

OVER-THE-TOP (OTT) PLATFORMS AND SPORTS BROADCASTING IN INDIA: A REGULATORY ANALYSIS

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Abstract:

This regulatory analysis delves into the evolving landscape of sports broadcasting in India, with a focus on the inclusion of Over-the-Top (OTT) platforms within the Sports Broadcasting Signals Act of 2007. The research examines the historical and legal framework, judicial pronouncements, and the implications of extending mandatory sharing to OTT platforms. The study explores the application of the public trust doctrine, emphasizing the public interest in spectrum allocation and equitable access to sporting content. It also addresses concerns about a potential decrease in the value of sports broadcast rights.

Keywords: Sports Broadcasting, OTT Platforms, Regulatory Framework, Public Trust Doctrine, and Broadcast Rights.

Introduction

India's sports fan base comprises a staggering 136.3 million people, equivalent to 9.8% of the nation's population. Notably, 36% of sports enthusiasts now embrace a hybrid approach, combining traditional TV and digital platforms, while 20% exclusively consume sports content via digital platforms, highlighting the growing influence of Over-The-Top (OTT) services.⁶²⁹ OTT platforms, defined as entities providing Information and Communication Technology (ICT) services without the need for traditional network infrastructure⁶³⁰, offer a convenient, on-demand, and personalized viewing experience, making them increasingly attractive to a diverse audience of sports enthusiasts. Prasar Bharati's collaborations with OTT platforms and

its potential entry into the OTT space⁶³¹ emphasize the pivotal role of these platforms in reaching a broad and dispersed audience, making the exploration of their implications and potential regulatory changes in sports broadcasting highly relevant.

The legal framework governing sports broadcasting in India encompasses the Prasar Bharati Act, the Cable Television Networks (Regulation) Act, and the Sports Broadcasting Signals Act. The Prasar Bharati Act establishes Prasar Bharati as a broadcasting corporation with a mandate to inform, educate, and entertain the public, including providing adequate coverage of sports and games. The Cable Television Networks (Regulation) Act regulates cable television networks and mandates the registration of cable operators. It also empowers the Central Government to specify channels that cable operators must mandatorily carry, including Doordarshan and other public service channels. The Sports

⁶²⁹ OrmaxMedia (2022) *We, the sports fans of India*, Ormax Media Pvt. Ltd. Available at: <https://www.ormaxmedia.com/insights/stories/we-the-sports-fans-of-india.html> (Accessed: 01 November 2023).

⁶³⁰ Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi-110002 (2023) *Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services*. Available at: https://www.trai.gov.in/sites/default/files/CP_07072023.pdf (Accessed: 31 October 2023).

⁶³¹ Pandey, D. K. (2023) *Prasar Bharati mulls own OTT platform*, *The Hindu*. Available at: <https://www.thehindu.com/news/national/prasar-bharati-evaluating-possibility-of-having-its-own-ott-platform/article66346004.ece> (Accessed: 1 November 2023).

Broadcasting Signals Act mandates in Section 3 that content rights owners and broadcasting service providers must share live broadcasting signals of sporting events of national importance with Prasar Bharati, ensuring widespread access to these events. This led to disputes over the control of these broadcasts, with Prasar Bharati exceeding its authority and the Supreme Court limiting its scope in the landmark case of BCCI v Union of India, 2017. In 2018, the Ministry of Information and Broadcasting proposed an amendment to the Sports Broadcasting Act to circumvent the Supreme Court's restrictions and allow private broadcasters to relay the shared signals. However, the amendment was met with opposition from various stakeholders and was ultimately shelved. Public Interest Litigations (PILs) have been filed in various High Courts, including Delhi, Punjab & Haryana, and Madras, seeking to expand the scope of mandatory sharing to include OTT and third-party platforms. The Madras High Court in its ruling on the case of Adithya Modi v Union of India and Ors. has declined to compel Prasar Bharati to make sports broadcasts accessible through online streaming platforms. Instead, the Court has issued a 'direction' instructing the relevant parties, including the Ministry of Information, Ministry of Sports, and Prasar Bharati, to deliberate on the matter and provide appropriate policy recommendations, leaving the question of OTT inclusion open for further interpretation.

