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CONTENT RESTRICTIONS IN COMMUNICATIONS *

INTRODUCTION

The content of voice, data and images transmitted through telecom, broadcasting and cable services is subject to numerous legal restrictions. These restrictions are imposed by various central and state laws that either generally or specifically regulates communication content. An example of a general law is the **Indian Penal Code (Act No 45 of 1860)**. It applies to all types of expressive media whether written, spoken, or in the form of images. The Cable Television Networks (Regulation) Act is a special law that specifically regulates programme content on cable television. Content Restrictions may also be imposed under licensing and policy guidelines that apply to telecom and broadcasting services. For instance the policy framework for private FM Radio Channels includes provisions that affect the broadcasting content of these channels.

In one way or another, content based restrictions affect the freedom of speech and expression guaranteed in Art 19(1) (a) of the Constitution. However these restrictions are usually justified as legitimate invasions of the freedom that can be imposed under Art 19(2). Parliament and the State Legislature make laws that restrict the freedom of speech and expression on nine grounds. These grounds are India's

- Sovereignty
- Integrity
- State Security
- Foreign Relations
- Public Order
- Decency
- Morality
- Contempt of Court
- Defamation
- Incitement of offences.

Therefore in order to be constitutionally valid, restrictions on communications content must be based on one or more of these grounds. Among these grounds morality and decency are the most commonly invoked in support of content restrictions. Morality and Decency based restrictions are usually justified on account of the dramatic and powerful effects of television, radio and the Internet on audiences. But there is notable example of based on other grounds in **Art 19(2)¹**, such as public order, national security and contempt of Court.

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¹ <https://indiankanoon.org/doc/1218090/>

It is important to understand the scope of content restrictions in order to fully appreciate the prevailing legal and regulatory framework for communications.

Restrictions Based on Public Morality and Decency

Programme Code for Cable Television

The Cable Networks Act imposes significant restrictions on the content transmitted through cable networks. **Section 5**² of the Statute requires cable operators not to transmit programmes that do not comply with the prescribed programme code. This code is contained in Rule 6 of the Cable Network Rules 1994 (the 'Cable Network Rules'). It prescribes the transmission of various categories of programmes, including those that are not

- Obscene and offend good taste or decency
- Encourage superstition and blind belief
- Contains visuals or words that reflect 'a slandering, ironical and snobbish attitude in the portrayal of something ethnic, linguistic, and regional groups'.

Rule 6(2)³ of the Cable Network Rules exhorts cable operators to carry programs that project women in leadership roles and the programmes that emphasize character – building qualities. While the motive behind this exhortation may be laudable, the rule carries with it the danger of reinforcing gender- based stereotypes regarding the appropriate role of women in society.

In order to protect children who are likely to watch cable television, **Rule 6(3)** requires that all adult entertainment should be featured only after 11pm and before 6am.

Rule 6(4) states that care should be taken to ensure that programmes for children do not contain any bad language or explicit violent scenes. Cable Operators are also prohibited from transmitting programmes in violation of **Cinematography Act**⁴.

Film Certification Under the Cinematography Act⁵

The Cinematography Act is an important element in the statutory framework for content regulation. It was enacted by the Parliament under the Union's legislative competence to regulate exhibitions of cinematograph films. The Statute establishes a certificate framework for films and documentaries and influences what can be shown in cinema and on television. This is because the Cable Networks Rules and the Uplinking and Downlinking Guidelines require cable operators and broadcasters to comply with the Cinematograph Act in determining their programme content. The Cinematograph Act's certification framework is carried out and enforced by the **Central Board of Film Certification** (the 'Film Board'). The Film Board consists of a chairperson and certain non- official members. The Government appoints the chairperson and the members, although the Board is expected to act independently in making decisions. An Appellate Tribunal reviews the Film Board's decision through appeal filed by aggrieved parties.

The Cinematography Act requires every film schedule for public screening to obtain a certificate from the Film Board. **Section 5B (1)** of the Act states that: a film shall not be certified on certain grounds. These grounds for denial of certification are similar to the restrictions on freedom of speech listed in **Art 19(2)** of the Constitution. In particular terms, the Film Board has four options, after it reviews a film submitted to it for certification.

- It may sanction the Film for unrestricted public exhibition by granting a 'U' Certificate.

² <http://www.wipo.int/edocs/lexdocs/laws/en/in/in033en.pdf>

³ http://cablequest.org/pdfs/i_b/PROGRAMME-ADVT-CODE.pdf

⁴ http://cbfcindia.gov.in/html/Cinematograph/cine_act1952.PDF

⁵ http://cbfcindia.gov.in/html/uniquepage.aspx?unique_page_id=1

- It can restrict viewing of the film to only adults through an 'A' Certificate
- It may require producers of the film to make certain modifications to it before screening.
- It may refuse to allow public exhibition of the film altogether.

