CHAPTER 5

ELECTRONIC MASS MEDIA
AND THE LEGISLATION
CHAPTER 5
ELECTRONIC MASS MEDIA AND THE LEGISLATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.1</td>
<td>Introduction</td>
<td>194</td>
</tr>
<tr>
<td>5.1.2</td>
<td>Classification of electronic media</td>
<td>194</td>
</tr>
<tr>
<td>5.1.3</td>
<td>Classification according to Supreme Court</td>
<td>195</td>
</tr>
<tr>
<td>5.1.4</td>
<td>Legislations on the electronic media in India</td>
<td>196</td>
</tr>
<tr>
<td>5.2.1</td>
<td>The origin of the central Government's power</td>
<td>196</td>
</tr>
<tr>
<td>5.2.2</td>
<td>The development from the telegraph laws to the Prasarbharathi and TRAI</td>
<td>197</td>
</tr>
<tr>
<td>5.2.3</td>
<td>The impact of the WPC, DoT and GOPA</td>
<td>197</td>
</tr>
<tr>
<td>5.3.1</td>
<td>Radio services and electronic media</td>
<td>198</td>
</tr>
<tr>
<td>5.3.2</td>
<td>The origin of FM Radio</td>
<td>198</td>
</tr>
<tr>
<td>5.3.3</td>
<td>The development of FM radio in India</td>
<td>198</td>
</tr>
<tr>
<td>5.3.4</td>
<td>The role of TRAI in the radio</td>
<td>199</td>
</tr>
<tr>
<td>5.3.5</td>
<td>Recommendations on radio</td>
<td>199</td>
</tr>
<tr>
<td>5.4.1</td>
<td>The foreign investment in the electronic media</td>
<td>200</td>
</tr>
<tr>
<td>5.4.2</td>
<td>Private electronic Media</td>
<td>200</td>
</tr>
<tr>
<td>5.4.3</td>
<td>The directives on radio</td>
<td>201</td>
</tr>
<tr>
<td>5.4.4</td>
<td>Law relating to the Code of Conduct</td>
<td>201</td>
</tr>
<tr>
<td>5.4.5</td>
<td>Community Radio in India</td>
<td>202</td>
</tr>
<tr>
<td>5.4.6</td>
<td>Home Amateur (HAM) Radio</td>
<td>202</td>
</tr>
<tr>
<td>5.4.7</td>
<td>The development of Satellite Radio</td>
<td>204</td>
</tr>
<tr>
<td>5.5.1</td>
<td>TRAI Recommendations</td>
<td>204</td>
</tr>
<tr>
<td>5.5.2</td>
<td>Prasarbharathi and Electronic Media</td>
<td>205</td>
</tr>
<tr>
<td>5.5.3</td>
<td>The duties of the proposed Broadcasting Regulatory Authority of India</td>
<td>205</td>
</tr>
<tr>
<td>5.6.1</td>
<td>The proposed freedom of BRAI</td>
<td>207</td>
</tr>
<tr>
<td>5.6.2</td>
<td>The impact of decision in Cricket Broadcasting case upon BRAI</td>
<td>207</td>
</tr>
<tr>
<td>5.6.3</td>
<td>Revamping of Prasarbharathi Corporation</td>
<td>208</td>
</tr>
<tr>
<td>5.6.4</td>
<td>The Regulation upon Cable Television</td>
<td>208</td>
</tr>
<tr>
<td>5.7.1</td>
<td>The impact of the Precedent</td>
<td>209</td>
</tr>
<tr>
<td>5.7.2</td>
<td>The legislation on Cable Networks</td>
<td>211</td>
</tr>
<tr>
<td>5.7.3</td>
<td>Statutory violations and offences relating to the private channels</td>
<td>211</td>
</tr>
<tr>
<td>5.8.1</td>
<td>The Cable Television Rules of restrictions on Advertisements</td>
<td>213</td>
</tr>
<tr>
<td>5.8.2</td>
<td>The Rules to prohibit certain advertisements</td>
<td>213</td>
</tr>
<tr>
<td>5.8.3</td>
<td>Advertisement and Programmes should be distinguishable</td>
<td>214</td>
</tr>
<tr>
<td>5.8.5</td>
<td>Conclusion</td>
<td>214</td>
</tr>
</tbody>
</table>
CHAPTER 5

