

Special Issue

HISTORY OF TV BROADCASTING REGULATION IN INDIA

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ABOUT THE AUTHOR

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OVERVIEW

According to the Broadcast Audience Research Council over 197 million Indian households had a television connection in 2019.¹ As of July 31, 2020 the Union Ministry of Information and Broadcasting (MIB) had permitted 920 TV channels to operate.

The television broadcast ecosystem has three stakeholders: broadcasters, distributors, and consumers. Broadcasters make content for TV and distributors provide it to consumers using one of four technologies: cable, direct to home (DTH), head-end in the sky (HITS) or internet protocol (IPTV).

A complex web of actors regulates the broadcast ecosystem in India, including the MIB, TRAI the Telecommunications Regulatory Authority of India, and self-regulatory bodies such as the Broadcasting Content Complaints Council and the News Broadcasting Standards Authority. The Department of Space and the Department of Telecommunications' Wireless and Programming Coordination Wing regulate the use of satellites and spectrum.

The Telegraph Act 1885 and the Indian Wireless Telegraphy Act of 1933 require broadcasters and distributors to register their service. The Cable TV Network (Regulation) Act of 1995 (CTN Act) formalized this registration. At the last mile, local cable operators register with post offices in their territory. State governments have empowered Monitoring Committees at the state and district levels to enforce provisions of the CTN Act– mainly its programme and advertising codes.

Since 2004 the broadcast sector has been regulated by TRAI. The central government expanded the Authority's powers in 2011 through an amendment to the CTN Act, which together with a 2004 notification from the erstwhile Union Ministry of Communications and Information Technology empowers TRAI to regulate tariffs, including the MRP of channels, the terms of interconnection between broadcasters and distributors, and standards for quality of service at the consumer end.

TRAI's legacy in the broadcasting sector is one of excessive economic regulation and restrictive price controls.² Having expanded its regulatory remit over broadcasting the State did not enhance expertise or capacity, within TRAI or the quasi-judicial Telecom Dispute Settlement Appellate Tribunal (TDSAT). The result has been formulaic, TRP-driven television content, and higher costs for subscribers³ and there is no mechanism to enforce quality of service at the last mile.

Since the CTN Act in 1995, Parliament has thrice considered a specialised regulator for the broadcasting sector. On numerous occasions Parliament and specialised committees such as the Nariman Committee have backed the proposal for a specialised regulator, and seminal judicial pronouncements including the 'Airwaves Judgment' have highlighted the need for a specific law and a specialised regulator for the sector.

Despite these efforts TRAI continues to regulate the broadcast sector, although its oversight was meant to be temporary. **This brief explores the history of attempts to introduce a parallel regulatory regime for broadcasting in India, which may help explain why governments have always preferred to expand TRAI's powers rather than establish a specialised regulator for broadcasting.**

1/ WHY IS BROADCASTING REGULATED?

The State had exclusive control over television content and distribution until 1990, under the Indian Telegraph Act 1885 and the Indian Wireless Telegraphy Act 1933. The advent of cross-border satellite television disrupted the public broadcaster Doordarshan's monopoly over television broadcasting, as foreign content could now be viewed in India.⁴ This created the opportunity to transmit channels to consumers through wired connections for a fee.⁵

In 1993 a district administration in Rajasthan directed local cable operators to cease their functioning as they were operating without licenses. Hearing a challenge to the order the Rajasthan High Court held that cables were telegraph lines and cable operators did require licenses under the Telegraph Act and the Wireless Telegraphy Act⁶ – however, it ruled that the district administration in question had no authority to issue such an order, and set it aside while maintaining that a licensing regime was necessary.

Consequently, the central government decided to provide formal legal recognition to private cable television through the CTN (Regulation) Ordinance 1994. In March, the following year the ordinance was passed as the CTN Act, intended to make cable operators accountable through mandatory registration. Other distribution technologies such as DTH, HITS and IPTV continue to be licensed under the Telegraph and Wireless Telegraphy Acts and regulated by MIB guidelines.

