



Broadcast regulation in the public interest: A Backgrounder

By [Ammu Joseph](#)

Is it necessary to regulate the broadcast media? Should citizens have a stake in deciding what kind of regulation is most suitable? What is the best model to emulate?

The furore over media coverage of the deadly and dramatic terrorist attacks in Mumbai in November 2008 was only one in a series of media-related controversies that have surfaced with remarkable regularity through the past couple of years, with much of the criticism directed at the broadcast media in general and television news channels in particular.

For example, media coverage of the double murder of 14-year-old Aarushi Talwar and her family's domestic help, Hemraj, in May 2008 had also drawn flak, not only from media critics, but also sections of the public and even the judiciary. The Supreme Court of India went so far as to declare that it would lay down norms for media coverage of ongoing criminal investigations.

The August 2007 instance of a fake sting operation telecast by a private television channel falsely implicating a school teacher in a sex work racket ' which was not only slanderous but even led to mob violence ' generated widespread outrage against media malpractices and seriously eroded the credibility of the media. The High Court of Delhi even proposed prior permission from a government-appointed committee for broadcast of programmes involving "stings."

The fact that television news has been the focus of much of the recent debate on media regulation in India is perhaps only natural in view of the nature and impact of television as a medium. However, there may be more to it than that.

Background

Television is, admittedly, a relatively young medium in India, restricted until the early 1990s to the State-owned broadcaster, Doordarshan (DD). Even DD began national telecasts only in the mid-1980s, when indigenous satellite technology made it possible.

Private television channels relying on satellites for transmission and on cable networks for dissemination began to make their presence felt by the mid- to late 1990s. It was only towards the end of the 1990s that 24-hour news channels catering specifically to Indian audiences ' in English, Hindi and other languages ' emerged at the national as well as regional levels. The subsequent proliferation of channels has naturally led to intense competition, which is widely believed to be the root cause of the malady of which periodic controversies are just a symptom. It is estimated that at least 77 24-hour news channels in multiple languages are currently in operation across the country and that a further 130 licences have been approved. (1)

The government appears to have been taken unawares by the sudden emergence and upsurge of television channels and cable networks, possibly lulled into complacency by the decades-long tradition of State control over the electronic media. The sudden onslaught of satellite television, initially through the so-called "invasion from the skies" by international TV networks in the early 1990s, changed the situation quite dramatically but the official response to the altered circumstances has been slow, hesitant and somewhat confused.

The government's first attempt to regulate the non-governmental broadcast media focused on cable operators and resulted in the Cable Television Networks (Regulation) Act, 1995, framed after the government reached an understanding at the all-India level with the Cable Operators Federation of India in 1993. The new law was an attempt to regulate the burgeoning cable market that had emerged a few years earlier by enabling some control of the cable system that enabled mass distribution of television signals. The Cable Television Networks Rules include a Programme Code that imposes some restrictions on the content of both programmes and advertisements shown on cable TV. These Rules were amended in March 2008 and there is talk every now and again of further amendments.

Cable operators contend that, as the only segment of the broadcasting chain currently subject to regulation, they bear a disproportionate burden of responsibility for controlling the content of television channels. At the same time, with networks spread across the country, implementation of the law is no easy task.

The comprehensive national media policy that has been discussed over the years is still hanging fire, as is the independent broadcasting authority called for by the Supreme Court in 1995 in the context of its landmark judgment on the airwaves. However, the Union Ministry of Information and Broadcasting has periodically attempted to introduce legislation to regulate the rapidly growing broadcast sector.

The Broadcast Bill of 1997 was one such attempt. Its statement of objects and reasons

observed that its purpose was "to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies". The proposed legislation apparently intended to establish an independent authority and to create a level playing field for indigenous broadcasters. However, the Bill never saw the light of day. In fact, it did not get past a joint parliamentary committee set up to examine the legislation after it was tabled in Parliament.

The government's next attempt at regulation took the form of the Communications Convergence Bill, 2000, which aimed to create a single regulatory authority (the Communications Commission of India) to deal with advancements in information and communications technology. It proposed to 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. This legislation, too, remained a dead letter.

The Broadcasting Services Regulation Bill, 2006, which came to public notice in July of that year, was widely criticised for draconian provisions that gave sweeping powers to the government and its representatives to cripple the media through pre-censorship and a particularly severe and potent form of 'inspector raj'. No process of public consultation and discussion preceded the drafting of the legislation.

One of the issues the 2006 draft legislation attempted to tackle was "concentration of media ownership" ' ie, the worldwide trend of ownership of media increasingly concentrated in a decreasing number of conglomerates. However, unlike in mature democracies where restrictions on ownership have been important features of media regulation, in India there has been little public discussion on the implications of media concentration. It is, therefore, not surprising that most comments on this aspect of the proposed legislation emanated from representatives of the media industry and its allies, who appeared more concerned about the impact of the Bill on business than its threat to freedom of expression. In any case, this draft law, too, was eventually shelved.

