

Electronic Media: Case Studies

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Abstract: Today, sharing and receiving information through electronic mode is a profession and the electronic gadgets are a medium of speech and expression for the public and media houses. However, in a welfare state, the action and reaction of individual are governed by the statutes to one extent or the other. The constitution of India under its Article 19(1) provides every citizen a right to speech and expression through any mode of communication but at the same time the Article also empowers the state to control the same in the interest of the sovereignty and integrity of the nation and the matters connected thereto.

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I. INTRODUCTION

As a matter of fact now that though the “Press” and today’s “Electronic Media” is genus of the right of speech and expression the liberty of the press/media in India stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such, as distinct from the freedom of the citizen. And therefore it is regulated and controlled by the state as such. Moreover the VII the Schedule of the Constitution of India empowers the Central Government to make laws on the electronic media.

Defining Electronic Media

The term media and electronic media have not been defined specifically by any of the legislation therefore to ascertain that what the term actually means or refers, different sources and statutes and terms such as electronic and media is to be scrutinize specifically. But however the term “media” inter - alia used as “Press” and denotes print & electronic information carriers – the News Papers & Magazines, Radio, and Television and currently includes Internet as new Media. through the print media or through any other communication channel e.g. the radio and television. Every citizen of this country, therefore, has the right to air his or her views through printing and the electronic media. Further the Information Technology Act, 2000 provides the definition of some electronic gazettes and equipments such as:-

- Section 2 (ha) of the Information Technology Act 2000, Provides that “communication device” means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.
- Section 2(r) provides that “electronic form” with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device.

Thus, one can understood the term Electronic Media as “Electronic mode of Communication” or Communicating through Electronic Mode. The Supreme Court in case of

Secretary, ministry of information & broadcasting v. Cricket association of Bengal & anr,¹ has observed that there is also a pervasive presence of electronic media such as TV and further “The telecasting is of three types (a) terrestrial (b) cable (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 TV centre which in turn relays it through its own frequencies to all the views that have TV 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 TV screens, which are linked to his cable. He also relays the recorded file programmes or cassettes through the cable to the cable - linked viewers. Further the Court while dealing with the question as to 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? It held that what distinguishes the electronic media like the 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.

II. DIVISION OF ELECTRONIC MEDIA

The electronic media depends upon technology and electric power (directly or indirectly). Thus it can be divided into mainly two categories on the basics of its technological aspect.

1. The technical side and
2. The content part

Therefore, all the physical aspects of the electronic media or the print are to be held by engineers and technicians. For example the All India Radio and Doordarsan have three

separate divisions of employees to discharge the duties relating to the programmes as well as engineering and the administration in general. The 'programme' part of the electronic media deals with the collection, storing and propagation of programmes. The 'engineering' or 'technical' division deals with the mechanical process of recording, editing, up-linking, transmitting etc. In terms of 'mass media' the technical side is of limited importance in comparison with the 'content' part.

III. ELECTRONIC MEDIA A JUDICIAL APPROACH

In *Anvar v. P. K. Basheer*,¹ the Supreme Court noted that "there is a revolution in the way that evidence is produced before the court". When electronically stored information was treated as a document in India before 2000, secondary evidence of these electronic "documents" was adduced through printed reproductions or transcripts, and the authenticity was certified. When the creation and storage of electronic information grew more complex, the law had to change more substantially. In *Prof. Manubhai D. Shah v Life Insurance Corpn*,² the Court held that freedom of speech and expression includes freedom to circulate and propagate views through electronic media subject to reasonable restrictions - Right extends to use the media to answer the criticism levelled against the propagated view. Publication of a research paper by Executive Trustee of Consumer Education and Research Centre - Paper criticizing premium policy adopted by Life Insurance Corporation-Counter prepared by a member of LIC as well as rejoinder prepared by Executive Trustee Publish in a newspaper - LIC also publishing it counter in its own magazine - Refusal to publish Executive Trustee's rejoinder in its magazine on the ground that it was in - house magazine - held refusal by LIC to publish rejoinder in its magazine was arbitrary and violative of Article 14 and 19(1) (a). In, *State of Maharashtra v. Dr Praful B Desai*,³ The question was involved whether a witness can be examined by means of a video conference. The Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence. The court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence. In *Fatima Riswana v. State and others*,⁴ the prosecution was relating to exploitation of certain men and women for the purpose of making pornographic photos and videos in various acts of sexual intercourse and thereafter

