Chapter – 3

AN ANALYTICAL ASPECT OF LAWS REGULATING ELECTRONIC MEDIA

BROADCASTING

"Broadcasting" means dissemination of any form of communication like signs, 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.¹

The burgeoning television audience is the result of broadcasting revolution of 1990s. Technological developments spurred by the satellite invasion have outpaced the law. Till, Telegraph Act of 1885 which is ill designed, is governing to tackle the challenges posed by the broadcasting revolution. Around 828 television channels cram the airwaves, but there is no organised and effective regulatory mechanism. In 1995, the honourable Supreme Court delivered the Hero Cup² judgement. The Apex court observed the lacuna in area of broadcasting regulation and directed the establishment of an autonomous broadcasting authority to control and regulate the broadcasting media.³ The Broadcasting Bill of 1997 was introduced in

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¹ The Prasar Bharati (Broadcasting Corporation of India) Act, 1990, Section 2(c)
² Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (1995) 2 SCC 161
³ Ibid., pp. 251-52.
response to this judgement but languished in parliament. The bill was to be replaced by the law on convergence, and Broadcasting Regulation which too, are yet to see the light of the day.  

**EVOLUTION OF BROADCASTING LAWS IN INDIA**

The earliest laws pertaining to wireless and radio broadcasting predated the formation of Government of independent India. The earliest enactment of significance was the Indian Telegraph Act, 1885. This Act gave power to Government to control the establishment, maintenance and working of wireless apparatus. “Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs.”

The Government’s continued monopoly over radio and television derives from this Act. This Act, as amended by Act 15 of 1961 defines

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5 Indian Telegraph Act, 1885, Section 4 reads:

Exclusive privilege in respect of telegraphs, and power to grant licenses:

(1) Within India, the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working:

(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above 13[India], or Indian territorial waters, and

(b) of telegraphs other than wireless telegraphs within any part of 14 India.

Explanation: The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendations made in this behalf by the Telegraph Regulatory Authority of India established under sub-section (1) of section 3 of the Telegraph Regulatory Authority of India Act, 1997 (24 of 1997).

(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of it its powers under the first proviso to sub-section (1). The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.
telegraph as “any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds for intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or hertzian waves, galvanic electric or magnetic means”.6 The expression ‘telegraph’ covers the generation of signals for telecasting.

Then, the Indian Wireless Telegraphy Act, 1933 was enacted to deal with the possession of wireless apparatus and radio receivers which were not covered by the Telegraph Act, 1885. The new Act made the possession of a radio set without a licence an offence.

Broadcasting was initially confined to Radio. The first radio service in the country was provided by the Indian Broadcasting company. It was started in 1927 and established its stations at Bombay, Calcutta and Lahore. In 1930, the broadcasting was placed under the direct control of the Government of India. A service designated as the Indian State Broadcasting Service began broadcasting. By the end of 1932, the British Broadcasting service began broadcasting to the Empire.7

In 1936, the Indian State broadcasting service came to be called the All India Radio. In 1937, All India Radio was transferred from the Department of Labour to the Department of Communications in the Government of India. In 1941, the Department of Information and

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6 Indian Telegraph Act, 1885, Section 3(1).
7 Madhavi Goradia Divan, Facets of Media Law 242 (Eastern Book Company, Lucknow, 2010).
Broadcasting came into being. After Independence, in 1947, it became the Ministry of Information and Broadcasting.

Before Independence, the British Government had decided to give the Governments of princely states the right to construct and use transmitters and to regulate and impose fees in respect of the construction and use of transmitters and receiving apparatus in the province or State.\textsuperscript{8} This attempt at decentralization seems to have been done away with at the time of independence after which the Government of India ensured that the broadcasting was closely controlled by the Central Government.

In 1950, Constitution of India came into force and freedom of speech and expression become fundamental right under Article 19\textsuperscript{(1)(a)}. After this Cinematograph Act, 1952 came into force, bringing into place an apparatus for the censorship of films.\textsuperscript{9} This Act of 1952, dealt with two separate matters:

(a) The examination and certification of films suitable for public exhibition, and

(b) Regulation of cinemas including their licensing.

The Act of 1952, was enacted in order to provide a clear demarcation between the provisions which concern the sanctioning of films for public exhibition\textsuperscript{10} and provisions relating to licensing and regulation of films.\textsuperscript{11} The Act created the Censor Board or the Board of

\textsuperscript{8} The Government of India Act, 1935, Section 129.
\textsuperscript{9} The Cinematograph Act, 1918 has been in force upto this time.
\textsuperscript{10} The Constitution of India, 1950, Seventh Schedule, Union list, Entry 60.
\textsuperscript{11} The Constitution of India, 1950, Seventh Schedule, State list, Entry 33.
Film Certification.\textsuperscript{12} Any film intended for public exhibition was required to get a certificate from the Board sanctioning the film for restricted or unrestricted viewing. The guiding principles for certification of films under the Act are an echo of the restrictions under Article 19(2).\textsuperscript{13}

Since 1959, television was confined to Delhi and was extended to Bombay only in about 1972. In 1973, before television had reached the major cities in India, it was extended to Srinagar and Amritsar which were close to the border. This was an attempt to counter the influence of Pakistani television which was already accessible in those sensitive border areas. Soon 250 television receivers were put into villages in the Kashmir Valley. Television was used to project the Government’s viewpoint on social and political issues.\textsuperscript{14}

During the Emergency in 1975 there was gross abuse of television by the Government. This led to a political demand for the autonomy of television. After the emergency ended, the country’s first non-congress Government commissioned a white paper titled “White Paper on the Misuse of the Mass Media during the Emergency” This was presented to parliament in August 1977 and around the same time in 1977, a working group was constitute to look into autonomy for Akashvani and Doordarshan with in the Government framework.

\textsuperscript{12} The Cinematograph Act, 1952, Section 3.

\textsuperscript{13} The Constitution of India, 1950, Article 19(2), Sovergnity, Integrity of State, Security of State, Public Order, Friendly relations with foreign states Decency and morality, Defamation, Contempt of Court, Incitement of offence.

\textsuperscript{14} Supra n. 7, p. 243.
This was the first concerted effort at broadcasting reform in India. The committee proposed the setting up of a trust named Akash Bharati or the National Broadcasting Trust. The Akash Bharati Bill declared that the trust was to be the “trustee of the national interest for radio and television and shall uphold the collective right of the Indian people to freedom of speech, expression and communication through broadcast media.” This Bill was introduced in Parliament but lapsed after the dissolution of Lok Sabha in 1979. The Indira Gandhi Government which returned to power in 1980 rejected this bill on the ground that “such an organisation is not considered necessary to enable those mass media to discharge their basic objective of serving people who are not served by other media.”

In May 1982, the Ministry of Information and Broadcasting issued a document called ‘New Policy for Broadcast Media’. This was the product of an advisory committee headed by G. Parthasarathi which made recommendations on the restructuring of various media organisations. The guidelines covered news selection and presentation, political coverage, statements and rejoinders, strikes, riots and disturbances, sex and crime, national calamities, deaths and anniversaries, external news, subversion and insurgency, comments, opinions, speculation and rumour. These guidelines are followed even today.

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In 1989, non-congress minority Government resurrected the idea of Akash Bharati. A bill called Prasar Bharati was introduced in Parliament in 1989. Prasar Bharati was envisaged as a corporation governed by a board of governors. The object was quite similar to that of Akash Bharati. However, the draft dropped the clause promising to ‘uphold the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a).’ It also dropped the clause pledging to uphold the impartiality, integrity and autonomy of broadcasting in the country. The bill that was eventually passed in 1990 was different from what was originally envisaged. It incorporated a parliamentary committee to oversee the functioning of the corporation and required the committee to submit a report on its working to parliament. This was a 22 member committee, 15 from Lok Sabha and 7 from Rajya Sabha. This measure was widely perceived as diluting the corporations autonomy. Primary duty of the corporation to organise, and conduct public broadcasting service, to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.\(^{16}\)

In the early 1990s, Doordarshan found itself overtaken by technological developments. For all its tight control, Doordarshan was unable to contain the onslaught from the skies. The satellite invasion began during the Gulf War when hotels showed CNN coverage of the war and private entrepreneurs sprang up in residential areas offering

\(^{16}\) Supra n. 1, Section 12(1).
cable connections linked to a rooftop dish antenna. International Satellite television dramatically transformed the broadcasting arena in the country with in a few months of the Gulf War. The Hong Kong based star television started broadcasting channels in India using the ASIASAT – one satellite. By early 1992, close to half a million homes were receiving star television telecast. By 1995, about 13 million homes were receiving cable & satellite channels.\textsuperscript{17}

\textbf{ACTS REGULATING ELECTRONIC MEDIA}

\textbf{1. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990}

This Act aims at bringing the Government electronic media under the control of an autonomous organisation. With the formation of the autonomous Broadcasting Corporation of India, AIR and Doordarshan became free from, the control of Government. Justice B.P. Jeevan Reddy, said in his landmark judgement in case of Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal,\textsuperscript{18} that the broadcasting media would be under the control of the public as distinct from Government. That means, instead of the politicians and bureaucrats controlling the broadcasting of information and other programmes of the radio and TV, an autonomous corporation would conduct the functioning of the media. The goal was to bring the functioning of the electronic media in line with the best in the world by giving the media freedom and scope

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  \item \textsuperscript{17} Supra n. 7, p. 245.
  \item \textsuperscript{18} (1995) 2 SCC 161.
\end{itemize}
for creativity. The honourable Supreme Court observed that the airwaves or frequencies for transmission of electronic communication are public property and should not be the monopoly of the Government or anybody else. The Supreme Court wanted the use of the frequencies to be controlled and regulated by a public authority in the interest of public. The Court further held that air waves are utilised to advance free speech of citizens and selectively of the powerful and the influential.

**Salient features of Prasar Bharati (Broadcasting Corporation of India) Act, 1990**

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 came into existence in September 1990 and came into force with effect from 15th September 1997. The Act sought to free Akashwani (All India Radio) and Doordarshan from direct control of the Government and provides for establishment of an autonomous corporation for electronic media.

The Act established a Broadcasting Corporation of India that is known as Prasar Bharati. The Act gave perpetual succession and common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, and shall by the said names sue and be sued to the corporation.

The General superintendence, direction and management of affairs of the Corporation rests in The Prasar Bharati Board.
The Board shall consist of:

(a) A Chairman
(b) One Executive Member
(c) One member (Finance)
(d) One member (Personnel)
(e) Six Part – Time Members
(f) Director-General (Akashvani), Ex-officio
(g) Director-General (Doordarshan), Ex-officio
(h) One representative of the Union Ministry of information and broadcasting, to be nominated by that Ministry.

(i) Two representative of the employees of the corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by other employees from amongst themselves.

The chairman and the part-time members shall be persons of eminence in public life; the Executive member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism, the member (finance) shall be a person having special knowledge or practical experience in respect of financial matters and the member (personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration.20

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19 Supra n. 1, Section 3(5).
20 Ibid., Section 4(3).
Section 9 of the Act says subject to such control, restrictions and conditions as may be prescribed by the Government, the corporation may appoint, after consultation with the recruitment board, the director-general (Akashvani), the director-general (Doordarshan) and such other officers and other employees and all other matters connected and the conditions of service of such officer and employees shall be such as be provided by regulations.\textsuperscript{21}

The corporation shall subject to the Government regulation and restrictions appoint recruitment boards consisting of persons other than the members, officers and other employees of the corporation.\textsuperscript{22} However to appoint people to the pots carrying scales of pay which are not less than that of a joint secretary to the Central Government, the recruitment board shall consist of chairman, other members, the ex-officio members, the nominated members and the elected members. The qualification and other conditions of service of the members constituting the recruitment board and the period for which such members shall hold office, shall be such as may be prescribed.\textsuperscript{23}

**Powers and functions**

The Act lays down the powers and functions of the corporation. The corporation is to ensure the public good and is to keep the interest of the citizens in mind while discharging its functions.\textsuperscript{24}

\textsuperscript{21} Supra n.1, Section 9(2).
\textsuperscript{22} Ibid., Section 10 (1).
\textsuperscript{23} Ibid., Section 10 (2).
\textsuperscript{24} Ibid., Section 12.
Parliamentary committee

Section 13 of the Act provides that it consist of 22 members of parliament (15 from Lok Sabha + 7 from Rajya Sabha). The function of the committee is to ensure that the corporation discharges its functions properly in accordance with the objectives set out in section 12. The committee is to submit a report for its evaluation to the parliament.

Broadcasting council

The broadcasting council is to receive and consider the complaints under Section 15 and to further advise the corporation in discharge of its functions. The council is to consist of a president and 10 other members (to be appointed by the president) from persons of eminence in public life.25

Complaints redressal scheme

Section 15 of the Act says broadcasting council shall receive and consider complaints from any person or groups of persons who allege that a certain programme or broadcast or the functioning of the corporation is not in accordance with the objective of the corporation. Further, any person who claim that they have been unjustly treated by the corporation in connection with any programme broadcast may also complain. This also includes unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity. Neither the officer

25 Supra n. 1, Section 14(2)(i).
nor the employee of the Prasar Bharati can complain under this provision. The broadcasting council shall follow the procedure that it deems fit for the disposal of the complaints. If council feels that the complaint is justified wholly or partly, then it shall advise the executive member to take necessary action. If the executive member does not agree with recommendations of the council then that shall place the same before the board for its decision thereon. If the board is also unable to accept the same recommendations then it shall record its reasons and inform the council accordingly.

**Financial support from government**

Section 17 empowers the Government to give financial assistance to the corporation in discharge of its functions. The Central Government after due appropriation made by parliament by law in this behalf, pay to the corporation, the proceeds of the broadcast receiver license fees, if there is any, as reduced by the collection charges; and also such other monetary assistance as the Government may deems necessary by way of equity, grant in aid or loan; in each financial year.

Section 18 of the Act states that the corporation may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of fund of the corporation. The Act also requires for the statement of programmes of activities and financial estimates to be submitted to Central Government for its approval.
Directions of central government

Section 23 of the Act gives the power to the Central Government to issue directions to the corporation, in the interest of the sovereignty, unity and integrity of India or the security of the state on preservation of the public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction.

Section 24 allows the Government to obtain from the corporation any information that is considered necessary.

Report to parliament and action against the board

If the Prasar Bharati Board persistently fails to comply with the directions issued under Section 23 or fails to supply the information required under Section 24 then the Central Government may prepare a report and lay it before each house of parliament for any recommendations as to any action which may be taken against the board. The action referred to in this provision may include the supersession of the Board also. The President may, on the recommendation of the Parliament supersede the board for a period that should not exceed six months. This should be done by issuing a notification.

Rule making power

Section 32 gives power to the Central Government for fixing the salaries, allowances and conditions of services of members of corporation. Central Government may make rules for the appointment of officers, other employees & the recruitment board.

26 Supra n. 1, Section 25.
**Recommendations for a change in television policy in India**

Some important recommendations have been articulated by various high power committees appointed by Indian Government in last 5 decades:\(^{27}\)

- Genuine autonomy for Parsar Bharati Board.
- Guaranteed funding for public service programming on Doordarshan.
- A legal and transparent framework to assist competition and growth of television industry at national, regional & local levels.
- Encourage competition among multiple networks and their channels.
- Universality of access that it should be available to all citizens in the country.

**Autonomy of Prasar Bharati Board as explained by the Supreme Court:**

Justice B.P. Jeevan Reddy ruled in the *Hero Cup* Case\(^ {28}\)

“Diversity of opinion, views, ideas and ideologies is essential to enable citizens to arrive at informed judgement on all issues touching them. This cannot be provided by a medium controlled by monopoly whether of the state or any other industrial group or organisation. The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1)(a) of the constitution”.

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\(^{27}\) Available at: www.ddindia.gov.in. (Visited on Oct. 12, 2012).