ELECTRONIC MASS MEDIA AND THE LEGISLATION

5.1.1 Introduction

Ministry of Information and Broadcasting is the nodal Ministry in the Information, Broadcasting and Film sectors. The functions of the three sectors are complementary. The electronic media cannot be strictly compartmentalized. They are interwoven as all activities are centered on the core objectives of informing, educating and entertaining the people. Each sector works towards the declared objectives and achievements are targeted through specialized media units and other organizations of the Ministry. The Ministry has eleven media units, nine Public Sector Units and independent organizations to which it provides administrative/budgetary support. The Ministry initiated a review of the structure and working of Prasarbarathi to ensure quality, credibility and professionalism. A Committee of experts was constituted which has given its recommendations. Budget of Prasarbarathi was delinked from the Ministry of Information and Broadcasting to strengthen its autonomous character. Noam Chomsky said that “For people to control and manipulation, it is quite useful to believe that human beings have no intrinsic morals and intellectual nature, that they are simply objects to be shaped by state and private managers of idealogues who of course perceive what is good and right. Concern for intrinsic human nature poses one of the barriers in the way of manipulation and control. The human rights are rooted in human nature”. 429

5.1.2 Classification of electronic media

The present day classification of electronic media is into radio, television and internet. Radio may be further divided to Medium Wave, Short Wave Frequency Modulation and satellite based respectively. The television may be terrestrial, cable and satellite. Ministry of Communications and Information Technology Department of Telecommunications is the relevant Ministry. The ITU has the following duties (1) Policy making relating to the Licensing and Coordination matters relating to electronic

media like television, radio, internet, telegraphs, telephones, wireless, data, facsimile and telematic services and other like forms of communications.

International co-operation in matters connected with telecommunications including matters relating to all international bodies dealing with telecommunications such as the organisations like ITU, Radio Regulation Board (RRB), Radio Communication Sector (ITU-R), Telecommunication Standardization Sector (ITU-T), Development Sector (ITU-D), International Telecommunication Satellite Organization (INTELSAT), International Mobile Satellite Organization (INMARSAT), Asia Pacific Telecommunication (APT). The ITU has promotion of standardization, research and development in telecommunications, promotion of private investment in telecommunications, financial assistance for the furtherance of research and study in telecommunications technology and for building up adequately trained manpower for telecom programme, including (a) assistance to institutions, assistance to scientific institutions and to universities for advanced scientific study and research and (b) grant of scholarships to students in educational institutions and other forms of financial aid to individuals including those going abroad for studies in the field of telecommunications (c) Procurement of stores and equipment required by the Department of Telecommunications (d) Telecom Commission. (e) Telecom Regulatory Authority of India (f) Telecom Disputes Settlement and Appellate Tribunal and (g) other related matters.

The laws to be maintained include (a) The Indian Telegraph Act, 1885 (13 of 1885); (b) The Indian Wireless Telegraphy Act, 1933 (17 of 1933); and (c) The Telecom Regulatory Authority of India Act, 1997 (24 of 1997). The concerns include the (a) Indian Telephone Industries Limited. (b) Post disinvestment matters relating to M/s Hindustan Teleprinters Limited. (c) BSNL (d) Mahanagar Telephone Nigam Limited (d) VSNL and Telecommunications Consultants (India) Limited. And (d) all matters relating to Centre for Development of Telematics (C.DOT).

5.1.3 Classification of telecasting according to Supreme Court

Supreme Court said that the electronic media in the form of telecasting is of three types. It may be terrestrial, cable television and satellite television. Further it may be a
private or public channel like Doordarsan. The Apex court said that it in either case it shall abide by Constitution of India. Article 19(1) says that freedom of speech is guaranteed by the Constitution. So the monopolisation even by the central government will amount to the curtailment of the Constitutional mandate. The doors must be open to the private operator of the private channels. The programme media includes the sports and other activities. The state cannot privatise any programme in the media. The Supreme Court went further that the State should take initiative to make laws to regulate the electronic media.

5.1.4 Legislations on the electronic media in India

At present legislations on the electronic media in India are Telegraph laws, the Cable Television(Regulation) Act, the TRAI Act and the Prasarbharathi Act. With rapidly changing technologies, and increasing business investments, the broadcast sector has become the site of contention between various interests of broadcast companies, the government, public interest groups, community radio and television channels, and an increasingly diverse audience that has been broadly categorized as the ‘public’. An important aspect of this tussle is the legal regulation of both existing and emerging technologies. The statutory basis of government monopoly of the broadcast sector, which was widespread until the emergence of satellite television in the 1990s, can be traced to the Indian Telegraph Act of 1885. The Act states that the Central Government has the exclusive privilege of establishing, maintaining, and working telegraphs within India.

5.2.1 The origin of the central government’s power

The Telegraph Act and its subsequent amendments define telegraph broadly to include most modern communication devices irrespective of their underlying technology. Judicial decisions have also held that the term ‘telegraph’ includes the

---

430 MIB and Others V Cricket Association of Bengal and Others AIR 1995 SC 1235.
431 Section 4(1) of The Indian Telegraph Act 1885
432 The Indian Telegraph Act of 1885. “...any appliance, instrument, material, or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual, or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, or magnetic waves”
term telephone, television, and radio, wireless, mobile and video equipment. The Act authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety. Section 5(2) enables the government to lawfully intercept telegraph messages on certain grounds. These include India’s sovereignty and integrity, state security, friendly relations with foreign states, public order, and preventing the commission of an offence. The Act empowers the government to revoke a telegraph license for breach of any terms and conditions or for a default in making license fee payments.

