sell such time slot to the advertisers and the proceeds so received will belong to CAB.

6. Contract will be entered upon by the CAB and Doordarshan directly for the above arrangements. TWI will give a written undergoing for the coverage breakup as mentioned in point 1.

7. Score Card and Graphics shall be arranged by CAB and the expenses for such production or income derived from sponsorship shall be on the account of CAB. Both TWI and Doordarshan will use such Score Cards and Graphics as arranged by CAB.

92. The CAB requested the DD to communicate their final decision in the matter before October 21, 1993.

93. On October 26, 1993 VSNL sent a communication to INTESLSAT at Washinton seeking information of uplinking timings for TV transmission asked for by CAB/TWI. On October 27, 1993 the Tele-

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communications Department sent a letter to the Central Board of Excise and Customs on the question of temporarily importing electronic production equipment required for transmission of one-day matches of the tournament and conveying ' no objection' of the Ministry of Communications

to the proposal, subject to the organizers coordinating with WTC (DoT) for frequency clearance, from the "Standing Advisory Committee on Frequency Allocation (SACFA)", for TV up-linking from different places and coordinating with VSNL, Bombay for booking TV transponders.

94. On October 27, 1993, DD informed CAB with reference to its renewed offer of October 18, 1993 that the terms and conditions of the offer were not acceptable to it and that they have already intimated to them that DD will not take signal from TWI - a foreign Organisation. They also made it clear that they had not agreed to any joint production with TWI. On October 29, 1993, CAB replied to DD that they were surprised at the outright rejection of the various alternative proposals they had submitted. They had pointed out that the only reason given for rejection was that DD will not take signals from TWI, which was a foreign organization. Since they had also suggested production of live matches by DD the question of taking signal from TWI did not arise. CAB further stated that purely in deference to DD's sensitivity about taking signal from TWI, CAB would be quite happy to allow DD to produce its own picture of matches and DD may like to buy rights and licenses from CAB at 'a price which will be mutually agreed upon, and that these rights would be on nonexclusive basis on Indian territory. On October 30, 1993, DD sent a message to CAB stating that DD will not pay access fee to CAB to telecast the matches. However, for DD to telecast the matches live, CAB has to pay technical charges/ production fee at Rs.5 lakh per match. In that case DD will have exclusive rights for the signal generated and the parties interested to take the signal will have to negotiate directly with the DD. On October 31, 1993 DD sent a fax message to CAB to the same effect.

95. On November 1, 1993 VSNL deputed its engineers/staff to be at the venues where the matches were being played to coordinate with TWI for TV coverage. On November 2, 1993, TWI paid US $29,640 and [Pounds] 121,400 to VSNL as fees for INTELSAT charges. On the same day, the Finance Ministry permitted the equipment of TWI to be imported on certain conditions by waiving the customs and additional duties of customs. On November 4, 1993, CAB addressed a letter to DD referring to DD's fax message of October 31, 1993 asking for certain clarification on the offer made by DD. In this letter, CAB stated that since, DD had asked for fees for production and telecast of matches, it was presumed that all revenue generated from the matches or entire timeslot for advertisements, would belong to CAB and that they shall have the right to charge access fees including other charges from parties abroad, and DD would telecast those matches for which CAB will pay the charges. The choice of the matches to be telecast by DD would be determined by CAB. On November 5, 1993, the DD rejected the terms.

96. On November 8, 1993, CAB filed

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a writ petition in the Calcutta High Court praying, among others, that the respondents should be directed to provide telecast and broadcast of all the matches and also provide all arrangements and facilities for telecasting and broadcasting of the matches by the agency appointed by the CAB, VI_., TWI. Interim reliefs were also sought in the said petition. On the same day, the High Court directed the learned advocate of the Union of India to obtain instructions in the matter and in the meanwhile. passed the interim orders making it clear that they would not prevent DD from telecasting any match without affecting the existing arrangements between CAB and TWI. The writ petition was

posted for further hearing on November 9, 1993 on which day, the learned Single Judge confirmed the interim orders passed on November 8, 1993 and respondents were restrained from interfering with the frequency lines given to respondents NO.10 [TWI]. On 10th November, 1993, VSNL advised INTELSAT at Washington seeking cancellation of its request for booking. On November 11, 1993, the learned Judge partly allowed the writ by directing All India Radio to broadcast matches. On November 12, 1993 in the appeal filed by the Union of India against the aforesaid orders of the Division Bench, the High Court passed interim order to the following effect:
(a)that CAB would pay DD a sum of Rs.5 lakh per match and the revenue collected by DD on account of sponsorship will be kept in separate account.
(b)that DD would be the host broadcaster.
(c)that Ministry of Telecommunication would consider the question of issuing a
license to TWI under the Telegraphs Act and decide the same within three days.
97. On November 12, 1993, the Film Facilities Officer of the MIB informed the Customs Department at New Delhi, Bombay and Calcutta airports, that as TWI had not obtained required clearances from the Government for the coverage of the tournament, they should not be permitted to remove exposed film outside India till it was cleared by the Government. On the same day, DD asked the CAB providing various facilities at each match venue as this was pre-requisite for creating host broadcaster signal in India. CAB sent a reply on the same day and called upon the DD to telecast matches within India pursuant to the High Court's order. On the same day again the Collector of Customs, Bombay called upon CAB to pay customs duty on the equipment as there was a breach in the terms of the, exemption order.
98. On the same day, i.e., November 1993, again the Committee of Secretaries decided that the telecast of all sporting events would be within the exclusive purview of the DD/MIB. It was also decided that for the purposes of obtaining necessary clearances for telecasting different types of events for the country, a Single Window service would be followed where the concerned Administrative Ministry would be the 'Nodal' Ministry to which' the application will be submitted and it would thereafter be the function of the 'Nodal' Ministry to obtain permissions from the concerned Ministry/Agencies.
99. On 14th November, 1993, the High Court in clarification of its order of No-
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vember 12, 1993 directed, among others, as follows:
[a] In case the signal is required to be generated by TWI separately, such necessary permission should be given by DD and/or other competent authorities. .
[b] The differences with regard to the placement of cameras etc., if any, between cricket authority and DD should be mutually worked out, and if this cannot be done, the dispute should be decided by the Head of the Police in the place where the match was being played.
[c] The equipment of TWI which had been seized by the Customs Authority should be released upon undertaking that the same would not be used for any. other purpose and
[d] The VSNL should take proper steps for uplinking, and should not take any steps to defeat the orders of the Court. The TWI should comply with all financial commitments to VSNL.
100. On November 15, 1993, the CAB and another filed the present Writ Petition No. 836 of 1993. On November 15.

1993, this Court passed an order directing the Secretary Ministry of Communications to hold meeting on the same day by 4.30 P.M. and communicate his decision by 7.30 P.M. The Customs Authorities were directed to release the equipments. On the same day at night another order was passed partly staying the orders of the Chairman, Telecommunications and Secretary, Dot. TWI was permitted to generate its own signals and Customs Authorities were directed to release the goods forthwith.

101. , The DD filed Contempt Petition in the High Court on the same day against CAB and another, for noncompliance with the orders of the High Court. The DD also filed the present Special Leave Petitions in this Court on the same day.

102. What emerges from the above correspondence is as follows. The CAB as early as on 15th March, 1993, had offered to the DD two alternatives, viz., either the DD would create host broadcaster signal and undertake live telecast of all the matches in the tournament or any other party may create the host broadcaster signal and DD would purchase from the said party the rights to telecast the said signal in India. The CAB made it clear that in either case, the foreign TV rights would remain with it. The CAB also asked the DD to indicate the royalty that it will be willing to pay in either case. To that, on 18th March, 1993, the DD rejoined by asking in turn the amount of royalty that the CAB expected if the rights were given to it exclusively for India without the. Star TV getting it. On 19th March, 1993, the CAB informed the DD that they would charge US $8 lakhs for giving the DD the right to create the host broadcaster signal and also for granting it exclusive right for India without the Star TV getting it It was however, emphasised that the CAB would reserve the right to sell/license the right of broadcasting worldwide excluding India and the Star TV. The CAB also stated that the DD would be under an obligation to provide a picture and commentary subject to payment of DD's technical fees. On 31st March, 1993, the DD sent its bid as host broadcaster for a sum of Rs.1 crore [i.e.. about US $3.33 lakhs at the then exchange rate]. Obviously, this was less than 50 per cent of the royalty which was demanded by the CAB. The

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CAB was, therefore, justified in looking for other alternatives and that is what they did before the DD by a fax message of 4th May, 1993 reminded the CAB about DD's offer of Rs. 1 crore [i.e., US $3.33 lakhs]. To that message, the CAB replied on 12th May, 1993 that it had decided to sell/allot worldwide TV rights to only one party and, therefore, they would like to know whether the DD would be interested in the said deal and if so, to send their offer for worldwide TV rights, latest by 17th May, 1993. To this, on 14th May, 1993, the DD by Fax, replied that it was interested only in exclusive TV rights for India alone without the Star TV getting it and that it stood by its earlier offer of Rs. 1 crore [i.e., US $3.33 lakhs]. The DD went further and stated that as there was a speculation that-Pakistan might not participate in the tournament which eventuality was likely to affect viewership and commercial accruals, it will have to rethink on that bid also meaning thereby that even the offer of Rs. 1 crore may be reduced.

103. According to the MIB, the CAB, thereafter, entered into an agreement with World Production Establishment representing the interests of TWI for telecasting all the matches without obtaining clearance from the Government for

telecasting, and granted TWI sole and exclusive right to sell or otherwise exploit all exhibition rights of the tournament. Under the agreement with TWI, the CAB was to receive US $ 5.50 lakhs as guaranteed sum and in addition, if any rights fee income was received in excess of the guaranteed sum, it was to be. split in the ratio of 70:30 between the parties, i.e. 70 per cent to the CAB and 30 per cent to TWI. Learning of this, the DD informed the CAB that it had decided not to telecast the matches of the tournament by paying TWI TV rights fee and that it was not prepared to enter into any negotiations with TWI for the purpose.

104. Again on 18th October, 1993, CAB addressed a letter to DD for telecasting the matches mentioning its earlier offer of rights for telecasting and pointed out that the offer of Rs. 1 crore made by DI) on the condition that the CAB should not grant any right 'to Star TV was uneconomical. CAB also pointed out that considering the enormous organisational costs involved, they were looking for a minimum offer of Rs.20 million.In this connection, they pointed out that the offers received by them from abroad-including from TWI were much higher than Rs.20 million and under those offers, the payment was also to be received in foreign exchange. The CAB further stated in that letter that they were given to understand that DD was not interested in increasing their offer and hence they entered into a contract with TWI for telecasting the matches. Yet, they were keen that DD should telecast the matches since otherwise people in India would be deprived of viewing the same. They had, therefore, made the TWI agree for co-production with DD. They, therefore, requested the DD to agree to such co-production. The CAB also stated in the said letter that in fact in a joint meeting, details of such arrangement were worked out including the supply of equipment list by the respective parties and it was decided in principle to go in for joint production. In the meeting, it was further agreed that DD would not claim exclusive rights and the CAB would be at liberty to sell the rights to Star TV. However, since subsequently they had learnt from newspaper reports that DD had decided not to telecast the matches, by their

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letter of 15th September, 1993 they had asked DD to confirm the authenticity of the news items. The DD, however, had not responded to the said letter. In the meanwhile, many other networks had repeatedly approached them for telecasting matches to the Indian audience and some of them on exclusive basis. But they had still kept the matter pending since they did not want to deprive the viewers of the DD of the matches. They further added that they had also learnt that DD would be interested in acquiring rights of telecast provided it was allowed to produce some matches directly and the matches produced by TWI are made available to it live without payment of any technical fee. The CAB, therefore, in the circumstances, suggested a fresh set of proposals for DD's consideration and requested response be-fore 21st October, 1993. On 27th October, 1993, DD responded to the said letter in the negative and stated that the offer made was not acceptable to it and they had already communicated to that effect earlier, stating that they will not take any signal from TWI. DD further denied that they had agreed to any joint production with TWI. The CAB by its letter of 29th October, 1993 pointed out, in response to this letter, that since they had also suggested production of live matches by DD, question of taking signals from TWI

did not arise, and in deference to DD's sensitivity about taking signals from TWI, CAB would be quite happy to allow DD to produce its own picture of matches and DD may buy rights and licences from it at a price which will be mutually agreed upon.

105. Thus, the controversy between the parties was with regard to the terms for the telecasting of the matches. It must be noted in this connection that the DD had never stated to the CAB that it had no frequency to spare for telecasting the matches. On the other hand, if the CAB had accepted the terms of the DD, DD was ready to telecast the matches. Therefore, the argument based on resource crunch as advanced on behalf of the MIB/ DD, is meaningless in the present case.

106. All that we have to examine in the present case is whether the MIB/DD had stipulated unreasonable conditions for telecasting the matches. It is apparent from the above correspondence between the parties that CAB wanted a minimum of U.S. $8 lakhs, i.e., Rs.2.40 crores. However, DD insisted that it would be the host broadcaster and will have exclusive telecasting rights for India and for these rights. it will pay only Rs. 1 crore. i.e. US $3.33 lakhs. It had also threatened to reduce the said offer of Rs. one crore because Pakistan was not likely to participate in the tournament. When it was pointed out by the CAB that this offer was uneconomical taking. into consideration the enormous costs involved and that they were looking for a minimum of Rs. 2 crores and had received higher offers from other parties under which the payments will also be made in foreign exchange, DD stuck to its earlier offer and refused to raise it. In the meanwhile, the CAB received an offer of U.S. $5.50 lakhs, i.e., Rs. 1.65 crores from TWI as guaranteed sum plus a share to the extent of 70 per cent in the rights income fee. The CAB being the sole organiser of the event had every right to explore the maximum revenue possible and there was nothing wrong or improper in their negotiating with TWI the terms and conditions of the deal. However, the only response of DD to these arrangements which were being worked out between the CAB and

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TWI was that it would not telecast the matches of the tournament by paying TWI the fees for purchasing the rights from that Organisation. Even then the CAB did not shut its doors on DD, and by its letter of 18th October, 1993 informed the DD that it was keen that DD should telecast the matches so that people in India are not deprived of viewing the matches. They also informed the DD that it was with this purpose that they had made TWI agree for co-production with the DD and had made a fresh set of proposals. However, these proposals were on materially different terms. To this, the DD replied by its letters of 27th October, 1993 that the terms and conditions of the offer were not acceptable to it. The CAB by its letter of 29th October, 1993 again offered the DD that if their only objection was to taking signals from TWI, since they had suggested production of live matches by DD in their fresh proposals, there was no question of taking signals from TWI and they should reconsider the proposals. To this, the only reply of the DD was that they will not pay any Access Fee to CAB to telecast the matches and if DD were to telecast the matches, the CAB will have to pay Technical/Production Fee at the rate of Rs.5 lakhs per match, and in that case the DD will have exclusive rights for the signal generated, and the parties interested will have to take the signals from the DD after negotiating directly with it. In other words, the DD took

the stand that not only it will not pay any charges to the CAB for the rights of telecasting the matches, but it is CAB which will have to pay the charges, and that the DD will be the sole producer of signals and others will have to buy the signals from it..

107. Thus the correspondence between the parties shows that each of the parties was trying to score over the other by taking advantage of its position. The blame for the collapse of the negotiations has to be shared by both. The difference, if any, was only in the degree of unreasonableness. If anything, this episode once again emphasises the need to rescue the electronic media from the government monopoly and bureaucratic control and to have an independent authority to manage and control it.

108. Coming now to the change in the, stand of the other Departments of the Government for granting facilities to the agency engaged by the CAB, the facts make a revealing reading. The actions of the various Departments of the Government, referred to earlier, show firstly, that the Ministries of Human Resources Development, of Home Affairs, of Finance, of Communications, and the VSNL had no objection whatsoever to the arrangements which the CAB had entered into with TWI, the foreign agency, for covering the cricket matches. In fact they granted all the necessary permissions and facilities to the CAB/TWI in all respects subject to certain conditions with which neither the CAB nor TWI had any quarrel. Secondly, these various Departments had accepted TWI as the agency of CAB for the purposes of the said coverage and they had no objection to the TWI covering the matches on the ground that it was a foreign agency. This was the situation till the writ petition was filed by the CAB in the Calcutta High Court on 8th November, 1993. It is necessary to remember in this connection that the decision or the DD to intimate CAB that it will not pay even access fee to the CAB to telecast the tournament and that it was for the CAB to pay the technical/pro-

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duction fee of Rs. 5 lakhs per match with DD having exclusive right for the signal generated, and others will have to buy it after negotiating directly with the DD, was taken on 30th/31st October, 1993. It is in that context that further developments which are relevant for our purpose and which took place during the pendency of the Court proceedings, have to be viewed. It is only on 12th November, 1993 that the Committee of Secretaries came out with the concept of the ! nodal ministry. By itself, the decision to form the nodal ministry to coordinate the activities of all the concerned ministries and departments is unexceptional. But the time of taking the decision and its background was not without its significance. However, there is no adequate material on record to establish a nexus between the MIB/DD and the aforesaid actions of the other authorities.

109. The nexus in question was sought to be established by the CAB by pointing out to the letter addressed by the Deputy Secretary in MIB with the approval of the Secretary, of that Ministry to Department of Youth Affairs and Sports of the Ministry of Human Resources Development. It in terms refers to the meeting of the committee of Secretaries on 12th November, 1993 and states that according to the so-called "extant policy" of the Government, as endorsed by the Committee of Secretaries, the telecasting of sporting events is within the exclusive purview of DD/MIB. Accordingly, the NIB opposes the grant of any permission to M/s. WPE or its agency TWI or any Indian company to cover the matches for

general reception in India through uplinking facility except in collaboration with DD with only the latter being the sole agency entrusted with the task of generating TV signal from the venue
of the matches. It further states that the MIB opposes [i] import of any satellite earth station for the coverage of the series, [ii] the grant of any ad-hoc exemption for the import of equipment by WTE or TWI without their first producing the approval of the competent authority permitting its use within India, in terms of the provisions of Indian Telegraph Act, 1885 and the Wireless Telegraph Act, 1933 in the absence of which possession of such equipment within India constitutes an offence, [iii] M/s. WTE or TWI being permitted to undertake shooting of the cricket matches at different places and grant of visa or RAP to its personnel for visiting India, and [iv] the grant of any permission to any aircraft leased by M/s. WPE/TWI for landing at any international or national airport.

