

(2013) 04 DEL CK 0387

In the Delhi High Court

Case No : Writ Petition (C) No. 1200 of 2011

Indraprastha People and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 1, 16, 17, 19, 2

Criminal Procedure Code, 1973 (CrPC) — Section 95, 96

Penal Code, 1860 (IPC) — Section 124A, 153A, 153B, 292, 293

Citation : (2013) 04 DEL CK 0387

Hon'ble Judges : Pratibha Rani, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rahul Mehra, for the Appellant; Rohit K. Aggarwal, Advocate for R-1 and R-2, Mr. Ashok Desai instructed by Mr. Kunal Tandon, Ms. Nidhi Jain and Mr. Jaspreet Singh Kapur, Advocates for R-3, for the Respondent

Judgement

Pradeep Nandrajog, J.—We are concerned in the instant writ petition with a social debate; and we need to caution that sometimes an ongoing social debate becomes a major ethical issue with no clear perspective in sight. The ageing Indian conservatism blames the intrusion of the Western culture into the Indian ethos for all the problems we find in the societal behaviour. On the other hand, the assertive, new liberal sensibility haughtily blames a monolithic idea of the past, especially religion, for its persistent objectification, or some may call it itemization. They argue that the new forms of media and globalization need not answer for their persistent normalization of objectification. The trouble with the debate on cultural invasion is that in our eagerness to safeguard our positioning, based on our ideologies, dogmas and attachments to values, we forget the obvious.

2. An independent mass media is undoubtedly one of the many important foundations of a democratic society. Philosophers and statesmen often measure the democratic credentials of a state with reference to the degree of independence enjoyed by the media. Media had always been considered as an

organ of thought, character and refinement. But of late, public concern on the freedom enjoyed by the media has become a matter of debate. There have been instances when the broadcast media i.e. television channels have used unethical means to attract viewership; for increased viewership in turn leads to high flow of revenue through advertisements. Questionable methods and tactics are deployed in the hope of easy gains and quick popularity. Many believe that in the desperate rush to "grab eye balls" truth becomes a casualty. Facts are either used selectively or out of context or are sensationalized to add "colour" and "spice" to events. Worse still, transgression of individual privacy, lying, cheating and deceiving are some of the epitaphs earned with discredit by the media sometimes. In a speech delivered in June 2007, Tony Blair, the Prime Minister of Britain, compared the media to a "feral beast".

3. Ethics seeks to use rational and systematic principles, values and norms to decide what is good or bad, correct or incorrect, right or wrong. Though sometimes used interchangeably, ethics and morality are different. While morality pertains more to conventions and customs that determine or govern behaviour, ethics concerns itself with: "Whether the action under consideration is good or bad". Ethics itself is a complex and controversial subject because society is heterogeneous. Notwithstanding a frequent reference made to: "the ignorant masses", "the poor masses", "the common masses", it has to be recognized that the mass is a faceless, large, heterogeneous and amorphous body of people with different ideologies, faiths, belief and attachments to dogmas. And this presents the most difficult challenge to the mass media because it entails communication within audience from different sections of the society and across societies. Topics considered worthy of a broadcast arise from the public and the public itself is the targeted audience. It is rightly said that media revolves around society because people provide the news and are the recipients of the news.

4. Media personnel deal with the subject of gender crimes; exploitation of the under-privileged, brazen and vulgar indulgence of the affluent, arrogance of those in positions of power and authority - the list is endless. One would accordingly expect that the language and the tone of a broadcast is appropriate, proper and relevant. The path therefore is a six fold path consisting of: (i) right speech; (ii) right action; (iii) right exertion; (iv) right-mindedness; (v) right resolution; and (vi) right point of view. The first two pertain to physical control, the next two pertain to mental control and the last two pertain to intellectual development.

5. As societies evolve, culture, belief, practices and values change. A dichotomy can be observed between the conduct and the belief-system within a society. An example of one such dichotomy could be, that despite our belief in the "sacredness" of our rivers and water bodies; the age-old tradition of respecting the wet lands and treating some of our rivers as our "mothers"; bestowing the title "temples of modern India" we have encouraged industries to be set up near rivers and water bodies - effluents are discharged freely in these very "sacred"

rivers.

6. Grievances that people over the world have taken to vulgar ways; they have grown greedy, avaricious, jealous and quarrelsome; they do not know whether they are happy or miserable, go back to the mythical days when gods went to Brahma, the creator, complaining as aforesaid, with a request: "Please let us have some diversion which could be both heard and seen "; and so Brahma created drama. Texts on Natyashastra i.e. science of drama, quote said legend. But what were the flavours which one started getting in drama?

7. Occasionally piety, occasionally humour or satire; occasionally fights; occasionally a social problem; etc. but slowly graduating to sexual passion. Even drama got corrupted. Titles such as "Halwa sooji da, chaska dooji da", "Chadhi jawani budhe nu", with raunchy dialogues and suggestive undertones-dialogues with innuendos-theaters were house full. A form of entertainment gifted by Brahma got corrupted with the passage of time. But we have to live with the drama and obviously the producer would produce a drama which would attract the audience and would look to such Directors who could deliver the goods.

8. Modernization has generally enhanced the material level of civilization throughout the world. In many respects it has enhanced the moral and cultural dimensions of civilization. Colonization, slavery, untouchability, torture and abuse of individuals are no longer acceptable in the contemporary world. Globally, as the citizens of the world step into the new millennium, in varying degrees, we find people using the instruments of modern life such as mobile phones, internet, television, fast food, pop music and Western attire. There are many in India who fear that liberalization, which comes hand in hand with modernization, will play havoc with our values. Showmanship, gross consumerism, cheap exhibitionism and seeking always to be in the news as a star or a superstar are overtaking the beauty and aesthetics of even the artistic. Another aspect of this is the emergence of a "consumer culture" - the product of the television network. Manufacturers and sellers, in a market-centered system, resort to indiscriminate television coverage of their products. They would obviously prefer to advertise in programmes where the viewership is the highest. This has led to commercial producers of television programmes being constantly on the look-out for those who can make programmes which would entertain the maximum people. We can witness the shifting of the relationship between art and society from the creative interface, in which the artist is moved by deep values and commitments, to that of increasingly institutionalized sets of contracts and salesmanship. Social responsibilities are seen receding from artistic consciousness.

