



# Legislative measures towards Information and Broadcasting in India

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## Abstract:

The broadcast media was under complete monopoly of the Government of India. Private organizations were involved only in commercial advertising and sponsorships of programmes. However, in SECRETARY, MINISTRY OF I & B V. CAB, the Supreme Court clearly differed from the aforementioned monopolistic approach and emphasized that, every citizen has a right to telecast and broadcast to the viewers/listeners any important event through electronic media, television or radio and also provided that the Government had no monopoly over such electronic media as such monopolistic power of the Government was not mentioned anywhere in the Constitution or in any other law prevailing in the country. This judgment, thus, brought about a great change in the position prevailing in the broadcast media, and such sector became open to the citizens<sup>1</sup>. 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 clash is the legal regulation of both existing and emerging technologies. This compilation attempts to examine the existing legal frame work that applies to various broadcast technologies that are currently in use in India<sup>2</sup>.

**Keywords:** Electronic media, Electronic mass communications medium, Broadcasting Service, Satellite system, Broadcasting license.

## Introduction:

Almost everybody in the country is familiar with the cable television. It has been spreading its wings from the initial urban cities, right to the remote villages. There has been a haphazard mushrooming of cable television networks all over the country due to the availability of signals of foreign television networks via satellites. To check the screening of undesirable programmes and advertisements which are screened on these channels and to regulate the operation of the cable television networks in the country, so as to bring uniformity in their functioning, the Cable Television Networks (Regulation) Act was passed in both the Houses of the Parliament.

The Prasar Bharati Act, 1990 was passed to provide for the establishment of a Broadcasting Corporation for India, to be known as Prasar Bharati. It says that it shall be the primary duty of the Corporation to organize and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television<sup>3</sup>.

The **Ministry of Information and Broadcasting** (Ministry of I&B) is a branch of the Government of India is the apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India. The Ministry is responsible for the administration of Prasar Bharati-the broadcasting arm of the Indian Government. The Central Board of Film Certification is the other important body under this ministry being responsible for the regulation of motion pictures shown in India.

**Meaning:** Broadcasting is the distribution of audio and/or video content to a dispersed audience via any electronic mass communications medium, but typically one using the electromagnetic spectrum (radio waves), in a one-to-many model.

**The Broadcasting Code**,<sup>4</sup> adopted by the Fourth Asian Broadcasting Conference in 1962 listing certain cardinal principles to be followed by the electronic media, is of prime importance so far as laws governing broadcast medium are concerned. Although, the Broadcast Code was chiefly set up to govern the All India Radio, the following cardinal principles have ideally been practiced by all Broadcasting and Television Organization:

- To ensure the objective presentation of news and fair and unbiased comment
- To promote the advancement of education and culture
- To raise and maintain high standards of decency and decorum in all programmes
- To promote communal harmony, religious tolerance and international understanding
- To treat controversial public issues in an impartial and dispassionate manner
- To respect human rights and dignity

**Organizations:**<sup>5</sup>

- Conditional Access System (CAS)
- Community Radio Stations
- Prasar Bharati
- Doordarshan
- Akashvani (All India Radio)
- Broadcast Engineering Consultants India Limited
- Uplinking/Downlinking of TV Channels
- Content Regulation on Private TV Channels
- Direct to Home (DTH)
- Internet Protocol Television (IPTV)
- Headend-in-the-Sky (HITS)
- Digital television transition
- Radio And Television Licence Around The World
- Broadcasting Authority of India 1977

**Legislation:**<sup>6</sup> Direction of DTH Operators, IPTV service providers and HITS operators under Section 13 of the TRAI Act, 1997 regarding compliance of amended procedure for filing of details of interconnect agreements.

