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LAW OF TELECOMMUNICATIONS AND BROADCASTING IN INDIA†

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INTRODUCTION

Telecommunications[1] is the science of transmitting information. Media employed for transmission include telegraph, telephone, radio, television, computer, telefax, and national and international satellites. Today, telecommunications technology is in a period of revolutionary change which will impact the entire fabric of society, in both developed and developing nations. The modes of communication, initially oral or hand written, have multiplied since the industrial revolution as a result of inventions such as telegraph, telephone, photography film, radio, television, teleprinters, computers, and telex, among others.

Communication is central to the entire developmental process of a country in more than just the economic sense. Multidimensional ramifications of telecommunication technology are felt in the social, cultural, educational, scientific, technological, and political spheres. Without effective communication, a democracy cannot function and socio-economic development cannot be sustained.[2] In sum, communication is the web that holds together a society, whether it is a collection of small and relatively isolated agricultural groups or a closely knit complex of interdependent groups in an industrialized country.

Accordingly, all nations need to pursue courses of action that encourage a freer and more reciprocal exchange of information across national boundaries.[3] The international community has recognized this need and is attaching increased importance to establishing a more equitable and just information and communication order. However, the new order is progressing too slowly. Being among

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† The Law Review has not been able to verify the sources and quotations contained within the Article. The author takes sole responsibility for the Article's accuracy.

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1. The word telecommunications is made up of two words: "*tele*" is derived from the Greek word meaning "*far*" and communication from the Latin root "*communico*" meaning to share. Thus, telecommunications is a process in which participants from a distance share information with one another. *See* NEW STRUCTURE OF INTERNATIONAL COMMUNICATION: THE ROLE OF RESEARCH 126 (1982).

2. I. GANDHI, REPORT ON TELECOMMUNICATIONS I (Ministry of Telecommunications, VI Five-Year 1980-85).

3. *See* Mathur, *Indira Gandhi on Communication*, 19 COMMUNICATOR 1, 3-6 (1984).

the world's top-ten industrialized countries, and equipped with significant satellite communications capability, India is not untouched by the latest communications developments.

This Article explores the evolution of Indian telecommunications and presents an overview of the current status of telecommunications and broadcasting law. Section I discusses the history and organization of Indian telecommunications, and introduces the two major legislative acts regulating the industry. Section II focuses on the Indian Telegraph Act of 1885, and describes the federal government's regulatory powers. Section III reviews the Indian Wireless Telegraphy Act of 1933 which regulates the possession and licensing of broadcast facilities and equipment. Section IV discusses the Telegraph Wires Act of 1950. Section V surveys Indian telephone service and its effect on consumers. Section VI addresses telex service and its effect on the Indian business community. Section VII critically evaluates the Indian Telegraph Act of 1885. Finally, Section VIII describes the government's monopoly over broadcasting services and steps taken to facilitate autonomy of the media. This Article concludes with a recommendation that legislation needs to be revised to address the rapid developments in telecommunications technology.

I. HISTORY AND ORGANIZATION OF TELECOMMUNICATIONS IN INDIA

Indian telecommunications is a federal government owned public utility. In operation since 1851, it is one of the oldest telecommunications systems in the world. India's first telegraph line was established in 1851 between Calcutta and Diamond Harbor. The first long distance overhead telegraph was opened in 1853 between Calcutta and Agra. Until December 31, 1984, telecommunications services were operated by the Department of Posts and Telegraph. To keep pace with technology, the independent Department of Telecommunications was placed in charge of telecommunications regulation effective January 1, 1985.

The Indian Telegraph Act of 1885,[4] supplemented by the Wireless Telegraphy Act of 1933,[5] and the Telegraph Wires (Unlawful Possession) Act of 1950,[6] are the essential pieces of legislation which control the operation of telecommunications services both in and out of the country.

Telegraph services in India are well-developed, efficient, and heavily used. India is one of the few countries in the world with its own operational satellite. India's INSAT-IB and INSAT-ID facilitate a variety of services, including telephone, telegraph, meteorological, hydrological, and oceanographic data collection, disaster warnings, and radio and television broadcasting. Although fairly new, telex and fax services are being increasingly relied upon, particularly for international communications. As the foregoing indicates, telephone services have made rapid strides since Indian Independence in 1949. However, much

4. *See infra* note 21.
5. *See infra* notes 81-82 and accompanying text.
6. *See infra* note 90 and accompanying text.

remains to be done. For example, a potential customer may have to wait years for a telephone connection.[7]

In 1974, the Department of Posts and Telegraphs separated at all the levels except the Directorate and Ministry, which remained a common department. On January 1, 1985, the Department of Posts and Telegraphs created two independent departments: (1) the Department of Post, and (2) the Department of Telecommunications ("DOT"). Each department has its own Board.[8]

DOT operates five divisions to facilitate telecommunications services both to India and abroad: (1) Wireless Planning and Coordination; (2) Videsh Sanchar Nigam Ltd.; (3) Telecommunications Consultants of India, Ltd.; (4) Indian Telephone Industries, Ltd.; and (5) Hindustan Teleprinters, Ltd. In addition, the DOT maintains a variety of support organizations including: (1) Telecommunications Research Centre; (2) Telecommunication Training Centre; (3) Technical and Development Circle; (4) Telegraph Stores; and (5) Telephone and Telecommunications Factories.[9]

On April 1, 1986, to cope with the rapid demand for expansion and modernization of telecommunications, the DOT created two companies in Delhi and Bombay for coordinating telecommunications inside the country. The companies were named the Mahanagar Telephone Nigam Ltd. ("MTNL"), and for overseas communication, the Videsh Sanchar Nigam Ltd. ("VSN"), translating to the Overseas Telecommunications Corporation, Ltd.

Transborder telecommunications is handled by the Overseas Communications Service,[10] through the VSN.[11] VSN operates through three gateway cities: Bombay, New Delhi, and Madras, and has a fourth operational center in Calcutta. VSN functions in close coordination with the Indian national domestic telecommunications services providers (i.e., DOT and MTNL) to provide the Indian public with the latest international telecommunications services. For example, VSN is equipped with computerized telephone, fax, telex, and telegraph switching exchanges in Bombay, Calcutta, New Delhi, and Madras.

As of March 31, 1989, VSN operated 1906 telephone circuits, 1183 telex circuits, 46 public telegraph circuits, 40 leased voice grade, and 164 leased teleprinter grade circuits. Furthermore, VSN operations managed approximately 1,800,000 incoming and outgoing telephone calls, 80,000 telex calls, and 70,000 telegrams daily. Also, VSN handled hours of video and a few hundred pages of

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7. K.D. GAUR, 5 LAW OF INTERNATIONAL TELECOMMUNICATIONS IN INDIA 7 (1988) [hereinafter GAUR].