9. Many believe that the world is heading towards a "universal civilization" which would be dominated by the Western values, assumptions and doctrines. After all, the Hindu view of the cosmos emphasizes: "Vasudhaiva Kutumbakam" - the world is a family. So what is wrong in thinking alike, behaving alike, speaking alike, eating alike, viewing alike etc. etc. The last hymn of the Rig Veda expresses it admirably:

Sam gacchadhvam sam vadadhvam,
sam so manamsi janatam
samani va akutib, samana bradayani vab
samanam astu vo manab
yatha vab susahasati

10. Translated it reads: "Walk together; speak in concord; let our minds apprehend alike, let our efforts be united; let our hearts be in agreement, let our minds be united, that we may all be happy."

11. Truth is one. But with many interpretations. As the Father of the Nation, Mohandas Karamchand Gandhi expressed it: "Life is an experiment with truth." And the experiment with truth would be incomplete if contradictions of the universal moral order are not understood by grappling sometimes with the moral person and sometimes with the vulgar person.

12. The freedom of expression is a pivotal component of our individual development - as human beings and as "political animals" - and to improve and radicalize democracies. The invention of the press constituted the turning point for the debates about freedom of expression. Guaranteeing each individual's right to freely seek, receive or impart information while interacting with other individuals ceased to be enough. It was necessary to go beyond, upholding this right allied by an intermediary that radically magnified the outreach of opinions, information and ideas: the mass media.

13. The factual background is that the third respondent: "UTV Software Communication Ltd." is engaged in the business of broadcast and operates a TV Channel called "UTV Bindass" on which a programme named "Emotional Atyachar" is broadcast. Of the various programmes which are broadcast on television, one category is "Reality television". As the name suggests, "Reality TV" is a non-fictional programme, in which the central characters, or subjects, are "Real" people, which is to say that they are not professional actors and do not have a script. In its original form, such reality TV shows featured interviews and talk shows but it slowly graduated to entertainment. The idea being to present real world events as they happened or even document real events over time. Singing and dancing talents were discovered in reality shows. By the year 2009, probably due to the viewers being tired with the many soap operas featuring mother-in-law/daughter-in-law, Reality TV shows focused on socially relevant themes, such as "interpersonal relationship between husband and wife", "members of opposite sexes"; may be as friends or colleagues in an office etc. etc. Programmes such as "Sach ka samna" (Moment of truth), "Khatron ke khiladi" (Fear Factor), "Rakhi ka swayamvar" (Rakhi's choice of a life partner) and the one with which we are concerned "Emotional Atyachar" (Cheaters).

14. The filing of the instant writ petition is proof of the fact that these reality

shows gained in popularity. The producers of these programmes claim that since the production is not in a controlled environment and no script is used, the thrill lies in the realness of the programme for the reason genuine response of the people enshrine the inherent "value" of the show. But along, may enter in the show, utterances which may be found to be offensive to the sensibilities of even an ordinary person; to be overlooked, as all ordinary persons would do, when in the heat of a dialogue the opponent, overcome by emotion, losing temporary self-control gives vent to a thought using expletives. We encounter such embarrassing moments in life amongst friends and family members: "caution or a reprimand" serves the purpose, and life goes on. The wrong doer is not ostracized or banished from the social circle or the family. It is a self-corrective mechanism. And so would urge Shri Ashok Desai, learned senior counsel for respondent No. 3, to which Mr. Rahul Mehra learned counsel who argued the brief pro-bono for the petitioner replied that a self-corrective system within a small group of the society would not be apposite in its application when the society at large is wronged. Learned counsel urged that self-corrective mechanism in today's environment where media has become a money spinning devise would be an oxymoron.

15. The format of the programme "Emotional Atyachar" is, as claimed, a consent taken from a person in a live in relationship; followed by a trap being laid where one partner is enticed by a planted hunter, if we may use the phrase, and once the prey falls into the trap, when the heat of the moment is at its maximum in the trap, the other partner is brought in to see the breach of faith of the entrapped partner. A flare up is bound to ensue if a female partner sees the male partner in the cosy arms of another lady. The accusation of breach of trust, faith and confidence are bound to fly. Entrapped, the prey starts furnishing justifications for the wrongful acts, and as is usual: offence is the best defence - strategy is employed. The entrapped partner accuses the opposite of being likewise unfaithful. A spat ensues. The viewer laps it all. The producer of the programme claims that deceit and treachery is a mundane activity in all spheres of life, including the house where the couple lives or even when two members of the opposite sex forge more than a platonic bond. The writ petitioner claims that the theory of alleged consent propounded is patently absurd because if a couple has consented to participate in a reality show of the kind, it is just not possible that a decoy would be able to entrap anyone, for if one know that he/she is a part of a reality show of a particular kind, he/she would obviously be expecting a thematic setting to carry forward the show. As per the petitioner, the truth is that one out of the two partners is instigated to get the loyalty of the other partner tested. The partner contacted normally tells that he/she does not suspect the loyalty of the other. But the producer insists that he has proof to the contrary. The partner preyed upon is brain washed to agree to accompany the TV crew to a place where it is informed that the partner is making merry. This is preceded by a honey trap being laid and the other partner being entrapped. Once the prey is lured in the lair, the other partner springs all of a sudden and catches the