Justice P.B. Sawant said, “The airwaves are the public property... A citizen has a fundamental right to the best means of importing and receiving information and such to have access to telecast for this purpose.”

The Supreme Court held that the State monopoly on electronic media was not mentioned in clause (2) of Article 19 and not on any other ground. The court directed the Government to set up an independent autonomous broadcasting authority which will free Doordarshan and Akashvani from shackles of Government control and ensure conditions in which the freedom of speech and expression can be meaningful and effectively enjoyed by one and all.

In this case29 the Government contended that it had monopoly on telecasting under Section 4 of the Telegraph Act 1885. The word “Telegraph” includes telecast. As the Cricket Association of Bengal (CAB) and Trans World International did not obtain licence or permission under Section 4, it was contended that, they had no right to telecast the matches from any place in Indian territory. The CAB argued that the cricket was a form of expression through which the public entertainment was provided and thus entitled to unrestricted telecast of entertainment under Article 19(1)(a) of the constitution.

The Calcutta High Court held that “right to free speech and expression guaranteed under this Article includes the right to telecast

29 Supra n. 28.
and broadcast the matches and this right belongs to the organizers which cannot be interfered with anyone. The organiser is free to choose any agency for this purpose.”

The Supreme Court confirming the order of Calcutta High Court, held that the fundamental right to freedom of speech and expression includes the right to communicate effectively, and to large population not only in this country but also abroad. There are no geographical barriers on communication. A citizen has a fundamental right to use the best means of imparting and receiving communication and as such have an access to telecasting for this purpose. The electronic media i.e. the Radio and TV being the most effective communication systems, and airwaves being the property of the general public, they should be utilised for public purpose.” Justice Jeevan Reddy suggested the amendments to the Telegraph Act, 1885 keeping in view of modern technological developments in the field of information and communication.

**Criticism of Prasar Bharati legislation**

It was criticised as a true representation of the idea of Verghese Committee. B.G. Verghese wanted a broadcast trust enshrined in the Constitution. The bill was criticised to be the caricature of the real concept because instead of bureaucratic control, there will be endless interference by legislators in the name of parliamentry control.
Analytical aspect regarding Prasar Bharati (Broadcasting Corporation of India) Act, 1990

Though Prasar Bharati Broadcasting corporation is called as autonomous body, but it is controlled by three-tier system.

1) The Broadcasting council

2) Parliamentary Committee and

3) The Central Government

1) The Broadcasting Council : It will receive complaints regarding programmes functioning of the corporation and staff members and advise the corporation suitably in discharge of its functions in accordance with the objectives set out in Section 12.\textsuperscript{30}

The Broadcasting Council is like the ombudsman or the Lok Pal or Lok Ayukta to oversee the performance of the corporation. It not only adjudicates on the complaints received but also advises the best how to carry out its objectives and aims. It is a body that is functionally higher than the Board of Directors. It should, therefore, be composed of men proven integrity and credibility, well known for their judicious and balanced approach to problems. The Act, however, does not lays down any suitable criteria for the appointment of these people. Also this council should be smaller in size with lesser members.\textsuperscript{31} The Broadcasting council should outride the jurisdiction

\textsuperscript{30} Supra n. 1, Section 14.

of the Prasar Bharati like a court or tribunal. The decision of the council should be mandatory and should be broadcasted over the media along with the stand taken by the corporation, as this will enable the public to make their own judgement and would ensure transparency.\(^32\)

2) Parliamentary Committee: To oversee that the corporation discharges its functions in accordance with the provisions of the Act there is a Parliamentary Committee consisting of twenty-two members of parliament, of whom fifteen from House of the people to be elected by members there of and seven from the Council of States to be elected by the members in accordance with the system of proportional representation by members of single transferable vote.\(^33\)

“As the Committee would be dominated by the members of the ruling party – The party wise representation would be in proportion to its strength in each house, it in effect means “accountability” to the Government of the day”, With this jumbo size committee breathing down the neck of the corporation, it is unrealistic to assume that the corporation can ignore such sensitives.\(^34\)

“It is wrong to say that there will be no parliamentary control. Prasar Bharati will be under parliamentary scrutiny. When the Act was passed in 1990, there was no system of parliamentary standing committees to scrutinize the budget and functioning of various

\(^{32}\) Supra n. 31, p. 441.  
\(^{33}\) Supra n. 1, Section 13.  
\(^{34}\) Supra n. 31, p. 438.
ministries. But now there are two such committees. Two committees looking into the work of Prasar Bharati, would have meant harassment, and if they made contradictory recommendations there would be confusion which committee has precedence. Such a committee makes the life of the Mandi House officials difficult who have to accommodate the whims and fancies of parliamentarians also.

3) The Central Government: It can issue instructions to the corporation to make or not to make a particular broadcast, whenever such an instruction is called for in the interest of security, sovereignty, unity and integrity of India.36

So all these three provisions (Broadcasting council, Parliamentary committee and Central Government) will not be in tune with the objective of providing an autonomy to the electronic media and they are uncalled for. Besides this, the corporation was also made answerable to parliament. The members would be eminent persons in public life, but they also will be under control of the Central Government as the Government can instruct what item should be inserted or deleted in the programme.37

Even the President, while appointing his nominee on the selection committee constituted for selecting the members (1-10) of the board, is to go by the advice of the Government. It means there is

35 Reason given for scraping of Parliamentary Committee by Mr. Jaipal Reddy, Minster for Information & Broadcasting.
36 Supra n. 1.
37 Supra n. 31, p. 430.
direct interference by the Government in the selection of members of board. Even the semblance of autonomy as visible in these provisions in the constitution of the three-tier control mechanism, will surely disappear and autonomy becomes a distrustful and suspicious word as the new minister for Information and Broadcasting wanted the total Government control over the Doordarshan for the sake of balance.

Executive member of the Board shall be the chief executive of the corporation and shall, subject to the control and supervision of the Board, exercise such powers and discharge such functions of the Board as it may delegate to him.\textsuperscript{38} Though, the executive member should be eminent professional expert in relevant disciplines, yet the only criterion that has been laid down for the appointment of the chairman is “Eminence in public life”. “In India, today, the phrase “Eminence in public life” is not always a guarantee for integrity, maturity or commitment to national interest”\textsuperscript{39}

There are provisions regarding the Chairman and the Executive members of corporation\textsuperscript{40} But the Act does not address the issue of the conflict in the positions of the Chairman and the Executive members who is supposed to be the Chief Executive also and to whom the DGs are subordinate. The entire board of Governors needs to be constituted with part time experts and the Chief Executive should be answerable to them.\textsuperscript{41}

\textsuperscript{38} Supra n. 1, Section 5.
\textsuperscript{39} Supra n. 31, p. 436.
\textsuperscript{40} Supra n. 1, Section 4.
\textsuperscript{41} Supra n. 31, p. 437.
Section 17 of Prasar Bharati (Broadcasting Corporation of India) Act, 1990 provides grant by Central Government. But autonomy of DD and AIR is not possible merely by creating a fund for them. Financial independence alone will help quality information and entertainment programmes. Doordarshan should be able to sustain itself out of its own income both for current expenditure and investment needs and should depend on the Government occasionally. Only then can they get the functional autonomy that they are out to achieve. Today, they do generate revenues for themselves largely but, to some extent are still dependent on the Government.\textsuperscript{42}

Section 18 provides that the corporation shall have its own fund. It is imperative that media’s autonomous functioning should not be dependent on funding. And funding should not in any way eclipse, imperial or dictate the corporation’s activities or programmes. If the Central Government exercises financial control over the electronic media then the whole autonomy that is envisaged will go to dogs.

Under Section 32, Government make rules together with restrictions and conditions and the recruitment board with non-professional members who know nothing about the media, recruit the staff. The provisions of recruitment boards outside the corporation should not go and this job should be left to the creative staff.

Section 32(2)(1) is a very vast provision and also the most dangerous which allows the Central Government to make rules with

\textsuperscript{42} Supra n. 31, p. 441.
regard to any other matter that it considers necessary. It is necessary to leave such matters to the board and not be meddled with by the Central Government. If the Central Government starts meddling with these matters also, then the whole concept of autonomy is a facade created to pacify our demands for media autonomy.

In nut shall, it can be concluded that the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 mainly deals only with the structure of the corporation and silent on the vital aspect of giving kind of autonomy. It is assumed that by providing a detailed structure for the governance of the corporation the interference from the executive and political bosses would be avoided, which itself would ensure the self decision process. The corporation should also rules over the private broadcasters. If a private channel is found violating the programme code then it can be even taken to the court for the same. Scope of Prasar Bharati is limited and confined only to Radio and Doordarshan. The Doordarshan which was once a sole medium that has the widest access with people spread over nook and corner of the country. But with the advert of numerous satellite and private channels it has lost much of its shine, because of more powerful players entering the fray. But the Doordarshan still remains a biggest terrestrial net work in India and still has scope to improve its market and develop as a formidable competitor to any counter part provided it assumes professionalism in its functioning and operations. The Government media belongs to people in general. It is the constitutional obligation of the State to secure the public interest in it.
2) The Cinematograph Act, 1952

The Cinematograph Act, 1952 has been passed to make provisions for certification of cinematographs films for exhibition and for regulating exhibition by means by cinematographs.\(^{43}\) Under the Act there is provision for constitution of a Board called the board of film certification by the Central Government.\(^{44}\) The function of the board will be to sanction the films for public exhibition. The board may after examining the film with the help of advisory panels at regional centers either sanction the film for unrestricted public exhibition,\(^{45}\) or may sanction the film for public exhibition restricted to adults only\(^{46}\), or it may sanction the film for public exhibition restricted to members of any profession or any class of persons keeping into account the nature, content and theme of the film.\(^{47}\) The board can also direct the applicant to carry out such excisions or modification in the film as it thinks necessary before sanctioning the film for public exhibition.\(^{48}\) The board can even refuse to sanction the film for public exhibition.\(^{49}\)

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\(^{43}\) In *Samnat Video Parlour v. State of Haryana*, AIR 1993 SC 2328. "Cinematograph" includes VCR/VCP/TV projector as the said equipments achieve/serve the same purpose as the traditional media for exhibition of moving pictures. It must be so interpreted to take into account new and subsequent scientific developments in the field as it cannot be confined to traditional interpretation of such apparatus or simply compartmentalised. Hence, licence is necessary to carry on business of running a video parlour.

\(^{44}\) The Cinematograph Act, 1952, Sec. 3.

\(^{45}\) *Ibid.*, Sec. 4 (i).

\(^{46}\) *Ibid.*, Sec. 4 (ii).

\(^{47}\) *Ibid.*, Sec. 4 (iia).

\(^{48}\) *Ibid.*, Sec 4 (iii).

\(^{49}\) *Ibid.*, Section 4 (iv).
If Central Board of Film Certification (CBFC) refuses to sanction a film for exhibition then such film cannot see the light of the day. It is a serious blow to the freedom of speech and expression but there are certain safeguards also in the Act to minimise the misuse of the Act. While examining the film the CBFC can refuse to certify a film on the grounds enumerated under Section 5 B(1) of the Act.\textsuperscript{50}

Further under Section 5 B(2) of the Act, the Central Government is empowered to issue such directions as it think fit to guide the authority competent to grant certificate. Consequently the Central Government issued following guiding principles.\textsuperscript{51}

The objective of film certification will be to ensure that:

- The medium of film remains responsible and sensitive to the values and standards of society;
- Artistic expression and creative freedom are not unduly curbed.
- Certification is responsive to social changes.
- The medium of film provides clean and healthy entertainment.

In pursuance of the above objectives, the board of film certification shall ensure that:\textsuperscript{52}:

- scenes showing involvement of children in violence as victims or as perpetrators or as forced witness to violence, or showing

\textsuperscript{50} The Cinematograph Act, 1952, Section 5B(1) a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the authority competent of grant the certificate the film or any part of it is against the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence.

\textsuperscript{51} S.O. 836(E) of Government of India, Ministry of Information and Broadcasting, on 6th Dec., 1991.

\textsuperscript{52} Guidelines for certification of films for public exhibition, 1991.
children as being subjected to any form of child abuse be deleted;

- human sensibilities are not offended by vulgarity, obscenity or depravity;
- scenes degrading or denigrating women in any manner are not presented.
- visuals or words contemptuous of social, religions or other groups are not presented.
- visuals or words involving defamation of an individual or a body of individual on contempt of court are not presented.

The board of film certification shall ensure that the film:

- is judged in the entirety from the point of view of its overall impact; and
- is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provided that the film does not deprave the morality of the audience.

**Central board of film certification** : Popularly known as the Censor Board, is a Government’s regulatory body. It is controlled by Ministry of Information and Broadcasting. It reviews, rates and censors movies, television shows, television advertisement and promotional material. It regulates the public exhibition of films in India under the provisions of
the Cinematograph Act, 1952. Films can be publicly exhibited in India only after the certification by the board. The CBFC currently issues the following certificates:

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>U</td>
<td>Universal</td>
<td>All ages admitted, there is nothing unsuitable for children. Films under this category should not upset children over 4 years.</td>
</tr>
<tr>
<td>U/A</td>
<td>Parental Guidance</td>
<td>All ages admitted, but certain scenes may be unsuitable for children under 12 years.</td>
</tr>
<tr>
<td>A</td>
<td>Adults only</td>
<td>Only adults are admitted, no body younger than 18 can rent or buy an 18 rated VHS, DVD, Blu-ray Disc, UMD or game, or watch a film in the cinema with this rating. Films under this category do not have limitation on the bad language that is used. Hard drugs are generally allowed, and strong violence or sex references along with non-detailed sex activity is allowed.</td>
</tr>
<tr>
<td>S</td>
<td>Restricted to any special class of persons</td>
<td>This rating signifies that the film is meant for a specialised audience, such as doctors.</td>
</tr>
</tbody>
</table>
The Honourable Supreme Court in *K.A. Abbas v. Union of India*\(^5^3\) observed "Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have strong impact on the minds of viewers and can effect emotions. Therefore it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or good behaviour. It cannot be equated with other modes of communication. Censorship by prior restraint, is therefore, not only desirable but also necessary."

Analytical aspect regarding the Cinematograph Act, 1952: Section 7-F of the Act provides for bar of legal proceedings against the Central Government, tribunal, the board, advisory panel or any officer or member of the above mentioned bodies in respect of anything which is done in good faith or intended to be done in good faith under the Act. Taking the benefit of this provision the authorities may misuse and harass the film producers.

Similarly Section 13 of the Act empowers Central Government of local authority to suspend the exhibition of a certified film without giving opportunity of being heard to the aggrieved party and from that date the film shall be deemed to be uncertified film. It is gross violation of principles of natural justice.

\(^{53}\) (1970) 2 SCC 780.
‘S’ certificate misused: Smart film distributors have quickly moved in to exploit the new classification of ‘S certificate’ which was introduced in 1983 under the cinematograph (certification) Rules, 1983. Under this certificate a movie has been passed for strictly restricted showing to a specialised audience such as doctors, engineers, architects, scientists and academics. Some films are imported from East block, America and European markets. Some alter distributors saw an opportunity to import out-and-out blue films. With the alleged connivance of certain bigwigs in the Ministry of Information and Broadcasting and Central Censor Board Bombay, these films were brought in under S Certificate and sold to highest bidders.54

The Cinematograph Act, 1952 completely missed out one thing, the obscenity contained in the lyrics of film songs. Filmmakers desperate to compete with opening sky which did not brook censorship, tried to compensate with sound, what they were not allowed to do through visuals. Sound here, meaning song lyrics, which they hoped, would be overlooked by the members of CBFC.