110. It was urged that the question of the absence of permission/licence of the requisite authorities under the Indian Telegraph Act and the Wireless Telegraph Act was never raised or made a ground for denial of the right to the BCCI/CAB to telecast the matches or to uplink the signal through TWI till after CAB had approached the Calcutta High Court on 8th November, 1993. It was contended that the MIB woke up suddenly to the relevant provisions of the statute after the Court proceedings. We are, however, not satisfied that these events conclusively establish that the other Departments acted at the behest of the DD/MIB.

111. The circumstances in which the High Court case to pass its interim order dated 12th November, 1993 may now be noticed. The MIB and DD's appeals are directed against the said order 'and writ petition is filed by the CAB for direction to respondent Nos. 1 to 9, which include,
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among others, Union of India.

112. In the writ petition filed by the CAB before the High Court on 8th November, 1993, the learned Single Judge on the same day passed an order of interim injunction commanding the respondents to provide all adequate facilities and cooperation to the petitioner and/or their appointed agency for free and uninterrupted telecasting and broadcasting of the cricket matches in question to be played between 10th and 20th November, 1993, and restrained the respondents from tampering with, removing, seizing or dealing with any equipment relating to transmission, telecasting or broadcasting of the said matches, belonging to the CAB and their appointed agency, in any manner whatsoever. On the next day, i.e., 9th November, 1993 the said interim order was made final. On the 11th November, 1993, on the application of the CAB complaining that the equipment brought by their agency, viz., TWI [respondent No. IO to the petition] were seized by the Bombay Customs authorities under the direction issued by the Ministry of Communications and the MIB, another order was passed by the learned Judge directing all Government authorities including Customs authorities to act in terms of the interim orders passed earlier on 8th/9th November, 1993. While passing this order in the presence of the learned counsel for the respondents who pleaded ignorance about the seizure of the equipment by the Customs authorities, the learned Single Judge observed, among other things, as follows:

"It is submitted by the learned Counsel on behalf of the respondent that since Doordarshan has been denied telecasting of the tournament by the respondent No. 6,

Akasliban has also decided to stop broad-
casting and in support of his contention has produced a letter dated 10th of November, 1993 issued by the Station Director, Calcutta, for Director General, All India Radio to Shri S.K. Kundu, Central Government's Advocate whereupon it appears that it was admitted, that All India Radio had planned to provide running commentary of the matches of the above tournament organised by the Cricket Association of Bengal, but as Doordarshan was denied the facility of nominating the Host Broadcaster's Signal and it consequently decided not to cover those matches, All India Radio also had decided to drop the coverage of those matches since the principles on which Doordarshan based its decision, viz.,, the protection of inherent interest of the National Broad-
casters to generate the signal of sports, applied equally to the All India Radio.

I fail to understand the logic behind the said letter and the stand taken by the All India Radio in the matter which appears to me wholly illogical and ridiculous, Doordarshan might have some dispute with the.... regarding the right to be the Host Broadcasters Signal including financial questions, but the All India Radio, which itself volunteered to broadcast the matches themselves, and when, admittedly, no financial transaction is involved between the All India Radio and the respondent No.6, denial of the All India Radio to broadcast the said matches only on the ground that since Doordarshan
was denied by the respondent No.6 to be 1 the Host Broadcaster's Signal, the All India Radio stopped broadcasting the matches following the same principle, ap-
pears to be absolutely whimsical and capricious.

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Such denial by the All India Radio certainly is an act done against the public interest and thus cannot be supported and/
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or upheld to deprive the general people of India of such small satisfaction...

x x x x x x

Accordingly, I find the action of the All India Radio in stopping the broadcasting of aforesaid tournament is wholly illegal, arbitrary and mala fide....

This writ application accordingly succeeds and allowed to the extent as stated above, and let a writ in the nature of mandamus to the extent indicated above be issued."

113. The Union of India preferred an appeal against the said decision and in the appeal moved an application for staying the operation of the orders passed by the learned Single Judge on 8th/9th November, 1993. Dealing with the said application, the Division Bench in its order dated
other things, as follows:

"Mr. R.N. Das, learned Counsel appearing for and on behalf of the Union of India and others including the Director General of Doordarshan, appearing with Mr. B. Bhattacharya and Mr. Prodosh Mallick submitted inter alia, that the Doordarshan authority is very much inclined and keen to telecast the Hero Cup matches in which several parties from abroad are participating including India. But it was pointed out that the difficulties have been created by Cricket Association of Bengal in entering into an agreement with Trans World International [UK] Inc. World Production the respondent No.10 of the writ petition wherein the Cricket Association of Bengal has given exclusive rights to telecast to that authority. It was submitted by Mr. Das that under Section 4 of the Indian Telegraph Act, 1885 the

Central Government have the exclusive privilege of establishing, maintaining
and working telegraph and that it was further submitted that the expression telegraph includes telecasts through Doordarshan. it was further provided that proviso to Section 4 [1] of the said Act provides that the Central Government may grant a licence on such conditions and in consideration of such payments as it thinks fit to any person to establish, maintain or work a telegraph within any part of India. Relying upon the provisions it was submitted that neither the CAB nor the TWI respondent No. 10 of the writ application have obtained any licence for the purpose of telecasting the matches direct from India."

114. The Court then referred to the correspondence between the CAB and the DD between 31st March, 1993 and 31st October, 1993 and the letters of no objection issued to the CAB by the Ministry of Communications and the VSNL and to the acceptence by the VSNL of the payments from TWI as per the demand of the VSNL itself for granting facilities of uplinking the signal and recorded its primafacie finding that the DD was agreeable to telecast matches live for India on a consideration of Rs.5 lakhs per match which was accepted under protest and without prejudice by the CAB and the only dispute was with regard to the revenue to be earned through advertisements during the period of the matches. The Court said that it was not adjudicating on as to what and in what manner the revenue through advertisements would be created and distributed between the parties. It left the said points to be decided on merits in the appeal pending before it and proceeded to observe as follows:

> "... but it present having regard to the interest of millions of Indian viewers who are anxiously expecting to see such live
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> telecast, we record as Doordarshan is inclined to telecast the matches for the Indian viewers on receipt of Rs.5 lakh per match and to enjoy the exclusive right of signalling within the country being host broadcaster, we direct the CAB to pay immediately a sum of Rs.5 lakhs per match for this purpose and the collection of revenue on account of sponsorship or otherwise in respect of 28 minutes which is available for commercial purpose be realised by the Doordarshan on condition that such amount shall be kept in a separate account and shall not deal with and dispose of the said amount until further orders and we make it clear regarding the entitlement and the manner in which the said sum will be treated would abide by the result of the appeal or the writ application. Accordingly, it is made clear that Doordarshan shall on these conditions start immediately telecasting the live matches of the Hero Cup for the subsequent matches from the next match in India. Mr. Das Id. counsel appearing on behalf of the appellant submits that they were in a position technically or otherwise to telecast immediately. With regard to the right of TWI to telecast the matches outside India is concerned, we also record that on time of hearing the counsel appearing on behalf of the appellant showed an order in three lines that the authority concerned has summarily and without giving any

reason and/or any hearing whatsoever directed to VSNL not to allow the TWI to transmit or to telecast from India in respect of the Hero Cup matches but it was submitted by the learned Counsel appearing for the appellant that they are very much keen to consider the matter in proper perspective in accordance with laws, having regard to the national impact on this question. It appears that on the basis of the representation made by VSNL, TWI came into the picture and subsequently TWI entered into an agreement with the CAB. At this stage, we are not called upon to decide the validity or otherwise
of such an agreement entered into by the parties. As a matter of fact, we are referring this without prejudice to the rights and contentions of the parties. It further appears that the Government of India through the Department of Communication stated that the said department had no objection with regard to the permission to the CAB for temporarily importing electronic product equipments required for transmitting one day matches of the Hero Cup as a part of Diamond Jubilee Celebration to be started from November 7 to 27, 1993, the Ministry has no objection to proposal "subject to the organisers Co-ordinating with WPC [DOT] for frequency clearance from the Standing Advisory Committee on frequency allocation {SACFA} for TV uplinking from different places and coordinating with VSNL, Bombay for booking of TV transponders etc. It appears that the said no objection certificate has created a legitimate expectation, particularly in view of the fact that the money demanded by VSNL in this behalf was duly paid by TWI and all arrangements have been made by TWI for performing the job. As we find that no formal permission is required under proviso to Section 4 [1] of Indian Telegraph Act is there in favour of the party, having regard to the facts stated above and having regard to National and International impact on this question and having regard to the fact that any decision taken will have the tremendous impact on the International sports, we direct the appellant No.5 who is respondent No.6 in the writ application. The Secretary, Ministry of Telecommunication, Sanchar Bhavan, New Delhi, Government of India to consider the facts and circumstances of the case clearly suggesting that there had already been an implied grant of permission, shall grant a provisional permission or licence without prejudice to the rights and contentions of the parties in this appeal and the writ application and subject to the condition that the respondent No.6
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in the writ application will be at liberty to impose such reasonable terms and condi- tions consistent with the provision to Section 4 [1]of the Indian Telegraph Act, having regard

> to the peculiar facts and circumstances of the case. If TWI comply with such terms and conditions that may be imposed without prejudice to their rights and contentions in the interest of sports and subject to the decision in this appeal or the writ application shall be entitled to telecast for International viewers outside India.... The Secretary, Ministry of Telecommunication, Sanchar Bhavan, New Delhi, Government of India, is directed to decide this question as directed by us within three days from today and all the parties will be entitled to be heard, if necessary. We must put in on record our anxiety that the matter should be taken in the spirit of sports not on the spirit of prestige or personal interest and should approach the problem dispassionately rising above all its narrow interest and personal ego..... In order to comply with this order any order of detention of the equipments of TWI should not be given effect to."

115. The Court also made it clear that in order to comply with its order, any order of detention of the equipments of TWI should not be given effect to. Notwithstanding this order or probably in ignorance of it, the Collector of Customs, Bombay wrote to the CAB that it had given an undertaking to fulfill all the conditions of the ad hoc order dated 2nd November, 1993 under which exemption was given to it for importing the equipments. However, it had not fulfilled the conditions laid down at [1] and [iii] of para 2 of the said ad hoc exemption order and, therefore, it should pay an amount of Rs.3,29,07,711/as customs duty on the equipment imported by TWI. They also threatened that if no such duty was paid, the goods would be confiscated. In view of the said show cause notice, the CAB moved the Division Bench and on 14th November, 1993. The lawyer of TWI also wrote a letter in the meanwhile on 13th November, 1993 to the Customs authorities at Bombay stating therein that as TWI had sent a letter enclosing a copy of the order of the Division Bench passed on 12th November, 1993 directing them not to give effect to the detention of the equipments and complaining that in spite of it they had not released the goods and, therefore, they had committed a contempt of the Court. This grievance of CAB and TWI along with the complaint of the DD for not permitting them to place their cameras at the requisite places, were heard by the Division Bench on 14th November, 1993 when the match was already being played in Bombay. The Bench observed that the Court was given to understand that none of the parties was inclined to go higher up against its earlier order and that what was required was certain clarification of that order in the changed circumstances. The learned counsel for the CAB stated that they were not going to oppose the DD placing their cameras but the dispute had arisen as to the signalling to be made for the telecast. According to the learned counsel for the Union of the India, there could be only one signalling from the field and DD should be treated as host broadcaster and the TWI should take signal from it. This was opposed by the learned counsel for the CAB who contended. that DD had been given exclusive right as host broadcaster so far as the telecasting of matches in India was concerned. The telecasting of matches abroad was to be done by TWI. The Division Bench held that the DD will have the exclusive right of signalling for the purposes of tele-

casting within the country, and they were to be treated as host broadcasters so far as
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telecasting within India was concerned. As far as TWI is concerned, if it was authorised and permitted in terms of their earlier order, it would be entitled to telecast outside the country and to send their signal accordingly. They also stated that in case the signalling was required to be made by the TWI separately the necessary permission should be given by the DD or other competent authorities. They resolved the dispute with regard to the placement of cameras by directing that DD will have first priority and if there was any dispute on that account it would be resolved by the local head of the Police Administration at the venue concerned. They also directed the Customs authorities, Bombay to release the equipments imported for the purposes of TWI with the condition that the said equipments will be used only for transmission of the matches and they shall not deal with or dispose of the said equipments or remove it outside the country without the permission of the Court. In particular, they also directed the VSNL to take proper steps for uplinking and not to take any step to defeat the purpose.

116. Against the said order of the Division Bench, the present appeals are preferred by the Ministry of Information and Broadcasting and others whereas the writ petition is filed by the CAB for restraining the respondents, (which include, among others, Union of India [No. 1], Secretary, Ministry of Information & Broadcasting [No.2], Director General, Doordarshan [No.3], Secretary, Ministry of Communications [No.5], Director, Department of Telecommunications [No.6], and Videsh Sanchar Nigam Limited [No.9], from preventing, obstructing and interfering with or creating any hurdles in the implementation of agreement dated 14.6.1993 between the petitioner-CAB and respondent No. 10, i.e., TWI.

117. The matter was heard by this Court on 15th November, 1993. It appears from the record that although the High Court had directed the Secretary, Ministry of Communications to decide the question of granting of licence under Section 4 [1] of the Telegraph Act within 3 days from 12th November, 1993 by its order of the same day, the Secretary had fixed the meeting for consideration of the application only on the 16th November, 1993. 'Mat itself was a breach of the High Court's order. This Court, therefore, directed the Secretary to hear the matter at 4.30 p.m. on 15th November, 1993 and communicate its decision to TWI or its counsel or to the CAB or its counsel immediately thereafter but before 7.30 p.m. on the same day. This Court also directed the Customs authorities to release the equipment forthwith which they had not done in spite of the High Court's order. The TWI and CAB were, however, restrained from using the said equipment till the licence was issued by the Secretary, Department of Telecommunication.

118. Pursuant to the direction given by this Court, the Secretary by his order of 15th November, 1993 after referring to the judgment of the High Court and its implication and after taking into consideration the arguments of the respective parties, held as follows:

"In this connection, we have to take into account an important point brought to our notice by the Director General Doordarshan. It is true that Section 4 of the Indian Telegraph Act of 1885 enables the government to give licences to agencies other than Doordarshan or the
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government departments to telecast. In fact, such a

permission had been given in January 1993 when the cricket matches were telecast by the same TWI. However, subsequently, I am given to understand that the government policy in the Ministry of I&B has been that the uplinking directly by private parties/foreign agencies from India for the purpose of broadcasting should not be permitted.

It is true that in a cricket match we are not considering security aspects. But, the point to be considered is whether uplinking. given in a particular case will have its consequences on other such claims which may not be directly linked to sports and which will have serious implications. Within the government, as per Allocation of Business Rules, it is the Ministry of I&B which has the responsibility for formulation and implementation of the policies relating to broadcasting/telecasting.

As was made clear earlier, in this case, we are considering two aspects. One is the generation of signals and the second is their communication. The Department of Telecommunication comes in the picture so far as the communication aspect is concerned.

Taking into account the facts mentioned above, the only reasonable conclusion I reach is that permission may be given to TWI for telecast overseas through the VSNL, while Doordarshan will be telecasting within the country. The TWI will have to get the signals from Doordarshan for uplinking through the VSNL by making mutual arrangements. So far as VSNL is concerned, there should be no difficulty in transmitting the signals through Intelsat as already agreed upon.

In my view, the above decision takes into account the needs of the millions of viewers both within the country and abroad

who are keen to watch the game and at the same time ensures that there is no conflict with the broad government policy in the Ministry of I&B which is entrusted with the task of broadcasting. It also takes into account the overall aspects and the reasonable expectation created within the TWI by the series of clearances given by the different authorities of the Government of India".

119. This order which was passed around 7.30 p.m. was challenged by the CAB, and being an urgent matter, was heard by the Court late at night on the same day. The Court stayed the order of the Secretary to the extent that it imposed a condition that the TWI will have to get the signals from the DD for uplinking through the VSNL by making mutual arrangements. The Court directed that the TWI can generate its own signal by focusing its cameras only on the ground where the matches were being played, as directed by the Ministry of Home Affairs and that they will take care not to focus their cameras anywhere else.

120. For telecasting the triangular series and the West Indies tour to India in 1994 season, the same disputes arose between the parties. By their letter of 25th August, 1994, the BCCI requested the Director, Sports, of the Ministry of Human Resources Development, Department of Youth Affairs and Sports to grant permission to it or TWI/SPN to telecast the triangular series and matches to be played between India and West Indies. By their letter of 30th August, 1994 written to the Secretary, Department of Sports, the MIB opposed the grant of uplinking facilities to any foreign agency. On 14th September, 1994, Ishan Television India Ltd. [with a tie-up with ESPN which had contract with

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BCCI, applied to the VSNL for uplinking facilities for telecasting of the said matches. The VSNL thereafter wrote

to the NM for their "no objection" and the NUB opposed the grant of "no objection" certificate and objected to VSNL writing to the MIB directly for the purpose. The MM also stated that their view in the matter was very clear that satellite uplinking from Indian soil would be within the exclusive competence of the MIB/DoT/DOS-and that the telecast of sporting events would be the exclusive privilege of DD. By their letter of 26th September, 1994, the 'nodal' Ministry, i.e., Ministry of Human Resources Development [Department of Youth Affairs and Sports addressed to all the Ministries and Departments including the MIB called for the remarks on the letter of the BCCI addressed to the nodal Ministry. The MIB again wrote to the Sports Department of the nodal Ministry, opposing grant of Single Window service to the BCCI. On 3rd October, 1994, the VSNL returned the advance which it had received from Ishan TV for uplinking facilities. On 7th October, 1994, this Court passed the following order:

> "Pending the final disposal of the matters by this interim order confined to telecast the International Cricket Matches to be played in India from October 1994 to December 1994, we direct respondent Nos. 1 and 6 to 9 in Writ Petition No.836/ 93 to grant forthwith necessary permission/sanctions and uplinking facilities for production, transmission and telecasting of the said matches.
>
> We also direct respondent Nos.2, 3 and 4 in writ petition No.836/93 and all other Government Agencies not to obstruct/restrict in any manner whatsoever production, transmission and telecasting of the said matches for the said period by the petitioner-applicant only on the ground where the Cricket Matches would be played and the signals are generated under the direct supervision of the VSNL personnel.
>
> So far as the production, transmission and telecasting of these matches in India is concerned, the Doordarshan shall have the exclusive right in all respects for the purpose, and the petitioner-applicant shall not prevent Doordarshan from doing so, and in particular shall afford all facilities for Doordarshan to do so.
>
> So far as the placement of cameras are concerned both petitioner-applicant as well as Doordarshan shall have equal rights. This shall be ensured by Shri Sunil Gavaskar in consultation with such technical experts as he may deem necessary to consult. He is requested to do so. As far as the remuneration for Shri Sunil Gavaskar and the technical expert is concerned, both Doordarshan as well as the petitioner-applicant will share the remuneration equally which will be fixed by this Court.
>
> As regards the revenue generated by the advertisement by Doordarshan is concerned, Doordarshan will deposit the said amount in a separate account and preferably in a nationalised Bank. The Doordarshan will have the exclusive right to advertisement. All the IAs are disposed of accordingly".