KA Abbas vs. Union of India⁶

It was the first and remains the most important film-censorship decision. The case is especially significant because it was the Supreme Court's first opportunity to examine the scope of the Article 19 (1) (a) outside the confines of the print media. Abbas the petitioner was an award winning film producer. The Film Board has refused to allow unrestricted screening of his documentary, *A Tale of Four Cities* because it included scenes depicting a Bombay red-light district. The Film Board asked Abbas to make certain cuts in order for his documentary to qualify for a 'U' Certificate. Abbas refused and complained to the Supreme Court that the Film Board is violating his freedom of Speech and Expression, the Attorney General appearing for the Government, made a dramatic concession. He announced that the Film Board had agreed to give the documentary a U Certificate without any cuts. The case should have ended there. Instead, at Abbas's request, the court continued to hear the matter to determine whether pre-censorship was constitutional, and to provide guidance to film producers regarding film censorship.

The task of the Censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thoughts, speech and expression of artistic quality and social purpose and interest.

Obscenity Provisions in Criminal Statutes⁷

Besides the Cinematography Act and the Cable Networks Act, there are other statutes of general application that impose content restrictions on the grounds of morality and decency. Section 292 Of the Penal Code is the most frequently invoked provision in this regard. It forbids the production, possession, sale, and distribution, public exhibition of an obscene material or object. An obscene material and object includes any book, pamphlet, paper, writing, drawing, painting, representation, or figure that has the 'tendency to deprave or corrupt'. Sentences for obscenity convictions can include a prison term for two years or five years and a fine. A related provision in a penal code is **Section 293**, which forbids the sale, hiring, distribution, exhibition, or circulation of obscene objects to any person under twenty. Another generally applicable statute that restricts communications content is the Indecent Representation of Women (Prohibition) Act (No 60 of 1986). This statute makes it an offence to depict a women in an indecent manner or in a manner that is derogatory to women as a class.

RESTRICTIONS ON NEWS AND ADVERTISEMENT

- **General Restrictions on News and Current Affairs Programmes⁸**

Strict Regulations apply to news and current affairs programmes on private broadcasting channels. Presently, private FM radio channels are not allowed to carry any news and current affair programmes, while several restrictions apply to private television channels that carry

⁶ <https://indiankanoon.org/doc/1719619/?type=print>

⁷ http://indiatogether.org/uploads/document/document_upload/2141/blawobscenity.pdf

⁸ <http://www.ibfindia.com/sites/default/files/pdf/Self%20Regulatory%20Guidelines%20for%20non-news%20%26%20current%20affairs%20programmes.pdf>

these programmes. The restrictions on television channels are contained in the Uplinking Rules. These rules imposed detailed corporate-compliance obligations for Uplinking news and current affairs channels. These restrictions are justified on the ground that news and current affairs programmes may cause law and order problems if they contain inaccurate information or analysis. But it is increasingly questionable whether these restrictions are constitutionally sustainable or logically tenable.

- **Cable and Radio Advertisement Codes**

Section 6 of the Cable Networks Act requires cable operators to transmit advertisements that are in conformity with the cable advertisement code. **Section 19** provides that an authorized government officer may prohibit a cable operator from transmitting any programmes or channels that are not in conformity with the cable advertisement code. The Cable Advertisement Code is found in **Rule 7⁹** of the Cable Network Rules. It contains a detailed list of restrictions on advertisements featured on cable networks.

Rule 7 (1) requires all cable advertising to conform to applicable laws. Advertising must not offend morality, decency and religious susceptibilities. **Rule 7(2)** prohibits transmission of various types of advertisements. Prohibited advertisements include:

- Deride any race, caste, color, creed and nationality
- Are against any provision of the Constitution.
- Tend to incite crime, cause disorder, violence, or breach of the law
- Present criminality as desirable.

Advertisements must not exploit the national emblem, the Constitution, and a national or state leader's person or personality. Furthermore Rule 7 (2) enjoins cable operators from transmitting advertisement that project a derogatory image of women or that exploit social evils such as dowry and child marriage. In addition to cable operators, the cable advertisement code is applicable to uplinking and downlinking television companies.