CBFC – What purpose does it serve? : The only job of the glorified members of the CBFC is to attend a general body meeting, may be once year. Although the Act stipulates quarterly meetings but due to shortage of funds, it is not taken seriously. The chairman, mostly a busy bollywood personalities, hardly sets time for such silly jobs. The

54 Available at: www.cscsarchive.org (Visited on June 27, 2012).
chairman is always asked to sign on dotted lines by the Regional officer at Mumbai, who is a Indian Information Service (IIS) Cadre officer accountable to the ministry. The I&B ministry appoints an advisory panel from a cross section of the society. The Advisory panel members play a very curious role while watching film as members of the Examining Committee. Election Commission also includes the Regional officer who is convener of the committee and it is his words which goes as the unanimous view of Election Commission. He dictates the comments to be entered in the relevant form and the Election Commission members write down as such. There is no individual application of mind. If there is a difference among the Election Commission members, the decision has to be referred to the chairman and it may take weeks or months which a producer can not put up with. Now the question is what is the great contribution of the hallowed members of the CBFC to quality of cinema?55


It is law relating to labour welfare. This law is enacted and enforced by Central Government. This Act provides for levy and collection of a cess on feature films. Sometime cine artists who enthralled the populace with their creative talents had fallen into distress. In order to provide assistance in cases of extreme hardship, it

is proposed to establish a welfare fund to promote the welfare of certain cine-workers. For this purpose, it is proposed to levy, as a cess, a duty of excise at the rate of one thousand rupees on every feature film which is certified for public exhibition under Section 5A of the Cinematograph Act, 1952. This duty of excise to be levied shall be in addition to any cess or duty leviable on the cinematograph films under any other law for the time being in force.

The duty of excise is required to be paid to the Central Government by the producer of the feature film on or before the date on which he makes an application for certificate under section 4 of the Cinematograph Act, 1952. Penalty for non-payment of duty of excise is upto fifty rupees for every month.\textsuperscript{56} Any amount due under the Act including the penalty is to be recovered by the Central Government as an error of land revenue.\textsuperscript{57}

**Analytical aspect regarding the Cine-workers welfare cess Act, 1981 :**

The Amount of levy, cess and excise duty is very less in today’s date. Even the penalty for non-payment of duty of excise is very low. So the Act should need a drastic change by amendment.


The Act was framed for the welfare of cine-artists by the Central Government. Earlier to this Act, there was no legislation for poor cine-

\textsuperscript{56} The Cine-workers Welfare Cess Act, 1981, Section 7.
\textsuperscript{57} *Ibid.*, Section 8.
artistes. There are many cases where artists won great fame and recognition, but dare to changes in styles, trends & their ages, they fall in poverty & distress. So helping them in such poor situations welfare measures are taken. Welfare fund under the Act is intended to provide assistance to cine-workers and to give benefit of such schemes to cine-artistry and to give benefit of such schemes to cine-artistics. Central Government may Constitute Advisory Committees for administration of these funds.

Assistance is given in the form of grants and loans to indigent cine-worker. Money is sanctioned out of welfare fund for aiding any scheme for the welfare of cine-workers including family welfare, family planning, education and services. Fund is also used to defray the cast of welfare measures on facilities for benefit of cine-worker.58


This is an Act to provide for the regulation of the conditions of employment of certain cine workers and cinema theatre workers. Cine workers means an individual who is employed, directly or through any contractor or other person, in connection with the production of a feature films to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise.59

59 The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981, Sec. 2(c).
The existing labour laws in India do not provide necessary safeguards to low paid artists and technicians engaged in the production of 'feature films'.\textsuperscript{60} Earlier to the framing of this Act, there were no provisions with regard to the terms and conditions of employment, payment of wages and provision of other amenities of these cine-workers.

Employees of cinema theatres are generally not provided with facilities such as gratuity and provident fund. This Act provides that every producer of a feature film will be required to enter into a written agreement with the cine-workers, before engaging him. Such agreement shall be registered with the competent authority provided by Central Government by notification in official gazette to perform all such functions. If the worker is entitled to the benefits of provident fund, a copy of such agreement should also be deposited with the Concerned Regional Provident Fund Commissioner.\textsuperscript{61}

When a dispute arises between cine-worker and producer of film, relating to terms and conditions or termination of employment of such cine-worker, it is settled by the conciliation officer appointed by the Central Government.\textsuperscript{62} The settlement arrived at in conciliation proceedings shall be binding on all the parties and shall not be called in question in any court.

\begin{itemize}
  \item \textsuperscript{60} \textit{Supra} n. 59, Section 2(f), 'feature film' means a full length cinematograph film produced wholly or partly in India with a format and a story woven around a number of characters where the plot is revealed mainly through dialogues and not wholly through narration, animation or cartoon depiction and does not include an advertisement film.
  \item \textsuperscript{61} \textit{Supra} n. 59, Section 3.
  \item \textsuperscript{62} \textit{Ibid.}, Section 4
\end{itemize}
If the parties fail to arrive at a settlement before conciliation officer, then the Central Government may refer the dispute to single member cine-worker Tribunal. The decision of Tribunal is final, subject to revision by High Court.

So the object of the legislature is to give protection to cine-workers against exploitation as regards the terms and conditions of employment.

6) The Cable Television Networks (Regulation) Act, 1995

Statement of Objects and Reasons: Signals of foreign television networks via satellite results into haphazard growth of cable television networks. The programmes available on these satellite channels were mainly western and totally alien to Indian culture. Programmes and advertisements were available to the viewers without any kind of censorship. Cable operators and cable network subscribers were not aware of their rights, responsibilities and obligations in respect of quality of service, content, copyrights, exhibition of uncertified films, anti-national broadcasts and programmes which are in violation of Cinematograph Act, 1952, The Copyright Act, 1957, Indecent Representation of Women (Prohibition) Act, 1986. Therefore to check the exploitation of this technology, which provides information & entertainment, and to regulate cable Television network in the entire country, this Act was framed.
Prior to the enactment of the Cable Television Networks (Regulation) Act, 1995, the cable industry had been completely unorganized and unregulated. The Act was intended at curbing a perceived 'cultural invasion' by regulating the content of the programmes being telecasted and by providing some accountability from cable operators. The Act provides for the mandatory registration\(^\text{63}\) for all cable operators.\(^\text{64}\) The Act confines itself to the regulation of cable operators and does not extend to broadcasters, with the result that broadcasters remain unaccountable under this legislation.\(^\text{65}\) There is no power under the cable Act to take action against television channels or broadcasters but only cable operators are covered under it.

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\(^{63}\) The Cable Television Networks (Regulation) Act, 1995, Section 3.  
Section 3, Cable Television Network not to be operated except after registration: No person shall operate a cable television network unless he is registered as a cable operator or under this Act: 
Provided that a person operating a cable television network, immediately before the commencement of this Act, may continue to do so for a period of ninety days from such commencement; and if he was made any application for registration as a cable operator under Section 4 within the said period, till he is registered under that section or the registering authority that Section.  
The Cable Television Networks (Regulation) Act, 1995, Section 4.  
Section 4, Registration of Cable Operator  
(1) Any person who is operating or is desirous of operating a cable television network may apply for registration as a cable operator to the registering authority.  
(2) An application under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.  
(3) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information and on being so satisfied, register the applicant as a cable operator and grant to him a certificate of such registration: 
Provided that the registering authority may for reasons to be recorded in writing and communicated to the applicant, refuse to grant registration to him if it is satisfied that he does not fulfil the conditions specified in clause (e) of Section 2.  

\(^{64}\) Section 2(aa) of the Act defines 'cable operator' as 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.  

\(^{65}\) The down linking Guidelines issued by Ministry of information and Broadcasting, Government of India in 2005 seeks to bind broadcasters to certain provisions of the Cable Television Networks (Regulation) Act, 1995, namely the programme code and the advertisement code.
Analytical aspect regarding the Cable television networks (regulation) Act, 1995

Programme Code and Advertising Code: The Cable Act brought into force a programme code and an Advertising Code in respect of programmes and advertisements transmitted by cable operators.66 Both codes67 are haphazardly drafted and contain wide and loosely worded restrictions, most echoing those contained in Article 19(2): restrictions in the interest of the integrity of the nation, friendly relations with foreign states, morality, decency, defamation, contempt of court or incitement of an offence and the like. However, some restrictions, are wider and not strictly with in the scope of Art. 19(2). For instance, rule 7(3) of the cable Television Network Rules, 1994, prohibits advertisements with a religious or political object. A prohibition on all religious advertisements appears to be contrary to Article 25 of the Constitution of India which expressly guarantees the right to propagate religion. The restriction on religious advertisements is also something of an irony considering that a large number of channels are devoted to religious preaching and propagation and there appears to be no fetter on such activity under the programme code.68

66 The Cable Television Networks (Regulation) Act, 1995, Section 5 and 6
67 The Cable Television Networks Rules, 1994, rule 6 and 7.
68 Madhavi Goradia Divan, Facets of Media Law 253 (Eastern Book Company, Lucknow, 2010).
Political advertisement are also prohibited under the same rule. However these have been flouted with impunity, particularly during the 2004 general election. In 2004, the Andhra Pradesh High Court suspended the operation of rule 7(3). The Supreme Court in *Secretary, Ministry of Information and Broadcasting v. Gemini TV (Pvt.) Ltd.*, stayed the order and laid down a set of guidelines to stop ‘oppressive and slanderous’ surrogate advertisements during electioneering. These guidelines were framed in consultation with the Attorney General. The Election Commission was appointed as the sole authority to regulate these advertisements. Under these guidelines advertisements were required to be submitted in advance to the Election Commission for clearance. To ensure accountability, the Supreme Court directed that all applications to the Election Commission must be accompanied by particulars including the cost of production of the advertisement, whether it was for benefit of the prospects of the election of candidate(s)/parties and a statement that all payments to television channels or cable television would be made by cheque or by demand draft. It is not clear as to how the Supreme Court could have allowed such advertisements to be telecast, inspite of the guidelines for their telecast when the rule altogether prohibiting political advertisements continues to be in force.

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69 The Cable Television Networks Rules, 1994, Rule 7 (3)
Rule 7(3) : Advertisement shall be permitted the objects which are wholly or mainly of a religious or political nature, advertisements must not be directed towards any religions or political end.

The Advertising Code also provides that the Goods and Services advertised shall not suffer from any defect or deficiency under the Consumer Protection Act, 1986. But, how a Cable operator can be expected to ascertain or test the quality of goods or services advertised on television is anybody's guess.

Another provision in the Advertising Code prohibits advertisements which promote 'directly or indirectly' the production, sale or consumption of cigarettes, tobacco products, wine, alcohol or other intoxicants, infant milk substitutes, feeding bottles or infant foods. Surrogate advertisements ostensibly promoting products such as sodas and apple juice but really intended at promoting alcoholic products abound. Also, advertisements of tobacco products, pan masala and gutkhas are a frequent and common feature on television. This provision has been followed in its breach.

The Advertising Code prohibits advertisements in its depiction of women violates the constitutional guarantees to all citizens and 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. This is a somewhat refreshing and thoughtful insertion. Laws on this subject have so far focused on preventing representation of women as sexual objects. i.e. in an indecent or vulgar

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71 The Cable Television Networks Rule, 1994, Rule 7(4).
72 Ibid., Rule 7 (2) (viii).
73 Ibid., Rule 7(2) (vi).
representation of the physical form of a woman. This provision attempts to ensure gender quality in the representation of the social status of women. Oddly, this provision appears only the Advertising Code and finds no mention in the programme code, which prohibits only the denigration of the physical form of a woman.\footnote{Supra n. 73, Rule 6(1) (k).}

The programme code lays special emphasis on the protection of children from the exhibition of programmes unsuited to their age.\footnote{Ibid., Rule 6(1) (l), 6 (1) (o), 6(4), 6(5).} The code prohibits the carriage of programmes that are ‘not suitable for unrestricted public exhibition’\footnote{Ibid., Rule 6(1) (o).}, an expression that is found in the Cinematograph Act, 1952.\footnote{The Cinematograph Act, 1952, Section 5-A.} This effectively means that no adult film or film bearing an ‘A’ certificate can be shown on cable television at any time. This is a somewhat drastic provision, though observed mainly in its breach.

In a Public Interest Petition \textit{Pratiba Naitihani v. Union of India}\footnote{Writ petition no. 1232 of 2004 (Bombay High Court).}, challenging the exhibition of obscene material in the media, the petitioner furnished a long list of ‘A’ films as also a number of foreign films which had no certification from the Censor Board that were being exhibited and advertised on television channels even at prime time. None of the broadcasters had cared to challenge the provision, perhaps because there was no one to prevent them exhibiting these films. Cable operators are a powerful group with strong political links...
and the authorities have generally shown reluctance to take action against them. The police authorities who are sufficiently empowered under the Cable Act to regulate content is unwilling to perform their duties. They take the plea that since cable television operated through satellite, it was practically impossible for the police to take any action. The Bombay High Court frowned on the stand taken by the police authorities and set out various provisions both under the Cable Television Networks (Regulation) Act, 1995 and also under section 292 of the Indian Penal Code, 1860 under which, the police were sufficiently entitled to take action against exhibition of obscene material. The Bombay High Court also passed an injunction restraining television channels from telecasting any adult television programme or film without the appropriate certificate from the Central Board of Film Certification.

The Cable Television Networks (Regulation) Act, 1995 regulate only cable operators and not television channels. To overcome this hurdle, the Bombay High Court by its orders dated 1st December, 2004 and 12th January, 2005 (unreported), directed the Central Government to formulate guidelines on downlinking of television channels.79

7) Conditional Access System (CAS)

The Cable Television Networks (Regulation) Amendment Act, 2002 introduced what is popularly known as the Conditional Access System (CAS). This system was introduced to ensure that only authorized users could access the television channels. It works by using a conditional access module (CAM) in the set-top box, which requires a subscription to access the channels. The Downlinking Guidelines, 2005 by the Ministry of Information and Broadcasting, provided the framework for the implementation of CAS.
System (CAS). The 2002 amendment inserted section 4A in the Cable Television Networks (Regulation) Act, 1995 provides the 'Transmission of programmes through addressable system'.

The 2002 amendment was introduced with a view to address a number of difficulties relating to the working of the cable industry which the Cable Act of 1995 had failed to address. Some of these problems are summed up below:

(i) There were complaints by subscribers of frequent and indiscriminate hikes in subscription rates by cable operators. Pay channels initially came as free-to-air channels but increasingly became pay channels resulting in rising consumer bills. According to an estimate, the total pay out for pay channels increased by 1100 per cent since the mid-nineties.

(ii) There were complaints by cable operators that MSOs or multi-service operators were forcing them to increase their subscription rates. The MSOs in turn, blamed the pay channels for the increase in subscription rates.

(iii) There were complaints by broadcasters that cable operators were under-declaring their collections from subscribers as also the actual number of subscriptions. An important object of the

80 The Cable Television Networks (Regulation) Amendment Act, 2002, Section 2.
82 Interestingly, often times, MSOs are subsidiaries of pay channels. For instance, Hathway, an MSO is the subsidiary of the pay channel ‘Star television’ and City Cable of ‘Zee television’.
CAS was to introduce transparency in the dealing of cable operators and broadcasters. Collections by cable operators were grossly under-reported, thus depriving different players in the industry of their entitlement as also causing the Government a staggering loss of revenue. The idea behind the amendment was to introduce accountability by calling for mandatory disclosures by cable operators of collections from subscriptions, subscription rates and collections by broadcasters etc.

(iv) The prevailing system offered little choice to the consumer. A whole package of channels was thrust on the consumer/subscriber and he was made to pay for all of these, irrespective of whether he desired to have access to all of these channels. CAS was introduced in order to provide the consumer with the right to subscribe to channels of his choice rather than be saddled with a host of channels he may not want to watch and thus have to bear the burden of paying not only the subscription rates for the entire package of pay channels but also the entertainment tax on such subscription.

By 2002 amendment of the Cable Act of 1995, a new provision of section 4A was introduced and sections 9, 11, 16 and 22 underwent suitable amendments.

