CHAPTER 1

THE STATE OF ART OF ELECTRONIC MEDIA REGULATION
CHAPTER 1

THE STATE OF ART OF ELECTRONIC MEDIA REGULATION

1.1.1 Introduction ......................................................16
1.1.2 Brief History of Electronic Media Laws in India ............17
1.1.3 Prior Art of the Electronic Media ................................18
1.1.4 The Foundation of Electronic Mass Media Jurisprudence ....19
1.1.5 The Regulatory System and Public Utility Services ..........20

1.2.1 Globalisation and Public Utility Services ......................21
1.2.2 The Need for the Control over the Electronic Media ........22
1.2.3 The International Scenario .....................................26

1.3.1 The Regulator on Electronic Media in other Nations ........26
1.3.2 The British Experience ..........................................28
1.3.3 The US Experience .............................................29
1.3.4 The European Union laws ......................................30
1.3.5 Audiovisual Media Services Directive (AVMSD) of Europe ....31

1.4.1 National Concern over the Electronic Mass Media Laws ....32
1.4.2 The Statutory Aspects Control over Electronic Media .......33
1.4.3 The Genesis of Electronic Media Laws .........................35
1.4.4 The Divisions of the Electronic Mass Media ..................36
1.4.5 The Impact of a Court Order ....................................39

1.5.1 Monopoly versus Pluralism in the Electronic Mass Media ....40
1.5.2 Policies relating to The Electronic Media ......................41
1.5.3 Coercive Feature of the Media and the Regulator Role ........44

1.6.1 The General Regulatory Parameters ..........................45
1.6.2 The Teledensity and the Regulation ............................47
1.6.3 The Spectrum and the Basis of the Laws .......................51

1.7.1 The Theories of Control over Electronic Media ...............53
1.7.2 The old philosophy .............................................53
1.7.3 The contemporary philosophy ..................................54
1.7.4 Conclusion .........................................................54
CHAPTER 1
THE STATE OF ART OF ELECTRONIC MEDIA REGULATION

1.1.1 Introduction

The electronic media generally covers the broadcast, narrowcast, podcast and webcast. The members of the general public are affected by the electronic media. The words electronic media covers only the electronically operated mass media. It includes radio, television and to some extent internet also. The term electronics was not present while the basic law relating to electronic was made in India. The honourable Supreme Court made an observation that it is high time to make law relating to the electronic media. In the words of Frederick Williams “We are in the centre of an electronic explosion that is bulging beyond a radius of 80 light years, perhaps this explosion would signify the creation of life, the termination of it or some other great evolutionary step.” Today electronics has permeated to every area of life. The study is related to electronic mass media. Sometimes the narrowcasting, webcasting or simulcasting when it is reaching the people at large may obtain the status of broadcasting. For example delivering a voice message in the telephone is narrowcasting. But if the ringtone is audible to the general public and it contains a particular message (say message to cast votes to a particular candidate in an election, or to buy a particular thing) it is considered as broadcasting. In general broadcasting laws are related to the radio, television and broadcasting part of internet. The National Telecom Policy 2012

---

1 Ministry of Information and Broadcasting v Bengal Cricket Association, AIR 1995 SC 1235. The Court held that “The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media. It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.”

2 Frederick Williams, The Communication Revolution, Mentor Books – New American Library (p.14)
has mentioned about the changes in the regulator along with the introduction of new technology.³

1.1.2 Brief history of electronic media laws in India

With rapidly changing technologies, and increasing business investments, the broadcast sector has become the site of contention between various interests – 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. This compilation attempts to examine the existing legal framework that applies to various broadcast technologies that are currently in use in India. The VII the Schedule of the Constitution of India empowers the Central Government to make laws on the electronic media.⁴ The Union List Item No: 31 says that the laws on posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication are to be made by the Union. Item No: 32 says that the Property of the Union and the revenue there from, but as regards property situated in a State subject to legislation by the State. It is subject laws made by the parliament. Further the Item No: 97. says that any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists or will come within the Union List and the Item No: 21.

³ National Telecom Policy – 2012 (NTP - 2012) Preamble says that: the Telecommunication has emerged as a key driver of economic and social development in an increasingly knowledge intensive global scenario, in which India needs to play a leadership role. National Telecom Policy-2012 is designed to ensure that India plays this role effectively and transforms the socio-economic scenario through accelerated equitable and inclusive economic growth by laying special emphasis on providing affordable and quality telecommunication services in rural and remote areas. Thrust of this policy is to underscore the imperative that sustained adoption of technology would offer viable options in overcoming developmental challenges in education, health, employment generation, financial inclusion and much else. NTP-2012 is an initiative to create policy framework to address these issues and to touch lives of all citizens and transform India. By formulating a clear policy regime, NTP-2012 endeavors to create an investor friendly environment for attracting additional investments in the sector apart from generating manifold employment opportunities in various segments of the sector. Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the National Telecom Policy – 2012.

http://www.trai.gov.in last visited on 28-2-2013

⁴ The VIIth Schedule of the Constitution of India empowers the Central Government to make laws on the电子媒体。
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 123 year 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.\(^5\) The Act and its subsequent amendments define telegraph broadly to include most modern communication devices irrespective of their underlying technology.\(^6\) Judicial decisions have also held that the term ‘telegraph’ includes the term telephone, television, and radio, wireless, mobile and video equipment.\(^7\) The Act authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety.\(^8\) 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.\(^9\) 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.\(^10\)

1.1.3 Prior art of the electronic media

Though the law 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 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

\(^5\) Section 4(1) the Indian Telegraph Act of 1885
\(^6\) The Indian Telegraph Act of 1885 says that “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”
\(^7\) The Kerala State Electricity v Livisha Etc. Supreme Court of India, Appeal (civil) 289 of 2006, further details are given in www.indian kannon.com last visited on 12-2-2013
\(^8\) Section 5(1) Indian Telegraph Act of 1885.
\(^9\) Section 5(2) Indian Telegraph Act of 1885.
\(^10\) Section 8 Indian Telegraph Act of 1885.
other service to be telecommunication service including broadcasting services). Though this section expressly excludes ‘electronic media’ from this definition, the directive authorizes the government to notify broadcasting services to be a telecommunication service.\(^{11}\) This notification gave TRAI the authority to regulate broadcasting and cable services in India. The license required for broadcasting (the Wireless Operating License) is given by the Wireless Planning and Coordination Committee (WPC) Wing of the Ministry of Communication and Information and Technology, while the Ministry of Information and Broadcasting (MIB) gives a Grant of Permission Agreement. The radio and television services are also regulated by the Indian Wireless Telegraphy Act (No 17 of 1933), as they constitute ‘wireless communications’. Sec 2(2) and Sec 3 regulate wireless communication by requiring users of various types of wireless equipment to obtain wireless licenses for possessing and using the equipment. These licenses are granted by the WPC (Wireless Planning and Coordination Authority) Wing of the DoT (Department of Telecommunications). Therefore, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licenses: A Grant of Permission issued by GOPA (Grant of Permission Authority) to offer broadcast services issued by the Ministry of Information and Broadcasting under the Telegraph Act is necessary to start a new channel in the electronic media. 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 also is to be obtained.

1.1.4 The foundation of electronic mass media jurisprudence

The communication experience of mankind has given birth to a distinct branch of jurisprudence regarding the mass media.\(^{12}\) It includes the journalistic laws covering

\(^{11}\) Broadcasting Services and Cable Services notified as Telecommunication Service’, S044 (E), Fno13-1/2004-Restg, 9 January 2004.

\(^{12}\) Krishan Sondhi in Communication Growth and Public Policy, Break through Publications 1983 has observed that “corresponding to the first and second industrial revolutions there is first and second communication revolutions. The first represented the triumph of scientific invention and mechanical engineering. It gave us, typically, the telephone, the radio and the giant printing press. The whole scenario is changed in the Second Communications Revolution, with the advent of electronics, satellites, computers and other and the other technological breakthrough. But the second communications Revolution even more than a technological revolution is a triumph of scientific theory and human engineering. It has given us, typically, cybernetics, mass communication and research and the behavioural, social and cultural applications”. (p1)
the freedom of speech and expression relating to the mass media, along with the technological, fiscal, labour and other aspects of laws.\(^\text{13}\) At the same time the print media and broadcasting media have their own separate jurisprudential domains.\(^\text{14}\) By the emergence of information technology a third domain in the media jurisprudence has been evolved. Even though the media laws have a basic pattern its application in each domain has its own distinct features. While constitutional laws and other substantive laws like the Indian Penal Code are generally applicable upon each of the media on finer aspects each has its own distinctive applications. This is based upon the nature of origin and dissemination of information or the ‘material’ relating to each media.\(^\text{15}\)

### 1.1.5 The regulatory system and public utility services

The regulatory system over the media is reckoned under the category of public utility service in India. The objective of such a regulatory system is to increase the efficiency of the service along with safeguarding the economic interest and making sure a more or less equitable distribution of the advantages of the service. In a country like India where the system of political justice prevails the ‘moral policing,’ ‘cultural protections’ etc are not in the purview of the regulatory practices. In spite of the legal control through various scattered laws the contemporary regulatory system is more or less a commercial practice or administrative procedure. Dr Madhava Menon in an analysis has rightly pointed out that: “The role of law in directing social change is indeed on test in the matter of broadcasting law. There is no definite model to follow it has to be evolved perhaps, through trial and error. If the Fundamentals are clear the state is willing to play its rightful role as an umpire and guardian of public interest.”\(^\text{16}\) It is up to the state to decide whether to confine to said practices or to widen the ambit of

---

\(^\text{13}\) In K.K. Birla v The Press Council of India AIR (1976) 1 Delhi 753, 797, Indian judiciary has upheld the significance of the freedom of speech and expression related to the mass media.

\(^\text{14}\) In United States and U.K this view has a deep root. Kenneth C Creech has observed that “Because broadcast media are licensed to serve the public interest and use space on the electromagnetic spectrum, they are held to a stricter standard under the First amendment than publishers or cable television operators”. Kenneth C Creech in Electronic Media and Regulation 2nd Edition, Routldge, UK (1995) p 48.

This observation was made after the analysis of the leading cases like Red Lion FCC 395 US 367 (1969) and Turner Broadcasting System Inc. v FCC 93-94 U.S. 1994.

