Directorate of Distance Education
NALSAR University of Law, Hyderabad

Reading Material

Post-Graduate Diploma in Media Laws

1.4 Electronic Media and Regulatory Law

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CHAPTER I

CONVERGENCE OF NEW MEDIA & THE INTERNET

1.1 Electronic Media: Need for Autonomy:

Technology is bringing all kinds of media together. This convergence is visible with palm top computer in the form of smart mobile phone instruments, where we can read newspaper, watch news bulletins, hear the podcasts, have our own web portal to give news or views, communicate audios and videos etc. Like copyright law was necessitated with invention of press, media law began with expansion of print medium. Next to add on was electronic media. When electronic media was under the control of State, the need for its autonomy was felt. The important question asked was: Why should the radio and television i.e. the electronic media be subjected to greater regulation and control than the press media in India and also the other countries in the world? Why has the government always felt the greater need to suppress the electronic media and not the print media? A contention in reply to this question is this: The vast majority of population in India is illiterate. The print media, therefore, is not accessible to the majority of the population. The radio and the television (mass media) reach this part of the population. The government, therefore, wants greater control over this media in order to reach the masses and make her voice heard India is a land of diverse culture and religions. "The press was left free in private hands to keep vigil over the performance of the government. Not that these functions are exclusive, but emphasis and domain was clear."[1] Another reason for keeping the media under government control was the cost of infrastructure and the operation of the medium. The costs involved were so huge that no private enterprise would have come forth to invest in the broadcasting, certainly not in the initial years of independence.

Once the media came under government control, they were largely misused to build up the image of the party and the leaders at the Center. Also the media became a source of entertainment for the urban middle class and a source of commercial exploitation for the private industries (as advertising).

This could have been acceptable in the countries like Britain, where the media is essentially a commercial and entertainment tool and the educative and information functions are left to other institutions. However, as this media was the only mode of educating and informing the vast majority of illiterate population in India, it became necessary to modify the media and mould it to serve the needs of the masses. Autonomy therefore becomes necessary in order to achieve these objectives and to ensure that the media does not functions as the mere mouth piece of the government.

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[1] J.S. Yadava, "Autonomy For Whom and For What?" Communicator, March 1990, pg 20

However Autonomy is essential for real development of the electronic media. In the field of broadcasting the concept of autonomy implies that there is an "unbridled functioning of the electronic media systems, free from government shackles, but within the aegis of the government."[2] Though every country in the world recognises the need for autonomy, what is being debated today is the extent to which such autonomy should be given and what kind of autonomy should be granted.

Public broadcasters are a vital component of the broadcasting sector in most countries, and will continue to be long into the future. Historically, such broadcasters have often been the only national broadcast medium and they continue to occupy a dominant position in many countries. Funded out of the public purse, they are a unique way of ensuring that quality programmes covering a wide range of interests and responding to the needs of all sectors of the population are broadcast. They thus ensure diversity in programming and make an important contribution to satisfying the public's right to know.

Autonomy signifies self-rule. Empowering the government with the hiring and firing authority contradicts the very essence of autonomy. The Government seems to be determined to give a new meaning of the term autonomy as according to the State Minister for Information, "the concept of autonomy did not suit with the era of free flow of information!"[3]

Autonomy can also be thought of in the terms of professional or functional autonomy i.e. having independence or freedom in the discharge of the functions the organization is entrusted with. Though in the use of this word 'autonomy' the different meaning or faces of autonomy are not always kept distinct but they do not necessarily go together. The most important kind of autonomy is the functional autonomy. Legal and administrative autonomy just assist the functioning of the functional autonomy. There can be instances where we have functional autonomy without legal and administrative autonomy and vice versa.

Though legal autonomy does not guarantee functional or operational autonomy, yet it is welcome. Secondly, apart from institutional arrangements, a lot depends on the top personnel in charge. What is needed is a "fully objective and professional process of formulation of job-specifications, definition of criteria, short-listing and actual selection, with (if necessary) expert professional assistance"[4]

Next important aspect is the autonomy of the clientele. However, this issue has become less relevant today as there are a number of private channels also which is giving

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[2] B.S.S. Rao on Equal Opportunity Broadcasting quoted from "Government Media- Autonomy and After" edited by G.S. Bhargava, Concept Publishing Co. , 1991, pg 13

[3] A. H. Monjurul Kabir, quoted from www.banglarights.net/HTML

[4] Ramaswamy R. Iyer on Autonomy : Form and Substance quoted from "Government Media- Autonomy and After" edited by G.S. Bhargava, Concept Publishing Co, 1991, pg 43

ample 'autonomy' or freedom to choose to the clientele, still we need to understand it because at one time the electronic media failed to give this autonomy to the people. In the light of the educational role of the television we can define this autonomy as the learner's autonomy. The media should be aware of the fundamental and the more complex problems involved in planning, developing, producing and presenting educational programs. The media should not only be sensitive to the educational needs of the people but should also be aware of its potential role as an educator. Thus, while trying to achieve the other forms of autonomy it has to keep the objective to attaining a society of 'learner's autonomy' in mind.

At this juncture it is relevant to discuss the concept of linguistic autonomy also. This is a problem which is cannot be ignored. In a country like India, there are diverse cultures and languages. Earlier, the entire Broadcast used to take place mostly in the national language and no thought was given to the various other languages that were spoken in the country. "The Journalists at large inculcate, a language which allows autonomy to percolate down to the lowest strata of the society. Autonomy of certain institutions, whether All India Radio, Doordarshan, any public sector organization or universities or other educational institutions would not bring any results, till the nature of modern India state changes in such a way that we would be able to find a balance between the social and individual interests."[5] What is the use of all the freedom and autonomy that we can possibly dream of if we do not understand what is being broadcasted to us?

Television's influence over the public makes it a tempting target for those in government who would seek to control public opinion—to devalue democratic processes and eliminate the public voice as a factor in official decision-making. In the United States, the recognition of the media's importance to democracy is embodied in the First Amendment to the Constitution, which instructs government to make no law abridging the freedom of speech or the press.

Yet even in the U.S. the tradition of press independence has occasionally come under attack from government, and in the New Independent States, press independence may lack deep constitutional or cultural roots. The Working Group therefore met this year to consider ways of protecting television autonomy, as a way to maintain the health of democratic institutions and processes. Though our initial focus was solely on the autonomy of the television and radio broadcaster, it soon became apparent that it was equally important to consider the participation of the community—its autonomy. For without the participation of citizens the highest forms of public discourse cannot take place and the concerns of the public may not reach the political agenda.

[5] Hemant Joshi, " Autonomy and Language" Communicator , March 1990, pg 34

Autonomy (or freedom, or independence) is about the discharge of power. In the case of the NIS, the state may seem to be the principal or only player from which protection needs to be guaranteed. They are surely not alone in that experience. In fact, however, there are three players which affect the freedoms enjoyed in an open society.

A legal structure against which to plan and measure the establishment of democratic processes and institutions must respond to all of them. The state is often the most powerful and self-serving in denying autonomy. As free societies evolve, however, the press itself accrues power that can be inimical to free expression and accurate communication with the public, and between the government and the people. Equally, the public and individual citizens—though perhaps least powerful and organised—can, when aroused, run roughshod over the rights of institutions and individuals, including government, the press, educational institutions, and business.

Balance among these centers of power, 1) the government, 2) the press, and 3) the people, is as desirable, and as problematic, in the United States as in the NIS.[6] Though current agendas may differ, the goal of legal constraints and protections and of operational standards and expectations for all three players—state, press, and public—seems fundamental to civic life in all societies striving toward the full expression of democratic principles.

1.2 Grip of Government over TV

Television represents an enormous political asset to those who are in power and those who seek it. Therefore, governments may not willingly give up their control of the delivery system by which television signals reach the public. However, the Working Group strongly asserts that without technological autonomy, the independence of television broadcasters is severely compromised. All the options below are predicted on the overriding recommendation that privately-owned transmission facilities and telecommunications infrastructure should be developed as soon as feasible where (as in the New Independent State) they are lacking. The following useful options were emerged for consideration as methods of protecting autonomy during the transition to a privately-owned common carrier telecommunications infrastructure.

1.3 Role of Politicization:

For an organization to be autonomous, it should be free of both the partisan interests of ruling party as well as the commercial interests. If both these forces start working in the organization then the situation could be highly dangerous leading to a total collapse of the society's culture. In a society that is democratically open, media is much more powerful than a political party. The political parties serve as instruments for changing political rulers. The

[6] http://www.vii.org/monroe/issue09/report.htm

media not only has an impact on the present but also on the social, political and cultural values for generation to come. That is why there are so many efforts on the part of the political parties to allure this electronic media. Eastern Europe can be the best example of this kind of this kind of potency. "It was the 'glasnost media' rather than political parties or armies which helped bring about changes in these countries in a peaceful manner. That is why, the catalyst for the fall of Ceasescu was the taking over of the broadcasting house in Romania by the rebels."[7]

Mere creation of an autonomous organization does not serve the purpose. The media does not have to move towards depoliticisation but towards the rightful role of politicization. It should have a vision that allows for free expression of different view points and not harping of the views of the ruling party. Also, as long as there is lack of professionalism in the organization all the autonomy we spoke about becomes meaningless.

Further, the question of autonomy should be approached from two different angles- the political and the creative angle. Politically what we are talking about is Article 19 of the Constitution which talks about freedom of speech and expression. A democracy should allow the free flow of information and knowledge. For a democracy to function people should have the freedom to choose and this freedom can only be exercised if there is a free flow of information. Information has become a crucial input for development with the fast developing technologies, and the electronic media has to disseminate such knowledge to the masses of the people. "From this point of view, it has been a crime against democracy on the part of the government which made use of the democratic process to come to power, to have denied necessary freedom to broadcasting and television of which it became the owner."[8]

Speaking of the creative aspect of the media, full freedom is a pre-requisite for any creative activity to communicate. If the writer, producer or the creator is trying to create within certain limitations laid down by others then his creation is faulted. Even the audience take an instant dislike to the constant drumming of the politicians, is very obvious.

Mostly when people talk about autonomy, they focus on news, political commentary and discussions. What they fail to realise is that the bulk of the programmes consist of music, drama, entertainment, educational and sports, etc. Autonomy for these is equally imperative. Today after the satellite channels and private channels coming in, Doordarshan is trying to reach the masses by providing more entertainment. Despite this, there is still a lot of control on the creativity exercised by the Doordarshan.

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7 Krishna Kant, "All A Matter Of Approach" Communicator, March1990, Vol XXV,No.I; pg5

8 L.Dayal, "Autonomy A Matter Of Culture And Conduct" Communicator, March 1990, pg8

Thus it can be concluded that autonomy for the electronic media is a matter of culture and conduct and not of form and structure. The structure is important, but a lot would depend on the person managing the structure and the persons who are in the position to exert pressure.

1.4 Study of Autonomy of Electronic Media in US:

Here is a report of the working group on Broadcaster Autonomy and the State Commission on Radio and Television Policy of Duke University and the Carter Center of Emory University. It is relevant to refer this report to understand the tendency of the Government to control the public mind and thus trying to tighten the grip over the electronic media. The report says: "Television's influence over the public makes it a tempting target for those in government who would seek to control public opinion—to devalue democratic processes and eliminate the public voice as a factor in official decisionmaking. In the United States, the recognition of the media's importance to democracy is embodied in the First Amendment to the Constitution, which instructs government to make no law abridging the freedom of speech or the press.

Yet even in the U.S. the tradition of press independence has occasionally come under attack from government, and in the New Independent States, press independence may lack deep constitutional or cultural roots. The Working Group therefore met to consider ways of protecting television autonomy, as a way to maintain the health of democratic institutions and processes. Though the initial focus was solely on the autonomy of the television and radio broadcaster, it soon became apparent that it was equally important to consider the participation of the community—its autonomy. For without the participation of citizens the highest forms of public discourse cannot take place and the concerns of the public may not reach the political agenda. The Working Group was also mindful of the economic problems attendant on reconstitution of the national broadcast systems in the New Independent States. It recognised the difficulties of operating a nascent, largely unregulated commercial television and radio system alongside a more established, state-owned broadcast system.

Autonomy (or freedom, or independence) is about the discharge of power. In the case of the New Independent State, the state may seem to be the principal or only player from which protection needs to be guaranteed. They are surely not alone in that experience. In fact, however, there are three players which affect the freedoms enjoyed in an open society.

A legal structure against which to plan and measure the establishment of democratic processes and institutions must respond to all of them. The state is often the most powerful and self-serving in denying autonomy. As free societies evolve, however, the press itself accrues power that can be inimical to free expression and accurate communication with the public, and between the government and the people. Equally, the public and individual

citizens—though perhaps least powerful and organized—can, when aroused, run roughshod over the rights of institutions and individuals, including government, the press, educational institutions, and business.

Balance among these centers of power, 1) the government, 2) the press, and 3) the people, is as desirable, and as problematic, in the United States as in the NIS. Though current agendas may differ, the goal of legal constraints and protections, and of operational standards and expectations for all three players—state, press, and public—seems fundamental to civic life in all societies striving toward the full expression of democratic principles.

(a) **Fundamentals of Autonomy & its goals**

The Working Group discussed several goals for autonomy of broadcasting. This list is an inclusive one and its components are not mutually exclusive.

- Ferreting out truth without fear or favor; countering untruthful ideas while uncovering facts the public needs to know.
- Empowering ordinary members of the public in the democratic process, activating their interest and involvement in civic life.
- Credibility for the news media is rooted in their genuine independence and believability; only credible media can minimize citizen alienation from and encourage participation in democratic processes.
- Controlling abuses of power by government and by other centers of power, including business corporations, through exposing misdeeds and establishing a countervailing center of power that works through the influence of an informed and mobilized public.
- Without autonomous sources of information, ordinary people cannot effectively press their interests upon and command resources from powerful institutions including but not limited to government.
- Providing access to means of self-expression for the average individual and for social institutions and groups: allowing the nation to talk to itself.

The Working Group also acknowledged the risks of unbridled media autonomy. Radio and television can, if they become too insulated from the rest of society, become a center of arrogant and unresponsive power themselves. For example, the electronic media are sometimes perceived to display an undue cynicism, distrust and antagonism toward government leaders. This can damage democratic discourse, and foment citizen alienation from politics. Media autonomy is not an end in itself; it is a means toward a healthy participatory democracy and society.

(b) Defining Media Autonomy:

Members of the Working Group suggested several definitions of media autonomy. Some of these notions are compatible with each other; others may conflict.

- Broadcasters should enjoy freedom of program choice without accountability to government for program content.
- Those who run broadcast outlets should have maximum freedom from all government involvement in their decisions; they should be free to maximize their economic profits, ideological satisfaction, or any other goals they choose, as disciplined and restricted by the pressures and incentives of a competitive free economic market.
- Control over public debate should not be exerted by self-serving, powerful forces in society, including but not only government: broadcast media should be free to stimulate and channel open, diverse, free-flowing public discourse.
- Broadcasters should have the freedom to maintain critical distance from all centers of political and economic power—to establish an adversary relationship with both government and corporate power.
- Broadcasters must possess guarantees of access to information about government; with few exceptions, secrecy in government is incompatible with an independent press and a democratic process.

(c) Ownership & Regulatory Structures

A. Buffer Organizations

Autonomy for broadcasters can be greatly aided by the creation of buffer organizations to stand between government and commercial entities on the one hand and the broadcaster on the other. Such buffers are useful especially if one takes the view that neither the government nor the market can fully reflect the public's preferences.

Buffer organizations can take the form of 1) Independent government regulatory agencies such as the U.S. Federal Communications Commission; 2) Government-appointed oversight entities, such as the British Broadcasting Corporation; and 3) Citizens Advisory Councils, established by joint efforts of broadcasters and citizens or by one of the two other forms of buffer agencies.

In the first two forms, buffer organizations promulgate broadcast regulations; in the latter, the councils provide less formal input to broadcasters.

Option 1: Establish buffer organizations to protect the broadcasting system from government interference in programming decisions and content.

Option 2: For initial period of time, buffer organizations may set requirements in the public interest, e.g., for regional or special minority cultural programming, public affairs

programming, etc. Review requirements after such time as competitive structure becomes more developed.

Option 3: Method of appointment to buffer committees should ensure reasonable representation of a range of voices in the communities served by the broadcaster.

B. The Public Service Broadcasting System

While buffer organizations are central to the ability of the entire broadcasting system to carry out its ultimate goals, certain policies should be considered that relate specifically to this type of system.

Option 1: Create separate regulatory bodies for individual public service broadcasting services (if more than one) with different sources of funding.

Option 2: If corporate or government funding is accepted by public service broadcasters, strictly separate the production of programs from funding mechanisms and organizations. In the U.S., this is the purpose of the Corporation for Public Broadcasting; in the U.K., of the British Broadcasting Corporation.

C. Commercial System

Option 1: Notwithstanding Option #1 in Section A above, minimize governmental regulation of the commercial sector of broadcasting. Under this option, buffer organizations exist only to protect commercial broadcasters' decisions from intrusion by public officials.

(c) **Technological Autonomy:**

Television represents an enormous political asset to those who are in power and those who seek it. Therefore, governments may not willingly give up their control of the delivery system by which television signals reach the public. However, the Working Group strongly asserts that without technological autonomy, the independence of television broadcasters is severely compromised. All the options below are predicated on the overriding recommendation that privately-owned transmission facilities and telecommunications infrastructure should be developed as soon as feasible where (as in the NIS) they are lacking. The following options should be considered as methods of protecting autonomy during the transition to a privately-owned common carrier telecommunications infrastructure.

Option 1: Government-owned satellites, transmitters and wire line networks should operate as common carriers made available to all television stations for a reasonable and stable fee. Common carrier operation means the facilities must be open to all stations desiring to use

them that can pay the fee; the owners of a common carrier facility have no right to censor or modify the content of any communication.

Option 2: For initial period of time, buffer organizations may set requirements in the public interest, e.g., for regional or special minority cultural programming, public affairs programming, etc. Review requirements after such time as competitive structure becomes more developed.

Option 3: Create as many technological options as possible, and make sure that there is enough overlap and redundancy to continue broadcasting if one technology fails or is withdrawn. Minimize costs of these alternatives.

Option 4: Autonomy for broadcasting institutions should be paralleled by autonomy of other organizations, such as colleges, unions, and community groups, which should be given low-cost production equipment and encouraged to distribute programming via broadcasting and other means.

1.5 Narrowcasting:

The electronic media, especially a public service broadcaster is an important and a very potent tool for the social and cultural development for all the people in general and of India, with its unique diversity, in particular "This implies more "narrowcasting" to local audiences, especially the disadvantaged and deprived sections of the population in terms of literacy, incomes, gender, social status, rural and peripheral location and lack of access generally. It must also cater to special needs and interests and encourage interactive and participative broadcasting."[9] It should not shy away from experimenting and pioneering, and setting standards for the commercial channels. Autonomy can be best safeguarded through excellence.

Both radio and television broadcasting are the most powerful medium of communication and have resulted in the revolution of `mass-communication'. Electronic medium, including films, is the single largest medium of communication that is reaching the masses with news, entertainment and education.

Keeping in mind the way the electronic media influences the masses, all the countries in the world have some form or control or the other on their broadcasting system. In India broadcasting earlier was state owned and private television companies could produce programs but not broadcast them. However to meet the greater public access to satellite transmissions from within and outside the country, the government had to liberalize its policies.

[9] B.G. Verghese quoted from www.thehoot.org

1.6 Growth of Professional Broadcast Medium:

For professionals as well as creative talent, radio and television broadcasting holds the hope of a bright future. The industry needs both qualified work force[10] and creative talent[11]. Also there are a lot of opportunities for the talented performers. International channels which are easily accessible today have resulted in the creation of a dynamic environment and instilled more competition in this field. They have also brought in qualitative change and tremendous opportunities for professionals. Time is the most important aspect of their work[12] and so the people working in radio and television broadcasting function under tremendous pressure.

The broadcasting media is expanding rapidly and India is fast emerging as a growth center for entertainment in Asia. "It is anticipated that by 2005 the broadcasting and entertainment industry could be worth Rs 60,000 crore compared to the current revenue of around Rs 15,000 crore. A huge spin off effect of all this is the growth rate in employment generation and therefore those with an interest in this area can look forward to a bright future. Job opportunities for radio jockeys, disc jockeys, video jockeys, announcers, performers, anchors, directors, producers, cinematographers, photographers, set designers and costume designers animators etc., are being regularly thrown up by umpteen broadcasting channels."[13] One of the noticeable features of jobs in these areas is that one can choose between full time or part time employment or even go for free lancing. Any of these options exist for employment in All India Radio, Doordarshan, and Private TV Channels etc.

Radio and television both cater to audiences of varying tastes and preferences and most networks therefore present a range of programs that target segments according to age, sex, language, occupation special interest and so on. It can be said that no segment of the society is left untouched by these mediums and they are rightly predicted to be the major mass communication media of the twenty first century.

Other than direct employment opportunities the radio and television industry has given rise to a number of related industries or provided impetus to such related industries, which already existed. Some of these related fields in which job opportunities exist are the following:

- Music- both audio and video recording
- Networking

[10] In the areas such as program software development, editing and graphics
[11] For production and direction
[12] Whether it involves appearing and speaking on the air, producing a program or transmitting it to radio and television receivers
[13] http://www.careerdowell.com/CareerCouns/Radio&TelevisionBroadcasting.htm

- Advertising Commercials
- Home Entertainment in both audio and video sectors and includes design, manufacture and sales of hardware as well as software like video games, compact discs etc.

Professional qualification is a prerequisite for technical jobs, however for jobs in the production side no such qualification is essential as skills in production jobs are generally gained through hands on experience. Depending upon the opportunity simple graduates, with an interest in this field, can get jobs in production. Formal training is however available even for production jobs and would be helpful in finding a placement and sharpening inherent skills. Various institutes around the country offer courses in Mass Communication and in various other aspects of television technology and production. Some of these institutes also offer specialized courses in radio journalism and production.

1.7 New Medium Internet, Birth of Social Media:

Going by global standards, India's internet penetration rate is considered less than 10 percent low. However India became a significant center of tens of millions of users and thus an important leader in the high-tech industry. In spite of Infrastructure limitations and cost considerations restricting the access to the internet and other ICTs in India, both infrastructure and bandwidth have improved in the last two years. The International Telecommunication Union (ITU) reported 61.3 million users as of 2009[14]. As per the Internet and Mobile Association of India (IAMAI) about 77 million Indians have used the internet at least once in their lifetimes[15]. A 2010 survey by the New Delhi–based research and marketing firm Juxta resulted in an estimate of 51 million "active" internet users, who had used the internet at least once in the past year (40 million urban and 11 million rural)[16]. Various measurements put the overall internet penetration rate at a rather low 5 to 8 percent of the population, but there are signs that this figure is increasing very fast. One recent study predicted that the number of Indian users would reach 237 million in 2015, from a current estimate of 80 million[17].

(a) Mobile Penetration

There is a dramatic increase in proliferation of mobile users, and the penetration almost touched 60 percent of the population. The TRAI explained that the total mobile subscriber base as almost 730 million by December 2010[18], more than double the 347 million

[14] International Telecommunication Union (ITU), "ICT Statistics 2009—Internet," http://www.itu.int/ITU-D/icteye/Indicators/Indicators.aspx#.

[15] http://www.iamai.in/Upload/Research/icube_new_curve_lowres_39.pdf

[16] http://www.juxtconsult.com/Reports/Snapshot-of-Juxt-India-Online-Landscape-2010-Press.ppt

[17] Tripti Lahiri, "India to Have 237 Million Web Surfers in 2015," *India Real Time* (*Wall Street Journal* blog), September 1, 2010, http://blogs.wsj.com/indiarealtime/2010/09/01/india-to-have-237-million-web-surfers-in-2015/.

[18] http://economictimes.indiatimes.com/news/news-by-industry/telecom/indias-mobile-phone-users-grow-to-72957-million/articleshow/7361931.cms

users recorded by the ITU for 2008[19]. Access to the internet through mobile phones has risen as well, apparently due to a series of inexpensive rate plans that service providers introduced in early 2010. Still, only a small percentage of mobile-phone users access the web on their devices. According to IAMAI, an estimated 20 million people had such access in late 2010, up from 12 million in 2009[20].

India today has over 10-crore Internet users, third largest in the world after China and the U.S., which is likely to more than double by 2015. India also has over 2.8-crore Facebook users and is the fifth largest Facebook user base in the world and is expected to become second largest by the end of 2012. Internet usage in India is growing at a very healthy rate and is close to a 100 million active users. This is just about 8.5% of the total population of India. About a decade ago, one would not believe these numbers to be at just about 25,000 Internet users. The forecast also comes with findings associated with Google properties. For e.g., Google's video sharing site YouTube has around 20 million unique users across India and the same is believed to grow to 30 million by end of 2011 itself. As far as the growth is concerned, Internet users will even surpass the 300 million users by 2014.[21]

(b) Internet

Following are the facts that explain the spread of internet in the world as on 2019.

1. There are 5.11 billion unique mobile users in the world today, up 100 million (2 percent) in the past year.
2. There are 4.39 billion internet users in 2019, an increase of 366 million (9 percent) versus January 2018.
3. There are 3.48 billion social media users in 2019, with the worldwide total growing by 288 million (9 percent) since this time last year.
4. And 3.6 billion people use social media on mobile devices in January 2019, with a growth of 297 million new users representing a year-on-year increase of [22]more than 10 percent.

The internet users are growing at a rate of more than 11 new users per second, which results in that impressive total of one million new users each day. On average, the world's internet users spend 6 hours and 42 minutes online each day.

[19] http://www.itu.int/ITU-D/icteye/Indicators/Indicators.aspx
[20] http://www.indianexpress.com/news/more-people-are-logging-on-to-internet-via-cellphones/658375/0
[21] http://www.imediaconnection.in/article/439/Digital/Internet/google-internet-users-in-india-to-reach-300-million-by-2014.html 8.12.2011
[22] https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates accessed on 2.10.2019

(c) Social Media reach

Worldwide social media user numbers have grown to almost 3.5 billion at the start of 2019, with 288 million new users in the past 12 months pushing the global penetration figure to 45 percent. Social media use is still far from evenly distributed across the globe though, and penetration rates in parts of Africa are still in the single digits.

GlobalWebIndex reports that the average social media user now spends 2 hours and 16 minutes each day on social platforms – up from 2 hours and 15 minutes last year – which equates to roughly one-third of their total internet time, and one-seventh of their waking lives.

India's internet users expected to register double digit growth to reach 627 million in 2019, according to market research agency Kantar IMRB on March 6, 2019. As there is a huge increase in rural internet growth and usage, half a billion (566 million) users were added. It is expected to touch 627 million by the end of this year. [23]
There are 4.68 billion mobile users in the world during 2019 and it is expected to touch 4.78 billion in 2020[24]. In India the mobile users in 2019 are 813.2 million.

(d) Convergence

Today there is no necessity to watch tv for news or entertainment. The broadcasting is being replaced by broadband programs. With smart TVs around, the Internet allows watching choicest programs switching over from channelled programs. The broadcasting has been revolutionalised further with development of broad band technology, as the High Broad Band TV (HbbTV) Consortium (later HbbTV Association) was born in February 2009 from the French H4TV project and the German HTML profil project. This HbbTV was first demonstrated in 2009, in France by France Télévisions and two developers of Set Top Box technologies, Inverto Digital Labs of Luxembourg, and Pleyo of France, for the Roland Garros tennis sport event on a DTT transmission and an IP connection and in Germany using the Astra satellite at 19.2° east during the IFA and IBC exhibitions[25].

In June 2014, the HbbTV Association merged with the Open IPTV Forum, a similar industry organisation for end-to-end Internet Protocol television (IPTV) services formed in 2007, which worked closely with the HbbTV initiative on browser and media specifications for network-connected televisions and set-top boxes. The two initiatives were combined

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[23] https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms?from=mdr accessed on 2.10.2019

[24] https://www.statista.com/statistics/274774/forecast-of-mobile-phone-users-worldwide/ accessed on 2.10.2019

[25] 27 August 2009, https://web.archive.org/web/20091007125549/http://www.hbbtv.org/news/HBBTV_PR_Final.pdf accessed on 2.10.2019

under the HbbTV Association's banner because the markets for IPTV, OTT and hybrid broadcast and broadband TV are converging[26].

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(e) HbbTV set-top boxes

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HD terrestrial services have encouraged a range of device manufacturers to launch new hybrid set-top boxes for the UK consumer retail market. Some of these companies have launched devices that, in addition to allowing traditional broadcast and IP-delivered services to be received, have an integrated smart-card slot that allows consumers to receive encrypted premium television services including sports and movies[30].

(f) Cable Telephone Service

Many cable operators have already introduced cable telephone service in North America, Australia and Europe. This operates just like existing fixed line operators, involving installing a special telephone interface at the customer's premises that converts the analog signals from the customer's in-home wiring into a digital signal, which is then sent on the local loop (replacing the analog last mile, or plain old telephone service (POTS)) to the

[26] June 17, 2014, https://www.prnewswire.com/news-releases/open-iptv-forum-and-hbbtv-association-merge-their-activities-263418211.html

[27] September 1, 2016, https://www.broadbandtvnews.com/2016/09/01/hbbtv-association-joins-forces-with-smart-tv-alliance/ accessed on 2.10.2019

[28] https://www.freeview.co.uk/blog/?p=293

[29] https://www.digitalspy.com/tech/terrestrial/a182608/bbc-arqiva-outline-dtt-hd-upgrade-plans/

[30] https://www.techradar.com/news/home-cinema/high-definition/freeview-hd-the-definitive-list-of-boxes-680661

company's switching center, where it is connected to the public switched telephone network (PSTN). One of the standards available for digital cable telephony, PacketCable, seems to be the most promising and able to work with the quality of service (QOS) demands of traditional analog plain old telephone service (POTS) service. The biggest advantage to digital cable telephone service is similar to the advantage of digital cable, namely that data can be compressed, resulting in much less bandwidth used than a dedicated analog circuit-switched service. Other advantages include better voice quality and integration to a Voice over Internet Protocol (VoIP) network providing cheap or unlimited nationwide and international calling. In many cases, digital cable telephone service is separate from cable modem service being offered by many cable companies and does not rely on Internet Protocol (IP) traffic or the Internet.

(g) TV, Telephone and Internet

This is practically a convergence of the television, telephone and internet access, which is commonly called ‘triple play’. Traditional cable television providers and traditional telecommunication companies are increasingly competing in providing voice, video and data services to residences through triple play, regardless of whether CATV or telcos offer it. The internet is a global network of computers storing data in every conceivable subject of interest, and retrieving whenever needed. The internet is a global matrix interconnected computer netorks using the Internet Protocol to communicate with each other. The establishment of large numbers of interconnected computers created an information transport system with multiple paths and innumerable destinations in a universal uniform mechanism to feed, store, transmit, receive and retrieve the information from one point to any other point without any lapse of time or cost. The growth of internet was accelerated with the creation of world wide web through which it became graphical and interactive. The World Wide Web is a network of sites thatn be searched and retrieved by a special protocol known as Hyper Text Transfer Protocol HTTP. This protocol simplified the writing of addresses, automatically searched the Internet for the address indicated and called up the document for viewing. 'Surfing' is the term used in developed countries to refer to the pastime of viewing web pages and moving from one to another by clicking on hyperlinks. With a world wide web of transport path of communication was made available, the scope for transmitting any kind of information, entertainment in written or spoken or audio or visual forms has tremendously increased leading to convergence of every perceivable communication all over the globe. Because a page on the World Wide Web can reach any person in any corner of the world, the boundaries were dissolved and jurisdictions became irrelevant. This aspect made the regulation of internet virtually impracticable and the freedom of speech, expression and communication was practically realised by every person capable of operating a web page on computers. Thus the internet is a technological convergence of all media to form a new comprehensive single media incorporating every imaginable communication. It has every attribute of each and every medium within it and being boundless and global in form and

nature, it is difficult to make it subject to existing regulation mechanism. Thus Internet jurisdiction, cause of action, regulation and accountability with possible legal consequences became very complex and difficult issues, which can not be answered easily.

The New Telecom Policy 99 envisaged opening up of Internet Telephony whereupon the Government decided to permit the Internet Service Providers ISPs to process and carry voice signals with effect from 1st April 2002 subject to prescribed guidelines. The TRAI is the regulator for this service also. The Convergence Bill proposed to regulate every service rendered on cyberspace through a common regulatory commission.

(h) Evolution of Concept of Convergence:

Convergence is happening in a big way. Efficient utilization of resources, increased level of competition, more innovative user applications and technological developments are the main drivers of convergence. The growth of convergence at ground level has in turn resulted in convergence of regulation in different parts of the world. In telecom this happens on account of maintaining one single network for voice and data and leveraging the Internet cloud to handle ever-increasing voice traffic leading to cheaper per-minute charges. Usage of IP technology is increasing day-by-day. In the space of internet, various kinds of convergences are happening. Growing technology with medium of Internet, unprecedented changes are going to be unfolded.

As on 19th December 2005, there have been more than 221.34 Million downloads of Skype VoIP software (which allows free peer to peer VoIP calls as well as calls to and from PSTN at rates significantly less than traditional phone companies). This number is more than the subscriber base of the world's largest mobile network operator Vodaphone (171 Million subscribers as on September 2005). Yahoo Messenger and Google Talk have also started offering free PC to PC calls. The incumbent UK telecom operator, the BT group has also announced plans to bundle broadband with VoIP.

(i) Convergence of Technology:

Convergence taking place at the technological level refers to the coming together of the telecom, audio visual and information technology sectors as a result of the increased use of the digital technologies. This technology as used initially only in the computers implies the conversion of any type of information into binary digits of 0 and 1. Most of the recent development in the telecom and broadcasting sectors is through digital technology. In the audio – visual sector the basic building block is the MPEG (Motion picture Experts Group.) standards for encoding of moving images. Once encoded in this format they could be modified, manipulate or transmitted in same way as any other digital information on network. Traditionally the analogue technology was used in these sectors. Further this

technological convergence is due to the use of compression techniques that reduce the number of bits required to represent the information in data transmission or storage, there by reducing the bandwidth necessary to transmit the content information or store it on floppy disk, hard disk or tape records. As the information transferred through the internet, it could be the prime mover in the convergence.

(j) Convergence of Network:

This technological convergence leads to a convergence of networks. Networks that previously could transmit only particular type of data can now carry any type of information. The telecom networks can now supply broadcast while the cable TV can be used for telephony, in addition to their traditional businesses. The scenario envisaged is that the Electric and gas companies have to install fibre optic and huge pipes for the supply. These companies could install fiber optic required to transmit information in their controlled public rights of way and lease the same to telecom or broadcaster.

(k) Convergence of Services:

Technological and network convergence is leading to the convergence of services. This is due to the creation of a new variety of hybrid services as a result of the cross fertilization between the telecom, broadcasting and information technology. This leads to the development of entirely new services eg. Home banking or home shopping. The wide usage of computer technology has permitted the wide usage of the sophisticated consumer devices like set top boxes, and navigation software essential for the consumer access.

(l) Convergence of Market:

Convergence is also changing the market structures. Companies that were previously active in marketing of individual products are now seeking to enter into the market of converged products. The most probable way of entry into these markets would be through the merger and alliances between two separate service providers. This would lead to the wide spread restructuring of the markets. For instance the trend towards the vertical integration for instance the content and the infrastructure provider, is indicative of the changing scene.

(m) Internet: Prime Driver of Convergence:

The technical architecture of the Internet constitutes its distinctive feature and a factor of convergence. The use of open protocol enables network interconnectivity and, with the required technical adjustment this inter connectivity is applicable to any type of information on any type of network. Hence the Internet competes with any traditional media, which is specific as telecom, broadcasting etc., by providing an alternative means of distribution. For instance the Internet can be used to transmit television or radio programmes, voice telephony

or software. In this sense the Internet greatly contributes in bringing these diverse sectors on a single platform though these had previously existed separately[31].

A general character of regulation in the globalised economy is the breakdown of the general legal norms into more specific subordinate legislations. These leads to wide administrative discretion, in response to the complexities of the economic and technological environment[32]. The sheer bulk of law has been transformed into legal rules, and policy documents, which lay down the broad guidelines and let the market forces do the rest. The plethora of this primary and secondary legislation is supplemented by other instruments like licenses. As the media expands the need for its regulation and protection of its autonomy are also recognized. Let us study the expansion of electonic media in the coming chapter.

[31] Gilhooly, "Towards Global Internet Infrastructure" International Journal Of Communications and Policy, issue 3 summer 1999.

[32] Habermas, J. Between Facts and Norms - *Contributions to a Discourse Theory of Law and Democracy* (William Rehg, Trans.). Polity Press, Cambridge (1996), 389, 438;

CHAPTER II

EXPANSION OF ELECTRONIC MEDIA: BROADCAST SECTOR TV & RADIO

2.1 Emerging Electronic Media: Broadcast sector

The technology widened scope of communication. From wheel- to- Printing Press to the Internet… technology emerged and converged to offer wide range of communcation tools and gadgets. The communication saw a revolution starting from the birth of very powerful print media consisting of newspapers and journals taking the information and opinions about happenings around to nook and corners of the world.

There are three Estates entrusted with power to control the people under Constitutional Governance- Executive, Judiciary and Legislature. The Fourth Estate- the Media contributes to dynamic thinking of people rather than controlling their minds. But when even the Fourth Estate develops interests to regulate the minds, the concerned civil society has a role to awaken the masses. That emerging estate is called Fifth Estate. As a parallel to Fifth Estate of physical world, the Blog world, netizen journalists, social network groups constitute this Fifth Estate in virtual space voicing their divergent thoughts and circulating their critical remarks. These virtual vocal voices on-line as part of the social networking group are now facing the possibility of censorship of one kind or the other or regulation from the rulers of the real world. Latest example is that the United States government is attempting, following foot-steps of Iran and China, to stifle voices by imprisoning for five years for violating copyright by linking to a copyrighted site. In fact, the life of communication in social networking sites makes the online community enliven and improve the quality of democracy in real world. The virtual space with the names like www.facebook.com, www.google.com, www.myspace.com, www.linkedin.com, www.twitter.com, www.youtube.com, www.yahoo.com is a wonderful place where people can connect instantly between themselves and with friends and relatives, colleagues, contacts etc. The people can easily register without any cost and get into fastest communication community on line. Minds can meet without bringing heads together in this online world and the communication will cross the continents in no time.

2.2. The growth of Media in India

Within short span of time Indian Media has grown leaps and bounds in myriad forms, languages and regions. It includes different types of communications media such as television, radio, cinema, newspapers, magazines, and Internet-based websites, blogs, social media net works, etc. Many of the media are controlled by large, for-profit corporations

reaping huge revenue from advertising, subscriptions and sale of news, entertainment and other copyrighted material.

The Indian media also has a very strong component of film medium and the music medium as well. Coming to print media, India has more than 70,000 newspapers. BBC considered India the biggest newspaper market in the world – with over 100 million copies sold each day. Advertising revenues have soared.[33]. In the past two decades, the number of channels has grown from one - the only state-owned broadcaster, Doordarshan - to more than 500, of which more than 80 are news channels[34].

BBC says there is no diversity in the growth of Indian Media. A 2006 study by the Delhi-based Centre for the Study of Developing Societies found that of the 315 key decision-makers surveyed from 37 Hindi and English publications and TV channels, almost 90% of decision makers in the English language print media and 79% in television were from the upper castes. There is virtually no representation of Dalits, Scheduled Castes and Tribes, who comprise some 20% of India's population and live on the margins. This accounts for a serious lack of diversity in Indian media[35].

The advent of print media is recorded in the late 18th century in 1780, while radio broadcasting began in 1927. The screening of moving pictures in Bombay was initiated during the July 1895. Indian Media is hailed as one among the oldest and largest media of the world[36].

In recent years there is a rapid growth in spending on entertainment and media in India, which was driven by the country's growing middle class and young urban population.

Still the country's entertainment and media market reportedly remained significantly smaller than that in other leading Asia Pacific countries such as China. However, during the five years to 2018 the gap with China was expected to be narrow, as India's overall spending on entertainment and media would expands at a compound annual growth rate (CAGR) of 11.6% – narrowly ahead of China's 10.9%, and more than double the 5.0% CAGR projected for entertainment and media globally. The rise in spending in India will be led by digitally driven sectors such as Internet advertising (at a CAGR of 20.4%), video games (16.7%), and Internet access (15.0%). The five-year forecast period will also see growth in every single segment of entertainment and media in India outpace the corresponding global average. India will be further differentiated by having one of the world's fastest-growing newspaper

[33] Why are India's media under fire?". *BBC News*. 12 January 2012.
[34] http://www.bbc.co.uk/news/world-asia-india-16524711
[35] ibid
[36] See *Thomas 2006* and *Burra & Rao 2006* Burra, Rani Day & Rao, Maithili (2006), "Cinema", *Encyclopedia of India (vol. 1)* edited by Stanley Wolpert, pp. 252–259, Thomson Gale.

industries, expanding at a CAGR of 7.5% over the five years amid a global newspaper market that will remain essentially flat[37].

The Indian Media and Entertainment (M&E) industry is considered a sunrise sector for the economy and it is making high growth strides. Proving its resilience to the world, the Indian M&E industry is on the cusp of a strong phase of growth, backed by rising consumer demand and improving advertising revenues. The industry has been largely driven by increasing digitisation and higher internet usage over the last decade. Internet has almost become a mainstream media for entertainment for most of the people[38].

The Indian advertising industry is projected to be the second fastest growing advertising market in Asia after China. At present, advertising revenue accounts for around 0.38 per cent of India's gross domestic product.

2.3 Recent development/Investments

The Foreign Direct Investment (FDI) inflows in the Information and Broadcasting (I&B) sector (including Print Media) in the period April 2000 – March 2019 stood at US$ 8.38 billion, as per data released by Department for Promotion of Industry and Internal Trade (DPIIT).

1. Dailyhunt, a regional language news aggregator run by Verse Innovation Pvt Ltd, will receive investment of US$ 60 million in a new funding round led by Goldman Sachs Investment Partners.
2. As of September 2018, Twitter announced video content collaboration with 12 Indian partners for video highlights and live streaming of sports, entertainment and news.
3. As of August 2018, PVR Ltd acquired SPI Cinema for worth US$ 94.42 million.
4. In H12018, 5 private equity investments deals were recorded of worth US$ 115 million.
5. The Indian digital advertising industry is expected to grow at a Compound Annual Growth Rate (CAGR) of 32 per cent to reach Rs 18,986 crore (US$ 2.93 billion) by 2020, backed by affordable data and rising smartphone penetration.
6. India is one of the top five markets for the media, content and technology agency Wavemaker where it services clients like Hero MotoCorp, Paytm, IPL and Myntra among others
7. After bagging media rights of Indian Premier League (IPL), Star India has also won broadcast and digital rights for New Zealand Cricket upto April 2020.

[37] https://www.pwc.com/gx/en/global-entertainment-media-outlook/assets/indian-summary.pdf accessed on 1.10.2019

[38] Updated on August 2019 https://www.ibef.org/industry/media-entertainment-india.aspx accessed on 1.10.2019

2.4 Growth of convergence media

IBEF researched on various aspects of growth and reported:

"The Telecom Regulatory Authority of India (TRAI) is set to approach the Ministry of Information and Broadcasting, Government of India, with a request to fastrack the recommendations on broadcasting, in an attempt to boost reforms in the broadcasting sector. The Government of India has agreed to set up the National Centre of Excellence for Animation, Gaming, Visual Effects and Comics industry in Mumbai. The Indian and Canadian Government have signed an audio visual co-production deal to enable producers from both the countries exchange and explore their culture and creativity, respectively.

The Government of India has supported Media and Entertainment industry's growth by taking various initiatives such as digitising the cable distribution sector to attract greater institutional funding, increasing FDI limit from 74 per cent to 100 per cent in cable and DTH satellite platforms, and granting industry status to the film industry for easy access to institutional finance.

The Indian Media and Entertainment industry is expected to grow at a much faster rate than the global average rate. The growth is also expected in retail advertisement, as several players entering the food and beverages segment, e-commerce gaining more popularity in the country, and domestic companies testing out the waters. The rural region is also a potentially profitable target[39].

As per KPMG India's 11th edition of its Media and Entertainment (M&E) report "India's Digital Future: Mass of Niches" in August 2019, India has reached a size of Rs 1,63,100 crore in FY'19, posting a growth of 13 per cent, as well as clocking a compound annual growth rate (CAGR) of 11.5 per cent over the period FY15-FY19. The report also said that the digital market is poised to become the second largest segment in India after TV, and also attract the maximum advertising spend by FY'22.

The M&E industry grew 13 per cent in FY19 on the back of rapid growth in digital user base and consumption, coupled with growing regional demand and monetisation, the report said. The M&E industry is expected to post a CAGR of 13.5 per cent over FY19-FY24, to reach a size of Rs 3,07,000 crore in FY'24, the report stated.

On the other hand the palmtop compluters – smartphones are penetrating very fast. Smartphone penetration and low data costs, as well as investments in original and regional

[39] Ibid. The India Brand Equity Foundation IBEF prepared this note with References: Media Reports, Press Releases, Press Information Bureau, Department for Promotion of Industry and Internal Trade (DPIIT), KPMG report – Media ecosystems: The walls fall down – September 2018

digital content, were identified as favourable factors for digital access and content supply respectively, and these factors will continue to drive up online consumption.
The "growing importance of regional language markets" in India was also recognized. It was reported: "With the digital migration of English speaking audiences almost complete, most new users coming online – and there are expected to be 500 million of them by 2030 – will access the internet in a local language".[40]

2.5 Broadcasting to Broadband

Broadcasting was initially confined to radio; the first radio broadcast was provided by the Indian Broadcasting Co. in 1927. The company went into liquidation in 1930[41], after having established its operations in Lahore, Calcutta and Bombay. Then soon after the broadcasting was placed under the Department of Labour and Industries. Indian Broadcasting Service began telecast and subsequently in 1932 the BBC started its operations in India[42]. Further this service was rechristened in 1937 as AIR. After independence the separate ministry of communication and broadcasting was established[43]. It is to be noted here that the British government in the 1935 Government of India Act, gave autonomy to the princely states to start their own Radio broadcasts[44]. This is very interesting, as after independence broadcasting was firmly in the hands of Central Government. States, till today are not allowed to have their own regional service channels run by them.[45]

Though Radio broadcasting began in 1927 the state took over the responsibility only in 1930. In 1937 it became Akashvani in Hindi and All India Radio in English. Limited duration of television programming began in 1959 and complete broadcasting followed in 1965. The Ministry of Information and Broadcasting owned and maintained the audio-visual apparatus—including the television channel *Doordarshan*—in the country prior to the economic reforms of 1991.

Under the control of the Government of India the Akashvani and Doordarshan played a significant role in increasing mass education in India's rural swathes. Projected television screens provided engaging education in India's villages by the 1990s.

Today there is no necessity to watch tv for news or entertainment. The broadcasting is being replaced by broadband programs. With smart TVs around, the Internet allows watching choicest programs switching over from channelled programs. The broadcasting has been revolutionalised further with development of broad band technology, as the High Broad Band

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40 https://www.thehindubusinessline.com/economy/media-and-entertainment-industry-growth-expected-to-double-in-five-years-kpmg/article29182018.ece accessed on 1.10.2019
41 Broadcasting. Ninan p. 3
42 ibid
43 P.C. Chatterjee, Broadcasting In India 1991
44 s. 129 of Govt. of India Act 1935.
45 Ibid.

TV (HbbTV) Consortium (later HbbTV Association) was born in February 2009 from the French H4TV project and the German HTML profil project. This HbbTV was first demonstrated in 2009, in France by France Télévisions and two developers of Set Top Box technologies, Inverto Digital Labs of Luxembourg, and Pleyo of France, for the Roland Garros tennis sport event on a DTT transmission and an IP connection and in Germany using the Astra satellite at 19.2° east during the IFA and IBC exhibitions[46].

In June 2014, the HbbTV Association merged with the Open IPTV Forum, a similar industry organisation for end-to-end Internet Protocol television (IPTV) services formed in 2007, which worked closely with the HbbTV initiative on browser and media specifications for network-connected televisions and set-top boxes. The two initiatives were combined under the HbbTV Association's banner because the markets for IPTV, OTT and hybrid broadcast and broadband TV are converging[47].

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[46] 27 August 2009, https://web.archive.org/web/20091007125549/http://www.hbbtv.org/news/HBBTV_PR_Final.pdf accessed on 2.10.2019

[47] June 17, 2014, https://www.prnewswire.com/news-releases/open-iptv-forum-and-hbbtv-association-merge-their-activities-263418211.html

[48] September 1, 2016, https://www.broadbandtvnews.com/2016/09/01/hbbtv-association-joins-forces-with-smart-tv-alliance/ accessed on 2.10.2019

[49] https://www.freeview.co.uk/blog/?p=293

[50] https://www.digitalspy.com/tech/terrestrial/a182608/bbc-arqiva-outline-dtt-hd-upgrade-plans/

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2.7 Community Radio

The Community Radio in India is very popular. It began on 16 November 2006, the Government of India released the community radio policy allowing agricultural centers, educational institutions and civil society organizations to apply for community based FM broadcasting license. The Community Radio is allowed 100 Watt Effective Radiated Power (ERP) with a maximum tower height of 30 meters. The license is valid for five years and one organization can only get one license, which is non-transferable and to be used for community development purposes.

Community Radio and TV broadcasting at the local levels have been found to be extremely useful in providing voices to the local community in managing their affairs and participating in overall developmental process. It has been provided that non-commercial organizations such as NGOs etc., working for the sole benefit of the community would be given licenses for non-commercial (restricted) broadcasting and educational institutions such as University etc., would be given licenses for broadcasting in their respective (restricted) areas to facilitate better education and communication on the basis of either a restricted bid or no bid at all.

The more effective media is the Community radio, which usually is a short-range, not-for-profit radio station or channel that caters for the information needs of people living in a particular locality, in the languages and formats that are most adapted to the local context. This short range media - Community radio station, can be mobilized for campaigns, like announcing campaign events, hosting talk shows with campaigners, or broadcasting academic activities etc.

The community radio requires low-cost technology. Hence it is easy to obtain free or inexpensive air time. It offers an opportunity for common persons to air their voice – e.g. "ordinary" women and youth – which can be used for empowering them. The Community radio will be more effective as it reaches a large section of the locality it covers, and listeners could be enlightened with local issues, in which they will be naturally interested. Another advantage is that it can be used in local language, besides the official national language.

[51] https://www.techradar.com/news/home-cinema/high-definition/freeview-hd-the-definitive-list-of-boxes-680661

Here is an example. In Nepal, an NGO called 'Equal Access', with support from the United Nations Trust Fund to End Violence against Women, in partnership with General Welfare Prathistan, trained rural women as community radio reporters. They collected stories from other rural women to create a radio program, "Changing our World", which reached two million listeners. It covered issues relating to women's human rights, peace-building, and violence against women. In parallel, sixty community listener groups were established to encourage grass-roots leadership and changes in attitudes and behaviour[52]. The World Association of Community Radio Broadcasters (AMARC) brings together a 4000-strong network all over the world, and supports the community radio movement. Information on radio stations, and events and conferences related to community radio can be found on its website in English, Spanish and French.[53]

The Straight Talk Foundation (Uganda), offers a crisp, 33-page manual <Using Radio to Help Communities Talk: A Manual for Community Dialogue, 2006> on the essentials of community radio, including basic guidance on technical issues[54].

The Community Radio Toolkit[55] is a website providing links to resources on practical issues related to community radio such as station management, sales and advertising, programming, research and evaluation and engaging volunteers.

CR: A user's guide to the technology[56] by N. Ramakrishnan (UNESCO, 2007) is the most up-to-date and comprehensive UNESCO technical guide on community radio (275 pages). It covers all technical aspects, including almost 100 pages on equipment. Although the document is chiefly targeted to Indian and South Asian audiences, it contains valuable general information applicable to other audiences.

The Indian organization Gram Vaani Community[57] Media (2008) provides an extensive on-line guide on community radio, with a particular focus on India. It includes strategic and technical guidance, information on costs and a host of useful links, which are also valid in other contexts.

2.8 Growth of the Television

The origin and development of Television, barring the above two experiments was totally confined to Delhi for a long time, i.e., from 1959 to 1973, in which year it was

[52] UNIFEM, 2007: Women Building Peace, Jan 2, 2012, https://www.endvawnow.org/en/articles/1270-community-radio.html?next=1248 accessed on 2.10.2019
[53] Ibid.
[54] https://www.endvawnow.org/en/tools/view/645-using-radio-to-help-communities-talk-a-manual-for-community-dialogue-2006.html accessed on 2.10.2019
[55] http://www.communityradiotoolkit.net/
[56] https://unesdoc.unesco.org/ark:/48223/pf0000156197_eng
[57] https://gramvaani.org/ accessed on 2.10.2019

extended to Bombay and then to Amritsar and Srinagar. These two areas were watching the Pakistan TV programmes with pro-Pakistan campaigns, which could not be countered as Doordarshan was not developed to match the reach of PTV, till 1973. The expansion of television was felt necessary to counter the PTV propaganda in rural areas in the sensitive border areas. It was gradually spreading through several transmitters to link the major metropolis in the beginning. The Government had to erect 250 television receivers all through the Kashmir Valley, to counter the miscommunication by neighbouring country. With this, state secured a propaganda machine and for the first time a mass media organization was found to be a useful weapon for security of state. Thus the Television was essentially considered to be the tool of State.

Since the 1980s, India has experienced a rapid proliferation of television broadcasting that has helped shape popular culture and the course of politics. Although the first television program was broadcasted in 1959, the expansion of television did not begin in earnest until the extremely popular telecast of the Ninth Asian Games, which were held in New Delhi in 1982. Realizing the popular appeal and consequent influence of television broadcasting, the government undertook an expansion that by 1990 was planned to provide television access to 90 percent of the population. In 1993, about 169 million people were estimated to have watched Indian television each week, and, by 1994, it was reported that there were some 47 million households with televisions. There also is a growing selection of satellite transmission and cable services available

With airwaves being opened up through the economic reforms satellite television channels from around the world gained a foothold in the country. It is recorded that 47 million households with television sets emerged in 1993, which was also the year when Rupert Murdoch entered the Indian market Satellite and cable television soon gained a foothold. State owned *Doordarshan* also has initiated reforms and modernization to stand in the stiff competition of the private channels. It is obvious that *Doordarshan* remained a significant medium with other foreign stake holders dominating the scene. With 1,400 television stations as of 2009, the country ranks 4th in the list of countries by a number of television broadcast stations[58].

2.9. Terrestrial television spreads

The Terrestrial television in India started with the experimental telecast starting in Delhi on 15 September 1959 with a small transmitter and a makeshift studio. The regular daily transmission started in 1965 as a part of All India Radio. The television service was extended to Bombay and Amritsar in 1972. Up until 1975, only seven Indian cities had a television service and *Doordarshan* remained the sole provider of television in India. Television services were separated from radio in 1976. National telecasts were introduced in

[58] *CIA World Factbook: Field Listing – Television broadcast stations.*

1982. In the same year, colour TV was introduced in the Indian market. Indian small screen programming started off in the early 1980s. As mentioned before, at that time there was only one national channel *Doordarshan*, which was government owned.

Days of *Ramayan* serial: Television programming was initially kept strictly under the control of the government, which embarked on a self-conscious effort to construct and propagate a cultural idea of the Indian nation. This goal is especially clear in the broadcasts of such mega series as the Hindu epics *Ramayana* and *Mahabharata*. The Ramayana and Mahabharath (both Indian epics) were the first major television series produced. This serial notched up the world record in viewership numbers for a single program. By the late 1980s, more and more people started to own television sets. Though there was a single channel, television programming had reached saturation. Hence the government opened up another channel which had part national programming and part regional. This channel was known as DD 2 later DD Metro. Both channels were broadcast terrestrially.

