LEGAL CONTROL OVER ELECTRONIC MEDIA IN INDIA

INTRODUCTION

1. Need for the study

Legal control over electronic media like radio, television and internet protocol television is a burning topic in India. The Supreme Court in Cricket Broadcasting Case has said that there shall be a law controlling the electronic media. But even now the basic law regarding the electronic media is the telegraph laws which are pre electronic laws. The Ministry of Information and Broadcasting is responsible for the administration of the public and the private channels. Doordarsan, Akashvani and Prasar Bharati Corporation and Telecommunication Regulatory Authority of India (TRAI) are the appendages of the Indian Government dealing with the media. Broadcasting, Conditional Access System (CAS), Community Radio Stations, Doordarsan, Prasar Bharati, Akashvani (All India Radio), SW, MW and FM Radio Phase (including FM Radio through Private Agencies) Broadcast Engineering Consultants India Limited, Uplinking and Downlinking of Television channels, Content Regulation on Private Television Channels, Direct To Home (DTH), Internet Protocol Television (IPTV), Headend in the Sky (HITS), Digital television are the different types of electronic media activities controlled by the Government of India. Recently, it has also started Digital Terrestrial Transmitters and addressable systems. The electronic media is shaping the nation in every aspect. It affects the opinion of the people in every aspects of life. Currently the private agencies like Indian Broadcasters Federation (IBF), News Broadcasters Association (NBA), Indian Media Group (IMG), Indian Society of Advertisers (ISA), The Advertising Standards Council of India (ASCI), Advertising Agencies Association of India (AAAI), Media Research Users Council (MRUC), Audit Bureau of Circulations (ABC), Press Trust of India (PTI), Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry of India (ASSOCHAM), Federation of Indian Chambers of Commerce and Industry (FICCI), and United News of India (UNI) are playing a big role in the electronic media in India. In the absence of the Government regulatory body the workers in the media are not getting protection as the media journalists and the people from the misuse of the electronic media.
This work attempts to examine the existing legal framework of the electronic media. It applies to various technologies on electronic media that are currently used and are likely to originate in the near future in India. The work proposes a new code for the media.

2. Title

The title is ‘Legal Control over Electronic Media in India’. The title originated from the decision in a case namely Secretary Ministry of Information and Broadcasting and others v Cricket Association of Bengal and Others (AIR 1995 SC 1235). The principal aim of the work is to find out whether there are any regulatory measures in India and to suggest means to fill in the statutory vacuum in the area of electronic media like television and radio. The title is capable of conveying the idea of the work. While the developed countries like US and UK are having separate laws for the electronic media European Union do have common directives for controlling the media laws in different European countries.

3. Objectives

The objectives of the work was to find out (1) What are the regulatory problems faced by the electronic media in India? (2) Whether the existing laws for control over electronic media in India are sufficient or not for the regulation? (3) Whether new law is to be made in the area? (4) If a new law is to be made, what are its ingredients?

3.1 The regulatory problems faced by the electronic media in India

The State was having monopolistic rights until the emergence of satellite television in the 1990s. It can be traced to the old Indian Telegraph Act of 1885. The Act states that the Central Government has the exclusive privilege of establishing, maintaining and working telegraphs within India. The 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 term telephone, television, and radio, wireless, mobile and video equipment. The telegraph is dealing with the electricity. While the electronic media is based upon the much recent science called electronics. Even though both are using radio waves and electricity the methods are totally different. The laws on the
telegraph cannot be applied to the electronic media. In spite of the fact that the electronic media has grown to big branch, a Code in that area is not passed. Due to that reason the private players are controlling the situation.

3.2 The existing need of laws for control over electronic media in India

The laws on Government Channels were based on the departmental directives. The officials were wielding the power to make law on the broadcasting. The first law on private channels was the Cable Television Act. The authority was the post master of the district. In spite of the fact that there are a good number of cases against the electronic media nothing came up to the post masters. Then made the All India Radio (AIR) or Akashvani and Doordarshan. They were brought under Prasar Bharati Corporation. But the benefits available to corporation were not given to its employees. Then the legislature enacted the Telecom Regulatory Authority of India (TRAI) Act. The TRAI dealt with powers of telecommunication and broadcasting including the Internet Protocol Television. But they were based upon The Wireless Telegraph Act. The Wireless Telegraph Act authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety. Section 5(2) of the Wireless Telegraph Act 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. A perusal of the Act shows that it is insufficient to meet the modern needs.