selling them to foreign websites. The case was allotted to fast track court presided over by a lady judge. The accused applied for copies of the CDs. The trial court rejected that prayer. The High Court also rejected such prayer by observing that if their copies are provided, they can be copied further and put into circulation. However, the High Court allowed viewing of the CDs in the chamber of the judge. It was contended on behalf of the accused that it may cause embarrassment to the lady judge. Hence, the matter was directed to be transferred to the court of a male judge. However, the concern of the victim side was not considered. The apex court observed that a judicial officer be it a female or male is expected to face this challenge when call of duty required it. Therefore that order was set aside. In *K. A. Abbas v. Union of India*,⁵ The petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The Supreme Court however observed that, pre-censorship of films under the Cinematograph Act was justified under Article 19(2) on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotions more deeply and thus, classification of films between two categories 'A' (for adults only) and 'U' (for all) was brought about. In *Hamdard Dawakhana v. Union of India*,⁶ The question faced by the Supreme Court was whether the Drug and Magic Remedies Act, which put restrictions on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of Article 19 (1) (a). But in, *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd*,⁷ A three judge bench of the Supreme Court differed from the view expressed in the Dawakhana case and held that 'commercial advertisement' was definitely a part of Article 19(1)(a) as it aimed at the dissemination of information regarding the product. The Court, however, made it clear that the government could regulate commercial advertisements, which are deceptive, unfair, misleading and untruthful. In *Indian Express v. Union of India*,⁸ Opinion polls conducted by polling agencies and disseminated widely by television channels and newspapers are an endemic feature of elections in India today. Several concerns have been raised about such polls, including bias in choosing sample sizes, the possibility of them being manipulated to favour particular political parties and the inordinate influence that they exercise on voters' minds especially in multi-phase elections, under the guise of an

¹ AIR 2015 SC 180

² AIR 1993 SC 171

³ AIR 2003 SC 2053

⁴ AIR 2005 SC 712

⁵ 1971 SCR (2) 446

⁶ 1960 SCR (2) 671

⁷ 1995 SCC (5) 139

⁸ (1981) Supp SCC 87

objective study. Equally, constitutional concerns have been raised about banning such polls. In an opinion on 8th April, 2004, Soli Sorabjee, Attorney General of India (as he then was) opined that banning opinion (and exit) polls would be violative of Article 19(1)(a) of the Constitution, specifically the public's right to know, which has been held by the Supreme Court to be part of the freedom of speech.

IV. CONCLUSION

The last twenty - five years have witnessed rapid developments in technology resulting in significant changes to the physical nature of computers, networked - technology, communications and a range of applications. Many of the features of modern communications technology such as low cost, ease of use and the potential of anonymity and pseudonymous activity make new technologies an appealing medium for committing and facilitating criminal activity too. New technological capabilities, a range of applications and a modern global communications system with a growth in network - based crimes with the help of electronic media have produced many new forms of electronic evidence. Many of the earlier held assumptions that a computer is just like a "compact filing cabinet" or that computer documents are just like the paper equivalent no longer hold true. Increasingly courts are being presented with evidence that includes more than the

obvious computer printouts. Evidence of Electronic Media can originate from a variety of sources, in different file formats and application systems, across a number of jurisdictions. Sources of such evidence include seized computer hard - drives and back - up media, real -time email messages, chat - room logs, ISP records, web pages, digital network traffic, local and virtual databases, digital directories, wireless devices and memory cards. With technology rapidly evolving, "unique file formats" across various storage media are in the "hundreds of thousand making it impossible to be familiar with every variation of every kind of digital evidence. The law of the country has also taken cognizance of this reality. The Information Technology Act, 2000 has been enacted recognizing electronic records as evidence, governing access to and acquisition of digital and electronic evidence from individuals, corporate bodies and / or from the public domain. By way of this enactment, amendments were also brought in other laws like Indian Penal Code; Special provisions as to evidence relating to electronic record have been inserted in the form of section 65A & 65B, after section 65, in Indian Evidence Act. These provisions are very important and they govern the integrity of the electronic record as evidence, as well as, the process for creating electronic record. Also the Criminal Procedure Code was amended thereafter.

ⁱ 1995 SCC (2) 161