

A BROAD OVERVIEW OF BROADCASTING LEGISLATION IN INDIA¹

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INTRODUCTION³

With rapidly changing technologies, and increasing business investments, the broadcast sector has become the site of contention between various interests – broadcast companies, the government, public interest groups, community radio and television channels, and an increasingly diverse audience that has been broadly categorized as ‘the public.’ An important aspect of this tussle is the legal regulation of both existing and emerging technologies. This compilation attempts to examine the existing legal framework that applies to various broadcast technologies that are currently in use in India.

The statutory basis of government monopoly of the broadcast sector, which was widespread until the emergence of satellite television in the 1990s, can be traced to the 123 year-old **Indian Telegraph Act of 1885**. The Act states that the Central Government has the exclusive privilege of establishing, maintaining, and working telegraphs within India.⁴ The Act and its subsequent amendments define telegraph broadly to include most modern communication devices irrespective of their underlying technology.⁵ Judicial decisions have also held that the term ‘telegraph’ includes the term telephone, television, radio, wireless, mobile and video equipment.⁶

The Act authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety.⁷ Section 5(2) enables the government to lawfully intercept telegraph messages on certain grounds. These include India’s sovereignty and integrity, state security, friendly relations with foreign states, public order, and preventing the commission of an offence.⁸ The Act empowers the government to revoke a telegraph license for breach of any terms and conditions or for a default in making license-fee payments.⁹

³ See Vikram Raghavan, *Communications Law in India*, New Delhi: Lexis Nexis Butterworths, 2007.

⁴ Section 4(1)

⁵ “any appliance, instrument, material, or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual, or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, or magnetic waves”

⁶ Section 3(1AA). However the physical possession of radio and wireless equipment is regulated by the Indian Wireless Telegraphy Act, 1933.

⁷ Section 5(1)

⁸ Section 5(2)

⁹ Section 8

Though the Telegraph Act does not explicitly define ‘telecommunications service’ and ‘broadcasting service’, the **Telecom Regulatory Authority of India Act, 1997**, defines communication service in s 2(1)(k) as:

“Service of any description (including electronic mail, voice mail, data services, audio-text services, video-text services, radio paging, and cellular mobile telephones services) which is made available to users by means of an transmission or reception of signals, writing, images, and sounds or intelligence of any nature, by wire, radio, visual or any other electronic means but shall not include broadcasting services.”

[Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.]

Though this section expressly excludes ‘broadcasting’ from this definition, the **directive** authorizes the government to notify broadcasting services to be a telecommunication service.¹⁰ This notification gave TRAI the authority to regulate broadcasting and cable services in India. The license required for broadcasting (the Wireless Operating License) is given by the Wireless Planning and Coordination Committee (WPC) Wing of the Ministry of Communication and Information and Technology, while the Ministry of Information and Broadcasting (MIB) gives a Grant of Permission Agreement.

Most radio and television services are also regulated by the **Indian Wireless Telegraphy Act** (No 17 of 1933), as they constitute ‘wireless communications’. Section 2(2) and Section 3 regulate wireless communication by requiring users of various types of wireless equipment to obtain wireless licenses for possessing and using the equipment. These licenses are granted by the WPC (Wireless Planning & Coordination Authority) Wing of the Department of Telecommunications (DoT)

Therefore, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licenses:

- A Grant of Permission (GOPA) to offer broadcast services issued by the Ministry of Information and Broadcasting under the Telegraph Act
- A wireless operating license from the WPC (Wireless Planning & Coordination Authority) Wing of the Ministry of Communication and Information Technology under the Wireless Telegraphy Act

RADIO SERVICES:

Terrestrial radio services can be divided into two main categories: AM radio that uses medium or short wave frequency bands, and FM that uses VHF frequencies in the 88 MHz to 108 MHz band. AM radio is offered only by AIR while FM radio, which works

¹⁰ See, Ministry of Communications, ‘Broadcasting Services and Cable Services Notified as Telecommunication Service’, S044 (E), Fno13-1/2004-Restg, 9 January 2004.

on line-of-sight principles and can be clearly received within a local area, is offered by both AIR and private channels.

FM Radio

AIR began FM broadcasts in Madras on 23 July 1977. FM radio was opened to private players in 1999. The Ministry of Information and Broadcasting invited bids for licenses to operate 140 FM stations in 40 cities. In March 2000, the government short-listed 29 applicants for licenses to operate 101 FM radio stations. Upon further screening, the government issued letters of intent to 93 stations. Ultimately, FM licenses were granted to 16 companies to operate 37 channels. The initial FM radio licenses were valid for ten years and licensees were required to submit performance bank guarantees equivalent to a year's license fee to ensure that they carried out their license obligation.

Second Round of FM Licenses

Many of the FM stations that were licensed were financially unsuccessful and could not meet the license fee requirements. They soon demanded a reduction in license fee and change in the prevailing licensing network. The MIB then constituted the Radio Broadcast Policy Committee under the chairmanship of Amit Mitra, Secretary General, FICCI, on 24 July 2003 to make recommendations for Phase II of FM licensing, and to “study the desirability and implications of making modifications in the licensing regime of Phase I licenses. The committee called for revisions to the prevailing license fee structure for FM licenses, and recommended the introduction of an annual revenue sharing arrangement that would require FM licensees to pay 4 per cent of their gross revenue as license fees. It also proposed restructuring existing licenses and restricting the licensees' liability for their original license-fee payments.¹¹ The second round of allocation of licenses concluded in early 2006¹².

TRAI took over regulatory responsibilities for broadcasting in January 2004. Its first set of recommendations to the government, sent in August 2004, proposed a migration package that would enable existing FM licensees to substitute their fixed fee terms with a more flexible revenue sharing formula. It also suggested relaxing the strict restrictions on multiple ownership that prevented FM licensees from owning more than one frequency in a city. It proposed a cap of 25 per cent on the total number of frequencies held by a single license across the country. It made detailed recommendations regarding foreign investment in FM radio. It suggested removing restrictions on news and current affairs programmes.¹³

In July 2005, the government accepted most of TRAI's recommendations and framed a new policy for FM licenses. The main features of this policy were:

¹¹ *Supra* note 2. The Amit Mitra Committee Report was sent to TRAI on 12 February 2004 for its recommendations. Private FM players also submitted their recommendations to TRAI on 24 February 2004.

¹² The full list of operational FM stations is available at <http://mib.nic.in/fm/fmmainpg.htm>

¹³ *Id*

- Two-round selection process for 336 channels in 90 cities
- Requirement that applicants be registered in India
- Prohibition of control by persons convicted of certain offences.
- Prohibition of application by subsidiary of applicant company
- Prohibition of application by companies with same management
- Prohibition of application by companies of the same group or otherwise inter-connected companies
- Prohibition of application by religious bodies or companies controlled by/associated with them
- Prohibition of application by political bodies or companies controlled by/associated with them
- Prohibition of application by advertising agencies or companies controlled by/associated with them
- Prohibition of application by Trusts, Societies, Non-Profit Organizations or companies controlled by/associated with them
- Permission granted for ten years

Under the policy

- Applicants are allowed to run one channel per city provided the total number of channels allocated to the entity is within the overall ceiling of 15% of all allocated channels in the country.
- Licensees cannot outsource, through any long-term production or procurement arrangement, more than 50% of the total content, and not more than 25% of the total content can be outsourced to a single content-provider.
- Licensees cannot hire or lease more than 50% of broadcast equipment on long-term basis
- Licensees cannot enter into any borrowing or lending arrangement with other permission holders or entities other than recognized financial institutions, which may restrict its management or creative discretion to procure or broadcast content

Total number of frequencies that an entity may hold

No entity can hold permission for more than 15% of all channels allotted in the country. In the event of allotment of more channels than prescribed, the entity will have the discretion to decide which channels it would like to surrender and the government has to refund its OTEF for these channels in full.

Foreign Investment:

Total foreign investment is permitted to the extent of not more than 20% of the paid up equity in the entity holding permission for a radio channel. Foreign investment includes Foreign Direct Investment (FDI) as defined by RBI, and FDI by OCBs/NRIs/PIOs etc. Portfolio Investments by Foreign Institutional Investors (FIIs) (within limits prescribed

by RBI) and borrowings, if these carry conversion options. The permission is subject to the following conditions:

- One Indian individual or company owns more than 50% of the paid up equity excluding the equity held by banks and other lending institutions.
- The majority shareholder exercises management control over the applicant entity.
- Has only Resident Indians as Directors on the Board.
- All key executive officers of the applicant entity are resident Indians.

No permission holder shall be permitted to change the ownership pattern of the company through transfer of shares of the major shareholders to any new shareholders without the written permission of the Ministry of Information & Broadcasting. The permission is granted for a period of five years from the date of its operationalisation, subject to the condition that the new shareholders conform to all the prescribed eligibility criteria.

Cross Media Ownership:

If, during the currency of the permission period, government policy on cross-media ownership is announced, the permission holder shall be obliged to conform to the revised guidelines within a period of six months from the date of such notification, failing which it shall be treated as non-compliant of Grant of Permission Agreement, and liable for punitive action. In case the permission holder is not in a position to comply with cross media restrictions for bonafide reasons acceptable to the Ministry of Information & Broadcasting, the Permission Holder would be given the option of furnishing one month's exit notice; the entry fee for the remaining period, calculated on a pro rata basis, would then be refunded to the permission holder.

