

I.C.T. AND REGULATORY FRAMEWORK IN INDIA WITH REFERENCE TO SATELLITE COMMUNICATION: AN OVERVIEW

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Abstract

The information and communication revolution have restructured patterns of development all over the world. But revolution effects have not been uniform in the developed and developing nations. Science and technology came to rescue of human being in many areas. After the invention of new technologies, computer, internet and satellite played an important role in communicating information, knowledge and messages. From the development of wireless to the satellite communication world has become closer in the global context fulfilling the spirit of global village and India is not an exception. Approximately 300 (S.T.V.) satellite television channels are broadcasting in India.

The Constitution assigns all legislative and executive power over communication to the Union government. Only parliament can make laws to govern and regulate communication. The Union government has made its efforts on Communication regulatory laws some of the Bill e.g. broadcasting Bill, Convergence Bill.

This paper highlights the various aspects of communication, its regulatory framework in dealing with communication and Media.

Introduction

Communication is an exchange of information and messages. The history of human society is primarily the history of evolution of human communication. The word Communication is of Latin Origin Communes means; to establish commonness of experience. Communication is fundamental of human society from Primitive to Modern but depend on human's capacity to transmit his knowledge, intentions, and experience from person to person.

The communication has undergone a remarkable change in the wake of information communication satellite, technological innovation. The use of Technology based media a have given it the tremendous stage that it has, to influence human being. The invention of new Technology like computer, internet and satellite played an important role in communicating information, knowledge and messages. Satellites are used for various purposes like communication satellite, Navigation satellite, weather satellite, research satellite.

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Indian Context

The use of technology has added a new dimension to the use of words as a tool of communication. The printing press, the radio and other mode of communication have multiplied words and their use to an immeasurable extent. Telecommunication in the real sense means transfer of information between two distant points in space. The popular meaning of telecom always involves electrical signals and nowadays people exclude postal or any other row Tele-Communication methods from its meaning. So Therefore, the history of Indian telecom can be started with the introduction of telegraph. The first experimental electric Telegraph line was started between Kolkata and diamonds Harbor in 1850. First satellite earth station for domestic communication established at Secunderabad, A.P. The Telecommunication is the life line of the rapidly growing information Technology Industry.

Satellite television took off during the first gulf war with CNN. There are no regulations against ownership of satellite, dish antennas. The first with facial satellite was sputnik I. launched by Soviet Union on 4 October, 1957.

India first experimental telecommunication relays in 1981 and in July 1992 launch, INSAT 2A. The Satellite Telecommunication Experimental Project (STEP), Conducting using Franco-German symphonic satellite during 1976. Presently India has a large network of optical Fiber cables, digital microwave and satellite communication system. April 19, 1975. Aryabhata, the first Indian space satellite, was launched for India and in August, 1993. The Rohini-3 communication satellite launched. The satellite popularly known was. "Teachers in the sky" can lead to a considerable improvement as a means of communication on earth; space communication is the latest in the list of effective instruments for this purpose satellite are bringing countries nearer one another. They have an important side to play a creating an atmosphere of International harmony in thought and action. The communication services in India are governed by loose patchwork of different laws and Regulations. This patchwork includes the Telegraph Act, 1885, the Cable Network Act, 1995 the TRAI Act, 1997, the parssar Bharati Act, 1990 and Information Technology Act, 2000.¹

International Provision

The International Telecommunication Union (hereinafter ITU) is an agency of the United Nations which is regulate information and communication technology issues. ITU Coordinates the shared global use of the Radio spectrum, Promotes International cooperation assigning satellite orbits works to improve Telecommunication in infrastructure in the developing world and establish worldwide standards. To establish sustainable and affordable access to International and Communication Technologies (herinafter ICT).

ITU are based in Geneva, Suintzerland and its 191 Member states. The legal frameworks of ITU are adopted by the Plenipotentiary Conference, the optional

protocol on the settlement of disputes. ITU also set up the International Telephone and Telegraph consultative committee (hereinafter CCITT) in 1992.

World Summit on the Information Society, (WSIS) It's provided a global forum on the thereof ICTs for development. European Conference on Postal and telecommunication Administrations. (hereinafter CEPT) was established on June 26, 1959. As a Coordinating body for European State Telecommunication and Postal Organizations, CEPT also create of the European Telecommunication standards Institute in 1988.