5.2.2 The development from the telegraph laws to the Prasarbharathi and TRAI

Though the Telegraph Act does not explicitly define ‘telecommunications service’ and ‘broadcasting service’, the TRAI Act, 1997, defines communication service in Sec 2(1) (k) as: “Service of any description (including electronic mail, voice mail, data services, audio-text services, video-text services, radio paging, and cellular mobile telephones services) which is made available to users by means of an transmission or reception of signals, writing, images, and sounds or intelligence of any nature, by wire, radio, visual or any other electronic means but shall not include broadcasting services.”(Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.) Though this section expressly excludes ‘broadcasting’ from this definition, the directive authorizes the government to notify broadcasting services to be a telecommunication service. This notification gave TRAI the authority to regulate broadcasting and cable services in India.

5.2.3 The impact of the Wireless Planning Council of Department of Telecommunication

The license required for broadcasting (the Wireless Operating License) is given by the Wireless Planning and Coordination Committee (WPC) Wing of the Ministry of

---

433 Section 3(1AA). However the physical possession of radio and wireless equipment is regulated by the Indian Wireless Telegraphy Act, 1933.
434 Section 5(1)
435 Section 5(2)
436 Section 8
Communication and Information and Technology, while the Ministry of Information and Broadcasting (MIB) gives a permission. The radio and television services are also regulated by the Indian Wireless Telegraphy Act 1933. They constitute ‘wireless communications’.\(^{438}\) These licenses are granted by the WPC a wing of the DoT. The broadcasting services, a broadcasting company must obtain two types of licenses: 1. GOPA to offer broadcast services issued by the Ministry of Information and Broadcasting under the Telegraph Act and 2. A wireless operating license from the WPC (Wireless Planning & Coordination Authority) Wing of the Ministry of Communication and Information Technology under the Wireless Telegraphy Act.

5.3.1 Radio services and electronic media.

Terrestrial radio services can be divided into two main categories, AM radio that uses medium or short wave frequency bands, and FM that uses VHF frequencies in the 88 MHz to 108 MHz band. AM radio is offered only by AIR while FM radio which works on line of sight principles and can be clearly received within a local area, is offered by both AIR and private channels.

5.3.2 The origin of FM Radio.

AIR began FM broadcasts in Madras on July 23, 1977. FM radio was opened to private players in 1999. The Ministry of Information and Broadcasting invited bids for licenses to operate 140 FM stations in 40 cities. In March 2000, the government short listed 29 applicants for licenses to operate 101 FM radio stations. Upon further screening, the government issued letters of intent to 93 stations. Ultimately, FM licenses were granted to 16 companies to operate 37 channels. The initial FM radio licenses were valid for ten years and licensees were required to submit performance bank guarantees equivalent to a year’s license fee to ensure that they carried out their license obligation.

5.3.3 The development of FM radio in India.

Many of the FM stations that were licensed were financially unsuccessful and could not meet the license fee requirements. They soon demanded a reduction in license

\(^{438}\) Sec 2(2) and Sec 3 of the Act regulate wireless communication by requiring users of various types of wireless equipments to obtain wireless licenses for possessing and using the equipment.
fee and change in the prevailing licensing network. The MIB then constituted the Radio Broadcast Policy Committee under the chairmanship of Amit Mitra, Secretary General, FICCI on 24 July 2003 to make recommendations for Phase II of FM licensing, and to “study the desirability and implications of making modifications in the licensing regime of Phase I licenses. The committee called for revisions to the prevailing license fee structure for FM licenses, and recommended the introduction of an annual revenue sharing arrangement that would require FM licensees to pay 4 per cent of their gross revenue as license fees. It also proposed restructuring existing licenses and restricting the licensees’ liability for their original license fee payments.\footnote{Supra note 2. The Amit Mitra Committee Report was sent to TRAI on 12 February 2004 for its recommendations. Private FM players also submitted their recommendations to TRAI on 24 February 2004.} The second round of allocation of licenses concluded in early 2006\footnote{The full list of operational FM stations is available at http://mib.nic.in/fm/fmmainpg.htm}.