In July 2007 there was yet another effort to introduce legislation to regulate the burgeoning broadcast sector in the country. The Union Ministry for Information and Broadcasting posted the Broadcasting Services Regulation Bill, 2007 (<http://www.mib.nic.in/Bill200707.pdf>) and the accompanying Content Code ' aka Self-Regulation Guidelines for the Broadcasting Sector (July 07 version <http://www.mib.nic.in/Code200707.pdf>, revised March 08 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 broadcast industry was quick to voice its vehement opposition to certain provisions in the Bill and several sections of the Code, particularly those referring to news television. The ministry repeatedly reiterated its intention to table the proposed law in Parliament during the imminent monsoon session. The controversy raged on for a few weeks, generating substantial media coverage. (2) A truce was finally called, with the two organisations representing television channels (the Indian Broadcasting Foundation and the News Broadcasters Association) undertaking to draft their own guidelines for self-regulation, and the ministry agreeing to postpone further action on the legislation until then. Consequently, media coverage of the subject also abated.

Public debate was conspicuously absent throughout this process. A few individuals and civil society organisations who submitted considered responses to the draft Bill and Code in August 2007 received no acknowledgement of their efforts, let alone further communication, from the ministry. (3) Neither the government nor the industry showed much inclination to encourage real public discussion, despite the fact the media ' especially broadcast media ' now constitute an integral part of people's daily lives and have a major impact on contemporary society. The ministry's frequent references to "stakeholders" appeared to exclude citizens.

Subsequent events and issues related to media regulation have been sporadically reported in the media, but with little attempt to contextualise developments, connect the dots, and thereby enable citizens to fully comprehend their meaning and significance. Periodic statements by politicians and bureaucrats ' again reported with little reference to background ' have further muddied the waters.

Despite the apparent "truce" between the government and the broadcasting industry with regard to the draft Broadcast Bill and Content Code, the I&B Ministry continued to make decisions and take actions that fit under the media regulation umbrella.

For instance, in February 2008 it notified the creation of a number of state and district-level "monitoring bodies" meant to assess non-governmental broadcast entities in terms of their conformity with the programme code of the Cable TV Rules. As initially constituted, these committees were dominated by bureaucrats and police personnel. As the International Federation of Journalists has pointed out, it was only in July 2008 ' almost as an afterthought ' that the ministry mandated that representatives of the journalism profession could also be included in the committees.

The setting up of an Electronic Media Monitoring Centre (EMMC) by the government to monitor the content of all news channels and FM radio stations was also widely reported in the media in mid-June 2008. Much of the coverage conveyed the

impression that the EMMC was linked to the deferred Broadcast Bill and Content Code and implied that its establishment was proof of the government's lack of commitment to self-regulation.

Actually the EMMC project was part of the 10th Five-Year Plan and had been in the works for some time. The fact that it pre-dated the 2007 Bill is evident in the reply to a question in the Rajya Sabha provided by the I&B Minister in July 2006. He had at the time stated in Parliament that the government had decided to set up such a Centre to monitor the content of private television channels for violations of the Programme and Advertisement Codes prescribed in the Cable Television Networks (Regulations), Act 1995 and the rules framed under that law. (4)

The EMMC, estimated to cost Rs 16 crore, is apparently meant to facilitate the functioning of the broadcast regulatory agency if and when such a body is set up. The idea is that, instead of having to rely on individual channels to supply footage about which a complaint has been received, the regulator will have ready access to recorded footage from 100 channels (to be eventually increased to 150).

However, little has been heard about the long-awaited broader broadcast regulatory body for some time even though, in an interview given in mid-June 2008, the outgoing secretary to the Ministry of Information & Broadcasting identified a "dedicated broadcast regulator" as the most urgent need of the sector. "It's inevitable," she said. "We are trying to be like mature economies in all other aspects, so why not on this issue? All developed economies have powerful broadcast regulators. It is part of the Broadcast Bill and hopefully it will come up for consideration by Parliament soon." The problem is that the nature and structure of the body outlined in the draft Bill was far from the independent regulatory agency mandated by a 1995 Supreme Court judgment. (5)

Meanwhile, following up on their undertaking to institute self-regulation, the News Broadcasters' Association (NBA) submitted two documents to the government in April 2008: a draft Code of Ethics and Broadcasting Standards, and draft regulations for the setting up of a News Broadcasting Standards Disputes Redressal Authority. In August 2008 the NBA announced the setting up of the News Broadcasting Standards Disputes Redressal Authority, as required in the regulations. The Authority finally came into being and the Code into effect on October 2, 2008. The nine-member Authority, headed by former Chief Justice of India J S Verma, includes four editors from different news channels and four 'eminent persons' drawn from different walks of life.

The terrorist attacks in Mumbai occurred less than two months later. The controversial, continuous, live television coverage of the three-day ordeal, which was avidly watched

by audiences across the country, generated considerable criticism and thereby revived the debate on media regulation. However, once again, much of the discussion sidestepped the idea of an autonomous regulatory body for the media as a whole or at least the broadcast sector.

Even as National Security Guard (NSG) commandos fought pitched battles with terrorists in three of the four locations that were targeted in India's commercial capital, with television cameras and journalists providing non-stop coverage, the style and substance of the coverage itself became news. Unprecedented public criticism of the coverage spread quickly via the Internet and mobile phones. Official objections to the coverage were also promptly expressed. And even the news broadcasters' own association sent an advisory to heads and editors of member organisations (14 private broadcasters representing 30 news channels) as early as November 27, the day after the attacks began ' indicating that the thinking in the NBA, too, was that something was amiss. (6)

Meanwhile, in the midst of the crisis, an order from a Deputy Commissioner of Police in Mumbai, citing Section 19 of the Cable Television Networks Act, resulted in news channels being off the air for a short while until the government intervened and cancelled the order.