Doordarshan spread its reach almost half of the world. The PAS-1 and PAS-4 are satellites whose transponders help in the telecasting of DD programmes in half the regions of the world. An international channel called DD International was started in 1995 and it telecasts programmes for 19 hours a day to foreign countries-via PAS-4 to Europe, Asia and Africa, and via PAS-1 to North America.

In addition to the effort at nation-building, the politicians of India's ruling party have not hesitated to use television to build political support. In fact, the political abuse of Indian television led to demands to increase the autonomy of Doordarshan; these demands ultimately resulted in support for the Prasar Bharati Act.

State controlled creativity: Some of the successful TV Programs which increased viewership were as follows: The 1980s was the era of *Doordarshan* with shows like Hum Log (1984), *Buniyaad* (1986-87) and comedy shows like Yeh Jo Hai Zindagi (1984), Mythological dramas like *Ramayan* (1987-88) and *Mahabharat* (1989-90) glued millions to Doordarshan and later on *Bharat Ek Khoj*, The Sword of *Tipu Sultan* and *Chandrakanta*. Hindi film songs based programs like *Chitrahaar, Rangoli, Superhit Muqabla* crime thrillers like *Karamchand, Byomkesh Bakshi.* Shows targeted at children include *Dada Dadi ki Kahaniyan, Vikram Betal, Malgudi Days, Tenali Rama.*

The 1990s have brought a radical transformation of television in India. Transnational satellite broadcasting made its debut in January 1991, when owners of satellite dishes--initially mostly at major hotels--began receiving Cable News Network (CNN) coverage of the Persian Gulf War. This opened the gateway for the earlier thought “cultural imperialists” to enter the Indian broadcasting system. “Any attempt to restrict foreign broadcasters would

have been construed as evidence of the government's lack of commitment to opening up the economy. Consequently, the Government chose to ignore the foreign television services, despite complaints from a number of political and social organizations of the cultural threat posed by these services. The Government clearly recognized that television is a highly visible cultural product that functions as the best marketing tool for the liberalization of the Indian economy."[59]

Foreign TV Channels: After this the doors were kept open for the private broadcasters to venture into India. This has assisted largely in the growth of our economic system. Three months later, Star TV began broadcasting using the ASIASAT-I satellite[60]. Its fare initially included serials such as "The Bold and the Beautiful" and MTV programs. Satellite broadcasting spread rapidly through India's cities as local entrepreneurs erected dishes to receive signals and transmitted them through local cable systems. After its October 1992 launch, Zee TV offered stiff competition to Star TV. However, the future of Star TV was bolstered by billionaire Rupert Murdock, who acquired the network for US$525 million in July 1993. CNN International, part of the Turner Broadcasting System, was slated to start broadcasting entertainment programs, including top Hollywood films, in 1995.

Foreign channels like CNN STAR TV and domestic channels such as Zee TV, ETV and Sun TV started satellite broadcasts. Starting with 41 sets in 1962 and one channel, by 1995 TV in India covered more than 70 million homes giving a viewing population of more than 400 million individuals through more than 100 channels.

The Hong Kong-based Star TV Network introduced five major television channels into the Indian broadcasting space that had so far been monopolised by the Indian government-owned *Doordarshan*: MTV, STARPlus, StarMovies, BBC, Prime Sports and STAR Chinese Channel. Soon after, India saw the launch of Zee TV, the first privately-owned Indian channel to broadcast over cable followed by Asia Television Network (ATN). A few years later, CNN, Discovery Channel, National Geographic Channel, BBC made their foray into India. Later, Star TV Network expanded its bouquet with the introduction of STAR World India, STAR Sports, ESPN, Channel V and STAR Gold.

Competition from the satellite stations brought radical change to Doordarshan by cutting its audience and threatening its advertising revenues at a time when the government was pressuring it to pay for expenditures from internal revenues. In response, Doordarshan decided in 1993 to start five new channels in addition to its original National Channel.

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[59] Nikhil Sinha on "Doordarshan, Public Service Broadcasting and the Impact of Globalization: A Short History" quoted from from "Government Media- Autonomy and After" edited by G.S. Bhargava, Concept Publishing Co. , 1991, pg27

[60] By early 1992, nearly half a million Indian households were receiving STAR TV telecasts. By 1995 around 13 million people were receiving STAR TV making India the largest market for STAR TV.

Programming was radically transformed, and controversial news shows, soap operas, and coverage of high-fashion events proliferated. Of the new Doordarshan channels, however, only the Metro Channel, which carries MTV music videos and other popular shows, has survived in the face of the new trend for talk programs that engage in a potpourri of racy topics.

There are at least five basic types of television in India: Broadcast, or "over-the-air" television, unencrypted satellite or “free-to-air”, Direct Broadcast Satellite, cable television and IPTV (internet protocol television).

2.10. Origin and Growth of Cable TV

When, urban Indians learnt that it was possible to watch the Gulf War on television, they rushed out and bought dishes for their homes. Others turned entrepreneurs and started offering the signal to their neighbors by flinging cable over treetops and verandahs. From the large metros satellite TV, delivered via cable, moved into smaller towns, spurring the purchase of TV sets and even the up-gradation from black & white to colour TVs.

DD responded to this satellite TV invasion by launching an entertainment and commercially driven channel and introduced entertainment programming on its terrestrial network. This again fuelled the purchase of sets in the hinterlands where cable TV was not available.

The initial success of the channels had a snowball effect: more foreign programmers and Indian entrepreneurs flagged off their own versions. From two channels prior to 1991, Indian viewers were exposed to more than 50 channels by 1996. Software producers emerged to cater to the programming boom almost overnight. Some talent came from the film industry, some from advertising and some from journalism[61].

More and more people set up networks until there was a time in 1995-96 when an estimated 60,000 cable operators existed in the country. Some of them had subscriber bases as low as 50 to as high as in the thousands. Most of the networks could relay just 6 to 14 channels as higher channel relaying capacity required heavy investments, which cable operators were loathe to make. American and European cable networks evinced interest, as well as large Indian business groups, which set up sophisticated headends capable of delivering more than 30 channels. These multi-system operators (MSOs) started buying up local networks or franchising cable TV feeds to the smaller operators for a fee. This phenomenon led to resistance from smaller cable operators who joined forces and started functioning as MSOs. The net outcome was that the number of cable operators in the country had fallen to 30,000.

[61] www.indiantelevision.com

The rash of players who rushed to set up satellite channels discovered that advertising revenue was not large enough to support them. This led to a shakeout. At least half a dozen either folded up or aborted the high-flying plans they had drawn up and started operating in a restricted manner. Some of them converted their channels into basic subscription services charging cable operators a carriage fee.

Foreign cable TV, MSOs discovered that the cable TV market was too disorganized for them to operate in and at least three of them decided to postpone their plans and got out of the market.

Over-the-air and free-to-air TV is free with no monthly payments while Cable, Direct Broadcast Satellite and IPTV require a monthly payment that varies depending on how many channels a subscriber chooses to pay for. Channels are usually sold in groups, rather than singly.

As per the TAM Annual Universe Update - 2010, India now has over 134 million households (out of 223 million) with television sets, of which over 103 million have access to Cable TV or Satellite TV, including 20 million households which are DTH subscribers. In Urban India, 85% of all households have a TV and over 70% of all households have access to Satellite, Cable or DTH services. TV owning households have been growing at between 8-10%, while growth in Satellite/Cable homes exceeded 15% and DTH subscribers grew 28% over 2009. However, some analysts place the number of households with television access at closer to 180 million since roughly a third of all rural families may watch television at a neighboring relatives' home, and argue that Cable TV households are probably closer to 120 million owing to a certain percentage of informal/unregistered Cable Networks that aren't counted by mainstream surveys. It is also estimated that India now has over 500 TV channels covering all the main languages spoken in the nation.

CATV is abbreviation of cable television. Originally, this stood for Community Access Television or Community Antenna Television, from cable television's origins in 1948. In areas where over-the-air TV reception was limited by distance from transmitters or mountainous terrain, large "community antennas" were constructed, and cable was run from them to individual homes.

Real convergence of all media is happening in cable tv today. The cable provides video entertainment, Internet connectivity, and digital telephone service to millions of consumers and what not. The creation of approximately 800 programming networks are being viewed by over 93% of Americans. And they provide it incredible Internet Speeds of up to 2 GBPS, with those speeds continuing to climb. Cable Operators have reinvented

television, creating TV that goes where our customers go. Cable Operators have provided more than $275 billion in infrastructure in the last 20 years and support over 2.9 million jobs.

2.11. TV Growth in India

In India, the television industry is very diverse and produces thousands of programs in many of official and regional languages. More than half of all households own a television in India[62]. It is caliculated that as of 2016, India had over 857 channels of which 184 were pay channels. 23.77 million subscribers are enrolled for DTH cable by June 2010 according to TRAI.

India is the second largest online market, with over 430 million internet users, ranked only behind China. Internet users in India are expected to increase to about 635.8 million by 2021. However, despite the large base of internet users, India continues to lag peer countries when it comes to internet penetration which leaves a significant scope for growth[63]. Nonetheless, steps like demonetization, GST and digital governance continue to act as tailwinds, encouraging the development and adoption of the digital economy framework. There have been some recent challenges (like the recent angel tax issue) and the government intent is to resolve. The upcoming e-commerce policy framework will also need to be reviewed for its implication on the sectoral growth[64]. The rapidly growing internet sector accounted for $2.1 trillion of the U.S. economy in 2018, or about 10% of the nation's gross domestic product (GDP). The study says the internet sector represents the fourth largest sector of the U.S. economy, behind real estate, government and manufacturing. Last year, manufacturing accounted for about $2.3 trillion in U.S. GDP.

The study also found that the internet sector has nearly 6 million direct jobs, which accounted for 4% of U.S. jobs, while U.S. internet firms spent $64 billion in capital expenditures. The study also found the internet sector indirectly supports another 13 million jobs[65].

2.12. Advancement of Telecommunications

The Communications field received a great boost up during the times of Indian Space Scientist Vikram Sarabhai, who launched the indigenous satellite development programme

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[62] https://www.business-standard.com/article/technology/23-77-mn-dth-subscribers-by-june-2010-trai-110100500228_1.html accessed on 2.10.2019

[63] https://www.statista.com/topics/2157/internet-usage-in-india/, https://www.livemint.com/Industry/dVhGzLfAa7sktDp2Wad9pJ/ Why-Digital-India-remains-a-distant-dream.html

[64] Foreword of Padmanabh Sinha, Chairman IVCA Managing Partner, Tata Opportunities Fund, https://www.ey.com/Publication/vwLUAssets/ey-ecommerce-and-consumer-internet-sector-india-trendbook-2019/$FILE/ey-ecommerce-and-consumer-internet-sector-india-trendbook-2019.pdf

[65] https://in.reuters.com/article/us-usa-internet-economy/internet-sector-contributes-2-1-trillion-to-u-s-economy-industry-group-idINKBN1WB2QB

which revolutionised the telecommunications and provided for development of Doordarshan in India. It started with Farm Television in 1967 as a tool of reaching remote areas of the country and to provide them necessary information for improving the Agriculture. Thus the Television was used first to help the agrarian community rather than for urban entertainment. Another major experiment was the Satellite Instructional Television Experiment "SITE" which put the time available on American Satellite for telecasting programmes to 2400 villages in six states of the country.

2.13. Internet Sector

The Union Government acquired the EVS EM computers from the Soviet Union, which were used in large companies and research laboratories. Tata Consultancy Services – established in 1968 by the Tata Group was the country's largest software producer during the 1960s[66]. The 'microchip revolution' of the 1980s had convinced both Indira Gandhi and her successor, Rajiv Gandhi that electronics and telecommunications were vital to India's growth and development[67]. MTNL underwent technological improvements. Between 1986 and 1987, the Indian government embarked upon the creation of three wide-area computer networking schemes: INDONET (intended to serve the IBM mainframes in India), NICNET (network for the National Informatics Centre) and the academic research oriented Education and Research Network (ERNET).

With economic reforms in 1991, leading to a new era of globalisation and international economic integration, overall growth has resulted in phenomenal increase in internet usage in India.

The Internet started gaining strong roots in India by 1996 and its connections rose to a total of 100 million Internet users—comprising 8.5% of the country's population—by 2010. By 2010, 13 million people in India also had access to broadband Internet— making it the 10th largest country in the world in terms of broadband Internet users.

2.14 IPTV platforms

Now there are many IPTV Platforms available for Subscription in India in the main cities as Broadband Internet in many parts of the country, they are

a. iControl IPTV A joint venture between MTNL and BSNL also in association with Aksh Optifiber a company that also provides FTTH and VoIP services available in some of the main cities in India such as Mumbai which has about 200 Television

[66] Desai, Ashok V. (2006), "Information and other Technology Development", *Encyclopedia of India (vol. 2)* edited by Stanley Wolpert, pp. 269–273, Thomson Gale

[67] Chand, Vikram K. (2006), *Reinventing public service delivery in India: Selected Case Studies*, Sage Publications

Channels on offer with Time Shift TV in a number of Basic and Premium Packages including Movies on Demand offered at various Basic, Premium and Pay Per View Rates and other services such as an Interactive Karaoke channel, The IPTV Operator uses the UTStarcom RollingStream IPTV Solution as its end-to-end Delivery Platform.

b. Airtel IPT available in some of the main cities in India such as New Delhi and Bangalore which has about 175 Television Channels on offer with Time Shift TV in a number of TV Packages and a small number of Television Channels offered on Premium Subscription Rates including Movies on Demand offered at Premium and Pay Per View Rates SVOD and other services such as Digital Radio and Games, The IPTV Operator uses the UTStarcom RollingStream IPTV Solution as its end-to-end Delivery Platform.

c. Smart TV Group also Operates an IPTV Platform based on the Sea-Change International IPTV and Cisco IPTV Standards in many parts of India with the following services:
    - 185 TV channels on various basic and premium packages
    - 40 TV channel Catch up TV service
    - 250 Hour Personal Video Recorder
    - A 5000+ Hour Movie Library
    - Digital Radio and Karaoke Service

The service is available to MTNL and BSNL Broadband Internet customers.

- Reliance IPTV is an IPTV service Operated by Reliance Communication the Telco uses the Microsoft Mediaroom IPTV Middleware Software as its end-to-end delivery Platform, with around three TV packages on offer. the service is currently only available in Mumbai.

- APSFL is a provider of IPTV service. This service was launched in 2016 and it offers over 250 channels out of which 38 are in HD. It is currently only available in Andhra pradesh.

2.15 Broadcast Audience Research Council

There is a body constituted for audience measurement. The Broadcast Audience Research Council (BARC) India has been set up by industry body to design, commission, supervise and own an accurate, reliable and timely television audience measurement system for India. It currently measures TV Viewing habits of 183 million TV households in the

country, using 30,000 sample panel homes. This will go up to 50,000 in the next couple of years, as mandated by the Ministry of Information & Broadcasting.

As per BARC India's Broadcast India (BI) 2018 Survey released in July 2018, based on a sample of 3 lakh homes in the country, TV homes in the country have seen a 7.5% jump[68], outpacing the growth of homes in India which grew at 4.5%. India currently boasts of 298 million homes, of which 197 million have a TV set, having an opportunity of almost 100mn more TV homes in the country[69].

Guided by the recommendations of the TRAI (Telecom Regulatory Authority of India) and MIB notifications of January 2014, BARC India brings together the three key stakeholders in television audience measurement - broadcasters, advertisers, and advertising and media agencies, via their apex bodies.

The BARC India has stated that it was committed towards establishing a robust, transparent and accountable governance framework for providing data points that are required to plan media spends more effectively[70].

The Ministry of Information and Broadcasting extended the cut-off date for Phase III of Cable TV Digitisation to 31st January 2017, and cut off date for Phase IV coverign rest of India has been shifted to 31 March 2017. The mutli-system operators (MSO) operators moved various High Courts and obtained extension of cut-off dates or stays on the operationalization of notifications earlier.

The Cable Television Networks (Regulation) Amendment Act 2011 made it mandatory for switch over of the existing analogue Cable TV networks to Digital Addressable System DAS in four phases. Though this is aimed to provide choice of content at reasonable price to consumers and total transparency of distribution and billing is yet to be achieved. It was estimated that 60 million subscribers were yet to be connected with digital signals in the year 2017[71] .

2.16. VoIP & Mobile Telephony

Now one can easily make voice communications through Voice-over-Internet Protocol (VoIP), which is a communications technology that allows users to interact by

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[68] https://economictimes.indiatimes.com/industry/media/entertainment/indians-are-watching-tv-for-3-hour-44-minutes-every-day-barc-india/articleshow/65151371.cms accessed on 2.10.2019

[69] https://timesofindia.indiatimes.com/toierrorfound.cms?url=https://timesofindia.indiatimes.com/tv/trade-news/tv-viewership-on-a-rise-in-india-survey/articleshow/65159050.cms

[70] rival to stare TAM in eyeball Archived 21 February 2009 at the Wayback Machine Financial Express

[71] 23 December 2016, https://cablequest.org/index.php/news/digitization-news/item/9501-das-deadline-extended-to-march-2017 accessed on 2.10.2019

audio through an Internet connection, rather than through an analog connection. This Voice-over-Internet Protocol converts the voice signal used in traditional phone technology into a digital signal that travels through the Internet instead of through analog telephone lines.

This technology renders these calls effectively free wherever the Internet is available. The VoIP changed the telecommunications industry by making traditional phone lines and services nearly obsolete and reducing demand for them significantly. As access to the Internet has become more widely available, VoIP has become ubiquitous both for personal use and for business use. VoIP service has also enabled video calls, conference calls, and webinars for commercial and personal use at prices that are affordable or free. Previously, video conferencing and web conferencing were expensive and only available to companies large enough to justify the expense, but VoIP allows companies of all sizes, including solo practitioners and freelancers, to afford it.[72] Expected convergence of phone and internet became a reality. Because calls are being made over the Internet, they are essentially free when made wherever the Internet is available. The traditional telephone industry was hit hard by the VoIP boom, with many users abandoning it as some of its services have become nearly obsolete.

The number of telephone subscribers in India increased from 1,183.51 million at the end of Mar-19 to 1,186.63 million at the end of Jun-19, registering a growth rate of 0.26% over the previous quarter. This reflects year-on-year (Y-O-Y) growth rate of 1.52% over the same quarter of last year[73]. With a net addition of 3.65 million subscribers during the quarter, total wireless (GSM incl. LTE + CDMA) subscriber base increased from 1,161.81 million at the end of Mar-19 to 1,165.46 million at the end of Jun-19, registering a growth rate of 0.31% over the previous quarter. Wireless subscriptions increased year-on-year (Y-O-Y) at the rate of 1.65% during the quarter, according to TRAI report.

The report further said: Total number of Internet subscribers increased from 636.73 million at the end of Mar-19 to 665.31 million at the end of Jun-19, registering a quarterly growth rate of 4.49%. Out of 665.31 million internet subscribers, number of Wired Internet subscribers are 21.67 million and number of Wireless Internet subscribers are 643.64 million. The broadband Internet subscriber base increased by 5.55% from 563.31 million at the end of Mar-19 to 594.58 million at the end of Jun-19. However, the narrowband Internet subscriber base declined by 3.67% from 73.42 million at the end of Mar-19 to 70.72 million at the end of Jun-19. The question is how to regulate the private broadcasting through internet and how to secure the indepenence of public broadcaster. Next chapter will attempt to answer this question in the context of public broadcaster.

[72] https://www.investopedia.com/terms/v/voiceoverinternet-protocol-voip.asp
[73] https://main.trai.gov.in/sites/default/files/PR_No.85of2019.pdf

CHAPTER III

AUTONOMY OF PUBLIC SECTOR BROADCASTER: PRASAR BHARTI

3.1. Evolution of policy and Regulation

With the spread of communication ability by leaps and bounds, the need for regulating emerged because of its potential power of changing the minds of the people which would bring change in the governments.

The political participation in India has been transformed in many ways since the 1960s and much of it can be attributed to the electronic media. New social groups have entered the political arena and begun to use their political resources to shape the political process. Scheduled Castes and Scheduled Tribes, previously excluded from politics because of their position at the bottom of India's social hierarchy, have begun to take full advantage of the opportunities presented by India's democracy. Women and environmentalists constitute new political categories that transcend traditional distinctions. The spread of social movements and voluntary organizations has shown that despite the difficulties of India's political parties and state institutions, India's democratic tendency continues to thrive.

An important aspect of the rise of civil society is the proliferation of voluntary or nongovernmental organizations. Estimates of their number ranged from 50,000 to 100,000 in 1993. To some extent, the rise of voluntary organizations has been sponsored by the Indian state. For instance, the central government's Seventh Five-Year Plan of fiscal years (FY--see Glossary) 1985-89 recognized the contributions of voluntary organizations in accelerating development and substantially increased their funding. A 1987 survey of 1,273 voluntary agencies reported that 47 percent received some form of funding from the central government. Voluntary organizations also have thrived on foreign donations, which in 1991-92 contributed more than US$400 million to some 15,000 organizations. Some nongovernmental organizations cooperate with the central government in a manner that augments its capacity to implement public policy, such as poverty alleviation, for example, in a decentralized manner. Other nongovernmental organizations also serve as watchdogs, attempting to pressure government agencies to uphold the spirit of the state's laws and implement policies in accord with their stated objectives. Nongovernmental organizations also endeavor to raise the political consciousness of various social groups, encouraging them to demand their rights and challenge social inequities. Finally, some social groups serve as innovators, experimenting with new approaches to solving social problems.

Beginning in the 1970s, activists began to form broad-based social movements, which proved powerful advocates for interests that they perceived as neglected by the state and

political parties. Perhaps the most powerful has been the farmers' movement, which has organized hundreds of thousands of demonstrators in New Delhi and has pressurised the government for higher prices on agricultural commodities and more investment in rural areas. Members of Scheduled Castes led by the Dalit Panthers have moved to rearticulate the identity of former Untouchables. Women from an array of diverse organizations now interact in conferences and exchange ideas in order to define and promote women's issues. Simultaneously, an environmental movement has developed that has attempted to compel the government to be more responsive to environmental concerns and has attempted to redefine the concept of "development" to include respect for indigenous cultures and environmental sustainability.

With its highly competitive elections, relatively independent judiciary, boisterous media, and thriving civil society, India continues to possess one of the most democratic political systems of all developing countries. Nevertheless, Indian democracy is under stress. Political power within the Indian state has become increasingly centralized at a time when India's civil society has become mobilized along lines that reflect the country's remarkable social diversity. The country's political parties, which might aggregate the country's diverse social interests in a way that would ensure the responsiveness of state authority, are in crisis.

The unresponsiveness of India's political parties and government has encouraged the Indian public to mobilize through nongovernmental organizations and social movements. The consequent development of India's civil society has made Indians less confident of the transformative power of the state and more confident of the power of the individual and local community. This development is shifting a larger share of the initiative for resolving India's social problems from the state to society. Fashioning party and state institutions that will accommodate the diverse interests that are now mobilized in Indian society is the major challenge confronting the Indian polity in the 1990s.[74]

3.2. Foundation of Communication Law in Constitutional Law

After the Constitution came into existence the entire broadcasting law had to follow the broad premise of Article 19, which gave freedom speech and expression with reasonable restrictions. These reasonable restrictions were construed as impact on culture and social fabric of the country, as it was believed and the debate still continues as to the effect of foreign channels on our culture. Second consideration was the maintenance of peace and harmony in the society by not telecasting programmes, which could foment communal trouble and cause religious sentiments of the vast majority to be hurt. Our broadcasting policy till early nineties was hostage to this fear of foreign and private media. The whole

[74] Robert L. Hardgrave, Jr., and Stanley A. Kochanek's "*India: Government and Politics in a Developing Nation* provides a thorough and insightful overview of Indian politics." from http://www.1upinfo.com

body of case law has developed on the issue of reasonable restrictions on media under Article 19 of the Constitution of India.

Section 129 of The Government of India Act of 1935 gave right to provincial governments and princely states to construct and use transmitters and to regulate and impose fees in respect of the construction and use of transmitters and receiving apparatus in the province or state. After Independence, the Government of India was having total and absolute control over the broadcast media. Constitution of India guaranteed the freedom of speech and expression with reasonable restrictions under Article 19.

3.3. First Law of Communication Regulation: Telegraph Act 1885

Indian Telegraph Act, 1885 is the earliest piece of legislation in India that intends to control the wireless broadcasting. The state has apprehensions as to misuse of the broadcasting media for propagating anti-national, anti-cultural thoughts and destroys the socio-cultural fabric of the nation. Thus the state wanted to retain enough control over broadcast media functioning.

The Supreme Court in *Union of India v Cricket Association of Bengal*[75] observed: The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., the broadcasting media.

The Indian Telegraph Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. With the advent of technological revolution and economic reforms towards globalization, the influence of external broadcast media was inevitable. There is tremendous increase in foreign satellite television channels flooding every home with tons of visual information. While the freedom lovers were pleading for autonomy for the state media, the demand was also raising for free private media video information flow. B. G. Verghese, senior Editor of prominent newspapers, was the first chairman of the committee, which suggested the autonomy of electronic media in 1977.

The first Broadcast Regulation law, The Indian Telegraph Act, 1885 empowered the government to control the establishment, maintenance and working of a wireless apparatus. It says: "Within India the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs". This law conferred the power to grant

[75] 1995(2) SCC 161

licenses to establish and maintain a telegraph. This Act was amended five times during 1957 and 1974.

In 1957 this Act[76] was amended to expand the term telegraph to include "any telegraph line, appliance, or apparatus for the purpose of affording means of telegraphic communications". From this provision, the Government of India drew its power to monopoly over the radio and television. The Ministry of Information and Broadcasting has been opposing the import of satellite earth stations and the up-linking to satellites by private parties under the provisions of this Act only. It was possible by stretching the interpretation of 'telegraph' to cover the generating of signals for telecasting. The Indian Wireless Telegraphy Act of 1933 made the possession of a radio set without a license an offence. This Act dealt with possession of wireless apparatus and radio receivers, which were not covered by Telegraph Act.

3.4 Autonomy of Public Sector Media

a. Chanda Committee, 1964

As early as in 1964 the Chanda committee indicted the Government by saying that the peoples trust of the government media and news was declining as it was seen as the mouthpiece of the authorities and nothing more than an avenue for personal glorification people in power.

Demand for reforming the Broadcasting law was basically for liberating the media from the state control, or providing an autonomous decision making power with neutral and objective functioning. Chanda Committee on Broadcasting and Information Media was first such inquiry commission appointed by the Government of India in 1964. The Chanda Committee in its report suggested that the credibility of the government information was to be improved. It stated that the suspicion of official information has deepened in India because of an incorrect, even improper use of media for personalized publicity and an undue accent on achievements. The Committee also suggested that it was necessary to correct this distortion and also to pose in proper perspective the many problems that confront the country without withholding adverse facts while at the same time stating convincingly how the remedy lies in the people's hands.[77] The Committee observed that "Confidence in the faitfhfulness of government information has to be generated. Suspicion of official information has deepened in India because of an incorrect, even improper use of media for personalised publicity and an undue accent on achievements. It is necessary to correct this distortion and also to pose in proper perspective the many problems that confront the country

[76] Section 7 of Act 47 of 1957 amending 1885 Telegraph Act.

[77] Virendra Kumar, Committee on Broadcasting and Information Media, Committees and Commissions in India 1947-1973, at 25 (1978)

without withholding adverse facts, while at the same time stating convincingly how the remedy lies in the people's hands"[78]. This is a clear indication of fall of credibility of the official information through state-controlled media.

While Article 19(1)(a) with sub-Article (2) has ushered in vibrant free press, the Telegraph Act still being used to give total control over broadcast media to the Government.

b. Use of Mass Media by the State

The media in India faced a rough weather during Emergency in 1975 during which period the official media alone was disbursing the information while the press and other private media sources were suppressed totally. With all democratic rights suspended, the dark period of Emergency provoked the fierce demand for autonomy for state information media. The first non-congress Government at the Center studied the "Misuse of Mass Media During Emergency".

As the democracy survives on effective communication of information, the vested interests were always against free flow of information which they did not like or which perceived as opposing their interests. The ruling class always tried to win over the minds of the people and abused media for propaganda purposes and suppressing the hostile information. With the advent of radio and television, the telecast and broadcast sectors started dominating the media scene with their wider reach and deeper impact on communication world. The electronic media became an entrenched communication device effectively operating on the whole of the universe across the borders. No territorial boundary can stop the communication of word and picture, at present. Hundreds of channels are now beaming variety of programmes at a time into every drawing room. The electronic media evolved into a very powerful global process of influencing the cultures and social patterns of any country. Impounding a small society with visual information will have a very serious cultural impact and may raise ethical and legal questions including international outcry against the cultural invasion. As media law is concerned with the violations of rights of individuals and societies or the nations as such, the electronic media impact and its regulation needs to be studied in depth.

c. Press Freedom levels

The French NGO, ‘Reporters Without Borders’, compiles and publishes an annual ranking of countries based upon the organisation's assessment of their press freedom records. In 2011-12 India was ranked 131st out of 179 countries, which was a setback from the preceding year[79].

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[78] ibid.

[79] "A Press Freedom Index 2011 - 2012". Reporters Without Borders. Retrieved 17.8.2012 http://en.rsf.org/spip.php?page=classement&id_rubrique=1043

d. News Policy for Broadcast Media 1982

In contradistinction to autonomy, the government felt the need for issuing directions from time to time to the official media, as provided by the News Policy for Broadcast Media, which was issued by the Ministry in May 1982. The policy contained guidelines to the news coverage and other politically related programmed aired by both Television and Radio. The guidelines cover news selection and presentation, political coverage, coverage of the President, Prime Minister and Ministers, Statements and rejoinders, strikes and bandhs, riots and disturbances, sex and crime, national calamities, deaths and anniversaries, external news, subversion and insurgency, comments and opinions, speculation and rumour and parliament coverage. These guidelines are still followed by the official media over TV and radio. This News Policy for Broadcast Media enjoins the news gathering apparatus to 'make a deliberate effort to explore new areas of development and nation building news".[80] These Guidelines lay a lot of emphasis on the coverage of development, its significance, achievements and problems. The news policy also consists of rules as to national integration and communal peace. The style and method of reporting news should reinforce the central principles on which national polices are based. These fundamental principles are territorial integrity, national integration, secularism, maintenance of public order, and upholding the dignity and prestige of Parliament, State Legislatures and the Judiciary.

With regard to communal matters, the Guidelines have specific instructions to be scrupulously followed. Some of the guidelines are as follows.

1. "If riots are of a communal nature do not identify the communities concerned",
2. "Never offend any particular community or religion"
3. Do not give any news which tends to incite subversive activities
4. AIR news bulletins should be on guard against encouraging secessionist activities even if promoted by a recognized political party

One of the guidelines relating to foreign affairs suggest: "Our own national interest should be the principal consideration in selection and presentation of a foreign news item".

e. Verghese Committee

A committee under the chairmanship of B. G. Verghese, a senior editor, inquired into the need and prospects of autonomy for mass media. This committee studied possibility of providing autonomy to Akashvani and Doordarshan within the control of government. The Committee suggested creation of National Broadcasting Trust or Akashbharathi to function independently and a Bill was also ready to regulate the functioning of the Akashvani and Radio relieving it from the day to day control of the government. The Bill was lapsed in the Parliament, as the House dissolved in 1979 after the government. It is intended that the

[80] Advisory commission on Official Media, Ministry of Information and Broadcasting, News Policy for Broadcast media, Guidelines prepared by the Advisory Committee on Official Media 3 (1982)

trustee of the national interest for radio and television shall uphold the collective right of the Indian people to freedom of speech, expression and communication through the broadcast media. The trust has to advise the central government regarding broadcasting affairs, and conduct public broadcast services. The development of broadcast services is also the prescribed job of the trust. According to charter, the Trust was to provide a national broadcasting service predominantly Indian in content and character, and it was to uphold the impartiality, integrity and autonomy of broadcasting in the country. The Bill envisaged a Complaints Board to hear complaints by any member of the public in respect of charge of unjust or unfair treatment, including unwarranted invasion of privacy and misrepresentation. It also contemplated to constitute a Licensing Board to grant franchise licenses to any broadcasting station.

The National Broadcasting Trust was formed and Akash Bharti Bill was introduced in Parliament. The trust was to consist of twelve to twenty one members. It also envisaged a Licensing Board which would grant franchise licenses to any station. The trust was to conduct and organize public broadcast services and would develop, extend, and improve these services in the public interest. It would advise the Central Government in respect of all matters relating to broadcast. It also has to provide a national broadcasting service predominantly Indian in content and character and it was to uphold the 'impartiality, integrity, and autonomy of broadcasting in India.

f. Demand for Autonomy and State opposition

Many a time, various committees were formed to look into the working and the structure of the broadcasting media in the country. But all the effort and environment built for autonomy was washed away during Mrs. Indira Gandhi's regime and that of her son, Rajiv Gandhi's from 1984 to 1989. The political policy of the new Government under Mrs. Indira Gandhi had again changed the entire spectrum of autonomy and preferred renewed controls over the official media. After Mrs. Indira Gandhi’s return to power in 1980, the Bill was totally opposed stating that such a Commission was not necessary. The new Government framed a News Policy exclusively for Broadcast Media, comprising several guidelines which ensure enough coverage to President, Prime Minister, Ministers, Official Statements and strict restrictions on the coverage of riots and disturbances. An additional duty of protecting the image of those in power as indirectly cast on the official media, which means total and absolute control over the news content and programme content of Radio and Television. Mrs. Gandhi's Government also did not like the proposal to give autonomy to the Films Division. The Working group appointed in 1978 to grant autonomy to Films Division was wound up and the Films Division was allowed to continue as an appendage of the Government at the Center.

g. National Doordarshan Council

A Working Group on Software for Doordarshan was constituted in 1982. Explore means to use the official media in the process of social and economic development in the country and for providing information, education and entertainment[81]. The report criticised the structure and management style of Doordarshan and mentioned the need of functional autonomy for Doordarshan. The report suggested constitution of National Doordarshan Council which would include members competent by virtue of their expertise in the field to tender advice to the Minister on broad social objectives as well as modes of television programming. It envisaged three kinds of roles for the National Doordarshan Council: as a body that would review and guide the organization's performance, as a guardian of Doordarshan's functional and professional autonomy, and as a counter part of the Press Council for examining complaints of inaccuracy or bias in the reporting of news and comment on current affairs. The Working Group suggested that Doordarshan be beaded by a director-general who had a proven record of excellence in any area of social communication as well as the leadership qualities necessary for attracting and utilizing creative talent in the service of the country's people through Doordarshan. It suggested that his status, emoluments, and financial powers should not be less than that of a Secretary to Government. It also recommended for review of salary, promotional avenues and support for all Doordarshan staff. None of these recommendations by Working Group were implemented at all.

The effect of not providing autonomy or professional independence and non-implementation of the guidelines and recommendations of the Working Group is visible. The Government Media delayed the announcement of death of Mrs. Indira Gandhi, while the BBC narrated the details of her assassination to whole of the world. Rajiv Gandhi assumed the office of Prime Minister and exhibited inititial enthusiasm to liberalize the official media, but in the wake of political turmoil both within and without his own party, he allowed official media to be vulnerable so that it could be misused during the elections. In 1989, the attempts to misuse the official media for projecting the positive image of Rajiv Gandhi and tarnishing the political opponents became a campaign point and opposition chose to include in their manifesto a promise to provide autonomy to the official media.

h. Case of 'Beyond Genocide'; Constitutional Validity of Instructions

The validity of departmental rule or notification or guideline in limiting the scope of freedom of speech and expression was under question before the Delhi High Court during 1989. In ***Cinemart Foundation v Union of India***[82], the Delhi High Court held that the fundamental right to freedom of speech on Doordarshan could only be curtailed by a valid

[81] The Working Group on Softare for Doordarshan, Ministry of Information and Broadcasting, An Indian Personality for Television 217 (1985)

[82] Judgements Today 1992 SC 204

law, not by a departmental rule or instruction. The Court directed Doordarshan to telecast a film which it had refused to earlier on the ground that it was too critical of the Government. In this case, the story of the film under question was about the Bhopal gas tragedy under the name "Beyond the Genocide". Doordarshan chose to refuse its telecast, ignoring the fact that the film won a national award. Government appealed to the Supreme Court, which rejected the appeal and observed that Doordarshan being a state-controlled agency funded by public funds, could not deny to the respondent, access to the screen except on valid grounds. Those valid grounds are as available under Article 19(2) only. Thus a claim that a rule from Ministry or guideline under the policy of Ministry could be used to stop screening of a film or programme. This case established the legal invalidity of the guidelines or the grounds other than Article 19(2).

3.5. Autonomy to State Media: Premise for Prasar Bharti Law

After the electoral defeat of Congress Government with Rajiv Gandhi as its leader, a second Non-Congress Government was formed in 1990, which tried to revive Akash Bharti and had a re-look at the Bill. The earlier Bill was reformed as PRASAR BHARTI.

The Prasar Bharti had a Board of Governors as compared to the trustees, which was envisaged earlier for Akash Bharthi. The new organisation was to be a corporation rather than being a trust. New arrangement also called for a government nominee on the board, which was not there earlier. The earlier structure provided for granting broadcast franchise licenses to the stations or Kendra’s through its licensing board. The Prasar Bharthi Bill dropped the clause promising to 'uphold the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution'. It also dropped the clause pledging to 'uphold the impartiality, integrity and autonomy of broadcasting in the country'. Prasar Bharthi also omitted the provisions relating to Trust's relations with the Government as provided in Akash Bharathi. Draft was further changed before it was approved as Bill. When the Bill was finally tabled in parliament, it had an added feature of a twenty-two member parliamentary committee to oversee the functioning of the autonomous body. This was a measure to reduce the concentration of power in a small group, which was envisaged earlier. The concerned Minister explained that it was necessary to prevent the Prasar Bharti Corporation from functioning under the supervision of Public Undertakings Committee or some other Committee. By providing a separate Parliamentary Committee, the Prasar Bharti was provided with a special status.

Though the Bill was passed in 1990 it was not immediately notified and it took another 7 years for notifying the Act in 1997 only after another non-congress Government was formed at the center. A comment is relevant here to understand the Act of 1990, which was in cold storage for seven years: "Overall, the quality of autonomy finally conferred

legislatively on the electronic media in 1990 was diluted in spirit compared to what had been conceived of in 1978"[83].

In 1991, the Congress-led minority Government survived for a full term at the Center, did not enforce its election promise of providing autonomy to the Official Media. In fact, it has nothing to do for enforcing that promise, except notifying the Act of 1990. That was not done.

Prasar Bharathi is the name given to the *Broadcasting Corporation of India,* which is India's largest public broadcaster. It is an autonomous body set up by an Act of Parliament and comprises of Doordarshan television network and the All India Radio which were earlier media units of the Ministry of Information and Broadcasting, Government of India.

Prasar Bharati was established on November 23, 1997 following a demand by which the government owned broadcasters in India were to be given more autonomy like those in many other countries. The Parliament of India passed an Act to grant this autonomy in 1990, but it was not enacted until September 15, 1997. The Act received the assent of President of India on September 12, 1990 after being unanimously passed by the Parliament. It was finally implemented in September 1997.

By the Prasar Bharati Act, all the property, assets, debts, liabilities, payments of money due, all suits and legal proceedings involving Akashvani (All India Radio) and Doordarshan were transferred to Prasar Bharati.

The Prasar Bharathi Act, 1990 was made mainly to provide some sort of autonomy to Government Media i.e., Doordarshan and All India Radio. The media when solely in private hands propagates only the non-government point of view or an independent criticism of the policies. Our country saw a very inhibited misuse of the media in the past. It was also used for narrow partisan purposes that led to the natural consequence of loss of credibility and ultimate exit from the market.. The electronic media under control of the Government was just trumpeting the state programmes while covering up any opposite viewpoint totally and absolutely. That also affected the credibility of the government controlled media, from which the idea of autonomy stemmed. The view that media can function properly only when it has autonomy is not new. The need was felt even in 1964 when the Government had appointed a committee under Shri A.K. Chanda, which examined the functioning of AIR. The committee observed that:

> "It is not possible in the Indian context for a creative medium like broadcasting to flourish under a regimen(sic) of departmental rules and regulations. It is only by

[83] Monroe E Price, Stefaan G. Verhulst, Broadcasting Reform In India, 2000, p11.

an institutional change that AIR can be liberated from the present rigid financial and administrative procedures of Government."[84]

This committee had recommended a constitution of a distinct corporation for Akashvani with the freedom to evolve its own method of recruiting, regulating scales of pay and conditions of service according to its needs and also planning a financial and accounting system, which was relevant to its creative needs.

Pandit Nehru preferred an independent authority with required autonomy for effectively utilizing the powerful broadcasting media. Speaking on the issue at Constituent Assembly, Nehru said that, "my own view of the set-up for the broadcasting is that we should approximate, as far as possible, to the British model, the BBC, that is to say, it would be better if we had a semi-autonomous corporation under the Government, of course, with the policy controlled by the Government, otherwise not conducted as a Government department."[85]

3.6. Emergency and Electronic Media:

During the 1975-1977 Emergency, the media was used primarily for the propaganda of only government views and ignored the recommendations from the Chanda Committee report. For Indira Gandhi's own political reasons and to curb the rapidly growing political opposition within and without the party, she imposed an emergency. As a national emergency was declared following the verdict of the Allahabad High Court, which unseated the Prime Minister from the Lok Sabha, censorship was imposed and AIR became the real propaganda instrument. AIR code that gave guidelines to the broadcasters was suspended. The directors of the AIR station were asked to do what the Government expected them to. She said that the guidelines given in the AIR code were outdated and so the code should lapse. However, she said that there was no need to inform the parliament about the same.

3.7. Pre-satellite era: Autonomy of Electronic Media:

After the emergency, one of the avowed objectives of the Janata Government that replaced Mrs. Gandhi's Congress Government was the granting of the autonomy to the AIR and Doordarshan. This resulted in the constitution of the Verghese Committee to evaluate the functioning of the two medias and to make relevant recommendations. The Akash Bharati Report, 1978, focused on autonomy for broadcasting in India, which at that time was an entirely government-controlled operation and limited to primarily AIR and to some extent DD. This was in the pre-satellite era. The Committee proposed an independent structure for a National Broadcasting Corporation (Akash Bharati) incorporating AIR and DD as an

[84] G.S. Bhargava, "Government Media- Autonomy and After"; Concept Publishing Co.,1991, Quoting from speech by P. Upendra, the then Minister for Information and Broadcasting while introducing the Prasar Bharati Bill in Lok Sabha, pg 100

[85] Nehru in the Constituent Assembly on March 15, 1946

integrated national broadcast trust and public service broadcast provider. This was to be under a Board of Trustees, named by a statutory panel, funded through the exchequer and responsible to Parliament through the Government, which was given reserve powers and a place on the Board. The scheme envisaged a two-tier structure: a policy-making Board of Trustees and a professional Board of Management headed by a Controller-General who would be the Member-Secretary of the Board of Trustees. "Under this, autonomy was sought to be devolved downwards through regional and local kendras. At the base, franchising non-political/religions institutions (NGOs, universities, cooperative institutions like Amul, and cultural and other public service non-profit institutions) to utilize Akash-Bharati's infrastructure to operate autonomous low-power was proposed, low-budget community radio and TV stations to serve both rural and urban populations and niche audiences for instructional, developmental and cultural purposes on the SITE-Pij model."[86] These were to be licensed by an independent Licensing Board for a period of up to three to five years at a time and run with broad-based community representation and audit. They were not to broadcast news but merely relay Akash Bharati news bulletins but would be able to run their own local current affairs programmes. Implicit in this arrangement was the idea that these Franchise Stations might be encouraged to network upwards over time. A broadcast commission was to review the entire broadcast scene after seven years. While the growth of TV was envisaged, the continuing importance of radio was emphasized. "In the Indian situation the objective of communication policy must be to awaken the people, inform, mobilize and educate them to be democratic citizens, ensure equity and equality of opportunity, safeguard national values, preserve both unity and accepted national goals."[87]

Making Prasar Bharati Act to confer considerable autonomy on Doordarshan and All India Radio was originally L K Advani's idea, when he was the Information and Broadcasting Minister in Morarji Desai's government. Memories of the Emergency were still fresh in 1978. "You were asked to bend," he told the print media, "But you chose to crawl." It was not even necessary for Indira Gandhi's henchmen during the emergency to tell the electronic media to bend as they had always done that. This was 15 years before STAR and CNN emerged with the satellite revolution.

Based on their recommendations, the Prasar Bharti Bill was introduced in the Lok Sabha in 1979. The effort was, however, wasted as the Bill lapsed with the dissolution of the Lok Sabha. For the next ten years nothing substantial was done towards the attainment of the much needed autonomy and the political autocracy on media continued. In 1989, the National Front Government again introduced the Bill which was passed and it finally became an Act in 1990. However, for a long time the autonomy was only on paper because the Prasar

[86] B.G. Verghese in an interview on *7 Mar 2002: from www.thehoot.org*

[87] Verghese Committee report quoted from G.S. Bhargava, "Government Media- Autonomy and After" Concept Publishing Co.,1991, p 3

Bharti Corporation was not set up. It was eventually set up in 1995 with the tireless efforts of Jaipal Reddy.

The Ministry of Information & Broadcasting, Government of India had issued a notification indicating that the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 shall come into force from 15th of September, 1997. The Prasar Bharati Act provides for establishment of a Broadcasting Corporation of India, to be known as Prasar Bharati to define its composition, functions, powers and related matters.

The Act received the assent of the President of India on September, 12, 1990 after being unanimously passed by Parliament. This had not come into force as the notification under sub-section (1) of Section 3 of the Act had not been issued. Mass media should be kept under the control of the public and distinct from the Government. It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters as well as on all other public issues.

Prasar Bharathi Broadcasting Corporation of India Act, 1990 aims at bringing the government electronic media under the control of an autonamous organisation. The demand for shifting the government control over the broadcasting organisation to a broad-based body of responsible people was up in the air for at least two decades, with every opposition supporting it vehemently demanding non interference with the functioning of electronic media. The moment the same party came to power, it was either engaged in dodging the issue of giving autonomy to the electronic media or enjoying the publicity provided to it in its capacity of being the master controller. The political parties in power were unwilling to give up the control over the powerful medium. During 1977, when Mr.L.K.Advani was the minister for information & broadcasting, a working group was set up to prepare a scheme for giving "full autonomy to Akashvani and Doordarshan". The group submitted its report on February 24, 1978. Based on this report the Prasar Bharathi Bill was moved in Parliament on May 16, 1979. A couple of months later, the Janata Party government collapsed and the Bill could not become an enactment. After ten years it was presented before Parliament in 1989 and was passed in September 1990 and the same year the President gave his assent to it. The Prasar Bharathi Act specified that the Government has to notify the commencement of the application of the Act. It took seven years for the government to notify the Act on July 22,1997 which stated that the Act would come into force from September 15, 1997. After an unjustifiable delay of seven years a union government could ultimately fill the big legislative vacuum in the Indian Media scenario.

With the formation of the autonomous Broadcasting Corporation of India, the AIR and Doordarshan became free from the control of the government. As the Supreme Court

said in its landmark judgement in the Hero Cup case, the broadcasting media was to be under the control of the public and distinct from the government. That means, instead of the politicians and the bureaucrats controlling the broadcasting of information and other programmes of the radio and TV, an autonomous corporation consisting of several prominent and indendent persons would conduct the functioning of the media. The goal was to bring the functioning of the electronic media in line with the best in the world by giving the media freedom and scope for creativity. In Doordarshan Metro channel, a Hindi new bulletin and current affairs programme produced by a private producer was introduced in the year 1995. It gained popularity as a complete new package and was found to be different from the bulletins aired by the main channel. However, till the Prasar Bharathi Act came into existence the officers of the Mandi House were having the last word, as they used to censor, amend, change or cancel any part of the news story from the list of items that would be telecast. This practice of previewing news programmes was dispensed with after Doordarshan and All India Radio were brought into Prasar Bharathi Corporation in 1997.

As rightly observed in Hero Cup case, the airwaves or frequencies for transmission of electronic communication are public property and should not be the monopoly of the government or anybody else. The Supreme Court wanted the use of the frequencies to be controlled and regulated by a public authority in the interest of the public. If the government fails to live up to this objective, the judiciary can intervene to test the validity and legality of the regulatory measures envisaged in the legislation. The Apex court categorically enjoined on the government to see that the air waves were being utilised to advance free speech of the citizens and selectively of the powerful and the influential. The first draft of Prasar Bharathi legislation was criticised as a true representation of the idea of Verghese Committee. B.G.Verghese wanted a broadcast trust enshrined in the Constitution. The Bill was criticized to be the caricature of the real concept because instead of bureaucratic control, there will be endless interference by legislators in the name of parliamentary control.

3.8. Prasar Bharathi Board

The Broadcasting Council and the Parliamentary Committee are the bodies empowered to manage the affairs of the electronic media. According to Section 3(4) of the Act, the "management of the affairs of the Corporation shall vest in the Prasar Bharathi Board". The board shall have 15 members. The Chairman and its six members who would be eminent public personalities, would be part-time. The "non-official" members would be appointed by the President of India for a six year term on the recommendation of a Committee consisting of the following: a. Chairman Rajyasabha i.e., Vice President of India, b. Chairman, Press Council of India, and c. a nominee of the President of India.

The Act states that the general superintendence, direction and management of the affairs of the Corporation shall vest in the Prasar Bharati Board which may exercise all such

powers and do all such acts and things as may be exercised or done by the Corporation under the Prasar Bharati Act.

The Chairman and the other Members, except the ex-officio Members, the Nominated Member and the elected Members shall be appointed by the President of India. The Board shall meet not less than six meetings every year but three months shall not intervene between two consecutive meetings.

3.8.1. Functions and objectives

It shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely:

(a) upholding the unity and integrity of the country and the values enshrined in the Constitution;
(b) safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;
(c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;
(d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;
(e) providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;
(f) providing appropriate programmes keeping in view the special needs of the youth;
(g) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;
(h) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;
(i) safeguarding the rights of the working classes and advancing their welfare;
(j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;
(k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities;
(l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;

(m) promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State;
(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;
(o) promoting research and development activities in order to ensure that radio broadcast and television broadcast technology are constantly updated

This Board would exercise all powers and do all such things which would be exercised or done by the corporation under the Act.

3.8.2. Broadcasting Council:

According to Section 14 of the Act, the Broadcasting Council will receive complaints regarding programmes, functioning of the Corporation and staff matters and subsequently advice the Corporation suitably in the discharge of its functions. The Parliamentary committee would be of 22 members of Parliament the composition of which would be 15 from the Lok Sabha and 7 from the Rajya Sabha. They would oversee the functioning of the corporation. The members of the council will be elected by their respective Houses. The rules of functioning shall be laid down by the Speaker of Lok Sabha.

3.8.3. Three-tier control system:

Though it is called an autonomous Broadcasting Corporation, it is controlled by a three tier system- the Broadcasting Council, the Parliamentary Committee and the Central Government. Under Section 23 of the Act, the Central Government can issue instructions to the corporation to make or not to make a particular broadcast, whenever such an instruction is called for in the interest of the security, sovereignty, unity and integrity of India. All of these three provisions will not be in tune with the objective of providing an autonomy to the electronic media and they are uncalled for. Besides this, the Corporation was also made answerable to the Parliament. The members would be eminent persons in public life, but they would also be under the control of the central government as the latter can instruct what item should be inserted or deleted in the programmes. These provisions amount to keeping a supervisory body for complaints over the high powered Broadcasting Corporation which was headed by an eminent person like Late Nikhil Chakravarthy. If the President, while appointing his nominee on the selection committee constituted from selecting the members (1-10) of the board, is to go by the advice of the government, that would mean direct interference by the government in the selection of the members of the board. Even the semblance of autonomy as visible in these provisions of the Constitution, in the three tier control mechanism, will surely disappear and autonomy becomes a distrustful and suspicious word as the new minister for Information and Broadcasting wanted the total government

control over Doordarshan for the sake of balance. He said that "the Rs 60,000 crore corporation has to be answerable and accountable. A 22 member parliamentary committee as envisaged in the Prasara Bharathi Act cannot act as watchdog on a day to day basis....We cannot have a CEO lord over a mammoth organisation for six years without checks and balances. An organisation that guzzles Rs14000 crore courtesy the government has to produce the results. It has to be accountable because it is public money that is being spent. That's why I think, the issue calls for a public debate."[88]

3.8.4. The Act and Autonomy:

A comprehensive review of the Act undertaken in 1991, had brought into focus certain operational difficulties that were likely to arise particularly in the area of personnel policy and manpower employment, issue of Government directions to the Corporation, the procedure for supersession for Prasar Bharati Board by the President etc. The Cabinet considered the issue for suitable amendments. Meanwhile with the advent of satellite channels and their rapid proliferation, the broadcasting environment had undergone a sea-change.

The Prasar Bharati Amendment Bill 1998 was passed in the Lok Sabha in August 1998. The Bill sought to revive the Prasar Bharati Act 1990 and nullify the effect of the Ordinance promulgated earlier which had removed a few provisions from the original Act. On August 29, 1998, the Prasar Bharati (Broadcasting Corporation of India) Ordinance 1998 was promulgated to restore the original Prasar Bharati Broadcasting Corporation of India Act 1990.

As in the original Act, the Ordinance provides for establishment of a Parliamentary Committee to oversee the functioning of the Corporation, establishment of a Broadcasting Council, the appointment of two full time members of finance and personnel, retirement of the 1/3 members by rotation, Fixing the upper age limit of 62 years for the CEO.

The Act established a Broadcasting Corporation of India that is known as Prasar Bharti. The Act gave perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said names sue and be sued, to the Corporation. The general superintendence, direction and management of the affairs of the Corporation vests in the Prasar Bharti Board.

“The Board shall consist of -

(a) a Chairman;
(b) one Executive Member;
(c) one Member (Finance);
(d) one Member (Personnel);

[88] The Pioneer, Sunday Pioneer, February 7, 1999, page 1

(e) six Part-Time Members;
(f) Director-General (Akashvani), ex-officio;
(g) Director-General (Doordarshan), ex-officio;
(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and
(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by other employees from amongst themselves." [Section 3(5)]

The corporation can appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties. Provided that all or a majority of the members of each committee shall be Members and a member of any committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.

Section 4 of the Act talks about the appointment of the chairman and the other members. "The Chairman and the Part-Time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration."[Section 4(3)].

Section 5 of the Act says that the Executive Member shall be the Chief Executive of the Corporation and shall, subject to the control and supervision of the Board, exercise such powers and discharge such functions of the Board as it may delegate to him.

Thus, though the Executive member should be an eminent professional expert in relevant disciplines, yet the only criterion that has been laid down for the appointment of the chairman is "eminence in public life". "In India today, the phrase "eminence in public life" is not always a guarantee for integrity, maturity or commitment to national interest."[89]

As far as the Chairman is concerned, he shall be a part time member and shall hold office for a term of six years from the date of which he assumes his office.[Section 6(1)]. The Executive Member, the Member (Finance) and the Member (Personnel) shall be whole-time members and every such Member shall hold office for a term of six years from the date on which he enters his office or until he attains the age of sixty-two years, whichever is earlier.[Section 6(2)] When the Gujral Government had passed this Act, they had increased

[89] L.Dayal, "Autonomy A matter of Culture and Conduct", Communicator, March 1990, pg8

the original age limit of 62 to 70. One wonders that was there such a dearth of talent in that age group that they had to increase the age limit. With the increase in the age limit, S.S. Gill who was well over the original age limit was appointed as the CEO. However, when the BJP Government came into power, they again reintroduced the original age limit so that S.S Gill, who was proving to be an inconvenience to the Government, would have to go.[90] The term of office of a part-time member shall be that of six years, but one-third of such members shall retire on the expiration of every second year [Section 6(3)]. The term of office of an elected member shall be two years or till he ceases to be an employee of the Corporation, which ever is earlier [Section 6(4)].