8. In May 1989, the DOT created the Telecommunications Board consisting of a full time chairman with the rank of secretary of the Government of India, and three other full time commission members. In addition, four part-time members, who also serve as secretaries to the Government of India in the Ministry of Finance, Electronic, Planning Commission, and Industry make up the Board. Videsh Sanchar Patrika, BOMBAY 7 (June 1989).

9. MINISTRY OF COMMUNICATIONS, ANNUAL REPORT 19 (1984-85).

10. *Id.* at 25. The Overseas Communication Service was formed as a government department on January 1, 1947 upon the nationalization of the Indian Cable and Communication Company.

11. VIDESH SANCHAR NIGAM LIMITED, SECOND ANNUAL REPORT I (1987-88). VSN is a fully-owned government corporation which is the successor to the OCS.

facsimile messages per day.[12]

Computer technology is rapidly developing in India with the new, liberal policies of the federal government. Revolutionary changes are expected in telecommunications when supercomputers are installed in the three metropolitan areas of Calcutta, Bombay, and Madras. Currently, Delhi is the only city with an operational supercomputer.

The VSN operations are connected by direct national telecommunication links. VSN offers major international telecommunication services such as telephone, telex, television, public telegram,[13] packet switched,[14] data service,[15] radiophoto, bureaufax,[16] voice cast[17] (programme transmission), leased teleprinter[18] and voice grade circuits,[19] teleconference, meteorological broadcasts, and press broadcasts.[20]

Communications satellites and a wide band submarine telephone cable which crosses the Arabian Sea and the Bay of Bengal provide the international telecommunications circuits. VSN has four satellite earth stations at Arvi near Pune, at Dehradoom, Bombay, and Bangalore which provide 70% of the telecommunication circuits. Thirty percent of the circuits come from two submarine telephone cable systems. One cable links Madras to Kuala Lumpur, Malaysia, and is called the Indian Ocean Commonwealth ("ICCOM") cable system. The second cable links Bombay to Fujairah, in the United Arab Emirates, and is called the Gulf Cable System.

II. LEGAL FRAMEWORK OF DOMESTIC TELECOMMUNICATIONS

A. Indian Telegraph Act of 1885

Telecommunications services in India are maintained and operated pursuant to the provisions of the Indian Telegraph Act of 1885 ("ITA"). The Act is divided into five parts consisting of thirty-four sections. Part I is preliminary.[21] Part II deals with the privileges and powers of the government.[22] Part III empowers the government to place telegraph lines and posts.[23] Part IV prescribes penalties for various categories of violations and offenses under the

12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. Indian Telegraph Act of 1885, India Cen. Acts 13, §§ 1-3.
22. *Id.* §§ 4-9.
23. *Id.* §§ 10-19.

Act.[24] Part V includes supplementary provisions concerning the power to employ additional police in areas where telegraphs are vandalized and also extends the scope of the Act to the metropolitan areas of Delhi, Calcutta, Bombay, and Madras.[25]

Sections 1 and 2 of the Act define the scope, extent, and operation of the ITA. Section 3 provides technical and legal definitions of key words. The word telegraph[26] has a comprehensive meaning under the Act, including all modern means of receiving or transmitting communication by the electromagnetic media including wireless telegraph, telephone,[27] teleprinter, telex, and radio.[28] Section 3 also defines telegraph officer,[29] messages,[30] and telegraph line,[31] post[32] and telegraph authority.[33]

B. Privileges and Powers of the Government

Section 4 of the ITA gives the federal government the exclusive power to establish, operate, and maintain telegraphs and grant licenses.[34] Using this power, the government may grant a license to any person within India under the conditions and payments it deems appropriate.

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24. *Id.* §§ 20-32.

25. *Id.* §§ 33-34.

26. *Id.* § 3(1). Telegraph means an electric, galvanic, or magnetic telegraph and includes appliances and apparatuses for making, transmitting, or receiving telegraphic telephonic or other communications by means of electricity, galvanism, or magnetism. *Id.*

27. Seethrama Sastry v. N. Kalwar and Sons, 1968 A.I.R. 315 (Madhya Pradesh H.C.).

28. Provincial Government of Central Provinces and Berar v. Chakkilal, 1942 Indian L.R. 344 (Nagpur H.C.). Telegraph as defined in the Telegraph (Amendment) of 1914, India Cen. Acts 7, includes a radio which is an apparatus for receiving communication by means of electricity. State of Bihar v. Mangal Sao, 1963 A.I.R. 445 (S.C.) ("Wireless transmitter transmits sounds as electromagnetic waves, and sound waves are detected and received by the receiving apparatus, hence a receiving set [radio] is a telegraph within the meaning of the Act 1964, M.P. L.J. 831: telegraph includes telephone.").

29. Indian Telegraph Act of 1885 § 3(2) ("'Telegraph Officer' means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Central Government or by a person licensed under this Act.").

30. *Id.* § (3) ("Message" means any communication sent by telegraph or given to a telegraph officer to be sent by telegraph or to be delivered.).

31. *Id.* § 3(4) ("Telegraph line" means a wire or wires used for the purposes of a telegraph with any casing, coating, tube or pipe enclosing the same on any appliances and apparatuses connected therewith for the purpose of fixing or insulating the same.). *See* Senior Electric Inspector v. Lakhsmi Narain Chopra, 1962 A.I.R. 159 (S.C.) (electric lines used for the purpose of wireless telegraph are telegraph lines).

32. *Id.* § 3(5) ("'Post' means a post, pole standard stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line.").

33. *Id.* § 3(6) ("'Telegraph authority' means the Director General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.").

34. *Id.* § 4 ("Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit to any person to establish, maintain or work a telegraph within any part of India.").

1. The Right to No Private Ownership. The government's exclusive powers conferred by section 4 of the ITA, should be changed to conform to the world-wide acceptance of the right to communication as a fundamental right of citizens. Specifically, India should follow the policies of the many countries which have a liberalized policy and permit commercial broadcasting by private individuals. For example, the United States, Mexico, Sri Lanka, Australia, New Zealand, Spain, Portugal, and Japan, permit private individuals to own and operate commercial broadcasting stations.[35]

In a fairly recent case, *P.L. Lakhanpal v. Union of India*,[36] the Delhi High Court was confronted with the vexing and interesting question of whether an Indian citizen has a right to claim a license for operating a transmitter for commercial and other general purposes. The petitioner, a journalist by profession and editor of a newspaper, applied to the Ministry of Telecommunication of the Government of India for a license for a 100-watt Medium Wave Broadcasting transmitter.