OTT platforms offer a unique opportunity to reach a broader, particularly younger, audience and introduce innovative broadcasting technologies. However, the absence of well-defined guidelines and obligations could potentially hinder the development of sports broadcasting in India, preventing the nation from realizing its full potential as a global sports superpower. To assess whether the inclusion of OTT platforms within the ambit of Section 3 of the Sports Signals Act of 2007 would genuinely propel sports in India, this research will meticulously analyse the existing regulatory

framework, the Public Trust Doctrine with regards to sports broadcasting regulations specifically with regards to OTT platforms and concerns regarding the potential decrease in value of broadcast rights.

Evolution of Regulatory Framework of Sports Broadcasting and OTT Platforms: Relevant Legislations and Judicial Pronouncements

The early history of sports broadcasting in India was marked by significant developments in the 1990s, primarily related to cricket, which played a crucial role in shaping the country's media landscape.⁶³²

Cricket broadcasts in India were under the exclusive purview of Doordarshan, with the state broadcaster demanding Rs 5 lakh from the Board of Control for Cricket in India (BCCI) to telecast cricket matches played on Indian soil. However, a pivotal shift occurred in 1992 when the BCCI decided to sell television rights for the 1992–93 England tour of India to Trans World International (TWI), a subsidiary of the US-based International Management Group (IMG). This bold move challenged Doordarshan's broadcasting dominance and signalled a turning point towards the commercialization of sports broadcasting.⁶³³

In the subsequent year, the Cricket Association of Bengal (CAB) made a similar decision by selling the rights for the Hero Cup one-day international cricket tournament to TWI. However, controversy erupted when TWI agreed to provide exclusive live coverage to the newly launched Star TV. Recognizing a potential threat to its broadcasting monopoly, Doordarshan challenged this deal in court, invoking India's 1885 Telegraph Act, which granted the government exclusive control over the airwaves.⁶³⁴

The turning point came in 1995 when the Supreme Court of India sided with the cricket

⁶³² Evens, T., Iosifidis, P. and Smith, P. (2013) in *The Political Economy of television sports rights*. Basingstoke: Palgrave Macmillan, pp. 152–156.

⁶³³ *ibid*

⁶³⁴ *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161

authorities, dismantling Doordarshan's monopoly and ushering in a new era of sports broadcasting in the country. It declared India's airwaves as "public property," effectively ending the state's broadcasting monopoly and setting the stage for the expansion of satellite television. This marked the formal deregulation of India's broadcasting landscape, opening doors to private players and fostering healthy competition. The Court also emphasized that the "right to impart and receive information" represented a form of freedom of expression enshrined in the Indian constitution.

The legal framework governing sports broadcasting in India was outlined in the landmark case of *Board of Control for Cricket in India v. Prasar Bharati*⁶³⁵. It encompasses three essential acts – the Prasar Bharati Act, the Cable Television Networks Act (CTN Act), and the Sports Broadcasting Signals Act.

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 formally established Prasar Bharati as a prominent broadcasting corporation in India. This Act delineates the corporation's core mission, focusing on taking over and executing the functions previously managed by Akashvani (All India Radio) and Doordarshan (Indian National Television). Section 12(2)(e) of the Act emphasizes Prasar Bharati's commitment to providing extensive coverage of sports and games, promoting healthy competition and the spirit of sportsmanship. This commitment underscores Prasar Bharati's role in the promotion of sports and their values to a diverse audience. Additionally, Section 12(3)(c) grants Prasar Bharati the authority to negotiate for the acquisition of programs, rights, or privileges related to various events, including sports, films, serials, public occasions, and incidents of public interest intended for broadcasting. It empowers Prasar Bharati to establish procedures for the

allocation of these programs, rights, or privileges to its broadcasting services.⁶³⁶