5.3.4 The role of TRAI in the radio.

TRAI took over regulatory responsibilities for broadcasting in January 2004. Its first set of recommendations to the government, sent in August 2004, proposed a migration package that would enable existing FM licensees to substitute their fixed fee terms with a more flexible revenue sharing formula. It also suggested relaxing the strict restrictions on multiple ownership that prevented FM licensees from owning more than one frequency in a city. It proposed a cap of 25 per cent on the total number of frequencies held by a single license across the country. It made detailed recommendations regarding foreign investment in FM radio. It suggested removing restrictions on news and current affairs programmes.\footnote{Id}

5.3.5 Recommendations on FM radio

In July 2005, the government accepted most of TRAI’s recommendations and framed a new policy for FM licenses. The main features of this policy were: (1)Two round selection process for 336 channels in 90 cities (2) Requirement that applicants be registered in India (3) Prohibition of control by persons convicted of certain offences. (4) Prohibition of application by subsidiary of applicant company (4) Prohibition of application by companies with same management (5) Prohibition of application by
companies of the same group or otherwise interconnected companies. (6) Prohibition of application by religious bodies or companies controlled by/associated with them. (7) Prohibition of application by political bodies or companies controlled by/associated with them. (8) Prohibition of application by advertising agencies or companies controlled by or associated with them. (9) Prohibition of application by trusts, societies, nonprofit organizations or companies controlled by or associated with them. (10) Permission granted for ten years under the policy. (11) Applicants are allowed to run one channel per city provided the total number of channels allocated to the entity is within the overall ceiling of 15% of all allocated channels in the country. (12) Licensees cannot outsource, through any long-term production or procurement arrangement, more than 50% of the total content, and not more than 25% of the total content can be outsourced to a single content provider. (13) Licensees cannot hire or lease more than 50% of broadcast equipment on long term basis. (14) Licensees cannot enter into any borrowing or lending arrangement with other permission holders or entities other than recognized financial institutions, which may restrict its management or creative discretion to procure or broadcast content. No entity can hold permission for more than 15% of all channels allotted in the country. In the event of allotment of more channels than prescribed, the entity will have the discretion to decide which channels it would like to surrender and the government has to refund its One Time Entry Fee (OTEF) for these channels in full.

5.4.1 The foreign investment in the electronic media.

Total foreign investment permitted to the extent of not more than 20% of the paid up equity in the entity holding permission for a radio channel. Foreign investment includes Foreign Direct Investment (FDI) as defined by RBI, and FDI by OCBs/NRIs/PIOs etc. Portfolio Investments by Foreign Institutional Investors (FIIs) (within limits prescribed by RBI) and borrowings, if these carry conversion options.

5.4.2 Private electronic Media.

In order to obtain a licence 50% of share holders shall be Indians. The majority of the share holders, the executive officers of the applicant entity shall be.

442 OCB means Overseas Corporate Bodies, NRI and Non Resident Indians and PIO means Persons of Indian Origin.
resident Indians. No permission holder shall be permitted to change the ownership pattern of the company through transfer of shares of the major shareholders to any new shareholders without the written permission of the Ministry of Information and Broadcasting. The permission is granted for a period of five years from the date of its operationalisation, subject to the condition that the new shareholders conform to all the prescribed eligibility criteria. If during the currency of the permission period, government policy on cross media ownership is announced, the permission holder shall be obliged to conform to the revised guidelines within a period of six months from the date of such notification, failing which it shall be treated as non compliant of Grant of Permission Agreement and liable for punitive action. In case the permission holder is not in a position to comply with cross media restrictions for bonafide reasons acceptable to the Ministry of Information & Broadcasting, the Permission Holder would be given the option of furnishing one month’s exit notice; the entry fee for the remaining period, calculated on a pro rata basis, would then be refunded to the permission holder.

5.4.3 The directives on radio

No news and current affairs programs are permitted under the Policy (Phase.II). TRAI, in its recommendations on licensing issues related to the 2nd phase of FM broadcasting has advised the government to lift restrictions on the broadcasting of news and current affairs. However, the government has not implemented these recommendations.\textsuperscript{443}

5.4.4 Law relating to the Code of Conduct

The license says that the code of conduct is relating to the Doordarshan. Every permission holder shall follow the AIR Program and Advertising Code as amended from time to time. In the event of the government announcing the setting up of a Broadcast Regulatory Authority, by whatever name called, and the content regulations are modified, the permission holder shall be obliged to conform to the revised guidelines. No permission holder shall use brand names or owners’ names or corporate

\textsuperscript{443} TRAI Recommendations on Licensing Issues related to 2\textsuperscript{nd} Phase of Private FM Broadcasting, August 2004
group names to identify its channel to gain commercial advantage over other permission holders. The Ministry of Information & Broadcasting shall have the right to suspend the permission of one or more permission holders in public interest or national security to prevent the misuse of their respective channels and the permission holders shall be obliged to immediately comply with the directives of the Government.

5.4.5 Community Radio in India

In a major development, the Government has permitted educational institutions, and more recently not for profit organizations to operate community radio stations. The 2002 Guidelines were applicable only to established educational institutions. In December 2006, the Information and Broadcasting Ministry issued guidelines making it possible for not for profit organizations to set up community radio. Recently, 16 NGOs and civil society organizations received Letters of Intent for setting up community radio stations. According to the website of the Information and Broadcasting Ministry, the Ministry has received around two hundred applications under the new broadened scheme.