The petitioner stated that he wished to set up the broadcasting station to disseminate news and comments on current issues of concern to the general public. The application was, however, rejected by the Department, and no license was issued. The petitioner appealed to the Delhi High Court under Article 226 of the Constitution[37] and challenged the denial as unconstitutional and *ultra vires*. First, the petitioner asserted that the refusal to grant the license to establish a broadcasting station amounted to an unreasonable restriction on the "right to freedom of speech and expression" guaranteed under Article 19(1)(a)[38] and is not saved by clause (2) to Article 19 of the Constitution.[39]

Second, the petitioner argued that the exclusive privilege of the Government "to operate, establish and maintain telegraph services" under section 4 of the ITA[40] created a government monopoly and deprived the petitioner of his fundamental right "to practise any profession, or to carry on any occupation, trade, or business," guaranteed under Article 19(1)(g) of the Constitution.[41]

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35. *Statistical Year Book*, [1978-79] UNESCO, *quoted in* P.L. Lakhanpal v. Union of India, 1982 A.I.R. 167, 173 (Del. H.C.); Ushodaya Publications v. Government of A.P., 1981 A.I.R. 109 (Andhra H.C.).

36. 1982 A.I.R. 167 (Del. H.C.)("*Lakhanpal*").

37. The Constitution of India empowers the High Courts to issue writs for the enforcement of any rights conferred by Part III of the Constitution dealing with "Fundamental Rights" against the government or even the legislature in a proper case. INDIA CONST. art. 226.

38. INDIA CONST. art. 19(1)(a). ("All citizens shall have the right . . . to freedom of speech and expression . . . .").

39. INDIA CONST. art. 19(2). "Nothing in sub-clause (a) of cl. (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." *Id.*

40. *See supra* note 34.

41. INDIA CONST. art. 19(1)(g). "All citizens shall have the right to–(g) to practise any profession, or to carry on any occupation, trade or business." *Id.*

After a close examination of the concept of the freedom guaranteed under Article 19(1)(a) the *Lakhanpal* court reasoned that the freedom of speech and expression is not only the right to speak, or the right to express, but it also implies the right to communicate that speech or expression to others by all available means.[42] The court recognized that one of the available means guaranteed by Article 19(1)(a) could be a broadcasting station. The court, therefore, held that in the broadest meaning of the word, the right to broadcast is included in the right to free speech.[43] The court, however, distinguished between the right to broadcast and the right to hold a broadcasting station, ruling that although the private individual has a right to free speech and broadcast, he does not have the right to own a broadcasting station, or to own his own radio station as part of the right to freedom of speech and expression.[44]

The court also rejected the petitioner's second argument. The court held that Article 19(6) enables the State to put reasonable restrictions on an individual's right to pursue a profession or to establish a business.[45] After examining the provisions of Article 19(6), the court concluded that the State may enact laws to enable the State to engage in a particular business, or by a corporation owned, or controlled by the State. To facilitate the State's business objectives, India may exclude—partially or completely—citizens from carrying on businesses which interfere with State goals and objectives. Thus, Article 19(6) permits the government to limit the right to carry on the business of broadcasting through

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42. 1982 A.I.R. para. 12, at 171-72.

43. *Id. See also* Rajni Kant Verma v. State, 1958 A.I.R. 360 (All. H.C.); Indulal K. Yagnik v. State, 1963 A.I.R. 259 (Gujarat H.C.).

44. The court therefore held:

> Public order demands that there should be a regulation of the system. That regulation may be by any means. One possible regulation is to give the exclusive right of using the standard broadcasting wave-band for Government owned Radio Stations and allow others to use other wave-bands. Broadcasting is covered by all international conventions because the medium is to be used by countries in all parts of the world. These international conventions have earmarked particular wave-lengths to particular countries. There is no unrestricted right to broadcast. This system of regulation is necessary so that every station can operate on its individual wave-length without interference with other broadcast stations. Therefore, on an analysis of the right, it would mean that theoretically there is a right but, practically it is a limited right. Then, the right to speak on the wireless does not imply that you must own a transmitter or own a broadcasting station. You can use this freedom by using another's radio station. Just like the case of an individual who wants to express himself through the media of newspaper, it is not necessary that such a person should own a practically it is a limited right. Then the right to speak on the wireless does not imply that you must own a transmitter or own a broadcasting station. You can use this freedom by using another's radio station. Just like the case of an individual who wants to express himself through the media or newspaper, it is not necessary that such a person should own a newspaper or a publishing press, it is sufficient if he is permitted to get his views published through a newspaper which may be owned by others.

Lakhanpal, 1982 A.I.R. paras. 12-13, at 172.

45. *Id.*

legislation. Furthermore, the court reasoned that licensing is crucial to prevent chaos in both domestic and international broadcasting. Accordingly, the court found the licensing requirement reasonable.[46]

2. Emergency and Public Safety Powers. In the event of any emergency or in the interest of public safety, section 5(1) of the ITA permits the federal or state government to take possession of any licensed telegraph. The government may intercept messages transmitted to, through, or by any telegraph in the following circumstances: (1) if it is necessary or expedient to do so to protect the interests of the sovereignty of India; (2) to protect the security of the State; (3) to promote friendly relations with foreign States; (4) to promote public order; or (5) to prevent incitement of an offense.[47]

3. Maintaining Telegraph Lines. The federal government can establish and maintain telegraph lines or railway land owned by the government. The railways must provide reasonable access to the government and maintain them.[48] Section 6-A of the ITA authorizes the government to promulgate rates, conditions and restrictions governing the transmission or messages to locations outside of India. Section 7 of the ITA empowers the government to frame rules of conduct for conduct of any or all telegraphs established or maintained by the government or of those operated by persons licensed under the Act.

4. Arbitration of Disputes. Any dispute between a consumer and the Telegraph Authority concerning any telegraph line will be referred to arbitration according to section 7-B of the ITA.[49] The arbitrator's decision is final and binding on the parties. However, the ITA should provide a procedure for appeal to the High Court in cases of gross violations of legal provisions.

5. Revocation of License Upon Breach. Section 8 of the Act[50] empowers the government to revoke any license if any of the conditions stated in the instrument of the license granted under section 4 of the Act are breached. Surprisingly, however, section 8 neither provides the licensee with an opportunity to be heard before revocation, nor does it require that the reasons for cancellation of the license be recorded by the concerned government department. Absence of these basic provisions are contrary to the principles of natural justice

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46. *Id.* paras. 19-20, at 174-75.

47. Indian Telegraph Act of 1885 § 5(2). *See also* Hukum Chand Shyam Lal v. Union of India, 1976 A.I.R. 789 (S.C.). This case held that power under section 5(1) of the Act of 1885 does not confer misguided and unbridled power to the central or a state government to take possession of any telegraph, rather the occurrence of a public emergency is the *sine qua non* for the exercise of power under this section.

48. Indian Telegraph Act of 1885 § 6.

49. *See infra* note 105.

50. Indian Telegraph Act of 1885 § 8. "*Revocation of licenses*: The Central Government may at any time, revoke any license granted under section 4, on the breach of any conditions therein contained, or in default of payment of any consideration payable thereunder." *Id.*

laid down by the Supreme Court of India in *Maneka Gandhi v. Union of India.*[51] The *Maneka* Court stated that any law depriving a person of his right and privileges must be fair, just and reasonable, which includes the right to be heard before revocation of a license. Accordingly, section 8 of the ITA should be amended to incorporate the right to a reasonable opportunity to be heard before revocation of a license. Protecting this fundamental right should not be left to the discretion of the government authorities.

