

Television in India Balancing Freedom and Regulation

Prof. T. Tripura Sundari

Professor, Department of Communication & Journalism, Sri Padmavati Mahila Visvavidyalayam
(Women's University), Tirupati - 517502, Andhra Pradesh, India

Abstract:

Television, as a powerful medium of mass communication, plays a pivotal role in defining public opinion and disseminating information. In India, the freedom of television broadcasting is an expansion of the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution. However, this freedom is subject to reasonable restrictions under Article 19 (2), including considerations of public order, decency, morality, and national security.

The legal framework governing television in India includes laws such as the Cable Television Networks (Regulation) Act, 1995, which governs content and prevents the broadcast of objectionable material. The Prasar Bharati Act, 1990 establishes Doordarshan as an autonomous public broadcaster. Furthermore, regulatory bodies like the Ministry of Information and Broadcasting (MIB) and the Broadcasting Content Complaints Council (BCCC) supervise television content to ascertain compliance with ethical standards.

Judicial interpretations have significantly shaped the landscape of television freedom. Landmark cases like *Secretary, Ministry of I&B v. Cricket Association of Bengal* (1995) emphasized that airwaves are public property, advocating for a diverse and independent broadcasting sector. Similarly, *Anand Patwardhan v. Union of India* (1997) upheld the right against arbitrary censorship.

Despite these regulations, challenges persist, including government influence over public broadcasters, concerns of media monopolization, political biases in news reporting, and issues related to digital streaming platforms. With the emergence of over-the-top (OTT) platforms, the regulatory framework is evolving to accommodate new broadcasting technologies while balancing freedom of expression and responsible content dissemination.

While India recognizes the fundamental right to television broadcasting, regulatory mechanisms must strike a balance between freedom and accountability, ensuring an independent, diverse, and ethical media landscape. The future of television regulation in India will depend on transparent policies, independent regulatory bodies, and adaptability to digital transformations.

Keywords: Freedom of Television; Article 19 (1) (a); Broadcast regulation; Reasonable restrictions; Censorship; Media Autonomy

Television is the most powerful visual medium which has become a sheer necessity of the day. Television continues to hold significant relevance in India, despite the rapid growth of digital media. With over 200 million TV households, it reaches a diverse audience, including those who may not be digitally literate. India is one of the world's most important TV markets, with the second largest number of TV households after China. The TV industry in India has huge potential for innovation and

expansion.

It plays an important role in the cultural, social, political and economic development of a country. The trend all over the world is to depend more on this medium as the most valid and trustworthy source of information. 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. The significance of television medium lies in the fact that it provides information on commercial, political, scientific and cultural aspect in an effective manner. The utility of television can be classified into information, orientation and entertainment. Television plays a key role in entertaining people by telecasting different features like drama, dance, music, cartoons etc. Besides entertainment, television also provides information on various aspects through its news bulletins and telecast on specific matters like politics, economics, literature, education, employment, sports, science, agriculture etc. Besides acting as an informer and entertainer, television also develops orientation in people by telecasting public events and various public issues.

Indian television is a multifaceted organization due to its diverse structure, functions, and influence across various domains. It operates as a dynamic ecosystem encompassing entertainment, news, education, business, technology, and cultural representation. Television, a many-faceted institution, creates better impact on people and has become the most powerful force in the world today. 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. As a mass communicator, television is a great asset in developing country where communication with the people through other modern modes is obstructed or impeded. The television by presenting realistic pictures of the events narrated creates a very strong impact on the minds of the viewers and this impact has a tell-tale effect on the community at large (Sen, 1987). This is particularly true in India, a developing country having multi-religious, multi-ethnic, multi-lingual and multi-structured society, where television acquires a special role in the nation building process.

In India, television was introduced in 1959 but on an experimental basis. Regular telecasting commenced in 1965. It has the advantage over newspapers by reproducing events in true to life manner. Similarly, it has the advantage over radio by providing extra feature of picture in motion. It has greater possibility for a tremendous impact, and has become more realistic than all other media of expression. By combining the spoken word communication and visual communication along with the best elements of broadcasting, television has acquired the status of all acclaimed medium of communication. The impact of television was recognized by various committees appointed by the Government of India after independence to examine the working of television in India. Indian judiciary asserted the impact of television medium in a number of cases that came up before them for adjudication. In *Anand Patwardhan V. Union of India* (1997) case, the right to television broadcasting is part of free speech and arbitrary censorship violates Art. 19 (1) (a). Political or ideological biases cannot justify banning content on TV. In *LIC V. Manubhai D. Shah* (1992), the Supreme Court upheld the right of individuals to express their opinions on television and other media platforms. The right to speech and expression includes the right to use media, including television, to disseminate information. Denial of access to a television platform without reasonable justification violates Art. 19 (1) (a). The government must allow a diverse range of opinions on television and cannot monopolize electronic media. The Supreme Court recommended the establishment of an independent broadcasting authority. Though primarily focused on cinema censorship, in *K.A.Abbas V. Union of India* (1971) case it has been established principles for

