CHAPTER 9

CONCLUSION

SUGGESTIONS ON ELECTRONIC MEDIA
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<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1.1</td>
<td>Introduction</td>
<td>274</td>
</tr>
<tr>
<td>9.1.2</td>
<td>The need for a Code</td>
<td>274</td>
</tr>
<tr>
<td>9.1.3</td>
<td>The doctrines or philosophy of new proposed Code</td>
<td>276</td>
</tr>
<tr>
<td>9.2.1</td>
<td>The authorities under the Electronic Media Authority of India Code</td>
<td>283</td>
</tr>
<tr>
<td>9.2.2</td>
<td>The powers under the Electronic Media Authority of India Code</td>
<td>284</td>
</tr>
<tr>
<td>9.2.3</td>
<td>The penalties under the EMAI Code</td>
<td>284</td>
</tr>
<tr>
<td>9.3.1</td>
<td>The Centre state relationship</td>
<td>284</td>
</tr>
<tr>
<td>9.3.2</td>
<td>The conclusion</td>
<td>285</td>
</tr>
</tbody>
</table>
CHAPTER 9
CONCLUSION
SUGGESTIONS ON ELECTRONIC MEDIA

9.1.1 Introduction

India is lacking a uniform law in order to regulate electronic media. Supreme Court of India has said the legal control of the media shall be made by the Indian Government. Though the Supreme Court said that a separate legal system to control over electronic media is to be made it is not yet made till this date. The Broadcasting Regulatory Authority (BRAI) as well the Communication Convergence Authority (CCA) which is near to electronic media regulatory Authority they never became entities. Even now the telegraph laws like The Wireless Telegraph Act, The Telegraph Act and The Telecommunication Regulatory Authority Act are the basic laws regarding the electronic media.

The learned sage 'Shukra Muni’ said that “law is changing every moment so the judge should take into consideration the old as well as the new law”. The contemporary history says that the electronic media shall not be left unbridled. A Code covering all the aspects of electronic mass media shall be based upon the problems to be covered. The TRAI Act, the Cable Networks regulation Act etc is not capable of covering all the issues. So a new legislation is to be made

9.1.2 The need for a Code

The codification is a systematic organisation of laws. There should be an electronic media code in India. It should be based on the need of the people, doctrine or doctrines and the infrastructure of the Code of law. The need is evident from the decision of the Supreme Court in Cricket Broadcasting Case. The doctrines are of different types according to the law, mass media, engineering, politics etc

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565 Quoted from History and Sources of Law in ancient India, Chandradhar Jha, Ashish Publishing House New Delhi(p.6)
566 The method of dealing the Mumbai blast case and Arushi Talwar case are examples.
Even though the doctrine can be limited to the laws as the subject is related to other areas the doctrine also will be permeated. The doctrines include the following.\textsuperscript{567}

The hypothesis of this work is that the electronic media in India is to be regulated. It must be on the basis of philosophy, technology, history and law. It should include the theories of mass media laws applicable to each item. Different variety of the electronic media covering a number of categories of television, radio, mobile phones, Internet Protocol Television (IPTV), webcasts, podcasts etc. The powers of the Prasarbarathi, Doordarsan and TRAI (Telecom Regulatory Authority of India) are to be vested in the new Authority. The private Television operators, viewers of DTH, CAS etc should come under the Code. Further the Department of the Telecommunication (DOT) and the Press Information Bureau (PIB). The media is generating a large amount of money. Steps should be taken to see that the money is reaching the exchequer. The consumers shall not be cheated by the electronic media. The voters shall not be mis represented. Similarly the media shall inform the general public the correct news. Supreme Court has said that the Airwaves are the public property. No monopolisation shall be allowed in the Airwaves.

\textsuperscript{567} In US the Regulatory Flexibility Act of 1980 and in United Kingdom's Better Regulation Commission Analyses regulatory innovations, usually suggested by economists, such as emissions trading
9.1.3 The doctrines or philosophy of The Electronic Media Authority of India Code

The code should cover at least the following doctrines, philosophies, theories or guidelines.

