CHAPTER 2

STATE CONTROL OVER ELECTRONIC MEDIA
CHAPTER 2
STATE CONTROL OVER ELECTRONIC MEDIA

2.1.1 Introduction ................................................................................................ 60
2.1.2 The term as used in India ............................................................................ 61
2.1.3 Electronic media and Mass Media Law in India.......................................... 62
2.1.4 Definition as per the Prasar Bharathi Act .................................................... 62

2.2.1 Comparison with the print media................................................................. 63
2.2.2 The origin of Control by the State .............................................................. 64
2.2.3 The concept of Official media .................................................................... 64
2.2.4 The emergence of the need for multiple voices in India ............................. 66
2.2.5 The basic legal system present day control in India..................................... 67

2.3.1 General Features of Media Law Applicable to Electronic media ................. 68
2.3.2 Special Features of Media Law ................................................................... 69
2.3.3 Electronic media as Public Utility Service and its Effect ............................. 71

2.4.1 State as Monopoly of Electronic media....................................................... 72
2.4.2 Foundation State monopoly ........................................................................ 72
2.4.3 Policies and media regulations..................................................................... 73
2.4.4 The conflict of the pluralistic right and state monopoly ............................. 74
2.4.5 Problems of State Monopoly over the media.............................................. 75
2.4.6 End of the State Monopoly ......................................................................... 76

2.5.1 The beginning era of the freedom over electronic media ......................... 77
2.5.2 Development after WTO Agreement ......................................................... 77
2.5.3 Electronic media in India and the international Controls........................... 78
2.5.4 The International Regulator on Electronic Media in India ........................ 79
2.5.5 Evolution of regulation during electrical Period ......................................... 81
2.5.6 The impact of The Indian Telegraph Act, 1885 and
   The Indian Wireless Telegraph Act 1933 ..................................................... 81

2.6.1 Post Constitutional Development .............................................................. 84
2.6.2 Television in India ...................................................................................... 84
2.6.3 Indian electronic media and Space Probes ............................................... 85
2.6.4 Growth of mass media Satellites in India .................................................... 86
2.6.5 The reasons for the private channels ........................................................... 87

2.7.1 Conflict with the Government channels and private channels ................. 88
2.7.2 Local channels in Doordarsan .................................................................. 89
2.7.3 Electronic media system in India after the economic liberalisation .......... 89
2.7.4 Journalism laws relating to electronic media ............................................ 90
2.7.5 The 'programme' related to electronic media ............................................ 91

2.8.1 Freedom of speech and electronic media ............................................... 91
2.8.2 Other laws in India .................................................................................. 93
2.8.3 Departments dealing with the media ..................................................... 96
2.8.4 The objectives of the media ..................................................................... 98
2.8.5 Specific laws dealing with the media in India ....................................... 99

2.9.1 The Cable Television Act ................................................................. 103
2.9.2 The Prasarbharathi Act ...................................................................... 106
2.9.3 The Telecom Regulatory Authority of India Act .................................. 108
2.9.4 The documents under the TRAI Act .................................................. 110
2.9.5 The Broadcasting Regulatory Authority Bills ...................................... 116
2.9.6 Conclusion ......................................................................................... 117
CHAPTER 2
STATE CONTROL OVER ELECTRONIC MEDIA

2.1.1 Introduction

When John Logie Baird invented television in 1924 he might not have thought of the significance of his invention that in the near future it will control the nations. The television was an electrical and analogous machine. The law relating to telegraph as The Indian Telegraph Act, 1885 Baird did not invent the Television. The Indian Wireless Telegraph Act 1933 is another law relating to television and radio. Radio was introduced in 1930 and officially was renamed in 1956 and television came to the land on 1965 in the official manner. The private channels developed along with the electronics. ‘Electronics’ emerged as a separate branch of science instead of the electrical science.\(^\text{118}\)

ITU was founded in Paris in 1865 as the International Telegraph Union. It took its present name in 1932, and in 1947 became a specialized agency of the United Nations. Although its first area of expertise was the telegraph, the work of ITU now covers, from the digital broadcasting, internet, and from mobile technologies to 3D TV. The ITU issued the band width to the Government of India. Until the Supreme Court interfered the electronic media was under the monopoly of the Central Government of India. As per the Supreme Court directives the Cable Television Act, Prasarbharathi Act and the Telecom Regulatory Authority of India Act were passed. But neither the Telegraph laws nor the Constitution of India was amended. Several attempts were made to establish as a separate body for electronic media. Apart from TRAI Act and Rules, Regulations, White paper, Consultation paper etc there is no other law relating to telecommunication. Even TRAI has a dubious sanctity for the reason that the telegraph law has changed according to the changes in Electronic media.\(^\text{119}\)

---
\(^{118}\) Supreme Court of India held that the rights of electronic media mentioned in the copyright Act is from the rights under the Cable Television (Regulation) Act. The State of West Bengal & Ors v Purvi Communication Pvt. Ltd. And others, Appeal (civil) No: 2508 of 2001.

\(^{119}\) ITU was formerly known as International Telegraphic Union. When the telecommunication replaced the telegraphs it became the International Telecommunication Union.
2.1.2 The term as used in India

The term electronic media means electronically operated mass media and it includes the terrestrial, the Short Wave (SW) Medium Wave (MW) frequency modulated (FM) satellite and Amateur Radio or HAM. TV is mentioned by the Supreme Court in cricket electronic media case has observed that “The telecasting is of three types (a) terrestrial (b) cable (c) satellite. In the first case, the signal is generated by the camera stationed at the spot of the event and the signal is then sent to the earthly telecasting station such as the TV centre which in turn relays it through its own frequencies to all the views that have TV screens/sets. In the second case, viz., cable telecasting, the cable operator receives the signals from the satellite by means of the parabolic dish antenna and relays them to all those TV screens, which are linked to his cable. He also relays the recorded file programmes or cassettes through the cable to the cable-linked viewers. In this case, there is no restriction on his receiving the signals from any satellite to which his antenna is adjusted. There is no demand made by him on any frequency or channel owned or controlled by the national Government or governmental agencies. The cable operator can show any event occurring in any part of the country or the world live through the frequencies if his dish antenna can receive the same. The only limitation from which the cable TV suffers is that only those viewers who are linked to the dish antenna concerned can receive the programmes relayed by it. The last type, viz., satellite TV operation involves the use of a frequency generated, owned or controlled by the national government or the governmental agencies, or those generated, owned and controlled by other agencies. The Press Council was of the
opinion that it is absolutely necessary now to do so in the prevailing circumstances of the country” the PCI said in a resolution passed in its meeting held on 27th August 2012. This shows that the State has concern over the electronic media.

2.1.3 Electronic media and Mass Media Law in India

In the contemporary world the term electronic media is synonymous with the mass communication media utilizing the technology of electronics and is popularly known as the electronic media. Electronic media disseminates programmes through radio, television or internet using electromagnetic waves. The present day electronic media systems are Radio Electronic media (including SW, MW, FM, HAM, Terrestrial and Satellite), Television Electronic media (including Terrestrial and Satellite, Cable TV and DTH or Direct to Home Electronic media), IPTV and Webcasting or electronic media through internet. As per the Supreme Court in Cricket Broadcasting Case the electronic media is terrestrial cable and satellite.

2.1.4 Definition as per the Prasar Bharathi Act

As per the Prasar Bharathi Act electronic media means in addition to the above it includes the dissemination of any form of communication like signs, signals, writing,
pictures, images and sounds of all kinds. Electronic media shall be by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly”

Sec 5 (dd) says that "broadcast" means communication to the public(I) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or(ii) by wire, and includes a rebroadcast.

2.2.1 Comparison with the print media

Unlike the print media the electronic media has a deeper influence upon the society. Even an illiterate can enjoy the audiovisual communication held through the electronic media. For that reason a television or a radio has become a household item even in the economically low strata. In the words of Dr. K.R. Narayanan "The media not only holds up the mirror to society and interpret the world but is one of the potent instruments for changing the world, for changing society, its values and tastes and influencing the minds of the people". It is said that the audiovisual media has about four times higher impact over human mind comparing to the print media. 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. This aspect makes the media a very powerful tool for social change. As a class of public media or mass media the

124 “Electronic media” 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 its grammatical variations and cognate expressions shall be construed accordingly

125 Quoted by K.G.Jogelker in Mass Media in India, Publication division MIB, Govt: of India (p-7)

126 "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 electronic media in the society. Rachael Craufurd Smith, Electronic media Law and Fundamental Rights, Clarendon Press, Oxford, 1997 (p 160).

127 "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 electronic media and representation of consumer interest"(in the chapter The Regulation of Independent Electronic media: Public Service, Codes and Auctions). Tony Prosser, Law and the Regulators, Clarendon Press Oxford, 1997 (p 245).

128 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.
electronic media shares with the press several common legal aspects like freedom of speech and expression, freedom of employment, laws relating to media crimes, defamation, intellectual properties etc. But due to the variation of technology the application of all these laws have a different dimension in the case of electronic media and apart from that the media has its own relating to the using of the radio spectrum, the rules regarding the dissemination of the programmes, regulations as to the programmes and advertisements.

2.2.2 The origin of control by the State

The Supreme Court has treated the electronic media as a public utility service. The radio waves are a rare commodity and it has great potential being misused against the society and there by the Sovereign State control is essential. Basically from the beginning of the development of the radio electronic media itself was under the State monopoly. During the two world wars the electronic media technology was widely used as exclusive communication system of the Sovereign war communities. This factor also contributed for the custom of maintaining radio waves to be brought under the State control. The UN organ for regulating the usage of the Radio Spectrum the International Telecommunication Union (ITU) is the ultimate authority for the allocation and sharing of the radio bandwidth to the humankind. ITU through its international conventions has considered the Sovereign States only as the qualified allottees for granting license to use specific bandwidths for electronic media. In India the bandwidth allotted by ITU is controlled and managed by the Ministry of Information and Broadcasting (MIB) Telecom Regulatory Authority of India (TRAI) 129.

2.2.3 The concept of official media

In India the electronic media were considered as a part of the official activity. The State has worked as the exclusive monopoly in the field of electronic media for long period. The All India Radio (A.I.R.) or Akashvani the official radio electronic media division and the Doordarshan the official television electronic media system

129 Alarmed by the mushrooming of cable channels, the Ministry of Information & Broadcasting (MIB) has sought the recommendations of Telecom Regulatory Authority of India (TRAI) regarding issues relating to transmission of local channels or ground based channels operated at the level of cable TV operator/Multi System Operators. http://www.indiantelevision.com. Last visited on 12-3-2013.
were official Departments of the Ministry of Information and broadcasting run by paid government servants. The Department managed to run the entire electronic media scenario till the 1990s.\textsuperscript{130}

The principal reasons were that the Wireless Telegraph Act and The Indian Telegraph Act which the country inherited from the British Raj and were considered as the basic law relating to the use of the ‘wireless’ as an exclusive monopoly of the State. The said laws were originally drafted in the background of the world wars and colonialism, which witnessed the use of ‘wireless’ against the sovereign powers in wars, internal conflicts and freedom movements. But the ‘wireless’ technology is totally different from the present day electronics and the correctness of the application of the laws relating to wireless to the electronic media is doubtful.