There are provisions regarding to the Chairman and the Executive Member of the Corporation. The Act does not address the issue of the conflict in the positions of the Chairman and the Executive Member who is supposed to be the Chief Executive as well and to whom the DGs are subordinate. The entire Board of Governors needs to be constituted with part-time experts and the Chief Executive should be answerable to them.

Section 9 of the Act says Subject to such control, restrictions and conditions as may be prescribed by the Government, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and other employees as may be necessary. The method of recruitment of such officers and employees and all other matters connected therewith such as the conditions of service of such officers and employees shall be such as be provided by the regulations.[Section 9(2)]

The corporation shall, subject to the Government regulation and restrictions, appoint Recruitment Boards consisting of persons other than the members, officers and other employees of the corporation. [Section 10(1)]. However to appoint people to the posts carrying scales of pay which are not less than that of a Joint Secretary to Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex-officio Members, the Nominated Members and the elected Members. The qualification and other conditions of service of the members constituting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed, [Section 10(2)]

3.8.5. Powers & Functions:

Section 12 of the Act lays down the powers and functions of the Corporation. The Corporation is to ensure the public good and is to keep the interest of the citizens in mind while discharging its functions.

[90] The Hindu, April 12, 1998

3.8.6. Parliamentary Committee:

Section 13 of the Act talks about the most controversial and the most debated aspect of the Act, which is the Parliamentary Committee. It talks about a Parliamentary Committee that is to consist of 22 members of the Parliament of whom fifteen are to be from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote. The function of this Committee is to ensure that the Corporation discharges its functions properly in accordance with the objectives set out in Section 12. The committee is to submit a report of its evaluation to the Parliament. As per this provision, first the Prasar Bharti would come under tighter parliamentary control through this 22 member committee of the MPs who would "oversee" its functioning. This cramps the style of the managers of the Prasar Bharti who are constantly worried about offending their MPs. Though Sushma Swaraj reasoned that this Committee would ensure that the accountability is to the Parliament and not to the government, yet the reality is quite different. "As the committee would be dominated by the members of the ruling party-the party-wise representation would be in proportion to its strength in each House-it, in effect means "accountability" to the government of the day."[91] With this jumbo size Committee breathing down the neck of the Corporation it is unrealistic to assume that the Corporation can ignore such sensitivities.

"It was in response to the responsible criticism by media experts that the Gujral ministry, goaded by Mr. Jaipal Reddy, dropped section 13 of the original Act."[92] The reason given for the scraping of the Committee can be summed up as under:

> "It is wrong to say there will be no parliamentary control. Prasar Bharati will be under parliamentary scrutiny. When the act was passed in 1990, we did not have a system of parliamentary standing committees to scrutinise the budget and functioning of various ministries. But now we have such committees. I did not want two committees looking into the work of Prasar Bharati, because that would have meant harassment, and if they made contradictory recommendations there would be confusion on which committee has precedence."[93]

He rejected the notion that the Standing Committee looked only into the budgetary aspect. He said that when the budgetary aspect is looked into then all the other aspects are also examined.

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[91] H.S., "The Government keeps the 'remote control'" , The Hindu, September 6, 1998
[92] S. Sahay, "Media Power and Voters- Let Prasar Bharti remain independent" The Tribune, March 24, 1998
[93] Jaipal Reddy in an interview on 16 november, 1997: from http://www.the-week.com/97nov16/events1.htm

The Committee was subsequently reintroduced when BJP came into power under Sushma Swaraj. She outrightly rejected the notion of the Parliamentary Standing Committee overseeing the functions of the Corporation, as, in the normal course the Committee, it would hardly find time to deal with the problems of the electronic media.[94] If as the present government argues, the intention of Prasar Bharti is to assure autonomy to the electronic media then, the Parliamentary Committee is a death blow in the whole concept of autonomy. "With 22 parliamentarians around (represented according to party strength) interference in the day to day working of the Corporation is not ruled out."[95] Such a committee makes the life of the Mandi House officials difficult, as they have to accommodate the whims and fancies of the parliamentarians also.

We should realize that the perspective of the media persons is to be very different from that of the politicians. If the media imposes upon itself the idea of equality, as is understood by the politicians, then the outcome would be a very dull and irresponsible media. We should realize that this mechanism of having a Parliamentary Committee is highly unwieldy and one which will not work, given the vital need of the electronic media to make split second decisions. A Standing Committee is a much simpler and effective method and needs to be activated properly. "All that needs to be done is to make it mandatory that the CEO and his officials will appear before the Committee at least once in three months to present a detailed report on the work being done, and to be examined by the Committee on the various complaints and issues that may have come before it in the preceding three months. A similar system exists in the UK."[96]

3.8.7. Broadcasting Council:

Section 14 of the Act talks about the establishment of a Broadcasting Council which is to receive and consider the complaints under section 15 and to further advise the corporation in discharge of its functions, as set out under Section 12. The Council is to consist of a President and 10 other members (to be appointed by the President) from persons of eminence in public life [Section 14(2)(i)]. It is to also consist of four Members of Parliament of whom two are from the House of the People and to be nominated by the speaker thereof and two from the Council of States to be nominated by the Chairman thereof. The President of the Council shall be a whole time member and every other member shall be a part time member and shall hold office for a term of three years from the date on which he assumes his office.[Section 14(3)] The council may have as many numbers of regional councils as it may consider necessary for proper discharge of its functions, [Section 14(4)] The President of the Broadcasting Council shall be entitled to such salary allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident

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[94] Sushma Swaraj in an interview to The Times of India, May 18, 1998
[95] Anuradha Raman, "Autonomy undecided" The Pioneer, 4th August, 1998
[96] Bhaskar Ghose, "The accountability of Prasar Bharti" The Pioneer, August 9, 1998

fund and other matters as may be prescribed.[Section 14(5)]. Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.[97] Again during the reign of Jaipal Reddy, this provision was deleted through an amendment as it was said that such an authority should be formed under the Broadcasting Bill. However, the Bill never became an Act and Sushma Swaraj reintroduced this Council under the Act.

The Council is like the Ombudsman, or the Lok Pal or Lok Ayukt to oversee the performance of the Corporation. It not only adjudicates on the complaints received but also advises best how to carry out its objectives and aims. It is a body that is functionally higher than the Board of Directors. It should, therefore, be composed of men of proven integrity and credibility, well known for their judicious and balanced approach to problems. The Act, however, does not lay down any suitable criteria for the appointment of these people. Also this Council should be smaller in size with a lesser number of members.

3.8.8. Complaints Redressal Scheme:

Section 15 of the Act says that the Council shall receive and consider complaints from any persons or group of persons who allege that a certain programme or broadcast or the functioning of the Corporation is not in accordance with the objective of the corporation.[98] Further, any persons who claim that they have been unjustly treated by the Corporation in connection with any programme broadcast may also complain. This also includes unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity[99] Neither the officer nor the employee of the Prasar Bharathi can complain under this provision. The broadcasting Council shall follow the procedure that it deems fit for the disposal of the complaints. If it feels that the complaint is justified wholly or partly, then it shall advise the Executive member to take necessary action.[100] If the executive member does not agrees with the recommendations of the Council then he shall place the same before the Board for its decision thereon.[101] However, if the Board is also unable to accept the same recommendations then it shall record its reasons and inform the Council accordingly.[102]

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97 Section 14(6) Prasar Bharathi Act, 1990
98 Section 15(1)(i) Prasar Bharathi Act, 1990
99 Section 15(1)(ii) Prasar Bharathi Act, 1990
100 Section 15(4) Prasar Bharathi Act, 1990
101 section 15(5) Prasar Bharathi Act, 1990
102 Section 15(6) Prasar Bharathi Act, 1990

This is another provision that was removed by earlier by the United Front Government at the time of passing the Act, and was subsequently reintroduced by the NDA Government. The reason that the United Front government had given for abolishing the Council was that they were planning to have a separate Council under the Broadcasting Bill. However, the BJP-led NDA government reintroduced this provision as the Broadcasting Bill lapsed and was never passed. The Broadcasting Council should be outside the jurisdiction of the Prasar Bharti like a Court or a Tribunal. The decision of the Council should be mandatory and should be broadcasted over the media along with the stand taken by the Corporation, as this will enable the public to make their own judgment and would ensure transparency.[103]

3.8.9. Financial Support from Government:

Section 17 empowers the Government to give financial assistance to the Corporation in discharge of its functions. The Central Government after due appropriation made by Parliament by law in this behalf, pay to the Corporation, the proceeds of the broadcast receiver license fees, if there is any, as reduced by the collection charges; and also such other monetary assistance as the government may deem necessary by way of equity, grant in aid or loan; in each financial year.[104] The UF Government felt that it was not feasible for Prasar Bharti to be financially independent and that the quality of the broadcasting service would suffer. Financial Independence alone will help quality information and entertainment programmes. Doordarshan should be able to sustain itself out of its own income both for current expenditure and investment needs. We should understand that it is impossible to grant autonomy to DD and AIR merely by creating a fund for them, into which shall be paid the broadcaster's license fees; if any, advertisement revenue, service fees and other earnings. It is necessary that both the Akashvani and the Doordarshan should have their own source of income and should depend on the Government occasionally. Only then can they get the functional autonomy that they are out to achieve. Today, they do generate revenues for themselves largely but, to some extent are still dependent on the Government.[105]

3.8.10. Own Funding Mechanism:

Section 18 of the Act provides that the Corporation shall have its own fund and all the payments by the Corporation shall be made from that fund.[106] It is stated that "the Corporation may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Corporation."[107] The Act also requires that the statement of programmes of activities and financial estimates is to be submitted to the Central Government for its approval.[108] If the Central Government

[103] The Statesman, July 1, 1998
[104] Section 17, Prasar Bharathi Act, 1990
[105] CEO; S.S. Gill in an interview to The Pioneer on February 6, 1998
[106] Section 18(1) Prasar Bharathi Act, 1990
[107] Section 18(3) Prasar Bharathi Act, 1990
[108] Section 20, Prasar Bharathi Act, 1990

exercises such strict control over the electronic media then the whole autonomy that we have been talking about will go to the dogs. "Therefore, it is imperative that media's autonomous functioning should not be dependent on funding. And funding should not in any way eclipse, imperil or dictate the Corporation's activities or programmes."[109]

Section 23 of the Act gives the power to the Central Government to issue directions to the Corporation, in the interest of the sovereignty, unity and integrity of India or the security of the State or preservation of the public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction.[110]

Section 24 also allows the Government to obtain from the Corporation any information that it considers necessary.

If the Board persistently fails to comply with the directions issued under section 23 or fails to supply the information required under section 24, then the Central Government may prepare a report and lay it before each House of Parliament for any recommendation as to any action which may be taken against the Board (Section 25(1). The action referred to in this provision may include the supercession of the Board also. The President may, on the recommendation of the Parliament supersede the Board for a period that should not exceed six months. This should be done by issuing a notification.[111]

Provided that before issuing the notification under this sub-section, the President should give reasonable opportunity to the Board to give reason why it should not be superseded and shall consider the explanations and objections of the Board. Upon the publication of the notification under sub-section (2) all the members should vacate their offices and all the powers, functions and duties which were to be exercised as directed by the Board shall be exercised by the persons who are appointed by the President. When the period of supersession expires then the President may reconstitute the Board by fresh appointments, and in such a case the person who had to vacate his office earlier under clause (a) of sub-section (3) shall not be disqualified from appointment.[112] The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament.[113]

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[109] M.R. Dua, "Who should pay for Media Autonomy", Communicator, March 1990, pg 30

[110] Section 23(2) says that where the Corporation makes a broadcast in pursuance of the direction issued under Section 23(1), then this fact should be disclosed by it during the broadcast.

[111] section 25(2) Prasar Bharathi Act, 1990

[112] Section 25(4) Prasar Bharathi Act, 1990

[113] Section 25(5) Prasar Bharathi Act, 1990

3.8.11. Rule Making Power

Section 32 gives the power to the Central Government to make rules for the functioning of the Corporation. It may make rules fixing the salaries and allowances and conditions of services in respect of leave, pension (if any), provident fund and any other matters in relation to the whole time members[114], the part time members, the Chairman[115], the President[116] and the other members of the Broadcasting and the Regional Council[117]. It may make rules with regard to the appointment of the officers and other employees of the corporation and that of the Recruitment Board[118]. In a nutshell, the Government will make the rules together with restrictions and conditions and the Recruitment Boards with non-professional members who know nothing about the two medias will recruit the staff. This provision of recruitment Boards outside the Corporation should go and this job should be left to the creative staff.

Section 32(2)(l) is a very vast provision and also the most dangerous one, which allows the Central Government to make rules with regard to any other matter that it considers necessary. It is necessary to leave such matters to the Board and not be meddled with by the Central Government. If the Central Government starts meddling with these matters also then the whole concept of autonomy is a façade created to pacify our demands for media autonomy.[119]

The Prasar Bharathi Act mainly deals only the structure of the Corporation and is silent on the vital aspect of giving any kind of autonomy. It is assumed that by providing a detailed structure for the governance of the corporation, the interference from the executive and political bosses would be avoided, which itself would ensure the self decision process. The Corporation also rules over the private broadcasters[120]. If a private channel is found violating the programmes code then it can be even taken to the Court for the same.

There is also another view that is making the whole Act look redundant. With the advent of numerous satellite and private channels, the scope of Prasar Bharathi is limited and confined only to Radio and Doordarshan which are now just one of many players in a global field. AIR and DD are and will be in existence as the mouth piece of the government whether used or misused. If the media suffers credibility or loses quality, it will lose viewership in competition with the private players. As the competition was set in, automatically it is for the masters who manage the media to keep their mouth piece in circulation or lose its place. Because the Government Media belongs to the people in general, it is the constitutional

[114] Section 32(2)(a) Prasar Bharathi Act, 1990
[115] section 32(2)(b) Prasar Bharathi Act, 1990
[116] Section 32(2)(g) Prasar Bharathi Act, 1990
[117] Section 32(2)(h) Prasar Bharathi Act, 1990
[118] Section 32(2)(c) Prasar Bharathi Act, 1990
[119] http://mib.nic.in/nicpart/pbpbact.htm
[80] The Asian Age, September 8, 1998

obligation of the state to secure the public interest in it. The autonomy of the broadcast media under the control of the Government has to be viewed within that limited perspective in the present context. In fact, the Doordarshan which was once a sole medium that had the widest access with people spread over every nook and corner of the country, has lost much its shine because of more powerful players entering the fray. The Doordarshan still remains one of the biggest terrestrial net works in India and still has scope to improve its market and develop as a formidable competitor to any counter part provided it assumes professionalism in its functioning and operations.

3.9. Amendment to Prasar Bharati Act

With the amendments to the Prasar Bharati Act, 1990, some changes were brought in. Those changes include the abolition of the 22-member Parliamentary Committee, which was to oversee the working of the autonomous Broadcasting Corporation of India (Prasar Bharati).

Another significant change is the scrapping of the Broadcasting Council, which was to hear complaints relating to the Prasar Bharati. A body on similar lines is envisaged in the broadcasting bill. Minister for Information and Broadcasting, S Jaipal Reddy said that the changes have been made to enhance the autonomy and efficiency of the corporation. He said that the government was considering creating an ombudsman to deal with complaints on unfair treatment of individuals or issues. Another alternative was to enlarge the Press Council into a Media Council which will then act as a redressal forum across media. The provision relating to the 22-member committee was not in the original bill and was brought in through an official amendment under pressure from opposition parties, including the Congress. However, since then, the act has not been notified on the ground that with the advent of satellite TV channels and other changes in the media, certain amendments were needed. The change of government with the Congress coming to power in 1991 also resulted in some rethinking on the legislation. The successive governments had also been saying that the act had to be amended in the light of the comprehensive legislation on broadcasting , which is now pending before a joint parliamentary committee.

Mr. I K Gujral and S Jaipal Reddy, who were then in the opposition, had urged the President to notify the legislation and had asked all the political parties to include this in their election manifestoes at the time of the last general election.

By the presidential ordinance, the assets of Doordarshan and All India Radio, estimated to be worth Rs 550 billion, are being transferred to the Prasar Bharati on a perpetual lease at a token fee of Re 1 per annum, instead of treating the assets as capital provided by the government to Prasar Bharati. Reddy said this was being done because of the criticism that capital can be converted into equity by a future government, thus retaining

control of Prasar Bharati. The Prasar Bharati has been given the option of deciding which government personnel it would like to retain on deputation. The earlier 1990 bill had said this would be decided by the government. The Prasar Bharati will also be free to take decisions relating to the shape of advertisement and commercial time in its programmes. Sections 12(5) and 12(2) have been amended accordingly. It had been decided that all members will have six-year terms instead of one-third of them retiring every two years. But no member will be eligible for a second term. An amendment has also been introduced to remove the possibility of any foreign national becoming a member of the board. When asked about how the department-related standing committees could do the work of overseeing an autonomous body, Reddy said that the Prasar Bharati was a statutory body, and not a constitutional one like the Election Commission or the Supreme Court. He made it clear that although the government had certain powers under Section 21 of the act, it could only issue transparent policy guidelines and interefere in the programming. Amendments have also bee made to give flexibility to the Prasar Bharati board to constitute recruitment boards or ask the Union Public Service Commission to perform the recruitment functions. The power to supersede the board of the Prasar Bharati on charges defined under the act has been vested with Parliament and not with the President, as provided in the principal act. Some sections have been amended in the light of the proposed broadcasting bill to clearly assign the role of public service broadcasting to the Prasar Bharati and to leave the regulatory role to the proposed Broadcasting Authority of India.

3.10. Struggle for Autonomy of Public Broadcaster

Whenever there is a change in the government at the centre, the view point of the ruling party is changed and the Bill is undergoes a thorough change. The Minister for Information and Broadcasting in the NDA Government headed by AB Vajpayee, Mr Pramod Mahajan strongly opposed the autonomy to electronic media and never tried to introduce the Broadcast Bill. He also opposed the handing over Doordarshan and AIR to half a dozen persons without any Parliamentary control[121]. In a debate on Doordarshan, he maintained that the public broadcast system had to be accountable to Parliament. He said "only the Chief Executive Officer is expected to answer the standing committee of parliament...I reply to Parliament about Prasar Bharathi over which I have no control". He dismissed comparisons with autonomy in the BBC saying "BBC is totally different. It has nothing to do with Prasar Bharathi of today. This is a unique system we have developed over 30 years.... No other country has an information and broadcasting minister." He said while in BBC the Home Minister made appointments, under the Prasar Bharathi Act, the government did not have the right to appoint or sack.

The UPA Minister for Information and Broadcasting who brought the 1990 Act into force from September 15, 1997, said the Government had the power to sack the CEO and

[121] The Hindu, Feb.15, 1999,p 8

issue policy directions which had to be complied with. Former speaker of Lok Sabha, Shivraj Patil said that the Prasar Bharathi should be autonomous as far as news was concerned, but as far as information is concerned, the government should have the instrument with it.

Being a very powerful media, the ruling party will always develop vested political and publicity interests and hence intends to have a grip over the electronic media, be it under Prasar Bharathi Act or Broadcasting Law. The incident of sacking of the first Chief Executive Officer CEO symbolizes the government control over this media. By not filling the post of the chairman of Prasar Bharathi, after the demise of the first chairman and veteran Journalist Mr. Nitish Chakravarthi, the government again vindicated its supremacy over the so called autonomous Prasar Bharathi. The concept of autonomy continues to be debated while the successive governments continue to meddle with it. The government of the day cannot overcome the temptation to make the electronic media a tool for propaganda. Even if the Government is unwilling to part with its censorial power over the news and views content of broadcast media, there is a need to protect the competitive spirit in news related programmes with required independence to professional bodies. There is an inevitable need for regulation of the private channels, foreign TV programmes and cable services, which involve huge amounts of revenue and have a greater influence over the viewers. The Broadcast Bill in its present form, reflects the government's willingness to reduce its hold over the electronic media and restore a semblance of order to the chaotic TV Bazaar. The Bill can certainly do some fine tuning. But by attempting to open the debate on the autonomy and other aspects of the Bill, the present government has already created doubts about the passage of the Bill in its existing shape. The lawmakers are always dodging the issue of making law on this important wing of media. It took more than a decade to pass the Prasar Bharathi Act, seven years to bring it into force, and already some years lapsed ever since the Broadcast Bill was drafted and referred to the Select Committee of Parliament. What happened to the Prasar Bharathi Act may happen to the Broadcast Bill too.

3.11. Proposed Amendment to Prasar Bharathi Act

Based on recommendations of a group of ministers (GoM), the I&B ministry is planning several amendments in the Prasar Bharati Act, 1990 which include omitting provisions for constitution of a Broadcasting Council and a separate Parliamentary Committee for Prasar Bharati. The Standing Committee had earlier in its report asked the ministry to either constitute a Parliamentary Committee and a Broadcasting Council as per the Prasar Bharati Act or amend these provisions. Minister of State in the I&B Ministry, S Jagathrakshkan, said that GoM had felt that a single complaints redressal mechanism for all broadcasters under the aegis of the proposed Broadcasting authority deserved merit.

According to the Minister, the proposed Broadcasting Authority can be assigned separate functions in relation to the private Broadcasters and Prasar Bharati. If this is done,

then, there will be no need to have a separate Broadcasting Council as envisaged under the Prasar Bharati Act. The Group of Ministers also recommended omitting the provision for setting up of a separate Parliamentary Committee. The Ministry is also planning to issue another Cabinet note on financial restructuring of the Prasar Bharati and filling up of essential posts, following recommendations of the GoM. The GoM had also examined the issue of the relation between the government and Prasar Bharati after the Shunglu Committee report pointed out irregularities in the broadcast of the Commonwealth Games. The GoM made several recommendations regarding Prasar Bharati including the composition of the board, the procedure for appointment, removal and tenures of chairperson and the members, the power of government to issue directions to Prasar Bharati[122].

3.12. Amendments in 2008 & 2012

The 2008 Amendment reduced the Chairman of Prasar Bharti to a part time member and the term is now just 3 years from earlier 6 years, or up to 70 whichever is earlier. The Amendment in 2008 also authorised the Government to remove incumbent Chairman without paying any compensation. To say the least it is highly unreasonable to throw out the Chairman of PB out of office. It gives no importance to the position but considers a person appointed by previous regime is persona non-grata. While Chairman is reduced to part time member, the Member (Finance) and Member (Personnel) were made permanent members. They hold office for six years or up to age of 62 years whichever is earlier.

Following is the text of amended provisions relating to their term of office.

Section 6 after amendment: (1) The Chairman shall be Part-time Member and shall hold office for a term of three years from the date on which he enters upon his office or until he attends the age of 70 years whichever is earlier:

Provided that any person holding office as a Chairman immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Chairman and shall not be entitled to any compensation because of his ceasing to hold such office. *[Substituted by Act 12 of 2008 Section 2(a) for sub-section (1) w.e.f. 07.02.2008]*

Section 6(2) The Member (Finance) and Member (Personnel) shall be Whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years whichever is

[122] Prasar Bharati Act to be amended, the DNA newspaper, PTI Report, May 22, 2012, http://www.dnaindia.com/india/report_prasar-bharati-act-to-be-amended-based-on-gom-recommendations_1692372

earlier:
[Amended by Act 12 of 2008 Section 2(b) w.e.f. 07.02.2008]

A similar provision is made for Executive Member also. It says: 6(2)(a)The Executive Member shall be a Whole-time Members and shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years whichever is earlier:

> Provided that any person holding office as an Executive Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008 shall, in so far as his appointment is inconsistent with the provisons of this sub-section, cease to hold office on such commencement as such Executive Member and shall not be entitled to any compensation because of his ceasing to hold such office.

Section 10 of Establishment of Executive Board is also amended in 2012 as follows:

The qualifications and other conditions of service of the members constituting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed. [Substituted by Act 6 of 2012 Section 2 for sub-section (11) w.e.f. 08.03.2012 – 11, 11A, 11B as follows]

This means the Central Government takes over the power from the Legislature which provided for certainty of qualifications. Now as the qualifications and conditions of service will be 'as prescribed by Centre', the Government of the day can keep on changing the terms to suits its whims and fancies.

The power of Centre to make rules under section 32 is expanded in 2012 further to include to make rules on:

(f) the terms and conditions the terms and conditions of service in the Corporation of officers and employees under subsection (2) of Section 11A [As amended by Act 6 of 2012 w.e.f. 08.03.2012];
(g) manner and terms and conditions subject to which matters relating to the posts borne on the strength of the cadres of the Indian Information Service, the Central Secretariat Service or any other cadre outside Akashvani or Doordarshan shall be determined under sub-section (2) of Section 11B [Inserted as per Act 6 of 2012 w.e.f. 08.03.2012];

Similarly, the power of Centre to make regulations under Section 33 is also expanded: Centre can make regulations on:

(d) the conditions of service of officers and employees under sub-section (5) of section 11 [As amended by Act 6 of 2012 w.e.f. 08.03.2012];

3.13. Functioning of Prasar Bharti

In 2011 the Government of India constituted five panels to monitor work at Prasar Bharthi[123]. It would be a first kind in the existence that an autonomous public broadcaster has been brought under the day-to-day supervision by five distinct committees. These committees will report to the Prasar Bharati Board and work under the direct supervision of its chairperson, Mrinal Pande and the Government nominee Rajiv Takru, additional secretary in the information and broadcasting ministry. These committees were appointed as per the resolutions adopted by the Prasar Bharati Board. This meeting was necessitated by the suspension of its CEO BS Lalli by the order of the President of India during December 2010. These five committees were entrusted with responsibility of dealing with various aspects of Prasar Bharati including finance and audit, personnel, project monitoring implementation, production and content, and strategy and vision. The members of these committees were drawn from within the Prasar Bharati including officials from Doordarshan and the All India Radio. This reflects the functioning and the system of Prasar Bharati.

3.14. PSC report on affairs of Prasar Bharathi

Seeing the "sad state of affairs in the public broadcaster Prasar Bharati's functioning", a Parliamentary Standing Committee for Information and Technology has reiterated once again that there is a need to review the Prasar Bharati Act 1990 "comprehensively" and "without any further delay"[124]. The Committee has taken note of the failures in systemic problems, massive under-utilisation of funds, acute shortage of staff etc. and have emphasized that the various provisions of the Prasar Bharati Act 1990 need to be reviewed comprehensively keeping in view the ongoing scenario and new legislations. Modifications to the existing Act should be brought about by the Parliament without any further delay. The Standing Committee noted that in various previous reports, it had consistently been recommending for organisational and financial restructuring of Prasar Bharati. The Standing Committee has also been expressing 'serious concern' over the non-implementation of various provisions of the Act such as constitution of a Parliamentary Committee and the Broadcasting Council as per provisions in the Act. The Committee was informed that GoM on Prasar Bharati constituted to examine various issues pertaining to Prasar Bharati and had made a number of recommendations aimed at bringing about a significant increase in the degree of efficiency in the overall operation of Prasar Bharati on one hand and improving governance in Prasar

[123] Five panels to monitor work at Prasar Bharathi, Financial Express, January 4, 2011, http://www.financialexpress.com/news/five-panels-to-monitor-work-at-prasar-bharati/732955/0

[124] Parliamentary Standing Committee asks for speedy review of Prasar Bharathi Act, June 5, 2012. http://www.indiantelevision.com/headlines/y2k12/june/jun41.php

Bharati on the other. It has also undertaken a comprehensive review to the Act and suggested certain amendments.

Prasar Bharti Corporation was exempted from payment of Income Tax with the passage of Finance Bill 2012 with some amendments on May 9 2012.

The Act clearly states that the objectives of Prasar Bharti are to do public service and gather news, and not the propaganda. The Prasar Bharati (Broadcast Corporation of India) Act of 1990 Section 12(3)(a) mandates that Prasar Bharati ensure that "broadcasting is conducted as a public service."

Section 12 (3)(b) reinforces that the purpose of establishing the corporation is to gather news, not propaganda. The Supreme Court in a landmark order in 1995 in Secretary Ministry of Information and Broadcasting versus the Cricket Association of Bengal, popularly known as Hero Cup case explained the objective, "first facet of the broadcasting freedom is freedom from state or governmental control, in particular from the censorship by the government... Public broadcasting is not to be equated with state broadcasting. Both are distinct." The Prasar Bharati Corporation's main objective is to provide autonomy to Doordarshan and Akashvani in order to "educate and entertain the public."

After experiencing severe misuse of national broadcasting agencies by the Government of the day, Government constituted B.G. Verghese Committee, which in its report in February 1978, highlighted the need for a fiercely unbiased and independent corporation as "the executive, abetted by a captive Parliament, shamelessly misused the Broadcasting during Emergency." The Bill proposed by Information and Broadcasting Minister L.K. Advani for an autonomous corporation called Prasar Bharati for AIR and Doordarshan lapsed. After return to power Indira Gandhi's Congress Government at Centre appointed the P.C. Joshi Committee in 1982, but it has a limited mandate, i.e., only to evaluate the programming of Doordarshan. But that discovered the lack of functional freedom in Doordarshan and said the "Ministry of Information and Broadcasting should be reorganised and a separate board, on the lines of the Railway Board, should be created, in which only people with professional experience should get entry." Though the Prasar Bharati Bill was passed in 1990, during another Congress Government, it was notified for implementation only in 1997, only after another non-Congress alliance came to power.
At present an eminent Journalist A. Surya Prakash is leading Prasar Bharti as its chairman. In an interview he explained how the rule making power is used by the Central Government to exercise control over the broadcasting medium. He alleged that the 1990 Act was being treated with "utter contempt." For example, he referred to a Ministry directive that the Secretary, I&B, would appraise the Prasar Bharati CEO. Another directive wants the Prasar Bharati to get rid of contractual employees. That Prasar Bharati is an autonomous corporation

is evident in Section 4. The Chairman and the other Members — except the ex-officio members, the nominated member and the elected members — shall be appointed by the President on the recommendation of a committee. The government has no part in the appointment. The Act points out that the CEO would be under the "control and supervision" of the Board and not the Central government.

Taking over rule making power from Parliament, through amendment to Act, the Centre continuously holds the reins of Prasar Bharati. In addition, it has financial power also. It issues grants or allowances and control the salaries of employees.

Section 22 gives the Centre powers to issue directions which it "may think necessary in the interests of the sovereignty, unity and integrity of India or the security of the State or preservation of public order" to not broadcast "any matter of public importance". On the context of what true autonomy means for a broadcasting corporation, the Supreme Court has referred to a ruling by the German Constitutional Court, which said that "freedom from State control requires the legislature to frame some basic rules to ensure that government is unable to exercise any influence over the selection, content or scheduling of programmes"[125]. This shows how the legislature should make certain substantive provisions leaving only functional rules to be made by the Government.

Mahesh Langa, from the Hindu newspaper interviewed Prasar Bharati Chairman A. Surya Prakash and published a detailed report on March 3, 2018[126]. The interview was in the context of growing tension between the Ministry of Information & Broadcasting and Prasar Bharati, that made headlines for some days in the last year. Being a journalist, Chairman boldly commented that the I&B Ministry officials behave as if the Prasar Bharati Act does not exist at all. For example, a few months ago, the Ministry issued an order stating that the Annual Performance Appraisal Report (APAR) of the CEO of Prasar Bharati would be written by the Secretary, I&B. This is absolutely and patently illegal. As per Section 6 (7) of the Act, the CEO is an employee of the corporation and not of the Ministry. The Act clearly mandates that the CEO is not to function under the control and supervision of the Ministry or its bureaucrats.

Another directive that flies against the letter and spirit of the Act is the one issued on February 5, 2018 directing Prasar Bharati to terminate all contractual employees. Members of the Board have taken strong exception to this, too. What kind of an autonomous media corporation is Prasar Bharati if it cannot hire contractual and casual manpower who are paid out of its own funds? Chairman said: "In fact, I regard such orders as gross contempt of the Act and of Parliament itself. I have never found another Act of Parliament being treated with such contempt by bureaucrats as the Prasar Bharati Act!....The dictatorial Emergency regime indulged in gross misuse of AIR (All India Radio) and DD (Doordarshan). Many media stalwarts like B.G.Verghese, Nikhil Chakraborty and M.V.Kamath therefore wanted an

[125] https://www.thehindu.com/news/national/what-is-the-prasar-bharati-act-all-about/article23034668.ece
[126] https://www.thehindu.com/news/national/no-other-act-is-treated-with-as-much-contempt/article22920322.ece

autonomous corporation. Eventually, Prasar Bharati was born in November 1997. It is the will of Parliament that Prasar Bharati be a genuinely autonomous corporation".

This emphasises the need for making the Prasar Bharti really autonomous and independent of day to day controls of the Ministry, so that it performs its statutory objectives.

3.15. Cinematograph Act extending to Cinema content on TV:

Another important legislation that controlled the visual mass media was the Cinematograph act 1952, which imposed pre-censorship of films intended for public viewing. The Board of Film Certification came into existence, with the power to issue a certificate for a restricted or unrestricted public exhibition of the film. Restrictions can be imposed on public exhibition of a film if in the opinion of the authority, the film of any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence. These are grounds for imposing reasonable restrictions on the cinematography film. The Cinematograph Act was amended several times to regulate the film media content. The whole organisational network of thw Censorship authority with official and non-official members on its board is working overtime to oversee the contents of the thousands of reels of celluloid film every year and it runs into a controversy every now and then, as powerful lobby of film industry pursue social, political and legal pressures to secure permission for exhibition. A similar machinery is yet to evolve for observing and regulating the content of TV channels. Cinematography Act, as such is not practically possible to apply to the small screen medium, which is a more powerful telecasting tool of cinema. It is physically difficult to extend the censorship to the TV contents. Even the uncensored publicity bit (like a trailer) of a commercial feature film under production can be considered as violation of the norms under Cinematography Act, as some or important scenes are being exhibited all over much before its exhibition is certified by the concerned competent authority. Such a criticism was mounted against unrestricted public exhibition through wall posters, advertisements in newspapers, video clippings in TV channels and hoarding of to-be-released films before it was censored. After this criticism, the publicity material was also being censored.

This explains the effect of interference of the State into an autonomous affairs of broadcast regulator. The private broadcasting is much more complex mechanism, which also the state attempts to control. Next chapter deals with that aspect.

CHAPTER IV

FREEDOM OF PRIVATE BROADCASTING AND REGULATION

4.1. The Cable Television Networks (Regulation) Act 1995

Cable television operations in the country were regularized with the promulgation of Cable Television Networks (Regulation) Act on March 25, 1995. This Act provides for the registration of cable operators and contains provisions that would facilitate upgradation of the cable television networks in the country.

Section 3 of the Act says that a person is not allowed to operate his cable network unless he is a registered cable operator under this Act. However, a person operating a cable television network immediately before the commencement of the Act, may continue to do so, (a) for a period of ninety days from such commencement; and (b) till (i) he is registered under section (3), or (ii) the registering authority refuses to grant registration under proviso to section 4(3) to him.

Section 8 of the Act talks about compulsory transmission of the Doordarshan channels. It says that:

(1) Every cable operator shall, from the commencement of the Cable Television Networks (Regulation) Amendment Act, 2000, re-transmit at least two Doordarshan terrestrial channels and one regional language channel of a State in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies.
(2) The Doordarshan channels referred to in sub-section (1) shall be retransmitted without any deletion or alteration of any programme transmitted on such channels.
(3) The Prasar Bharti (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) may, by notification in the Official Gazette, specify the number and name of every Doordarshan channel to be re-transmitted by cable operators in their cable service and the manner of reception and re-transmission of such channels.[127]

Section 10 the Act casts a duty on the cable operator to ensure that his cable network system does not interferes with the functioning of the authorized telecommunication systems.

[127] Subs. by Act 36 of 2000, sec 5 for sec 8 (w.e.f. 1-9-2000)

This Act, however, is being criticized by the cable operators as it does not protect any cable operators from being harassed by the subscribers, pay channels and the bad competitors (fellow cable operators).

Presently, more than 30 cable television channels are available to viewers round the country. These include CNN, BBC, NBC, CNBC, Zee TV, Star Plus, Star Movies, Star Sports, Sony TV, Raj TV, TNT, MTV, Discovery, National Geographic, Jain TV, Sahara TV and others.[128]

MUCH of the growth of the electronic media in India over the last decade occurred in a regulatory vacuum. With the government's broadcasting monopoly in headlong retreat against the insurgent entry of cable television, the only significant assertion of regulatory authority came in late-1996, when direct-to-home (or DTH) broadcasts on the Ku-Band were firmly prohibited.[129]

4.1.1. What is DTH

While the conventional satellite-dish-cable system uses a frequency range called C-band, the DTH system uses the Ku-band frequency capable of carrying much better quality picture and sound signals. The DTH system also requires a very small antenna, a dish of 12-18 inches diameter easily installed at home, and a set-top decoder box. If one ignores the technicalities, the essential difference between the existing cable system in India and DTH is that the latter completely eliminates the local intermediary, the cable operator, and allows the consumer to deal directly with the TV channel beaming its signals from orbiting satellites. It is estimated that consumers in India could receive dozens of channels through DTH in addition to the close to one hundred channels that are even now available through cable.

A divisional bench of the Allahabad High Court dismissed a public interest petition filed against the Union Government notification of July 16, banning DTH broadcasting services. The Court ruled that the ban order was valid under the Indian Telegraphs Act, 1885.

But the Delhi High Court directed the Government to resolve the dispute over DTH broadcasting services "in the interest of the people". The order followed on a petition filed by News Television India Ltd (NTIL), STAR TV's Indian arm, challenging the Government ban on DTH broadcasting services.

The Court directed the Government not to ban DTH broadcasting, but to evolve an effective mechanism to regulate such services, saying that "the total ban would deprive

[128] http://pib.nic.in/archieve/factsheet/fs2000/i&b.html
[129] SUKUMAR MURALIDHARAN quoted from http://www.flonnet.com/fl1724/17240960.htm

people of the country from good things, like advancement of science and technology, that were being telecast by foreign TV channels".

Following the recommendations of a Group of Ministers (GoM), the Union Cabinet in October decided that the ban had outlived its usefulness. DTH broadcasting has been opened up with immediate effect to all entrants who can demonstrate the necessary resources to qualify for a license. The 1996 ban was decreed as a direct response to the Rupert Murdoch-owned Star TV network's effort to work its way through a lacuna in the regulatory framework and start DTH broadcasts in India. It was rightly perceived that Murdoch was attempting to run away with the ball and disrupt the entire process of framing a comprehensive law for the broadcast sector. The Union Cabinet's decision on November 2 to revoke the ban on DTH, though, is not quite so clear in its intentions, since a comprehensive broadcasting law - subsumed under the new technological *mantra* of "convergence" - is believed to be imminent.

Till a statutory broadcasting (or convergence) authority is set up with the requisite autonomy, the government would have to function as a licensing authority, in addition to being a broadcaster and a content provider. Experience from the telecom sector, Jaipal Reddy suggests, indicates that this does not make for a very smooth execution of policy.

The present union Government has decided to permit Direct-to-Home (DTH) TV service in Ku Band in India. The prohibition on the reception and distribution of television signal in ku Band has been lifted.[130] Following are the eligibility criteria for applicants, conditions which will apply to DTH license and procedural details:

4.1.2. Eligibility Criteria:

a) Applicant Company to be an Indian Company registered under Indian Company's Act, 1956.
b) Total foreign equity holding including FDI/NRI/OCB/FII in the applicant company not to exceed 49%.
c) Within the foreign equity , the FDI component not to exceed 20%
d) The quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter Company, held or controlled by the foreign investor through FDI?NRI?OCB investments , shall form part of the above said FDI limit of 20%.
e) The applicant company must have Indian Management Control with majority representatives on the board as well as the Chief Executive of the company being a resident Indian.

[130] withdrawn by the Government vide notification No. GSR 18 (E) dated 9th January 2001 of the Department of Telecommunications

f) Broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20% of the total equity of applicant company at any time during the license period. Similarly, the applicant company not to have more than 20% equity shares in a broadcasting and/or cable network company.
g) The License shall be required to submit the equity distribution of the Company in the prescribed proforma once within one month of start of every financial year.

4.1.3. Number of Licensees:

There will be no restrictions on the total number of DTH licenses and these will be issued to any person who fulfills the necessary terms and conditions subject to the security and technical clearances by the appropriate authorities of the Govt.

4.1.4. Period of License:

License will be valid for a period of 10 years from the date of issue of wireless operational license by Wireless planning and Coordination Wing of Ministry of Communications. However, the license can be canceled/suspended by the Licensor at any time in the interest of Union of India.

4.1.5. Basic conditions/obligations:

The license will be subject to terms and conditions contained in the agreement and its schedule

4.2. Procedure for application and grant of licenses:

a) To apply to the Secretary , Ministry of I&B, in triplicate proforma on the basis of information furnished in the application form, if the applicant is found eligible for setting up of DTH platform in India, the application will be subjected to security clearance in consultations with the Ministry of home Affairs and for clearance of satellite use with the Department of Space.
b) After these clearances are obtained, the applicant would be required to pay an initial nonrefundable entry-fee of Rs.10 crores to the Ministry of Information and Broadcasting.
c) After such payment of entry-fee, the applicant would be informed of intent of ministry of I & B to issue license and requested to approach WPC for SACFA clearance.
d) After obtaining SACFA clearances,within one month of the same ,the License will have to submit a Bank guarantee from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount of Rs.40 crores valid for the duration of the license.
e) After submission of this Bank Guarantee , the applicant would be required to sign a licensing agreement with the Ministry of information and Broadcasting as per prescribed proforma.

f) After signing of such licensing agreement with the ministry of Information and Broadcasting, the applicant will have to apply to the wireless planning & Coordination (WPC) Wing of the Ministry of Communications for seeking Wireless Operational License for establishment , maintenance and operation of DTH platform.

g) The License shall pay an annual fee equivalent to 10% of its gross revenue as reflected in the audited accounts of the company for that particular financial year, within one month of the end of that financial year.

The Licensee shall also in addition pay the license fee and royalty for the spectrum used as prescribed by Wireless planning & Coordination Authority (WPC) , under the Department of Telecommunications

4.3. Arbitration Clause:

In case of any dispute matter will be referred to the sole Arbitration of the Secretary, Department of legal Affairs, Government of India or his nominee for adjudication. The award of the Arbitrator shall be binding on the parties. The Arbitration proceedings will be governed by the law of Indian arbitration in force at the point of time Venue of Arbitration shall be India. [131]

The existing licensing and registration powers, and the regulatory mechanisms for the telecom, information technology and the broadcasting sectors are currently spread over different authorities.

4.4. Advertisement Code and Programme Code:

Then Secrions 5 & 6 mandate that any programme or advertisement has to be in conformity with the prescribed programme[132] and advertising code[133]. Under s. 7 every cable operator has to maintain a register indicating in brief the programmes transmitted or retransmitted.

S. 8 of the Act imposes an obligation on the cable operators that they have to mandatorily telecast one regional and two terrestrial channels of the Doordarshan[134].Channel can be notifed by Prasar Bharti under the Prasar Bharti act , 1990[135]. All equipment used by the cable operator has to be BIS marked after three years of publication of the of the standard by the BIS.[136]

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[131] http://www.ipan.com/reviews/archives/0299tv.htm
[132] S. 5 of act prescribed under r 6 of the Cable Television Network Rules.
[133] s. 6 act prescribed under r 7 of the Cable Television Network Rules
[134] Cable Television Networks(regulation)Amendment Act 2000
[135] s. 3 of Cable Television Networks(regulation)Amendment Act 2000
[136] s. 9 of Cable Television Networks(regulation)Amendment Act 2000

From the point of view of the study of this seminar S. 10 of the act is very important as it expressly prohibits the interference of any kind by the cable transmission in the authorized telecommunication network. Hence the difference in approach towards the telecom and broadcasting sectors, the cable and telecom were considered to be two totally different spheres.

S.11 gives the power to the authorized officer to seize and confiscate the equipment of the cable operator and further S.12 talks of confiscation of equipment within 30 days of the seizure.

The act mandates that that the cable operator indicted under the above provisions would be given to the reasonable opportunity to be heard[137]. Under S.16 of the Act, punishment for the offences is: for the first offence the punishment could be two years imprisonment or one thousand rupees or both. The Act further provides that for every subsequent offence will be imprisonment of five years or five thousand rupees fine[138].

S.16 talks of the offences by the companies whereby every person in charge of the company shall be guilty for the offence. S. 18 is also important and was brought by the 2000 amendment. This states that no court shall take cognizance unless the authorised officer makes the complaint in writing.

S. 19 follows reasonable restriction principle to Art 19 freedom of speech and expression. Whereby it gives the power to the authorized officer to order any cable operator to prohibit from transmitting or re transmitting any programme, which does not adhere to the programming code or advertising code. And in the opinion of the officer would foment hatred on the lines of caste, religion. Race, community etc.

S. 20 states that the central government reserves the right to prohibit the transmission of any cable television network on the grounds of

1. sovereignty and integrity of India
2. security of India
3. friendly relations of India with any foreign state.
4. public , order , decency and morality.

Cable television Rules 6 & 7 also lay down the relevant procedure for the functioning of the ACT. In this age of technology and convergence, it is very necessary that we have a single regulatory authority to regulate the telecom, broadcast, and Internet.

[137] S. 14 of Cable Television Networks(regulation)Amendment Act 2000
[138] S. 16 (b) Cable Television Networks(regulation)Amendment Act 2000

4.5. The Cable Television Networks (Regulation) Amendment Act 2011

The Cable Television Networks (Regulation) Amendment Bill 2011 was passed in Lok Sabha on December 13, 2011. It aimed at digitizing the cable sector by December 31, 2014. It will pave the way not only for mandatory digitisation, but usher in a host of other changes. The amendments include systemisation of registration of cable operators, compulsory transmission of certain channels like Doordarshan, inspection of cable network services, use of standard equipment in the cable television network, prescription of interference standards by the Central Government and empowering the TRAI to specify basic service tier and its tariff.

Cable television network will not be operated except after registration and cable operators are required to fulfill certain eligibility criteria as may be prescribed by the Central Government.

Almost all stakeholders in the TV broadcasting and members in the distribution chain including LCOs (local cable operators) hailed this cable digitalisation Bill. The Bill makes it mandatory to digitalise analogue cable network before the end of 2014 in four phases though. Leading DTH service providers welcomed the bill and believe that this will, for sure, offer a better level-playing field for DTH operators and will benefit every stakeholder in the industry. The move, apart from addressing issues such as under declaration of subscriber base, will generate better subscription revenue for broadcasters and the Government by way of taxes. Other stakeholders also felt that this will bring Indian TV viewing experience on par with other developed countries in the world. This will also help broadcasters to have better and accurate TRP ratings and as a result channels will be able to price their airtime and strategise their business accordingly.

Earlier, the Telecom Regulatory Authority of India Chairman, Mr J.S. Sarma, said he would not be surprised if the last phase of digitisation gets over by December 2013, as the National Broadband Plan (nation-wide fibre optic network) is likely to be completed by then, and "one has to simply plug into the fibre optic network". He said once digitised even the prices of set-top boxes too will come down even to the levels of sub-$20[139].

a) Registration and Regulation

The Act amends the Cable Television Networks (Regulation) Act, 1995, and repeals the Cable Television Networks (Regulation) Amendment Ordinance, 2011. The Cable Television Networks (Regulation) Act, 1995 requires and provides a mechanism for

[139] The Hindu Business Line, December 14, 2011, http://www.thehindubusinessline.com/industry-and-economy/marketing/article2711755.ece?homepage=true&ref=wl_home

registration of all cable operators. The Act empowers the central government to appoint a registering authority to review applications and grant registrations. The Act defines 'pay channels' as channels for which 'addressable systems' are required to be attached to the set top box. The Bill redefines 'pay channels' to mean channels for which the cable operator pays the broadcaster and the broadcaster's permission is required for transmission of the channel.

An addressable system consists of electronic devices in an integrated system through which signals of cable television can be sent. In the Act, the addressable system could transmit signals that were both encrypted and decrypted. However, under the Act, the addressable system may only transmit encrypted signals.

b) Center assuming total power over cable tv

The Act empowers the central government to make it obligatory for cable operators to transmit any pay channel through addressable systems. The Act also requires the cable operators to submit reports on the total number of subscribers, subscription rates, and the number of subscribers for free-to-air and pay channels.

The Act empowers the central government to issue notifications requiring all cable operators to transmit any channel, including free-to-air channels, in an encrypted form through a digital addressable system. The cable operators will be given a minimum of six months to install the equipment required for such transmission. In the interim, in order to be registered, new cable operators would have to make an undertaking to transmit channels in encrypted form.

c) TRAI to fix tariff

The Act provides that the central government may direct the Telecom Regulatory Authority of India (TRAI) to specify the free to-air channels to be included in the basic service tier. It may also direct TRAI to specify the tariff rate at which the cable operators would provide basic service tier to the consumer.

Use of public property for laying cables is permitted by the Bill. A cable operator may lay cables and erect posts on public property upon receiving permission from the relevant public authority. The public authority may impose a liability to pay expenses, and conditions on the time and mode of execution of such work on the cable operator. This right of way is subject to the cable operator's obligation of restoration of property.

d) Additional Eligibility Criteria to restrict content

This Act created an authority, empowering the registration authority to refuse registration if the cable operator does not meet eligibility requirements that may be

prescribed under the amended Act. The central government may prescribe additional eligibility criteria related to matters such as, sovereignty, integrity and security of India, public order, decency and morality.

The decisions of the registering authority to refuse grant or renewal of registration may be appealed against before the central government. The Act authorized the central government to inspect cable networks and services. Prior notice may not be given to the cable operator or broadcaster if it would defeat the purpose of the inspection. The Act authorised the seizure of the cable operators' equipment if the cable operator violates provisions of the Act. This period of seizure was limited to 10 days and could be extended by an order of the District Judge. There is no limitation on the period of seizure. The Act empower the central government to revoke or suspend a cable operator's registration if he violates the terms of registration. Prior to taking such action, the cable operator has to be given an opportunity to be heard[140].

e) Implementation

After a long deliberation and doubt, the Telecom Regulatory Authority of India (TRAI) on April 31, 2012 issued an order specifying modalities for the implementation of the Cable Television Network (Regulation) Amendment Act of December 2011. The 2011 Act makes it mandatory for television networks (both DTH and cable networks) to switch over from analogue to digital transmission in the entire country.According to a set time-frame by TRAI, all four metros, Mumbai, Delhi, Kolkota and Chennai, had to make the switchover by July 1, 2012, while for the rest of the country the changeover must be effected by 2014.

This law became necessary because the system needed transparency and clarity on who should get what part of the money collected. A digital transmission system allows anyone to see who the customer is, what he is consuming, how much is he consuming, and so on. The customer can now choose what he wants to buy, apart from being able to use features like interactive services or one-way service. Moreover, one can record, forward, rewind and much more, which all is possible only on the digital platform. It is estimated that in next ten years the Government is likely to get around Rs5,500 crores by way of incremental taxes.

As a natural progression in which the consumer gets more choice. A metering device attached for the first time to cable services, as now there is encryption for all content. There is investment coming into the business. People will get better content, better quality and the right to choose with this digitization.

[140] For details see: http://www.prsindia.org/uploads/media/Cable/Bill%20Summary%20--%20Cable%20television%202011.pdf

The cable industry has been lobbying for the digitalisation since years. In fact, the CAS [Conditional Access System] Act was passed in 2002, but it got aborted. In 2003, there was another effort to secure CAS but that also got aborted in January 2007. Stakeholders said that CAS made sure that only pay channels are encrypted and FTA channels were to be broadcast in the analogue mode. But broadcasters did not want it. Pay channels did not want CAS. So they managed to scuttle it, and that is the hard truth.

Now, DAS [digital addressable system] was brought in. Both DAS and CAS are digital. In CAS, only pay channels were to be encrypted. In DAS, every channel, whether FTA or paid, is encrypted.

One DISH TV top executive expressed, the government seems to have neglected entirely the legitimate concerns of DTH operators, who have digitalised 45 million households at a huge investment of over Rs. 20,000 crore. Yet, the DTH industry remains crippled with high taxes and licence fees totaling nearly 32% of revenues. It is time the government took a practical view as it expects the industry to invest a further Rs. 30,000 crore to achieve its mandate of digitalisation.

Another important player in the field referring to tariff said that "it was long overdue. Even the tariff order finally came out 10-15 days ago. There are a few issues we have, as DTH operators. For example: There is this tariff specification, which says the rate has to be 1.5 times versus three times. We are quite hopeful and have drawn up a letter raising it with TRAI. Similarly, the news broadcasters have raised the issue of carriage fees. There is an issue in terms of the prescribed 500 minimum channels for the MSOs. DTH players may have to carry 700. But transponder capacity and the bandwidths are completely controlled by ISRO [Indian Space Research Organisation]"[141].

f) Ten Points

Based on the Act, the NDTV made out the top 10 facts on what this could mean for TV viewers in India, as given below:

1. The Cable Television Networks (Regulation) Amendment Bill, 2011 mandates that all cable TV operators will have to transmit TV signals in an encrypted format through a digital addressable system. This will be done through the installation of a set top box in every cable TV home.
2. Consumers will now be able to enjoy better picture and sound quality, enhanced services such as high definition and video on demand content.

[141] Will digitization be a reality by July 1?, the DNA May 28, 2012, http://www.dnaindia.com/mumbai/conversation-corner_will-digitalisation-be-a-reality-by-july-1_1694633

3. Viewers will be able to choose and pay for only those channels that they want rather than having to pick from packages with fixed prices. The Bill will prevent Local Cable Operators (LCOs) from bypassing the digital set-top box, and deciding the mix and price of channels according to locality and customer base. The bill will also shift the balance of power away from LCOs to cable service providers and TV broadcasters who will now be able to monitor their subscriber base and control the flow of revenues.
4. Digitisation, experts say, will increase the broadband penetration in India, and will do so at a much lower cost. Analysts suggest a 10 per cent increase in broadband penetration will increase the GDP by 1.5 per cent.
5. Broadcasters will now be relieved from paying huge sums as carriage fee, thereby increasing profitability and enabling them to focus on better content creation.
6. Subscription revenue will increase for the broadcaster and make them less dependent on advertising and drive higher value creation.
7. Niche and specialist channels will now be able to launch and grow since the artificial shortage of bandwidth created by cable operators will no longer hold true.
8. Transparency in the entire system will ensure accurate reporting of subscriber numbers and revenue, thus creating higher value for the exchequer and preventing the fueling of the black economy. Currently, broadcasters claim cable operators and distributors gain disproportionate revenues through under-declaration of subscribers.
9. Higher growth in profitability for the broadcasters and Multiple System Operators (MSOs) will ensure creation of higher value jobs and drive value in the industry.

Cable and broadcasting will become a more interesting option for private investment due to the organisation and transparency. Advertisers too will now be able to create targeted campaigns due to higher visibility into the viewership patterns of users[142].

As of 2016, the country had over 857 channels of which 184 were pay channels. It is reported: Indian films, especially the flashy musicals and dramas of Bollywood, have grabbed plenty of attention in the West. But the country's lesser-known television business is more than twice as big, with an estimated $3.4 billion in revenue in 2005, according to PricewaterhouseCoopers. It is also starting to exert greater cultural influence[143].