The Cable Television Networks (Regulation) Act, 1995, is primarily aimed at regulating the operation of cable television networks in India. Section 3 mandates individuals to register as cable operators to operate a cable television network, defining a "cable operator" as any person providing cable service through a cable television network while adhering to prescribed eligibility criteria and conditions. Section 8, as amended by Act No. 21 of 2011, empowers the Central Government to specify the names of Doordarshan channels or those operated by or on behalf of Parliament that must be mandatorily carried by cable operators in their cable service. Importantly, it prohibits the deletion or alteration of the programs originally transmitted on such channels.⁶³⁷

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, was enacted to address the challenges of acquiring sports broadcasting rights, especially for events like Indian cricket. This Act was introduced to protect the "right to information" of Indian viewers. Section 3 requires that no content rights owner, holder, or broadcasting service provider can carry a live television broadcast of sporting events of national importance on any cable or Direct-to-Home (DTH) network or radio commentary broadcast in India without simultaneously sharing the live broadcasting signal with Prasar Bharati, devoid of advertisements. This enables Prasar Bharati to re-transmit the content on its terrestrial networks and DTH networks as specified by the Act. Section 3(2) outlines terms and conditions for signal sharing, including advertisement revenue sharing ratios, ensuring equitable distribution of advertising revenue for television and radio coverage. Section 3(3) empowers the Central Government to specify a percentage of the revenue received by Prasar Bharati that

⁶³⁵ *Board of Control for Cricket in India v. Prasar Bharati*, 2015 SCC OnLine Del 7046

⁶³⁶ Prasar Bharati (Broadcasting Corporation of India) Act, No. 25 of 1990, INDIA CODE (1990).

⁶³⁷ Cable Television Networks (Regulations) Act, No. 7 of 1995, INDIA CODE (1995)

must be utilized for broadcasting other sporting events.⁶³⁸

In this case, BCCI had established exclusive media sharing agreements with Nimbus Communications and later Star India, both proving to be financially rewarding ventures. Under the Sports Act of 2007, cricket matches were categorized as sporting events of national importance. This classification compelled broadcasters to share live signals with Prasar Bharti, the state broadcaster, for transmission on its terrestrial and DTH networks, subsequently retransmitted on Doordarshan's DD1 channel, a channel under Section 8 of the Cable Act, 1995. The case revolved around the interpretation of Section 3 of the Sports Act, 2007. The Supreme Court's verdict clarified that under this section, the live feed received by Prasar Bharati was intended solely for re-transmission on its own terrestrial and DTH networks, and not for distribution to private cable operators, ensuring that cable TV operators would not have access to these signals.

The Ministry of Information and Broadcasting proposed the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) (Amendment) Bill, 2018. The existing Sports Broadcasting Signals Act of 2007 aims to provide free access to a broad audience for sporting events of national importance through mandatory sharing of signals with Prasar Bharati via Doordarshan channels. However, the current provisions limit this sharing to Doordarshan's terrestrial and DTH networks, excluding cable operators and other networks. To address this limitation, the Ministry proposed amending Section 3(1) of the Sports Act. The proposed amendment would extend the mandatory sharing of signals to cable and DTH networks, Internet Protocol Television (IPTV), terrestrial networks, and other television distribution platforms where broadcasting mandatory channels is required under the Cable Television Networks (Regulation) Act,

1995. The amendment was not enacted eventually because of resistance from the industry.⁶³⁹

The Adithya Modi v. Union of India judgement underscores the evolving right to access information in the digital era and the necessity for adaptable regulations, particularly concerning over-the-top (OTT) platforms and sports broadcasting. In this case, the Madras High Court addressed the issue of unrestricted access to sports and entertainment content through Prasar Bharati's internet services. Acknowledging rapid technological changes, the Court emphasized that while specific electronic access may not be a fundamental right, it should not face undue restrictions. The government was directed to evaluate the feasibility of permitting unrestricted access to sports and entertainment channels through Prasar Bharati, as this is a matter of policy.⁶⁴⁰ This case highlights the lacunae in the law surrounding access to information through evolving technologies, particularly OTT platforms. While the right to access information is paramount, the regulations governing this domain are often outdated and struggle to keep pace with technological advancements. This poses a challenge in ensuring that individuals have unfettered access to information, including sports content, while also respecting constitutional provisions safeguarding freedom of expression. As technology continues to evolve, it is crucial for regulations to adapt accordingly.