The monopoly of the State couldn’t put the media in the shackles of the State control permanently due to the development of the technology, expansion of the concept of freedom of speech and expression secured by the constitution and by the intervention of the apex court. The pressing demand for opening the scenario of the electronic media to the private entrepreneurs grew up in the mind of the general public. This demand rather developed in the background of the experience of the millions of the Non Resident Indians exposed to the ‘foreign channels’ abroad and due to the propagation of the journalists about the advantage of the multi options in the electronic media channels.\textsuperscript{131}

\textsuperscript{130} Wireless telegram is abolished in India from 2013 from the post office.

\textsuperscript{131} Delhi High Court held that Home Communication Ltd and another v Union of India and Ors. (1993) DLT 168 Civil Writ Petition No. 3104/93 was filed by Home Communication Network Ltd. and another The respondents were: Director General, Doordarshan ; Union of India through the Secretary in the Ministry of Information and Broadcasting; and the Deputy Director General, Satellite Channels, Doordarsan. In this case the court held that the impugned, scheme to introduce five satellite based channels is bad in law. The basis of first come first served for allotment of time slots on satellite channels is arbitrary. It is unreasonable, unjust and unfair. The order of the Central Government in the Ministry of Information and Broadcasting reverting back to the allotment of time slots on this basis is set aside. The random number generation method, though it treats all the applicants equally and the allotment would be dependent on chance and not on merit entailing an element of lottery, is not valid as all the methods available for allotment of timeslots on satellite channels have not been taken into consideration, and has, therefore, also to be set aside. Further a mandamus was issued to the respondents to introduce a proper scheme for allotment of time slots on satellite channels after due consideration in view of the observations in the judgment.
2.2.4 The emergence of the need for multiple voices in India

The growing demand for pluralism in electronic media channels became a pressing force in the liberalised scenario of the country. More and more private channels entered in the electronic media field. New technologies like convergence, Conditional Access System, digital techniques, Micro wave, Ku Band etc and increased dependency on space satellites also have acted as catalysts for withholding the State monopoly in India as elsewhere in the world. The evolution of electronic media law in the international scenario was started with the creation of ITU can be traced to 1865s.

International Telecommunication Convention of 1932, which merged the International Telegraph Convention and the International Radiotelegraph Convention, provided that the International Telecommunication Union would succeed the International Telegraph Union when the convention became effective in 1934. It was made a specialized agency of the United Nations in 1947, and the convention has been revised several times. From time to time the ITU has formulated principles for allocating radio waves establishing different types of electronic media propagation systems like broadband, DTH, Conditional Access System etc. The general regulations applicable within the jurisdiction of the State territory have been developed in different countries independently.

As in the case of any other laws the diversity in electronic media regulations are significantly different in common law countries, continental countries and socialistic countries are visible in the media law also. Since Indian laws are more near to the common law countries the comparative analysis of United States and United Kingdom laws are significant in the Indian context. In both the countries there is freedom for private electronic media and there is a self regulatory mechanism instead of the State regulatory. At the same time the State also is a broadcaster. Electronic media regulations in the pre independent period in India were basically under the statutes. The Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act 1933, the Indian Copyright Act 1914, The Indian Penal Code 1860 etc. The post independent period in electronic media regulations has witnessed the changes. The first phase relates to totally controlled monopolistic period when the State was the lone player. The basic laws were the pre independent period telegraph laws. The crucial change came after the
Cricket Broadcasting Case. The Prasar Bharathi (Electronic media Corporation of India) 1990, The Telecom Regulatory Authority of India 1997 helped to change the electronic media scenario in India. But the Broadcast Bill is still in the cold storage and the co-ordination of the different aspects of the media.

The electronic media regulations in India are not codified in to a single statute. The principle regulatory source is Article 19(2) and (6) Constitution of India. Further the general provisions relating to media in Indian Penal Code, Prohibition of Indecent Representation of Women Act, Indian Contract Act, The Copyright Act law of torts etc are also applicable to the electronic media also. The more specific laws relating to electronic media in India are the Cable Television Networks (regulation) Act 1995, The Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act 1933, the Copyright Act 1957 The Prasar Bharathi (Electronic media Corporation of India) 1990 and The Telecom Regulatory Authority of India 1997.

2.2.5 The basic legal system present day control in India

The present day control over electronic media is basically done by the Ministry of Information and Electronic media especially in the technical aspect. The permission to start new channel, the introduction of new system of electronic media etc are basically subject to the approval of the ministry. But the policies relating electronic media require the assent and approval of the Departments of Space Technology, Information Technology, Electronics, Finance, and External Affairs etc. Hence the Cabinet takes all new policy decisions relating to the electronic media. The electronic media regulation scenario in India is very gray and ambiguous one. None of the statute relating to electronic media is capable of resolving the problems relating to the media nor are they capable of imparting justice to the society. The much awaited Electronic media Bill is not yet given the status of an enactment. In the present form the Bill is not capable of regulating the fast changing aspects of electronic media. The present day practice of seeking executive decision also is not advisable. The media need a regulatory system on different grounds. But as the need for an integrated law relating to the media comes from different dimension relating radio and television in different systems like terrestrial satellite, internet based, convergence, Conditional Access System etc; a thorough analysis of the technology is needed before drafting the law.
Since the media acts as a promoter of changes in cultural pattern, social habits, knowledge level etc the media need to be controlled through law with a perspective to protect the national ethical and moral values. But all such rules and regulations must be within the purview of the constitutional principles. The duty of the legislator is to find out the need of the media and to chalk out a comprehensive law to resolve the issues.

2.3.1 General features of media law applicable to electronic media

The communication experience of mankind has given birth to a distinct branch of jurisprudence regarding the mass media.\textsuperscript{132} It includes the journalistic laws covering the freedom of speech and expression relating to the mass media, along with the technological, fiscal, labour and other aspects of laws.\textsuperscript{133} At the same time the print media and electronic media have its own separate jurisprudential domains.\textsuperscript{134} 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.\textsuperscript{135}

\textsuperscript{132} 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)

\textsuperscript{133} 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.

\textsuperscript{134} In United States and U.K this view has a deep root. Kenneth C Creech in Electronic Media and Regulation 2nd Edition (1995) p 48 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”. This observation was made after the analysis of the leading cases like Red Lion FCC 395 US 367 (1969) and Turner Electronic media System Inc. V FCC 93-94 U.S. 1994.

\textsuperscript{135} The treatment of 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 (by Hidayathulla. J) and Raj Kapoor v. Lakshman A.I.R. 1980 S.C. 604 (by Krishna Iyer J)
2.3.2 Special features of media law

Freedom of speech and expression is the basic right relating to the mass media. In Brij Bhushan's case,136 Patanjali Sastri, J. speaking for the majority judgment said that "every free man has undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press". Bagwathi, J. in the Express Newspapers case speaking for the Court said that the freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that the liberty of the press consists in allowing no previous restraint upon publication137. It is indisputable that by freedom of the press is meant the right of all citizens to speak publishes and expresses their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express what is termed "policy" can become justiciable when it exhibits itself in the shape of even purported "law". According to Article 13(3) (a) of the Constitution, "law" includes "any Ordinance, order, law, rule, regulation, notification, custom or usage having in the territory of India the force of law". So long as policy remains they are expected to do under it. But, it cannot bind citizens unless the impugned policy is shown to have acquired the force of "law".

Lord Bryce said "The more completely popular sovereignty prevails in a country, so much the more important is it that organs of opinion should be adequate to its expression, prompt, full, and unmistakable in their utterances.... The press, and particularly the newspaper press, stands by common consent first among the organs of opinion.... The conscience and common sense of the nation as a whole keep down the evils which have crept into the working of the Constitution, and may in time extinguish them.... That which, carrying a once famous phrase, we may call the genius of universal publicity, has some disagreeable results, but the wholesome ones are greater and more numerous. Selfishness, injustice, cruelty, tricks and jobs of all sorts, shun the light; to expose them is to defeat them. No serious evils, no rankling sore in the body politic,

---

136 Brij Bhushan and another. v The State of Delhi 1950 Supp SCR 245
137 Express Newspapers (p) Ltd. v Union of India, A.I.R 1958 SC 578.
can remain long concealed, and, when disclosed, it is half destroyed. So long as the opinion of a nation is sound, the main lines of its policy cannot go far wrong.  

John Stuart Mill, in his easy on "Liberty", pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the 'dialectical' process of a struggle with wrong ones which exposes errors. Milton, in his "Areopagitica" said "Though all the winds of doctrine were let loose to play upon the earth, so Truth is in the field, we do injuriously by licensing and prohibiting misdoubting her strength. Let her and Falsehood grapple; whoever knew Truth put to the where, in a free and open encounter? ... Who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensing to make her victorious; those are the shifts and defenses that error makes against her power." Voltaire expressed a democrat's faith when he told an adversary in argument: "I do not agree with a word you say, but I will defend to the death your right to say it"...Permissible restrictions on any fundamental right, even where duly enacted law imposes them, must not be excessive, or, in other words, they must not go beyond what is necessary to achieve the objects of the law under which they are sought to be imposed. The power to impose restrictions on fundamental rights is essentially a power to "regulate" the exercise of these rights. In fact, "regulation" and not extinction of that which is to be regulated is, generally speaking, the extent to which permissible restrictions may go in order to satisfy the test of reasonableness. The term "regulate" has come up for interpretation on several occasions before American Courts which have held that the word "regulate" means "to adjust by rule, method, or established mode; to direct by rule or restrictions; to subject to governing principles of laws." I do not see any reason to give a different meaning to the term "regulation" when we use it. The word "regulates" means "to adjust by rule, method, or established mode; to direct by rule or restrictions; to subject to governing principles of laws." Article 19(1) (a) is not a "guardian of unlimited talkativeness". Justice Mathew said “It is a total misconception to say that speech cannot be regulated or that every regulation of speech would be an abridgment of the freedom of speech. In other words, regulation of speech is not inconsistent with the concept of the freedom of

138 The American Commonwealth (New and Revised Edition) (pp. 274, 275, and 367)
speech unless the regulation amounts to abridgment of that freedom. No freedom, however absolute, can be free from regulation.”

2.3.3 Electronic media as Public Utility Service and its Effect

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 Madava 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 electronic media 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, it is up to the state to decide whether to confine to the afore said practices alone or to widen the ambit of 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

---

139 Bennett Coleman & Co. and Ors. V Union of India (UOI) and Others, AIR1973SC106.
140 N.R.Madhava Menon; ‘Who Controls the Air Waves ‘Voices Vol-III No.3 1995(p28)
141 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. On the other hand 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.
of a comprehensive legislation relating to electronic media all the decisions are taken exclusively by the cabinet or the executive authority.  

2.4.1 State as Monopoly of Electronic 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 “Electronic media 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 electronic media are also of economic importance both as 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 electronic media regulations and further that in many countries there is a constitutional dimension to the disputes.”