1. **Normative theory.** It covers the laws of civilized nation in the matter. Normative means something related to norms. It means implying, creating, or prescribing a norm or standard, it is expressing value judgments or prescriptions as contrasted with stating facts.\(^{569}\)

2. **Empirical theory.** Basically empirical theory in media relates to evidence based on sensory organs. In science empiricism is widely used.\(^{570}\)

3. **Media richness theory.** It is otherwise known as information richness theory is its capability to reproduce the information sent over it. A phone call cannot reproduce visual social cues such as gestures, so it is a less rich communication

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\(^{569}\) Normative is pertaining to giving directives or rules. The law maker should ask what happened in reality when the electronic media was introduced and what happened to the laws in that society.

\(^{570}\) It was Brandon who popularizes the empirical evidence or evidence based on the material facts rather than the statutory principles or precedent. Philosophers associated with empiricism include Aristotle, Alhazen, Avicenna, Francis bacon, Thomas Hobbes, Robert Boyle, John Locke, George Berkeley, David Hume, John Stuart Mill etc.
medium than video conferencing, which allows the users to communicate the spoken words and the scenes.\textsuperscript{571}

4. Economic Benefit Theory. Economic benefit means benefit in terms of money, such as revenue, net cash flow, net income. The problem is to whom the benefit goes; to the State or to the business people. To a public media it is only an official job. On the other hand the private media may be concerned only money making process.

5. The electronic media and the UN Regulations.

The UN guidelines for the media include the laws of UN Bodies, theories of legal rights, human right, legal duties and legal obligations shall be included. International Standards includes Universal Declaration of Human Rights (1948), International Convention on the Elimination of All Forms of Racial Discrimination (1965), The International Covenant on Civil and Political Rights. Within the Universal Declaration of Human Rights, the General Assembly of the United Nations proclaimed the: Right to privacy: Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Right to freedom of opinion and expression: Article 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

6. The International Convention on the Elimination of All Forms of Racial Discrimination

It guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. These right include the

\textsuperscript{571} Richard L. Daft and Robert H. Lengel developed the theory.
protection of civilian population, protection for journalists: the Protection of Victims, engineers etc.  

7. **Cyber culture.** It is based upon the Cyber culture. Since modern electronic media relates to the computer and networks no one can escape from the cyber culture. For example the term shouting relates to giving anything in extra large letters or high voice. It is against the net manners. When it is incorporated in media laws anything which is not in ordinary format, letters or voices it is to be prohibited.  

8. **Broadcaster’s rights.** The broadcaster’s rights are mentioned in the Copyright Act. It is to be mentioned in the new Code and double advantage or problem related to

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572 The UN Conventions state as follows. Part I:Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (…) (d) Other civil rights, in particular: (…) (viii) The right to freedom of opinion and expression The International Covenant on Civil and Political Rights states as follows: - Article 19 says that (1). Everyone shall have the right to hold opinions without interference. (2). Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3). the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals. Article 20 says that: 1. any propaganda for war shall be prohibited by law (2) any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

529 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Signed by the U.S. the 12 December 1977, the convention states: Part IV : Civilian population, Section III -- Treatment of persons in the power of a party to the conflict, Chapter III – Journalists: Article 79 says the measures of protection for journalists: (1) Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1. (2). They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention. (3). They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist. Journalism is one of the pillars of democracy. Journalism is dynamic. It is constantly being subjected change such as societal norms and values. The technical aspects to be included in the Electronic Media Code shall cover all the aspects mentioned by the concerned engineers, the Department of telecommunication, Department of electronics and Department information and broadcasting. For example the rules regarding internet protocol television (IPTV) will come under one window instead of several windows coming under several departments. Rules of interpretation shall include the intrinsic aids, the extrinsic aids and words interpreted. The methods of special words to be included.
the Copyright Act and Electronic Media Authority of India Code is to be considered.\textsuperscript{574}

9. **The license giving authorities rights.** The license giving authorities shall be treated as the public servant and their rights shall be protected.\textsuperscript{575}

10. **The electronic media journalist’s activities shall be supervised by Public persons** both in Central and State levels \textsuperscript{576}

\textsuperscript{570} Central Administrative Tribunal-Hyderabad, K.Phani Prasad v Union of India, O.A.No.311 of 2008.