\(^\text{15}\) The treatment each media considering the special nature of each of it was observed in several cases like K.A. Abbas v Union of India A.I.R. 1971 S.C.481 and Raj Kapoor v Lakshman A._I.R. 1980 S.C. 604

\(^\text{16}\) N.R.Madhava Menon; ‘Who Controls the Air Waves ’Voices Vol-III No.3 1995(p28)
the powers of the regulatory authority so as to include the social safeguarding provisions also. Legal control in the primordial stage of media related activity could be possible if strict regulatory measures are implemented. The non-regulatory control is a kind of post facto action. A sui juris system can be worked out in this matter. Another significant aspect is that the regulations over the system are effected mainly based upon executive decisions rather than legislations. In the absence of a comprehensive legislation relating to broadcasting all the decisions are taken exclusively by the cabinet or the executive authority.

### 1.2.1 Globalisation and public utility services

The ‘globalisation’ has opened a Pandora’s Box in the case of electronic media. The cultural identity of each nation, the moral beliefs, the ethnic values of the indigenous groups etc are said to have attacked and invaded by the western media imperialism. In the words of former Director of AIR "The technical innovation of satellite transmission has made further inroads into absolute rule. While the government was fumbling about the conditions on which they would permit cable operators to function, cable transmission became a reality. Cable operators set up dish antennae to receive satellite signals from outside and distribute them through cable networks. The government had no choice but to accept what was an accomplished fact."

---

17 A good regulatory system provides a condition precedent preventing the unwanted acts unlike the statutory provisions for sanction in the case of doing certain act. e.g. If the regulatory authority can specifically impose a condition that certain types depictions or matter are prohibited from publication such situation can be accounted as Regulation based Legal control. If the regulation is silent about such act but the general law prescribes punishment in case anybody commits such an act it can be considered as a situation where the Legal Control is non regulatory. In the case of electronic media the non-regulatory legal control is dominant. The problem is if there is a regulation generally the authorities are likely to ignore the general law provisions to an objectionable act.

18 Till the formation of TRAI (Telecom Regulatory Authority of India) all the decisions relating to broadcasting -mainly on technical aspects - were taken by the Ministry of Information and Broadcasting. But this seldom covered the area relating to quality or standard of the programmes.

19 P.C Chatterji (Former Director General of All India Radio). He worked with All India Radio for thirty-six years. He was in charge of Doordarshan at the time of the crucial satellite experiment SITE-was made effective. Mr. Chatterji was associated with the Commonwealth Broadcasting Association and the Non-Aligned Broadcasting Conference. President of the Asia-Pacific Broadcasting Union (1978-1979) and a Senior Fellow of the Indian Council of Social Science Research (1980-1983), Broadcasting in India (2ed, 1991), SAGE: New Delhi, India
The formation of World Trade Organisation, the resolutions of General Agreement on Tariffs and Trades (GATT) are instrumental for this ongoing process. The electronic media, whether it is broadcasting, narrowcasting (like telephony) or webcasting (through internet), has free flow of data through the information super high way. The information generation, storing, retrieval and transmission made through the computer based technology are the backbone of all these means of the media. Hence the computer based issues are relevant in the entire media. This has generated a good variety of legal issues. The question of jurisdiction for enforcement of laws, issues relating to privacy, piracy, conflict of the basic approach of law towards the issues, creation of new variety of rights and duties relating to the media content as well as the technological problems like wave length or spectrum allocation, digitalisation etc are some of the major areas of problems faced by the media.²⁰

1.2.2 The need for the control over the electronic media

The peculiarity of this technology is that no aspect of life is left untouched by it. In the present era even the sovereign power is controlled by media technology. Unless the media support is assured. No one can wield the political authority in a modern

---
²⁰ Shiv Cable TV System v The State of Rajasthan And Others. AIR 1993 Raj 197. The petitioners are cable-operators who have installed TV Equipments commonly known as Disc (Dish) Antenna, to receive signals from ASIASAT (Star TV, BBC, ZEE TV, PRIMA, SPORTS, ATN etc.) and are further transmitting these signals as well as the pre-recorded cassettes through cable system to the TV viewers in their houses, who are their subscribers. These petitioners are transmitting the programme of competent authority under the Indian Telegraph Act, 1985, under the Indian Wireless Telegraphy Act, 1933.
state. The presence of media power is very much apparent in India. The controlling mechanism of the media is thus a very difficult task of the state. It requires the balancing of the interests of the society in the morals and values aspects along with the freedom for speech and expression and other rights of the media owners. The topic ‘legal control over electronic media’ covers several branches of knowledge the branch of science called ‘electronics’, the branch of social science relating to electronic ‘mass media’ as well as ‘journalism’ and the normative science of law relating to the control of the other two. Electronic mass media regulations exist as overlapping sets. A unified regulatory system needs consideration of all the related factors. Above all as the entire topic relates to human behaviour and other behavioural sciences and that itself is emerging as an independent branch of knowledge like anthropology, physiological

21 This fact has been elaborately dealt by Sevanti Ninan in Broadcasting Reform in India Media Law from a Global Perspective (edited by Monroe E. Price Stefan G Verhulst), Oxford University Press, (1998) in Chapter 1.

22 Electronics is a branch of physics that deals with the emission, behaviour, and effects of electrons (as in electron tubes and transistors) and with electronic devices. Electronics encompasses an exceptionally broad range of technology. The term originally was applied to the study of electron behaviour and movement. It came to be used in its broader sense with advances in knowledge about the fundamental nature of electrons and about the way in which the motion of these particles could be utilized. Today many scientific and technical disciplines— including physics, chemistry, materials science, mathematics, and electrical and electronic engineering— deal with different aspects of electronics. Research in these fields has led to the development of such key devices as transistors, integrated circuits, lasers, and optical fibers. These in turn have made it possible to manufacture a wide array of electronic consumer, industrial, and military products. These products range from cellular radiotelephone systems and videocassette recorders to high-performance supercomputers (Encyclopedia Britannica)

Electronic media is the most popular mass media in the contemporary world. Its influence and impact over the society is so enormous. At the same it is considered as a Pandora’s Box, which generates several social issues. Almost every country in the world has recognised the significance of the media and the issues relating to the media. The developed countries have established regulatory mechanism for the legal control of the media. The noted writers in the media law Daniel L. Brenner and William L. Rivers has opined that “Legal acts are the products of social forces; advance in technology, growing sophistication in describing and regulating economic relationships, and enhanced sensitivity to the interface.

FIGURE 2
OUTLINE OF ELECTRONIC MEDIA

25 An analysis of the significance of broadcasting regulations and the western experience was analyse by Tony Prosser in the work 'Law and the Regulators', Clarendon Press oxford 1997 (pp241 -267)
26 The Central Authentication Service (CAS) is a single sign-on protocol for the web. Its purpose is to permit a user to access multiple applications while providing their credentials (such as user id and password) only once. It also allows web applications to authenticate users without gaining access to a user's security credentials, such as a password. The name CAS also refers to a software package that implements this protocol. An application programming interface (API) is a protocol intended to be as an interface by software components to communicate with each other. An API is a library that may include specification for routines, data structures, object classes, and variables. An API specification can take many forms, including an International Standard such as POSIX, vendor documentation such as the Microsoft Windows API, the libraries of a programming language, e.g. Standard Template Library in C++ or Java API. Electronic program guides (EPGs) and interactive program guides provide users of television, radio, and other media applications with continuously updated menus displaying broadcast programming or scheduling information for current and upcoming programming. Some guides such as ITV also feature backward scrolling to promote their catch up content.
The high velocity of development in technology, the complex transitions in the socio-economic scenario caused by the globalisation and the intricate cultural diversity and deep founded belief in the ethical values are the contributing factors in the media issues. In India, there is a statutory vacuum in the matter; especially with relation to the broadcasting system. 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 steps in soon to fill the void by enacting a law or laws, as the case may be, governing the broadcasting media, i.e., both radio and television media.”

In India the terrestrial broadcasting till recently was under the exclusive ownership of the state. Immediately after the independence India felt the country being a nascent republic striving hard for economic survival the control over air waves is necessary. In another aspect it was believed that even for the national security an absolute monopoly over the air waves by the state is inevitable. In early days even the radio receivers were subjected to license fee both as measure for national security and as a source of revenue. Till general approach of the world changed in this aspect through liberal policies India maintained this as substantive policy.

Do you listen to the radio, watch TV, or use a microwave oven? All these devices make use of electromagnetic waves. Radio waves, microwaves, visible light, and x rays are all examples of electromagnetic waves that differ from each other in wavelength (a) longer wavelength or (b) shorter wavelength. Electromagnetic waves are produced by the motion of electrically charged particles. These waves are also called "electromagnetic radiation" because they radiate from the electrically charged particles. They travel through empty space as well as through air and other substances. Scientists have observed that electromagnetic radiation has a dual "personality." Besides acting like waves, it acts like a stream of particles (called "photons") that have no mass. The photons with the highest energy correspond to the shortest wavelengths.

27 Secretary Ministry of Information And Broadcasting Govt; Of India And Others V Cricket Association of Bengal and Others AIR 1995 SC 1235.
In the words of Venkata Iyer "it is worth noting that, despite being under exclusive government control both radio and television in theory, covered by the same general rules as are applicable to other media. These include constitutional prescriptions on free speech and other provisions; laws governing national security, public order, public morals etc; the laws of defamation; the law of copyright; and employment laws". 29

1.2.3. The international scenario

The regulation of broadcasting and other varieties of electronic media like telecommunication, telephony and internet are in the principal agenda of almost every country especially in the developed countries. 30 The experience of advanced countries are very much relevant for the reason that the impact of advanced technology and cultural and social modifications are felt in such societies bit earlier than in the less developed countries. 31 The main international law is made by the UN bodies like UNESCO and WIPO. The news is treated as a news item and part of the history and therefore is a part of the history according to the UNESCO. But it is treated as the intellectual property according to the WIPO. The UN has direct role in the electronic media. The UN has made UNCITRAL model laws in the electronic media also.

