CHAPTER 8

THE PRESENT CONTROL OVER THE ELECTRONIC MEDIA
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8.1.1 Introduction

The apex court has made it clear that "the airwaves or frequencies are a public property" (belonging neither to the State nor to private entities) and that "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". In spite of the directives of the Supreme Court, the state has not made a comprehensive law relating to the electronic media. The Cable networks regulating act which is intended to control the private channels, the Prasarbarathi Act which is intended to make the state owned channels a corporation and the TRAI Act the controlling authority of Air Waves does not have neither the freedom nor sufficient controlling powers for managing the electronic media.

8.1.2 The proposed regulations in the media

It is estimated that at least 88 24-hour news channels in multiple languages are currently in operation across the country and that a further 130 licenses have been approved. (1) The government appears to have been taken unawares by the sudden emergence and upsurge of television channels and cable networks, possibly lulled into complacence by the decade’s long tradition of State control over the electronic media. The sudden onslaught of satellite television, initially through the so called "invasion from the skies" by international TV networks in the early 1990s, changed the situation quite dramatically but the official response to the altered circumstances has been slow, hesitant and somewhat confused. 

8.2.1 The government’s first attempt to regulate

The government’s first attempt to regulate non-governmental broadcast media focused on cable operators and others and resulted in the Cable Television Networks (Regulation) Act, 1995, framed after the government reached an understanding at the all India level with the Cable Operators and others of the Federation of India in 1993.

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552 Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal AIR 1996 SC 1236
The new law was an attempt to regulate the burgeoning cable market that had emerged a few years earlier by enabling some control of the cable system that enabled mass distribution of television signals. The Cable Television Networks Rules include a Programme Code that imposes some restrictions on the content of both programmes and advertisements shown on cable TV. These Rules were amended in March 2008 and there is talk every now and again of further amendments. Cable operators contend that, as the only segment of the broadcasting chain currently subject to regulation, they bear a disproportionate burden of responsibility for controlling the content of television channels. At the same time, with networks spread across the country, implementation of the law is no easy task.

8.2.2 The proposed independent BRAI (Broadcasting Authority of India)

The comprehensive national media policy that has been discussed over the years is still hanging fire, as is the independent broadcasting authority called for by the Supreme Court in 1995 in the context of its landmark judgment on the airwaves. However, the Union Ministry of Information and Broadcasting has periodically attempted to introduce legislation to regulate the rapidly growing broadcast sector. The Broadcast Bill of 1998 was one such attempt. It is observed that its purpose was "to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies". The proposed legislation apparently intended to establish an independent authority and to create a level playing field for indigenous broadcasters. However, the Bill never saw the light of day. In fact, it did not get past a joint parliamentary committee set up to examine the legislation after it was tabled in Parliament. The government’s next attempt at regulation took the form of the Communications Convergence Bill, 2000, which aimed to create a single regulatory authority (the Communications Commission of India) to deal with advancements in information and communications technology. It proposed to repeal the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933, the Telegraph Wire Unlawful Possession Act, 1950, and the Telecom Regulatory Authority of India Act, 1998.
8.2.3 The fate of BRAI (Broadcasting Authority of India)

This legislation too remained a dead letter. The Broadcasting Services Regulation Bill, 2006, which came to public notice in July of that year, was widely criticised for draconian provisions that gave sweeping powers to the government and its representatives to cripple the media through pre-censorship and a particularly severe and potent form of inspector raj. No process of public consultation and discussion preceded the drafting of the legislation. One of the issues the 2006 draft legislation attempted to tackle was "concentration of media ownership" i.e., the worldwide trend of ownership of media increasingly concentrated in a decreasing number of conglomerates.

8.2.4 The second effort on BRAI in the form of broadcasting Services Regulation Bill, 2008

However, unlike in mature democracies where restrictions on ownership have been important features of media regulation, in India there has been little public discussion on the implications of media concentration. It is, therefore, not surprising that most comments on this aspect of the proposed legislation emanated from representatives of the media industry and its allies, who appeared more concerned about the impact of the Bill on business than its threat to freedom of expression. In any case, this draft law, too, was eventually shelved. In July 2008 there was yet another effort to introduce legislation to regulate the burgeoning broadcast sector in the country. The Union Ministry for Information and Broadcasting posted the Broadcasting Services Regulation Bill, 2008.\textsuperscript{554}

8.3.1 The objectives of the regulation

In order to understand the statement of objects and reasons of the broadcasting bill is necessary. They are as follows: (1) the broadcasting scenario, especially in the realm of satellite broadcasting, has undergone a revolution during the last few years. A large number of satellite television channels have been beaming their programmes through the Indian skies to our people. All these channels are foreign entities and their programmes are uplinked from outside the country without any regulation through the