\textsuperscript{575} It is given in the Constitution of India

\textsuperscript{576} Lev Manovich, in an introduction to The New Media Reader, defines New Media by using eight propositions. (1) New Media and Cyberculture – Cyberculture is the various social phenomena that are associated with the Internet and network communications (blogs, online multi-player gaming), whereas New Media is concerned more with cultural objects and paradigms (digital to analog television, iPhones). (2) New Media as Computer Technology Used as a Distribution Platform – New Media are the cultural objects which use digital computer technology for distribution and exhibition, e.g. (at least for now) Internet, Web sites, computer multimedia, Blu-ray disks etc. The problem with this is that the definition must be revised every few years. The term "new media" will not be "new" anymore, as most forms of culture will be distributed through computers. (3) New Media as Digital Data Controlled by Software – The language of New Media is based on the assumption that, in fact, all cultural objects that rely on digital representation and computer-based delivery do share a number of common qualities. New media is reduced to digital data that can be manipulated by software as any other data. Now media operations can create several versions of the same object. An example is an image stored as matrix data which can be manipulated and altered according to the additional algorithms implemented, such as color inversion, gray-scaling, sharpening, rasterizing, etc. (4) New Media as the Mix Between Existing Cultural Conventions and the Conventions of Software – New Media today can be understood as the mix between older cultural conventions for data representation, access, and manipulation and newer conventions of data representation, access, and manipulation. The "old" data are representations of visual reality and human experience, and the "new" data is numerical data. The computer is kept out of the key "creative" decisions, and is delegated to the position of a technician." e.g. In film, software is used in some areas of production, in others are created using computer animation. (5) New Media as the Aesthetics that Accompanies the Early Stage of Every New Modern Media and Communication Technology – While ideological tropes indeed seem to be reappearing rather regularly, many aesthetic strategies may reappear two or three times... In order for this approach to be truly useful it would be insufficient to simply name the strategies and tropes and to record the moments of their appearance; instead, we would have to develop a much more comprehensive analysis which would correlate the history of technology with social, political, and economical histories or the modern period." (6) New Media as Faster Execution of Algorithms Previously Executed Manually or through Other Technologies – Computers are a huge speed-up of what were previously manual techniques. E.g. Calculators. "Dramatically speeding up the execution makes possible previously non-existent representational technique." This also makes possible of many new forms of media art such as interactive multimedia and video games. "On one level, a modern digital computer is just a faster calculator, we should not ignore its other identity: that of a cybernetic control device" New Media as the Encoding of Modernist Avant-Garde; New Media as Metamedia – Manovich declares that the 1920s are more relevant to New Media than any other time period. Meta-media coincides with postmodernism in that they both rework old work rather than create new work. New media avant-garde "is about new ways of accessing and manipulating information" (e.g. hypermedia, databases, search engines, etc.). Meta-media is an example of how quantity can change into quality as in new media technology and manipulation techniques can "recode modernist aesthetics into a very different postmodern aesthetics (8)." New Media as Parallel Articulation of Similar Ideas in Post-World War II Art and Modern Computing – Post World War II. Combinatorics is the next generation electronics. The proposed law shall be able to cope up with the changes in the media.
11. **Nations rights.** In another sphere it covers the rights covered by the Constitution of India by virtue of the terms Article 12.\(^{577}\)

12. **The right of privacy.** It shall be mentioned in the Code. No one shall be permitted saying that it is a part of the electronic media operations and journalistic activity.\(^{578}\) The sting operations of some of the electronic media is said to be affecting the privacy of the people.\(^{579}\) The new code shall have the provisions relating to the sting operation.\(^{580}\)

13. **Right of ownership.** The EMAI shall cover the ownership of different types of rights. The title may be included the corporeal Property (e.g. land and building for the studio, dish antenna, set top box, transponder and satellite) laws or Intellectual property (e.g. copyright ownership upon the programmes, technical knowhow of the materials used in telecasting etc.)

14. **Rights of the oppressed class.** It shall include the children, the women, the disabled and the minorities.

15. **Right against money laundering.** They have costs for some and benefits for others. The media shall not be used as Regulations or legal controls are justified using different reasons.

16. **The coercive action.** Like any other form of law EMAI Code should have a coercive action. The penalty must be more effective.