6. Disconnection of Telephone Services. According to Rule 443 of the Telegraph Rules (1951), Part V, the telegraph authorities can disconnect a telephone connection without notice if a consumer fails to pay telephone dues in time. In modern India, a telephone is not a luxury, but a necessity like other public utilities such as water and electricity. Entire business transactions are consummated over the telephone and professionals depend for their survival on service. Because of this heavy dependence, Rule 443 authorizing the department of telecommunications to disconnect a telephone connection without notice is unreasonable and needs to be replaced with a provision requiring mandatory written notice before disconnecting a telephone line.

C. Government Officers' Immunity for Any Loss or Damage

Part V of the ITA, sections 33 and 34, are supplemental provisions. Section 33 confers power on the state governments to employ additional police force in places where it appears that: (1) any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed, and (2) the employment of such force is necessary.[52] The local citizens pay for the additional police protection. Section 34 extends the application of the Act to the metropolitan areas of Delhi, Calcutta, Madras, and Bombay.

Section 9 of the Act makes government and its officers immune from liability for any loss or damage resulting from the negligent performance of duties[53] by any telegraph officer. According to established case law, this provision is improper. Section 9 should be revised to bring it in line with the longstanding principles of justice and fair play described in the following cases.

As long ago as 1861, the Supreme Court of Calcutta held that the Secretary of State of India is liable for damages caused by the negligence of a Government servant to the same extent as a servant employed by a private employer.[54] This principle was affirmed by the Supreme Court of India in the *State of Rajasthan*

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51. 1978 A.I.R. 597 (S.C.).

52. Indian Telegraph Act of 1885 § 33.

53. *Id.* § 9. *"Government not responsible for loss or damage:* The Government shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently." *Id.*

54. Penusular & Oriental Steam Navigation Co. v. Secretary of State for India, 1885 Bom. H.C.R. at app. I. *See also* V.N. SHUKLA'S CONSTITUTION OF INDIA 540 (6th ed. 1982).

v. Vidyayati.[55] In this case, the court held the State of Rajasthan liable in tort for damages to the decedent's wife, whose husband was killed in a car accident caused by the negligent driving of a public servant.

Furthermore, in *Supretendent and Remembrencer of Legal Affairs, West Bengal v. Corporation of Calcutta*[56] the Supreme Court of India held that the archaic common law rule that the State is not bound by the negligent acts of its servants is not relevant in a democratic republic. The court reasoned that the principles of equity and justice demand that the same rules should apply to both the state and to the citizen alike, especially in a situation where the state is engaged in a trade or business and earns profit alongside private citizens.

Accordingly, section 9 of the ITA should be amended to hold the State liable in law (of tort, and/or contract) for damages to the consumer/public for losses arising out of the negligence of its employees. This revision also would be consistent with the laws of several Western countries such as the United Kingdom, the United States, Germany, and Switzerland, where the telecommunications and postal authorities are liable for damage to the consumer for any loss arising out of their negligence.

D. Power to Place Telegraph Lines and Posts

In sections 10-19 of the ITA, the Telegraph Authority is empowered to place and maintain telegraph lines and posts and to perform acts necessary to carry out its task. Section 10 allows the government to legally trespass over private land for the purpose of establishing or maintaining a telegraph installation. Section 10 also provides full compensation for any damage caused by the operation.

The court uses two tests to determine compensation under section 10(d)[57] for damages caused to fruit bearing trees when the Telegraph Authority installs the telegraph wires and poles. The first method measures the value of produce[58] the landowner lost by the installation, notwithstanding the market value of the land before or after the damage was caused.[59]

The second method is a market value test which measures the present value of the fruit trees.[60] For example, in *Ramachandra Rao v. State of Madras*,[61]

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55. 1962 A.I.R. 933 (S.C.).

56. 1967 A.I.R. 997 (S.C.). *See also* Director of Rationing and Distribution v. Corporation of Calcutta, 1960 A.I.R. 1355 (S.C.).

57. Indian Telegraph Act of 1885 § 10(d). "The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property. Provided that . . . in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property . . . shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers." *Id.*

58. The temporary right of using a thing, without having ultimate property right.

59. Kerala State Electricity Board v. Varghese Thomas, 1961 A.I.R. 237 (Kerala H.C.). *See also* K. Vishwanathswami Temple v. Assistant Engineer, 2 Madras L.J. (Reports) 254 (1980); Hussainh Baksh v. Secretary of State, 1935 Indian L.R. 391 (Lahore H.C.).

60. *E.g.*, coconut, jack, and rubber trees, or peeper vines.

a claim for compensation under section 10(d) of the ITA was brought before the Andhra Pradesh High Court for damages caused when the government cut the plaintiff's coconut trees while laying transmission lines. The court held the damages incurred by the property owner should be assessed by reference to the deterioration of the property value caused by the acts.[62]

E. Violations and Penalties Under the Act

Part IV of the ITA, specifically sections 20-32, prescribes the penalties for violating the Act. Penalties vary from a fine of fifty rupees[63] to three years of imprisonment, depending upon the gravity of the offense. The following are the serious offenses for which the ITA imposes penalties: establishing, operating, or maintaining an unauthorized telegraph;[64] breaching a condition of license;[65] using an unauthorized telegraph;[66] opposing the establishment of a telegraph on railway land;[67] trespassing in, or obstructing the operation of, a telegraph office;[68] unlawfully attempting to learn the contents of a message;[69] tampering with a telegraph message;[70] damaging a telegraph line or post;[71] unlawfully intercepting or disclosing a telegraph message or divulging the object of signals;[72] fraudulently sending of a message by a telegraph officer without payment;[73] misconduct;[74] retaining a message delivered by mistake;[75] bribery;[76] and attempting to commit an offense.[77]

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61. 1962 A.I.R. 58 (Andhra Pradesh H.C.). *See also* Satvanaravan Hegde v. Malikarajun Bhavanappa Tirumale, 1960 A.I.R. 315 (Andhra Pradesh H.C.).

62. *Id.*

63. Indian Telegraph Act of 1885 § 29-A. In terms of dollars, Rs. 50 could be treated as $50 for the purpose of parity in terms of paying capacity of the consumer and tracing it from 1885 when the Telegraph Act was enacted. However, in terms of present rate of exchange, Rs. 50 would be equivalent to $4.

64. *Id.* § 20.

65. *Id.* § 20-A. *See* Angal Sao, 1963 A.I.R. 445 (holding that the use of a radio without a license is an offense under section 20 of the Act).

66. Indian Telegraph Act of 1885 § 21.

67. *Id.* § 22.

68. *Id.* § 23.

69. *Id.* § 24.

70. *Id.* § 25.

71. *Id.* § 25-A.

72. *Id.* § 26.