\textsuperscript{554} \url{http://www.mib.nic.in}. Last visited on 9-10-2012.
law of our land, while Indian entrepreneurs and Indian companies are not at present permitted to own either Radio or Television stations (2) Concern has been voiced both inside Parliament and outside about the implications of these unregulated television programmes and the denial of level playing field to Indian entities. The only legal instrument available is the Indian Telegraph Act, 1885, which is considered totally inadequate to govern modern broadcasting media. All leading democratic countries have enacted laws specifically regarding broadcasting media. The introduction of the Broadcasting Bill is a step in this direction. (3) It is felt that the public service broadcaster alone will 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 all informed and given wider choice in matters of information, education and entertainment. This can be provided by facilitating private broadcasting in the country (4) The Bill needs to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies, apart from becoming a catalyst for social change, promotion of values of Indian culture and shaping of a modern vision. It will also curb monopolistic trends in this sensitive field, so that people are provided with a wide range of news and views.555

8.3.2 The impact of media ownership

It is proposed to repeal the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933, the Telegraph Wire Unlawful Possession Act,1950, and the Telecom Regulatory Authority of India Act, 1998. It must be replaced. This legislation, too, remained a dead letter. The Broadcasting Services Regulation Bill, 2006, which came to public notice in July of that year, was widely criticised for

http://www.thehindu.com. Last visited on 15-10-2012. The Hindu viewed as follows: “The Supreme Court is right that, insofar as it risked violating the right to life of others, such TV coverage cannot be justified under the right to free expression. However, it is one thing to criticize over-the-top coverage and quite another to say something that could be interpreted as tacit endorsement of an external regulatory framework. Despite the occasional excesses, self-regulation of the broadcast media is the best way of striking a balance between preserving freedoms of expression from state interference and preventing the abuse of its immense power.”
draconian provisions that gave sweeping powers to the government and its representatives to cripple the media through pre-censorship and a particularly severe and potent form of inspector raj. No process of public consultation and discussion preceded the drafting of the legislation. One of the issues the 2006 draft legislation attempted to tackle was "concentration of media ownership" i.e., the worldwide trend of ownership of media increasingly concentrated in a decreasing number of conglomerates.

8.3.3 The role of IBF (Indian Broadcasting Foundation)

The controversy raged on for television channels (the Indian Broadcasting Foundation and the News Broadcasters Association) undertaking to draft their own guidelines for self regulation. The ministry concedes to postpone further action on the legislation until then. Consequently, media coverage of the subject also abated. A truce was finally called, with the two organisations representing debate was conspicuously absent throughout this process. A few individuals and civil society organisations who submitted considered responses to the draft Bill. There is no acknowledgement of their efforts. The ministry is to give further directives.

Neither the government nor the industry showed much inclination to encourage real public discussion, despite the fact the media especially broadcast media now constitute an integral part of people’s daily lives and have a major impact on contemporary society. The ministry’s frequent references to "stakeholders" appeared to exclude citizens. Subsequent events and issues related to media regulation have been sporadically reported in the media, but with little attempt to contextualise developments, connect the dots, and thereby enable citizens to fully comprehend their meaning and significance. Periodic statements by politicians and bureaucrats again reported with little reference to background have further muddied the waters. Despite the apparent "truce" between the government and the broadcasting industry with regard to the draft Broadcast Bill and Content Code, the Information and Broadcasting Ministry continued to make decisions and take actions that fit under the media regulation umbrella. For instance, in February 2008 it notified the creation of a number of states and district level "monitoring bodies" meant to assess non-governmental broadcast entities in terms of their conformity with the programme code of the Cable
TV Rules. As initially constituted, these committees were dominated by bureaucrats and police personnel.

8.3.4 The role of EMMC (Electronic Media Monitoring Centre) of the State

As the International Federation of Journalists has pointed out, it was only in July 2008 almost as an afterthought that the ministry mandated that representatives of the journalism profession could also be included in the committees. The setting up of an Electronic Media Monitoring Centre (EMMC) by the government to monitor the content of all news channels and FM radio stations was also widely reported in the media in mid June 2008. Impression about EMMC was linked to the deferred Broadcast Bill and Content Code and implied that its establishment was proof of the government’s lack of commitment to self regulation. Actually the EMMC project was part of the 10th Five Year Plan and had been in the works for some time. The fact that it predated the 2008 Bill is evident in the reply to a question in the Rajya Sabha provided by the Information and Broadcasting Minister in July 2006. He had at the time stated in Parliament that the government had decided to set up such a Centre to monitor the content of private television channels for violations of the Programme and Advertisement Codes prescribed in the Cable Television Networks (Regulations), Act 1995 and the rules framed under that law.