wrong doer, literally with the pants down. The petitioner claims that as the other partner, finding himself/herself being cheated, bound to be emotionally surcharged, bursts into a tirade; choicest expletives are hurled inviting a few to be returned by way of compliment. Not only is the sentiment of the programme but even the language is stated to be fouling the atmosphere in the family of the viewer. Brazenly vulgar language is used. To add fuel to the fire, the programme is aired at prime time when the viewership is the maximum. Adolescent sons and daughters, sons and daughters in their teens, maidens and bachelors, fathers and mothers, uncles and aunts, grandfather and grandmother - sitting together in front of the television box find themselves not only embarrassed but also idiots watching the programme. But by the time realization dawns, the damage is done. The mind of the adolescent and teenagers is corrupted. Their language is also corrupted. Their cultural values are also corrupted. They think that it is normal to use such kind of language whenever an interpersonal debate gets heated. The petitioner prays that the reality show be directed to be investigated by CBI and the license obtained by respondent No. 3 to operate a TV Channel should be cancelled.

16. In all fairness to Shri Rahul Mehra, the learned counsel who appeared pro-bono for the petitioner after the petition had been filed, did not argue for grant of relief as per prayers made. Very fairly conceding that a broad issue of great public importance was emerging for consideration, the learned counsel submitted that he would be making submissions on two distinct facets. Firstly a regulatory mechanism to enforce the provisions of "The Cable Television Networks (Regulation) Act 1995" be devised. Secondly action to be taken against respondent No. 3 for being found to be violating the "Programme Code" i.e. Rule 6 of the "The Cable Television Network Rules 1994". And for the curious reader who may find it a little odd that the Rules are of 1994 but the Act is of 1995, we would like to inform that the Act, as per sub-Section 3 of Section 1 thereof, shall be deemed to have come into force on September 29, 1994, on which date the Rules of 1994 were promulgated as per power conferred by sub-Section 1 of Section 22 of "The Cable Television Networks (Regulation) Ordinance 1994". The first violation is the one detected by the Ministry of Information and Broadcasting of being offensive to the sensibilities of children, directing the timing to be shifted to 11:00 PM, reference whereof is to be found in a show cause notice dated February 22, 2011 (Annexure R-5) when another violation (second) in the form of allegedly indecent, obscene and vulgar language used - offending good taste and decency, was alleged and therein a reference was made to a violation in the past. The show cause notice would evidence that the offending programme was not one but five in number broadcast on November 20, 2010, November 27, 2010, December 04, 2010, December 11, 2010 and December 18, 2010. Four letter words were used in the broadcast. So it is alleged in the show cause notice. The third set of violation was as found in Annexure R-1/6 pertaining to programmes broadcast on July 16, 2011 and July 23, 2011. Learned counsel pointed out another violation found by a self regulatory body constituted by the

broadcasters called "Broadcast Content Complaint Council" (BCCC) which also found a violation during the pendency of the instant writ petition.

17. Admittedly, neither under "The Cable Television Networks (Regulation) Act 1995" or the Rules of 1994, a regulatory body has been constituted. In other words, the provisions of the Act and the Rules are enforced by the executive, and this would be any functionary of the Government of India working in the Ministry of Broadcasting. The Union of India claims that an administrative decision has been taken that complaints would be examined by a Committee consisting of: (i) Additional Secretary, Ministry of Information and Broadcasting - as Chairperson; (ii) Joint Secretary, Ministry of Home Affairs; (iii) Joint Secretary, Ministry of Law & Justice; (iv) Joint Secretary, Ministry of Women and Child Development; (v) Joint Secretary, Ministry of Health and Family Welfare; (vi) Joint Secretary, Ministry of External Affairs; (vii) Joint Secretary, Ministry of Defence, (viii) Representative from the "Advertising Standards Council of India (A Self Regulatory Body of the Advertising Industry)"; and (ix) Joint Secretary (Broadcasting).

18. And we simply highlight that we fail to understand as to what would the Joint Secretary in the Ministry of Home Affairs, Ministry of External Affairs and Ministry of Defence be doing?

19. In the year 2008 the Government of India had prepared a draft of "Self-Regulation Guidelines for the Broadcasting Sector - 2008", proposing a two-tier self regulatory mechanism. Firstly a self-regulatory system where a broadcaster would nominate an individual charged with the duty to comply with the law, to whom a complaint could be addressed. At the second tier was, if we may use the expression, an Appellate Forum at the industry level being "Broadcasting Consumers Complaint Committee" (BCCC) consisting of professional experts representing all stake holders such as industry, consumer, civil society and organizations of eminence in social sciences. As per the Union of India concerns were expressed by various sections in the media. A wide ranging consultative process was put into motion with all stake holders, but a consensus eluded. Conceding that the regulations of 2008 have no statutory force, as per Union of India and respondent No. 3 the Indian Broadcasting Foundation, a body of broadcasters has set up BCCC which is functioning from July 01, 2011. The Committee consists of:-

- (i) A retired Judge of the Supreme Court or a High Court.
 - (ii) Four eminent persons.
 - (iii) Four members from any National level Statutory Commissions.
 - (iv) Four broadcast members.
- i.e. 13 members in all.

20. As informed to us under cover of written submissions filed by respondent No.

3, as of today the 13 member board consists of:-

- (i) Justice (Retd.) A.P. Shah (Ex Chief Justice of Delhi High Court)
- (ii) Mr. Bhaskar Ghose, eminent theatre personality and Retd. IAS Officer
- (iii) Ms. Shabana Azmi, eminent actress and activist (iv) Mr. Vir Sanghvi, eminent journalist
- (v) Prof. Anand Kumar from Jawaharlal Nehru University
- (vi) Ms. Mamta Sharma, Chairperson, National Commission for Women (NCW)
- (vii) Dr. P.L. Punia, Chairperson, National Commission for Schedule Castes (NCSC)
- (viii) Ms. Dipa Dixit, Member, National Commission for Protection of Child Rights (NCPCR)
- (ix) Mr. Ashok Nambissan, Multi Screen Media Pvt. Ltd.
- (x) Mr. Himavat Chaudhuri, Turner General Entertainment Network
- (xi) Mr. Nittin Keni, Zee Network
- (xii) Mr. Sujeet Jain, Viacom 18 Media Pvt. Ltd.

