

To control or not to control

N Bhaskara Rao writes about the importance of regulating the broadcasting scene in the country

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Prime Minister Deve Gowda should have at least joked with Rupert Murdoch to qualify for Indian citizenship before seeking for unrestrained broadcast operations in India. Australian Rupert Murdoch had to become a US citizen to enter the US market with his ambitious broadcast business plans, as he is trying now in India.

The US law allow only US licensed satellites of US companies for direct broadcasting, and foreign equity of only 20 percent. USA has also clearly laid down cross media restrictions and they are implemented rigidly. Then why the hostile reactions to the Broadcast Bill? How can India be isolated and accused of fostering restrictive practices?

There is hardly any country today without some regulation or the other on broadcasting. In fact, most developed economies have stringent regulations as in USA on satellite transmissions. Most of these countries satellites of their own country for direct broadcast. The recent WTO meet at Geneva brought out the rigidities of some countries like Canada, Japan, USA on direct broadcast regulations. The most recent decision of the Canadian Government, making it illegal to receive direct broadcasting (DTH), even from USA, and manufacturing dishes within for that purpose, and the way the US has retaliated, should put to rest the notion that democratic countries do not have restrictions on broadcasting and that they are not worried about the implications of new broadcast technologies. No wonder then that at the Geneva meet some countries wanted these aspects of satellite broadcasting to be dealt with separately as part of 'cultural relations' between counties. Socio-economic and information imbalances in our country compel us even more urgently for a broadcast policy and some regulations.

Liberalisation nowhere in the world means no regulation. Deregulation, which liberalisation often implies, and regulation which the liberalisation process compels, go together. That is, neither liberalisation nor deregulation is synonymous with abrogation of the state's responsibility. Besides, certain conflict is inherent in the case of mass media as they enjoy 'fourth estate' status. However, today profit or business dimension has become the driving force. In any case, the 'social responsibility' aspect, inherent in the 'fourth estate' concept, has become a secondary concern.

Also, liberalisation should not mean shift from the monopoly of the state to the monopoly of the markets. Both need to be checked. In the context of today's technologies and national priorities, the new broadcast environment should enable (a) easy access to mass media to much larger sections of people, (b) at much cheaper costs and, of course, (c) certain interactiveness in the process of communication, including the right to respond and (d) help the process of information equity.

Once broadcast legislation comes into being, the media scene in the country obviously will go through yet another sea change, qualitatively and quantitatively. However, there is no guarantee that mere proliferation of broadcast channels would lead to information equity and better understanding among people and regions. In fact, evidence in similar situations recently is otherwise. As such we need to ensure better spread of broadcast infrastructure across the country and that choice does not mean many more of the same 'consumer' or 'market'. The legislation should also facilitate reaching the unreached. However, all this may not achieve the kind of 'viabilities' that are expected of heavy infrastructure-oriented broadcasting operations. The need in the country is for decentralised, and low-cost broadcasting which emerging convergence in technologies allow.

Pronouncing airwaves to be 'public property' under Article 19 (1) of the constitution and as distinct from that of the state, the February 1995 judgement of the Supreme Court brought to fore the need to bring broadcasting out of the purview of the outdated 1885 India Telegraph Act. Despite vulnerability of this section of the 1885

Act, surprisingly, it was never challenged until 1994. Rightly, the landmark judgement has stuck down the government's monopoly over the airwaves and ordered establishment of an independent authority to license broadcasting subjects to such 'reasonable restrictions' as embodied in Article 19 (2). The judgement does not imply blanket privatisation. Equally important, the judgement clarified the confusion between freedom of media and the freedom the media outlets to trade or to carry on business. While media freedom is a part of the freedom of speech and expression, it is not a part of another Fundamental Right which is given to carry on any business, occupation or trade. Which means, the former is essentially the right of the people to be informed and educated. This distinction should not be lost sight of.