News and Current Affairs Programmes:

No news and current affairs programmes are permitted under the Policy (Phase-II). TRAI, in its recommendations on licensing issues related to the 2nd phase of FM broadcasting, had advised the government to lift restrictions on the broadcasting of news and current affairs. However, the government has not implemented these recommendations.¹⁴

Code of Conduct:

Every permission holder shall follow the AIR Programme and Advertising Code as amended from time to time. In the event of the government announcing the setting up of a Broadcast Regulatory Authority, by whatever name it is called, and the content regulations are modified, the permission holder shall be obliged to conform to the revised guidelines.

¹⁴ TRAI Recommendations on Licensing Issues related to 2nd Phase of Private FM Broadcasting, August 2004

No permission holder shall use brand names or owners' names or corporate-group names to identify its channel to gain commercial advantage over other permission holders.

The Ministry of Information & Broadcasting shall have the right to suspend the permission of one or more permission holders in the public interest or for the sake of national security in order to prevent the misuse of their respective channels. The permission holders shall be obliged to immediately comply with the directives of the Government.

3rd Phase of Private FM Radio Broadcasting

TRAI released its Recommendations on the 3rd Phase of Private FM Radio Broadcasting on 22 February 2008. Details of the recommendations are available in the accompanying document on recent TRAI recommendations.¹⁵

Community Radio

In a major development, the Government has permitted educational institutions and, more recently, not-for-profit organizations to operate community radio stations. The 2002 Guidelines were applicable only to established educational institutions. In December 2006, the I&B Ministry issued guidelines making it possible for not-for-profit organizations to set up community radio. By the end of February 2008, nearly 200 applications had been received under the new, broadened scheme.¹⁶ By the end of April, 76 organisations (including educational institutions and Krishi Vigyan Kendras) had received Letters of Intent (LoI) for setting up community radio stations.¹⁷

Main Features of the December 2002 and December 2006 Guidelines

	December 2002 Guidelines	December 2006 Guidelines
Holders of the Service (persons who are able to get radio spectrum frequencies in this category)	Established educational institutions recognized by the Central or State government	Non profit organizations with a proved track record of 3 years
Assignment of frequency	Up to 50 watts	Up to 100 watts for non profit organizations, requests for 100-250 watts subject to approval by Committee constituted by I & B Ministry

¹⁵ Telecom Regulatory Authority of India (TRAI) Draft Recommendations on 3rd Phase of Private FM Radio Broadcasting , February 22, 2008 (available at <http://www.trai.gov.in/searchdoc.asp>)

¹⁶ See <http://mib.nic.in/CRS/crsnop260208.htm>

¹⁷ See <http://mib.nic.in/CRS/crsloi090508.htm>

Restrictions on foreign citizens	All foreign personnel likely to be deployed by the permission holder for the installation, maintenance, and operation of the Permission Holder's services need to acquire prior security clearance from the government	All foreign personnel likely to be deployed by the permission holder for the installation, maintenance, and operation of the Permission Holder's services need to acquire prior security clearance from the government
Procedure for license	For educational institutions: Application submitted to I&B Ministry- clearance from HRD and Home Ministries- license agreement to be signed after allotment of frequency	Application with processing fee to be cleared by the I&B Ministry. In the event that the Ministry does not grant within 3 months, case referred to committee constituted under I&B Ministry
Restrictions in publicity and advertising	Educational institutions cannot use its channels to broadcast for commercial purposes and has to provide its services on a free to air basis	Licensees are allowed advertisements and announcements related to local businesses and services and employment opportunities but the duration of this is restricted to five minutes per hour of broadcast. The revenue generated from this can only be utilized for operational expenses and capital expenditure of the radio service. After these needs are met, the service may, after taking permission from the I&B Ministry plough back information into the primary activity of the organization.
Characteristics of Assignment Norm for communitarian broadcasting	License granted for a period of three years Programmes should focus on issues related to education, health, environment, agriculture, rural and community development. Content must be confined to social, cultural, and local	Permission granted for five years Programmes should be of immediate relevance to the community. The emphasis should be on developmental, agricultural, health, educational, environmental, social welfare, community

	<p>issues and the format, subject, presentation and language must reflect and exude the local flavour and fragrance</p>	<p>development, and cultural programmes. The programmes should reflect the special interests and needs of the local community</p>
Restrictions in Content	<p>No news allowed. Nothing in the content should offend against good taste or decency, should not criticize friendly countries, should not attack religions or communities, should not contain anything obscene, innuendos or defamatory material, should not incite violence, should not amount to contempt of court, should not cast aspersions on the dignity of the President, Vice President or judiciary, should not encourage superstition or blind belief, should not denigrate women or denigrate children.</p> <p>The community radio service is not allowed to broadcast material that perpetuates hatred against or attempts to demean persons based on ethnicity, nationality, race, gender, sexual preference, religion, age, or physical and mental disability.</p>	<p>No news allowed. Nothing in the content should offend against good taste or decency, should not criticize friendly countries, should not attack religions or communities, should not contain anything obscene, innuendos or defamatory material, should not incite violence, should not amount to contempt of court, should not cast aspersions on the dignity of the President, Vice President or judiciary, should not encourage superstition or blind belief, should not denigrate women or denigrate children.</p> <p>The community radio service is not allowed to broadcast material that perpetuates hatred against or attempts to demean persons based on ethnicity, nationality, race, gender, sexual preference, religion, age, or physical and mental disability.</p>
Sanctions and penalties contemplated	<p>The government can revoke the license at any time in public interest and breach the terms and conditions of the license by giving notice of 15 days</p>	<p>For non-profits, for s breach of the content regulation can suo moto or on basis of complaints place the matter before an Interministerial Committee on Programme and Advertising Codes. Penalties range from</p>

State economical allowances for broadcasters	No state economic allowances but Ministry will charge only the spectrum usage fee as determined by the WPC and not levy another license fee	temporary suspension of permission for operating the radio service for a period of up to one month for the first violation, three months for the second violation and revocation of permission for subsequent violations. In case of revocation the permission holder can not apply for a fresh license for a period of up to five years No state allowances but non profit organizations are eligible to seek funding from multilateral agencies
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Satellite Radio

Satellite radio relies on satellite signals, instead of FM/AM frequencies, for radio transmission. These services are in a nascent stage in India. Recognising the potential for satellite radio services, TRAI issued comprehensive recommendations in June 2005.

TRAI Recommendations

TRAI has indicated that satellite radio services would be complementary to FM services, rather than competitive. TRAI suggested that there be no separation between carriage and content in satellite-radio licenses. There should be common rules of subscription and broadcast-type services. All India Radio (AIR)'s programme and advertisement codes should apply to satellite radio. There should be no ban on news and current affairs programmes. Licenses should be permitted to establish terrestrial repeaters to rebroadcast their signals for better reception. Given the high capital-intensity of the medium and limited number of global players, 100% foreign investment should be permitted in satellite radio services. Licenses should be issued for ten years. There should be no license fee, unless there is excessive demand for available spectrum. If satellite radio licenses are permitted to use terrestrial repeaters, a revenue share of 4 per cent can be imposed as a license fee. No specific transmission standards should be prescribed. A satellite radio licensee should be free to decide on the preferred transmission technology subject to the licensor's approval. Satellite radio licensees should offer to their subscribers the option of blocking unwanted channels.¹⁸

¹⁸ *Supra* note 2.

Satellite Radio Policy

Meanwhile, satellite radio had already entered the country - like cable TV - on the basis of a license issued by the Ministry of Telecommunications. WorldSpace began operations in 2000 and, because satellite radio services were then unregulated, it became by default the only private radio broadcaster in the country to offer news and current affairs channels.

In May 2008 TRAI opened up its draft Satellite Radio Policy¹⁹ for comments (with a deadline of less than two weeks). It included a section relating to news channels which, if accepted and implemented, could mean the end of news and current affairs on non-governmental radio.

The relevant section of the draft Satellite Radio policy states:

5.1 Satellite radio service provider shall be able to carry only the following types of radio channels on its service:

- (i) Non-News and Current Affairs radio channels registered with Government of India as per provisions contained in Part-II of these Guidelines.
- (ii) The news broadcast of All India Radio (AIR) as mutually agreed between the service provider/radio channel and AIR.
- (iii) Channels of Prasar Bharati as provided in paras 5.13 and 5.14

This is despite the fact that TRAI's Recommendations on Phase III of FM Radio licensing – issued in February 2008 – had already stated that "FM Radio broadcasters may be permitted to broadcast news taking content from AIR, Doordarshan (DD), authorized TV news channels, United News of India (UNI), Press Trust of India (PTI) and any other authorized news agency without any substantive change in the content. No other source of news is permitted at present." While even this formulation was fairly restrictive, the new policy seeks to restrict news and current affairs on private radio channels to programmes produced by the state broadcaster, All India Radio. Critics believe that such a move could have major implications for both private FM and community radio in the country.

¹⁹ See <http://www.trai.gov.in/trai/upload/PressReleases/574/draft19may08.pdf>

PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) ACT, 1990

The introduction of the Prasar Bharati Bill in Parliament in May 1979 was the direct result of the recommendations of the B. G. Verghese Committee set up in 1977 after the Internal Emergency declared by the then Prime Minister Indira Gandhi (1975-77). The Bill was allowed to lapse after the Janata Party government elected to form the government after the Emergency collapsed and the Congress Party returned to power.