73. *Id.* § 27. *See* Emperor v. Jagiri Lal, 1938 A.I.R. 251 (Lahore H.C.). The court in this case held the charge is not payable in advance but is to be recovered in terms of monthly bills submitted to the telephone. The mere transmission of the message without payment by the accused does not fall within the Indian Telegraph Act of 1885 § 28.

74. Indian Telegraph Act of 1885 § 28.

75. *Id.* § 30.

76. *Id.* § 32.

77. *Id.* § 32.

III. THE INDIAN WIRELESS TELEGRAPHY ACT OF 1933

An important source of revenue for the Indian State Broadcasting Service[78] is the license fees generated under the ITA, which authorizes the establishment, operation, or maintenance of wireless apparatuses.[79] Since the ITA does not regulate possession of these apparatuses,[80] resulting in loss of revenue, the Indian Wireless Telegraphy Act of 1933[81] was enacted to license the actual possession of wireless telegraphy apparatuses.

The ITA is the only authority competent to issue licenses to possess wireless telegraphy apparatuses.[82] Section 3 of the Act[83] prohibits possession of a wireless telegraphy apparatus without a valid license. Section 4[84] gives the federal government exclusive power to exempt any person from the provision of the Act.[85] A license to establish, operate, or maintain a wireless telegraphy apparatus (which includes a wireless receiving set) issued under section 4 of the ITA is effective from the first day of the month in which the license was issued. Illegal possession of an apparatus between the first day of the month and the actual date of issue is retroactively valid by the subsequent issue of a license. Thus, between the first day of the month and the date the license was issued, the licensee cannot be prosecuted for legal possession of a telegraph apparatus under section 3 of the Act of 1933.[86]

In practice, however, detecting unlicensed apparatuses and the successful prosecution of offenders is difficult. First, unlicensed apparatuses must be located. Then, evidence must be gathered proving that individuals established, operated, or maintained an unlicensed apparatus.[87] If prosecution is successful,

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78. *Id.* § 34.

79. *See* GAUR, *supra* note 7, at 38.

80. *Id.*

81. India Cen. Acts § 17 (1933).

82. Indian Wireless Telegraphy Act of 1933 § 5. ("The telegraph authority constituted under the Indian Telegraph Act of 1885 shall be the authority competent to issue licenses to possess wireless telegraphy apparatus under this Act and may issue licenses in such manner, on such conditions and subject to such payment as may be prescribed.").

83. *Id.* § 3. ("Save as provided by section 4, no person shall possess a wireless telegraphy apparatus except under and in accordance with a license issued under this Act").

84. *Id.* § 4. ("The Central Government may by rules made under this Act exempt any person or any class of persons from the provisions of this Act either generally or subject to prescribed conditions, or in respect of specific wireless telegraphy apparatus.").

85. The grant of exemption from the purview of the Act is based on the policy of the Government and is specified in the rules. For example, educational institutions are exempt from the Act and no license fee is charged if the apparatus is used for educational purposes.

86. *See* GAUR, *supra* note 7, at 38.

87. Provincial Government Central Provinces and Berar v. Willayat Hassain, 1942 Indian L.R. 283 (Nagpur H.C.).

section 6 of the 1933 Act prescribes the penalties.[88]

Section 7 of the 1933 Act authorizes: (1) the central government to search any premises in which a telegraphy apparatus is suspected of being illegally kept or concealed, and (2) to take possession thereof. All confiscated wireless telegraphy apparatuses, as well as those having no ostensible owner become the property of the central government.[89]

IV. TELEGRAPH WIRES ACT OF 1950

Another significant law relating to violations of telecommunications law is the Telegraph Wires (Unlawful Possession) Act of 1950 ("1950 Act").[90] It creates an offense for unlawful possession of telegraph wires. The 1950 Act consists of only eight sections. Section 2(b) defines telegraphy wire as "any copper wire, the gauge of which, as measured in terms of pounds per mile, is between 147 and 153 or between 195 and 204 or between 294 and 206." Section 3 imposes a duty on those possessing telegraph wires to declare in writing the quantity in their possession. Section 4 directs persons in possession of telegraph wires in excess of ten pounds to convert them into ingots.[91] Section 4-A prohibits the sale or purchase of any quantity of telegraph wires without the permission from authority prescribed under the Act.[92] Section 5 authorizes up to five years of imprisonment for unlawful possession of telegraph wires.

In cases of second, or subsequent offenses committed under the 1950 Act, a fine of 2000 rupees is also authorized. Section 6 authorizes punishment of up to six months of imprisonment, a fine, or both, for failure to make a declaration required by section 3, and violations of sections 4 or 5. Section 7 directs that no court recognize an offense under the Act unless a complaint is made by, or under the authority of, the central government. Section 7 also provides that no

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88. Indian Wireless Telegraphy Act of 1933 § 6 provides:

> (1) Whoever possesses any wireless telegraphy apparatus, other than a wireless transmitter, in contravention of the provisions of section 3 shall be punished, in the case of the first offence, with a fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence a fine which may extend to two hundred and fifty rupees.
> (1-A) Whoever possesses any wireless transmitter in contravention of the provisions of section 3 shall be punished with imprisonment which may extend to three years, or with a fine which may extend to one thousand rupees, or with both.
> (2) For the purpose of this section, a Court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge or is located in any premises or place over which he has effective control.
> (3) If in the trial of an offense under this section the accused is convicted, the court shall decide whether any apparatus in respect of which an offence as been committed should be confiscated, and if, it so decides, may order confiscation accordingly.

89. *Id.* § 8.

90. India Cen. Acts §§ 1-8 (1950).

91. *See* GAUR, *supra* note 7, at 40.

92. Such authority means the Director General of Telecomunications and any officer empowered by him. *See supra* note 33.

court inferior to the Presidency Magistrate[93] of the first class try any offense punishable under the Act. Finally, section 8 empowers the central government to make rules to carry out the purposes of the Act.

V. TELEPHONE SERVICES

The telephone was introduced in India as early as 1881, five years after its invention by Bell,[94] when a fifty-line telephone exchange was installed in Calcutta.[95] The Orient Telephone Company introduced telephone services in Bombay, Madras, Ahamedabad, and a few other towns. In 1913, the first telephone exchange[96] with automatic lines was installed at Simla. This was followed by India's first carrier system, installed in 1930 between Delhi and Agra. During World War II, telephone services were strengthened by high grade lines covering some 12,800 kilometers. Although telephone services were originally operated by private companies, the government of India took over the licensed private telephone companies in 1943. Ever since then, the telephone industry has functioned as a government undertaking.

In 1947, with the independence of India, technology in telephone services began making rapid progress. In 1948, telephone services were available in only about 650 cities and towns. Today, services are available in over 31,000 cities, towns, and villages. In response to the large demand for telephones[97] and other telecommunications facilities, the DOT has initiated a number of steps and devised plans for the rapid expansion and modernization of the telecommunications system.[98]

In India, consumers cannot demand telephone service as a matter of right.[99] Instead, telephone services are a privilege, which the government and the Telephone Authority can extend as they see fit. For instance, the government may give priority to any particular category of applicants it chooses. This action cannot be attacked as discriminatory,[100] or *ultra vires* under the Constitution.[101]

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93. *See* GAUR, *supra* note 7, at 40.