On November 28, even as the security forces were still engaged in battle, the Union Ministry of Information and Broadcasting summoned news media owners as well as office-bearers of the Indian Broadcasting Federation (IBF) and the News Broadcasting Association (NBA) to express concern over the conduct and content of television channels during the extraordinary emergency.

A few days later there were reports that the Government of Maharashtra was considering restrictions on news channels so that live media coverage would not hamper security operations. The central government also discussed the possibility of tightening laws governing broadcasting through changes in the Cable Television Networks (Regulation) Act, 1995 and steps to get private television channels to adhere to the content code drafted by the Ministry of Information and Broadcasting in July 2007 and revised in March 2008.

In addition the ministry went ahead and issued notices to two Hindi channels for what it deemed irresponsible coverage, besides sending advisories to all news and current affairs channels as well as the two industry bodies (IBA and NBA). Television news broadcasters unanimously rejected the advisories as "completely unacceptable" and decided to approach the prime minister, who held additional charge of the ministry at the time in view of the concerned minister's illness, to plead their case. Meanwhile the

ministry was apparently all set to introduce guidelines for reporting on "emergency situations."

The shortcomings of the authorities in charge of the anti-terror operation ' in terms of providing information and instructions ' were also discussed at a series of meetings between the government and broadcasters from the 28th onwards. Finally the broadcasters agreed to create an 'emergency protocol' and adhere to their own self-regulatory guidelines with 'more strictness and vigilance,' especially while covering events of such magnitude as the Mumbai attacks. They categorically stated that they would not accept any guidelines/regulations on coverage 'imposed' on them.

On December 18, 2008 the NBA duly unveiled a new set of guidelines dealing specifically with the telecast of news during emergency situations and said the six-point document would become part of its larger self-regulatory code of conduct, which had come into effect in October and is supposed govern all its members.

While the ministry welcomed this initiative, describing it as "a step in the right direction", it simultaneously announced the setting up of a Standing Media Consultative Committee to be chaired by the secretary, Information & Broadcasting, with representatives of key ministries, the NBA and the Editor's Guild as members. Among the proposed committee's tasks would be the drafting of guidelines for media coverage of emergency situations like terror strikes, natural disasters and riots.

The government also indicated that it would neither endorse nor reject the NBA's guidelines for coverage of news related to emergency situations such as armed conflict, hostage crises, communal violence and public disorder. It was suggested that the ministry would instead closely monitor all news channels for any violation of its own programming codes and guidelines issued under the Cable TV Act and exercise its right to issue advisories and take action against any violation.

A couple of weeks later, in early January 2009, the ministry again commented on the NBA's guidelines, indicating that it would adopt a wait-and-watch policy, looking in particular at implementation of the self-regulatory guidelines.

Broadcasters kept up their protest against what they perceived as the government's continuing attempts to control the media until the Prime Minister stepped in to assure them that any decision on guidelines to deal with media coverage of emergency situations would be taken only after "widest possible consultations with all the stakeholders."

In February 2009, the NBA issued a fresh set of guidelines dealing with a wide range of issues, including accuracy, privacy, impartiality and fairness, decency and good

taste. The guidelines covered areas of media practice such as sting operations, coverage of law and order, crime and violence, occultism and supernatural/paranormal matters, race and religion, as well as national security, media depictions of women and children, content that could disturb/alarm children, etc. According to the NBA, these were meant to elaborate on the principles of self-regulation contained in the code of ethics and broadcasting standards put in place in October 2008.(7) But there are already indications that self-regulation has its own set of problems.

On February 18, the Minister of State for I&B stated in the Lok Sabha that steps had been taken to sensitise the media on key issues involving the security and safety of the country. Claiming to be in favour of self-regulation by media houses, the minister affirmed that there was no plan to control the content of news media and ruled out any blanket ban on live coverage of sensitive incidents. In the face of protests by members of parliament against live coverage of the "26/11 terror attacks", he reiterated that self-regulation was the best option and explained that the NBA had already drafted a self-regulatory code of ethics and established an emergency protocol to be followed during coverage of such incidents.

Within a couple of days, the ministry had set up its proposed media consultative committee, under the chairmanship of the secretary, Ministry of Information and Broadcasting. The committee is supposed to function as a forum for regular consultations between the government and professional media bodies.

According to the ministry, committee members would be drawn from, among others, the Press Council of India, the Editor's Guild, the Indian Newspapers Society, the News Broadcasters' Association, the Indian Broadcasting Foundation, the All India Newspapers Editors' Conference, the All India Small and Medium Newspapers Federation, the Indian Language Newspapers' Association and the Indian Women Press Corps, besides noted journalists. It would also reportedly include representatives of civil society, NGOs and other stakeholders, including educationists, child rights activists and the National Commission for Women.

Of late, the ministry's standard answer to questions about the status of the Broadcast Bill ' raised by members of Parliament, judges hearing media-related cases and others ' is that a decision will be taken after comments on the proposed legislation are received from all states and union territories. So, while the Bill may be on the back-burner, it has obviously not been taken off the stove.