The victory of the National Front government in 1989 saw the revival of the Prasar Bharati Bill in a somewhat modified form; the Bill was passed by Parliament and received presidential assent on September 12, 1990. The **Prasar Bharati Act** provided for the formation of an autonomous Broadcasting Corporation that would manage Doordarshan and AIR, discharging all powers previously held by the Information and Broadcasting Ministry. The Corporation would inherit the capital assets of Doordarshan and AIR and would be managed by a 15-member Prasar Bharati Board, including the Directors-General of the two organisations and two representatives from amongst the employees. The Chair and other members of the Board would be appointed on the recommendations of the selection committee headed by the Vice President. A fifteen-member Broadcasting Council would address public complaints.

The primary duty of the Broadcasting Corporation was to ‘organize and conduct public broadcasting services to inform, educate, and entertain the public’ and to ensure ‘a balanced development’ of broadcasting of radio and television.²⁰ The Corporation was to be guided by a set of objectives while discharging its functions. These include:

- Upholding the unity and integrity of the country and the values enshrined in the Constitution
- Safeguarding the citizen’s right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own
- Paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology.
- Providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes.
- Providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship.
- Providing appropriate programmes keeping in view the special needs of youth.
- Informing and stimulating the national consciousness with regard to the status and problems of women and paying special attention to the upliftment of women.
- Promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society.

²⁰ See Section 12, The Prasar Bharati Act, 1990.

- Safeguarding the rights of the working classes and advancing their welfare
- Serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas.
- Providing suitable programmes keeping in view the special needs of the minorities and tribal communities.
- Taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people.
- Promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State.
- Providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception.
- Promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated.
- Expanding broadcasting facilities by establishing additional channels of transmission at various levels.
- Ensuring that broadcasting is conducted as a public service to provide and produce programmes.
- Establishing a system for the gathering of news for radio and television.
- Negotiating for the purchase of, or otherwise acquiring, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and establishing procedures for the allocation of such programmes, rights or privileges to the services.
- Establishing and maintaining a library or libraries of radio, television and other materials. Conducting or commissioning, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit.

Though the Broadcasting Corporation was supposed to be independent, Section 23 of the Act gave the Central Government the power to issue to the Corporation directions to broadcast or not to make a broadcast, if it deemed it necessary in the interests of the sovereignty, unity and integrity of India, or the security of the State, or the preservation of public order. Another provision that curtailed the autonomy of the Corporation was Section 13, which provided for the constitution of a 22-member Parliamentary Committee to oversee the working of the Corporation. The National Front government (with VP Singh as Prime Minister) fell before the Act could be notified.

However the legislation got a fresh lease of life when the Supreme Court, on 9 February 1995, in the Cricket Association of Bengal case,²¹ directed the Government to set up an

²¹ *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* AIR 1996 SC 1236

independent broadcasting authority that would give access to all interests and groups. In September 1997, then Information and Broadcasting Minister Jaipal Reddy announced that the Act would be notified. The United Front government introduced changes in two main categories. It scrapped Section 13 of the 1990 Act that had provided for a Parliamentary Committee to oversee the working of the Board. Other amendments removed the Government's power to stipulate advertisement airtime and provided for the transfer of the assets of Doordarshan and Akashvani to the Corporation for a perpetual lease of a token Re 1 a year.

The second sets of amendments were broadly meant to seek to reconcile the Prasar Bharati Act with planned legislation on private broadcasters. It replaced the Broadcasting Council provided for in the Prasar Bharati Act with the Broadcasting Authority of India, that would govern private broadcasters when the then pending Broadcasting Bill 1997 was enacted.²²

The United Front government appointed SS Gill as the Chief Executive of the Corporation, amending the statutory qualifications for the designated head of Prasar Bharati. But early general elections in 1998 saw the formation of a new BJP-led government. The BJP had opposed Gill's appointment as violative of the stipulated age limit. When Gill refused to resign, the BJP government allowed the presidential ordinance amending the Prasar Bharati Act to lapse, and then removed him from office saying he did not satisfy the qualifications required under the Act. The government also removed other members of the Prasar Bharati from their posts. These actions were challenged in the Delhi High Court, which declined to interfere on the ground that it was a policy matter.²³

The Central Government introduced the Prasar Bharati (Broadcasting Corporation of India) Amendment Bill, 2008 in Parliament, amending the Prasar Bharati Act to reduce the tenure of the Corporation's Chairman from six to three years. The move is seen to be aimed at easing out the current Prasar Bharati Chairman, MV Kamath. An upper age limit of 70 years was also introduced for the position of Chairman. The I&B Minister said these changes would help bring diversity of experience at the top level for the benefit of the organisation. The I&B Minister, Priya Ranjan Dasmunsi, pointed out in the statement of objects and reasons that it was felt necessary to rationalise such matters "in order to inject sectoral experience to rejuvenate Prasar Bharati and its Board."²⁴

²² See Praveen Swami, "Public Service Broadcasting?", *Frontline*, Vol 14, No 23, November 15-28, 1997.

See Praveen Swami, "Autonomy in Prospect", *Frontline*, Vol 14, No 19, September 20- October 3, 1997.

²³ See *Rajendra Yadav v Union of India* AIR 2000 Del 229. Also See *Supra* note 2 at 81-82.

²⁴ "Bill on Prasar Bharati Act Tabled in Lok Sabha", *The Hindu*, March 11, 2008,

<http://www.thehindubusinessline.com/2008/03/11/stories/2008031151891000.htm> and "Content Code for TV channels soon: Dasmunsi", *The Hindu* 18 March 2008,

<http://www.hindu.com/2008/03/18/stories/2008031859431300.htm> , "Prasar Bharati Amendment Bill Passed", *The Hindu* 19 March 2008,

<http://www.hindu.com/2008/03/19/stories/2008031960131300.htm>

Prasar Bharati has been functioning in name, without measuring up to the objectives underlying the act. The PB Act has implemented only partially. For instance, neither the assets nor the staff of AIR/DD have

REGULATION OF CABLE TELEVISION

The sudden emergence of cable television and cable networks in the early 1990s caught the Indian government unprepared. The DoT initially responded with new regulations targeting the fledgling networks, requiring all users and dealers of satellite equipment to obtain special operating licenses for their equipment. Users and dealers were specifically prohibited from engaging in commercial distribution of programmes downloaded from satellites. To obtain these licenses, users had to undertake that they would not use their equipment to establish unauthorized networks.²⁵

The government's action against cable television networks was unsuccessfully challenged by cable operators before various high courts. Despite this, the growth of these networks continued, especially in urban areas. The Government appointed a committee which recommended that the censors should clear all programmes transmitted through cable networks. It also suggested that cable networks should be prohibited from directly relaying programmes received from satellites. The government, however, did not accept these recommendations.²⁶

*Shiv Cable v State of Rajasthan*²⁷

The reality of cable networks was tested in *Shiv Cable TV System v. State of Rajasthan*.²⁸ The case arose from a district administration's order directing the local police to halt cable TV networks because the cable operators lacked the necessary licenses. The affected operators challenged the district administration's order in the Rajasthan High Court on the ground that there was no law that required them to obtain licenses for their networks. They argued that the district administration's actions violated their fundamental right to carry on a trade and business. The state government told the high court that the cable operators had to obtain licenses under the Telegraph Act and the Wireless Telegraphy Act to legally operate their networks.

The High Court agreed with the government's arguments. It explained that cable networks typically comprise two elements:

- 1) A dish antenna to receive programmes transmitted by satellites.
- 2) A cable network to physically distribute these programmes to subscribers.

The Court said that since a cable operator's dish antenna was capable of receiving transient images of fixed and moving objects from satellites, the dish antenna constituted

been transferred to the Corporation. The staff are still government servants under 'deemed deputation' to Prasar Bharati.

²⁵ *Supra* note 2, pp 533-553

²⁶ *Id*

²⁷ *Id*

²⁸ AIR 193 Raj 197.

a wireless telegraph apparatus under the Wireless Telegraphy Act. It held that unless covered by an exemption, the dish antenna required a wireless license for its operation.

The Court held that lines and cables in a cable network were covered by the definition of a 'telegraph line' under the Telegraph Act, and the cable operators had to obtain statutory licenses in order for their dish antennas to download programmes from satellites and to transmit these downloaded programmes through their networks to customers.

Despite this, the High Court set aside the impugned orders of the district administration as they were made without jurisdiction. It held that under the Telegraph Act and the Wireless Telegraphy Act, only the Director General of Posts and Telegraphs, a Central Government official, was competent to take the actions in question. The High Court noted that the government had not framed any rules or guidelines to regulate cable networks. Noting that an outright prohibition on cable networks was difficult because they had already grown deep roots in several areas, the high court called on the government to establish a licensing system to regulate cable networks.

This decision prompted the government to promulgate an ordinance in 1994 that provided a legal basis to regulate cable networks. The ordinance was later ratified by Parliament and passed as the **Cable Networks Act, 1995**. This legislation was amended in 2003 to require cable subscribers to use conditional access systems to receive premium channels. The government's **New Telecom Policy, 1999** sought to align the cable industry closer to the market for telecom services.²⁹ It classified cable operators as access providers along with fixed and cellular licensees. It allowed cable operators to provide last mile links, switched services, and one-way entertainment services in their respective service areas. Cable operators were allowed to directly interconnect with other service providers within their service area and share infrastructure with them. The government decided not to allow cable operators to provide two-way communications as it would amount to their offering fixed services. But the policy gave cable operators the option to obtain a separate fixed license for this purpose.