5.4.6 Amateur (HAM) Radio

Home Amateur Radio (HAM) is truly a hobby but often one that makes a difference especially in emergency or disaster situations. It is an activity of Self Learning, Inter Communication and the Technical Investigation carried on between Amateur Radio Operators. Amateurs talk to local friends over the radio waves using a hand held transceiver, communicating digitally with packet radio to exchange personal messages or vital information in an emergency, talking to other hams anywhere in the world, or engaging in contests with other Radio Amateurs over the airwaves there is something for everyone. Amateur Radio Operators have to qualify in an examination conducted by Ministry of Communications, Government of India and obtain license for operating or possessing a Radio Station. Any individual above the age of 12 is permitted to appear for Amateur Station Operator License Examination and no

444 http://mib.nic.in/CRS/crsloi220208.pdf
445 The list of 16 NGOs (with a total of 36 entities including campuses and KVKs) that have received license as on 22 Feb 2008 is available on the link at http://mib.nic.in/CRS/crsop260208.htm. last visited on 1-4-2011
educational qualification is prescribed. It takes just two months (say two hours a day training) to become eligible for the examination. One should qualify a simple test conducted in three subjects namely (i) Morse Code (Transmission & Reception) (ii) Communication Procedure (iii) Basic Electronics.

The Officer in Charge, Wireless Monitoring Station, Department of Telecommunication under Ministry of Communication, Government of India is the authority for conducting these tests in their own town provided there is sufficient number of applicants. The licenses are issued by Wireless Planning & Coordination Wing of Department of Telecommunication, Government of India after passing the test in any of the following grades:

(1) Grade I. Permitting all amateur frequencies with higher power including latest techniques.

(2) Grade II (Restricted but permitting) use of VHF/UHF only (i.e. walkie-talkies).

(3) Grade III. Permitting HF/VHF/UHF frequencies but with limited transmitting power

(4) Advance Grade. Permitting higher power and advanced techniques including Satellite Communication.

The Morse code of 5 words per minutes sending and receiving will make eligible to get grade one and 12 words per minutes sending and receiving will get grade one. For advanced grade higher level of technical knowledge in electronics is essentially required. Basic knowledge can be obtained by purchasing study manuals, books on Morse code from any of the amateur clubs or local clubs. At the end of the classes, a test is given. In order to pass HAM you have to pass an exam containing these things. There are over Lakh people all over the world who pursue this activity in their free time.

---

5.4.7 The development of Satellite Radio

The satellite broadcast radio was started in 1992 in US. The XM Satellite Radio and Sirius Satellite Radio started commercial service in 2001 and 2002, respectively. Both use channels in the 2.3.ghz microwave S.band, but their systems are considerably different in 2008. The two companies merged to form Sirius XM Radio. Sirius xm has 22.9 million subscribers across the U.S. It include programming like commercial free music, premier sports talk and live events, news and comedy, exclusive entertainment, and the most comprehensive. Customers will get quality audio on payment of the prescribed fee. In India, one can tune into WorldSpace, which offers digital broadcast of satellite radio and multimedia services, directly from satellites to portable receivers or PCs. The WorldSpace network has three geo- stationary satellites that have footprints or spot beams over six continents. Satellite radio relies on satellite signals, instead of FM/AM frequencies for radio transmission. These services are in a nascent stage in India. Recognising the potential for satellite radio services, TRAI has issued comprehensive recommendations in June 2005.

5.5.1 TRAI Recommendations

TRAI has indicated that satellite radio services would be complementary to FM services, rather than competitive. TRAI suggested that there be no separation between carriage and content in satellite radio licenses. There should be common rules of subscription and broadcast type services. All India Radio (AIR)’s programme and advertisement codes should apply to satellite radio. There should be no ban on news and current affairs programmes. Licenses should be permitted to establish terrestrial repeaters to rebroadcast their signals for better reception. Given the high capital intensity of the medium and limited number of global players, 100 % foreign investment should be permitted in satellite radio services. Licenses should be issued for ten years. There should be no license fee, unless there is excessive demand for available spectrum. If satellite radio licenses are permitted to use terrestrial repeaters, a revenue share of 4 per cent can be imposed as a license fee. No specific transmission standards should be prescribed. A satellite radio licensee should be free to decide on the preferred
transmission technology subject to the licensor’s approval. Satellite radio licensees should offer their subscribers the option of blocking unwanted channels.\textsuperscript{448}

5.5.2 Prasarbarathi and Electronic Media

The introduction of the Prasarbarathi Bill in Parliament in May 1979 was the based on the recommendations of the B. G. Varghese Committee set up in 1977 after the Internal Emergency declared by the then Prime Minister Indira Gandhi (1975-77). The Bill was allowed to lapse after the Janata party government elected to form the government after the Emergency collapsed and the Congress party returned to power. The victory of the National Front government in 1989 saw the revival of the Prasarbarathi Bill in a somewhat modified form.