121. Since certain disputes arose between the parties,

on 18th October, 1994, this Court had to pass the following order:

> "The BCCI will ensure that all Cricket Associations and staging Centres shall extend every facility to the personnel authorised by the Doordarshan to enter into the Cricket Ground for production, transmission and telecasting of the
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> matches without any late or hindrance.
> The BCCI will also ensure that all Cricket Associations staging the matches will make available every facility and render such assistance as may be necessary and sought by the Doordarshan for effective telecasting of the matches at the respective grounds and stadia.
> The BCCI shall not permit the ESPN to enter into any contract either with A.T.N. or any other Agency for telecasting in any manner all over India, whether through the Satellite footprints or otherwise, Cricket Matches which are being telecast in India by the Doordarshan. If the ESPN has entered into any such contract either with A.T.N. or any other Agency, that contract should be cancelled forthwith.
> Since this Court is seized of the present matter, no court should entertain any writ petition, suit or application which is connected in any manner with the discharge of obligation imposed on the respective parties to the present proceedings. If any such writ petition suit or application is already entertained, the Courts should not proceed with the same till further orders of this Court.
> The BCCI and the Doordarshan will mutually solve the problem of the Control Room and Storage Room facilities needed by the Doordarshan, preferably in one meeting La Bombay on 20th October, 1994".

122. The law on the subject discussed earlier makes it clear that the fundamental right to freedom of speech and expression includes the right to communicate effectively and to as large a population not only in this country but also abroad, as is feasible. There are no geographical barriers on
communication. Hence every citizen has a right to use the best means available for the purpose. At present, electronic media, viz., T.V. and radio, is the most effective means of communication. The restrictions which the electronic media suffers in addition to those suffered by the print media, are that [i] the airwaves are a public property and they have to be used for die benefit of the society at large, [ii] the frequencies are limited and [iii] media is subject to pre-censorship. The other limitation, viz., the reasonable restrictions imposed by law made for the purposes mentioned in Article 19 [2] is common to all the media. In the present case, it was not and cannot be the case of the NM that the telecasting of the cricket matches was not for the benefit of the society at large or not in the public interest and, therefore, not a proper use of the public property. It was not the case of the MIB that it was in violation of the provisions of Article 19 [2].

There was nothing to be pre-censored on the grounds mentioned in Article 19 [2]. As regards the limitation of resources, since the DD was prepared to'telecast the cricket matches, but only on its terms it could not plead that there was no frequency available for telecasting. The DD could also not have ignored the rights of the viewers which the High Court was at pains to emphasise while passing its orders and to which we have also made a reference. The CAB/BCCI being the organisers of the event had a right to sell the telecasting rights of its event to any agency. Assuming that the DD had no frequency to spare for telecasting the matches, the CAB could certainly enter into a contract with any agency including a foreign agency to telecast the said matches through that agency's frequency for the viewers in this country [who could have access to those frequen-

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cies] as well as for the viewers abroad. The orders passed by the High Court in effect gave a right to DD to be the host broadcaster for telecasting in this country and for the TWI, for telecasting for the viewers outside this country as well as those viewers in this country who have an access to the TWI frequency. The order was eminently in the interests of the viewers whatever its merits on the other aspects of the matter.

123. The orders passed by the High Court have to be viewed against the backdrop of the events and the position of law discussed above. The circumstances in which the High Court passed the orders and the factual and legal considerations which weighed with it in passing them speak for themselves. However, since the cricket matches have already been telecast, the question of the legality or otherwise of the orders has become academic and it is not necessary to pronounce our formal verdict on the same. Hence we refrain from doing so.

124. We, therefore, hold as follows:

[i] The airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Since the electronic media involves the use of the airwaves, this factor creates an in-built restriction on its use as in the case of any other public property.

[ii] The right to impart and receive information is a species of the right of free-

the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property, viz., the airwaves, involved in the exercise of the right and can be controlled and regulated by the public authority. This limitation imposed by the nature of the public property involved in the use of the electronic media is in addition to the restrictions imposed on the right to freedom of speech and expression under Article 19 [2] of the Constitution.

[iii] The Central Government shall take immediate steps to establish an independent autonomous public authority repre-sentative of all sections and interests in the society to control and regulate the use of the airwaves.

[iv] Since the matches have been telecast pursuant to the impugned order of the High Court, it is not necessary to decide the correctness of the said order.

[v] The High Court 'will now apportion between the CAB and the DD the revenues generated by the advertisements on T.V.

during the telecasting of both the series of the cricket matches, viz., the Hero Cup, and the International Cricket Matches played in India from October to December 1994, after hearing the parties on the subject.

125. The civil appeals are disposed of accordingly.

126. In view of the disposal of the civil appeals, the writ petition filed by the Cricket Association of Bengal also stands disposed of accordingly.

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B.P. JEEVAN REDDY, J.

127. Leave granted in Special Leave Petitions.

128. While I agree broadly with the conclusions arrived at by my learned brother Sawant,J. in Para 24 of his judgment, I propose to record my views and conclusions on the issues arising in these matters in view of their far-reaching importance.

129. Cricket is an interesting game. Radio, and more particularly the television has made it the most popular game in India. It has acquired tremendous mass appeal. Television has brought the game into the hearths and homes of millions of citizens across the country, enhancing its appeal several-fold. Men, women and children who had no interest in the game earlier have now become its ardent fans - all because of its broadcast by radio and television. This has also attracted the attention of business and commerce. They see an excellent opportunity of advertising their products and wares. They are prepared to pay huge amounts therefor. The cricket clubs which conduct these cricket matches have come to see an enormous opportunity of making money through these matches. Previously, their income depended mainly upon the ticket money. Now, it probably does not count at all. The real income comes from the advertisements both in-stadia as well as the spot advertisements over radio and television. The value of in-stadia advertisement has increased enormously on account of its constant exposure on television during the progress of the game. Lured by this huge revenues, organisers of these events now propose to sell the broadcasting rights used compendiously to denote both radio
and television rights - of these events to the highest bidder, be he foreign agency or a local one. They find that Doordarshan is not in a position to or willing to pay as much as the foreign agencies are. Accordingly, they have sold these rights to foreign agencies. But - and here lies the rub - broadcasting the event, particularly telecasting, requires import, installation and operation of certain equipment by these foreign agencies for which the law (Indian Telegraph Act) requires a prior permission - licence - to be granted by Government of India. Earlier, they wanted uplinking facility too through Videsh Sanchar Nigam Ltd., a Government of India-owned company. Now they suggest, it may not be necessary. They say, they can uplink directly from their earth station installed, or parked, as the case may be, near the playing field to their designated communication satellite which will beam it back to earth The revolution in communications/ information technology is throwing up new issues for the courts to decide and this is one of them.

130. The Doordarshan says that all these years it has been telecasting the cricket events in India and has helped it popularise. So also is the plea of All India Radio (AIR). They are Government agencies - departments of Government. AIR and Doordarshan enjoy a monopoly in this country in the matter of broadcasting and telecasting. They cannot think of any other agency doing the same job. They

are not prepared to reconcile themselves to any other agency, more particularly, a foreign agency being invited to broadcast/ telecast these events and they themselves being asked to negotiate and purchase these rights from such foreign agencies. They say, they alone should be allowed to telecast and broadcast these events; that they alone must act as the 'host broadcaster', which means they alone shall generate the host broadcasting signal, which the interested foreign agencies can purchase from them. They are, of course, not prepared to pay as much amounts as the foreign agencies. They are seeking to keep away the foreign agencies with the help of the legal provisions in force in this country. If they are successful in that, it is obvious, they may - they can - dictate terms to the organisers of these events. If they cannot, the organisers will be in a position to dictate their terms. But here again, there is another practical, technological, problem. The foreign agencies do beam their programmes over Indian territory too, but for receiving these programmes you require - period - a dish antenna, which costs quite a bit. Our TV sets cannot receive these programmes through the ordinary antenna. Doordarshan alone has the facility of telecasting programmes which can be received through ordinary antennae. Millions in this country, who arc deeply interested in the game, cannot afford these dish antennae but they want to watch the game and that can be provided only by the Doordarshan. And this is its relevance. Doordarshan says, if the organisers choose to sell their telecasting rights to a foreign agency, they would have nothing to do with the event. They would not telecast it themselves. If the foreign agencies can telecast them, well and good - they can do so in the manner they can, but Doordarshan would not touch the event even by a long barge-pole. But, the Doordarshan complains, they are being compelled by the courts to telecast these events in public interest; such orders have been passed in writ petitions filed by individuals or groups of individuals purporting to represent public interest; the

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Doordarshan is thus made to lose at both ends - and the organisers are laughing all the way; telecasting an event requires good amount of preparation; advertisements have got to be collected well in time; it cannot be done at the last minute; without advertisements, telecasting an event results in substantial loss to public exchequer - it says. These are the problems which have given rise to these appeals and writ petitions. They raise inter alia grave constitutional questions touching the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. The interpretation of Section 4(1) of the Indian Telegraph Act, the right to establish private broadcasting and telecasting facilities/ stations - in short, the, whole gamut of the law on broadcasting and telecasting has become involved in the issues arising herein.

FACTUAL CONSPECTUS-

131. Cricket Association of Bengal (CAB) organised an international cricket tournament under the name and style of "Hero Cup Tournament" to commemorate and celebrate its diamond jubilee celebrations. Apart from India, national teams of West Indies, South Africa, Sri Lanka and Zimbabwe to participate though the national team of Pakistan withdrew therefrom having agreed to participate in the first instance. The Hero Cup Tournament comprised several one day matches and its attraction was not confined to India but to all the cricket loving countries which, in effect, means all

the commonwealth countries. The tournament was to be held during the month of November, 1993. Until 1993, Doordarshan was acting as the host broadcaster in respect of all the cricket matches played in India. It
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generated the 'host broadcaster signal', which signal could be assigned or sold to foreign television organisations for being broadcast in their countries. However, an exception was made by the Government of India - for reasons we do not know - in respect of an earlier tournament; a foreign agency was permitted to telecast the matches in addition to Doordarshan. This exception appears to have set a precedent. On March 15, 1993 the Cricket Association of Bengal wrote to Doordarshan asking it to send their detailed offer which could be any one of the two alternatives mentioned in the letter. The two alternatives mentioned were: "(a) that you (Doordarshan) would create 'host broadcaster signal' and also undertake live telecast of all the matches in the tournament or (b) that'any other party may create the 'host broadcaster signal' and you would only purchase the rights to telecast in India." The Doordarshan was requested to clearly spell in their offer the royalty amount they were willing to pay. It was further made clear that "in either case it may also please to noted that foreign T.V. rights will be retained by this association". The letter also suggested the. manner in which and by which date the royalty amount was to be paid to it. The offer from Doordarshan was requested to be sent by March 31, 1993. On March 18, 1993 Doordarshan wrote to CAB asking it to send in writing the amount it expects as rights' fee payable to it for granting exclusive telecasting rights "without the Star T.V. getting it". On March 19, 1993, CAB wrote to Doordarshan stating that "we are agreeable to your creating the Host Broadcaster Signal and also granting you exclusive rights for India without the Star TV getting it. And we would charge you US $ 800,000 (US Dollars Eight Hundred Thousand only) for the same. We 'Will, however, reserve the right to sell/licence right worldwide, excluding India and Star TV. You would be under an obligation to provide the picture and commentary, subject to the payment of your technical fees". On March 31, 1993 Doordarshan replied back stating that the exclusive rights for India without Star TV getting it may be granted to Doordarshan at a cost of Rupees one crore. Evidently, because no response was forthwith coming from CAB, the Doordarshan sent a reminder on May 4, 1993. On May 12, 1993, CAB wrote to Doordarshan. By this letter, CAB informed Doordarshan that they have now decided "to sell/allot worldwide TV Rights for the tournament to one party only, instead of awarding separate areawise and companywise contracts". In view of this revised decision, the CAB called upon Doordarshan to let them know whether Doordarshan is in the deal and if so to submit its detailed offer for worldwide TV rights by May 17, 1993. The Doordarshan was given an option either to purchase TV rights outright or to purchase TV rights on the basis of sharing of rights fee. Even before receiving this letter of CAB dated May 12, 1993, Doordarshan addressed a letter to CAB on May 14, 1993 stating that while Doordarshan is still committed to its bid of Rupees one crore, there is speculation that Pakistan may not participate in the tournament which would adversely affect the viewership and commercials. In such an eventuality, the Doordarshan said, it will have to re-think its bid.

132. On June 18, 1993 Doordarshan sent a fax message to CAB referring to the press reports that CAB has entered into

amendment with Transworld Image (TWI) for the
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TV coverage of the said tournament and that, therefore, Doordarshan has decided not to telecast the tournament matches organised by paying TWI. It stated that Doordarshan is not prepared to enter Into any negotiation with TWI to obtain TV rights for the event. will not
133. Months passed by and then on October 18, 1993, CAB wrote a detailed letter to Doordarshan. In this letter, CAB stated that though they were expecting an offer Doordarshan was offering only a sum of Rupees one crore and that they have received offers from agencies abroad including TWI which were much higher than Rupees two crores and that too in foreign exchange. Since Doordarshan was not interested in increasing its offer, the letter stated, CAB entered into a contract with TWI for the telecast of matches. Even so, the letter stated, the CAB is still keen that Doordarshan comes forward to telecast the matches since it does not wish to deprive 800 millions people of this country and that accordingly they have made TWI agree for co-production with Doordarshan. It was also stated that Doordarshan should not claim exclusive rights and the CAB would be at liberty to sell the rights to Star TV. The letter further stated that the Doordarshan has not been responding to their letters and that meanwhile several foreign TV organisations and networks have been approaching them to telecast their matches to the Indian audience. The letter also referred to their information received from some other sources that Doordarshan is interested in acquiring the rights of tele cast provided its allowed produce some matches directly and that matches produced by TWI are made available to Doordarshan without payment of technical fees. The letter indicated the matches which Doordarshan would be allowed to telecast directly and the matches which TWI was to telecast directly. This offer was, however, subject to certain conditions which inter alia included the condition that Doordarshan will not pay access fee to CAB but shall allow four minutes' advertising time per hour 9i.e. a total of twenty eight minutes in seven hours) and that CAB will be at liberty to sell such time slots to advertisers and receive the proceeds therefor by itself.
134. On October 27, 1993 Doordarshan replied that they are not interested in the offer made by CAB in its letter dated October 18, 1993. They stated that they have never agreed to any joint production with TWI. On October 29, 1993, CAB again wrote to Doordarshan expressing their regret at the decision of the Doordarshan conveyed in their letter dated September 27, 1993 and stated..... purely in deference to your sensitivity about taking a signal from TWI, CAB would be quite happy to allow you production of your own picture of matches; you may like to buy rights and licence from CAB, at a price to be mutually agreed upon. We would also like to clarify that these rights will be on non-exclusive basis for Indian territory". Doordarshan's response was requested at the earliest. On October 30, 1993, Doordarshan confirmed its message sent that day expressing their refusal to pay any access fee to CAB and stating further that if Doordarshan has to telecast the matches live, CAB has to pay technical charges/ production fee at the rate of Rupees five lacs per match and that Doordarshan shall have exclusive rights for the signal generated. There was a further exchange of letters, which it is unnecessary to refer.
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135. While the above correspondence was going on

between CAB and Doordarshan, the CAB applied for and obtained the following permissions from certain departments. They are:

(a) On September 2, 1993, the Government of India, Ministry of Human Resource Development (Department of Youth Affairs and Sports) wrote to CAB stating that government has no objection to the proposed visit of the cricket teams of the participating countries in November 1993. The government also expressed its no objection to provide the conversion facility for guarantee money and prize money for foreign players subject to a particular cell'ing.

(b) Videsh Sanchar Nigam Limited (VSNL) indicated its charges for providing uplinking facility to INTELSAT and accepted the said charges when paid by the CAB/TWI.

(c) On October 13, 1993 the Government of India, Ministry of Home Affairs wrote to CAB expressing its no objection to the filming of cricket matches and to the use of walkie-talkie sets in the playground during the matches. It also expressed its no objection in principle to the production and technical staff of TWI visiting India.

(d) On October 20, 1993, the Department of Telecommunications addressed a letter to the Central Board of Excise and Customs expressing its no objection to temporary import of electrical production equipment required for transmission of the said matches between November 7-27, 1993 subject to the organisers coordinating with wireless planning committee for frequency clearance and also with VSNI.

(e) On November 2, 1993, the Ministry of Finance (Department of Revenue) addressed a letter to Collector of Customs, Sahar Airport, Bombay intimating him of the grant of exemption from duty for the temporary import of electrical equipment by TWI, valued at Rs.4.45 crores subject to certain conditions.

136. Inasmuch as no agreement could be arrived at between CAB and Doordarshan, the Department of Telecommunications addressed a letter to VSNL on November 3, 1993 (on the eve of the commencement of the matches) to the following effect: "Refer to your letter No. 18IP(TWI)/93-TG dated 13.10.1993 and discussion of Shri V.Babuji with W.A. on 2.11.1993 regarding uplink facility for telecasting by TWI of C.A.B. Jubilee Cricket matches. You are hereby advised that uplink facilities for this purpose should NOT repeat NOT be provided for T.W.I. This has the approval of Chairman (TC) and Secretary, DoT. Kindly confirm receipt." The VSNL accordingly intimated CAB of its inability to grant uplinking facility and also returned the amount received earlier in that behalf

137. Faced with the above developments, the CAB approached the Calcutta High Court by way of a writ petition being Writ Petition No.F.M.A.T.Nil of 1993 asserting that inspite of their obtaining all permissions including the TV uplinking facilities from VSNL as contemplated by the proviso to Section 4 of the Indian Telegraph Act, Doordarshan - and other governmental authorities at the instance of Doordarshan - are seeking to block and prevent the telecast of the matches by TWI.