21. A peep into the statute would reveal, as per Section 3 of The Cable Television Networks (Regulation) Act 1995, hereinafter referred to as "the Act", that no person can operate a cable television network without being registered as a cable operator under the Act. As per the definition clause i.e. Section 2(aa), a cable operator would be a person who provides a service through a cable television network; and as per clause (c) of Section 2, a cable television network would mean any system consisting of a set of closed transmission paths and associated signal generation designed to provide cable service for reception by multiple subscribers.

22. Suffice would it be to state that a term of registration to operate a cable television network is that the cable operator would abide by the statutory provisions of the Act.

23. Section 5 of the Act and Section 6 of the Act read as under:-

5. Programme Code. No person shall transmit or retransmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

6. Advertisement code.- No person shall transmit or retransmit through a cable

service any advertisement unless such advertisement is in conformity with the prescribed advertisement code.

24. Sections 16 and 17 provide for punishment for contravention of the provisions of the Act and offences by companies respectively. The two provisions read as under:-

16. Punishment for contravention of provisions of this Act. -

1. Whoever contravenes any of the provisions of this Act shall be punishable, -

(a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;

(b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the contravention of section 4A shall be a cognizable offence under this section.

17. Offences by companies. -

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

25. Sections 19 and 20, enable the authorized officer to prohibit a cable operator from transmitting or re-transmitting a programme which is not in conformity with

the prescribed programme code or the advertisement code referred to in Sections 5 and 6 as also such programmes which are found to be within the ambit of the latter part of Section 19. Section 20 empowers the Central Government to prohibit the operation of a cable television network itself if as contemplated by Section 20 it becomes necessary in public interest to do so. Sections 19 and 20 read as under:-

19. Power to prohibit transmission of certain programmes in public interest. -

Where any authorized officer, thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any programme or channel if it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquility.

20. Power to prohibit operation of cable television network in public interest. -

1. Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf

2. Where the Central Government thinks it necessary or expedient so to do in the interest of the -

(i) sovereignty or integrity of India; or

(ii) security of India; or

(iii) friendly relations of India with any foreign State; or

(iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.

3. Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in Section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme.

26. Providing flesh and blood to the skeleton of Section 5 and Section 6 of the Act, pertaining to "Programme Code" and "Advertising Code", Rule 6 and 7 of The Cable Television Networks Rules 1994 enumerate as under:-

6. Programme Code.-

(1) No programme should be carried in the cable service which-

(a) offends against good taste or decency;

- (b) contains criticism of friendly countries;
 - (c) contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;
 - (d) contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;
 - (e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes.
 - (f) contains anything amounting to contempt of court.
 - (g) contains aspersions against the integrity of the President and Judiciary;
 - (h) contains anything affecting the integrity of the Nation;
 - (i) criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;
 - (j) encourages superstition or blind belief;
 - (k) denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;
 - (l) denigrates children;
 - (m) contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups;
 - (n) contravenes the provisions of the Cinematograph Act, 1952 (37 of 1952).
 - (o) is not suitable for unrestricted public exhibition.
- (2) The cable operator should strive to carry programmes in his cable service which project women in a positive, leadership role of sobriety, moral and character building qualities.
- (3) No cable operator shall carry or include in his cable service any programme in respect of which copyright subsists under the [Copyright Act, 1957 (14 of 1957)] unless he has been granted a licence by owners of copyright under that Act in respect of such programme.
- (4) Care should be taken to ensure that programmes meant for children do not contain any bad language or explicit scenes of violence.
- (5) Programmes unsuitable for children must not be carried in the cable service at times when the largest number of children are viewing.

7. Advertising Code.-

- (1) Advertising carried in the cable service shall be so designed as to conform to

the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.

(2) No advertisement shall be permitted which-

(i) derides any race, caste, colour, creed and nationality;

(ii) is against any provision of the Constitution of India:

(iii) tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way;

(iv) presents criminality as desirable;

(v) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary;

(vi) in its depiction of women violates the Constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator shall ensure that the portrayal of the female form, in the programmes carried in his cable service is tasteful and aesthetic, and is within the well established norms of good taste and decency;

(vii) exploits social evils like dowry, child marriage.

(viii) promotes directly or indirectly production, sale or consumption of--

(a) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;

(b) infant milk substitutes, feeding bottle or infant foods.

(3) No advertisement shall be permitted the objects whereof are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end.

(3A) No advertisement shall contain reference which hurt religious sentiments.

(4) The goods or services advertised shall not suffer from any defect or deficiency as mentioned in the Consumer Protection Act, 1986.

(5) No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved.

(6) The picture and the audible matter of the advertisement shall not be excessively "loud"

(7) No advertisement which endangers the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner shall not be carried in the cable service.

(8) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements.

(9) No advertisement which violates the standards of practice for advertising agencies as approved by the Advertising Agencies Association of India, Bombay, from time to time shall be carried in the cable service.

(10) All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme.

27. As per the petitioner, the programmes of respondent No. 3 offend good taste and decency as also denigrate women in such way that the mind thinks derogatory of women; in any case, says the petitioner, the format of the programmes not only corrupts but even injures public morality as also the morals of the society.