In 1995 the Supreme Court held that airwaves/frequencies are public property and should be regulated by a public authority.⁷ Private satellite broadcasting, since it makes use of airwaves, would be regulated like any other public property.⁸ The central government was directed to establish an independent and anonymous public authority for the purpose. In a separate opinion Justice B.P Jeevan Reddy held that the 1885 Telegraph Act was inadequate to govern media like radio and television.⁹

Consequently in 2004 the central government reclassified broadcasting and cable services as a 'telecommunication service', entrusting their regulation to the Telecom Regulatory Authority of India. No government has since tried to create a sector-specific regulator for broadcasting, apart from the Broadcasting Services Regulation Bill 2007, which sought to establish an independent Broadcasting Regulatory Authority of India. But this Bill was never tabled in Parliament.

2/ EARLY YEARS: PUBLIC BROADCASTING

Television broadcasting was introduced in India in 1959 when Doordarshan conducted an experimental broadcast from New Delhi.¹⁰ Regular broadcast services began only in 1965 as part of All India Radio (AIR). Since their inception both AIR and Doordarshan have been closely wedded to public service broadcasting. Due to its non-commercial nature they could not generate adequate resources and remained dependent on the public exchequer for sustenance.

Recognising the need for sustainability in the broadcast sector, the Committee on Broadcasting and Information Media, popularly known as the Chanda Committee, was established in 1966. It recommended the use of commercial advertising revenue as an additional resource to expand the network and improve the standard of programmes. Consequently, in November 1967 AIR started its first commercial broadcasting service called Vividh Bharti. As a safeguard against obtrusive advertisements it also introduced a code for commercial broadcasting.¹¹

The credibility of Doordarshan and AIR came under a cloud during the state of emergency declared in 1975 which imposed several constraints on radio and TV.¹² As a result the Union government formed after the Emergency pledged to provide autonomy to the electronic media. A working group headed by B.G Verghese in 1977 proposed the formation of an autonomous National Broadcasting Trust called Akash Bharati, which would be a not-for-profit body accountable to Parliament. However, the Akash Bharati Bill introduced for the purpose lapsed after the Lok Sabha was dissolved in 1979, and over the next decade no further efforts in this direction were made.

In 1989 the V.P Singh government reconsidered the issue. On the same lines as the Akash Bharati Bill, it introduced the Prasar Bharati Bill 1989 which was passed the following year, but as the Lok Sabha was dissolved again the Act could not be notified. Meanwhile, making use of cable TV services, satellite television channels had begun making inroads into Indian homes.



Doordarshan and All India Radio are operated by Prasar Bharati, India's Public Service Broadcaster.

3/ PRIVATE BROADCASTING

The debate on broadcast regulation changed direction in 1991, when new technology facilitated the beaming of foreign satellite channels (particularly from other Asian countries) into India. Cable operators seized the opportunity to provide these channels to consumer households for a fee.

Recognising the proliferation of private satellite TV channels, the Supreme Court delivered a landmark judgment in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*.¹³ Dealing with the question of live-telecast rights for cricket matches hosted by Cricket Association of Bengal and the BCCI it held that:

“The airwaves or frequencies are a public property. Their use must be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Since the electronic media involves the use of the airwaves, this factor creates an in-built restriction on its use as in the case of any other public property.

“The Central Government shall take immediate steps to establish an independent autonomous public authority representative of all sections and interests in the society to control and regulate the use of the airwaves.” One of the judges, Justice B.P. Jeevan Reddy pronounced a concurring judgement highlighting the inadequacies of the Indian Telegraph Act.

In March 1996 a subcommittee under the Union Ministry of Information and Broadcasting headed by Ram Vilas Paswan submitted a working paper on National Media Policy. The Paswan Committee’s recommendations formed the basis for a high-powered committee under Dr N.K Sengupta in December 1995 to review the provisions and restructuring of the Prasar Bharati Act. In its report submitted in August 1996 the Sengupta Committee concurred with the Paswan Committee to recommend the government establish an independent body called the Radio and Television Authority of India.¹⁵

The functions of the proposed authority were to include licensing of satellite, digital and analog terrestrial transmission and multiplexes, prescribing programming obligations and programming standards to ensure quality and diversity and monitoring public opinion about programming and services. It was also expected to ascertain appropriate regulations for advertisements, including grievance redressal. This culminated in the introduction of the Broadcasting Bill of 1997.