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The reliefs sought for in the writ petition are the following:

(1)A mandamus commanding Respondents 1, 3 and 4 (Union of India, Director General, Information and Broadcasting and Director General, Doordarshan) and other respondents to ensure uninterrupted and unobstructed telecast and broadcast of Hero Cup tournament between November 1028, 1993 and to

take all appropriate measures for such telecast and broadcast.
(ii)A mandamus to the respondents to provide all arrangements and facilities for telecast and broadcast of the Hero Cup tournament by the appointed agencies of the petitioners.
(iii)A mandamus restraining the respondents from- seizing, tempering with, removing or dealing with any equipment relating to transmission telecast and broadcast of the said tournament; and
(iv)Restraining the respondents from interfering or disrupting in any manner the live transmission and broadcast of the said tournament by the petitioners and their agents.
138. A learned Single Judge of the Calcutta High Court heard the matter on November 8, 1993. The learned Judge directed the matter to come up on the next day with a view to enable the Advocate for the Union of India to obtain necessary instructions in the matter. At the same time, he granted an interim order of injunction in terms of prayers (i) and (j) in the writ petition effective till the end of the next day. Prayers (i) and (j) in the writ petition read as follows:

> (i) Interim order commanding the Respondents, their servants, agents, employees or otherwise to provide all adequate assistance and cooperation to the Petitioners and/or their appointed Agency for free and uninterrupted telecast and broadcast of HERO CUP TOURNAMENT between 10th November, 1993 and 28th November, 1993;
> (i) An interim order of injunction restraining the Respondents their servants, agents, employees and others from tempering with, removing, seizing or dealing with any equipments relating to transmission telecast and broadcast of HERO CUP TOURNAMENT belonging to and/or their appointed agency in any manner whatsoever.

139. The order made it clear that the said order shall not prevent Doordarshan from telecasting any match without affecting any arrangement arrived at between CAB and TWI.
140.On the next day, i.e., November 9, 1993, the learned Single Judge heard the Advocate for the Union of India but declined to vacate the interim order passed by him on the previous day. He further restrained the respondents to the writ petition from interfering with the frequency lines given to the Respondent No.10, i.e., TWI as per request made by VSNL to SAT in view of the fact that VSNL had accepted the proposal of CAB and TWI and had also received the fees therefor. On November 11, 1993, the learned Judge passed another order, on the representation of the learned counsel for the writ petitioners, that the equipment brought by TWI for the purpose of production of transmission and telecasting of cricket matches which was seized by the Bombay customs authorities, allegedly under the instructions of the Ministry of Telecommu-
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nications and Ministry of Information and Broadcasting, be released. The learned Judge directed that all the governmental authorities including the customs authorities shall act in accordance with the interim orders dated 8/9th November, 1993. Meanwhile, it appears, certain individuals claiming to be interested in watching cricket matches on television filed independent writ petitions for a direction to the Doordarshan to telecast the matches. The learned Judge expressed the opinion that by their internal fight

between Respondents 1 to 5 on one hand and Respondent No.6 (reference is to the ranking in the writ petition) on the other, millions of viewers in India are deprived of the pleasure of watching the matches on television. He then referred to the representation that at the instance of Doordarshan and others, All-India Radio (AIR) too has stopped broadcasting the matches. The learned Judge observed that there is no reason for AIR to do so and accordingly directed the Union of India and others including the Ministry of Information and Broadcasting to broadcast the remaining cricket matches on AIR as well.

141. Aggrieved by the orders of the learned Single Judge aforementioned, the Union of India and other governmental agencies filed a writ appeal (along with an application for stay) which came up for orders on November 12, 1993 before a Division Bench of the Calcutta High Court. It was submitted by the learned counsel for the Union of India that though the Doordarshan is very much keen to telecast the matches, the CAB has really created problems by entering into an agreement with TWI. He submitted that under Section 4 of the Telegraph Act, 1885, the Central Government has the exclusive provilege of establishing, maintaining and working telegraph and that the definition of the expression "telegraph" includes telecast. He submitted that neither CAB nor TWI have obtained any licence or permission as contemplated by the proviso to Section 4(1) of the Indian Telegraph Act and, therefore, TWI cannot telecast the matches from any place in Indian territory. After referring to the rival contentions of the parties and the correspondence that passed between them, the Division Bench observed that there were two dimensions to the problem arising before them, viz., (i) the right to telecast by Doordarshan within India and (2) right of TWI to telecast outside India for viewers outside India. Having regard to the urgency of the matter and without going into the merits of the rival contentions, and keeping in view the interest of millions of viewers, the Division Bench observed: "we record, as Doordarshan is inclined to telecast the matches for the Indian viewers on receipt of Rs.5 lakhs per match and to enjoy the exclusive right of signalling within the country being the host broadcaster, we direct the CAB to pay immediately a sum of Rs.5 lakhs per match for this purpose and the collection of revenue on account of sponsorship or otherwise in respect of 28 minutes which is available for commercial purpose be realised by the Doordarshan on condition that such amount shall be kept in a separate account and shall not be dealt with and dispose of the said amount until further orders" to be passed in the said writ appeal. The Doordarshan was accordingly directed to immediately start telecasting the matches. The Bench then took up the question whether TWI is entitled to telecast the matches from Indian territory. It noted that no formal order as required under the proviso to Section 4(1)

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of the Telegraph Act has been granted in favour of either CAB or TWI. Purporting to take notice of the national and international impact of the issue, the Bench directed the 5th appellant before them, viz.., the Secretary, Ministry of Telecommunications, Government of India "to consider the facts and circumstances of the case clearly suggesting that there had already been an implied grant of permission, shall grant a provisional permission or licence without prejudice to the rights and contentions of the parties in this appeal and the writ application and subject to the condition that Respondent No.6 (5th appellant in appeal) in the writ

application will be at liberty to impose such reasonable terms and conditions consistent with the provision to Section 4(1) of the Indian Telegraph Act having regard to the peculiar facts and circumstances of the case." (emphasis added). The Secretary was directed to decide the said question within three days from the date of the said order after hearing all the parties before the Division Bench, if necessary,

142. On November 14, 1993, the matter was again taken up by the Division Bench, on being mentioned by the parties. The first problem placed before the Bench was placement of cameras. The Doordarshan authorities complained that they have not been given suitable place for the purpose of telecasting. Doordarshan further submitted that there can only be one signalling from the field and that in terms of the orders of the Division Bench, Doordarshan should be the host broadcaster and TWI should take the signal from Doordarshan. This request was opposed by the CAB and TWI. The Bench directed that according to their earlier order the TWI is entitled to telecast outside the country and to send their signal accordingly and in case the signalling is required to be made by TWI separately, the necessary permission should be given by the Doordarshan and other competent authorities therefor. Regarding placement of cameras, certain directions were given.

143. Aggrieved by the orders of the Division Bench dated 12/14th November, 1993, the Secretary, Ministry of Information and Broadcasting, Government of India, Director General, Doordarshan and Director General, Akashvani filed two Special Leave Petitions in this court, viz., S.L.P.(C)Nos.18532-33 of 993. Simultaneously, CAB filed an independent writ petition in this court under Article 32 of the Constitution being W.P.(C) No.836 of 1993. The prayers in this writ petition are practically the same as are the prayers in the writ petition filed in the Calcutta High Court. The additional prayer in this writ petition related to release of equipment imported by TWI which was detained by customs authorities at Bombay. On November 15, 1993, this court directed the Secretary, Ministry of Telecommunications, Government of India to hold the meeting, as directed by the Calcutta High Court, at 4.30P.M. on that very day (November 15, 1993) and communicate the decision before 7.30P.M. to TWI or its counsel or to CAB or its counsel. The customs authorities were directed to release the equipment forthwith. The TWI was, however, restrained from using the equipment for telecast purpose unless a licence is issued by the Secretary, Ministry of Telecommunications in that behalf.

144. Pursuant to the orders of this court, Shri N.Vithal, Chairman, Telecommunications and Secretary, DoT passed orders on

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November 15, 1993 which were brought to the notice of this court on that very day. This court stayed the said order to the extent it imposed a condition that TWI will get their signal from Doordarshan for uplinking through VSNL. The TWI was permitted to generate their own signal by focussing their cameras on the ground. It was observed that the said order shall not be treated as a precedent in future since it was made in the particular facts and circumstances of that case.

145. The matches were telecast in accordance with the directions given by this court and the High Court but the Special Leave Petitions and the Writ Petition remained pending. While so, a new development took place in 1994

which now requires to be mentioned.

146. In connection with World Cup Matches scheduled for the year 1996, certain correspondence took place between Doordarshan and the Board of Cricket Control, India (BCCI). While the said correspondence was in progress, each side re-affirming their respective stand, BCCI arranged certain international cricket matches to be played between the national teams of India, West Indies and New Zealand during the months of October-December, 1994. BCCI entered into an agreement with ESPN, a foreign agency, for telecasting all the cricket matches organised by BCCI in India for the next five years for a consideration of US $30 million. Doordarshan was totally excluded. ESPN in turn made an offer to Doordarshan to purchase the right to telecast the matches in India from ESPN at a particular consideration which the Doordarshan declined.

147. On September 20, 1994, we commenced the hearing of these matters. While the hearing was in progress, the BCCI filed a writ petition, being Writ Petition No.628 of 1994, for issuance of a writ, order or direction to the respondents (Government of India and its various departments and agencies) to issue and grant the necessary licences and/or permissions in accordance with law to BCCI or its appointed agencies for production, transmission and live, telecast of the ensuing international cricket matches to be played during the months of October-December, 1994 and to restrain the Doordarshan and other authorities from interfering with or obstructing in any manner the transmission, production, uplinking and telecast of the said matches. This writ petition was occasioned because the authorities were said to be not permitting ESPN to either bring in the necessary equipment or to telecast the matches from the Indian territory. The said writ petition was withdrawn later and Interlocutory Applications filed by the BCCI in the pending special leave petition and writ petition seeking to be impleaded in those matters and for grant of reliefs similar to those prayed for in Writ Petition No.628 of 1994. Since the hearing was yet to be concluded, we passed certain orders similar to those passed by this court earlier - confined, of course, to the matches to be played during the months of October-December, 1994.

CONTENTIONS URGED BY THE PARTIES AND THE QUESTIONS ARISING FOR CONSIDERATION.

148. The CAB and BCCI have taken a common stand, were represented by the same counsel and have also filed common written submissions. It is not possible to reproduce all their contentions as put forward in their written submissions because

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of the number of pages they run into. It would suffice if I set out their substance. The submissions are:

(a) CAB and BCCI are non-profit-making sporting organisations devoted to the promotion of cricket and its ideals. They organise international cricket tournaments and series from time to time which call for not only good amount of Organisation but substantial expense. Payments have to be made to the members of the teams participating. Considerable amount of money has to be expended on the training of players and providing infrastructural facilities in India. All this requires funds which have to be raised by these organisations on their own. Accordingly, CAB entered into an agreement with TWI for telecasting the Hero Cup Tournament matches to be played in the year 1993. The necessary permissions were applied for and granted by the Ministries of Home, Defence, Human Resource Development and

Telecommunications. The Ministry of Telecommunications/VSNL accepted the monies for the purpose of providing uplinking facilities, which does amount to implied grant of permission under the proviso to Section 4(1) of the Telegraph Act. In any event, the acceptance of the monies made it obligatory upon the ministries to grant the said licence. It is only on account of the interference and lobbying by Doordarshan and Ministry of Information and Broadcasting that the other ministries went back and refused to permit the telecast. The action of the Doordarshan and the Ministry of Information and Broadcasting is malafide, unreasonable and authoritarian besides being illegal.

(b) The game of cricket provides entertainment to public. It Is a form of expression and is, therefore, included within the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. This right includes the right to telecast and broadcast the matches. This right belongs to the organiser of the matches which cannot be interfered with by anyone. The organiser is free to choose such agency as it thinks appropriate for telecasting and broadcasting its matches. The Doordarshan or the Ministry of Information and Broadcasting can claim no right whatsoever to telecast or broadcast the said matches. If they wish to do so, they must negotiate with the organiser and obtain the right. They have no inherent right, much less a monopoly, in the matter of telecasting and broadcasting these matches. It is not their events. If the organisers, CAB and BCCI herein, choose to entrust the said rights to a foreign agency, such foreign agency is merely an agency of the organisers and the mere fact that it happens to be a foreign agency is no ground for depriving the organisers, who as Indian citizens, are entitled to the fundamental right guaranteed by Article 19(1)(a). The said right can be restricted or regulated only by a law made with reference to the grounds mentioned in clause (2) of Article 19 and on no other ground.

(c) Section 4 of the Indian Telegraph Act must be understood and construed in the light of Article 19(1)(a). So read and understood, it is only a regulatory provision. If a person applies for a licence for telecasting or broadcasting his speech and expression - in this case the game of cricket - the appropriate authority is bound to grant such licence unless it can seek refuge under a law made in terms of clause (2) of Article 19. The appropriate authority cannot also impose such conditions as would
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nullify or defeat the guaranteed freedom. The conditions to be imposed should be reasonable and relevant to the grant.

(d) Doordarshan or AIR has no monopoly in the matter of telecasting/broadcasting. Radio and television are only a medium through which freedom of speech and expression is expressed. Article 19(2) does not permit any monopoly as does clause (6) in the matter of Article 19(1)(g). Section 4, which contemplates grant of telegraph licences is itself destructive of the claim of monopoly by Doordarshan/AIR.

(e) Right to disseminate and receive information is a part of the right guaranteed by Article 19(1)(a). Televising the cricket match is a form of dissemination of information. The mere fact that the organisers earn some income from such activity does not make it anytheless a form of expression. It has been held repeatedly by this court in the matter of freedom of press that the mere fact that publication of newspaper has also certain business features is no ground to treat it as a business proposition and that it remains an activity relatable to Article 19(1)(a). Business activity

is not the main but only an incidental activity of CAB/BCCI,. the main activity being promotion of cricket. It follows that whenever any citizen of this country seeks to exercise this right, all necessary permissions have to be granted by the appropriate authorities. The only ground upon which it can be refused is with reference to law made in the interest of one or the other ground mentioned in Article 19(2) and none else.

(f) With the technological advance and the availability of a large number of frequencies and channels, being provided by the increasing number of satellites, the argument of limited frequencies and/or scarce resource is no longer tenable. The BCCI does not want allotment of frequency - not even the uplinking facility, since it has the facility to uplink directly from the earth station to Gorizon-Russian satellite with which ESPN has an arrangement All that the BCCI wants is a licence/permission for importing and operating the station, wherever the match is played. In such an eventuality, Doordarshan does not come into picture at all. Of course, in connection with Hero Cup matches, the CAB wanted uplinking facility for the reason that it wanted uplinking to INTELSAT, which is provided only through VSNL. If an organiser does not want uplinking to INTELSAT, he need not even approach VSNL. As a matter of fact, major networks in United States have their own satellites.

149. On the other hand, the submissions on behalf of the Doordarshan and the Ministry of Information and Broadcasting are the following:

(i) The CAB or for that matter BCCI did not even apply for a licence under the proviso to Section 4(1) nor was such licence granted by the appropriate authority at any time or on any occasion. The grant of permission by other departments including the collection of fees by VSNL does not amount to and cannot take the place of licence under the proviso to Section 4(1). In the absence of such a licence, the CAB/BCCI or their agents had no right to telecast or broadcast the matches from the Indian territory. The argument of implied permission - or the alternate argument that the authorities were bound to grant such permission - is misconceived, more par-

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ticularly, in the absence of even an application for grant of licence under Section 4 of the Telegraph Act.

(ii) The Calcutta High Court was not right in giving the directions it did. Particularly the direction given in its order dated November 12, 1993 to the Secretary, Ministry of Telecommunications, Government of India, was contrary to law. While directing the Secretary to consider the facts and circumstances of the case, the High Court expressly opined that there was already an implied grant of permission. After expressing the said opinion, the direction to consider was a mere formality and of little significance. The charge of malafides and arbitrary and authoritarian conduct levelled against Doordarshan and the Ministry of Information and Broadcasting is wholly unfounded and unsustainable in the facts and circumstances of the case. In the absence of a licence under Section 4 of the Telegraph Act, VSNL could not have granted uplinking facility and it is for that reason that the Department of Telecommunications wrote its letter dated November 3, 1993 to VSNL.

(iii) Realising the lack of coordination among the various ministries concerned in granting permission in such a matter, the Government of India has since taken a policy decision in the meeting of the Committee of Secretaries held on November 12, 1993. It has been decided that satellite

uplinking from the Indian soil should be within the exclusive competence of the Ministry of Information and Broadcasting/ Department of Space/Department of Tele-communications and that similarly the telecast of sports events shall be within the exclusive purview of the Doordarshan/Ministry of Information and Broadcasting who in turn could market their rights to other par-ties on occasion in whole or in part. It has been further decided that in respect of any such event, the organiser shall contact the specified nodal ministry which in turn will coordinate with all other concerned departments. In short, what may be called a 'single window system' has been evolved which is indeed in the interest of organisers of such events.

(iv) So far as the contention based upon Article 19(1)(a) is concerned, the contentions of CAB/BCCI are misleading and over-simplistic. The right guaranteed by Article 19(1)(a) is not limited to organisers of such sports events. The said right is guaranteed equally to the broadcaster and the viewers. Among them, the right of the viewers is the more important one. The decisions rendered by this court in the matter of freedom of press are not strictly relevant in the matter of broadcast/telecast. Telecasting a sports event is distinct from the event itself It is evident that the CAB/ BCCI are seeking to earn as much as possible by selling the telecasting rights. It is nothing but commerce and an activity solely relatable to Article 19(1)(g) and not to Article 19(1)(a). Inviting bids from all over the world and selling the telecast rights to the highest bidder has nothing to do with Article 19(1)(a). In any event, the predominant element in such activity is that of business. The interest of general public is, therefore, a relevant consideration in such matters. The public interest demands that foreign agencies should not be freely permitted to come and set up their telecasting facilities in India in an unrestricted fashion. The occasion for inviting foreign agencies may possibly arise only if Doordarshan and AIR refuse to telecast or

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broadcast the event which they have never done. The Doordarshan was and is always ready to undertake the telecasting on reasonable terms but the CAB and BCCI were more interested in deriving maximum profit from the event. Doordarshan cannot certainly compete with foreign agencies who are offering more money not merely for obtaining the right to telecast these events but with the real and ultimate object of gaining a foothold in the Indian telecasting scene. Through these events, the foreign telecasting organisations, particularly ESPN, are seeking entry into Indian market and it is for this reason that they are prepared to pay more. Their interest is something more than mere commercial.