1.3.1 The regulator on electronic media in other nations

The first conference on International telecommunication was held at Paris in 1865 to discuss the issues regarding the allocation of wavelength to different countries. It paved foundation for the creation of International Telecommunication Union. The Berlin conference held in 1885 discussed international telephone communications. Further two conferences held at Berlin in 1903 and 1906 dealt with radiotelegraph. 32 A conference of the International Telecommunication Union held at London in 1925 dealt with the whole field of radio communications. A conference of 10 countries held in London in 1925 created the Union International de Radiophone based in Geneva It was

29 Venkata Iyer was a well known communication specialist.
30 A general study of the impact of new information technology coming under electronic media is given in Tapan Bhattacharya’s work The Shrinking Universe- National Book Trust.
31 Donald R. Browne, International Radio Broadcasting. Praeger Special Studies 1982 the author after analysis of the broadcasting observed that "in spite of its considerable history, we know very little about the ultimate influence of international broadcasting" (p 344)
32 A list of regulators in other countries on communication is given in Appendix C.
the first international broadcasting organization. The conference discussed the use of wavelengths, copyright problems, and international program exchanges.33 The Washington conference held in 1927 dealt with the area of cooperation in respect to radiotelegraph, broadcasting, and the international allocation of wavelengths, or frequencies. The official international frequency list and the Codes relating to radio wave usage were published in Madrid Conference in 1932. After the World War II a conference was held in Copenhagen in 1948. It reallocated frequencies in the European Broadcasting Area. In 1947 the conference held in the Atlantic City had already created the International Frequency Registration Board. In Geneva Convention held in 1959, the radio regulations were revised. Again in Geneva in a Convention held in 1963, the frequency bands for space and earth space communications were allocated.34 In the International scenario apart from the technical regulatory measures there is no specific Code for regulating the directives of UNESCO etc has provided certain guidelines in general. The World Intellectual Property Organization (WIPO) has played a direct role in drafting the international law principles relating to the Intellectual property aspect of the Electronic programmers. But to a certain extent the Universal Declaration of Human Rights (UDHR)35 and International Convention on Civil and Political Rights (ICCPR), Media related copyright laws are important documents in the international laws.36 The regulators in other nations are given in the appendix B. The UN has made a

33 On the basis of the resolutions in the conference agreement on wavelength allocation was implemented All of the more advanced participating countries (which had risen to 16: Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom) had to make some sacrifices, and some, such as the United Kingdom, had to persuade their post offices to agree to the use of wavelengths outside the broadcasting range. But the principle of international agreement had been established. The Washington Conference of 1927 widened the area of cooperation in respect to radiotelegraph. More about the history of International Telecommunication Union (formerly International Telegraph Union) is given in the website http://www.itu.int/en/history/Pages/home.aspx. Last visited on 12-2-2011.

34 Encyclopædia Britannica, Inc. Online www.britannica.com last visited on 1-1-2011

35 The Universal Declaration, it must be noted, is not a treaty. It was meant to proclaim "a common standard of achievement for all peoples and all nations" rather than enforceable legal obligations. Some of the significant rights enumerated in the UDHR are freedom of thought, conscience, freedom of opinion and expression; and freedom of peaceful assembly and association economic, and social. The original work of UDHR is given in the web site http://www.un.org/en/documents/udhr/index. Last visited on 12-2-2013.

draft law for the control of electronic media for its member. At the same time the member countries are given freedom for making laws in the matter. The UN laws are known as the UNCITRAL model laws.

1.3.2 The British experience

In UK independent broadcasting was established by an Act of Parliament in 1954. Broadcasting began under the control of the Independent Television Authority (ITA). A year later it was renamed Independent Broadcasting Authority (IBA) under the terms of the Sound Broadcasting Act in 1972. Although the authority had substantial independence, it did not produce any programs or advertising; these tasks were performed by commercial programme companies. These, organized on a regional basis, supplied all the material broadcast except for news, for which separate group, Independent Television News was created. It was jointly owned and financed by the program companies. TVAM originated in 1983 and operated outside the system with an early morning breakfast-show format. Channel 4 was a wholly owned subsidiary of the Independent Broadcasting Authority, which was funded through compulsory annual subscriptions of Independent Television companies in exchange for advertising rights. It was authorized by the Broadcasting Act of 1980 and began broadcasting in 1982. A separate Welsh Fourth Channel was authorized at the same time. It is funded by the government. The cable system, created in 1985, was placed under the control of the Cable Authority. The Broadcasting Act of 1990 substantially reorganized independent broadcasting. It reassigned the regulatory duties of the Independent Broadcasting Authority and Cable Authority to two newly formed bodies, the Independent Television Commission (ITC) and the Radio Authority. The ITC is in charge of licensing and regulating all television services not related to BBC, including ITV (renamed Channel 3 in 1993), Channel 4, and cable and satellite services. The Radio Authority has responsibility for granting franchises for up to three new national commercial radio channels and for licensing and regulating local commercial stations. The television

---

37 In 1936 British TV was started with, an analogue terrestrial, mechanical television. Test transmissions were done in 1926. It was made the first official broadcast in 1929. The BBC was launched as the electronic television broadcasts, the BBC Television Service, From Alexandra Palace. The picture format is monochrome, 405-line, and the transmission analogue terrestrial VHF. The service rebrands to BBC TV in 1960. The details of British television are given in the website http://www.bbc.co.uk/historyofthebbc/. Last visited on 12-2-2013.
programme companies are under a substantial measure of control from the Independent Television Commission, which is responsible for the appointment of program companies, control of programme and advertising output, and its transmission. The commission enforces codes with respect to advertising and violence on the screen. Television companies broadcast throughout the week within their respective areas, except for two that share the London area. The program companies are entirely financed by spot advertising in "natural breaks" in and between programs, by commercial sponsorship, and, on some cable and satellite services, by subscription; they pay a rental to the commission to cover the latter's transmitting and administrative costs and a fiscal levy to the exchequer. The program companies cooperate in a network committee, and all companies broadcast a substantial number of the principal programs. The contribution to the network made by each company varies in accordance with its size and resources. The revenue of each company is substantially dependent upon the number of homes with television receivers able to receive the Independent Television Commission signal in the area it covers, which varies significantly from the Channel Islands to the London area. The diversified output makes valueless any percentage analysis of program categories; but the principal types of output, in order of size, are as follows: drama, including telefilms series; light entertainment; children's programs; news, news magazines, features, and documentaries; sports; feature films (British and foreign); education; and religion.

1.3.3 The US Experience

In US an independent government agency is in charge of the regulation of the broadcasting. The Federal Communication Council or FCC is dealing with the electronic media in United States.\(^{38}\) FCC was formed by the US code. It reads as

---

\(^{38}\) The Federal Communications Commission (FCC) is an independent agency of the United States government, created by Congressional statute and with the majority of its commissioners appointed by the current President. The FCC works towards six goals in the areas of broadband, competition, the spectrum, the media, public safety and homeland security. The Commission is also in the process of modernizing itself. The FCC was formed by the Communications Act of 1934 to replace the radio regulation functions of the Federal Radio Commission. The FCC took over wire communication regulation from the Interstate Commerce Commission. The FCC's mandated jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The FCC also provides varied degrees of cooperation, oversight, and leadership for similar communications bodies in other countries of North America. The FCC is funded entirely by regulatory fees. It has an estimated fiscal-2011 budget of US$335.8 million and a proposed fiscal-2012 budget of $354.2 million. It has 1,898 federal employees.
follows: 47 USC § 151. Purposes of chapter; Federal Communications Commission are
for the purpose of regulating interstate and foreign commerce in communication by
wire and radio so as to make available, so far as possible, to all the people of the United
States, without discrimination on the basis of race, colour, religion, national origin, or
sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication
service with adequate facilities at reasonable charges, for the purpose of the national
defence, for the purpose of promoting safety of life and property through the use of
wire and radio communications, and for the purpose of securing a more effective
execution of this policy by centralizing authority heretofore granted by law to several
agencies and by granting additional authority with respect to interstate and foreign
commerce in wire and radio communication, there is created a commission to be known
as the “Federal Communications Commission”, which shall be constituted as hereinafter
provided, and which shall execute and enforce the provisions of this chapter.

The FCC has five members, who are appointed for 7-year terms by the U.S.
president. The responsibility of FCC was recently expanded to include cable television,
communications satellites, in addition to broadcasting and telephonic communication.
The FCC commissioners and staff are mainly engaged in activities like renewal of
licenses for the country's more than 10,000 broadcasting stations, as well as paperwork
related to transferring ownership of individual stations. The FCC is a part of US
government. The US is controlled by the US Code and the electronic media is a part of
the US Code.

1.3.4 The European Union laws

The European Broadcasting Union (EBU) was formed in 1950. It has twenty three
broadcasting organisations from Europe and the Mediterranean. At present European
countries in the EU are members of the EBU also. In 1993 another organisation named
the International Radio and Television Organisation (OIRT), an equivalent organisation
of broadcasters from Central and Eastern Europe, was merged with the EBU. The
EBU is the world's foremost alliance of public service media entities, comprising 74
Active Members in 56 countries and 37 Associate Members from a further 22

39 In India there is no unified authority which can decide all the matters relating to broadcasting as in the
case of ITA or FCC. www.fcc.com Last visited last on 12.2.2012
countries. It is not related to the European Union. The radio and television companies are Members of the EBU. The majority of the media are the government owned public service broadcasters or privately owned stations with public service missions. The members of the Council of Europe are active Members. The Union also encourages active collaboration between its Members on the sharing their knowledge and experience in order to achieve they can obtain individually. It operates in the widespread use of open standards (such as MPEG.2, DAB, DVB, etc.) and ensures interoperability between products from different vendors, as well as facilitating the exchange of programme material between EBU Members and promoting "horizontal markets" for the benefit of all consumers.\footnote{Further details are given in the www. eudirectives.eu. Last visited on 12.2.2013.}

1.3.5 Audiovisual Media Services Directive (AVMSD) of Europe

One can watch the programmes from all over Europe not just on TV, but also via the internet or on the mobile phones. Like other goods and services, the audiovisual media are subject to the rules of the single European market. A minimum set of common rules covering the "single European TV market" needs aspects like advertising and protection of minors. These rules are laid down in the EU's Audiovisual Media Services Directive, which governs EU wide coordination of national legislation on all audiovisual media, both traditional TV broadcasts and on demand services. Goals of EU coordination are providing rules to shape technological developments, creating a level playing field for emerging audio visual media, preserving cultural diversity, protecting children and consumers, safeguarding media pluralism, combating racial and religious hatred, guaranteeing the independence of national media regulator. Areas of EU coordination are the AVMSD governs EU wide coordination of national legislation in the following areas: General principles, Incitement to hatred, Accessibility for people with disabilities, Principles of Jurisdiction, Major Events, Promotion and distribution of European works, Commercial communications and the Protection of minors.\footnote{Directive of the European Parliament and of the Council (No: 2010/13/EU) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) The European Parliament and The Council of The European Union.}
1.4.1 National concern over the electronic mass media laws

The apex court (Justice Sawant) said that the airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Since the electronic media involves the use of the airwaves, this factor creates an inbuilt restriction on its use as in the case of any other public property. The broadcasting in India was started in the year 1956. The regulatory mechanism was under the Wireless Telegraphy Act 1886. The scenario was depicted by the Supreme Court in the following words: “In this country, unlike in the United States and some European countries, there has been a monopoly of broadcasting/telecasting in the Government. The Indian Telegraph Act, 1885 (hereinafter referred to as the "Telegraph Act") creates this monopoly and vests the power of regulating and licensing broadcasting in the Government. Further, the Cinematograph Act, 1952 and the Rules made there under empower the Government to pre-censor films. However, the power given to the Government to license and to pre-censor under the respective legislations has to be read in the context of Article 19(2) of the Constitution which sets the parameter of reasonable restrictions which can be placed on the right to freedom of speech and expression. Needless to emphasise that the power to pre-censor films and to grant licenses for access to telecasting, has to be exercised in conformity with their provisions of Article 19(2).