28. As a matter of fact, though the respondent No. 3 never admitted it, but the Union of India admits that the three violations as alleged by the petitioner have been found to have been committed. Pertaining to the first violation, the content of the programme was found to be not suitable for children, requiring the time slot to be shifted post 11:00 PM i.e. after the children have gone to bed, and we understand that this would be the time when Wee Willie Winkie runs through the town; Upstairs and Downstairs, in his night gown. Peeping through the windows and knocking at the doors: are all the children in their bed for it is past 8 O'clock." When the second set of violations were detected, after issuing a show-cause notice, on July 26, 2011 (Annexure R-1/5) an order was passed to run Apology Scroll every hour for seven days between July 29, 2011 to August 05, 2011. It was informed that any further violation would entail stringent action which may include suspension or prohibition of the broadcast.

29. The grievance of the petitioner was that in spite of a third violation being found as per minutes of the meeting dated August 08, 2011, Annexure R-1/6, no order was passed because instant writ petition was pending. Learned counsel would urge that even the BCCC i.e. the Self Regulatory Body found two programmes dated June 25, 2011 and July 02, 2011 to be having objectionable content, but passed no directions since instant writ petition was pending.

30. To summarize, learned counsel for the petitioner urged that since the Act and the Rules envisage that any broadcast which is vulgar, offensive of public morality, is indecent or not in good taste should not only be prohibited but even registration of the broadcaster cancelled, an authority to enforce the Act and the Rules has to be put in place and it should not be left to the discretion of the Executive to take cognizance of complaints and adjudicate thereon. On facts, learned counsel urged that three violations were found by the Executive and one by BCCC. Counsel urged that respondent No. 3 is a proved incorrigible violator of the law warranting the strictest action to be taken against it i.e. power to be exercised u/s 20 and hence a direction to be issued to prohibit respondent No. 3

from transmitting the broadcast "Emotional Atyachar". In fact, Mr. Rahul Mehra, pleaded that the facts admitted by the Union of India pertaining to the four violations, were sufficient to even direct the registration of respondent No. 3, to function as a cable operator, to be cancelled.

31. Responding to the factual aspect of the matter, i.e. the four violations alleged against the respondent No. 3, Shri Ashok Desai, learned senior counsel urged that Emotional Atyachar was envisaged to be having four parts, called Season-1, Season-2, Season-3 and Season-4. Learned senior counsel highlighted that whereas Season-1, 2 and 3 were an unscripted reality show, having a theme of the loyalty of a partner, Emotional Atyachar Season-4 is a dramatized show of real life incidents of a person, who have themselves undertaken or conducted a loyalty test on their partners. The social relevance was explained by urging that in today's modern society, infidelity in relationship is a fact of life and thus a media house was entitled to hold a mirror up to the society, portraying life and society as it exists in its many hues, with unsavoury truths of relationships being one of the many colours of the society. Learned senior counsel urged that it is useless to portray only good, the perfect or the idyll for unless the worst is shown to the society, it would be difficult to make the society understand what plagues the society. Learned senior counsel urged that respondent No. 3 had to experiment with the truth. Thus, the respondent No. 3 itself was on a learning curve; but striving to improve, based upon public reaction to the programmes it improved the broadcasts. Learned senior counsel urged that there may be aberrations in an episode or two out of roughly 25 episodes constituting each Season. Therefore, learned senior counsel would urge that reality shows have to be viewed not episode by episode but collectively. Learned senior counsel urged that based upon the reaction received pertaining to the earlier shows, the respondent No. 3 kept on making improvements: offensive scenes were blurred, offensive language was muted. Learned senior counsel argued that neither episode contained overt scenes of nudity of the body or that of the language, which would be objectionable to ordinary prudent persons. With respect to the four violations, learned counsel urged that the first alleged violation pertained to the timing of the programme and not to the content per se i.e. the content was found unsuitable for viewing by children and hence the time slot was directed to be shifted. Compliance was made. With respect to the second violation it was urged that the explanation being found justified; notwithstanding the wrong being opined, the Executive thought it advisable that a self published admonition i.e. running scrolls of apology would suffice. With respect to the next two violations, it was urged that since only prima facie findings were recorded and no final order was passed, the respondent No. 3 would explain its case before the Authorities concerned. But undertook to comply with the directions if any issued. With respect to the regulatory mechanism, Mr. Ashok Desai, learned senior counsel urged that in a democratic society, self regulation is the best. Learned counsel urged that as regards the substantive law, Sections 5, 6, 16, 17, 19 and 20 of the Act coupled with Rule 6 and 7 of the Rules, were sufficient guarantee to

the nation, the society and the State, that cable operators using cable television network would not destroy the moral fibre of the society. BCCC, was urged to be, a body of persons of eminence inspiring confidence in the civil society to perform the task of taking to task such cable operators who were found polluting the ethos of the society.

32. Print media is regulated by "The Press Council Act 1978". To enforce the Act, a Council called "The Press Council of India" is constituted as per Section 4 of the Act, and as per Section 5 thereof, the composition of the Council is: a Chairman and 28 other members. The Chairman is to be nominated by a Committee constituting of the Chairman of the Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council. Of the 28 members, 13 are nominated by working journalists, 6 are nominated from amongst persons who own or carry on business of management of newspapers, 1 is nominated in accordance with such procedure as may be prescribed from among persons who manage news services, 3 persons are nominated, 1 each by the University Grants Commission, Bar Council of India and Sahitya Academy, i.e. persons having special knowledge in Education, Law and Literature, and 5 persons being Members of Parliament are nominated; 3 by the Speaker of the Lok Sabha and 2 by the Chairman of the Rajya Sabha. The Chairman and the Members of the Council hold office for a period of 3 years. As per Section 7 of the Act, the Chairman is a whole-time officer to be paid a salary by the Central Government; and notwithstanding who could be the Chairman, by tradition it has always been a retired Judge of the Supreme Court of India.

33. As per the Cinematograph Act 1952, a Board is constituted as per Section 3, consisting of a Chairman and not less than 12 but not more than 25 members appointed by the Central Government. The Chairman of the Board has to be paid a salary as determined by the Central Government. As per Section 5, to enable the Board to discharge its functions efficiently, at Regional Centres, Advisory Panels have to be established. An Appellate Forum i.e. a Tribunal is constituted u/s 5(d) of the Act consisting of a Chairman who shall be a person who has held the office of a Judge of a High Court or is qualified to be appointed as a Judge of the High Court; the Chairman receives salary as determined by the Central Government, and not more than 4 members.

