



Telecom Regulatory Authority of India

Consultation Paper

on

**Issues relating to entry of certain entities into Broadcasting and
Distribution activities**

New Delhi: February 25, 2008

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Preface

Television and radio broadcasting are among the most popular and effective means of communication for the masses. In India, the activities relating to the broadcasting sector, particularly owning television or radio channels, are in the hands of Prasar Bharati (an autonomous body created by an Act of Parliament) and the private sector, while its distribution platforms are largely in the hands of the private sector.

There are different eligibility criteria for entering into the broadcasting and distribution activities. In the past, certain State Governments had shown interest to get into this sector, but were not granted the permission under the extant policy of the Government of India. Recently, some more requests have been received by the Government of India seeking permission for undertaking broadcasting and distribution activities. The Government of India has sought the recommendations of TRAI on the subject.

The Telecom Regulatory Authority of India has, as per established practice for open consultation with all the stakeholders, prepared a consultation paper on the subject covering various issues involved. The objective of this Consultation Paper is to obtain the inputs of stakeholders and to generate a discussion on the appropriate policy relating to commencement of broadcasting activity by certain entities including the State Governments. Accordingly, the Telecom Regulatory Authority of India (TRAI) solicits the views of all the stakeholders on the issues raised in the consultation paper.

4. Written comments on the issues raised for consultation may please be furnished to Principal Advisor (Legal), TRAI by March 25, 2008. The comments may preferably be sent in electronic form. [E-mail: traicable@yahoo.co.in]. The Fax numbers of TRAI are 011-23237749 /011-23213294.

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Chapter 1. Introduction

- 1.1 Radio and television broadcasting are among the most popular means for mass communication. The broadcasting activities broadly fall under two categories, the first one being creation and dissemination of content, while the second one is the distribution activity. As of today, broadcasting activities in India are with Prasar Bharati (created by an Act of Parliament) and with the private sector, while that of distribution is largely in the hands of private operators except the Direct to Home (DTH) services of Prasar Bharati, and some public sector undertakings like Mahanagar Telephone Nigam Limited (MTNL), who have reportedly registered themselves as cable operators under the Cable Television Networks (Regulation) Act, 1995.
- 1.2 Government of India, Ministry of Information & Broadcasting in its letter No. D.O. No. 9/32/2007-BP&L dated December 27, 2007 (placed at **Annexure A**) has requested the Telecom Regulatory Authority of India (TRAI) to examine the matter of allowing some other entities including State Governments to enter into the broadcasting activities and has requested for submission of its recommendations as per the provisions of section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997 especially covering the following issues, namely:-
- i. Whether State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies and political bodies should be permitted to enter into Broadcasting activities which may include starting of broadcast channel or entering into distribution platform like cable services.
 - (a) If 'yes', what are the kind of broadcasting activities which should be permitted to such organization and to what extent? What are the safeguards required to prevent monopoly or misuse? Whether any amendments are required in the extant Acts/Rules/Guidelines to provide for the same.
 - (b) If 'No', Whether disqualifications proposed in Section 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto should be considered as it is or with some modifications for incorporation in the

existing Cable Act and Rules relating thereto and in the proposed Broadcasting Services Regulation Bill, 2007, and policy guidelines with respect to broadcast sector issued by Ministry of Information and Broadcasting. If so, what are the amendments/provisions required to be made in them?

- ii. Whether similar disqualifications with respect to religious bodies on the lines of Broadcasting Bill, 1997 or with some modifications be also considered for religious bodies.
- 1.3 As per sub-section (4) of section 11 of the TRAI Act, 1997, the Authority is required to ensure transparency while discharging its functions. TRAI is accordingly initiating a process of consultation to evolve a detailed policy framework on these issues.
- 1.4 Chapter 2 of this consultation paper gives the brief background of the sector. Chapter 3 mainly focuses on the extant policies in different fields of broadcasting activities. Chapter 4 contains information on the international practices. Chapter 5 contains the history of past requests for permission to enter into the broadcasting sector and decisions taken by the Central Government on such requests. The issues for consultation are discussed in Chapter 6, and at the end, the letter from Ministry of Information and Broadcasting, and the relevant portions of Broadcasting Bill, 1997 are annexed alongwith other annexures relating to the subject .

Chapter 2. Background

Broadcasting in India

- 2.1 Radio and television are among the two important communication tools to reach the masses. Radio broadcasting was started in India in 1927 with the proliferation of private radio clubs. The operations of All India Radio (AIR) began formally in 1936, as a Government organisation, with clear objectives to inform, educate and entertain the masses. When India attained independence in 1947, the coverage of AIR was 2.5% of the area and 11% of the population. Rapid expansion of the network took place after Independence. AIR today has a network of 229 broadcasting centres with 148 medium wave (MW), 54 short wave (SW) and 168 Frequency Modulation (FM) transmitters. The coverage is 91.79% of the area, serving 99.14% of the people in the largest democracy of the world. All India Radio is having its operations in Medium Wave (MW), Short wave (SW) and in Frequency Modulation (FM) mode of terrestrial radio transmission.
- 2.2 Keeping in line with the policy of liberalization and reforms followed by the Government since 1991, frequency Modulation (FM) Radio broadcasting was opened up for private participation in the year 2000. Today, apart from All India Radio, there are 185 private FM channels operating in different cities.
- 2.3 On the television side, Doordarshan's TV transmission was started in India in 1959. This had a modest beginning with an experimental telecast starting in Delhi. The regular daily transmission started in 1965 as a part of All India Radio. The television service was separated from All India Radio in 1976. Today, apart from various satellite channels, Doordarshan is having 1397 transmitters relaying their two terrestrial channels DD-National and DD News. DD National is covering 91.9% population and DD News is covering 49% population of India terrestrially.
- 2.4 Subsequently, Doordarshan and All India Radio have come under the Prasar Bharati established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.
- 2.5 Government of India (Ministry of Information and Broadcasting) notified the "Guidelines for uplinking from India" in July 2000. This was followed by "Guidelines for Uplinking of News and Current Affairs TV Channels from India" in March 2003, which were amended in August 2003, "Guidelines for use of Satellite

News Gathering (SNG)/Digital Satellite News Gathering (DSNG)” in May 2003 and addendum dated April 01, 2005 to the uplinking guidelines. The Government further amended these guidelines on October 20, 2005. All these were consolidated into one set of guidelines and the consolidated uplinking guidelines were notified on December 2, 2005. No broadcaster can uplink a channel from India without uplinking permission from the Government of India under these Guidelines.

- 2.6 Ministry of Information and Broadcasting, Government of India has, on November 11, 2005, issued Policy Guidelines for Downlinking of Television Channels, applicable for downlinking satellite television channels in India for public viewing. Consequently, no person/entity shall downlink a channel, which has not been registered by the Ministry of Information and Broadcasting under the said guidelines. Thenceforth, all persons/ entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (TV Channel), receivable in India for public viewership, is required to obtain permission from Ministry of Information and Broadcasting, in accordance with the terms and conditions prescribed under the said guidelines.

- 2.7 ¹As on November 15, 2007, Government of India (Ministry of Information and broadcasting) has permitted 149 News and current affairs TV channels and 106 non-News & current affairs TV channels to uplink from India. A total of 57 TV channels, uplinked from abroad, have been permitted to downlink in India, including 52 TV channels who have been provisionally permitted. This permission is for operation on an All-India basis and are not State-wise. Out of the total 255 channels permitted to be uplinked form India, 123 channels have Indian ownership whereas 132 channels have varying component of foreign equity in the parent company. Out of the total 57 TV channels uplinked from abroad and permitted to be downlinked in India, two TV channels have Indian equity whereas the remaining 55 TV channels have foreign equity. As pointed out ahead in para 3.22, the Lok Sabha Secretariat and the Indira Gandhi National Open University (IGNOU) are also operating their respective TV channels.

¹ Source: Reply to Lok Sabha unstarred Question No. 555 dated the 20th November, 2007

- 2.8 The cable TV operations in India were started around 1990. The cable TV operations in India are governed by the Cable Television Networks (Regulation) Act, 1995. The cable TV segment in India, although fragmented, has shown a tremendous growth. As per the industry estimates, there are 120 million TV Homes in the country, out of which, about 75 million are served by cable TV network. There are between 40,000 to 60,000 cable operators serving these 75 million cable TV homes.
- 2.9 Conditional Access System (CAS) in cable services is right now operational in whole of Chennai and in the CAS notified areas of Delhi, Mumbai and Kolkata. In these areas, pay channels are being transmitted in addressable mode. In these CAS operational areas, around 0.5 million subscribers have opted for watching pay channels and enjoying the facility to pay for their subscribed pay channels.
- 2.10 Government of India permitted the reception and distribution of television signals in Ku band vide its notification no. GSR 18(E) dated January 09, 2001 issued by the Department of Telecommunications. This marked the beginning of Direct-to-Home(DTH) broadcasting services in India in Ku band. At present, apart from Doordarshan's DTH free to air service, there are 3 DTH pay services in operation. Two new DTH operators are expected to launch their services shortly. There are, at present, approximately 3.5 million pay DTH subscribers of private operators in India.
- 2.11 Government of India, in the year 2003, issued permission to two companies to operate Headend-In-The-Sky (HITS) service for fast implementation of CAS. However, this service has not taken off so far. Recently, on 17th October, 2007, TRAI has forwarded its recommendations on the detailed policy framework for HITS operation to the Government of India.
- 2.12 The Authority had earlier made its recommendation separately on August 29, 2005 on the Issues Relating to Private Terrestrial TV Broadcast Service. The Authority has recommended that---
- i. terrestrial television broadcasting should be allowed in the private sector also.
 - ii. this should be allowed also for community television.

These recommendations are under consideration in the Government.

- 2.13 The Authority has also given recommendations for other distribution services such as Internet Protocol Television(IPTV) (issued on November 28, 2007) and Mobile TV (issued on January 23, 2008) recently.

Chapter 3. Extant Legal Framework and Policy

Constitutional Provisions:

3.1 Entry No.31 in List I (Union List) of the Seventh Schedule to the Constitution of India covers "Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication". Thus, only the Central Government, as per Article 246 of the Constitution, can legislate on these subjects.

3.2 Article 19 of the Constitution of India on the Right to Freedom (including the right to freedom of speech and expression) reads as under:-

"19. Protection of certain rights regarding freedom of speech, etc. – (1) All citizens shall have the right –

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

* * * * *

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (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 relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law

imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

Provisions of Indian Telegraph Act

3.3 Section 4 of the Indian Telegraph Act, 1885 reads as under:-

“ 4. Exclusive privilege in respect of telegraphs, and power to grant licenses.— (1) Within India, the Central Government shall have 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:

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working –

- (a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
- (b) of telegraphs other than wireless telegraphs within any part of India.

Explanation – The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendations made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997).

(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.”

- 3.4 The Grant of Permission Agreements for establishment, maintenance and operation of unlinking hub (teleport) under the Guidelines for Uplinking from India provides, inter alia, as under:-

“5. Application of the Indian Telegraph Act and other Laws

5.1 The Permission shall be governed by the provisions of the Telecom Regulatory Authority of India Act, 1997, Indian Telegraph Act, 1885 and Indian

Wireless Telegraphy Act, 1933 as amended from time to time and any other law as applicable to broadcasting which has or may come into force.”

Allocation of Business Rules

- 3.5 As per the Government of India (Allocation of Business) Rules, 1961, the Ministry of Information & Broadcasting is mandated to deal with all matters relating to radio and television broadcasting activities within the Union. The Second Schedule to the said Rules, inter alia, contains the following provisions as regards broadcasting as part of the functions of the Ministry of Information and Broadcasting, namely:—

“I. BROADCASTING POLICY AND ADMINISTRATION

1. All matters relating to radio and television broadcasting within the Union including regulation of the use of All India Radio and Doordarshan by recognised national and regional political parties during elections to the Lok Sabha and State Assemblies and procedure to be followed by the official electronic media during periods of national mourning on the demise of a high dignitary.
2. The enunciation and implementation of the law relating to radio and television broadcasting in India by private Indian companies or Indian nationals.
3. Broadcast Monitoring and Administration of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990).
4. All matters relating to the Indian Broadcasting (Programme) Service and the Indian Broadcasting (Engineering) Service until they are handed over to Prasar Bharati.

II. CABLE TELEVISION POLICY

5. Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

III. RADIO

6. All business connected with All India Radio embracing news services in the home programmes, programmes for the foreign countries and Indians overseas, radio journals, research in the field of broadcasting engineering, monitoring of foreign broadcasts, programme exchange and transcription services, supply of

community receiving sets to State Governments under the community listening scheme, etc.

7. Development of radio Broadcasting throughout the Union, installation and maintenance of Radio Stations and Transmitters and operation of broadcasting services.”

- 3.6 Thus, all matters relating to television and radio broadcasting and the distribution of broadcast channels are under the purview of the Ministry of Information and Broadcasting and the legal regime governing these activities is contained in the provisions of the various Acts referred to in the preceding paragraphs.
- 3.7 As indicated in the previous chapter, the television and radio broadcasting sector in India has participation from both the Prasar Bharati (established by an Act of Parliament) as well as private sector broadcasters.
- 3.8 The cable TV sector, as a distribution platform, is almost entirely in the hands of private cable operators including multi-system operators. Some State owned entities such as MTNL have also reportedly registered themselves as cable operators in some areas under the Cable Television Networks (Regulation) Act, 1995. DTH distribution platform is in the hands of private players except for the DTH free-to-air service of Doordarshan under Prasar Bharati.
- 3.9 As far as creation of content is concerned, there is no bar for any entity to create content. However, television and radio broadcast channels are required to adhere to the Programme Code and Advertisement Code prescribed under the Cable Television Networks (Regulation) Act, 1995, as far as content is concerned.
- 3.10 The satellite television channels are permitted to be carried through different distribution modes such as cable TV, DTH, etc. by adhering to the uplinking/downlinking guidelines. The other type of channels created by the cable operators (more popularly known as Ground Channels) which run only within the closed network of cable, do not currently need any specific permission, but these Ground Channels are also required to follow the Programme Code and Advertisement Code as per the Cable Television Networks (Regulation) Act, 1995.

- 3.11 There are certain criteria and guidelines in place as regards the entry of different categories of persons and entities into the broadcasting sector and into the distribution platforms, i.e., whether it is for running a TV/radio channel or for distributing broadcast channels to the masses for public viewing/listening. These are indicated in the following paras.

I. Eligibility conditions for TV channel broadcasting and news agencies

A. For Downlinking the Television Channels uplinked from abroad

- 3.12 The entity applying for permission for downlinking a channel, uplinked from abroad must satisfy, inter alia, the following eligibility conditions as specified in the downlinking guidelines, namely:-

“1.1 The entity applying for permission for downlinking a channel, uplinked from abroad, (i.e. Applicant Company), must be a company registered in India under the Indian Companies Act, 1956, irrespective of its equity structure, foreign ownership or management control.