83 In a public interest litigation filed to protect consumer interests, in the Bombay High Court, (Writ Petition no. 611 of 2003, Kirit Somaiya v. The Chief Secretary, Govt. of Maharashtra) it was claimed that out of about 20 lac cable connections in the city of Mumbai, collections of entertainment taxes were only in respect of 4,47,081 cable connections, causing a loss to the State Government of 80% of the potential revenue collections. Similarly, the Central Government also lost out on service tax.
The amendment made it obligatory for every cable operator to transmit or retransmit programmes of pay channels through the addressable system. 'Addressable system' is defined as 'an electronic device or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted from which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber by the cable operator to the subscriber.

The amendment empowered the Central Government to specify one or more free-to-air channels or other channels to be compulsorily included in the package of channels forming the basic service tier so as to provide a mix of entertainment, information and education. It further empowered the Central Government to specify the maximum amount that a cable operator was entitled to charge from the subscriber and these amounts could be fixed at varying rates for different states, cities or towns. An addressable system was not

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84 The Cable Television Networks (Regulation) Act, 1995, Section 4-A, *Explanation* (f) defines 'pay channel' as a 'channel the reception of which by the subscriber would require the use of an addressable system'.

85 The Cable Television Networks (Regulation) Act, 1995, Section 4-A, *Explanation* (a)(d); for meaning of 'encrypted'.

86 The Cable Television Networks (Regulation) Act, 1995, Section 4-A (i).

87 The Cable Television Networks (Regulation) Act, 1995, Section 4-A, *Explanation* (e) defines a 'free-to-air channel' as a channel the reception of which would not require the use of any addressable system to be attached with the receiver set of a subscriber.

88 The Cable Television Networks (Regulation) Act, 1995, Section 4-A, *Explanation* (b) defines 'basic service tier' as 'a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of the type existing immediately before the commencement of the Cable Television Networks.

89 The Cable Television Networks (Regulation) Act, 1995, Section 4-A(2)(3).

90 *Ibid.*, Section 4-A(4) and Section 4-A(5).
required by a subscriber in respect of programmes forming the basic service tier which would be receivable on a receiver set of the same type as existing prior to the amendment. Every cable operator was required to publicise to subscribers the subscription rates and the intervals at which subscriptions became payable. All cable operators were required to submit a report to the Central Government stating the total number of subscribers, the subscription rates, the number of subscribers receiving transmission under the basic service tier and those under pay channels, and the amount payable by the cable operator to a broadcaster. The cable operator could not require the subscriber to install a receiver set of any particular type, provided the subscriber used an addressable system to be attached to his receiver set for receiving programmes transmitted on pay channels.

A contravention of section 4-A by a cable operator could attract seizure of the equipment used by the cable operator to operate the cable network. The contravention of section 4-A was made a cognizable offence.

**Analytical aspect regarding Conditional access system** : The implementation of CAS ran into severe difficulties. A number of writ petitions were filed in the Delhi High Court and the Mumbai High Court challenging the amendment. There were many reasons for these difficulties:

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91 Supra n. 89, Section 4-A(6).
92 Ibid., Section 4-A(7), Section 22(aa), Section 23(aaa).
93 Ibid., Section 4-A(9).
94 Ibid., Section 4-A(8).
95 Ibid., Section 11-15.
96 Ibid., Section 5.
(i) Although the amendment was intended at rationalising consumer bills, it had the effect of increasing the financial burden on consumers by compelling them to invest in set top boxes if they wished to view pay channels. The requirement to purchase a set top box arose only if a consumer wished to avail of pay channels and not otherwise. However, a very large number of channels are pay channels, including those of educational and scientific interest therefore, virtually compelling the consumer to purchase a set top box to be able to view these channels.

(ii) There was also no restriction on the price structure of the broadcaster or the rates chargeable by the cable operator – the result being that by selecting a few channels of his choice the consumer could end up paying more than he was hitherto paying cumulatively for a much larger package of channels, even though he may not have wanted access to all of these channels. The net result was more money for less channels.

(iii) A major grievance of consumer groups has been that broadcasters operating pay channels (unlike free-to-air channels) earn enormous revenue from advertising sponsorship and are still unjustly allowed to recover subscriptions from

97 Currently, even channels showing educational and scientific programmes such as National Geographic, Discovery and Animal Planet are pay channels and under CAS a consumer would have to invest in a set-top box to be able to subscribe to these channels.
consumers. Consumer groups proposed that the Cable Act should be amended to prevent pay channels from recovering advertisement revenue. The result would be that broadcasters would declare their channels 'free-to-air' since they cannot afford to forgo their advertising revenue. Consequently, consumers would not be compelled to buy set top boxes.  

(iv) The set-top boxes (STB) were non interoperable. Consumers apprehended that their STB would be of no use if they changed their address or their service provider. STBs were not easily available on rent. Some MSOs had brought out pamphlets offering rental schemes for STBs. But this information did not percolate down to the consumer. Also, there was considerable variation in the pricing of STBs by different MSOs.  

(v) Most broadcasters, MSOs and cable operators were not able to arrive at revenue sharing arrangements amongst themselves.  

(vi) State Governments had not been consulted at the decision making state and therefore, there was little support from these Governments at the implementation state.  

(vii) There was also considerable uncertainty about the continuity of the CAS scheme. In order to ensure better competition among service providers and to prevent anti-competitive activates, the TRAI issued the

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98 *Citizens for a Just Society v. Union of India*, Writ Petition No. 1484 of 2003 field in the Bombay High Court.
Telecommunications (Broadcasting and Cable Services) Interconnection Regulation, 2004.

The Government of India issued a notification\(^99\) whereby under section 2(l)(k) of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act), the scope of the expression ‘telecommunication services’ was expanded to cover broadcasting and cable services. Thus broadcasting and cable services came within the purview of the TRAI Act. The TRAI was directed to make recommendations on the terms and conditions on which the ‘addressable system’ should be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. TRAI was also assigned the function of specifying the standard norms for, and periodicity of revision of rates of pay channels, including interim measures. The TRAI was given the power to determine the ceiling rate at which charges would be paid by cable subscribers to cable operators and by cable operators to MSOs and MSOs to broadcasters.


The Purpose of this Act is to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and other Connected matters.

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No Content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct to home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with Parsar Bharati to enable them to re-transmit the same on its terrestrial network and Direct to home networks.\textsuperscript{100}

The Central Government has been empowered to issue guidelines for mandatory sharing of broadcasting signals with Prasar Bharati relating to sporting events of national importance\textsuperscript{101} and is empowered to specify penalties to be imposed, including suspension or revocation of license, permission or registration, for violation of any terms and conditions.\textsuperscript{102}

**Sharing of advertisement revenue and marketing of commercial time :**

The Parsar Bharati shall on being informed, take steps to determine who out of the two, that is the content rights owner or holder or the Prasar Bharati, shall undertake the marketing of commercial time generated by the retransmission on the Prasar Bharati’s channel and either of the party, which offers to maximize the revenue, shall get the marketing rights.\textsuperscript{103}

\begin{flushleft}
\textsuperscript{100} The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, Section 3.
\textsuperscript{101} Ibid., Section 5.
\textsuperscript{102} Ibid., Section 7.
\textsuperscript{103} Ibid., Rule 4.
\end{flushleft}
Responsibility of television or radio channel broadcasting the sporting event: If the television or radio broadcasting service provider is different from the content rights owner or holder, it shall be its duty to ensure that adequate arrangements for compliance with the provisions of the Act and the rules are made, at the time of acquisition of the rights from the content rights owner or holder.104

9) The Cable Television Networks Regulation (Amendment) Act, 2011

1) The Cable Television Networks Regulation (Amendment) Act, 2011 mandates that all cable TV operators will have to transmit TV signals in an 'encrypted'105 format through a digital 'addressable system'.106 This is done through the installation of a set top box in every cable TV home.107

2) Consumers will now be able to enjoy better picture and sound quality, enhanced services such as high definition and video on demand.

104 Supra n. 100, Rule 5.
105 The Cable Television Network Regulation Amendment Act, 2011, Section 4A, Explanation (C).
"Encrypted", in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression "unencrypted" shall be constructed accordingly.
106 The Cable Television Network Regulation Amendment Act, 2011, Section 4A, Explanation (A) "Addressable System" Means an electronic device which includes hardware and its associated software or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the devices on devices, having an activated conditional Access system at the premises of the subscriber within limits of authorization made, though conditional access system and the subscriber management system, on the explicit choice and request of such subscriber, by the cable operator to the subscriber.
3) Viewers are able to choose and pay for only those channels that they want rather than having a pick from packages with fixed prices. The Act will prevent local cable operators (LCOs) from by passing the digital set-top box, and deciding the mix and price of channels according to locality and consumer base. The Act also shifts the balance of power away from LCOs to cable service providers and TV broadcasters who will now be able to monitor their subscriber base and control the flow of revenues.

4) Broadcasters will now be relieved from paying huge sums as carriage fee, these by increasing profitability and enabling them to focus on better content creation.

5) Subscription revenue will increase for the broadcaster and make them less dependent on advertising and drive value creation.

6) Transparency in the entire system will ensure accurate reporting of subscriber numbers and revenue, thus creating higher value for the exchequer and preventing the fueling of black economy. Currently, broadcasters claim cable operators and distributors gain disproportionate revenues through under-declaration of subscribers.

7) High growth in profitability for the broadcasters and Multiple System Operators (MSOs) will ensure creation of higher value jobs and drive value in the industry.
8) Cable and broadcasting will become a more interesting option for private investment due to the organisation and transparency. Advertisers too will now be able to create targeted campaigns due to higher visibility into the viewership patterns of users.

9) Compulsory transmission of certain channels:— The Central Government may, by notification in the official gazette, specify the names of Doordarshan channels operated by or on behalf of parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and retransmission of such channels:

Provided that in areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of Section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language channel of the State in which the network of the cable operator is located.

The channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.
Notwithstanding the provisions of sub-section (1) any notification issued by the Central Government or the Prasar Bharati (Broadcasting corporation of India) in pursuance of the provisions of sub-section (1), prior to the 25th day of October, 2011 shall continue to remain in force till such notification are rescinded or amended, as the case may be.

10) The Central Government or its officers shall have the right to inspect the cable network and services. No prior permission or intimation shall be required to carry out such inspection.108 Any authorized officer who has reason to believe that cable operator has contravened the provisions of the Act, may seize the equipment being used by such cable operator for operating the cable television network.

**Extract from annual report of ministry of information and broadcasting 2011-12**109

The Cable Television Networks (Regulation) Amendment Act, 2011, will pave the way for digitalization of cable networks in a time-bound-phased manner in the entire country. Digitalization will facilitate on accurate and transparent subscription fee model, thereby reducing the dependence of broadcasters on advertising revenue and this will in turn, considerably soften their anxiety for Television Rating

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108 The Cable Television Network Regulation (Amendment) Act, 2011, Section 10A.
Points (TRPs). As such, the broadcasters are expected to produce content not with any eye on the TRP alone, but keeping in view the diverse interests prevailing in a diverse country like India. However, mushrooming of television channels, and attempt by each channel to crave out a niche for itself, will continue to pose challenges in the arena of content regulation.\footnote{110}{Supra n. 109, p. 2.}

For regulation of content on satellite TV channels, an Inter-Ministerial Committee (IMA) chaired by Additional Secretary, Information and Broadcasting, has been constituted, which give its recommendations on whether a violation has taken place or not. The ministry generally issues warnings or advisories or asks them to scroll apologies on their channels. Occasionally, the channels are also taken off air temporarily for a period or permanently depending on the gravity of violation.

The Government has set up a state-of-the-art Electronic Media Monitoring Centre (EMMC) to monitor and record channels on a 24×7 basis. The EMMC has enable the Ministry to \textit{suo moto} initiate action without depending on the recordings provided by the channels which were subject to manipulated by the channel. This set up has strengthened the regulatory system and reduced the time period required for taking action in case of violations.\footnote{111}{Ibid., p. 2.}
The nature of content related cases dealt with, in the Ministry, mainly relate to obscenity, portrayal of women in bad taste, ill effects on children, ill-treatment of animals, advertisements of misleading nature, etc. There is no denying the fact that the content carried by tele-serials is only available window to the world in a large part of the country and deeply impacts societal values, behavioral patterns and customs. The ministry has issued 28 show-cause notices to television channels for violation of programme and Advertisement codes. In addition, 13 advisories, seven warnings and two apology scroll orders have been issued to different satellite TV channels.\textsuperscript{112}

\textbf{Self-Regulation in Non-News (General Entertainment) Channels.}

Regulation of content is a challenging pursuit, in view of expansion of TV Channels and ever growing variety of programmes telecasted by TV channels. The content generation in this sphere, therefore calls all the more for an effective self-regulation mechanism. In this direction, Indian Broadcasting Foundation (IBF) has also been setup as a mechanism of self-regulation. As part of this, IBF has laid down content code of certification rules, 2011 covering an entire gamut of content-related principles and criterion for television broadcast.\textsuperscript{113}

As part of this mechanism, a two-tier based complaints redressed system has also been setup. At tier-I level, each Broadcaster

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{112} Supra n. 109.
\item \textsuperscript{113} Available at: http://www.ibfindia.com (Visited on Sep. 23, 2012).
\end{itemize}
\end{footnotesize}
shall setup a Standard and Practices (S&P) Department with content auditor to deal with the complaints received for content aired on its channels. At Tier-II, which is at the apex level, the Broadcast content complaint council (BCCC) has been setup and made operation from 1st July, 2012.

**Broadcasting Content Complaints Council**

Broadcasting Content Complaints Council (BCCC), the independent self-regulatory body for non-news channels set up in June 2011 by the Indian Broadcasting Foundation (IBF) in consultation with the Ministry of Information & Broadcasting. BCCC comprises of 12 other members drawn from different walks of life—four eminent persons, four representatives of national-level statutory commissions and four nominees of broadcast industry. The council is Chaired by Justice (Retd.) A.P. Shah.

At present, IBF’s account for more than 235 such national as well as regional channels. There hasn’t been a single case of a channel refusing to comply with the BCCC’s directives.

Transparency is the main stay of BCCC’s functioning. The council has put out all necessary information in the public domain through Indian Broadcasting Foundation’s (IBF) website www.ibfindia.com. The portal through its subhead complaints and redressals, facilitates instant on-line filing of complaint. The website functions in addition to personal communication received through mails, letters and even telephonically.\(^{114}\)

\(^{114}\) *Supra* n. 113.
All through day and night, the channels continue to run an on-screen scroll, making the viewers aware of the BCCC’s complaint-redressal. This has helped in speeding up redressal, as is evident from the large number of complaints received by BCCC. Every complaint is thoroughly examined and, if found in order with necessary details, placed before the Council along with video clip of the programme under review. The Electronic Media Monitoring Centre (EMMC) of the Ministry of Information and Broadcasting has been of immense help in providing video clips of programmes against whom complaints are filed.

While complaints against channels that are not members of IBF are referred to the Ministry, matters relating to telecast of news and advertisements are forwarded to the self-regulatory body concerned — News Broadcasters Association (NBA) or Advertising Standard Council of India (ASCI), as the case may be. The ‘Self-Regulatory Guidelines of BCCC has identified seven themes whose violation can form the basis of filing a complaint. These are: Crime & Violence; Sex, Obscenity & Nudity; Horror & Occult; Drugs, Smoking, Tobacco, Solvents & Alcohol; Religion & Community; Harm & Offence; and General Restrictions.115

The BCCC is committed to upholding the Constitution of India and various laws and statutes enacted from time to time. This is kept in constant view while examining any matter placed before the Council.