(v)The present situation is that the Doordarshan and AIR has got all the facilities of telecasting and broadcasting the events in India. They have been doing it for over the last several decades and they have the necessary infrastructure. The Doordarshan is taking all steps for updating its equipment and for training its technicians to handle the latest equipment. It is also entering into tic,-ups with certain foreign agencies for the purpose. They have always been prepared for any reasonable terms. Both Doordarshan and AIR are agencies of the State. Until recently, 97% of the telecasts made by Doordarshan did not earn any income. They only involved expense. Its income was derived mainly from the remaining three per cent of its activities including sports events like cricket. Recently, there has

been a slight change in policy but the picture largely remains the same. There is nothing illegitimate or unreasonable in Doordarshan seeking to earn some money in the matter of telecast of such events.

(vi)The very nature of television media is such that it necessarily involves the marshaling of the resource for the greatest public good. The state monopoly is created as a device to use the resource for public good. It is not violative of the right of free speech so long as the paramount interest of the viewers is subserved and access to media is governed by the 'fairness doctrine'. Section 4 of the Telegraph Act cannot be faulted on any ground. Indeed, in none of the petitions filed by the CAB/BCCI has the validity of the monopoly of Doordarshan questioned. If the argument of the CAB/BCCI is accepted it would mean a proliferation of television stations and telecasting facilities by all and sundry, both domestic and foreign, which would not be in the interest of the country. Indeed, the other side has not placed any material to show that such free grant of licences would serve the public interest.

(vii)Section 4 of the Telegraph Act is in no way inconsistent with the monopoly of Doordarshan/AIR. Indeed, it supports it. The American decisions are not really relevant to the Indian context. The availability of more or unlimited number of frequencies or channels is no ground to permit free and unrestricted import, establishment and operation of Radio/Television stations, earth stations or other such equipment.

150. In the light of the contentions advanced, the following questions arise for consideration:

1.(a) Whether a licence or permission can be deemed to have been granted to CAB under the proviso to Section 4 of the Indian Telegraph Act, 1885 for telecasting the Hero Cup Tournament matches played

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in November, 1993?

(b) If it is found that there was no such permission, was it open to the Calcutta High Court to give the impugned directions?

(c) Whether the charge of malafides and arbitrary and authoritarian conduct attributed to Doordarshan by CAB justified?

2.(a) Whether organising a cricket match or other sports event a form of speech and expression guaranteed by Article 19(1)(a) of the Constitution?

(b) If the question in clause (a) is answered in the affirmative, the further question is whether the right to telecast such event is also included within the right of free speech and expression?

(c) Whether the organiser of such sports events can claim the right to sell the telecasting rights of such events to such agency as they think proper and whether they have the right to compel the government to issue all requisite permissions, licences and facilities to enable such agency to telecast the events from the Indian soil? Does the right in Article 19(1)(a) take in all such rights?

(d) If the organiser of sports does have the rights mentioned in (c), whether the government is not entitled to impose any conditions thereon except charging technical fees or service charges, as the case may be?

3. Whether the impact of Article 19(1)(a) upon Section 4 of the Telegraph Act is that. whenever a citizen applies for a licence under the proviso to Section 4(1) it should be granted unless the refusal can be traced to a law within the meaning of Article 19(2)?

4. Whether the virtual monopoly existing in favour of Doordarshan in the matter of telecasting from Indian soil violative of Article 19(1)(a) of the Constitution?

ANSWERS TO THE QUESTIONS

QUESTION NO. 1:

151. The facts narrated in Part-II show that neither CAB nor BCCI ever applied for a licence under the first proviso to sub-section (1) of Section 4 of the Telegraph Act. The permissions obtained from other departments, viz., from the Ministry of Human Resource, VSNL, Ministry of Home Affairs, Ministry of Finance or the Central Board of Excise and Customs cannot take the place of licence under Section 4(1). Indeed, this fact was recognised by the Division Bench of the Calcutta High Court and it is for the said reason that it directed the Secretary to the Telecom Department to decide the question whether such licence should be granted to CAB in connection with Hero Cup matches. But while directing the Secretary to consider the said question, it chose to make certain observations which had the effect of practically foreclosing the issue before the Secretary. The Division Bench observed that the Secretary should proceed on the assumption that there was an implied grant of permission. As a matter of fact, the Secretary was directed to grant the licence in so many words, thus leaving no discretion in him to examine the matter in accordance with law. It became an empty formality. I am of the opinion that while asking the Secretary to decide the issue under proviso to

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Section 4(1), his discretion and judgment could not have been restricted or forestalled in the above manner. Be that as it may, in pursuance of the said directions and the directions of this Court - the Secretary passed certain orders, the legality of which has now become academic for the reason that both the events, viz., the Hero Cup matches as well as the recent international matches (October-December, 1994) are over. The only thing that remains to be considered is whether the charge of malafides and arbitrary and authoritarian conducted attributed to the Doordarshan by CAB and BCCI is justified. Firstly neither the CAB nor its foreign agent had applied for or obtained the licence/permission under Section 4(1). The permissions granted by other departments are no substitute for the licence under the proviso to Section 4(1). 'Mere is nothing to show that seizure of imported equipment by customs authorities was at the instance of Doordarshan; it appears to be for non-compliance with the requirements subject to which permission to import was granted. Secondly, this issue, in my opinion, cannot be examined in isolation but must be judged in the light of the entire relevant context. The Doordarshan did enjoy monopoly of telecasting in India which is the product of and appears to be sustained by Section 4(1) of the Telegraph Act. There was no occasion when a foreign agency was allowed into India without the consent of or without reference to Doordarshan to telecast such events. All these years, it was Doordarshan which was telecasting these matches. On one previous occasion, a foreign agency was allowed but that was by the Doordarshan itself or at any rate with the consent of and in cooperation with the Doordarshan. It is for this reason that the Doordarshan was asserting its exclusive right to telecast the event taking place on Indian soil and was not prepared to purchase the said right from a foreign agency to whom the CAB and BCCI sold all their rights. It is also worth noticing that neither CAB nor BCCI or for that matter any

other sports organisation had ever before invited a foreign agency to telecast or broadcast their events - at any rate, not without the consent of Doordarshan. The agreement with TWI entered into by CAB and the agreement with ESPN entered into by the BCCI were unusual and new developments for all concerned. Like the bureaucracy everywhere, the Indian bureaucracy is also perhaps slow in adjusting to the emerging realities, more particularly when they see a threat to their power and authority in such developments. In the circumstances, their objection to a foreign agency coming in and telecasting such events without even obtaining a licence under the proviso to Section 4(1) of the Telegraph Act cannot be termed malafide or arbitrary. So far as the charge of authoritarianism is concerned, it is equally unsustainable for the reason that the CAB/ BCCI had no legal right nor any justification in insisting upon telecasting their events through foreign agencies without even applying for and/or obtaining a licence required by law. The correspondence between them shows that each was trying to get the better of the other; it was like a game of fencing. In my opinion, therefore, the charge of malafides or for that matter, the charge of arbitrary or authoritarian conduct levelled against the Doordarshan and/or other governmental authorities is unacceptable in the facts and circumstances of this case.

QUESTION NOS. 2.3 AND 4:

152. The contentions of Sri Kapil Sibal,

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learned counsel for the BCCI/CAB have been set out hereinbefore. What do they really mean and imply? It is this: the game of cricket provides entertainment to public at large. The entertainment is organised and provided by the petitioners. Providing entertainment is a form of expression and, therefore, covered by Article 19(1)(a) of the Constitution. Except in accordance with a law made in terms of clause (2) of Article 19, no restriction can be placed thereon. The organiser of the game has the right to telecast and broadcast the game. None can stop it - neither the Doordarshan nor AIR. The monopoly in favour of Doordarshan and AIR is inconsistent with Article 19(1)(a) as well as Section 4 of the Telegraph Act. If Section 4(1) is construed as conferring or affirming such monopoly, it is void and unconstitutional may fall foul of Article 19(1)(a). The first proviso to Section 4(1) is bad for the added reason that it or the Act does not furnish any guidance in the matter of exercise of discretion conferred upon the Central Government thereunder. The organiser of the Same is free to choose such agency as he thinks appropriate for telecasting and broadcasting the game - whether domestic or foreign - and if the organiser asks for a licence under the proviso to Section 4(1) for importing and operating the earth station or other equipment for the purpose, it must be granted. No conditions can be placed while granting such permits except collection of technical fees. This in sub-stance is the contention. It must be said at once that this may indeed be the first decision in this country, when such an argument is being addressed, though such arguments were raised in certain European courts and the European Court of Human Rights, with varying results as we shall indicate in a little while.

153. There may be no difficulty in agreeing that a game of cricket like any other sports event provides entertainment - and entertainment is a facet, a part, of free speech. [See Burstyn v. Wilson (96 L.Ed.1098)], subject to the caveat that where speech and conduct are joined in a

single course of action, the free speech values must be balanced against competing societal interests. [Los Angeles v. Preferred Communications (1986 - 476 U.S.488 = 90 L.Ed.2d.480)]. It attracts a large audience. But the question is whether the organiser of the event can say that his freedom of expression takes in the right to telecast it from the Indian soil without any restrictions or regulations. The argument really means this, I have a right to propagate my expression, viz., the game, by such means as I think appropriate, I may choose to have a television station of my own or I may invite a foreign agency to do the job. Whatever I wish, the State must provide to enable me to propagate my game. I may make money in the process but that is immaterial'. In effect, this is an assertion of an absolute and unrestricted right to establish private radio and television stations, since there is no distinction in principle between having a mobile earth station (which beams its programmes to a satellite via VSNL or directly to another satellite which in turn beams it back to earth) and a stationary television station. Similarly, there is no distinction in law between a permanent telecasting facility and a facility for a given occasion. Question is, is such a stand acceptable within the framework of our Constitution? (The question relating to interpretation of Section 4(1), 1 will deal with it separately.) I may clarify that I am concerned herein with 'live telecast' which requires the telecast equipment to be placed at or near the field where the
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event is taking place, i.e., telecasting from the Indian territory. This clarification is appended in view of the contention urged that nothing prevents the organisers - 1 or for that matter, anybody - from video recording the event and then take the video cassette out of this country and telecast it from outside stations. Undoubtedly, they can do so. Only thing is that it will not be a live telecast and it would also not be a telecast from the Indian soil.

154. Article 19(1)(a) declares that all citizens shall have the right of freedom of speech and expression. Clause (2) of Article 19, at the same time, provides that nothing in sub-clause (1) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar 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 the foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of India, security of the State, friendly relations with the foreign States, public order, decency or morality. Similarly, the said right cannot be so exercised as to amount to contempt of court, defamation or incitement of an offence. Existing laws providing such restrictions are saved and the State is free to make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining conditions in which the said right can meaningfully ad peacefully be exercised by the citizens of this country.

155. The freedom of speech and expression is a right given to every citizen of this country and not merely to a few. No one can exercise his right of speech in such a manner as

to violate another man's right of speech. One man's right to speak ends where the other man's right to speak begins. Indeed, it may be the duty of the State to ensure that this right is available to all in equal measure and that it is not hijacked by a few to the detriment of the rest. This obligation flows from the preamble to our Constitution, which seeks to secure. to all its citizens liberty of thought, expression, belief and worship. State being a product of the Constitution is as much committed to this goal as any citizen of this country. Indeed, this obligation also flows from the injunction in Article 14 that "the State shall not deny to any person equality before the law" and the direction in Article 38(2) to the effect: "the State, shall, in particular - endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people..... Under our Constitutional scheme, the State is not merely under an obligation to respect the fundamental rights guaranteed by Part-III but under an equal obligation to ensure conditions in which those rights can be meaningfully and effectively enjoyed by one and all.

156.The fundamental significance of this freedom has been stressed by this Court In a large number of decisions and it is unnecessary to burden this judgment with those decisions. Freedom of speech and expression, it has been held repeatedly, is

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basic to and indivisible from a democratic polity. It encompasses freedom of press. It includes right to impart and receive information. The question now in issue is: does it include the freedom to broadcast and telecast one's views, ideas and opinions and whether, if one wishes to do so, is the State bound to provide all necessary licences, permits and facilities therefor? This requires an examination of the history of broadcasting and telecasting in this country as well as in certain leading democracies in the world. In this judgment, the expression "broadcasting media" wherever used denotes the electronic media of radio and television now operated by AIR and Doordarshan - and not any other radio/TV services

INDIA:

157. Though several countries have enacted laws on the subject of broadcasting, India has not. The Indian Telegraph Act, enacted in 1885 (as amended from time to time) is the only enactment relevant in this behalf Clause (1) of Section 3 defines the expression "telegraph" in the following words:

> ""Telegraph" means any appliance, instrument material or apparatus used or capable of use for transmission or reception of signs signals,writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.
>
> Explanation.- "Radio waves" or "Hertzian waves" means electromagnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide.

158. Sub-section (1) of Section 4 which occurs in Part-11 entitled "Privileges and Powers of the Government" confers the exclusive privilege of establishing, maintaining and working telegraphs In India upon the Central Government. At the same time, the first proviso to sub-section empowers the

Central Government itself to grant a licence on such conditions and in consideration of such payments as it thinks fit, to establish, maintain or work a telegraph within any part of India. Section 4 may be set out for ready reference:

> "4.(1) Within India the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
> Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:
> Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-
> (a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
> (b) of telegraphs other Om wireless telegraphs within any part of India.
> (2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1).
> The exercise by the telegraph author-
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> ity of any power so delegated shall be subject to such restrictions and conditions the Central Government may, by the notification, think fit to impose."

159. The arguments before us have proceeded on the footing that the radio broadcasting and telecasting fall within the definition of "telegraph", which means that according to Section 4, the Central Government has the exclusive privilege and right of establishing, maintaining and working the radio and television stations and/or other equipment meant for the said purpose. The power to grant licence to a third party for a similar purpose is also vested in the Central Government itself the monopoly-holder. The first proviso says that the Central Government may grant such a licence and if it chooses to grant, it can impose such conditions and stipulate such payments therefor as it thinks fit. The section is absolute in terms and as rightly pointed out by the petitioners' counsel, it does not provide any guidance in the matter of grant of licence, viz., in which matters the Central Government shall grant the licence and in which matters refuse. The provision must, however, be understood in the context of and having regard to the times in which it was enacted.

160. In Life Insurance Corporation of India etc. v. Manubhai D.Shah (1992 (3) S.C.C.637), Ahmadl,J. (as the learned Chief Justice then was) held that the refusal of Doordarshan to telecast a film "Beyond Genocide" on Bhopal gas disaster (which film was certified by censors and had also received the Golden Lotus Award) on the ground of lacking moderation, restraint, fairness and balance is bad. The court noted that while the Doordarshan conceded that the film depicted the events faithfully, it failed to point out in what

respects it lacked in moderation etc. Merely because it was critical of government, it was held, Doordarshan cannot refuse to telecast it. It was pointed out pertinently that the refusal to telecast was not based upon the ground that the list of award-winning films was long and that having regard to inter se priorities among them, it was not possible to telecast the film or that the film was not consistent with the accepted norms evolved by Doordarshan. In this connection, the learned Judge, speaking for the Bench, observed:

> "The words "freedom of speech and expression" must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. 11, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. The radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, public educators, so VItal to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to de-mocracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemi-
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> nation of news and views for popular con-sumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make consid-erable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19(2), would be an

> inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) is subject to' imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a)."
>
> (Emphasis added)

161. Similarly, it was held in Odyssey Communications Pvt.Ltd. v. Lokvidayan Sanghatana & Ors. (1988 Suppl.(1) S.C.R.486):

> "It can no longer be disputed that the right of a citizen to exhibit films on the Doordarshan subject to the terms and conditions to be imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India which can be curtailed only under circumstances which are set out in clause (2) of Article 19 of the Constitution of India. The right is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement boardings etc. subject to the terms and conditions of the owners of the media. We hasten to add that what we have observed here does not mean that a citizen has a fundamental right to establish a private broadcasting station, or television centre. On this question, we reserve our opinion. It has to be decided in an appropriate case."

The- Court held that since the Union of India and Doordarshan have failed to produce any material to show that "the exhibition of the serial was prima facie prejudicial to community", the refusal cannot be sustained.

162. Be that as it may, by virtue of Section 4, radio and television have remained a monopoly of the Central Government Though in the year 1990, Parliament enacted the 'Prasar Bharati (Broadcasting Corporation of India) Act, 1990, it never came into force because the Central Government did not choose to issue a notification appointing the date (from which the Act shall come into force) as contemplated by Section 1(3) of the said Act. Be that as it may, Government monopoly over broadcasting media is nothing unusual and it is

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not solely because of the fact that India was not an independent country, or a democracy, until 1947-50. Even in well-established democracies, the position has been the same, to start with, as would be evident from a brief resume of the broadcasting history in those countries which we may now proceed to examine. It would help us understand how the freedom of speech and expression is understood in various democracies with reference to and in the context of right to broadcast and telecast - compendiously referred to here-

inafter as broadcasting.

Broadcasting Law in other Countries:

163. The history of broadcasting in United States and other European countries has been basically different, perhaps because of historical factors besides constitutional principles. In the United States, courts have regarded freedom of speech almost entirely as a liberty against the State, while the constitutional courts in Europe have looked upon it as a value which may sometimes compel the government to act to ensure the right. Constitutions of most of the countries in western Europe, e.g Germany, Italy and France are of post World War-II vintage whereas the First Amendment to the United States Constitution is more than 200 years old. These modem European Constitutions cast an obligation upon their governments to promote broadcasting freedom and not merely to refrain from interfering with it. The Constitution of Germany expressly refers to the right to broadcast as part of freedom of speech and expression. So far as the United Kingdom is concerned, the development there has to be understood in the context of its peculiar constitutional history coupled with the fact that it has no written constitution. Even so, freedom of thought and expression has been an abiding faith with that nation. It has been a refuge for non-conformists and radical thinkers all over the world - a fact, which does not beg any proof And yet broadcasting in all these countries was a State or a public monopoly to start with. Only much later have these countries started licensing private broadcasting stations. The main catalyst for this development has been Article 10 of the European Convention on Human Rights which guarantees freedom of expression to all the citizens of the member countries and refers specifically to radio and television. It says:

> "10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and import information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> (2)The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."
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> (Emphasis added)

More about this provision later.