1.2 The applicant company must have a commercial presence in India with its principal place of business in India.

1.3 The applicant company must either own the channel it wants downlinked for public viewing, or must enjoy, for the territory of India, exclusive marketing/distribution rights for the same, inclusive of the rights to the advertising and subscription revenues for the channel and must submit adequate proof at the time of application.

1.4 In case the applicant company has exclusive marketing / distribution rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and programme content.”

B. For Setting up of an uplinking hub/teleport in India

- 3.13 The applicant seeking permission to set up an uplinking hub/ teleport should be a company registered in India under the Companies Act, 1956. The foreign equity

holding including NRI/OCB/PIO should not exceed 49% in the applicant company (as specified in clause 1.1.1 of the consolidated uplinking guidelines).

C For uplinking a News and Current Affairs Television Channel

3.14 Under the Guidelines for Uplinking from India, a “News & Current Affairs TV channel” has been defined as a channel which has any element of news & current affairs in its programme content.

3.15 The entity seeking permission for uplinking a News and Current Affairs Television Channel should be a company registered in India under the Companies Act, 1956.

3.16 Clause 3.1 of the consolidated uplinking guidelines contains the following eligibility conditions, namely:-

“**3.1.1** Foreign Equity holding including FDI/FII/NRI investments should not exceed 26% of the Paid Up equity of the applicant company. However, the entity making portfolio investment in the form of FII/NRIs deposits shall not be “**persons acting in concert**” with FDI investors, as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The Company, permitted to uplink the channel shall certify the continued compliance of this requirement through its Company Secretary, at the end of each financial year.

3.1.2 Permission will be granted only in cases where equity held by the largest Indian shareholder is at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions as defined in Section 4A of the Companies Act, 1956, in the New Entity. The term largest Indian shareholder, used in this clause, will include any or a combination of the following:

(1) In the case of an individual shareholder,

(a) The individual shareholder.

(b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(c) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(2) In the case of an Indian company,

(a) The Indian company

(b) A group of Indian companies under the same management and ownership control.

For the purpose of this Clause, “Indian company” shall be a company, which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

Provided that in case of a combination of all or any of the entities mentioned in Sub-Clause (1) and (2) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

3.1.3 While calculating foreign equity of the applicant company, the foreign holding component, if any, in the equity of the Indian shareholder companies of the applicant company will be duly reckoned on pro-rata basis, so as to arrive at the total foreign holding in the applicant company. However, the indirect FII equity in a company as on 31st March of the year would be taken for the purposes of pro-rata reckoning of foreign holdings.

3.1.4 The company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.

3.1.5 It will be obligatory on the part of the company to intimate the Ministry of Information & Broadcasting, the changes in Foreign Direct Investment in the company, within 15 days of such change. While effecting changes in the shareholding patterns, it shall ensure its continued compliance to Clause 3.1.1 and 3.1.2 above.

3.1.6 The applicant shall be required to intimate the names and details of all persons, not being resident Indians, who are proposed to be inducted in the Board of Directors of the company.

3.1.7 The company shall be liable to intimate the names and details of any foreigners/ NRIs to be employed/ engaged in the company either as Consultants (or in any other capacity) for more than 60 days in a year, or, as regular employees.

3.1.8 At least 3/4th of the Directors on the Board of Directors of the company and all key Executives and Editorial staff shall be resident Indians.

3.1.9 The representation on the Board of Directors of the company shall as far as possible be proportionate to the shareholding.

3.1.10 All appointments of key personnel (executive and editorial) shall be made by the applicant company without any reference on from any other company, Indian or foreign.

3.1.11 The applicant company must have complete management control, operational independence and control over its resources and assets and must have adequate financial strength for running a news and current affairs TV channel.

3.1.12 CEO of the applicant company, known by any designation, and/ or Head of the channel, shall be a resident Indian.”

D. For uplinking a non- News Television Channel

3.17 Under the Guidelines for Uplinking from India, a “Non-News & Current Affairs TV channel” has been defined as a channel which does not have any element of news & current Affairs in its programme content.

3.18 The applicant seeking permission to uplink a Non-News & Current Affairs TV channel should be a company registered in India under the Companies Act, 1956.

3.19 The applicant company, irrespective of its ownership, equity structure or management control, would be eligible to seek permission (clause 2.1.1 of the consolidated uplinking guidelines).

E. Permission for uplinking by Indian News agency

3.20 The applicant seeking permission to set up uplink facility by a News Agency should be a company registered in India under the Companies Act, 1956.

3.21 Clause 4.1 of the consolidated uplinking guidelines prescribes, inter alia, the following eligibility conditions, namely:-

“4.1 Eligibility criteria.

4.1.1 The applicant company should be accredited by Press Information Bureau (PIB).

4.1.2 The applicant company should be 100% owned by Indian, with Indian Management Control.”

F. Other existing permissions

3.22 Lok Sabha Secretariat has been granted permission by the Government of India to launch their own television broadcasting channel, namely, Lok Sabha television channel. Similarly, the Indira Gandhi National Open University (IGNOU) has been granted permission earlier by the Government of India to broadcast its own television channels.

G. Private Terrestrial Television

3.23 Terrestrial television has not been opened up for the private sector yet by the Government of India. The Authority has made its recommendations on “Issues Relating to Private Terrestrial TV Broadcast Service” on August 29, 2005. In these recommendations, the Authority has given the following recommendations on the question of eligibility conditions and on the issue of foreign ownership for private terrestrial television, namely :-

“ 6.3.2 Eligibility

No detailed eligibility conditions need be laid for the present. However, the general disqualifications which have been adopted for Private FM Radio may be used for private terrestrial television broadcasting also. This would mean that the following would be disqualified from holding a licence :

- General disqualifications

- o Companies not incorporated in India;
- o Any company controlled by a person convicted of an offence involving turpitude or declared as insolvent or applied for being declared insolvent;
- o Subsidiary company of any applicant in the same centre;
- o Companies with the same management within a centre;
- o More than one inter-connected undertaking at the same centre.
- o Religious bodies
- o Political bodies
- o Advertising agencies
- o Trusts, Societies, Non profit Organisations controlled/associated companies.

6.3.3 Foreign Ownership

As has been recommended earlier by the Authority in the context of Private FM Radio, the rules regarding foreign investment need to be reviewed to bring about a greater consistency in the rules of various segments of the media sector. Given the interest of the telecom sector in this area, this review would also need to take note of the likely convergence in future between telecommunications and broadcasting.”

II. Eligibility conditions for Radio Operations

A. Frequency Modulation (FM) Radio

- 3.24 Apart from AIR (Prasar Bharati), FM Radio operations have been opened up for private agencies. The basic eligibility condition for private FM operators is that the applicant should be a company registered in India under the Companies Act, 1956.
- 3.25 Other eligibility conditions as prescribed in the invitation for Pre-Qualification Bids for expansion of FM Radio Broadcasting Services through Private Agencies (Vacant

channels of Phase – II), as published by the Government of India in the Ministry of Information and Broadcasting, provide, inter alia, as under:-

“2.1 Foreign Investment:

2.1.1 In the applicant company, total foreign investment, including FDI by Overseas Corporate Bodies/Non-Resident Indians/Persons of Indian Origin etc., portfolio investments by Foreign Institutional Investors(FII), within limits prescribed by RBI, and borrowings, if these carry conversion options, shall not exceed 20% of the paid up equity in the entity, subject to the following conditions:-

- i. One Indian individual or company owns more than 50% of the paid up equity in the applicant entity excluding the equity held by banks and other lending institutions.
- ii. The majority shareholder exercises management control over the applicant entity.
- iii. The applicant entity has only resident Indians as directors on the board.
- iv. All key executive officers of the applicant entity are resident Indians.”

- 3.26 The invitation for Pre-Qualification Bids for expansion of FM Radio Broadcasting Services through Private Agencies (Vacant channels of Phase – II), as referred to in the preceding paragraph also contains the following clause related to disqualifications, namely:-

“3. DISQUALIFICATIONS:

- a) Companies not incorporated in India.
- b) Any company controlled by a person convicted of an offence involving moral turpitude or declared as insolvent or applied for being declared insolvent;
- c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;
- d) A company controlled by or associated with a religious body;
- e) A company controlled by or associated with a political body;

- f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;
- g) Subsidiary company of any applicant in the same City;
- h) Holding company of any applicant in the same City;
- i) Companies with the Same Management within a City;
- j) More than one Inter-Connected Undertaking at the same City;
- k) A company that has been debarred from taking part in the bidding process by virtue of default in Phase- I/phase-II or its associate company with the same management.
- l) The defaulters of conditions under Phase-I & Phase II who have contested the revocation of their Letters of Intent/License Agreements, thereby continue to be debarred from participating in any future bidding process as per Phase-I policy

Provided that the following shall not be disqualified:

- i. A company on default of terms and conditions under Phase-I/Phase -II whose Letter of Intent/License Agreement has been revoked and who has accepted such revocation and has exercised its option to participate in Phase-II.
- ii. A company on default of terms and conditions under Phase-II, whose Letter of Intent/License Agreement has been revoked and who has accepted such revocation.
- iii. A Company already operating FM radio stations (except for cities where it is already operating under Phase I & II).

Note 1: For the purpose of sub clause (d) above a religious body shall be:

- i. A body whose objectives are wholly or mainly of a religious nature;
- ii. A body, which is controlled by a religious body or an associate of religious body

Note 2: For the purpose of sub clause (e) above a political body shall be:

- i. A body whose objects are wholly or mainly of a political nature;
- ii. A body affiliated to a political body;
- iii. A body corporate, which is an associate of a body corporate controlled, held by, operating in association or controlling a body of political nature as referred above.

Note 3: For the purposes of clause (f) an “Advertising Agency” shall mean an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent and any reference to an advertising agency includes a reference to an individual who

- i. is a director or officer of any body corporate which carries on such a business, or
- ii. is employed by any person who carries on such a business.

Note 4: For the purposes of clause(g), (h) & (i) the terms “Same Management”, ‘Subsidiary Company’ and ‘Holding Company’ shall have the same meaning as assigned to them under Section 4 of the Companies Act, 1956;

Note 5: For the purposes of clause (j) the term “Inter Connected Undertakings” shall have the same meaning as assigned to it in the Monopolies and Restrictive Trade Practices Act, 1969;

Note 6: If the applicant and the subsidiary company/holding/company with the same management/Inter-Connected Undertaking submit more than one bid for the same City, only the highest valid bid shall be taken into account for evaluation.”

B. Community Radio

- 3.27 The policy guidelines for community radio stipulates the eligibility criteria for the applicants as under:-

“1. Basic Principles

An organisation desirous of operating a Community Radio Station (CRS) must be able to satisfy and adhere to the following principles:

- a) It should be explicitly constituted as a 'non-profit' organisation and should have a proven record of at least three years of service to the local community.
- b) The CRS to be operated by it should be designed to serve a specific well-defined local community.
- c) It should have an ownership and management structure that is reflective of the community that the CRS seeks to serve.
- d) Programmes for broadcast should be relevant to the educational, developmental, social and cultural needs of the community.
- e) It must be a Legal Entity i.e. it should be registered (under the registration of Societies Act or any other such act relevant to the purpose).

2. Eligibility Criteria

(i) The following types of organisations shall be eligible to apply for Community Radio licences:

a) Community based organisations, which satisfy the basic principles listed at para 1 above. These would include civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such act relevant for the purpose. Registration at the time of application should at least be three years old.

b) Educational institutions

(ii) The following shall not be eligible to run a CRS:

- a) Individuals;
- b) Political Parties and their affiliate organisations; [including students, women's, trade unions and such other wings affiliated to these parties.]
- c) Organisations operating with a motive to earn profit;
- d) Organisations expressly banned by the Union and State Governments."

III. Eligibility conditions for distribution platforms for TV channels

A. Cable TV Operation

- 3.28 The cable TV operations are governed by the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the Cable Act) and the Cable Television Networks Rules, 1994 (hereinafter referred to as the Cable Rules). Under sub-section (1) of section 4 of the Cable Act, any person who is operating or is desirous of operating a cable television network requires registration as a cable operator with the registering authority (as notified by the Central Government under the Act, being Head Post Masters of local Head Post Offices). For the purpose of the Cable Act, “person” has been defined as under :-

“(e) ‘person’ means -----

- (i) an individual who is a citizen of India;
 - (ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
 - (iii) a company in which not less than fifty-on per cent of paid-up share capital is held by the citizens of India;”
- 3.29 In the distribution chain in Cable TV, there are entities functioning as Multi System Operators (MSOs) which mainly aggregate the contents from different broadcasters and then provide the signals for the same to last mile cable operators. The present legal system is that these MSOs also have to register themselves as a cable operator and the same eligibility conditions apply to MSOs also. In addition to registration as a cable operator, an MSO operating in CAS notified areas is also required to take necessary permission from the Ministry of Information and Broadcasting as per sub-rule (2) of rule 11 of the Cable Television Networks Rules, 1994.

B. Direct to Home (DTH) Operations

- 3.30 The eligibility criteria for entities wishing to start DTH operations (according to the guidelines for obtaining licence for providing Direct-to-Home (DTH) broadcasting service in India) are as under:-

- (i) Applicant Company to be an Indian Company registered under Indian Company's Act, 1956.
- (ii) Total foreign equity holding including FDI/NRI/OCB/FII in the applicant company not to exceed 49%.
- (iii) Within the foreign equity, the FDI component not to exceed 20%.
- (iv) The quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter Company, held or controlled by the foreign investors through FDI/NRI/OCB investments, shall form part of the above said FDI limit of 20%.
- (v) The applicant company must have Indian Management Control with majority representatives on the board as well as the Chief Executive of the company being a resident Indian.
- (vi) Broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20% of the total equity of the applicant company at any time during the license period. Similarly, the applicant company shall not have more than 20% equity share in a broadcasting and/or cable network company.

C. Mobile TV

3.31 The Authority has forwarded its recommendations on the Issues Relating to Mobile Television Service on January 23, 2008 to the Government of India. The Authority has recommended the following general disqualifications for mobile television service, namely :-

- “(a) Companies not incorporated in India;
- (b) Any company controlled by a person convicted of an offence involving moral turpitude or declared as insolvent or applied for being declared insolvent;
- (c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;
- (d) A company controlled by or associated with a religious body;

- (e) A company controlled by or associated with a political body;
- (f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;
- (g) Subsidiary company of any applicant in the same license area;
- (h) Holding company of any applicant in the same license area;
- (i) Companies with the Same Management within a license area;
- (j) More than one Inter-Connected Undertaking at the same license area;
- (k) A company that has been debarred from taking part in the bidding process or its associate company with the same management."