Initially the media was intended for rural development and education. Basically the legal issues relating to electronic media cover a variety of categories. They are the sedition and acts against friendly state, contempt of court and contempt of legislature, violation of decency and morality, violation of public tranquillity, offences relating to monopoly and commercial competitions, violation of other intellectual property, violation of privacy and personal rights, violation of human rights and terrorism and violation of consumer’s rights.

42 The Indian telecommunications system continues to be governed by the provisions of the Indian Telegraph Act, 1885 (ITA 1885) and the Indian Telegraph Act, 1933. Substantial changes have taken place in the telecommunications sector since 1992. ITA 1885 needs to be replaced with a more forward-looking Act.

43 Secretary Ministry Of Information And Broadcasting Govt; Of India And Others (Appellants) V Cricket Association Of Bengal And Others (Respondents) with Cricket Association of Bengal and another (petitioners) V Union (petitioners) Union of India and another (respondents) AIR 1995 SC 1235.
### 1.4.2 The statutory aspects of electronic media control

The statutory offences related to media issues are very much significant. The category covers contempt of court, contempt of legislature, official secrets violations, offences coming under telegraph and electricity laws, special laws relating to the operation of HAM radio, issues coming under the IT laws, control over airwaves and outer space and radio magnetic spectrum and control over satellites, dish antenna and other tangible materials relating to the electronic media.\(^44\) The principal civil issues relating to the electronic media are matters concerned to contractual liability, tortuous liability, intellectual property rights and fiscal and labour issues.

The legal regulations relating to electronic media in India exists in different dimensions of law. A brief outline can be sketched as follows. (a) Broadcasting regulations in general relating to radio and television (including the Broadcasting Bill),\(^45\) (b) Special Codes on electronic media (like the code of commercial advertising on All India Radio Code of Commercial Advertising on Doordarsan)\(^46\) (c) Regulations relating to use of airwaves, outer space, air space and land territory for the purpose of electronic media (including use of satellites, fibre optic cable etc)\(^47\) (d) Censoring based on cinema, dramatic performance etc. (as prescribed by the Cinematograph Act) (e) Regulations based on intellectual property rights (performers rights, copy rights, phonogram rights, etc under copy rights Act, WIPO regulations etc) (f) Regulations based on reporting and journalistic laws (news, views, talk shows etc)\(^48\) (g) Regulations

---

\(^44\) The statutory offences relating to the electronic media lies in diverse category of laws like statutes, notifications, departmental orders etc. Each time an issue comes up the authorities and the related parties are required to make extensive research over the subject. Often the quest ends up with the finding that the unique features of electronic media makes it impossible to implement the laws are relevant for print or other media not in the case of the media. Application of Indian Telegraph Act itself is a good example.

\(^45\) Though the Broadcasting Bill was introduced in the year 1994 it is still remaining in cold storage.

\(^46\) As per the TRAI regulations in order to obtain permission for satellite uplinking and starting a Television channel the Programme and Advertisement Codes are required to be complied with. Ministry of Information and Broadcasting Guidelines for Uplinking from India specifically mention this as a condition precedent for granting license for broadcasting. [www.trai.org](http://www.trai.org) last visited 12.2.2013

\(^47\) This area of the regulations extends to the International perspective. Ibid

\(^48\) For Example the Programme Codes of Doordarsan and All India radio are the significant ones. Voluntary Codes as in the case of Europe or US is yet to be formed by the private Broadcasters in India. [www.prasarbharti.org](http://www.prasarbharti.org) last visited on 12-2-2013
on programs relating to children. (As prescribed by the administrative regulations) (h) Regulations related cable television (Cable Television Act 1995) (i) Regulation relating to advertisements (Code of Advertising Practice of the Advertising Standards Council of India)  (j) Laws relating to crimes, penalties, prevention of crimes and criminalisation (Indian Penal Code, Juvenile justice Act, Probation of Offenders Act, Information Technology Act)49  (k) Economic, trade and monopoly regulations( including contract laws, corporate laws etc)50  (l) Regulations under law of torts (including principles relating to liabilities, remedies etc specific tort like defamation and consumer protection laws).51

The Telegraph Act 1933 is the first statute applied over the electronic media in India. The term electronic was not in existence at the time the Act was made. The wireless telegraphy is an electrical operation52. At the same time all the possible types of electrical and electronic communications media have been brought under the provisions of the Act on the basis of the definition of the term “wireless communication.”53 From the Morse key technology of wireless telegraph and telephone

---

49 In this aspect the basic habits of human beings is to be taken for consideration in order to make possible the general laws applicable in the case of media crimes also. The examples are the relevance of application of mens rea and actus rea.

50 Along with the expansion of the broadcasting domain fiscal Laws taxation laws, corporate laws etc and labour laws like Industrial dispute act Minimum Wages Act etc have become more and more significant.(e.g. The Information and Broadcasting Ministry had suggested bringing the entertainment industry under the purview of section 80HHC of the Income Tax Act, and additionally proposed a number of fiscal incentives to the entertainment industry, including: Rationalisation of the duty structure on entertainment hardware; Duty exemption on entertainment software imports)

51 The international conventions and treaties on Space laws, the regulations prescribed by the International Telecommunication Union, Amateur Radio Regulation, various regulations relating to electronic propagation prescribed by Ministry of Information and /broadcasting and TRAI etc are the relevant laws in the are

52 The Telegraph Act defines that "wireless communication" means any transmission, emission or reception of signs, signals, writing, images and sounds, or intelligence of any nature by means of electricity, magnetism, or radio waves or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus: Explanation: "Radio waves" or "Hertzian waves" means electromagnetic waves of frequencies lower than 3,000 gigacycles per second propagated in space without artificial guide;"

53 The Telegraph Act defines that “Wireless telegraphy apparatus” means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made under section 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made under section 10 not to be wireless telegraphy apparatus.
system using land based poles and lines for which the Act was originally intended the science has enormously developed by the era of satellite communications.\textsuperscript{54}

1.4.3. The genesis of electronic media laws

The mass media laws have a common domain where it covers the freedom of speech and expression, the right of occupation, crimes relating to media, intellectual property laws relating to media and the general principles of public law at large.\textsuperscript{55} The print media has developed a defined area of legal system. But that legal system is not applicable over the electronic media as it is, due to the difference in the technology. The inevitable consequence is the genesis of electronic mass media laws. Since the development of electronic media is in a very fast pace the proliferation of the law also is to be made in such a pace. The innovative technology emerging in the area has caused ramifications in the electronic media laws. But in India it is in almost in a rudimentary stage even after the efflux of ten years after the historic judgment of the Supreme Court in the Cricket broadcasting case in 1995\textsuperscript{56}. The print media has almost uniform laws for the books as well as periodicals and newspapers. But in the case of electronic media the law is to be charted out for the broadcasting, narrowcasting (like radio telephony, ham radios and paging), telecommunication, Internet and areas of convergence specifically. The crave for information and audio visual entertainment developed by the mankind, along with the acquisition of modern knowledge has paved foundation for a strong basis for the broadcasting system. The ability of broadcasting to

\textsuperscript{54} The Act further says that (as per Section 2Aof the Act ) a "wireless transmitter" means any apparatus, appliance, instrument or material used or capable of use for transmission or emission of wireless communication; "Wireless communication" means any transmission In one aspect the Telegraph Act to certain extent is futuristic

\textsuperscript{55} Two definitions in the relevant statutes marks the origination of the wider concept of the media laws

A-The Prasar Bharathi Act 1990 has defined that -In this Act, unless the context otherwise requires,(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all it is a grammatical variations and cognate expressions shall be construed accordingly

B-Cable Television (Regulation) Act. (g) "Programme" means any television broadcast and includes-Exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players; any audio or visual or audio-visual live performance or presentation, and the expression "programme service" shall be construed accordingly.

\textsuperscript{56} Secretary Ministry of Information And Broad Casting Govt; of India and others V Cricket Association of Bengal and others AIR 1995 SC 1235
bring information about the incidences occurring in the far away corners of the world to
the television or radio set placed in one’s own home has caused the development of the
global village concept. The music and other entertainments, which could be afforded by
wealthy people alone has brought to the common man by the broadcasting media.
Above all the choice of channels offered the convenience of selecting and rejecting the
types of programmes according to ones wish has brought the specific media more
intimate to the humankind. By virtue of this bondage and on the ground of
commercialization and roles played by the power players and by the introduction of
novel methods of technological innovations the broadcasting law is being developed
into a separate and independent branch of law.

1.4.4. The divisions of the electronic mass media

In the beginning itself the electronic media had two distinct area of law, which
has been proliferated to two separate branches; one on technical side the other on
programme side. The remaining divisions of law applicable to electronic media are
more or common for other categories of media and other types of ventures. Basically
even the All India Radio and Doordarsan has three separate divisions of employees to
discharge the duties relating to the programmes as well as engineering and the
administration in general. The 'programme' part of the electronic media deals with the
collection, storing and propagation of programmes. The 'engineering' or 'technical'
division deals with the mechanical process of recording, editing, uplinking, transmitting
etc. While the former is more or less normative work the latter one is empirical work.

---

57 Any audio or visual or audio-visual live performance or presentation, and the expression "programme
service" shall be construed accordingly. There are a number of distinguishable types of programmes
that are broadcast, but they often overlap in technique, subject matter, and style. Television adds the
visual element, greatly increasing the number of possible programme forms. Most sizable broadcast
organizations, however, have several categories for administrative convenience. But the definitions
cannot be too precise, and lines of demarcation are necessarily vague. A list of TV programmes is
given in the Appendix C.

58 Essentially the electronic media depends upon technology and all the physical aspects of the media
are to be held by engineers and technicians. In terms of 'mass media' the technical side is of limited
importance in comparison with the 'content' part. Along with them comes the third category the
administrators. Though not much known to the general public the conflict between these three
categories is to be resolved through an effective administrative policy through some regulatory
mechanism. Broadcast Engineering Consultants India Limited (BECIL) is dealing with the radio and
television broadcast engineering viz content production facilities, terrestrial, like satellite and cable
broadcasting in India and abroad. Further details are given in the web site www.becil.com last visited
on 1-2-2012.
The laws relating to performers right, neighbouring rights, broadcasting and rebroadcasting rights etc comes under the purview of the laws relating to programme. On the other hand granting license for broadcasting itself is based upon satisfaction of certain condition as to possession of prescribed equipments, which are capable of utilising the radio wave length for broadcasting purpose. It is technically called 'uplinking' and 'transmission'. A television channel needs the service of a satellite. It costs a huge amount to place a satellite in outer space in order to use it for broadcasting purpose. Generally the private broadcasters use to hire the service of service provider having satellite. This often involves the application of International law. The UN and its body the International Telecommunication Union has contributed greatly to develop laws relating to the technical side applicable in the international perspective. These factors show that both in the municipal and international perspective the electronic media are developing into an independent and significant branch of law. In an information society electronic media is both a cultural form and a commodity. In a way the preponderance is given to the commercial status. The developed countries have observed that service part of the commercial and cultural system is economically more viable. Electronic media satisfy this need of a modern society very effectively.