It remains to be seen whether or not the recently set up Media Consultative Committee will address the question of what is to be done about the Bill and/or revive the long-pending and occasionally discussed proposals for a comprehensive national media

policy, a Media Council or Commission (8) to oversee all the various sectors of media in these days of convergence, and/or the independent broadcasting authority mandated by the Supreme Court. (9)

Citizens and the media

Is there any reason why citizens must be informed about and participate in debates about media policy and regulation? Consider the facts. First, the news media are supposed to play a vital role in democratic societies as the Fourth Estate, one of the four pillars of democracy alongside the Legislature, the Executive and the Judiciary. It stands to reason that the watchdog of the other three Estates, and of society as a whole, must also, ultimately, be accountable to the public.

Secondly, few would deny that the mass media wield enormous power in today's world. They are increasingly playing the role once played by family, community, religion and formal education: not only disseminating information and knowledge, but also shaping values and norms, moulding attitudes and behaviour, and influencing the very process of living.

Thirdly, the media set the public agenda in a number of ways: for example, they more or less determine which wars and conflicts citizens should know about and what they should know about them, which disasters and diseases are worthy of public attention, which scams and scandals people must get hot and bothered about, what issues and developments they should be informed and concerned about, which events in a city residents need to be aware of, and so on.

The media are also in a position to pressurise the State to act; and they enjoy this privilege because they are supposed to represent the public interest. The news media in particular have traditionally played a key role in democracy by creating what is known as the "public sphere", where information essential to citizen participation in national and community life is supposed to be presented and where issues of importance to the public are meant to be discussed and debated. Such a public sphere is indispensable to democratic society because democracy critically depends upon an informed populace making political choices.

So citizens of a democracy do have a stake in the media and, consequently, they have the right to be heard on media-related matters ' not only issues relating to media content but also those concerning media policy.(10) Indeed, the democratisation of the media is one of the important challenges of the future.

A growing number of people in different parts of the world are becoming aware of the need for citizens to be critically aware of the media, not just in terms of programming,

but also with regard to various determinants of policy, such as institutional structure, funding and regulation. Broadcast audiences, long presumed to be passive consumers, are beginning to turn active, and increasingly seeking recognition as stakeholders who have a right to be heard on all issues relating to the media.

Unfortunately, in India, even sections of civil society that are vigorous and vocal on a wide range of important issues have yet to intervene actively in media matters. Yet, as P V Satheesh of the Deccan Development Society, Andhra Pradesh, says, media sovereignty is as critical as sovereignty in food, natural resources, seeds and markets - for all citizens, and especially for the poor.

A landmark judgment of the Supreme Court of India in 1995 (11) provides legitimacy to the notion that the primary purpose of all broadcasting is to serve the public interest. The apex court has made it clear that "the airwaves or frequencies are a public property" (belonging neither to the State nor to private entities) and that "their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights".

This is a potentially powerful tool that has, so far, not been sufficiently highlighted, let alone effectively used. In the resulting vacuum, the judgment has been narrowly interpreted to promote private participation in broadcasting. Only a small group of media advocates have used the judgment to press home the imperative of community media ' thanks to their efforts community radio is slowly but surely becoming a reality in different parts of the country at long last.

While the entry of private players has certainly broadened the field and provided citizens with more choice, and while the long-awaited dawn of community media is certainly to be welcomed, what is equally significant about the judgment is that it represents a sound basis for citizens to get involved in matters concerning broadcasting. Such involvement is necessary to secure people's right to diverse as well as independent media, which are essential if the public sphere so vital for democracy is to be truly public.

Despite the judgment, however, media policy ' with far-reaching implications ' is still being formulated without the knowledge, let alone the participation, of even the cognoscenti among media professionals and users, not to mention the ever-growing number of citizens who are consumers in the burgeoning media market. In the absence of people's participation it is hardly surprising that it is, primarily, the broadcast industry that engages with the government on the wide range of issues relating to the electronic media. This is so despite the lip service paid to public consultation in the form of postings on official websites, "open house" meetings in a couple of cities,(12) etc.

Chaos and confusion

One reason why it is difficult even for those who wish to engage in media matters to do so is the confusion that prevails in the realm of media policy and legislation, especially with respect to the broadcast sector. This situation is aided and abetted by the paucity and fragmented nature of information in this area.

Media regulation in India is currently a maze, with multiple agencies involved in formulating and implementing policy, drafting and enforcing legislation. To make matters worse, they often appear to be unaware of each other's interventions and seem to work at cross purposes. Among the official organisations currently involved in media regulation are the following:

- Union Ministry of Information & Broadcasting (MIB, <http://www.mib.nic.in/>), which functions as policy-maker and content regulator
- Telecom Regulatory Authority of India (TRAI, <http://www.mib.nic.in/>), at one point given responsibility for regulation of the broadcast sector (in addition to the telecommunications sector) but involved primarily with issues of technology, such as carriage regulation and pricing
- Telecom Disputes Settlement & Appellate Tribunal (TDSAT, <http://tdsat.nic.in/>) which, as the name implies, is the body to which appeals can be made for problems relating to broadcast regulation
- Ministry of Communications & Information Technology (MCIT, <http://www.mit.gov.in/>), which has responsibility for licensing transmission equipment (eg, radio through the Wireless Planning & Coordination or WPC wing), satellites, Internet Protocol Television (IPTV) and, potentially, Mobile TV
- The courts ' in the absence of an independent regulator, the courts are often called upon to adjudicate on broadcast-related issues and they are playing an increasingly proactive role in matters of media regulation (13)
- Head post offices in various cities, given responsibility for registering cable TV networks
- State/District level Monitoring Committees and Authorised Officers, entrusted under the Cable Television Act with the responsibility to prevent the transmission of "certain programmes in public interest" (NB: The Authorised Officer is empowered to seize broadcast equipment)
- The Inter-Ministerial Committee constituted by the Ministry of Information & Broadcasting to look into complaints regarding violations of the programme and advertisement codes connected to the Cable Television Act and Rules.