Justice B.P. Jeevan Reddy concurring judgement

“The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. **While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. Except Section 4(1) and the definition of telegraph, no other provision of the Act is shown to have any relevance to broadcasting media.**

It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/ statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.”¹⁴

The Broadcasting Bill, 1997

Introduced in the Lok Sabha in May 1997, the Broadcasting Bill proposed to regulate the only unregulated industry of its size anywhere in the world.¹⁶ It sought to establish an independent regulator called the Broadcasting Authority of India, update the laws governing the broadcast sector from the time of the Indian Telegraph Act, and stimulate the private sector in India to increase the plurality of content and provide a level playing field with foreign competitors.

The proposed Broadcasting Authority of India was vested with a wide array of powers ranging from granting licenses to control over programme content. The Bill provided for licenses only to enterprises of Indian origin, and imposed other limitations on foreign participation, mandating for instance the uplinking of channels from India, with certain exceptions for foreign broadcasters.

While it recognised that the broadcasting sector needed its own regulatory mechanism, the media industry remained critical of the Bill. The cable television industry remarked important issues like the lack of harmonisation with copyright provisions in the Bill.¹⁷ Criticism was also made of the composition and wide regulatory sweep of the proposed Broadcasting Authority, seen by many as an attempt to extend government control over private media broadcasters.

The Bill was referred to a 30-member Joint Parliamentary Committee headed by Sharad Pawar. It lapsed upon the dissolution of the Lok Sabha in December 1997.

Communications Convergence Bill, 2001

On December 13, 1999 a Working Group on Telecom and Information Technology Convergence was constituted under the chairmanship of Union Finance Minister Yashwant Sinha.¹⁸ It comprised three sub-groups to look at specific aspects of regulation: the first would make recommendations to strengthen

TRAI through amendments, the second would identify issues in the telecom sector and Internet Service Provider policy, also suggesting measures for the rapid adoption of e-commerce, and the third would suggest a comprehensive reboot of the Telegraph Act given the rapid convergence of telecommunications, computers, television and electronics.

Sub-group I of the Sinha Working Group noted the cumbersome additional responsibility on TRAI were it to regulate broadcasting, given the presence of many market participants and the differential nature of disputes. Acknowledging the reality of infrastructural convergence, however, it suggested that Parliament amend the TRAI Act to extend the regulator's powers to broadcasting services as well.

Sub-Group III highlighted the imperative to differentiate between TV broadcast carriage and TV content creation, proposing two options: either the Broadcasting Bill 1997 should address content concerns in broadcasting, with the Telegraph Act amended to cover carriage; or the Broadcasting Bill should comprehensively cover both the carriage and content aspects of the sector.

However, the Working Group was heavily influenced by the Malaysian Communications and Multimedia Commission Act of 1988 and the US Telecommunications Act 1996.¹⁹ They suggested a departure from sector-specific regulators to a single autonomous regulator to regulate all communications. The committee prepared a draft Communications Convergence Bill which sought to repeal the Indian Telegraph Act, the Indian Wireless Telegraphy Act, the Telegraph Wires (Unlawful Possession) Act of 1950, the Telecom Regulatory Authority of India Act of 1997, and the Cable Television Networks (Regulation) Act of 1995, envisaging instead the establishment of a single independent regulator called the Communications Commission of India.

The Communications Convergence Bill of 2001 was introduced in the Lok Sabha on August 31 that year. It sought to establish a Communications Commission of India vested with wide powers²⁰ including commercial

THE COMMUNICATION CONVERGENCE BILL, 2001 A BILL

to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia), for the establishment of an autonomous Commission to regulate carriage of all forms of communications, and for establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto.

WHEREAS it is considered necessary—(

- 1) to facilitate development of a national infrastructure for an information based society, and to enable access thereto;
- (ii) to provide a choice of services to the people with a view to promoting plurality of news, views and information;
- (iii) to establish a regulatory framework for carriage and content of communications in the scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and
- (iv) to provide for the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

The Communication Convergence Bill, 2001 was introduced on August 31, 2001 and lapsed with the dissolution of the Thirteenth Lok Sabha.

spectrum usage, licensing, tariff determination, advertisement and Programme Codes. The television industry objected to the powers of censorship vested with the proposed Commission, including the regulation of internet content.