Over-the-air and free-to-air TV is free with no monthly payments while Cable, DTH, and IPTV requires a subscription that varies depending on how many channels a subscriber chooses to pay for and how much the provider is charging for the packages. Channels are usually sold in groups or a la carte. All television service providers are required by law to provide a la carte selection of channels. India is the second largest pay-TV market in the

[142] Cable TV digitization; Top ten facts, NDTV article April 30, 2012. http://www.ndtv.com/article/india/cable-tv-digitisation-top-10-facts-204388

[143] https://www.nytimes.com/2007/02/11/business/yourmoney/11india.html accessed on 2.10.2019

world in terms of subscribers after China and has more than doubled from 32% in 2001 to 66% in 2018[144]

4.6. Telecom Regulatory Authority of India Act, 1997 & amendment

The Telecom Regulatory Authority of India Act, 1997 (TRAI Act) facilitated establishment of the Telecom Regulatory Authority of India (TRAI) and Telecom Dispute Settlement Appellate Tribunal (TDSAT) with a purpose to regulate telecommunication services, adjudicate disputes, dispose appeals and protect the interest of the service providers as well as the consumers. The machinery under the Act is supposed to work for promoting and ensuring orderly growth of the telecom sector.

Proposal to amend Telegraph Act was dropped by the Parliament as MPs preferred a creation of a comprehensive statutory telcom regulatory institution TRAI. because several Members of the Parliament argued for a statutory telecom regulator. TRAI was then constituted under the presidential ordinance issued in 1997, later the Parliament enacted the TRAI Act. Subsequently, TRAI Act went through major amendments. Though the TRAI exercised regulatory and dispute resolution functions before 2000, the amendment has facilitated establishment of Telecom Dispute Settlement Appellate Tribunal to review the decisions of TRAI tribunal in appeals.

a) Independent Telecom Regulatory Authority

The Supreme Court in ***Delhi Science Forum v. Union of India***[145], insisted on independence to regulator, while deciding on the constitutionality of the National Telecom Policy, 1994. As the National Telecom Policy, 1994 allowed for private participation in the telecommunication sector, and in the light of policy change the Supreme Court also pointed out the necessity for an independent statutory authority in a competitive telecom market.

b) Is TRAI a toy of Government?

But the TRAI is not a completely independent telecom regulator. The Government retained certain amount of control over TRAI, for instance, under section 25 of the Act it has the power to issue directions that bind the TRAI. Totally the TRAI must depend on Centre for funding. The Centre also reserved rule making powers, under section 35 of the TRAI Act, with which it can make rules on various subjects and such rules are binding upon TRAI. Therefore, TRAI is not independent telecom regulator as envisioned by the Supreme Court.

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[144] https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf accessed on 2.10.2019

[145] https://indiankanoon.org/doc/1085457/ (AIR 1996 SC 1356)

The TRAI Act has six chapters. While chapter 1 deals with applicability of the Act, key concepts and definitions, next one - Chapter 2 provides for constitution of the TRAI. The Chapter 3 explains the powers and functions of TRAI. Chapter 4 establishes appellate tribunal, TDSAT and the procedure of the appellate tribunal. Chapter V is about finance, accounts and audit of the two institutions established under the Act. Chapter 6 provided for miscellaneous provisions to facilitate smooth functioning of the two institutions created under the Act.

c) Composition of TRAI

Section 3 of the Act envisaged the Telecom Regulatory Authority of India (TRAI) as a corporation. With a head office at New Delhi, the TRAI will have a chairperson and not less than two, full time and part-time members. The chairperson and the members of TRAI are appointed by the Central Government and the duration for which they can hold their office is three years or until they attain the age of 65 years, whichever is earlier. They are expected to have special knowledge and prior experience in the field of telecommunication, industry, finance, accountancy, law, management or consumer affairs. If someone, who has been in the service of the Government prior to appointment then he should have served the Government in the capacity of a Secretary or Additional Secretary for a period more than three years. Section 8 deals with procedure to be followed with respect to meetings of TRAI. All questions before TRAI will be decided by a majority vote of the members, present and voting. The person who is presiding the meeting will entitled to a second or casting vote.

d) Divisions of TRAI and its functions

The TRAI may also appoint officers and employees in order to carry out its function under this Act. Currently the officers and employees of TRAI are divided into nine divisions. The divisions are:

- Mobile network division;
- Fixed network division;
- Converged network division; (iv) quality of service division;
- Broadcast and cable services division;
- Economic division (vii) financial analysis and internal finance and accounts division;
- Legal division and (ix) administration and personnel division.

The functions of the TRAI are listed section 11 of the TRAI Act. The function mentioned under the provision has an overriding effect on any provision of the Indian Telegraph Act, 1885.

The 2000 Amendment classified the TRAI's functions into four broad categories:

1. Making recommendations on various issues;

2. General administrative and regulatory functions;
3. Fixing tariffs and rates for telecom services; and
4. Any other functions entrusted by the Central Government.

The Act left the TRAI without any independence and made it only a recommendatory body. However, the Central Government must mandatorily ask for recommendations from TRAI with respect to need and timing of new service provider and terms and conditions of the licence to be granted to the service provider. The TRAI is under an obligation to forward the recommendation to the Central Government within 60 days from the date of the request for recommendation. TRAI may request, not direct, for relevant information or documents from the Central Government to make such recommendations and the Central Government must furnish such information within seven days from the date of the request. If it fails, the Central Government can issue licence to the service provider. Where the Central Government is of the opinion that the recommendations made by TRAI cannot be accepted or need modification, then it can send them back to TRAI for reconsideration. TRAI may reply within a period of 15 days from the date of reference. This is how the TRAI has been reduced into a department subordinate to the Government. The TRAI can notify in the official gazette the rates at which telecommunication services are being provided in and outside India. It has a duty to ensure transparency while exercising its powers and discharging its functions. Under section 12 it has the power to call for information and conduct investigation. It also has got powers to issue directions under section 13.

e) Appellate Tribunal

The Telecom Dispute Settlement Appellate Tribunal (Tribunal) is established under section 14 of the Act as the sole dispute resolution body in the communication sector. It can adjudicate upon any dispute between Licensor (Central Government) and a licensee, two or more service providers and between a service provider and a group of consumers. Interestingly, the Tribunal does not have any jurisdiction to try any matter which deals with anti-competitive trade practices or any consumer complaint.

f) Grounds and Procedures for Appeal to the Tribunal (Section 14A)

Any person, including the Central Government, State Government, or any local authority can approach the Tribunal for adjudication on matters related to dispute between parties as discussed.

The Tribunal can make recommendation either on its own accord or on the request of the Government on various matters like:

- Need and timing of new service provider.

- Terms and conditions of the licence which may be granted to the service provider.
- Revocation of licence for not following the term and conditions of the licence.
- Measures to facilitate competition in the market and promote efficiency and growth in the telecom sector.
- Type of equipment to be used by service provider.
- Technological improvements in the services.
- Measure for development of telecommunication technology.
- Spectrum management.

There are certain functions prescribed for the TRAI apart from above referred recommendations:

- Ensure compliance with the terms and conditions of the licence.
- Fix the terms and conditions of inter-connectivity between service providers.
- Ensure technical compatibility and effective inter-connection between different service providers.
- Regulate any arrangement between service providers for sharing of revenue derived from providing telecommunication services.
- Lay down standards for quality of service and also ensure and conduct periodal survey as to implementation of standards for quality of service.
- Lay down and ensure the time period for implementing local and long distance circuits of telecommunication between different service providers.
- Maintain register of interconnect agreements between service providers and such register should be made available to any member of the public for inspection on payment of a fee.
- Ensure effective compliance with the universal service obligations.
- Levy fees and charges at such rate and for services as determined by regulations.

g) Chairperson and Members

The minimum qualification for a Chairperson is that he is or has been a judge of the Supreme Court or a Chief Justice of a High Court and the minimum qualification for a member is that he should have been at the post of a secretary to the Central Government or at any equivalent post in the Central Government. A person can also be qualified as a member of the Tribunal if he has held the position of Secretary under the State Government for a period more than two years and has knowledge and experience in technology, telecommunication, industry, commerce or administration. The Chairperson can hold office till he attains the age of 75 or completes three years, whichever is earlier. The members of the Tribunal can hold office till they attain the age of 65 years or complete three years, whichever is earlier. Qualifications are thus very high, but its function is reduced to

recommendatory function and the authority will be deprived of its independence. Even for making recommendations, it is required to be independent.

h) Procedure of the Tribunal

Procedure and powers of the Tribunal is laid down under section 16 of the TRAI Act. The Civil Procedure Code, 1908 which lays down the procedure of the conventional courts is not applicable to the Tribunal. An appeal from the Tribunal's final order in a matter can be directly referred to the Supreme Court under section 18 of the TRAI Act. However, in the circumstance where the Tribunal has passed an order with the consent of the parties to the dispute, no appeal can be made to any court or tribunal. Within five years of its creation the Tribunal has already decided 400 cases consisting of complex questions of law.

i) TRAI's new Regulations

The TRAI issued new regulations for the Television and broadcasting sector that facilitated the consumers to have the freedom to select TV channels they want to watch. The consumer is entitled to know the MRP maximum retail price of the selected channel. The payment for service provider has two components, first one is Network Capacity Fee (NCF) which is a rental charge and the second is the price of any pay channels that consumer selected. The MRP of NCF is fixed at Rs 130 per month which include carriage of 100 TV channels[146].

j) New DTH and cable TV regulations

The new DTH and cable TV regulations have been in effect since February 1. Under the new regulations, consumers now get to pay only for those channels that they wish to see. Subscribers now need to pay at least a minimum sum of close to Rs 150, which includes a Network Capacity Fee of maximum Rs 130 as well as the additional 18 per cent tax. On top of that, subscribers need to pay Rs 25 for a slot of 25 channels upon which 18 per cent GST will be applicable.

The new system has been slammed by consumers a lot for increasing the monthly TV bills. Many have complained that for a similar price, consumers are now getting lesser channels and some of the important ones have been priced too high. Many subscribers refused to move to the new regulations and TRAI asked operators to offer a Best Fit Plan for them that curated a channel pack maintaining most of the channel collection and the total monthly bill.

[146] https://channel.trai.gov.in/

Earlier this year, the TRAI mandated a new set of regulations in the DTH and Cable TV industry to make the entire system transparent and make TV bills affordable. However, the regulations were found to burden subscribers with higher overall prices and a more complex system. TRAI received a lot of backlashes and it seems the regulatory authority wants to make things right very soon. The authority is working on a consultation paper that will explore ways to reduce the TV bills for both cable and DTH subscribers. The consumers criticized this regulation for increasing the monthly tv bills and reducing the number of channels available. Reducing the bills will become essential because the subscribers are migrating to OTT platforms that offer similar or better content collection than DTH/cable operators at cheaper prices.

k) Regulating OTT apps

The Telcom Regulatory Authority of India TRAI is reportedly considering the regulation of the over-the-top OTT apps that stream TV channels, such as Hotstar, Airtel TV and Sony liv to bring them under a licensing framework on the lines of regulating broadcasters. These apps are not being regulated till now. The TRAI has introduced affordable tariff rules in May 2019. As per Cable TV Regulation Act the channels have to take a licence valid for 10 years and renew it. It is statutory obligation for broadcasters to comply with the programming and advertising codes besides adhering to guidelines set by the I & B Ministry. Broadcaster are opposing this move because apps of OTT platforms are only an additional medium for viewers to watch tv channels and they help convergence of various media and that there was no need for additional regulation as the tv channels were sufficiently regulated.

l) Criticism

The TRAI was criticised for facilitating through bending its rules multiple times the Jio, a subsidiary of Reliance Industries Limited, become a market leader in the span of few years. It was alleged that Jio was allowed to "test" its services for a much longer period and with a much larger subscriber base than was the industrial norm. In a letter to the telecom department, Rajan Mathews of the Cellular Operators Association of India wrote that Reliance's offers were "full-blown and full-fledged services masquerading as tests, which bypass regulations and can potentially game policy features." TRAI was also criticised for modifying its definition of "significant marker power" so as to exclude Jio from strict scrutiny. It is stated that whilst initially the definition of market power was based on total network activity, the parameters were changed to subscriber share and gross revenue. Jio qualified as a significant market power according to the first definition but not the second[147].

[147] *Block, Daniel. "How Reliance Jio is monopolising the telecom sector". The Caravan.*

4.7. Regulation of Private Broadcasting

Signing the end of monopoly of Doordarshan the satellite invasion began in the aftermath of the Gulf War. CNN coverage of war was attractive and that caused a widespread interest among the viewers, which was hurridly encashed by the cable operators. Prior to this, Indian viewers had to do with DD's chosen fare, which was dull, non-commercial in nature, directed towards only education and socio-economic development.

It was inevitable for the Government to recognize the advent of cable as a phenomenon and thus it appointed a committee in July 1989 to study the various aspects of establishemnt of Cable Television Networks and Dish Antennae Systems. The Committee recommended in 1991, to regulate the cable. Another Committee was appointed in 1991 to look at the competition in the electronic media. Besides the issue of autonomy, other aspects of electronic media like competition and commercial services by Doordarshan were also considered by the government. The satellite invasion of foreign channels have caused erosion of Doordarshan's viewership and commercial revenues. The Government was then under a compulsion to consider measures to improve the quality of Doordarshan programmes to face the stiff competition. For that, it is necessary to reduce the intervention of the bureaucracy and political executive, in the functioning of the electronic media, i.e., to provide necessary autonomy. The Committee suggested revamping of Doordarshan's programming content as well as its program scheduling patterns, more aggressive wooing of advertisers by state television which so far had a complete monopoly on all advertising reviewing Doordarshan's advertising code to make it more liberal, and rationalizing its advertising rates.

a) Air Committee of India: Open Skies Policy

An Air Committee of India was appointed in September 1992 to find way out to open the electronic media to private broadcasters. It was supposed to work out the modalities of giving broadcasters licenses to broadcast on the second channel of Doordarshan, which was introduced in metropolitan cities, as well as on FM radio channels. The Committee made very rationale recommendations which were radical in nature. This committee’s recommendations were also not implemented by the Government.

Zee TV, a satellite Hindi channel was telecasting in India. This was an initial challenge to Doordarshan from a private channel through satellite. The Metro channel launched by Doordarshan was no match to the emerging competitors in the field. Then the official media suffered yet another jolt when Doordarshan delayed the news of demolition of Babri Masjid in December 1992, while BBC and CNN presented the visuals to whole of the

world. Despite having a perfect infrastructure and a wide network of terrestrial telecasting capacity, the credibility of Doordarshan suffered severely with governmental intentions rendering it as an ineffective broadcaster, but the cable has stormed its viewers by spreading its tentacles by sponsoring the foreign satellite and private channels.

b) Taxing cable operators

The government started taxing cable operators in a bid to generate revenue. The rates varied in the 26 states ranging from 35% upwards. The authorities moved in to regulate the business and a Cable TV Act was passed in 1995. After the Supreme Court gave verdict in Hero Cup case about airwaves, the government reacted by making efforts to get some regulation in place by setting up committees to suggest what the broadcasting law of India should be, as laws that were passed in 19th century India were still governing the sector. A Broadcasting Bill was drawn up in 1997 and introduced in the Parliament but was not passed into an Act. State-owned telecaster, Doordarshan and radio-caster, All India Radio were brought under a holding company called the Prasar Bharati under an Act that had been gathering dust for seven years, the Prasar Bharati Act, 1990. The Act served to give autonomy to the broadcasters as their management was left to a supervisory board consisting of retired professionals and bureaucrats.

c) Sharad Pawar Committee

A committee headed by a senior Congress (I) politician Sharad Pawar and consisting of other politicians and industrialist was set up to review the contents of the Broadcasting Bill. It held discussions with industry, politicians, and consumers and a report was even drawn up. But the United Front government fell and since then the report and the Bill have been consigned to the dustbin. But before that, it issued a ban on the sale of Ku-band dishes and on digital direct-to-home Ku-band broadcasting, which the Rupert Murdoch-owned News Television was threatening to start in India. ISkyB, the Murdoch DTH venture, has since been wallowing in quicksand and in recent times has even shed a lot of employees. But News Corp has been running a C-band DTH venture in the country which has around 20,000 subscribers[148]. Now under changed circumstances and improved technological communication net-works, the demand for new regulatory regime increased, in response of which, the Communication Convergence Bill is drafted. The Bill is to be studied further and approved to begin a new regulation of broadcast and telecast media coupled with other telecommunication networks.

[148] www.indiantelevision.com

d) Control over the Content: Television and Censorship

The next important legislation that controlled the visual mass media was the Cinematograph Act, 1952, which imposed pre-censorship of films intended for public viewing. The Board of Film Certification came into existence, with the power to issue a certificate for a restricted or unrestricted public exhibition of the film. Restrictions can be imposed on public exhibition of a film if in the opinion of the authority, the film of any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence. These are grounds for imposing reasonable restrictions on the cinematography film. The Cinematograph Act was amended several times to regulate the film media content. The whole organisational network of Censorship authority with official and non-official members on board is working overtime to oversee the contents of the thousands of reels of celluloid film every year and it runs into controversy every now and then, as powerful lobby of film industry pursue social, political and legal pressures to secure permission for exhibition. A similar machinery is yet to evolve for observing and regulating the content of TV channels. Cinematography Act, as such is not practically possible to apply to the small screen medium, which is more powerful telecasting tool of cinema. It is physically difficult to extend the censorship to the TV contents. Even the uncensored publicity bit (like a trailer) of a commercial feature film under production can be considered as violation of the norms under Cinematography Act, as some or important scenes are being exhibited all over much before its exhibition is certified by the concerned competent authority. Such a criticism was mounted against unrestricted public exhibition through wall posters, advertisements in newspapers, video clippings in TV channels and hoarding of to-be-released films before it was censored. After this criticism, the publicity material was also being censored. The guiding principles in certifying films can be drawn from the reasonable restrictions in Article 19(2) of the Constitution. A Film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of state, friendly relations with foreign States, public order, decency, or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence. The Cinematograph Act has been amended seven times between 1953 and 1984. In fact, the reform in broadcast sector was made possible for increasing pressures in the society questioning the one-sided arbitrary misuse of mass media by those in power, which led to constitution of several committees. Almost all of these Committees made a similar recommendation for scuttling the interference of Government in the media organizations controlled by the state for the benefit of the people and in the interest of free communication in Democratic polity.

By a 1984 notification issued by the Central Government, Doordarshan had been exempted from provisions of the Cinematograph Act on the grounds that its officials would

keep the film certification guidelines in mind while clearing programs for telecast. The Cinematograph Act did not extend to the cable TV or foreign channels. Virtually, the Censorship of TV programmes could not be censored. Thus, the Cinematograph Act was proved ineffective in pursuing the purposes for which it was existing and also in controlling the contents of audio visuals on Television, which is as effective a medium as that of Films. In 1995 some court cases were filed alleging the corrupting influences of satellite television in the citizenry. One metropolitan magistrate ordered the Government to monitor all satellite broadcasts for culturally alien values and morally offensive depictions. The state carried on the process of monitoring and then came out with startling results that some of the private, regional satellite channels in the south were the biggest offenders. In yet another appeal by a nurses' association, the Court ordered Zee TV to change the salacious depiction of nurses in a feature film that it had telecast on its movie channel. In 1996 another metropolitan Magistrate declared the need of censoring the programme content of Television because it was ruining the country's moral fabric. The Court also observed that foreign channels operating in India and promoting 'the opposite of Indian culture' had led to Doordarshan competing with such channels on commercial lines, 'thereby bringing cultural invasion into the lives of millions of Indians'[149]. The Court stated that the freedom of speech and expression cannot be permitted to be diluted to stifle expression nor licentiously enlarged to promote a riot of sensual display. The magistrate also ruled that both Doordarshan and the private channels would have to obtain clearance from the Censor Board for every film, serial, or commercially sponsored advertisements that they aired. And in the event of noncompliance of directions, police officers of concerned police station not below the rank of sub-inspector would have the right to enter any place or studio from which the film or serial was being exhibited or likely to be exhibited, search and seize the offending material, and initiate legal proceedings under the relevant laws.

Both the metropolitan magistrates who ruled on the issue in 1995 and 1996 strongly expressed the view that Doordarshan officials had not adequately lived up to this responsibility. It is further impossible in case of private channels and cable TVs. However, the pressure was mounting on the Government to stop cultural invasion by regulating the cable TV, which ultimately meant to reform the regulation process.

e) Senguptha Committee

As the Prasar Bharati Act was passed before the advent of foreign TV channels invading from sky through satellites and cables, a need was felt to rethink about the role of Prasar Bharati., for which a High Power Committee under the chairmanship of Senguptha was formed in 1995. This committee recommended for creation of an Independent Radio and Television Authority of India to grant licenses to Satellite channels, domestic or foreign, and

[149] Vinodanand Jha v State, Delhi Magistrate Court, Interim Order dated July 3, 1996, para 23

permit them to up-link from Indian soil, by making necessary provisions in the statute. The Committee also suggested a provision for issuance of licenses on payment of application fee, an annual license fee and adherence to standard codes on broadcasting and advertising. The Committee felt that besides ensuring plurality to achieve objective leadership of the organization, there was also a necessity to prescribe certain standards for the private operators to ensure quality and diversity of the programmes through some codes. Recommending to put an end to monopoly of Doordarshan in terrestrial broadcasting, the Committee also suggested to permit local terrestrial and radio stations to successfully compete with satellite channels in other countries. The committee recommended dispensation with the 22 member Parliamentary Committee and proposed many structural changes in the corporation besides some suggestions as to financial support.

4.8. Working paper on Media Policy 1996

In 1996 a subcommittee of the Consultative Committee of Ministry of Information and Broadcasting produced a draft working paper on the media policy of the country. This Committee headed by Shri Ram Vilas Pashwan, submitted a report, which also was not adopted as the policy of the country. The policy advocated for the absence of monopoly in any media, projection of developmental needs and social, cultural and economic aspirations of the people, strengthening democratic traditions, culture and values, national integration, and scientific temper; and to promote national integrity built on secularism, socio-cultural pluralism, and linguistic diversities. It recommended formation of a regulatory body as an autonomous authority to oversee both public and private telecasting and broadcasting. Finally, the committee suggested to not dilute the provisions of the Prasar Bharathi Act and further strengthen it by bringing foreign satellite channels within the ambit of such regulatory body. It also suggested the creation of a mechanism to redress the grievances from general members of society. The policy paper also pleaded for setting up of non-commercial broadcasting stations to be run by universities, educational institutions, panchayats, local bodies, state governments etc. The subcommittee suggested that the Government should devise an institutional system for funding public broadcasting. It agreed with the proposal that the field of broadcasting and telecasting should be open to Indian Private sector, state government, NGOs and local government. It strongly recommended restrictions on cross-media ownership. It has unequivocally advocated for not allowing direct or indirect foreign equity participation in companies entering the field of private broadcasting.

4.9. Public Control, not Government control of Airwaves - SC

The Supreme Court dealing with control of airways in ***Union of India v Cricket Association of Bengal*** [150] stated that the broadcasting media should be under the control of the public as distinct from Government, it observed:

[150] 1995(2) SCC 161

> the airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights…..The question whether to permit private broadcasting or not is a matter of policy for the Parliament to decide. If it decides to permit it, it is for the Parliament to decide, subject to what conditions and restrictions should it be permitted. Private broadcasting, even if allowed, should not be left to market forces, in the interest of ensuring that a wide variety of voices enjoy access to it.

The Supreme Court even advocated regulation to guard against "the potential danger flowing from the concentration of the right to broadcast\telecast in the hands either of a central agency or of a few affluent broadcasters" [Part I, 6(ii), (iii)]. Thus Supreme Court ruled in favor of public control of the electronic media, against private sector monopolies. This landmark decision of the Supreme Court formed premise for framing policy and laws for regulating the Broadcasting and telecasting.

Broadcasting freedom involves and includes the right of the viewers and listeners who retain their interest in free speech. It is on this basis that the European courts have taken the view that restraints on freedom of broadcasters are justifiable on the very ground of free speech. It has been held that freedom of expression includes the right to receive information and ideas as well as freedom to impart them. The freedom of speech, interests of viewers and listeners in exposure to a wide variety of material can be best be safeguarded by the imposition of programme standards, limiting the freedom of radio and television companies", (Justice Jeevan Reddys Judgement).

From the stand point of Article 19(1)(a) what is paramount is the right of the listeners and viewers and not the right of the broadcaster- whether the broadcaster is the State, public corporation or a private individual or body. While the freedom guaranteed by Article 19(1)(a) does include the right to receive and impart information, no one can claim the fundamental right to do so by using or employing public property. Only where the statute permits him to use the public property, then only- and subject to such conditions and restrictions as the law may impose-he can use the public property, viz, airwaves. In other words, Article 19(1)(a) does not enable a citizen to impart his information, views and opinion by using the airwaves. He can do so without using airwaves.

The Court did not favour opening up of the broadcasting to private powers without restrictions. It stated that: "Allowing private broadcasting would be to open the door for powerful economic, commercial and political interests, which may not prove beneficial to free speech right of the citizens and certainly so if strict programme controls and other controls are not prescribed. The analogy is wholly inapt...Private broadcasting, even if

allowed, should not be left to market forces, in the interest of ensuring that a wide variety of voices enjoy access to it." The apex court in this judgement held that Government control of broadcasting media is inconsistent with the freedom of speech and expression.

The Supreme Court observed: Government control in effect means the control of political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views, and opinions expressed through the media. It is not, conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy".

4.10. Efforts to Regulate Private Broadcasting

Because of its audio-visual impact, the electronic media is considered most powerful media. Broadcasting has widest reach covering each and every section of the society includig children, illiterate persons etc., where the print media does not reach. Broadcasting happens technically with electro-magnetic waves (airwaves) for TV/Radio programmes. These airwaves are public property and thus should be used only for the larger public good. These cannot be a source of merely a commercial venture in the hands of a few affluent people or corporates and, therefore, cannot be left to market forces.

Every civilised jurisprudence understood this and made legislations for equitable utility of broadcasting. All the leading democratic countries have enacted laws on broadcasting, India being perhaps, the only exception. In the absence of such a law, private broadcasting in the country has not been permitted as yet. The absence of indigenous private broadcasters and inability of public service broadcasters i.e. AIR and Doordarshan, to meet the diverse needs and aspirations of the different sections of the society, coupled with attractive commercial market offered by the affluent section, though small in terms of percentage of, but substantial in numbers, offered a fertile ground for invasion of Indian skies by the foreign satellite channels. The impact of these foreign satellite channels, beaming from outside the country on Indian values and culture, have been a subject matter of intense debate within and outside the Parliament. It may be relevant to mention here that countries like Canada are seriously disturbed over invasion by American TV channels and have banned their reception in Canada. Almost all the European countries in their respective laws have provided for a certain minimum local programming. In countries like Singapore, Malaysia, Indonesia and China individual dish antennas are not permitted to be installed freely.

There is a definite need to have a law on broadcasting. Such a law should broadly achieve the following objectives:

(i) Preserve our national identity and give a direction and shape to our national vision.

(ii) Give voice to the local and regional aspirations and needs.

(iii) Provide plurality of news and views.

(iv) Promote and groom the indigenous private broadcasters to thwart the invasion from foreign satellite broadcasters.

(v) Ensure wide dispersal of media ownership and source of information to avoid monopoly.

(vi) Make efficient use of airwaves, a public property, in the larger public interest.

There are two sets of models of broadcasting regulation. One in nations like China, Singapore, Malaysia, Indonesia etc., where even the individual dish antennas are to be licensed and regulated and second the example of leading and liberal democracies from Europe, Australia etc[151].

4.11. In other countries

There were two sets of models available for the Indian drafters to follow before the Bill was drafted. On the one hand, there are examples of countries like China, Singapore, Malaysia, Indonesia etc., where even the individual dish antennas are to be licensed and regulated and on the other hand, the examples from leading liberal democracies from Europe, Australia etc. In USA, private broadcasting started much earlier and has matured and stabilised itself over a long period of time. In Germany, the broadcasting is a State subject, which is not the case in India. Italian Broadcasting system had its own ups and downs and at times, led to oligopolies. The UK has a much more elaborate and detailed rules and regulations on the broadcasting, which have been tried and tested for the last 6 to 7 years. The basic framework of Broadcasting Bill 1997 was based on the UK law. The Ministry of Information and Broadcasting ruled out all other models and preferred to follow the UK law.

4.12. Broadcast Authority of India & the Autonomy

Federal Communications Commission (FCC) in USA, Independent Television Commission (ITC) and Independent Broadcasting Authority (IBA) in Australia and Counsel Superieur de l'audivisuel CSA in France are the independent authorities responsible for regulation and licensing of broadcasting services. FCC consists of 5 members including its Chairman and all of them are appointed by the President with consent of the Senate. Members of ITC and IBA, 10 to 12 in numbers, are including its Chairman and the Deputy Chairman and all of them are appointed by the Governor General. Member is empowered to appoint other associated members. CSA is a 9-member body, out of which 3 members are appointed each by the President, the National Assembly and the Senate. As against these practices, where the Government has almost free hand in constituting the independent

[151] John Alan Cohan, Broadcasting Industry Ethics, The First Amendment And Televised Violence, 9 UCLA Ent. L. Rev. 1

broadcasting authority, the proposed broadcasting bill in India provides for a more transparent system i.e, a Selection Committee headed by the Chairman of the Council of States with Union Minister in charge of Information & Broadcasting and the Chairman, Press Council of India as its members for selection of the chairman of the Broadcasting Authority of India. The other members of the Authority are to be appointed by the Government in consultation with the Chairman of the Authority.

In case of USA, private broadcasting started much earlier and has matured and stabilised itself over a long period of time. Public Service Broadcasting in USA is of a recent origin. In case of India, the situation is just the reverse and, therefore, John Alan Kohan felt this model may not be the most appropriate to follow.[152] In case of Germany, broadcasting is a State subject, which is not the case in India.[153] Italian Broadcasting system had its own ups and downs and at times, led to oligopolies.[154] Among the remaining three options, UK has a much more elaborate and detailed rules and regulations on the broadcasting, which have been tried and tested for the last 6 to 7 years. UK model also might be suitable for India.

4.13. Airwaves and Broadcasting Bill

The Broadcasting Bill discussed in the Parliamentary consultative committee, has been cleared by a Cabinet sub-committee. After objections in the Union Front Government's Cabinet, primarily by the CPIs Chaturanan Mishra, a sub-committee of the I&B Minister C.M. Ibrahim, Finance Minister P. Chidambaram, Communications Minister Beni Prasad Verma and Law Minister Ramakant Khalap was set up.

The proposed independent Broadcasting Authority of India had to interact and coordinate for its smooth and effective functioning on day to day basis with the Ministry of Information & Broadcasting and the Department of Telecommunication. In order to facilitate this coordination, it has been provided that the Secretary, Ministry of I & B and Secretary Ministry of Telecommunication would be the two ex-officio members of the Broadcasting Authority.

Criticism: The proposed Broadcast Authority of India is not the "independent autonomous public authority representative of all sections and interests in society to control and regulate the use of airwaves" directed by the Supreme Court. The Authority consists of: (i) one whole time Chairman; (ii) four whole time members; (iii) six part time members; (iv) three ex-officio members: Secretary, Ministry of Information & Broadcasting; Secretary, Dept. of Telecommunication; & Secretary, Dept. of Space. These members will be appointed

[152] Ibid.
[153] Id.
[154] Id.

by the President on the recommendation of a 3 person selection committee including the Chairman of the Rajya Sabha, i.e. the Vice President, who shall chair the committee; the Chairman of the Press Council; and a nominee of the President of India. So, at least two of the three selectors will be represent state interests. The key executive member of the Authority: the Secretary General shall be a Secretary of the Government of India. Through these mechanisms of appointment and executive authority, the Union Government will ensure its control over this Authority.

4.14. Accountability of BAI:

While the accounts and report of the Authority will be submitted to Parliament, the actual accountability of this body to Parliament or its committees, is not spelt out. In view of the influence the Union Government will have on the Authority, the extensive powers that the Authority has been invested with, the importance of the electronic media, and the extent of foreign and other private sector control of radio\TV, this lack of accountability is likely to have serious consequences.

While public service broadcasting is under the purview of Prasar Bharti Act, the Private Broadcasting is yet to come under any legal control measures. The foreign satellite channels came in and settled in Indian territory through Indian skies irrespective of consent or liking of Indian state or its legal framework. Like Singapore and Malaysia etc., the state restrictions on individual dish antennas and policing of telecasting in a vast country like India are practically impossible without resulting in harassment of operators and individual viewers. Then what is left for is to develop indigenous private broadcasters who can compete with foreign satellite channels? In the absence of indigenous private broadcasters, the public broadcaster like Doordarshan and AIR, which are totally dependent on bureaucratic and political instructions from the top will not be capable of meeting the aspirations of the large masses, and cannot ensure the plurality of programmes both based on news and entertainment. In most of the developed countries, there are exclusive channels both radio as well as television to meet the requirement of different interests, groups and sections of the people. Such a wider choice and plurality of views can be facilitated only by promoting private broadcasting in the country. The Ministry expected that such a liberalization would also generate ample employment opportunities and provide avenues enhancing the creativity of various group of artists.

4.15. Freedom of Speech and Regulation of Broadcasting:

The vital difference between the newspaper and electronic media is that the later uses airwaves which are public property. There could be no right to exploit public good, the airwaves, which are limited and could not be enjoyed by all. Thus, the use of public property imposes certain built-in restrictions on the freedom of broadcasters in the interest of listeners and viewers. It is impossible for everyone to acquire a license broadcast or to enjoy access to

air his or her views on radio or television whether public or private. Therefore the state may reasonably require licenses to share their privilege with other representative members of public, and may compel them to present a balanced range of programmes in the interests of listeners and viewers, which means regulation of broadcaster's rights.

The classic judicial expression of this view is to be found in the famous Supreme Court decision in Red Lion Broadcasting Co vs FCC: "When there are substantially more individuals who want to broadcast than frequencies to allocate, it is idle to posit an unbridgeable First Amendment right comparable to the right of every individual to speak, write, or publish."

4.16. Broadcast Regulation Bill 1997

The Broadcasting Bill, 1997 is a step towards providing a regulatory mechanism to supervise growing broadcasting media. According to statement of objects and reasons of the Bill, it is felt that the public service broadcaster alone ill not be able to meet the needs and urges of the people in terms of variety and plurality of programmes required in different regions by different sections of society in our vast country. Keeping in view our great democratic traditions, it is imperative that our citizens are well informed and given wider choice in matters of information, education and entertainment. This can be provided by facilitating private broadcasting in the country. "The Bill seeks to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating the broadcasting services in India so that they become competitive in terms of quality of services, cost of service and use of new technologies, apart from becoming catalyst for social change, promotion of values of Indian culture and shaping of a modern vision. It will curb monopolistic trends in this sensitive field so that people are provided with a wide range of news and views[155]". This is avowed objective of the Broadcasting Bill, 1997, as introduced by Mr. S Jaipal Reddy, the Minister for Information and Broadcasting in United Front Government.

The Bill envisaged an independent authority, which is generally the most influential form of regulator worldwide. Historically, regulation by a government department has been the prevalent method of broadcast management. However, this practice became discredited through the use of broadcasting as a means of unfiltered political propaganda by governments themselves. Thus, in France, the Haute Autorité took over important aspects of broadcasting regulation in 1982, later replaced by the Commission Nationale de la Communication et des Libertés and, more recently, the Conseil Supérieur de l'Audiovisuel, all in the form of authorities with some degree of

[155] Statement of Objects and Reasons, The Broadcasting Bill, 1997

independence from government.[156] Similar moves have taken place more recently in Italy, where a bill has completed its passage through Parliament establishing a new authority covering both broadcasting and telecommunications.[157] Independent regulatory authorities are also increasingly favoured as part of the process of liberalizing telecommunications in the EU. The most influential model is of course that of the FCC, responsible for regulation of both broadcasting and telecommunications in the United States. The idea of an independent authority is thus part of an important worldwide trend. An independent regulatory authority has existed in varying forms in UK since the establishment of the Independent Television Authority, which later became the Independent Broadcasting Authority in 1954[158]. The Broadcasting Act 1990 created the current embodiment of this authority, the ITC. The Commission has a number of functions. Firstly, it licenses commercial television services in the UK, cable television, domestic satellite services, some text and data services, and digital terrestrial television. It also enforces program quality standards through license conditions and its own codes. Apart from program quality content, these cover advertising and sponsorship. Standards are supervised through monitoring and through an annual performance review, although the ITC has no power to preview programs or schedules. Sanctions may be handed out in the form of warnings, financial penalties, and the shortening or revocation of a company's license.[159] The ITC has a general duty to secure fair and effective competition, and to ensure the enforcement of the rules on concentration of ownership, which are determined by the Secretary of State. This is the nature of the regulatory authority which operates in the UK.

Convergence is the central characteristic of current developments in the media, through which separate technologies, markets, and industries are combined to create new forms of communication. The Internet, combining elements from telecommunications, computing, and the print media is the most familiar of these forms. This convergence could cause serious problems for regulators, and, in the UK, it has been made more complex by the establishment of a plethora of different regulatory bodies. Commentators have identified at least fourteen statutory or self-regulatory bodies claiming to have jurisdiction over the UK media.[160]For example, cable delivery operators need licenses from the ITC, the Department of Trade and Industry, and, in some cases, a third license is needed from the Radio Communications Agency.

Limiting the access to those who paid for it was a technology issue relating to digital television, i.e., conditional access. Such issues are regulated by the ITC, which proposed that

[156] Rishab Aiyer Ghosh, Broadcasting Reform In India: A Case Study in the Use of Comparative Media Law, 5 Cardozo J. Int'l & Comp. L. 387.
[157] Ibid.
[158] Tony Prosser, A British Perspective On Structuring The Indian Broadcasting Regulatory Authority, 5 Cardozo J. Int'l & Comp. L. 491
[159] Ibid.
[160] Id.

it should license conditional access for digital television. The Government proposed giving this responsibility to the Office of Telecommunications Regulation ("OFTEL"), a solution to which the Commission strongly objected. The compromise finally adopted called for the granting of licenses by the Department of Trade and Industry, with enforcement by OFTEL "in consultation" with the ITC. Most important task of the authority is to develop fair procedures to issue licences to broadcast, which ultimately determines right to broadcast or telecast. The Authority, the ITC's predecessor, was required to allocate this right through the issue of "franchises," a form of private law contract. In 1967, it undertook a highly secretive and extremely controversial reallocation of franchises.[161] It gave no advance warning to the companies from which it revoked the right to broadcast, and during the brief interviews the Authority held with them, no detailed discussion of their performance took place. These defects were largely repeated during the next allocation in 1980, although a greater degree of public consultation took place and the interviews were more substantial. These procedures were in marked contrast to those of the FCC, which made decisions of this kind through open hearings and also engaged in sophisticated rule-making procedures to determine new policy.[162] A White Paper in 1988 emphasized the need for a lighter and less discretionary form of regulation with a greater emphasis on freedom of consumer choice.[163] Where the Government is holding the control over broadcasting and electronic content there is a move towards the formation of an independent regulatory authority. Regulators have traditionally worked within the provisions of empowering legislation, such as the Telecom Regulatory Authority of India (TRAI), which deals with telecom sector issues. TRAI is also responsible for so-called carriage issues that have to do with content being distributed across cable and satellite services. The Press Council of India is also based on a similar model created for the print media in our country. It was difficult for PCI to be in protective or proactive role like TRAI.

As there is no effective regulation in the form of Censorship for films and PCI for print media, there is a growing opinion in favour of ‘self regulation’. It would mean leaving the responsibility with the broadcasters to show restraint. However, the experience such as fake sting operations, public humiliation of young girl on a reality dance show and controversy over using actual ongoing court cases as plots for soap operas, picturisation of molestation of girls, invading individual privacy for TV ratings etc suggests that self-control is quite unlikely amid a mushrooming of competitive broadcast companies, all hunting for television eyeballs or looking for

[161] Bernd-Peter Lange, The European Interest In The American Experience In Self-Regulation, 13 Cardozo Arts & Ent. L.J. 657
[162] Ibid.
[163] Jeffrey A. Jacobs, Comparing Regulatory Models -- Self-Regulation vs. Government Regulation, 1 J. Tech. L. & Pol'y 4

TRP ratings. Meanwhile, formal mechanisms, such as licensing and the imposition of codes are less feasible in an environment where there are potentially myriad content sources. Given this complex media environment in India, it may be relevant to consider the concept of co-regulation as evolved in Australia. Co-regulation is essentially a cooperative form of regulation that is designed to achieve public objectives and that contains elements of self-regulation as well as of traditional command and control regulation. The prime benefits of co-regulation are perceived to be the expertise and flexibility offered by a more specialized industry-based organization and also a detached regulatory organization that, nevertheless, has a clear system of legal backstops and accountability. Given the current distrust between key stakeholders— private broadcasters, government, civil society and viewers—this model of co-regulation could be an option that could very well break the current impasse in the unregulated broadcast content filling Indian air waves. When every system appears imperfect and we distrust almost everything proposed, India need to look for a better alternative in finding such methods of controlling air waves.

With this background of several committees making in depth studies and reporting variety of suggestions, the work to draft another comprehensive bill for broadcasting reform began. In a note prepared by the Ministry of Information and Broadcasting, for the Cabinet, a broad basic line was outlined to reform the broadcasting law to address the impending need of the much more powerful digital Direct to Home…services[164].

The Bill encompassed the meritorious recommendations from different committees, principles of justice evolved from different judgements and out of experience of working of the present set up to regulate the broadcasting aspects, besides, growing technology with fresh devices to improve broadcasting. The need for cultural concerns like portrayal of violence and sexual conduct, the need to lay down standards of taste and decency, to promote the values of national integration, religious harmony, scientific temper and Indian culture, and to ensure time for children's programming, educational programming, developmental programming and programming of Indian Origin, are expected to be taken care by any draft legislation intending to regulate the broadcasting and telecasting fields. Apart from above objectives, the security concerns, communal and integrity concerns, keeping a grip of control over the foreign channels while up-linking permissions are issued, to enforce the code to address these concerns, were also to be considered.

Far from freeing the airwaves, the Broadcast Regulation Bill has proposed to impose more restrictions and regulations on the public property viz., airwaves. As the Broadcast Authority of India will be manned by bureaucrats and nominees handpicked by the government, the very purpose behind its setting up- to take airwaves related matters away from the government's purview is defeated. The only autonomy granted to BAI may be

[164] Ministry of Information and Broadcasting: Subject: Broadcasting Law for India 1 (1997)

regarding generating its own funds since the government may not be willing to shell out any money from the Central Pool for funding BAI. By clearly ruling out any channel which does not up-link from India, the government has left enough scope for itself to fully control and meddle with news and editorial contents, which is a clear violation of fundamental right to freedom of speech Art 19 (1)(a), as well as citizen's right to information.

a) Disqualifying the State and Centre from holding Broadcasting licenses:

Another controversial aspect is that the Bill provided for a prohibition of public ownership of radio\TV channels (apart from those already run by Doordarshan and Akashvani), which is replaced by that of the private sector. The Ministry of I & B tried to justify the stand by stating: "In fact in none of the leading democracies in the world, the broadcasting media is controlled or run by Government. India is perhaps the only exception, where Doordarshan and AIR have been functioning as a Government organ[165]". It is in this context that the Prasar Bharathi Act has been proposed to be enforced with certain modifications through the Prasar Bharathi Amendment Bill so as to bring Doordarshan and AIR under an autonomous public authority namely, the Prasar Bharathi, claimed the Ministry of Information & Broadcasting. Basing on these grounds and Supreme Court's observations, the Ministry preferred to impose a ban on the Central and State Governments for obtaining broadcasting licences. .

This was justified on two grounds: 1. By claiming that a democratic plurality of views is only possible through private ownership. Thus: "It is felt that the public service broadcaster alone may not be able to meet the aspirations of the people in terms of variety and plurality of programs demanded\required in different regions by different sections of society in this vast country known for its diversity...Keeping in view our great democratic traditions, it is imperative that our citizens are well informed and given wider choice in matters of information, knowledge, entertainment etc. Such a wider choice and plurality of views can be facilitated only by promoting private broadcasting in the country... 2. Additionally, licensing and auction of channels would bring in much needed revenues required for developing and improving the quality of public broadcasting". [para. 4]

On these grounds, the Bill debars all publicly funded bodies including other Union Ministries like the Human Resource Development Ministry which may like to telecast\broadcast educational material, State governments, municipalities, panchayats, cooperatives, universities, or any agency, from obtaining broadcasting and TV licenses. Public bodies which are either "(e) Governments or local

[165] The Broadcasting Bill: Issues and Perspectives (1996), the document issued by the Ministry of Information and Broadcasting.

authorities" or "3 (a) a body (other than a local authority) which has in its last financial year received more than half its income from public funds" are debarred. [Part I, 1(e) & 3(a)].

Criticism: Considering the Supreme Court's historic decision holding that the airwaves are public property, the Bill appears quite contrary to that spirit.. The Court has ruled in favour of public control of the electronic media, against private sector monopolies. Even the right of the private sector to enter into the electronic media was left to Parliament to decide.

The Bill's blanket ban on State Governments and local authorities having licensed radio\TV channels militates against the federal principle of State\local authorities\Union Government sharing public broadcast \ television facilities. Such an action is clearly contrary to the CMP and the federal basis of the UF.

4.17. Satellite Up-linking facility:

The Bill also says that no foreign company can get the license to up-link from India, the fate of Star TV, MTV, Home TV, Sony is left undecided. The bill is silent on some other aspects also. The issue relating to foreign and Indian satellite whether the former will be treated equally compared to its Indian counterpart or the foreign operators will have to go through licensing procedures has also been left unanswered.

The move to allow foreign companies to up-link from Indian soil is appreciated since this will effectively bring them under the ambit of Indian Laws, making it mandatory for them to comply with the programming and advertising code in the country. The experts suggested that the government owned earth stations should allow up-linking facilities to both Indians and foreigners, though again, the first offer should be made to Indians.

The Bill intends to divide the country into circles and the government will auction the circle for cable operators. It means only some affluent sections alone could bid for the circles. The remaining 55,000 small cable operators will become agents and lose their independence. It means even the cable services will be monopolized. The 49 per cent foreign equity as envisaged by the bill will result in backdoor control by foreign owners. A foreign company with 49 per cent equity, succeeds in managing another two per cent with benami names and back door methods, it can have the full control over the company.

4.18. Views of FIFV and Working group:

The Forum for Independent Film and Video FIFV has argued that the separation of programme maker and audience that commercial oriented broadcasting requires must be ended because the audience never has control over the production and type of images and

messages it is forced passively to consume. The 1982 Working Group on Software for Doordarshan stated that the "over representation of the elite and the negligible representation of the weak in TV software is an issue which is as serious and fundamental as the issue of creative freedom". The present Bill on Broadcasting contains nothing to address this issue. It is difficult to expect Television as a state propaganda machine or advertiser's bill board can never ensure a free and fair flow of images ideas and views. This means that the ideas and concerns which do not conform to the logic of state or commercial control will be marginalised or completely shut out.

Mr. Ashish Mullick, expert on electronic media, said[166] there is a general feeling that the draft broadcast bill has erred by treating alike vastly different categories such as domestic satellites, setting up of earth stations, terrestrial television, joint venture satellite TV channels like STAR TV, terrestrial radio both AM and FM, emerging DTH services and cable works. Quoting analysts' view, he said that since each category was at a different stage of development and required different resources, they needed separate criteria.

4.19. Foreign equity:

Satellite broadcasting technology has made the national boundaries irrelevant and a large number of 100 per cent foreign owned TV channels are already beaming into the sky and reaching Indian homes. Thus, the issue of whether to permit foreign equity in the satellite broadcasting and what its quantum should be, if permitted, has lost its relevance. Moreover, indigenous private satellite broadcasters have to be provided a level playing field with necessary financial and technological advantage to enable them to compete effectively with the foreign satellite channels. At the same time they should not lose their Indian character. Thus, foreign equity participation up to 49 per cent has been permitted in case of satellite broadcasting only subject to the conditions that control of the company should remain in the hands of Indian partners. In case of terrestrial broadcasting, it takes place within the national boundaries and within the ambit of national laws. Therefore no body can start terrestrial broadcasting service unless the same is permitted by the law of the land. Thus, the Bill did not permit any foreign equity participation in respect of terrestrial broadcasting[167].

On foreign equity, the Bill specifically provides a safeguard against takeover of an Indian company by foreign investors through manipulation. It makes it clear that only those companies, with foreign equity participation, that are controlled by Indian shareholders will be eligible for a licence. The idea is to bring foreign satellite channels within the ambit of Indian laws by telling them that if they want to up-link from India they must register as an

[166] Ashish Mullick, Broadcast Bill: Key issues regarding foreign equity", The Times of India, Mumbai, May 3, 1997, page 13.
[167] Ibid.

individual company with a maximum of 49 per cent equity. The objective is to legitimize the presence of foreign satellite channels.

Most of the developed nations and others do not allow foreign equity in TV ventures in excess of 25 per cent. In the UK, ownership of broadcast stations by companies based outside the European Union is prohibited. Even US laws require one to be a citizen of that country before he can invest in media projects there. The extent of foreign holding in media ventures needs to be carefully monitored, since allowing 49 per cent foreign control runs the risk of manipulating two per cent or above through fiduciaries, so as to gain management control, says Mr Mullick. Besides these, Mr Mullick made several other suggestions in the different categories of the electronic media. They are as follows:

1. The government's accent should be clearly to safeguard and boost the interests of Indian companies, by allowing private players to acquire transponders in domestic satellites like the INSAT series, which are government-owned.
2. The government should encourage private players to launch their own satellites over Indian airspace, with the option of foreign players later acquiring a 25 per cent stake in these satellites.
3. The government must give the private players a priority to get the transponder on lease and also should be provided with the right to refuse as also a lead time of six months, before allowing foreign companies the option. This will check the outflow of valuable foreign exchange, since Indian TV players have to currently pay through their nose for transponder rental to foreign satellite players.

4.19.1 Foreign Investment in Terrestrial television:

4. No foreign investment should be allowed in the setting up of earth stations in India. Only private Indian companies should be encouraged under an operating license scheme.
5. The government should deregulate the terrestrial television. It should restrict itself to owning only the terrestrial DDI channel and regional language channels and privatize all the other DD channels by issuing a 10 year renewable license.
6. No foreign equity should be allowed in terrestrial TV channels. Private Indian companies should be encouraged to invest in their own infrastructure to facilitate the setting up of terrestrial TV stations. This will allow a multiplicity of channels thereby offering greater choice to viewers.
7. Indians should be encouraged to make direct investment in joint ventures between Indian and foreign companies for television channels such as ATL (which runs Zee), TV India (which runs Home TV) and others. It will help avoid malpractice such as operating through offshore companies in order to get over the Indian laws.

8. In order to bring foreign satellite TV or satellite radio channels within the purview of Indian laws, the government, instead of opting for the licensing method, should hold cable networks responsible. For instance, if a cable operator continues to transmit a channel which has been offering objectionable material consistently, the government should not hesitate to confiscate his equipment. With master control rooms replacing the large, unregulated head-ends, this should not be all that tough. Another way errant channels can be reined in, is by either blocking Indian ads aired by them, or attaching their property/assets in India.

4.19.2 Foreign Investment in Terrestrial Radio

9. The government should restrict itself to owning one national and regional AM channel only and privatize the rest. The onus should be on private broadcasters to set up their own infrastructure.
10. No foreign equity should be permitted in radio since it is not a cost intensive proposition that requires huge investments. Besides, there is nothing unique by way of programming that a foreign company can bring. The proposal to issue licenses for FM radio also defies logic since over 50 FM radio channels can be offered in one city. Hence registration- as in the case of newspapers- would be a more practical approach. The registration fee should be fixed at a nominal Rs. 10 crore, apart from levies of 25 per cent of the one time hardware cost paid by the viewer, and 25 per cent of the monthly subscription fee paid by him. This will ensure that the government stand to earn sizable revenues every month from levies accruing from subscription fees alone.

4.19.3 Foreign Investment in Cable services

11. The government should disallow foreign equity in cable ventures. Besides, strict norms must be laid down for "must carry" channels such as DD-1. The government should also keep out broadcasting companies from the cabling arena since it may lead to unfair trade practices.
12. Cable services should be licensed on the basis of territories, as in the case of telecom. For instance, each city can be divided into zones on the basis of demographic patterns and population, and licences issued for operating in these zones.
13. The government must levy a fee on cable operators, apart form a separate infrastructure fee for the use of electric poles or underground facilities, which are government properties.

4.19.4 Foreign Investment in DTH

14. In the case of direct-to-home TV (DTH), up to 40 per cent foreign equity should be allowed. This is because any DTH business is likely to entail an investment in the range of Rs 500 to Rs 1000 crores, which makes reliance on foreign investors unavoidable. Besides, foreign players will bring to India their vast operational experience, technology and cost-effective solutions.
15. The government may insist that DTH operators offer one or more DD channels, on normal commercial terms, if it is in the public interest.

4.20. Notification banning DTH operations

During July, 1997, the Union Government issued a notification banning the Direct to Home operations in India. The then Union Minister, Pranab Mukherjee, felt that the ban rendered the task of the Select Committee which is considering the Broadcast Bill, useless. In his letter dated July 14, Mukherjee wrote, "since this banning of DTH services is a very significant legislation in a sensitive area, any such attempt to circumvent the parliamentary committee by departmental action should not be permitted and the concerned officials restrained till the matter is disposed of in the Parliamentary Select Committee." Mr Jaipal Reddy, the then minister for Information and Broadcasting clarified that the notification was temporary and would be in effect till the proposed Broadcast Bill was cleared by Parliament. Bharathiya Janata Party is against the DTH operations in the country as they felt that it would affect the cultural values.

4.21. Licensing Issues:

Though the Broadcasting Bill 1997 has dealt with several critical issues of broadcasting and comprehensively covered several technical aspects including possible controls, several other issues such as foreign and cross media ownership restrictions, requirements for auctions, up-linking and the use of orbital slots were left out. The key objective of the Bill was "to provide for the establishment of an independent authority to be known as Broadcasting Authority of India, for the purposes of developing, promoting, facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of service and use of new technologies, apart from becoming a catalyst for social change, promotion values of Indian culture and shaping of a modern vision. It would also curb monopolistic trends in this sensitive field, so that people are provided with a wide range of news and views."

During 1998 a Joint Parliamentary Committee re-examined the possibility of setting up a Broadcasting Council or Authority on the lines of the Press Council of India to control private and foreign channels and to strengthen the facilities for broadcasting. The outcome is

yet to be seen. The Bill also addressed the issue of DTH. The DTH, the most combustible of issues in the Broadcast Bill, was the subject of a variety of strategies for separate implementation. Only an understanding that Doordarshan might control it exclusively for at least a two year period led to some prospect that DTH might actually be introduced[168]. The Election Commission condemned the proposal to grant Doordarshan a license for exclusive operation of direct-to-home at the end of July 1999. The Election Commission noted that 'this being a matter of vital interest in the area of media policy of the Union Government, the appropriate forum for a full debate and appropriate decision is Parliament". The Commission held that the matter should await the completion of the election process and should be rightfully taken up by the new government. Political vacillations might increase industry doubt as to whether DTH is financially viable[169]. The Election Commission intervened in this affair, as the opposition made that an ordinance during a pre-election period as an issue of violation of conduct rules for the ruling party. The Commission felt that it as inappropriate to issue an ordinance when the poll schedule has already been announced.