There may well be others. In addition, other semi-official players also occasionally enter the field. For example, in mid-2008 the National Commission for Women (<http://ncw.nic.in/>)

) recommended amendments to the Indecent Representation of Women Act (relating to the depiction of women in the media) aimed at expanding the scope of the Act to include electronic and digital media, besides broadening the definition of 'indecent representation,' and making punishment for infringements more stringent. (14)

In a parallel development, the National Commission for the Protection of Child Rights (NCPCR, <http://ncpcr.gov.in/>) sought clarifications from the Ministry of Labour in an effort to determine whether or not children's participation in TV programmes, including reality shows, should be viewed as child labour and thereby violative of laws against the economic exploitation of children.

Around the same time the Union Ministry for Women & Child Development (WCD, <http://www.wcd.nic.in/>) also weighed in, criticising the media ' especially some television channels ' for their handling of the murder of 14-year-old Aarushi Talwar in May 2008.

In mid-December 2008 the Committee on Petitions of the upper house of Parliament (Rajya Sabha) focused its 132nd report on a petition regarding the alleged misuse of the right to freedom of speech and expression by both print and electronic media and the need to restrict this under Article 19 [2] of the Constitution.(15) Giving its opinion on a variety of media issues the Committee came out in favour of statutory regulations to cover the media ' both print and electronic ' in the larger interests of society.

According to the Committee, "Self-regulation is an ideal situation but it may not be effective to regulate the media, particularly in the scenario of growing competition amongst the channels for supremacy in the business of ratings. The Committee is, therefore, in favour of having statutory regulations in place covering the print and electronic media, in the larger interest of the society, on the model of the Press Council of India vested with more powers. The Committee understands that the Government has proposed to put in place the Broadcasting Regulatory Authority of India (BRAI) under an Act of Parliament and a new Content Code to be issued thereunder. The Committee expects the Government to address all the issues raised by it, while going ahead with the proposed legislation. The Committee hopes that the proposed Broadcasting Services Regulation Bill will incorporate the views of all concerned and the same introduced in Parliament without further delay."

In search of a regulator

The need for a body to oversee India's burgeoning broadcast media is debated every now and then, with discussions usually triggered off by controversial media coverage and/or official announcements or initiatives, including draft legislation pertaining to the broadcast sector. A common proposal made at such times is that the entity be

modelled on the Press Council of India (PCI) whose jurisdiction ' such as it is ' is currently restricted to the print media.

The idea of a broader Media Council or Commission has been floating around for several years. For example, in 2004, both the Prime Minister, Manmohan Singh, and the then Minister for Information and Broadcasting, S Jaipal Reddy, made statements highlighting the need to review existing media policies in the context of current realities. This sparked off some discussion on the possible nature and structure of such an organisation.(16) But over the years the concept remained in the realm of general, intermittent discussion, even though the broadcast scenario in the country has been transformed in recent years and is continuing to expand and evolve at a rapid pace, overtaking policy and regulation.

The controversial draft Broadcasting Services Regulation Bill, 2007, floated by the Union Ministry of Information and Broadcasting in July that year, finally gave legislative form to a regulatory body meant to oversee the broadcasting industry. However, the Broadcasting Regulatory Authority of India (BRAI), as described in the Bill, had little resemblance to an independent and autonomous public authority, in view of the overarching influence of the government over almost every aspect of it ' from its constitution and composition to its powers and functions.

The prescribed process of selecting and appointing the chairperson and members of BRAI also did not inspire confidence. The fact that, both, the chief executive officer of the Authority, and the regional directors of its satellite offices across the country were to be government officers drawn from the civil services contradicted the claim that BRAI was to be an independent institution. With "Licensing Authorities" as well as "Authorised Officers" also likely to be drawn from the bureaucracy, the proposed regulatory infrastructure appeared indistinguishable from the government.

In addition, a number of sections in the Bill listing the powers and functions of the central government reinforced the perception that BRAI would be neither independent nor autonomous. Other provisions suggested that it was meant to merely implement policy determined by the government. The fact that it was empowered to make recommendations to the central government made little sense as long as the latter was not committed to even considering the recommendations, let alone accepting them.

Similar weaknesses afflicted the Public Service Broadcasting Council (PSBC) as envisaged in the draft Bill. There was also undue confusion about the division of responsibility and labour between the various players listed in the draft Bill. Critics pointed out that the lack of clarity and focus in the terms of reference for each would, in all probability, result in wasteful, fruitless overlap.

Most importantly, the draft Bill did not make any provision for public involvement in the regulatory framework. Media regulators in several democratic countries across the world have established transparent procedures for public consultation on matters relating to media policy and legislation. So this was clearly a serious omission. In the final analysis, the Broadcast Bill 2007 perpetuated a problem that has dogged all efforts in the direction of a Media Council/Commission in India: the virtual absence of public consultation and discussion.