94. *Id.* at 43.

95. *Id.*

96. *Id.*

97. About 18 million potential subscribers are waiting for connection, about 25% of the number of working connections.

98. The World Bank, recognizing the importance of telecommunications in the proper management of the socio-economic development of India, has been extending considerable support to telecommunications development in the form of loans and credits. The bank has also been instrumental in the extension of bilateral credits from other countries.

99. Matheu v. Vijaya Movies, 1978 Indian L.R. 275 (Kerala H.C.). This court held that there is no unqualified right on the part of any subscriber of any transferee to have his application for a telephone or for a transfer of the telephone invariable allowed or granted.

100. *Id.*

101. INDIA CONST. art. 14. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." *Id. See* Ram Niwas Singh v. District Manager Telephones, 1987 A.I.R. 314 (Allahabad H.C.).

Due to a heavy and growing demand for telephones and limited capacity of the Department to meet the demand, the DOT classifies its customers in different categories and priority is given accordingly. The three categories are: (1) Own Your Telephone Scheme; (2) special; and (3) ordinary. In the first category, the consumer is required to deposit a substantial sum of money to get a telephone. The special category includes professionals, such as doctors and nurses, social workers, and persons of eminence. The ordinary category encompasses all others. It takes about one to two years to get a telephone for someone in the special category, and three to four years in the ordinary category. The courts have upheld the three preferential classifications as constitutional.[102]

When the Telephone Authority refuses to continue or extend telephone facilities to a subscriber because the charges for telephone services have not been paid, there is no opportunity for a hearing before disconnection.[103] Disconnection is not considered punishment, but rather, a remedy for breach of contract since the subscriber and the Telephone Authority are bound by a contract. Breach on the part of the subscriber entitles the Telephone Authority to take appropriate steps. However, there is one limitation. The authorities are not allowed to disconnect telephone service without a hearing if the subscriber was neither residing nor maintaining a place of business at the premises where the telephone was installed.[104]

Any dispute between a telephone consumer and the Telephone Authority concerning any telephone line will be referred to arbitration, according to section 7-B of the ITA.[105] Disputes relating to reading telephone meters, such as whether the meter had been correctly and honestly noted is outside the purview of section 7-B of the ITA.[106]

Subletting a telephone is against public policy and prohibited by section 4 of the ITA.[107] Accordingly, the Andhra Pradesh High Court held in *Seethrama Sastry v. N. Kalwar and Sons*[108] that in view of the ITA's purpose and of section

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102. *See* 1978 Indian L.R. 275 (Kerala H.C.).

103. Raghubar Dayal Kanodia v. Union of India, 1970 A.I.R. 143, 145 (Allahabad H.C.); Bharat Plywood and Timber Products Ltd. v. Kerala State Electricity Board Trivendrum, 1972 A.I.R. __ (Kerala H.C.).

104. 1974 K.L.T. 43. *See also* Hukum Chand v. Union of India, 1976 A.I.R. 789 (S.C.) (holding that if the telephone of the subscriber were to be disconnected on the ground of misuse, then the authorities would have to give the consumer an opportunity to be heard, consonant with the principles of natural justice, before taking any action).

105. Indian Telegraph Act of 1885 § 7-B1. "(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus, is, or has been, provided the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government for determination of disputes under this section. (2) The award of the arbitrator appointed under the subsection (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court."

106. Raghubar Dayal Kanodia, 1970 A.I.R. 143 (Allahabad H.C.).

107. *See supra* Section III.B discussing the privileges and powers of the government.

108. 1968 A.I.R. 315 (Andhra Pradesh H.C.).

20-A,[109] a telephone subscriber who sublets without the written consent of the Telephone Authority and in contravention of the specific conditions of his agreement with the government cannot recover the phone charges from the sublessee.[110]

In *Union of India v. Narayana Iyer*,[111] the court addressed the important question of whether telephone tariffs could be increased to relieve the deficit incurred by DOT. The respondent, a telephone subscriber, challenged the validity of the increased tariff, which was implemented under the Indian Telegraph (Amendment) Rules of 1966[112] and levied pursuant to section 7(2) of the ITA.[113] The respondent contended that the charge for the use of the telephone was a fee, and as such, a reasonable correlation must exist between an increase in the telephone rates and the services rendered by the Department of Posts. Thus, an increase in telephone rates to make up for losses incurred by the Department was not permissible because services were not enhanced.[114] The respondent further argued that the increased rates were arbitrary, unjust, unreasonable, and beyond the rate-seeking power conferred under section 7(2)(a)[115] of the ITA.[116]

The court rejected the respondent's contentions and held that: (1) the impugned tariff was lawful; (2) the additional charges were not unreasonable; and (3) no fundamental rights of the subscriber would be adversely affected by the rate increases.[117] The court further held that section 7(2)(a) of the ITA and rule 443 of the Amendment Rules of the 1966, both of which fix the tariff rate, were neither *ultra vires* under the Constitution nor in excess of the rule-

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109. Indian Telegraph Act of 1885 § 20A. If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with a fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach continues. *See also* Chakkilal, 1943 A.I.R. 143 (Nagpur H.C.) (License for domestic purposes, station installed in shop: conviction can only be possible by evidence not merely of the situation of the radio but of its use to attract or amuse the public).

110. Indian Telegraph Act of 1885 § 20A.

111. 1 Madras L.J. (Reports) 19 (1970) ("*Union of India*"). The Union of India, represented by the Secretary of the Ministry of Communications in Delhi, and the General Manger of Telephones in Madras appealed the judgment of the Single Bench striking down the enhanced tariff. Under the 1960 Tariff Rules in the Madras District, telephone installation charges were fixed at Rs. 40 and rent for a telephone installed in the subscriber's premises at Rs. 50 per quarter year, with 150 free calls for a quarter year (ten paisa for every extra call over and above the free calls). The impugned tariff raised the installation charges to fifteen paisa.

112. The rules came into force on January 16, 1966.

113. *See infra* note 115.

114. *Union of India*, 1 Madras L.J. (Reports) at 19.

115. Indian Telegraph Act of 1885 § 7(2)(a). This section empowers the central government to make rules for the conduct of telegraph. It reads "rules made under this section may provide for the rates at which and other conditions subject to which, messages shall be transmitted within India." Rule 45(c) of the Indian Telegraph Rules of 1984 states: "the charges for ordinary and S.T.D. Trunk calls between any two exchanges or two long distance charging centers not being situated within a redial distance of fifty kilometers shall be reduced by 50% (i) on all Sundays an National Holidays and (ii) between 00.00 hours and 5.00 hours and between 22.00 hours and 24.00 hours on other days."