The Communication Convergence Bill, 2001 was introduced on August 31, 2001 and lapsed with the dissolution of the Thirteenth Lok Sabha. Moreover, like the 1997 Broadcasting Bill, the 2001 Communications Convergence Bill made no reference to the Indian Copyright Act except for a passing mention in clause 28, which required service providers to ensure that no programme broadcast through their services was violative of copyright.

A more fundamental objection to the proposed Bill concerned the doctrine of separation of powers. A Commission vested with the power to grant licences and decide tariffs was also empowered to adjudicate disputes arising from provisions of the Act deemed juridical in nature, in violation of the cardinal principle of natural justice that no one shall be a judge in their own cause.

Subsequently the Communications Convergence Bill lapsed with the dissolution of the Thirteenth Lok Sabha.

TRAI as Interim Regulator

Absent an independent broadcasting regulator, in 2004 the Union Ministry of Communication and Information Technology vide a notification dated January 9 classified broadcasting and cable television services as a 'telecommunication service'. Consequently, TRAI was entrusted with the following additional functions:

- a. To make recommendations regarding the terms and conditions on which 'addressable systems' shall be provided to customers.
- b. To lay down parameters regulating the maximum time for advertisements on pay channels as well as other channels.
- c. To specify standard norms for, and the periodicity of, revision of rates of pay channels, including interim measures.

Through this notification TRAI was entrusted with the functions of a broadcasting regulator, a situation which continues. Yet the TRAI Act was not amended to accommodate the additional expertise and resources required to regulate the broadcast sector. A possible explanation is that TRAI's regulatory expansion was meant to be interim in nature, until a standalone broadcasting regulator could be established.

Illustratively, a division bench of the Delhi High Court in the matter of *Star India P. Ltd. v. The Telecom Regulatory Authority of India*,²¹ while upholding the inclusion of broadcasting services within the definition of telecommunication services under the TRAI Act, argued for the interim nature of TRAI's regulatory expansion:

“The Broadcasting Bill which was intended to be contemporaneous legislation to the TRAI Act, was introduced in Parliament in 1997 and was referred to the Joint Parliamentary Committee for detailed consideration. The Bill, however, lapsed consequent upon the premature and precipitate dissolution of Parliament in December 1997.

“The intention of Parliament was already manifestly clear, namely, that although broadcasting is inherently covered under the TRAI Act and the Telegraph Act, its galloping growth has warranted that it should be governed by a separate statutory structure.

It was for this reason that although broadcasting services would fall within the umbra of the definition of telecommunication services as available in Section 2(k) of the TRAI Act, it was from the very inception intentionally excluded therefrom, in the sanguine expectancy that the Broadcasting Bill would very soon receive statutory standing alongside the TRAI Act.

“In the event, however, the planning proved presumptuous. The Proviso is the penumbra which will persist only till the passing of the Broadcasting Bill or the Convergence Bill, as the case may be. It appears to us that this is the intention of Parliament.”²²

Broadcasting Services Regulation Bill, 2006

In 2006, Union Minister of Information and Broadcasting Minister Priya Ranjan Dasmuni proposed a Draft Broadcasting Services Regulation Bill to achieve the same goals as its precursors. The Bill sought to establish an independent authority called the Broadcasting Regulatory Authority of India (BRAI) comprising a chairperson and six full-time members. It would be vested with powers ranging from licensing, registration and quality of service to adjudicating disputes and certifying content.

CONSULTATION PAPER ON THE PROPOSED DRAFT OF BROADCASTING SERVICES REGULATION BILL

The Ministry of Information & Broadcasting has been examining the issue of introducing a legislation to regulate the operation of broadcasting services consequent upon the judgment of the Supreme Court in the Cricket Association of Bengal case delivered in 1995 that airwaves are public property and have to be controlled and regulated by public authority in the interests of the public.

The Broadcasting Bill of 1997 was introduced in the Parliament but lapsed. The Communication Convergence Bill 2001 was introduced but even this lapsed due to the dissolution of the 13th Lok Sabha. In 1995 the Cable Television Networks Act was brought in to regulate the cable business and their operations. Most of the other required regulations in the sector were being accomplished by issuing guidelines such as those for Uplinking TV channels, DTH, FM Radio, Community Radio and Downlinking etc.