164. In the United States, of course, radio and television have been operated by

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private undertakings from the very beginning. As pointed out by the United States Supreme Court in Columbia Broadcasting System v. Democratic National Committee [(1973) 412 U.S.94 - 36 L.Ed.2d.772], at the advent of the radio, the government had a choice either to opt for government

monopoly or government control and that it chose the latter. The role of the government has been described as one of an overseer" and that of the licensee as a "public trustee". The position obtaining in each country may now be noted briefly.

UNITED KINGDOM*:

165. The first licence to operate eight radio stations was granted to British Broadcasting Company (BBC) in 1922. In 1927, British Broadcasting Company was replaced by British Broadcasting Corporation. The Sykes Committee, appointed in 1920s, considered the overall state control of radio essential in view of its influence on public opinion but rejected operation of the medium by the State. The other committee appointed in 1920s, viz., Crawford Committee, also recommended that radio should remain a public monopoly in contra-distinction to the United States system of 'free and uncontrolled transmission'. It, however, recommended that the government company should be reorganised as a commission either under

*This part of the judgment dealing with the broadcasting law obtaining in United Kingdom and other European countries is drawn largely from the Book "Broadcasting Law A Comparative Study" (1993 Edition) by Eric Barendt, Goodman Professor of Media Law, University College, London and his article "The influence of the German and Italian Constitutional courts on their National Broadcasting systems", published in 'Public Law, Spring 1991'.

a statute or as a public company limited by guarantee. In 1927, a Royal Charter was granted with a view to ensure the independence of BBC, which charter has been renewed from time to time. It prohibits the BBC from expressing its own opinion on current political and social issues and from receiving revenue from advertisement or commercial sponsorship. The power to give directions is reserved to the government. In 1935, the Corporation was licensed by the Post-Master General to provide a public television service, which was introduced in the following year. The monopoly of BBC continued till 1954. In that year, the British Parliament enacted the Television Act, 1954 establishing the Independent Television Authority (ITA) to provide television broadcasting services additional to those of the BBC. The function of the Authority was to enter into contracts with programme companies for the broadcast of commercial programmes. In 1972, ITA was redesignated as Independent Broadcasting Authority (IBA). In 1984, IBA acquired powers in respect of direct broadcasting by satellite.

166.The Peacock Committee appointed in 1980s to examine the question whether BBC should be compelled to take advertising, rejected the idea but advocated deregulation of radio and television. The government accepted the proposal and, accordingly, the Parliament enacted the Broadcasting Act, 1990. Section 1 established the Independent Television Commission (ITC) with effect from January 1, 1991 in the place of IBA and the Cable Authority. The ITC is vested with the power to licence and regulate non-BBC

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television services including Channels 3 and 4 and the proposed Channel 5 besides cable and satellite services. Section 2 requires that the ITC discharge its functions in the manner it considers best to ensure a wide range of TV programme services and also to ensure that the programmes are of high quality and cater to a variety of tastes and

interests. In 1991, ITV decided to grant 16 new channels 3 licences to private bodies with effect from January 1, 1993. The allocation was to be made by calling for tenders - the highest bidder getting it - subject, of course, to the bidder satisfying the qualifying criteria. The eligibility criteria prescribed guards against granting licences to non-EEC nationals, political bodies, religious bodies and advertising agencies. It also guards against concentration of these licences in the hands of few individuals or bodies. Sections 6 and 7 impose strict programme controls on the licencees while Sections 8 and 9 regulate the advertisements. The programme controls include political impartiality, eschewing of excessive violence, due regard for decency and good taste among others. The programmes should not also offend religious feelings of any community. Section 10 provides for government control over licenced services. Section 11 provides for monitoring by ITC of the programmes broadcast by licenced services. It is obvious that this Act has no application to BBC, which is governed by the Royal Charter, as stated hereinabove. The Act has also set up a Radio Authority to exercise comparable powers over radio services. It is said that this Act ultimately imposed as many restraints on broadcasters freedom as there were in force earlier.

FRANCE:

167. Para II of the Declaration of the Rights of Man adopted by the National Assembly in 1789** - affirmed in the preamble to the Constitution of the Fifth Republic (1958) and treated as binding on all branches of the government - guarantees freedom of dissemination of thought and opinion. This provision - the child of the French Revolution - has greatly influenced the development of broadcasting freedom in that country. Initially, licences were granted to private radio stations to function along side the public network but with the out-break of the WorldWar 11, the licences of private broadcasters were suspended and later revoked. From 1945 to 1982, broadcasting remained a State monopoly. The government exercised tight control over the radio. An ordinance issued in 1959 legalised government control. In 1964, public monopoly was re-affirmed by law. In 1974, the State Organisation, Office de la radiodiffusion-television Francaise (ORTF) was divided into seven separate institutions catering to radio and television broadcasts in the country. This was done with a

**Para 11 reads: "XI. The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write and publish freely, provided he is responsible for the abuse of this liberty in cases determined by law. " At the same time, Para 4 sets out the limitation implicit in all freedoms comprised in the concept of political liberty. It says: ..... The exercise of the natural rights of every man has no other limits than those which are necessary to secure to every other man the free exercise of the same rights; and these limits are determinable only by the law."

view to introduce competition among the public television companies. The government exercised a significant degree of control over all these units. No private broadcasting was allowed since broadcasting services were regarded as essentially public. The State monopoly in the matter of

broadcasting was upheld by Conseil constitutionnel (Constitutional Court) in 1978. In 1982, however, a significant change took place. The State recognised the right of citizens to have a "free and pluralist broadcasting system". Even so, permission to institute a private broadcasting station was dependent on prior authorization of the government. This provision was upheld by the Conseil Constitutionnel as compatible with Para 11 of the Declaration of the Rights of Man, In 1985, the law was amended providing for private broadcasting and television stations. In 1986, the government sought to privatise one of the public television channels which immediately provoked controversy. The Conseil constitutionnel ruled (in 1986) that principle of pluralism of sources of opinion was one of constitutional significance, against which the concrete provisions of the proposed Bill must be assessed II observed that access to a variety of views was necessary for the effective guarantee of the freedom of speech protected by the Declaration of the Rights of man. At the same time, it found nothing wrong with the decision to favour private television but held that it was for the Parliament to determine the appropriate structure for broadcasting in the light of freedom of communication and other relevant constitutional values, like public order, rights of other citizens and pluralism of opinion. The law was accordingly amended. Wherever private broadcasting is allowed it is governed by a contract between the applicant and the administrative authority.

GERMANY.

168. After the occupying authorities withdrew from West Germany in 1949, the pattern that emerged was one of nine regional public broadcasting organisations. They formed into an association, the Arbeitsgemeinschaft der offentlich-techtlichen Rundfunkanstalten der Bundersrepublik Deutschland (ARD), in 1950 and under its auspices the first public television channel was formed. Article 5 of the Basic Law of 1949 states, "(E)very one shall have the right freely to express and disseminate his opinion by speech, writing, and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship." In a decision rendered in 1961, the Federal Constitutional Court held inter alia that in view of the shortage of frequencies and the heavy cost involved in establishing a TV station, public broadcasting monopoly is justifiable, though not constitutionally mandatory. It held further that broadcasting, whether public or private, should not be dominated by State or by commercial forces and should be open for the transmission of a wide variety of opinion. [(12 BVerfGE 205-196)]. There was a long battle before private commercial broadcasting was introduced. Many of the States in West Germany were opposed to private commercial broadcasting. The Constitutional Court ruled in 1981 The Third Television Case - 57 BVer EfG 295) that private broadcasting was not inconsistent with Article 5 of the Basic Law but it observed that unlike the press, private

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broadcasting should not be left to market forces in the interest of ensuring that a wide variety of voices enjoy access to it. It recognised that the regulation of private broadcasting can be different in content from the regulation applying to public broadcasting. In course of time, private television companies came into existence but in the beginning they were confined to cable. In the Fourth

Television Case decided in 1986 (73 BVerfGE 118), the court held in the present circumstances, the principal public service functions of broadcastings are the responsibility of the public institutions whereas private broadcasters may be subjected to less onerous programme restrictions. Only after the decision of the Constitutional Court in 1987 were the private companies allocated terrestrial frequencies. It appears that notwithstanding the establishment of private companies , it is the public broadcasting companies which dominate the scene and attract more advertisement revenue. The German constitutional court has exercised enormous influence in shaping the contours of broadcasting law. It has interpreted the broadcasting freedom in a manner wholly different from the United States Supreme Court casting an obligation upon the State to act to ensure the right to all citizens.

ITALY:

169. In Italy too, the broadcasting was under State control, to start with. In 1944, Radio audizioni Italia (RAI) was created having a monopoly in broadcasting. It still holds the concession for public radio and broadcasting. Article 21(1) of the Italian Constitution, 1947 provides that "(E)veryone has the right to express himself freely verbally, in writing, and by any other means". This provision was relied upon by potential private broadcasters in support of their claim for setting up private commercial stations. In a decision rendered in 1960 (Decision 59/60 (1960) Giurisprudenza Constituzionale 759) the Constitutional Court of Italy upheld RAI's monopoly with reference to Article 43 of the Constitution which enables legislation to reserve (or expropriate subject to compensation) for the state, businesses which are concerned with vital public service or are natural monopolies and which are of pre-eminent public interest. It denied the right of applicants to establish private radio or television stations. it-opined that private broadcasting would inevitably be dominated by a few corporations and, therefore, not in public interest, an aspect which was reaffirmed in a decision in 1974. (Decision 225/74 (1974) Giurisprudenza Constituzionale 1775). It held that broadcasting provides an essential service in a democratic society and could legitimately be reserved for a public institution, provided certain conditions were met. In particular, it said that radio and television should be put under parliamentary, and not executive control to ensure their independence and that rules should be drawn up to guarantee the access of significant political and social groups. Accordingly, the Parliament enacted the Legge in April, 1975 which provided for a greater control by a Parliamentary Commission over the programmes and their content. In 1976, the Constitutional Court ruled (Decision 202/76 (1976) Giurisprudenza Constituzionale 1276) that while at the national level, the monopoly of RAI is valid, at the local level, it is not, since at the local level there is no danger of private monopolies or oligopolies emerging a hope belied by subsequent developments.

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This ambiguous decision resulted in establishment of a large number of private radio stations in Italy notwithstanding the re-affirmation of RAI's national monopoly in 1981 by the court. One of the major rather the largest - private television and radio networks which thus came into existence is the $7 billion Fininvest Company, controlled by Silvio Berlusconi (the Ex-Prime Minister of Italy, who resigned in December, 1994). It owns three major TV networks in Italy.

This development prompted the Constitutional Court, in 1988, to call for a prompt and comprehensive regulation of private broadcasting containing adequate anti-trust and other anti-monopolistic provisions to safeguard pluralism. Accordingly, a law was made in 1990 which devised a system for licensing private radio and television stations.

AUSTRIA:

170. Broadcasting has been a State monopoly in Austria throughout. This monopoly was challenged -as inconsistent with Article IO of the European Convention before the Austrian Constitutional Court which repelled the attack with reference to clause (2) of Article 10. It held that inasmuch as a law made by the State, viz., Constitutional Broadcasting Law had introduced a licencing system within the meaning of the last sentence in Article 10(1) of the Convention and since the said system was intended to secure objectivity and diversity of opinions, no further need be done. It held that the Austrian Broadcasting Corporation with the status of an autonomous public law corporation is a sufficient compliance not only with the national laws but also with Article 10 of the Convention and that granting licence to every applicant would defear the objectives of pluralism, diversity of views and range of opinions underlying the said Austrian law. Several individuals and organisations, who were refused television/radio licences, lodged complaints with the European Human Rights Commission, which referred the matter for the opinion of the European Human Rights Court [EHRC] (at Strasbourg). The court held that the refusal to consider the applications for licence amounted to a violation of Article 10 (Informationsverein Lentia & Ors. v. Austria - 15 Human Rights law Journal 31 - judgment dated 24th November, 1993). The reasoning of the Court is to be found in paragraphs 38 and 39 which read thus:

> "38. The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive (see, for example, mutatis mutandis, the Observer and Guardian v. the United Kingdom judgment of 26 November 1991, Series A no.216, pp. 29-30, $59 - 13 HRLJ 16 (1992)). Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely.
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> 39. 0 'all the means of ensuring that these values are respected, a public monopoly is the one which imposes the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a national station and, in some cases, to a very limited extent through a local cable station. The far reaching character of such
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> restrictions means that they can only be justified where they correspond to a pressing need.
> As a result of the technical progress made over the last decades, justification of these

> restrictions can no longer today be found in considerations relating to the number of frequencies and channels available; the Government accepted this. Secondly, for the purposes of the present case they have lost much of their raison d'etre in view of the multiplication of foreign programmes aimed at Austrian audiences and the decision of the Administrative Court to recognise the lawfulness of their retransmission by cable (see paragraph 21 above). Finally and above all, it cannot be argued that there are no equivalent less restrictive solutions; it is sufficient by way of example to cite the practice of certain countries which either issue licences subject to specified conditions of variable content or make provision for forms of private participation in the activities of the national corporation."

The Court then dealt with the argument that "Austrian market was too small to sustain a sufficient number of stations to avoid regroupings and the constitution of the private monopolies" and rejected it in the following words:

> "42. The court is not persuaded by the Government's argument. Their assertions are contradicted by the experience of several European States, of a comparable size of Austria, in which the coexistence of private and public stations, according to rules which vary from country to country and accompanied by measures preventing the development of private monopolies, shows the fears expressed to be groundless."
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> 171. The Court finally concluded;
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> "43. In short, like the Commission, the Court considers that the interferences in issue were disproportionate to the aim pursued and were, accordingly, not necessary in a democratic society. There has therefore been a violation of Article IO."

172. In our opinion, the reasoning of EHRC is unacceptable for various reasons which we shall set out at the proper stage.

OTHER WESTERN EUROPEAN COUNTRIES.

173. In Denmark, private broadcasting was permitted by Legislation enacted in 1985. In Portugal, private broadcasting was allowed only in 1989, by amending the Constitution. In Switzerland too, private broadcasting has been allowed only recently. Private broadcasting is, however, subject to strict programme control.

UNITED STATES OF AMERICA:

174. In the United States, there was no law regulating the establishment and working of broadcasting companies till 1927. In that year, Radio Act, 1927 was enacted by Congress creating the Federal Radio Commission with authority to grant three year licences to operate radio stations on an assigned frequency. In the year 1934, the Congress enacted the Federal Communications Act. This Act placed the telephone and wireless communications under one authority, viz., Federal Communications Commission (FCC). The Commission had the authority to assign frequency for particular areas, to prescribe the nature of the service to be provided for different types of stations and to decide licence applications. The only guideline issued to the Commission was that it should exercise its powers keeping in view the "pub-

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lic interest, convenience and necessity".. It is under these guidelines that the FCC evolved the Fairness Doctrine in 1949. Notwithstanding the First Amendment, the United States Supreme Court held that the freedom of speech did not entail a right to broadcast without a licence. It held: "unlike other modes of expression, radio inherently is not available to all" vide N.B.C. v. U.S. [319 US 190 (1943)]. The Fairness Doctrine was approved by the Supreme Court in Red Lion Broadcasting Company v. F.C.C. [395 US 367 (1969)]. The Court observed: "Although broadcasting is clearly a medium affected by a First Amendment interest, differences in the characteristics of news media justify differences in the First Amendment standards applied to them Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle lo posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish ... those who are licenced stand no better than those to whom licences are refused A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens .... The people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters which is paramount. It is the right of the public to receive suitable access to social, political, esthetic moral and other ideas and experiences which is crucial here In 1967'70, public broadcasting was established on a national basis through the institution of the Corporation for Public Broadcasting (CPB), viz., the Public Broadcasting Service (PBS) for television and National radio service. The CPB is funded by appropriations made by the Congress. In 1978, the Supreme Court affirmed in FCC. v. National Citizens Committee for Broadcasting (436 U.S.775) that:

> "in making [its] licensing decisions between competing applicants, the Commission has long given "primary significance" to "diversification of control of the media of mass communications." This policy is consistent with the statutory scheme and with the First Amendment goal of achieving "the widest possible dissemination of information from diverse and antagonistic sources."*** Petitioners argue that the regulations are invalid because they seriously restrict the opportunities for expression of both broadcasters and newspapers. But as we stated in Red Lion, "to deny a station licence because 'the public interest' requires it 'is not a denial of free speech'." The regulations are a reasonable means of promoting the public interest in diversified mass communications; thus they do not violate the First Amendment rights of those who will be denied broadcast licenses pursuant to them.

175. It is significant to notice the statement that "to deny a station licence because 'the public interest' requires it 'is not a denial of free speech"' - a holding to which we shall have occasion to advert to later. Yet another relevant observation of Burger,C.J. is to the following effect:

> *** As far back as 1948, the Court held in US v. Paramount Pictures (92 L. Ed. 126 1) that no monopoly can be countenanced in the matter of First Amendment rights.
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> "The Commission (F.C.C.) was justified in concluding that the public interest in providing access lo market place of "ideas and expressions " would scarcely be served by a system so heavily weighted in favour of the financially affluent or those with access to wealth.....
> (Emphasis added)

176. In 1970s, however, it was argued that programming restraints were contrary to the First Amendment besides being unproductive. and that broadcasting licencees should enjoy the same rights as newspaper editors and owners. In course of time. the government moved towards deregulation of broadcasting and ultimately in 1987 the Fairness doctrine was repealed by FCC. An attempt by Congress to restore the said rule by an enactment was vetoed by the President.

177. Having examined the systems obtaining in the United States and major west European countries, Eric Barendt says:

> "These developments illustrate the widely divergent approaches to broadcasting regulation in the United States and (for the most part) in Europe. This is partly an aspect of the more sceptical attitude to government and to administrative regulation which has prevailed in the USA, at any rate. in the last twenty years. The First Amendment has been interpreted as conferring on broadcasters rights, which have not been derived from the comparable provisions in continental countries. Another explanation is that in the USA private commercial broadcasting enjoyed for a long time a de facto monopoly, while in Britain, France, Germany and Italy there was a public monopoly. It is interesting that there has been a continuity to US broadcasting law, which (perhaps sadly) is not found in these European jurisdictions. The Federal Communications Act has remained in force since its passage in 1934, though it has been amended on a handful of occasions."
> (Eric Barendt: Broadcasting Law - Page31)

178. We may now proceed to examine what does "Broadcasting freedom" mean and signify?

BROADCASTING FREEDOM Meaning and content of.