With neither the media nor citizens involved in the process of determining the purpose and nature of such an organisation, let alone its frame of reference, composition, powers, and so on, the government has repeatedly laid itself open to the suggestion that its intention is to control or even muzzle the media. Lack of transparency and dialogue is clearly a fundamental flaw, especially since media regulatory authorities are meant to be public institutions, accountable above all to citizens.

In a democracy the need for media regulation cannot be used as a fig leaf to mask the promotion of state control over media. The first step towards media regulation in the public interest in a democratic society must necessarily be the setting up of a properly constituted, independent public authority empowered with a clear mandate and guaranteed autonomy, as envisioned by the Supreme Court of India.

In search of models

There are at least two aspects to media regulation within what was once known as the broadcast sector. One relates primarily to organisational structures and technological systems (including ownership, licensing, spectrum allocation, etc), while the other has to do with content and includes facilities for receiving and addressing complaints from the public. Although many regulatory organisations deal with both functions it is useful to acknowledge and understand the difference.

Take, for example, the situation in Sweden, where the two facets of regulation are dealt with by separate organisations. The Swedish Radio and TV Authority (<http://www.grn.se/grn/pages/>), the national authority for the media sector, grants licences for digital terrestrial television, local and community radio broadcasting, and issues publishing licences for databases. It also issues regulations on television standards and exercises a supervisory role in this area. In addition, the Authority monitors developments in the field of media and publishes statistics and other relevant information on the subject.

On the other hand, the Swedish Broadcasting Commission (<http://www.rtvv.se/uk/>) 'also a national body' oversees the content of radio and television broadcasts. While viewers or listeners can file complaints about programmes before the Commission, the

SBC can also review programmes on its own initiative. In both instances the Commission evaluates the programmes *vis a vis* their compliance with the provisions of the Radio and Television Act and the terms of the licence agreement between the broadcaster and the government.

Internationally, however, the trend seems to be towards convergence. In several countries existing, parallel regulatory institutions have been merged over the past few years to form a single one dealing with a broad spectrum of media and communications technologies as well as both components of regulation.

For example, the Australian Communication and Media Authority (ACMA - <http://www.acma.gov.au/WEB/>), established in 2005, is a statutory authority within the federal government portfolio dealing with Broadband, Communications and the Digital Economy. It is responsible for the regulation of broadcasting, the Internet, radio communications and telecommunications.

Created by merging the Australian Broadcasting Authority and the Australian Communications Authority, the ACMA aims "to enable the communications needs of the Australian community to be met by supporting and encouraging an innovative and vibrant communications sector". Its goal is "to manage an effective regulatory environment that supports a dynamic communications sector and enables industry to meet the communications needs of the community".

The ACMA's mandate includes regulation of media content and advertising. Working closely with relevant industries to promote active self-regulation, the Authority oversees industry compliance with licence conditions, codes and standards. It also monitors the effect of regulations in order to ensure that they are responsive to the community's needs.

Among the ACMA's responsibilities, as listed on its website, are the following:

- promoting self-regulation and competition in the communications industry, while protecting consumers and other users
- fostering an environment in which electronic media respect community standards and respond to audience and user needs
- managing access to the radiofrequency spectrum
- representing Australia 's communications interests internationally

The ACMA regulates broadcasting services in Australia in a number of ways:

- planning the [radiofrequency spectrum](#) used by radio and television services use

- issuing and renewing [licences to broadcasters](#)
- administering commercial ownership and control rules to maintain [media diversity](#), regulating [broadcasting content](#), developing programme standards or [licence conditions](#) on specific issues
- supporting the development of codes of practice for the industry to ensure community safeguards

The key word in all this is, clearly, "community". The *raison d'etre* of regulation is, obviously, the public good. In fact, the home page of the ACMA website places the public above licensees and industry: information meant for the former on how regulation works, together with advice for consumers and communities, is literally in the top spot, before details meant for the latter.

The Broadcasting Bill 2008 announced by the government of Ireland in May 2008 (<http://www.oireachtas.ie/viewdoc.asp?DocID=9433&&CatID=59>) also follows the trend of convergence and is expected to significantly change the broadcasting landscape in the country. The proposed legislation provides for the establishment of a single content regulator, the Broadcasting Authority of Ireland, which will assume the roles currently held by the Broadcasting Commission of Ireland (BCI) and the Broadcasting Complaints Commission (BCC). It will also have a range of new functions, including oversight of the public service broadcasters.

A detailed and comprehensive legislative proposal, the Bill seeks to deal with virtually all aspects of regulation and provision of broadcasting. It represents a consolidation of almost 50 years of Irish broadcasting legislation, repealing key Acts dating from 1960. Significantly, the Bill also amends legislation concerning public service broadcasters and the allocation of public funding for broadcast services.

The draft law was reportedly approved by the Irish government following a wide-ranging and informed debate, much of which was carried out through an e-consultation process. It is believed to be the first such legislation in the country to undergo such widespread consultation and rigorous scrutiny prior to its introduction.

The Bill includes a number of proposals meant to protect the interests of viewers and listeners. This includes a 'right of reply' mechanism whereby individuals who feel their reputations have been damaged by the media may seek to have the wrong corrected in a further broadcast. The proposed legislation also contains a provision for the establishment of Audience Councils to represent the views of listeners and viewers. In addition it puts forward some new approaches to codes and rules for broadcasting in Ireland, particularly in relation to food advertising aimed at children.