115 Available at: www.afaqs.com (Visited on Sep. 2, 2012).
The Broadcasting Service Provider (BSP) has to adhere to Certification Rules under the Cable Television Networks (Regulation) Act, 1995, which are in addition to and not in derogation of Drugs and Cosmetics Act, 1940; Emblems and Names (Prevention of Improper Use) Act, 1950; Drugs (Control) Act, 1950; Drugs and Magic Remedies (Prevention of Improper Use) Act, 1954; Prevention of Food & Adulteration Act, 1954; Prize Competitions Act, 1995; Indecent Representation of Women (Prohibition) Act, 1986; Trade and Merchandise Marks Act, 1999; Copyright Act, 1957; Prevention of Cruelty to Animals Act, 1960; Cigarette and other Tobacco Products Act, 2003; Cinematograph Act, 1952; Consumer Protection Act, 1986, and other existing or new statutes and Rules/Regulations/Guidelines framed there under from time, relating to exhibition of films or broadcasting of programmes.

The BCCC meetings emphasize to uphold and strengthen high standards of self-regulation based on the three principles of autonomy, transparency and accountability.

The BCCC has meetings with Channel Heads/S&P Heads/Content Heads to develop better understanding about IBF's Self-Regulatory Guidelines, and to make television content suitable for unrestricted viewing. These sessions have proved to be helpful, providing an effective platform for discussing mutual concerns with regard to content and self-regulatory guidelines.
BCCC approved the issuance of three advisories. These advisories sensitise the channels about the manner in which particular content issue should be addressed. These advisories related to:

1. Depiction of Animals/Wildlife in TV Programmes;
2. Telecast of Award Functions; and
3. Participation of Children in Reality Shows and related Programmes

All three advisories have been well received by the Channels. The BCCC is confident that its impact would be felt on programmes related to these subjects. The issuance of Advisories also received extensive media coverage.

To streamline the day-to-day functioning of the BCCC, the IBF has now put in place a full-fledged permanent Secretariat of the Council. It is headed by a Secretary General and comprises the necessary support staff.

**OTHER LAWS INDIRECTLY REGULATING ELECTRONIC MEDIA**

1) **Indian Penal Code**

The relevant provisions which regulate electronic media are as follows:-

- Section 153A - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.
➤ Section 153B - Imputations, assertions, prejudicial to national integrity
➤ Section 171-G - False statement in connection with an election
➤ Section 177 - Furnishing false information
➤ Section 200 - Using as true such declaration knowing is to be false
➤ Section 203 - Giving false information respecting an offence
➤ Section 228 - Intentional insult to public servant sitting in judicial proceedings
➤ Section 228-A - Disclosure of identity of the victim of certain offences etc.
➤ Section 292-294 - Sale, letting to hire, distribution, public exhibition, circulation, import, export and advertisement of obscene material.
➤ Section 294-A - Keeping lottery office
➤ Section 295-A - Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
➤ Section 298 - Uttering words etc. with deliberate intent to wound religious feelings.
2) Hindu Marriage Act, 1955

Section 22 provides that proceeding to be *in camera* may not be printed or published. The same applied to electronic media. So it cannot telecast or broadcast *in camera* proceedings.

3) The Constitution of India, 1950

The relevant Articles regulating media under the Constitution of India are following one :-

Article 14 - Equality before law

Article 19 - Protection of certain rights regarding freedom of speech and expression etc

Article 129 - Supreme Court to be court of record

Article 142 - Enforcement of decrees and orders of Supreme Court and orders as to discovery etc

Article 215 - High Court to be court of record

Article 352 - Proclamation of emergency

Article 358 - Suspension of provisions of Article 19 during emergency

Article 359 - Suspension of enforcement of the rights conferred by part III during emergencies

Article 361-A - Protection of publication of proceedings of parliament and state legislatures
4) The Copyright Act, 1957

The first law on the subject came to be enacted in England as early as in 1709. In India, the first copyright law was enacted in 1914 as the Copyright Act, 1914. It was based on English Copyright Act, 1911. India is a member of two international conventions on copyright, namely, the Berne Convention for protection of Literary and Artistic Works (Paris Act, 1971) and the Universal Copyright Convention, 1952. After the Independence, the Copyright Act, 1957 was given effect to the recommendations of these two conventions. The Copyright Act, 1957 is in accordance with India’s obligations under the Agreement on Trade Related Intellectual Property Rights (TRIPS).

The Universal Declaration of Human Rights recognises not only the right to protection of original works but also to the protection of the economic benefits attached to it.\textsuperscript{116}

The object of the Copyright Law is to prevent plagiarism\textsuperscript{117} and unfair exploitation of creative work. It is a natural extension of freedom of speech and expression protected under Article 19(1)(a) of the constitution. If an individual enjoy the freedom of speech and expression, he must also be guaranteed protection of the intellectual property in his expression, be it in the form of a literary, dramatic, musical or artistic work, a film or sound recording.

\textsuperscript{116} The Universal Declaration of Human Rights 1948, Article 27 reads:
(1) Everyone has the right freely to participate in the cultural life of the community to enjoy the arts and share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author.

\textsuperscript{117} Unauthorised use of any copyrighted content amounts to plagiarism or infringement.
Copyright protection and a guarantee of material benefit to the creator of an original work are essential to ensure encouragement of creative work in all walks of life, so that society can make cultural programmes. Absence of such protection would demoralize creative artists and have a chilling effect on creative activity. Also, since copyright protection is afforded not only to authors but to publishers and assignees of such work, if other were entitled to copy their works and profits from their sale, such persons would be hesitant to invest their resources in publishing and circulating original works.\(^{118}\)

‘Copyright’ means the exclusive right to commercially exploit the original literary, dramatic, artistic, musical work, sound recording or cinematography films as per the wishes of the owner of copyright subject to the restrictions imposed in the Copyright Act, 1957. It is necessary to identify the owner of a copyright in order to know who has the right to licence use of the copyright, whose rights are to be protected and who has the power to take action for infringement. The author of a work is the first owner of the copyright.

Although this Act is applicable to all branches of media but in the case of cinematographed film, to do or to authorise the doing of any of the acts would lead to infringement of copyright. Those acts are namely:

\(^{118}\) Sumangalam R. Jjayalakshmi v. Meta Musicals, AIR 2000 Mad 454.
To make a copy of the film

To cause the film, in so far, as it consists of visual images, to be seen in public and in so far as it consists of sounds to be heard in public.

To make any record embodying the recording in any part of the sound track associated with the film by utilizing such sound track.

To communicate the film by radio-diffusion.

The Act makes the person liable under cognizable offence whoever sells, hires, distributes, exhibits, possesses or views any unauthorized recording. Punishment is imprisonment, fines as well as confiscation of the equipment used for the purpose of such recording and exhibition. The Act also prohibits unauthorized transmission of films on the cable television.

**Analytical Aspect regarding Copyright Act, 1957**

In case of *R.G. Anand v. Delux Films and others*,¹¹⁹ R.G. Anand penned, produced, staged a drama called “Hum Hindustani” in Wavel Theatre New Delhi. It was a popular drama appreciated by the press and the public during 1954-56. The Delux films made a film “New Delhi” on the same theme and released in 1956. R.G. Anand saw the film and found it an exact copy of his drama. On the suit filed by Anand the Supreme Court found that there was a clear violation of

¹¹⁹ AIR 1978 SC 1614.
copyright by the film producer and it was an act of piracy. The honourable Supreme Court laid down the following tests for infringement:

1. There can be no copyright in an idea, subject matter, themes, plots, historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in different manner, it is manifest that source being common, similarities one bound to occur. In order to be actionable the copy must be substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
(5) Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

(6) As a violation of copyright amount to an act of piracy it must be provided by clear and cogent evidence after applying the various tests laid down by the case-law.

(7) Where, however, the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

This case and judgement expose the weakness of the copyright law and hardship involved in establishing the piracy of copyright by the author, as it demands a clear and cogent evidence and application of relevant tests.\textsuperscript{120} The Bombay High Court gave the same view.\textsuperscript{121}

\textsuperscript{120} Supra n. 119.
\textsuperscript{121} Zee Telefilms Ltd. v. Sundial Communication Pvt. Ltd. (2003) 5 Bom CR 404 (DB)
Performers and copyrights

Copyright is having related rights or neighbouring rights (droits voisins) means those rights which have developed parallel and related to copyright such as rights granted to protect performers, producers of phonograms and broadcasting organisations in the performance of their works. Cine artists rights are discussed in Fortune Films International v. Dev Anand & others. Fortune Films produced ‘Darling Darling’ with Dev Anand as lead star. It was agreed by producer and Dev Anand that the copyright in his work in the film would vest in Dev Anand until certain conditions had been met, including payment of Rs. 70,00,00/-. When the film was released for exhibition in East Punjab territory also against the terms, Dev Anand questioned the breach of agreement. The question before the Bombay High Court was:

(a) whether ‘copyright’ there in the agreement, refer to the work of cine artiste in the film or to the film itself;

(b) whether the performance of a cine artist in the film would be ‘work’ protected by the copyright Act?

It was held that the agreement referred to the work of cine artist in the film and not to the film itself. Responding to second question, the court held that the definition of ‘artistic work’, ‘dramatic work’ and ‘cinematograph film’ does not recognise the performance of an actor as work which is protected by the Act.

122 AIR 1979 Bom. 17.
This is a major anomaly of the Act, which was later rectified by 1994 amendment and performer's right is recognised. The work of a film artiste is protected under the head “performer’s right”. This right subsists for a period of 50 years.\textsuperscript{123} It would amount to an infringement of the performer’s right to make, reproduce, broadcast or otherwise communicate the performance to the public, a sound or visual recording of the performance without the performer’s consent.\textsuperscript{124}

**Rights of broadcasting organisations**

The 1994 Amendment to the copyright Act conferred special rights on broadcasting organisations and on performers. Broadcasting organisations enjoy a special ‘broadcast reproduction right’ in respect of its broadcasts which subsists for 25 years. During this period, any person who in the absence of a licence of the owner rebroadcasts the broadcast, causes the broadcast to be heard or seen in public on the payment of charges, makes a sound or visual sound recording or rents such sound or visual recording, infringes the broadcaster’s reproduction right. There would be no infringement, however, where the recording is for the private use of the person making the recording or is for bonafide teaching or research. Similarly use of experts of a broadcast in the reporting of current events, for bonafide review, teaching or research also would not amount to infringement.

\textsuperscript{123} The Copyrights Act, 1957, Section 38(2).
\textsuperscript{124} Ibid., Section 38(3).
A performer is conferred with a special right in relation to his performance known as the ‘performer’s right’.

**Cable Operator cannot substitute his advertisement for authors advertisements**

In *Ambience Space Sellers Ltd. v. Asia Industrial Technology Pvt. Ltd.*, the second plaintiffs were owners of copyright in various programmes, which are produced in India. The second plaintiffs assigned an exclusive licence to the third plaintiffs to broadcast those programmes on a Zee TV channel. The Zee TV channel has a “free to air programme”. It means that the viewers are not charged for watching the programme. The expenses are met through advertisements. The first plaintiffs are the sole agents who produce for the third plaintiffs advertisements in India. The third plaintiffs after receiving the programme from the 2nd plaintiff and advertisements from the first plaintiff combine the two and broadcast the programme on the Zee TV.

The defendants (Asia Industrial Technology Pvt. Ltd.) are two companies, which owns, control and operate cable TV networks in several cities. In cities like Bombay, the majority of the viewers will subscribe the cable TV networks for payment of charges. The sophisticated equipment, which is available with cable TV networks, they can blank out or switch off the signals sent by various

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125 1998 PTC (18) 232.
broadcasters and interpose or substitute their programmes or materials. The Zee TV (plaintiffs) alleged that the defendants are blanking out the advertisements during the period when the plaintiffs are broadcasting, and substituting them with their own (defendant) advertisements. The cable company admitted such activity and claimed that they have a right to do so. The Zee TV also alleged that the company was running an advertisement film along in the lower part of the TV Screen simultaneously covering about 20-25% of the TV screen space. The defendants denied this. The main question before the court was whether the defendants have a right and are entitled to substitute their advertisements during the broadcast of the plaintiffs.

The cable company was aware of the plaintiff’s agreement with advertisers. (Such agreement would require the third plaintiff to assure that the advertisements of the advertisers appear during the programmes). The defendants by switching off the programmes at that time that the advertisements are being broadcast are preventing the third plaintiff from carrying out the contractual obligations and are thus procuring a breach of contract of the third plaintiff.

With the Amendment of Section 37 of the copyright Act in 1994, every broadcasting organisation has been given a broadcast reproduction right. The broadcast is one composite programme. The composite programme may consist of the entertainment portion and advertisement portion. An interference with the advertisement part has a direct result of interfering with entertainment part. The court
held that the defendants cannot broadcast the third plaintiffs programme nor cause the third plaintiff’s programme to be heard or seen by the public on payment of charges without a license from the plaintiff. This is very clear from Section 38-A of the Copyright Act, which makes applicable the provisions of Section 30 even to a broadcast reproduction right. This would mean that defendants must communicate or broadcast the plaintiff's programmes in its entirely including the advertisement portion. The defendant cannot shutoff, much less substitute the plaintiffs advertisements with their own advertisements. The court held that the defendants are willing and intentionally committing a wrongful act and are affecting the plaintiff’s right. The court granted permanent injunction restraining the cable company (defendants) from blanking the advertisements of the TV channel and substituting with their own commercial advertisements.

**Indian law and piracy**

The law in India with regard to digital piracy is far below international standards. The copyright Act, 1957 is in the progress of being amended to address such issues. In *State of Andhra Pradesh v. Nagoti Venkataramana*\(^{126}\) the Supreme Court held that the object of amending the Copyright Act by amendment 65 of 1984, was to prevent piracy which become a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish the pirates and protecting copyrights. The law, therefore, came to be

\(^{126}\)(1996) 6 SCC 409.
amended introducing Section 52-A. Therefore the piracy of cinematograph films and of sound recordings etc. could be satisfactorily prevented. Moreover, the object of pirate is to make quick money and avoid payment of legitimate taxes & royalties. The uncertified films are being exhibited in a large scale.

Therefore apart from increasing the penalty of punishment under law, it also provides the declaration on the offence of infringement and video films to display certain information on recorded video films and containers thereof.”

Audio and Video piracy by any means, including digital piracy was brought under the Maharashtra, Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders and Dangerous Persons Act, 1981 (MPDA) on July 15, 2009. Similar preventive detention laws have been enacted in the State of Tamil Nadu, Karnataka and Kerla. With the new legislation in place, the respective State Governments are now empowered to detain a person involved in piracy under the preventive detention Act for a period from 3-12 months.

Section 11 of Customs Act, 1962 provides that the Central Government may restrict or prohibit import and exports of goods infringing trademarks, patents and copyrights under section 11(2)(n) of the Customs Act, 1962. Similarly the central Government may restrict import and export of goods being in contravention of any law for the time being in force under section 11(2)(u) of the said Act. In

127 By an ordinance being Maharashtra Ordinance No. X of 2009.
exercise of that power, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 prohibits import of goods infringing intellectual property rights of the right holders. The said rules lay down a detailed procedure to be followed by the right holders or their authorised representatives.

**Loopholes in copyright statutes**

Copyright statutes were originally enacted for literary property, extended to other forms of creativity. As technology changes it make easy transfer and easy infringement of Intellectual Property Right. With technology evolving at a rapid pace, it has become possible for consumers to use a downloadable copyrighted item in different ways on their mobile phones, ipods, MP3 Players, whole or in part on a CD-ROM, on a DVD, on a Website, on an electronic bulletin board or on a blog initiated by an individual.¹²⁸

This is further complicated by the common perception that what is ‘freely’ available on the internet is ‘free’ to use, based on the rationale that if it was not to be used free of cost it would not be ‘freely’ available or ‘free’ further exacerbates the problems.