3.3 Scope of sui juris law to be made on the electronic media in India

Though The Telegraph Act does not explicitly define ‘telecommunications service’ and ‘broadcasting service’, The Telecom Regulatory Authority of India 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. It means of a 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.” The Supreme Court has rightly observed the fact in the cricket broadcasting case in the following words, “It is absolutely essential, in the interests of public, in the interests of the freedom of speech and expression guaranteed by Article 19(1) (a) and with a view to avoid confusion, uncertainty and consequent litigation that Parliament should take steps to fill the void by enacting a law or laws, as the case may be, governing the electronic media. The Supreme Court said the same in the Secretary Ministry of Information and Broadcasting, Government of India and others V Cricket Association of Bengal and Others (AIR 1995 SC 1235). Hence in this aspect also a law comprising all the electronic media is to be made.

3.4 The ingredients of electronic media regulator in India

It should originate from the need. Need may be from different branches of government namely judiciary, legislature or executive. Or it may come in any other form like policy, Non Governmental Organisation (NGO) demands or press reports or in any other form. The regulator must have a philosophy. Finally it must be arranged in a specific manner relating to an electronic media code.

4. Hypothesis

Hypothesis of this thesis is that: (1) There is no specific regulatory frame work for the electronic media in India (2) The existing laws in India are scattered and not sufficient for the regulation (3) A sui juris law is to be made to control the electronic media is needed and (4) The ingredients of electronic media regulator in India should be need of the people. It must have a philosophy and format of the code. The electronic media in India is to be treated as a separate branch of law. Separate Code for the electronic media is to be drafted. In the absence of specific laws there is a statutory vacuum.

5. Methodology

The Methodology followed in this thesis is Doctrinal research in law. The problem analysed is that whether a legal control is needed in order to have a regulatory mechanism over the media and if a legal control is needed what must be its nature. If a commercial or financial control is needed legal right is to be established. The work is to find out the rights relating to it. A methodology shall be the analysis of the principles.
of methods, rules, and postulates employed by law. It is a systematic study of methods that are, can be, or have been applied within law and it is based upon the study or description of methods". Different types of regulatory mechanism are analysed. Different types of case laws, statutory laws of different aspects of the regulation in the electronic media are analysed. A legal doctrine is a body of inter related rules generally originated from a precedent, associated with a legal concept or principle. Doctrinal Research is concerned with legal prepositions and doctrines. In case of doctrinal research the sources of data are legal and appellate court decisions whereas in the other case the sources of data are less and mostly new techniques have to be used. Doctrinal research is not concerned with people but documents whereas in case of non doctrinal more importance is given to the society and people. The scope of doctrinal research is narrower as compared to non doctrinal since it studies about what the doctrine or the authority says yet more encouragement is given to doctrinal type of research than the non doctrinal. There is no requirement of imparting training for collection and use of sources whereas training is needed to use new techniques in the non doctrinal research. In case of doctrinal field work is not needed library is sufficient whereas in non doctrinal research the field work is most important thing.

6. Material

Basically the prior art in this area are the decisions, legislations, executive orders, the books and the opinion of the jurists and persons relevant in the field. The Acts include the Wireless Telegraphy Act, the Indian Telegraphy Act, The Prasar Bharati Act and the Telecom Regulatory Authority of India Act. The other materials are the juristic opinions To collect materials regarding the topic I have visited libraries of Supreme Court of India New Delhi, Indian Law Institute New Delhi, High Court of Kerala Ernakulam, British Council of India, Thiruvananthapuram, US India Library Chennai, Mahatma Gandhi University School of Indian Legal Thought Kottayam, Govt: Law College Calicut, Calicut University, Tenhipalam, Government Law College Ernakulam, Cochin University School of Legal studies, Kochi, Kannur University and the National University for Law Bangalore. I have visited the officials the radio stations, Doordarsan and the private channels like the Asianet, Indiavision and Kiran TV. The main judgment is the Ministry of Information and Broadcasting, Government
of India and Others v Cricket Association of Bengal and Others AIR 1995 SC 1235. Other case laws, authors, statutes are given in the concerned index.