The press model of law is rejected in the case of broadcasting regulations. Press originally started as mode of correspondence communicated through the literates. Basically it was not a commodity. The foundation of the print media was not really entertainment. It played a significant role in political propaganda, dissemination of news and knowledge and popularisation of art and literature. The access to the content of the print media is limited to the literates. On the other hand the television being an audiovisual media and radio an audio media were from the very beginning itself was equated with entertainment media like cinema. In short the electronic media being equated with the entertainment media escaped serious control as in the case of newspapers. But the World Wars gave an experience to the European community to the

---

59 It is observed 52% of the GDP of US comes from the service sector and it employs 79 % of the total work force. The electronic media plays the cardinal role in this field. David French and Michael Richards, Contemporary Television, Sage Publications, New Delhi, 1996 (p 347). The authors have explained how electronic media became a more and more significant economic commodity and why the absolute state control over the media by the state is withering away along with the economic development.
effect that the electronic media can be used to transmit messages in transboundary levels. It can be used to disseminate seditious materials or for waging war without leaving any evidence in the hands of the recipient. In the view of Rachael Craufurd Smith "The perils and possibilities of the fourth estate in upsetting the established hierarchies and side-tracking well-worn lines of communication were clearly evident to politicians, whether of a totalitarian or democratic bent, from the very inception of sound broadcasting."\(^{60}\)

Absorbing this view, majority of the countries in the world had chosen the practice of state monopoly in the case of electronic media from the very beginning of the media itself. The Pluralism in the case of the electronic media was not in the agenda of the state till the concept of liberalisation came into the world scenario. The Akashvani, All India Radio and Doordarsan were originated in that era. Since the state wielded monopoly in the field of broadcasting the pluralism was not considered as an essential thing for the protection of the broadcasting media. The scope of legal intervention was very limited and there were very little law relevant to the media during that period.

In 1989 the Delhi High Court ruled that the Fundamental right of Freedom of speech on Doordarsan could only be curtailed by a valid law not by a Departmental rule or instruction. It ordered the organisation to broadcast a film named "Beyond Genocide" which it had refused to broadcast on the ground it was too critical of the Government. The film was about the Bhopal gas tragedy and was awarded with a national award. Against the High Court Order the Government appealed to the Supreme Court and the apex court upheld the lower courts verdict on the ground that the Petitioner is entitled to get the protection under part III of the constitution against the state agency.\(^{61}\) The first attempt to convert the broadcasting monopoly pattern to a different pattern was made with the Akash Bharathi Bill of 1978. But it did not come into force. In its place another bill came after eleven years as Prasar Bharathi Bill of 1989 The former was envisaged as Governmental Trust, but the latter was designed as

\(^{60}\) Rachael Craufurd Smith, (Fellow of Trinity College, Oxford) Broadcasting Law and Fundamental Rights, Clarendon Press 1997 (P-27)

a corporation. In 1991 first declaration on liberation of the media was declared by the Government. In May 1991 the STAR TV a private channel owned by Rupert Murdoch started its extended service through ASISAT.1 satellite. In 1992 came the zee TV. In 1993 government itself started an additional entertainment channel the metro channel. In 1994 came the Cable Television Ordinance. And in 1995 came the landmark judgement by the Supreme Court on broadcast liberalisation known as the Cricket Broadcasting Case. The court made several significant observations in the matter. The court observed that “Broadcasting is a means of communication and therefore, a medium of speech and expression. Hence in a democratic polity neither any private individual, institution or organisation nor any government or Government organisation can claim exclusive right over it. Our constitution also forbids monopoly either in the print or electronic media.”

1.4.5 The impact of a court order

The court had observed the special feature of the media based on the scarcity of air waves in the following words:" There is no doubt that since the air waves or frequencies are public properties and are also limited rights. They have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licenses to other agencies including private agencies. Further the electronic media is the most powerful media both because of its audio-visual impact, and its widest reach covering the section of the society where the print media does not reach. The right to use the air waves and the contents of the programmes there for needs regulation for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of private agency or of a few affluent broadcasters." In the meanwhile in 1995 the owner of STAR TV the media baron Rupert Murdoch was taking steps to introduce DTH and the general public had been developing a feeling that

---

62 In the Akash Bharathi Bill there were special provisions for enforcing the fundamental rights. But in the Prasarbharathi Bill that provision was not incorporated.

63 Secretary Ministry of Information and Broadcasting and Others V Cricket Association of Bengal and Others AIR 1995 SC 1235

64 Ibid para 13

65 Ibid Para 17
the Doordarsan is not taking pain to keep the quality of the programme. In 1990 the Prasarbharathi Act was passed but the invasion of new broadcasters in the satellite television with new channels made the Act insufficient. In 1996 a new media policy was drafted and on the basis it was decided to provide unconditional access to foreign channels to Indian Television. In 1997 the Prasarbharathi Corporation was established and AIR and Doordarsan were brought under it. In the same year notification was issued to prohibit DTH without the knowledge of the government. The Union Government has taken a decision on 25th July, 2000 to further liberalise its Uplinking Policy and permit the Indian private companies to set up uplinking hub/teleports for licensing/hiring out to other broadcasters. The new policy also permits uplinking of any television channel from India. It also allows the Indian news agencies to have their own uplinking facilities for purposes of newsgathering and its further distribution. The salient features of eligibility criteria, basic conditions/obligations and procedure for obtaining the necessary permission for these services are briefly described below. Later in 2004 through a notification the permission was given for conditional access on the stipulation that an application for the purpose shall be moved through the TRAI and shall use only electronic devices approved by the Bureau of Indian Standard (BIS). But the much need Broadcasting Act is still in cold storage. These matters shows that Electronic media has been developed into a separate branch of law.

1.5.1. Monopoly versus pluralism in the electronic mass media

Almost all the countries, which have a significant presence in the international media scenario has started with state monopoly over the media. “The reasons are several including that the:' Broadcasting is an activity of enormous political and social significance. For many it constitutes their principal source of information and entertainment. Politicians believe that elections are won and lost on the nation’s television sets. The broadcasting media are also of economic importance both as


67 The reasons (in the words of media jurists were)” Our views on broadcasting technology were formed R.H.Coase has said “in the shadows cast by a mysterious technology”. The earliest rationale for the regulation of electronic media-specifically radio- was the "enteric bedlam" as the Department of Navy quaintly described it in 1910, resulting from the unregulated operation of several stations on the same frequency at the same time. Judith Litchtenberg (liberal constraints over private power) Democracy and Mass Media, Cambridge University press1995, (p 4)
service industries in themselves and in providing outlets of advertising. It is therefore hardly surprising that there have been sharp disputes about the appropriateness and character of broadcasting regulations and further that in many countries there is a constitutional dimension to the disputes.\footnote{Eric Barendt, broadcasting Law a comparative study, Oxford University Press 1993 (p 9)} State monopoly was founded on the basis of the world war experiences as to the utility of the telecommunication and radio broadcasting, print media and postal service, apprehension of the development of private monopoly in the media especially when the entrepreneurs with newly developed advanced technology in their possession. It is an offence under the Telegraph Act and Wireless Telegraphy Act to make the wireless Transmission without license. The state monopoly was exercised under the provisions of these statutes. Though the modern broadcasting devices are totally different from the Morse key era the authorities have exercised their powers upon the electronic media under the assumption that basically the electronic media is being on electric power and is based on the Hertz and waves.\footnote{Similar provisions are present in British laws also are mentioned in the Geoffrey Robertson and Andrew. G.L Nicol. Media Law, Penguin Books 1992 (p 644). It provided provisions to seize the vehicles ships etc which are used for broadcasting purpose. But Radio pirate ships were used for transmission of radio programmes from the high seas but in 1990 that also was prevented through law in U.K.}

1.5.2. Policies relating to the electronic media

In India the regulatory measures are based on the industrial policy, telecom policy, information technology policy and media policy apart from the related constitutional mandates.\footnote{The debate between the public interest and public choice school is of course a current and influential, if often appearing remarkably sterile. However the motives for regulating as well as being irreducibly mixed, do not sell out the rationales to be employed by the regulators, for these have to be gathered from the interpretation of materials which do not necessarily regulators motives; for otherwise it would be impossible to handle the unforeseen, and it is the unforeseen that dominates the current works of utilities regulators."Tony Prosser, Law and Regulators Clarendon Press Oxford 1997 (p10)  \footnote{Ibid p11.}} Basically the monopoly is claimed by the state on two principal grounds the economic and social reasons.\footnote{Eric Barendt, broadcasting Law a comparative study, Oxford University Press 1993 (p 9)} The radio wave being a public property its ownership by way of a peremptory norm vests with the state. The argument is that for maximization of the economic efficiency the state monopoly is needed. It will enable the state revenue in both the tax as well as commercial income. If the state do not take pain to control the media there is a chance of having uncontrolled activities of market elements either a single monopoly or cartels entering to the picture and the
state being put to the loss of income and social power. Another reason for regulation in favour of state monopoly is that 'the correction of the spill over cost or externalities, where the unregulated price of an item does not reflect the true cost to the society of producing that item.'

The social protection aspect of state monopoly over the electronic media is having two other dimensions also one is that the governmental policy prompts for it and the other argument is that the state monopoly is needed for the benefit of the consumer. The governmental policy may be founded on the political mandate. The historical experience is that the capitalistic countries, socialistic countries and countries with the mixed economy have adopted monopoly over electronic media.