2.4.2 Foundation State monopoly

State monopoly was founded on the basis of the world war experiences as to the utility of the telecommunication and radio electronic media, 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 wireless Transmissions without license. The state monopoly was exercised under the provisions of these statutes. Though the modern electronic media devices are totally different from the other key era the authorities have exercised their authorities upon the electronic

---

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

143 The reasons (in the words of media jurists were)” Our views on electronic media 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 "etheric 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)

media under the assumption that basically the electronic media is being on electric power and Hertzian waves.\textsuperscript{145}

2.4.3 Policies and media regulations

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.\textsuperscript{146} Basically the monopoly is claimed by the state on two principal grounds the economic and social reasons\textsuperscript{147}. 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 to enhance the state the 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 spillover cost or externalities, where the unregulated price of an item does not reflect the true cost to the society of producing that item.'\textsuperscript{148} 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

\textsuperscript{145} Similar provisions are present in British laws also. 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 electronic media 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.

\textsuperscript{146} 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)

\textsuperscript{147} Ibid p11

\textsuperscript{148} A detailed study of the Economic aspect of the regulatory mechanism is dealt by A.Ogus Regulation: Legal form and economic theory. -Clarendon Press 1994 -p33.
the political mandate. The historical experience is that the capitalistic\textsuperscript{149} countries, socialistic\textsuperscript{150} countries and countries with the mixed economy\textsuperscript{151} have adopted monopoly over electronic media.\textsuperscript{152}

2.4.4 The conflict of the pluralistic right over the radio spectrum and state monopoly

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 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

\textsuperscript{149} 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 it is 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 (French: "allow to do"), policy 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 electronic media originated as public utility service unlike the print media. Red: Adam Smith An Inquiry into the Nature and Causes of the Wealth of Nations (1776).

\textsuperscript{150} Socialism is 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. An analytical study of Marxism and its evolution is given by Per Manson in Chapter on Marxism in Classical and modern social theory (edited by Hein Anderson and Lars Bo Kaspersen) Blackwell publishers2000 pp121-123.

\textsuperscript{151} 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.

\textsuperscript{152} 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)
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. The principal reason for the State monopoly over the electronic media is that air waves or radio spectrum are a very precious and rare public property. By virtue of the observations of the International Telecommunications Union the airwaves are the exclusive property which is to be dealt by the sovereigns in order to prevent the misuse of the radio spectrum. This monopolistic right is intended to meet the equitable distribution of the waves for the benefit of the public at large. The second ground is that the Wireless Telegraph Act of India provides an exclusive monopolistic right to the State over the radio waves.

2.4.5 Problems of State Monopoly over the media.

The State monopoly, which has its strong grip over the electronic media in the early part of the history of the media, lost its power due to the introduction of the new technologies. The Electronic media in early days were not depended upon the electronics. By the introduction of electronics, digital and satellite communication systems the electronic media system changed thoroughly. The problem of the shortage of the bandwidths was reduced to a great extent by the introduction of microwave. Ku and the new varieties of gadgets are used in the electronic media. One main reason for State monopolization of the media was the experience of the use of the wireless system in war in the World War period. When the right of freedom of speech and expression became a Fundamental right as well as a Human Right the right to broadcast emerged

153 “Globalisation, driven by technological change, has also greatly increased the amount of international competition. A high degree of domestic concentration even a single firm in a country, is not a serious threat if domestic firms are competing internationally” the author explained that the best way for survival even to a local entrepreneur is to compete globally. In the case of media it has significance. A TV channel which telecasts through satellite is an example for global competition. No monopoly can withstand in the case of such competition. Richard G. Lipsy (in chapter 2, Globalization and National Government Policies an economists view) Governments Globalization and International Business (edited by John H Dunning. Oxford University Press.1997 (p 96)

154 “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)
as a form of fundamental right and Human right. In the mean while the communication explosion occurred in various levels of the society. The information super high way became an indispensable part of human life. In this situation the monopoly over the electronic media by the State became an impediment for the development of the society. In a way the economic disparity between the rich and poor countries was caused by the media. A controlled electronic media prevented the intellectual development of the society.

2.4.6 End of the State Monopoly

The end of the State monopoly is caused by several factors. The prime causes are the technological development, globalisation, growing concern for freedom of speech and expression, development of a non polarized State with mitigation of the fear of cold war the development of information superhighway and above all shifting concept of the Sovereign State as liberalised welfare State. When India became a party to GATT agreement an obligation was created to open the doors to the foreign countries to provide access to the electronic media scenario. Electronic media comes within the purview of the services and commercial transaction as per the agreement. Till 1991 the electronic media was done by a government department as a bureaucratic act. According to the old concept it was the duty as well as privilege of the State to run the show. But those who experienced the advantage of having pluralism in electronic media had insisted that exclusive monopoly of the State over the media amounts to denial of fundamental rights. Further it has been revealed from the experience in the developed countries like U.S and U.K liberalisation of the media will only help for the development of nation in different dimensions. In Cricket Electronic media case it was prescribed by the Supreme Court of India that the media should be liberated. Apart from that the Gulf War of 1991 and the Olympics and Asiad games popularized the

---

155 Supreme Court observed that every citizen of this free country, therefore, has the right to air his or her views through the printing course to permissible restrictions imposed under Article 19(2) of the Constitution”. It has also been held in the decision that “the print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. The Secretary, Ministry Of Information & Broadcasting, V Cricket Association Of Bengal & Anr 1995 AIR 1236, 1995 SCC (2) 161.
television. The Star TV and CNN started beaming their channel through without seeking the permission of the government for the reason that there was no law to regulate the satellite electronic media in India.

2.5.1 The beginning era of the freedom over electronic media

Modern electronic media system is interlinked with the space technology, information technology and transnational financial transactions. Hence it is not the concern of a particular country. The electronic media cannot limit the area of dissemination strictly within the territorial boundary of a country. Thus the media content must be controlled in order to prevent international disputes. For technological regulations the UN has made United Nations International Trade related Laws within the area of Information Technology and International Civil Dispute settlement. Further media acts as a fine base for the international human rights protection activities. On many occasion the voice of the oppressed people. Hence the protection of the media comes within the purview of the protection of the freedom of speech and expression of the Universal Declaration of Human Rights. For a total development of human kind the international bodies like ITU and UN has made international conventions.

2.5.2 Development after WTO Agreement

General Agreement on Trade Tariffs (GATT) was created in 1947 by a specialized agency of the United Nations proved remarkably successful in liberalizing the world's trade over the next five decades. By the mid 1990s, however, there were demand for a mightier multilateral organization to monitor that trade and resolve disputes. As a result the WTO came into being on 1995. The 104 founding member countries had agreed to deregulate the laws regarding various types of commercial transactions including the broadcast. According to GATT principles, trade is to be conducted on a non discriminatory basis (most favored nation clause); domestic industry may be protected only by customs tariffs and not by quantitative restrictions; and tariff reductions should be through multilateral arrangements. GATT provides a forum for negotiation and discussion to promote fairness, expand world trade, and
resolve disputes. This change of international business scenario has influenced the electronic media in India.

2.5.3 Electronic media in India and the international Controls

India being an active member of the UN and ITU the country has an obligation to comply with the conventions relating to the electronic media. The satellites used by a broadcaster are subject to the regulations of the Space Treaty of the UN. The radio bandwidth for electronic media is to be allotted by the International Telecommunication Union. WTO conditionality’s have insisted that the UNCITRAL Model Laws relating to the technology and dispute settlement process must be adopted by the country. All these things acted as catalysts for change in the electronic media scenario. End of the monopoly occurred due to the ‘globalisation’ and for the reason that there was a ‘statutory vacuum’ with relation to the electronic media. In 1991 during the Gulf war the Star TV and CNN started their programmes India unlimitedly. The people could receive the television waves through a dish antenna. There was no law to check it and there was no need to control the new channels. In fact if the channels were prohibited there might have been a mass protest against the State action. In effect the end of the State monopoly started then. Later in 1995 the Supreme Court in cricket electronic media case it was asserted that the State monopoly must be given up and the freedom of speech and expression includes the right to open electronic media channels by private persons. The TRAI or the Telecom Regulatory Authority of India and the Prasar Bharathi Corporations were formed to meet the objective. In the Television electronic media the Cable Television started and about 100 new channels came into the scenario within a decade. The terrestrial television and radio is not yet liberated fully except in the case FM radio. The new players are generally depending upon the satellite based electronic media for the Dish Television, Cable Television and the Conditional Access System in the form of DTH or Direct Television to Home. Are very good exam Thereby the pluralism has been introduced in the electronic media.

The radio wave allocation for the State and the programmes on television are uncontrolled without a precensorship. General Agreement on Tariffs and Trade

\[156\] The detailed history of the GATT and WTO is given in the websites named www.wto.org. Last visited on 10-2-2013.
(GATT) has played a crucial role in shaping the international commercial transactions. The World Trade Organisation (WTO) an appendage of UN has helped to liberalise the electronic media scenario also along with the other kind of services like telecommunication and information technology.

After the liberalisation of the media along with the foreign channels like Star TV, CNN other channels like BBC, Discovery, Animal Planet, ESPN, POGO, Cartoon Network, TV 5, Fashion Channel, MTV, V Channel and several other channels came into the picture along with the private broadcasters within the country. The global concerns generated by this were the problem of allocation of radio bandwidths, access to the satellites, permeation of the culture from the west to the east, problem of the financial control, and differences in the regulatory norms adopted by the different participating countries. India has adopted pluralism in electronic media with a view to keep in pace with the developed countries. It has provided job opportunity in different dimensions to the educated youth. The multiple voices coming through different channels with regard to the matters of public concern has helped the society to reinforce democratic principles.

2.5.4 The International Regulator on Electronic Media in India

The regulation of electronic media 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. 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. 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. A conference of the International Telecommunication Union held at London in 1925 dealt with the whole field of radio communications. A conference of

---

157 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, New Delhi.
10 countries held in London in 1925 created the Union Internationale de Radiophonie based in Geneva. It was the first international electronic media organization. The conference discussed the use of wavelengths, copyright problems, and international program exchanges. The Washington conference held in 1927 dealt with the area of cooperation in respect to radiotelegraph, electronic media, 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 Electronic media 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. In the International scenario apart from the technical regulatory measures there is no specific Code for regulating the programmes. But to a certain extent the Universal Declaration of Human Rights (UDHR) and International Convention on Civil and Political Rights (ICCPR), the directives of UNESCO etc has provided certain guidelines in general. The World Intellectual Property Organisation (WIPO) has played a direct role in drafting the international law principles relating to the Intellectual property aspect of the Electronic Media.

---

158 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 electronic media range; but the principle of international agreement had been established. The Washington Conference of 1927 widened the area of cooperation in respect to radiotelegraph.

159 www.britannica.com last visited on 1-1-2012.

160 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 in this context are freedom of thought, conscience;, freedom of opinion and expression; and freedom of peaceful assembly and association., economic, social, and cultural rights as the right to work and to choose one's work freely, the right to equal pay for equal work etc.

161 The organization was established by a convention signed in Stockholm in 1967 and came into force in 1970. It became a specialized agency of the United Nations in December 1974. It is headquartered in Geneva, Switzerland. Encyclopædia Britannica, Inc.
2.5.5 Evolution of regulation during electrical Period

Electronic media service began with pioneering efforts of the Madras Presidency Radio Club since 1924 and also of YMCA at Lahore during the same period. In 1927 two privately owned transmitters started radio transmission in Bombay and Calcutta. Government took over the transmitters in 1930 and started operating them under the name of Indian Electronic media Service. It was changed to All India Radio in 1936 and it also came to be known as Akashwani since 1957. On the eve of independence India had nine electronic media stations. Three of them now belong to Pakistan after partition AIR has at present (as on 01.04.1998) 198 radio stations operating in the country. These include 185 full-fledged stations, 10 relay centres and 3 exclusive Vividh Bharati commercial centres. It has 310 transmitters, which provide radio coverage to a population of 97.7% spread over 90 of the country. Television started in India on an experimental basis in September 1959, with a limited transmission, three days a week. The regular service began in 1965.