4.22. Private licensing of Terrestrial FM Radio.

The government at the centre announced that terrestrial FM would be opened for private licensing. But it was subjected to stringent restrictions. One of such restrictions was that the private channel would not be allowed to broadcast news. There are series of administrative actions from the Government regulating the broadcast and telecast fields. "The administrative action also altered the up-linking environment. Rather than the prohibition on up-linking from within India for any entity except government channels, VSNL, the state facility, now became open to Indian entities operating satellite channels delivered predominantly for cable television distribution. The so called foreign channels still were required to up-link from abroad, but this may have been more because of VSNL's limited capacity than discriminatory intent, namely to give domestic channels an advantage for real-time delivery of signals. At the moment, the idea of compelling all channels to up-link from India seemed to be placed on a distant back-burner", opined Monroe E. Price and Stefaan G. Verhuist, the authors of Broadcasting Reform in India[170]

4.23. Banning a Channel

There was another major administrative action by the Ministry of Information and Broadcasting, under the Cable TV Act of 1995, by which a ban was imposed on the Pakistan TV during the Kargil war in the summer of 1999. This is an example of

[168] Sharif Rangnekar, I & B Ministry Paves Way for DD's Foray into DTH service, In Economic Times, 20 July 1999.
[169] EC vetoes Govt's Grant of DTH license to DD, In EconomicTimes, 27 July 1999
[170] Monroe E. Price, Stefaan G Verhuist, Broadcasting Reform In India, prologue, OUP, 2000, page xiii.

content restriction imposed on the foreign satellite channels through cable operators. The Ministry invoked the powers under Article 19(2) to impose restrictions on the content of the foreign channel to prevent possible harm to the national security and communal harmony through dis-information campaign in PTV. The administration of the VSNL Internet Service Provider blocked transmission of the website for Dawn, the Pakistani newspaper[171]. It is yet another restriction on the news flow from a foreign land, through internet.

Another grey area where the State can interfere by imposing restrictions on the content is prosecution of channels for obscenity and pornography. Cable Act contains such provisions also.

Meanwhile, the internet began to spread by leaps and bounds creating another major issue regarding a new media, relegating the broadcasting or telecasting into secondary position. Innumerable internet cafes are providing access to super highway of information, a tool providing link to vigorous market for information of global proportions. Internet is convergence of all kinds of communications with information, entertainment, news and all possible vital aspects of new culture and civilization. The government at the centre is under an obligation to find ways to regulate the internet, if at all that is possible. That is the new challenge staring at the government now. Even as the Government is still thinking as to consider the Convergence Bill, the foreign satellite channels are competing with each other in Indiansing their programmes and aggressively invading into the advertisement market. In all dozens of channels are operating in Indian market in each state involving both domestic private enterprises and foreign satellite channels. The Internet coupled with these channels pose a serious challenge to the law makers to come out with new legislative regulatory scheme. Thus from earliest Telegraph Law to offing Convergence Law, the broadcast regulatory reform travelled a long distance, but still waiting to reach a logical stage wherefrom the state can control the situation which almost went out of hand with technological revolution.

4.24. Broadcasting Services Regulation Bill, 2006

The Broadcasting Services Regulation Bill, 2006 proposes the setting up of a separate Broadcast Regulatory Authority of India (BRAI). The draft bill would call for major corporate restructuring by media companies, foreign and domestic, operating in India. Other major areas of the Bill include content, cross media ownership, subscriptions and live sports feeds (which are already part of the downlink norms).

[171] Ibid.

a) Salient Features of Draft Bill, 2006

On restrictions on accumulation of interest, the draft bill states, "The Central government shall have the authority to prescribe such eligibility conditions and condition with regard to accumulation of interest in the print and broadcast segments as may be considered necessary from time to time to prevent monopolies across different segments of the media." (Thus the broadcaster like Star, for instance, can have a maximum 20 percent stake in an FM radio venture or a multi system operator. The immediate fallout of such a bill becoming law would be that Star, which has a 26 percent holding in the Rajan Raheja-promoted Hathway Cable & Datacom MSO, would have to bring down its stake by 6 percent. It seems that the demerger that took place in Zee Telefilms could prove to be beneficial for the company. Down South, the Sun TV group would also have to restrict its interest in cable distribution companies like Sumangli.)

Limits on Equity: The draft bill states, "No broadcasting network service provider and its associated companies shall have more than 20 percent share of paid up equity or have any other financing or commercial arrangement that may give it management control over the financial, management or editorial policies of any other broadcasting network service provider…"

Thus, no broadcasting service provider (Television Company) can hold more than 20 percent equity in another TV company. Additionally, no TV Company can own more than 15 percent of the total number of television channels beaming in the country.

"No content broadcasting service provider shall have more than the prescribed share of the total number of channels in a city or state, subject to overall ceiling of 15 percent for the whole country," the draft states. A broadcast network service provider (presumably multi system operator / cable operator) cannot have more than 15 percent of the national average in regards to subscriber numbers. (What this means, at the moment as an explanatory annexure are not available, is that if 60 million is the C&S national subscriber average, an MSO like Zee group's SitiCable or the Hinduja-owned INCablenet or Sumangli, for example, cannot exceed 9 million paid subscribers in a city or a state.)

Limit on subscribers: "No broadcasting network service provider shall have more than the prescribed of the total number of consumer/subscribers in city or a state subject to the overall ceiling of 15 percent for the whole country," the draft bill states. TV channels on a mandatory basis would have to have a certain prescribed percentage of content produced locally and also carry socially relevant programmes.

Indian Content: "The share of content produced in India shall not be less than 15 percent of the total content of a channel broadcast during every week," the draft bill states. Thus it would also be mandatory for the channels to ensure that at least 15 percent of the total content broadcast per week is produced in India.

Public Service: It also goes on to state that the share of public service/socially relevant programme content shall not be less than 10 percent of the total programme content of a channel broadcast during every week. (This would mean that channels like Cartoon Network, Animax, Discovery, Animal Planet and Discovery Travel and Living would have to have a prescribed percentage of content generated from India, which has been a long-standing demand of Indian animators.)

Regulating Cable industry: The Bill envisages that the Cable Operators / MSOs have to operate only on licence from BRAI. This could well be the catalyst that brings in some order into the cable industry. At present, the only requirement for anyone wanting to start cable services is that he/she should fill in the prescribed form at any post office and pay the nominal fee.

Existing laws and guidelines relating to broadcasting, TV and radio, would subsume under this over-arching regulatory framework. This would mean that laws and guidelines relating to FM radio, DTH, community radio, uplink and downlink of channels and use of SNG/DSNG infrastructure would cease to exist and assimilate with the broadcast law.

BRAI: The proposed Broadcasting Regulatory Authority of India (BRAI) would be taking over the powers and jurisdiction now vested with the Telecom Regulatory Authority of India (TRAI) with regard to broadcasting and cable television network services in the country, including satellite radio broadcasting networks.

The BRAI would be a quasi-judicial authority with powers to hear and adjudicate disputes between various licensing authorities under it and broadcasters, consumers and also dispute between broadcasters. It would be a seven-member body headed by a Chairperson and six full-time members. It would have a government official, not less than the rank of Additional Secretary, as its CEO/secretary.

However, though BRAI would be taking over the powers related to broadcasting and cable television from TRAI, the Telecom Dispute Settlement and Appellate Tribunal would be the appellate tribunal for both the regulators.

The new Bill codifies a framework of guidelines and proposes to set up a Broadcasting Regulatory Authority of India (BRAI) with both a licensing and oversight

function covering terrestrial as well as satellite services and cable networks, including DTH, conditional access systems, emerging digital/computer modes and community radio. Licensing would be mandatory.

b) *Public Services Broadcasting Obligation Fund:*

The BRAI would also be the administrative authority for setting up and functioning of a `Public Services Broadcasting Obligation Fund' (PSBOF) that would take care of the public service obligations of the private broadcasters.

The Bill empowers the Government to separately formulate terms and conditions for raising funds for the PSBOF from the licensed broadcasters and the modalities of their collection and utilisation. The Government would also formulate an institutional arrangement for carrying out the objective of the fund that would include financing the production and broadcasting of programme content and messaging on socially relevant themes on various channels.

The BRAI would have a strict vigil on various public services obligations of the private broadcasters. The public services obligations, apart from participating in the PSBOF, would also include dedicating at least 10 per cent of the channel's commercial time and 10 per cent of programme time per week to public service/social messaging and public interest/socially relevant programme, respectively.

c) Curbs on Monopoly in Radio:

At present there is no cross-media ownership restriction in the country. Thus, the prevailing situation is that several media houses, both English and vernacular, have stakes in print, radio and television. Responding to the emerging monopoly situation in the radio segment, the Ministry revised policy for the second stage of FM broadcasting, which has mandated that no company can have more than 15 per cent of the total number of frequencies allotted.

Restriction on monopoly is a tested phenomenon world over. If these proposals are approved, India will join leading democracies that already have similar provisions. Among the countries with such restrictions are the United States, the United Kingdom, Australia, Germany, France, Italy and Greece. Still, this continues to be an issue of great debate and the Federal Communications Commission of the U.S. recently announced that it would review media ownership rules to address the issue of media consolidation and the impact it has had on diversity of news coverage.

Mr. Prashanth Bhushan, Senior Advocate and Human Rights activist welcomed these measures, he said: “The provisions to prevent media monopolies by restricting the control of channels and viewership by single organizations and conglomerates is welcome. Though the details of how this should be done can be debated, but there can be no doubt that media monopolies are even more dangerous than government control over the media, and this must be regulated by law. The provisions in the bill to ensure that private channels carrying national sporting events must be obliged to share the feed (without advertisements) with the public service broadcasters is also salutary. This will prevent a situation as we had recently where Doordarshan had to carry the advertising of the private channel in order to show cricket matches. The obligation proposed by the bill to carry 10-15% public interest content is more problematic, for who is to judge what public interest content is. That is bound to lead to unending disputes and corruption in certification of public interest content”.

The Government was continuously announcing that it would come out with the content regulation, but was not sharing the details of proposed provisions of the Bill. Once the salient features were revealed, it faced spate of adverse criticism, which forced the Government to agree to look into certain contentious issues again, and officials of the Indian Broadcasting Foundation (IBF) stated that they were keen to take the media industry into confidence before getting on with the process of formulating laws for governing them.

d) Controversy on content regulation:

Meanwhile, the International Federation of Journalists (IFJ), which supported proposed curbs on monopolistic controls, has expressed concern over the Bill for its provisions of strict content regulation for news channels. The IFJ President said: “While IFJ supports any move to prevent monopolistic control of the media in the hands of a few corporations, journalists and unions must ensure that the proposed changes to the Broadcasting Services Regulation Bill do not allow for the abuse or stretching of the law by the Indian government in any situation,” There is also concern that the Bill provides for punishment like revocation of licences and fines on those who violate the proposed broadcast guidelines, including the Content Code under preparation, if their service is considered “prejudicial to friendly relations with a foreign country, public order, communal harmony or security of the state,” which are not specifically defined.

e) Sweeping Powers and Punishments:

The draft bill intends handing over sweeping powers to the Union government which can take over control and management of private broadcasting channels in case of war or a natural calamity of national magnitude if the draft legislation becomes law. “In the event of war or a natural calamity of national magnitude, the Central Government may, in public interest, take over the control and management of any of the broadcasting services or any

facility connected therewith, suspend its operation or entrust the public service broadcaster to manage it, in the manner directed by the Government for such period as it deems fit," the draft bill states.

The Broadcasting Services Regulation Bill, 2006, to regulate private broadcasting also provides for punishment like revocation of licence and fines on those who violate the proposed broadcast guidelines, including the new Content Code under preparation. The Bill provides that the government may at any time direct the licensing authority (Broadcasting Regulatory Authority of India) to suspend or revoke a broadcasting service's licence, if the service is "considered prejudicial to friendly relations with a foreign country, public order, communal harmony or security of the state."

Every authorised BRAI officer shall have the power to prohibit any service provider from transmitting or re-transmitting any programme or channel, "if it is not in conformity with the prescribed content code, or if it is likely to promote feelings of disharmony or of enmity, hatred or ill-will between religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb public tranquillity." According to the draft Bill, the government will have the power to make rules from time to time.

Moreover, every authorised BRAI officer shall have the powers to inspect, search, seize equipment under Section 24 and prosecute on a written complaint by the concerned licensing authority, according to the draft Bill which has proposed setting up of a broadcast regulator, which would issue licences to cable operators and MSOs.

The BRAI can refuse to register a channel or even cancel its registration, after due hearing, if its content "is likely to threaten the security and integrity of the State or threaten peace and harmony or public order in the whole or part of the country." BRAI can also do the same if the name or logo or symbol of a channel is in any way obscene, similar to that of a terrorist organisation or the brand or symbol of any prohibited product, or similar to that of any well-known foreign channel. The phrase "likely to threaten" could permit subjective or vindictive judgements to prevail without redress other than petitioning the Supreme Court for exceeding "reasonable restrictions" as permitted under Article 19(2) of the Constitution, wrote columnist and veteran journalist BG Verghese in *Daily News & Analysis*. "The State now wants to arrogate to itself the right to storm into any press, any broadcasting studio, and any cyber cafe to stop news from reaching you and me. And, horror of horrors, it demands that the law cannot intervene. Even Idi Amin's Uganda and Saddam's Iraq would

have been ashamed of such a Bill. How come India 2006 is even considering it?" Pritish Nandy, famous journalist wondered.

"It has been the universal experience of nations that it is far too dangerous to entrust such sweeping powers of controlling content to the government. Such powers are bound to be misused by the government, which will eventually completely compromise the freedom of the media and reduce them to instruments of the government. These provisions will also violate of the fundamental right of free speech, which includes a free press, and should be struck down as being unconstitutional," Supreme Court lawyer and rights activist Prashant Bhushan wrote in *Outlook*.

The Leader of the Opposition L.K. Advani condemned the UPA government for having conceived such a legislation to gag the media. "It reminds me of the Emergency days when the worst-hit was freedom of the press, which is considered to be the fourth pillar of democracy. Our hunch is that the ruling party is in a bad shape and so its anger is first directed against the media. We will oppose it tooth and nail," he said.

The Bill came under severe criticism from media channels also, as it was alleged that, it intends to regulate the content of electronic media also and thus interferes with the Press Freedom. The Centre repeatedly allayed fear over the contents of the proposed Broadcast Bill and said that the government is committed to press freedom and that the legislation is meant to facilitate and develop the content of broadcasting in an orderly manner.

f) Curbs on Sting Operation?

The draft of the content regulation, prepared by a sub-panel of a 30-member committee overseen by I&B secretary SK Arora, according to Indiantelevision.com, hints at stringent content regulation, particularly for news channels. If okay-ed by lawmakers in its present state, it would be the end of sting operations and coverage of issues where high-profile politicians and personalities are involved. An excerpt: "TV channels must not use material relating to a person's personal or private affairs or which invades an individual's privacy unless there is an identifiable public interest reason for the material to be broadcast."

Apart from empowering government officials of the ranks of district magistrate, sub-divisional magistrate or police commissioner to barge into newsrooms are seize equipment, Section 37 makes it clear that the officials' action cannot be challenged even in court. "No civil court shall have the jurisdiction to entertain any suit or proceedings in respect of any matter which the Authority or the Licensing Authority is empowered by or under this Act to determine," the draft Bill says.

Critiques say that it is a calculated effort to muzzle the media in general and incapacitate the electronic medium, which has its own powers because of the impact of visuals, in particular. Cross media restrictions, powers bestowed on authorities to take action against the media and TV channels on the flimsiest of grounds, content censorship (which is being drafted separately, but could be made part of this Bill or legislation at a later stage) are all aimed at strangling the media. The proposed autonomous Broadcast Regulatory Authority of India (Brai) has been given powers that permit it to run amok if interpreted incorrectly by it, especially when BRAI's chief executive would be a serving government official of additional secretary's rank, drawing a salary from the government and, naturally, having allegiance to the government.

The 1997 Bill stated that a person or a company will be allowed to hold licences in only one of the following category of services: Terrestrial Radio Broadcasting, Terrestrial Television Broadcasting, Satellite Television or Radio Broadcasting, DTH Broadcasting, Local Delivery Services and any other category of services, which may be notified by the Central government. In 1997, restriction of monopolies was more targeted towards newspaper houses. The Bill then had said that no proprietor of a newspaper will either be a participant with "more than 20 per cent interest in or control a body corporate, which is the holder of a licence to provide a licensed service under this Act." This time round, the government has allowed interest in various segments of the media business, but capped them so low that effective concentration of power is totally neutralised to the extent of threatening to destroy various business models.

g) What is the character and content of the present print and electronic Media?

The content and character of the present print and electronic media is coming under severe criticism from all quarters. This has been aptly explained by Mr. Prashanth Bhushan in his criticism on the new broadcasting bill in following words: “There is little doubt that there is a serious problem with the content of the print and broadcast media in India today. Apart from the fact that more and more time and space of the media is devoted to carrying commercial advertisements, much of the remaining content too has become trivial, inane, and debasing, essentially containing violence, sex and gossip meant to titillate and serve the baser instincts of the audience. Even most news channels and newspapers have been reduced essentially to purveyors of salacious gossip with meaningful news being carried only in snippets and sound bytes. Though the media says that it is merely catering to public taste, the fact is that this kind of content is debasing public taste and values, dulling intelligence and making people more amenable to propaganda. And when this debasement of taste and values is coupled with media consolidation and monopolies, as in the U.S. where

just five media companies control more than 90% of all television, newspapers, publishing houses and even movie companies, you have a situation where, as Chomsky says, it is easy to "manufacture consent" and reduce democracy to a farce.[172]"

h) How to Regulate it?

The Bill authorizes the government to "prescribe guidelines and norms to evaluate and certify broadcasting content and the terms and conditions of broadcasting different categories of content by service providers". It also empowers District Magistrates, Sub Divisional Magistrates and other officers to prevent any broadcasts and even seize equipment of broadcasters for violation of the content code or for non-certification of broadcast requiring certification. It authorizes the government to take over the control of any broadcasting service during a war or national calamity.

Such powers are bound to be misused by the government, which will eventually completely compromise the freedom of the media and reduce them to instruments of the government. These provisions will also violate of the fundamental right of free speech, which includes a free press, and should be struck down as being unconstitutional.

However, regulating prurient, inane and debasing content is a more difficult problem. Authorising the government to do so is certainly not the solution. In order to deal with this, one must understand what is driving such content.

Are there any alternatives? Mr. Prashanth Bhushan tried to answer this question, he says: One solution worth considering would obviously be to empower an independent and fully autonomous regulator/media council, chosen in a transparent manner, to lay down guidelines to regulate content and give it teeth to enforce the guidelines. A more radical solution worth considering would be to provide by law that media organizations cannot be run for profit and cannot carry commercial advertisements. That will ensure that they run only on subscriptions by readers and viewers. That may result in the closure of many media organisations which may not be such a bad thing. But it may also make even those which survive, quite expensive for the viewers/readers and therefore inaccessible to many. Or we could end up having only a few channels and newspapers on the lines of the Public Broadcasting Service in the U.S. But such a scenario has the obvious need to worry about the media being controlled by Trusts set up by large business houses or media organisations trying to circumvent the ban on advertising by using advertorials and surreptitiously selling news space.

[172] Prashant Bhushan, *Published in Outlook, July 6, 2006*

It is very difficult in practical terms to regulate content of the domestic and international TV channels. Any legal curbs would be prone to be misused and amount to censoring of the ideas and news channels and news event reporting content would be severely affected. The strong Media Council is being discussed as projected alternative to regulate the TV content. But the proposed Media Council would be an enlarged version of the present Press Council, which can not practically impose ethics and regulate the media. Media whether print or electronic has to be regulated only within the limits prescribed under Article 19(2) alone. Any excessive limitation over the media might lead to agitation in higher courts and ultimately striking down the legislation as unconstitutional, if enough care is not taken at drafting level itself.

i) Restrictions on Cross Media Ownership

Capping Cross-Media Ownership: The bill introduces restrictions on cross media holdings in all electronic ventures capping it a maximum 20 per cent. While print media companies have not been included in the ambit of the bill for the present, this could be later extended to them as well.

The proposals relating to capping of cross-media ownership are generally welcomed by several sections, except from the existing media houses. Perhaps this is the only provision that was welcomed by many, while the Bill was criticized for concentrating more controlling powers in politically appointed executives on BRAI. The Bill proposes to cap cross-media ownership at 20 per cent and restructure shareholding patterns. A broadcaster, therefore, cannot have more than 20 per cent stake in another broadcasting network, a cable network or DTH or a radio network. Just like FM Radio operators, television networks will not be allowed to own more than 15 per cent of the total number of channels. It amounts that the Government will have the power to prescribe restrictions to prevent cross-media monopoly, an emerging situation in India as leading media houses consolidate their hold over different segments of the media.

Regarding the curbs on monopoly, the Government heavily depended upon the 1995 Supreme Court judgment on airwaves, which said that diversity of opinion was "essential to enable the citizen to arrive at informed judgment" and could not be provided by a medium controlled by a monopoly, be it of the State or any individual group/organisation, the Information and Broadcasting Ministry has proposed cross-media ownership restrictions to ensure plurality of views. Moving in slowly, the Bill empowers the Government to prescribe eligibility conditions and restrictions on accumulation of interest from time to time as the situation warrants.

While some of the restrictions under consideration pertain to equity, others seek to put a ceiling on the reach/subscriber base of channels. No content provider and its associated companies can have more than 20 per cent share of paid up equity or any other form of agreement with another such entity that would allow it to have managerial or editorial control over the latter. A similar provision is planned for broadcasting network service providers.

Also, no content provider for broadcasting will be allowed to have more than the prescribed share of the total number of channels in a city or a State. However, this condition will be subject to the overall ceiling of 15 per cent of the whole country. The same applies to broadcasting network service providers. Only in their case the criteria will be subscriber-base.

Thus one of the contentious issues of the Bill is restriction on the cross media ownership i.e. print media owners have been barred from holding more than 20 per cent equity in other broadcast media. As several companies have investments in print as well as broadcast business, the bill has put a question mark on their future. The main intention behind this restriction is to discourage the monopoly. But through indirect investments a print media baron can always have an effective control over the broadcast media also. It is futile to impose such restrictions which cannot prevent the monopoly. By putting restrictions on cross media ownership, the government claims that it is trying to control monopoly. But it is doing just what it is aiming to avoid. The government justified the cross media restrictions on the ground that airwaves are public property and their use has to be regulated to ensure a level playing field for everyone by preventing monopolies. Distributing the airwaves in such a manner as to balance the interests of both the broadcasters and listeners/viewers does not violate the fundamental right to speech. When frequencies are limited there is no escape from restricting the freedom of the broadcaster in the interest of the public. Besides cross media restrictions exist in one form or the other even in more advanced democracies such as the UK, the US and France.

Part III of the Bill states that "No proprietor of a newspaper shall either be a participant with more than 20 per cent interest in a body corporate which is the holder of a license to provide a licensed service under this Act."

"No proprietor of a newspaper, who is a participant with more than five but less than 20 percent interest in a body corporate and not controlling such a body corporate, holding a license shall be participant with more than five per cent, in any other such body corporate."

"No person who is the holder of a license to provide licensed service under this Act shall be either a participant with more than 20 per cent interest in or control body corporate which controls a newspaper."

"No person is the holder of a license and is a participant with more than five but less than 20 per cent interest in a body corporate and not controlling such a body corporate which means which runs a national newspaper, shall be participant with more than five per cent interest in any other such body corporate".

With the regulations mentioned above the Bill only sets certain limits on control, but not on participation. Up to five percent equity one could hold in inter and intra media services. The Bill does not discourage holding of up to 20 per cent equity of a broadcast service. Newspaper also can hold 5 per cent in more than one broadcast service. Dr N. Bhaskar Rao, the chairman of center for media studies and an authority on media policies the expert on media policy, in his article on cross media restrictions[173] observed: " Rightly, control and participation have not been mixed up. However, in reality even this may not prevent manipulative control of more than one media by the same entities". He listed out the newspaper entities that might be affected if the Bill in present form is enacted. "In the event of the Bill being adopted in the present form some newspaper groups would get affected adversely. These include the Eenadu group in Andhra Pradesh, Rajasthan Patrika group in Rajasthan and Hindusthan Times, Times of India, India Today, Prajavani / Deccan Herald group and Punjab Kesri group etc. All of them have a proven track record and would easily stand out as the best anywhere in the world." He suggested that instead of putting a restriction on equity participation for restraining media monopoly, it may be better to use the market share concept either in terms of circulation or readership or both. This calls for an effective monitoring mechanism with an independent regulatory authority. He also suggested that the existing establishments with operations both in newspapers and television, for example, the Eenadu or India Today should be allowed reasonable time to catch up with the law of the land should the Bill become an Act in the present form and also get implemented. He said "Newsmedia are not like any other business, Newspaper is a distinctly different 'public service' in a civil society as compared to any other business. They are still viewed as a "public utility" and as a "fourth estate" institution. Hence they are entitled to certain privileges, formally and informally.

Dr Bhaskar Rao in an interview[174], said the Bill was vague on the most controversial issue of cross media ownership restricted to 20 per cent. He said "though there should be provisions to prevent possibility of monopolistic tendencies in the case of news and current affair flows in the country, newspapers enterprises should not be deprived of operating within the territory and in other than news and current affair programmes even if they have a circulation of say more than 50 per cent. Also there should be no restriction on subleasing time on channels for specialized programmes." He objected to exclusion of government

[173] The Pioneer, dated September 9, 1997, page 11
[174] Dr Bhaskar Rao, Interview, The Observer of Business and Politics, Mumbai, dated March 14, 1997, page 9

media- Doordarshan and AIR- from the regulations proposed for other private broadcasters. The bill, he says, envisages separate Corporation each for DD and AIR. In no case should the government become a regulator as well as an operator, he added. Bhaskar rao saw no role to the Minister for Information and Broadcasting in the scheme of proposed Bill, and said that it was the time that ministry would up altogether. He suggested that the broadcasting ministry to be merged with the ministry of communication as broadcasting was becoming more a telecom service. He also suggested that the information wing should be converted into an independent board with media professionals. "In fact, instead of two different regulatory authorities, one for telecom and another for broadcasting, we should have only one commission - more in the lines of the US Communication Commission".

Mr Nitish Senguptha, director general, Indian Management Institute, also the chairman of Sengupta Committee on Prasar Bharathi Bill, says that any licenses from the Indian authorities to permit direct up-linking from India will also give a chance to the government to impose appropriate checks, such as prohibiting programmes that may impinge on India's security, and national sovereignty, or that insult past leaders, or that violate various provisions of our advertising code-such as advertising smoking and alcohol or showing programmes which are pornographic in nature.[175] He justified such restrictions as they were imposed on satellite TV programmes in all civilised countries like US, UK, or Japan.

Plurality and variety of sources information are essential for an effective democracy. Therefore, any broadcasting regulation should guard against few powerful voices dominating the media. This can be achieved by putting restrictions on horizontal and vertical integration within the electronic media and cross media restrictions between broadcasting and newspapers. It may be pointed out that cross media restrictions between broadcasting and newspaper, in one form or the other, are there in most of the developed democracies like USA, UK, France, Australia etc.

The restrictions on cross-media holdings are legally ambiguous. Part III of the Bill lays down that, "No proprietor of a newspaper shall be a participant with more than 20% interest in a body corporate which is a holder of a license" under this Act. Similarly, no licensee can hold "more than 20% interest in a body corporate which runs a newspaper". The proprietor is defined as a person who must "control a body which is the proprietor of such a newspaper". This definition of ‘control’ would permit legal loopholes and exceptions in cases of multiple owners\proprietors, including benami shareholders of newspapers.

[175] Nitish Sengupta, Interview, The Observer of Business and Politics, Mumbai, March 14, 1997, page 9

j) Deviation from Earlier Policies:

The Bill represents a major deviation from the earlier national consensus against foreign control\ownership of the electronic media, reflected in the Verghese Committee on TV and Radio (1977- 78), the Prasar Bharati Act, 1990, and the National Media Policy, 1996.

The drafters of the Bill have made no effort to explain the reversal of policy in allowing foreign equity participation. Reasons for such a major policy shift should at least have been explained. In the Schedule dealing with "Restrictions on the Holding of Licenses" is it laid down that foreign equity not exceeding 25 per cent "in case of (radio) broadcast services" and "foreign equity (not) exceeding 49% in case of non-domestic satellite broadcast services and local delivery services" will be permitted. The drafters must be aware of the universal practice of not allowing substantial foreign equity in domestic radio\TV channels. The USA, European Union, Japan and most countries do not allow such levels of foreign ownership. France prohibits any foreign participation.

Foreign ownership up to 49 per cent in TV channels, would give foreign media virtual control, if shareholdings are dispersed, or if benami shareholdings exist. And if 49% foreign equity is allowed today, 51% and then 74% may be allowed later, as has happened in other sectors. In the advanced capitalist countries there are public broadcasting\TV channels, largely autonomous of Government, which represent the plurality of interest groups and social interests. This Bill because of its exclusive reliance on the private sector, both Indian and foreign, would rule out such public channels, against the earlier national consensus, and all earlier, publicly debated public policy.

k) TRAI: Cross Media Ownership Restrictions

Chairman of the Telecom Regulatory Authority of India Dr. Rahul Khullar advocated for the cross-media ownership restrictions and controls for the survival of democracy and plurality of views in the Indian context. The TRAI Chairman held a round table on Cross Media Ownership organised by the Associated Chambers of Commerce and Industry of India (ASSOCHAM). TRAI would soon be coming out with a consultation paper on the issue. Questioning the Media insistence on only self-regulation Dr. Khullar in his first public speech in his new assignment said there were serious issues of monopoly both horizontal and vertical in ownership, what constituted limits of market dominance and how mergers and acquisitions impacted the free market of ideas that needed a wide range of public discussion before the TRAI formulated its recommendations. He clarified that he was not speaking of content regulation in this context. “If one newspaper controls all contents of opinion through cross-media ownership, if one TV group owns both channels and cable distribution, it could pose grave danger. No democracy can survive if you do not have

plurality and diversity of opinion." In the Indian context there were also lingual barriers to plurality creating non-competitive markets in South India that needed to be considered[176].

Accordingly, the Ministry of Information and Broadcasting commissioned a report on this subject. It was prepared by Administrative Staff College of India, Hyderabad ASCI, an independent institution recommending imposition of cross-media ownership restrictions.

Though this report was submitted in July 2009, it was placed on the Ministry's website only after Parliament's Standing Committee on Information Technology sharply criticized the government for not initiating any action on the ASCI report's recommendations.

The ASCI report pointed out that there is "ample evidence of market dominance" in specific media markets and argued in favour of an "appropriate" regulatory framework to enforce cross-media ownership restrictions, especially in regional media markets where there is "significant concentration" and market dominance in comparison to national markets (for the Hindi and English media).

The government seems unlikely to accept the recommendations of the report[177]. The Standing Committee on IT, headed by Congress MP Rao Inderjit Singh, noted that the issue of restrictions on cross-media ownership "merits urgent attention" and needs "to be addressed before it emerges as a threat to our democratic structure." It urged the Ministry to "formulate" its stand on the issue in coordination with the TRAI "after taking into account" prevalent international practices.

The ASCI report[178] found that both developed countries such as the United States, Australia, United Kingdom and Canada as well as developing countries like South Africa, had put in place a set of rules for cross-media ownership. Internationally, the report added, cross-media restrictions in terms of presence (that is, absolute restrictions) have been in place for varying periods in these countries and while "there have been some discussions about relaxing these restrictions; none of these countries … have in fact removed cross-media restrictions."

[176] http://www.assocham.org/prels/shownews.php?id=3617, http://articles.economictimes.indiatimes.com/2012-05-16/news/31726940_1_broadcasters-and-advertisers-trai-telecom-regulatory-authority

[177] Paranjoy Guha Thakurtha, Need to Restrict cross media ownership, June 10, 2012, http://thehoot.org/web/Indianeedscrossmediarestrictions/6005-1-1-4-true.html and http://currentnews.in/2012/07/25/need-to-restrict-cross-media-ownership/

[178] ASCI report is accessible at http://www.mib.nic.in/ShowPDFContent.aspx (Under Documents, Broad-casting)

The Standing Committee on IT[179] pointed out that after an "extensive" study, ASCI had recommended that rules relating to cross-media ownership "must be put in place" after conducting periodic market analyses and surveys (every three or four years) to "ascertain the structure of ownership and the level of competition". The study had pointed to the inadequacies of the Draft Broadcasting Services Regulation Bill in restricting ownership of equity in media companies, the committee stated.

In India at present, restrictions on cross-media holdings are imposed only on DTH and private FM (frequency modulation) radio companies, while broadcasters, cable operators, and publishing houses have no such restrictions even though there are enough examples of print companies operating in television broadcasting, internet and radio and vice versa.

l) TRAI: Jurisdiction

The ASCI report stated: "It would appear rational for the government to extend TRAI's jurisdiction in the arena of economic regulation, (that is,) the accumulation of interest to the print media as well so that the economic regulation of the entire media would vest with one regulator." It added that the jurisdiction of the Telecom Disputes Settlement Appellate Tribunal (TDSAT) "could also be extended to cover the print media."

Under this option, either a new law would have to be enacted by Parliament or the government would have to formulate a policy defining cross ownership and empower the regulator (TRAI) to draw up rules restricting cross-media ownership and accumulation of interest. The ASCI report suggests a second option, namely, to set up a Broadcasting Regulatory Authority.

On the question of jurisdiction, the report notes that although TRAI had been notified by the government in 2004 to regulate broadcasting, companies in this sector included over 60,000 cable operators, DTH providers, multi-system operators (MSOs) and operators proving HITS (head-end-in-the-sky) services. Almost all these operators are not licensed and many of the provisions of the TRAI Act pertain to licensees. "This limits TRAI's jurisdiction on broadcasting companies," the ASCI report observes.

The report "draws attention to the fact that international experience has shown distinct moves towards consolidating regulatory frameworks to cover all media and

[179] The report of the Standing Committee of IT can be accessed from:
http://164.100.47.134/lsscommittee/Information%20Technology/Final_Report.pdf
(In the above report, pages 29 and 30 deal with cross-media restrictions.)

telecommunications under one umbrella in line with the emerging market realities and technological developments". It points that having a separate broadcasting regulator "has the danger of fragmenting regulation and goes against the international tide of consolidating regulatory frameworks to adapt to the convergence taking place between broadcasting and telecommunications".

Thus, it recommends that the Competition Commission of India (CCI) be involved in issues relating to market power, concentration of ownership, formation of cartels, mergers and acquisitions (M&A), bid rigging, tie-in arrangements, exclusive supply and distribution agreements and predatory pricing. "Consultations with CCI on all these matters by TRAI should be made mandatory by law," the report recommends.

The ASCI report found intense competition in three regional media markets it studied (Tamil, Telugu and Malayalam), leading to accumulation of interest and growing instances of cross-media ownership. The report used the Herfindahl-Hirschman Index (HHI) to measure market concentration and the impact on competition.

The report studied major media conglomerates in the country including the following groups: Sun, Essel/Zee, STAR India, Times of India/Bennett, Coleman, Eenadu, India Today/TV Today, ABP (Ananda Bazar Patrika), Jagran Prakashan, Malayala Manorama, Mid-day Multimedia, Rajasthan Patrika, Dainik Bhaskar/D.B. Corp, Hindustan Times/HT Media, Network18, Reliance Anil Dhirubhai Ambani group, New Delhi Television, Malar, B.A.G. Films, Positiv Television, Outlook and Sahara. Cross-media ownership was detected in most of the above groups.

In September 2008, a consultation paper was put out by TRAI. After receiving comments on the paper, the TRAI produced a report in February 2009. While the TRAI was preparing its report on media ownership, ASCI was asked by the Ministry to prepare another report. The latter, prepared by a three-member team from ASCI led by Dr Paramita Dasgupta and comprising Dr Usha Ramachandra and Ashita Allamraju, is described as a "draft" report.

The TRAI had recommended that broadcasters should not have "control" over distribution of television channels and vice versa. The regulator had also called for putting safeguards for horizontal and vertical integration for broadcasters and distribution companies and suggested separate M&A guidelines for the sector to prevent media concentration and creation of significant market power. Most leading media houses have opposed the TRAI's role in probing print companies that have ventured into television.

Also, India's established media conglomerates have staunchly refused to accept the need for restrictions over ownership and control, arguing that this would result in devious

and dubious forms of censorship. Their spokespersons resurrect the ghosts of the 1975-77 Emergency if cross-media restrictions are imposed. The government too has, by and large, played along with the interests of India's large media groups. After all, powerful politicians need media barons as much as they need them – a mutually beneficial back-scratching society of sorts.

According to the TRAI report[180], it is important that "necessary safeguards be put in place to ensure plurality and diversity are maintained across the three media segments of print, television and radio." However, during the consultation phase, there was strong resistance on the part of media groups to the idea of restrictions on their sector. Many different arguments were proposed, among others that regulation would stifle growth, that the multiplicity of media and the highly fragmented nature of the Indian market prevents monopolization, and that regulation of the sector amounts to an impingement on the Constitutional right to freedom of expression [specified in Article 19(1)(a)].

After a fuss was kicked up about whether the TRAI had the jurisdictional right on the media other than telecommunications, the Information & Broadcasting Ministry clarified that the issue of cross-media ownership restrictions "should be examined in its entirety" and that it was within the jurisdiction of the TRAI to make recommendations regarding cross-media ownership. After hearing the arguments of media groups, TRAI came to the conclusion that certain restrictions are required on vertical integration, that is to say on media companies owning stakes in both broadcast and distribution companies within the same media.

Further, the TRAI report drew attention to the fact that all restrictions on vertical integration are currently placed on companies. However, large media conglomerates in India are usually groups that own many different companies. This allows them to have controlling stakes both in broadcasting and distribution by acquiring licenses under their different subsidiary companies, thus totally bypassing current restrictions and defeating the purpose of their existence in the first place. The report therefore suggests that the restrictions no longer be placed on "companies" but on "entities", which would include large groups and conglomerates.

Regulation may not be a panacea for all of Indian media's problems — far from it. The real challenge becomes apparent when one accepts the fact that the media is, and will always be, a business. Its dual role – as a profit-maximization

[180] TRAI report can be accessed at The TRAI report is available at: http://www.trai.gov.in/content/RecommendationDescription.aspx?RECOMEND_ID=322&qid=11

enterprise and as the “fourth estate” with a commitment to the dissemination of information for the benefit of the public – creates a set of dilemmas.

Those in favour of cross-media restrictions lean on the Supreme Court’s observation in the famous February 1995 “airwaves are public property” case (Union of India vs. Cricket Association of Bengal) that “the right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues in respect of which they are called upon to express their views”, to argue that “reasonable restrictions” can be imposed on the media in order to maintain plurality and diversity of views required in a healthy democracy, and that these restrictions in no way undermine the fundamental right of citizens to freedom of expression. With this principle behind the regulation needs to be evolved for the convergence of technology. If there is a convergence of technology, there should be a comprehensive regulation convergence too, which is discussed in next chapter.

CHAPTER V

CONVERGENCE REGULATION

5.1. Difficulties in Regulation

Thus it is seen that large scale changes in the telecom and cable industries are taking place due to convergence and without a converged regulatory framework any attempts to regulate the communications/ broadcasting sectors in coming times may result in the following problems:-

a) Bottlenecks:- A regulatory regime which discriminates between service providers on account of technology used or services offered will result in bottlenecks in growth of industry. For example, the telecom companies in the USA are unable to roll out their IPTV services on account of the fact that provision of cable TV services requires approval/ license/ franchise at municipal level. Thus even though their high speed broadband infrastructure is in place, the telecom companies can not move ahead with their IPTV services.

b) Imperfect Competition:- Different regulation for different sectors of industry leads to imperfect competition and gives rise to level playing field issues. In the absence of any obligations/ regulations which are imposed on the Circuit switched telephone service providers, the per-minute call charges being offered by the VoIP service providers are significantly less than those being charged by the circuit switched telephone networks. Regulatory issues should not be a hurdle in technological developments but at the same time any technology should not take advantages of regulatory loopholes such that if affects the level playing field. Different FDI limits in different industries also give unfair advantage to certain technologies/ service providers over others even though the end service being provided to the consumer may be same. For example Cable industry and IPTV services have different FDI limits even though the end service is the same.

c) Disputes/ opportunities for arbitrage:- Divergent regulation gives an opportunity to some market players to exploit this divergence and engage in arbitrage by zeroing in on high profit niche market that have been created by regulation. The arbitrage gives rise to various disputes and leads to avoidable litigation. Convergence is not limited to technological convergence only and market related convergence is also happening around the world. This trend is giving rise to competition between different sectors of telecom and broadcasting industries. This consultation paper gives a roundup of the emerging technological, market and regulatory developments around the world and the possible way forward for India.

Convergence is a very general term and it means different things to different people. Convergence covers provision of different services through same technology as well as

provision of same service through different technologies and platforms. There is convergence of technologies in telecom and broadcasting on account of digitalization and increasing use of IP technology. At the same time there is market related convergence in Information, Communication and Entertainment markets.

Convergence is touching everyday lives of people around the world. From downloading of ringtones in mobile phones by individuals to large scale call-centres and BPO services, convergence is present in one form or the other all around us. Convergence has had a profound impact on markets, economy and consumers.

Convergence is a worldwide phenomenon and different countries are trying to deal with convergence in different ways. Each country tries to solve the problems thrown up by convergence in its own unique way. A study of the regulatory approach adopted by different countries gives clues about possible solutions to these problems.

The first move to harness the benefits of the converged technologies to meet the growing social and commercial needs in India was made when The Communication Convergence Bill, 2001 was introduced in Lok Sabha on 31st August 2001. The Bill proposed to combine and bring under the purview of the Commission the licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors. However, the bill could not get through the Parliament and in the absence of a statutory converged regulatory framework, the TRAI recommended introduction of Unified Licensing Regime in India to keep pace with technological and market developments[181].

Four categories of licenses, namely Unified License, Class License, Licensing through Authorization and Standalone Broadcasting & Cable TV Licenses were recommended (with Unified License at the highest hierarchical level). Such a licensing regime would have enabled a licensee to provide any or all telecom services by acquiring a single license. TRAI suggested that the development in international telecom and broadcasting markets and technological developments are indicators that a country like India with a huge market for telecom services should introduce a converged regulatory regime. This will eliminate the possibility of litigation on the account that service providers are offering services which are not covered in their licensing regime. Any regulatory hindrance in deployment of such technologies would result in not taking full advantage of technological developments which is not desirable. This is specially so for a fast growing economy like India which presently has low levels of subscriber base for all services and therefore a huge potential of growth for triple play (and more) services[182]. With technology converging there

[181] http://www.trai.gov.in/trai/upload/ConsultationPapers/4/cpaper2jan06.pdf
[182] See consultation paper by TRAI on January 2, 2006

is in fact no option but for regulation to converge especially in the areas of Spectrum Allocation, Interconnection Regulations, Foreign Direct Investment.

Role of State: Initially in the common law countries the state involvement in the sector was conspicuously absent. The attempt was to let the normal rules of markets and contracts regulate the sector. But the obligation to provide degree of service satisfaction and the principles of access to all with the threat of monopolies led to the United Kingdom Nationalization of services in 1911.[183] The United Kingdom followed the government monopoly in telecom for next 70 years. In the United States the response was to leave service providers in private hands, promoting the private monopoly of AT&T, while simultaneously creating specific obligations through highly technical regulation, under the Communications Act of 1934, administered by the Federal Communications Commission. Thus in the US the materialization of law in the telecommunications field came early[184].

With the policies of privatization and liberalization being followed in other common law countries, the European Union began to look towards the United States to develop a regulatory character in the telecom sector. In UK in the 1984 the policy of liberalization came in and the materialization of law did occur but with the detailed provisions on the Universal Service Obligation and the Interconnection. These were to achieve the socio – economic goals with the private investment and legal rules were framed to that end.

The government and its ministers but the Office of Telecom did the determination of policy. The other country which can be seen to evolve a telecom law paradigm was New Zealand, here the govt. avoided the creation of detailed regulatory rules and institutions but left the general competition norms to govern the telecom sector. Here it needs to be mentioned that the rules could be the general competition norms or the sector specific regulation like the universal service obligation or interconnect rules.

Among the chief external stimuli for the more generalized rules for the telecommunication regulation is the emergence of convergence and globalization. The emergence of the convergence of telecommunication, broadcasting and computing sectors renders the sector specific regulation as a potential barrier to the market and techno changes that would occur. The regime, which is required in such a situation, is that which is technology neutral. The globalization has resulted in the national being superseded by the international norms as are given by the WTO or the EU. Further pressure for generalization of norms arises from the use of a principle of reciprocity as the basis for bilateral agreement on access for foreign companies to national telecommunications markets.

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[183] Scott C, 'The Proceduralization of Telecommunications Law: Adapting to Convergence', 1997 (3) ./issue/1997_ *The Journal of Information, Law and Technology (JILT).* <http://elj.warwick.ac.uk/jilt/wip/97_3scot

[184] ibid

The decontextualisation of the sectors is occurring at a rapid pace this leads to a situation where the norms for the telecom, media and the computing are made taking into consideration the broader information society apparatus.

The role of courts: The development of highly specific sectoral rules has largely been the work of legislatures. The courts, with a preference for norms of general application, have exhibited a number of contrasting reactions to the complexity and specificity of telecommunications regulation. In some instances they have attempted, either implicitly or explicitly, to unpick highly detailed regimes, by attempting to reassert general values. Such an approach was most marked in the United States, where the assertion by the courts of general anti-trust rules, which reached its climax in the AT&T decision of the District Court of Columbia in 1982, was only reversed through new federal regulatory legislation in 1996. Were this approach of the courts to predominate an increase in litigation associated with liberalization would be likely to provide further pressure for generalization of norms. A second response has been for the courts to throw their hands up in the air on seeing the complexity of the issues they are required to adjudicate on, discouraging the pursuit of preliminary actions to full hearings[185] or refusing to have the court used as the forum for the resolution of such a technical dispute.[186]

In some instances the courts have shown themselves inclined to dilute or substantially reject the specificity of regulatory regimes through the application of more general principles. In *Clear Communications* the Privy Council effectively rejected arguments that had persuaded the New Zealand Court of Appeal, that the application of competition rules in relation to abuse of dominant position had to be tailored to the specific character of the telecommunications sector.[187] In *Scottish Power* the Court of Appeal held the system of individual licence modifications was effectively subject to duties to consider whether to modify other licences in similar circumstances, implicitly arguing for general rather individuated rules in that sector.[188]

In India the experience of the Telecom Regulatory Authority of India with the courts is full of the above complexities, the court in *The Delhi Science Forum Case.*

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[185] *Mercury Communications Ltd v Director General of Telecommunications*, (Court of Appeal, unreported) noted in *Utilities Law Review* 1994 5 103-105. See also the House of Lords decision: [1996] 1 All ER 575.

[186] *Clear Communications v Telecom New Zealand* Privy Council

[187] ibid

[188] *R v Director General of Electricity Supply ex p Scottish Power* (Divisional Court, unreported) noted in *Public Law* [1997] (3) (forthcoming). Contrast the more hands-off approach of the Court of Appeal in *R v Director General of Telecommunications ex p British Telecom* (unreported) noted in *Utilities Law Review* (1997) 8 82-83.

5.2 Evolution of Convergence Law in India:

The 1995 judgement of the Supreme Court in the case of *Secretary Ministry of Informaton and Broadcasting V The Cricket Association Of Bengal*[189], Justice B.P. Jeevan Reddy and Justice Sawant for the first time went into the dynamics of electronic media. The case related to the denial of uplinking facility to private broadcasting Company to which the Board of Control Of Cricket in India had given right to telecast cricket matches for a tournament called HERO CUP. The petitioners the Cricket Association of Bengal went to the court on the denial of this right by the DoT and the Government of India. The court held the following :

Airwaves constitute public property and must be utilized for advancing public good. No individual has a right to utilize them at his choice and pleasure and for the purposes of his choice including profit. The right of free speech guaranteed by Article 19 (1) (a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance with such statute. Airwaves being public property, it is the duty of the State to see that airwaves are so utilized as to plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured. The free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing. Conceding such a right would be detrimental to the free speech rights of the body of citizens in as much as only a privileged few - powerful economic, commercial and political interests - would come to dominate the media. By manipulating the news, views and information, by indulging in misinformation and disinformation, to suit their commercial or other interests, they would be harming - and not serving - the principle of plurality and diversity of views, news, ideas and opinions. This has been the experience of Italy where a limited right, i.e., at the local level but not at the national level was recognised. It is also not possible to imply or infer a right from the guarantee of free speech, which only a few can enjoy.

Broadcasting media is inherently different from press or other means of communication / information. The analogy of press is misleading and inappropriate. This is also the view expressed by several constitutional courts including that of the United States of America" The court further noted that "Having regard to the revolution in information technology and the developments all around, Parliament may, or may not, decide to confer such right. If it wishes to confer such a right, it can only be by way of an Act made by Parliament. The Act made should be consistent with the right of free speech of the citizens and must have to contain a strict programme and other controls, as has been provided, for example, in the Broadcasting Act, 1991 in the United Kingdom. This is the implicit

[189] *(1995) 2 S.C.C. 161, 252, 298-301*

command of Article 19 (1) (a) and is essential to preserve and promote plurality and diversity of views, news, opinions and ideas.

These were the important words, which laid the foundation of the autonomy of broadcasting media in the country. Here the court declared the Air Waves as public property and their use to be in the public interest. And also called upon the parliament to enact the separate broadcasting Act in the country. This judgement could be said to be the genesis of Convergence. Subsequently various acts to regulate cable TV and Broadcasting Bill along with the notification of the Prasar Bharti were important.

In December 1998 the Prime Minister constituted a group under the Chairmanship of the Finance Minister to expeditiously implement the Telecom Policy 1999 whilst taking into account the increasing convergence between telecom and IT[190]. Accordingly, a GROUP on Telecom and IT Convergence was duly constituted under the Chairmanship of the Finance Minister by Government of India notification dated December 13, 1999 issued from the Prime Minister's Office.

5.3 The Report of Sub-Group: Telecommunications to include Broadcasting:

Sub-Group I in its Report made certain recommendations for strengthening the TRAI Act. A portion of this Report of Sub-Group I is given below:

The Subgroup(I) discussed the issue of a common authority for broadcasting and telecom. While appreciating the need of a single regulatory authority to regulate both telecom and broadcasting rather than create separate authorities for regulating broadcasting, IT, etc. the Subgroup felt that the nature of disputes in the broadcasting industry were quite different and the number of players too large. It would, therefore, not be prudent to burden the TRAI with this additional responsibility. However, keeping in view the fact that integration of the two sectors was taking place very rapidly in the wake of technological convergence, the Subgroup felt that there was a need to have an enabling provision in the TRAI Act by amending the definition of Telecommunication Service under Section 2 (1) (k) so as to include broadcasting services.

Thus, the possibility of "telecommunication services" being widened to include "broadcasting" in all its aspects was clearly envisaged in the Report of Subgroup I.

Meanwhile the Interim Report of Sub Group III, which was on Convergence, was circulated to members of the GROUP on January 13th, 2000. The tentative conclusion of the report were: It was necessary to differentiate between carriage of information and content

[190] THE FINAL DRAFT REPORT OF THE SUB-GROUPON CONVERGENCE (Dated 11-8-2000) , www.indiantelevision.com

through various different technologies. There has been a convergence of various media especially at the infrastructure level. At that time in the interim report the group had recommended that the Broadcasting Bill. Information Technology Bill was adequate. Hence only the carriage of the information was left to be provided for, this was recommended to be under the broad guidelines issued under the NTP 99, the group recommended that in the new enactment the structural framework of the Indian Telegraph Act was to be retained[191].

(A) Maximum convergence is occurring in the area of access network (telecommunication including data communication) or local delivery services (broadcasting). This is because technological developments now permit the network used for carrying broadcasting signals to the customer premises, namely cable TV network, to be used for purposes of carrying telecommunication and data (including Internet) signals also. Likewise, the telephony access network i.e., the network-connecting subscriber to the telephone exchange can be used for carrying broadcasting signals. In a similar manner, the web - casting function utilised for Internet data transfer though a telecommunication service uses the broadcast mode. All this convergence could not be achieved without inevitable conflict if the licensing authority for telecommunications and for broadcasting services were different and separate.

(B) The regulatory function in the case of telecommunication service is being performed by the Telecom Regulatory Authority of India. (Under the 1997 Act). This Authority, which has been formed under the TRAI Act, has been given the function only of regulation of telecom services. On the other hand the Broadcasting Regulatory Authority of India proposed in the draft-broadcasting bill is to cover regulation of broadcasting services as well as licensing of the broadcasting service. It is felt by this Subgroup (and we do so recommend) that there should be a single regulatory authority for both broadcasting services as well as telecom services. [192]

(C) Third, the GROUP observed that in the communications sector where there was rapid technological change , the traditional "*Command and Control*" had lost their relevance and there was need to encourage more self regulation , by the industry, hence the group was of the opinion that the new enactment should be a *reflexive* law. Hence the Commission recommended , "With this object in view we have recommended the setting up of an independent autonomous Commission, which would continuously interact with various sectors of industry to help set standards and formulate regulatory norms - both as to content and as to carriage of information. The crucial topic of "regulation" is, basically the problem of the use and abuse of power: we envisage that this problem be addressed, in the present context, by using power to advance, facilitate and encourage the growth of technological and

[191] Cl. 5 (1),(2),(3) of the final report.
[192] See cl. 12 (1)(a) (b)

social development, thus reducing (if not eliminating) the chances of abuse of power by providing mechanisms ensuring the appointment of highly qualified and independent persons of integrity as members of the autonomous Commission"[193]

5.4 The Convergence Bill 2000 and Communication Commission of India

The title of the Statute was proposed to be "**The Communication (Carriage and Content) Bill**, 2000. The objectives and the long title of the recommended law were adopted in the Communication Convergence Bill, 2000 as tabled before the Parliament. Further the Group recommended the creation of a commission called the Communication Commission of India, in order to secure the independence of the functioning of the commission, it was recommended that any member or the chairperson can only be removed by the President on the grounds of misconduct or non performance on a enquiry made by the retd. Or a sitting Supreme Court judge. This was necessary to keep the commission free from any kind of political interference. The kind of regulatory structure envisaged can be summarized as, "It is expected that the Commission will be able to take a broad view of the converging sectors, and to respond flexibly to the emergence of new services, as also ensure a consistent approach to regulation of related activities. As different organisations diversify their activities across the convergent sectors, a regulator with the breadth scope and expertise expected of this Commission would (it is hoped) make the law move to new heights of achievement.

However, there are concerns about the transparency and accountability of a single regulatory body: and we have suggested provisions to help overcome these misgivings in the new statute.

We continue to support the principle that Independent Regulators must conduct regulation on an arms-length basis. Without this, the risk of ad-hoc political involvement in economic regulation will increase regulatory risk, and influence adversely the ability of companies to invest and operate in a settled climate. This principle is even more significant and sensitive in connection with the regulation of content. It is now accepted in most countries that Governments must be seen to stand back from controls, and confine themselves to setting up a general institutional framework"

Another important recommendation was that the Chairperson and the members be appointed by a collegiums comprising :

(a) the Prime Minister;
(b) the Leader of Opposition in Lok Sabha;
(c) Leader of the House in the Rajya Sabha
(d) Leader of the Opposition in the Rajya Sabha

[193] Cl 12 (1)(c)

(e) the Minister in charge of Information and Broadcasting and Minister in charge of Communication in the Central Government."

Clause 3 of part IV give the exhaustive list of functions of the Commission and the appellate body. The functions envisaged by the commission are exhaustively laid down by the GROUP, each and every minor function is taken care of. But this in the researchers opinion goes against the whole spirit with which the GROUP wanted to suggest a Technology neutral regime , which would be very compact and for the sake of rely on the subordinate legislation.