In spite of the fact the state has tried to hold its grip over the media with monopolistic authority the technological development and the strong longing for the

---

73 The capitalism which follows either mercantilism or laissez faire has shared the same view that the airwaves being the public property is to be reserved for the benefit of the public. (Mercantilism was the forerunner of modern capitalism. It was an economic theory and practice common in Europe from the 16th to the 18th century that promoted governmental regulation of a nation's economy for the purpose of augmenting state power at the expense of rival national powers. It was the economic counterpart of political absolutism. In this the national assets are considered to be preserved as the capital of the state and they are to be used sparingly. Formerly natural resources like gold was taken as the criterion for national capital and it was sparingly used and conservation was considered as the motto of the state. The radio waves are put in the equal footing of the national resources like gold. Laissez faire policy is based on a minimum of governmental interference in the economic affairs of individuals and society. The policy of laissez-faire received strong support in classical economics as it developed in Great Britain under the influence of Adam Smith. It was John Stuart Mill was responsible for bringing this philosophy into popular economic usage in his Principles of Political Economy (1848), in which he set forth the arguments for and against government activity in economic affairs. In UK the broadcasting media originated as public utility service unlike the print media. Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations (1776); http://www.gutenberg.org/ebooks/3300 1-2-2012
74 Socialism may be defined as a system of social organization in which property and the distribution of income are subject to social control rather than individual determination or market forces. Marx the most popular amongst the socialists viewed that "Capitalist production develops the technique and the combination of the process of social production only by exhausting at the same time the two sources from which all wealth springs: the earth and the worker." According to the Marxist dialectic, these fundamental contradictions can only be resolved by a change from capitalism to a new system. Hence the media shall be owned and controlled by (the) proletarian state. Marxism, Classical and Modern Social Theory (edited by Hein Anderson and Lars Bo Kaspersen) Blackwell Publishers 2000 pp 121-123.
75 India being a nation with mixed economy has adopted both the approach of national wealth as well as social protection approach towards the electronic media.
76 The extent of the controls imposed on the economy is one of the principal distinctions among capitalist, Socialist, and Communist systems. In Communist countries it is a matter of doctrine that the means of production should be owned and therefore controlled by the state Frederic L. Pryor, A Guidebook to the Comparative Study of Economic Systems (1985). (P 80)
alternative for the state sponsored monopolistic media with variety of views and aesthetic vividness coupled with the new business skills has caused the expansion of the media beyond the locus of governmental limitations in India as elsewhere in the world. Added to that the technical defects in allocating responsibilities relating to different bandwidth also has created situation for rethinking of absolute monopoly of state over the radio waves.  

A good example for the permeation of the electronic media by private entrepreneurs occurred in the cable television and satellite channels. In fact in India a regulation regarding both the categories came into the picture only after the presence of the private broadcasters became visible in the market.

There is a group of staunch supporters for the pluralism in the broadcasting with multiple channels and stations. They advocate the claim on the ground of freedom of speech and expression, the liberalization policy, right for equal opportunity etc. Justice B.P. Reddy observed in the cricket broadcasting case that: "A monopoly over broadcasting whether by Government or anybody else, is inconsistent with free speech right. No monopoly of this media can be conceived for the simple reason that Article 19 (2) does not permit state monopoly unlike cl. (6) of Art. Vis-à-vis the right guaranteed by Art.19 (1) (g)."

The advocates for the pluralism or multiple broadcasting channels used to rely upon the International documents like UDHR, ICCPR and ICESCR. The freedom of thought, conscience, and religion; freedom of opinion and expression are some of the significant rights the documents have declared. Another view is that, “Much of the impetus 'deregulation' has come from realization that much government activity concerns private goods where markets should be lubricated, rather than

---

77 “Parcelling the available spectrum between different government departments forces each one of them to manage spectrum in their bands, which they are not equipped to handle. Much would be a central database of all spectrum usage, so that if a fresh requirement comes along, it would not take months and years to even determine if there is any conflict with existing equipment”. Arun Mehta Second generation Reforms: Delusions of Development. Lokayan Azadi Bachao Andolan Rainbow Publishers Limited, 2001. (P 171)

78 Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal, AIR 1995 Supreme Court 1236.

79 Universal Declaration of Human Rights or UDHR (1948), the International Covenant on Civil and Political Rights or ICCPR (together with its Optional Protocol; 1976), and the International Covenant on Economic, Social and Cultural Rights or ICESCR (1976). They are collectively known as the International Bill of Rights.
government intruding directly in the process of allocation."\(^8^0\) Yet another view is that India was at the height of economic crisis in 1991. The reasons were that the economy was a closed one and the industrial policy was based on license Raj. There was no link with international economy for the internal economy. There was no confidence for the international invests to invest capital in 'India. The change in the situations has changed the nation from the fiscal wreckage the 'New Economic policy’ was adopted. To a great extent it has helped for the development of the nation\(^8^1\). The pluralistic demands in the electronic media and globalization are inter connected. The technological development in India as elsewhere in the world has pressed for opening the doors for the foreign investors as well as foreign technologists. A situation has been created that a state cannot survive without liberalisation as well as deregulation. These were the background for the opening of the electronic media scenario by India and other countries to the world at large.\(^8^2\) Of course debates are going on the impact of this upon the society at large.

### 1.5.3 Coercive feature of the media and the regulator role

Regulation is a kind of legal and coercive method relating to control. It is the promulgation, monitoring and enforcement of rules. The electronic media regulation creates, limits, constrains or allocates a right, duty or responsibility. The statutes as well as the government orders need coercive aspect of electronic media regulations. Though the airwaves are natural things its use is regulated by the national and international laws. The main reason is that it has become one of the main economic resources. The media has warranted the cases of Sri Raja, Smt Kanimozhi etc.

\(^8^0\) Robert Cooter and Thomas Ulen, Pearson Education. Inc 2004 (p 109) in the Article by 'What can be privately owned' the author has discussed that the state when conserves the right over a public property as a monopoly the state itself acts as a private person and when the members of the public is denied the right over the property it reduces the lubrication in the economic development. The inference is that the absolute state monopoly will be detrimental to the society.

\(^8^1\) "Globalisation is the opposite of autarchy which implies a closed economy insulated from developments in the world economy. Globalised economy on the other hand accords primacy to foreign trade which is treated as an engine for growth" Dr. Renu Verma in Liberalisation and Globalisation of Indian Economy (edited by Dr K.R. Gupta Atlantic Publishers And Distributors 1999 (p 136)

\(^8^2\) “It is undisputed that globalisation is associated with purposeful government action (trade and financial market liberalisation, transformation) on the one hand and technological innovation on the other”. Little consensus however, exists concerning the causes of globalisation. Gunter G. Schulze and Heinrich W. Ursprung, Globalisation, Technology and Trade in the 21st century part III (edited by Sir Hans Singer, Neelambar Hatti and Rameswar Tandon. (P.1181)
According to the CAG (Comptroller and Auditor General) the money is to be earned by the state is being diverted to some political party.\textsuperscript{83} She was arrested on 20\textsuperscript{th} May, 2012 after the Special CBI Court rejected her bail plea and ordered forthwith arrest. Since then Kanimozhi had spent her days in jail with both Delhi High Court and Supreme Court asking her to approach the lower court for bail after framing of charges. However, the special court on November 3 rejected her bail plea following which she approached the High Court which granted bail on 28\textsuperscript{th} November 2012.\textsuperscript{84}

\section*{1.6.1. The general regulatory parameters}

The law commission of India in its report held that: The freedom of the media not being absolute, media persons connected with the print and electronic media have to be equipped with sufficient inputs as to the width of the right under Art 19(1)(a) and about what is not permitted to be published under Art 19(2).\textsuperscript{85} The audiovisual media

\begin{figure}
\includegraphics[width=\textwidth]{figure3}
\caption{AN OVER VIEW OF THE ELECTRONIC MEDIA REGULATORS IN INDIA}
\end{figure}

\textsuperscript{83} www.indiatoday.intoday.in Last visited on 15-6-2012

\textsuperscript{84} She was released from jail on 29\textsuperscript{th} November 2012. The case is an evidence of the importance of the media in India.

\textsuperscript{85} Law commission report on trial by media. 200th report by a Committee headed by Jagannadha Rao J. Details are given in web site www.lawcommissionofindia.nic.in/reports. Last visited on 1-2-2013
has about four times higher impact over human mind comparing to the print media.\textsuperscript{86} How the media is to be utilised for the best advantage of the society is a social concern, which embraces all the dimensions of social life.\textsuperscript{87} This aspect makes the media a very powerful tool for social change.\textsuperscript{88} Neuman argues that New Media will alter the meaning of geographic distance. It will vanish due to the electronic media. Allow for a huge increase in the volume of communication.\textsuperscript{89} It will provide the possibility of increasing the speed of communication, provide opportunities for interactive communication and allow forms of communication that were previously separate to overlap and interconnect.\textsuperscript{90}

The media is generally used for disseminating knowledge,\textsuperscript{91} providing correct news\textsuperscript{92} and for rendering legitimate entertainment. In Life Insurance Corporation of India v. Manubhai the apex court of the country has held that “the print media, the radio

\textsuperscript{86} “In audiovisual context the courts emphasis on pluralism appear to stem from concerns over the potential influence of the mass media on individuals and society.” The author was discussing the ground in Italy where the pluralism was upheld on the basis of audiovisual significance of the broadcasting media in the society. Rachael Craufurd Smith. Broadcasting Law and Fundamental Rights, Clarendon Press Oxford.1997 (p 160).

\textsuperscript{87} “The problem of regulatory complexity dealt with in discussions of the utilities is peculiarly acute here; so much in fact that the national heritage Select Committee has stated that there is a plethora of bodies with confused overlapping terms of reference, responsible both for regulation of broadcasting and representation of consumer interest”(in the chapter The Regulation of Independent Broadcasting: Public Service, Codes and Auctions.) Tony Prosser- Law and the Regulators Clarendon Press Oxford (UK) 1997 (p 245).

\textsuperscript{88} An analytical study in the matter is given by the authors in the book (edited by) Monroe E. Price and Stefaan G. Verhulst, Broadcasting Reforms in India Oxford University Press 1998.

\textsuperscript{89} Manovich, in an introduction to The New Media Reader, defines New Media by using eight propositions: New Media versus Cyberculture, New Media as Computer Technology Used as a Distribution Platform, New Media as Digital Data Controlled by Software New Media as the Mix Between Existing Cultural Conventions and the Conventions of Software New Media as the Aesthetics that Accompanies the Early Stage of Every New Modern Media and Communication Technology New Media as Faster Execution of Algorithms. Previously Executed Manually or through Other Technologies New Media as the Encoding of Modernist Avant-Garde; New Media as Metamedia, Parallel Articulation of Similar Ideas in Post-WWII Art and Modern Computing. Lev Manovich, Introduction to The New Media Reader, edited by Noah Wardrip Fruin and Nick Montfort, The MIT Press, 2003 and Lev Manovich, The Language of New Media, MIT Press, 2001.

\textsuperscript{90} http://en.Electronic Media laws.org last visited on 9-1-2012

\textsuperscript{91} SITE was the first programme for education, which was telecasted by Indian Television. Both AIR and Doordarsan had adopted dissemination of knowledge as their prime motto.