The Cable Networks Act, 1995³⁰

The principal purpose of the Cable Networks Act was to introduce regulatory certainty to the cable market that had emerged in the early 1990s. The statement of objects and reasons declared that cable TV constituted a 'cultural invasion' as cable programmes were predominantly Western and alien to Indian culture and way of life. It declared that the lack of regulation had resulted in undesirable programmes and advertisements being shown to Indian viewers without any censorship.

Section 3 of the Act mandates that a cable television network can be operated only by a registered cable operator. The registering authority is any authority so notified by the Central Government.³¹

²⁹ See Ministry of Communications, New Telecom Policy 1999, 26 March 1999.

³⁰ See *Supra* Note 2 pp 533-553 Chapter 16

‘Cable television network’ is defined in Section 2 c) as:

Any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers.

In order to register, an entity could be

- an Indian citizen
- an association of individuals whose members are Indian citizens
- a company in which not less than 51 per cent of paid up equity share capital is held by Indian citizens³²

If the registering authority refuses to register an applicant, it must record its reasons for doing so and inform the applicant accordingly.

Statutory Violations and Offences:

The Cable Networks Act empowers and authorizes a government officer to seize a cable operator’s equipment if the officer has reason to believe that the cable operator is functioning without proper registration. The seized equipment cannot be retained for a period exceeding ten days from the date of seizure, unless a local District Judge, within whose jurisdiction the seizure has been made, approves continued retention of the seized equipment.³³

A first time violation under the statute can result in an imprisonment term that extends up to two years or a fine up to Rs. 1000 or both. Every subsequent offence is punishable with imprisonment for a term up to five years and a fine that may extend to Rs. 5000. The Act says that if a company commits an offence under the statute, the company and any person in charge, or responsible for its business, shall be deemed guilty, proceeded against and punished accordingly. If a company commits an offence with the consent, connivance, or attributable negligence of a director, manager, secretary, or other officer, these officers are deemed guilty, along with the company, and they can be prosecuted, and punished accordingly.³⁴

Cable Television Network Rules, 1994:

The Rules were enacted under the **Cable Television Networks (Regulation) Ordinance, 1994**. The Programme Code of the **Cable Television Network Rules** lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV. These restrictions are laid down in Section 6 of the Rules.

³¹ Section 2 (h)

³² Section 2(e)

³³ Section 11

³⁴ Section 17 (1) Cable Networks Act

No programme can be shown that:

- Offends against good taste or decency
- Contains criticism of friendly countries
- Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes (*sic*)
- Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths
- Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes
- Contains anything amounting to contempt of court
- Contains aspersions against the integrity of the President and Judiciary
- Contains anything affecting the integrity of the Nation
- Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country
- Encourages superstition or blind belief
- Denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure public morality or morals
- Denigrates children
- Contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups
- Is not suitable for unrestricted public exhibition

The Rules say that the cable operator should strive to carry programmes in his cable service that project women in a positive, leadership role of sobriety, moral and character building qualities. They say that care should be taken to ensure that programmes meant for children do not contain any bad language or explicit scenes of violence. Programmes unsuitable for children must not be carried in the cable service at times when the largest numbers of children are viewing.

Restrictions on Advertisements³⁵

The Advertising Code in the Cable Network Rules says that all advertising carried in the cable service have to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers. The code says that no advertisement shall be permitted which:

- Derides any race, caste, colour, creed and nationality
- Is against any provision of the Constitution of India
- Tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way

³⁵ Section 7 Cable Network Rules

- Presents criminality as desirable
- Exploits the national emblem, or any part of the Constitution, or the person or personality of a national leader or a State dignitary
- In its depiction of women violates constitutional guarantees to all citizens
- Projects a derogatory image of women. The Rules say that women should not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator is supposed to ensure that, in the programmes carried in his cable service, the portrayal of the female form is “tasteful and aesthetic, and is within the well-established norms of good taste and decency”
- Exploits social evils like dowry, child marriage
- Promotes directly or indirectly the production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, infant milk substitutes, feeding bottle or infant food.

The Rules prohibit advertisements that

- Are wholly or mainly of a religious or political nature or directed towards any religious or political end³⁶
- Contain references that hurt religious sentiments
- Contain references that are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or supernatural property or quality, which is difficult of being proved
- Contain pictures and audible matter of the advertisement that are excessively loud
- Endanger the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner
- Contain indecent, vulgar, suggestive, repulsive or offensive themes or treatment
- Contain advertisements that violate the standards of practice for advertising agencies as approved by the Advertising Agencies Association of India, Bombay, from time to time

All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme – for example, the use of lower part of screen to carry captions, static or moving, alongside the programme.

In March 2008, the Central Government amended the Cable Television Network Rules through a gazette notification to ban ‘surrogate advertisements’ to prevent tobacco and liquor brands from sidestepping the law. According to the notification, no advertisement that permits “directly or indirectly sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.”³⁷

³⁶ Political and religious groups are banned from owning FM channels, but apparently, they are allowed to own TV channels. The eligibility criteria are listed in the Uplinking and Downlinking Guidelines.

³⁷ This amendment is aimed at removing the leeway given to cigarette and liquor companies in a 2006 amendment that allowed advertisements that shared a brand name or logo with any tobacco or liquor product with several caveats. No reference, direct or indirect, could be made to the prohibited products in

Indecent Representation of Women Act

Although the Cable Television Network Rules, 1994, and the Advertising Code within it, include specific provisions relating to the representation of women on television, in May 2008 the National Commission for Women initiated a process seeking to modify the Indecent Representation of Women (Prohibition) Act, 1986 on the ground that its scope needed to be widened to include the expanded electronic media and cyberspace.³⁸ The amendments, apparently proposed by the Ministry of Women & Child Development, Government of India, were posted on the NCW website for comment and seminars were held in different cities to discuss the proposals.³⁹ The main recommendations comprise amendment of Section 1 of the Act to make the definition of ‘derogatory representation of women’ wider and increase in the punishment prescribed for violations.⁴⁰

Use of Conditional Access Systems in Cable Networks:

In December 2002, Parliament enacted an amendment to the Cable Networks Act requiring consumers to use ‘addressable systems’ to access premium and pay channels through cable networks.⁴¹ Addressable systems are also called ‘conditional access systems’ (CAS) or ‘set-top boxes.’ The amendment provided that cable subscribers receive a basic package of channels that had to include a mixture of entertainment, information, and educational programmes. The government may fix the total number of free-to-air channel to be included, and the maximum amount that cable operators may charge subscribers in the basic service tier.⁴²

Following a 2003 Amendment, the Central Government announced a series of measures to implement the CAS framework, including a 2003 notification that required cable operators in Chennai, Mumbai, Delhi and Kolkata to transmit pay channels only through addressable systems.⁴³ Operators were given six months to procure the necessary equipment to implement this requirement. Through a separate notification, the

any form, and the “story board” or visual could depict only the product being advertised”. Besides allowing nuanced references, the “relaxed regime” mandated that advertisements could not use certain colours, layout presentations or situations associated with the prohibited products. The Government had relaxed its rules in view of the blatant violation of the ban on tobacco and liquor advertisements by which companies that launched new products like soda and glasses to circumvent the Advertising Code of the Cable Television Network Rules. See “Government Bans Surrogate Advertisements,” *The Hindu*, March 18 2008, <http://www.hindu.com/2008/03/18/stories/2008031854721300.htm>

³⁸ See news reports on the NCW’s efforts in this direction:

<http://news.webindia123.com/news/Articles/India/20080524/960976.html> and <http://www.dnaindia.com/report.asp?newsid=1166236>

³⁹ See Existing Provisions and Amended provisions of the Indecent Representation of Women (Prohibition) Act, 1986: http://ncw.nic.in/Comments/Indecent_representation.pdf

⁴⁰ See ‘Indecent Proposals’ for a critique of the NCW’s proposal to modify the 21-year-old law: <http://infochangeindia.org/200806257188/Women/Analysis/Indecent-proposals.html>

⁴¹ See Cable Networks (Amendment) Act (No 2 of 2003) published in the Official Gazette on 1 January 2003.

⁴² *Supra* note 2 at 546

⁴³ See Ministry of Information and Broadcasting, ‘Notification on Addressable Systems’, Gazette of India, 14 January 2003.

government ordered cable operators to offer a minimum of 30 free-to-air channels in a basic package to be priced at Rs. 72.⁴⁴ The Government also amended the Cable Network Rules to regulate rentals and security deposits for set-top boxes.

While broadcasters and Multi-Service Operators (MSOs) welcomed the introduction of CAS framework, consumers were outraged at the prospect of paying special rates for premium channels. Local cable operators were also upset as they feared loss of revenue from cable subscribers who would elect to receive only the basic package of free-to-air channels.

The government was thus forced to announce an indefinite delay in the introduction of CAS in Delhi. Soon the matter was taken to the Delhi High Court [*Jay Polychem v Union of India* (2004) IV AD 249 (Del)]. In December 2003, the Delhi High Court ordered the introduction of the CAS framework in Delhi on a trial basis for three months.⁴⁵

In January 2004, the Government referred the matter to TRAI. For this purpose the government issued a notification under section 11(1) (d) of the Telecom Regulatory Authority of India Act entrusting additional regulatory functions to the Authority. In a separate notification, the government revised the definition of ‘telecommunication service’ in Section 2 (1) (k) of the TRAI Act to include broadcasting and cable services within this definition. This meant that TRAI could now regulate broadcasting and cable service as telecommunication services and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) could adjudicate upon disputes relating to this service.