The much delayed Broadcast Bill provides 49 percent foreign equity. The cross media ownership envisaged is limited to 20 percent. The draft also provides to limit the number of circles, coterminous with telecom circles, that a broadcaster could be licensed and also the circles/categories which could be held by a media company. The draft bill provides for a Broadcast Authority to regulate broadcasting, terrestrial and satellite based operation. The seven categories of broadcast services which would come under the authority's purview include: terrestrial radio and TV, satellite radio and TV, DTH and local delivery services like cable networks etc. A licensee in one category will not be able to hold in another in the same region. The bill provides for punitive measures for violation of provisions and the licensing conditions of the Broadcast Authority.

The draft bill, going against the spirit of Supreme Court judgement of 1995, excludes the government media, that is Doordarshan and All India Radio, from the regulations proposed for private broadcasters. It, instead proposes separate corporations each for Doordarshan and All India Radio and would like to describe them as 'public service broadcasters' without ensuring enabling conditions. A 'Public Service Broadcasting Bill' is also being brought now simultaneously before the Parliament replacing the Prasar Bharati Act.

Some contentious issue in the proposed broadcast bill are (1) the extent of foreign equity participation (2) the extent and nature of cross media regulations (3) the extent of level playing vis-à-vis the state-owned media of AIR and Doordarshan (4) composition and constitution of Indian Broadcast Authority (5) possibility of state, local bodies, universities and the like taking up to broadcasting for specific communities (6) emerging convergence of technologies and restricted view of categories of broadcast services (7) scope for networking with and between national, regional and local broadcast services (8) the bidding process for licensing (9) future of present cable operators, (10) uplinking and downlinking procedures etc.

The draft bill is rather vague on the cross media ownership issue although it prescribes a 20 percent restriction. It hardly implies any radical stand in terms of practical implications. Some existing big players, both in print and broadcast, would be affected once the bill passes through the House. Nevertheless, newspaper enterprises should not be deprived of operating broadcasting outside the territory and in other than news and current affair segments even if they have more than 50 percent market share in circulation in that territory. Also, newspapers or even radio entrepreneurs should not be deprived of subleasing time on television channels for specialized programmes like education, sports, etc. Irrespective of legislative provisions certain 'pooling' in and between media operations is unavoidable. Earlier in the country we were talking of certain industrial groups controlling the press and freedom of the press, later, the concern shifted to government control and misuse; now it is cross media ownership. I am sure tomorrow this concern would shift to issues to do with convergence between telecom, computer, software and broadcasting. It is only recently that the US had removed some restrictions for operating cable TV and telecom on the same cable networks. In any case, none should oppose deterrent provisions to minimise monopolistic tendencies in the case of news and current affairs and their flow in the country. No legislation on broadcasting today could be without some such provisions.

Succumbing to pressures, a 25 percent limit on foreign equity holding which the initial draft of the Bill envisaged has been revised. It needs to be seen whether 49 percent in the Bill now would again be changed. While there is nothing surprising in Left parties opposing this provision, it is interesting that our media owners are divided rather sharply on this issue.

Foreign equity allowed by countries today vary between 18 to 100 percent. Canada, Mexico, Japan, South Korea and many others, restrict foreign ownership to 46.7 percent. In this regard, Japan (20 percent) and Canada refused to budge at Geneva.

The independent Broadcast Authority should not be just for licensing. It should have standing councils on a statutory footing for standards, complaints, monitoring and research.

A controversial part of the proposed bill implies an active role for government bureaucrats and the Minister for Information and Broadcasting (I&B) when, in fact, it is time that the Ministry of I&B itself should have by now been dismantled. Instead, the Vice-President of India, the Chief Justice of India and the Speaker of the Lok Sabha should be involved in constituting a statutory authority. Independence of such a Broadcast Authority from the Government of the time has to be transparent. The 'broadcasting' wing of the I&B Ministry should be merged with the Ministry of Communication (broadcasting is becoming more of a telecom service) and the "Information" wing should be converted into an independent board with media professionals.

In fact, instead of two different regulatory authorities, one for telecom and another for broadcasting, we should have only one on the lines of the US Communication Commission. The Ministers of I&B and Communication are already at loggerheads and, if this continues, it would delay the implementation of legislation. We need a broader vision on broadcast media. Despite the fact that an independent and responsive broadcast service for the country has long been called for. We still have a long way to go to achieve it.