\textsuperscript{92} News in the early stage of broadcasting development was a very serious and sincere programme. Gradually it has gathered the status of an entertainment. It may be noted that in India the satellite linked private cable television came into existence during the Iraq Kuwait war in 1991. For the sake of multiple and global view of the news which came through BBC, CNN and STAR TV the media market became very live and even before the state made any kind of regulation the programme went uncensored to the people. This included programmes like 'Baywatch' and uncensored Hollywood movies. The M TV, the 'V' Channel and Fashion TV often aired programmes which are totally against the values and moral principles of India.
and the tiny screen play the role of public educators so vital to the growth of healthy democracy. It cannot be gainsaid that modern communication medium advances public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of democracy". It cannot be gainsaid that modern communication medium advances public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of democracy". For that it may be accounted as a public utility service or as a commodity. The information society, that is the contemporary society, is rather media addicted. The society is prepared to devour any junk for the sake of variety. The commercial broadcasters are banking on this growing consumerist habit of Indian society to mint money. For profiteering they used to give up all the morals, values, and ethical norms developed by the nation by centuries.

1.6.2 The Teledensity and the Regulation

The Teledensity in the country is increasing every day. In India a radio set and a television set is a common thing from slum to palace. Justice V.R.Krishna Iyer said: “The locomotive of the cultural liberation of a nation is the free flow of information in the twin streams of aural and visual mass communication. Why? Francis Bacon told so. So did Milton and our sages and seers: that the mind is the man, and knowledge mind; a man is but what he knoweth' Jefferson emphasized this imperative when he wrote: The most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness

It can shape the views of the people, can build vote bank elevate apolitical party to power or can pull down from the authority. It enables every one to watch the sports and entertainment programmes at a very little cost. The cinema people had a rightly founded anxiety that the electronic media will cause the closure of the theatres around the world. But lately the trend has been changed. To a certain extend the electronic media has assumed the position of salvager of cinema and cinema related work force. The situation has changed that an average villager in India who could watch one movie

93 Life Insurance Corporation of India v Manubhai A.I.R 1993 S.C.171
94 In 'Tamas ' case it was observed by the Supreme Court that 'it is true that the television ,the range of which is vastly developed in our country in the past few years, now reaches out to the remotest corners of our country catering to the not so sophisticated , literary or educated masses of people living in distant village'- Ramesh v. Union of India A.I.R. 1988 S.C.775,
in a year can watch approximately ten movies a day through the cable television. On many occasions the broadcasters used to run between pillars to post to find movies, which were not screened, in recent times. But the opening of the media to commercial ventures has created a situation, which has generated several unwarranted issues. The censoring of the cinema is inapplicable to the electronic media. Further the apex court had observed that even a censored cinema could be objected for the purpose of broadcasting. But the problem is that there are no specific parameters by which the media can be 'censored'. The Cable Television Act has prescribed certain provisions. But to a great extent it is ambiguous and without teeth. Dr. John V. Vilanilam had observed that the theoretical approach towards the electronic media control in a country like India must be a customised one suitable for the general population of the country. The P.C Joshi Committee Report in 1987 had observed that the television was in the grip of a powerful commercial, consumerist lobby and the media had to be active instruments in promoting linkages between education, employment local issues, local economy and local socio cultural needs. All integrated with modern science and technology applied local and national needs and priorities. The two major themes of regulation are one for protection of the consumer and the other for promoting the competition. There is a need for social regulation to correct information gaps about quality of services provided or to deal with externalities or ("spill over effect"). The problem of information failure has been singled out for particular attention. Where consumers do not have adequate information, they are unable to obtain what they want and producers are unable to supply it. The classical model of regulation has come to be called as "command and control regulation" and involves the regulator making and enforcing rules. It has gradually become lesser popular in countries which look for

---

96 There is even a view as expressed by Krishan Sondhi that 'the indiscriminate rise in outlets of information is leading to breakdown of culture' Krishan Sondhi, Communication growth and public policy, Breakthrough Publications 1983 (p 198)

97 "The big media and their effectiveness in transforming society were treated from a purely cognitive approach by seminal communication scholars of the west, without realising limitations and ignoring their own history and the history of the countries where they recommended the introduction of the 'big' media"- Dr John V. Vilanilam The Socio Cultural Dynamics of Indian Television, Contemporary Television. Sage Publications 1996.(p64)

98 Working group on Software for Doordarsan (P.C.Joshi Committee Report) 1987 and P.C.Joshi, an Indian Personality for Television Publications Division. MB, Govt. of India 1987.


100 In this democratic age and following are the manifest failures. (1) A centrally controlled economy (2) the economy may be in favour "command and control "of anything and (3) the exception the military expenditure. Robert Baldwin, Olin Scott and Christopher Hood. A Reader on Regulation, Oxford University Press1998 (p24)
welfare and economic development. The alternatives for it are 'the agency regulation',
state regulation without commands and sanctions but through taxes, contracts etc', and
through' self regulatory institutions and rules. Whatever be the form of regulation
what must be the crux of it? This lingering question is to be confronted in the
perspective of globalisation and decentralisation. Shall we imbibe all the stuff pumped
by media moguls or cultural imperialists? Gandhiji gave the answer to this question
years ago. Gandhiji said: "I do not want my house to be walled on all sides and my
windows to be stuffed. I want the cultures of all lands to be about my house as freely as
possible but I refuse to be blown off my feet by any." To maintain equilibrium in a
mixed information and entertainment tsunami one has to gather immense counter force
supported with great will and proper direction. In a growing consumerist society the
market used to create both the will and direction. The consumer has little choice what
to see in advertisement, entertainment or infotainment. The term 'art' provides a
protective shield even to soft porn movies semi nude dances. Who has to 'censor' it? It
is to be noted on the majority of occasions any attempt was made to cut the lascivious
materials from a visual media the 'cultural vanguards’ used to bounce to fight with
tooth and nail to protect their 'freedom of expression' against the 'right for a dignified
life'.

There is a statutory vacuum in the matter of absolute regulation over all the
electronic media in all the necessary premises. An logical approach is required for
drafting such an all pervasive regulation. It is political, social and other legal aspects of
the media. It is sure that a comprehensive Code is not possible in the light of fast

---

101 Ibid (p25)
101 Gandhi.M.K. Young India 1 June 1921-Collected works of Mahatma Gandhi-MIB Publishing
Division  Govt of India (p-159)
103 "We are bombarded with 30,000 to 40,000 TV advertisement per year .We have learned to tolerate
messages about sanitary napkins with our morning coffee."Frederick Williams, The Communication
104 "Art for art's sake and money for God's sake is a vulgar but pithy way of saying a great deal about the
flesh and blood side of the film industry; and somewhere between the two aspirations the film censor
has to take his stand. It is not an enviable position”  (John Trevelyan was Secretary of the Board of
the British Board of Film Censors from 1958–1971 )
John Trevelyan- What the censor saw, Michael Joseph ltd (publisher) 1977 (p24). The position of
broadcasting is more complicated in the matter of censoring. The daily routine of airing
heterogeneous programmes within specific time slots and the wider disseminating capacity are the
two principal reasons for it.
changing technology. But the basic behaviour of the human kind does have certain pattern. That shows if not an empirical set of regulation a set of normative rules will be useful to a great extent. In which the 'agency mechanism', 'regulation through specific laws' and self regulatory system, may be covered. It must be a David capable of controlling the media Goliaths. The main task of the system must be to protective to the general mass as in the words of Hammelink “A cultural system which would be adequate for the poorest persons in that system would mean a set of instrument symbolic and social relations that helps them to survive in meeting such fundamental needs as food clothing, housing, medical treatment and education”.  

The main impact of the invasion of foreign media in the broadcasting is that the indigenous culture is put to peril. The technical perfection, the structured presentation to touch the tender part of the social mind, the commercially calculated dissemination without any respect to the culture or morality often under the guise of an advanced cultural pattern used to mislead the society. To a great extent the growing instances of crimes especially sex crimes are the products of the media. The opposite experience also has its own drawback. Cultural autonomy has lead to fundamentalism on certain occasions.

Three approaches are possible in drafting media policy. The total monopoly is not possible with absolute control by the state. Market controlled by state and absolute free market is possible only in case absolute freedom is given to the market. On the basis of the four reasons generally pure free market is not permitted by the world community at large: (1) Spectrum scarcity (2) Priority of freedom of speech (3) To prevent the cultural over power by the commercial broadcaster and (4) Simple difficulty for fixing a pricing mechanism. Another aspect of control is the diverseness of the objective of

---

105 Hamelink Cees, Cultural autonomy in Global Communication, Longman London. 1983,(p 15)

106 “Cultural autonomy should not lead to cultural competition of an unhealthy kind. The trend in India today, and perhaps some other south Asian countries, is fundamentalism. The ritual of religion is revived not only go in temples, mosques, churches and other houses of worship but on TV and radio.” Dr John V. Vilanilam, The Socio Cultural Dynamics of Indian Television, Contemporary Television. Sage Publications,1996, (P 79).

107 In R.D. Shetty v. International Airport Authority of India & Ors, [(1979) 3 SCR 1014], it was held that due to expansion of welfare and social service functions, the State increasingly controls material and economical resources in the society involving large scale industrial and commercial activities with their executive functions affecting the lives of the people. It regulates and dispenses special services and provides large number of benefits. When the Government deals with the public, it cannot act arbitrarily.

108 David French and Michael Richard, the Open Markets and the Future of Television Fiction and Fact, Contemporary Television, Sage publications,2009 (P 349)
the television viewers. The communication system was adopted to accelerate the progress of nation. But the experience is that the majority of the channels are pumping trash programmes. A kind of ‘anti dumping’ law is required in this situation. The precious radio waves are misused for broadcasting silly balderdash. The negative impact is that the society is getting filled with more and more couch potatoes with intellectually retarded and creative capacity drained mind. To elevate the cultural standard of the media a concerted effort of those who are working in cultural, literary and social fields are needed.

1.6.3 The spectrum and the basis of the laws

Spectrum scarcity, pollution in the cultural, political and economic fields makes the central government wield the authority of legal restrictions. The number of electronic media is increasing day by day. The regulation over which has become mandatory. The statutory powers were made by the British parliament. But some of them were arrogated by the India Government by virtue of Article13 and concerned statutes. They can be challenged in case it is against fundamental rights and if it comes within First Schedule of the British Statutes (Application to India) Repeal Act, 1960 No: 57. The statute on Telegraph is not challenged on either of the grounds.