Following TRAI’s recommendations, the Central Government suspended the notification of the CAS framework in February 2004. However, the matter did not end here. A single judge of the Madras High Court stayed the government’s suspension notification in March 2004. This was followed by the Delhi Court ordering the government to reintroduce the CAS framework within four weeks. The Central Government then issued amendments to the Cable Network Rules in the metro areas.⁴⁶

The amendments established a detailed regulatory scheme to reintroduce the CAS framework in areas notified by the Central Government. Rule 11(5) of the Cable Network Rules prohibits MSOs from offering cable services in the notified areas without the Central Government’s permission. The Ministry of Information and Broadcasting may grant or refuse permission after taking into account factors like the MSO’s operational area, the number of subscribers and local operators in the area, commercial arrangements with broadcasters and cable operators, financial strength, management capability, security clearance, the MSO’s ability to supply and maintain adequate set top boxes.

⁴⁴ See Ministry of Information and Broadcasting, ‘Notification on Free-to-Air Channels’, Gazette of India, 7 May 2003.

⁴⁵ See Consumer Coordination Council v Union of India CWP No 8993-8994 of 2003 (Del, 26 December 2003).

⁴⁶ See Ministry of Information and Broadcasting, Cable Television Networks (Second Amendment) Rules 2006.

Every broadcaster is required to declare whether each of its channels is either pay or free to air, and the maximum retail price of each of the ‘pay channels.’ If TRAI believes that the declared price for a channel is too high, it may revise the price of the channel. It has the option of fixing retail price ceiling for all pay channels.

Rule 9 of the Cable Network Rules empowers TRAI to take decisions regarding:

- Standard interconnection and distribution agreements to be used for pay and free-to-air channels between broadcasters and MSOs, and MSOs and cable operators
- Ceilings for security deposits and monthly rentals charged for set-top boxes
- Tariffs for the basic service tiers of cable services and minimum number of free-to-air channels
- Quality of service standards⁴⁷

TRAI released comprehensive recommendations on broadcasting and cable services in October 2004. It recommended that there should be no regulation on advertisements in free-to-air and pay channels. But it proposed a suitable amendment to the Cable Networks Act to enable the government to regulate advertisements, if necessary. It called for strengthening the functions of authorized officers under the Cable Networks Act and recommended that they be made responsible for registering cable operators. Based on a detailed study of various cable technologies, TRAI suggested that the government consider ‘traps’ as an alternative to set top boxes for distribution of cable channel. Traps were cheaper than set-top boxes, and could be used as a transitory arrangement.

TRAI proposed three alternative models for the future regulation of the cable industry. The first model did not envisage a mandatory CAS framework. The second would use the system of traps as a mandatory arrangement, and the third envisages a mandatory arrangement with CAS.

TRAI Recommendations on Restructuring of Cable TV Services, July 2008

In July 2008 TRAI issued draft recommendations relating to the restructuring of Cable TV services in order to “ensure effective licensing compliance, attract investment,

⁴⁷ Since the MIB grants uplinking permission, all the technical parameters are specified by the MIB in its uplinking guidelines. But the oversight of the channel on technical parameters is undertaken by TRAI, since this is the body that has jurisdiction over spectrum allocation decisions. Oversight of the channels on content issues is undertaken by the MIB, though there is no law that empowers them to do this – other than the content code, which is applicable to the cable operators and not to the channels. But the provisions of the law are broad enough to allow a district magistrate to bully a local cable operator into doing his bidding, for any real or perceived violation of the content code. So there is a multiplicity of controlling bodies, with unclear jurisdictions. And a part of the problem is that they’re always engaged in mutual jealousies and bureaucratic turf battles.

facilitate new value added services and encourage digitisation.”⁴⁸ It provided a deadline of only a week for comments on the draft.

The most significant recommendations propose the replacement of the present system of registration for Local Cable TV operators (LCOs) with a licensing framework, and the creation of a separate licensing provision for Multi-System Operators (MSOs), thus recognising them as separate entities from local cable TV operators.

The recommendations also include changes in the licensing authorities, the geographical boundaries of service areas permitted under such licenses, the duration of licenses, the documents to be submitted along with applications for licenses, the entry fee and administrative cess to be levied, the time frame for the grant of licenses, procedures for renewal as well as termination/cancellation/suspension of licenses, mechanisms for the redressal of subscriber complaints, responsibility for violations of rules and regulations relating to content, and technology (e.g., digitisation vs. analog transmission).

The 154-page document includes a preface and introduction that provides an interesting useful condensed history of the advent and growth of cable television in India, with the latest data available on the subject.

Film Certification under the Cinematograph Act⁴⁹

The Cable Network Rules and the **Uplinking and Downlinking Guidelines** require cable operators and broadcasters to comply with the **Cinematograph Act** in determining their programme content. The Central Board for Film Certification (CBFC) certifies films based on the Cinematograph Act framework. Films are certified as ‘U’ (unrestricted exhibition), UA (parental supervision), A (restricted supervision), depending on the content. The grounds for denial of certification are laid down in Section 5 (B) (1): “the film or any part of it is against the interests of 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.”

INFORMATION TECHNOLOGY ACT 2000

The **Information Technology Act** was enacted in 2000 to deal with a number of issues that arose from the increasing use of the Internet in commercial transactions, and to bring this emerging technology into the scope of the law. While the Act was not aimed at regulating the broadcast sector, it will have an impact on the content of broadcast service providers that use the Internet to broadcast material. Also, with an increasing number of

⁴⁸ Telecom Regulatory Authority of India (TRAI) Draft Recommendations on Restructuring of Cable TV Services, July 15, 2008, (available at <http://www.trai.gov.in/searchdoc.asp>)

⁴⁹ Supra note 2 at p 559

broadcasters using websites to telecast material (webcasting), the Information Technology Act has become relevant to the broadcast sector.

The provision in the IT Act that would be most relevant to broadcasters is Section 67, which deals with “publishing of information which is obscene in electronic form.” The section seeks to punish “Whoever publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.” The punishment for a first time offence is imprisonment of up to five years, and fine of up to one lakh rupees, and for a second or subsequent conviction, with imprisonment of up to ten years and a fine of up to two lakh rupees.

This restriction on content is similar to the restrictions laid down by the Indian Penal Code, and the ‘Hicklin test’⁵⁰ that has been adopted by Indian courts. It remains to be seen how this provision will be applied in practice.

It is significant that the proposed Broadcast Bill 2007 defines ‘broadcasting’ widely so that it is possible to interpret it to include Internet technology. The Act defines “Multi System Operator (MSO)” to mean “any person who manages and operates a multi-system cable television network to provide a cable television service to multiple subscribers, which may or may not include other value added services including telecommunications and Internet.”

⁵⁰ The 1868 English case *R v. Hicklin* or the Hicklin test which defined obscenity as matter which had the tendency :“to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall. ... it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of most impure and libidinous character”.

According to the Indian Supreme Court, there are 3 aspects to the obscenity test:

- the material is offensive to decency and modesty and has the effect of depraving and corrupting
- having regard to community mores, the text is without a preponderant social purpose or profit
- the material is not redeemed by artistic merit or literary defence.

The Court has thus moved away from the primary focus Hicklin on the effect of depraving and corrupting , and has added that obscenity also includes concerns of decency and modesty. A piece of work, would thus be offensive if it involved treating sex in a way that appealed to ‘the carnal sides of human nature’ or had such a tendency. The Court held that such treatment of sex was offensive to modesty and decency, ‘as judged by national standards, and considered likely to pander to lascivious, prurient, or sexually precocious minds.’

CONVERGENCE BILL⁵¹

The **Communications Convergence Bill, 2000** was aimed at creating a single regulatory authority (Communications Commission of India) that would repeal **the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933, the Telegraph Wire Unlawful Possession Act, 1950, and the Telecom Regulatory Authority of India Act, 1997**. The government's decision to open the telecommunications sector and its recognition that traditional media and communication laws did not adequately deal with advancements in information technology led to the proposal to create a single regulatory authority.

The Bill is applicable to the following technologies:

1. Network infrastructure facilities (e.g., earth stations, fixed links and cables, public payphone facilities, radio-communications transmitters and links, satellite hubs, towers, poles, ducts and pits used in relation with other network facilities).
2. Network services (e.g., bandwidth services, broadcasting distribution services, cellular mobile services, customer access services, mobile satellite services).
3. Application services (e.g., public cellular telephony services, IP telephony, public payphone service, Public switched data service).
4. Content application services (like satellite broadcasting, subscription broadcasting, terrestrial free-to-air TV broadcasting, terrestrial radio broadcasting).

According to the licensing requirements under the Convergence Bill, no person is allowed to use any part of the spectrum (defined as “a continuous range of continuous electromagnetic wave frequencies up to and including a frequency of 3000 giga hertz”) without assignment from the Central Government or the Commission. It further provides that no person is allowed to own or provide any network infrastructure facility, or provide any network service, application service or content application service without a license granted under the Act. In addition, no person is permitted to possess any wireless equipment without obtaining a license under the Act.