Private FM licenses are required to observe. All India Radio's advertising code. Among other things the radio advertising code requires advertisements to conform to applicable laws and not to offend morality, decency, and religious susceptibilities. Prohibited advertisements under the code include those that:

- (1) Disparage any race, caste, color, creed and nationality
- (2) Are against the Constitution
- (3) Tend to incite crime, cause disorder, violence, or breach of law, or glorify violence and obscenity in any way;
- (4) present criminality as desirable;
- (5) Adversely affect friendly relations with foreign states
- (6) Exploit the national emblem or the constitution, and
- (7) Promote cigarettes and tobacco products, liquor, wines, and other intoxicants. The radio advertising code includes a list of restricted advertisements as well as special rules for advertisements that focus on children. It also includes some gems, such as a prohibition on advertisements for products with 'special or miraculous or super-

⁹ <http://www.wipo.int/edocs/lexdocs/laws/en/in/in079en.pdf>

natural property or quality which is difficult of being proved, example- cure for baldness skin whitener, etc.

Broadcast of Political Advertisements¹⁰

Rule 7(3) of the Cable network rules prohibits cable operators from displaying advertisements of a religious or political nature. This rule also restricts advertisements with religious or political ends. Rule 7(3) formed the backdrop for an interesting legal battle in 2002 between the Election Commission and the cable industry in Andhra Pradesh, during the 2004 General Elections, the Election Commission prohibited political advertisements on television. Some broadcasters and cable operators challenged the commission's decision before the Andhra Pradesh High Court. They argued that the decision affected their fundamental right to carry on a trade or business recognized in art 19(1) (g) of the Constitution. The high court admitted the petition and passed interim orders suspending the operation of Rule 7(3) and the Election Commission's decision.

The high court's order was appealed to the Supreme Court. The court was not inclined to render a decisive ruling on the high court's interim orders, and it seemed to favor a negotiated settlement. Accordingly, it asked the Election Commission to suggest modalities for regulating political advertisements on cable television. The Election Commission complied with the court's direction, and filed a list of suggestions. The court also received submissions on this matter from the Attorney General of India. Based on these inputs, the court passed an unusual judicial order to resolve the underlying controversy. The highlights of the court's order may be summarized as follows:

- (1) A political party or candidate that wants to broadcast advertisements on television must apply in advance to the Election Commission. IN the case of registered political parties an application must be made at least three days before the advertisement is telecast. Other persons and unregistered political parties must apply at least seven days before the proposed telecast.
- (2) An application must be accompanied by electronic copies of the proposed advertisement and a transcript. The application should include such details as the cost of production and telecast and a statement regarding the intended beneficiary of the advertisement.
- (3) The Election Commission may take up to two or three days to review the application depending on the phase of the election. As part of its review, the commission may delete or modify a proposed advertisement. The commission may delegate its responsibility to review applications to district magistrates across the country.
- (4) Chief electoral officers in each state or union territory are to appoint a committee to entertain complaints and grievances regarding reviewed applications. Decisions of these committees are binding on all parties
- (5) Persons aggrieved by the Election Commission's or the designated committees decisions must approach only the Supreme Court for relief.
- (6) The Election Commission may deploy staff to monitor political advertisements. It can pass order in cases of violations and seize equipment.

Restrictions Based On Public Order, State Security, and Contempt Of Court

A. Cinematograph Act¹¹

¹⁰ https://en.wikipedia.org/wiki/Campaign_advertising

After morality and decency, public order is the most frequently invoked ground to restrict expressive content in the electronic media. As a general practice, courts carefully scrutinize censorship decisions based on public order to ensure that this ground has been validly invoked in an underlying case. Accordingly, in **Rangarajan v Jagjivam Ram**, the Supreme Court overruled the Madras High Court for revoking a censorship certificate granted to a film critical of the reservation policy. The Supreme Court was not persuaded by the law-and-order rationale to justify restricting circulation of the film. It ruled that the freedom of expression under the Constitution could not be held ransom by intolerant groups. The freedom could only be restricted on the constitutionally permissible ground listed in art 19(2). Moreover, restrictions on free speech had to be justified based on necessity, rather than on convenience or expediency. The court also held that the government could not plead its inability to handle a hostile audience as a ground to restrict the film. Similarly in **Ramesh v Union of India**, the Supreme Court upheld Bombay High Court decision dismissal objections against screening a television ministry called Tamas. The ministries was based in pre-partition Lahore and depicted, among other things the horrors of partition. The court was unconvinced by the argument that the miniseries would encourage communal violence.

Cable Network Act¹²

As discussed above, **Section 5** of the Cable Network Act restraints cable operations from transmitting programmes that do not comply with the cable. Programme code. The cable programme code is found in r 6 of the Cable Network Rules. It lists various programmes that should not be broadcast on a cable network for national security and public order reasons. These programmes include those that:

- (1) Attack religions and communities or promote communal attitudes;
- (2) Encourage or incite violence;
- (3) Contain material the prevents maintenance of law and order;
- (4) promote anti-national attitudes: or
- (5) Affect the integrity of the nation.