The legal and regulatory frame work in India for communication

Constitution and communication Law

The constitutions of India have a significant influence over the regulatory and legal framework for communication. The impact of constitution law on communication classified in to four categories. *First*, under India's federal system, the Constitution of India ordains whether and to what extent the centre and the states have competence to regulate, controls and tax communication. *Second* the Constitution protects citizens and other persons from arbitrary and subversive state action by guaranteeing them certain fundamental rights. This guarantees the right to freedom of speech and expression. *Third*, a set of constitutional provisions called the directive principle about appropriate role of the state in economic matters including the provision of communication service. *Finally*, the constitutions guarantee of Equal protection of administrative law principals that affect the manner in which licensing and regulatory decisions are made.

Federal system of Governance

India is a federation which comprises of the Union, various States and Union Territories.² The Constitution apports executive and legislative power between the Union and States.³ Parliament which is the Union legislature, can make law for the any part of India.⁴ As a default rule, the union gets to make and implement laws for any matters that are not expressly included in any of the three lists in the Seventh Schedule⁵ contains point, the Supreme Court has described India as federation with a bias to the center, although states are supreme within their assigned competences.⁶

Union Government responsibility for Communication

The Constitution assigns all legislative and executive power over communication to the Union: only parliament can make law to govern and regulate communication. The seventh schedule entry 31 in Union List: Post and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

It gives the Union are ability to make laws for new Technologies and service that developed over time. Therefore; although the Internet and satellite are not expressly mentioned in entry 31 as they constitute other like forms of communication.⁷

States are forbidden from directly regulation communication because Art-246⁸ provides that parliament has exclusive power be enact laws for items, such as entry-31 Union List. It should be noted that entry 13 in the state list also was on term communication that entry focuses on physical means of communication such as roads, bridges. It does not over electronic Radio visual communication, which the subject of Union List entry 31.⁹

State and Local Regulation on Communication

Although central Government plays a dominant role in regulating communication, but State and Local Government are also important players in the regulatory land scope for several aspects. First; state government are responsible for enforcing various Central statutes as party their General responsibility to maintain law and order in their territories second, state health and safety laws can affect the operations of telecom and communication network thirds, state levy a significant amount of sales, entertainment tax on communication services.

Public order, law enforcement function and communication

Law and order is a state subject.¹⁰ There for state police and law enforcement agencies are usually responsible for implementation of central law like Telegraph and communication laws. The case on point recent controversy over the condition Accuses system (CAS) satellite based cable Television.

In case of *PUCL v. Union of India*¹¹ Supreme court held that the state law enforcement agencies have to monitor and intercept communication.

Fundamental Rights and Communication

The Constitution protects every activity and, in some cases all person against state action that violates the fundamental right in part III of the constitution fundamental rights and it is important to obtain a basic understanding of these rights.

Freedom of Speech and Expression

The Constitution of India includes various basic freedoms in Article 19(1) (a) right freedom of speech and expression. This Article is of tremendous significant to communication, it read as follows: All citizens shall have the right- (a) to freedom of speech and expression. Unlike the more recent South African constitution, India is constitution does not expressly recognize media freedom.¹²

Life and personal liberty: The Constitution of India provides that no person shall be deprived of life or personal liberty except according to procedure established by Law.¹³

We are of the view that to have a communication telephone, satellite phone as connection from the government nowadays is a necessity in order to lead a meaningful life within the meaning of Act 21 of the constitution of India.¹⁴

Right to Communicate and telecast

The Supreme Court decision Cricket Association¹⁵ was a defining event in the evolution of India free speech jurisprudence. In this case supreme court recognized and strong linkage between Act 19(1)(a)¹⁶ and Broadcasting communication freedom.

Restriction of free speech and communication

Article 19(2) provide that the government of was impose reasonable restrictions on free speech and explosions in the interest of India's sovereignty and integrity, state security, friendly relation with Foreign states, public order, decency, morality contempt of court defamation and incitement of an offence.