34. Pertaining to publications, if a newspaper, a document or a book is opined to contain matters, publication whereof would be punishable u/s 124A, 153A, 153B, 292, 293 or 295A of the Indian Penal Code, stating the grounds for its opinion, by notification, Government can direct such document, newspaper or book to be seized as per Section 95 of the Code of Criminal Procedure 1973. But, as per Section 96 thereof, a person interested can seek a declaration from the High Court to set aside the notification issued and such an application has to be heard by 3 Judges, where the High Court consists of 3 or more Judges and by a Special Bench if the High Court consists of less than 3 Judges.

35. The Press Council Act 1978, The Cinematographic Act 1952 and the

applicable provisions of the Code of Criminal Procedure 1973 highlight that freedom of expression, Print and Celluloid has been accorded a very high status in India, in conformity with the march of times by State which claims democratic credentials. Recognizing that freedom enjoyed by the media cannot be unregulated, at the same time unshackling from State control the freedom of the media, a balance is struck by constituting Boards consisting of men and women of stature enjoying public confidence, charged with the duty to ensure that the media does not become a "feral beast".

36. In the United Kingdom we find that the Communications Act 2003 regulates media broadcast. A statutory body named "Office of Communication" (OFCOM), consisting of a Chairman and such number of members as OFCOM deems fit has been constituted which is charged with the duty to ensure that broadcast media conforms to The Communication Act 2003.

37. But, does television have any impact on social behaviour? Does a particular kind of broadcast have an impact on social behaviour?

38. We do not find much literature on the subject which is based on empirical data. But would hasten to add that social scientists are of the opinion that television has impacted the behaviour of the society as also that a particular kind of a broadcast can also impact social behaviour. These opinions are unsupported by any empirical data.

39. We could lay our hands on one publication by sociologists in Canada. The publication is called "The Impact of Television: A Natural Experiment in Three Communities".

40. Television is awful Kids watch too much of it! Are exclains commonly heard in soft discussions at social gatherings.

41. Of the various usages of Cathode rays, one led to the invention of television. T.V. broadcast began on July 02, 1928 in the United States of America. The next year 1929 we had television in the United Kingdom and Germany. Followed by France and USSR in the year 1931. With single TV channels: Unitel, commencing from news only, slowly and steadily various kinds of programmes were introduced. Came along multi channels. Simultaneously, the industrial revolution was also having its impact on the society in the said countries. World War-I was over. These countries were re-building themselves. It was the age of travel, discovery and of reason. Which factor outweighed the others in the changing behavioral pattern leading towards consumerism, it was difficult to guess. Depending upon the sample size and the method adopted to study the sample, different social scientists propounded different theories.

42. Television broadcasts were introduced in Canada in the year 1952. They were available in most parts of Canada by the year 1973 except for a few towns in Central British Columbia. The terrain was mountainous and therefore the TV signals didn't carry far. In the year 1973, the town elders convinced the

Canadian Broadcasting Corporation (CBC) the official channel of the Government to install transmitter for them. The towns would be exposed to television, not in its early formative stage, but in its mature and virulent form. Tannis MacBeth Williams, a Professor of Sociology at the University of British Columbia in Vancouver, learnt about the transmitters being installed and decided to test the hypothesis about the effects of television by studying the social behavioural pattern in the towns before and after the television arrived.

43. Hard Science students routinely denigrate the subject of Sociology for its lack of controlled experiments, ignoring the fact that even the field scientists have the same problem. Just as astronomers do not get to try out different galactic structures in the laboratory nor do geologists get to bang continents together to see what happens, like sociologists, they too have to find reasons for things from studying them as they are. But in this case in Canada there was a beautiful example of a community where the effect of a change in one variable could be observed.

44. Williams and 12 other faculty and students from the University of British Columbia did extensive surveys around the towns which they code-named "Notel". They did control studies in towns having a single TV channel and towns having four broadcast channels. They studied the towns twice: once before TV came and once after two years of the advent of TV.

45. Fortunately, the homogenous character of the towns was the same. Nearly similar in size. Around same population. Similar economic base: logging, mining and farming being the activities yielding income. Income level being around C\$ 7000 per family. The class structure being similar: 10% business; 60% skilled labour/farmer and 20% - 30% unskilled labour. All towns had small libraries, weekly newspapers, telephones and a regular road and rail service.

46. So, what did the team discover?

47. It was observed that the introduction of television had caused significant changes in the attitudes and behavior of the people of the towns where television had been introduced, especially in the case of young children. It was observed that television seemed to increase the differences that the children saw between the sexes, mainly between boys and girls. It led to increase gender awareness at a young and tender age. A drastic effect was noticed concerning social activities in the form of religious, civic, business or sports events wherein participation dropped significantly. The group most affected was those over 55 years of age and their participation dropped dramatically. The number of activities did not change, however the amount of participation reduced. Upon examination of the reading fluency of young children using a Tachistoscope, an instrument which flashes a word on a screen for a few milliseconds, and the speed of response determines the reading fluency of the reader, it was observed that the reading skills of children below the 8th grade (whose reading skills had already developed) had been hindered since television distracted and consumed reading

time, thus reducing time dedicated to reading and hampering the children's reading abilities and habits. The most profound effect was noted in relation to the behavior of the children. It was observed that there was increased aggression in children of a young age reflected by increased acts of pushing, taunting, scuffles etc. in the class room and in the playground. Boys were more physically aggressive than girls; however, they were both equally verbally aggressive. The overall level of aggression was noted to have increased in both boys and girls. Interestingly, no significant effect was found in the behavioural pattern where single TV channel was broadcast and where four channels were broadcast. Meaning thereby, the advent of television made the impact and not the particular contents of a programme.

