

# MEDIA GOVERNANCE AFTER NEW ECONOMIC POLICY: REGULATING TELEVISION MEDIA INDUSTRY IN INDIA.

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## **Abstract:** -

Media governance means the entirety of rules that aim to organize media systems. It is characterized as a new concept suited for the analysis of media policy and regulation. In a society like India to draw conclusions at issues of media regulation, at first there should be an establishment of a genuine and neutral body to judge the process of media workings. By looking at the current environment of non-existing neutral regulatory bodies for media the only hope that is left is the judiciary. This article tries to address the issue of regulation of electronic media in India. It also focuses on the history of media regulation in India with special reference to television content regulation. It analyzes the consequence of several regulatory mechanisms relating to media around the world. Lastly it suggests a model of regulatory mechanism through the ideas of co-regulation, to regulate the fastest growing media industry of India and to find a balance between private and public sphere.

## **Introduction:-**

“One of the objects of a newspaper is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects.”-Mahatma Gandhi (The Story of My Experiments with Truth).

Freedom of speech is the basic component for individual development to improve and radicalize democracies. The emergence of media constitutes the turning point for the debates about freedom of expression. The writings of John Milton, Alexis of Tocqueville and John Stuart Mill dedicated their attention to freedom of expression and its links to the mass media. As a result the idea of an independent and diversified media has become the ideal to be achieved in a democratic system to fully ensure the right to receive and impart information.

The challenge of a free, plural and a vibrant media working in a democratic system became particularly complex when broadcasting took over the system of communication's leading role in the beginning of the 20<sup>th</sup> century. The 1991 gulf war marked the beginning of foreign satellite broadcasting and the entry of commercial cable networks in India. Therefore the last two decades witnesses a rapid transformation in the distribution of cable and satellite TV services across the country. The networks of television now reaches millions of Indian homes who represented the fast pace of growth within the new television industry. Similarly the idea of media regulation started its development to promote and protect freedom of expression. In fact the ultimate goal for regulating media should be to protect and deepen this fundamental right.

## **The need of Media regulation:-**

The increasing media landscape has thrown fresh challenges to an unsettled ecosystem of media policy in India. Some of the challenges are posed by the new communication technologies and the variegated field of media practices which argues that the fragmented media policy framework requires a complete makeover in terms of its regulatory objectives, strategies and public media obligations (udupa, 2012). In India media as a whole is regulated through a spectrum of statutes and codes. But as one of the largest industries of the country its regulation is regarded significant to protect the interest of the people. The real need of such regulating mechanism is to balance the relationship between the public and the media houses. It can be expected that with the help of a proper regulatory mechanism the performance of public responsibility of the media can be improved (Solomon, 1999).

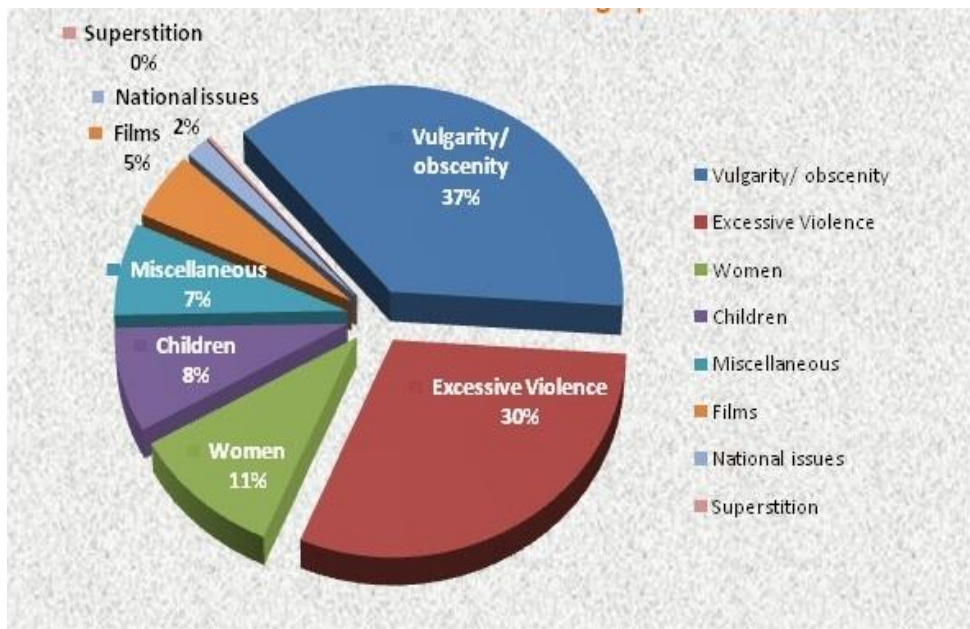
It is known that whenever regulation is introduced in any field where influence over public is large there will be always a mix of economic, political and cultural concerns. Anyone can see the impact of visual media to be far more than the other media options and hence regulation over it should have been more than the other parts of media (Sarkar, 2014). Earlier the broadcaster needed limited access to airwaves when the state was capable of license away to any private player. That system was an opportunity in the hand of the state to increase revenue and to regulate the displayed content. Technologically also airwaves is relatively easier to regulate so the state had full advantage to impose regulation.