According to the Irish communications minister, the primary focus in the drafting of the

Bill has been to ensure that the broadcasting sector delivers on the needs and wants of the viewer and listener. In his view, this can be achieved only through an appropriate and fair regulatory structure, which mandates the Authority to work with everyone in the sector.

The Office of Communications of the United Kingdom (<http://www.ofcom.org.uk/>) was established in 2002 as the independent regulator and competition authority for the country's communications industries. A statutory corporation accountable to Parliament but independent of Government, Ofcom's jurisdiction extends across television, radio, telecommunications and wireless communications services; and its responsibilities cover both content and infrastructure in the communications sector. The new institution took over the functions of the Radio Authority and the Independent Television Commission, which consequently ceased to exist in 2003.

Ofcom's statutory duties under the Communications Act, 2003, are "to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition". Ofcom's specific responsibilities, listed on its website, include the following:

- Ensuring the optimal use of the electro-magnetic spectrum
- Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK
- Ensuring a wide range of TV and radio services of high quality and wide appeal
- Maintaining plurality in the provision of broadcasting
- Applying adequate protection for audiences against offensive or harmful material
- Applying adequate protection for audiences against unfairness or the infringement of privacy

Significantly, the home page of the Ofcom website highlights advice for consumers as prominently as information on licensing, etc., meant for the industry. The Finnish Communications Regulatory Authority (<http://www.ficora.fi/en/index.html>) also places consumers side by side with industry, providing information on FICORA's services for the public.

The clearly stated regulatory principles that are meant to guide Ofcom's actions leave little room for arbitrary action and sufficient basis for public scrutiny of its initiatives and questions about its sins of omission and commission, if any:

- It will regulate with a clearly articulated and publicly reviewed annual plan, with stated policy objectives.

- It will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve.
- It will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required.
- It will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
- It will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.
- It will research markets constantly and will aim to remain at the forefront of technological understanding.
- It will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.

Also on the Ofcom website are detailed guidelines (17) on the process of consultation on matters of media policy. The following excerpts from Ofcom's Consultation Guidelines, issued in November 2007, make it clear that the regulator's ultimate responsibility and accountability is to citizens (certain sections have been underlined here for emphasis):

We are the communications industry regulator spanning television, radio, telecoms and the use of spectrum. Our actions affect people and organisations across the UK. As a result, it is very important that we take our decisions at the right time and in the right way. These decisions must be based on evidence and they need to take account of the views of those who have an interest in the outcome.

Consultation plays an important part in achieving this. It allows those who could be affected by or concerned about a particular issue to give us their views before we decide on a course of action.

Consultation is an essential part of regulatory accountability ' the means by which those people and organisations affected by our decisions can judge what we do and why we do it...

Effective consultation

...For us, an effective consultation means allowing all those interested in the outcome of a particular decision to have their say before we make that decision

We will try to:

- involve, as far as possible, all those whose voices need to be heard, whether big companies or small ones, industries, consumer and community groups or just individuals;
- explain fully the different options that we are considering before we make our decision;
- help those with views to respond fully and in an informed way; and listen to those responses and use them to help understand the effect of any action we take.

We will also try to:

- do this clearly and openly so everyone can see what is happening when, and why;
- deliver value for money by making sure the cost to us of running the consultation process is not too high; and
- avoid taking too much time as the markets we regulate change quickly...

How formal consultation will work

...(But) formal consultation has its limits. Some of those affected by our decisions are better placed to deal with regulation than others. Very big companies have experts available to analyse long and complicated documents ' but small companies usually do not. Consumer and community groups and individuals also lack both time and specialist skills. But the views of all concerned matter, and we want to hear them.

We think the best way to help achieve this is to make formal consultation as efficient as possible and to back this up with other ways of gathering opinions...

... We don't just want to know whether people agree or disagree with our proposals. We also want to know why people hold the views they do. How would our proposals affect each individual as a citizen and a consumer? How

would they affect each person's business?...

After the consultation

...We will also:

- list these seven principles in every consultation document that we publish;
- run a consultation helpdesk ' to help organisations such as small businesses and consumer and community groups make their views heard in response to our consultations; and
- keep a table on our website at www.ofcom.org.uk listing all current consultations and those recently closed. Annually, we will also publish a list of projects we are planning, and whether these have an associated consultation document, indicating whether we will be publishing these in quarter 1, 2, 3 or 4...

How long will our consultation last?

...If a consultation is too short, some of those with important views to share may not have enough time to prepare their responses. If it is too long, the market involved may have changed dramatically. This could affect our ability to deal with an issue as quickly as the organisations involved would like.

When we decide how long a consultation should last, we need to strike the right balance between the two. There are generally 3 categories of consultation:

Category 1: Consultations which contain major policy initiatives and/or of interest to a wide range of stakeholders (especially those who may need a longer time to response); we will consult for 10 weeks.

Category 2: Consultations which, whilst containing important policy proposals, will be of interest to a limited number of stakeholders who will be aware of the issues; we will consult for 6 weeks.

Category 3: Consultations which fall within one or more of the following

- i. detailed technical issues;
- ii. where there is a need to complete the project in a specified timetable because of market developments or other factors which require the project to be concluded within a short period;
- iii. the issue has already been the subject of a consultation;
- iv. a proposal will have a limited effect on a market;
- v. a proposal is only a limited amendment to existing policy or regulation.