reasonable restrictions on visual media, including television. Freedom of expression on television can be restricted under Art. 19(2) for reasons such as decency, morality and public order. Pre-censorship of visual content is permissible under certain conditions. The government should not misuse public television for political propaganda. State-run channels must ensure fairness, objectivity, and balance in content (Indraprastha People & Anr v. Union of India (2015). The Common Cause V. Union of India (2017) case challenged the unregulated expansion of television channels without proper oversight. Broadcast content must adhere to public interest standards. Independent regulatory bodies should ensure that freedom of television is not abused.

Judicial thinking in USA also highlighted the impact of television as a powerful visual medium of communication (Metro Broadcasting V.F.C.C., 1990). All countries in the world have realized that television can communicate effectively and create better impact than other media.

Considering the impact of television as a visual mass communicator, freedom of speech and expression is normally understood to include freedom of speech and expression through television. Similar view was expressed by Justice Sen (1989) that freedom of speech and expression is normally understood to be freedom of the mass media. Mass media includes television, film, press, radio and drama. The basic documents of United Nations (Art.19 of UDHR) and certain other International bodies (Art. 19 of the International Covenant on Civil and Political Rights, 1966; Art. 10 of European Convention on Human Rights, 1953) declare that freedom of speech and expression includes the express of one's ideas freely through the visual medium of television. In our Constitution, there is no separate provision guaranteeing one's right to expression views freely through the visual medium of television. But it was judicially held that the freedom of speech and expression of one's ideas freely by any other medium like television. Article 19 (1) (a) of the Indian Constitution guarantees freedom of speech as well as of expression, and certainly television is one of the means of expression.

The position is similar in USA. The guarantee of free speech in the United States Constitution has been judicially construed to embody the right of the individual to utilize a proper and effective medium like television for the expression of his views. Judicial thinking in United Kingdom also highlighted the state's obligation of fairness and objectivity in disseminating views through State controlled television media. The question of Constitutional protection of television as a medium of speech and expression was elaborately considered by the Supreme Court of India in *Odyssey Communications Pvt. Ltd. V. Lokvidyavan Sanghatana* (1988) wherein the Supreme Court observed that "a citizen's right to exhibit films on television is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement. In *Indira Jaising V. Union of India* (1989), the Bombay High Court answered the question of constitutional protection of television in the affirmative that the right of freedom of speech and expression has been considered by our courts as including the freedom of press. The right equally covers freedom of other media. In a recent case, the Supreme Court of India deeply analyzed the content of the fundamental right to freedom of speech and expression and observed that the right to communicate includes right to communicate through any media that is available whether print or electronic or audio visual such as advertisement, movie, article, speech etc. (*Secretary, Ministry of I & B V. Cricket Association of Bengal*, 1995). It follows that a citizen for propagation of his or her ideas has a right to use television medium since it is a great purveyor of news and views and make considerable impact on the minds of the viewers. **Restriction on Television Medium.**

The right to use television medium for the propagation of one's ideas is a valuable right today, because television is the most powerful medium molding the public opinion on vital issues of national

importance. Judiciary interpreted the right guaranteed under Art. 19 (1) (a) as including one's right to express freely through the medium of television. But, like any other fundamental right, this right is also not absolute, and it must be exercised with care and caution and not to jeopardize public interest. It is manifest from Art.19(2) that the right conferred by Art. 19 (1) (a) is subject to the imposition of reasonable restrictions.

Art. 19(2) enables the state to impose reasonable restrictions on the exercise of the freedom of speech and expression. But those restrictions must be imposed by a valid law enacted by the State. Without legislative authority, the executive cannot impose any restriction upon any of the fundamental right guaranteed by Art. 19.