7. Procedure

The research was to find out answers to the questions in the hypothesis. Since it is doctrinal the method followed was the verification of the problem of establishing separate laws on verification of existing statutes, works of learned authors and opinions. A number of libraries, a large number of statutes, case laws and interdisciplinary materials are verified. The procedure includes learning the Acts, learning the precedents, juristic and journalistic opinions. After learning the things in the laws an idea is formulated to control the over the electronic media in India.

8. Layout of the thesis

8.1 Chapter 1. The state of art of electronic media regulation

A short history of electronic media laws in India and transition from electric media to electronic media is given at the outset. The chapter provides that electronic mass media jurisprudence and the regulatory system and public utility services. The electronic media is different from the print media. The electronic media is fast proliferating. Globalisation plays a significant role in the public utility services. Television and radio are the public utility services coming under the electronic media. The need for the control over the electronic media is imminent in India. The same is needed same in the international scenario also. In this chapter the regulator on electronic media in other nations including the United Kingdom, United States and European Union are mentioned. When private channels used to beam to India it changed from the official action as in the case of Akashvani and Doordarshan to a private and act of national concern. It caused to the development over the electronic mass media laws. The Cable Television Act, The Prasarbharathi Act and The Telecom Regulatory Authority of India Act are the statutory aspects control over electronic media. The chapter deals with the genesis of electronic media laws. The divisions of the electronic mass media and the impact of a court order in Cricket Broadcasting case are the other two significant developments mentioned in the chapter. The problem of the state monopoly versus private pluralism in the electronic mass media is a big menace
before the Regulator. Minimum level play ground theory is to be applied. Neither the
government nor the private shall be given undue favouritism. The erstwhile policies
relating to the electronic media are to be changed. The coercive feature of the media is
to be analysed before the regulator are assuming their role. The general regulatory
parameters are required to be considered. The regulations are based on the teledensity.
The Spectrum and the basis of all the laws relating to the electronic media shall be there
in the uniform regulatory. Thus the regulations are upon the radio spectrum issued by
the International Telecommunication Union (ITU). Theories of Control over Electronic
Media can be divided to the old philosophy, the contemporary philosophy and new
philosophies. Chapter one concludes with an observation that the electronic media in
India is to be regulated with new philosophies and new technological information.

8.2 Chapter 2. The state control over electronic media

In India electronic media is a part of the mass media. The mass media law in
India is divided to the print media and the broadcasting media. Ancillary to the
broadcasting are the webcasting, simulcasting, podcasting and new methods of
broadcasting. Even in the print media electronics is widely used in the form of
collecting news, desk top printing and large scale printing. They are not coming in the
study. Similarly the telecommunications and mobile phones are not broadcasting even
though they are using the electronic media. The definition as per the Prasar Bharathi
Act broadcasting means the dissemination of any form of communication like signs,
signals, writing, pictures, images and sounds of all kinds by transmission of
electromagnetic waves through space or through cables intended to be received by the
general public either directly or indirectly through the medium of relay stations and
all its grammatical variations and cognate expression shall be construed accordingly.
Along with the introduction of the origin of private channels the control by the state
was started. The concept of electronic media as the official media gradually faded
away. The emergence of the need for multiple voices in India became a necessity.
The basic legal system on present day control in India was started on this basis. The
general laws applicable to the mass media were applied to the electronic media. Later
the special features of media laws in the area were identified. Electronic media as a
part of public utility services were noticed as a part of it. The effect of state monopoly
of electronic media became an extinct story. At the same time the regulation became more relevant for the reason that the radio spectrum is a rare commodity. The conflict of the pluralistic right over the radio spectrum and state monopoly still remained in another dimension. The reasons for pluralism were the globalization, the space probes, and new findings in the electronic media and introduction of private channels due to the end of monopoly. Further the journalism has got new dimension due to the introduction of the new media. The ‘programmes’ and ‘advertisements’ in the media became are fact others to be regulated. The Cable Television Act, Prasarbharathi Act, Telecom Regulatory Authority of India Act, the documents under The TRAI Act, Broadcasting Regulatory Authority Bills are examples for the state control. This probe is to find out how far the present state control is effective in the electronic media.