The environment of media policy had changed with the emergence of satellite TVs in the 1990. By the time new economic policy was introduced and it was a key to open the gateway for the private players to owned and control media with negligible regulation (richard, 1996). It led to the introduction of censorship as a part of regulation on television media basically for non news channels. The earlier public authorities to regulate the use of airwaves became an example of failure (McChesney, 1999). Consequently the idea of self regulatory bodies has been emerged and regulatory bodies like News Broadcaster Association<sup>1</sup> and Indian Broadcaster Foundation<sup>2</sup> had been formed. So all these changing atmosphere of media workings, invention of new technologies of communications and the growing influence of media over people day by day demanded a better regulatory mechanism for the regulation of television media in India.

Following are the specific reasons behind the need of an independent regulatory body for media-

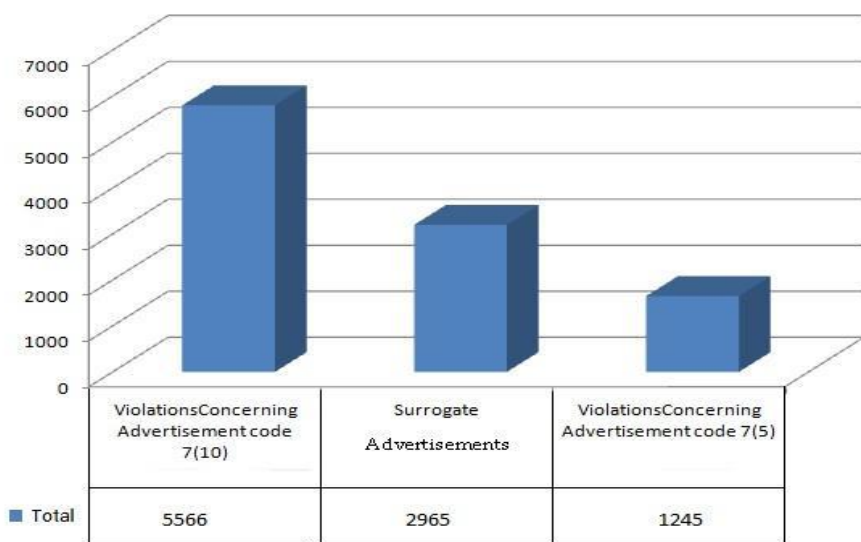
- The scenario of media in India is drastically changed after the entries of private actors in a large manner. It has undergone a revolution during the last two decades. A large number of television channels have been beaming their programs through the satellite to the people. All these channels are foreign entities and their programs are uplinked from outside of the country without any regulation.
- The only legal instrument for content regulation is just the addition purview of the other acts made for print or telecom sections of media. No specific legal framework has been made to regulate the private television industry. It would be a new step in this direction.
- It is already proved that public authorities alone are not able to regulate all the sections of media and its contents. Regulation is needed for all types of media in a uniform manner to improvise the quality of service.