D. Headend in the Sky (HITS) service

3.32 The Authority has forwarded its recommendations on Headend-In-The-Sky (HITS) on October 17, 2007 to the Government of India. The Authority has made, *inter alia*, the following recommendations in regard to foreign investment, cross holding restrictions, networth, etc., namely :-

" 3.5 The total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies.

.....

3.9 Further, in order to ensure proper monitoring, it should be compulsory that only an Indian company should be granted the license for HITS operations.

.....

3.13 A minimum networth requirement of Rs. 40 crores at the close of the immediately preceding financial year should be made a qualifying condition for applying for a HITS license.

3.14 HITS operator shall not allow Broadcasting Company(ies) and/or DTH licensee company(ies) to collectively hold or own more than 20% of the total paid up

equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company. “

E. Internet Protocol Television (IPTV)

- 3.33 Some of the telecom service providers have started IPTV service on experimental basis. The Authority has submitted its recommendations on provision of IPTV services to the Government of India on January 4, 2008. In para 4.1 of the said recommendations, the Authority has recommended as follows :-

“ (i) Telecom service providers (UASL, CMTS) having license to provide triple play services and ISPs with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV can provide IPTV service under their licenses without requiring any further registration. DoT can permit any other telecom licensee to provide IPTV services as licensor. Similarly cable TV operators registered under Cable Television Network (Regulation) Act 1995 can provide IPTV services without requiring any further license.”

- 3.34 Thus, essentially, the eligibility condition for grant of telecom licences under the Indian Telegraph Act, 1885 or for registration as a cable operator under the Cable Act, as the case may be, would be applicable for providing IPTV services on acceptance of the recommendations of TRAI by the Central Government.

Chapter 4. International Practices

- 4.1 While preparing this consultation paper, the Authority had written to various regulators around the world for getting information regarding the role and involvement of governments and their agencies in the broadcasting sector. The Authority had also sent a questionnaire to various foreign missions in India to find out the international practices on the issue. Based on limited information received as well as information obtained from Internet (which may not be up to date), the scenarios in some of the countries have been compiled and summarised in following paragraphs.

USA

- 4.2 The sector is being regulated by Federal Communications Commission (FCC). The broadcast TV channels are entirely privately owned. The "public" TV and radio stations are privately owned non-profit entities, most of which are supported by the Congressionally chartered and funded Corporation of Public Broadcasting (CPB). There is no government-owned broadcast TV station or channel in the U.S. However, government - usually a local municipality or a city - can own a cable distribution company.
- 4.3 The Communications Act of USA does not prohibit a local municipality or entities affiliated with local cable franchising authority from operating as a cable operator. Both private and city or municipality owned cable companies are required to offer a certain number of Public, Educational, and Government (PEG) channels to their subscribers. These channels usually show local government proceedings, local high schools games and other local non-profit programming. The Communications Act, however, prohibits any state or franchising authority from exercising any editorial control regarding the content on a cable system in which such governmental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

Australia

- 4.4 Australian Communication and Media Authority (ACMA) is the regulator for broadcasting sector. Australia has three national public service broadcasters, namely, Australian Broadcasting Corporation (ABC), Special Broadcasting service (SBS) and National Indigenous Television (NIT). Special Broadcasting Service was started especially for those 20% of the population which is non-English speaking and it is allowed to carry commercial advertisements also, whereas ABC is not permitted to carry commercial advertisements. Provincial governments do not have any public service broadcasting of their own.

Germany

- 4.5 Public Service Broadcasting is the responsibility of twelve broadcasting corporations. Out of these twelve corporations, nine corporations are from provincial states and three are of Federal (Central) Government. Association of Public Broadcasting Corporation of Germany (ARD) is an association of nine state/regional corporations and two federal corporations. Zweitee Deutsches Fernsehen or the second German Television (ZDF) is the main Public Service Broadcaster (PSB) at federal level. DW and DLF are other two PSBs which mainly provide services on radio. All these corporations are set up under the state/federal act. Major source of funding is the license fee which is collected from every household, who owns a radio or television set in the country.
- 4.6 Each state is empowered to have its own set of legislation/rules/regulation on broadcasting activities. All these broadcasting corporations are non-profit, self governing organizations under public law and are subject to limited supervision by the State/Federal Governments. There are separate regulators at State and Federal level. Association of Public Broadcasting Corporation of Germany (ARD) and Inter State Agreement on the restructuring of Broadcasting signed by the federal states harmonises the regulating framework for the whole country.

Canada

- 4.7 Canadian Radio-Television and Telecommunication Commission (CRTC) is the regulatory body in Canada. The Canadian Broadcasting Corporation (CBC), a Canadian crown corporation is the country's national public radio and television

broadcaster. Several provinces maintain their own provincial public broadcasting networks in addition to the CBC. Provincial public broadcasters broadcast through satellite as well as terrestrial mode. Mostly provincial public broadcasters are for educational purpose and receive funds from the provincial government; however some provincial public broadcasters do get some income from commercial advertisements.

Sweden

- 4.8 In Sweden, a licence is required under the Radio & TV Act to broadcast sound radio or television programmes using radio waves at frequencies of less than 3 GHz. License is not needed to broadcast radio or TV via satellite or cable and there are no ownership restrictions for such broadcasts. There is no regulation for running cable TV network operations or any other similar TV channel distribution operations. There are ownership restrictions stipulated for both local commercial radio and community radio. For TV, there is no legislation with actual restrictions on ownership but when the authority is to grant licences for terrestrial broadcasts, they take into consideration that there shall be television channels provided by multiple mutually independent programme providers.

Hongkong

- 4.9 The regulation of television and sound broadcasting in the Hongkong Special Administrative Region are regulated according to the Broadcasting Ordinance (Cap. 562) (BO) and Telecommunications Ordinance (Cap. 106) (TO) respectively. There are no restrictions in these ordinances on the entry into the broadcasting sector by government institutions, political parties, religious bodies or public funded bodies. However, the two ordinances have provisions on ownership or control of certain types of broadcasting licences as explained below.
- 4.10 Under the BO, there are restrictions on persons that are not ordinarily resident in Hongkong to acquire or exercise voting control of a Domestic Free Television Programme Service Licensee. A non-resident shall not hold more than 2% of a licensee and the aggregate control of all shares held by non-residents shall not exceed 49%. Similarly the TO has placed restrictions on the aggregate of voting share held

by non-residents and it shall not exceed 49% of the total voting share of a Sound Broadcasting Licensee.

- 4.11 There are cross media ownership restriction also in place. Under BO, cross media ownership restriction applies to Domestic Free Television Programme Service Licensees and Domestic Pay Television Licensees. With regard to government institutions, the Radio Television Hong Kong (RTHK) is a government department which provides sound broadcasting services to the public.

Chapter 5. Policy and Practice of Ministry of I&B in Broadcasting and Cable Sector

Requests from Various State Governments, public bodies, etc.

5.1 The Central Government have received few requests from State Governments/ State Government undertakings, etc. for starting TV or Radio channels, and for entering into distribution platforms like cable service. The details of some of these requests, as indicated by the Government of India, Ministry of Information and Broadcasting, are given in the following paragraphs.

5.2 One such request for launch of a TV broadcasting channel was made in the year 1999 by the Government of West Bengal. It was proposed to set up an autonomous body and, till such time the body could be put in position, the channel was proposed to be owned, launched and operated by the West Bengal Film Development Corporation Ltd., a public sector-undertaking of the State Government.

5.3 The matter was considered by the Government of India and the request was not acceded. The Authority has been informed by the Government of India in the enclosure to their letter dated December 27, 2007 that following factors were, among others, taken into account while rejecting the request, namely:-

- (i) The observations of the Hon'ble Supreme Court in their judgment in the case of Union of India vs. Cricket Association of Bengal dated 9.2.1995 (AIR 1995 (SC) 1236 :: 1995 (2) SCC 161). Relevant portions of the said judgment are reproduced below:-

"Broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1) (a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues."(Justice Jeevan Reddy) (para 201)

"Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy". (Justice Jeevan Reddy) (para 199)

- (ii) It has been also mentioned that keeping in view the above judgment of the Hon'ble Supreme Court, the Government, local authorities and public bodies substantially funded from public fund were proposed to be disqualified in the draft Broadcast Bill, 1997 and that there was a special provision in the said Bill for public service broadcasters created under an Act of Parliament to avoid any contradiction or inconsistency.
- 5.4 Subsequently, the Central Government received a proposal from the Government of Punjab for setting up a TV Broadcasting Station in collaboration with a foreign broadcast company named Globe Satellite Communication. The reply dated 24.5.2000 has reportedly conveyed refusal of the Government of India stating that as per the extant policy, State Governments are not permitted to set up TV channels or broadcasting stations. It was also mentioned that even Doordarshan and All India Radio (AIR) which were earlier part of the Central Government have been distanced from the Central Government and brought under statutory body Prasar Bharati, under the Prasar Bharati Act, 1990.
- 5.5 Another request was received from the Government of Andhra Pradesh for permitting distribution of Ku Band signals of Mana TV through commercial cable operators. The request was also not acceded to by the Government of India.
- 5.6 Recently, Tamil Nadu Arasu Cable Corporation Ltd, a Govt. of Tamil Nadu undertaking, has filed an application with the Ministry of Information and Broadcasting for permission under rule 11 of the Cable Television Networks Rules, 1994 to work as a Multi System Operator in the CAS notified areas of Chennai. A request from the Chief Minister of Delhi for starting an FM Radio Channel or a community Radio Station has also been received in the Ministry of Information and Broadcasting.

Chapter 6. Issues for Policy Framework

A. Issues regarding entry into Broadcasting Activities

- 6.1 The Judgement of Hon'ble Supreme Court in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161) was delivered on February 9, 1995 (see para 5.3 ante). This was at a time when broadcasting in India was virtually a Government monopoly and private broadcasting was a comparatively recent phenomenon.
- 6.2 This was followed by the establishment of the Prasar Bharati as a statutory autonomous body under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. The main objective behind the creation of Prasar Bharati was to ensure a reasonable degree of freedom to All India Radio and Doordarshan, 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. The Statement of Objects and Reasons of the Prasar Bharati (Broadcasting Corporation of India) Bill, 1989 as introduced in Lok Sabha on 29.12.1989 is placed at **Annexure F**.
- 6.3 The Prasar Bharati Board came into existence on November 23, 1997. The Prasar Bharati is the Public Service broadcaster in India. During the last decade or so, the broadcasting sector, i.e., both radio broadcasting and television broadcasting, has witnessed enormous expansion and growth, with participation of private entities. There has been a phenomenal growth in the number of television channels, belonging to different genres (such as general entertainment, sports, news, children's entertainment, education, religion, music etc.), and such channels are uplinked both from India and abroad, and downlinked into the territory of India for distribution through various platforms to the viewers at large.
- 6.4 In view of the growth of the broadcasting sector and the diversity among various players in the sector, and in view of the various other entities desiring to enter into this important sector, it has become necessary to have a relook at the policies relating to entry of various entities, with a view to enable citizens to arrive at informed judgment on all issues touching them. Further, as observed by the Hon'ble Supreme Court in the judgment aforesaid, airwaves constitute public property and must be

utilized for advancing public good. Accordingly, there is need to have a comprehensive policy as regard conferment of the right for different entities to enter into the broadcasting sector, which would advance the public good without any infringement of the citizen's free speech rights.

- 6.5 Pluralism in the broadcasting sector embraces a number of aspects, such as (a) diversity of ownership, (b) variety in the sources of information, (c) range of contents available in the broadcasting media, (d) multiplicity of delivery platforms and service providers, etc. Diversity of ownership of media is not sufficient per se to ensure pluralism of content. The manner in which media content is produced also has an impact on the overall level of plurality in the sector. It is in this context that the character of the entity which owns a broadcasting medium may influence the nature of the contents disseminated through the said medium. In other words, the character and the basic objective of the entity which owns a particular broadcast channel can be said to influence the contents of such channel for seeking to achieve its basic objective.
- 6.6 Both public service broadcasters and commercial broadcasters contribute to pluralism of the sector and strengthen this sector. At the same time, it is useful to lay down clear cut principles as regards the balancing of public service broadcasting and commercial broadcasting by various entities in this sector.
- 6.7 High quality information is an important aspect of public service broadcasting and fulfilment of this requirement makes an important contribution to pluralism in the sector. Presently, Prasar Bharati is catering to the needs of the State Governments to educate the public about their policies, etc. through the broadcast route. It has separate satellite TV channels in almost all the national languages. These channels are being uplinked from the State capitals. Doordarshan's National Channel (DD1) is also delinked for about 3-4 hours a day for State level programming by the concerned Doordarshan Kendras situated in different States. Proceedings of Question Hours of the Lok Sabha and the Rajya Sabha are also being telecast live on National Channel of Doordarshan. Thus, Doordarshan has played an important role in meeting the requirements of Central and State Governments as far as public education is concerned.

6.8 The question would, therefore, arise as to whether public service broadcasting privileges should be extended to various organs and undertakings of a Federal Government and the federating units, and various local self government institutions and other publicly funded bodies, etc. Thus, the following issues mentioned in paras 6.8.1 and 6.8.2 relating to plurality of broadcasting activity would arise for consultation, namely :-

6.8.1 Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as -

(a) starting of a television broadcast channel;

(b) starting of a radio broadcast channel (including an FM channel) ?

6.8.2 Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?

6.9 In case of opening up of the broadcasting sector to the State Governments, Government owned enterprises, urban and local bodies, other publicly funded bodies, and political bodies, it would give rise to another important question as to what type of broadcasting activities can be permitted for such organisations, particularly in view of the fact that the broadcasting activities to be undertaken by such bodies will be basically dictated by the broad objectives and functions of these organisations. The scope of such permission is also an important issue to be considered in this context. For example, if a district level Panchayati Raj body seeks permission to start a satellite television broadcasting channel which may have a foot print for the entire area of the country, it may only result in wasteful expenditure of public funds besides other political and other implications.

6.10 The issue, therefore, for consideration is:-

6.10.1 In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organisations and to what extent?

6.11 Another connected issue which would arise in the context of permitting such entities to enter the broadcasting sector is the possibility of its limited usage with certain political or committed religious objectives. So far, the Government has, by and large, not encouraged such entities to enter into broadcasting sector. The issue to be considered, therefore, is :-

6.11.1 What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?

6.12 The Draft Broadcasting Bill, 1997 as introduced in the Lok Sabha in 1997 contained certain restrictions for grant of licences for the broadcasting sector. Sub-clause (1) of clause (12) of the said Bill read as follows :-

“ 12. (1) No person specified in Part 1 of the Schedule shall be eligible for the grant of a license under this Act.”.

A copy of clause 12 of the said Bill is placed at **Annexure B** to this consultation paper. Part 1 of the Schedule appended to the said Bill contained, *inter alia*, provisions disqualifying Government and local authorities, religious bodies, political bodies, publicly funded bodies and advertising agencies. A copy of the Schedule appended to the Broadcasting Bill, 1997 is annexed at **Annexure C** to this consultation paper.