The Bill was passed by Parliament and received presidential assent on 1990. The Act provided for the formation of an autonomous Broadcasting Corporation that would manage Doordarshan and AIR, discharging all powers previously held by the Information and Broadcasting Ministry. The corporation would inherit the capital assets of Doordarshan and AIR and would be managed by a fifteen member Prasarbarathi Board, including the Directors General of the two organisations and two representatives from amongst the employees. The Chair and other members of the Board would be appointed on the recommendations of the selection committee headed by the Vice President. A fifteen member Broadcasting Council would address public complaints.

5.5.3 The duties of the proposed Broadcasting Regulatory Authority of India

The primary duty of the Broadcasting Corporation was to ‘organize and conduct public broadcasting services to inform, educate, and entertain the public’ and to ensure ‘a balanced development’ of broadcasting of radio and television.\textsuperscript{449} The Corporation was to be guided by a set of objectives while discharging its functions. These include: (1) Upholding the unity and integrity of the country and the values enshrined in the Constitution, 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

\textsuperscript{448} Supra note 2.
any opinion or ideology of its own (2) Paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology. (3) Providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes. (4) Providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship. (5) Providing appropriate programmes keeping in view the special needs of the youth. (6) Informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women. (7) Promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society. (8) Safeguarding the rights of the working classes and advancing their welfare (9) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas. (10) Providing suitable programmes keeping in view the special needs of the minorities and tribal communities. (11) Taking special steps to protect the interests of children, the blind, the aged, and the handicapped and other vulnerable sections of the people. (12) 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. (13) Providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception. (14) Promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated. (15) Expanding broadcasting facilities by establishing additional channels of transmission at various levels. (16) Ensuring that broadcasting is conducted as a public service to provide and produce programmes. (17) Establishing a system for the gathering of news for radio and television;(18) Negotiating for the 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 and Establishing and maintain a library or libraries of radio, television and other
materials. Conducting or commissioning, 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.

5.6.1 The proposed freedom of BRAI

Though the Broadcasting Corporation was supposed to be independent, section 23 of the Act gave the Central Government the power to issue to the Corporation, directions to broadcast or not to make a broadcast, if it deemed necessary in the interests of the sovereignty, unity, and integrity of India, or the security of the State, or preservation of public order. Another provision that curtailed the autonomy of the Corporation was Sec 13 which provided for the constitution of a 22 member Parliamentary Committee to oversee the working of the Corporation. The National Front government fell before the Act could be notified.

5.6.2 The impact of decision in Cricket Broadcasting case upon BRAI

The legislation got a fresh lease of life when the Supreme Court, on February 9, 1995, in the Cricket Association of Bengal case, directed the Government to set up an independent broadcasting authority that would give access to all interests and groups. In September 1997, then Information and Broadcasting Minister announced that the Act would be notified. The United Front government introduced changes in two main categories. It scrapped Section 13 of the 1990 Act that had provided for a parliamentary committee to oversee the working of the Board. Other amendments removed the Government’s power to stipulate advertisement airtime and provided for the transfer of the assets of Doordarshan and Akashvani to the corporation for a perpetual lease of a token Re 1 a year. The second sets of amendments were broadly meant to seek to reconcile the Prasarbarathi Act with planned legislation on private broadcasters. It replaced the Broadcasting Council provided for in the Prasarbaraththi Act with the Broadcasting Authority of India, that would govern private broadcasters when the then pending Broadcasting Bill 1997 was enacted.451

450 Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal AIR 1996 SC 1236
5.6.3 Revamping of Prasarbarathi Corporation

New chief executive was appointed by amending the statutory qualifications for Prasarbarathi’s chief executive\textsuperscript{452}. But early general elections in 1998 saw the formation of a new BJP led Government. The BJP had opposed Gill’s appointment as violating the age limit that was laid down. When Gill refused to resign, the BJP government allowed the presidential ordinance amending the Prasarbarathi Act to lapse, and then removed him from office saying he did not satisfy the qualifications required under the Act. The government also removed other members of the Prasarbarathi from their posts. These actions were challenged in the Delhi High Court, which declined to interfere saying it was a policy matter.\textsuperscript{453} Recently, the Central Government has passed the Prasarbarathi (Broadcasting Corporation of India) Amendment Bill, 2008 in Parliament amending the Prasarbarathi Act to reduce the tenure of the Chairman of Prasarbarathi from six to three years. The move is seen as aimed at easing out current Prasarbarathi Chairman M V Kamath. An upper age limit was also introduced for the position of chairman at 70 years. The Information and Broadcasting Minister said it would help bring diversity of experience at the top level for the benefit of the organisation. Mr Dasmunsi said in the statement of objects and reasons that it is being felt necessary to rationalize such matters “in order to inject sectoral experience to rejuvenate Prasarbarathi and its Board.”\textsuperscript{454}