At present India have 832 permitted private satellite Television channels out of which 406 are News & Current affairs channels, and 426 are Non News & Current affairs channels.<sup>3</sup> The category wise violations of guidelines or advertisement codes of Cable Television Network Act 1995 by electronic media in India from March, 2014 to April, 2015 can be represented as below-



(Source: Union Ministry of Information & Broadcasting, Government of India Report 2015)

Violations in Advertisements during April 2014 - March 2015



(Source: Electronic Media Monitoring Centre, Government of India, Annual Report 2015)

**Media regulation in India since Liberalization:-**

Before the emergence of the private satellite channels it was the government owned Doordarshan channel which used to rein the broadcasting world in India. During that era the purpose was to enhance socio economic development through media. Mythological series like Ramayana, Mahabharata or series depicting historical events and family drama would get aired which had a lesser controversial flavor. After the introduction of new economic policy in India the Indian audience was being catered with a sudden rise of many more channels and the rise of cable operators in the country.

This advent of private players in the markets gave rise to three C's-

- Competition.
- Creativity.
- Censorship.

Competition among the newly rising media industry led to a new game of creativity and this new game started the question of censorship. In 1995, the Supreme Court in Hero Cup case judgment opened a new chapter in the broadcaster's lives in India. Wherein it stated that every citizen has a right to telecast and broadcast to the viewers and listeners through other electronic media, television or radio as it is a right which gets covered under the right of communication and the right to communication is an integral part of right to freedom of speech and expression (Ninam, 2000).

The judgment made clear that the government had no monopoly over such electronic media. Airwaves or frequencies are public property therefore the government was directed to establish an independent autonomous public authority representative of all sections and interests in the society to control and regulate the use of airwaves. Since then government attempted to control the use of airwaves (Singh, 1999). But the formulation of the regulation is still failing to achieve the aim of television content regulation. The scenario of the Hero Cup case was no doubt different in the light of the current media regulation issue but the judgment of the Supreme Court in that case had made the starting of new phenomenon of private player's freedom to broadcast to the Indian republic.

Before the Hero Cup case, in 1990 the **Prasar Bharati** bill was passed which led to a formation of an autonomous broadcasting corporation to control both Doordarshan and All India Radio discharging all the powers previously enjoyed by the Ministry of Information and Broadcasting. But the important factor is that section 23 of the Prasar Bharati Act, 1990 was a powerful weapon at the hands of the central government to issue directions to the corporation in matter of what to broadcast and what not to, keeping an eye in the case of country's sovereignty, unity and integrity. Also section 13 of the act provided for the formation of a 22 member parliamentary committee to monitor the working of the corporation (Nain, 2003). But after the Hero Cup case as the government had to abide by the judgment of the Supreme Court it led to the introduction of Cable Television Network Act 1995 and the Cable Television Network Rules 1994. Section 5 and 6 of the Cable Act prohibits any person from transmitting through a cable service without the conformity with the program code or advertisement.

On later when United Front Government came to power they replaced the broadcasting council with the broadcasting authority by the Broadcasting Act 1997 of India to govern the private broadcasters. In 2000, the government again put forward a proposal to create a single regulatory authority called Communications Commission of India under the Communication Convergence bill 2000. It would have all the powers to regulate any form of media but the bill had a young death. In January 2004 the government revisited the definition of telecommunication service under the Telecom Regulatory Authority of India Act 1997 which included broadcasting and cable services. However this act in its suggestion was very clear that content regulation should be kept out of the purview of the converged regulation (Chakravarty, 2004).

Broadcasting Service Regulation bill was introduced in 2006. This bill was devoid of any public consultation so the Union Ministry for Information and Broadcasting putted the Broadcasting Services Regulation Bill 2007 with self regulation guidelines for the broadcasting sector in its website for the public opinion. This bill proposes a new broadcasting regulatory authority to carry out the regulatory functions which are now performed by the Ministry of Information and Broadcasting (Price, 2008). Representing the television channels the Indian Broadcasting Foundation and the News Broadcasters Association prepared a draft for self regulation but on later the Ministry of Information and Broadcasting continued their dominance on any kind of decision making functions regarding content regulation of media.