2.5.6 The impact of The Indian Telegraph Act, 1885 and The Indian Wireless Telegraph Act 1933

The Indian Telegraph Act, 1885 and The Indian Wireless Telegraphy Act 1933 are the first statute relating to the electronic media in India. The term electronic was irrelevant at the time the statutes were made for reason that then the electronic media as it is seen now was not present then. At the same time all the possible types of electrical and electronic communications have been brought under the provisions of the Act on the basis of the definition of the term wireless communication.

The Indian telecommunications system continues to be governed by the provisions of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraph Act, 1933. Indian Telegraph Act, 1885 covers the law relating to the telegraphs. Originally it was intended to meet the needs of Morse key based and Marconian Telegraphs. The act defines “telegraph” as 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 electromagnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means. The Act further
provides the explanation as “Radio waves” or “Hertzian waves” means electromagnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide.162

The Act further deals with the ‘telegraph lines’163 ‘posts’164 and the authorities165. The most significant aspect of the Act is that it paved the foundation regarding the ‘exclusive privilege of the Government of India for the establishment of, maintenance and working of telegraphs, the authority to provide license powers to determine the license fee to establish, maintain or work a telegraph within India.166 The powers conferred to the Government include the power to intercept any message in the interest of the sovereignty of the India, integrity of India, the security of the India, friendly relations of the foreign Sates, or public order or for the preventing of the incitement to the commission of an offence. It does not include indecency, defamation etc.167 the exception to the interception was the messages transferred by the press by its accredited correspondents in India, which is not previously prohibited. The traces of the recognition of the freedom of speech can be noted in this section.168

The Act is intended to regulate the Wireless Telegraph. The radio and television will not come within the purview of wireless apparatus. But the electronic devises are accounted as materials coming within the purview of definition of wireless apparatus. The Indian Wireless Telegraphy Act, 1933 section 2(1) defines the term “Wireless communication” as the means of 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. The statute gives an explanation to the effect that the “Radio waves” or

---

162 Section 3(1) The Indian Telegraph Act, 1885
163 Section 3(4) The Indian Telegraph Act, 1885
164 Section 3(5) The Indian Telegraph Act, 1885
165 Section 3(6) and (7) The Indian Telegraph Act, 1885
166 Section 4 The Indian Telegraph Act, 1885
167 In that aspect it covers only limited areas mentioned in the Article 19(2) of the Constitution of India.
168 Section 5 The Indian Telegraph Act, 1885
“Hertzian waves”\(^\text{169}\) mentioned in the section means electromagnetic waves\(^\text{170}\) of frequencies lower than 3,000 gigacycles per second propagated in space without artificial guide\(^\text{171}\). Message\(^\text{172}\) means any communications sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered. The Act is silent about the crimes, civil wrongs and statutory offences relating to the electronic media.\(^\text{173}\)

The Act also says that the term “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\(^\text{174}\) and “Wireless transmitter” means any apparatus, appliance, instrument or material used or capable of use for transmission or emission of wireless communication;\(^\text{175}\) The term wireless or without the use of wires was intended to cover the ‘wireless telegraphy’. Hence it excludes the cable television, fiber optic cable networking etc. or other continuous electrical conductors between the transmitting and the receiving apparatus.

---

\(^{169}\) Hertz is the unit of frequency. The number of hertz (abbreviated Hz) equals the number of cycles per second. The frequency of any phenomenon with regular periodic variations can be expressed in hertz, but the term is used most frequently in connection with alternating electric currents, electromagnetic waves (light, radar, etc.), and sound. It is part of the International System of Units (SI), which is based on the metric system. The term hertz was proposed in the early 1920s by German scientists to honour the 19th-century German physicist Heinrich Hertz. The unit was adopted in October 1933 by a committee of the International Electro technical Commission and is in widespread use today, although it has not entirely replaced the expression "cycles per second." A rarely used multiple of the hertz is the Fresnel, which is equal to 1012 hertz. The Fresnel was named for the 18th-19th-century French.

\(^{170}\) "Radio waves" or "Hertzian waves" mean electromagnetic waves of frequencies lower than 3,000 gigacycles per second propagated in space.

\(^{171}\) Without artificial guide means radio waves capable of travelling without any other waves like micro wave, Ku band etc. Usually frequency is expressed in the hertz unit, named in honour of the 19th-century German physicist Heinrich Rudolf Hertz, one hertz being equal to one cycle per second, abbreviated Hz; one kilohertz (kHz) is 1,000 Hz, and one megahertz (MHz) is 1,000,000 Hz. And one Giga hertz (GHz) is 1,000,000,000 Hz.

\(^{172}\) Section 2(1) The Indian Wireless Telegraphy Act, 1933.


\(^{174}\) Ibid Section 2(2).

\(^{175}\) Ibid Section 2(2A).
2.6.1 Post Constitutional Development

India had nine electronic media stations at the time it obtained freedom. Three of them now belong to Pakistan after partition. In 1950, All India Radio acquired its new name of Akashvani. At that time, AIR's network consisted of only six stations. AIR has 187 stations operating in the country. These include 179 electronic media stations, four relay centers, one auxiliary and three Vividh Bharati Commercial Centers. AIR has 297 transmitters. These include 149 Medium Wave, 52 Short Wave and 96 FM transmitters. External services of AIR, broadcast for 75 hours in 16 foreign and seven Indian languages. It covers all the countries except the American Continent, by short wave transmitters. The priority areas of external services are immediate neighbours, the South-East and Middle-East Countries, African Countries, Europe and Australia.

In order to diversify radio services and providing choice in entertainment to the people, 37 channels in 19 cities are poised to be operational by the end of 2001. All India Radio has launched its 2nd FM Channel, which provides both news and entertainment contents. These stations are to begin electronic media in 2001. FM Stations are also planned for auction in 70 more cities and towns. This will revolutionize the very concept of electronic media in the country and trigger further growth in electronic media and entertainment sectors.\(^\text{176}\)

2.6.2 Television in India

Television started in India on an experimental basis in September 1959, with a limited transmission, three days a week. The regular service began in 1965. It witnessed unprecedented growth after 1982, and has now grown to be a network of three National channels, two special interest channels, 10 regional language channels, four state networks and an International channel. It has 47 production centers, terrestrial transmitting centers of varying power, OB vans for outside coverage, TRACTS and Earth Stations for countrywide dissemination of programmes through channels on the INSAT satellite. The International channel beams its programmes on a transponder on PAS.4. The first television center of the country was started as an experimental service

\(^{176}\) M/S Music Broadcast Pvt. Ltd. V Union of India, New Delhi. Union of India, Telecom Disputes Settlement & Appellate Tribunal, Petition No. 73 (C) Of 2008. In this case it was held that that the FM radio will be granted on payment of the agreed guarantee amount.
at Delhi in September 1959 with a 500 watts transmitter, which had a range of 24 km. To fulfill the aim of education and information, Doordarshan started its telecast with a limited transmission of three days a week. Gradually it turned into infotainment medium with manifold increase in its telecast time. It telecasts programmes on 19 channels with a network of 41 Programme Production Centers and 984 transmitting stations. It is one of the largest terrestrial networks in the world. With its programme output of 1,350 hours per week, it reaches to nearly 380 million people all over the world. It telecasts 75 bulletins in 28 languages daily from its Headquarters and regional news units.

2.6.3 **Indian electronic media and Space Probes**

First satellite electronic media in the country was started on August 1, 1975. The journey of satellite electronic media was started in the form of the famous Satellite Instructional Television Experiment (SITE) in 1975-76. It used the American satellite ATS.6 and transmitted development programmes through direct reception to 2400 remote villages scattered in six different states of the country. SITE is described as the biggest techno-social communication experiment in the world. SITE proved India's capability of using advanced technology and adapt to the socio-economic needs of the country. The success was technological, managerial, programme production and research. Satellite electronic media was not having a speedy growth before SITE. The Indian television continued to make steady progress. Since the small beginning in 1959, the crucial change for the expansion of satellite electronic media in the country was caused by the development of ISRO which was the nodal agency for implementation of SITE, continued to prepare for a national satellite system in the country. Several technical experiments were undertaken by ISRO and eventually INSAT system was launched in 1982. INSAT provided satellite based national transmission either in the form of direct reception from the satellite or through a hybrid system of receiving it from the satellite and retransmits it terrestrially through low or high power transmitters. But this provided communication umbrella to the whole country.

---

177 In modern electronic media satellites are the most important parts. Along with satellites different aspects of the satellites also came before the courts.
Operationalisation of INSAT in 1982 coincided with the Asian games held at New Delhi. This initiated a very rapid expansion of transmitters in different parts of the country. There was almost one transmitter a day for over a period of one year during the 1982.83 timeframe. This movement never slackened and today there are well over 1000 transmitters. It would be incomplete to say that the expansion of the television in the country was due only to the technological capability of the INSAT system. The fact that the Asian games were held in New Delhi gave a big boost to the television industry. Around this time government liberalised the import of television sets from other countries and encouraged manufacturing of television sets in the country through a liberal economic policy. This was a big impetus to the increase in the number of television sets in the country. Around this time the political leadership had also grasped the enormous power of the medium. The fact that one could reach out to the entire country was no mean potentiality for the medium. The democratic set up of the country facilitated this entire process. The fact that there was a period of economic liberalisation during this period, commercial viability was being seriously looked at, and encouragement went a long way in expanding the satellite based television network in the country.

2.6.4 Growth of mass media Satellites in India

India has developed several national space applications in the area of telecommunication and meteorological satellites the Indian National Satellite (INSAT) is the organisation responsible for the management and operation of the fleet of in orbit satellites. INSAT is a joint venture the Department of Telecommunications (DOT), India Meteorological Department (IMD), All India Radio (AIR) and Doordarshan. INSAT currently operates nine satellites (INSAT 2 and 3 series, Kalpana.1, and the most recent one, INSAT 4A, launched in December 2005).\textsuperscript{178}

After 1982 when Indian National Satellite (INSAT) was launched there was a sharp rise in the number of transmitters, began colour television and telecast of Asiad games increased private investment in television sets. In early nineties new face of satellite television entered Indian households in the name of Cable and Satellite

\textsuperscript{178} Abdulgafar A. Nadiadwala v Assistant Commissioner Of Income (2004) 188 CTR Bom 232, 2004 267 ITR 488 Bom
television (C&S TV) and transnational content entered Indian households. Today one third of Indian television households have access to C&S TV. Beginning of Satellite Television in India was marked by world first techno social experiment SITE. Satellite Instructional Television Experiment SITE was for education and development purposes. That followed number of other experiments like SITE Continuity, School Television, UGC Country Wide Class Room, Jhabua Development Communication Project, Indira Gandhi National Open University transmission and lately channels like Training and Development Communication Channel and Gyan Darshan for educational and social development purposes. Technologies per se provide the scope of democratization at the same time creates issues related to control and access for others who do not own it. The paper examines the notion of ‘satellite television’ as democratizing force and concept of community television sets as one important component of all development communication experiments in India. The paper examines various projects and how the technology ‘reached’ ‘the poorest of poor’ and the divides of ‘rich-poor’, ‘men-women’ ‘urban-rural’ were somewhere brought into main text. At the same time it reports that satellite television in India has come a long way since 1975. SITE days but one thing is common over the years that it invariably has remained with people who ‘had’ and ‘have’ other technologies.