6.13 The said Bill having not been enacted into law, the legal regime governing the broadcasting sector continues to be governed by the provisions of the Indian Telegraph Act, 1885 and other cognate legislations and the guidelines and policies framed by the Government of India from time to time.

6.14 In view of the issues raised in the preceding paragraphs 6.5 to 6.11, and the provisions contained in the Broadcasting Bill, 1997, the following further issue would arise for consultation, namely:-

6.14.1 Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?

6.15 As regards the specific issue of religious bodies entering into broadcasting activities, the extant policy guidelines of the Government do not allow such bodies to undertake broadcasting activities because the eligibility conditions only stipulate a company registered in India under the Companies Act, 1956 as an eligible entity. As indicated in the preceding paragraph 6.12, the Broadcasting Bill, 1997 had proposed to disqualify religious bodies from entering into broadcasting sector. However, it has to be kept in mind that there are a number of broadcasting channels permitted in India which carry religious contents either exclusively or as part of their general programming. These channels are offered by companies registered in India. The issue, therefore, posed for consultation is as follows:-

6.15.1 (i) Whether religious bodies may be permitted to enter into broadcasting activities such as –

(a) starting of a television broadcast channel;

(b) starting of a radio broadcast channel (including an FM channel) ?

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels?

(iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

B. Issues regarding entry into Distribution Platforms

6.16 As already indicated in Chapter 3 of this consultation paper, the eligibility conditions for entry into the distribution platforms are governed by the provisions of the Cable Television Networks (Regulation) Act, 1995 and rules made thereunder in respect of the cable TV distribution networks and by the guidelines and policies framed by the Government from time to time in respect of other delivery platforms such as DTH, etc.

6.17 As stated earlier, the cable TV sector, as a distribution platform, is almost entirely in the hands of private cable operators including multi-system operators. Some State owned entities such as MTNL have also reportedly registered themselves as cable operators in some areas under the Cable Television Networks (Regulation) Act, 1995. DTH distribution platform is in the hands of private players except for the DTH free-to-air service of Doordarshan under Prasar Bharati. A question would arise in this context as to whether the other entities including State Governments and State-owned commercial enterprises (both at the Central level and the State/UT level), local bodies, publicly funded bodies and political parties can be allowed to enter into these distribution platforms. The entry into the distribution platforms by such entities would be more in the nature of a business enterprise. Therefore, the issue for consultation is as under:-

6.17.1 **(i) Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.**

6.17.2 **Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be**

within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

6.17.3 If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

6.18 Another question which would arise in the context of entry of State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, particularly, into the cable distribution platform is with regard to the definition of “person” as contained in the Cable Television Networks (Regulation) Act, 1995. The definition of “person” in the Cable Television Networks (Regulation) Act, 1995 covers the following categories, namely:-

- “ (i) an individual who is a citizen of India;
- (ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
- (iii) a company in which not less than fifty-one per cent of paid-up share capital is held by the citizens of India;”.

Under the Citizenship Act, 1955, a person can be a citizen, *inter alia*, by birth or by registration or by naturalisation. “person” under clause (f) of sub-section (i) of section 2 of aforesaid Act, does not include any company or association or body of individuals, whether incorporated or not. The question, therefore, arises:-

6.18.1 Whether the entities, other than citizens of India, should be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

6.18.2 Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

6.18.3 In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

Extracts from Constituent Assembly debates, Sarkaria Commission Report, and Terms of Reference of the Commission on Centre-State Relations

6.19 Whether the broadcasting as a subject should be with the Centre or State had been considered by the Constituent Assembly in detail. While deliberating on item 32 (b) of the List I – Federal List which corresponds to item 31 of List I of the Seventh Schedule to the Constitution, it had been decided by the framers of the Constitution (as per debates of the Constituent Assembly on the 26th August, 1949 – annexed as **Annexure D** to this consultation paper) that Broadcasting should be part of the Federal subjects. The underlying reason was that the states had come together to form a Union under a federal structure on the basis that the three subjects, namely, defence, communications and foreign affairs, among others, will be handled by the federal government. Some of the points raised by the members of the Constituent Assembly of India are quoted below²:-

“Shri K. Santhanam: Sir, I beg to move-

"That in paragraph (b) of item 32, the word 'broadcasting' be deleted and the following be added at the end:

'Federal' broadcasting and law and regulation of broadcasting."

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communications whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration.....

Mr. A. P. Pattani: (Western India States Group 4) : Mr. President, the amendment which I wish to submit reads as follows:-

² Source: <http://164.100.24.208/ls/condeb/vol5p7.htm>

"That for paragraph (b) of item 32 the following be substituted:

"Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States'."

The States, Sir, have agreed to federate-to Join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are wholeheartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction between Federal telephones, wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

.....

.....

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir,

....

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b) item 4 of clause (c). of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones. wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not control them. The present item on the other hand seeks to control an telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not.

.....

Prof. Shibbanlal Saksena (United Provinces : General) : Mr. President, Sir,

....

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs.....

...

... in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation.

....

This is only possible by providing in this Federal list. complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of 'broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam's amendment. We are all agreed that the Central Government must have control over broadcasting.

....

....

.....Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion."

- 6.20 The issues relating to amendment of Entry 31 of List I of Seventh Schedule to the Constitution have also been considered by the Commission under the Chairmanship of Justice R.S. Sarkaria. Paragraphs 2.10.32 and 2.10.33 of the Report of the said Commission dealt, *inter alia*, with the aforesaid issue and the said paragraph reads as under:-

" 2.10.32 **Entry 31, List I** - It relates to "Posts and Telegraphs: telephones, wireless, broadcasting, and other like forms of communication".

It has been suggested by one State Government that Broadcasting and Television should be transferred to the State List. Another State Government has suggested that these matters should be transferred to the Concurrent List.

2.10.33 There are various facets of Broadcasting. These powerful media, *inter alia*, have a vital role in national integration, education and socio-economic development of the country. Establishment and working of this

media involve large investments and complex technological requirements. 'Broadcasting' includes not only 'Radio and Television' but also other forms of wireless communication. The criticism of most of the States is mainly directed against the functional and not against the structural aspect of this Entry. Their main grievance is about lack of access to these media, which is an entirely different issue. We have considered these complaints and suggestions in detail in the Chapter on "Mass media". Suffice it to say here, that Broadcasting and Television are a part of the Broad head of 'Communications' which are universally recognised as matters of national concern. These media have even inter-national dimensions.

One State Government has pointed out that while in the past the telephone facilities were departmentally run, now the Mahanagar Telephone Nigam, an autonomous body has been set up for the management and development of these facilities in Bombay and Delhi. It is argued that, in line with this trend, autonomous bodies set up by the Union are made responsible for telephone facilities in metropolitan towns while in other towns and rural areas similar autonomous bodies set up by States may be made responsible. It has proposed that for the purpose telephones may be shifted from List I to List III.

Telephones are a very important means of communication. Stretching over the length and breadth of the country, they help to bind the nation together. They are vital for practically every facet of the nation's life e.g. in trade and commerce. These facilities require large investments. Technological advances are taking place all the time in this field. For the successful operation of these facilities, they lean on other facilities like satellites which are with the Union. Establishment of autonomous bodies at important centres is only an administrative arrangement decided upon by the Union for the more efficient discharge of its functions. But such an action cannot be made the basis for a plea to transfer part of the subject to the Concurrent List.

It is in the larger interests of the nation that this important means of communication remains within the exclusive jurisdiction of the Union so that

the entire system develops as an integrated, sophisticated and modern facility.”.

- 6.21 The aforesaid Commission further dealt the issue in Chapter XIX under heading “Mass Media”. The paragraphs 19.2.03, 19.2.04 and 19.2.05 discuss the aforesaid issues which read as under:-

“19.2.03 We will first examine the suggestion for constitutional amendment to transfer Broadcasting from the Union to the State or the Concurrent List in the Seventh Schedule. A radio transmission system or a television transmission system works on an energy wave which carries the message across to the receiver system working synchronously on the same wave length. As energy waves do not observe any boundaries except the boundary of dissipation of its energy, national or linguistic boundaries are no bar to the reception as long as the energy can carry the message across. If Radio or TV transmission in two nations or two linguistic areas work on the same wave length, there is quite a chance of the two system interfering with each other. When there is stress between two nations or two linguistic areas, such interference can lead to greater stress. Therefore, the international community has agreed to control the wave lengths and bands on which each country can work. Every country has to honour this agreement. Transmission in each country has to be kept within the agreed frequencies. This control over frequencies is exercised by the International Telecommunications Union. There is no criticism on the working of this international agreement in the replies received by us. What the States seek is control over the message or the entertainment dissemination by the system and freedom to air their views through the system.

19.2.04 In a country where a substantial part of the citizenry is illiterate or semi-literate and the population, particularly in the rural areas, is not very mobile, and they have few opportunities to get information of men and affairs in the other parts of the country, the Radio and the TV are powerful media for influencing thinking, attitudes and options of the citizenry. Hence every political party seeks to have access to the media in the interest of the party. In the more educated and enlightened countries, with

several systems of mass communication to which people have access, the citizen has some means of comparing notes and differentiating between propaganda and fact. In this country where, as we have emphasised elsewhere, parochialism, chauvinism, casteism and communalism are pervasive and are actively made use of by powerful groups, if uncontrolled use of these media is allowed, it may promote centrifugal tendencies endangering the unity and integrity of the nation. In the context of the demand of some States to have their own broadcasting stations, it will be pertinent to quote the views of the Verghese Committee:

“The propagation of a national approach to India’s problems, creating in every citizen an interest in the affairs, achievements and culture of other regions and helping them to develop a national consensus on issues which concern the country as a whole, is of such supreme importance that any structure which inhibits this cannot be accepted.”

We agree with these views. Further, the message of unity and integrity and the basic cultural links of the various parts of the country has to be carried to all, especially to the backward areas of the country so that the impact becomes effective. From a purely economic angle, if other reasons are not conclusive, a devolution to the States to have their own broadcasting and control will help largely the richer States. The poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces. The Verghese Committee has also drawn attention to these difficulties. If autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult. The telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union. For all these reasons and particularly the need to control centrifugal tendencies, we cannot support the demand for either a concurrent or an exclusive power to the States with respect to broadcasting.

19.2.05 Nevertheless, it cannot be forgotten that it is a political party which controls the Union Executive. Lest there be a temptation to use these powerful media wrongly in the party interest and not necessarily in the national interest, ‘Ground Rules’ of behaviour have to be established and observed meticulously. The need for a

watch-dog for both the Union and the States becomes obvious. We shall deal with these aspects in the next section.”

Relevant extracts from the Report of the Commission on Centre-State Relations (the Sarkaria Commission) are placed at **Annexure G**.

- 6.22 Keeping in view the sea change that has taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations, the Union Government resolved to set up a Commission on Centre-State Relations. The Government of India has constituted the Commission on Centre-State Relations by its Resolution of April 27, 2007. The Terms of Reference of the Commission have been set out in the Government of India Resolution dated September 30, 2005 (extracts annexed at **Annexure I**), which , *inter-alia*, specify as under :-

“ (i) The Commission will examine and review the working of the existing arrangements between the Union and States as per the Constitution of India, the healthy precedents being followed.....

.....

(ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years particularly over the last two decades and have due regard to the scheme and framework of the Constitution. Such recommendations would also need to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.”

- 6.23 In view of above, the following issues arise for consultation namely:-

6.23.1 In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their

enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.

(a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

(b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

Annexure A: Letter from Ministry of Information and Broadcasting



ASHA SWARUP
Tel : 23382639

D.O.No.9/32/2007-BP&L

सचिव
SECRETARY

सूचना एवं प्रसारण
INFORMATION & BROADCASTING
भारत सरकार
GOVERNMENT OF INDIA

नई दिल्ली-1, तारीख
Dated New Delhi-1, the

December 27, 2007

200

Dear *Shri Mishra*,

The Central Government is receiving a number of requests from the State Governments to allow the State Governments or State Government Public Undertakings for entering into broadcasting activities which include in some cases starting of a Broadcast Television or Radio channel and in other cases entering into distribution platforms like Cable Services. The recent requests have come from the Chief Minister of Delhi for starting a FM Radio channel or a Community Radio Station and another request has come from the Chief Minister of Tamil Nadu for permission to work as a Multi System Operator in the city of Chennai. These requests raise a broader policy issue of whether such requests from the State Governments should be entertained. As per the provisions of Section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997, Telecom Regulatory Authority of India is requested to examine the matter and submit its recommendations especially covering the following issues:-

(i) Whether State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies and political bodies should be permitted to enter into broadcasting activities which may include starting of broadcast channel or entering into distribution platform like cable services

(a) If 'Yes', what are the kind of broadcasting activities which should be permitted to such organizations and to what extent? What are the safeguards required to prevent monopoly or misuse? Whether any amendments are required in the extant Acts/Rules/Guidelines to provide for the same.

(b) If 'No', whether disqualifications proposed in Section 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto should be considered as it is or with some modifications for incorporation in the existing Cable Act and Rules relating thereto and in the proposed Broadcasting Services Regulation Bill, 2007, and policy guidelines with respect to broadcast sector issued by the Ministry of Information & Broadcasting. If so, what are the amendments/provisions required to be made in them?

(ii) Whether similar disqualifications with respect to religious bodies on the lines of Broadcasting Bill, 1997 or with some modifications be also considered for religious bodies.

(iii) It is requested that TRAI may also like to consider provisions in broadcast legislation of other countries while making its recommendations.

2. Since the Government wants to take an early decision on the pending requests of the State Governments and also desires to lay down a clear cut policy for future, it is requested that the recommendations of the Telecom Regulatory Authority of India may be sent at an early date. Copy of the Broadcasting Bill, 1997 and a brief background paper on the issue is enclosed for reference.

With regards,

Yours sincerely,


(ASHA SWARUP)

Encl: As stated.

Shri Nripendra Mishra
Chairman
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan
Jawaharlal Nehru Marg (Old Minto Road)
NEW DELHI-110002.

Background Note on permitting State Governments to enter into Broadcasting Activities

The Government has been receiving requests from various State Governments, local authorities and publicly funded bodies to enter into broadcasting activities which include starting a radio or TV channel or entering into distribution platforms like cable services. While considering such requests the Government wants to take a policy decision on the entire issue of whether such requests can be or should be considered for permission to enter into broadcasting activities which may include starting a broadcast channel or entering into distribution platforms like cable services.