Statutory Framework and communication

Indian communication law started from the Indian Telegraph Act, 1885. This statute was passed by British Government for India and electric Telegraph were the Principal means of electronic communication. Although the Telegraph Act is more than 120 years old, it remains the principal pillars of the regulatory framework for communication. The statute, legal rule and regulatory provisions are organized around the concept of a Telegraph. This term is capaciously defines in the Act this definition covers within it most modern from of communication including landline telephone, cellular service, satellite Radio and the internet. However, statutes such as the telegraph Act, that regulate technology and scientific matters must be given a progressive construction to accommodate new inventions and innovations that arise after the first enacted.¹⁷

Other Statutes that Regulate Communication***Telecom Regulatory Authority of India Act, 1997***

Telecom Regulatory Authority of India Act is a key element in the regulatory framework for Indian communication. The TRAI Act builds upon and establishes the telegraph Act is basic legal architecture. Its main objective was to establish an independent regulatory system for communication, licenses and to protect consumers. The Act was substantially amended in 2000 and provides to the establishment of (TDSAT) Telecom Disputes Settlement and Appellate Tribunal exclusive dispute resolution forum for communication. The directions, regulations and recommendations have contributed to the emergence of distinct communications jurisprudence in India.¹⁸

The Wireless Telegraphy Act, 1933

The act deals with wireless equipment like transmitters, cellular phones and radio to obtain a license.

The Telegraph Wires (Unlawful possession) Act, 1950

The telegraph wires (Unlawful possession) Act a penal statute designed to curb the theft of copper wires used in telegraph and telephone service.¹⁹

The Prasar Bharti Act, 1990

The Prasar Bharti Act establishes a legal framework for public broadcasting in India. The Act provides the Prasar Bharti Corporation as the principal public broadcasting agency.

Cable Network Act, 1995

The cable television networks (Regulation) Act, 1995 regulates the operation of cable television networks in India. The Act was amended in 2003 to require cable operators to sue 'addressable systems' also called (CAS) conditional access systems based on satellite.

Convergence Bill

A legislative proposal is pending in parliament since 2000 called the communication convergence Bill.²⁰ The main propose of this law is to create a single regulatory and licensing umbrella for all type of telecommunication and communications broadcasting and cable services. It would replace following statutes:—

- The Indian telegraph Act 1885.
- The Indian wireless telegraphy Act 1933.
- The India wireless (Unlawful possession) Act 1950.
- The telecom regulatory authority of India Act, 1997.
- The cable television networks (Regulation) Act, 1995.

The Prasar Bharti Act is not covered under the Bill. The proposed law would establish the communication commission of India as the super regulator of India communication systems with both power regulatory and licensing functions. The Bill also proposed to create a commission appellate tribunal to hear appeals from the communication commission's decision.

Broadcasting Bill

The government also announced a new broadcasting Bill. The will establish a broadcasting regulatory authority to regulate broadcasting and cable service.

The information technology Act, 2000 This Act not exclusively deals with the communication but some provision of the Act that's includes communication technology.²¹

Satellite communication scenario in India

The satellite communication covers-satellite internet access, satellite phone, satellite radio, satellite television, satellite navigation, weather satellite, earth observation satellites, research satellite etc. Space stations and human space craft in orbit are also satellite.

The world has become a global village through satellite communication. Communication satellite frequently called birds or teacher's in sky' are merely orbiting solar powered relay stations. They receive up linked, signals from special satellite, earth stations equipped with suitable transmitters and dishes, which retransmit the signals earth worlds as the speed of light.

Satellite broadcasting implies the direct reception of radio and television programming through dish antenna. In India the most common form of satellite television is direct-to-home (DTH).

Committees Set Up By Government On Communication

The union government appointed a high powered committee in 1981 to study the need for administrative reorganization of post and telegraph service²²: *The Sarin committee* submitted over 400 recommendations the committee proposed splitting the post and telecom department in to two and collaboration with Foreign Telecom Companies, but government ignored these recommendations entirely.

Athery Committee

The short lived government of Prime Minister Shri Chandra Shekhar established television restructuring committee in 1990. It was headed by M.B. Athreya a management professor. The committee recommended to the creation of an independent telecommunication regulator.

Regulatory and Telecom Agencies

Under the constitution of India, telecom, broadcasting and cable service are regulated by the union government. The following agencies involved in communication regulation.