2.6.5 The reasons for the private channels

The Gulf war of 1991 was another very major landmark influencing television scene in the country CNN was first to beam transnational signals on the war. These transmissions by CNN clearly opened up enormous possibilities. A large number of small enterprising youngsters saw the enormous potentiality of this as a viable business activity. They initiated the present mode of distributing satellite signals through a cable network to individual households. Reception of the satellite channels in India takes place in a unique manner. The cable operator receives the satellite channels and he distributes them through a cable network to the household subscribers for a small fee. Along with CNN many other foreign private satellite channels saw the huge market that was India. After CNN the earliest initiatives came from Rupert Murdoch's Star TV. 1992 was the beginning of Star TV network through the Asiasat.1. They offered a bouquet of free to air channels consisting of soap operas, movies, music, sports, and
news and so on. Initially all these channels were English language channels. For the first time this gave the Indian audience used to the monopoly of the state used to the multiple voices in the form of private channels.

Expansion occurred through English language based channels. Later was not a feasible proposition for a country as diverse, linguistically rich with a unique cultural ethos as India to sustain and certainly not be wholly satisfied on only foreign sourced programmes. Many enterprising Indians saw and seized this opportunity. The earliest being Zee TV network, which started a Hindi language channel. It offered programmes produced in India for Indian audiences and transmitted through a foreign satellite. They soon expanded to a bouquet of channels. Indian made soap operas, music; feature film based channels became favourites amongst the large number of middle class homes in the country.

2.7.1 Conflict with the Government channels and private channels

Today, out of 70 million TV households of the country, about 37 million receive satellite channels. The growth in the number of channels has been exponential especially in the Indian regional languages. Southern states of India took a major initiative in this regard. The major initiative came from Sun TV which started a Tamil language channel and soon the channels in other languages like Kannada, Malayalam and Telugu were initiated by many players and almost all of them offering a

bouquet of ‘niche’ channels. Today there are well over 90 channels which an Indian consumer can get in English language as well as Hindi and other regional languages. According to industry figures, some 2.5 billion people across the world watch on average more than three hours of television every day. The largest growth is in countries such as India. The consumerism the era of multi channel broadcasting in this country also paved foundation for the media revolution. Since visual images tend to cross linguistic and national boundaries relatively easily, television carries much more influence than other media, especially in a developing country where millions cannot read or write. 

2.7.2 Local channels in Doordarsan

Doordarshan now had real competition to face. Gone were the days of monopoly and this national television authority of Government of India had to orient to face the channels. Doordarshan on its own started several satellite channels. Initially they were all niche channels like news, sports, music, etc. They soon started regional language channels. India has 18 officially recognised languages and the population of these regional languages speakers is scattered all over the country and they are interested in being exposed to programmes in their mother tongue and culture and this has given a big boost to the expansion of the regional language channels.

2.7.3 Electronic media system in India after the economic liberalisation

The period was not only the end of monopoly of Doordarshan or for that matter any other single player, it also meant greater commercialisation and massive growth in all the related cultural as well as hardware industries of the country. Software and content generation has become a major industry. The artistic talent is in great demand. Scriptwriters are in such a heavy demand that they find it difficult to respond to it and this has given a quantum boost to the cultural industries. There has been corporatisation of software industries and this has also given a major growth for the market research agencies. Impact assessment, surveys, formative studies and other research activities are becoming regular practices. Doordarshan, the national television service of India

---

180 The article by Daya Thussu on The ‘Murdochization’ of News. The case, Star TV in India, University of Westminster. published by Sage. Kishan(P3)
devoted to public service electronic media is one of the largest terrestrial networks in
the world. The flagship of Doordarshan DD.1 operates through a network of 984
terrestrial transmitters of varying powers reaching over 87 per cent of the population.
There are 57 additional transmitters giving terrestrial support to other channels.
Doordarshan uses a large number of transponders on the Indian National Satellites
(INSAT) and other satellites to network its terrestrial transmitters and also to extend
coverage. The signals of Doordarshan International service could be received in most
part of the globe. Doordarshan has established programme production facilities in 46
cities across the country. 360 million viewers in their homes watch Doordarshan
programmes in India. Doordarshan earned around Rs 4 billion during the financial year
1998.99 through commercial advertisements.181

2.7.4 Journalism laws relating to electronic media

The Ministry of Information and Electronic media, Government of India has
issued a notification indicating that the Prasar Bharati (Electronic media Corporation of
India) Act, 1990 came into force from 15th of September, 1997. The Prasar Bharati Act
provides for establishment of Electronic media Corporation of India, to be known as
Prasar Bharati to define its composition, functions and powers and related matters. It
provides for grant of autonomy to electronic media, namely, AIR and Doordarshan,
presently under the Government control. The Act received the assent of President of
India on September 12, 1990 after being unanimously passed by Parliament. This had
not come into force as the notification under sub-section (1) of Section (3) of the Act
had not been issued. Media should be under the control of the public as distinct from
Government. A public statutory corporation or corporations should operate it, as the
case may be, whose constitution and composition must be such as to ensure its/their
impartiality in political, economic and social matters and on all other public issues. In
spite of the so called freedom as a corporation in the form of Prasarbharathi and an
authority in the form of TRAI the authorities failed to look in to the problem of
journalists working in the public and private electronic media.

181 Details of the DD budget can be obtained from http://www.ddindia.gov.in. Visited on 1-4-2012.
2.7.5 The ‘programme’ related to the electronic media

The programme has two aspects in the electronic media. The engineering side and the artistic method of the media are the two. The programme mentioned here is basically artistic format. Whatever be the activity two types of natural resources are used. One is the air waves and the other is man power. The problem is whether the government is capable of managing both of it. A comprehensive review of the Act undertaken in 1991 had brought into focus certain operational difficulties that were likely to arise particularly in the area of personnel policy and manpower employment, issue of Government directions to the Corporation, the procedure for suppression for Prasar Bharati Board by the President etc. The Cabinet considered the issue for suitable amendments during the last few years. However, no final decision was taken. Meanwhile with the advent of satellite channels and their rapid proliferation, the electronic media environment had undergone a sea-change. Also two significant judgements having direct relevance to Prasar Bharati Act were also made.

2.8.1 Freedom of speech and electronic media

The freedom speech guaranteed by the Constitution shall available to all. The right to speak is not specifically mentioned in any statute. At the same time it may include anything related to freedom of speech.\textsuperscript{182} Supreme Court in its judgements dated 9.2.1995 in the Ministry of Broadcasting and Information \textit{v} Cricket Association of Bengal \textsuperscript{183} has held that airwaves are public property and a monopoly over electronic media whether by government or anybody else is inconsistent with the free speech right of the citizens and directed the Government to take immediate steps to establish an independent autonomous public authority representative of all sections and interest in the society to control and regulate the use of airwaves. The Calcutta High Court has in its judgements dated 19.7.75 in Union of India \textit{v} People's Union for Civil Liberties\textsuperscript{184} observed that the Central Government should take appropriate steps to give shape to the objectives and ideals of the Prasar Bharati Act as early as possible. Government is at liberty to pass fresh legislation if it deems fit. The Honourable court has further

\begin{flushleft}
\textsuperscript{182} The use of air waves were considered as a method of ‘speech and expression’ in the Cricket broadcasting case.
\textsuperscript{183} The Secretary, Ministry of Information and Broadcasting \textit{Vs} Cricket Association of Bengal. 1995 AIR 1236.
\textsuperscript{184} Peoples' Union for Liberties and Others \textit{v} Union of India and Others, AIR 1996 Cal 89.
\end{flushleft}
observed that electronic media should be under the control of the public as distinct from Government. A public statutory corporation or corporations should operate it, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues.

The Calcutta High Court has in its judgment dated 19.7.75 in Union of India Vs People's Union for Civil Liberties observed that the Central Government should take appropriate steps to give shape to the objectives and ideals of the Prasarbharathi Act as early as possible. Government is at liberty to pass fresh legislation if it deems fit. In March 1996, Sub-Committee of Consultative Committee of Ministry of Information and Broadcasting headed by Shri Ram Vilas Paswan submitted a Working Paper on National Media Policy. In view of the Supreme Court judgment the Committee noted that there should be a regulatory body to oversee both public and private telecasting/electronic media. The Sub-Committee noted that the provisions of the Prasarbarathi Act, which was unanimously passed by Parliament in 1990, should be kept in mind while framing the regulatory mechanism which should be an independent autonomous authority. The Sub-Committee noted that the provisions of the Prasarbarathi Act, which was unanimously passed by Parliament in 1990, should be kept in mind while framing the regulatory mechanism which should be an independent autonomous authority.

---

185 Ibid. In the case it held that ‘Considering all aspects of the case in the instant writ petition, it is expected that the Central Government should take appropriate steps to give shape to the objectives and ideals of the Prasar Bharati Act as early as possible and if the Central Govt. considers necessary, the proposed amendments as suggested and which appears from the affidavit filed on behalf of the Union of India may also be given effect to. The Government also will be at liberty to pass fresh legislation in this respect if it feels fit and proper. Such steps should, however, be taken within 31st December, 1995, and an affidavit should be filed by a competent officer of the Ministry of Information and Electronic media stating the steps taken. In the event, the Central Government feels that such steps cannot be taken within such period, Government should record reasons for the same and file a report to that effect in the form of an affidavit’. Peoples’ Union for Liberties and Others v Union of India and Others AIR 1996 Cal 89. Justice A.K.Sen.

186 Shri Ram Vilas Paswan submitted a Working Paper on National Media Policy. Latest media or Telecom policy was in 2012.

187 Subsequently Sen Gupta Committee was set up by the Ministry of Information and Electronic media vide a notification dated 28th December, 1995 under the Chairmanship of Dr. N.K. Sen Gupta to review the provisions of Prasar Bharati (Electronic media Corporation of India) Act, 1990 and to make recommendations regarding the restructuring of Prasar Bharati. Besides Dr. Sen Gupta, the other Members are Brig. M.R.Narayanan and Shri Ved Lekha. In March 1996, Sub-Committee of Consultative Committee of Ministry of I&B headed by Shri Ram Vilas Paswan submitted a Working Paper on National Media Policy. In view of the Supreme Court judgment the Committee noted that there should be a regulatory body to oversee both public and private telecasting/electronic media.

188 The reflections can be seen in Mahesh Bhatt vs Union Of India And Anr on 23 January, 2009 WP (C) No.23716 of 2005 23.01.2009
2.8.2 Other laws in India

The Ministry of Information and Electronic media is the nodal Ministry in the Information, Electronic media and Film sectors. The functions of the three sectors are complementary to each other and cannot be strictly compartmentalized. They are interwoven as all activities are centered on the core objectives of informing, educating and entertaining the people. Each sector works towards the declared objectives and achievements are targeted through specialized media units and other organizations of the Ministry. The Ministry has 11 media units, 9 Public Sector Units and independent organizations to which it provides administrative/budgetary support.