Rule 6 also restricts programmes that may constitute contempt of court, cast aspersions against the integrity of the President of India and the judiciary, contains criticism of friendly countries, and criticizes, malign, or slander persons or certain groups.

Additional content-based restrictions on cable services may be imposed under Section 19 and 20 of the Cable Networks Act. Section 19 empowers an authorized government officer to prohibit, where it is necessary or expedient in the public interest, a cable operator from transmitting certain cable programmes. The authorized officer may impose prohibitions under s 19 on three grounds. First, if a cable programme or television channel does not conform to the cable programme code or the cable advertisement code. Second, if the cable transmission is likely to promote disharmony, enmity hatred, or ill-will among different religious, racial, linguistic, or regional groups, castes, or communities. Third if a cable programme disturbs public tranquility. Similarly, s 20 authorizes the Central Government to prohibit, in the public interest, operations of cable networks in certain notified areas.

During the Kargil conflict in 1999, Union Information and Broadcasting Minister Promod Mahajan ordered all cable networks to stop transmitting Pakistan Television. It is unclear whether this order was issued under s 19 or under s 20 of the Cable Networks Act. If the order was issued under s 19, it was invalid because an authorized government official, and not a Union Minister, should have issued it. On the other hand if s 20 was the legal basis for the minister's order, the provision was wrongly applied as it only authorizes the Central

¹¹ http://cbfcindia.gov.in/html/uniquepage.aspx?unique_page_id=34

¹² [http://lawmin.nic.in/ld/P-ACT/1995/The%20Cable%20Television%20Networks%20\(Regulation\)%20Act,%201995.pdf](http://lawmin.nic.in/ld/P-ACT/1995/The%20Cable%20Television%20Networks%20(Regulation)%20Act,%201995.pdf)

Government to prohibit the operation of cable networks in specified areas. It does not empower the government to impose a blanket ban on a specific channel throughout the country.

Penal Code and Other Laws¹³

The Penal Code includes a number of offences based on national security that could apply to communications. **Section 124-** A proscribes sedition, which is defined as the bringing of hatred or contempt or existing disaffection against the government. Sedition may take place through words, writing, or signs and other visible representation. A conviction for sedition may result in life imprisonment. Section 153-A makes it an offence to promote enmity between different groups on the grounds of religion, race, of any act that is prejudicial to the maintenance of harmony among different religious racial, linguistic, or regional groups, castes, or communities or which may have the tendency to disturb public tranquility. Section 153-B targets imputations and assertions prejudicial to national integration. Finally, s 295-A imposes criminal sanctions against any person who commits deliberate or malicious acts intended to outrage the religious feelings of any class of people by insulting its religion or religious belief.

Besides the Penal Code, there are other statutes of general application, such as the Unlawful Activities Prevention Act (No 37 of 1967) and the Protection of Civil Rights Act (No 22 of 1955) that restrict certain types of speech and expression and, in turn, affect communications content. Broadcast and Internet content may also be subject to restrictions if they constitute contempt of court. These restrictions usually arise under the Contempt of Courts Act (No 70 of 1971) or through judicial orders made in the exercise of a high court or the Supreme Court's inherent powers to impose sanctions for contempt. Accordingly, courts have ordered deletion of film scenes that improperly depict the judiciary in some cases, while in another instance, a court restrained parties from discussing pending cases on television.

Finally, the government may impose restrictions on the ground of national security on Internet content and websites under the Information Technology Act and under the applicable licenses of ISPs. A recent example is a Dot order directing ISPs to block various websites shortly after the July 2006 railway bomb blasts in Mumbai. The order resulted in ISPs denying access to several websites, including several web-blogs. Dot subsequently restricted the scope of its order and directed ISPs to block only a specific list of websites.

CONCLUSION¹⁴

In this age of media explosion, one cannot simply remain confined to the boundaries of the traditional media. The media world has expanded its dimensions by encompassing within its orbit, the widening vistas of cyber media etc. As a consequence, the laws governing them are also numerous. It is not within the scope of this Article to deal with the whole subject of media laws, but this Article makes a person aware of the various important legislations affecting the various branches of Media Communication, making him aware of his rights and facilitating him to exercise them within the framework of law existing in India and in the end furthering the cause of "Freedom Of Speech And Expression" and "Dissemination of Knowledge".

¹³ http://www.ddbangla.gov.in/files/pdf/89_Cable%20TV%20Act.pdf

¹⁴ Summary of the entire research work and study of law