Some of the important objectives of the regulation of convergence, according to the Act, include.⁵²

⁵¹ See Lawrence Liang, “Whose convergence is it anyway? A Critical Introduction to the Convergence Bill 2000”, available at http://www.nwmindia.org/Law/Commentary/convergence_bill.htm

⁵² See Chapter IV of the proposed Bill. One of the criticisms levied against the Act is the fact that in its wide-ranging powers, it does not distinguish between services and infrastructure. To illustrate, can the same regulatory framework apply to a cable television network as well as a satellite services provider? The

- To establish a modern and effective communication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics.
- To ensure that the communication sector is developed in a competitive environment and that market dominance is suitably regulated. To ensure that communication services are made available at an affordable cost to uncovered areas like rural, remote, hilly and tribal areas.
- To ensure that there is increasing access to information for greater empowerment of citizens and towards economic development.
- To make sure that quality, plurality, diversity and choice of services are promoted.
- To protect the security interests of the country.
- To facilitate the introduction of new technologies, investment in services and infrastructure, and maximisation of communications facilities and services (including telephone density).
- To ensure equitable and non-discriminatory interconnection across various networks.
- To ensure that licensing criteria are transparent and to provide for an open licensing policy.
- To provide for a level playing field for all operators serving consumer interest.

The single body that will be created to monitor both the carriage and content of communication is the Communications Commission of India.

A few of the specific tasks of this Commission include:⁵³

- Carrying out management, planning and monitoring of the spectrum for commercial usage
- Granting licenses, determining and enforcing license conditions and fees
- Determining appropriate tariffs and rates for licensed services
- Ensuring competition in the market, and that service providers do not become dominant players to the detriment of other service providers or consumers
- Promoting competition and efficiency in the operation of communication services and network infrastructure facilities
- Formulating and determining conditions for fair, equitable and non-discriminatory access to a network infrastructure facility or network service such other related matters in respect thereof
- Taking measures to protect consumer interests and to enforce universal service obligations

former may have to be regulated in terms of content while the latter would have to be regulated more terms of infrastructure requirements and limitations.

⁵³ See Chapter V for a list of the powers, duties and functions of the Commission. It is beyond the scope of this paper to critique in detail the powers given to the commission, but see T. H. Chowdary, "Convergence Bill: An Advanced, but Flawed", *Economic and Political Weekly*, Vol. XXXVI No. 44 (Nov 3rd, 2001), pp. 4169-4172. T. H. Chowdary, "Licensing Lacunae", *Computers Today*, December 2001, p.57

- Formulating and laying down programme and advertising codes in respect of content application services
- Formulating and laying down commercial codes in respect of communication services and network infrastructure facilities
- Taking steps to regulate or curtail the harmful and illegal content on the Internet and other communication services
- Formulating and lay down codes and technical standards and norms to ensure quality and interoperability of services and network infrastructure facilities
- Carrying out studies on matters of importance to the consumers, service providers and the communications industry
- Institutionalising appropriate mechanisms to interact on a continual basis with all sectors of industry and consumers
- Making recommendations on matters that the Central Government refers to it

The Bill proposes a Spectrum Management Committee (SMC) whose responsibility it will be to allocate available spectrum for strategic and non-strategic/commercial purposes.⁵⁴ The SMC will also coordinate with international agencies on matters relating to overall spectrum planning, use and its management, carry out spectrum planning, and assign frequencies to the Central Government and to State Governments to meet their vital needs, including defence and national security among other functions.⁵⁵ Liang points out that there is, however, a serious lacuna in what can be construed as non-commercial purposes as the Bill seems to imply that only state activities such as defence, security, etc., qualify. It is in the interest of civil society organizations working in the area of media to press for the inclusion of non-commercial activities such as community radio, rural broadcast, etc.⁵⁶

According to the Bill, the Commission can specify programme codes and standards:⁵⁷

(i) To ensure that nothing is contained in any programme which is prejudicial to the interests of the sovereignty and integrity of India, the security of state, friendly relations with foreign States, public order or which may constitute contempt of court, defamation or incitement to an offence.

(ii) To ensure fairness and impartiality in presentation of news and other programmes.

(iii) To ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony, and a scientific temper.

(iv) To ensure in all programmes decency in portrayal of women, and restraint in portrayal of violence and sexual conduct.

⁵⁴ Clause 24(1)

⁵⁵ Clause 24 (4)

⁵⁶ *Supra* note 35

⁵⁷ Clause 21

(v) To enhance general standards of good taste, decency and morality.

Liang has specifically referred to freedom of speech and expression issues that arise from the Convergence Bill.⁵⁸ He points out that the authority given to the CCI is probably broader in scope than any other statutory body. The CCI has all the powers to regulate content in any form and media. Content has been defined as “any sound, text, data, picture - still or moving, other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically”. According to Liang, the codes and standards alluded to in the Bill betray a lack of imagination, and are based on the abstract axes of national culture and morality. He uses the example of thriving sub-cultural practices like the Indian online gay community that has so far largely escaped the all-encompassing arm of the law. With the passage of the Information Technology Act and the Convergence Bill, there will be a replication of all existing standards onto online practices as well.⁵⁹

Regulation of Competition

A serious implication of convergence is the possibility of an increase in media holdings, which may have several adverse consequences on competition within media markets. Media monopoly could significantly affect the kind of information flows that a free media makes possible. In the US context serious anti-trust concerns have been expressed over the kinds of mergers and acquisitions that have taken place in the media field.

UPLINKING GUIDELINES (DECEMBER 2005)

The Ministry of Information and Broadcasting initially permitted the uplinking of television programmes in 1998, but only through the facilities of the then public sector Vidhesh Sanchar Nigam Ltd. (VSNL). In March 1999, Indian broadcasters were authorized to use their own uplinking facilities through the C band without having to rely exclusively on VSNL. A few months later, a group of ministers recommended that the government further liberalise uplinking rules to ensure that television channels were properly regulated.⁶⁰

In July 2000, the Ministry notified the “Guidelines for Uplinking from India”. This was followed by “Guidelines for Uplinking of News and Current Affairs TV Channels from India” in March 2003, (amended in August 2003), “Guidelines for use of Satellite News Gathering (SNG)/Digital Satellite News Gathering (DSNG)” in May 2003 and addendum

⁵⁸ *Id*

⁵⁹ *Supra* note 35

⁶⁰ *Supra* note 2 at p.512

dated 1.4.2005 to the Uplinking Guidelines. On 20 October 2005 the Government further amended the March 2003 guidelines.

In order to gather all this into one set of guidelines, the Government notified the consolidated Uplinking Guidelines, in supercession of all previous guidelines. That came into effect from 2 December 2005 and is applicable to all existing channels.

The Guidelines classify uplinking into three categories:

- 1) Companies that provide uplinking facilities, such as hubs and teleports. These can only transmit television channels that have been authorized by the MIB
- 2) Television channels that use uplinking facilities (including that cover news and current affairs)
- 3) News agencies channels that use uplinking facilities (including that cover news and current affairs)

General Terms and Conditions:

The company should be registered in India. Once the applicant is found to be eligible, the application is sent for security clearance to the Ministry of Home Affairs, and for further clearance to the Department of Space.

Uplinking is allowed in the C band and the Ku Band. Uplinking in the C band is allowed for both Indian and foreign satellites, but the government gives preferential treatment for proposals involving use of Indian satellites. This band cannot be used for DTH services without obtaining a separate license.

An entity engaged in uplinking must comply with the programme and advertising codes issued under the Cable Television Regulation Act and Rules framed under the Act.

It must retain a record of uplinked materials for a 90-day period, and produce these to government agencies on request. It must allow these agencies to inspect its facilities and furnish necessary information to the Ministry of Information and Broadcasting from time to time. The company has to provide, at its own cost, facilities to the Ministry or any other government agency for monitoring of programmes. It has to comply with terms and conditions of the Wireless Operational License issued by the WPC Wing, DoT.

The Ministry has the right to suspend the company's permission for a specified period in public interest or in the interest of national security. The Ministry's permission is needed before any changes are made to the CEO/ Board of Directors

Offences and Penalties:

If a channel/teleport/SNG/DSNG found to be disseminating objectionable or unauthorized content, messages, or communication inconsistent with the public interest or national security or failing to comply with the directions issued by the Ministry of Information and Broadcasting, the permission granted can be revoked and the company disqualified to hold any such permission for a period of five years.

Permission for setting up of uplinking hubs/teleports

Foreign equity holding in an applicant company has to be less than 50 per cent. Applicant companies are also required to pay processing fee of Rs. 10,000 and, after being held eligible, the applicant company must pay a permission fee at the rate of Rs. five lakhs per teleport.

The Company should have a minimum Net Worth as prescribed below:

Item	Required Net Worth
Teleport for single channel capacity	Rs. 1.00 Crore
Teleport for 6 channel capacity	Rs. 1.50 Crore
Teleport for 10 channel capacity	Rs. 2.50 Crore
Teleport for 15 channel capacity	Rs. 3.00 Crore

Permission is for a period of ten years. Companies can uplink only those channels that have permission from the I&B Ministry and have to stop uplinking once permission is withdrawn for a channel.

Permission for uplinking non-news/current affairs TV channel

For non-news/current affairs channels, uplinking approval is for ten years

News and Current affairs channels have to satisfy the following minimum net worth requirements:

Item	Required Net Worth
Single TV channel	Rs. 1.50 Crore
For each additional TV channel	Rs. 1.00 Crore

Processing fees for applicants is Rs. 10,000, and permission fee after being held eligible is Rs 5 lakhs per channel.