The Ministry initiated a review of the structure and working of Prasarbarathi to ensure quality, credibility and professionalism. A Committee of experts was constituted which has given its recommendations. Budget of Prasarbarathi was de-linked from the Ministry of Information and Electronic media to strengthen its autonomous character. Special Kashir Channel was launched in Jammu and Kashmir to provide wholesome entertainment to the people of the State and counter the vicious propaganda from across the border. A special package of Rs 430 crores is being implemented for strengthening DD and AIR services in J&K. A similar Special Package for the North Eastern Region and Island territories to improve AIR and DD services in these areas. To bring Doordarshan closer to the people, 24-hour satellite channels are launched in Hindi, Telugu, Kannada, Malayalam, Gujarati, Marathi, Oriya and Punjabi languages. A similar channel for the Northeast region has been launched. Coverage of DD International is being extended to major parts of the world. A special Sports Channel has also been launched. During the last two years, the media units of the Ministry have been focusing on issues of concern of the common man and reaching the people in every nook and corner of the country. The two mammoth electronic media organizations namely the All India Radio and Doordarshan have been brought under a new autonomous body corporate, namely Prasarbarathi. It is estimated that the Prasarbarathi incurs an expenditure of Rs 1,400 crores and Rs1,600 crores annually on its Plan and Non-Plan heads. The Eighth and Ninth Plan budgetary support has been pegged at 20%.25% and the rest of the outlay has to come through IEBR. Due to a variety of reasons, the DD viewer ship and commercial revenue have shown a declining
trend making for an annual yield about Rs 400 crores –Rs 430 crores. The widening gap between required outlay and actual IEBR component may pose serious financial problem in implementation of Plan projects. Serious efforts are needed to improve the revenues of Prasarbarathi.

**FIGURE 10**

**RADIOWAVES IN ELECTRONIC MEDIA**

New measures in electronic media system in India after the economic liberalisation on entering the GATT agreement and WTO Conditionalities are several. The Indian satellite channels allowed to uplink from India through VSNL. Fully Indian owned companies allowed to set up 108 private FM Radio Stations in 40 cities on license fee basis. Approval of Rs 430 crores special package for substantial up gradation of A.I.R. and DD services in J and K State is sanctioned. Industry status accorded to the Film Industry is given. Doordarshan introduced digital transmitters shortly, one each at Delhi, Mumbai, Calcutta and Chennai and it has started simultaneous telecasting of both analogue and digital mode.189

One of the major policy initiatives during the period had been the notification of the industry status to the Entertainment Industry, which includes the film sector. Institutional finance and other facilities now would be available to the film industry. The IDBI has already started financing film and other entertainment projects. This will go a long way in providing clean credit and help bringing the industry out of the

189 5 Judge Bench of the Kerala High Court held in a case relating electricity act on the basis of Wireless Telegraphy Act, in Kumba Amma v. K.S.E.B. [2000 (1) KLT 542]
clutches of the underworld mafia. In 1993, Doordarshan launched the Metro channel in the four metros. DD2 is now also available at satellite and terrestrially at 56 cities. Transmission on Metro Channel has been increased to 24 hours Doordarshan launched its International Channel on March 14, 1995. The Channel's daily transmission is now available for 18 hours daily. DD has also commenced telecast of proceedings of Question Hour in Rajya Sabha and Lok Sabha. Now the coverage has been extended to the entire proceedings in two hours. Two separate Sports and News Channels have been introduced from this year, which are now available is a satellite transmission round the clock. Another channel education has been introduced last year. Transmission of DD 1, DD 2, DD News, DD Sports and DD India are now available in digital mode through satellite television. The mass media laws has 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. 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 electronic media case in 1995. 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 electronic media.

190 Two definitions in the relevant statutes mark 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) "electronic media" 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 its 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.

191 Secretary Ministry Of Information And Broad Casting Govt; Of India And Others V Cricket Association Of Bengal And Others AIR 1995 SC 1235
narrowcasting (like radio telephony, ham radios and paging), telecommunication, Internet and areas of convergence specifically. The longing 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 electronic media system. The ability of electronic media to 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 electronic 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 commercialisation and roles played by the power players and by the introduction novel methods of technological innovations the electronic media law is being developed into a separate and independent branch of law.

2.8.3 Departments dealing with the 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

---

192 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.
mechanical process of recording, editing, uplinking, transmitting etc\textsuperscript{193}. While the former is more or less normative work the latter one is empirical work. The laws relating to performer’s right, neighbouring rights, electronic media and comes under the purview of the laws relating to programme. On the other hand granting license for electronic media itself is based upon satisfaction of certain condition as to possession of prescribed equipments, which are capable of utilising the radio wave length for electronic media 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 electronic media 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\textsuperscript{194}.

India is a member of International Telecommunications Union, the commonwealth Telecommunications Organization, INTELSAT, INMARSAT, Asia Pacific Telecoms and The South Asia Association for Regional Cooperation (SARC) Telecoms Committee. India is the third largest supplier of telecommunication experts in engineering, planning and traffic areas for the ITU and its technical assistance

\textsuperscript{193} 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.

\textsuperscript{194} 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.
programmes in developing countries. But ‘The Telegraph and Wireless Telegraph Acts of colonial vintage (1885 and 1932, respectively) are the only legal bases of telecommunication system in India’

The electronic media 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 electronic media/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 electronic media 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. The emphasis is that, the power to pre-censor films and to grant licenses for access to telecasting, has to be exercised in conformity with the provisions of Article 19(2).”

2.8.4 The objectives of the media

Initially the media was intended for rural development and education. Later, especially after the introduction of the western satellite channels like the Star TV and CNN and by the introduction of various Indian Channels the scenario underwent a total change. The entertainment, sports and news programmes along with its different offshoots became predominant. Cinema became the best type of entertainment in the media. In spite of the fact, the electronic media in India is developed in par with many of the developed country the country. At the same time it lacks an integrated and controlled regulatory system. The laws relating to the electronic media are too prosaic, insufficient or ineffective. Indian electronic media is largely depended on the

\begin{footnotesize}
\footnote{Edited by Eli M.Noam- Telecommunications in Western Asia and Middle East (T.H.Chowdary- in. the chapter on Telecommunications in India)-Oxford University Press 1997 (p25)} \\
\footnote{Secretary Ministry of 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}
\end{footnotesize}
telecommunication system. Though some of its applied area is coming within the purview of common legislation like Indian Penal Code, the Indian Contract Act etc a comprehensive Code is not yet made in the matter.

2.8.5 Specific laws dealing with media

The first attempt for a definition of electronic media was made in Copy Right Act.\textsuperscript{197} The state monopoly over the media is assumed by virtue of the provisions in the Telegraph Act and the wireless telegraph act. “The Indian Telegraph Act of 1885 and the Wireless Telegraph act of 1932, passed in colonial times, have been interpreted as providing the legal basis of the central government’s telecommunications monopoly.”\textsuperscript{198}

The Telegraph Act 1933 is the first statute relating to the electronic media in India. The term electronic was irrelevant at the time the statute was made for reason that then the electronic media as it is seen now was not present then. At the same time the all the possible types of electrical and electronic communications have been brought under the provisions of the Act on the basis of the definition of the term “wireless communication.”\textsuperscript{199}

Section 4 of the Indian Telegraph Act prescribes that the Central Govt: shall have the exclusive privilege of establishment, maintaining and working telegraphs.\textsuperscript{200} Initially the Post and Telecommunication was a combined department known as Post and Telegraph under Ministry of Communication. In 1985 the telecommunication department was separated from the Postal Department. But both remained under the ministry of Communication. The new Department came to be known as DOT (or Department of Telecommunication). In 1989 a Telecom Board was formed and the Secretary of Telecommunication Ministry was the Director General of DOT and Chairman of the Telecom Commission.

\textsuperscript{197} S((dd) "broadcast" means communication to the public (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or (ii) by wire, and includes a re-broadcast;)
\textsuperscript{198} ibid (p 23)
\textsuperscript{199} vide supra at foot note no:181
\textsuperscript{200} In the Cricket Case it was observed that the electronic media either the petitioner or the respondent in that case preferred an application for permission for electronic media under Section 4 of the Telegraph Act.
In 1997 The Central Government enacted The Telecom Regulatory Authority of India Act 1997 (which is known as TRAI Act) by virtue of Section 2 clause (k) the electronic media services are excluded from the jurisdiction of TRAI. But all the telecom services utilised by a broadcaster will come within the purview of this section. Here came another turning point. The electronic media services have been differentiated from the telecom service. It is TRAI which determines the matters relating to ‘band width allocation’ ‘satellite uplinking’, ‘use of data links’, ‘use of routers and hubs for electronic connectivity’ etc. To start a terrestrial, cable or satellite linked channel the broadcaster has to obtain the clearance from TRAI. The entire electronic media through the Internet known as ‘webcasting’ comes within the jurisdiction of TRAI. But it cannot regulate the content part of the ‘net’. The Telecom Regulatory Authority of India (TRAI) was formed in January 1997 with a view to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests. The Government is committed to a strong and independent regulator with comprehensive powers and clear authority to effectively perform its functions.\(^{201}\)

TRAI is assigned the arbitration function for resolution of disputes between Government (in its role as licensor) and any licensee. The Government will invariably seek TRAI's recommendations on the number and timing of new licenses before taking decision on issue of new licenses in future. The functions of licensor and policy maker would continue to be discharged by Government in its sovereign capacity. In respect of functions where TRAI has been assigned a recommendatory role, it would not be statutorily mandatory for Government to seek TRAI's recommendations. If the Convergence Bill is passed (by which the television, telephone and Internet is provided by a single service provider) a significant area where the role of TRAI will become irrelevant in electronic media. In fact that the technical regulations given by TRAI, acts

\(^{201}\) Towards this objective the following approach will be adopted:

Section 13 of The TRAI Act gives adequate powers to TRAI to issue directions to service providers. Further, under Section 14 of the Act, the TRAI has full adjudicatory powers to resolve disputes between service providers. To ensure level playing fields, it will be clarified that the TRAI has the powers to issue direction under Section 13 to Government (in its role as service provider) and further to adjudicate under Section 14 of the Act, all disputes arising between Government (in its role as service provider) and any other service provider.
as a good regulatory mechanism for the protection of the radio waves. It will come under the policy of ‘conservation of public property’. But the enforcing mechanism of the decision is very weak. The penalty, which can be imposed upon the willful failure to comply with the order of TRAI, is only one Lakh and for the consecutive offences it is two lakhs per day. For those who have invested hundreds of crores to run an electronic media channel this penalty is a paltry sum.  

In the words of Sri 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" 

Legal issues relating to electronic media covers a variety of categories. Sedition and acts against friendly state, contempt of court and contempt of legislature, violation of decency and morality, violation of public tranquility, offences relating to monopoly and commercial competitions, piracy and violation of other intellectual property, violation of privacy and personal rights, violation of human rights and terrorism and violation of consumer’s rights are some of them. 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 (Home Amateur Radio), issues coming under the Information Technology 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. 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.