48. In conclusion of the study it was observed that the introduction of television had made children more aggressive, harmed the reading skills of the children, decreased creativity and cut participation in leisure activities amongst children and adults as well. Overall, introduction of television had a negative effect on the community where it was introduced.

49. The virulent form of television in a virgin community would have no better study, in any case we have not come across any.

50. The reason for changed social behaviour is obvious. Take children. In the play field with a football, they learn to form two teams: adversaries and yet friends. Inter personal skills such as dribble, tackle and pass the ball to a team mate are learnt. A rough tackle by the adversarial friend would result in physical pain and the child learns to live with the pain. The child learns that if you seek pleasure (playing the game) you must bear some pain as well. The child learns to let somebody else take the credit for the hard work, for when dribbling past the defenders of the adversarial friends' team, the ball is passed on to a team member on the other side of the field to score the goal since the goal keeper has rushed towards one corner of the "D". All this learning holds steadfast in life as well, for after all, life is one big game/gamble. Sitting and watching television in the house deprives the child the games of learning on the football field and this explains the change in behavioural pattern. Speaking of young housewives, walking together to the market to buy vegetables and groceries, having time at hand, one would walk slowly and talk. There is no hurry to return home to watch a favourite television programme. One would tend to be with the neighbour in the market till all have completed the purchases. Time is well spent. If the neighbour has purchased more groceries, a helping hand is extended to cart the groceries home. If the neighbour has run short of money in the market, some money is lent on trust. But if there is a television, one tends to go to the market at a time convenient to oneself and return quick and fast, lest the programme is missed. The helping hand attitude, the care and trust which is developed as a matter of habit while shopping with a friend is not then to be found. We could multiply the examples to bring home the point, but it would be of no use because we are not writing a thesis on social analysis. We are writing a judicial opinion

and thus would only illustratively speak with reference to two examples.

51. Whether Emotional Atyachar or Sach Ka Samna is to be blamed for the ills in the society or over 200 channels 24 x 7, 365 days a year, and not to forget 366 in the leap year.

52. The study by Professor Williams and his team, with empirical data, and a good sample, tell us that it is the latter and not the former.

53. The test whether a piece of writing, a cinematograph film, a painting or a TV serial is vulgar or is against good taste or decency is to keep in mind the mythical "common man" who has been created by creative judicial minds. Now, this common man is supposed to be a person with ordinary prudence, robust common sense, sense of humour, sense of rationale and understanding, of course with the usual failings of an imperfect mind. One would ordinarily expect such a common man to shun something which is not in good taste or is against decency. Do we not instinctively grimace when foul odour is smelt? Do we not instinctively cover our nose? Do we not instinctively spit bitter and festered food? Do we not instinctively put our hands on the ears if we hear a loud bang? Do we not instinctively remove our hand if it touches hot iron? But why is it that when the eyes perceive something sensational, some look the other side and like Gandhiji's first monkey, shut the eyes, but the gaze of some gets fixed to that sensational something. Are those who shut their eyes the mythical common man or is it those who do not?

54. We have no answer. We venture none. Who are we to say that 50% of the people in society are foolish.

55. But, we have an explanation for such diametrically opposite behaviour in society when it comes to doing things which some perceive as objectionable and worthy of a response by shutting of the eyes and some consider it worthy of a gaze. Human nature is a union of opposites: love and hatred; peace and violence; truth and falsehood; unselfishness and self-centeredness; saintliness and sinfulness; and the spiritual and the physical. These opposite traits are inseparable from one another.

56. This appears to be the reason why the "Self-Regulation Guidelines for the Broadcasting Sector - 2008", remained a subject matter of debate; with a consensus eluding the Government, as informed to us by the respondents.

57. We have reached far enough to realize that two Judges sitting on a Division Bench would hardly be capable of carrying the mantle and resolve the deadlock of two competing claims and in particular how to regulate the mass media.

58. But fortunately for us we are not called upon to lay down guidelines pertaining to broadcast for the reason we have a Statutory Programme Code and we have statutory provisions to enforce the same. The limited question with which we are concerned is whether or not to accept self regulation as sufficient or nudge the Government to put in place a statutory body to enforce the

Programme Code or leave it to the Executive to do the needful.

59. Learned counsel for the petitioner and the learned senior counsel for respondent No. 3 conceded that the third option was the worst. The debate therefore was on the first two i.e. self regulation vis-?-vis a statutory body composed of men and women of eminence to regulate mass media.

60. The freedom of expression is a pivotal component of our individual development - as human beings and as political animals - and to improve and radicalize democracies. The invention of the Press was a turning point in the debate about freedom of expression. The printing press magnified the reach of opinions, information and ideas. Indeed, the pen became mightier than the sword. Guaranteeing each individual the right to freely give and receive information was perceived as a threat to the sovereign and sometimes even the State; when ideologies clashed. It was the era of mass media. Except for the United States of America, due to the First Amendment, democracies all over the world regulated mass media.

61. The countervailing viewpoints i.e. society would be better off without any regulation versus that society would be better off with a regulation has of lately been debated by Professor Amartya Sen who has persuasively argued that it is the precondition of social and economic development that transparent and open communications are necessary to ensure economic and social development that benefit everyone. There is often a tussle between the forces of media and state authorities over the communication of certain material with the general view that the State tries to limit media exposure. The response of the Media and the citizenry to state control and intervention in a democratic government may be summated in a quote: "If liberty means anything to all, it means the right to tell people what they do not want to hear". George Orwell.