179. There is little doubt that broadcasting freedom is implicit in the freedom of speech and expression. The European Court of Human Rights also has taken the view that broadcasting like press is covered by Article 10 of the Convention guaranteeing the right to freedom of expression. But the question is what does broadcasting freedom mean? Broadly speaking, broadcasting freedom can be said to have four facets, (a) freedom of the broadcaster, (b) freedom of the listeners/viewers to a variety of view and plurality of opinion, (c) right of the citizens and groups of citizens to have access to the broadcasting media, and (d) the right to establish private radio/TV stations. We shall examine them under separate heads.

(a) FREEDOM OF THE BROADCASTER:

180. The first facet of the broadcasting freedom is freedom

from State or Governmental control, in particular from the censorship by the Government. As the Peacock Committee put it, pre-publication censorship has no place in a free society. Pre-publication censorship is prohibited in Germany by Article 5 of the Basic Law. This principle applies in equal measure both to public and private broadcasting. It is, however, necessary to clarify here that public
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broadcasting is not to be equated with State broadcasting. Both are distinct. Broadcasting freedom in the case of public broadcasting means the composition of these bodies in a manner so as to genuinely guarantee their independence. In Germany, the Constitutional Court has ruled that freedom from State control requires the legislature to frame some basic rules to ensure that Government is unable to exercise any influence over the selection, content or scheduling of programmes. Laws providing to the contrary were held bad. Indeed, the court also enunciated certain guidelines for the composition and selection of the independent broadcasting authorities on the ground that such a course is necessary to ensure freedom from Government control. It should be noted that an unfettered freedom for licensees to select which programmes appear on their schedule to the complete disregard of the interests of public appears more like a property right than an attribute of freedom of speech. It is for this reason that the German constitutional court opined in 1981 (57 BVerfGE 295) and in 1987 (73 BVerfGE II 8) that television and radio is an instrument of freedom serving the more fundamental freedom of speech in the interest of both broadcasters and the public. The court opined that broadcasting freedom is to be protected insofar as it's exercise promotes the goals of free speech, i.e., an informed democracy and lively discussion of a variety of views. The freedom of broadcaster cannot be understood as merely an immunity from government intervention but must be understood as a freedom to safeguard free speech right of -all the people without being dominated either by the State or any commercial group. This is also the view taken by the Italian and French courts.

(b) LISTENERS/VIEWERS RIGHT.

181. Broadcasting freedom involves and includes the right of the viewers and listeners who retain their interest in free speech. It is on this basis that the European courts have taken the view that restraints on freedom of broadcasters are justifiable on the very ground of free speech. It has been held that freedom of expression includes the right to receive information and ideas as well as freedom to impart them. "The free speech interests of viewers and listeners in exposure to a wide variety of material can best be safeguarded by the imposition of programme standards, limiting the freedom of radio and television companies. What is important according to this perspective is that the broadcasting institutions are free to discharge their responsibilities of providing the public with a balanced range of programmes and a variety of views. These free speech goals require positive legislative provision to prevent the domination of the broadcasting authorities by the government or by private corporations and advertisers, and perhaps for securing impartiality.....

182. The Fairness Doctrine evolved by FCC and approved by the United States Supreme Court in Red Lion protected the interest of persons by providing a right of reply to personal attacks. But difficulties have arisen in the matter of enforcing the listeners'/viewers' rights through courts.

(c) ACCESS TO BROADCASTING:

183. The third facet of broadcasting freedom is the freedom of individuals and groups of individuals to have access to broadcasting media to express their views.

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The first argument in support of this theory is that public is entitled to hear range of opinions held by different groups so that it can make sensible choices on political and social issues. In particular, these views should be exposed on television, the most important contemporary medium. It is indeed the interest of audience that justified the imposition of impartiality rules and positive programme standards upon the broadcasters. The theoretical foundation for the claim for access to broadcasting is that freedom of speech means the freedom to communicate effectively to a mass audience which means through mass media. This is also the view taken by our court as pointed out supra.

184. An important decision on this as'pect is that of the United States Supreme Court in Columbia Broadcasting System v. Democratic National Committee [412 US 94 (1973)]. The CBS denied to Democrats and a group campaigning for peace in Vietnam any advertising time to comment upon contemporary political issues. Its refusal was upheld by the FCC, but the District of Columbia Circuit Court of Appeals ruled that an absolute ban on short pre-paid editorial advertisements infringed the First Amendment and constituted impermissible discrimination. The Supreme Court, however, allowed the plea of CBS holding that recognition of a right of access of citizens and groups would be inconsistent with the broadcasters' freedom. They observed that if such right were to be recognised, wealthy individuals and pressure groups would have greater opportunities to purchase advertising time. It rejected the "view that every potential speaker is 'the best judge of what the listening public ought to hear ". (Burger,C.J.) Some Judges expressed the opinion that the broadcaster enjoyed the same First Amendment rights as the newspapers whereas the minority represented by Brennan and Marshall,JJ. was of the view that freedom of groups and individuals to effective expression justified recognition of some access rights to radio and television.

185. It appears that this aspect has been debated more intensively in Italy. The Italian constitutional court held that the monopoly of RAI can be justified only on certain conditions, one of them being that access must be allowed so far as possible to the political, religious and social groups, representing various strands of opinion in society. It opined that statutory provision for access was required by Article 21 of the Constitution guaranteeing freedom of expression. The Italian courts viewed access as a goal or a policy rather than a matter- of fundamental right while at the same time protecting the individual's right of reply. On this aspect, Barendt says: There are also practical objections to access rights. It may be very difficult to decide, for example, which group are to be given access, and when and how often such programmes are shown. There is a danger some groups will be unduly privileged.....

(d)THE RIGHTS TO ESTABLISH PRIVATE BROADCASTING STATIONS:

186. The French Broadcasting Laws of 1982 and 1989 limit the right of citizens to establish private broadcasting stations in the light of the necessity to respect individual rights, to safeguard pluralism of opinion and to protect public interests such as national security and public order. No private radio or television channel or sta-

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tion can be established without prior authorisation from the regulatory body, Conseil superieur de l'audiovisuel. In Britain, the ITC and the Radio Authority must grant the necessary licence for establishing a private television or radio station. In none of the European countries is there an unregulated right to establish private radio/television station. It is governed by law. Even in United States, it requires a licence from FCC.

187. Let us examine the position obtaining in Italy and Germany where constitutional provisions corresponding to Article 19(1)(a) - indeed more explicit in the case of Germany - obtain. Notwithstanding Article 21, referred to hereinbefore, the Italian Constitutional Court continues to hold that public monopoly of broadcasting is justified, atleast at national level till adequate anti-trust laws are enacted to prevent the development of private media oligopolies. In fact, this principle has been applied in the case of local broadcasting and private broadcasting allowed at local level. The Italian Constitutional Court is of the view that Article 21 of the Italian Constitution does no doubt confer right to speak freely but this right is to be exercised by "using means already at one's disposal, not a right to use public property, such as the airwaves ". The analogy with the right to establish private schools was held to be a weak one and rejected by the Constitutional Court. More particularly, it is of the view that it is impossible to justify recognition of a right which only a handful of individuals and media companies can enjoy in practice.

188. In Germany too, the Constitutional Court has not recognised a right in the citizens to establish private television/radio stations at their choice. The question was left open in what is called the Third Television case. This question has, however, lost its significance in view of the laws made in 1980s permitting private broadcasting. What is relevant is that even after the enactment of the said laws, the Constitutional Court held in Sixth Television case (decided in 1991) that establishment of private broadcasting stations is not a matter of right but a matter for the State (legislature) to decide. If the State, legislation does permit such private broadcasting, it has been held at the same time, it cannot impose onerous programme and advertising restrictions upon them so as to imperil their existence.

189. So far as the United States is concerned,where licencing of private broadcasting stations has been in vogue since the very beginning, the Supreme Court said in C.B.S. v. Democratic Committee [36 L.Ed.2d.772 (1973)] that "(B)ecause the broadcast media utilize a valuable and limited public resource, there is also present an unusual order of First Amendment values". It then affirmed the holding in Red Lion that "no one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because 'the public interest' requires it 'is not a denial of free speech ... ****. The

> **** It is true that reference to "the public interest" in the above extract must be understood in the light of the guidance provided to F.C.C., which inter alia directs the F.C.C. to perform its functions consistent with public interest, the fact yet remains that even the guidance so provided was understood to be within the ambit of First Amendment and consistent with the free speech right guaranteed by it. It was held in National Broadcasting Company v. United States (1943 319

U.S. 190) that the guidance provided to F.C.C. to exercise its powers "as public convenience, interest or necessity requires" did not violate the First Amendment.

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court also affirmed that "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish." It is relevant to mention here that the distinction made between the Press and the broadcasting media vis-a-vis the First Amendment has been justified by an American jurist Bollinger as based on First Amendment values and not on notions of expediency. He says that in "permitting different treatment of the two institutions..... (the) Court has imposed a compromise - a compromise, however, not based on notions of expediency, but rather on a reasoned and principled accommodation of competing First Amendment values". [75 Michigan law Review 1, 26-36 (1976) quoted in "Constitutional Law" by Stone, Seidman and others (Second Edition) at 1427-28].

190. It is true that with the advances in technology, the argument of few or limited number of frequencies has become weak. Now, it is claimed that an unlimited number of frequencies are available. We shall assume that it is so. Yet the fact remains that airwaves are public property that they are to be utilised to the greatest public good; that they cannot be allowed to be monopolised or hijacked by a few privileged persons or groups; that granting license to everyone who asks for it would reduce the right to nothing and that such a licensing system would end up in creation of oligopolies as the experience in Italy has shown - where the limited experiment of permitting private broadcasting at the local level though not at the national level, has resulted in creation of giant media empires and media magnates, a development not conducive to free speech right of the citizens. It would be instructive to note the lament of the United States Supreme Court regarding the deleterious effect the emergence of media empires had on the freedom of Press in that country. In Miami Herald Publishing Company v. Tornillo (1974 - 418 U.S. 24 1), the Court said:

"Access advocates submit that .... the press of today is in reality very different from that known in the early years of our national existence.....

The elimination of competing newspapers in most of our large cities, and the concentration of control of media that results from the only newspaper's being owned by the same interests which own a television station and a radio station, are important components of this trend towards concentration of control of outlets to inform the public.

The result of these vast changes has been to place in a few hands the power to inform the American people and shape public opinion. Much of the editorial opinion and commentary that is printed is that of syndicated columnists distributed nationwide and, as a result, we are told, on national and world issues there tends to be a homogeneity of editorial opinion, commentary, and interpretive analysis. The abuses of bias and manipulative reportage are, likewise, said to be the result of the vast accumulations of unreviewable power in the modem media empires.

> In effect, it is claimed, the public has lost any ability to respond or to contribute in a meaningful way to the debate on issues....
> The obvious solution, which was available to dissidents at an earlier time when entry into publishing was relatively inexpensive, today would be to have additional newspapers. But the same economic factors which have caused the disappearance of vast numbers of metropoli-
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> tan newspapers, have made entry into the market place of ideas served by the print media almost impossible. It is urged that the claim of newspapers to be "surrogates for the public" carries with it a concomitant fiduciary obligation to account for that stewardship. From this premise it is reasoned that the only effective way to insure fairness and accuracy and to provide for some accountability is for government to take affirmative action. The First Amendment interest of the public in being informed is said to be in peril because the "marketplace of ideas " is today a monopoly controlled by the owners of the market.....
> (Emphasis added)

Of course, there is another side to this picture: the media gaints in United States are so powerful that Government cannot always manipulate them - as was proved in the Pentagon Papers' case [New York Times v.United States - (1971) 403 U.S.713)] and in the case of President's Claim of Privilege [United States v. Nixon - (1974) 418 U.S.683)]. These considerations - all of them emphasised by Constitutional Courts of United States and major west-European countries - furnish valid grounds against reading into Article 19(1)(a) a right to establish private broadcasting stations, whether permanent or temporary, stationary or mobile. Same holding holds good for earth stations and other telecasting equipment which the petitioners want to bring in through their chosen agencies. As explained hereinbefore, there is no distinction in principle between a regular TV station and an earth station or other telecasting facility. More about this aspect later.

191. Having noticed the judicial wisdom of the Constitutional Courts in leading democracies, we may turn to the issues arising herein.

> The Nature of grounds specified in Article 19(2) of the Constitution

192. A look at the grounds in clause (2) of Article 19, in the interests of which a 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 society. The first set of 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 of grounds, viz., decency, morality, contempt of court, defamation and incitement to offence are conceived in the interest of society. The inter-connection and the inter-dependence of freedom of speech and the stability of 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 in an orderly, legal and peaceful manner is by itself an assurance of stability and an insurance against violent upheavals which are the hall-mark of societies ruled by dictatorships, which do not permit this freedom. The stability of, say, the British nation and the periodic convulsions witnessed in the dictatorships around the world is ample proof of this truism. The converse is equally true. The more stable the society is, the more scope, it provides for exercise of right of free speech and expression. A society which feels secure can and does permit a greater latitude than a society whose stability is in
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constant peril. As observed by Lord Sumner in Bowman v. Secular Society Ltd. (1917 A.C.406):

"The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day meetings or processions are held lawful which a hundred and fifty' years ago would have been deemed seditious, and this is not because the law is weaker or has changed, but because, the times having changed, society is stronger than before..... \. After all, the question whether a given opinion is a danger to society is a question of the times and is a question of fact. I desire to say nothing that would limit the right of society to protect itself by process of law from the dangers of the movement, whatever that right may be, but only to say that, experience having proved dangers once thought real to be now negligible, and dangers once very possibly imminent to have now passed away, there is nothing in the general rules as to blasphemy and irreligion .... which prevents us from varying their application to the particular circumstances of our time in accordance with that experience.

193. It is for this reason that our founding fathers while guaranteeing the freedom of speech and expression provided simultaneously that the said right cannot be so exercised as to endanger the interest of the nation or the interest of the society, the case may be. This is not merely in the interest of nation and society but equally in the interest of the freedom of speech and expression itself, the reason being the mutual relevance and inter-dependence aforesaid.

194. Reference may also be made in this connection to the decision of the United States Supreme Court in F.C.C. v. National Citizens Committee for Broadcasting [(1978) 436 U.S.775], referred to hereinbefore, where it has been held that "to deny a station licence because the public interest requires it is riot a denial of free speech". It is significant that this was so said with reference to First Amendment to the United States Constitution which guarantees the freedom of speech and expression in absolute terms. The mason is obvious. The right cannot rise above the national interest and the interest of society which is but another name for the interest of general public. It is true that Article 19(2) does not use the words "national interest", "interest of society" or "public interest" but as pointed hereinabove, the several grounds mentioned in clause (2) are ultimately referable to the interests of the nation and of the society. As observed by White,j., speaking for the United States Supreme Court, in Red Lion:

> "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas

> in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. Associated Press v United States, 326 US 1, 20, 89 L Ed 2013, 2030, 65 S Ct 1416 (1945); New York Times Co. v Sullivan, 376 US 254, 270, 11 L Ed 2d 686, 700, 84 S Ct 710, 95 ALR2d 1412 (1964); Abrams v United States, 250 US 616, 630, 63 L Ed 1173, 1180, 40 S Ct 17 (1919) (Holmes,J., dissenting). "[S]peech concerning public affairs is more Om self-expression; it is the essence of self-government." Garrison v Louisiana, 379 US 64, 74-75, 13 L Ed 2d 125, 133, 85 S Ct 209 (1964). See Brennan, The Supreme Court and the
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> Meiklejohn interpretation of the First Amendment, 79 Hary L Rev 1 (1965). It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."
> (Emphasis added)

195. We may have to bear this in mind while delineating the parameters of this freedom. It would also be appropriate to keep in mind the observations in Columbia Broadcasting System v. Democratic National Committee (36 L.Ed.2d.772), Burger,C.J. quoted the words of Prof, Chafee to the following effect:

> "Once we -get away from the bare words of the First Amendment, we must construe it as part of a Constitution which creates a government for the purpose of performing several very important tasks. The First Amendment should be interpreted so as not to cripple the regular work of the government.

196. We must also bear in mind that the obligation of the State to ensure this right to all the citizens of the country (emphasised hereinbefore) creates an obligation upon it to ensure that the broadcasting media is not monopolised, dominated or hijacked by privileged, rich and powerful interests. Such monopolisation or domination cannot but be prejudicial to the freedom of speech and expression of the citizens in general - an aspect repeatedly stressed by the Supreme Court of United States and the Constitutional Courts of Germany and Italy.

197. The importance and significance of television in the modern world needs no emphasis. Most people obtain the bulk of their information on matters of contemporary interest from the broadcasting medium.

The television is unique in the way in which it intrudes into our homes. The combination of picture and voice makes it an irresistibly attractive medium of presentation. Call it idiot box or by any other pejorative name, it has a tremendous appeal and influence over millions of people. Many of them are glued to it for hours on end each day. Television is shaping the food habits, cultural values, social mores and what not of the society in a manner no other medium has done so far. Younger generation is particularly addicted to it. It is a powerful instrument, which can be used for greater good as also for doing immense harm to the society. It depends upon how it is used. With the advance of technology, the number of channels available has grown enormously. National borders have become

meaningless. The reach of some of the major networks is international they are not confined to one country or one region. It is no longer possible for any government to control or manipulate the news, views and information available to its people. In a manner of speaking, the technological revolution is forcing inter-nationalism upon the world. No nation can remain a fortress or an island in itself any longer. Without a doubt, this technological revolution is presenting new issues, complex in nature - in the words of Burger,C.J., "complex problems with many hard questions and few easy answers". Broadcasting media by its very nature is different from Press. Airwaves are public property. The fact that a large number of frequencies/channels are available does not make them anytheless public property. It is the obligation of the State under our constitutional system to ensure that they are used for public good.

198. Now, what does this public good mean and signify in the context of the

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broadcasting medium? In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware - aware of social, political, economic and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. Right to receive and impart information is implicit in free speech. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and State. All the constitutional courts of leading democracies, reference to which has been made hereinbefore, have recognised and reiterated this aspect. This is also the view of the European Court of Human Rights. In Castells v. Spain (14 EHRR 445) - quoted in 1994 Public Law at 524 - the court held that free political debate is "at the very core of the concept of a democratic society".