Provisions of Cable TV Act and Rules:

2. The Registering Authority for registration of a cable operator vide notification S.O. 718(E) dated 29th September, 1994 under Section 2(h) of the Cable Television Networks(Regulation) Act, 1995 is the Head Post Master of the Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated. Thus the application for registration will not come to the Ministry and they may be seeking registration directly in the concerned Head Post Office. Section 2(aa) defines 'cable operator' as a person providing cable service. A 'person' has been further defined in Section 2(e) to include 'a company in which not less than fifty one per cent of the paid up share capital is held by the citizens of India'. Neither in the Cable TV Act nor in the Rules made thereunder it has been prescribed that the company cannot be a Government owned company or a State Govt. undertaking or a joint venture of the State Government and the private sector.

Cases of requests by State Governments considered in the Government earlier:

3. (1) Request by West Bengal State Government:

The first case is in the year 1999 was pertaining to a proposal of the Govt. of West Bengal to launch a TV channel. It was proposed to set up an autonomous body. Till such time the body could be put in position the channel was supposed to be owned, launched and operated by the West Bengal Film Development Corporation Ltd. a public sector undertaking of the State Govt. The permission of the Govt. of India was sought for starting the channel. The matter was analysed and the request of the State Government was rejected. Following factors were taken into account:-

- (i) The observations of the Supreme Court in their judgment in the Union of India vs. Cricket Association of Bengal dated 9.2.1995. Relevant portions of the judgment are reproduced below:-

"Broadcasting media should be under the control of the public as distinct from Government. It should be operated by a public statutory corporation or corporations, as the case may be whose constitution and composition must be such as to ensure its/their

impartiality in political, economic and social matters and on all other public issues..”(Justice Jeevan Reddy) (para 201)

“Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy”.(Justice Jeevan Reddy) (para 199)

(ii) It was also mentioned that keeping in view of the above judgment of the Supreme Court, the Government, local authorities and public bodies substantially funded from public fund were proposed to be disqualified in the draft Broadcast Bill, 1997. There was a special provision in the bill for public service broadcasters created under an Act of Parliament to avoid any contradiction or inconsistency.

(iii) In almost all the developed democracies, Governments are explicitly debarred under the relevant laws from holding broadcasting licence or do not do so by tradition or convention. Broadcasting system controlled or managed by the State is found to be inconsistent with the basic principles of democracy. Not only does it affect adversely the citizen's right to free speech but also acts against the principle of level playing fields among the political parties.

(iv) On practical consideration also, a State owned or managed broadcasting is not likely to survive since it would be perceived as a propaganda machinery and would lose its credibility and viewership in due course. Example of newspapers is relevant in this regard. Even though there is no restriction on the Government owning or managing a newspaper, neither the Central Government nor any State Government has ventured in this area because it is not likely to have a sustained readership.

(v) Permission to one State Government to start its channel will open up a pandora box followed by public funded bodies, political bodies etc. Such a scenario would run against the moral of broadcasting observed by the Supreme Court after the Central Government has moved away from having direct control over broadcasting by creating an autonomous body under the Prasar Bharati(Broadcasting Corporation of India) Act, 1990.

(2) **Request by Government of Punjab:** Subsequently a proposal was received from the Government of Punjab for setting up a TV Broadcasting Station in collaboration with a foreign broadcast company named Globe Satellite Communication. The reply dated 24.5.2000 conveyed refusal of the Government stating that that as per the extant policy, State Governments are not permitted to set up TV channels or

broadcasting stations. It was also mentioned that even Doordarshan and AIR which were earlier part of the Central Government has been distanced from the Central Government and brought under statutory body Prasar Bharati under the Prasar Bharati Act, 1990

(3). **Request by Government of Andhra Pradesh:** Another request was received from the Government of Andhra Pradesh for permitting distribution of Ku Band signals of Mana TV through commercial cable operators. The request was again not acceded to and reply was sent on October 20, 2005 and again on March 05, 2007 .

Community Radio Policy Provisions:

4. Recently while reviewing the policy of Community Radio Stations for allowing the NGOs/civil society organizations for setting up of Community Radio Stations, the Ministry of Panchayati Raj has requested to allow Panchayati Raj bodies permission to set up Community Radio Stations. In the comments put up by this Ministry before the Cabinet on the request of the Panchayati Raj Ministry it was mentioned that allowing them would amount to allowing this facility to the third level of instrument of Government, established through 73rd amendment to the Constitution. It is also apprehended that they shall fall back on public funds whereas the instant proposal does not envisage such a pattern of funding. The Panchayati Raj institutions has not been finally permitted by the Cabinet.

Extant Policy:

5. Thus the extant policy has been that State Governments have not been allowed to enter into broadcasting activity. However this issue has neither been specifically deliberated upon by the Cabinet nor by the Parliament at any stage, except perhaps at the time of consideration of the Broadcast Bill 1997 by the Joint Parliamentary Committee.

Constitutional Provisions:

6. It may also be mentioned that entry no.31 in the Union List of the VII Schedule to the Constitution says "Post & Telegraphs, telephones, wireless, broadcasting and other like forms of communication". That means the Central Government only as per Article 246 can legislate on it. Article 298 provides that the executive power of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament. This in itself does not prevent the State Government from operating broadcasting channels under the Central law enacted by Parliament.

Allocation of Business Rules and provisions of Indian Telegraph Act

7. As per the Government of India (Allocation of Business) Rules the Ministry of Information & Broadcasting is to deal with all matters relating to Radio and television Broadcasting activities within the Union. In this context, Section 4 of the Indian Telegraph Act 1885 mentions that within India the Central Government shall have

exclusive privilege of establishing, maintaining and working telegraphs provided that it may grant licence on such conditions and for consideration of such payments as it thinks fit to any person to establish, maintain or work a telegraph within any part of India. It is apparent from this Section also that the Central Government if it so wishes can authorise the State Governments also to establish, maintain and work telegraph.

Supreme Court Judgement in Union of India vs. Cricket Association of Bengal dated 9.2.1995 case:

8. In the judgment delivered by one of the Judges, Justice D.P. Jeevan Reddy has also opined in para 199 that in the interest of ensuring the plurality of opinions, views, ideas and ideologies, broadcasting media cannot be allowed to be under the monopoly of any one – be it the monopoly of Government or of an individual body or organization. In fact he has also opined in para 194 that there is a far greater likelihood of the private broadcasters indulging in misinformation, disinformation and manipulation of views and news than the Govt. controlled media which is at least subject to public and parliamentary scrutiny. What we can conclude from this judgment is that the Court wanted multiplicity of opinions, views, news and did not want any monopolisation either of the Government or the private broadcasters.

SIMCON XVI deliberations:

9. In the recently concluded SIMCON XVI, Smt. Sheila Dixit also requested for allowing the Delhi State Govt. to launch a private FM channel or a Community Radio Station. Some of the other States also requested for carrying the Legislative Assembly and Council proceedings live on the lines of the Lok Sabha and Rajya Sabha channels. MIB has also expressed a view in the Conference that the demand of the State Government needs to be looked into.

10. It appears from above that legally there is no bar in Central Government authorizing the State Governments to enter into broadcasting activity. We have neither barred the State Govts. nor permitted the State Govts. specifically by any law to enter into broadcasting activity. Considering the desire of more and more State Govts. to enter into not only broadcasting of channels but also cable operation service and DTH service, it is desirable that a conscientious policy decision be taken at an appropriate level to lay down the path for future.

Annexure B: Section 12 of the Broadcasting Bill, 1997

12. (1) No person specified in part I of the Schedule shall be eligible for the grant of a licence under this Act.
- (2) No person shall be given the number of licenses for a category of service more than the number prescribed for the category of service.

Explanation – For the purpose of this sub-section, the category of service shall be the same as referred to in section 9.

- (3) No person shall be granted licence for more than one category of services specified in Part II of the Schedule.
- (4) There shall be such restrictions on cross media ownership between the newspaper and broadcasting service as specified in Part III of the Schedule.
- (5) The Central Government may, by notification in the Official Gazette, modify any limit on interest or equity holding in the body corporate or companies referred to in the Schedule.
- (6) For the purposes of this section “person” includes connected persons referred to in paragraph 3 of Part IV of the Schedule.

Annexure C: Part I of the Schedule to the Broadcasting Bill, 1997

THE SCHEDULE

(See section 12)

RESTRICTIONS ON THE HOLDING OF LICENCES

PART 1

Disqualification for Holding of Licences

The following persons shall be disqualified for the purposes of grant of licence under this Act.

1. General disqualification.

- (a) An individual who is not an Indian national;
- (b) A partnership firm all whose partners are not citizens of India;
- (c) Companies not incorporated in India;
- (d) Companies incorporated in India but with
 - (i) foreign equity in case of terrestrial broadcast service;
 - (ii) foreign equity exceeding 49% in case of other services not mentioned in (i) above and management control not with the Indian shareholders.
- (e) Governments and local authorities;
- (f) Any person convicted of an offence under this Act or convicted of the offences referred to in section 8 of the Representation of the People Act, 1951 (43 of 1951) or declared as insolvent.
- (g) A body, which is controlled by a person, referred to in any of clauses (a) to (e) above.
- (h) A body corporate, in which a body referred to in clause (g) above, is a participant with more than a 5 per cent interest.

Explanation– “Foreign equity” for the purpose of this Part, shall be notified by the Central Government, from time to time.

2. Disqualification of religious bodies.

- (a) A body whose objectives are wholly or mainly of a religious nature;
- (b) A body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together.
- (c) A body which controls a body referred to in clause (a);
- (d) A body corporate which is associate of a body corporate referred to in clause (a), (b) or (c);
- (e) A body corporate in which a body referred to in any of clauses (a) to (d) is a participant which more than five per cent. interest;
- (f) An individual who is an officer of a body referred to in clause (a); and
- (g) A body which is controlled by an individual referred to in clause (f) or by two or more such individuals taken together.

3. Disqualification of political bodies.

- (a) A body whose objects are wholly or mainly of a political nature;
- (b) A body affiliated to a body, referred to in clause (a);
- (c) An individual who is an officer of a body, referred to in clause (a) or (b);
- (d) A body corporate, which is an associate of a body corporate referred to in clause (a) or (b);
- (e) A body corporate, in which a body referred to in any of clauses (a) and (b) is a participant with more than a five per cent. interest;
- (f) A body which is controlled by a person referred to in any of clauses (a) to (d) or by two or more persons, taken together;
- (g) A body corporate, in which a body referred to in clause (f), other than one which is controlled by a person, referred to in clause (c) or by two or more such persons, taken together, is a participant with more than a five per cent. interest.

4. Disqualification of publicly funded bodies.

- (a) A body (other than a local authority) which has in its last financial year received more than half its income from public funds;
- (b) A body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together; and
- (c) A body corporate in which a body referred to in clause (a) or (b) is participant with more than a five per cent. interest.

5. Disqualification of advertising agencies.
- (a) An advertising agency;
 - (b) An associate of an advertising agency;
 - (c) Any body which is controlled by a person referred to in sub-clause (a) or by two or more such persons taken together;
 - (c) Any body corporate in which a person referred to in any of sub-clauses (a) to (c) is a participant with more than a five per cent. interest.

PART II

RESTRICTIONS TO PREVENT ACCUMULATION OF INTEREST IN LICENSED SERVICES

1. A person shall be allowed to hold licences in only one of the following category of services:-
- (a) Terrestrial radio broadcasting;
 - (b) Terrestrial television broadcasting;
 - (c) Satellite television or radio broadcasting;
 - (d) Direct-to-Home broadcasting;
 - (e) Local delivery services;
 - (f) Any other category or categories of service(s) which may be notified by the Central Government for the purpose.
2. Any restriction on participation imposed as above on the holder of a licence shall apply to him as if he and every person connected with him were one person.

PART III

RESTRICTIONS ON CONTROLLING INTEREST IN BOTH NEWSPAPERS AND LICENSED SERVICES

1.1 No proprietor of a newspaper shall either be a participant with more than twenty per cent. interest in or control a body corporate which is the holder of a licence to provide a licensed service under this Act.

1.2 No proprietor of a newspaper, who is a participant with more than five but less than twenty per cent. interest, in a body corporate and not controlling such a body corporate holding a licence shall be a participant with more than a five per cent. interest in any other such body corporate.

1.3 No person who is the holder of a licence to provide licensed service under this Act shall be either a participant with more than twenty per cent. interest in or control a body corporate which controls a newspaper.

1.4 No person who is the holder of a licence and is a participant with more than five but less than twenty per cent. interest in a body corporate and not controlling such a body corporate which runs a national newspaper, shall be a participant with more than five per cent. interest in any other such body corporate.

2. For the Purposes of this Part, a person controls a newspaper if-

- (a) He is the proprietor of such a newspaper; or
- (b) He controls a body which is the proprietor of such a newspaper.

3. Any restriction on participation imposed as above on the proprietor of any newspaper or on the holder of licence shall apply to him as if he and every person connected with him were one person.

PART IV

1. (1) For the purposes of this Schedule,-

"Advertising Agency" means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an, advertising agent, and any reference to an advertising agency includes a reference to an individual who-

- (a) is a director or officer of any body corporate which carries on such a business, or
- (b) is employed by any person who carries on such a business;

"Associate" -

- (a) In relation to a body corporate, means a director of that body corporate or a body corporate interconnected with that body corporate;
- (b) In relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm;

- (c) In relation to the trustee of a trust, means any other trustee of such trust; and
- (d) In relation to an individual, shall be construed in accordance with sub-clause (3);
- (e) Where a person or a body corporate is an associate of another person or body corporate, the latter shall also be deemed to be an associate of the former.

"Control" -

- (a) In relation to a body corporate, shall be construed in accordance with sub-clause (3), and
- (b) In relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person,

and would include control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

"Newspaper" means as defined under the Press and Registration of Books Act, 1867 (25 of 1867).

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely:

- (a) Any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;
- (b) Any individual and any body corporate of which that individual is a director;
- (c) Any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
- (d) Persons carrying on business in partnership and the husband or wife and relatives of any of them;
- (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph "relative" means as defined under the Companies Act, 1956.

- (3) A person controls a body corporate if-

- (a) He has a controlling interest in the body, or
- (b) (although 'not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or
- (c) He has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the ' body are so conducted,

and for this purpose, in the absence of proof to the contrary, a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, more than twenty per cent. of the equity share capital in that body, or possesses more than twenty per cent. of the voting power in it.

(4) It is hereby declared that a person may be regarded as controlling a body corporate by virtue of clause (b) of sub-clause (3) despite the fact that-

- (a) He does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or
- (b) Any such other body corporate does not have a controlling interest in the 'body in question, or
- (c) He and any such other body corporate together do not have a controlling interest in that body.

(5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies, in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.

(6) In this Schedule any reference to a participant with more than a five per cent. or, as the case may be, twenty per cent. interest in a body corporate is a reference to a person who-

- (a) Holds or is beneficially entitled to more than five or, as the case may be, twenty per cent. of the shares, in that body, or
- (b) Possesses more than five or, as the case may be, twenty per cent. of the voting power in that body,

and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraph shall have effect in relation to it subject to the necessary modifications.