When the copyright laws of India were first framed, most of the technology and media which are used today were not even envisaged. Therefore such rights of exploitation through technology were not provided for. This has resulted into uncertainty on how such rights can be effectively enforced.¹²⁹

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5) The Copyright (Amendment) Act, 2012

The provision of The Copyright (Amendment) Act, 2012 has been enacted by the Government of India bringing changes to the copyright Act, 1957. The Act has been amended five times, prior to 2012, in 1983, 1984, 1992 and 1999 to meet with national and international requirements. The amendments make Indian copyright law in compliance with Internet Treaties, World Intellectual property organization copyright treaty (WCT) and World Intellectual Property Organisation performance and phonograms treaty (WPPT). While introducing technological protection measures, the law ensures that fair use survives in the digital era by providing special fair use provisions. The amendments have gone beyond the limited mandate of WCT and WPPT.

The Copyright (Amendment) Act, 2012 is aimed at correcting an imbalance in India's copyright law which was seen as favoring film producers and record labels rather than the lyricists, script writers and song composers. Right now, the lyricists sell their compositions to the productions house and production house re-sell it to music companies, cell-phone companies as ring tones, ads and use it wherever they can. In return, the creator of that song, music or tune get nothing. Under this amended Act, those above rights lie with the original owners (of words, song, stories and tunes).

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130 The treaties address the challenges relevant to the dissemination of protected material over digital networks such as the internet.
Salient features of the Act:

1. First Owner: The original authors of literary, musical, dramatic and artistic works that have been incorporated in cinematograph film will be considered as the first owners of copyright in the said works. The "work for hire" concept which states that the employer or "commissioning party" is the first owner of copyright in relation to a said work shall not apply in the abovementioned circumstances.

2. Royalties: Authors of literary or musical works incorporated in films or sound recordings shall be entitled to receive royalties equal to the royalties received by the assignee for exploitation of the work. However, this provision does not extend to communication of the film to the public in cinema halls.

3. Assignment: The right of an author to claim royalties or any other form of consideration for utilization of his work in any form other than as part of a cinematograph film or recording shall not be extinguished or affected in any way by assignment of the copyright in that work for making a film or a sound recording.

4. Digital Rights Management: Digital rights management also called "DRM" is a generic term that refers to access control technologies that can be used by hardware manufactures, publishers, copyright holders and individuals in order to impose
limitations on the usage of digital content and devices.\textsuperscript{131} DRM promises to offer a secure framework for distributing digital content, be it music video, works in writing or even raw data. Compared to traditional copyright law, DRM promises an unprecedented degree of control over the entire distribution chain and the usage of digital content.\textsuperscript{132}

Three new sections – 2(xa), 65A and 65B of the copyright (Amendment) Act 2012 deal with digital rights management.

(a). Right Management Information (RMI)

Section 2(xa) defines right management information to mean the title or other information identifying a work or performance, the name of the author or performer, the name and address of the owner of rights, terms and conditions regarding the use of the rights, and any number or code that represents this information although it does not include any device or procedure intended to identify the user.

(b). Protection of technological measures

(i). Section 65A criminalizes the circumvention of an effective technological protection measure which has been applied for the purpose of protecting any of the rights conferred by the copyright statute if the circumvention is performed with the intention of infringing rights conferred by the Act – unless it is carried out in one of the many circumstances in which the Act states that circumvention

\textsuperscript{131} Available at: wikipedia: "Digital Rights Management". (Visited on July 23, 2013).

is permissible (such as for conducting any lawful investigation or taking measures necessary in the interest of national security).

(ii) Section 65B not only criminalizes certain acts relating to rights management information but also states the rights owners would be entitled to avail of certain civil remedies. The prohibited acts include the unauthorised removal or alteration of RMI on copies of works, or the unauthorised and 'knowing' distribution, importation, broadcast or communication to the public of such of works.

5. Meaning of copyright

(a) Electronic and other storage

Copyright – in the case of artistic works, cinematograph films and sound recordings – includes the right to store works in any medium by electronic or other means.133

(b) 3D – 2D conversion of art

Copyright in artistic works continues to include the right to convert works from three dimensions into two dimensions and vice versa. However, this is limited by a new provision in Section 52 (1)(w) which allows 'the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device' without the permission of the copyright owner.

133 The Copyright (Amendment) Act, 2012, Section 14(i)(A)
(c) Film stills

Explicitly states the reproduction of still from a cinematograph film is one of the exclusive rights of the copyright owner of the film.\textsuperscript{134} This amendment too appears to be merely clarificatory in nature.

6. Visual recording

A visual recording means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations there of from which they can be perceived, reproduced or communicated by any method'.\textsuperscript{135}

7. Compulsory license

Compulsory licensing provision under section 31 in relation to published work and section 31–A in relation to unpublished work or anonymous work which were earlier restricted to Indian works have now been made applicable to all works. In addition to this, the compulsory license may now be granted by the Copyright Boards to any qualified person and not just to the complainant.

8. Compulsory license for benefit of disabled.

(a) Exception to copyright infringement

A new provision facilitates access to copyrighted works by persons with disabilities provided that the reproduction of accessible formats is on 'a non-profit basis but to recover only the cost of

\textsuperscript{134} Supra n. 133, Section 14(ii)(d)(i)(A).
\textsuperscript{135} Ibid., Section 2(xxa).
production' and the organization ensures that the accessible copies are used only by persons with disabilities and takes reasonable steps to prevent the entry of the accessible copies into ordinary channels of business.\(^{136}\)

**(b) Compulsory license**

In cases where the exception to copyright infringement does not apply, any person working for the benefit of persons with disability on a commercial basis may apply to the copyright board for a compulsory license to publish a work in an accessible format for the benefit of persons with disability.\(^{137}\)

9. Cover version

The new section 31C facilitates the making of cover versions (of any literary, dramatic or musical work) only after five years from the first recording of the original creation and generally for royalty payable for a minimum of 50,000 copies made during each year. It could be considered to be a substitute of the old section 52 (1)(j) \(^{138}\) which the 2012 amendments deleted from copyright statute.

10. Statutory license

New Section 31-D provides the "statutory license" in relation to the published works. Any broadcasting organization, that proposes to

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136 *Supra* n. 133, Section 52(1)(zb)
137 *Supra* n. 147, Sec. 31 – B.
138 The making of sound recordings in respect of literary, dramatic or musical work with the consent of or licence from the owner of the copyright in the work subject to specific terms and conditions.
broadcast any published work to the public including performance of any published musical/lyrical work and sound recording, shall be required to first give a notice or its intention to the owners of the rights. Such notice shall contain details regarding the duration and territorial coverage of the broadcast and royalties for each work at the rate and manner fixed by the copyright board shall be duly paid to the owners of the rights. Moreover, the names of the author and the principal performer will have to be announced with the broadcast.

11. Copyright societies

Under the amended Act, copyright societies will be granted registration for a term of five years and would need to be re-register within one year from the date of commencement of the copyright (Amendment) Act, 2012. Both authors and owners may now be members of societies. Copyright societies will be required to have governing bodies requiring equal number of authors and owners of work for the purpose of administration of the society. A new section 33A also requires each copyright society to publish Tariff Scheme.

12. Performer's right

Performer's right is the exclusive right to do or authorize for doing any of the following acts in respect of the performance or any substantial part thereof, namely:\textsuperscript{139}

\footnote{\textit{Supra} n. 133, Section 38A.}
(a.) To make a sound recording or a visual recording of the performance, including:

(i). Reproduction of it in material form including the storing of it in any medium by electronic or any other means.

(ii). Issuance of copies of it to the public not being copies already in circulation.

(iii). Communication of it to the public.

(iv). Selling or giving it on the commercial rental or offer for sale or fro commercial rental any copy of the recording.

(b.) To broadcast or communicate the performance to the public except where the performance is already broadcast.

13. Exceptions to copyright infringement

Acts that do not amount to infringement are listed in section 52 of the Copyright Act, 1957 and the said section has undergone some changes. The use for educational purposes, fair dealing will not amount to copyright infringement in respect of any work. Earlier this exception only extended to literary, dramatic, musical or artistic work. Several new exceptions have been included in the ambit of this section.

(a) Fair dealing

Section 52 (1)(a) of the copyright (Amendment) Act, 2012 now allows for fair dealing with respect to any work (except a computer programme), and fair dealing is not restricted to literary, dramatic,
musical or artistic works other than computer programmes as was the case earlier. The purposes for which fair dealing is permissible has also been 'expanded' although the expansion may not actually bring in any substantive change from a practical point a view.

(b) Defenses to copyright infringement available to intermediaries

Safe harbors have been introduced to protect intermediaries in cases of secondary copyright infringement, and a notice-and-take-down procedure has been incorporated into the statute to enable rights owners to have infringing content taken down for a minimum period of twenty one days.

(c) Broadened exceptions to copyright infringement

The exceptions to copyright infringement dealing with the reproduction of works for judicial, legislative and educational use now generally apply to any work, instead of only to literary, dramatic musical and artistic works as was the case earlier.

As far as the exceptions to copyright infringement for the benefits of academia are concerned, these exceptions have been broadened. For example, the publication of compilations for educational institutions in Section 52(1)(g) of the 'old' copyright statute has been deleted and the new Section, 52(1)(h) which has replaced it allows the publication of compilations for 'Instructional use' instead of just for educational institutions.
(d) Archival storage and reproduction by libraries

The new Section 52(1)(n) allows: 'the storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work', and the scope of Section 52(1)(o) has been restricted to allow only non-commercial public libraries to make not more than three copies of books unavailable for sale in India for their own use, as opposed to any public library as was the case earlier.

14. Commissioner of customs

The new Section 53 of Amended Act, 2012 states that the owner of the copyright can make an application to the commissioner of customs for seizing of infringing copies of works that are imported into India and that infringing copies be treated as prohibited goods for not more than one year under certain circumstances, by following the procedure laid down by section.

15. Person deemed to be the author or publisher

Section 55(i) of the amended Act presumes that the person as the author or publisher of not only a literary, dramatic, musical or artistic work but also a non-infringing film or sound recording is actually the author or publisher.

16. Author's moral rights

Section 57 has been amended so as to have the right to integrity to subsist even after the expiry of copyright in a relevant work. The
right to claim damages in respect of any distortion, mutilation or other modification of the author’s work will be available even after expiry of the term of the copyright. It not just enable the author, but now also his legal representatives to exercise the right to paternity. This means that legal representative may initiate legal proceedings if the author of a work is not credited and the right to claim authorship does not extinguish with the death of the author.

17. Curbing piracy

With an aim to curb piracy, Section 65A has been inserted in Copyright (Amendment) Act, 2012 and states the following:

"An person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Copyright Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine. However, the following are the exceptions :

- Doing anything referred to above, for the purpose not expressly prohibited by this Act :

  Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all the relevant particulars necessary to identify him and the purpose for which he has been facilitated; or
• Doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or
• Conducting any lawful investigation; or
• Doing Anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator; or
• Doing anything necessary to circumvent technological measures intended for identification or surveillance of a user of national security.

18. Disputes with respect to assignment of copyright

The scope of section 19A which deals with the resolution of disputes with respect to the grant of right (caused by the unilateral insufficient exercise of the rights granted) has been limited to assignments (as opposed to assignments and licenses, as was the case earlier).

Disputes under the section are now generally be settled within six months after the receipt of a complaint by the Copyright Board, and the Board may now also pass interim orders ‘regarding implementation of the terms and conditions of assignment including any consideration to be paid for the enjoyment of the right assigned’.

19. Relinquishment of copyright

The amended Act allow for the relinquishment of copyright not only by way of notice to the Registrar of Copyrights but also by way of public notice.140

140 Supra n. 133, Section 21.
20. Term of copyright in photographs

Photographs are now treated in the same manner as artistic works and instead of enjoying a sixty year post-publication term, the copyright to photographs now effectively subsists till sixty years after the death of the photographer.

6) Laws Regulating Electronic Media Advertisement

Advertisement is a mode of communication addressed to the public or a section of it, the purpose of which is to influence, the options of behaviour of those to whom it is addressed. Any communication which in the normal course would be recognised as an advertisement by the general public would be included in this definition even if it is carried free of charge for any reason.\textsuperscript{141}

Advertising industry in India is on the expansion spree for last few years. It has become a serious and big business growing at a considerable rate. However, the growth of this industry is affected by prevalent malpractices carried out by advertisers in order to lure the consumers and sustaining an edge over the competitors. Advertisement is often described as commercial speech and enjoys protection under Article 19(1)(a) of the Indian Constitution. As a fact of the right to information, it facilitates the dissemination of information about the sellers and their products.\textsuperscript{142} However the

\textsuperscript{141} Definition from Advertising Standards Council of India.

\textsuperscript{142} Neeraj Dubey, \textit{Advertising Regulation in India}, available at: http://www.temptingmt.blogspot.com (Visited on July 29, 2013).
manner of facilitation is subject to a number of statutory provisions.

The prominent prohibitory legal provisions that regulate advertising are:

(i) The Indian Penal Code, 1860 makes it a punishable offence to advertise any obscene publication or its distribution, sale, hire or circulation.143

(ii) The Indian Penal Code, 1860 also makes it an offence to publish advertisements relating to any lottery which is not a state lottery or which is not authorised by the State Government.144

(iii) The Young Persons (Harmful Publications) Act, 1956 makes it a punishable offence to advertise a ‘harmful publication’.145 A ‘harmful publication’ is a publication portraying the commission of offences, acts of violence or cruelty or incidents of a repulsive or horrible nature, in such manner as would tend to corrupt a young person.146

(iv) The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use, for professional or commercial

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143 The Indian Penal Code, 1860, Section 292(2)(d). The keeper, printer or publisher may be held liable under this provision for the publication of an obscene advertisement. In Pratibha Naithani v. Union of India (Writ Petition No. 1232 of 2004), a public interest petition filed in the Bombay High Court to control obscenity in the print and electronic media, by an order dated 8th December, 2004, the High Court restrained newspapers and periodicals from publishing advertisements which amount to an invitation to prostitution, advertisements which have sexual overtones and those which violate Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986 (unreported order).

144 The Indian Penal Code, 1860, Section 294-A. For such unauthorized lottery, not only the maker of the advertisement but also the proprietor, printer or publisher of the newspaper would be liable, whether or not the lottery is actually held; Chimanlal Pranjivandas Gheewala v. Emperor, AIR 1925 Bom 243.


146 The Young Persons (Harmful Publication) Act, 1956, Section 2(a).
purposes, of select emblems and names of national or international significance. An Advertiser who makes commercial use of such emblems and names would be liable under the Act.\textsuperscript{147}

(v) The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 prohibits advertisements of drugs for certain purposes and of treatment of certain diseases and disorders. The Act also prohibits misleading advertisements relating to drugs and advertisement of magical remedies for the treatment of certain diseases and disorders.\textsuperscript{148}

\textsuperscript{147} The Emblems and Names (Prevention of Improper Use) Act, 1950, Section 3.

\textsuperscript{148} The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Section 3, 4 and 5.
(vi) The Indecent Representation of Women (Prohibition) Act, 1986 prohibits the publication of advertisements containing an indecent representation of women.\textsuperscript{149}

(vii) The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 prohibits advertisements relating to prenatal determination of sex.\textsuperscript{150} Under this Act, ‘advertisement’ includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas.

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a) directly or indirectly gives a false impression regarding the true character of the drug; or
b) makes a false claim for the drug; or
c) is otherwise false or misleading in any material particular.

Section 5. Prohibition of Advertisement of Magic Remedies for Treatment of Certain Diseases and Disorders: No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3.

\textsuperscript{149} The Indecent Representation of Women (Prohibition) Act, 1986, Section 3.

\textsuperscript{150} The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Section 22

(1) No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.

(2) No person, organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

Explanation 1: No person shall sell, distribute, supply, rent, allow or authorize the use of any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus whether on payment or otherwise to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person or body not registered under the Act.