The time period for consultations in this category is one month.

Under the law we must allow at least one month for consultation on many issues relating to electronic communications networks and services. We think this period will be long enough for most of these consultations, but we will extend this period in some cases if needed.

When we begin a formal consultation we will also say when we expect to publish our decision.

The website of the Federal Communications Commission (<http://www.fcc.gov>), the federal agency directed by Congress to regulate broadcasting in the USA, includes a detailed document titled 'The Public and Broadcasting' (<http://www.fcc.gov/mb/audio/decdoc/>), which outlines how the public can get involved in assessing the performance of local broadcast stations in terms of their compliance with the FCC's rules and fulfilment of their service obligations, as well as in the FCC's own processes.

During the controversy over the Broadcast Bill 2007, the Indian Ministry of Information & Broadcasting claimed that it had studied media regulation systems in different parts of the world. Unfortunately the draft made public in July 2007 did not reflect any of the positive trends in media regulation in the public interest across the globe. There is no dearth of international examples and models of media regulatory bodies accountable to the public that can be used to create democratic institutions and systems of media regulation in India.

This review of the media regulation debate in India in recent times, together with the accompanying documents (an overview of broadcast-related legislation in India and summaries of some recent recommendations from the Telecom Regulatory Authority of India and the Supreme Court judgment on the airwaves, as well as case law dealing with sting operations, obscenity and political advertisements) are intended to facilitate more informed and active public debate on issues relating to media regulation in the country.

NB: Partly updated till June 1, 2009

Endnotes

1. P N Vasanti, Director, Centre for Media Studies, New Delhi quoted by Mark Magnier (*Los Angeles Times*), January 25, 2009: <http://www.baltimoresun.com/news/>

2. Some articles on the subject can be accessed here: ***Economic and Political Weekly***, September 15, 2007 (<http://www.epw.org.in/epw>, <http://www.epw.org.in/epw/uploads/>); ***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#>)

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

4. Press Information Bureau, Government of India, July 27, 2006: 'Electronic Media Monitoring Centre to be set up at a cost of Rs. 11.65 crore'

5. The Supreme Court's 1995 judgment relating to broadcast rights clearly stated that "the airwaves or frequencies are a public property" (belonging neither to the State nor to private entities) and that "their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights."

6. For a discussion on whether TV news channels lived up to the NBA's own self-regulatory code while covering the Mumbai attacks, see 'Watching the Watchdog' (http://tehelka.com/story_main40.asp)

7. In April 2009 the NBA's efforts to encourage a system of self-regulation were at least

temporarily stymied when one of its members withdrew from the association after being fined by the News Broadcasting Standards Disputes Redressal Authority. For more details see: 'The tricky road to media regulation' by Siddharth Narrain (<http://infochangeindia.org/Media/>)

8. 'Resurrecting the Media Council Idea', The Hoot: <http://www.thehoot.org/web/>

9. On June 1 the new Minister for Information & Broadcasting listed the "content code for news broadcasters" among her priorities: see 'Content code is in Ambika Soni's priority list' (<http://www.indiantelevision.com/headlines/y2k9/june/june5.php>), 'Government to discuss content code for news channels': <http://ia.rediff.com/business/report/2009/may/>

10. For more information on citizens and the media, see 'Media Matter, Citizens Care: The Who, What, When, Where, Why, How, and Buts of Citizens' Engagement with the Media', UNESCO Advocacy Brochure (URL: <http://portal.unesco.org/ci/>); pre-publication draft available at: <http://portal.unesco.org/ci/en>

11. In ***Ministry of Information and Broadcasting v Cricket Association of Bengal*** case, AIR 1996 SC 1236

12. See, for example, 'Public Missing in Broadcast Bill Debate', India Together (URL: <http://indiatgether.org/2007/aug/ajo-bcastbill.htm>), Open Houses and Closed Doors, The Hoot (URL: <http://www.thehoot.org/web/>)

13. See, for example:

"SC asks Centre to give content code for TV channels" (<http://newsx.com/story/35494>),

"Centre under pressure to come up with TV content regulation code" (<http://timesofindia.indiatimes.com/India/>),

"SC pulls up Centre for delay in bringing broadcasting Bill" (<http://www.indianexpress.com/news/SC-pulls-up-Centre-for-delay-in-bringing-broadcasting-Bill/373907>)

"Court to lay down norms for coverage of criminal cases" (<http://www.hindu.com/2008/08/19/>),

"Delhi HC seeks suggestions to regulate sting operations" (<http://www.televisionpoint.com/news2007/>)

"Court moots panel to screen sting operations" (<http://timesofindia.indiatimes.com/>)

14. 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>; existing Provisions and
Amended provisions of the Indecent Representation of Women (Prohibition) Act, 1986:
http://ncw.nic.in/Comments/Indecent_representation.pdf; critique of the NCW's
proposal to modify the 21-year-old law:
<http://infochangeindia.org/200806257188/Women/Analysis/Indecent-proposals.html>

15. A summary of the Committee's recommendations is available on The Hoot (<http://www.thehoot.org/web/home/>)

16. Resurrecting the Media Council Idea, The Hoot (URL:<http://www.thehoot.org/web/>)

17. 'A guide to our consultation process':<http://www.ofcom.org.uk/>

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