202 Section 20 of the Telecom Regulatory Act 1997.
203 Venkata Iyer, Mass Media Laws and Regulations in India(2nd Edn Asian Media Information and Communication Centre.(pp67,68)
204 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.
The legal regulations relating to electronic media in India exist in different dimensions of law. A brief outline can be sketched as follows. (a) Electronic media regulations in general relating to radio and television (including the Electronic media Bill)\textsuperscript{205}, (b) Special Codes on electronic media (like the code of commercial advertising on All India Radio Code of Commercial Advertising on Doordarshan)\textsuperscript{206} (c) Regulations relating to the use of airwaves, outer space, air space and land territory for the purpose of electronic media (including use of satellites, fiber optic cable etc)\textsuperscript{207} (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)\textsuperscript{208} (g) Regulations on programs relating to children (as prescribed by the administrative regulations) (h) Regulations related to 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)\textsuperscript{209} (k) Economic, trade and monopoly regulations (including contract laws, corporate laws etc)\textsuperscript{210} (l) Regulations under law of torts (including principles.

\textsuperscript{205} Though the Electronic media Bill was introduced in the year 1994 it is still remaining in cold storage.

\textsuperscript{206} 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 Electronic media Guidelines for Uplinking from India specifically mention this as a condition precedent for granting license for electronic media.

\textsuperscript{207} This area of the regulations extends to the International perspective. 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 electronic media and TRAI etc are the relevant laws in the area.

\textsuperscript{208} For Example the Programme Codes of Doordarshan 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.

\textsuperscript{209} 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.

\textsuperscript{210} Along with the expansion of the electronic media 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 Electronic media 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)
relating to liabilities, remedies etc specific tort like defamation and consumer protection laws).

2.9.1 The Cable Television (Regulation) Act

The Cable Television Act says that it is an act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto. The Section 2 of the Act says that the “cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network; “cable service” means the transmission by cables of programmes including retransmission by cable of any broadcast television signals and “cable television network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers. The Act further says that the “programme” means any television broadcast and includes (i) exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players; (ii) any audio or visual or audio-visual live performance or presentation, and the expression “programme service” shall be construed accordingly. The video cassettes and video players mentioned in the enactment has come and gone just like gramophone records. In its place the compact discs, digital video discs and blue ray discs have taken place. Tomorrow new technology may take place in its place.

This Act determines authorised officer is an officer of the government who is pre occupied with so many unrelated works. He is bound to maintain registers, accept or reject applications, register new applicants on accepting the prescribed fees as per the Cable Television Networks Rules 1994. The Rule 6 of the programme code mentioned in the Rules as that: (1) No programme should be carried in the cable service which - (a) offends against good taste or decency, (b) contains criticism of friendly countries; (c) contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes.

---

211 The first law in the matter was ‘The Cable Television Networks (Regulation) Ordinance, 1995 (3 of 1995)’ is repealed by virtue of the Section 23 of the Act.

212 Rule 2 of the Cable Television Networks Rules 1994
anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths(e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes (f)contains anything amounting to contempt of court (g)contains aspersions against the integrity of the President and Judiciary;(h) contains anything affecting the integrity of the Nation; (i) criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country; (j) encourages superstition or blind belief (k) denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals, (l) denigrates children, (m) contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups, (n) contravenes the provisions of the Cinematograph Act, 1952.213 (o) It is not suitable for unrestricted public exhibition.

The Act further says that the cable operator should strive to carry programmes in his cable service which project women in a positive, leadership role of sobriety, moral and character building qualities.214 No cable operator shall carry or include in his cable service any programme in respect of which copyright subsists under the Copyright Act, 1957 unless he has been granted a licence by owners of copyright under that Act in respect of such programme.215 (4) Care should be taken to ensure that programmes meant for children do not contain any bad language or explicit scenes of violence.216 (5) Programmes unsuitable for children must not be carried in the cable service at times when the largest number of children is viewing.217 There are only minor variations in the programme code of Doordarshan. Similarly Rule 7 of the Cable Television Networks Rules 1994 says that the Advertising Code shall follow the following Rules: (1) Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and

216 Rule 3 of Cable Television Networks Rules 1994
217 Rule 4 of Cable Television Networks Rules 1994
218 Rule 6 of Cable Television Networks Rules 1994
religious susceptibilities of the subscribers. (2) No advertisement shall be permitted which: (i) derides any race, caste, colour, creed and nationality; (ii) is against any provision of the Constitution of India: (iii) tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way; (iv) presents criminality as desirable; (v) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary; (vi) in its depiction of women violates the Constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society.

The cable operator shall ensure that the portrayal of the female form, in the programmes carried in his cable service is tasteful and aesthetic, and is within the well established norms of good taste and decency; (vii) exploits social evils like dowry, child marriage. 219 (viii) Promotes directly or indirectly production, sale or consumption of: (a) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; (b) infant milk substitutes, feeding bottle or infant foods. (3) No advertisement shall be permitted the objects whereof are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end. 220 (3A) No advertisement shall contain reference which hurt religious sentiments. (4) The goods or services advertised shall not suffer from any defect or deficiency as mentioned in the Consumer Protection Act, 1986. (5) No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or supernatural property or quality, which is difficult of being proved. (6) The picture and the audible matter of the advertisement shall not be excessively 'loud'(7) No advertisement which endangers the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner shall not be carried in the cable service. (8) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all

advertisements. (9) No advertisement which violates the standards of practice for advertising agencies as approved by the Advertising Agencies Association of India, Bombay, from time to time shall be carried in the cable service. (10) All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme. Doordarshan code on advertisements though not enforceable reads similarly.

2.9.2 The Prasarbharathi Act

The Prasarbharathi (Broadcasting Corporation of India) Act, 1990 says that to provide for the establishment of Broadcasting Corporation for India, to be known as Prasarbharathi, to define its composition, functions and powers and to prove for matters connected therewith or incidental thereto. It is applicable to Akashvani (or national radio) Doordarsan (or national television) Section 2(a) of the Prasarbharathi says that ‘Akashvani’ means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director General, All India Radio of the Union Ministry of Information and Broadcasting. The section 2 (h) says that ‘Doordarshan’ means the offices, Kendra and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate general Doordarshan of the Union Ministry of Information and Broadcasting. The Act says ‘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 its grammatical variations and cognate expressions shall be construed accordingly. It is to organise and conduct public balanced development of broadcasting on radio and television. The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely:

221 Rule 7 of Cable Television Networks Rules 1994
222 Section 12 of Prasar Bharati Act Functions and Powers of Corporation as per the act is that includes shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885 (13 of 1985).
(a) upholding the unity and integrity of the country and the values enshrined in the Constitution; (b) safeguarding the citizen’s right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own; (c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology; (d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes; (e) providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship; (f) providing appropriate programmes keeping in view the special needs of the youth; (g) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women; (h) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society; (i) safeguarding the rights of the working classes and advancing their welfare; (j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas; (k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities; (l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people; (m) promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State; (n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception; (o) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and (p) expanding broadcasting facilities by establishing additional channels of transmission at various levels.
2.9.3 The Telecom Regulatory Authority of India Act

The Telecom Regulatory Authority of India Act, 1997 is otherwise known as the TRAI Act. The Act says that it is to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto. The modern electronic media is closely related to telecommunication and radio spectrum. 2(e) of the Act says that "Licencee" means any person licenced under sub .section (1) of section 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunication services. Hence the Indian Telegraph Act, 1885 becomes a part of TRAI. Similarly many of the electronic media include many of the activities mentioned in the telecommunication service. Section 2(k) of the TRAI Act says that "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audiotex services, videotext services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services.

Further the Act says that the words and expressions used and not defined in this Act but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy

---

223 Bharat Sanchar Nigam Limited and others v Telecom Regulatory Authority of India and others on (2003) http://indiankanoon.org/doc/814227/- last visited on 12-2-2013. Telecom Disputes Settlement Tribunal says that every dispute relating to radio waves shall be filed before TRAI. In this appeal was filed under Section 14A (a) of the Telecom Regulatory Authority of India Act, 1997 the appellants have challenged the directions issued by the Telecom Regulatory Authority of India (TRAI), issued under Section 13 read with Section 11(1) (b) of the TRAI Act. The directions, which have been issued by the TRAI, included that, under Section 29 of the Act, an offence is committed when a person violates directions of the Authority. Section 12(4) and Section 13 of the only provisions in the Act under the Authority can issue directions and violations of which would attract penalty under Section 29 of the Act. There is no requirement of law that before filing complaint under Section 29 Authority is to observe rules of natural justice though it may do so in its wisdom and give a show cause as to why action is not initiated under Section 29. In issuing the directions which are impugned before us Authority may be motivated with their desire to stimulate the service providers to comply with its orders and fulfill other requirements as contained therein. But then Authority is to act the provisions of the Act. Authority is not the final Arbiter and its directions, decisions or orders are subject to appellate jurisdiction of the Appellate Tribunal. Each case of infraction of the Orders/Regulations/ Determinations/Directions has to be dealt with separately by the Authority and the order passed thereof would be subject to appeal as provided under Section 14(a) (2) of the Act. The court was pleased to allow the appeals.

224 Even though the broadcasting services are specifically excluded in this section the majority of the electronic media activities including the mobile televisions are coming in this category.
Act, 1933, shall have the meanings respectively assigned to them in those Acts. Sections 3 to 11 say about the Telecom Authority of India. Section 11(1) says that notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to (a) recommend the need and timing for introduction of new service provider, (b) recommend the terms and conditions of licence to a service provider and (c) ensure technical compatibility and effective interconnection between different service providers. The remaining powers mentioned in the Act are specifically mentioning the telecommunication. The electronic media dispute according to TRAI can be classified to (i) technical compatibility and interconnections between service providers, (ii) revenue sharing arrangements between different service providers and (iii) quality of telecommunication services and interest of consumers.

Provided that nothing in this sub-section shall apply in respect of matters relating to (a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969, (b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986,(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885. Code of civil Procedure, 1908 is applicable to (a) summoning and enforcing the attendance of any person and examining him on oath, (b) requiring the

---

225 Arising out of Centre for Public Interest Litigation, Appellants and others v The Union of India and others, Respondents SLP (C) No. 24873 OF 2010. Feeling aggrieved by refusal of the Division Bench of the Delhi High Court to entertain the writ petition filed by them for a court monitored investigation by the Central Bureau of Investigation (for short, 'the CBI') or a Special Investigating Team into what has been termed as '2G Spectrum Scam' for unearthing the role of respondent No.5-Shri A. Raja, the then Union Minister for the Department of Telecommunications (DoT), senior officers of that department, middlemen, businessmen and others, the appellants have invoked the jurisdiction of this Court under Article 136 of the Constitution. After issue of notice by this Court on 13.9.2010, the parties have filed affidavits and large number of documents including performance audit report (draft and final) prepared by the Comptroller and Auditor General of India (CAG) on the issue of licences and allocation of 2G Spectrum by the Department of Telecommunications, Ministry of Communications and Information Technology for the period from 2003-04 to 2009-10, which has been submitted to the President of India as per the requirement of Article 151 of the Constitution, a compact disc allegedly containing conversation of Ms. Niira Radia with some public representatives, businessmen, journalists and alleged middlemen and written submissions.
discovery and production of documents, (c) receiving evidence on affidavits, (d) issuing commissions for the examination of witnesses or documents, (e) reviewing its decisions, (f) dismissing an application for default or deciding it ex parte (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte and (h) any other matter which may be prescribed.