17. **The media shall be public good based.** People started downlinking foreign channels without paying anything to the government. This happened for two reasons. (1) There is no effective law regarding the electronics and (2) It affected the general public wilfully when a foreign channel is beamed to India.

18. **Inadequate information regarding the media.** We are not sure what kind of electronics may come tomorrow. It may be new forms of digital media.

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\(^{577}\) It emanates from the Constitution of India.


\(^{579}\) A sting operation is a deceptive operation designed to catch a person committing a crime. They are common in many countries including the United States, but not allowed in other countries such as Sweden and the Netherlands. In India there is no direct law relating to the sting operation.

\(^{580}\) Shri R.K. Agarwal v Delhi Development Authority and others 4th Appeal No. CIC/WB/A/2007/00568/. It was held that the Information Commissioner shall give a CD made by the Sahara TV shall be given to the petitioner even if it is a part of sting operation.
19. **Collective desires.** Regulation about collective desires or considered judgements on the part of a significant segments of society

20. **Diverse experiences** The EMAI shall be capable of diverse groups together.

21. **Social subordination.** EMAI is aimed to increase or reduce social subordination of various social groups

22. **Endogenous preferences.** The EMAI regulation's purpose is to affect the development of certain preferences on an aggregate level

23. **Irreversibility.** The EMAI regulation that deals with the problem of irreversibility – the problem in which a certain type of conduct from current generations results in outcomes from which future generations may not recover from at all

24. **Academic research.** Academic research shall be protected on the basis of amalgamation of law, technology, economics, politics etc.

25. **Liberalization.** Liberalization prescribed by the GATT and WTO as agreed by the country shall be protected by the Media Authority.

26. **Market failures.** The regulation created by the Authority must be capable of fluctuations in the market. It must be capable of preventing inefficiency.

27. **Monopoly.** The statute must be capable of controlling the media as well as increasing number of channels and the plurality of voices. One reason is that even if there is no control the media people may use new technology. Second reason is that the state may miss a large amount in the form of license fee, registration fee or penalty. Oligopoly in the media is the opposite.

28. **Collective action for public good.** It is a ground for the electronic media regulation. People say that the electronic media regulation is essential. But it shall not be given unbridled power. This argument is strong in the light of the entry of private media in the market.

29. **Inadequate information.** Inadequate information will lead to back money and such other anti social elements. In order to prevent that the correct income must be obtained by the authority.
30. **Adaptability.** The EMAI regulation shall be capable of adaptation to new technology employed in the area.

31. **Interest group transfers.** The EMAI regulation that results from efforts by self-interest groups to redistribute wealth in their favour, which may disguise itself as one or more of the justifications above.

32. **Sociology of law.** Legal sociologists have in particular been interested in exploring the limits of formal and legal regulation in changing patterns of social behaviour. The authority shall study the social aspects of the regulations.  

33. **Social Responsibility Theory.** Media should be accountable to society as well as to employers and the market.  

34. **Coherence.** The electronic media Code shall have coordination. Then only the regulatory aspect of the media will work out.

35. **Framework of the Code.** A framework of the Code shall be applied for the directives over the EMAI.

36. **Impartiality and transparency.** The Code shall be impartial and transparent. The legal aspect shall be open to all relating to the media. For which the legal system shall establish a separate legal system and a separate court. Electronic Media shall have a court of its own and the file tacking system.

37. **Consolidation of the laws by the Code.** Consolidation of the laws on the electronic media through a code

38. **Cost and benefit theory.** A successful Code will ensure that users derive maximum benefit in terms of choice, price and quality;

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581 Mc Quail's Mass Communication Theory, New Delhi: Vistar Publications.

582 One of the foremost Communication scholars Denis McQuail summarized the basic principles of Social Responsibility Theory as the following: Media should accept and fulfill certain obligations to society. These obligations are mainly to be met by setting high or professional standards of informativeness, truth, accuracy, objectivity and balance. In accepting and applying these obligations, media should be self-regulating within the framework of law and established institutions. The media should avoid offensive content triggering crime, violence, or civil disorder or harm to minority groups. The media as a whole should be pluralist and reflect the diversity of their society, giving access to various points of view and rights of reply. Society and the public have a right to expect high standards of performance, and intervention can be justified to secure the, or a, public good. Journalists and media professionals should be accountable to society as well as to employers and the market.
39. **Planning technical quality of service.** The Code shall encourage efficient planning, technical quality of service and management of radio frequencies.