199. From the standpoint of Article 19(1)(a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster - whether the broadcaster is the State, public corporation or a private individual or body. A monopoly over broadcasting, whether by government or by anybody else, Is inconsistent with the free speech right of the citizens. State control really means governmental control, which in turn means, control of the political party or parties in power for the time being. Such control is bound to colour the views, information and opinions conveyed by the media. The free speech right of the citizens is better served in keeping the broadcasting media under the control of public. Control by public means control by an independent public corporation or corporations, as the case may be, formed under a statute. As held by the Constitutional Court of Italy, broadcasting provides an essential service in a democratic society and could legitimately be reserved for a public institution, provided certain conditions are met. The corporation(s) must be constituted and composed in such a manner as to ensure its independence from government and its impartiality on public issues. When presenting or discussing a public issue, it must be ensured that all aspects of it are presented in a balanced manner, without appearing to espouse any one point of view. This will also enhance the credibility of the media to a very large extent; a

controlled media cannot command that level of credibility. For the purpose of ensuring the free speech rights of the citizens guaranteed by Article 19(1)(a), it is not necessary to have private broadcasting stations, as held by the Constitutional Courts of France and Italy. Allowing private broadcasting would be to open the door for powerful economic, commercial and political interests, which may not prove beneficial to free speech right of the citizens - and certainly so, if strict programme controls and other controls are not prescribed. The analogy with press is wholly inapt. Above all, airwaves constitute public property. While, the freedom guaranteed by Article 19(1)(a) does include the right to receive and impart information, no one can claim the fundamental right to do so by using or employing public property. Only where the statute permits him to use the public property, then only - and subject to such conditions and restrictions as the law may impose - he can use the public property, viz., airwaves. In other words, Article 19(1)(a) does not

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enable a citizen to impart his information, views and opinions by using the airwaves. He can do so without using the airwaves. It need not be emphasised that while broadcasting cannot be effected without using airwaves, receiving the broadcast does not involve any such use. Airwaves, being public property must be utilised to advance public good. Public good lies in ensuring plurality of opinions, views and ideas and that would scarcely be served by private broadcasters, who would be and who are bound to be actuated by profit motive. There is a far greater likelihood of these private broadcasters indulging in mis-information, disinformation and manipulation of news and views than the government-controlled media, which is at least subject to public and parliamentary scrutiny. The experience in Italy, where the Constitutional Court allowed private broadcasting at the local level while denying it at the national level should serve as a lesson; this limited opening has given rise to giant media oligopolies as mentioned supra. Even with the best of programme controls it may prove counter-productive at the present juncture of our development; the implementation machinery in our country leaves much to be desired which is shown by the ineffectiveness of the several enactments made with the best of the intentions and with most laudable provisions; this is a reality which cannot be ignored. It is true that even if private broadcasting is not allowed from Indian soil, such stations may spring up on the periphery of or outside our territory, catering exclusively to the Indian public. Indeed, some like stations have already come into existence. The space, it is said, is saturated with communication satellites and that they are providing and are able to pro vide any number of channels and frequencies. More technological developments must be in the offing. But that cannot be a ground for enlarging the scope of Article 19(1 (a). It may be a factor in favour of allowing private broadcasting - or it may not be. It may also be that the Parliament decides to increase the number of channels under the Doordarshan, diversifying them into various fields, commercial, educational, sports and so on. Or the Parliament may decide to permit private broadcasting, but if it does so permit, it should not only keep in mind the experience of the countries where such a course has been permitted but also the conditions in this country and the compulsions of technological developments and the realities of situation resulting from technological developments. We

have no doubt in our mind that it will so bear in mind the above factors and all other relevant circumstances. We make it clear, we are not concerned with matters of policy but with the content of Article 19(1)(a) and we say that while public broadcasting is implicit in it, private broadcasting is not. Matters of policy are for the Parliament to consider and not for courts. On account of historical factors, radio and television have remained in the hands of the State exclusively. Both the networks have been built up over the years 'With public funds. They represent the wealth and property of the nation. It may even be said that they represent the material resources of the community within the meaning of Article 39(b). They may also be said to be 'facilities' within the meaning of Article 38, They must be employed consistent with the above articles and consistent with the constitutional policy as adumbrated in the preamble to the Constitution and Parts III and IV. We must reiterate that the Press whose freedom is implicit in Article 19(1)(a) stands

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on a different footing. The petitioners - or the potential applicants for private broadcasting licenses - cannot invoke the analogy of the press. To repeat, airwaves are public property and better remain in public hands in the interest of the very freedom of speech and expression of the citizens of this country.

200. It would be appropriate at this stage to deal with the reasoning of the European Court of Human Rights in the case of Informationsverein Lentia. The first thing to be noticed in this behalf is the language of Article 10(1) of the European convention, set out hereinbefore. Clause (1) of Article 10 not only says that everyone has the right to freedom of expression but also says that the said right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The clause then adds that Article 10 shall not, however, prevent the State from requiring the licensing of broadcasting, television or cinema enterprises. Clause (2) of course is almost in para materia with clause (2) of Article 19 of our Constitution. What is, however, significant is that Article 10(1) expressly conferred the right "to receive and impart information and ideas without interference by public authority". The only power given to public authority, which in the context means the State/Government, is to provide the requirement of license and nothing more. It is this feature of clause (1) which has evidently influenced the decision of the European court. The decision cannot, therefore, be read as laying down that the right of free expression by itself implies and includes the right to establish private broadcasting stations. It is necessary to emphasise another aspect. While I agree with the statement in Para 38 to the effect that freedom of expression is fundamental to a democratic society and that the said right "cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor", I find it difficult to agree that such pluralism cannot be ensured by a public/statutory corporation of the nature already in existence in Austria and that it is necessary to provide for private broadcasting to ensure pluralism, as held in Para 39. The fact that as a result of technological advances, the argument of limited number of frequencies is no longer available, cannot be a ground for reading the right to private broadcasting into freedom of expression. The decision as such is coloured by the

particular language of clause (1) of Article 10, as stated above. I must also say that the last observation in Para 39 viz., that there can be other less restrictive solutions is also not a ground which we can give effect to under the legal system governing us. The question in such cases always is whether the particular restriction placed is reasonable and valid and not whether other less restrictive provisions are possible. I may also mention that the arguments which weighed with other constitutional courts, viz., that airwaves represent public property and that they cannot be allowed to be dominated or monopolised by powerful commercial, economic and political interests does not appear to have been argued or considered by the European Court. As has been emphasised by other constitutional courts, the very free speech interest of the citizens requires that the broadcasting media is not dominated or controlled by such powerful interests.

201. There is yet another aspect of the

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petitioners' claim which requires to be explained. According to their own case, they have sold the telecasting rights with respect to their matches to a foreign agency with the understanding that such foreign agency shall bring in its own equipment and personnel and telecast the matches from the Indian territory. Once they have sold their rights, the foreign agency is not their agent but an independent party. It is a principal by itself The foreign agency cannot claim or enforce the right guaranteed by Article 19(1)(a). Petitioners cannot also claim because they have already sold the rights. In other words, the right to telecast is no longer with them but with the foreign firm which has purchased the telecasting rights. For this reason too, the petitioners' claim must be held to be unacceptable.

202. Having held that Article 19(1)(a) does not encompass the right to establish, maintain or run broadcasting stations or broadcasting facilities, we feel it necessary to clarify the true purport of the said freedom in the context of broadcasting media. This is necessary to ensure that I am not misunderstood or misinterpreted. Indeed, what I propose to say hereafter flows logically from what I have said heretofore.

203. It has been held by this Court in Life Insurance Corporation v. Manubhai Shah that the freedom of speech and expression guaranteed to the citizens of this country "Includes the right to propagate one's views through print media or through any other communication channel, e.g., the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing course to permissible restrictions imposed under Article 19(2) of the Constitution". It has also been held in the said decision that "the print media, the radio and the tiny screen play the role of public educa-tors, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship..... It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance." To

the same effect is the holding in Odyssey Communications referred to supra. Once this is so, it follows that no monopoly of this media can be conceived for -the simple reason that Article 19(2) does not permit State monopoly unlike clause (6) of Article 19 vis-a-vis the right guaranteed by Article 19(1)(g).

204. All the Constitutional Courts whose opinions have been referred to hereinbefore have taken the uniform view that in the interest of ensuring plurality of opinions, views, ideas and ideologies, the broadcasting media cannot be allowed to be under the monopoly of any one - be it the monopoly of Government or or an individual, body or Organisation. Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and/or the electronic media subject of and in some cases, may even distort the

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news, views and opinions expressed through the media. It is not conducive to free expression of contending viewpoints and opinions which is essential for the growth of a healthy democracy. I have said enough hereinbefore in support of the above propositions and we do not think it necessary to repeat the same over again here. I have also mentioned hereinbefore that for ensuring plurality of views, opinions and also to ensure a fair and balanced presentation of news and public issues, the broadcast media should be placed under the control of public, i.e., in the hands of statutory corporation or corporations, as the case may be. This is the implicit command of Article 19(1)(a). I have also stressed the importance of constituting and composing these corporations in such a manner that they ensure impartiality in political, economic and social and other matters touching the public and to ensure plurality of views, opinions and ideas. This again is the implicit command of Article 19(1)(a). This medium should promote the public interest by providing information, knowledge and entertainment of good quality in a balanced way. Radio and Television should serve the role of public educators as well. Indeed, more than one corporation for each media can be provided with a view to provide competition among them (as has been done in France) or for convenience, as the case may be.

205. Now, coming to the Indian Telegraph Act, 1885, a look at its scheme and provisions would disclose that it was meant for a different purpose altogether. When it was enacted, there was neither Radio***** nor, of course, television, though it may be that radio or television fall within the definition of "telegraph" in Section 3(1). Except Section 4 and the definition of the expression "telegraph", no other provision of the Act appears to be relevant to broadcasting media. Since the validity of Section 4(1) has not been specifically challenged before us, we decline to express any opinion thereon. The situation is undoubtedly unsatisfactory. This is the result of the legislation in this country not keeping pace with the technological developments. While all the democracies in the world have enacted laws specifically governing the broadcasting media, this country has lagged behind, rooted in the Telegraph Act of 1885 which is wholly inadequate and unsuited to an important medium like radio and television, i.e., broadcasting media. It is absolutely essential, in the interests of public, in the interests of the freedom of speech and expression guaranteed by Article 19(1)(a) and with a view to avoid confusion, uncertainty and consequent litigation that Parliament steps in soon to fill the void by enacting a law or laws, as the case may be, governing the

broadcasting media, i.e., both radio and television media. The question whether to permit private broadcasting or not is a matter of policy for the Parliament to decide. If it decides to permit it, it is for the Parliament to decide, subject to what conditions and restrictions should it be permitted. (This aspect has been dealt with supra.) The fact remains that private broadcasting, even if allowed, should not be left to market forces, in the interest of ensuring that a wide variety of voices enjoy access to it.

SUMMARY

206. In this summary too, the expres-

***** It was only in 1895 that G.Marconi succeeded in transmitting wireless signals between sending and receiving points without the use of connecting wires over a distance of tw o kilometers.

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sion "broadcasting media" means the electronic media now represented and operated by AIR and Doordarshan and not any other services.

I (a).Game of cricket, like any other sports event,provides entertainment. Providing entertainment is implied in freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution subject to this rider that where speech and conduct are joined in a single course of action, the free speech values must be balanced against competing societal interests, The petitioners (CAB and BCCI) therefore have a right to organise cricket matches in India, whether with or without the participation of foreign teams. But what they are now seeking is a license to telecast their matches through an agency of their choice - a foreign agency in both the cases - and through telecasting equipment brought in by such foreign agency from outside the country. In the case of Hero Cup Matches organised by CAB, they wanted uplinking facility to INTELSAT through the government agency VSNL also. In the case of later international matches organised by BCCI they did not ask for this facility for the reason that their foreign agent has arranged direct uplinking with the Russian satellite Gorizon. In both cases, they wanted the permission to import the telecasting equipment along with the personnel to operate it by moving it to places all over the country wherever the matches were to be played. They claimed this license, or permission, as it may be called, as a matter of right said to be flowing from Article 19(1)(a) of the Constitution. They say that the authorities are bound to grant such license/ permission, without any conditions, all that they are entitled to do, it is submitted, is to collect technical fees wherever their services are availed, like the services of VSNL in the case of Hero Cup Matches. This plea is in principle no different from the right to establish and operate private telecasting stations. In principle, there is no difference between a permanent TV station and a temporary one; similarly there is no distinction in principle between a stationary TV facility and a mobile one; so also is there no distinction between a regular TV facility and a TV facility for a given event or series of events. If the right claimed by the petitioners (CAB and BCCI) is held to be constitutionally sanctioned one, then each and every citizen of this country must also be entitled to claim similar right in respect of his event or events, as the case may be. I am of the opinion that no such right flows from Article 19(1)(a).

(b)Airwaves constitute public property and must be utilised for advancing public good. No individual has a right to

utilise them at his choice and pleasure and for purposes of his choice including profit. The right of free speech guaranteed by Article 19(1)(a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance with such statute. Airwaves being public property, it is the duty of the State to see that airwaves are so utilised as to advance the free speech right of the citizens which is served by ensuring plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured. The free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing. Conceding such a right would be

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detrimental to the free speech rights of the body of citizens inasmuch as only the privileged few - powerful economic, commercial and political interests - would come to dominate the media. By manipulating the news, views and information, by indulging in misinformation and disinformation, to suit their commercial or other interests, they would be harming and not serving - the principle of plurality and diversity of views, news, ideas and opinions. This has been the experience of Italy where a limited right, i.e., at the local level but not at the national level was recognised. It is also not possible to imply or infer a right from the guarantee of free speech which only a few can enjoy.

(c)Broadcasting media is inherently different from Press or other means of communication/information. The analogy of press is misleading and inappropriate. This is also the view expressed by several Constitutional Courts including that of the United States of America.

(d) I must clarify what I say; it is that the right claimed by the petitioners (CAB and BCCI) - which in effect is no different in principle from a right to establish and operate a private TV station - does not flow from Article 19(1)(a); that such a right is not Implicit in it. The question whether such right should be given to the citizens of this country is a matter of policy for the Parliament. Having regard to the revolution in information technology and the developments all around, Parliament may, or may not, decide to confer such right. If it wishes to confer such a right, it can only be by way of an Act made by Parliament. The Act made should be consistent with the right of free speech of the citizens and must have to contain strict programme and other controls as has been provided for example, in the Broadcasting Act, 1991 in the United Kingdom. This is the implicit command of Article 19(1)(a) and is essential to preserve and promote plurality and diversity of views, news, opinions and ideas.

(e) There is an inseparable inter-connection between freedom of speech and the stability of the society, i.e., stability of a nation-State. They contribute to each other. Ours is a nascent republic. We are yet to achieve the goal of a stable society. This country cannot also afford to read into Article 19(1)(a) an unrestricted right to licensing (right of broadcasting) as claimed by the petitioners herein.

(f) In the case before us, both the petitioners have sold their right to telecast the matches to a foreign agency. They have parted with the right. The right to telecast the matches, including the right to import, install and operate the requisite equipment is thus really sought by the foreign

agencies and not by the petitioners. Hence, the question of violation of their right under Article 19(1)(a) resulting from refusal of license/permission to such foreign agencies does not arise.

2. The Government monopoly of broadcasting media in this country is the result of historical and other factors. This is true of every other country, to start with. That India was not a free country till 1947 and its citizens did not have constitutionally guaranteed fundamental freedoms till 1950 coupled with the fact that our Constitution is Just about forty five years into operation explains the Government monopoly. As pointed out in the body of the judgment, broadcasting media was a mo-

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nopoly of the Government, to start with, in every country except the United States where a conscious decision was taken at the very beginning not to have State monopoly over the medium. Until recently, the broadcasting media has been in the hands of public/statutory corporations in most of the West European countries. Private broadcasting is comparatively a recent phenomenon. The experience in Italy of allowing private broadcasting at local level (while prohibiting it at national level) has left much to be desired. It has given rise to powerful media empires which development is certainly not conducive to free speech right of the citizens.

3 (a). It has been held by this Court - and rightly - that broadcasting media is affected by the free speech right of the citizens guaranteed by Article 19(1)(a). This is also the view expressed by all the Constitutional Courts whose opinions have been referred to in the body of the judgment. Once this is so, monopoly of this medium (broadcasting media), whether by Government or by an individual, body or Organisation is unacceptable. Clause (2) of Article 19 does not permit a monopoly in the matter of freedom of speech and expression as is permitted by clause (6) of Article 19 vis-a-vis the right guaranteed by Article 19(1)(g).

(b) The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or Organisation. As a matter of fact, private broadcasting stations may perhaps be more prejudicial to free speech right of the citizens than the government controlled media, as explained in the body of the judgment. The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1)(a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues. It/they must be required by law to present news, views and opinions in a balanced way ensuring pluralism and diversity of opinions and views. It/they must provide equal access to all the citizens and groups to avail of the medium.

4. The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an

altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media. It is, therefore,

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imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case.may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.

5. The CAB did not ever apply for a license under the first proviso to Section 4 of the Telegraph Act nor did its agents ever make such an application. The permissions, clearances or exemption obtained by it from the several departments (mentioned in judgment) are no substitute for a license under Section 4(1) proviso. In the absence of such a license, the CAB had no right in law to have its matches telecast by an agency of its choice. The legality or validity of the orders passed by Sri N.Vithal, Secretary to the Government of India, Telecommunications Department need not be gone into since it has become, academic. In the facts and circumstances of the case, the charge of malafides or of arbitrary and authoritarian conduct attributed to Doordarshan and Ministry of Information and Broadcasting is not acceptable. No opinion need be expressed on the allegations filed by BCCI in these matters. Its intervention was confined to legal questions only.

6. Now the question arises, what is the position till the Central Government or the Parliament takes steps as contemplated in Para (4) of the summary, i.e., if any sporting event or other event is to be telecast from the Indian soil? The obvious answer flowing from the judgment [and Paras (1) and (4) of this summary is that the organiser of such event has to approach the, nodal Ministry as specified in the decision of the Meeting of the Committee of Secretaries held on November 12, 1993. I have no reason to doubt that such a request would be considered by the nodal Ministry and the AIR and Doordarshan on its merits, keeping in view the public interest. In case of any difference of opinion or dispute regarding the monetary terms on which such telecast is to be made, matter can always be referred to an Arbitrator or a panel of Arbitrators. In case, the nodal Ministry or the AIR or Doordarshan find such broadcast/telecast not feasible, then they may consider the grant of permission to the organisers to engage an agency of their own for the purpose. Of course, it would be equally open to the nodal Ministry (Government of India) to permit such foreign agency in addition to AIR/ Doordarshan, if they are of the opinion that such a course is called for in the circumstances.

207. For the above reasons, the appeals, writ petition and applications are disposed of in the above terms. No costs.

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