116. *Id.*

117. *Union of India*, 1 Madras L.J. (Reports) at 30.

making powers given to the central government by the ITA.[118] The court reasoned that the charges levied by the DOT were not fees, but rather, tariff rates determined through lawfully delegated power.[119] The DOT was therefore entitled to a reasonable return under its rate base and could employ all principles of modern accounting in determining of the rate.[120] Also, the court determined that a reasonable tariff rate is a question of fact and depends on such factors as gross income and expenditure, application of surplus and extent of net profits.[121] The court concluded that even if the tariff were unreasonable, it would be the function of the legislature, not the courts, to make a tariff adjustment.[122]

VI. TELEX SERVICES

The major development in telegraph services since India's Independence has been the installation of telex exchanges.[123] In 1963, telex service was introduced in India on a national scale. To satisfy consumer demand, a large number of telex exchanges with full intercommunication capacity have been established in India within a short span of twenty-five years. This service has become extremely popular and consumers increasingly rely on the telex for current news, trade, and business information. In 1983, a new regulation was enacted which requires a security deposit from users of both future and existing telex machine users.[124]

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118. *Id.* at 28-31. *See* Akadasi v. State of Orissa, 1963 A.I.R. 1017 (S.C.). The court held the concept of State monopoly is based on the doctrinaire approach accepted by socialism and not on a pragmatic approach. Hence, the declaration of State monopoly with respect to a trade or business has to be presumed to be reasonable, and in the interest of the public and that would apply to a public utility, like telecommunications, including telephones.

119. Indian Telegraph Act of 1885 § 7(5) provides a statutory safeguard for the rule fixing the tariff to the following effect: "Every rule made under this section shall be laid as soon as may be after it is made before each House of the Parliament . . . and if . . . both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be. . . ."

120. For example, the Department of Telecommunications may be entitled to a reasonable return on investment, to part appropriation of the surplus for capital expansion, and to the employment of modern accounting techniques with regard to depreciation, reserve, sinking fund, etc. The *quid pro quo* element is also essential if there is a monopoly and the consumer is being deprived of the benefits of competition.

121. *Union of India,* 1 Madras L.J. (Reports) at 19.

122. *Id.*

123. *See* GAUR, *supra* note 7, at 40.

124. Indian Telegraph (Second Amendment) Rules of 1983, Rule 505-B(1). "Every subscriber who has a telex connection on the date of commencement of the Telegraph (Second) Amendment Rules of 1983 shall within a period of three months from such commencement deposit a sum of Rs. 10,000 to the Telegraph Authority as security for the said telex connection. (2) If the subscriber fails to deposit the amount specified in sub-rule (1) within the period specified therein the Telegraph Authority may withdraw the telex service and remove any telex or other apparatus belonging to the Telegraph Authority." *Id.* The application of the rule to existing telex subscribers was challenged in the case of *Messrs. S.G. Steels Ltd. v. Union of India,* 1984 A.I.R. 272 (Del. H.C.).

VII. THE NEED FOR AMENDMENT AND REFORM OF INDIAN TELECOMMUNICATIONS REGULATION

It is unfortunate that the Indian Telegraph Act of 1885 which was enacted over a century ago, has not been modified to accommodate modern ideas and new technology.[125] The ITA was drafted by the colonial rulers to protect and safeguard the interest of the ruling class. A careful examination of the provisions reveals that the ITA is unsuited for a democratic country. It does not consider the consumers interest.

The ITA does not safeguard the consumer against invasions or privacy damage to reputation, piracy, or theft of intellectual property. The government may intercept, tap, and withhold any message or content of any document with absolute impunity.[126] This power cannot be tolerated in a democracy.

As discussed above, a consumer may be deprived of a telephone without notice[127] and even charged rent for the period a telephone remains out of order.[128] A consumer, according to the provisions of the ITA, cannot successfully claim damages for loss due to an apparatus, i.e., a telephone, telex, fax, computer, or telegraph remaining out of order and unusable from the telecommunications department, even if it is due to the negligence and fault of the department and its officers.[129] These powers do not reflect a democracy, but rather an authoritarian regime.

To make the provisions of the ITAs and Rules conform to current legal norms, the legislation should be redrafted to recognize and incorporate the latest technological developments into the legislation. The following are suggestions that could serve as guidelines for making telecommunications services and corresponding legislation more responsive to the changing times.

(1) The ITA should be consumer oriented instead of establishment oriented. Adequate and reasonable safeguards should be provided to the consumers to protect their interest as envisaged in a welfare state.

(2) As suggested by Anantanarayanan, C.J., in *Narayana Iyer,*[130] the DOT needs to be more responsive and efficient so that it can handle the challenges posed by modern technology. This could be achieved by converting the DOT into a statutory corporation with full powers to plan the future and to conduct the present affair with fairness to the subscribers.[131] Although some steps have been taken in recent years to organize the department by establishing two

125. *Union of India,* 1 Madras L.J. (Reports) at 34.
126. Indian Telegraph Act of 1885 § 5(2).
127. Rule 443 of Telegraph Rules of 1951, Part V. *See supra* text discussed in Section II.C.
128. N.L. Roy v. Union of India, 1987 A.I.R. 147 (Cal. H.C.).
129. *See supra* note 53. *See also supra* Section II.C.
130. *Union of India,* 1 Madras L.J. (Reports) at 19.
131. *Id.* at 38.

companies in Metropolitan towns of Delhi and Bombay,[132] these half-hearted attempts will not solve the problems.

(3) The private sector should become involved in a telecommunication expansion program. Gradual privatization of the telecommunications sector may be a necessary alternative to make the services cheap, efficient, and effective. Currently, the telecommunications services in India are very costly, inefficient, and counter-productive relative to similar services offered elsewhere in the world.[133] In this modern age of advanced technology, there is no reason for a consumer to wait years to receive a telephone connection. Even in India's neighboring countries in Southeast Asia, such as Malaysia, Indonesia, Singapore, Korea, and Hong Kong, a telephone is available upon one day's notice.

(4) The efficiency of the government telecommunications personnel, judged by relative statistics of similar departments in foreign countries, appears to be low.[134] To remedy this weakness, the DOT personnel should be properly trained, initially, and then be required to attend periodic training and refresher courses to keep them abreast of technological developments. Finally, incentives should be given to encourage the staff to work efficiently.

(5) The public should be informed about their rights, obligations, duties, and privileges regarding telecommunication facilities through the press, radio, and television. Then, they will be able to support and defend any arbitrary and unfair action and harassment by the DOT.

VIII. BROADCASTING: GOVERNMENT MONOPOLY—A STEP FORWARD TOWARD AUTONOMY

Radio and television broadcasting, like other telecommunications services, are state monopolies in India. This industry is under the control and jurisdiction of the Ministry of Information and Broadcasting.[135]

Radio broadcasting has been particularly effective in informing, educating, and entertaining the Indian population. Eighty-five percent of Indians live in over 500,000 villages and have little access to the print media, illiteracy notwithstanding. Similar to telephone services, the radio network has been greatly expanded since 1947. Indian Radio,[136] the largest broadcasting agency in the world, supervises broadcasting within India and seeks to project a true and objective image of the country and its viewpoints to listeners abroad.