The EMMC, estimated to cost Rs 16 crore, is apparently meant to facilitate the functioning of the broadcast regulatory agency if and when such a body is set up. The idea is that, instead of having to rely on individual channels to supply footage about which a complaint has been received, the regulator will have ready access to recorded footage from 100 channels (to be eventually increased to 150). However, little has been heard about the long awaited broader broadcast regulatory body for some time even though, in an interview given in mid June 2008, the outgoing secretary to the Ministry of Information & Broadcasting identified a "dedicated broadcast regulator" as the most urgent need of the sector. "It is inevitable," she said."We are trying to be like mature

556 www.infochangeindia.org visited on 2.11.2012
557 Indian Kanoon - http://indiankanoon.org/doc/963929/ , Mr. Rishi Kumarsingh v Ministry Of Information And others on 22 April, 2010, Central Information Commission CIC/AD/A/2010/000020.BECIL, New Delhi
558 ibid
economies in all other aspects, so why not on this issue? All developed economies have powerful broadcast regulator. It is part of the Broadcast Bill and hopefully it will come up for consideration by Parliament soon."

8.4.1 The self regulation by the News Broadcasting Association.

The problem is that the nature and structure of the body outlined in the draft Bill was far from the independent regulatory agency mandated by a 1995 Supreme Court judgment. Meanwhile, following up on their undertaking to institute self regulation, the News Broadcasters Association (NBA) submitted two documents to the government. In August the NBA announced the setting up of the News Broadcasting Standards Disputes Redressal Authority, as required in the regulations. The Authority finally came into being and the Code into effect on October 2, 2008. The nine member Authority, headed by former Chief Justice of India J S Verma, includes four editors from different news channels and four eminent persons drawn from different walks of life. The terrorist attacks in Mumbai occurred less than two months later.

8.4.2 The defects of proposed content regulations law

Victoria L. Farmer observed that “A major consequence of Doordarshan programming in the 1980s was the erosion of the credibility of its news programming, through blatant use of the medium for publicizing Congress Party leaders and initiatives. This became particularly severe in the period preceding the 1989 elections, when the conspicuous use of news broadcasts for electioneering earned for Doordarshan the derisive sobriquet “Rajiv Darshan.” This attempt to manipulate the media did less to garner electoral support than it did to hamper democratic

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559 http://articles.timesofindia.indiatimes.com Editors Guild differs with NBA on SC approval of self-regulatory norms Dhananjay Mahapatra, TNN Mar 30, 2012, 02.14AM IST.NEW DELHI: The print and electronic media differed fundamentally on the nature of guidelines for media reporting of sub-judice matters, with the Editors Guild on Thursday trashing News Broadcasters Association’s (NBA) stand that its self-regulatory code could be applied across the board with apex court’s approval. "If a guideline for media reporting is framed, it will become a tool for the politicians to drag journalists to the court for every report. The guidelines will then become the fighting point for politicians against media. There will be flood of litigation from trial court to the Supreme Court," senior advocate Rajiv Dhawan, appearing for the Editors Guild, told the Supreme Court.

560 A draft Code of Ethics and Broadcasting Standards, and draft regulations for the setting up of a News Broadcasting Standards Disputes Redressal Authority is given at the end of this work.
processes.” One of the principal allegations is that the media is used by the ruling political party. The majority of allegations relating to electronic media come under other laws like law of Indian Penal Code, Torts, Copyright etc. If they are convicted or acquitted in accordance with any of the laws there is a question of double jeopardy or resjudicata. The only way to escape from this is creating a law which is having the status of Sui juris and equity. Then the people may have the right and ability to prefer a suit for violation of the laws.