Explanation 2: “Person” includes manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus” as also any organization including a commercial organization.
(viii) The Transplantation of Human Organs Act, 1994 makes it a punishable offence to issue advertisements inviting persons to supply, for payment, a human organ.\textsuperscript{151}

(ix) The Drugs and Cosmetics Act, 1940 makes it an offence to use any report of a test or analysis made by the central drugs laboratory or by a Government analyst for the purpose of advertising any drug or cosmetic.\textsuperscript{152}

(x) The Prize Competition Act, 1955 prohibits the publication or distribution of advertisements of price competitions where the prize or prizes offered exceeds Rs. 1000 in any month.\textsuperscript{153}

(xi) The Prize Chits and Money Circulation Schemes (Banning) Act, 1978 prohibits the printing or publication of advertisements of a prize chit or a money circulation scheme.\textsuperscript{154}

(xii) The Motor Vehicles Act, 1998 entitles the State Government to empower the police to direct the removal of any sign or advertisement which could obscure a traffic sign from view or any misleading advertisement that appears to be a traffic sign or which could distract the attention or concentration of the driver.\textsuperscript{155}

\begin{footnotes}
\item[151] The Transplantation of Human Organs Act, 1994, Section 19(f).
\item[152] The Drugs and Cosmetics Act, 1940, Section 29.
\item[153] The Prize Competition Act, 1955, Section 4, Section 11.
\item[154] The Prize Chits and Money Circulation Schemes (Banning) Act, 1978. See in particular, Sections 5, 7, 8 and 11. Transactions in the nature of gambling may be controlled or suppressed to protect the public from fraud. The direct impact of such restrictive legislation is not on the freedom of the press but on gambling. \textit{R.M.D. Chamarbaughwalla v. Union of India}, AIR 1957 SC 628.
\end{footnotes}
(xiii) The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 prohibits the advertisement of cigarettes and other tobacco products.\textsuperscript{156}

(xiv) Under the Consumer Protection Act, 1986, the appropriate consumer forum has the power to discontinue an ‘unfair trade practice’ or a ‘restrictive trade practice’.\textsuperscript{157} The forum also has the power to issue a corrective advertisement to neutralize the effect of a misleading advertisement.\textsuperscript{158}

(xv) The Representation of People Act, 1951 prohibits political advertising forty-eight hours prior to polling time.\textsuperscript{159} The Act

\textsuperscript{156} The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Section 5.

\textsuperscript{157} The Consumer Protection Act, 1986, Section 14(1)(f).

\textsuperscript{158} Ibid., Section 14(1)(hc). The expression ‘unfair trade practice’ is defined in Section 2(r) of the Act as a ‘trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts an unfair method or unfair or deceptive practice including any of the following practices, namely:- (1) the practice of making any statement, whether orally or in writing or by visible representations which;

\textsuperscript{159} The Representation of People Act, 1951, Section 126.

126. Prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll:

(1) No person shall:
(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or
(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or
(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.
also requires all election pamphlets to bear the names of the printer and publisher.\textsuperscript{160}

(xvi) The Cable Television Networks (Regulation) Act, 1995 prohibits the transmission of advertisements on the cable network which are not in conformity with the Advertisement code. The Advertisement code is set out under Rule 7 of the Cable Television Network Rules, 1994. The contravention of these provisions attract liabilities under Section 16 and 17 of the Cable Act. The authority under the Cable Act also has the power to prohibit the transmission of a programme or a channel if it contravenes the Advertisement Code under Rule 7. The Central

\textsuperscript{160} The Representation of People Act, 1951, Section 127-A. During the campaign for the 2004 general election, the Supreme Court directed all political parties to get prior approval from the Election Commission for the telecast of political advertisements. \textit{Secretary, Ministry of Information and Broadcasting v. Gemini TV}, (2004) 5 SCC 714, Section 127A. Restrictions on the printing of pamphlets, posters, etc.: (1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof. (2) No person shall print or cause to be printed any election pamphlet or poster:

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document:

(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section:

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.
Government has similar powers under Section 20(3) of the Act, 1995.

Absence of a single comprehensive legislation had created a lot of confusion in the advertising industry. In 1985, a self-regulatory mechanism of ensuring ethical advertising practice was established in the form of Advertising Standards Council of India (ASCI), a non-statutory tribunal. These regulations are made keeping in view the interests of the advertiser, advertising agency, the media, the consumers and society. The ASCI is very broad based to cover the entire gamut of media vehicles which carry advertisements, ranging from printing, audio visual and also internet. ASCI entertained and disposed off complaints based on its code of Advertising practice (ASCI Code). Gradually, the ASCI Code received huge recognition from advertising industry. In August 2006, the ASCI Code was made compulsory for TV advertisement by amending the Cable Television Networks (Amendment) Rules, 2006. It says, “No advertisement which violates the code for Self-Regulation in Advertising, as adopted by ASCI, Mumbai for public exhibition in India, from time to time, shall be carried in the cable service.”

The Key Objectives of ASCI Code is to ensure that advertisement must-

- Make truthful and honest representations and claims which is essential to prohibit misleading advertisements;

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161 Supra n. 31, p. 960.
• Not to be offensive to public decency or morality.
• Not to promote products which are hazardous or harmful to society or to individuals, particularly minors; and
• Observe fairness in competition keeping in mind consumer’s interests.

Other self-regulations relating to advertisements

The specific self-regulations that are of considerable importance are as follows:

2) The norms of journalistic conduct regarding advertising evolved by the Press Council of India.
3) Code of Commercial Advertising on Doordarshan and
4) All India Radio Code for Commercial Broadcasting.

Complaints against the advertisements

Under ASCI Code, complaint against the advertisements can be made by any person who considers them false, misleading, offensive or unfair. The complaints are evaluated by an independent consumer complaints council (CCC). CCC decides on complaints from the general public including Government officials, consumer groups, complaints from one advertiser against another and even suo mato complaints from the member of ASCI Board, CCC or the secretariat. The CCC usually decides upon the complaints with a period of 4 to 6 weeks once the party concerned is afforded an opportunity of presenting its case.
Advertisement on internet

The Indian advertising is slowly recognising the potential of web casting as well which is the transmission of video and audio content over the internet. It is used for updating the news, weather or coverage of any selected events such as seminar, product launches or training. Though online advertising which is now also considered as viral marketing uses social networking sites, popular sites and industry specific portals to target audience. In order to target the audience, it considers the twin formulae of demographic information and online behaviour of the user. Equally popular is mobile advertising in India, which is growing like forest fire with increasing mobile connections in India.

7) The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

The purpose of this Act is to control the advertisement of drugs which alleged to posses magic qualities. Drugs and medicines are not matter of pubic interest unlike all other matters printed, published and disseminated to the public. In fact, it is a matter of human health and welfare. In the recent past a great number of objectionable advertisements relating to alleged cures for veneral diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women have been published in various newspaper and magazines. By influence of these advertisements ignorant and unwary persons have
resorted to self-medication with harmful drugs and appliances. People indulging in such activities can be a real threat to the society if left unnoticed. In order to stop such advertisements and save the ignorant and unaware masses, The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 was framed.

The Act defines ‘Magic Remedy’ includes a talisman, mantra, kavacha and any other charm of any kind which is alleged to poses miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human being or animals.\footnote{The Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954, Section 2(1).}

The schedule for diseases specified under the Act are: appendicitis, atherosclerosis, blindness, blood poisoning, Bright’s disease, cancer, cataract, deafness, diabetes, brain diseases or disorder, uterus diseases, disorder of menstrual flow, disorders of nervous system, dropsy, epilepsy, fits, gall bladder stones, kidney stones, glaucoma, heart diseases, high and low blood pressure, hydrocele, hysteria, infantile paralysis, obesity, Rock jaw, pneumonia, small pox, sterility of women, sexual impotence, veneral diseases including AIDS etc.

**8) Indecent Representation of Women (Prohibition) Act, 1986**

This is an Act to protect the dignity of women. Section 3 of the Act prohibits advertisements containing indecent representation of
woman. Section 4 of the Act prohibits publication or sending by post of book, pamphlets etc. containing indecent representation of women. Although, the Act does not contain unreasonable provisions because exception can be made under proviso to Section 4 of the Act in favour of books, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation on figure which is in the interest of science, literature, public good etc.

**Analytical aspect regarding the Indecent Representation of Women (Prohibition) Act, 1986**

- The Act does not expressly extend its applicability to visual media and computer including internet.
- There is no Central Authority to govern and regulate the manner in which women are represented in any document published or broadcast or telecast.
- There is no provision for filing complaints to the appropriate authority, by any person, group of persons or any organisation etc., in case there is any violation of provisions of the Act.
- There is no self-regulatory mechanism for advertisement agency, media group, production house, publications engaged in the production/display of ad-films or advertisements.

9) **Information and Technology Act, 2000**

India’s first cyber legislation, the Information Technology Act, 2000 (IT) was introduced to provide legal recognition for e-commerce
and e-transactions to facilitate e-governance, to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology world wide.163

To implement the said Act, amendment were also earned out under the Indian Evidence Act and Banking Laws, to recognise digital signatures and electronic records as evidence in a court of law.

The IT Act prevents publication and transmission of obscene materials in electronic forms through the internet. The Act provides punishment for such offences, imprisonment upto 5 years and fine which may extend to rupees one lakh for publishing or transmitting material which is lascivious or appeals to the prurient interest.164

The controller is empowered to intercept any information transmitted through any computer resource, if it is against the Sovereignty and Integrity of India, Public order or may incite the commission of a cognizable offence.165

The IT Act, provides for prosecution of offenders who have committed the offence outside India, if such act involves a computer or computer network located in India.166 Thus, certain provisions of IT Act, are applicable to any person, irrespective of the nationality or location.

164 Information Technology Act, 2000, Section 67.
165 Ibid., Section 69.
166 Ibid., Section 75.
Analytical aspect regarding Information Technology Act, 2000

The Information Technology Act, 2000 was amended to include cyber crimes, confidential data, liability of Internet Service Provider (ISPs) and breach of information security. Provisions were introduced to tackle the new forms of crimes like sending offensive emails and multimedia message, child pornography, cyber terrorism, publishing sexually explicit material in electronic form, video voyeurism, breach of confidentiality and leakage of data by intermediaries, e-commerce frauds as phishing, identity theft frauds and prohibiting online actions sites etc.

10) Indian Competition Act, 2002

The Competition Act deals with relating to the existence and regulation of competition and monopolies. Its aims is promotion of competition in markets, protection of consumer interest and ensuring freedom of trade of other participants in the market. The Act keeps in view the economic development of the country and checks anti-competitive behaviour. Earlier Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) was dealing with these aspects. On September 1, 2009, Section 66 of Indian Competition Act, 2002 repealed MRTP, Act. The reason for repealing was that MRTP was inadequate for fostering competition in the market and eliminating anti-competitive practices in the national and international trade.

167 The Amended Act came into effect on October 27, 2009.
The competition Act, 2002 covers media sector also along with all other sectors operating in India. Even before this Act of 2002, there were many issues in the media sector e.g. issues such as bundling of channels, must carry or must share obligations of TV channels or complex vertical and horizontal arrangements.\textsuperscript{168} There are also sector specific regulators such as Telecom Regulatory Authority of India (TRAI) or Telecom Disputes Settlement Appellate Tribunal (TDSAT) assuming the role of ‘encouraging competition’ in the broadcasting e.g. prescribing the maximum price that can be charged from consumer.\textsuperscript{169} The Competition Act, 2002 has following main features:

**Regulation of anti-competitive agreements**

It provides that no enterprise or association of enterprises shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services, which comes or likely to cause an Appreciable Adverse Effect (AAE) on competition within India. It prohibits horizontal and vertical agreements.\textsuperscript{170} The Competition Act prohibits Cartel\textsuperscript{171} arrangements.

\textsuperscript{168} Horizontal arrangements are among are among competitions. These fix prices, limit or control production, allocate markets, bid rigging or collusive bidding arrangements. They are presumed to have appreciable adverse effect (AAE). Vertical agreements are those relating to actual or potential relationships of purchasing and selling to each other, exclusive supply/distribution arrangements refusal to deal or re-sale price maintenance. The rule of reason applies to vertical agreements.

\textsuperscript{169} Supra n. 142, p.42.

\textsuperscript{170} The Competition Act, 2002, Section 3(1).

\textsuperscript{171} Ibid., Section 2(c) A ‘Cartel’ includes an association of producers, sellers, distributors, traders or service providers, who by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, on, trade in goods or provision of services.
between competitors, such as price fixing, market and consumer sharing, limiting or controlling production or supply as well as bid rigging and collusive tendering.

The Competition Act also prohibits agreements between enterprises at different levels of the supply chain, such as tie-in arrangements, exclusive supply, exclusive distribution and resale price maintenance agreements as well as refusal to deal, if such agreements cause or are likely to cause an Appreciable Adverse Effect (AAE) on competition in India.¹⁷²

**Regulation of abuse of dominance**

Dominance is said to be abused when there is an appreciable adverse effect on competition due to actions of a dominant undertaking. Dominant position under the Competition Act means – a position of strength enjoyed by an enterprise in the relevant market, which enables an enterprise to:

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour.¹⁷³

Dominance is determined by several factors such as market share of the enterprise, market share of competitors, entry barriers, size and resources of the enterprise or competitors. Examples of abuse

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¹⁷² *Supra* n. 170, Section 3(4).
include predatory pricing, discriminatory pricing, denying market access, leveraging and tying arrangements. Competition Act is amended by adding new provisions under Competition (Amendment) Act, 2007.

**Regulation of combination and mergers**

The Act provides regulation for the operation and activities of combinations, a term which contemplates acquisition, mergers, joint ventures, takeovers or amalgamations. The Act mandates that no person or enterprise shall enter into a combination which causes or likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.\(^{174}\)

**The Competition Commission of India (CCI)**

CCI is successor of the MRTP commission. The CCI is not merely a law enforcement agency but would be actively involved in the formulations of the country’s economic policies. It advise the Government on competition policy, take suitable measures for the promotion of competition advocacy and create awareness and imparting training about competition issues. CCI imposes penalties for non-compliance with provisions of the Act.

**Analytical aspect regarding the Competition Act, 2002**

There is no inbuilt principle that statutory authorities and private person are required to approach the commission to determine

\(^{174}\) Supra n. 170, Section 5 and Section 6.
whether anti-competitive agreement is in force, or whether there is an abuse of dominant position or whether the combination is detrimental to public interest. The parties approach the commission of their own accord.

The Central Government enjoys unbridled power in the matters of policy framing and issues directions on questions of policy which shall be binding on the CCI. Such provisions seriously affect independence and efficiency of CCI.

11) The Right to Information Act, 2005

‘In a Government of responsibilities like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to known every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings’. 175

The purpose of the Act is to provide the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of very public authority. The Act also provides Central Information Commission and State Information Commission for such matters.

Although the Act provides for access to any kind of information, but there are certain provisions which exempt some informations from disclosure. The reason is disclosure of such information prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with Foreign States or lead to incitement of an offence. 176

If a request for information involves an infringement of copyright subsisting in a person other than a State, it may be rejected. 177

**Right to information and media**

Media is the most important vehicle for information, knowledge and communication in a democratic society. It plays a significant role in shaping societies, providing public sphere of information, debates that enables social and cultural discourse, participation and accountability. Information is power. An Right to Information (RTI) regime can enable credible, evidence-based and factual reporting on key issues of public interest. RTI can enable the media to expose mal-administration, corruption, inefficiency, transparency and good governance. 178

**REGULATIONS REGULATING ELECTRONIC MEDIA**

1) **The Telecommunication (Broadcasting and Cable Service) Interconnection Regulations, 2004**

These regulations shall cover arrangements among service provides for interconnection and revenue share, for all

176 The Right to Information Act 2005, Section 8.
177 Ibid., Section 9.
178 The Right to Information Act, 2005: A guide for media 49 [Published by the Centre for Good Governance (CGG), Hyderabad.] available at: edaa.in/communityradio/community (Visited on March 25, 2013).
telecommunication (Broadcasting and Cable Services) throughout the territory of India.