In 2008 government had set up **Electronic media monitoring centre** to regulate the content of all channels and Fm stations. At the same time News Broadcasting Association again came out with a draft code of ethics and broadcasting standards for the setting up of news broadcasting standards disputes redress authority and finally it came into being and the code into effect on October 2008. The value of this authority was tested when the 2008 member attack took place. Referring section 19 of the cable act many news channels ordered to went off for a short while (Meenakshi Vermai & Joji Thomas Philip, 2008). After this incident NBA set a new guidelines regarding telecast of news during emergency situations as six point document of Self Regulatory Code i.e. **Accuracy, Privacy, Impartiality, Fairness, Decency and Good Taste**. In response to this government replied that the six point document would neither endorsed nor rejected but every news channels will be bound to follow their own programming codes and guidelines issued under the Cable TV Act.

The Telecom Regulatory Authority of India in its recommendations dated the 5<sup>th</sup> August, 2010 on implementation of digital addressable cable systems in India which led to the Cable Television Networks Amendment Act 2011. It recommended a time frame comprising four phases for switch over from analog system to the Digital Addressable System (DAS). In view of the above mentioned recommendations of the TRAI, the central government decided to introduce digitalization with addressability in the cable TV services. This amendment include systemization of registration of cable operators, permission by public authorities, Inspection of cable network services, prescription of interfere standards by the central government and empowering the TRAI (Adukiya, 2012). The Act has come into force from 25<sup>th</sup> December 2011. Referring to the section 22 of the Cable Television Network Regulation 1995, an amendment has been made by the government of India at the year 2015. It prohibits the live coverage of any anti terrorist operation by media channels and restricted it to periodic briefing by an officer designated by the proper authority till such operation concludes. It is known as Cable Television Networks Amendment Rules 2015.

India still doesn't have a independent and genuine regulatory body for regulation of electronic television media. Each medium of information or communication technology has its own regulatory body. The press is regulated by **Press Council of India**, Telecommunication is regulated by **Telecom Regulatory Authority of India**, Cinema by the **Central Board for Film Certification**, advertising by the Advertising Standards Council of India but the most powerful part of the media do not have a regulatory or monitoring bodies. It is operating under the AIR Code and Cable Television Network Act 1995. We have autonomous corporation like **Prasar Bharati** but it continues to function as a unit of the Ministry Of Information and Broadcasting.

### **Existing authorities regulating the electronic media industry in India:-**

In India media regulation is currently a design of puzzle, with many agencies involvement in formulating and implementing media policies. Even sometimes they appear to be unaware of each other's interventions and seem to work at cross purpose (Shatrugna, 1994). Following are the important official organizations currently involved in content regulation of media in India-

- a) **Union Ministry of Information and Broadcasting** functions as policy maker and content regulator. It is the apex body for formulation and administration of the rules and regulations, laws relating to information, broadcasting, the press and films. This ministry is responsible for international co-operation in the field of mass media and interacts with its foreign counter parts on behalf of Government of India.
- b) **Electronic Media Monitoring Centre<sup>4</sup>** was established by Ministry of Information & Broadcasting to have effective monitoring of content of various TV channels beaming over Indian Territory. It mainly scrutinizes violation of Cable Television Network regulation 1995. It's put out reports on violations along with the recorded clips to the upper committee which examines and goes into the purported violations and forwarded its findings to the inter-ministerial committee for further actions. At present EMMC records and monitors around 600 TV

channels round the clock. It used to produce their monthly achievement report on their activities on cases related to the violation of program and advertisement code.

