

PREFACE

Media, the fourth pillar of a democratic nation is the most important source of information and knowledge to the people. The last decade has witnessed a change from the traditional pattern of broadcasting involving clips and highlights into new forms of broadcasting involving internet, ICT and convergence. With the development of communication technology, broadcasting through TV channels has emerged as an effective means of communication and dissemination of information.

The right to broadcasting has developed as one of the fundamental rights under the ambit of article 19(1)(a) of the Indian Constitution which provides for the right to speech and expression. The right to speech and expression also manifests the right to publish and circulate one's own views. Freedom of speech and expression broadly includes opinions expressed by words, in writing, through print or any other mode of communication. It includes the expression of one's ideas through any communicable media or visible representation including through broadcasting. Hence, broadcasting is part of the right to freedom of speech and expression provided under article 19(1)(a) of the Indian Constitution. In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995) 2 SCC 161, the Supreme Court held that the primary purpose of all broadcasting media is public interest. And the right to freedom of speech and expression includes the right to telecast and broadcast even cricket matches and this right belongs to the organization, which could not be interfered with by any one.

Although, the broadcasting organizations do not produce any work, but just arrange transmission of the signal, still there is lot of competition in broadcasting media as it tries to provide news and events for better coverage. The emergence of large number of competitive broadcasters give rise to the duty of the government to regulate broadcasting by unauthorized and unlawful use of media. At the same time the rights and duties of the broadcasters are also to be defined precisely. However, broadcasting remains an area less touched

by national legislators. The broadcasting reproduction right is a special right comprising certain exclusive rights including right to rebroadcast a broadcast or causing the broadcast to be seen or heard for a specified duration of time. This right is a distinct right apart from the copyright held for the contents of the broadcast. Section 37 of the Copyright Act, 1957 provides for the broadcasting reproduction right. Protection can also be sought under section 43 of the Information Technology Act, 2000. However, the articulation of the broadcasts rights has not been widely echoed in our country as has been abroad.

The existing international legal instruments pertaining to broadcasting protections do not cover advancements in broadcasting technology that were not envisioned when they were made. As history reveals, the law of copyright expanded its scope in order to meet the technological innovations and challenges. Copyright law as it stands today is nothing but a legal response to technological developments. Therefore, even though, the protection of broadcasts was not envisaged under the original copyright laws, it began to cover a set of neighbouring rights and later it was extended to cover broadcasters' right over recorded performances. Under the new copyright laws the broadcasters are bestowed with the right to reproduce the broadcast made already. Expect certain level of protection offered to the broadcasters in national jurisdictions as well as under the international instruments, no concrete steps have been taken for safeguarding copyright vested in broadcasts. Any kind of broadcast piracy causes serious harm to the broadcasters which can be protected only through substantial legal machinery. There is a persistent demand from the broadcasters for a legally enforceable international protection. The lack of a robust legal protection and enforcement mechanism on the one hand facilitates the pirates and on the other hand create impediments for the broadcasters to reap the potential of the broadcasting industry. With the increase in the technological methods to circumvent protection and infringe the right holders' right there is a real need to grant more effective rights to the broadcasters.

In the event of sports bodies giving contracts to television and radio broadcast channels various disputes about the right to broadcast, re-broadcast and even communicate the scores through SMSs have come up in the Indian courts. There have been number of judgments which have addressed these issues from the angles of various legislations and also keeping in view practical compromise solutions. There is an increasing need for academic studies in this area. In this context, the book-*Broadcasting Reproduction Right in India: Copyright and Neighbouring*

Rights Issues is an attempt to examine various legal issues surrounding broadcasting in India. This includes matters relating to both content and transmission. 'Content' is covered by copyright and neighbouring rights and transmission falls under neighbouring rights and broadcasting rights. It also emerges out of article 19 of the Constitution of India. The judicial decisions pertaining to right to broadcast and broadcasting reproduction rights have been analyzed at appropriate places.

Delhi
July 01, 2013

Prof. (Dr.) S. Sivakumar
Dr. Lisa P. Lukose