62. However, the absence of state intervention on its own is no guarantee of a rich media environment. On the contrary: to promote a media environment characterized by pluralism and diversity, State intervention is necessary. To guarantee pluralism and diversity of opinion requires provisions for public broadcasting, commercial broadcast and print media and community-based broadcast. To ensure media pluralism may require the application of competition law by the State to prevent monopoly of forms of communications, airwaves etc. The other circumstance where the State plays a role, through its judicial arm, is in the regulation of content in certain limited circumstances. Freedom of expression is not an absolute right and it can be restricted to protect the rights of others for example by prohibiting speech that incites violence or hatred against a particular racial group; to protect children from sexual exploitation or to protect the reputation of individuals from false accusations etc. But only by legislation.

63. This debate in India has been won by the latter viewpoint evidenced by the fact that the print as also the broadcast media and the third form of mass communication i.e. cinema has been regulated by legislation.

64. Under self-regulation the media voluntarily commits to uphold a code of ethics that it itself drafts. It establishes a complaints mechanism, often called a media council or complaints commission, to which the public can complain about perceived breaches of the code. The independent council adjudicates on the complaints and decides upon appropriate remedies. The courts play no role in enforcing the code of practice. Compliance with the code is voluntary and the media does so out of a desire to secure the credibility of its profession and the trust of the public. Self regulation is combination of standards setting out the appropriate codes of behaviour for the media that are necessary to support freedom of expression, and process how those behaviours will be monitored or held to account. But as observed by us in para 4 above, ethics itself is a complex and controversial subject due to society not being homogeneous.

65. Some of the Advantages of self regulations could be:

(i) Self regulation preserves independence of the media and protects it from partisan government interference.

(ii) It leads to more efficiency since the media understand their own environment better than an external agency.

(iii) As the media environment becomes global (through the development of the internet and digital platforms) questions of jurisdiction become complex in an external adjudicatory system. The self regulatory system can fill the resulting gap.

(iv) It is beneficial to the society in terms of money because the tax payer is not burdened and the industry bears the cost.

(v) Peer pressure is believed to be the best self regulatory form of discipline.

(vi) Self regulation can also drive up professional standards by requiring organizations to think about and even develop their own standards of behaviour.

66. Some of the Disadvantages of promoting self-regulation of media could be:

(i) Lack of faith by the society and the feeling that the media having appointed its own Judge may curry favour from the Judge, thereby diminishing the acceptability of the verdict by the self regulatory body.

(ii) Lack of legal sanction to enforce the decision of the self regulatory body, because moral sanction may not be perceived as a deterrent by the society.

(iii) Security of tenure, salary and allowances of the members of the regulatory body being perceived by the society as a possible source of fear in the minds of the members of the regulatory body, thereby diminishing the acceptability of the decision of the self regulatory body.

67. Self regulation therefore is not a simple matter; it places requirements upon every level of the media organization, on the journalist themselves, on their editors and managers, on the approach of the media organization to the

production of content and the overall behaviour of the media company.

68. Even media personnel can be heard crying that the taint of money has polluted the clear stream of reason which should dictate the conscience of mass media. In the print media, paid news has already started sullyng the stream of news. Similarly, the desperate rush to grab eyeballs due to higher revenue earned if viewership is more has led the broadcast media to sully itself with sensationalization by adding colour and spice to events. Transgression of individual privacy and the rush to produce programmes which may be tainted but attract viewership has been witnessed in the past.

69. Thus, as we find in the United Kingdom and as we find pertaining to cinema and print media, there is no reason why the legislature does not put in place a statutory, regulatory body, and taking cue from The Cinematograph Act 1952 and The Press Council Act 1978 legislate to have a statutory Board comprising men and women of eminence in the field of Law, Science, Art and Culture, Literature, History and Social Sciences.

70. Since broadcast has been regulated by The Cable Television Networks (Regulation) Act 1995 and The Cable Television Network Rules 1994 and there exists a Programme Code as also an Advertising Code, violation whereof entails action u/s 16, 17, 19 and 20 of The Cable Television Networks (Regulation) Act 1995, finding no statutory regulatory body constituted, meaning thereby, as per the extant law the duty would fall on the executive to ensure that the mandate of the legislation is complied with, a situation which would be an anathema in a democratic set up inasmuch as it would put broadcast under the direct control of the state, we recommend that a statutory regulatory body be constituted consisting of men and women of eminence. Security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference.

71. Till said happens, since the law as it stands today has to be enforced, taking on record the stand of Union of India that as a stop gap mechanism the self-regulatory body formed by the Indian Broadcasting Foundation named "Broadcasting Consumers Complaint Committee" is recognized by the Union of India as a body competent to take cognizance of and decide complaints pertaining to violation of the law by broadcasters, but since decisions by said committee would lack the legal foundation to take action i.e. the non statutory committee cannot direct a particular kind of action to be taken or an order passed; its decisions shall be treated by the Union of India as the foundation to take appropriate action and pass necessary directions as also orders against the offender.

72. We do not comment upon the merits of the arguments advanced by learned counsel for the petitioner and learned senior counsel for respondent No. 3 which we have noted in paragraph 16 and 32 above pertaining to the alleged 3rd and the 4th violation, as per Annexure R-1/6 and the one allegedly found by BCCC for

the reason a final decision was not taken by either the executive or BCCC on account of the reason both felt that the instant writ petition being pending in this Court they should not proceed to pass final directions. We therefore direct the Union of India and BCCC to pass final directions with respect to the said two alleged violations; Union of India would take the decision with respect to the first of the two violations and BCCC shall pass an order with respect to its opinion, which order would be taken to its logical conclusion by the Union of India.

73. We place on record a word of appreciation for Mr. Rahul Mehra learned counsel who appeared for the petitioner pro-bono for arguing the writ petition detaching himself from the one sided projection of a stand pleading in a writ petition and assisting us by presenting a correct overview of the intricate and delicate subject with which we have dealt with. Likewise we acknowledge the measured response by Shri Ashok Desai learned senior counsel who appeared for respondent No. 3. Parties shall bear their own costs.