- c) **Press Information Bureau** is the nodal agency of the government to disseminate information to the print and electronic media on government policies, programs and initiatives. It functions as an interface between the government and the media. It also provides feedback to the government on people's reaction as reflected in the media.
- d) **The Telecom Regulatory Authority of India** was established at 1997 by an act of parliament. At a point it was given the responsibility for the regulation of the broadcast section in addition to the telecommunication sector but it backed out and currently it is involved primarily with issues of technology such as carriage regulation and pricing.
- e) **Directorate of Advertising & Rural Publicity** is the multi media advertising agency of the Government of India. It provides the single window cost-effective service to almost all central ministries/departments and autonomous bodies. It informs and educates the people both rural and urban, about the government policies and programs and motivates them to participate in developmental activities through different communications.
- f) **Telecom Disputes Settlement & Appellate Tribunal** is the body to which appeals can be made for problems relating to broadcast regulation, Ministry of communication & Information technology. In the absence of an independent regulation, the courts are often called upon to adjudicate on broadcast related issues.
- g) **State/District Level monitoring committees** and authorized officers are entrusted under the Cable Television Act with the responsibility to prevent the transmission of programs in public interests if needed.
- h) **Inter-Ministerial Committee** was constituted by the Ministry of Information & Broadcasting to look into complaints regarding violations of the program and advertisement code connected to the Cable Television Act and Rule.
- i) **National Commission For Women** in mid 2008 recommended amendments to the Indecent Representation of Women Act relating to the depiction of women in the media, which aimed at expanding the scope of the act to include electronic and digital media to make wider the definition of indecent representation.

### The Idea of Self Regulation of Media in India:-

The debate concerning self regulation of the media is quite contradictory. On one hand, public opinion in democratic states tends to support self-regulation. On the other hand if self regulation is seen as effective it implies the transfer of responsibility for fundamental rights to private actors. Going by the definition of self regulation in media is the combinations of standards setting out the appropriate codes of behavior that are necessary to support freedom of expression, and process how those behavior will be monitored (Bhargava, 2005). The first advantage of self regulation is that it preserves the independence of media and protects it from government interference. It could be more efficient as a system of regulation of media as the media understood their own environment better than the government. But there is always the possibility of using that knowledge of self regulation to further their selfish commercial interests rather than the public interest.

Defending the advantages that self regulation can encourage compliance, also can drive up professional standards by requiring organizations to think about their own standard of behavior, in February 2009 News Broadcasting Association issued a fresh set of guidelines. The guidelines covered areas of media practice such as sting operations, coverage of law and order, crime and violence, race and religion as well as matter of national security. Union Ministry of Information and Broadcasting at that time was in favor of self regulation and also made a public announcement to set up a media consultative committee which function would be as a forum for regular consultations between the government and the professional media bodies (Vilani, 2003). On later The Media Consultative Committee was established. But whatever advantages are there as argued by NBA or other agencies, name-sake self regulatory body always has its own shortcomings and more or less a toothless tiger (Chatterji, 1991).

Self regulation of media is not a simple idea. It places requirements upon every level of the media organization, on the journalists, on the editors and managers, on the approach of the media organization to the production of content and the overall behavior of the media company. There are two overarching principles if we accept that self regulation is necessary. At first all media actors, professional or business should have obligations to uphold for the freedom from state interference. Secondly all such obligations should be made transparent by making all the actors subject of regular reporting (Baker, 1994). Both the condition is essential if self regulation is to protect freedom of expression and not just the interests of companies themselves. And most importantly at both the conditions we need an independent regulatory body for supervision of all the proceeds. There still remains a hope that the media consultative committee might revive the discussion for a comprehensive national media policy and a true regulatory mechanism to oversee all the sections of media in India.

### **Suggesting Regulatory Models for Media:-**

There are two dimensions regarding the regulatory models for content regulation of media in all over the world. One is productive side and another is restrictive side. The productive side provoked new imaginations of content regulation and the restrictive side supports a rigorous reassessment of content (Chomsky, 1989). Basically there are three models of regulating content of media widely discussed-

- State led regulatory mechanism.
- Self regulation.
- Co-regulation.

In state led regulatory mechanism all the activities related to the regulations of the media are controlled by the state authority. Activities like rule making, drawing the code of ethics and professional rule, supervision of implementation all are vested with the state authorities. It ensures compliance through strict statutory institutions and process but the dangers of command- control model of state regulation in the Indian context can't be ignored (Chunamwala, 1991). There have been many examples in the history to hold the evidence of state intervention on media like the national emergency of 1975. This regulatory mechanism provides the government the power to close down any media house if it feels necessary for nation benefits. It can be called a formalized mechanism to implement the restrictive regulation on media by the state.