Licensing :

Grant of Licenses

(A) Generally:

(1) Generally, it is recommended that conditions and prescriptions for granting licenses by the Commission should be left to be provided for by regulations to be framed (by the Commission) under the Act.

(2) However with regard to Licenses for content obligation services (i.e. principally in the realm of Broadcasting) it may be preferable to enumerate them in the statute, leaving a residual item of content principles/conditions to be provided for by regulations.

(3) The content - obligations to be stated in the statute will be :

(1) The Commission may from time to time determine by regulations such obligations, conditions and restrictions subject to which the licensee will provide his services.

(2) The service provider of a Content Application Services shall, amongst other, follow the programme standard and codes set and published by the Commission. Ensure that a minimum percentage of programmes (to be determined by the Commission) shall be of Indian origin. include only such programmes in his service for which he has obtained the necessary copyrights;

(3) The licensee for Direct-Home-Delivery service and Local Delivery service shall, amongst other, provide a specified number and type of broadcasting services of the public service broadcaster and in such manner as may be prescribed include only licensed services or registered services in his delivery package for the purposes of distribution; use not more than such number of channels as determined by the regulations out of the total channels capacity of the system for providing its own programming.

(B) The Commission should be specifically empowered to grant licenses in respect of all or any service/services except such specific service/services as are not permitted to be licensed.

(C) It has been suggested that consultation with the Central Government should be mandated

when the Commission exercises its licensing functions. But in the considered opinion of this Sub-Group, this suggestion is neither feasible, nor will it be practicable or workable; "In consultation with" does not mean "with the concurrence of"; to provide for the former would only involve needless duplication, whereas the latter would make the setting up of an independent Commission a meaning-less exercise. This Sub group considers that the Sovereign interests of the State will be sufficiently safe guarded: (a) by our proposal that service or services not permitted to be licensed would remain within the discretion of the Central Government, provided such services are duly notified in the Official Gazette and (b) by the further stipulation that in exercising its licensing and regulatory functions the Commission shall follow such policy - directives and policy guidelines as may be communicated to it in writing by the Central Government from time to time.

Other Licensing Provisions Our recommendations are as follows[194]:

1. The Commission may grant licenses for the following categories, viz:
(i) Network facilities
(ii) Network services
(iii) Application services
(iv) Content Application services

The commission shall grant licenses subject to terms and conditions which shall be published and decided by the commission, this may include some amount of fees, and for a limited period of time. After the commencement of this act no person shall be allowed own or provide any service under the act , without license. It was also recommended that the licenses already issued under the Telegraph Act, 1885 shall be deemed to be issued under the provisions of this act. And central govt. by notification may provide for exemption in case of common ownership and non – commercial nature.

5.5 Analysis of the Communication Convergence Bill, 2001 [195],

Increasing need for regulation and inadequacy of existing law are the important reasons behind the attempt to frame new convergence legislation. Convergence means the provision of different kinds of services to provide a wide variety of services with the available infrastructure and also providing for the enhancement of existing technologies. It is a relatively new phenomenon. It is also not possible to predict the emergence of new services with rapid development of new technology. The existing regulatory mechanism is inadequate in dealing with the emerging needs of new media convergence. Furthermore, the existing

[194] Cl 4.2 of part 4

[195] PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA. [Copy of letter No. 13-7/2001-Restg. Dated 29th August, 2001 from Shri Ram Vilas Paswan, Minister of Communications, to the Secretary-General Lok Sabha] The President, Convergence Bill, 2001 recommends the introduction and consideration of the Communications Convergence Bill, 2001 in the House..

licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors are currently spread over different authorities. Therefore a flexible type of legislation to accommodate and encourage permutation and combination of technologies and services is required. The Communication Convergence Bill proposes to establish a structured mechanism to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia) in the scenario of increasing convergence of technologies.

The Bill aims at facilitating development of national infrastructure for an information based society, and to enable access thereto; providing a choice of services to the people with a view to promoting plurality of news, views and information; establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

These objectives are proposed to be achieved by setting up an autonomous body to be known as Communications Commission of India with wide ranging powers, duties and functions. The head office of the proposed Commission shall be located at Delhi, and its regional offices shall be located at Kolkata, Chennai and Mumbai. The Commission shall consist of a chairperson, not more than ten Members and the Spectrum Manager as an ex-officio Member. The chairperson and Members, other than the ex-officio Member, shall be appointed by the Central government from amongst persons of eminence recommended by a Search Committee from fields such as literature, performing arts, media, culture, telecommunications, law, broadcasting technology, information technology, finance etc.

The Bill proposes to combine and bring under the purview of the Commission the licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors. It is also proposed to replace large number of categories of license with the following five broad categories to enable service providers to offer a range of services within each category, namely: -

(a) to provide or own network infrastructure facilities;
(b) to provide networking services;
(c) to provide network application services;
(d) to provide content application services;
(e) to provide value added network application services

This flexible licensing regime is expected to optimize the use of resources and encourage the development of infrastructure. The information technology enabled services such as call centers, electronic-commerce, tele-banking, tele-education, tele-trading, tele-

medicine, videotex, video conferencing shall not be licensed under this legislation and all the facilities and services exempted from licensing or registration immediately before the commencement of this legislation shall continue to be so exempt, until otherwise notified.

The Commission is envisaged to be involved in the assignment of the spectrum; it will carry out frequency management, planning and monitoring for non-strategic or commercial usage of spectrum; determine appropriate tariffs and rates for services; facilitate and regulate all matters relating to the carriage and content of communications; promote competition; take measures to protect consumer interest and promote and enforce universal service obligations; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities; report and make recommendations either suo motu or on such matters as may be referred to it by the Central Government etc.

The Commission is also proposed to be empowered with dispute resolution functions and will have the power to appoint Adjudicating Officers. It is also proposed to set up an Appellate Tribunal, to be known as the Communications Appellate Tribunal, to hear appeals against decisions or orders of the Commission, or against orders of Adjudicating officers imposing civil liabilities. The jurisdiction of the Appellate Tribunal may be exercised by its Benches, which shall ordinarily sit at Delhi and at such other places as may be notified. The Appellate Tribunal shall consist of a Chairperson and not more than six members. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a judge of the Supreme Court and shall be appointed in consultation with the Chief Justice of India. The members of the Appellate Tribunal shall be appointed from amongst persons recommended by the Search Committee and they should be, or should have been, Judges of High Court or should have held the post of secretary to the Government of India or any equivalent post in the Central Government or a State Government for a period of not less than two years, or should be persons who are proficient in any of the fields specified for appointment as Members of the Commission.

Repealing of Old Legislations:

The Bill proposes to repeal the following legislations namely: -

(a) The Indian Telegraph Act 1885.
(b) The Indian Wireless Telegraphy Act 1933.
(c) The Telegraph Wires (Unlawful possession) Act 1950.
(d) The Telecom Regulatory Authority of India Act 1997.
(e) The Cable Television Networks (Regulation) Act 1995.

The Bill also provides that with effect from the dates of establishment of the Commission and of the Appellate Tribunal, the Telecom Regulatory Authority of India and

the Telecom Disputes Settlement and Appellate Tribunal respectively, established under the Telecom Regulatory Authority of India Act 1997, shall stand dissolved and proceedings pending before them shall stand transferred and deemed to be pending respectively before the Commission and the Appellate Tribunal.

Section 1 of the proposed law provides for application of the proposed legislation to the entire country and for appointment of different dates for commencement of different provisions of the proposed legislation. Section 2. of the Bill defines the various expressions occurring in the proposed legislation.

Under the sec. Broadcasting Service[196] is defined as , "Broadcasting service" means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service, but does not include –

(a) a service (including a teletext service) that provides only data, or text (with or without associated still images); or
(b) a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; or
(c) a service, or a class of services, that the Central Government may notify as not being a broadcasting service;

Further, A Channel means a set of frequencies used for transmission of a programme[197]. "communication"[198] means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electromagnetic emissions "communication service"[199] means a networking service or network application service or value added network application service or a content application service; "content"[200] means any sound, text, data, picture (still or moving) other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically"."content application service"[201] means an application service which provides content meant for the public and includes such other services as may be prescribed; "frequency"[202] means frequency of electromagnetic waves used for providing a communication service; "network application service"[203] means the service provided by means of one or more networking services and includes such other services as may be prescribed; "network infrastructure facilities"[204] means any element or

[196] S. 2 (3) of the bill .
[197] S.2 (5)
[198] S.2 (7)
[199] S.2(8)
[200] S.2 (9)
[201] S. 2 (10)
[202] S. 2. (11)
[203] S. 2 (16)
[204] S. 2 (17)

combination of elements of physical infrastructure, which would be utilised by licensees for providing networking services and includes such other facilities as may be prescribed; "network service"[205] means a service for carrying communications by means of guided or unguided electromagnetic waves and includes such other services as may be prescribed; "post"[206] means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility; "programme"[207] means - television or radio programme including advertising or sponsorship, whether or not of a commercial kind, and broadcast programming shall be construed accordingly; "programme code"[208] means the code specified under section 20; Under S. 2 (24) the public authority includes the Central Government; a State Government; any person, agency or organisation engaged in land development for public use, or in roads for public transportation; any local authorities legally entitled to, or entrusted by the Central or any State Government with, the control or management of any municipal or local fund; and any institution, concern or undertaking or body which is financed wholly or substantially by funds provided directly or indirectly by the Government that may be specified by notification in this behalf by the Central Government. "public service broadcaster"[209] means any body created by Act of Parliament for the purpose of public service broadcasting. "service provider"[210] includes any person who provides a communication service;" spectrum"[211] means a continuous range of continuous electromagnetic wave frequencies upto and including a frequency of 3000 giga hertz; "Spectrum Manager"[212] means Wireless Advisers to the Government of India notified as Spectrum Manager, Government of India under sub Section (3) of section 23; "subscriber of a service"[213] means a person who subscribes to a communication service primarily for his own use; "Universal Service Obligation"[214] - means obligation as may be prescribed;. "value added network application service"[215] means the service provided by means of value addition using one or more network application services and includes any article or apparatus as may be prescribed; "wireless equipment"[216] means any equipment in use or capable of use in wireless communication and includes any article or apparatus as may be prescribed;" wireless communication"[217] means any communication without the use of wire or cable.

[205] S. 2 (18)
[206] S. 2 (20)
[207] S. 2 (22)
[208] S. 2 (23)
[209] S. 2 (25)
[210] S. 2 (29)
[211] S. 2 (30)
[212] S. 2(31)
[213] S. 2 (32)
[214] S.2 (33)
[215] S. 2 (34)
[216] S.2 (35)
[217] S.2 (36)

Further the definitions of licensee, licensor, communication commission etc. are also defined in the section. The above definitions are the of the techchnical terms used in the Act. Most of the have also been defined in the other statutes dealing with the Telecom and Broadcasting.

Chapter II of the proposed legislation deals with the regulation of use of spectrum, communication services, network infrastructure facilities, and wireless equipment.

s. 3 provides that no person shall use any part of spectrum without assignment from the Central Government or the Commission as provided for in the proposed legislation.

Further S. 4 provides that no person, other than a public service broadcaster, shall own or provide any network infrastructure facility[218] or provide any networking service or any value added network application service or any content application service without a license or registration[219]. Proviso to the clause stipulates that that all facilities and services exempted from licensing or registration immediately before the coming into force of the proposed legislation shall continue to be so exempt under the proposed legislation, until otherwise notified. Further it provides that the Central Government may by notification exempt any person, or class of persons or any facility or service from the provisions of this clause[220].

Further under S. 5 the act provides that no person shall possess any wireless equipment without obtaining a license under provisions of the proposed legislation. It also provides that the Central Government may, in public interest, by a notification exempt any person or class of persons or any wireless equipment or class of wireless equipment from the provisions of this clause. It further states that any licenses issued or any persons or equipments previously exempted from the licensing requirements shall continue to be valid until a further notification is issued[221].

Chapter III of the proposed legislation is dedicated to the formation , structure , functions and objectives of the Communication Commission to be established under the act. It provides[222] for the establishment of the Communications Commission of India with its head office at Delhi and regional offices at Kolkata , Chennai and Mumbai. The Commission will be a body corporate having perpetual succession, a common seal and shall by the said name sue and be sued.

[218] S. 4 (1) (a)
[219] S. 4 (1) (b)
[220] S. 4 (2)
[221] S. 5 (2)
[222] S. 6

The commission shall consist of a chairperson , not more than ten Members and the Spectrum Manager as an ex-officio Member. The Chairperson and not less than six Members other than the ex-officio Members and the remaining shall be part-time Members.

Section 7 talks of the appointment and qualification of members and chairperson, it provides that the Members of the Commission (except the ex-officio Member) shall be appointed by the Central Government from amongst persons recommended by a search committee. One half of the Members shall be appointed from amongst persons of eminence in the fields of literature, performing arts, media, culture, education, films and from persons prominent in social and consumer activities, while one half of the members shall be appointed from amongst persons of eminence in specialized fields such as telecommunications, broadcasting technology, information technology, finance, management and administration, or law. The Chairperson shall be a person of eminence from any of the fields mentioned above. Before appointment the Central Govt. has to satisfy itself that the person to be appointed has no financial or other interest, which could prejudicially affect his functions.

Section 8. Provides that the Chairperson and a whole time Member shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 65 years, whichever is earlier, and he will not be eligible for reappointment. Further it provides that tenure of a part time member shall be such as may be prescribed[223].

Section 9 deals with circumstances under which, and the procedure for removal of Chairperson and Members from office, section gives an illustrated list of the conditions where a person can be removed from the commission.

Section13. provides for the Commission to determine the procedure for the transaction of business in its meetings including times and places of its meetings. It also provides that if the Chairperson and a member abstains himself from three consecutive meetings, without leave, he is deemed to have vacated his office.[224]

Section 14. Provides for the powers of the civil court under the Civil Procedure Code 1908 to discharge its functions. Sub clause 3 of the section further provides that the commission shall not be bound by the code of civil procedure but shall be guided by the principles of natural justice..

[223] It also gives the power of general supervision and of resignation and prescribes that the chairperson shall preside over the meetings of the commission.
[224] S. 13 (2)

Section 16. provides that the Commission may set up a Panel from amongst its Members to deal with matters in relation to the content in content application services[225]. It also provides that, the Commission may distribute its business amongst its Members; it also provides that the Commission may authorize officers of the Government[226] to implement and carry out orders and directions of the Commission[227].

Chapter IV of the act defines the powers, Functions and duties of the commission. Section 18 indicates that while exercising its functions, the Commission shall strive to achieve objectives and principles governing the administration of the proposed legislation which inter alia include that the communications sector is developed in a competitive environment and in consumer interest, that communication services are available at affordable cost to all, that choice of services is promoted, that defence and security interests of the country are fully protected, that equitable and non - discriminatory interconnection across various networks are promoted, that licensing and registration criteria are transparent and made known to the public and that the principle of a level playing field for all operators is promoted so as to serve consumer interest[228].

Section 18 stipulates the powers, duties and functions of the Commission. It lays down that it shall be the duty of the Commission to facilitates and regulate all matters relating to carriage and content of communications. The commission shall also inter alia carry out spectrum management, planning and monitoring for non-strategic or commercial usages; promote competition and efficiency in the operation of communication services and network infrastructure facilities; take measures to protect consumer interests and promote and enforce Universal Service Obligations; formulate and lay down programme and advertising codes in respect of content application services; take steps to regulate or curtail the harmful and illegal content on the internet and other communication services; formulate and lay down codes and technical standards and norms to ensure in a technology neutral manner the quality and interoperability of services and network infrastructure facilities (including equipment); institutionalize appropriate mechanisms and interact on a continual basis with all sectors of industry and consumers, so as to facilitate and promote the basic objectives of the proposed legislation to encourage self regulatory codes and standards; and report and make recommendations either suo- moto or on such matters as may be referred to it by the Central Government. It has also been provided that while exercising its powers and discharging its functions, the Commission shall ensure transparency[229].

[225] S. !6 (1)
[226] DM and SDM can be delegated power to ensure compliance by the commission orders.
[227] S. 16 (4)
[228] S. 17 gives the exhaustive list of the objectives and guiding principles.
[229] S. 18 gives the exhaustive list of the various functions of the commission.

Section 19 gives the power to the Commission, that it may at any time make recommendations to the Central Government with regard to any particular practice that impinges upon or adversely affects the interests of the security, sovereignty and integrity of India, friendly relations with foreign states, public order, decency or morality.

Section 20 of the statute is very important as it provides the power to the commission to lay down the program codes, the Commission shall by regulations specify programme codes and standards which may include inter alia practices to ensure that nothing is contained in any programme which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, public order or which may constitute contempt of court, defamation or incitement to an offence; practices to ensure fair and impartial presentation of news and other programme, promotion of Indian culture, values of national integration, religious and communal harmony, decency in portrayal of women, restraint in portrayal of violence and sexual conduct and to enhance general standards of good taste, decency and morality etc[230]. Hence under the Section the Commission will be the moral policeman of the society and can decide what the society should watch in the best interest of the Nation and the Culture, this provision has a potential to be misused, as has been seen so many times that our Censor board becomes the moral guardian of the society. Each individual or the policymaker or the govt. will want to promote its own policy and ideology, this could lead to misuse of communication sector.

Section 21 provides for the Commission to decide any dispute or matter between service providers, between service providers and a group of consumers or any matter arising out of enforcement of the proposed legislation. The commission shall also hear and determine any complaint from any person regarding contravention of the provisions of the proposed legislation or the rules regulations or orders made thereunder and if necessary refer the matter for adjudication to the adjudication officer established under the act. Chapter 10 deals with adjudicating machinery.

Section 22. Empowers the Central Government to issue policy directives to the Commission which may include the procedure and the mode in which any services are to be licensed or registered. It has further been provided that in framing the policy directives, the Central Government shall take into account the objectives and guiding principles governing the administration of the proposed legislation. Hence the Central govt. would retain overall control by issuing policy directives, which shall be mandatory to be followed by the commission. The commission can only request the central govt. to review a particular directive[231]. Ideally the policy should be formulated by the Central govt. in consultation with

[230] S.20 lists out the specific provisions.
[231] S. 22(4)

the commission, as the commission in handling the affairs would be better equipped to advise the govt. on the problems of the industry and the consumers.

Section 23. provides that the Central Government shall be responsible for spectrum management and also for allocation of spectrum for strategic and non strategic or commercial purposes. This clause also sets up a Spectrum Management Committee with Cabinet Secretary as its Chairman. This also lays down that the Central Government shall notify Wireless Advisor to Government of India as Spectrum Manager, Government of India to act as the Member -Secretary of the Spectrum Management Committee. It also sets out, subject to the general supervision and control of the Spectrum Management Committee, the functions of the Spectrum Manager, and that he shall assign frequencies on payment of such fees as may be prescribed. This is another very important provision of the Act as the effective Spectrum management is the important for development of broadcasting and telecom industry. IT is also to be acknowledged that the spectrum is Scarce and hence has to be effectively used.

Section 23 (4) lays down the functions of the spectrum manager: (i)to co-ordinate with international agencies, matters relating to overall spectrum planning, use and its management; (ii) to carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including those of defence , national security and of the public service broadcaster. (iii) to allocate frequencies or band of frequencies including frequencies which are to be assigned by the Commission; and reassignment of frequencies from time to time. (iv) to review constantly and make available as much spectrum as possible for assignment by the Commission, in particular by optimizing usages, and. (v) monitoring as appropriate, in consultation with the Commission, the efficiency of the utilization of the spectrum by all users including investigation and resolution of spectrum interference; and (vi) after meeting the requirements of the Central Government and of State Governments for fulfilling their vital needs including those of defence, national security and public service broadcaster, the Spectrum Manager shall make the spectrum available, to the maximum extent possible, for assignment by the Commission, both in the shared as well as in the exclusive bands

Section 24. Provides for assignment by the Commission of spectrum to non-strategic and commercial users and the procedure for dealing with requests by the Commission for allocation of additional spectrum. It states that the Commission shall freely assign only the frequencies allocated to it and in case the frequency band is not exclusively allocated to it then the commission would consult the Spectrum manager.[232]

[232] S. 24 (1)

Section 25. Provides that before assigning any part of spectrum, the Commission shall prepare and notify from time to time one or more schemes or plans for such assignment, after such public hearing as the Commission may consider appropriate. It also empowers the Central Government to notify the class or classes of persons or services for preferential assignment of any frequency of spectrum by the Commission.

Chapter 7 of the Act deals with the License or registration Section 26 provides for the grant of license or registration under this Act to service providers subject to such conditions, restrictions ,fee, tariffs and rates etc at which facilities and services will be provided, as may be determined by the Commission, which may also determine the conditions for grant or transfer of license or registration. The commission shall also notify from time to time schemes or plans for licensing or registration after consulting the Central Government for ensuring that the defence and security interests of India are fully protected. This clause further provides for the five categories of licenses namely

1. to provide or own network infrastructure facilities[233]
2. to provide networking services[234]
3. to provide application services[235].
4. to provide content application services[236]
5. to prove value added network application services such as internet services and unified messaging services[237].

The Clause however also clarifies that information technology enabled services will not be licensed. The Commission may, while granting a license under the above said categories, grant licenses either singly or jointly for one or more of the categories of facilities or services. Further clause provides that a license or registration shall be granted for such period, in such form and subject to payment of such fees as determined by the Commission. It also provides that the Central Government may in public interest exempt any person or class of persons from payment of license or registration fee[238].

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[233] For the purposes of this clause, network infrastructure facilities shall include earth station, cable infrastructure, wireless equipment, towers, posts, ducts and pits used in conjunction with other communication infrastructure, and distribution facilities including facilities for broadcasting distribution

[234] For the purposes of this clause, networking services shall include band-width services, fixed links and mobile links

[235] For the purposes of this clause, network application services shall include public switched telephony, public cellular telephony, global mobile personal communication by satellite, internet protocol telephony, radio paging services, public mobile radio trunking services, public switched data services and broadcasting (radio or television service excluding continued);

[236] For the purposes of this clause, content application services shall include satellite broadcasting, subscription broadcasting, terrestrial free to air television broadcasting and terrestrial radio broadcasting

[237] For the removal of doubts, it is hereby declared that information technology enabled services such as call centers, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex and video conferencing shall not be licensed under this Act.

[238] S. 27

Section 28 is another very important clause which stipulates the duties of service providers. It inter alia provides that every service provider shall wherever required or applicable provide services to give effect to universal service obligations[239], provide life saving services[240], provide services to any person on demand with a reasonable time and on a non-discriminatory basis[241], and follow the codes and standards laid down and specified by the commission[242]. It also lays down that every service provider of a content application service shall, endeavor to provide a suitable proportion of programme of indigenous origin and ensure that no programme forming part of its services infringes any copy right. It further stipulates that every service provider holding a license for providing distribution of broadcasting services shall provide a specified number and type of broadcasting services including those of the public service broadcaster in such manner as may be prescribed. This section is important because it casts a duty on the license holder towards the society, so that all people of all regions without any discrimination have access to Communication facilities of all types. Especially a duty is cast on the Broadcaster to promote indigenous programming and have due regard to copyright laws with respect to that programme. This implies that broadcaster cannot show pirated DVDs and CDs of latest movies. Obligation is also cast to show specified number of channels of public broadcaster.

Further clause provides that certain agreements entered into or made by any service provider or infrastructure facilities provider will be registered with the Commission, within sixty days[243].

The lone section under chapter 8 deals with the stipulation that , any person who intends to possess wireless equipment shall have to register with the commission by filing an application[244].

Section 31[245] provides that for the purpose of ensuring the widest availability of viewing in India of a national or international event of general public interest to be held in India, such event will have to be carried on the network of the public service broadcaster(s) as well. It also provides that such event shall be notified well in advance so as to provide level playing field to other broadcasters and bidders.

This section has wide ramifications especially on sporting events like Cricket matches, which will be mandatory to be telecast by the public service broadcaster so that it is

[239] S. 28 (1) (i)
[240] S. 28 (1)(ii)
[241] S. 28 (1)(iii)
[242] S. 28 (1)(iv)
[243] S. 29, it talks of shareholders or promoters' agreements, interconnect agreements, and such other agreements specified by the regulations.
[244] S.30
[245] Chapter 9

available to widest number of people. Such a requirement is also available in various broadcasting laws of European countries.

Next Chapter in the Act deals with the breach of terms and conditions of license or registration, civil liability and adjudication clause provides for the powers of the Commission in case of breach of terms of the license or registration or failure to comply with its decisions or orders[246]. Such powers include the power to revoke the license or registration and also in case of breach of terms and conditions of license or registration, for seizure of equipment being used for provision of services[247]. Any person aggrieved may prefer an appeal to the appellate tribunal within 30 days[248].

Section 33& 34 provide for the Civil Liability, if the license holder commits breach and in case any person uses network infrastructure facility or communication service or wireless service , which is required to be licensed and is not licensed [249].

Section 35 provides that if a person uses network infrastructure facility, communication service or wireless equipment and he has knowledge or has reasons to believe that this service is without licenses under the act then he is liable to a civil liability. Sections 36 & 37 provide for civil liability if any agreement is not registered or if a person willfully does not comply with the directions of the commission, he has a civil liability.

Section 38 provides for the filing before the commission of complaints, the complaints have to be filed within 60 days and if the commission is of opinion that the prima facie case is made, the matter will be referred to adjudicating officer. Section 39 provides for the appointment by the Commission of Adjudicating Officers for the purposes of adjudging whether any person has contravened any of the provision of the proposed legislation, any rule, regulation, direction or order made thereunder or whether he is liable to a civil liability, and for the powers of the Adjudicating Officers. The adjudicating officer for the purpose of discharging his functions shall be vested with the powers of the civil court.[250]

Clause 40.-This clause provides for the imposing of civil liability for willfully or otherwise damaging network infrastructure facility, and for causing interruption of a

[246] S. 32 (1)
[247] S. 32(2)
[248] S. 32(3), Section 33, provides for civil liabilities which may be imposed on a license or grantee for breach of or failure to comply with any terms and conditions of a license or registration or for failure to comply with any rule, regulation or order made under the proposed legislation
[249] S 34.- This clause provides for the imposing of a civil liability on any person who delivers any content for transmission or accepts delivery of any content sent by the use of a network infrastructure facility, communication service or wireless equipment, which though required to be is not licensed or registered or which has been established or maintained or operated in contravention of the provision of the proposed legislation or any rule and regulations made therunder.
[250] S. 39 (5)

communication service. The person shall be liable for the damage of Rs. 5 crore and where the actual damage is greater than 5 Crore, the actual extent of the damage. And any person contravening S.63 (2) shall also be liable[251].

Clause 42.- This clause provide for the imposing of a civil liabilities shall not exceed fifty crore rupees, and also stipulates the factors to be taken into account by the Adjudications Officer in adjudging the quantum of civil liabilities, these include the quantification of damages[252].

Section 43 provides that the establishment of the Communications Appellate Tribunal. It also lays down that appeals can be preferred to the Appellate Tribunal by any person aggrieved by any decision or order of the Commission, or by an order of civil liability imposed by the Adjudicating Officer. It also lays down that the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, and also that the Appellate Tribunal may call for relevant records for examining the legality etc. of any order or decision of the commission or of the Adjudicating Officer, and pass such order as it thinks fit. Section 44. deals with the composition of the Appellate Tribunal which shall consist of a consist a chairperson and not more than six members to be appointed by the Central Government. The appointment of chairperson has to be made in consultation with the Chief Justice of India. The appointment of the Appellate Tribunal shall be from amongst persons recommended by search committee. This clause also provides for the constitution of benches by the chairperson, and that each bench shall be headed by a judicial member.

Section 45. provides for the qualifications, tenure, salary and allowances etc. of the chairperson and members of the Appellate Tribunal and the manner of filling up of vacancies in the Tribunal.

Section 46. provides for the procedure for resignation, and also the procedure for the removal of the chairperson or members of the Appellate Tribunal. Section 47. provides for the procedure for the distribution of business, and the procedure for the transfer of business, and the procedure for the transfer of cases, amongst benches of the Appellate Tribunal. Section 48. provides for the powers and procedures of the Appellate Tribunal, for the purpose of discharging its functions under the proposed legislation. Section 49. This clause provides for the right of the applicant or appellant to take assistance of legal practitioners etc. before the Appellate Tribunal. Section 50. provides that an appeal against the order, not being an interlocutory order, of the Appellate Tribunal, shall lie to the Supreme Court. Section 51. Provides that an order passed by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of a civil court having local jurisdiction

[251] S. 41
[252] S. 42 (2)

and such civil court shall execute the order as if it were a decree made by that court. Section 52. Provides that if any person willfully fails to comply with any decision ,direction or order of the Appellate Tribunal he shall be liable to a penalty which may extend to five crore rupees and no such penalty shall be imposed without giving an opportunity of being heard to the party concerned.[253]

Chapter XIII[254] deals with finance accounts and audit, it provides that the proceeds of the license and other fees. And the amounts received by the imposition of the civil liabilities and penalties shall be credited to the Consolidated Fund of the India. Its also lays down that such portion or percentage of the license fee as may be attributable to the Universal Service Obligation shall be credited to a separate fund to be as the Universal Service Obligation Fund in the public account of India[255].

Chapter XIV deals with the important issue of the Right of way for laying cables and poles.

Section 59 states that the facility provider may from time to time require to establish poles or underground cables etc. to run their network. The section provides that any public authority under whom the property is vested shall grant necessary permission to lay the infrastructure. This right shall be given to all service providers without discrimination, with the condition that the property shall be restored. Further it is provide that if the public authority thinks that the pole or cable that has been put, needs to be removed for certain reasons , the facility provider shall remove it without any delay[256].

It is also provided that disputes including refusal of permission by the public authority shall on application be determined by the District court within whose local limits of jurisdiction the property is located.[257]

The private land may be used by a facility provider for constructing or laying cables or erecting posts only with the written consent of the owner of the land or premises, and when the consent is not forthcoming then the facility provider may request the Commission, and takes steps as authorised by the commission.[258]

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[253] Clause 53.-This clause provides for appointment of the officers and other employees of the Commission and of the Appellate Tribunal, by the Commission or the Appellate Tribunal as the case may be, subject to such conditions as may be prescribed by the Central Government. This clause also provides that the salary and the allowances payable to and the terms and conditions of the service of the officers and the employees of the Commission and the Appellate Tribunal shall be prescribed by the central Government.

[254] Sections 54 to 58 deal with these.

[255] S. 54

[256] S. 61

[257] S. 62

[258] S. 63

Commission is empowered with the powers to issue orders for requiring any network infrastructure facility to be provided, constructed, installed, altered, moved etc. on private land or premises subject to such conditions as to compensation or otherwise, and the time and manner of doing so. It also provides that failure to comply with the order of the Commission will be liable to imposition of civil liability[259]. The section restricts the rights of facility providers only to that of a user for laying cables or erecting posts or maintaining them[260].

Chapter XV is Interception of Communication and Punishment for unlawful Interception.

Section 66 is very important as it gives the Central Govt. power to intercept the communication network This clause provides that, subject to the prescribed safeguards, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government, on the occurrence of any public emergency or in the interest of public safety, if satisfied that it is necessary or expedient so to do, in the interest of the security, sovereignty and integrity of the India, friendly relation with foreign state or public order or for preventing incitement to the commission of an offence, may direct any agency of the Government to intercept any communication on any network facilities or services or that any content brought for communication or communicated or received by any service provider shall not be communicated or shall be intercepted or detained or shall be disclosed to the Government or its agency authorized in this behalf. It also stipulates that the service provider shall extend all facilities and technical assistance for interception of the content of communication. It further provides that any service provider who fails to assist authorized agency shall be punished with imprisonment, which may extend to seven years. This clause also lays down that any person, save as otherwise provided under this clause, who intercepts or discloses to any person any content shall be punishable with imprisonment which may extend to five years or with fine which may extend to ten lakh rupees and, for a second and subsequent offence with imprisonment which may extend to five years and with fine which may extend to fifty lakh rupees.

This section has the potential to be misused by the authorities and the govt. hence it is very important that the safeguards prescribed in the section are carefully implemented.[261]

Chapter XVI gives the offences and punishments. Section 68 provides for the punishments for unlicensed ownership or provision of any network infrastructure facility or communication service, for knowingly assisting in the transmission or distribution of such

[259] S. 64
[260] S. 65
[261] S. 67 further provides that nothing in Chapter XV relating to interception of communication and punishment for unlawful interception, shall affect the provisions of Section 69 of the Information Technology Act, 2000

service, for diverting any signal without the permission of the service provider[262] and with intent to defraud , for dealing in decoding equipment[263], for knowingly benefiting from any unauthorized diversion for tampering with any service or infrastructure facility[264] , for abetting or inducing unauthorized diversion or tampering[265] and for conviction of subsequent offences[266].

Section, 68**.** (1) states that , "Save as otherwise provided in this Act, any person who, without a licence, owns or provides any network infrastructure facility or provides any communication service or knowingly assists in the transmissions or distribution of such service in any manner including -
(a) collection of subscription for his principal; or
(b) issuing of advertisements to such service; or
(c) dealing in, or distribution of, equipment for decoding programme,
shall be punishable with imprisonment which may extend to five years, or with fine which may extend to five crore rupees, or with both, and, for the second offence, with imrprisonment which may extend to five years or with fine which may extend to ten crore rupees or with both."

Section 69. provides for punishment to any person who possesses any wireless equipment without a license or uses a radio frequency which he is not authorized to use under the provisions of the proposed legislation[267]. The clause also provides for forfeiture of wireless equipment utilized for committing these offences and vesting of any unclaimed wireless equipment in the Central Government[268]. Further the clause also provides for power to any officer specially authorized by the Central Government or the Commission , to search any place in which he has reason to believe that any wireless equipment without a license has been kept or concealed, and take possession thereof[269].

Section 70. provides for the punishments for any person for sending by means of a communication service or a network infrastructure facility any content that is grossly offensive or of an indecent, obscene or menacing character, or for the purpose of causing annoyance, inconvenience , obstructing, criminal intimidation, enmity etc. knowing that the content is false, and for persistently making use for this purpose a communication service or

[262] Punishment of imprisonment of five years and five crore fine. S. 68 (3)
[263] ibid
[264] Imprisonment of two years and two crore fine .S. 68 (4)
[265] ibid
[266] Imprisonment of Six months to five years and fine up to 5 crore.
[267] Imprisonment up to three years and fine up to five crore. S. 69 (1) (b) For the purpose of this subsection "radio frequencies" means any frequency of electro-magnetic waves up to and including a frequency of 3000 giga hertz.
[268] S. 69 (2)
[269] S. 69 (4)

a network infrastructure facility. The punishment under the section is imprisonment upto three years and fine upto two crore rupees or both.

Section 72. Provides for offences committed by companies under the proposed legislation. It is provided that no court inferior to that of a court of Session shall try any offence under the proposed legislation. [270] Every offence punishable under the proposed legislation shall be cognizable. [271]

Section 75 & 76 state that any proceeding pending before the TRAI or the TDSAT on the date of commencement of this act shall be transferred to the CCI and the Tribunal.

Section 77 clause provides that the Central Government may by notification in the event of war or any casualty of national magnitude, for a limited period, in public interest, to take over control or management of any communication service or a network communication infrastructure facility or suspend its operation or entrust any agency of the government to manage it in the manner directed by the government for such period as provided for in the notification. The clause also provides that the Central Government, if it feels necessary or expedient to do so in the public interest, may at any time request the Commission to direct any licensee or grantee to broadcast specific announcements in a manner as may be considered necessary by the Government or to stop any broadcasting service, which is prejudicial to the security, sovereignty and integrity of India, friendly relations with foreign states, or to public order, decency or morality or communal harmony and on issue of such directions it shall be the duty of the licensee or grantee to ensure compliance of such directions.

Section 78. provides for obligations of licensees and grantees which *inter alia* include commencement of operation of service within time specified by the Commission, maintenance of documentary and transmission schedule as specified by the Commission and allow inspection of such facilities and documentary record and schedules by any officer authorised by the Commission. The Commission may call for any information from a licensee or a grantee, and shall also have the power to inspect and obtain information from programme producers, distributors and advertising agents.

Section 81. provides that notwithstanding anything contained in any other law for the time being in force, where the Central or State Government is satisfied that any information or document etc. in possession of any service provider relating to any service availed of by any consumer or subscriber is necessary to be furnished in relation to any pending or

[270] S. 73
[271] S. 74

apprehended civil or criminal proceeding, then the Government may authorise an officer in writing who shall direct such service provider to furnish such information.

Section 82 stipulates that the act shall not be applicable for the infrastructure facility or communication service established by the govt. for its own use.

Section 83. provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an Adjudicating Officer or the Commission or the Appellate Tribunal is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Section 87. provides that the provisions of the proposed legislation shall have overriding effect over other laws. The act empowers the central govt. to make rules[272] and regulations[273]
Section 91 confers upon the Central Government to remove any difficulty arising out of implementation of the provisions of the proposed legislation. Every order of the Central Government under this clause is to be laid before each House of parliament.

Section 93. deals with repeal of four enactments namely the *Indian telegraph Act, 1885, the Indian Wireless Telegraphy Act 1933, the Indian Telegraph Wires (Unlawful possession) Act, 1950 and the Telecom Regulatory Authority of India Act 1997.* It also provides that notwithstanding such repeal, any person, who has obtained a license or registration under the repealed acts or has obtained a registration under the policy of the Central Government in force may continue to provide his services if he has made an application to the Commission for the grant of a license or registration under the proposed legislation within a period of six months from the date of establishment of the Commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license or registration the Commission will take into consideration the terms and conditions on which such services were licensed or registered and keeping in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Acts or the Policy, as the case may be. Further, with effect from the date of establishment of the Commission and of the Appellate Tribunal under the proposed legislation, the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal shall stand dissolved.

Clause 94 - This clause deals with repeal of the Cable Television Networks (Regulation) Act, 1995. It also provides that notwithstanding such repeal, any cable operator

[272] S. 88
[273] S. 89

registered under the repealed Act may continue to provide his cable service if he has made an application to the Commission for the grant of a license under the proposed legislation within a period of six months from the date of establishment of the commission or till the time of disposal of his application whichever is later. It also envisages that while granting a license the commission will take into consideration the terms and conditions on which such cable operator was registered and keeping in view the objectives of the proposed legislation. Furthermore during this period the applicant shall continue to be governed by the repealed Act.

5.6 Concept of Communication, Broadcsting and IT:

Convergence of telecom, broadcasting and information technology is occurring at the technological level i.e. digital technology now allows both traditional and new communications services, voice, data, sound or pictures, to be provided over many different networks. For example, voice telephony services may be provided via Internet or cable TV networks may be used to carry both content and telecommunication services. The technological convergence is also leading to hybridization of services such as video on demand.[274] Convergence provides opportunities for operators of one particular service to branch out to new services. The only hindrance to development and use of such technologies is due to the constrictions imposed by the legal and regulatory practices. In this respect the current divergence in the regulatory structures of Telecommunication and broadcasting spheres is a substantial barrier to convergence. The critical aspect of the matter is that the diverging regulations could lead to similar services being differently regulated on the basis of the platform through which they are delivered. Given the pace of the technology development in the Communications, the regulatory framework is uncertain and needs to be clarified. The existing diverging regulatory structures shall greatly impede the investment and ultimate consumer access to the products.

5.7 The Indian Telegraph Act, 1885

The Indian Telegraph Act, 1885 only define the term 'Telegraph'. That define the Telegraph under section 4 (1) Radio waves and the hertizan have been define to mean the electromagnetic waves of frequencies lower than 3000 and giga cycles/sec propagated in space without artificial guide[275].

The definitional scope of telegraph leaves it for the interpretation if it includes materials for building, TC network such as optical fiber or Telegraph wires? This under the little interpretation of section 4 (1) of Telegraph act seems unlikely as the term Telegraph covers only the end-use terminal/apparatus or a medium that actually enables transmission of

[274] Laurent Garzaniti, " Telecommunication , Broadcasting and Internet EU Competition Law and Regulation", Sweet and Maxwell , London 2000

[275] Explanation to section 4 (1)

a message and not the individual ingredients of a telecommunication network network[276]. In order to be covered by the definition of a Telegraph, the apparatus would have to transmit or receive signals by wire, visual or other electromagnetic emissions or other means. This covers only to the end-use terminal. Hence only defending in receiving apparatus will be the 'Telegraph' and not the transmission medium, which transmits the waves[277].

Under the guidelines for issue of licence as Infrastructure Service Provider category(IP-II and IP (I)) also states that infrastructure providers who lease , rent or sell end to end bandwidth, capable of carrying digital message shall require licence from TRAI, while providers which provided assets for transmission shall only need to be registered.

Hence the companies that provide physical elements of TC network do not require licence but companies that actually give end-to-end bandwidth that is medium that transmits the message require licence.

5.8 Telecom Regulatory Authority Act:

The National Telecom Policy (NTP) 1994 helped to attract Foreign direct investments and domestic investments. With the entry of several private and international players necessitated an independent regulatory body. The Telecom Regulatory Authority of India was established on 20 February 1997 by an act of parliament called "Telecom Regulatory Authority of India Act 1997". The objective of the TRAI is to create and nurture an environment which will enable the quick growth of the telecommunication sector in the country. The mission of TRAI is to provide a transparent policy environment. TRAI has regularly issued orders and directions on various subjects like tariff, interconnections, Direct To Home (DTH) services and mobile number portability.

The term "telecommunications services" is defined in section 2 K. of TRAI Act, 1997. The Amendment Act of 2000 added the proviso to the section. This definition is based on the definition of Telegraph in 1885 Telegraph act.

It is opined that the proviso has restricted the definition of the telecommunications services, as with the proviso the "other services" to be categorized as telecommunication services, they have to be notified by the central government. This would make the illustrative list have exhaustive. Hence the basic telephone services and Internet services fall outside the ambit of TRAI. Hence DoT would also be outside the scope of TRAI.

[276] Piyush Joshi , "Infrastructure Law In India" p. 422,
[277] ibid

Another inherent conflict is that the main definition expressly excludes the broadcasting service but proviso states that Central Government has the power to modify the broadcasting service as telecommunication services[278].

Wireless communication is defined under the wireless Telegraphy act. Section 2 (1) defines wireless communication and section 2 (2) defines wireless apparatus. The salient feature of the act is that the act regulates the possession of wireless telegraphy apparatus.

Telecom Regulatory Authority of India: The genesis of the TRAI lies in the bidding process for the grant of cellular licences and the litigation that followed specially the case of Delhi science Forum v. Union of India[279] , after the grant of first set of licences under the NTP[280], 1994. Section 2 of Part V of the tender documents floated by DoT, Department of Telecom, on the basis of which the bids were invited, specified that, the tariff for the service 'shall be subject to the regulation by TRAI as and when such an authority is set up by government of India[281].

One of the grounds for challenge in the Delhi science Forum case was that the NTP 1994 did not provide for the creation of a telecom regulator nodded provide for delegation of authority by the central government to such authority to regulate the functioning of NTP 1994. But before the court delivered the judgment, TRAI ordinance 1996 had been promulgated. Supreme Court held that 'with creation of TRAI, now the independent regulatory authority shall supervise and regulate the functioning of various telecom service providers in accordance with the ordinance.' Supreme Court observed with respect to the TRAI, that TRAI was essential to regulate telecom sector, since the private sector shall contribute to develop telecom sector more than DoT/MTNL , and the role of independent regulator is very important. The court further held that, 'the Central Government and the TRAI should not behave like sleeping trustees, but have two function as active trustees in public good.'[282] TRAI started functioning with the above mandate, and ironically the first dispute that TRAI involved itself against was the central government[283]. The main question here was if the TRAI in the exercise of power is to regulate "service providers", could it also regulate the functioning of central government at the licensor. Justice Usha Mehra, held that the grant and amendment of licence was the prerogative of the central government as licensor and this fall outside the ambit of the TRAI jurisdiction.

[278] Definition under Income Tax Act 1961
[279] AIR 1996 SC 1356
[280] National Telecom Policy
[281] Piyush Joshi p. 427
[282] ibid
[283] UOI v TRAI FAOs 89/98, 93/98 , 94/98 &ors. CWs 2764/97,2805/97, 3947/97 at High Court of New Delhi

The Act established TRAI was chairperson and members were to be appointed by the central government. They were to be persons having special knowledge of and personal experience in Telecommunication industry, finance, law, management and consumer affairs. The person should have held the post offer Secretary or Additional Secretary in central or state government for a period of not less than three years[284]. The act lays down that the chairperson of members shall not have any financial or other interest, which could affect prejudicially his function[285]. The term of office for the chairperson and members would be three years or the age of 65 years whichever his earlier. The chairperson is mandated the powers of general superintendent and directions in conduct of its affairs and shall preside over its meetings[286].

Section 8 (3) states that all issues which come up before the authority shall be decided by majority vote.

Chapter 3 talks of powers and functions of authority, section 11 states that notwithstanding anything in the Indian Telegraph act, 1985 the TRAI will make recommendations:

- the need and timing for introduction of new service provider[287], the section does not laid on any specific guidelines as to when TRAI can make recommendations, primarily interviewed that the effect on the existing licensee should be seen.
- Terms on condition of licence was service provider[288]: the terms on the licences issued under section for after Telegraph act, 1985 which are to be recommended by TRAI , though no guidelines are prescribed yet the terms should evaluate the viability of service provider and consumer interests.
- Revocation of licence for non-compliance with terms: this is an essential regulatory tool in the hands of TRAI , to effectively regulate the private operators, but it is advisable that the TRAI should use this as a last resort.
- Measures to facilitate competition and promote efficiency in the operation of telecommunications services so as to facilitate growth in such services. This is a positive provision, which makes it obligatory on TRAI to make such recommendations and policies so as to optimally develop the sector.
- Technological improvements in the service provided by service providers-this provision makes TRAI an observer of the telecom scenario is than endeavor to make TRAI responsive to any legal changes required to adapt to that technology.
- Type of equipment to be used by service providers after inspection of equipment used in network. Actual inspection of equipment being used in the network is to be carried out,

[284] S. 4 of TRAI Act
[285] S. 5(1) ibid
[286] S.6
[287] S.11(1)(a)
[288] S. 11(1)(ii)

before change to new technological equipments.

- Measures for development of technology and any other matter will relatable to telecom industry in general-this provision aims to primarily give an impetus to the research and development of the telecom technology in India.
- Efficient management of spectrum-this only provision apart from NTP 1999 which talks of spectrum. Spectrum is not defined anywhere else.

The above were the matters where it is mandatory for the central government to take recommendations from TRAI.

Following regulatory functions of TRAI :

1. Ensure compliance with terms and a condition of licence-the ambit of powers under the section is limited. TRAI can ensure compliance by issuing directions or by recommending termination of licence for non-compliance. The powers are limited as action against the licensor can only be taken by the licensee. TRAI cannot take any steps to enforce the terms of licence. TRAI can issue any directions to the service providers.
   Under section 30 and section 29 of the TRAI act, the penalty for not following the directions of TRAI is fine of Rs one lakh, second contravention Rs 2 lakhs, additional fine of Rs 2 lakh can be imposed for every day of default.
2. Fix the terms and conditions of interconnectivity between the service providers, irrespective of the terms of licence issued prior toTRAI amendment act of 2000. The change was brought by the 2000 amendment from the licences issued by the union government, in which it was specifically stated that interconnection terms would be specified by government but under this provision TRAI has the mandate to take the terms and conditions of interconnect agreement. But critics argue that it would have been better that TRAI formulates broad principles and leads the players to reach an agreement along those terms.
3. Ensure technical compatibility and effective interconnection between different service providers this provision supplement the above compatibility but ‘effective interconnection’ which takes care of commercial and consumer requirements in a fair manner.
4. Regulate arrangements amongst service providers for sharing revenue derived from providing telecommunications services. The ambit of this power is not clear as it can be interpreted that TRAI can alter and change the agreement between two private players or they may require prior approval of TRAI.
5. Lay down the standards for quality service to be provided by the service providers: Under this provision the TRAI is mandated to conduct surveys so as to ascertain the quality of service provide by the service provider. Then TRAI can lay down the standards for quality service based on consumer interest. Conflict could arise when the standard in the license and guideline s of TRAI vary.

6. Lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers: This function is related to the function of stipulating terms for inter connect of various service providers so as to ensure effective inter connection.
7. Maintain register of all interconnect agreements and of all other matters as may be provided in the regulations: Only important point under the section is that the register to be maintained by the TRAI is open to public for inspection.
8. Ensure effective compliance of the universal service obligation: This is the only provision in the telecom law other the than the NTP 99[289] Broadly the universal service obligation means that the opportunities through the developments in communications should reach to all classes of people irrespective of their socio-economic strata. Primary function is to identify what constitutes USO, the standards set should not be unviable to the operators, and a coordinated effort by the DoT and the private players would be required.

NTP 99 stipulates that the union Govt. will provide a basic telecom services to all people at affordable cost, the primary aims were:

- Provide voice and low speed data service to balance 2.9 lakh villages by 2002.
- Achieve Internet access to all district headquarters' by 2000
- Achieve telephone on demand in urban and rural areas by 2002.

It also imposes a Universal access levy, which would be the percentage of the revenue earned by the operators under various licenses. This percent age would be decided by the union govt. in consultation with TRAI.

Rates for the various telecom services within and outside India will be notified by TRAI in the official gazette[290]hence the power to determine the tariff is with the TRAI. Earlier govt. under s. 6 and 7 (2) of the telegraph act retained this power.

The Telecom Disputes Settlement: The TRAI Act was amended in 2000 to separate adjudicatory and regulatory functions of the TRAI a new body 'Telcom Disputes Settlement and Appellate Tribunal (TDSAT), was formed. Chapter IV of the TRAI Act deals with TDSAT . S. 14 of the Act establishes TDSAT.to adjudicate disputes between[291] :

- licensor and licensee ;
- between two or more service providers ;
- between service provider and group of consumers

[289] S.6 NTP 99
[290] S.11. (2). TRAI Act 1997.
[291] S. 14 (a) I, II , III

Exceptions to these are the disputes relating to the MRTP[292], Consumer dispute redressal forum[293]and S. 7b of the Telegraph Act.[294] TDSAT can tribunal can hear and appeal against any order of the TRAI, the appeal from shall go to the Supreme Court.[295]. Under S. 14N all appeals shall stand transferred to the tribunal
Under S. 18(1) the appeal shall lie to the Supreme Court, S. 18(2) no appeal lies in case the tribunal has ordered with the consent of the parties.

TRAI seeks Powers: The Telecom Regulatory Authority of India (TRAI) has asked during May 2012 the department of telecommunications (DoT) to amend the law governing it to give the watchdog the powers to penalize, frustrated at being just a recomendatory agency that's unable to enforce rules. A number of issues have come up in the last 12 years where there are different readings and intepretations of the law. This has led to a huge number of cases pending in the various courts, including the Supreme Court and high courts. Because of this the TRAI is not in a position to take any decisions.

TRAI officers were seeking powers to enforce rules as well as prosecute and penalize offenders, based on fifteen years of existence and experience. When TRAI gave ruling on interconnection charges, operators could secure stay on such order of TRAI which could not come into effect at all.

A decision on the 9 March 2009 TRAI ruling was again deferred by the Supreme Court on 10 July 2012. The bench hearing the case directed it to a larger bench for hearing, indefinitely delaying the issue. The Trai order had reduced interconnection usage charges to Rs. 0.20 per minute for local calls against the prevailing Rs. 0.30.

The Telecom Commission had approved a proposal to give TRAI the power to summon companies and individuals, call for evidence, and even seek expert advice while conducting an enquiry. The commission being the highest telecom policy decision-making body in the country it cannot summon the officers and also cannot enforce its orders.

The proposal was part of the draft National Telecom Policy 2012 (NTP2012). This document lays out the general direction with targets and objectives, based on which the government is expected to frame the telecom policy for the coming decade. However, the Union cabinet removed this from NTP2012 when the policy was approved on 30 June. Trai has no penal or provisional powers, though the Telecom Commission had approved a proposal on the need to give the regulator such teeth in the draft NTP2012, which was set aside by the cabinet. The TRAI should have a graded form of financially penalizing the

[292] S. 14 (a) proviso A
[293] S. 14 (a) proviso B
[294] S. 14 (a) proviso C
[295] S. 18 TRAI Act 1997

operators. Only after it's convinced about the breach in rules TRAI should look into prosecution[296].

Restrictions on Duration of Ads in TV: The Telecom Regulatory Authority of India (TRAI) on Monday issued the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations 2012. Among other conditions, the regulations limit the duration of ads on TV channels to 12 minutes per hour. Also, the minimum time gap between two consecutive advertisement breaks should not be less than 15 minutes[297].

Broadcasters and advertisers have slammed Telecom Regulatory Authority of India move to limit the duration of television advertisements to 12 minutes in an hour, and accused the regulator of exceeding its brief. They argued that Trai has no jurisdiction in the subject. Advertising is governed by the Cable and Satellite Act and the appropriate authority is the ministry of information and broadcasting.

Stakeholders commented that the sale of television rights have become an important source of income for sports bodies such as BCCI but the restriction on advertising will adversely impact the ability of broadcasters to recoup their investments, forcing them to scale down their bids[298].

TRAI, Cable Digitalization: TRAI wanted to implement Cable Digitalisation by the due date. The TRAI has pulled up broadcasters and Multi System operators (MSOs) for not finalising inter-connection agreements and has now set new deadlines for it. TRAI Chairman Rahul Khullar instructed broadcasters and MSOs that the regulator will have to step in and decide the tariffs and carriage norms if they failed to finalise these contracts. The interconnection agreements decide the price and terms at which channels are bought by MSOs from broadcasters for further transmission to cable households[299].

TRAI Paper on Convergence: From a regulatory standpoint the important issues are the implications of such convergence on competition and the nature of regulation in future. TRAI has in several of its recommendations provided some measures to deal with the rapidly growing convergence[300]. This consultation paper is an exercise aimed at eventually making recommendations which knit together these threads in a complete conceptual framework. Secondly there have been some developments, which have not been specifically addressed –

[296] http://www.livemint.com/2012/08/10003000/Trai-seeks-teeth-via-amendment.html
[297] http://www.bestmediainfo.com/2012/05/trai-sets-12-minute-cap-per-hour-on-tv-ads/
[298] http://articles.economictimes.indiatimes.com/2012-05-16/news/31726940_1_broadcasters-and-advertisers-trai-telecom-regulatory-authority
[299] http://www.thehindu.com/arts/radio-and-tv/article3750233.ece
[300] TRAI Consultation Paper on Issues relating to Convergence and Competition in Broadcasting and Telecommunications, January 2006

notably the lack of comprehensive legislation to deal with the rapidly converging telecommunication/broadcasting carriage issues - these gaps have been filled in this paper.

Convergence covers provision of different services through same technology as well as provision of same service through different technologies and platforms. There is convergence of technologies in telecom and broadcasting on account of digitalization and increasing use of IP technology. At the same time there is market related convergence in Information, Communication and Entertainment markets. Section – I of the paper gives a brief introduction to convergence. Convergence is touching everyday lives of people around the world. From downloading of ringtones in mobile phones by individuals to large scale call-centres and BPO services, convergence is present in one form or the other all around us. Convergence has had a profound impact on markets, economy and consumers. Section– II of the paper tries to understand the impact of convergence.

Convergence is a worldwide phenomenon and different countries are trying to deal with convergence in different ways. Each country tries to solve the problems thrown up by convergence in its own unique way. A study of the regulatory approach adopted by different countries gives clues about possible solutions to these problems. Section – III of the paper sketches the evolving regulatory structure in different parts of the world.