Interconnection refers to the technical and commercial arrangements between service providers. Interconnection is an important consumer issue since subscribers would not be able to access the service they demand unless necessary interconnection arrangements are in place. Commercial disputes between service providers over revenue sharing result in disruption of services by blocking of Channels. It is the consumer who suffers on account of dispute over revenue sharing arrangements. So there was need that an effective interconnection framework was laid down so that the disputes could be resolved without resorting to extreme measures such as blocking of channels.

On 31st December, 2004, The TRAI insured a regulation on Register of Interconnect Agreements with Service Providers under different Platforms.179 The TRAI recommended that agreements entered into between MSOs180 and LCOs181 should be registered with the authorised officers under the cable Act. Accordingly, on 2nd December, 2005, the regulations were amended to facilitate flexibility in procedures as to the manner of filing of interconnect agreements.182

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179 The Register of Interconnect Agreements (Broadcasting and cable services) Regulation, 2004.
180 Multi Service Operators
181 Local Cable Operators
182 The Register of Interconnect Agreements (Broadcast and Cable) (2nd Amendment), Regulation, 2005 (12 of 2005)
Subsequently on 10th March, the regulations were further amended requiring DTH service providers to file with the TRAI, interconnect agreements entered into with the broadcasters.\textsuperscript{183}

This amendment was carried out in order to facilitate better monitoring of DTH operators. In order to ensure better competition among service providers and to prevent anti-competitive activities, the TRAI issued the telecommunications (Broadcasting and cable Services) Interconnection Regulation, 2004.

These regulations prohibit anti-competitive agreements between broadcasters and distributors of television channels which prevent any other distributor of television channels from obtaining such television channel for distribution.\textsuperscript{184}

These regulations also prohibit broadcasters and multi-service operators from disconnecting television channels without one month's notice accompanied by reasons for the proposed disconnection.\textsuperscript{185}

Free to air channel can be converted to Pay channel and vice-versa by any broadcaster by informing the Authority and giving one month public notice before the date of conversion.\textsuperscript{186}

\textsuperscript{183} The Register of Interconnect Agreements (Broadcast and Cable Services) (3 Amendment), Regulation, 2006 (3 of 2006)
\textsuperscript{184} The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, regulation 3.1.
\textsuperscript{185} \textit{Ibid}, Regulation 4.1.
\textsuperscript{186} \textit{Ibid}, Regulation 7.1.
So these are measure in the interest of The Consumer and enhance the quality of services available to the Consumer.

2) The Standards of Quality Of Services (Broadcasting And Cable Services) (Cable Television- Cas Areas Regulation, 2006)

This regulation is issued by Telecom Regulatory Authority of India on 23rd August, 2006. This regulation has provisions relating to connection, disconnection, transfer and shifting of Cable Service in CAS areas; complaints and redressal in respect of cable services and set top boxes related issues and complaints; change in positioning of Channels/Taking the Cannels off air in respect of cable services and public awareness campaign in CAS areas.

3) The Direct to home Broadcasting Services (Standards of Quality of Service An Redressal of Grievances) Regulations, 2007

These regulations deal with direct to home service, its connection, disconnection, transfer and its shifting. Regulations also Provide redressal to Direct to home (DTH) subscribers through call centers and nodal officers. The nodal officer authorities forward the complaints of DTH subscriber to DTH operators. The main purpose of these regulations is to provide good quality service of programmes to subscribers and in case of any grievances providing redressal or relief with the time limit provided under regulations.
Every direct to home operator\textsuperscript{187} shall, on fulfillment of the requisite requirements for providing direct to home service, provide, on non-discriminatory basis, the direct to home service to every one making request for the same, subject to technical and operational feasibility.\textsuperscript{188}

Any person seeking connection, disconnection or shifting of direct to home service connection may make an application in duplicate to the direct to home operator in such format as may be specified by the direct to home operator and such application shall be provided to such person by the direct to home operator as specified by regulation.\textsuperscript{189}

DTH operator shall not take off the air or discontinue exhibition of any channel the air or discontinue exhibition of any channel without giving prior notice to The DTH subscriber\textsuperscript{190} and indicating the reason for such disconnection\textsuperscript{191}

DTH or Direct-to Home television is defined as the reception of satellite programmes with personal dish in an individual home. DTH dies away with the need for the local cable operator and puts the broadcaster directly in touch with the consumer. A DTH network

\textsuperscript{187} ‘Direct to home operator’ means an operator licensed by the Central Govt. to distribute multi channel TV Programmes by using a Satellite System directly to the subscriber’s premises without passing through intermediary such as cable operator or any other distributor of TV Channels.

\textsuperscript{188} The Direct to Home Broadcasting Services (Standards of Quality of Service An Redressal of Grievances) Regulations, 2007, Section 3. Section 3

\textsuperscript{189} Ibid., Section 5.

\textsuperscript{190} Ibid., Section 6.

\textsuperscript{191} Ibid., Section 7.
consists of a broadcasting centre, Satellites, encodes, multiplexers, modulators and DTH receivers. A DTH service provider has to lease ku-band transponders from the satellite. The encoders convert the audio, video and data signals into the digital format and the multiplex mixer these signals. At the user end, there is a small dish antenna and set-top boxes to decode and view numerous channels. DTH is an encrypted transmission that travels to the consumer directly through a satellite. DTH transmission is received directly by the consumer at his end through the small dish antenna. A set-top box, unlike the regular cable connection, decodes the encrypted transmission. DTH has the advantages of being able to reach the remotest of areas since it does away with the intermediate step of a cable operator and the wires (Cables) that come from the cable operator to the home. Also, with DTH, a user can scan hundreds of channels. DTH offers better quality picture than cable television. This is because cable television in India is in analogue mode while DTH is in the digital mode. DTH offers stereophonic sound effects. Apart from enhanced picture quality, DTH also allows for interactive television services such as movie on demand, internet access, video conferencing and e-mail. In DTH, the payments are made directly by the subscriber to the satellite company offering the service. A major problem that broadcasters face in India is the under-reporting of subscribers by cable operators resulting in huge losses. Broadcasters do not earn much in
subscription fees and are largely dependent on advertisement revenue to cover their costs. DTH enables the broadcaster to know the exact number of subscribers.

DTH is gradually gaining ground in India. The prices of the dish and the set-top box have come down significantly. Overall investments required in putting up a DTH infrastructure has dropped and customers are also reaping the benefits of more attractive tariffs. The service is coming at a time when there are attempts to introduce CAS (conditional access system), which will make cable television more expensive, narrowing the tariff gap between DTH and cable television.

**BILLS REGULATING ELECTRONIC MEDIA**

1) **Communication Convergence Bill, 2001**

Traditionally, communication services were distinct broadcasting, voice telephony and on-line computer services. These operated on different networks and used distinct means or platforms: television sets, telephones and computers. Each of these media has been regulated by separate laws and separate regulators. Digital technology allows a substantially higher capacity of traditional and new services to be transported over the same networks and to use integrated consumer devices for purposes such as telephony, television or personal computing. Examples of convergent services include internet services delivered to television sets via systems like web televisions; web-casting of radio and television programming on the internet; using the internet for voice telephony; and e-mail and
world wide web access via digital television decoders and mobile telephones. Convergence plays a crucial role in the democratic and social process by enabling the citizen to act both as a recipient and a generator of information. It also facilitates electronic commerce & contributes to faster economic growth.

The Communication Convergence Bill, 2001 was introduced to promote, facilitate and develop in an orderly manner the carriage and content of communications, (including broadcasting, telecommunication and multimedia) for the establishment of an autonomous commission to regulate carriage of all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.\textsuperscript{192}

The new law is to replace and render inoperative the Telegraph Act, 1885, the Wireless Telegraphy Act, 1933 and the Cable Television Networks (Regulation) Act, 1995.

The Bill provides for the establishment of an autonomous commission known as the Communications Commission of India to regulate all forms of communications.\textsuperscript{193} The Bill also makes it mandatory to obtain a license in order to own or provide any network infrastructure facility, any network services, application service, or content application service.\textsuperscript{194} A license is also required for the possession of any wireless equipment unless specifically exempted by the central Government.\textsuperscript{195}

\textsuperscript{192} The Communication Convergence Bill, 2001, Preamble.
\textsuperscript{193} Ibid., Section 3.
\textsuperscript{194} Ibid., Section 4.
\textsuperscript{195} Ibid., Section 5.
The Communications Commission of India is empowered to issue regulations to ensure competition and prevent monopoly in the provision of network infrastructure facilities and communication services. Such regulations may include eligibility conditions for granting of licences or registrations; their conditions, tariffs and rates; restrictions regarding ownership and control of the media; restrictions on the number of licences for extent of accumulation of interest in such licences by a person.196

The Communication Convergence Bill empowers the Central Government, the State Government or their authorised officers to intercept communications on the occurrence of any public emergency in the interest of public safety where it is necessary or expedient to do so in the interest of the scrutiny, sovereignty and integrity of India, friendly relations with foreign States or public order or to prevent incitement of the commission of an offence.197

The Bill introduces provisions in the nature of anti-siphoning provisions in respect of live broadcasting of a national or international event of general public interest to be held in India. The Bill makes it mandatory that such an event be carried on the network of a public service broadcaster.198 In order to strive towards a level playing field for bidders for broadcasting rights or persons interested in receiving broadcasting rights for events, the Commission is given the power to determine the principles and terms for access to the network of the public service broadcaster.199

196 Supra n. 192, Section 26.
197 Ibid., Section 66.
198 Ibid., Section 31 read with Section 2(25).
199 Ibid., Section 31(3).
2) Broadcasting Services Regulation Bill, 2006

The bill was drafted to facilitate and develop in an orderly manner the carriage and content of broadcasting. It aims for regulation of broadcasting services in India for offering a variety of entertainment, news, views and information in a fair, objective and competitive manner. It endeavors to encourage broadcasting services to be responsive to the educational, development, social, cultural and other needs and aspirations of people and include in their programming public service messaging and content.

The bill attempt to check media monopolies and cross holdings. Bill brings radio also under its fold. FM radio still has not been allowed to broadcast news. Now under Section 4 of this bill all television & radio channels require registration. Registration of channel may be cancelled if it will not comply with content code. The Government will lay down for all broadcasters public or private, public service obligations in advertising messages and programmes, and prescribe the percentage of programming which should be Indian in Origin.

The Bill provides content code to regulate the programme “quality” being aired by broadcasters and to “protest the consumer interests”, national interest and right to privacy. It provides\textsuperscript{200} “it is likely to the threaten the security and integrity of the State or threaten

\textsuperscript{200} Broadcasting Services Regulation Bill, 2006, Section 4 (3).
peace or harmony, public order in whole or in part, if name, logo or symbol of channel is vulgar or obscene, resembles that of a terrorist or terrorist organisation or resembles any other registered channel in India or well known channel outside India.”

**Powers in a situation of external threat or war**

Sweeping powers are conferred on the Central Government. For instance in the event of war or a natural calamity of national magnitude, the Central Government has the power to, “in public interest, take over the control and management of any of the broadcasting services or any facility connected therewith, suspend its operation or entrust the public service broadcaster to manage it in the manner directed by the Government for such period as it deems fit...” The service provider shall immediately comply with all such directions failing which the Central Government may direct the licensing Authority to suspend or revoke its license.

The Central Government is empowered to direct the licensing authorities to suspend or revoke a licence granted to broadcasting service or stop the broadcasting service where it considers the broadcasting service to be prejudicial to friendly relations with a foreign country, public order, communal harmony or security of the State.

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201 Supra n. 200, Section 4 (2).
202 Ibid., Section 5(1).
203 Ibid., Section 5(2).
Sharing sports feeds with Doordarshan

The Bill provides for mandatory sharing of sports broadcasting signals with Prasar Bharati. It provides “no content rights owner or holder and no television or radio broadcasting service provider shall carry a live or delayed live television broadcast on any cable or Direct to home network or radio commentary broadcast on its Amplitude Modulation (AM) and Frequency Modulation (FM) channels in India of sporting events of national importance, unless it simultaneously offers the same live or delayed live broadcasting signal, without its advertisement, to Prasar Bharati to enable it to re-transmit the same on its terrestrial networks and Direct to home networks in such manner as may be prescribed.”204

The bill also contains anti-siphoning provisions providing for mandatory sharing of sports broadcasts signals in respect of national or international sporting events of national importance.205

The Bill provides for introduction of Digital Addressable Systems (DASs) in broadcasting network services. The Government may make it obligatory for every broadcasting network service provider to transmit or re-transmit content of any or all channels through a DAS.

Broadcasting regulatory authority of India (BRAI)

The draft bill provides for the establishment of the BRAI appointed by the Central Government. The powers and the functions

204 Supra n. 200, Section 7.
205 Ibid., Section 6.
of the Authority include the power to notify the terms and conditions of licences for various categories of service providers in accordance with Government policy guidelines; to recommend guidelines or norms to the central Government; to grant registration to television and radio channels; to lay down standards of quality of service to be provided by service provider to formulate and determine condition for fair and non-discriminatory access to broadcasting services; to ensure effective compliance of public service broadcasting obligations; to hear appeals against the orders and directions of the Licensing Authorities and adjudicate between licensing authorities or consumers or complaints of service providers in respect of violation of content code. The authority is unlikely to enjoy the autonomy given that its chief executive would be a serving Government official drawing a Government salary and owing allegiance to the Government.

**Restriction on monopolies**

There are provisions to restrict monopolies across different segments of the media as well as with in broadcast segments. The Central Government is authorised to prescribe eligibility conditions and restrictions with regard to accumulation of interest in the print and broadcasting segment to ensure ‘diversity of news and views’. Broadcasting Service providers and content broadcasting service providers (and their associated companies) are precluded from holding more than a 20% share of the paid-up equity or from having any other financing or commercial arrangement that may result in management
control over the financial, management or editorial policies of any other broadcasting service provider or content broadcasting service provider. Like wise, content broadcasting service providers and broadcasting service providers are precluded from having more than the prescribed share of the total number of channels in a city/State subject to an overall ceiling of 15% from the whole country.206

Public service broadcasting obligations

It is to be prescribed by Central Government. These obligations include the obligation for broadcasting service providers to promote public service/social messaging through advertisements and programmes to the extent of not less than 10% of the weekly commercial time and programme content of a channel.207

Authorised officers

The Bill confers wide powers on ‘authorised officers’, a Distt. Magistrate, a Sub-Divisional Magistrate or a Commissioner of Police, to inspect, search and seize equipment, prosecute license service providers or other persons who have committed offences under the Act, to prohibit any service provider from transmission of a programme or channel for violation of the content code or if it is likely to promote disharmony between religious, racial, linguistic groups.208

There provisions are an echo of what is already found in Cable Television Networks (Regulation) Act, 1995.

206 Supra n. 200, Section 10.
207 Ibid., Section 11.
208 Ibid., Section 23 and Section 24.
Analytical aspect regarding the broadcasting regulation bill, 2006

In India about 60% of news comes from politics. After the passing of this bill, the Act will give a monopolistic approach to the Government and media will be barred to cover such issues. Media will fail in revealing Government’s failure or it negligence. BRAI and powers of licensing authority will act as a puppet at Government’s hand.

Government wants to put few genuine restrictions on the broadcasted content. There are three important and noticed features of his proposed bill:

- Establishment of BRAI
- Creation of the Code of Conduct for broadcasted content.
- Provisions for punishment of the violators of the ‘Code of Conduct’.

Electronic media, specially, news media, has registered strong protest against any code of conduct made by the Government. Broadcasters Foundation, the organisation of news channels has declared any such attempt as the violation of the freedom of press. They are alleging that the Government wants to control electronic news media. News channels want a self-made code of conduct. Freedom of news cannot be ignored. The earlier situation of press censorship during emergency at the time of P.M. Indira Gandhi is a good example of effects of pre-censorship.209