8.3 Chapter 3. The constitutional aspects of the electronic media regulations

The constitution lays down certain restrictions and certain freedoms. The most important part relevant to it is the freedom of speech and expression and the constitutional remedy. Air waves are considered as the media propagated in the space allotted by the ITU but coming within the constitutional framework. Next is relating to the restrictions in the interest of sovereignty and integrity, Sedition and related matters and contempt in electronic media. Constitutional remedies are for the bureaucratic exegesis, restrictions in the interest of security of the state electronic media and religious feeling, violation of public mischief, restrictions in the interest of friendly relations with foreign states, public order, decency or morality is to be curtailed. Comstockery in electronic media is not practical. Protection of women, children and oppressed class is to be maintained. Morality is mentioned in the Programme Codes. But Cinema in the electronic media alone is capable of pre censoring. The problems of pornography due to liberalisation and humiliation are other threats facing the electronic media. Contempt of court, scandalisation, defamation and incitement to an offence are other things discussed in this chapter. The State, fundamental rights, reasonableness theory of regulation are other things discussed. The restrictions made by the State shall be in tune with the fundamental rights.
8.4 Chapter 4. The license and content regulations

The license and content regulations are discussed in this chapter. License may be based upon the morality, Programme Code, laws of journalism and laws of advertisement. It must be a kind of coercive means to protect the oppressed class and minority. It must have tooth and nail. The programmes like, news sports, live telecast as well as the advertisements shall come within the purview of the powers of licensing authority. Similarly the cinema in spite of the pre censoring shall come within the By virtue of the Telegraph laws the Central Government through the Ministry of Information and Broadcasting is acting as the licensing authority. At present there are different parameters for the State owned media and private channels. Similarly the ‘uplinking’ and the ‘downlinking’ is decided by the concerned section in the TRAI. A specific directive is to be given in the matter also. These also are to be done through a Code.

8.5 Chapter 5. The electronic mass media and the legislation

The role of the electronic media and the legislation is discussed in this chapter. The electronic media can be broadly classified into broadcasting and telecommunication. Basically the telecommunication or phones is narrowcasting. The broadcasting is a kind of the mass media. Apart from the radio and Television recent addition to it is the webcasting and podcasting. Radio is again divided to the SW, MW, FM, HAM and satellite radio. The television is divided to the terrestrial, analog, cable, digital, addressable etc. It may be either State owned or the private channels. The legislations by the State owned electronic media like Akashvani or Doordarsan is the departmental Code and Prasarbharathi Act, the Telecom Authority of India (TRAI) Act and Rule. On the private media are the Cable Television Act and Rules and Telecom Authority of India (TRAI) Act and Rule. The common rules applicable to both the groups are that of the laws relating telegraphy. But when the laws on telegraphy are made the term electronic media was not born. Hence new law is to be made.

8.6 Chapter 6. Intellectual property regulations in electronic media

This chapter deals with the Intellectual property and electronic media. Types of intellectual property related to electronic media include everything relevant to the
intellectual property. It may be copyright, trademark, patent etc. Copyright related to electronic media like the Broadcaster’s Moral rights, Performers Rights. Neighbouring Rights over intellectual property are the specific rights coming under the copyright laws. There is an international conflict on the basis of Intellectual Property in Electronic Media between WIPO and UNESCO. The problem can be resolved only through a sui juris law. Judicial pronouncements on the intellectual property also say that the media need to be regulated. Disparagement is increasing in the electronic media. TV commercial are acting as the coercion for the marketing. The unfair trade practices in the electronic media is to be controlled. The court has observed the unregistered electronic media commercials are increasing. It is to be checked. Passing off is relevant to electronic medium and it is coming under the law of Torts. The chapter concludes with an observation that the relevant statutes in the matter are numerous and this acts as the loophole for the media people, politicians and the government officials. In this aspect also a new code covering all aspects for the media is needed.