Public Trust Doctrine and Including OTT platforms within the ambit of Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

In the evolving landscape of broadcasting, the significance of the public trust doctrine and its application to the allocation and distribution of

⁶³⁸ Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, No. 11 of 2007, INDIA CODE (2007).

⁶³⁹ Reddy, P., SpicyIP and Gour, P. (2018) *The Government Moots Proposal to Amend Sports Broadcasting Law – Deadline for Comments is December 31, 2018*, Spicyip. Available at: <https://spicyip.com/2018/11/the-government-moots-proposal-to-amend-sports-broadcasting-law-deadline-for-comments-is-december-31-2018.html> (Accessed: 2 November 2023).

⁶⁴⁰ *Adithya Modi v. Union of India*, 2020 SCC OnLine Mad 64

natural resources, particularly the spectrum, extends beyond traditional broadcasting platforms. The argument based on the Public Trust Doctrine posited by Mr. Paras Kuhad, the learned Additional Solicitor General of India in the Division Bench proceedings in the Delhi High Court in the case of *BCCI v. Prasar Bharati*⁶⁴¹ can be expanded to include OTT platforms within the purview of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007.

While traditional broadcasting comprises terrestrial, cable, and Direct-to-Home (DTH) networks, OTT platforms have emerged as prominent mediums for content dissemination in the digital age. These platforms utilize the same spectrum, a finite and limited resource recognized as a national asset by the Supreme Court in *Centre for Public Interest Litigation v. Union of India*⁶⁴². The principles of equality and public trust hold true for OTT platforms as well.

*Reliance Natural Resources Ltd. v. Reliance Industries Ltd*⁶⁴³, emphasizes the importance of preventing actions detrimental to the public interest, placing public interest above private agreements. This principle should extend to OTT platforms, given their pervasive impact on society and the public's right to access information and cultural content.

The right to access information, protected under Article 19(1)(a) of the Constitution of India, remains equally relevant in the digital realm. With cultural rights extending to the right to access cultural content, OTT platforms play a significant role in preserving cultural diversity and inclusivity, much like traditional broadcasting channels. Thus, it is within the public interest to ensure equitable access to content through these platforms.

As the community possesses an inherent right to utilize the spectrum to secure access to information and cultural content, this right

extends to both traditional broadcasting networks and OTT platforms. Extending the principles of public trust, equality, and the paramount importance of public interest to OTT platforms within the framework of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, would create a comprehensive and inclusive regulatory regime.

The public trust doctrine, therefore, applies not only to traditional broadcasting but also to OTT platforms. Recognizing the finite and vital nature of the spectrum, the community's right to access information and cultural content should be upheld across all broadcasting mediums, promoting equity and public interest. Expanding the regulatory framework to encompass OTT platforms within the Sports Broadcasting Signals Act, 2007, is a step toward ensuring that the public's right to access sports content remains unhindered in the digital age.

Reduction in Sports Broadcast Value: A Threat to the Development of the Sports Sector

The inclusion of Over-the-Top (OTT) platforms within the ambit of the Sports Broadcasting Signals Act of 2007 has ignited a robust debate in India. While the act was initially crafted to ensure the mandatory sharing of sports signals with Prasar Bharati, the state broadcaster, extending this obligation to private platforms such as OTT services raises complex and multifaceted issues.