Judicial Review

The right to freedom of speech and expression guaranteed under Art. 19 (1) (a) of the Indian Constitution is subject to reasonable restrictions provided under Clause (2) of Art. 19. This Article enables the legislature to enact laws imposing reasonable restrictions on the exercise of the right to freedom of speech and expression. It is the word "reasonable" which enables the judiciary in India to review the regulatory laws on freedom of speech and expression. Indian Constitution has adopted the principle of judicial supervision of legislative and executive action taken by the government. Television, being a medium of expression, everyone has the right to express his views through this medium subject to the reasonable restrictions provided under Art. 19(2) of the Constitution. If the restrictions are unreasonable, the court will declare the same to be unconstitutional.

Revolutionary progress in the use of television media in India created legal problems in the course of time. Though the Supreme Court observed that the impact of this powerful medium is as much for good as for evil, it is firmly established that the right of an artist to freely express, exhibit or propagate his view through the television medium is of prime significance. While acknowledging the fact that an instructive and revealing creative expression cannot be restricted by mere apprehensions of violence, Indian judiciary has very zealously guarded the freedom of expression through the television medium, as a preferred right. This approach can be seen in the decision of *Odyssey Communications Pvt. Ltd. V. Lokvidayan Sanghatana* (1988). The decision in this case firmly established the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements etc. The merit of this decision lies in the fact that freedom of speech and expression through this medium cannot be restricted on mere apprehension of danger. By setting aside the interim injunction order passed by the Bombay High Court, the Supreme Court of India asserted the fundamental right to freedom of speech and expression of the producer of the serial. The pronouncement of Bombay High Court in *Indira Jaising V. Union of India* (1989) is of great significance. It laid down several important propositions asserting the primacy of freedom of speech and expression through television medium. Here an important question may arise as to whether the right to broadcast or access to television medium is a part of the freedom of the television medium. This question was elaborately considered by courts outside India, who acknowledged the existence of a general right of access to television media as a part of the freedom of television medium.

Democracy does not consist merely in electing representatives at the end of every five years, but it involves participation by the people in the democratic process at all levels. But the people cannot be involved in the participatory process unless they have the right to information and access to media or the right to know. In other words, right to information and access to media, are basics to the democratic way

of life. From the audience's point of view, it may be said that they are interested to know all sides of a public controversy so that they can make their own judgment. The audience or reader's right to know has been held as a basic right under the Indian Constitution.

Conclusion:

Judicial thinking in India has recognized that the freedom of speech and expression is not to be regarded as a mechanical formula to be applied in every case with rigid uniformity. Judiciary is entrusted with the task of applying the concept of freedom of speech and expression to different situations and in relation to different media, in creative and dynamic manner covering all aspects of the media. Freedom of television is not a single ended concept, but carries with it many other rights. By a creative and imaginative interpretation of this right, judiciary brings out the full matrix of its component rights, namely the right to broadcast or access to television media, the right to information or the right to know etc. The judiciary also highlighted the necessity of enacting law on this subject which must lay down precise guidelines and provided rational criteria regarding access to television, and state's obligation of fairness and objectivity in disseminating news through television. The revolutionary progress in the use of television medium has made possible free flow of information across international frontiers Cable and satellite television has an international dimension beyond the territorial jurisdiction of India. Freedom of television media must not only be ensured by law alone but also by social support and at the same time, limited by public obligations and social responsibility.

References:

1. Anand Patwardhan v. Union of India, AIR 1997 Bombay 25
2. Barendt, Eric (1993). "Freedom of Speech in English Law". Public Law. 449-463.
3. Basu, D.D. (1978). The Law of the Press in India. 2nd Edition. New Delhi: Prentice Hall.
4. Basu, D.D. (1986). Law of Torts. 10th Edn. New Delhi: Penguin.
5. Bennet Coleman V. Union of India. AIR 1973 SC 106.
6. Indira Jaising V. Union of India. A.I.R. 1989 Bom. 25.
7. Indraprastha People & Anr v. Union of India (2015)(1) RCR (Civil) 24..
8. Metro Broadcasting V. F.C.C. 497 U.S.547 (1990).
9. Namboodripad V. Narayan AIR 1970 SC 2015.
10. Odyssey Communications Pvt. Ltd. V. Lokvidyavan Sanghatana, AIR 1988 S.C. 1642.
11. Secretary, Ministry of I&B V. Cricket Association of Bengal (1995) 2 S.C.C. 161.
12. Sen, A.N. (1987). "Media Trends: Role of Communicators". 8 (4). P.C.I.R. 1.
13. The Common Cause V. Union of India (2017) AIR 2008 SC 582, (2008) 1 SCC 234.