8.7 Chapter 7. Computer and electronic media

Formerly the intellectual property was the basis of laws on computer. From the computer based media laws electronic media law originated. In fact the word cyber law is related to the media through the computers. The cyber law may be, civil law, criminal law, law related procedure or monopoly. The media is used for the commercial activities using the computer. In other words the e-commerce happening in the electronic media is used. The internet is using for the purpose of electronic media and the digital media comparing to analog media. The Information Technology Act plays a significant role in electronic media like cyber offences, cyber jurisdiction, cyber punishment and cyber notice. This affects the Internet Protocol Television (IPTV). After the introduction of the digital television the television may be viewed from computer to telephones and everything may come within cyber laws and thereby Information Technology Act. The proposed Convergence Bill is to repeal all the existing telegraph laws, information technology laws and media laws covering both the telecommunication and the broadcasting laws. The theory of renvoi and electronic media relates to the choice of the forum. Invariably the affected person’s nationality or
domicile is the determining factor of the law of the forum. Suppose the propagator of the electronic media is living in a different country. ADR (Alternative Dispute Resolution) and ODR (Online Dispute Resolution) are the kinds of remedies to be applied in the electronic media other than the litigation. The ADR may be classified into categories like negotiation, mediation, arbitration, conciliation, Lok Adalaths and ombudsman. Some of the advantages for the ADR are suitability; flexibility, lower costs, and durability of agreements confidentiality the preservation of relationships and the preservation of reputations. ODR (Online Dispute Resolution) and the electronic media are not in India. It has originated from the Information and Communication Technology (ICT). ODR was born from ADR and ICT, as a method for resolving disputes that were arising online, and for which traditional means of dispute resolution were inefficient or unavailable. The other laws in UNCITRAL model laws relates to the commercial activities in the electronic media in all the member countries including India. Chapter seven concludes with an observation that the electronic media laws are to be redrawn in consonance with the cyber laws and the UNCITRAL model laws.

8.8 Chapter 8. The attempts of the State Control over the media

The Supreme Court Order caused framing of the new laws on broadcasting. Several years took separate laws on the media. The basis of the law is the seventh schedule and the old telegraph laws. The proposed regulations in the media governments were independent BRAI (Broadcasting Authority of India). The Bill of first BRAI (Broadcasting Authority of India) died in young. The second effort on BRAI was in the form of Broadcasting Services Regulation Bill, 2007. That also did not see any light. Then the 'regulator' like the IBF (Indian Broadcasting Foundation), the EMMC (Electronic Media Monitoring Centre) of the State, and self regulation by the (NBA), the News Broadcasting Standards Disputes Redressal Authority, and the advertisement standard council of India (ASCI), came to existence. EMMC was a state department with no power to make regulations. In the meanwhile TRAI came with the addressable system and digitalisation. The chapter concludes that certain provisions in the BRAI Bill can be taken while others are objectionable.
8.9 Chapter 9. Conclusion

The thesis is done in order to find out a solution for the regulatory problem over the electronic media in India. The work concludes with a finding that the effective remedy is framing a code relating to the electronic media. The Code shall be to formulate an independent body like Bar Council of India and Medical Council of India. As Justice Markandeya Kadiu has pointed out the media shall be given freedom at the same time the state should have control. The basic principle of wrongs and crimes are the same. The laws deal with that. But the technology may change. The law must keep pace with the technology.

9. Conclusion

In India the law applied in the electronic media is made even before the word electronic media came into existence. The cabinet decisions for new channels either in private or public sector are granted on political will. The income of the electronic media is from the advertisements. The characters in the advertisements are mainly human beings. The female figure is used to attract the customers. In spite of the fact that there are laws regarding the advertisements they are not effective upon the electronic media. Similarly the religion and the politics are widely using the media. There is no control over it. The regulatory problems faced by the electronic media in India were Constitutional, related to general laws, related to morality, based upon the rights mentioned in special laws (especially minors, women and alternatively abled). The existing laws for control over electronic media in India are not sufficient for the regulation. People involved in the electronic media may have to approach different departments or ministries in order to obtain licenses. At the same time the penalty is very little comparing to the money involved in the electronic media. A new law is to be made in the area. Since it is ever growing new law shall be in the form of an Electronic Media Code containing broadcasting, the telecommunication and internet. The ingredients of new law are given by the end of the work. New law may be based upon the concerned court order, the existing statutes, need of the people and philosophy of the subject. The work ends with the appendices. The Appendix A contained a model Code on the electronic media. It is in minimum words as Thornton and Reed Dickerson has pointed out. The model statute was based upon a need, philosophy and the specific format. Appendix B relates to list of regulator in other countries. Appendix C is a list of some of the electronic media programmes.