It must commence services within a year after permission is granted.

The sports channels/sports rights management companies holding TV broadcasting rights are obliged to share their feed with Prasar Bharati for national and international sporting events of national importance, whether held in India or aboard, for terrestrial transmission and DTH broadcasting (free-to-air) under the following conditions:

Events of national importance are to be determined by the Ministry of Information & Broadcasting in consultation with the Ministry of Sports & Youth Affairs, Prasar Bharati and the concerned sports channels/sports rights management companies. In the case of cricket events, these include all matches featuring India, as well as the semi-finals and finals of international competitions.

The above conditions apply to all future events, including those covered by existing contracts of broadcasting rights. However, in the case of cricket events where broadcasting rights have been obtained by sports channels/right management companies prior to the issue of the notification in the matter, the rights holders will be obliged to share the feed for all matches featuring India and the finals of international competitions.

Prasar Bharati will transmit the feed, free to air, on its terrestrial channel and it will be carried through the terrestrial network and/or via the satellite/DTH mode.

The marketing of rights to such sports events (relating to terrestrial as well as satellite/DTH) will be decided through mutual negotiations between Prasar Bharati and the rights holder. The marketing rights should go to the party that offers the maximum revenue. The guidelines fix the revenue sharing formula at 75:25 in favour of rights holders.

Permission for uplinking news and current affairs TV channel

Foreign Equity holding, including FDI/FII/NRI investments, should not exceed 26% of the Paid Up equity of the applicant company. Equity held by the largest Indian shareholder should be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions.

The company has to intimate the names and details of any foreigners/NRIs to be employed/engaged in the company either as Consultants (or in any other capacity) for more than 60 days in a year, or as regular employees.

At least three quarters of the Directors on the Board of Directors of the company and all key Executives and Editorial staff shall be resident Indians.

The CEO of the applicant company, known by that or any other designation, and/or the Head of the channel, shall be a resident Indian.

The Company should have a minimum Net Worth as prescribed below:

Item	Required Net Worth
Single TV channel	Rs. 3.00 Crore
For each additional TV channel	Rs. 2.00 Crore

The applicant has to pay a processing fee of Rs 10,000 and, after being deemed eligible, permission fees at the rate of Rs. 5 lakhs per channel. Permission is granted for a period of 10 years.

Permission for use of facilities/infrastructure for live news/footage collection and transmission, irrespective of the technology used, will be given only to channels that are uplinked from India.

The channel/company will ensure that its news and current affairs content provider(s), if any, are accredited with the Press Information Bureau.

Permission for uplinking by Indian News Agency

Indian news agencies that want to engage in uplinking need to be accredited to the Press Information Bureau (PIB). The agency must be completely under the control of Indian management. It can uplink facilities⁶¹ for news-gathering and news facilities only. It is not permitted to offer TV programmes and channels that can be received directly by the general public.

The period of permission is specified in the WPC (Wireless Planning & Coordination Authority) license.

Permission for use of Satellite News Gathering/Digital Satellite News Gathering (SNG/DSNG) equipment in C band and Ku band

The use of SNG/DSNG can be permitted to News and Current Affairs channels uplinked from India for live news/footage collection and point-to-point transmission. PIB-accredited content provider(s), if any, can use SNG/DSNG for collection/transmission of news/footage.

Entertainment channels uplinking from their own teleport, can also use SNG/DSNG for their approved channels, for the transfer of video feeds to the permitted teleport.

All Foreign channels, permitted entertainment channels uplinked from India and companies/individuals not covered in the Guidelines are required to seek temporary uplinking permission for using SNG/DSNG for any live coverage/footage collection and transmission on a case-to-case basis.

⁶¹ In this case, 'uplink' is used in the limited sense of using a satellite to, say, link the DSNG unit (news reporter) to the newsroom.

Each company/channel desiring to use SNG/DSNG has to apply to the I&B Ministry for permission before doing so. The channel also has to give an undertaking that the feed collected through SNG/DSNG will conform to the Programme and Advertisement Codes.

Period of Permission:

- (a) For teleport owners – co-terminus with teleport license.
- (b) For permitted News and Current Affairs channels – for the period of the channel permission.
- (c) For content providers to permitted channels - for the period of the channel permission.

(d) For other broadcasters with temporary uplinking permission – for periods as specified in the temporary permission.

Companies permitted to use SNG/DSNG shall apply to the WPC (Wireless Planning & Coordination) Authority for frequency authorization. It should be renewed in time annually and a copy must be submitted to the Ministry by the company every year.

The permitted company has to maintain a daily record of the location and the events which have been covered and uplinked by SNG/DSNG terminals and downlinked at their main satellite earth station and produce the record before the licensing authority or its authorized representative, which will include officers of Ministry of Home Affairs and Ministry of I&B, as and when required.

Permission for Temporary Uplinking

The Ministry grants permission for temporary uplinking on a case-to-case basis, in consultation with the Ministry of Home Affairs and other Ministries/Departments concerned.

Foreign news channels/ agencies can, from time to time, be granted permission for temporary uplinking -- for a period of up to one year at a time -- through a pre-designated teleport, subject to the following conditions:

- (a) The applicant is accredited with the Press Information Bureau, Government of India
- (b) The applicant undertakes to conform to the Programme and Advertisement Codes
- (c) The applicant has a binding agreement with the relevant teleport for the period of permission.
- (d) The applicant pays a processing fee of Rs. 10,000 and temporary permission fee of Rs. 50,000 per year.

The news/footage so uplinked has to be primarily for usage abroad by the foreign news agency/channel and cannot be broadcast in India without downlinking

permission and registration of the channel.

DOWNLINKING GUIDELINES (NOVEMBER 2005)

The Ministry of Information and Broadcasting published its Downlinking Guidelines in November 2005.⁶² No person/entity is allowed to downlink a channel that has not been registered by the Ministry under the guidelines.

The applicant company must be registered in India, and its principal place of business should be India. It should either own the channel it wants downlinked or enjoy exclusive marketing/distribution rights for it -- including rights to the advertising and subscription revenues for the channel.

The applicant company should have a minimum net worth as prescribed below:

Item	Required net worth of the Co.
1. For downlinking one Channel	Rs 1.50 Crores
2. Every Additional Channel	Rs.1.00 Crores

The downlinked channel must be licensed or permitted for being broadcast by the regulatory or licensing authority of the country of transmission.

News and Current Affairs Channels that need to be downlinked cannot carry any advertisements aimed at Indian viewers, cannot be designed specifically for Indian viewers, has to be a standard international channel, and needs to be permitted to be telecast in the country of its uplinking by the regulatory authority of the country.

The Ministry of Information and Broadcasting grants registration to each channel for an initial period of 5 years, which is extendable. The Applicant has to pay a registration fee of Rs 5 lakhs for each channel. Every company permitted to downlink channels uplinked from other countries into India under these guidelines must pay Rs 5 lakh as the initial fee, and Rs 1 lakh per channel per annum as the annual fee.

The Company permitted to downlink registered channels needs to comply with the Programme and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995.

⁶² 'Policy Guidelines for Downlinking of Television Channels', 11 November, 2005

Sports channels/sports rights management companies with television broadcasting rights have to share their feed with Prasar Bharati for national and international sporting events of national importance, held in India or abroad, for terrestrial transmission and DTH broadcasting (free-to-air) under the following conditions:

Events of national importance will be determined by the Ministry of Information & Broadcasting in consultation with Ministry of Sports & Youth Affairs, Prasar Bharati and the concerned sports channels/sports rights management companies. In the case of cricket events, these will include all matches featuring India, as well as the finals and semi-finals of international competitions.

The above conditions will apply to all future events, including those covered by existing contracts of broadcasting rights. However, in the case of cricket events where broadcasting rights were obtained by sports channels/rights management companies prior to the issue of the notification in the matter, the rights holders will be obliged to share the feed for all matches featuring India and, in addition, the finals of international competitions.

Prasar Bharati has to transmit the feed, free to air, on its terrestrial channel to be carried through the terrestrial network and/or the satellite/DTH mode. The marketing of the events' rights (terrestrial as well as satellite/DTH) will be decided through mutual negotiations between Prasar Bharati and the rights holder. The marketing rights should go to the party which offers to maximize the revenue.

A revenue-sharing formula of 75:25 in favour of the rights holders must be applied, without any minimum guarantee/opportunity cost. In the event of any dispute, the matter will be referred to an arbitrator to be appointed by the Secretary, Ministry of Law & Justice, from the approved panel of arbitrators.

The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995. The applicant company shall keep a record of programmes downlinked for a period of 90 days and produce it before any agency of the Government as and when required.

The Government's right to suspend a license and impose penalties

The Union Government has the right to suspend the permission of the company/registration of the channel for a specified period in the public interest or in the interest of national security in order to prevent the misuse of the channel.

In the event of any war, calamity/national security concerns, the Government has the power to prohibit for a specified period the downlinking/ reception/ transmission and re-transmission of any or all channels.

In the event of a channel found to have been/be used for transmitting any objectionable unauthorized content, messages, or communication inconsistent with the public interest or national security or failing to comply with the Ministry's directions, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws. Further, the registration of the channel will be revoked and the channel shall be disqualified from being considered for fresh registration for a period of five years.