8.4.3 The impact of the Advertising Standard Council of India

The Advertising Standards Council of India (ASCI), established in 1985, is a private body. It is concerned about advertising only. It is for Self Regulation in Advertising, ensuring the protection of the interests of consumers. The ASCI was formed with the support of all four sectors connected with Advertising, viz. Advertisers, Ad Agencies, Media (including Broadcasters and the Press) and others like public relation Agencies, Market Research Companies etc. Its main objective is to promote responsible advertising thus enhancing the public's confidence in Advertising. ASCI represented in all committees working on advertising content in every Ministry of the Government of India. ASCI’s Code for Self Regulation in Advertising is now part of ad code under Cable TV Act’s Rules. Violation of ASCI’s Code is now violation of Govt. rules. ASCI’s membership of The European Advertising Standards Alliance (EASA) ensures that it gets valuable advice, learning and even influence at the international level.562

The Consumer Complaints Council is ASCI's heart and soul. It is the dedicated work put in by this group of highly respected people that has given tremendous impetus


562 Television advertising has two main objectives: 1) making an advertisement that meets broadcast standards, and 2) reaching the intended customers in intenended time. The advertising agency with pertinent expertise in these two arenas, and it is preferable to choose an agency that both produces advertisements and places air time, because expertise in broadcast quality production and broadcast standards is vital to gaining the advertisement's acceptance by the networks. After the advent of cheap video software and consumer cameras, numerous individuals have offered video production services on the internet. Video production companies that do not regularly place TV advertisements on the air often have their productions rejected by networks for technical or content issues, due to their inexperience with creating broadcast-ready content.
to the work of ASCI and the movement of self regulation in the advertising. This group comprise of 21 drawn from various disciplines. 12 are eminent people not associated with advertising (such as lawyer, doctor, journalist, teachers, technical expert’s consumer activities etc.) and 9 are from industry (advertiser, media, ad agencies and allied professionals. ASCI thus aim to achieve its own overarching goal: to maintain and enhance the public's confidence in advertising. The Board of Governors (16 members) ensures equitable representation of Advertisers, Agencies, Media and other Advertising Services, the individual member firms being leaders in their respective industries or services. The Consumer Complaints Council (CCC) (21 members) has 12 Non Advertising professionals representing civil society, who are eminent and recognised opinion leaders in their respective disciplines such as Medical, Legal, Industrial Design, Engineering, Chemical Technology, Human Resources and Consumer Interest Groups; 9 are advertising practitioners from our member firms. But the Government is not prevented from making a Code for the electronic media alone.

8.5.1 TRAI Act and digitalisation

In the meanwhile the TRAI Act and digitalisation came into picture. This changed the scenario and the Broadcasting Regulating Authority became non pragmatic. Huge capital investment came into the electronic media. This attracted politicians as well the money dealers. In fact the electronic media has grown to separate branch. It warranted a separate code for electronic media. The aim of the proposed Broadcasting Regulatory Authority was (1) To carry out frequency planning of such frequencies or band of frequencies assigned to it by the wireless adviser to the government for the purpose of licensing services (2) To grant licences for broadcasting services (3) To ensure that wide range of broadcasting services are available throughout India (4) To ensure services of high quality and offer a wide range of programmes to appeal to variety of tastes and interests (5) To determine the programme code and standard (6) To take necessary action for violation of code, violation of condition of licence (8) To set technical and other quality standards to ensure a reasonable quality of reception.563

563 The details are given in the website www.trai.org . Last visited on 10-2-2012
8.5.2 License under the proposed Broadcast Regulating Authority of India

The draft Bill says that license is needed for every kind of the media. It says that no person is entitled to provide broadcasting services without obtaining a licence, after commencement of this act. The authority can grant licences for the following broadcasting services namely (1) Terrestrial Radio Broadcasting, (2) Terrestrial Television Broadcasting (3) Satellite Radio Broadcasting (4) Satellite Television Broadcasting (5) Direct To Home Broadcasting (6) Local Delivery Services, (8) such other services as may be prescribed. The Terrestrial broadcasting services can be further categorised into analogue and digital and also into national, regional, local, restricted local services or any other similar service for the purposes of the licences and prevention of their accumulation.