2. (1) Any reference in paragraph 1 to a person-

- (a) Holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
- (b) Possessing voting power, or any amount of the voting power, in a body corporate,

is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

(2) "Inter connected Undertakings or Corporate Bodies" shall have the same meaning as assigned in, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

3. For the purposes of this Schedule, the following persons are connected with each other in relation to a particular licence, namely:-

- (a) The licence holder;
- (b) A person who controls the licence holder;
- (c) An associate of the licence holder or of a person referred to in clause (b); and
- (d) A body which is controlled by the licence holder or by an associate of the licence holder.

Annexure D: Extracts of Debates of the Constituent Assembly of India

Tuesday, the 26th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING OF THE PLEDGE

The following member took the pledge:

Mr. S. K. Patil.

Mr. President: We shall now take up the consideration of the item of List I.

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ITEM No. 32

Mr. President: We take item 32. There is an amendment by Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari (Jaipur State): I do not move it.

Shri K. Santhanam: Sir, I beg to move-

"That in paragraph (b) of item 32, the word 'broadcasting' be deleted and the following be added at the end:

'Federal' broadcasting and law and regulation of broadcasting."

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communications whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration; in such a big country as this, with all kinds of difficulties and many languages, it is essential that the lines should not be drawn too tightly. I think at least so far as broadcasting is concerned, it is essential that every linguistic unit should be allowed to have its own broadcasting arrangements, subject of course to the regulation of the Centre for law and other matters which require to be regulated. I wish that the other matters also--telephones

and other communications also--had been brought in but as that amendment is not moved, I am moving my amendment so that at least the broadcasting is brought in. Sir, I move the amendment.

Mr. A.

P. Pattani: (Western India States Group 4) : Mr. President, the amendment which I wish to submit reads as follows:-

"That for paragraph (b) of item 32 the following be substituted:

"Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States'."

The States, Sir, have agreed to federate-to Join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are wholeheartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction between Federal telephones, wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

Mr. N. Madhava Rao: Mr. President, Sir, these are amendments which I have tabled more with a view to elicit information than to make any positive contribution to the proper drafting of this item. I shall explain my object.

In the first sub-item, Posts and Telegraphs, it has been stated

"Provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be Prescribed to the Unit until they are modified or extinguished." etc.'

Now, with regard to posts and telegraphs, there are certain rights more or less of a contractual character which subsist in favour of certain States. I am not aware that there are any with regard to telegraphs. With regard to telephones there is an understanding that the States are at liberty to erect and operate systems which are internal to the State. The Indian States are entitled to set up and maintain telephone systems, open them to the public and work them for gain or grant licences to private companies and persons for the same provided the lines do not go beyond the limits of the State into British India or into another State.

Now, I would like to know how this assurance that has been given in the past is likely to be affected by the adoption of this item of the Federal Legislative List.

Then again, Sir, with regard to Savings Bank, this is not really an item under communications at all. Merely because the Savings Bank is operated by the Postal Department this item is mentioned here. This question of Savings Bank was raised before the Davidson Committee. The Government of India, who were consulted by the committee, expressed their opinion as follows :-

"These operations which take the form of savings bank account and the sale of cash certificates represent a form of commercial exchange from which each party concerned derives some benefit which is fairly balanced by the consideration given..... We admit, however, that it would be a new and unjustifiable principle of political practice to hold that the Paramount Power is entitled to carry on these transactions in the States against the wishes of the Rulers and, in some cases, in competition with the Durbar's own local arrangements. We are prepared therefore to arrange for their complete cessation in the territory of any State that definitely asks for it. '

Now, some States I know of are thinking of establishing their own savings banks and it is, quite likely that for their proper working it would be necessary to ask the Postal Department to withdraw its own savings bank system. Now, whether the assurance conveyed in the passage which I have now read out is still valid or is to be regarded as a matter of ephemeral policy which may be altered at any time is a matter on which I should be very grateful for elucidation.

Thirdly, with regard to wireless

and broadcasting, there is a provision in section 129 of the Government of India Act. I wish to know whether anything corresponding to this would be reproduced in the new Constitution. It is for the sake of ascertaining these particulars that I am moving these three amendments, viz.,

"That in paragraph (a) of item 32, after the words 'Posts and Telegraphs' the words ,telephones; post-office Savings Bank be inserted."

"That in paragraph (b) of item 32, the word 'telephones' be deleted, and the following be added at the end: 'subject to the provision of the Constitution corresponding to Section 129 of the Government of India Act, 1935.'"

"That paragraph (c) of item 32 be deleted."

Mr. Naziruddin Ahmad: I beg to move-That in item 32, the following new para. be added after para. (b) :-

"That in item 32, the following new para. be added after para. (b): '(bb) other like forms of communications'."

This is practically an amendment of a drafting nature because it only seeks to make the enumeration complete. There are in clause (a) the Posts and Telegraphs owned and managed by the Government. In clause (b), telephones, wireless and broadcasting are mentioned. The subparagraph which I wish to add is to include within this list "Other like forms of communications". There may be private postal

undertakings by private individuals. The Government of India have the monopoly for carrying on postal communications. So, in order to guard against any loophole enabling private persons to undertake a parallel postal service I have suggested that this sub-clause may be added. It is only a suggestion to the Drafting Committee to take note of and to do the needful that I have made in this amendment.

With regard to Mr. Madhava Rao's amendment in the matter of postal savings bank I think that though it is connected historically with the Postal Department, it does not form part of the "Communications" to which the States have acceded. I should therefore think that before dealing with the law relating to Postal Savings Banks, some consultation with the States' authorities may be undertaken. That is all I have to submit in this respect.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move, that in para (a) of item 32 the words "or are acquired by the Federation" be deleted and at the end of para (c) of item 32 the words "in a Province" be inserted.

Sir, in connection with other amendments which I had the temerity to move earlier this morning I have been accused of being sensitive and also of being unduly apprehensive. I plead guilty to these accusations and I must say that my apprehensions regarding the acquisitive tendency of the Centre are not removed by the wording of item 32 or by any sub-item of this item. I have moved amendments only in respect of sub-items (a) and (c), but I am in full agreement with the amendment moved also in respect of clause (b) of item 32.

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b) item 4 of clause (c) of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones, wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not control them. The present item on the other hand seeks to control all telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not. To principle that was in mind my mind this is clearly an extension of the when the earlier April Report was drafted.

Then again, Sir, with reference

to clause (c) it has been pointed out Savings Bank does not form is already by other speakers that the Post Office part of the subject of communications which is one of the three subjects in respect of which the States have acceded Federation in future. In practice, Sir, the business conducted by the Post Office does mean a certain amount of profit to the Post Office and it is only legitimate that Indian States which have established banks of their own should be permitted to deal with the savings bank

business and that the Post Office should cease to do this work in future in Indian States.

Prof. Shibbanlal Saksena (United Provinces : General) : Mr. President, Sir, my amendment is as follows" That for para. (b) of item 32 the following be substituted:

(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present'."

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs. In regard to Foreign Affairs, Sir, the list of Federal subjects will show that the entire jurisdiction is with the Federal Government. As for Defence, there, too the entire control is with the Federal Government. In fact there is provision in item 5 allowing the States to keep their armies though the strength Organisation and control of these will be by the Federation. But I wish that this provision were not there, and no separate armies were allowed to be kept by any unit. Similarly in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation. We had the experience of the last war and we know how the Fifth. Columnists used to employ wireless transmitters and other things for purposes of espionage. We can conceive of another war. In that case, until the Federation has full control over the system of communications, it cannot adequately discharge its responsibilities for defence. So, think, that. so far as communications are concerned, the Federation must have complete ownership. Of course, I visualise that our Federation will trust its units and will in normal times delegate its powers to them and grant full autonomy by federal laws, but it must have the power in times of emergency to take away all control and be fully prepared to meet emergencies. For if we have no power of ownership of these means of communication, we cannot own them.

This is only possible by providing in this Federal list. complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of 'broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting. Therefore, I have suggested that "Acquirement when such systems of communication are not owned by the Federation at present", be added to the present clause after the deletion of the words "whether owned by the Federation or not" at the end of the present clause. Because there are some States which have got their own systems of communication I want the Federation should have the right to acquire them at least during the time of emergency and to that I think, nobody should object.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam's amendment. We are all agreed that the Central Government must have control over broadcasting. Even the amendments that have been suggested by the States Ministers-did not try to take away the control in the last resort of the Federal Government. All that I am able to read from their amendments is that they should be permitted to establish their

own broadcasting stations and to some extent exercise control over them. I am sure that in the body of the Act a provision

similar to the existing provision in section 129 of the Government of India Act will be enacted. There, reference is made to treaties and obligations between the Central or Federal Government and the States or Rulers of States regarding the manner in which the powers should be exercised and also in cases of emergency the Governor-General should have power to take charge of the entire broadcasting system in the whole country, whether the broadcasting station is within the ambit of a State or in a province. A similar provision clothing the Central Government with power to take charge in case of emergency will also, I am sure, be made. This provision is adequately made in the amendment of Mr. Santhanam who recognises that both the provinces and the States may be allowed to have their own broadcasting stations subject to laws and regulations to be made by the Centre.

Then I find Mr. Maheshwari takes objection to one thing in clause (a) of item 32, that, is acquisition of broadcasting stations, and posts and telegraphs within the ambit of a State. It is true that it is not there in Entry No. 7 in List I in the Government of India Act. For the sake of uniformity, Sir, if a State is prepared to sell away the posts and telegraphs communications there, it must be open to the Federation to acquire them. Acquisition means not only voluntary acquisition or agreement between the parties, but compulsory acquisition also. The only thing to which they are taking exception is compulsory acquisition.-

So far as the railways are concerned, there has been an attempt to centralise all the railway systems for the benefit of the entire State. I am not talking of the States who are not acceding. Those States who are acceding, originally even under the Cabinet Mission Plan, it was intended, should concede the three subjects Defence, External Affairs and Communications. Communications are practically the arteries of defence and in referring to defence, we think in terms of emergency. Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion.

I support the amendment moved by my honourable friend Mr. Santhanam and oppose the other amendments.

Mr. S. V. Krishnamoorthy Rao (Mysore State) : Sir, I do not think clause 32 excludes the right of a Unit to own broadcasting, wireless, telephones, because it says in clause (b), telephones, Wireless, broadcasting and other forms of communication, whether owned by the Federation or not. So, all that this clause does is to empower the Federal legislature to legislate, whether these forms of communication are owned by the Federation or not. Especially, in a country like India, in times of war and emergency, communications are closely allied with defence and so the power to regulate and legislate for these communications should rest with the Centre and the Centre alone.

I also oppose the amendment to exclude the Savings Bank from the Post offices, because these Savings Banks are a normal function of the post offices. No State so far as I know can afford the service that these Post office Savings Banks are doing, especially in the rural areas. Almost every State has got its own Savings Bank in the Treasuries and also the Banks financed or partially run by the State. But these post offices are situated in rural areas in small villages and I do not think any State or province can afford to start savings banks in rural areas. This work can be done and it is being done very usefully by these post offices, even branch post offices and therefore I oppose the amendment to exclude the savings banks from the purview of the post office.

I oppose all the amendments and support the original clause as it is.

Shri Gopikrishna Vijayavargiya (Gwalior State): [Mr. President, I am of the opinion that "broadcasting" should be included in "Communications." Broadcasting is also one of the means of communicating one's ideas and therefore this should also be a federal subject. The objections raised against it are not sound. The amendment of Mr. Santhanam in this connection is appropriate and broadcasting should be a federal subject. Many States today are pressing the view that this right should remain with them. In this connection, what I have to say is that when we are all jointly making the Federation, it is not proper to say that this right belongs to the States and that the Federal Centre should not interfere with it. I think that this is not in good spirit. We are framing the Federation in cooperation with the Princes and their representatives and therefore whatever few rights are being ceded in a few subjects must be surrendered without reservations. This includes Posts and Telegraphs. We must give them to the Federation.

It is my' experience that in the small States where there are only State Post-offices, the States place a number of restrictions on people's liberties. Very often, in cooperation with post-offices, C.I.D., and many similar methods the States suppress the news that is sent out, and people's confidential letters are detained, intercepted and utilised against them in litigation. Therefore, the post-offices, etc., should be a little more independent, and the States should be given minimum rights over them, so' that the service that can be rendered to the people through the Post offices, should be properly done. These (Post-offices) can escape intrigues and mismanagement of States only by recognition as a Federal subject. Therefore this whole subject should be treated as suggested in the amendment of Mr. Santhanam.]³

Chaudhri Nihal Singh Takshak (Jind State): [Mr. President, I rise to oppose one half of the amendment of Mr. Maheshwari. As an inhabitant of an Indian state, I have some experience of those States which have their own postal arrangements, particularly the smaller States. The State-subjects have a number of difficulties there. Post offices are considered a source of state-revenue and therefore the States try to have as many post-offices and as few postmen as possible, Whereas, in the provinces

³ English translation of the Hindustani speech.

(of India) the mail is distributed in a village twice a week, in Indian States it is distributed hardly twice a month, not even once a week. The reason is the shortage of postmen.

One other particular difficulty is that the money-orders that are sent there are "exchanged" and the "exchange" takes place in the post-offices in British India. This takes a lot of time. Many a time it happens that due to shortage of money in State-treasuries, money-orders are delivered after many days and delayed even for months.

The third special difficulty is that in such States as have their own postal arrangements, when the pensions are paid from Indian Provinces the recipients have to go very long distances. Very often, I have seen how much inconvenience widows have to undergo when they go (to post offices) to receive pensions.

The other thing is that post office is included in the "item" but the Savings-Banks clause cannot be separated from it. In the States where there are local post-offices, Savings bank facilities are not given. Therefore, the words "or acquired by the Federation" should not be deleted. I would request this Assembly that as soon as the Constitution comes into operation, right from the very beginning the post offices must be a Federal-subject, so that the difficulties of State subjects may be removed.]⁴

Mr. A. P. Pattani: Mr. President, Sir, last honourable member's remarks about the States who wish to cooperate in every possible way, as I said as a member from the States, are something that I do not understand. What is the intrigue of the States he talks about ? We are asking you to take the communications that are necessary for the Union. We are requesting that communications that are necessary for the Union. are re-requesting that communications which are owned by the provinces or States should only be regulated by the Centre. Where is the intrigue in this ? I do not understand, Sir, and I wish the honourable member will explain.

Shri Gopikrishna Vijayavargiya: The thing is this. The intrigue I was mentioning was not regarding the present affairs. But in some post offices, some letter,,, were intercepted and other things done by the States. That was what I was referring to and not the present state (if affairs).