5.6.4 The Regulation upon Cable Television

The sudden emergence of cable television and cable networks in the early 1990s caught the Indian government unprepared. The DoT initially responded with new regulations targeting the fledgling networks, requiring all users and dealers of satellite equipment to obtain special operating licenses for their equipment. Users and dealers

\textsuperscript{452} United Front government appointed SS Gill as the new Chief Executive
\textsuperscript{453} See Rajendra Yadav v Union of India AIR 2000 Del 229. Also See Supra note 2 at 81-82.
were specifically prohibited from engaging in commercial distribution of programmes downloaded from satellites. To obtain these licenses, users had to undertake that they would not use their equipment to establish unauthorized networks. The government’s action against cable television networks was unsuccessfully challenged by cable operators before various high courts. Despite this, the growth of these networks continued, especially in urban areas. The Government appointed a committee which recommended that the censors should clear all programmes transmitted through cable networks. It also suggested that cable networks should be prohibited from directly relaying programmes received from satellites. The government, however, did not accept these recommendations.

5.7.1 The impact of the Precedent

The reality of cable networks was tested in Shiv Cable TV System v. State of Rajasthan. The case arose from a district administration’s order directing the local police to halt cable TV networks because the cable operators lacked the necessary licenses. The affected operators challenged the district administration’s order in the Rajasthan High Court on the ground that there was no law that required them to obtain licenses for their networks. They argued that the district administration’s actions violated their fundamental right to carry on a trade and business. The state government told the high court that the cable operators had to obtain licenses under the Telegraph Act and the Wireless Telegraphy Act to legally operate their networks.

The High Court agreed with the government’s arguments. It explained that cable networks typically comprise of two elements

1) A dish antenna to receive programmes transmitted by satellites.
2) A cable network to physically distribute these programmes to subscribers.

The Court said that since a cable operator’s dish antenna was capable of receiving transient images of fixed and moving objects from satellites, the dish antenna constituted a wireless telegraph apparatus under the Wireless Telegraphy Act. It held

---

455 Supra note 2, pp 533-553
456 Id
457 AIR 13 Raj 197.
that unless covered by an exemption, the dish antenna required a wireless license for its operation. The Court held that lines and cables in a cable network were covered by the definition of a ‘telegraph line’ under the Telegraph Act, and the cable operators had to obtain statutory licenses in order for their dish antennas to download programmes from satellites and to transmit these downloaded programmes through their networks to customers.

Despite this, the High Court set aside the impugned orders of the district administration as they were made without jurisdiction. It held that under the Telegraph Act and the Wireless Telegraphy Act, only the Director General of Posts and Telegraphs, a Central Government official, was competent to take the actions in question. The High Court noted that the government had not framed any rules or guidelines to regulate cable networks. Noting that an outright prohibition on cable networks was difficult because they had already grown deep roots in several areas, the high court called on the government to establish a licensing system to regulate cable networks.

This decision prompted the government to promulgate an ordinance in 1994 that provided a legal basis to regulate cable networks. The ordinance was later ratified by Parliament and passed as the Cable Networks Act, 1995. This legislation was amended in 2003 to require cable subscribers to use conditional access systems to receive premium channels. The government’s New Telecom Policy, 1999 sought to align the cable industry closer to the market for telecom services. It classified cable operators as access providers along with fixed and cellular licensees. It allowed cable operators to provide last mile links, switched services, and one way entertainment services in their respective service areas. Cable operators were allowed to directly interconnect with other service providers within their service area and share infrastructure with them. The government decided not to allow cable operators to provide two way communications as it would amount to them offering fixed services. But the policy gave cable operators the option to obtain a separate fixed license for this purpose.

---

5.7.2 The legislation on Cable Networks

The principal purpose of the Cable Networks Act was to introduce regulatory certainty to the cable market that had emerged in the early 1990s. The statement of objects and reasons declared that cable TV constituted a ‘cultural invasion’ as cable programmes were predominantly western and alien to Indian culture and way of life. It declared that the lack of regulation had resulted in undesirable programmes and advertisements being shown to Indian viewers without any censorship. Section 3 of the Cable Networks Act said that the cable television network can be operated only by a registered cable operator. The registering authority is any authority so notified by the Central Government. Cable television network’ is defined in sec 2 (c) as 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. In order to register, an entity could be an Indian citizen an association of individuals whose members are Indian citizens

A company in which not less than 51 per cent of paid up equity share capital is held by Indian citizens. If the registering authority refuses to register an applicant, it must record its reasons for doing so and inform the applicant accordingly.

5.7.3 Statutory violations and offences relating to the private channels

The Cable Networks Act empowers and authorizes a government officer to seize a cable operator’s equipment if the officer has reason to believe that the cable operator is functioning without proper registration. The seized equipment cannot be retained for a period exceeding ten days from the date of seizure, unless a local District Judge, within whose jurisdiction the seizure has been made, approves continued retention of the seized equipment.