2.9.4 The documents under the TRAI Act

TRAI was initially intended for telephones only.\textsuperscript{226} Hence the TRAI was related to telecommunication or phones. But a new phone as well as new television and radio are using the radio spectrum. At present all the regulations, notifications, directions etc. related to the electronic media are made by the TRAI. The examples for the documents made by the TRAI are as follows. The documents made by TRAI are given below. Some of the documents made by TRAI are related to the broadcasting. It is not according to the objectives of TRAI Act.

TRAI directions on Broadcasting and Cable Services

1) Direction to MSOs under Section 13 of the Telecom Regulatory Authority of India Act, 1997, for implementation of Digital Addressable Cable TV Systems (DAS). (25 Feb 2013.)

2) Direction to Local Cable Operators under Section 13 of the Telecom Regulatory Authority of India Act, 1997, for implementation of Digital Addressable Cable TV Systems (DAS). (25 Feb 2013)


\textsuperscript{226} M/S. Kansan Communications Pvt. Ltd v Telecom Regulatory Authority of India and others, Bombay High Court, Arbitration Petition No. 571 of 2008 and SLP Nos. 13305 of 2003 Decision pronounced in the year 2012. The TRAI Act says that any dispute relating to electronic media can be preferred for arbitration by the TRAI Appellate Tribunal. But that is subject to the jurisdiction of the Supreme Court. The order in the case were that (1) The impugned award dated 3rd September 2008, signed and validated on 18 September 2008, is quashed and set aside. (2) The matter is remanded back for re-hearing on all issues. (3) The parties to take steps for earlier hearing. (4) The learned Arbitrator to dispose of the matter expeditiously and (5) there shall be no order as to costs.
4) Direction regarding compliance of amended procedure for filing of details of interconnects agreements. (29 Jul 2009)

5) Direction regarding compliance of amended procedure for filing of details of interconnects agreements. (29 Jul 2009)

6) Direction to broadcasters for reporting of commercial tariff for CAS areas and Non–CAS areas. (28 Aug 2008)

7) Direction to modify the a-la-carte and bouquet rates for its channels. (28 Aug 2008)

8) Direction to modify Reference Interconnect Offer for Direct to Home platforms (24 Jun 2008)

9) Direction to modify Reference Interconnect Offer for Direct to Home platforms. (18 Jun 2008)

10) Direction on Tariff Order for Broadcasting and Cable Services (05 Jun 2008)

11) Amendment of Direction to all Broadcasters, Multi System Operators and Cable Operators – Standard Interconnection Agreements in CAS notified areas. (11 Jan 2008)

12) Direction for providing billing information to the consumers by the MSOs who possess valid permission granted by the Government of India. (15 Nov 2007)

13) Direction to M/s Ushodaya Enterprises Private Limited under section 13 and Show Cause Notice. (24 Sep 2007)


16) Direction to M/s ESPN Software India Private Limited (16 Apr 2007).

17) Direction under section 13 of the Telecom Regulatory Authority of India Act, 1999 (11 Jan 2007).

18) Direction to broadcasters for reporting of commercial tariff (22 Dec 2006).

19) Direction to Multi System Operators (MSOs) to provide cable services in notified CAS areas – Regarding Fortnightly Report (16 Nov 2006).


22) Direction to M/s ESPN Software India Private Limited (16 Apr 2007)


24) Direction to broadcasters for reporting of commercial tariff (22 Dec 2006)

25) Direction to Multi System Operators (MSOs) to provide cable services in notified CAS areas – Regarding Fortnightly Report. (16 Nov 2006)

**TRAI recommendations Broadcasting and Cable Services**


27) Recommendations on “Prescribing Minimum Channel Spacing, within a License Service Area, in FM Radio Sector in India” (19 Apr 2012);

28) Revised Recommendations of TRAI to the reference dated 18.05.2011 of the Ministry of Information & Broadcasting on recommendations of TRAI on Foreign Investment Limits for Broadcasting Sector (03 Jun 2011).


31) Recommendations on 3rd Phase of Private FM Radio Broadcasting-. response to the reference dated 27.01.2011, made by the Government (09 Feb 2011)

32) Recommendations on Implementation of Digital Addressable Cable TV Systems in India (05 Aug 2010)
33) Recommendations on Issues relating to Uplinking/ Downlinking of Television channels in India (22 Jul 2010)

34) Recommendations On Foreign Investment Limits for Broadcasting Sector (30 Jun 2010)


41) Interim recommendation on private fm radio broadcasting (06 Apr 2004)

42) Interim recommendations on conditional access system (CAS) (23 Feb 2004)


**TRAI consultations on Broadcasting and Cable Services**

44) Consultation Paper on Issues relating to Media Ownership (15 Feb 2013)

45) Consultation Paper on "Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems" (20 Dec 2012,


47) “Issues Related to Advertisements in TV Channels” (16 Mar 2012),

49) Consultation Paper on “Issues related to prescribing Minimum Channel Spacing, within a License Service Area, in FM Radio Sector in India” 08 Dec 2011.

50) Consultation Paper on Issues related to the Interconnection Regulation in Non-Addressable Cable TV Sector (27 Dec 2010)


52) Consultation paper on Issues related to Tariff for Cable TV services in CAS notified Areas (22 Apr 2010).

53) Consultation Paper on Interconnection and Tariff issues related to HITS services (06 Apr 2010).

54) Consultation paper on Tariff Issues related to Cable TV Services in Non.CAS Areas22 (06Apr 2010).


56) Consultation paper on foreign investment in Broadcasting Sector (15 Jan 2010).

57) Supplementary Consultation Paper on Tariff related issues for DTH services (24 Dec 2009).

58) Consultation Paper on DTH issues relating to tariff Regulation and new issues under reference from Ministry of Information and Broadcasting (06 Mar 2009).

59) Consultation paper on interconnection issues relating to Broadcasting & Cable Services (15 Dec 2008).

60) 01 Dec 2008, Consultation Paper on Quality of Service issues for Cable TV Services in Non.CAS Areas and for DTH Services.

61) Consultation Paper on Media Ownership (23 Sep 2008)

63) Consultation Paper on Restructuring of Cable TV Services (04 Mar 2008).
64) Consultation paper on foreign investment limits for broadcasting sector (03 Mar 2008).
65) Consultation paper on issues relating to entry of certain entities into broadcasting and distribution activities (25 Feb 2008).
67) Consultation Paper on issues relating to Mobile Television Service (18 Sep 2007)
68) TRAI seeks Consultation on Provisioning of IPTV Services (06 Sep 2007).
70) Consultation Paper on Issues relating to Tariff for Cable Television Services in Non.CAS areas (21 May 2007).
72) Consultation Paper on Revenue Sharing Formula for Service Providers in CAS notified areas (22 Jan 2007).
73) Consultation Paper on Tariff Order for CAS Areas (14 Jun 2006)
74) Consultation Paper on Licensing Issues relating to DTH (05 Jun 2006).
77) Consultation Note on some issues relating to Broadcasting and Cable Services (21 Mar 2006).
In spite of the fact that the TRAI says that the telecommunication alone is their concern and the electronic media is not their concern the above documents shows that they used to draft laws regarding the media also.

**2.9.5 The Broadcasting Regulatory Authority Bills**

Two attempts were made to regulate the electronic media. They were futile. The last was the broadcasting Services Bill 2007. The Bill said that the airwaves are public property and it is felt necessary to regulate the use of such airwaves in national and public interest, particularly with a view to ensuring proper dissemination of content and in the widest possible manner; Further the Broadcast media is a powerful purveyor of ideas and values and plays a pivotal role in not only providing entertainment but also disseminating information, nurturing and cultivating diverse opinions, educating and empowering the people of India to be informed citizens so as to effectively participate in the democratic process; preserving, promoting and projecting the diversity of Indian culture and talent. In addition to that the proposed law said that Government has issued guidelines from time to time for regulating the Broadcasting Services and it is felt necessary to give a statutory effect to these guidelines and provide for a comprehensive legislation; therefore this is a Bill. It was intended to promote, facilitate and develop in an orderly manner the carriage and content of Broadcasting. It was intended to provide for regulation of broadcasting services in India for offering a wide variety of entertainment, news, views and information in a fair, objective and competitive manner and to provide for regulation of content for public viewing and matters connected
therewith or incidental thereto and to provide for the establishment of an independent authority to be known as the Broadcast Regulatory Authority of India for the purpose of regulating and facilitating development of broadcasting services in India.

The Bill said that it was to encourage broadcasting services to be responsive to the educational, developmental, social, cultural and other needs and aspirations of people and include in their programming public service messaging and content. The major defect of the two BRAI Bills were that it was not concerned about the convergence of the broadcasting and new technologies in electronics.

2.9.6 Conclusion

The lex loci of India lack a comprehensive statute capable of regulating the electronic media. Just like a convention or practice the State has been retaining the monopoly over the electronic media and the necessity for a regulation over the media was not felt till recent years. The scenario has been 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 electronic media/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 electronic media 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. It is 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).”

In spite of the fact that the electronic media in India is developed in par with many of the developed countries the country lack an integrated and controlled regulatory system. The laws relating to the electronic media are too prosaic, insufficient or ineffective. Indian electronic media is largely depended on the

---

227 Secretary Ministry Of Information And Broad Casting 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
telecommunication system. Though some of its applied area is coming within the purview of common legislation like IPC, Contract Act etc a comprehensive Code to control media specific wrongs and crimes are a need of the day. The Electronic media Bill 1997 that was intended to meet all the needs the Electronic media regulatory system is still in the cold storage. In the form as it was drafted it has become inadequate due to the reason that innovations and technological advancements like convergence, Conditional Access System, Internet Protocol Television etc.

The electronic media environment is undergoing a drastic change. Any kind of regulatory institution on the electronic media must consider this fact. The pertinent question is whether flexible or a hard and fast system of regulation is suitable upon different variety of the electronic media. The regulations are generally implemented in the form of legal control. Such regulatory mechanism through law is an essential element of the sovereign authority. The regulations upon the electronic media are dependent upon legal, journalistic, artistic, cultural, moral and technological issues. Often the media issues are amalgamation of several types such categories.

The public electronic media by the State monopoly is gradually fading away in our country. This began with the introduction of the Cable Television. By the advent of the new categories of electronic media like Conditional Access System, (CAS), Direct To Home (DTH) television and Internet Protocol Television (IPTV) the dimensions of electronic media is changed in an unprecedented dimension. Technology will offer hither to unknown varieties of electronic media systems, which may involve the telecommunication system, the electronics, the intellectual properties etc. At the same time the basic principles relating to Fundamental rights of freedom of speech and expression and right to practice any profession, business or trade, general principles of human rights, consumer protection rights also will remain applicable. Another aspect of regulatory concern over the media is the growing practice of thrusting of economic hegemony of multinational companies is commercializing even the culture and civilization to a great extend. To ward off the unwanted effects of the electronic media programmes certain mechanism is to be chalked out.