The first move to harness the benefits of the converged technologies to meet the growing social and commercial needs in India was made when The Communication Convergence Bill, which proposed to combine and bring under the purview of the Commission the licensing and registration powers and the regulatory mechanisms for the telecom, information technology and broadcasting sectors. However, the bill could not get through the Parliament and in the absence of a statutory converged regulatory framework, the TRAI recommended introduction of Unified Licensing Regime in India to keep pace with technological and market developments. Convergence[301] can either be:

i) Integration of customer end terminal equipment/access devices such as the telephone, television and personal computer.
ii) Provision of various communication services like text, data, image, multimedia and video over the existing infrastructure or over a single transmission medium.
iii) Capability of the same technology to offer various services.
iv) Different services under converged licensing regime.
v) Fixed – mobile substitution/convergence.

[301] "Trends in Telecommunications Reform - 2004-05: Ch 5: licensing approaches in an era of convergence" (ITU; 2004).

In common parlance triple play is also used to define the end result of convergence. In telecommunication, a triple play service is the term used for a combination of the three following services: Internet, Television and telephone.

Regulatory: Different nations and institutions are adapting their policies, regulations, and institutional frameworks to address issues in an increasingly converging communications sector, both within and between countries. One clear trend is to merge the responsibilities for regulation of carriage of telecommunications and broadcasting in a single regulatory body.

USA: The Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. Content Regulation is also done by the FCC.

However, provision of cable TV services requires approval/ license/ franchise at municipal level. The Telecom Companies wishing to provide IPTV services on their broadband networks have been demanding that the laws must be amended to provide for national level franchise to enable them to roll out their services. The cable industry has been opposing this demand in view of the fact that the cable industry had to undergo the time consuming and expensive process to secure city-by-city franchise over the last three decades.

Recently, the Texas state legislature has passed a bill on deregulation of telecom markets making it the first state allowing telephone companies to receive a statewide franchise in order to provide new video services that compete with cable.

The Regulation of the European Parliament and of The Council lays down a common regulatory framework for electronic communications networks and services. The regulatory framework consists of this Directive and four specific Directives on related matters. The Directive, inter alia, recognises the following:

(a) The convergence of the telecommunication media and the information technology sectors means all transmission networks and services should be covered by a single regulatory framework.
(b) It is necessary to separate the regulation of transmission from the regulation of content.

Accordingly the scope and aim of the directive is stated to be the establishment of a harmonized framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services.

In pursuance of this directive Twenty Member States out of a total of Twenty Five Member States had completed the adoption of primary legislation and notified the Commission thereof by December 2004.

UK: Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. OFCOM was created in 2002 combining the regulatory functions of the Broadcasting Standards Commission, Independent Television Commission, Office of Telecommunications, Radio Authority and the Radio communications Authority. Content regulation is also assigned to OFCOM.

Australia: On 1 July 2005, the Australian Broadcasting Authority and the Australian Communications Authority merged to become the Australian Communications and Media Authority (ACMA).

Canada: The Canadian Radio-television and Telecommunications Commission (CRTC) was established by Parliament in 1968. It is an independent public authority and reports to Parliament through the Minister of Canadian Heritage. The CRTC is vested with the authority to regulate and supervise all aspects of the Canadian broadcasting system, as well as to regulate telecommunications common carriers and service providers that fall under federal jurisdiction.

South Africa: The Independent Communications Authority of South Africa (ICASA) is the regulator of telecommunications and the broadcasting sectors. It was established in July 2000. It took over the functions of two previous regulators, the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority (IBA). The two bodies were merged into ICASA to facilitate effective and seamless regulation of telecommunications and broadcasting and to accommodate the convergence of technologies.

A number of other countries also like Malaysia, Tanzania, Botswana, Papua New Guinea, Hong Kong, Bhutan and Brazil have converged regulators – i.e. a regulator whose responsibilities cover both – telecommunications and broadcasting. However, as in the case of some of the examples listed above, content regulation is not always with the same regulator.

Triple Play: For the last few years, in some of the developed economies, Telcos and Cable operators are competing in the field of Triple Play (Voice, data and Video). Telcos who have already laid Copper infrastructure are attempting to woo the Cable TV customers by providing all the three services from a single pipe using DSL and IPTV technologies.

Similarly, Cable operators with the use of already laid Hybrid Fiber Coaxial (HFC) cable network are ready to deliver Voice, Broadband and TV from the single Cable entering into the subscriber's home.

The successful penetration of Cable TV services with more than 61 million cable homes (as per 2005 NRS survey) is offering a good opportunity for spread of broadband and telephony in India. Major MSOs cum ISPs like Hathway, In2Cable, Ortel, Siti Cable etc have already started providing Broadband through CMTS (Cable Modem Termination System) based Cable TV infrastructure in some large cities.

5.9 Autonomy of Internet

The New Medium Internet is the most powerful communicator today. This power of the Internet comes from user generated content – everybody with access to a Internet through computer can now publish a "newspaper" or have a "TV station" in her home. Newspapers and news channels no longer have monopoly over news. This technology driven new facility of expression and communication has enormous potential for democratisation of media.

The Internet is a major media force today, restructuring our economic, social, political and cultural systems. Most people implicitly assume that it is basically a beneficent force, needing, if at all, some caution only at the user-end. This may have been true in the early stages when the Internet was created and sustained by benevolent actors, including academics, technologists, and start-up enterprises that challenged big businesses. However, we are getting past that stage now. What used to be a public network of millions of digital spaces, is now largely a conglomeration of a few proprietary spaces. (A few websites like Google, Facebook, Twitter and Amazon together make much of what is considered the Internet by most people today.) We are also moving away from a browser-centric architecture of the 'open' Internet to an applications-driven mobile Internet, that is even more closed and ruled by proprietary spaces (like App Store and Android Market). In fact, some Internet plans for mobiles come only with a few big websites and applications, without the open 'public' Internet, which is an ominous pointer to what the future Internet may look like**.** What started off as a global public resource is well on its way to becoming a set of monopoly private enclosures, and a means for entrenching dominant power.

A joint statement by civil society organisations for the UN CSTD meeting on 'Enhanced Cooperation on Public Policy Issues Pertaining to the Internet', says: It is a myth that *'the Internet is not governed by anyone'*. It is neither a coincidence nor a natural order of things that the Internet, and through it, our future societies, are headed in the way of unprecedented private gate-keeping and rentier-ing. The architecture of the Internet is being actively shaped today by the most powerful forces, both economic and political. A few US based companies increasingly have monopoly control over most of the Internet. The US

government itself controls some of the most crucial nodes of the global digital network. Together, these two forces, in increasing conjunction, are determining the techno-social structure of a new unipolar world. It is important for progressive actors to urgently address this situation, through seeking globally democratic forms of governance of the Internet[302].

While the US government and US based monopoly Internet companies already have a close working relationship to support and further each other's power, this relationship is now being formalised through new power compacts; whether in the area of extra-territorial IP enforcement (read, global economic extraction) through legislations like **SOPA**, or in the area of security (read, global extension of coercive power) through cyber-security legislations like **CIPSA**.

Prabir Purkayasta wrote that Internet also brings in new problems -- how do we prevent illegal material from reaching the people? This illegal material can be copyrighted material or material that is termed as "hate" or “seditious” or "obscene" in different countries. This also brings up how to handle material that is legal in one country but not in another. Something that is legal in the US such as white supremacist literature is illegal in most countries. Similarly, material that is copyrighted in the US may not be copyright protected in India. So how do we operate various country laws in cyberspace? In other words, whose laws should operate on the net?[303]

If we consider the Minister for HRD Mr Kapil Sibar objections to ‘objectionable’ content over the internet and statement of Chairman Press Council, Justice Markandey Katju that there should be a regulatory to check and remove the illegal content, what comes to our understanding is that there is a strong effort control the content on the Internet.

The IT Act as amended in 2008 defines “safe harbour” for intermediaries against criminal or civil liabilities. The IT Rules negates this safe harbour by enlarging the scope of offensive material far beyond what is legally permissible in India. Nor does it contain a put-back provision for parties whose material is taken down for what may be a frivolous complaint.

Two sets of threats are now emerging. One is from treating companies that allow social networking and posting of user generated content on their sites as publishers and not as intermediaries. This is the essence of the private complaints filed in Delhi courts against companies such as Google and Facebook by Vinay Rai, a journalist and Aijaz Ashraf Qasmi, the founder offatwaonline.org. These two complaints claimed that web content that can

[302] A joint statement by civil society organisations for the UN CSTD meeting on 'Enhanced Cooperation on Public Policy Issues Pertaining to the Internet' to take place in Geneva on May 18th, 2012

[303] Prabir Purkayasta, Waging War against the Internet and Democracy, Newsclick 26 March 2012

discovered in search engines and user generated content posted on various websites violates Indian laws. The civil court has passed a restraining order against "content of this type" from being made available on the Internet in the future. The criminal court has held that a *prima facie* case exists that Internet platforms are engaged in "criminal conspiracy" and therefore instituted criminal proceedings against the senior management of these companies. In these cases, the Government agencies are presenting arguments that effectively complement the private complaints[304].

Under the IT Act, the power for the Government to block material are given under Section 69A. They have provisions that are quite similar to what conventional media also has, so Internet media would appear to have protection similar to other media. The catch is that the Government is now claiming that under Section 79 too the Government can ask material to be taken down, and this without the protection granted under Section 69A. Strange as it may seem, instead of safe harbour meant to be provided under Section 79, the Government is now claiming *additional censorship* powers. In other words, they have two ways of censorship – one way is under Section 69A that has various protection against misuse and another under section 79, that only requires a phone call; or being called into Sibal's chamber and being asked to take down material.

Strongly pleading for internet content autonomy, Prabir Purkayasta wrote: It is widely recognised that without a safe harbour provision for intermediaries, user generated content is largely dead – most bloggers and those uploading videos depend on intermediaries. Without them, we are back to only those with money being able to survive, who can perhaps try and pre-screen content. The democratisation of media that the Internet currently provides would disappear. What the Parliament has given as safe harbour for intermediaries under the IT Act is now sought to be taken back under Section 79; safe harbour would be available only if the the Internet companies implement private censorship of material that Government does not want. Therefore the urgent need to define in the Rules clearly that Section 79 cannot be used for Government censorship. And that the IT Rules cannot go beyond what is under Indian constitution reasonable restriction on the media. Take down any material that violate law, but nothing else.

The IT Act may not be the best but at least is a workable regime for the Internet. What the Government has notified as the Rules under the Act is completely retrogressive and against the legislative intent of the Act. The Parliament must therefore assert its authority and annul these rules. The window for such a motion in Parliament is only the current Budget session. We hope some parliamentarians will take the initiative to move such a motion. And the courts should throw out complaints that challenge not Google and Facebook as is being made out to be but essentially user generated content itself.

[304] Ibid.

Joint statement by civil society organizations demand that Internet's governance systems must be open, transparent and inclusive, with civil society given adequate avenues of meaningful substantive participation. It said:

> "While we denounce statist control over the Internet sought by many governments at national levels, we believe that the struggle at the global level also has significant dynamics of a different kind. Our demands with respect to 'global' Internet Governance espouse a simple and obvious democratic logic. On the technical governance side, the oversight of the Internet's critical technical and logical infrastructure, at present with the US government, should be transferred to an appropriate, democratic and participative, multi-lateral body, without disturbing the existing distributed architecture of technical governance of the Internet in any significant way. (However, improvements in the technical governance systems are certainly needed.) On the side of larger Internet related public policy-making on global social, economic, cultural and political issues, the OECD-based model of global policy making, as well as the default application of US laws, should be replaced by a new UN-based democratic mechanism. Any such new arrangement should be based on the principle of subsidiarity, and be innovative in terms of its mandate, structure, and functions, to be adequate to the unique requirements of global Internet governance. It must be fully participative of all stakeholders, promoting the democratic and innovative potential of the Internet.

The Internet should be governed on the principles of human liberty, equality and fraternity. It should be based on the accepted principle of the indivisibility of human rights; civil, political, economic, social and cultural rights, and also people's collective right to development. A rights-based agenda should be developed as an alternative to the current neo-liberal model driving the development of the Internet, and the evolution of an information society.

The Civil Societies together wanted UN to be the right place for working an alternative agenda with regard to governance and autonomy of internet. They said:

> The UN is the appropriate place for developing and implementing such an alternative agenda. Expedient labelling by the most powerful forces in the Internet arena, of the UN, and of developing countries, as being interested *only* in 'controlling the Internet', and under this cover, continually shaping the architecture of the Internet and its social paradigm to further their narrow interests, is a bluff that must be called. We demand that a Working Group of the UN Commission on Science and Technology for Development (CSTD) be instituted to explore possible ways of implementing 'enhanced cooperation' for global Internet-related policies[305].

[305] A joint statement by civil society organisations for the UN CSTD meeting on 'Enhanced Cooperation on Public Policy Issues Pertaining to the Internet' to take place in Geneva on May 18th, 2012

CHAPTER VI

INTERNET, SOCIAL MEDIA & INFORMATION TECHNOLOGY ACT 2000

6.1 Communication and Commerce: Information Technology Act 2000

Electronic commerce is commercial transaction on line. Except the communication form being different, this commerce contains all similar characteristics of ordinary commerce. Yet, because of its peculiar form and paperless character, a new form of regulation and legal provisions became necessary. The Information Technology Act is a major attempt to answer these needs. Communicating commercial transactions through electronic, optical or analogous means including EDI, E-mail, etc. With globalization and privatization becoming a reality through world wide web, the new regulation of e-commerce is necessitated. To promote standardization and homogenistion of laws internationally, the Untied Nations Commission on International Trade Law UNCITRAL has drafted a model law that supports the commercial use of international contracts in electronic commerce. This is called the UNCITRAL Model Law on Electronic Commerce, 1996. India being a signatory to this model law, passed Information Technology Act, 2000. The Act facilitates the electronic commerce transactions, electronic filing, maintenance of electronic records and electronic government transactions. It provided legal validity to using of electronic data interchange EDI, electronic records and electronic signatures. This Act made incidental and consequential amendments to the Indian Penal Code, the Indian Evidence Act, the Banker's Book Evidence Act and the Reserve Bank of India Act. Ultimately this law secures electronic transactions enabling the parties to enter into electronic contracts. Electronic signatures and electronic records were given legal status. The Act established a Digital Signature Infrastructure making specific use of Asymmetric Crypto System Technology with new authorities such as the Controller of Certifying Authorities being set up. Contraventions, regarding electronic records like hacking, theft of electronic records, manipulation of records, spreading of viruses etc have been identified and provided for adjudication and punishment. Information Technology offences like tampering with computer source documents, obscenity were created under this Law and provided with punishments. Privacy and confidentiality of information submitted to statutory authorities is protected. Dissemination to third parties of such information collected in pursuance of powers under the Act is made a criminal offence. The Act sets up Cyber Regulatory Authority such as the controller of Certifying Authorities and the Cyber Regulations Appellate Tribunal. It also envisaged setting up of a Cyber Regulatory Advisory Committee also. It also provided for a limited liability to Internet Service Providers for content on the Internet. This is relevant in regard to copyright violations, pornography and other media related crimes.

2008 Amendment: The Information technology Act 2000 has been substantially amended through the Information Technology Amendment Act 2008 which was passed by the two houses of the Indian Parliament on December 23, and 24, 2008. It got the Presidential assent on February 5, 2009 and was notified for effectiveness on October 27, 2009.

Information Technology Act 2000 addressed the following issues:

1. Legal Recognition of Electronic Documents
2. Legal Recognition of Digital Signatures
3. Offenses and Contraventions
4. Justice Dispensation Systems for Cyber crimes

ITAA 2008 (Information Technology Amendment Act 2008) as the new version of Information Technology Act 2000 is often referred has provided additional focus on Information Security. It has added several new sections on offences including Cyber Terrorism and Data Protection.

Authority to intercept: Section 69 empowers the Central Government/State Government/ its authorized agency to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource if it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence or for investigation of any offence. They can also secure assistance from computer personnel in decrypting data (see mandatory decryption), under penalty of imprisonment.

Due deligence clauses: Section 79 of the Information Technology Act 2000 says that Intermediaries, like Google, Yahoo, Facebook, My Space etc are not liable for third party information if they observe due diligence while discharging their duties. Under the amended Information Technology Act, Section 66 has been amended to remove the definition of hacking. Amendments also introduced a series of new provisions under Section 66 covering almost all major cyber crime incidents. With internet and telecommunication virtually controlling communication amongst people, amendments in the Information Technology Act, 2000 (IT Act) have made it clear that transmission of any text, audio or video that is offensive or has a menacing character can land a sender in jail. The punishment will also be attracted if the content is false and has been transmitted for the purpose of causing annoyance, inconvenience, danger or insult.

6.2 Internet, Social Media and Regulation

Going by global standards, India's internet penetration rate is considered less than 10 percent low. However India became a significant center of tens of millions of users and thus

an important leader in the high-tech industry. In spite of Infrastructure limitations and cost considerations restricting the access to the internet and other ICTs in India, both infrastructure and bandwidth have improved in the last two years. The International Telecommunication Union (ITU) reported 61.3 million users as of 2009[306]. As per the Internet and Mobile Association of India (IAMAI) about 77 million Indians have used the internet at least once in their lifetimes[307]. A 2010 survey by the New Delhi–based research and marketing firm Juxt resulted in an estimate of 51 million "active" internet users, who had used the internet at least once in the past year (40 million urban and 11 million rural)[308]. Various measurements put the overall internet penetration rate at a rather low 5 to 8 percent of the population, but there are signs that this figure is increasing very fast. One recent study predicted that the number of Indian users would reach 237 million in 2015, from a current estimate of 80 million[309].

There is a dramatic increase in proliferation of mobile users, and the penetration almost touched 60 percent of the population. The TRAI explained that the total mobile subscriber base as almost 730 million by December 2010[310], more than double the 347 million users recorded by the ITU for 2008[311]. Access to the internet through mobile phones has risen as well, apparently due to a series of inexpensive rate plans that service providers introduced in early 2010. Still, only a small percentage of mobile-phone users access the web on their devices. According to IAMAI, an estimated 20 million people had such access in late 2010, up from 12 million in 2009[312].

India today has over 10-crore Internet users, third largest in the world after China and the U.S., which is likely to more than double by 2015. India also has over 2.8-crore Facebook users and is the fifth largest Facebook user base in the world and is expected to become second largest by the end of 2012. Internet usage in India is growing at a very healthy rate and is close to a 100 million active users. This is just about 8.5% of the total population of India.

Objectionable content: On December 6, 2011, Mr. Kapil Sibal, Union Minister for Information Technology asked some social networking sites to remove the 'objectionable content'. During 2010 between July and December, Google received 282 requests from

[306] International Telecommunication Union (ITU), "ICT Statistics 2009—Internet," http://www.itu.int/ITU-D/icteye/Indicators/Indicators.aspx#.
[307] http://www.iamai.in/Upload/Research/icube_new_curve_lowres_39.pdf
[308] http://www.juxtconsult.com/Reports/Snapshot-of-Juxt-India-Online-Landscape-2010-Press.ppt
[309] Tripti Lahiri, "India to Have 237 Million Web Surfers in 2015," *India Real Time* (*Wall Street Journal* blog), September 1, 2010, http://blogs.wsj.com/indiarealtime/2010/09/01/india-to-have-237-million-web-surfers-in-2015/.
[310] http://economictimes.indiatimes.com/news/news-by-industry/telecom/indias-mobile-phone-users-grow-to-72957-million/articleshow/7361931.cms
[311] http://www.itu.int/ITU-D/icteye/Indicators/Indicators.aspx
[312] http://www.indianexpress.com/news/more-people-are-logging-on-to-internet-via-cellphones/658375/0

different law enforcement agencies in India to remove content. The increasing flow of such requests continued. A single agency even asked Google to remove 236 communities and profiles from social networking site Orkut as they were "critical of a local politician." The extent of post screening can be gauged by a simple fact - Google was asked for "user data request" of 2,439 users in only the six months from January to June, this year. This is nearly a 1,000 more than those asked in the preceding six months.

Google claims that the transparency is their core value at Google. It said: “As a company we feel it is our responsibility to ensure that we maximize transparency around the flow of information related to our tools and services. We believe that more information means more choice, more freedom and ultimately more power for the individual”. The "Transparency Report” prepared by Google says that in the last half of 2009, it received 142 requests from law enforcement agencies to remove content. "The majority of Indian requests for removal of content from Orkut related to alleged impersonation or defamation," says the report[313]. While Google is blamed for supplying users’ private information to the governments, the search engine giant also attempts to balance out by releasing a Transparency Report. According to this report India ranks three in the list. India made 1430 data requests to the search engine with 30 removal requests. While many requests are over alleged defamation, hate speech or pornography. It is United States that topped the list with over 4000 requests.[314]

Between January and June 2011, there were requests to remove 236 communities and 19 blogs from Orkut for containing criticism of the government while requests on impersonation and pornography totaled only 19. The Google report also revealed that in 2009, they complied with 77% of the requests. But in the last half of 2010, they agreed to remove only 22% as the company felt that content in most cases requested did not violate the community standards or local laws[315].

India is one of four countries which, during the first half of 2011, requested Google to remove content on the basis that it was critical of the government. However the Google did not comply, whereas Google restricted local users from accessing the offending content in Thailand and Turkey. In United States also the Google refused compliance with the Government request. According to Transparency Report of Google for January to June 2011, it has received requests from the Government of India to remove 358 items. Among these requests 255 items were classified under the “government criticism” category. Interestingly, the biggest chunk of this is accounted for by a single “request from a local law enforcement

[313] http://www.google.com/transparencyreport/ 8.12.2011
[314] http://www.ndtv.com/article/technology/india-third-snoopiest-country-google-transparency-report-116783 8.12.2011
[315] http://timesofindia.indiatimes.com/tech/news/internet/Code-of-conduct-for-social-media-Indian-politicians-way-too-touchy-about-online-image/articleshow/11012153.cms 7.12.2011

agency to remove 236 communities and profiles from [social networking site] Orkut that were critical of a local politician." Google did not identify this politician, but it did state that "we did not comply with this request, since the content did not violate our Community Standards or local law."[316]

The furnished data indicated that only 8 items were requested to be removed under the category of hate speech. On the grounds of defamation 39 items were sought to be removed, 20 due to privacy and security concern, 14 due to impersonation, 3 as pornographic items and one request due to national security reasons. The fact that the single largest category is government criticism; apart from the 236 items on orkut, the government also asked for 19 items on YouTube to be removed on these grounds, raises the question whether state could seek removal of such content because it criticizes the Government?

Last year, between July and December 2010, Google reportedly "received requests from different law enforcement agencies to remove a blog and YouTube videos that were critical of Chief Ministers and senior officials of different states." It did not comply with those requests.

It is not only India, several other countries do object to political criticism. The Thailand's Ministry of Information, Communication and Technology made two requests to "remove 225 YouTube videos for allegedly insulting the monarchy in violation of Thailand's lèse-majesté law." The Google choose to follow the directions and complied with the request, restricting Thai users from accessing 90% of the videos. In Turkey, Google received court orders and requests from the Telecom authority "to remove YouTube videos and blogs that documented details about the private lives of political officials." Google says it "restricted Turkish users from accessing YouTube videos that appeared to violate local laws and removed the blogs for violating Blogger's Terms of Service."[317]

In China during the period that Google's joint venture operated google.cn, its search results were subject to censorship pursuant to requests from government agencies responsible for Internet regulation. Chinese officials consider censorship demands to be state secrets, so we cannot disclose any information about content removal requests for the two reporting periods from July 2009 to June 2010. YouTube was completely inaccessible during this period of transparency study[318]. YouTube was inaccessible in Pakistan for 6 days during this reporting period due to concerns around the "Everyone Draw Mohammad Day" competition organized by a Facebook user.

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[316] The Hindu, India wanted 358 items removed, December 8, 2011, http://www.thehindu.com/news/national/article2696027.ece

[317] ibid

[318] http://www.google.com/transparencyreport/governmentrequests/8.12.2011

Indian Union Minister and Constitutional Expert, Mr. Kapil Sibal made clear the intention of the Government to strongly oppose the uploading of disparaging and defamatory content on some social networking sites. A regulatory order has been issued seeking the removal of such objectionable content or face the action[319]. The websites such as Facebook, Google, YouTube and Yahoo, were asked to evolve a mechanism to filter such "inflammatory" and "defamatory" content that could create social tension. Besides referring to uploading of pictures and videos having morphed images of popular leaders, he mentioned the use of material that could hurt people's religious sentiments.

It was reported that Mr Kapil Sibal, being a member of the Council of Ministers and party loyalist has every reason to take action to prevent indiscriminate usage of morphed images of Congress President Sonia Gandhi and Prime Minister Manmohan Singh, on the Internet which might disturb the public order. But is it right in the context of Constitutional guarantee to freedom of speech and expression.

If the 'content' is objectionable because it breaches the right to reputation as part of recognised right to life, the victims should have, and they have, legal remedy. Defamation is a problem of individual against the wrong-doer. Obscenity is another damaging content that could be objected by law. But obscene content becomes penal or removable depending upon the harmful impact on the society. Wrongs of this nature invite consequential penal actions. But when the content is hate speech and highly inflammable generating violence leading to loss of life in communal riots, the State has responsibility to prevent such loss of life. Thus more than defamatory and obscene material it is this hate speech that has to be removed to protect lives from being destroyed in meaningless violence sparked by communal hatred. The impact of the content decides the responsibility of the state to deal with it.

However this power cannot be used to remove political criticism and analysis of Governance issues because that is the purpose of freedom of speech and expression guaranteed by the Constitution of India like any other democratic nation in the world. The liberty of thought flourishes by the freedom of speech and expression (guaranteed by Article 19(1)(a) of Constitution of India), largely exercised by the media and writers. Any action to remove this critical political comment is unconstitutional and violative of freedom of speech. At the same time not preventing the communally inflammable content is also unconstitutional and violative of right to live. Like any other freedom, the freedom of speech is not absolute. When right to life is also not absolute there is no point in expecting expression right to be absolute. The Constitution permitted the reasonable restrictions against irresponsible writing in newspapers, screenplay over movies, broadcasting or telecasting in radio and television or posting in blogs, websites and social net work groups.

[319] The Hindu, New Delhi, "Hate speech must be blocked, says Sibal", December 6, 2011

Reportedly the Internet Service Providers Association of India (ISPAI) president Rajesh Chharia opposed saying the controlling the Internet was not a good idea … but at the same time he said that the ISPs should cooperate with the government when it came to matter of national security and law and order problems. "ISPs should follow the law of the land and help create a safe and secure Internet. To begin with, they should end all Internet telephony services being offered by them illegally, which is also causing revenue loss to the exchequer," he said, referring to services like Google Talk and Skype[320].

The Minister, in an interview to The Hindu, popular Indian daily newspaper, has defended his demand that global internet companies block some content from sites they operate, saying he had been left with no choice after the companies refused to delete incendiary hate-speech published on their social-networking websites. "People have been asking why we can't just prosecute individuals who post hate-speech instead of blocking sites," Mr. Sibal said, "but there are three reasons why that's not workable. First, many of the individuals posting inflammatory material online are overseas, out of the reach of our laws. Second, the Internet companies have rejected our requests for information on the individuals, citing laws in the countries where the servers are located." Finally, "each time material of this kind becomes the subject of legal proceedings in open court, you will have protests, mobs, perhaps violence — even if the media is responsible, and doesn't report the details." He further said, "It gives me no pleasure, to restrict social media, but the fact is there's a problem. These companies are in essence saying that they publish content in accordance with standards in the west. That's not good enough. I will, however, call all stakeholders to the table, and evolve agreed standards for what kinds of content are acceptable, before a final decision.[321]"

It is not the case that internet users are free and post whatever information they wanted. There are instances where Internet users faced prosecution for their irresponsible online postings, and even private companies hosting the content were obliged by law to hand over user information to the authorities. In September 2007, after Google and a major ISP cooperated with a police investigation, information-technology worker Lakshmana Kailash K was jailed for 50 days for allegedly defaming an Indian historical figure Chatrapathi Shivajee online. It later emerged that another person had posted the material, and Kailash was arrested based on the wrong IP address. In May 2008, two men were arrested and charged for posting derogatory comments about Congress party Chief Sonia Gandhi on Orkut; the case is still pending.As in the 2007 case, Google, which owns Orkut, accommodated the authorities' request for identity information. In July 2010, a magazine editor in the southern city of Kerala was arrested on defamation charges for an article posted on the magazine's website about an Indian businessman residing in Abu Dhabi

[320] The Hindu, 'Sibal warns social websites over objectionable content', December 6, 2011, New Delhi
[321] ibid

In 2009, the Supreme Court of India has ruled that both bloggers and moderators can face libel suits and even criminal prosecution for comments posted by other users on their websites. A 19 year old young person from Kerala, Ajith D moderated a blog wherein several anonymous comments criticizing the right-wing party Shiv Sena. That party's youth wing filed a criminal complaint against Ajith, who approached the Supreme Court to quash the prosecution, but the court rejected his request.

As the UN Special Rapporteur on Freedom of Opinion and Expression noted recently "[Internet] Intermediaries play a fundamental role in enabling Internet users to enjoy their right to freedom of expression and access to information. Given their unprecedented influence over how and what is circulated on the Internet, States have increasingly sought to exert control over them and to hold them legally liable for failing to prevent access to content deemed to be illegal."

Either under Telegraph Act or the Information Technology Act, there is no requirement of prior judicial approval for communications interception. The amended IT Act grants both central and state governments the power to issue directives on interception, monitoring, and decryption. All licensed ISPs are obliged by this law to sign an agreement that allows Indian government authorities to access user data, though the providers may lack the technical capacity to respond to some requests. Recently, for instance in September 2010, the ISPs claimed that they would be unable to comply with a Department of Telecommunications notice requiring them to enable the interception of BlackBerry messages for national security reasons.

6.3 Constitutional Premise of Freedom and State Power

The Indian Constitution, particularly Article 19, protects freedom of speech and expression. Along with the right to life and liberty under Article 21, Article 19(1)(a) has also been held to apply to the privacy of telephone conversations, though established guidelines regulate the ability of state officials to intercept communications. Removing content or denying access on grounds of security and obscenity is one facet of power of regulator or administrator while securing the information on privacy is another important facet of it.

Information and Communication Technology usage is governed primarily by the Telegraph Act, the Indian Penal Code, the Code of Criminal Procedure, and the Information Technology Act (ITA), 2000. The 2008 amendments to the ITA raised concerns about an expansion of state surveillance capacity, including interception of SMS and e-mail messages. Several provisions of the revised law entail possible restrictions on users' rights.

The IT law defined new Information Technology related crimes with prescribed punishments such as sending offensive messages, dishonestly receiving stolen computer resources or communication devices, identity theft, impersonation, violation of bodily privacy, cyberterrorism, and the publication or transmission of sexually explicit material. The prescribed punishments vary, but many offenses carry up to three years in prison. Under the revised Section 80, lower-ranking police officers are permitted to conduct personal searches and arrests without a warrant in public spaces and private businesses that are accessible to the public, provided there is a reasonable suspicion that a crime covered under the Act has been or is about to be committed. Section 69 has expanded the circumstances under which communications could be monitored, intercepted, and decrypted. Earlier this power was used only in emergency situations. Such surveillance was governed by the 1885 Telegraph Act, which allowed it in the "interests of the sovereignty and integrity of India."

The Privacy angle: The amended IT Act drops these and other limitations. For instance Section 69B, allows the central government to collect traffic data from any computer source without a warrant, whether the data are in transit or in storage. These provisions enormously increase the power of state to regulate the content of internet which affects the right to privacy also. On the other hand the law is criticized as lacking in enough provisions to protect personal information held by private corporations. These inadequacies need to be addressed. The changed law provided the power to require corporations handling sensitive personal data to maintain "reasonable security practices and procedures." This provision has to be further expanded by clear definition of rules and guidelines for better clarity and enforceability.

Power to intercept: Cyber Technology which facilitates to record every transactional communication is a big boost to investigation efficiency to trace the conspirators of crimes including terrorist attacks. It is great tool of crime detection today. The state certainly has power to intercept the telephone conversations by following certain guidelines prescribed by Supreme Court of India. The evidence obtained by such interception is admissible. The Ministry of Home Affairs intercepted mobile-phone communications between the gunmen and their Pakistan-based handlers during the Mumbai terrorist attacks in 2008. These communications were then rightly used as evidence in court of law. In May 2010, the news magazine Outlook published transcripts of phone tapping that recorded individuals including lawmakers from the ruling party. These calls, made on mobile phones at different times and locations were intercepted and recorded using a new GSM monitoring device. In 2010, another major scandal had erupted after the leaking of hundreds of intercepted 2009 phone conversations between lobbyist Ms. Niira Radia and several politicians, bureaucrats, and journalists. These taped records revealed incriminating evidence of political corruption and other abuses which led to arrest of former Ministers and MPs. Meanwhile, noted industrialist Mr. Ratan Tata, employer of Radia, filed a lawsuit against the government claiming that his

privacy rights had been breached. The Government appropriately responded with the claim that Radia was being monitored as a suspected agent of foreign intelligence services. In the interest of public order, where security is involved and crime is a possible result, the Government assumes power to monitor the content of communication, which operates as a major restriction on right to privacy and also freedom of expression[322].

Under certain compelling circumstances the phone tapping and using the result as incriminating evidence is inevitable. In the context of a corruption investigation related to a former telecommunications minister, the mobile-phone provider Reliance Communications reported to the Supreme Court that the authorities had submitted over 150,000 phone tapping requests from early 2006 to the end of 2010, an average of 30,000 requests per year. These scandals generated a lot of public response leading to telephone tapping power and imposing obligation on private companies to respect the wiretap requests from authorities. The Privacy has to be relegated to secondary level as it is prime need to secure the order and arrest the crime of corruption.

Either under Telegraph Act or the Information Technology Act, there is no requirement of prior judicial approval for communications interception. The amended IT Act grants both central and state governments the power to issue directives on interception, monitoring, and decryption. All licensed ISPs are obliged by this law to sign an agreement that allows Indian government authorities to access user data, though the providers may lack the technical capacity to respond to some requests. Recently, for instance in September 2010, the ISPs claimed that they would be unable to comply with a Department of Telecommunications notice requiring them to enable the interception of BlackBerry messages for national security reasons.

The concern for security is the constitutional duty of the Government. The Government of India has given warning to shut down BlackBerry services altogether in 2010, demanding that the device's manufacturer, Research in Motion (RIM), provide it with the capacity to read encrypted e-mail and instant messages sent via BlackBerry. It is the Constitutional obligation of the Government that prompted it to scrutinize BlackBerry services apprehending that the devices may be used by terrorists or for other illegal activities because the device's encryption prevents intelligence agencies from monitoring mail traffic. Whereas the RIM claimed that it genuinely tries to be as cooperative as possible with governments in the spirit of supporting legal and national security requirements. The company claimed that strong encryption is a fundamental commercial requirement for any country to attract and maintain international business. The company also said that it adopts a "consistent global standard" in setting access requirements and won't do "special deals" for

[322] This matter is still pending before the Supreme Court, which might set the principles of privacy and security in the context of communication technology.

individual countries. It is reported that RIM has about 1.1 million users in India, 1.2 million subscribers in Indonesia and a combined 1.2 million in the U.A.E. and Saudi Arabia and it had 46 million subscribers globally. The dispute remained unresolved for a long time after authorities rejected RIM's proposed solutions to the decryption problem. In September 2010, India's home secretary warned that RIM, Google, and Skype could be required to operate their services from locally based servers, enabling closer monitoring by security agencies. In this context the government has warned to block the introduction and expansion of 3G mobile service across the country until operators provide sufficient means for security-related interception[323].

Prosectuion for Expression Crimes on Internet: It is not the case that internet users are free and post whatever information they wanted. There are instances where Internet users faced prosecution for their irresponsible online postings, and even private companies hosting the content were obliged by law to hand over user information to the authorities. In September 2007, after Google and a major ISP cooperated with a police investigation, information-technology worker Lakshmana Kailash K was jailed for 50 days for allegedly defaming an Indian historical figure Chatrapathi Shivajee online. It later emerged that another person had posted the material, and Kailash was arrested based on the wrong IP address. In May 2008, two men were arrested and charged for posting derogatory comments about Congress party Chief Sonia Gandhi on Orkut; the case is still pending.As in the 2007 case, Google, which owns Orkut, accommodated the authorities' request for identity information. In July 2010, a magazine editor in the southern city of Kerala was arrested on defamation charges for an article posted on the magazine's website about an Indian businessman residing in Abu Dhabi.

In 2009, the Supreme Court of India has ruled that both bloggers and moderators can face libel suits and even criminal prosecution for comments posted by other users on their websites. A 19 year old young person from Kerala, Ajith D moderated a blog wherein several anonymous comments criticizing the right-wing party Shiv Sena. That party's youth wing filed a criminal complaint against Ajith, who approached the Supreme Court to quash the prosecution, but the court rejected his request.

6.4 New Regulatory Rules in 2011

The Information Technology ministry introduced the Information Technology (Intermediaries guidelines) Rules, 2011, under the Information Technology Act, 2000 during February 2011. The new rules grant exemption to internet intermediaries, such as telecommunication companies, e-commerce websites, internet service providers (ISPs) and blogging sites, among others, from liability in certain cases. The rules are significant, especially because of the increasing litigations against online service providers, who are

[323] The companies were still negotiating with the authorities.

being indicted as co-accused in cases of unlawful conduct by end-users. These rules have emphasized the website hosts' obligations to perform "due diligence." These rules increase the responsibility of intermediaries in the pre-crime scenario, in terms of keeping a close watch over the kind of content that is put on the website by the end-user. At the same time, these rules go a long way in exempting intermediaries in post-crime scenario if steps are taken to curb the illegal activity of the end-user or disable access to the illegal content. The rules ask the intermediaries to publish the terms and conditions of use of their websites, user agreement, privacy policy, apart from notifying its users not to use, display, upload, transmit and share illegal or 'objectionable' content. Among other things, such content may include harmful, threatening, blasphemous, defamatory, vulgar, pornographic content, content invasive of another's privacy, is hateful, or racially or otherwise objectionable. These rules allow officials and private citizens to demand that Internet sites and service providers remove content they consider objectionable.

These rules require intermediaries to adopt terms of service that prohibit users from hosting, displaying, publishing, sending or sharing any proscribed content, including not just obscene or infringing content, but also any material that threatens national "unity" or "integrity," "public order," or is that "grossly offensive or menacing in nature," "disparaging," or "otherwise unlawful in any manner whatever." It is criticized that such a broad standard lacks clear limits on what kinds of content may be taken down and invites abuse.

The law thus imposes a duty that once an intermediary discovers, or is notified of proscribed content, it must "disable" the content within 36 hours. Under the rules, intermediaries are also authorized to immediately terminate access or usage rights. They must also preserve related user records for 90 days for investigatory purposes. This is not a flexible, discretionary standard: under the rules, intermediaries must "strictly follow the provisions of the Act or any other laws."

In addition to new content regulations, the government also issued regulations pertaining to data security, Internet cafes and the electronic provision of government services. As an example, part of the regulations stipulates that cyber cafes be registered with a unique registration number with an agency called as registration agency. Besides, the Government has declared to introduce regulations to restrict the ‘objectionable material’ also.

Criticism against making of the Rules

What is the remedy if some content is wrongfully removed? Such remedy was available under the rules of the 1998 United States' Digital Millennium Copyright Act (DMCA). It is criticized that the users in India do not have any recourse if their content is removed wrongfully. Nor are there any safeguards against abuse: the rules do not require that

the party lodging the complaint have any rights or even have a good faith basis for believing that the content is illegal.

Though the Government called for comments on the rules, it was still criticized that the drafting process was not very open or inclusive. It was alleged that the Government has not given sufficient time. The Government responded: "these due diligence practices are the best practices followed internationally by well-known mega corporations operating on the Internet." One lesson for other developing democracies is that the process matters, not just for legitimacy, but also for purposes of producing satisfactory substantive provisions.

Intermediaries Burdens and Benefits

Indian media criticized that the new rules facilitate the internet intermediaries by granting exemptions to them such as telecommunication companies, e-commerce websites, internet service providers (ISPs) and blogging sites, among others, from liability in certain cases. Facebook said in a statement, "We want Facebook to be a place where people can discuss things freely, while respecting the rights and feelings of others, which is why we already have policies and on-site features in place that enable people to report abusive content. We will remove any content that violates our terms, which are designed to keep material that is hateful, threatening, incites violence or contains nudity off the service. We recognise the government's interest in minimizing the amount of abusive content that is available online and will continue to engage with the Indian authorities as they debate this important issue." When media contacted the Microsoft and Yahoo refused to comment, but Google spokesman said: "We work really hard to make sure that people have as much access to information as possible, while also following the law. This means that when content is illegal, we abide by local law and take it down. And even where content is legal, but violates our own terms and conditions, we take that down too, once we've been notified. But when content is legal and doesn't violate our policies, we won't remove it just because it's controversial, as we believe that people's differing views, so long as they're legal, should be respected and protected." Google also owns social networking site Orkut and video-sharing site YouTube[324].

According to cybercrime experts, the rules increase the responsibility of intermediaries in the pre-crime scenario, in terms of keeping a close watch over the kind of content that is put on the website by the end-user. At the same time, these rules go a long way in exempting intermediaries in post-crime scenario if steps are taken to curb the illegal activity of the end-user or disable access to the illegal content. The rules ask the intermediaries to publish the terms and conditions of use of their websites, user agreement, privacy policy, apart from notifying its users not to use, display, upload, transmit and share

[324] http://timesofindia.indiatimes.com/tech/news/internet/Kapil-Sibal-snaps-at-social-networks-says-code-of-conduct-coming/articleshow/11012467.cms December 7, 2011, Times of India, New Delhi.

illegal or 'objectionable' content[325].Among other things, such content may include harmful, threatening, blasphemous, defamatory, vulgar, pornographic content, content invasive of another's privacy, is hateful, or racially or otherwise objectionable.

Cyber security expert Anshul Abhang said, "The rules say the intermediaries will not be liable as long as they do not host or publish any such content. Furthermore, the intermediaries will not be liable if they have taken steps to remove the illegal content, thus observing due diligence, as is mentioned in the rules." "For instance, if a blogging website has a blogger posting defamatory content about somebody, the latter may ultimately file a defamatory suit against the blogging website and not the blogger who actually defamed him. In the light of these rules, if intermediaries know of such a content being published on their blogs, they can follow due diligence by removing the content and blocking the user's access," said Abhang[326].

These new rules have definitely increased the responsibility of intermediaries in a pre-crime scenario, where they would have to keep a constant vigil over the activities of the numerous users using their portals or blogs. The intermediaries will only be liable if they fail to remove the content or disable the user's access after being notified about the existence of such objectionable content on their website by the government or its agency. These provisions made the Rules reasonable.

As the government has already a set of detailed laws to deal with user generated content on websites, notices were sent as per those laws but some of the foreign social networking sites refused to comply with and that has necessitated the Government to seek removal of the content. It can't be ignored that under the IT Act, an intermediary is duty-bound to act on a complaint relating to content (including user generated content) within 36 hours of receiving a complaint. Some of the foreign sites have been taking the position that they will not remove the allegedly offensive content unless they receive a court order - as any content removal by them has to be in line with their global policy and US laws.

Though the draft rules earlier proposed under the Information Technology Rules 2011 (due diligence observed by intermediaries guidelines), included the definition of 'Blog' and 'Blogger' for the first time under the IT Act, the actual rules in the gazette did not mention these terms. Still the rules will apply to blogs also. A techno-legal consultant and faculty at the Asian School of Cyber Law, Mr. Sagar Rahurkar, agreed that 'observing due diligence' will apply to blog service providers as well. The bloggers are also expected to remove objectionable content uploaded by a blogger and terminate access. The rules and the instructions mentioned therein do not violate the freedom of speech or expression. Another expert on Information security and blog owner Kaustubh Kumbhar explained the physical

[325] Neha Madaan, New IT rules grant relief to internet intermediaries, TNN **,** Times of India, Jun 6, 2011
[326] Ibid.

impossibility of responsibility for content. "It is impossible to keep a track of the content being published on one's blog. Whenever we post an article on the blog, it is backed with a disclaimer stating that the company is not liable for the damages or claims that may follow as bloggers' comments. A good article usually has hundreds of comments and it is impossible to go through all of them. It is because of this reason that each response posted has a 'report abuse' link. As soon as one comes across any objectionable post or comment, he/she can click on the link and the owner of the blog can then remove the post within 24 hours.[327]" The ruled did take note of this impossibility and prescribed the duty of post-publication removal of objectionable content.

Giving the power to Government to proscribe some content and direct its removal will find justification with reference to religious hate speech.

No absolute freedom

There are two important questions to be answered in this context. First question: When freedom is not absolute and the state has a constitutional duty to protect the lives from possible riots fanned by irresponsible writings, is it justified to take any action? No. Speech or writing can be restricted by the Government, but not using an executive or individual order. It can be done only under the legislation to impose reasonable restriction as permitted by Article 19(2) of the Constitution of India. There is a law to impose 'censorship' on Cinematographic Films depicting fictitious stories – the Cinematography Act. Its constitutionality is upheld by the Supreme Court in several cases. There is no law to impose censorship on Television. The Government cannot also make such law because the impact of TV is not comparable to severe impact of cinema on the viewers. Though the word 'expression' under Article 19(1)(a) include the 'press', 'cinema', 'broadcasting', 'telecasting' and Internet, the censorship on Cinema cannot be extended to other media, because, the democracy needs free flow of ideas and discussions on governing aspects. The communication of ideas throughout the society is like blood circulation for a living person.

Next question: Whether limited jurisdictions of an Indian police or law reach the unlimited reach of Internet? When the wrongdoers are beyond the control, what is the use of making 'law'? That issue came out when the functionaries of social networking websites have expressed their helplessness on pre-screening of content due to the large amount of content being uploaded, besides the server being located in foreign locations, particularly the U.S. They are also averse to the government's attempt to monitor and control the Internet. The US Constitution and society's democratic character allows the free flow of any amount of critical content through any medium. First Amendment freedom was further expanded by the strong judicial protection offered through series of judgments of Supreme Court.

[327] http://articles.timesofindia.indiatimes.com/2011-06-06/pune/29624972_1_objectionable-content-intermediaries-websites, June 6, 2011

While communications & IT minister said that the government was against censorship, he said that the US laws and community standards could not be applied in India. "We have to take care of the sensibilities of our people. Cultural ethos is very important to us," Kapil Sibal said on 6th December 2011. The Minister indicated that the legal process being developed the code of conduct may contain provisions that stipulate heavy penalty for websites that put out "offensive" material.

For a society in India, which is a union of different religions, regions, castes and languages but also divided by the same factors, any small provocation is enough to disturb the harmony and public order. In such a state of affairs, the state cannot give up responsibility of securing the society. Even US freedom is restricted on the basis of doctrine of police powers and doctrine of present and imminent danger.

The location of server or internet service provider gives jurisdiction to enforce the law of the land even though the objectionable matter is introduced somewhere beyond the control of a domestic jurisdiction. That is where the Government wants to make use to enforce the norms.

As the UN Special Rapporteur on Freedom of Opinion and Expression noted recently "[Internet] Intermediaries play a fundamental role in enabling Internet users to enjoy their right to freedom of expression and access to information. Given their unprecedented influence over how and what is circulated on the Internet, States have increasingly sought to exert control over them and to hold them legally liable for failing to prevent access to content deemed to be illegal."

Internet intermediaries—Internet Service Providers (ISPs), online service providers like Twitter and Google, and even Internet cafes—are thus increasingly subject to legal demands by private citizens and governments worldwide for infringing or illegal content to be removed, filtered or blocked, and for mandatory collection and disclosure of Internet users' personal data. It remained unsettled in most of the countries as to whether Internet intermediaries have liability for content posted by their users, and in what circumstances.

As the usage of internet is fast growing in developing countries like India, risks are also evidently increasing and demanding the liability of internet intermediaries. After a particularly notorious case holding the managing director of a popular online marketplace, Banzee.com, personally liable for a user's offer to sell an obscene video, the Indian Parliament amended the Information Technology Act in 2008, ostensibly to curb the liability of intermediaries for user content.

To a great extent the EU E-Commerce Directive was in the back of mind when it amended the Act, which extended safe harbor protection to services that 1) are merely transmission conduits, 2) temporarily cache content, or 3) host content and exercise "due diligence" in complying with the Act and other government regulations. It is very difficult for the law to spell out the scope of safe harbor immunity. Thus there is a possibility that some courts held them responsible while others relieve them. Some courts argued that secondary liability for copyright infringement is not precluded.

Earlier this year also, the government of India circulated rules which made it incumbent on internet intermediaries — like Facebook and Yahoo — to exercise due diligence to block material deemed, "threatening, abusive, harassing, blasphemous, objectionable, defamatory, … or otherwise unlawful in any manner whatever."

Terrorism & Controlling the Internet Content

In the back drop of terrorist attacks, the Government preferred to assume power to control the online content. After the November 2008 terrorist attacks in Mumbai killing 171 people Indian Government felt the need for controlling the communication technologies and for censoring undesirable content. As the people feel security of the nation is threatened, most of them favoured content monitoring by the government. According to a survey by Times of India, 53% said the government should be allowed to monitor phone calls, bank accounts and e-mail accounts and a further 19% said this should be allowed for a suspect person. That left a mere 28% of Indians holding the opinion that such monitoring was an unacceptable intrusion into personal privacy. Parliament passed amendments to the Information Technology Act (ITA) in 2008, which came into effect in 2009 have expanded the government's censorship and monitoring capabilities.

In August 2010 it was reported that the Ministry of Home Affairs (MHA) had asked the Department of Telecommunications to suspend newly introduced 3G mobile service and halt providers' ongoing rollout of the technology, particularly in Jammu and Kashmir. It is because the authorities wanted time to develop the ability to intercept 3G communications in this troublesome state. Short-message service (SMS), or text messaging, has been blocked periodically in Jammu and Kashmir. Expecting violence in Ayodhya in the wake of judgment on the dispute, the Government blocked mass text messages across India on September 23, 2010, which was later extended as the verdict was deferred.

The Government started seeking data removal since 2010. Then it was assessed that India ranked third in the world for removal requests and fourth for data requests. Between July 1, 2009, and December 31, 2009, India had submitted 142 removal requests, of which 77.5 percent were fully or partially complied with. The requests related to the Blogger blog-hosting service, Book Search, Geo, SMS channels, web searches, YouTube, and especially

Orkut. 40 In one case that gained international attention, Google in September 2009 took down an Orkut group on which users had reportedly posted offensive comments about the chief minister of Andhra Pradesh, who had been killed in a helicopter crash. Indian officials were apparently concerned that the comments could spark communal violence.

Many a time the Google has removed content in response to requests from various government authorities. In January 2007 the company agreed to an arrangement allowing police forces to directly report objectionable content to Google and ask it for details regarding internet protocol (IP) addresses and service providers. By May 2007, Google had cooperated with the Mumbai police regarding online communities and comments directed against the Indian historical figure Shivaji, right-wing leader Bal Thackeray, and Father of the Indian Constitution Dr. B. R. Ambedkar.

However, except during crisis or war like situations, the Government has not imposed any restrictions on the content of internet. It also did not formulate any policy to block the access to IT on a large scale. Once during the Kargil war with Pakistan in 1999 such a direction was issued. On the other hand the State Governments directed many a times to filter the content through court cases. In recent years, apprehending the violence, the state administrative directions to remove certain content from the web are increasing.

In 2003, the Indian Computer Emergency Response Team (CERT-IN) was created in 2003 within the MCIT's (Ministry of Communication and Information Technology's) Department of Information Technology. Since then the institutional structure of internet censorship and filtering in India has begun through CERT-IN serving as a nodal agency for accepting and reviewing requests from a designated pool of government officials to block access to specific websites. When it decides to block a site, it directs the Department of Telecommunications to order all licensed Indian ISPs to comply with the decision. No review or appeals are provided. The Controller of Certifying Authorities (CCA), a government agency under the Department of Information Technology, is the agency that is entrusted under the IT Act with the power to block websites.

Blocking access on obscenity grounds

In June 2009 using this power, the authorities blocked an adult cartoon site called Savitabhabhi, which was criticized for not granting the website creators an opportunity to defend their right to free expression, raising concerns about the arbitrary nature and broad scope of the government's power in this area.

It is an adult cartoon strip launched in March 2008 in the name of www.Savitabhabhi.com featuring a married Indian woman's sexual adventures. Bhabhi is Hindi word for sister-in-law. It became very popular soon. According to Alexa.com,

Savitabhabhi is the 82nd-most-visited Indian website, attracting more visitors than Bseindia.com, the website of the Bombay Stock Exchange. In February, when Mint interviewed the anonymous creator of the strip, the site ranked 45th in India.

Mr. N. Vijayashankar, techno-legal information security consultant from Bangalore, waged a sustained campaign against Savitabhabhi, complaining to the government's Computer Emergency Response Team (CERT-IN) as well as the Director General of Police in Karnataka. "Cartoons are a more participative medium. Videos don't do as much damage. When a child is watching a cartoon, he imagines himself as the character. This has a deeply corrupting influence on our youngsters. This, apart from the fact that an Indian name was being used in such an obscene cartoon, is what led me to make the complaint," Vijayashankar said.

According to Pawan Duggal, cyber law expert and an advocate at the Supreme Court of India, "Under Section 67 of the IT Act of 2000, publishing or transmitting obscene electronic information is punishable with up to five years' imprisonment and Rs1 lakh in fine. The creators of Savitabhabhi can challenge the ban, arguing that it is an expression of their thoughts and what is expressed is not lascivious. When there is so much explicit pornographic content easily available, why should they be singled out? It is a cultural cum legal issue. The courts will have to decide whether Savitabhabhi is a lascivious site or not. Kamasutra and the sculptures of Khajuraho are far more explicit but not considered obscene. So they do have an argument," Duggal said.

So far this power of internet censorship is not used to ban the political websites. After amending Information Technology Act in 2008, pressure on private intermediaries to remove certain information has increased since late 2009. The amended law grants the Ministry of Communication and Information Technology, authority to block internet material on the ground that it will endanger public order or national security. It is mandatory for the companies to have a designated employee to receive government blocking requests, and provided up to seven years' imprisonment for representatives of a wide range of private service providers—including ISPs, search engines, and cybercafés—if they fail to comply with government blocking requests. With frequent communal riots and terrorist attacks posing danger to the security, such a power is felt needed to protect the peace and avoid provocations.

At the same time there is a very strong criticism from civil liberty activists who apprehend possibility of abuse of this power creating a chilling effect on the press freedom and might even use to suppress political speech.

Internet Censorship Bill in US

The United States government is debating a Bill currently attempting to imprison people for five years for linking to a copyrighted site. The bill claims that it is for protecting "prosperity, creativity, entrepreneurship, and innovation." The US Congress is debating the PROTECT-IP Act and its House version, the Stop Internet Piracy Act (SOPA)[328], concerning censorship of the internet that intends to leave legal windows open to prosecute regular users. It'll give the government new powers to block Americans' access to websites. The bill would criminalize posting all sorts of standard web content — music playing in the background of videos, footage of people dancing, kids playing video games, and posting video of people playing cover songs.

It becomes a felony with a potential 5 year sentence to stream a copyrighted work that would cost more than $2,500 to license, even if it is done by a totally noncommercial user, e.g. singing a pop song on Facebook. But with the passage of this bill, there would be nothing stopping corporations from finding someone with a high-quality, DIY tribute video on YouTube and bringing them to court, where the government will tell that person: "Under PROTECT-IP and SOPA, you are a criminal for using this content without permission. And now, you will be sentenced for your crime, which you can't really deny, because it was on the internet and seen by all these other users."[329] The US has started its history of censorship in 1864 when a postmaster general discovered a large amount of nude pictures were being sent to the Civil War troops. Laws were quickly passed to ban sending any obscene book, pamphlet, picture, print or other publication of vulgar and indecent character through the US Mail.