40. **Avoid harmful interference.** The code shall contain provisions for avoiding harmful interference for the reason that it will affect the standard of the electronic media.

41. **Protect public health.** The code must contain provisions for against electromagnetic fields.

42. **Standardisation.** Fixing the standards is essential to electronic media.

43. **Interoperability of digital television services.** Where other nations are involved the Electronic media should be cautious about the programmes launched from a particular country. The DTH, CAS, HITS, analog and digital televisions must be interoperable.

44. **Dispute resolution.** Adjudication, ADR (Alternative Dispute Resolution) and ODR (Online dispute Resolution) are the types of resolutions applicable in the case of electric media. Separate media court may be established.

45. **Penalties.** Penalties applicable to infringements of the provisions in this Code shall be effective.

**9.2.1 The authorities under the Electronic Media Authority of India Code**

There must be a general authority and under them specialised agencies must be constituted by the Government. The specialised agency in the electronic media is on (1) the broadcasting media (2) the telecommunication (3) the internet and (4) others. There shall be ex-officio members as well as the elected members. The ex-officio members shall be the judges of high court or the Supreme Court, those who held the constitutional posts and such other experts in the area. The elected members may be elected from the media journalists who are enrolled by the committees, electronic media owners and the representatives of the State owned media. The voting power of the members shall be based upon the graduation in journalism.

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The civil dispute may be resolved by the CPC and the ADR may be under Legal Service Authorities Act. But ODR or Online Dispute Resolution is yet to be introduced in India.
9.2.2 The powers under the Electronic Media Authority of India Code

The powers under the EMAI Code shall be specific. Doctrines and philosophies mentioned above shall be included as the powers, directives or inherent authority of the EMAI. The ministries powers shall be given to a body constituted under this law. The minister shall be considered as the facilitator only. Licensing, powers under the TRAI Act as well as the minister shall be given to a body constituted under the EMAI Code. The remedies under the Electronic Media Code maybe under the civil laws, criminal laws, equitable laws or special laws. Once the special remedy is opted other remedies shall be given. The ADR or ODR may be implemented through the code.

9.2.3 The penalties under the EMAI Code

The penalty in the Code must be enforceable, effective and realistic. By imposing a fine there must be an effect of the punishment. The party may be classified as (1) the persons including the broadcast listening and watching persons (2) the broadcaster and (3) the State. The fine for the three groups shall be different. A huge amount of penalty to person may be silly amount to a broadcaster. The penalty imposed shall act as punishment. The Code should contain three categories. The State, the broadcaster and the audience. Similarly the penalty for the first offence and the repeating offences shall vary.

9.3.1 The centre state relationship

According to the telegraph laws the central government alone was authorised to make laws. The local language was not playing a significant role in the electronic media. The revenue from the media was far less at the time the telegraph laws were made. Today the situation has been changed. Hence the states must be given a part of responsibility as well the revenue created by the central government. This must be done at least in the case of local channels. This will create a participatory role as well as the control by the local states. The states must be given a role in creating the channels. It will generate more revenue as well as control over the media.
9.3.2 The conclusion

On analysis of various laws it is found that any of the laws relating to the electronic media is insufficient. A Code on Electronic Media Authority in India is proposed. The Telegraph laws The TRAI Act and the Cable Television (Regulation) Act etc and the related Rules shall be repealed. The new Code establishes a separate court and legal system. That will help the media watcher, electronic media entrepreneur and the state. If a new technology originates the committees under the Code can formulate new set of guidelines on the basis of the Constitution and new Code. All the laws relating to the electronic media shall be brought under a single statute. An authority with name and style of the Electronic Media Authority of India (EMAI) shall be formulated. A special court to try the matters related to Electronic media shall be established. For all the matters related to uplinking, downlinking and all the other matters related to the electronic media shall be brought under this statute.

The term EMAI means eyes. Similarly the Authority shall be a watchful for all events happening in the electronic media.
FIGURE 21
CONDITION OF ELECTRONIC MEDIA