A first time violation under the statute can result in an imprisonment term that extends up to two years or a fine up to Rs. 1000 or both. Every subsequent offence is punishable with imprisonment for a term up to five years and a fine that may extend to

459 See Supra Note 2 pp 533-553 Chapter 16
460 Section 2 (h)
461 Section 2(e)
462 Section 11
Rs. 5000. The Act says that if a company commits an offence under the statute, the company and any person in charge, or responsible for its business, shall be deemed guilty, proceeded against and punished accordingly. If a company commits an offence with the consent, connivance, or attributed negligence of a director, manager, secretary, or other officer, these officers are deemed guilty, along with the company, and they can be prosecuted, and punished accordingly. 463

Cable Television Network Rules, 1994 were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The Programme Code of the Cable Television Network Rules lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV. These restrictions are laid down in section 6 of the Rules. No programme can be shown that: Offends against good taste or decency Contains criticism of friendly countries, Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes, Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths, Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote antinational attitudes, Contains anything amounting to contempt of court, Contains aspersions against the integrity of the President and Judiciary, Contains anything affecting the integrity of the Nation, Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country, Encourages superstition or blind belief, Denigrates women through the depiction in any manner of the figure of a women, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals, Denigrates children, Contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups, Is not suitable for unrestricted public exhibition

The Rules say that the cable operator should strive to carry programmes in his cable service that project women in a positive, leadership role of sobriety, moral and character building qualities. They say that care should be taken to ensure that programmes meant for children do not contain any bad language or explicit scenes of

463 Section 17 (1) Cable Networks Act
violence. Programmes unsuitable for children must not be carried in the cable service at times when the largest numbers of children are viewing.

5.8.1 The Cable Television Rules of restrictions on Advertisements

The restrictions on advertisements private cable are given in the Cable Television Networks Rules\(^{464}\) The Advertising Code in the Cable Network Rules says that all advertising carried in the cable service have to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers. The code says that no advertisement shall be permitted which Derides any race, caste, colour, creed and nationality Is against any provision of the Constitution of India, Tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way, Presents criminality as desirable (4) Exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary, In its depiction of women violates the constitutional guarantees to all citizens and projects a derogatory image of women. The Rules say that women should not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator is supposed to ensure that the portrayal of the female form, in the programmes carried in his cable service, is “tasteful and aesthetic, and is within the well established norms of good taste and decency”, Exploits social evils like dowry, child marriage and Promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, infant milk substitutes, feeding bottle or infant food.

5.8.2 The Rules to prohibit certain advertisements

The prohibited advertisements include (1) that are wholly or mainly of a religious or political nature or directed towards any religious or political end.\(^{465}\) (2) Contain references that hurt religious sentiments. (2) Contain references that are likely to lead the public to infer that the product advertised or any of its ingredients has

\(^{464}\) Section 7 Cable Network Rules

\(^{465}\) Political and religious groups are banned from owning FM channels, but apparently, they are allowed to own TV channels. The eligibility criteria are listed in the Uplinking and Downlinking Guidelines.
5.8.3 Advertisement and Programmes should be distinguishable

All advertisement should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme. Recently, the Central Government has amended the Cable Television Network Rules through a gazette notification to ban ‘surrogate advertisements” to prevent tobacco and liquor brands from sidestepping the law. As per the notification no advertisement that permits “directly or indirectly sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.”

5.8.4 Conclusion

In spite of the fact that there are laws on telegraphy, laws relating to the Prasar Bharathi Corporation and Telecom Regulatory Authority of India and several orders made by it, there is no uniform law regarding the electronic media in India. This causes a huge financial loss to the government and a great confusion to the concerned parties. The Supreme Court held that uniform law in the matter is to be made. Though

---

466 This amendment is aimed at removes the leeway given to cigarette and liquor companies in a 2006 amendment that allowed advertisements that shared a brand name or logo with any tobacco or liquor product with several caveats. No reference, direct or indirect, could be made to the prohibited products in any form, and the “story board” or visual could depict only the product being advertised”. Besides allowing nuanced references, the “relaxed regime” mandated that advertisements could not use certain colours, layout presentations or situations associated with the prohibited products. The Government had relaxed its rules in view of the blatant violation of the ban on tobacco and liquor advertisements by which companies that launched new products like soda and glasses to circumvent the Advertising Code of the Cable Television Network Rules. See “Government Bans Surrogate Advertisements”, The Hindu March 18 2008, http://www.hindu.com/2008/03/18/stories/2008031854721300.htm
the Government has made two attempts to make Broadcasting Regulatory Authority of India the two were ineffective. It is intended to be different from TRAI and authorities relating to telecommunication. There were no attempts for making a Code regarding the electronic media in India.