- Digital Addressable Systems: Revised Tariff Order Direction to All pay broadcasters/ aggregators under section 13, read with sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) for implementation of...
- Direction to Multi System Operators under section 13, read with sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) for implementation of Digital Ad...
- Standards of Quality of Service (Duration of Advertisements in TV Channels) Amendment regulation.
- Cable Television Networks (Amendment) Rules, 2012 Digital Addressable System.
- Cable TV Networks regulation Amendment Ordinance 2011.
- Cable TV Act 1995.
- Cable TV Network (Regulation) Amendment Act, 2011.
- Policy Guidelines for Uplinking of channels in India 2011
- Amendments in the Downlinking Policy of Television channels in India
- Programme and Advertising Codes
- Supreme Court Judgement on airwaves
- Self-Regulating Guidelines for the Broadcast Sector (Draft Bill 2008)
- Policy Guidelines for IPTV Service in India
- Cable Television Networks (Amendment) Rules, 2012 Digital Addressable System
- Guidelines for DTH Services – 2
- Guidelines for DTH Services – 1
- Guidelines to provide Head end in the sky ( HITS) Broadcasting Service in India
- Notification regarding amendments of Cable Television rules 1994 in view of DAS dated 06.07.2013
- Ministry of Information and Broadcasting Notification
- List of permitted teleports operators in India
- Views of the Ministry of Information and Broadcasting on TRAI recommendation relating to Policy Issues for up linking/ Down linking of Television channels in India
- Review of the existing Television Rating in India: Report of the Amit Mitra committee
- Sports Broadcasting Signals (Mandatory sharing of Sports Broadcast Signals with Prasar Bharti) Act 2007
- Permitted Private Satellite TV Channels for uplink from India and also Downlink in India as on 20.12.2012 (News and Current Affairs Channels)
- Permitted Private Satellite TV Channels for uplink from India and also Downlink in India as on 20.12.2012 (Non- News and Current Affairs Channels)
- Status of Permitted Satellite TV Channels for uplink and Downlink in India as on 20.3.2013
- Total Number of Permitted Satellite TV Channels as on 20.03.2013

**Cable Television Networks (Regulation) Act, 1995:** basically regulates the operation of Cable Television in the territory of India and regulates the subscription rates and the total number of total subscribers receiving programmes transmitted in the basic tier.



**Direct-to-Home Broadcasting** – Direct-to-Home (DTH) Broadcasting Service, refers to distribution of multi-channel TV programmes in Ku Band by using a satellite system and by providing TV signals directly to the subscribers' premises without passing through an intermediary such as a cable operator. The Union Government has decided to permit Direct-to-Home TV service in Ku band in India.

**Film** – India is one of the largest producers of motion pictures in the world. Encompassing three major spheres of activity – production, distribution and exhibition, the industry has an all-India spread, employing thousands of people and entertaining millions each year. The most important law in force regulating the making and screening of films is:

**The Cinematograph Act, 1952** – The Cinematograph Act of 1952 has been passed to make provisions for a certification of cinematographed films for exhibitions by means of Cinematograph. Under this Act, a Board of Film Censors (now renamed Central Board of Film Certification) with advisory panels at regional centres is empowered to examine every film and sanction it whether for unrestricted exhibition or for exhibition restricted to adults. The Board is also empowered to refuse to sanction a film for public exhibition.

In **K. A. Abbas v. Union of India**,<sup>7</sup> the petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The Supreme Court however observed that, pre-censorship of films under the Cinematograph Act was justified under Article 19(2) on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotion more deeply and thus, classification of films between two categories 'A' (for adults only) and 'U' (for all) was brought about.

Furthermore, in **Bobby Art International v. Om Pal Singh Hoon**,<sup>8</sup> the Supreme Court re-affirmed the aforementioned view and upheld the order of the Appellate Tribunal (under the Cinematograph Act) which had followed the Guidelines under the Cinematograph Act and granted an 'A' certificate to a film.

The reality of cable networks was tested in **Shiv Cable TV System v. State of Rajasthan**.<sup>9</sup> 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 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<sup>10</sup>.

### Conclusion:

Transmission of radio and television programs from a radio or television station to home receivers over the spectrum is referred to as OTA (over the air) or terrestrial broadcasting and in most countries requires a broadcasting license. Transmissions using a combination of satellite and wired transmission, like cable television (which also retransmits OTA stations with their consent), are also considered broadcasts, and do not require a license.

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