In contrast to radio, television has grown quite slowly since its introduction in the late 1960s. However, since the IX Asian Games,[137] held in Delhi in November 1982, television has expanded rapidly and now reaches nearly 75% of

132. *See supra* Section I discussing the history and organization of telecommunications in India.
133. *Union of India,* 1 Madras L.J. (Reports) at 38.
134. *Id.*
135. *See supra* note 97.
136. *See* GAUR, *supra* note 7, at 8.
137. *Id.* at 131.

the population. This unparalleled growth is the result of satellite telecommunications capabilities. Nonetheless, several problems linger in the television industry: (1) overcommercialism;[138] (2) lack of appropriate software;[139] and (3) excessive government control.

1. Commercialization. Commercials were introduced on Indian television on January 1, 1976.[140] At present, all the main television centers telecast commercial spots, as well as sponsored programs. These paid spots provide substantial revenue for the state. However, they provide little to the public, other than frustration. India is a welfare State where 70% of the population do not receive two square meals a day. All the charming and colorful faces appearing on the screen to buy toiletries, costly fabric, and artificial food do not correspond well with a welfare state's idealogy. The DOT should be more responsive to the public's need when approving commercial spots. Specifically, the government should expose the public to positive messages rather than providing the public with impossible dreams. The current government policy is akin to holding a steaming bowl of rice to a starving person from a distance and then allowing him to die.[141]

2. Software Vis-à-Vis Communication. The message and form of the desired software should dictate the choice of communications hardware, not the other way around.[142] Realizing the importance of software, the Ministry of Information and Broadcasting appointed a working group on television software on December 6, 1982.[143] The committee suggested that the audio-visual media should serve a large, national purpose, instead of narrow and partisan interest. The committee concluded that telecommunications technology must be used to facilitate socio-economic transformation and growth with social justice. The committee asserted that unless the importance of software is realized, the television expansion plan would stand condemned as the greatest aberration in the history of the Third World.[144]

The key to television effectiveness lies in the right kind of software, and proper planning to meet the challenges of a democratic society striving to achieve an idealized culture, a wider social vision, and deeper social consciousness. Through diverse broadcasting, i.e., broadcasting music, dance, traditional theater, and folk arts, the monotony of television programs should dissipate leaving room for a more meaningful programs which promote these social goals.

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138. Hindustan Times, Mar. 18, 1985, at 5.

139. *See* GAUR, *supra* note 7, at 143-45.

140. *Id.* at 146.

141. Dosai, *A New Doordurshan*, THE STATESMAN (Jan. 18, 1985).

142. Bhagat, *Communications in India: Prospects and Policies*, 28 COMMUNICATOR 53 (1983).

143. *See* GAUR, *supra* note 7, at 143-44. The working group was headed by P.C. Joshi, Director of the Institute of Economic Growth. The committee submitted its report to the government on January 18, 1985.

144. Dosai, *supra* note 141.

3. Step Forward Towards Media Autonomy: Prasar Bharati (Broadcasting Corporation of India) ITA, 1989. The perception that the electronic media can function independently only when it is autonomous and free from the clutches of the government is not new. This perception has sharpened over time in keeping with the increasing reach of radio and television.

The Prasar Barati (Broadcasting Corporation of India) Act of 1989 ("1989 Act") is a small act consisting of thirty-one sections divided into four chapters. Chapter I (sections 1 and 2) is preliminary. Chapter II (sections 2-14) contains provisions for the constitution, establishment, and composition of the Prasar Bharati (Broadcasting Corporation of India). Chapter III (sections 15-21) deals with assets, finances, and accounts of the corporation. Chapter IV (sections 22-31) is comprised of miscellaneous provisions.

The 1989 Act envisions the creation of an autonomous corporation called Prasar Bharati (Broadcasting Corporation of India). The Corporation will have two distinct departments, radio and television. The Corporation will have a Board of Governors consisting of a Chairman, an Executive Governor, and a Governor.[145] The Corporation will, while discharging its functions, be guided by specific objectives, with emphasis on upholding the unity and integrity of the country, nurturing the democratic and social values enshrined in the Constitution, and projecting the varied cultural traditions of different regions of the country.[146]

Apart from a Board of Governors, a Broadcasting Council of eleven members will be formed to advise the Corporation in the discharge of its functions.[147] The members of the Council will be appointed by the President of India.[148] The Broadcasting Council will receive and consider any complaint in any matter relating to the functioning of the media and all related matters.[149] If necessary, the Broadcasting Council may form Regional Councils to aid and assist the Council in the discharge of its functions.[150]

Although the 1989 Act has been enacted as law, another major hurdle remains regarding its implementation. According to section 1(3), the implementation of the Act is entirely within the purview and discretion of the government.[151]

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145. Prasar Bharti (Broadcasting Corporation of India) Act of 1989 §§ 3-10. The Board will consist of four full time and six part time members and a nominee of the Ministry of Information and Broadcasting, Government of India.

146. *Id.* § 12 (details the functions and powers of the Corporation). Clause (1) provides that it shall be the primary duty of the Corporation to organize and conduct public broadcasting services, to inform, educate, and entertain the public and to ensure a balanced development of radio and television. Sub-clause (2) enumerates the various objectives by which the Corporation shall be guided in the discharge of its functions.

147. *Id.* § 13(1).

148. *Id.* §§ 13(2)-13(3).

149. *Id.* § 14.

150. *Id.* § 13(4).

151. Prasar Bharati (Broadcasting Corporation of India) Act of 1989 § 1(3) provides: "It [the act] shall come into force on such date as the Central Government may, by notification, appoint."

Thus, if the successor government is not committed to according autonomy to the electronic media, the 1989 Act will have no effect. The future will be a critical time for the current government to demonstrate its sincerity and determination to implement the 1989 ITA and fulfill the public's desire for a fair and free electronic media. The government should act swiftly and use its discretion to establish the Broadcasting Corporation.

CONCLUSION

The advent of satellites, cable television, optical fibre, and other high technology has raised many legal questions on such matters as frequency use, transborder communications privacy, contract, and intellectual property rights. The Indian government should examine these new technologies and review how these matters are being addressed under current Indian laws and regulations. The government will no doubt find that the speed with which technological developments and changes have occurred has made many former legal provisions obsolete.[152] Consequently, regulators and administrators find it difficult to apply legislation to meet new situations.

As this Article demonstrates, most of the Indian legislation concerning telecommunications broadcasting should be thoroughly revised and amended to address the developments in telecommunications technology so India's telecommunications services can become more efficient and responsive to public needs. The suggestions in this Article are intended to initiate this reform process.

152. *See* GAUR, *supra* note 7, at 115-16.