Radio spectrum refers to the part of the electromagnetic spectrum corresponding to radio – that is, frequencies lower than around 300 GHz (or, equivalently, wavelengths longer than about 1 mm). Different parts of the radio spectrum are used for different radio transmission technologies and applications. Radio spectrum is typically government regulated in developed countries and, in some cases, is sold or licensed to operators of private radio transmission systems (for example, cellular telephone operators or broadcast television stations). Ranges of allocated frequencies are often referred to by their provisioned use (for example, cellular spectrum or television spectrum). The telegraph laws deals with the 3000 megahertz only. The modern communications are using other frequencies also. (1)Super high frequency, SHF, 3–30 GHz, 100 mm–10 mm, Radio-astronomy, microwave communications, wireless LAN, most modern radars, communications satellites, satellite television broadcasting, DBS, amateur radio, (2) Extremely high frequency, EHF, 30–300 GHz, 10 mm–1 mm, Radio astronomy, high-frequency microwave radio relay, micro wave remote sensing, amateur radio, directed-energy weapon, millimeter wave scanner, (3) Terahertz or Tremendously high frequency, THz or THF, 300–3,000 GHz, 1 mm – 100 am, Terahertz imaging – a potential replacement for X-rays in some medical applications, ultrafast molecular dynamics, condensed-matter physics, terahertz time-domain spectroscopy, terahertz computing/communications, sub-mm remote sensing, amateur radio.

---

109 “For many of us it was there to help modernisation, to create awareness for generating public participation and support for the governments plans and programmes for bringing about social and economic social and economic change, to protect national security, as well as to advance the cause of national integration. Perhaps we have ascribed inappropriate expectations to the medium, or perhaps the medium has its own limitations.” Ibid (P. 316).

110 British Statutes (Application to India) Repeal Act, 1960 No: 57

111 Radio spectrum refers to the part of the electromagnetic spectrum corresponding to radio – that is, frequencies lower than around 300 GHz (or, equivalently, wavelengths longer than about 1 mm). Different parts of the radio spectrum are used for different radio transmission technologies and applications. Radio spectrum is typically government regulated in developed countries and, in some cases, is sold or licensed to operators of private radio transmission systems (for example, cellular telephone operators or broadcast television stations). Ranges of allocated frequencies are often referred to by their provisioned use (for example, cellular spectrum or television spectrum). The telegraph laws deals with the 3000 megahertz only. The modern communications are using other frequencies also. (1) Super high frequency, SHF, 3–30 GHz, 100 mm–10 mm, Radio-astronomy, microwave communications, wireless LAN, most modern radars, communications satellites, satellite television broadcasting, DBS, amateur radio, (2) Extremely high frequency, EHF, 30–300 GHz, 10 mm–1 mm, Radio astronomy, high-frequency microwave radio relay, micro wave remote sensing, amateur radio, directed-energy weapon, millimeter wave scanner, (3) Terahertz or Tremendously high frequency, THz or THF, 300–3,000 GHz, 1 mm – 100 am, Terahertz imaging – a potential replacement for X-rays in some medical applications, ultrafast molecular dynamics, condensed-matter physics, terahertz time-domain spectroscopy, terahertz computing/communications, sub-mm remote sensing, amateur radio.
But telegraphy and electronics are different things. It is not proper to take ones power in order to make laws for another. The statutory powers were made by the British parliament. But some of them were arrogated by the India Government by virtue of Article13 and concerned statutes.\textsuperscript{112} The UN body called ITU is vested with the authority of spectrum allocation to different countries. The countries are at liberty to allocate bandwidth. The allocation of the bandwidth and spectrum allocation are technical as well as the normative activity. The regulation of electromagnetic spectrum is to be done by the states.

\textbf{FIGURE 4}
THE BASIC PATTERN OF REGULATORY SYSTEM

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure4.png}
\caption{The basic pattern of regulatory system}
\end{figure}

\begin{itemize}
\item THEORY OF REGULATIONS BY STATE ONLY
\item ECONOMIC BENEFIT THEORY
\item LICENSE THEORY
\item THEORIES BY DIFFERENT LAWS
\item AGENCY THEORY
\item MIXED ECONOMY THEORY
\item COMMAND AND CONTROL THEORY
\item FAIRNESS THEORY
\item DEMOCRATIC THEORY
\item SELF REGULATION THEORY
\end{itemize}

\textsuperscript{112} British Statutes (Application to India) Repeal Act, 1960
### 1.7.1 The theories of control over electronic media

The theories of control over electronic media can be divided into two types; the classic theories and contemporary theories. The world at large is divided to monopoly and oligopoly. In India the state was having the monopoly in the form of the Akashvani and Doordarsan. The SW (Short Wave) and MW (Medium Wave) is still within the hands of state. Even though the Britain gave up the monopoly of the government over the electronic media the Indian government stuck to the British made the Indian Telegraph Act 1885 even after the Second World War. The current dichotomy of public and private entry was made by a free country called India. The entry of the private media in India was forceful. In the initial stage the private media paid nothing. The programme was free. The private media is concerned about the profit only. At the same the state owned channels like Doordarsan was acting as a department. The Indian Penal Code, Civil Procedure Code, and the Indian Evidence Act etc were the only laws applied in the media cases. Comparing to the electronic media the old laws are inadequate.

### 1.7.2 The old philosophy

The classic theories include are the (1) Regulation by State Only, (2) Economic Benefit Theory and (3) License Theory. According to the regulation by the State the regulation is made by the state only. No private participation of persons and bodies of persons. The telegraph laws are coming under this category. The economic benefit theory deals with the benefit of the State only. The Akashvani and the Doordarsan are

---

113 Néeraj Malhotra Informant v Deutsche Post Bank Home Finance Opposite Parties, Competition Commission of India Case No. 5 of 2009 it was held that the anti competitive effect of any practice can be presumed only if the relevant market is monopoly or oligopoly. In Maneka Gandhi v. Union of India (1978)2 SCR 621, and E.P. Royappa v State of Tamil Nadu and another (1974) 2 SCR 348, relied on the principle that the policy of the Government is to promote efficiency in the administration, to provide an incentive to the uneconomic units to achieve efficiency, to prohibit concentration of economic power and to control monopolies so that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, and to ensure that while promoting industrial growth there is reduction in concentration of wealth and that the economic power is brought about to secure social and economic justice.

114 ESPN Star Sports v Global Broadcast News Ltd. and others, RFA (OS) No.25/2008. The Supreme Court held that the broadcast reproduction right in respect of telecast of live event like a Cricket match is separate and distinct right as from the copyright and as such Section 61 is not applicable to broadcast reproduction right.
coming under this category. In License Theory the state is the license issuing authority. Basically it is related to police raj

1.7.3 The contemporary philosophy

Present or contemporary method include (1) theory of different types of law\(^{115}\) (2) agency theory (3) mixed economy theory\(^{116}\) (4) command and control theory (5) fairness theory (6) democratic theory (7) self regulation theory and often an amalgamation of these theories. Theory of different types of law includes principles followed in different types of laws. For example,—if it is per se defamatory, the defamatory statement may be the criminal law. In the civil law even if it is innuendo it will attract the laws defamation. It may attract the advertisement codes in cable television laws, Doordarsan Advertisement Code or Advertisement Standard Council of India Code etc.

1.7.4 Conclusion

The Ministry of Information and Broadcasting is a branch of the Government of India is the apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India. The Ministry is responsible for the administration of Prasarbharathi the broadcasting arm of the Indian Government. The Censor Board of India is the other important body under this ministry being responsible for the regulation of motion pictures shown in India. The head of the ministry, Minister of Information and Broadcasting Independent Charge is Cabinet minister. The electronic media in India is not regulated by the law relating to the electronics. The developed countries have established a separate branch for electronic media including private and public. In India both the television and radio are still controlled by telegraph laws. Basically the term telegraph is different from the word electronics. The Supreme Court of India has said that laws are to be made instead of using old telegraph laws. The central government has made several attempts to solve the problem. Broadcasting Authority of India Bills are examples for it. But they were not successful. Amendment of telegraph laws or passing of separate code for the

\(^{115}\) Aditya Thackeray v Telecom Regulatory Authority of India, (TRAI), Telecom Disputes Settlement and Appellate Tribunal New Delhi, Appeal No.1 of 2012 (With M.A.No.20 of 2012).

\(^{116}\) The mixed economy includes socialism as well capitalism. India is following mixed economy.
Electronic Media is the only solution. In order to survive a code should have a philosophy. The philosophical foundation can be made on the analysis of the situation.\textsuperscript{117}

\textbf{FIGURE 5}
THE ARRANGEMENT OF RADIO SPECTRUM

\textbf{FIGURE 6}
THE RADIO SPECTRUM

\textsuperscript{117} http://www.radio-electronics.com/info/broadcast/index.php last visited on 11.2.2011
## FIGURE 7
### TYPES OF RADIO WAVES

<table>
<thead>
<tr>
<th>Band</th>
<th>Frequency</th>
<th>Wavelength</th>
<th>Propagation via</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELF</td>
<td>Extremely Low Frequency</td>
<td>3–300 Hz</td>
<td>1000,100,000 km</td>
</tr>
<tr>
<td>VLF</td>
<td>Very Low Frequency</td>
<td>3–30 kHz</td>
<td>100–10 km Guided between the Earth and the ionosphere.</td>
</tr>
<tr>
<td>LF</td>
<td>Low Frequency</td>
<td>30–300kHz</td>
<td>10–1 km Guided between the Earth and the D layer of the ionosphere. Surface waves.</td>
</tr>
<tr>
<td>MF</td>
<td>Medium Frequency</td>
<td>300–3000kHz</td>
<td>1000–100 m Surface waves. E, F layer ionospheric refraction at night, when D layer absorption weakens.</td>
</tr>
<tr>
<td>HF</td>
<td>High Frequency (Short Wave)</td>
<td>3–30 MHz</td>
<td>100–10 m E layer ionospheric refraction. F1, F2 layer ionospheric refraction.</td>
</tr>
<tr>
<td>VHF</td>
<td>Very High Frequency</td>
<td>30–300MHz</td>
<td>10–1 m Infrequent E ionospheric (E) refraction. Uncommonly F2 layer ionospheric refraction during high sunspot activity up to 50 MHz and rarely to 80 MHz Generally direct wave. Sometimes tropospheric ducting.</td>
</tr>
<tr>
<td>UHF</td>
<td>Ultra High Frequency</td>
<td>300–3000MHz</td>
<td>100–10 cm Direct wave. Sometimes tropospheric ducting.</td>
</tr>
<tr>
<td>SHF</td>
<td>Super High Frequency</td>
<td>3–30 GHz</td>
<td>10–1 cm Direct wave.</td>
</tr>
<tr>
<td>EHF</td>
<td>Extremely High Frequency</td>
<td>30–300GHz</td>
<td>10–1 mm Direct wave limited by absorption.</td>
</tr>
</tbody>
</table>