As discussed earlier, self regulation holds the promise of greater compliance for content code and ethics of conduct. But in reality the practicalities of everyday media production and competition among media houses may overcome the professional guidelines at any moment hold by the self regulatory bodies. Already it is proved by many incidents of violating professional ethics by different private news broadcasters. At the same time this regulatory model bears the risk of lack of legitimacy because the structural issue of ownership and consolidation can hardly addressed by a self regulatory model (Powers, 1992).

The well established regulatory authority of the UK, **OfCOM**<sup>5</sup> is an example for the whole world. This has silently set free itself from the responsibility of imposing restrictions and bowing to corporate pressure. It has increasingly lent its departments for market friendly research promising business models for local media entities also. Many of the reasonably successful efforts in regulation in these countries have adopted co-regulatory model involving distribution of regulatory functions between public and private players (Laclau, 2005).

The co-regulation model can be an effective mechanism for regulating contents of media and to address the issues related to ownership of media. Co regulatory model can be conceived by distributing regulatory functions in a single regulatory strand and distributions of different aspects of regulation between private players and public authorities (Vilanilam, More Effective Communications, 2000). In Germany, co-regulatory models retains the state's regulatory power through certification of code and non-state regulatory bodies while allowing sufficient institutional space for the

industry associations to administer and monitor regulations (Smith, 1995). But this co-regulation model can be successful only for minor protection in audio visual services.

The above all three models have their own advantages and also their limitations. An effective mechanism for content regulation should establish a fine balance between regulatory power of the state and incentives built in the self regulatory models. It should be a proper understanding between the private players and the public authorities. This layer of understanding between the public and the private actors should be legally linked by establishing an independent regulatory body or a media council. Following are the some suggestions about the requirements of a regulatory body for content regulations-

- The regulatory body should be dedicated to each medium in its form. Be it print, radio, television or any other electronic mode. There can't be uniformity of regulation if the form itself can be distinguished.
- The regulatory body should be independent of serving journalists, the government and commercial concerns and not include any editors, government members or Member of Parliament.
- Inside a media organization there should be a media ombudsman to receive and investigates complaints from viewers about accuracy, fairness, balance and good taste in news coverage under the jurisdiction of a independent regulatory body.
- It should intervene in specific forms of productive regulation of content and include a modular approach to regulating ownership, consolidation and other structural issues.
- The independent regulatory body should make the data's transparent on different media fields, pattern of media workings and practices with in the country.
- There should be innovative ways of encouraging compliance, like publication of outcomes of compliance, publicity to regulatory mechanism and policies to enhance professionals to approach regulation.

### **Conclusion:-**

The field of electronic media and entertainment in India is one of the fastest growing industries in the world. Competitive pricing, increased consumer base and significant marketing, use of technology on creative ground are driving the growth of this industry. Many media companies in India have grown up speedily and also it brought a lot of new challenges with it. To achieve the dream of people's media or to ensure the freedom of expression of the media without an independent regulatory body is just a endless journey. The existing regulatory authorities are often encountered when the issues of regulation of television content surfaces. It is true that the idea of an independent regulatory body to regulate the media content is a topic of discussion across the nation. After so many years of introducing new economic policy still the concept of independent regulatory body remains as an illusion.

Going through the consultation report of the law commission on media regulation, it demanded to have a media council body to regulate over all discord amongst public against media. The idea of co-regulation also could be considered which has been quite successful in Australia, because the idea of self regulation has proved to be a failure or maybe it was not allowed to flourish fully. But the most important thing is that even if we would have a better programming code of conduct for content regulation of all sections of media, the need of a guardian would be always there and that guardian should be an independent, genuine and neutral regulatory body.

<sup>1</sup> NBA was formed at October 2008.

<sup>2</sup> IBF was established at 1919 as a small cell, which has now grown into a national network of 8 regional offices and 34 branch offices.

<sup>3</sup> The union ministry of information and broadcasting, Government of India report was published on 9<sup>th</sup> April 2015.

<sup>4</sup> Electronic media monitoring centre was formerly known as central monitoring service and it was brought under the direct control of Ministry of Information & Broadcasting at 2003. It's all activities was transferred to national Technical Research Organization at the year 2005 excluding content monitoring. At 9<sup>th</sup> June 2008 it was set up as EMMC.



<sup>5</sup> OfCom is the independent regulator and competition authority for the UK communication industries.

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