Penalties:

- In the event of a permission holder and/ or channel violating any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties:
 - In the event of first violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 30 days
 - In the event of second violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 90 days
 - In the event of third violation, revocation of the permission of the company and/or registration of the channel and prohibition of broadcast up to the remaining period of permission
 - In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and /or registration and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission and /or registration in future for a period of five years
 - In the event of revocation of permission and /or registration, the fees paid will be forfeited
 - All the penalties mentioned above can be imposed only after giving a written notice to the permission holder.
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DTH GUIDELINES

Direct-to-Home (DTH) Broadcasting Service refers to the distribution of multi-channel TV programmes in Ku Band by using a satellite system to provide TV signals direct to subscribers' premises without passing through an intermediary such as cable operator. While the Central Government had initially banned DTH services in India, it legalized them after a high level group of ministers studied the matter. Subsequently, the Central

Government passed guidelines regulating DTH in India⁶³ and withdrew the prohibition on the reception and distribution of television signal in Ku Band.⁶⁴

Eligibility Criteria:

The applicant company has to be registered in India. The total foreign equity holding in the company should not exceed 49%; the FDI component in this foreign equity should not exceed 20%. The applicant company must have Indian Management Control with the majority representatives on the board as well as the Chief Executive of the company being resident Indians.

Cross-ownership restrictions: Broadcasting companies and cable network companies cannot collectively own more than 20% of the total equity of applicant company at any time during the license period. Similarly, the applicant company cannot have more than 20% equity share in a broadcasting and/or cable network company.

Period of license:

License will be valid for a period of 10 years from the date of issue of wireless operational license by the Wireless Planning and Coordination Wing of the Ministry of Communications. However, the license can be cancelled/suspended by the Licensor at any time in the interest of the Union of India.

Fee:

The applicant has to pay an annual fee equivalent to 10% of its gross revenue as reflected in the audited accounts of the Company for that particular financial year -- within one month of the end of that financial year.

In addition, the applicant has to pay the license fee and royalty for the spectrum used, as prescribed by Wireless Planning & Coordination Authority (WPC), under the Department of Telecommunications.

Content Regulation/Prohibition/Monitoring

The applicant cannot carry any channels prohibited by the Ministry of Information & Broadcasting.

The applicant has to ensure that its facilities are not used for transmitting any objectionable or obscene content, messages or communication inconsistent with the laws

⁶³ Guidelines for Obtaining License for Providing Direct-To-Home (DTH) Broadcasting Service in India, (not dated)

⁶⁴ Notification No. GSR 18 (E) dated 9 January, 2001 of the Department of Telecommunications.

of India. The use of the facility or service for anti-national activities would be construed as an offence punishable under the Indian Penal Code and applicable laws and it will result in the immediate termination of the License.

The Ministry of Information and Broadcasting reserves the right to prohibit the transmission or reception of programmes in the interest of national security or in the event of emergency/war or similar type of situation. Regardless of any agreement between the applicant and the content providers, the applicant has to stop the transmission of TV channels or any content, as and when directed to do so by the Ministry of Information and Broadcasting or any other designated lawful authority.

The applicant has to provide the necessary facility for continuous monitoring of the DTH broadcasting service at its own cost. The applicant must maintain the recordings of programmes and advertisements carried on the platform for a period of 90 days from the date of broadcast and produce the same to the Ministry of Information and Broadcasting, or its authorised representative, as and when required.

The applicant has to furnish any information concerning channels or content being transmitted or provided under the service, technical parameters, etc., as may be required at periodic intervals by the Ministry of Information and Broadcasting. The information has to be presented in the format(s) prescribed by the Ministry from time to time.

The applicant also has to provide access to all its facilities -- including equipment, records, systems, etc. -- to the Ministry, or its duly authorised representative. If required by the Ministry, or its authorised representative, the applicant must provide the necessary facilities for continuous monitoring of any particular aspect of the Licensee's activities and operations.

The Ministry has the right to take over the entire lot of services and networks of the Licensee or revoke/cancel/suspend the License in the interest of national security or in the event of an emergency or war or low intensity conflict or similar types of situations. Further, the Ministry has the right to direct the applicant to close down the service if security implications make such a step necessary. Any specific order or direction from the Government issued in this regard has to be swiftly and strictly complied with by the applicant.

The applicant cannot use any equipment which are identified as unlawful and/or render network security vulnerable. All foreign personnel likely to be deployed by way of appointment, contract, consultancy, etc., by the applicant for installation, maintenance and operation of its services must obtain security clearance from the Government of India prior to their deployment.

DRAFT BROADCAST BILLS

In July 2007 the Union Ministry of Information and Broadcasting (MIB) sought to introduce legislation to regulate the burgeoning broadcast sector in the country. This was the latest of several attempts by the Government of India within a decade to put in place a regulatory system for a sector of media that had been exclusively in the hands of the state until the so-called “invasion from the skies” of the early 1990s in the form of newly accessible international satellite television channels and the subsequent mushrooming of indigenous, private TV channels.⁶⁵

The Ministry posted the Broadcasting Services Regulation Bill, 2007 (<http://www.mib.nic.in/Bill200707.pdf>) and the accompanying Self-Regulation Guidelines for the Broadcasting Sector (original <http://www.mib.nic.in/Code200707.pdf>, revised version www.mib.nic.in/informationb/CODES/ContentCode100308.pdf) – on its website and announced a two-week deadline for responses to the draft documents.

The ensuing controversy generated considerable comment and criticism, especially from the broadcast industry. Some independent responses were submitted directly to the Ministry⁶⁶, others were published in the press.⁶⁷ The tug of war between the government and the industry resulted in a stalemate, with the former keeping the legislation in abeyance pending the establishment by the broadcasters themselves of a system of self-regulation.

The News Broadcasters Association (NBA, <http://www.nbanewdelhi.com/index.asp>) submitted two documents to the Ministry in April 2008, titled “Code of Ethics & Broadcasting Standards” (<http://www.nbanewdelhi.com/codeof-ethics-broadcasting-standards.asp>) and “News Broadcasting Standards (Disputes Redressal) Regulations.”

⁶⁵ Earlier efforts, notably in 2006 and 1997, had failed to take off for various reasons.

⁶⁶ Detailed comments sent to the MIB by the Alternative Law Forum, Bangalore, can be accessed here: http://www.altlawforum.org/ADVOCACY_CAMPAIGNS

⁶⁷ Some articles on the subject can be accessed here: Economic and Political Weekly, September 15, 2007

(http://www.epw.org.in/epw/user/loginArticleError.jsp?hid_artid=11017,

<http://www.epw.org.in/epw/uploads/articles/11009.pdf>); Vidura, July-September 2007 (http://pressinstitute.org/scripts/vidura_english.asp); India Together

(<http://indiatgether.org/2007/aug/ajo-bcastbill.htm>, <http://indiatgether.org/2007/aug/ajo-mediaown.htm>, <http://indiatgether.org/2007/sep/ajo-content.htm>); The

Hoot (<http://www.thehoot.org/web/home/searchdetail.php?sid=2655&bg=1>); Infochange News & Features (<http://www.infochangeindia.org/analysis219.jsp#>)

The Indian Broadcasting Foundation (IBF, <http://www.ibf-india.com/>) had reportedly been in touch with the Ministry about their plans for self-regulation even earlier.

A question was asked in Parliament (Lok Sabha) on 22 April 2008 seeking information on steps taken on the recommendations of the Content Reviewing Committee set up to review the TV Programme and Advertising Codes prescribed under the Cable TV Network (Regulation) Act, 1995. In response the Minister only spoke of “Further consultation with the various stakeholders – i.e., Indian Broadcasting Foundation (IBF), News Broadcasters Association (NBA), etc. – ...on the issue of Self-Regulation mechanism...”

In August 2008 the present Secretary in the Information and Broadcasting Ministry, addressing the News Television Summit 2008, said that a decision had yet to be taken on the much delayed Broadcast Bill. According to her, the Bill is posted on the ministry's website, the views of various stakeholders have been taken on it, and it is awaiting Parliament's nod. She also revealed that the government plans to take a fresh look at the Content Code for television programmes since the current one (drafted just a year earlier and revised in March 2008:

<http://www.mib.nic.in/informationb/CODES/ContentCode100308.pdf>) had become outdated.

In November 2008, addressing the Economic Editors Conference, Anand Sharma, Minister of State for Information and Broadcasting, reportedly said that the Ministry would take a decision on the Broadcast Bill after it had received comments from all states and Union Territories. According to him, only 11 States and four UTs had responded thus far.

Significantly, the Broadcast Bill was missing from the Ministry's year-end review ('Major Initiatives of I&B Ministry during 2008').⁶⁸ So was the contentious Content Code that accompanied it.

Meanwhile, the News Broadcasting Standards Disputes Redressal Authority, a self-regulatory body set up by the 14-member NBA (representing 30 channels) and chaired by a former chief justice of India, began functioning in October 2008. The industry-established regulator is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards⁶⁹ and to act on complaints from the viewing public.

⁶⁸ Ministry of Information and Broadcasting Year-end-Review 2008 (<http://pib.nic.in/release/release.asp?relid=46125>)

⁶⁹ Alternative source for the NBA's Code of Ethics and Broadcasting Standards:

<http://www.thehoot.org/web/home/story.php?storyid=3296&pg=1&mod=1§ionId=7&valid=true>; and the NBA's News Broadcasting Standards (Disputes Redressal) Regulations:

<http://www.thehoot.org/web/home/story.php?storyid=3297&mod=1&pg=1§ionId=7&valid=true>

NB Partly updated up to January 2009.