Mr. N. Gopalaswami Ayyangar: Sir, the first amendment that was moved to this particular item was that of Mr. Santhanam. I take it that he moved it because the previous amendment on the list had not been moved. I may say at once that, though that particular amendment was not moved by Sir V. T. Krishnamachari, an amendment in substance more or less the same as that amendment has been moved by Mr. Pattani; and, if the House will permit me, I propose to accept the substance of Mr. Pattani's amendment but in the language of Sir V. T. Krishnamachari's amendment which was not moved. The only verbal change that I would make in Sir V. T. Krishnamachari's draft is that I would substitute "Federal" for "Union". It will read: "Federal telephones. wireless, broadcasting and other like forms of

⁴ English translation of the Hindustani speech.

communication". That, 'I think, disposes of Mr. Santhanam's amendment. I will not accept it.

Shri K. Santhanam: I withdraw it.

Mr. N. Gopalaswami Ayyangar: Then, Sir, I have to deal with the remarks of Mr. Madhva Rao in regard to certain points connected with the wording of this item. I may mention for his information that there is a State where there were agreements about telegraphs between the Paramount Power and the State. I refer to Kashmir. In addition to the Indian telegraph system which works in Kashmir, that State has also a State telegraph system, and the correlation and coordination of these two systems have been provided for by an agreement between the State and the Government of India. He referred also, Sir, to certain assurances and statements of policy made by the Crown Representative in respect of post offices, of telephones, of post office savings banks, and about wireless. Now I do not wish to go into all the statements of policy by the Paramount Power which is defunct today. But I would only say that any assurances of that sort were not supposed to be eternal. It is quite possible, even if the Paramount Power had continued in this country, for these arrangements being revised by agreement between the State and the Paramount Power. That procedure will still be available. The short answer to Mr. Madhava Rao as regards these matters is this. I would refer him to the terms of the Instrument of Accession which has been recently signed by all States which have acceded to the Dominion, and one of the items under Communications in respect of which they have agreed that the Federal Legislature should have power to make laws is worded as follows:-

"Posts and Telegraphs, including telephones, wireless, broadcasting, and other like forms of communication."

There is no limitation at all here. In actual fact this broadly worded item is limited by other arrangements. Now I was referring to agreements as regards these matters. We find in the standard Standstill Agreement which has been entered into between the States and the Government of India the clause that will apply to agreements is worded as follows

"Until new agreements in this behalf are made all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or as the case may be the part thereof and the State."

So that, whatever assurances or agreements already exist will be continued until new arrangements are made. And such agreements, according to the schedule to that Standstill Agreement, could relate to Posts, Telegraphs and Telephones. There can be no quarrel then as regards the wording of the item in the Federal list in the Union Powers Committee Report. It really puts into the new constitution limitations on the power of the Federal Legislature which you do not find in the Instrument of Accession that you have already signed. And it preserves the right which exist in favour of any individual State at the commencement of this constitution. Those rights will be preserved until they are modified or extinguished by agreement between the Federation and the unit concerned. That, I hope, supplies the clarification which Mr. Madhava Rao sought.

There is one part of this item, clause (a) of item 32, to which some exception was taken in an amendment moved by my friend Mr. Himmat Singh. He thought that his apprehensions as regards the Centre were only fortified by the words which you find in this clause "or are acquired by the 'Federation'". Now, I wish to put to the House this one point: Posts and Telegraphs are, according to the distribution of powers between the Centre and the Units, an item which should normally be under the exclusive control of the Federation. We recognize the fact that any arrangement that may exist with the States which accede should be continued until other arrangements are made. Now, take the case of the Federation deciding at some time in the future that, in the interests of the country as a whole it is necessary that the standard of postal administration of a particular State should be pulled up, that there was no hope of the State itself doing it, that therefore it is necessary for the Federation to take over the administration of Posts and Telegraphs in that particular State. I think, Sir, in the larger interests of India the Federation should have the power to acquire any rights that that particular State might have. When we say "or are acquired by the Federation" it means that for any rights in what is essentially a Federal subject—any vested interest—which an individual State may have, due compensation will be paid to that State on acquisition. No body who really appreciates a scheme of federation can object to the lodgement of such a power in the Centre.

Then, Sir, I would refer to the other amendment which was moved by Mr. Himmat Singh. He wants to restrict Post Office Savings Banks to Provinces. Apart from the merits of it, I think, if we do that, it will mean a tremendous unsettlement of the existing state of things. There are hundreds of States and thousands of Post Offices in such States which are now doing this work. Is it suggested that the Federation should not have anything to do with this sort of thing in any Indian State? The only thing we need provide for is that, in case any particular State makes out a case for running Savings Banks of its own, unconnected with the Post Office, then it will be a matter for negotiation between it and the Government of India as to whether the Post Offices in the State might be instructed from the administrative standpoint not to have any more Savings Bank work. That is quite possible and if a State makes out a case, I dare say the future Government of the Dominion will consider it. But to remove Post Office Savings Banks in all Indian States from the purview of the Federation will be an economic upsetting of conditions in Indian States which I for one will not recommend to the House.

Then, Sir, we have Mr. Shibbanlal Saksena's amendment which runs as follows :

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms; of communication. Acquisition when such systems of communication are not owned by the Federation at present."

I think, Sir, the amended form in which this item will appear as a result of what I have said already will cover the substance of what Mr. Shibbanlal Saksena wants.

The only other amendment I need refer to is that of Mr. Naziruddin Ahmad. He very rightly points out that the words "other like forms of communication" which now occur in clause (b) will only refer to forms of communication of the same type as

telephones, wireless and broadcasting. He wanted that the Centre should have power also to regulate forms of communication such as Post Offices and Telegraphs. The only thing that I need say on this point is this: Posts and Telegraphs, in item (a), are a Federal subject. You will notice that even in the case of any postal or telegraph systems, which under the exceptional arrangements which exist with certain Indian States are continued, the Centre will have the power-the Federal Parliament will have the power-to make laws for their regulation and control.

In areas which are not covered by any such special arrangements the Federal Parliament will have exclusive power to prohibit any other kind of postal communication between individual and individual or groups of individuals and groups of individuals. As a matter of fact, I believe, there is in the existing Post Office Act a section which makes it an offence to circumvent the regular post by making any arrangement privately for the dispatch of letters between one area and another. That is an offence under the Post Office Act. I am sure that provision will be continued. Nobody can send a telegram except through the Government Telegraph Office at present. In view of this, I do not think he need press the addition of the item he wanted. Sir, I have nothing more to say. The result is that I accept Mr. Pattani's amendment in Sir, V.T.Krishnamachari's language, and oppose all the other amendments.

Mr. President: I will now put the amendments to vote, and I think the best course would be to take the item by paragraphs.

There is first the amendment of Mr. Madhava Rao.

"That in paragraph (a) of item 32, after the words Posts and Telegraphs' the word 'telephones; post-office, Savings Bank;' be inserted."

(The amendment was negatived.)

Mr. President: Then there is the amendment of Mr. Himmat Singh,

"That in para. (a) of item 32, the words 'or are acquired by the Federation' be deleted."

(The amendment was negatived.)

Mr. President: Then I take up the amendments to clause (b).

Shri K. Santhanam: In clause (a) I have an amendment about the words "State Unit". These words are likely to cause confusion.

Mr. N. Gopalaswami Ayyangar: Sir, he might leave the refining of the phrase to the draftsmen. Shri K. Santhanam: The intention is the States ?

Mr. N. Gopalaswami Ayyangar: Yes.

Mr. President: To Item No. 32 (b) Vie first amendment is that of Mr. Pattani, in the language of Sir V. T. Krisnamachari.

The amendment was adopted.

Mr. President: Then I take it that Mr. Santhanam withdraws his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not think it is necessary to put Mr. Shibbanlal Saksena's amendment now separately.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: Then we take Mr. Madhava Rao's amendment.

Mr. N. Madhava Rao: That is a consequential one and it drops, as also my amendment to 32(c).

Mr. President: Then we come to Mr. Himmat Singh's amendment.

"That at the end of para. (c) of Item 32, the words 'in a province' be inserted."

(The amendment was negatived.)

Mr. President:. There is, I think, only one other amendment, that is the one by Mr. Naziruddin Ahmad.

"That in item 32, the following new para be added after para (b) (bb) other like forms of communications'.

Mr. Naziruddin Ahmad: Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the item, as amended, to the vote of the Assembly

Item No. 32, as amended, was adopted.

.....

.....

.....

Mr. President: It is one O'clock now. The House will now adjourn till ten O'clock tomorrow.

The Assembly then adjourned till ten of the Clock on Wednesday, 27th August 1947.

Annexure E:Report of the Union Powers Committee of Constituent Assembly of India

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN, UNION POWERS COMMITTEE.

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA

SIR,

On the 28th April 1947, the Hon'ble Sir N. Gopalaswamy Ayyangar on behalf of our Committee, presented our first report to the Constituent Assembly. In doing so, he referred to the changes that were developing in the political situation and were likely to affect the nature and scope of the Committee's recommendations, and sought permission to submit a supplementary report at a later date. The House was pleased to grant us leave to do so.

2. Momentous changes have since occurred. Some parts of the country are seceding to form a separate State, and the plan put forward in the Statement of the 16th May on the basis of which the Committee was working is, in many essentials, no longer operative. In particular we are not now bound by the limitations on the scope of Union Powers. The first point accordingly that we considered was whether, in the changed circumstances, the scope of these powers should not be widened. We had no difficulty in coming to a conclusion on this point. The severe limitation on the scope of central authority in the Cabinet mission's plan was a compromise accepted by the Assembly much, we think, against its judgement of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with

the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the

conclusion-a conclusion which was also reached by the Union Constitution Committee-that the soundest framework for our constitution is a federation, with a strong Centre. In the matter of distributing powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, viz., the federal, the provincial and the concurrent. We have prepared three such lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre. in view however of the exhaustive nature of the three lists draw up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present indentifiable and cannot therefore be included now in the lists.

3. It is necessary to indicate the position of Indian States in the scheme proposed by us.. The States which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal 1st of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre.

4. To enable States and, if they so think fit, Provinces also, to cede wider powers to the Centre, we recommend that the constitution should empower the Federal Government to exercise authority within the Federation on matters referred to them by one or more Units, it being understood that the law would extend only to the Units by whom the matter is referred or which afterwards adopt the law. This follows the Australian model as set out in section 51 (xxxvii) of the Australian Constitution Act.

5. We have included in the federal list the item the strength, organisation and control of the armed forces raised and employed in Indian States". Our intention in doing so is to maintain all the existing powers of co-ordination and control exercise over such forces.

6. We recommend to the Assembly the proposals contained in para 2-D of our previous report on the subject of federal taxation. It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing, of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time.

I have the honour to be,

NEW DELHI; Sir,

July 5, 1947. Your most obedient servant, JAWAHARLAL NEHRU,

Chairman.

APPENDIX

LIST I-FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.
2. Requisitioning of lands for defence purposes including training and manoeuvres.
3. Central Intelligence Bureau.
4. Preventive detention, in the territories of the Federation for reasons „of State.
5. The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units; the strength, Organisation and control of the armed forces raised and employed in Indian States.
6. Defence industries.
7. Naval, Military and Air Force works.
8. Local self-government in cantonment areas, the constitution and powers
within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.
9. Arms, firearms, ammunition and explosives.
10. Atomic energy, and mineral resources essential to its production.
11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.
12. Diplomatic, consular and trade representation.
13. United Nations Organisation.
14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
15. War and Peace.
16. The entering into and implementing of treaties and agreements with foreign countries.
17. Trade and Commerce with foreign countries.

18. Foreign loans.
19. Citizenship, naturalization and aliens.
20. Extraditions.
21. Passports and visas.
22. Foreign jurisdiction.
23. Piracies, felonies committed on the high seas and offence committed in the air against the law of nations.
24. Admission into, and emigration and expulsion from, the territories of the Federation; pilgrimages to places beyond India.
25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.
26. Import and export across customs frontiers as defined by the Federal Government.
27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution declared by Federal law to be an institution of national importance.
28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.
29. Airways.
30. Highways and waterways declared by the Federal Government to be Federal highways and waterways.
31. Shipping and navigation on inland waterways, declared by the Federal Government to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.
32. **(a) Posts and telegraphs; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control;**
- (b) Telephones, wireless, broadcasting, and other like forms of communication, whether owned by the Federation or not;**
- (c) Post Office Savings Bank.**
33. Federal Railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges,

interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

34. Maritime shipping and navigation, including shipping and navigation on tidal waters.

35. Admiralty jurisdiction.

36. Ports declared to be major ports by or under Federal Law or existing Indian Law including their delimitation.

37. Aircraft and air navigation : the provision of aerodromes, regulation and Organisation of air traffic and of aerodromes.

38. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

39. Carriage of passengers and goods by sea or by air.

40. The Survey of India, the Geological, Botanical and Zoological Surveys of India, Federal Meteorological organisations.

41. Inter-Unit quarantine.

42. Federal Judiciary.

43. Acquisition of property for the purposes of the Federation,

44. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

45. Census.

46. Offences against laws with

respect to any of the matters in this list.

47. Enquiries, surveys and statistics for the purposes of the Federation.

48. Federal services and Federal Public Service Commission.

49. Industrial disputes concerning Federal employees.

50. Reserve Bank of India.

51. Property of the Federation and the revenue therefrom, but as regards property situated in a Unit subject always to legislation by the Unit, save in so far as Federal Law otherwise provides.

52. Public debt of the Federation.

53. Currency, foreign exchange, coinage and legal tender.
54. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.
55. Insurance.
56. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one Unit, but not including universities.
57. Banking.
58. Cheques, bills of exchange, promissory notes and other like instruments.
59. Patents, copyright, inventions, designs trademarks and merchandise marks.
60. Ancient and Historical Monuments: archaeological sites and remains.
61. Establishment of standards of weight and measure.62. Opium, so far as regards cultivation and manufacture, or sale for export.
63. Petroleum and other liquids and substances declared by Federal Law to be dangerously inflammable, so far as regards possession, storage and transport.
64. Development of industries where development under Federal control is declared by Federal Law to be expedient in the public interest.
65. Regulation of labour and safety in mines and oilfields.
66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal Law to be expedient in the public Interest.
67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or Chief Commissioner's Province, to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any Unit to railway areas outside that Unit.
68. All Federal elections; and Election Commission to superintend,. direct and control all Federal and Provincial elections.
69. The salaries of the Federal Ministers and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of the Federal Parliament.

70. The enforcement of attendance of persons for giving evidence or Producing documents before committees of the Federal Parliament.

71. Duties of customs including export duties.

72. Duties of excise on tobacco and other goods manufactured or produced in India except- (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs; (c) medicinal and toilet preparations containing alcohol, or any substance included In sub-paragraph (b) of this entry.

73. Corporation tax.

74. State lotteries.

75. Migration from one 'Unit to another.

76. Jurisdiction and powers of all courts, with respect to any of the matters in this list.

77. Taxes on income other than agricultural Income.

78. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of the companies.