The economic dynamics of sports broadcasting are intrinsically tied to the revenue generated from the sale of broadcasting and media rights. This revenue serves as a significant source of funding for sports organizations, enabling them to finance major sporting events, upgrade stadiums, and contribute to the development of sports at the grassroots level. Broadcasters rely on exclusive footage rights to generate royalties by selling their content to other media outlets. These funds, in turn, are crucial to maintaining the organizational and technical infrastructure

⁶⁴¹ *Board of Control for Cricket in India v. Prasar Bharati*, 2015 SCC OnLine Del 7046, paras 34-45

⁶⁴² *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1

⁶⁴³ *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, (2010) 7 SCC 1

required to broadcast sporting events to millions of fans worldwide.⁶⁴⁴

In light of these considerations, many sports federations, including the All India Football Federation (AIFF) and the All India Tennis Association (AITA), argue against extending mandatory sharing to OTT platforms. They assert that such a move could hinder their ability to raise essential funds for sports development. Competitive bidding for broadcast rights is seen as a cornerstone in upholding sports broadcasting standards and financially supporting sports and athletes. The Indian Olympic Association highlights the high investment required by private broadcasters to deliver world-class quality broadcasts of sporting events, especially for mega-events like the Olympics. It argues that competitive bidding is essential to uphold the Olympic movement's efforts to support sports and athletes.⁶⁴⁵

While recognizing the importance of public access to sports content, it is essential to strike a balance between these considerations and the economic imperatives of the sports broadcasting industry. Extending mandatory sharing to private platforms, especially OTT services, should carefully consider the delicate ecosystem of sports funding, intellectual property rights, and the global sports industry's reliance on competitive bidding and technological investments.

Conclusion:

In conclusion, the integration of Over-the-Top (OTT) platforms into the framework of the Sports Broadcasting Signals Act of 2007 marks a pivotal juncture in India's evolving sports broadcasting landscape. The dynamic and multifaceted nature of this debate necessitates

a careful examination of both the regulatory framework and the broader implications for the sports sector.

The consideration of public trust doctrine as articulated by Mr. Paras Kuhad in *BCCI v. Prasar Bharati* underscores the importance of treating spectrum allocation as a resource embedded with public interest obligations. It is only prudent that this doctrine extends to OTT platforms, given their influence and reach. The principles of equality, public trust, and paramount public interest must be upheld to ensure equitable access to sporting content across all broadcasting mediums. However, the inclusion of OTT platforms within the mandatory sharing provisions of the Sports Broadcasting Signals Act is not without its challenges. Therefore, it is imperative to strike a harmonious balance between the fundamental right to access information, safeguarded by Article 19(1)(a) of the Constitution of India, and the economic imperatives underpinning the sports broadcasting industry. While recognizing the vital importance of public access to sports content, any extension of mandatory sharing must be undertaken with caution. Competitive bidding for broadcast rights, intellectual property protection, and technological investments constitute the cornerstones of the global sports industry, and these factors must be duly considered.

As the global sports industry continues to evolve, India's approach to sports broadcasting must be flexible and forward-thinking, in line with the nation's aspiration to become a sports superpower. Balancing public access, economic realities, and technological advancements is the key to unlocking India's immense potential on the global sports stage.

⁶⁴⁴ *Broadcasting & Media Rights in Sport*, WIPO. Available at: <https://www.wipo.int/sports/en/broadcasting.html#:~:text=Under%20the%20International%20Convention%20for,the%20public%20of%20their%20broadcasts.> (Accessed: 2 November 2023).

⁶⁴⁵ *India's sports broadcasting ecosystem threatened by 'motivated' PILs (2023)* Indian Television Dot Com. Available at: <https://webcache.googleusercontent.com/search?q=cache%3Ahttps%3A%2F%2Fwww.indiantelevision.com%2Ftelevision%2Ftv-channels%2Fsports%2Findia-s-sports-broadcasting-ecosystem-threatened-by-motivated-pils-190702> (Accessed: 2 November 2023).