- Telecom Regulatory Authority of India (TRAI), Department of Telecommunication (DoT) and Telecom Commission and Prime Minister Office.²³
- Telecom disputes settlement and appellate tribunal (TDSAT).
- Ministry of Information and Broadcasting.
- Prasar Bharti Corporation.

Conclusions and Suggestion

Broadly speaking, technology of communication and internet are going to set of the contours of further technological advancement in the current decade and the decade to next. The most recent initiative aims at convergence of voice and data received from multiple sources, both website based and real do streams in mobile devices, global satellite system, have made virtual presence possible almost everywhere and any where outreaching the barriers of distance and remoteness.

In zeal of becoming convergence, India the second country in the world to have a communication convergence law in pipeline. First country is Malaysia. The convergence bill hardly addresses issues of public interest such as universal access; public address broadcasting any regulatory regime draws its need from public interest.

- The regulatory law should be made as per International Standard.
- Some provisions must be made in the proposed convergence bill to address the public interest as like cross media.
- The anti monopoly aspects of telecommunication must also brought in the Bill.

Endnotes

1. Vikram Raghawan, communication Law in India, lexis nexis, Butterworths, Wadhwa, Nagpur.
2. See, Constitution of India, Article 1(1) India is a Union of State and Article 1(3) India includes Union territories.
3. *Ibid.*, Article 73 and Articles 162 Extent of executive power of state— Subject to the provision of this Constitution, the executive power of state shall extend to the matters with respect to which the legislature of the State has power make laws.
4. *Ibid.*, Article 245(1) Extent of laws made by parliament and by the legislature of State: (i) Subject to provision of Constitution; Parliament may male law for whole or any part of the territory of India, and the legislature of State may make laws for the whole or any part of the State.
5. *Ibid.*, Article 248 Residuary power of legislation—(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent List or State List and schedule VII List-I, entry 97.
6. *S.R. Bommai v. Union of India*, AIR 1994 SC. 1918.
7. *Gujarat Cable T.V. Operators v. State of Gujarat*, AIR 1999 Guj. 330.
8. See, Constitution of India, Article 246(4) Parliament has the power to make laws with respect of any matter for any part of the territory of India not include [in a State] notwithstanding that such matter enumerated in the state List.
9. *Bharat Shantilal Shah v. State of Maharastra*, (2002) 1 BOM. L.R. 529, Seventh Schedule (Art. 246) List-I Entry 31. Post and Telegraphs; telephones, wireless, Broadcasting and other like forms Communication.

10. See, The constitution of India, Sch. VII, List-II, Entry: 1. Public order [but not including (the use of any Naval, military or air force or any other armed force of the Union or of any other force subject to the control or of any contingent or unit thereof in aid of civil power)] 2. Police (including railway and village police) Subject to the entry of List-I.
11. AIR 1997 S.C. 368.
12. The Constitution of the Republic of South Africa, Sec. 16(1)(a), However Indian judiciary has inserted media rights as part of Art.19(1)(a) through interpretation some of the cases are; Romesh thoper case.
13. See, The constitution of India, Part-III, Art. 21 Protection of life and personal liberty—No Person shall be deprived of his life or personal liberty except according to procedure established by Law.
14. *Francis Coralie v. State of Delhi*, AIR 1981 SC 746.
15. *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, AIR 1995 SC 1236.
16. See, Constitution of India, Article 19 Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the rights – (a) to freedom of speech and expression.
17. *Senior Electric Inspector v. Laxminarayan Chopra*, AIR 1962 SC 159.
18. Krishnalal Shridharan, *Story of Indian telegraph: A century of progress*, Post and Telegraph Department 1993.
19. Vikram Raghavan, *Communication Law in India*, Lexis Nexis, Butterworths, Wadhwa Nagpur p. 7.
20. The communication convergence Bill, 2000 reprinted in 2001.
21. S.4 of Information Technology Act, 2000 provides definition of Computer Networks—Means the interconnection of one or more computers or computer system or communication device through:
 - (i) The use of satellite, microwave, and wire, wireless are other communication media.
 - (ii) Terminals or a computer consisting two or more inter connected computers or communication device.
22. The Gazette of India Part-II, 1981.
23. Charu Malhotra, *Chronology perspective of telecommunication infrastructure develops in India*, IJPA No. 3 Vol. 47, 2001.