The MIB initiated consultation on the Broadcasting Services Regulation Bill in 2007 but it was never introduced in Parliament.

BROADCAST REGULATORY AUTHORITY OF INDIA (BRAI):

Presently, the regulatory functions are being performed by the Ministry of Information & Broadcasting in respect of the broadcasters under several guidelines issued from time to time. On the other hand, the cable operators only need to register themselves with the local post office. The authorized officers perform some of the regulatory functions in respect of cable operators. It is proposed to set up BRAI on the lines of Telecom Regulatory Authority of India (TRAI). In order to function in a coordinated manner with clear roles and responsibilities, it is proposed to specify respective powers and functions of the Central Government, the BRAI , the licensing authorities and the authorized officers.

Among other things, the draft Broadcasting Services Regulation Bill considered setting up the Broadcast Regulatory Authority of India

The Bill had a far-reaching impact however, as it gave wide powers to the central government to regulate the sector. Clause 11 laid down certain public service broadcasting obligations upon all broadcasters, and empowered the central government to issue guidelines to this effect with the following limits:

- At least 15% of all content broadcast on a channel per week must be indigenous;
- At least 10% of the total commercial time of a channel broadcast per week should be reserved for socially relevant messaging through advertisements;
- At least 10% of the total programme content of a channel broadcast per week should contain socially relevant programmes.

The Bill met with strong resistance from industry stakeholders owing to clauses on content censorship and mandatory public service obligations. Industry bodies like the Editors Guild of India rejected the Bill in its existing form and advocated for the self-regulation of electronic media.²³

Above all, BRAI's autonomy was questioned, much like the regulators previously conceived, given that its members would be appointed by the central government. Due to the heavy criticism, another draft of the Bill was issued for public consideration in 2007. However, it was not introduced in Parliament.

4/ CONCLUSION

The history of broadcasting regulation recounted here indicates that the need for a separate broadcasting regulator has been discussed several times by governments and Parliaments. Despite stakeholders' highlighting substantive deficiencies in the proposed legislations, it can be inferred that there was broad agreement on the need for a separate regulator.

The root of regulatory challenges in broadcasting in India is the lack of regulatory distinction between broadcast content and distribution. A sector-specific legislation could resolve this problem.

As stated earlier, television content distribution falls within the scope of 'telegraph' under the 1885 Telegraph Act, giving the central government exclusive power over it. The Nariman Committee, the Paswan Committee, and Justice B.P Reddy in the Airwaves Judgement highlighted the Act's inadequacy to regulate broadcasting and the need for a separate regulator. The essence of their argument was that producing broadcast content and distributing it are two distinct functions, which should be regulated differently. 'Telegraph' as regulated under the Telegraph Act and Wireless Telegraphy Act refers only to the distribution aspect of broadcasting. The inability to institutionalise a distinction between content and distribution has had a cascading effect on the sector.

Additionally, the regulatory scheme continues to leave no scope for audit and enforcement at the consumer level, creating dissonance between the consumer demand for quality and choice, and the regulator's notion of consumer interest.

As mentioned earlier, the quality of content on TV is formulaic and seemingly designed to appeal to the lowest common denominator or maximum eyeballs. This is a consequence of regulatory design, and it has led to a steady attrition of the Indian broadcasting market, with 26 million consumers²⁴ cutting the cord over the past two years and many popular and niche TV channels being closed down.²⁵ The history of TV broadcast regulation in India contains a clue to the genesis of these persisting ecosystem challenges.

ENDNOTES

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- 6 *Shiv Cable TV System v. State of Rajasthan*, AIR 1993 Raj. 1997.
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- 16 Namita Bhandare, [Pulling the Plug](#), *India Today*, July 28, 1997.
- 17 *Ibid*.
- 18 PMO notification dated December 13, 1999.
- 19 Ashish Pathak, [India: The Communications Convergence Bill: India's Tryst with Destiny](#), July 11, 2002; see also Sudesh Prasad, [CONVERGENCE: The Search for a Sarkari Approach!](#), November 11, 2000.
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