There are proposals to have a law on the lines of the Communication Assistance for Law Enforcement Act (CALEA), 1994, of the US, though it's in a nascent phase. Section 103 of the CALEA defines the telecom service providers' obligations in the event of phone tapping ordered by the authorities. It provides that the service providers should expeditiously isolate all wire and electronic communications of a target transmitted by the carrier within its own service area. The operators are expected to isolate call-identifying information of a target and provide intercepted communications and call-identifying information to the law enforcing agencies. The US law also makes it obligatory for the operators to carry out intercepts unobtrusively so that the targets are not made aware of the electronic surveillance, and in a manner that does not compromise the privacy and security of other communications.

In strict sense no government in any democratic country can impose censorship against the media. In this context censorship means scrutinizing each and every piece of information or broadcast or telecast before it is published. The flow of information so much

[328] http://www.washingtonpost.com/blogs/right-turn/post/overkill-on-internet-piracy/2011/12/11/gIQA9TK6nO_blog.html

[329] http://www.themarysue.com/censorship-bills-protect-ip/ 9.12.2011

and so fast that it is not possible to censor every aspect of that fast material. Government is also not contemplating total censorship of the Internet content, which is physically impossible. But it announced, only to retract later, that there will be regulation to curb the social media network from resorting to hate speech generating riots and disturbance including threats to lives.

The powers that want social networking media to be under their control should go back to the basics of democratic governance and understand why the free expression is accorded a prime position in the Constitution. The protection of free speech is essential for people to communicate on political matters, which in turn enables them to fully participate in democratic affairs including exercising their franchise in elections. Justice Brandeis of the U.S. Supreme Court in *Whitney v. California*[330] has explained this as primary rationale for freedom of speech and expression. Justice Holmes of the U.S. Supreme Court said in *Abrams v. United States*: "The best test of truth is the power of the thought to get itself accepted in the competition of the market"[331]. Instead of judging the negative or destructive aspects of the speech it should be left to the market assessment and if the idea floated fail in the test, it will be discarded automatically.

While commenting on Indian Constitution famous author, Professor Glanville Austin[332], in his book *Working A Democratic Constitution, The Indian Experience*, explained how these fundamental aspects of free speech were incorporated in the Indian Constitution aiming at securing spirit of democracy, unity of nation and fostering social revolution for the welfare of the people.

Raising slogans like "down down" or burning effigies are no more acts of criminal defamation, though British imperialist colonial regime has incorporated penal provisions in Criminal law to punish such acts as crimes. Even though provisions remained same, the trend is that neither the state is complaining nor the courts are considering them as crimes. In a democratic society, you cannot draw literal meaning and infer that a person is defamed. If someone shouts a slogan 'CM down down' he was expressing dissent at the way Chief Minister is functioning but he did not defame him. In dynamic democracy the space for criticism is increased over a period of time, while law remained static but useless unless some autocratic ruler wanted to misuse it.

It is interesting to note that technology is facilitating freedom of expression in abundance beyond what freedom laws and democratic government could grant. Social media networks like facebook, twitter, yahoo, youtube, etc are causing enough of embarrassment to

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[330] 274 U.S. 357 (1927)
[331] *Abrams v. United States*, 250 U.S. 616 (1919)
[332] Glanville Austin, *Working A Democratic Constitution, The Indian Experience*, Oxford University Press, 2000

the autocratic rulers by freely discussing their performance in public field, whether they are artistes or political leaders or star sports persons. It is difficult to stop them both legally and technically.

Any attempt to impose 'pre-censorship' is physically not possible, because content generated online is phenomenally very high and immeasurable. Legally speaking a democratic constitution cannot permit Government to take over the control over the minds of people by regulating what they are watching or reading. Obscenity and defamation are post-publication issues and any aggrieved person can agitate for their affected rights. Political criticism definitely worries the rulers but it should not be stopped. They cannot abuse the power under IT Act to remove the political criticism however hostile it is to the persons in power. Only where the government could seek some control is seeking removal of communally provocative content under public order provisions and police powers. It is equally the duty of the educated citizen not to post reckless comments causing loss of lives for meaningless communal reasons.

Online community and cyber technology should to come to rescue of this time tested freedom of speech and expression and prevent the censorship attempts of state by evolving alternatives for protecting the public interest from onslaught of online destructive content. They have to come up with Internet Filtering Systems and assign ratings to websites to advise parents to filter websites to protect the young minds from porn attacks. This will work to prevent obscenity in online community. Hate speech is something which the internet service providing intermediaries should prevent as a matter of self-regulation or face the wrath of tough criminal laws punishing communally provocative postings. When person's reputation is affected by defamation on cyberspace, there are adequate laws to secure the rights of those individuals where there is not much left for the state to intervene. If the state responsibly uses its power under IT laws and other anti-terrorism laws to curb terrorism, none can dispute it. It is only when the political power is abused to control voices raising political criticism, the civil society is expected to resist those attempts on the strength of constitutional guarantee of freedom of expression.

6.5 Curbs on online media and the legal scope

The Central Government has amended the Guidelines for Accreditation of Journalists on April 2, 2018 which was announced through Press Information Bureau, to deal with the incidence of fake news. According to the amended guidelines for journalist accreditation, once the complaint is registered for determination of fake news, the accreditation of the journalist, whoever "created and/or propagated" the fake news, will be suspended till the determination regarding the fake news is made, the ministry said. It said any complaint of instances of fake news would be referred to the Press Council of India (PCI), if it pertains to print media, and to the News Broadcasters Association (NBA), if it relates to the electronic

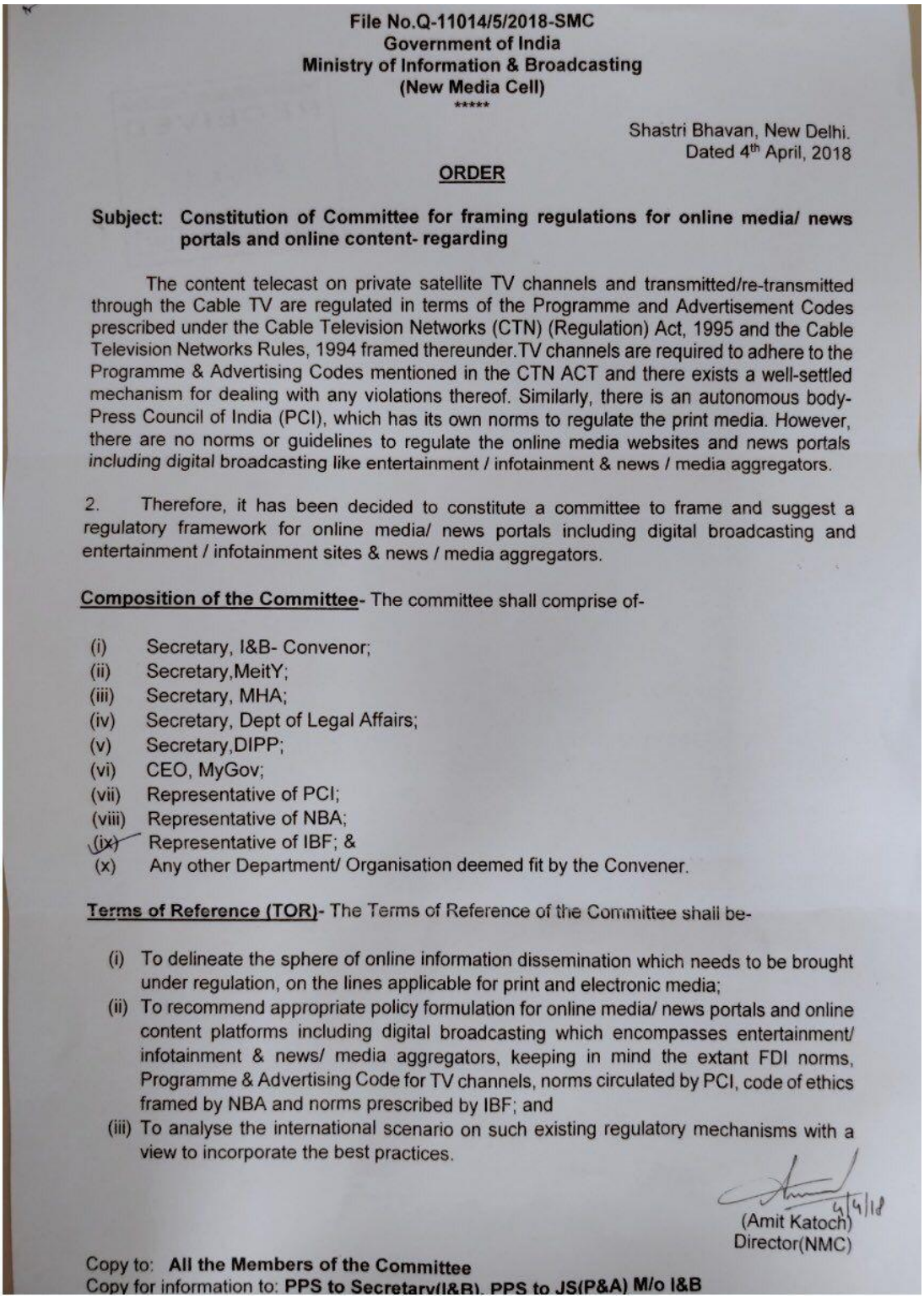
media, for determination of the news item being fake or not. This determination is expected to be completed within 15 days by these agencies, the ministry said. The government said the accreditation of a journalist could be permanently cancelled if the scribe is found generating or propagating fake news, as it came out with stringent measures to contain the menace.

As per the amended guidelines for the accreditation of journalists, if the publication or telecast of fake news is confirmed, the accreditation of that journalist would be suspended for a period of six months in the first violation and for one year in case of a second violation. In case of a third violation, his or her accreditation would be cancelled permanently, the information and broadcasting ministry said in a release. There was criticism from the media about the Ministry' attempt to target journalists using excuse of fake news. Senior journalists accused the government of targeting accredited journalists of mainstream media while winking at websites that "openly flout journalistic ethics and are often quoted by ministers." Main aspect of the criticism was that the government only wants to penalise those who are accredited, i.e "Mainstream media". The I&B ministry's "Fake News" threat doesn't extend to those websites that openly flout journalistic ethics.

The I&B minister who withheld the salary money of the entire staff of the public broadcaster, Prasar Bharati, because it resisted some of her demands – wants us to believe that since neither body is "controlled/operated by GOI" there is nothing to fear. Well, things are not that simple. The PCI is a statutory body with quasi-judicial powers that has government and industry members. And its budget comes from the government. The NBA, on the other hand, is essentially a voluntary association that most of our unethical channels have refused to recognise or have actually seceded from in the face of verdicts they disagreed with. How will the PCI and NBA safeguard themselves against a flood of frivolous complaints lodged by troll armies seeking to police the boundaries of what can be reported and what can't?[333]

In the wake of criticism, on April 3, 2018 the I&B ministry has withdrawn its guidelines to regulate fake news, after the PM intervened. The Prime Minister directed that the press release regarding fake news be withdrawn and matter should only be addressed in the Press Council of India, adding that any decision on fake news should be taken by bodies like PCI and NBA. The PMO had directed the I&B ministry to withdraw its order on journalists' accreditation that allowed regulatory bodies to assume a journalist accused of writing fake news to be guilty until proven innocent -- which goes against cardinal principles of justice, as per reports.

[333] https://thewire.in/media/doctor-modis-cure-for-fake-news-is-worse-than-the-disease accessed on 13.10.2019



File No.Q-11014/5/2018-SMC
Government of India
Ministry of Information & Broadcasting
(New Media Cell)
*****

Shastri Bhavan, New Delhi.
Dated 4th April, 2018

ORDER

Subject: Constitution of Committee for framing regulations for online media/ news portals and online content- regarding

The content telecast on private satellite TV channels and transmitted/re-transmitted through the Cable TV are regulated in terms of the Programme and Advertisement Codes prescribed under the Cable Television Networks (CTN) (Regulation) Act, 1995 and the Cable Television Networks Rules, 1994 framed thereunder.TV channels are required to adhere to the Programme & Advertising Codes mentioned in the CTN ACT and there exists a well-settled mechanism for dealing with any violations thereof. Similarly, there is an autonomous body-Press Council of India (PCI), which has its own norms to regulate the print media. However, there are no norms or guidelines to regulate the online media websites and news portals *including digital* broadcasting like entertainment / infotainment & news / media aggregators.

2. Therefore, it has been decided to constitute a committee to frame and suggest a regulatory framework for online media/ news portals including digital broadcasting and entertainment / infotainment sites & news / media aggregators.

Composition of the Committee- The committee shall comprise of-

(i) Secretary, I&B- Convenor;
(ii) Secretary,MeitY;
(iii) Secretary, MHA;
(iv) Secretary, Dept of Legal Affairs;
(v) Secretary,DIPP;
(vi) CEO, MyGov;
(vii) Representative of PCI;
(viii) Representative of NBA;
(ix) Representative of IBF; &
(x) Any other Department/ Organisation deemed fit by the Convener.

Terms of Reference (TOR)- The Terms of Reference of the Committee shall be-

(i) To delineate the sphere of online information dissemination which needs to be brought under regulation, on the lines applicable for print and electronic media;
(ii) To recommend appropriate policy formulation for online media/ news portals and online content platforms including digital broadcasting which encompasses entertainment/ infotainment & news/ media aggregators, keeping in mind the extant FDI norms, Programme & Advertising Code for TV channels, norms circulated by PCI, code of ethics framed by NBA and norms prescribed by IBF; and
(iii) To analyse the international scenario on such existing regulatory mechanisms with a view to incorporate the best practices.

4/4/18
(Amit Katoch)
Director(NMC)

Copy to: **All the Members of the Committee**
Copy for information to: **PPS to Secretary(I&B), PPS to JS(P&A) M/o I&B**

Secretaries Committee to regulate Digital Content

The government then constituted a committee to frame rules to regulate news portals and media websites. According to an official "order" issued by the ministry on April 4, a decision was taken to constitute a high-level 10-member committee comprising

of the secretaries of the ministries of information and broadcasting, electronics and information technology, home affairs, legal affairs and the department of industrial policy and promotion as members.

The other members on the panel, the order noted, would be the chief executive officer of MyGov, representatives of the Press Council of India (PCI), the News Broadcasters Association and Indian Broadcasters Federation (IBF), as also representatives of any other department or organisation as deemed fit by the convener. There will be no representation from digital media – the very object of the government's 'regulatory' exercise.
The order in the "terms of reference" for the committee noted that the idea behind constituting the panel was to "delineate the sphere of online information dissemination which needs to be brought under regulation, on the lines applicable for print and electronic media".

Further, it stated that the committee would also "recommend appropriate policy formulation for online media/news portal and online content platforms, including digital broadcasting which encompasses entertainment/infotainment and news/media aggregators, keeping in mind the extant FDI norms, programme and advertising code for TV channels, norms circulated by PCI, code of ethics framed by NBA and norms prescribed by IBF." The third term of reference for the committee would be to "analyse the international scenario on such existing regulatory mechanism with a view to incorporate the best practices".

The reason for this constitution of the Committee is stated to be that while television channels are required to adhere to the programme and advertising codes mentioned in the Cable Television Networks (Regulation) Act, 1995 and "there exists a well-settled mechanism for dealing with any violations thereof" and similarly, the PCI has its own norms to regulate the print media, "there are no norms or guidelines to the to regulate the online media websites and news portals including digital broadcasting". Therefore it has been decided to constitute a committee to frame and suggest a regulatory framework for online media/new portals including digital broadcasting and entertainment/infotainment sites and news/media aggregators."

It is commented that largely due to their ability to lean on media owners, governments at the Central and state level exercise considerable influence over the print media, while official licensing terms make electronic media even more vulnerable to official pressure.

6.6 Digital media regulated by IT Act

The question is whether the digital media is unregulated as claimed by this order. There is the Information Technology Act, which prescribed criminal liability for "intermediaries" for uploading criminal content. The government wielded is power to take

down posts or pages or block certain websites. The law mostly used were copyright violation or content piracy. The web portals had to remove the content because the Government has deemed it offensive. Even the Foreign digital platforms like Facebook, Twitter and YouTube have all complied with these demands. The expression 'offensive' was not defined, and its open ended and highly opinionated issue that results in deprivation of information leading to denial of people's right to know. The IT Act and machinery under it makes the digital media outlets subjected to such restrictions over and above the rules governing the publication or dissemination of other forms of content, such as the laws of civil and criminal laws including the Indian Penal Code. Offences of obscenity, defamation and hate speech apply to anything that is posted online.

The reference to "digital broadcasting" suggests that the government is attempting to regulate the news and current affairs content distributed via YouTube, Facebook and WhatsApp in the same way it is controlling the content on conventional broadcasting. For instance, private FM stations cannot broadcast news and current affairs. But they have no control over the web radio.

Indian citizens can upload video content directly on to a platform like YouTube or WhatsApp which others can watch without involving any license from the I&B ministry. With internet technology every citizen can function as "media", without any territorial or geographical limitations, is it possible to pre-license or pre-censor the content except tackling the post-publication restrictions as per the general law?

It may be recalled that the Supreme Court has struck down as unconstitutional an open-ended clause in Section 66(A) of the Information Technology Act 2000, which was widely misused by the police in various states to arrest innocent persons for posting critical comments on social and political issues on social networking sites. What the Governments and media organizations did not facilitate all these decades was giving space for voice of the people. The Information Communication Technology has provided every citizen many opportunities and lot of space to ventilate his/her views exercising freedom of speech and expression in its full sense. Any regulation is apprehended to be a weapon in the hands of government machinery to curb the expression, dissent and discussion which could undo the freedom that constitution and technology has facilitated.

Senior constitutional, commercial and media lawyer in the Supreme Court Karuna Nundy said, "We should keep in mind that the normal criminal law and IT act in any case apply online as well," In such a scenario, she expressed the apprehension that "these regulations could be used disproportionately against websites like the *The Wire*, *Scroll.in* and *Alt News*, that are acting fairly independently, and hold a mirror up to power when necessary". So we had a situation in 2015 where about 800 websites were blocked, without reason. Also there are intermediary liability rules by which the

government itself can ask for a particular website to take down certain content," she pointed out. She also said that under trademark law or other laws, people are liable for infringement as much online as they are offline.

Cyber law expert Pavan Duggal said, "All output of digital media comprise electronic records which are covered under the Information Technology Act. So all offences for such content are covered under the IT Act….. As such while the IT Act is not a digital media law in its own character, it is basically regulating digital content. "Also, all the digital media players become intermediaries and service providers under the IT Act which mandates them to exercise due diligence. But the parameters for due diligence for social media entities are not defined under the IT Act. Some broad parameters are defined, so probably the ministry wants to come up with some dedicated provisions for regulating digital media."

As for the law on digital media covering content being provided by websites incorporated outside the country, Duggal said the law as laid down by section 1 and section 75 of the IT Act specifies that it would be applicable to any person of any nationality anywhere in the world, as long as the content is available on computers, computer systems and networks physically located in India. "Even if the entities are not in India but their content can be viewed on computers based in India, they become subject to the IT Act."

Regarding fake news he said: "There are no direct provisions for it under the Act, but fake news can still be covered under the Indian Penal Code. Earlier there used to be section 66A which could also be used for countering fake news but that was struck down by the Supreme Court in March 2015."

Internet is blocked by the Government many a time in recent years. Apar Gupta, an Advocate & media policy professional, says "Internet shutdowns have increased tremendously in the last four years. In fact, at the end of 2016, there was a report by Brookings Institution which had pegged India as the country with the highest number of internet shutdowns in the world, even ahead of Iraq and Libya.[334]"

"There is no question that this government has a very poor record on media freedom." He pointed out how the BJP had opposed section 66A when it was in the opposition but went back on its stand and defended the provision in the Supreme Court. It was the courts that finally struck it down."

[334] https://thewire.in/media/cyber-law-experts-wary-of-ib-ministrys-order-on-regulating-digital-media accessed on 13.10.2019

It is true that there is no organization like print media regulatory Press Council for online media. “But it is incorrect to say that TV broadcasting has a regulatory body in place, because the regulations under the (Cable Regulation)1995 Act are enforced by the inter-ministerial committee headed by the I&B ministry. The News Broadcasters Association is only a private self-regulatory body which does not have any kind of statutory backing,” said Apar Gupta.

There is a very less possibility to impose a regulatory framework for digital news that will not encroach upon constitutionally guaranteed freedoms, beyond the “reasonable restrictions’ which are already in established standing the judicial scrutiny. Cyber law expert Pavan Duggal said, “All output of digital media comprise electronic records which are covered under the Information Technology Act. So all offences for such content are covered under the IT Act….. As such while the IT Act is not a digital media law in its own character, it is basically regulating digital content. “Also, all the digital media players become intermediaries and service providers under the IT Act which mandates them to exercise due diligence. But the parameters for due diligence for social media entities are not defined under the IT Act. Some broad parameters are defined, so probably the ministry wants to come up with some dedicated provisions for regulating digital media.”

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6.7 Constitutional limitations

Legal experts viewed that any provision to regulate the medium must be within the boundaries of freedom of speech as laid out under Article 19(1) of the constitution. The reasonable restrictions are there under Article 19(2) of the constitution and need to be enforced in the interest of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.

6.8 No consultations

Another demerit of this attempt is the Government has not involved people, civil society, media stake holders or people's representatives to voice their views in this committee, which is full of bureaucrats that might lead to totally rulers-sided-regulation. Karuna Nundy says: "As they are constituting this committee, various representatives of online media of various political hues and online media legal experts should be involved. Given this government's history on suppressing speech in the name of regulation, the setting up of a committee like this is problematic. But we are saying that if you have to set up a panel, then that committee should have representatives of all concerned groups – you cannot have it full of government representatives, and bodies controlled by the government and ruling party supporters alone." As on this day, this Committee is yet to give report.

What is needed, perhaps is, the convergence of law and rules to deal with every type of expression on any form of medium within the frame of Constitutional guarantee for the fundamental right of expression.

After the abrogation of substantial provisions of Article 370 relating to status of Jammu & Kashmir, the Union Government has issued restrictive orders to curb the media, including internet, landline phones and mobiles. With limitations on physical space, media and cyber space, the expression right is facing legal, social and political issues. Social media platforms are used to spread hate speech but at the same time the life that increasingly getting dependent upon the use of internet cannot be exercised during the critical period of such curbs.

Renowned writer Sunjay Joshi wrote a conclusion to his article "Why regulating social media will not solve online hate speech":

> *Finally, to answer the question - is the New Media polarising societies? The short answer is no. If the world were indeed one big happy place the internet would also be the same. The internet only mirrors the world, it may reflect it, but it does not create it. Today, the polarisation in society manifests itself in outbursts on the social media; in another time another place it led to the Crusades. Flat-earthers have always been there. Fifty years ago they may have been tied down by the Gutenberg barrier. They would have languished in their coffee houses and pubs and formed their little secret societies. But they did influence events, churches and kings – often and inordinately. The well-springs of hate and terror are the same. The falsities, the hate, the iron in the heart, all reside in us; not in the weapons and instruments we use*[335].

[335] https://www.orfonline.org/research/why-regulating-social-media-will-not-solve-online-hate-speech-54490/

ANNEXURE I

THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) ACT, 1990

An Act

To provide for the establishment of a Broadcasting Corporation for India, to be known as Prasar Bharati, to define its composition, functions and powers and to provide for matters connected therewith or incidental thereto.

Chapter I

Preliminary

1. **Short title, extent and commencement.**
    1. This Act may be called the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.
    2. It extends to the whole of India.
    3. It shall come into force on such date as the Central Government may, by notification, appoint.
2. **Definitions.**

    In this Act, unless the context otherwise requires, ----

    a. "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General, All India Radio of the Union Ministry of Information and Broadcasting;
    b. "appointed day" means the date appointed under section 3;

c. "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expression shall be construed accordingly;
d. “Board" means the Prasar Bharati Board;
e. "Broadcasting Council" means the Council established under section 14;
f. "Chairman" means the Chairman of the Corporation appointed under section 4;
g. "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;
h. "Broadcasting Council" means the Council established under section 14;
i. "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;
j. "elected Member" means a Member elected under section 3;
k. "Executive Member" means the Executive Member appointed under section 4;
l. "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;
m. "Member" means a Member of the Board;
n. "Member (Finance)" means the Member (Finance) appointed under section 4;
o. "Member (Personnel)" means the Member (Personnel) appointed under section 4;
p. "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;
q. "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;
r. "notification" means a notificaion published in the official Gazette;
s. "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an ex-officio Member, the Nominated Member or an elected Member;
t. "prescribed" means prescribed by rules made under this Act;
u. "Recruitment Board" means a board established under sub-section (I) of section 10;
v. "regulations" means regulations made by the Corporation under this Act;
w. "station" means any broadcasting station with studios or transmitters or both and includes a relay station;

x. "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);
y. "year" means the financial year.

Chapter II

Prasar Bharati (Broadcasting Corporation of India)

3. **Establishment and composition of Corporation.**
    1. With effect from such date as the Central Government may by notification appoint in this behalf, there shall be established for the purposes of this Act a Corporation, to be known as the Prasar Bharati (Broadcasting Corporation of India).
    2. The Corporation shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.
    3. The headquarters of the Corporation shall be at New Delhi and the Corporation may establish offices, kendras or stations at other places in India and, with the previous approval of the Central Government, outside India.
    4. The general superintendence, direction and management of the affairs of the Corporation shall vest in the Prasar Bharati Board which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under this Act.
    5. The Board shall consist of :-
        a. a Chairman
        b. one Executive Member;
        c. one Member (Finance);
        d. one Member (Personnel);
        e. six Part-time Members;
        f. Director-General (Akashvani), ex-officio;
        g. Director-General (Doordarshan), ex-officio;
        h. one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry and
        i. two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employee from amongst themselves.
    6. The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties: Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall

have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.

7. The Corporation may associate with itself, in such manner and for such purposes as may be provided by regulations, any person whose assistance or advice it may need in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated, but shall not have the right to vote.
8. No act or proceeding of the Board or of any committee appointed by it under sub-section (6) shall be invalidated merely by reason of ---
    a. any vacancy in, or any defect in the constitution of, the Board or such committee; or
    b. any defect in the appointment of a person acting as a Member or a member of such committee; or
    c. any irregularity in the procedure of the Board or such committee not affecting the merits of the case.

4. **Appointment of Chairman and other Members.**
    1. The Chairman and the other Members, except the ex-officio Members, the Nominated Member and the elected Members shall be appointed by the President of India on the recommendation of a committee consisting of –
        a. the Chairman of the Council of States, who shall be the Chairman of the Committee;
        b. the Chairman of the Press Council of India established under section 4 of the Press Council Act, 1978 and
        c. one nominee of the President of India.
    2. No appointment of a Member shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of, the committee appointed under sub-section (1).
    3. The Chairman and the Part-time Members shall be persons of eminence in Public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) shall be person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration.
    4. The recommendations made by the committee constituted under sub-section (1) shall be binding for the purposes of appointments under this section.
5. **Powers and functions of Executive Member.**

1. The Executive Member shall be the Chief Executive of the Corporation and shall, subject to the control and supervision of the Board, exercise such power and discharge such functions of the Board as it may delegate to him.

6. **Term of office, conditions of service, etc, of Chairman and other Members.**
    1. The Chairman shall be Part-time Member and shall hold office for a term of three years from the date on which he enters upon his office or until he attends the age of 70 years whichever is earlier:
    Provided that any person holding office as a Chairman immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Chairman and shall not be entitled to any compensation because of his ceasing to hold such office.
    [Substituted by Act 12 of 2008 Section 2(a) for sub-section (1) w.e.f. 07.02.2008]
    2. The Member (Finance) and Member (Personnel) shall be Whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years whichever is earlier:
    [Amended by Act 12 of 2008 Section 2(b) w.e.f. 07.02.2008]
        a. The Executive Member shall be a Whole-time Members and shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years whichever is earlier:
        Provided that any person holding office as an Executive Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008 shall, in so far as his appointment is inconsistent with the provisons of this sub-section, cease to hold office on such commencement as such Executive Member and shall not be entitled to any compensation because of his ceasing to hold such office.
        [Inserted by Act 12 of 2008 Section 2(c) w.e.f. 07.02.2008]
    3. The term of office of Part-time Members shall be six years, but one-third of such Members shall retire on the expiration of every second year.
    4. The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.
    5. As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit for curtailing the term of office of some of the Part-time Members then appointed in order that

one-third of the Members holding office as such Part-time Members shall retire in every second year thereafter.

6. Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed or elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.
7. The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:
   Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.
8. The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.

7. **Removal and Suspension of Chairman and Members.**
   1. Subject to the provisions of sub-section (3), the Chairman or any other Member, except an ex-officio Member, the Nominated Member and an elected Member shall only be removed from his office by order of the President of India on the ground of misbehaviour after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with such procedure as the Supreme Court may by rules provide, reported that the Chairman or such other member, as the case may be, ought, on such ground, be removed.
   2. The President may suspend from office the Chairman or other Member, except an ex-officio Member, the Nominated Member or an elected Member, in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the president has passed orders on receipt of the report of the Superme Court on such reference.
   3. Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman or any Whole-time Member from his office if such Chairman or such Whole-time Member --
      a. ceases to be a citizen of India; or
      b. is adjudged an insolvent; or
      c. engages during his term of office in any paid employment outside the duties of his office; or
      d. is convicted of any offence involving moral turpitude; or
      e. is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove any part-time Member from his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.

4. If the Chairman or any Whole-time Member, except any ex-officio Member, the Nominated Member or any elected Member, is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or, participates in any way in the profit thereof, or in any benefit or emolument arising there from than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.
5. If a Part-time Member is, or becomes in any way concerned, or interested in any contract, or agreement made by or on behalf of the Corporation, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.
6. The Chairman or any other Member may resign his office by giving notice thereof in writing to the President of India and on such resignation being accepted, the Chairman or other Member shall be deemed to have vacated his office.

8. **Meetings of Board**
    1. The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations:
    2. Provided that there shall not be less than six meetings every year but three months shall not intervene between one meeting and the next meeting.
    3. A Member shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Board without the leave of the Chairman.
    4. The Chairman shall preside at the meetings of the Board and if for any reason he is unable to attend any meeting, the Executive Member and in the absence of both, any other Member elected by the Members present at such meeting, shall preside at the meeting.
    5. All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the Members present and voting and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.
9. **Officers and other employees of Corporation.**
    1. Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the

Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and other employees as may be necessary.

2. The method of recruitment of such officers and employees and all other matters connected therewith and the conditions of service of such officers and other employees shall be such as may be provided by regulations.

10. **Establishment of Recruitment Boards.**

1. The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:
   Provided that for the purposes of Appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex-officio Members, the Nominated member and the elected Members.
2. The qualifications and other conditions of service of the members constituting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed.[Substituted by Act 6 of 2012 Section 2 for sub-section (11) w.e.f. 08.03.2012 – 11, 11A, 11B as follows]

11. **Status of officers and employees.**

1. All officers and employees recruited for the purposes of Akashvani or Doordarshan before the appointed day and in service in the Corporation as on the 1st day of April, 2000, shall be on deemed deputation to the Corporation with effect from the 1st day of April, 2000, and shall so continue till their retirement.
2. All officers and employees recruited during the period on or after the appointed day till the 5th day of October, 2007 shall be deemed on deputation to the Corporation with effect from the 1st day of April, 2000 or the date of their joining service in the Corporation, whichever is later and until their retirement.
   Explanation. – For the purpose of sub-sections (1) and (2), “officers and employees recruited” either under the proviso to article 309 of the Constitution or in accordance with the regulations made under the Act, but shall not include persons engaged or appointed on daily wages, casual, ad hoc or work charge basis.
3. The officers and employees referred to in sub-section (1) and sub-section (2) shall be entitled to the pay and all other benefits as admissible to an employee of the Central Government:Provided that such officers and employees shall not be entitled to any deputation allowance.

4. Notwithstanding anything contained in any other law for the time being in force, the Corporation shall have the disciplinary and supervisory powers and full control on the officers and employees referred to in sub-section (1) and sub-section (2), including the power to transfer them from one place, post or media to another, and suspend, initiate disciplinary proceedings and impose major or minor penalties:

   Provided that the power to impose major penalties of compulsory retirement, removal or dismissal from service shall be exercised by the Central Government.

5. All officers and employees recruited after the 5th day of October, 2007 shall be officers and employees of the Corporation and shall be governed by such conditions of service as may be specified in the regulations.

F. Section 11 not to apply to certain officers and employees.
   1. The provisions of section 11 shall not apply to officers and employees of the Indian Information Service, the Central Secretariat Service or any other service borne on any cadre outside Akashvani or Doordarshan, who have been working in Akashvani or Doordarshan before the appointed day or in service in the Corporation after that day.
   2. The terms and conditions of service in the Corporation of officers and employees referred to in sub-section (1) shall be such as may be prescribed.

G. Transfer of posts of Akashvani and Doordarshan to Corporation.

1. All posts in the erstwhile Akashvani and Doordarshan other than the posts borne on the strength of the cadres referred to in sub-section (2) shall be deemed to have been transferred to the Corporation with effect from the 1st day of April, 2000.
2. All matters relating to the posts borne on the strength of the cadres of the Indian Information Service, the Central Secretariat Service or any other cadre outside Akashvani or Doordarshan, in so far as such posts are concerned with the Corporation, shall be determined in such manner and on such terms and conditions as may be prescribed.

5. **Functions and Powers of Corporation.**

8. Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.
   Explanation --- For the removal of doubts, it is hereby declared that the

provisions of this section shall be in addition to, and not in derogation, of the provisions of the Indian Telegraph Act, 1885.

9. The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely:-

. upholding the unity and integrity of the country and the values enshrined in the Constitution;

a. safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;

b. paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;

c. providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;

d. providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;

e. providing appropriate programmes keeping in view the special needs of the youth;

f. informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;

g. promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;

h. safeguarding the rights of the working classes and advancing their welfare;

i. serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;

j. providing suitable programmes keeping in view the special needs of the minorities and tribal communities;

k. taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;

l. promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State;

m. providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;
n. promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and
o. expanding broadcasting facilities by establishing additional channels of transmission at various levels.

10. In particular, and without prejudice to the generality of the foregoing provisions, the Corporation may take such steps as it thinks fit ----
    . to ensure that broadcasting is conducted as a public service to provide and produce programmes;
    a. to establish a system for the gathering of news for radio and television;
    b. to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;
    c. to establish and maintain a library or libraries of radio, television and other materials;
    d. to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit;
    e. to provide such other services as may be specified by regulations.
11. Nothing in sub-sections (2) and (3) shall prevent the Corporation from managing on behalf of the Central Government and in accordance with such terms and conditions as may be specified by that Government the broadcasting of External Services and monitoring of broadcasts made by organisations outside India on the basis of arrangements made for reimbursement of expenses by the Central Government.
12. For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement.
13. The Corporation shall be subject to no civil liability on the ground merely that it failed to comply with any of the provisions of this section
14. The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:
    Provided that the fees and other service charges levied and collected under

this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time.

12. **Parliamentary Committee.**

1. There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provision of this Act and, in particular, the objectives set out in section 12 and submit a report thereon to Parliament.
2. The committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

4. **Establishment of Broadcasting Council, term of office and removal, etc., of members thereof.**

1. There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.
2. The Broadcasting Council shall consist of -------

. a President and ten other members to be appointed by the President of India from amongst persons of eminence in public life;

i. four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.

1. The President of the Broadcasting Council shall be a whole-time member and every other member shall be a part-time member and the President or the part-time member shall hold office as such for a term of three years from the date on which he enters upon his office.
2. The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.
3. The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed. Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

4. The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

13. **Jurisdiction of, and the procedure to be followed by, Broadcasting Council.**
    0. The Broadcasting Council shall receive and consider complaints from--
        . any person or group of persons alleging that a certain programme or broadcast or the functioning of the Corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established;
        i. any person (other than officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.
    1. A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.
    2. The Broadcasting Council shall follow such procedure as it thinks fit for he disposal of complaints received by it.
    3. If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Member to take appropriate action.
    4. If the Executive Member is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board for its decision thereon.
    5. If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.
    6. Notwithstanding anything contained in sub-section (5) and (6), where the Broadcasting Council deems it appropriate, it may, for reasons to be recorded in writing, require the Corporation to broadcast its recommendations with respect to a complaint in such manner as the Council may deem fit.

Chapter III

Assets, Finances and Accounts

16. **Transfer of certain assets, liabilities, etc., of Central Government to Corporation. As from the appointed day,-----**
    a. all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation

on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation;

b. all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government immediately before such day for or in connection with the purposes of Akashvani or Doordarshan or both shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Corporation;

c. all sums of money due to the Central Government in relation to the Akashvani or Doordarshan or both immediately before such day shall be deemed to be due to the Corporation;

d. all suits and other legal proceedings instituted or which could have been instituted by or against Central Government immediately before such day for any matter in relation to the Akashvani or Doordarshan or both may be continued or instituted by or against the Corporation.

17. **Grants, etc., by Central Government.**

1. For the purposes of enabling the Corporation to discharge its functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Corporation in each financial year, -----
   i. the proceeds of the broadcast receiver licence fees, if any, as reduced by the collection charges; and
   ii. such other sums of money as that Government considers necessary, by way of equity, grant-in-aid or loan.

18. **Fund of Corporation.**

0. The Corporation shall have its own Fund and all the receipts of the Corporation (including the amounts which stand transferred to the Corporation under section 16) shall be credited to the Fund and all payments by the Corporation shall be made therefrom.
1. All moneys belonging to the Fund shall be deposited in one or more nationalised banks in such manner as the Corporation may decide.
2. The Corporation may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Corporation.
   Explanation ---- For the purpose of the section, "nationalised bank" means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

19. **Investment of Moneys.**

0. The Corporation may invest its moneys in the securities of the Central Government or any State Government or in such other manner as may be prescribed.

20. **Annual Financial Statement of the Corporation.**
    0. The Corporation shall prepare, in each financial year, an Annual Financial Statement for the next financial year showing separately –
        a. the expenditure which is proposed to be met from the internal resources of the Corporation; and
        b. the sums required from the Central Government to meet other expenses, and distinguishing ----
            i. revenue expenditure from other expenditure; and
            ii. non-plan expenditure from plan expenditure.
    1. The Annual Financial Statement shall be prepared in such form and forwarded at such time to the Central Government for its approval as may be agreed to by that Government and the Corporation.
21. **Accounts and Audit of Corporation.**
    0. The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed.
    1. The accounts of the Corporation shall be audited by the Comptroller and Audio-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General.
    2. The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.
    3. The accounts of the Corporation as certified by the comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.
22. **Corporation not Liable to be Taxed.**[Repealed by Act 20 of 2002 Section 163 (w.e.f. 01.04.2003]

Chapter IV

Miscellaneous

23. **Power of Central Government to give directions.**
    1. The Central Government may, from time to time as and when occasion arises, issue to the Corporation such directions as it may think necessary in the interests of the sovereignty, unity and integrity of India or the security of the State or preservation of public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction. (1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation such directions as it may think necessary in the interests of the sovereignty, unity and integrity of India or the security of the State or preservation of public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction.
    2. Where the corporation makes a broadcast in pursuance of the direction issued under sub-section (1), the fact that such broadcast has been made in pursuance of such direction may also be announce along with such broadcast, if the Corporation so desires.
    3. A copy of every direction issued under sub-section (1) shall be laid before each House of Parliament.

24. **Power of Central Government to Obtain Information.**
    1. The Central Government may require the Corporation to furnish such information as that Government may consider necessary.

25. **Report to Parliament in certain matters and recommendations as to action against the Board**
    1. Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action (including supersession of the Board) which may be taken against the Board.
    2. On the recommendation of the Parliament, the President may by notification supersede the Board for such period not exceeding six month, as may be specified in the notification:
       Provided that before issuing the notification under this sub-section, the President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board.
    3. Upon the publication of the notification under sub-section (2),----
        a. all the Members shall, as from the date supersession, vacate their offices as such;

b. all the powers, functions and duties which may, by or under the provision of this Act be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

4. On the expiration of the period of supersession specified in the notification issued under sub-section (2), the President may reconstitute the Board by fresh appointments, and in such a case any person who had vacated his office under clause (a) of sub-section (3) shall not be disqualified for appointment: Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.
5. The Central Government shall cause the notification issued under-sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament.

26. **Office of member not to Disqualify a Member of Parliament.**
    1. It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under section 13 shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.

27. **Chairman, Members, etc., to be public servants.**
    1. The chairman and every other Member, every officer or other employee of the Corporation and every member of a Committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. **Protection of action taken in good faith.**
    1. No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made there under.

29. **Authentication of Orders and other Instruments of Corporation.**
    1. All orders and decisions of the Corporation shall be authenticated by the signature of the Chairman or any other Member authorised by the Corporation in this behalf and all other instruments executed by the corporation shall be authenticated by the signature of the Executive Member or by any officer of the Corporation authorised by him in this behalf.

30. **Delegation of Powers**

1. The Corporation may, by general or special order, delegate to the Chairman or any other Member or to any officer of the Corporation, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem fit.

31. **Annual Report.**

1. The Corporation shall prepare once in every calendar year, in such form and within such times as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.
2. The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

32. **Power to make rules.**

1. The Central Government may, by notification, make rules for carrying out the provisions of this Act.
2. In particular, and without prejudice to generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
    a. the salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (7) of section 6;
    b. the allowances payable to the Chairman and Part-time Members under sub-section (8) of section 6;
    c. the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under subsection (1) of section 9;
    d. the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;
    e. the qualification and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;
    f. the terms and conditions the terms and conditions of service in the Corporation of officers and employees under subsection (2) of Section 11A [As amended by Act 6 of 2012 w.e.f. 08.03.2012];
    g. the manner and terms and conditions subject to which matters relating to the posts borne on the strength of the cadres of the Indian

Information Service, the Central Secretariat Service or any other cadre outside Akashvani or Doordarshan shall be determined under sub-section (2) of Section 11B [Inserted as per Act 6 of 2012 w.e.f. 08.03.2012];

h. the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of section 14;
i. the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils, under sub-section (6) of section 14;
j. the manner in which the Corporation may invest its moneys under section 19;
k. the form and the manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 21;
l. the form in which, and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under section 31;
m. any other matter which is required to be, or may be, prescribed.

33. **Power to make regulations.**

1. The Corporation may, by notification, make regulations not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act.
2. Without prejudice to the generality of the foregoing power such regulations may provide for all or/any of the following matters, namely -----
    a. the manner in which and the purposes for which the Corporation may associate with itself any person under sub-section (7) of section 3;
    b. the times and places at which meetings of Board shall be held and, the procedure to be followed thereat, and the quorum necessary for the transaction of the business at a meeting of the Board under sub-section (1) of section 8;
    c. the methods of recruitment and conditions of service of officers and other employees of the Corporation under sub-section (2) of section 9;
    d. the conditions of service of officers and employees under sub-section (5) of section 11 [As amended by Act 6 of 2012 w.e.f. 08.03.2012];
    e. [Deleted as per Act 6 of 2012 w.e.f. 08.03.2012];
    f. the services which may be provided by the Corporation under clause (f) of sub-section (3) of section 12;

g. the determination and levy of fees and other service charges in respect of advertisements and other programmes under sub-section (7) of section 12;

h. the manner in which and the period within which complaints may be made under sub-section (2) of section 15;

i. any other matter in respect of which provision is, in the opinion of the Corporation, necessary for the performance of its functions under this Act:

Provided that the regulations under clause (c) or clause (d) shall be made only with the prior approval of the Central Government.

34. **Rules and regulations to be laid before Parliament.**

1. Every rule and every regulation made under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

35. **Power to remove difficulties**

1. If any difficulty arises in giving effect to provisions of this Act, the Central Government may, by order, published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it may deem necessary, for the removal of the difficulty:
Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

ANNEXURE – II

The Cable Television Networks (Regulation) Act, 1995

(As amended in 2003)

1. **Short title, extent and commencement**.—

(1) This Act may be called the Cable Television Networks (Regulation) Act, 1995.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 29th day of September, 1994.

2. **Definitions.—**In this Act, unless the context otherwise requires,— **1**[

(a) "authorised officer" means, within his local limits of jurisdiction,—

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police, and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may by determined by that Government;] **2[**(aa)] "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(b) "cable service" means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(c) "cable television network'' means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

(d) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);

(e) "person" means—

(i) an individual who is a citizen of India;

(ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;

(iii) a company in which not less than fifty-one per cent. of the paid-up share capital is held by the citizens of India;

(f) "prescribed'' means prescribed by rules made under this Act;

(g) "programme" means any television broadcast and includes—

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation, and the expression "programming service" shall be construed accordingly;

(h) "registering authority" means such authority as the Central Government may, by notification in the Official Gazette, specify to perform the functions of the registering authority under this Act;

(i) "subscriber" means a person who receives the signals of cable television network at a place indicated by him to the cable operator, without further transmitting it to any other person.

3. **Cable television network not to be operated except after registration**.—No person shall operate a cable television network unless he is registered as a cable operator under this Act: Provided that a person operating a cable television network, immediately before the commencement of this Act, may continue to do so for a period of ninety days from such commencement; and if he has made an application for registration as a cable operator under section 4 within the said period, till he is registered under that section or the registering authority refuses to grant registration to him under that section.

4. **Registration as cable operator**.—

(1) Any person who is operating or is desirous of operating a cable television network may apply for registration as a cable operator to the registering authority.

(2) An application under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information and on being so satisfied, register the applicant as a cable operator and grant to him a certificate of such registration: Provided that the registering authority may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant registration to him if it is satisfied that he does not fulfil the conditions specified in clause (e) of section 2.

[1] [4A. **Transmission of programmes through addressable system, etc**.—

(1) Where the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or retransmit programme of any pay channel through an addressable system with effect from such date [2] as may be specified in the notification and different dates may be specified for different States, cities, towns or areas, as the case may be.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, specify one or more free-to-air channels to be included in the package of channels forming basic service tier and any or more such channels may be specified, in the notification, genre-wise for providing a programme mix of entertainment, information, education and such other programmes.

(3) The Central Government may specify in the notification referred to in sub-section (2), the number of free-to-air channels to be included in the package of channels forming basic service tier for the purposes of that sub-section and different members may be specified for different States, cities, towns or areas, as the case may be.

(4) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, specify the maximum amount which a cable operator may demand from the subscriber for receiving the programmes transmitted in the basic service tier provided by such cable operator.

(5) Notwithstanding anything contained in sub-section (4), the Central Government may, for the purposes of that sub-section, specify in the notification referred to in that sub-section different maximum amounts for different States, cities, towns or areas, as the case may be.

(6) Notwithstanding anything contained in this section, programmes of basic service tier shall be receivable by any subscriber on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached with such receiver set in any manner.

(7) Every cable operator shall publicise, in the prescribed manner, to the subscribers the subscription rates and the periodic intervals at which such subscriptions are payable for receiving each pay channel provided by such cable operator.

(8) The cable operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network: Provided that the subscriber shall use an addressable system to be attached to his receiver set for receiving programmes transmitted on pay channel.

(9) Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding—

(i) the number of total subscribers;

(ii) subscription rates;

(iii) number of subscribers receiving programmes transmitted in basic service tier or particular programme or set of programmes transmitted on pay channel, in respect of cable services provided by such cable operator through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also contain the rate of amount, if

any, payable by the cable operator to any broadcaster. Explanation.—For the purposes of this section,—

(a) "addressasble system" means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator to the subscriber;

(b) "basic service tier" means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached to such receiver set in any manner;

(c) "channel" means a set of frequencies used for transmission of a programme;

(d) "encrypted", in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression "unencrypted" shall be construed accordingly;

(e) "free-to-air-channel", in respect of a cable television network, means a channel, the reception of which would not require the use of any addressable system to be attached with the receiver set of a subscriber;

(f) "pay channel", in respect of a cable television network, means a channel the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set.]

5. **Programme code.—**No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code. 1[***]

6. **Advertisement code**.—No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code. 1[***]

7. **Maintenance of register**.—Every cable operator shall maintain a register in the prescribed form indicating therein in brief the programmes transmitted or re-transmitted through the

cable service during a month and such register shall be maintained by the cable operator for a period of one year after the actual transmission or re-transmission of the said programmes.

1[8. **Compulsory transmission of Doordarshan channels**.—2[

(1) Every cable operator shall re-transmit,—

(i) channels operated by or on behalf of Parliament in the manner and name as may be specified by the Central Government by notification in the Official Gazette;

(ii) at least two Doordarshan terrestrial channels and one regional language channel of a State in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies.

(2) The channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.]

(3) The Prasar Bharti (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) may, by notification in the Official Gazette, specify the number and name of every Doordarshan channel to be re-transmitted by cable operators in their cable service and the manner of reception and re-transmission of such channels.]

9. **Use of standard equipment in cable television network**.—No cable operator shall, on and from the date of the expiry of a period of three years from the date of the establishment and publication of the Indian Standard by the Bureau of Indian Standards in accordance with the provisions of the Bureau of Indian Standards Act, 1986 (63 of 1986), use any equipment in his cable television network unless such equipment conforms to the said Indian Standard: 1[Provided that the equipment required for the purposes of section 4A shall be installed by cable operator in his cable television network within six months from the date, specified in the notification issued under sub-section (1) of that section, in accordance with the provisions of the said Act for said purposes.]

10. Cable television network not to interfere with any telecommunication system.—Every cable operator shall ensure that the cable television network being operated by him does not interfere, in any way, with the functioning of the authorised telecommunication systems.

11. Power to seize equipment used for operating the cable television network.—1[

(1) If any authorised officer has reason to believe that the provisions of 2[section 3, 4A,] 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network.]

(2) No such equipment shall be retained by the authorised officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention.

12. Confiscation.—The equipment seized under sub-section

(1) of section 11 shall be liable to confiscation unless the cable operator from whom the equipment has been seized registers himself as a cable operator under section 4 within a period of thirty days from the date of seizure of the said equipment.

13. **Seizure or confiscation of equipment not to interfere with other punishment**.—No seizure or confiscation of equipment referred to in section 11 or section 12 shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act.

14. **Giving of opportunity to the cable operator of seized equipment**.—

(1) No order adjudicating confiscation of the equipment referred to in section 12 shall be made unless the cable operator has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such equipment and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice against the confiscation and if he so desires of being heard in the matter: Provided that where no such notice is given within a period of ten days from the date of the seizure of the equipment, such equipment shall be returned after the expiry of that period to the cable operator from whose possession it was seized.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to every proceeding referred to in sub-section (1).

15. **Appeal.—**

(1) Any person aggrieved by any decision of the court adjudicating a confiscation of the equipment may prefer an appeal to the court to which an appeal lies from the decision of such court.

(2) The appellate court may, after giving the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or revising the decision appealed against or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence if necessary.

(3) No further appeal shall lie against the order of the court made under sub-section (2).

16. **Punishment for contravention of provisions of this Act.—**1[(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[(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.

18. Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made 1[by any authorised officer].

19. Power to prohibit transmission of certain programmes in public interest.—Where 1[any authorised 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 2[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 tranquillity.

20. **Power to prohibit operation of cable television network in public interest**.—1[(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[(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.]

21. **Application of other laws not barred**.—The provisions of this Act shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940), the Pharmacy Act, 1948 (8 of 1948), the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950), the Drugs (Control) Act, 1950 (26 of 1950), the Cinematograph Act, 1952 (37 of 1952), the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Prize Competitions Act, 1955 (42 of 1955), the Copyright Act, 1957 (14 of 1957), the Trade and Merchandise Marks Act, 1958 (43 of 1958), the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986) and the Consumer Protection Act, 1986 (68 of 1986).

22. Power to make rules.—

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of application and the fee payable under sub-section (2) of section 4; 1[(aa) the manner of publicising the subscription rates and the periodical intervals at which such subscriptions are payable under sub-section (7) of section 4A;

(aaa) the form and manner of submitting report under sub-section (9) of section 4A and the interval at which such report shall be submitted periodically under that sub-section;]

(b) the programme code under section 5;

(c) the advertisement code under section 6;

(d) the form of register to be maintained by a cable operator under section 7;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. **Repeal and savings**.—

(1) The Cable Television Networks (Regulation) Ordinance, 1995 (3 of 1995) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provision of this Act.

End Notes:

1. Ins. by Act 2 of 2003, sec. 2 (w.e.f. 31-12-2002).]
2. 31st December, 2006, vide S.O. 1231(E), dated 31st July, 2006, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 31st July, 2006.
3. Proviso omitted by Act 36 of 2000, sec. 3 (w.e.f. 1-9-2000). tc" 1. Proviso omitted by Act 36 of 2000, sec. 3 (w.e.f. 1-9-2000)."
4. Proviso omitted by Act 36 of 2000, sec. 4 (w.e.f. 1-9-2000). tc" 2. Proviso omitted by Act 36 of 2000, sec. 4 (w.e.f. 1-9-2000)."
5. Subs. by Act 36 of 2000, sec. 5, for section 8 (w.e.f. 1-9-2000).
6. Subs. by the Cable Television Networks (Regulation) Amendment Act, 2007, sec. 2, for sub-sections (1) and (2). Sub-sections (1) and (2), before substitution, stood as under:
7. Ins. by Act 2 of 2003, sec. 3 (w.e.f. 31-12-2002). tc" 1. Ins. by Act 2 of 2003, sec. 3 (w.e.f. 31-12-2002)."
8. Subs. by Act 36 of 2000, sec. 6 for sub-section (1) (w.e.f. 1-9-2000). tc" 2. Subs. by Act 36 of 2000, sec. 6 for sub-section (1) (w.e.f. 1-9-2000)."
9. Subs. by Act 2 of 2003, sec. 4, for "section 3" (w.e.f. 31-12-2002). tc" 3. Subs. by Act 2 of 2003, sec. 4, for \"section 3\" (w.e.f. 31-12-2002)."

10. Section 16 re-numbered as sub-section (1) thereof by Act 2 of 2003, sec. 5 (w.e.f. 31-12-2002). tc" 1. Section 16 re-numbered as sub-section (1) thereof by Act 2 of 2003, sec. 5 (w.e.f. 31-12-2002)."
11. Ins. by Act 2 of 2003, sec. 5 (w.e.f. 31-12-2002). tc" 2. Ins. by Act 2 of 2003, sec. 5 (w.e.f. 31-12-2002)."
12. Subs. by Act 36 of 2000, sec. 7, for certain words (w.e.f. 1-9-2000). tc" 1. Subs. by Act 36 of 2000, sec. 7, for certain words (w.e.f. 1-9-2000)."
13. Subs. by Act 36 of 2000, sec. 8, for certain words (w.e.f. 1-9-2000). tc" 2. Subs. by Act 36 of 2000, sec. 8, for certain words (w.e.f. 1-9-2000)."
14. Subs. by Act 36 of 2000, sec. 8, for “any particular programme if it is” (w.e.f. 1-9-2000). tc" 3. Subs. by Act 36 of 2000, sec. 8, for “any particular programme if it is” (w.e.f. 1-9-2000)."
15. Section 20 re-numbered as sub-section (1) thereof by Act 36 of 2000, sec. 9 (w.e.f. 1-9-2000). tc" 4. Section 20 re-numbered as sub-section (1) thereof by Act 36 of 2000, sec. 9 (w.e.f. 1-9-2000)."
16. Ins. by Act 36 of 2000, sec. 9 (w.e.f. 1-9-2000). tc" 5. Ins. by Act 36 of 2000, sec. 9 (w.e.f. 1-9-2000)."
17. Ins. by Act 2 of 2003 sec. 6 (w.e.f. 31-12-2002). tc" 1. Ins. by Act 2 of 2003 sec. 6 (w.e.f. 31-12-2002)."