8.5.3 The conditions for licence under the proposed Broadcast Authority

The person granted the licence will ensure that nothing is included in the programmes of the licensee which is likely to encourage crime or lead to disorder or will be offensive to public feeling. The licensee will ensure that news given in the programme will be presented with due accuracy and impartiality. The licensee has to ensure that due impartiality is maintained in respect of social or political issues or matter relating to public policy. The licensee will ensure due responsibility is exercised with respect to religious programmes with a view to avoiding improper exploitation of religious susceptibilities and offence to the religious views and beliefs of those belonging to a particular religion. The licensee will ensure that due emphasis is given to promote national integration, Indian culture in his programmes. The licensee will have to ensure that time, determined by the Authority, and is earmarked for broadcasting of children's programmes, educational programmes, programmes of Indian origin, a range of diversity of independent production. The licensee will have to follow the programme codes and standards and codes set by the Authority. The licensee will pay the license fees in the same manner as may be determined by the regulations. The Licensee will not carry out networking of local or regional broadcasting services without prior approval of the authority. The conditions of the license can be changed by the Authority after giving to the licensee a reasonable opportunity of being heard. The licence granted for Direct to Home service or Local Delivery service shall be subject to
the following conditions in addition to the conditions referred above. The licensee will have to provide a tier basic service which may include a number and type of terrestrial broadcasting for every permitted service and also of the public service broadcaster. The licensee will include only licensed services or permitted services in his delivery package for the purpose of distribution and also he will not use more than that number of channels as determined by the Authority out of the total channel capacity of the system for providing his own programming. The period of licence for each category will be for a period not exceeding ten years. The licence is not transferable and it will lapse prior to its normal expiry in case of insolvency or death of the licensee. No person will be given the number of licences for a category of services more than the number prescribed for the category of service. There are restrictions on cross media ownership between the newspaper and the broadcasting service. The government can modify any limit on interest or equity holding in the body corporate or companies by notification in the official gazette.

8.5.4 Grant of licence for satellite broadcasting services

Any person desirous of obtaining a satellite broadcasting licence will have to apply to the Authority. If the Authority is satisfied that the applicant: a) has acquired transponder on an Indian satellite system or on a foreign satellite system. b) It has obtained technical clearance for transponders from the wireless adviser. c) Has fulfilled all other condition laid down in the Act ;The Authority may grant a licence to such person on payment of fees ; If the Authority refuses to grant a licence it will have to give the applicant an opportunity to be heard. Provide further that such a person providing his broadcasting services immediately before the commencement of the Act may continue to do so without a licence for a period of one month from such commencement.

8.6.1 Authorities under the proposed law

The bill says that the Authority will be guided by principles of natural justice and subject to the other provisions of this act and of any rules; the Authority will have powers to regulate its own procedure including the fixing of places and times of its inquiry. The Authority will have for the purpose of discharging its functions under this
Act, the same powers as are vested in a civil court under the code of Civil Procedure, while trying a suit, in respect of the following matters namely, summoning and enforcing the attendance of any person and examining him on oath, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents and any other matter which may be prescribed.

8.6.2 War or vis. major

In event of any war or a natural calamity of national magnitude, the central government may, in public interest, take over the control and management of any broadcasting service 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 government, if it considers necessary or expedient to do so, may, in public interest, at any time require the Authority to Direct any licensee to transmit in his broadcasting service such announcement in such a manner as may be considered necessary stop any broadcasting service which is considered prejudicial to friendly relations with a foreign country, public order, security of state, or communal harmony. The central government may in public interest, issue such other directions, to the Authority, from time to time as considered necessary.

8.6.3 Period of license

The licensee will have to start his service within the period is specified by the TRAI and maintain documentary records and transmission schedules as may be specified and allow inspection of such records to the Authority. The Authority can call for information from the licensee whom it considers in the public interest and necessary for the transparency and ascertaining the true ownership of the licensee. The Authority will have all the powers of an inspecting officer. If the licensee defaults with any conditions the Authority can cancel the licence. The application of this law is in addition to and not in derogation of the provisions of any other law. The powers as per the Bill cannot be exercised for the reason that high money is involved and the Bill is silent about the offences.
8.6.4 Penalties under the proposed law

The bill mentions that a person who provides, distributes or receives any broadcasting service which is neither a licensed service nor a permitted service or abets or assists transmission of such service in any manner which may include collection of subscription for his principal, issuing of advertisements to such service, dealing in or distribution of decoders or dish antennas, shall be guilty of committing an offence of illegal broadcasting and on conviction, shall be punishable with imprisonment which may extend up to five years, or with fine which may extend up to rupees ten lakhs and in subsequent offence such fine which may extend to rupees fifty lakhs, or with both. But when the money in the form of fine can be paid by the stake holders and the real person to be punished and what programme the punishment is to be made is not mentioned in the Bill.564

8.6.5. Conclusion

The regulation by the statutes as well as the self regulation is not sufficient for the control over the electronic media. The Prasar Barathi Act, the TRAI Act and the Cable Television Act read with The Wireless Telegraphy Act and The Telegraph Act are legislation relating to the media. Along with that The Copyright Act and The Information Technology Act are the other laws. None of the statutes are able to deal with the problems of the people for the reason that the statutes do not have a uniform philosophy.

564 Penalties relating to internet offences are not mentioned in the bill. Majority of modern applications relating to the electronic media is related to the computer. Other laws are to be depended for it e.g. http://legalservicesindia.com. Last visited on 9-10-2012.