79. Duties in respect of succession to property, other than agricultural land.

80. Estate duty in respect of property other than
agricultural land.

81. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

82. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

83. The development of inter-Unit waterways for purposes of flood control, irrigation, navigation and hydroelectric power.

84. Inter-Unit trade and commerce.

85. Fishing and fisheries beyond territorial waters.

86. Federal manufacture and distribution of salt; regulation and control of manufacture and distribution of salt by other agencies.

Note.-A section should be incorporated in the constitution itself prohibiting the imposition of any duty or tax on salt.

87. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II-PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the evil power); the administration of justice; constitution and Organisation of all courts, except the Supreme Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to each detention.
2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.
4. Prisons, reformatories, Borstal Institutions and other institutions of a like nature, and persons detained therein; arrangements with other Units for the use of prisons and other institutions,
5. Public debt of the Province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Works, lands and buildings vested in or in the possession of the Province.
8. Compulsory acquisition of land except for the purpose of the Federation.
9. Libraries, museums and other similar institutions controlled or financed by the Province.
10. Elections to the provincial Legislature and of the Governors of the provinces subjected to the provisions of paragraph 68 of list I.
11. The salaries of the Provincial Ministers, of the speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman, thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and the enforcement of attendance of persons for giving evidence or producing documents before Committees of the Provincial Legislature.
12. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
13. Public health and sanitation hospitals and dispensaries; registration of births and deaths.
14. Pilgrimages, other than pilgrimages to places beyond India.
15. Burials, and burial and burning grounds.
16. Education including Universities other than those specified in paragraph 28 of List I.
17. Communications, that is to say roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tram ways; ropeways; inland waterways and traffic

thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies, irrigation and canals-drainage and embankments, water storage and water power.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

20. Land, that is to say, rights

in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and revolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards: encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal Control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and 'gasworks.

26. Trade and commerce within the Province; markets and fairs.

27. Money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I, or Universities; unincorporated trading literary, scientific, religious and other societies and associations, co-operative societies.
35. Charities and charitable institutions; charitable and religious endowments.
36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.
37. Betting and gambling.
38. Offences against laws with respect to any of the matters In this List.
39. Inquiries and statistics. for the purpose of any of the matters in this List.
40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.
41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in subparagraph (B) of this entry.
42. Taxes on agricultural Income.
43. Taxes on lands and buildings, hearths and windows.
44. Duties in respect of succession to agricultural land.
45. Estate duty in respect of 'agricultural land.
46. Taxes on mineral rights, subject to any limitations Imposed by any Act of the Federal Parliament relating to mineral development.
47. Capitation taxes.
48. Taxes on professions, trades, callings and employments.
49. Taxes on animals and boats.
50. Taxes on the sale of goods and on advertisements.
51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

52. Taxes on the consumption or sale of electricity.
53. Cesses on the entry of goods into a local area for consumption, use or sale therein.
54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
56. Dues on passengers and goods carried on inland water-ways.
57. Tolls.
58. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

LIST III-CONCURRENT LEGISLATIVE LIST

1. Criminal Law. including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws

with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces In aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.
3. Removal of prisoners and accused persons from one Unit to another Unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution: the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes; and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce;. infants and minors; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency.

13. Administrators-general and official trustees.
14. Stamp duties other than duties or Fees collected by means of judicial stamps, but not including rates of Stamp duty.
15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List., II.
16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and, dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy; nomadic and migratory tribes.
25. Factories.
26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
27. Unemployment and social insurance.
28. Trade union; industrial and labour disputes.
29. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Electricity.
31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.
32. The 'Sanctioning of cinematograph films for exhibition.
33. Persons subjected to preventive detention under Federal authority.

34. Economic and social planning.

35. Inquiries and statistics for the purpose of any of the matters in this List.

36. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

Annexure F: Statement of Objects and Reasons of Prasar Bharati Bill, 1989

It is the Government's declared policy to confer autonomy on Akashvani and Doordarshan thereby ensuring that they function in a fair, objective and creative manner. It is in this context that it is proposed to provide for the establishment of an autonomous Corporation to be known as 'Prasar Bharti' (Broadcasting Corporation of India) and to entrust to it the functions which are at present discharge by Akashvani and Doordarshan. The intention is that the proposed Corporation should function as a genuinely autonomous body - innovative, dynamic and flexible - with a high degree of credibility. It must function in a democratic manner which enriches our democratic traditions and institutions, being responsible to the people and Parliament of India and keeping in mind the variegated traditions, languages and cultures of the country.

2. The Corporation is conceived of as a single unit with two distinct wings - Radio and Television respectively. The proposed structure takes into account the need for ensuring that Radio and Television, which belong to two distinct cultures, are enabled to evolve and grow in terms of their own genius while, at the same time, ensuring a commonality in overall approach which alone can ensure that the requirements of the people in terms of entertainment, information and education are met.

3. The Corporation will have a Board of Governors comprising a Chairman, an Executive Governor, a Governor who would be responsible for finance and a Governor incharge of personnel matters. Besides these full-time functionaries, the Board will also have six part-time Governors - people of eminence drawn from diverse walks of life. The Governors will be appointed by the President of India on the recommendations of a Committee headed by the Chairman of the Rajya Sabha and consisting of the Chairman of the Press Council of India and a nominee of the President of India.

4. The Corporation will, while discharging its functions, be guided by specified 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.

5. The Executive Governor shall be the Chief Executive of the Corporation, responsible for its day-to-day administration.

6. The Bill also provides for the establishment of a Broadcasting Council, consisting of a President and ten other Members appointed by the President of India. The Council will ensure that the citizen's right to be informed freely, truthfully and objectively is fully protected and that the Corporation does not stray from the objective of ensuring adequate coverage to the country's diverse culture, and of catering to the various sections of society. This Council will consider complaints about programmes broadcast by the Corporation in this context and render suitable advice to the Board of Governors.

7. In addition to making provisions regarding establishment and composition of the Corporation, appointment and removal of the Governors of the Corporation, the Bill also provides for transfer of properties and funds at present vested in the Central Government for the purpose of Akashvani and Doordarshan to the Corporation transfer of employees of

Akashvani and Doordarshan to the Corporation and other ancillary matters and the establishment of Recruitment Boards for recommending the appointment of officers and other employees of the Corporation.

8. The Bill seeks to achieve the above objectives.

Annexure G: Extracts from the Report of Commission on Centre-State Relation (constituted vide Government of India, Ministry of Home Affairs Notification No. IV/11017/1/83-CSR dated June 9, 1983)

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scope of the later part of this Entry should be modified and restricted to inter-State rivers as against national waterways.

✓ 2.10.32 Entry 31, List I—It relates to "Posts and Telegraphs : telephones, wireless, broadcasting, and other like forms of communication".

It has been suggested by one State Government that Broadcasting and Television should be transferred to the State List. Another State Government has suggested that these matters should be transferred to the Concurrent List.

2.10.33 There are various facets of Broadcasting. These powerful media, *inter alia*, have a vital role in national integration, education and socio-economic development of the country. Establishment and working of this media involve large investments and complex technological requirements. 'Broadcasting' includes not only 'Radio and Television' but also other forms of wireless communication. The criticism of most of the States is mainly directed against the functional and not against the structural aspect of this Entry. Their main grievance is about lack of access to these media, which is an entirely different issue. We have considered these complaints and suggestions in detail in the Chapter on "Mass media"²⁰. Suffice it to say here, that Broadcasting and Television are a part of the Broad head of 'Communications' which are universally recognised as matters of national concern. These media have even inter-national dimensions.

One State Government has pointed out that while in the past the telephone facilities were departmentally run, now the Mahanagar Telephone Nigam, an autonomous body has been set up for the management and development of these facilities in Bombay and Delhi. It is argued that, in line with this trend, autonomous bodies set up by the Union are made responsible for telephone facilities in metropolitan towns while in other towns and rural areas similar autonomous bodies set up by States may be made responsible. It has proposed that for this purpose telephones may be shifted from List I to List III.

Telephones are a very important means of communication. Stretching over the length and breadth of the country, they help to bind the nation together. They are vital for practically every facet of the nation's life e.g. in trade and commerce. These facilities require large investments. Technological advances are taking place all the time in this field. For the successful operation of these facilities, they lean on other facilities like satellites which are with the Union. Establishment of autonomous bodies at important centres is only an administrative arrangement decided upon by the Union for the more efficient discharge of its functions. But such an action cannot be made the basis for a plea to transfer part of the subject to the Concurrent List.

It is in the larger interests of the nation that this important means of communication remains within the exclusive jurisdiction of the Union so that the entire system develops as an integrated, sophisticated and modern facility.

(*) Chapter XIX.

2.10.34 Entry 32, List I—"Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides".

It has been suggested that the saving clause at the end, *viz.*, "save in so far as Parliament by law otherwise provides" is unnecessary and should be deleted, because "Article 285 itself provides for such powers".

2.10.35 Article 285(1) provides for exemption of all Union property from taxes levied by a State or by any authority within a State. We have dealt with the issues relating to Articles 285 and 289 in a subsequent part of the Chapter²⁰ and have concluded that no structural change in these provisions is called for. It will be sufficient to say here that the exception carved out by the saving clause of Entry 32 in question is in conformity with the basic scheme of inter-governmental tax immunities provided in Articles 285 and 289. If this saving clause is deleted from Entry 32, as suggested, the Entry will become incompatible with Article 285. We are, therefore, unable to support the suggestion for modification of Entry 32.

2.10.36 Entry 33, List I—The Constitution (Seventh Amendment) Act, 1956 deleted this Entry as also Entry 36 in List II and modified Entry 42 in List III to read "Acquisition and requisitioning of property".

2.10.37 The suggestion of a State Government is that the pre-1956 position should be restored. An Entry "Acquisition and requisitioning of property for the purposes of the Union" should be inserted in List I and a new Entry 36 inserted in List II which will read "Acquisition and requisitioning of all property other than for the purposes of the Union". Entry 42 in List III, it is suggested, should be omitted. The State Government has not pointed out any difficulty that they might be facing on account of the present Entry 42 being in the Concurrent List.

2.10.38 Prior to the Seventh Amendment, both Entry 33 of List I and Entry 36 of List II provided for acquisition and requisitioning of property, the former for the purpose of the Union and the latter for purposes other than those of the Union, subject, however, to the provisions of Entry 42 of List III. The last named Entry provided for "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

2.10.39 Such trifurcation of the subject led to several difficulties. Questions arose as to whether a State Government could acquire or requisition property for a "Union purpose". It was held by the Supreme Court, in *State of Bombay V. Ali Gulshan*²¹ that a State was not competent to requisition or acquire property under the Bombay Land Requisition Act, 1948, for the accommodation of the staff of a foreign consulate, because that was a 'Union purpose' and not a purpose of the State.

(²⁰) Paras 2.34.01 to 2.35.11.

(²¹) 1955(2) SCR 867.

CHAPTER XIX

MASS MEDIA

1. INTRODUCTION

19.1.01 Radio and Television are two powerful systems of mass communication generally denoted as Mass Media. These systems fall within the scope of the words "wireless, broadcasting and other like forms of communication" in Entry 31 of the Union List in the Seventh Schedule to the Constitution. The legislative and executive powers with respect to these subjects, therefore, vest exclusively in the Union. Both these systems are controlled and owned by the Union.

19.1.02 In this Chapter, we will consider the various issues relating to the Radio and Television broadcasting systems.

2. COMPLAINTS AND SUGGESTIONS

19.2.01 Most State Governments have not proposed any change in the existing constitutional arrangements. However, some of them have suggested that broadcasting should be transferred to the Concurrent List. One of them has stated that since States are responsible for a substantial chunk of development activity and have in most cases been reorganised on linguistic lines. They should have adequate access to radio and television facilities to propagate their language, culture, values, development programmes and different view points with regard to their special problems and opportunities. It is alleged that the States, particularly those governed by parties other than the one ruling at the Centre, do not get reasonable access to these media on these premises, it is urged that 'Broadcasting and Television' should be shifted to the Concurrent List. One State Government wants it to be transferred to the State List. The general tenor of the replies from the intelligentsia is that the two systems must be run in such a way that they have substantial autonomy in the type of information or entertainment disseminated. They also desire that direct interference in either the content or the quality of dissemination should be minimised. It is implied that there is too much interference from the bureaucratic system at present.

19.2.02 While a large number of State Governments have not questioned the placement of Broadcasting in List I, there is in the replies a general complaint of over-centralisation in both these systems. It is alleged that this over-centralisation has led to the denial to the States, the legitimate use of these media for putting across their views to the public. For instance, one State Government has said that "Central control over such powerful and expanding media has endangered political controversy in the past and could conceivably do so in the future". Several suggestions have been made by the State Governments in this context to secure access to these media for themselves. One State Government has suggested that "a law be made, or the present law be amended, to enable State Governments, wherever feasible, to set up their broadcasting stations, subject to such conditions or res-

trictions as necessary in the national interest". Yet another State has suggested that "in a country with India's size, diversity and complexity of problems, it is important that the State Governments are allowed parallel jurisdiction over radio and television and the Constitution may be amended accordingly." One State Government has suggested a special channel in the existing systems to be placed at the disposal of States so that the listeners of radio and viewers of television may have a choice and come to their own conclusions. Two State Governments have urged autonomy for the AIR and the Doordarshan.

19.2.03 We will first examine the suggestion for constitutional amendment to transfer Broadcasting from the Union to the State or the Concurrent List in the Seventh Schedule. A radio transmission system or a television transmission system works on an energy wave which carries the message across to the receiver system working synchronously on the same wave length. As energy waves do not observe any boundaries except the boundary of dissipation of its energy, national or linguistic boundaries are no bar to the reception as long as the energy can carry the message across. If Radio or TV transmission in two nations or two linguistic areas work on the same wave length, there is quite a chance of the two systems interfering with each other. When there is stress between two nations or two linguistic areas, such interference can lead to greater stress. Therefore, the international community has agreed to control the wave lengths and bands on which each country can work. Every country has to honour this agreement. Transmission in each country has to be kept within the agreed frequencies. This control over frequencies is exercised by the International Telecommunications Union. There is no criticism on the working of this international agreement in the replies received by us. What the States seek is control over the message or the entertainment dissemination by the system and freedom to air their views through the system.

19.2.04 In a country where a substantial part of the citizenry is illiterate or semi-literate and the population, particularly in the rural areas, is not very mobile, and they have few opportunities to get information of men and affairs in the other parts of the country, the Radio and the TV are powerful media for influencing thinking, attitudes and options of the citizenry. Hence every political party seeks to have access to the media in the interest of the party. In the more educated and enlightened countries, with several systems of mass communication to which people have access, the citizen has some means of comparing notes and differentiating between propaganda and fact. In this country where, as we have emphasised elsewhere, parochialism, chauvinism, casteism and communalism are pervasive and are actively made use of by powerful groups, if uncontrolled use of these media is allowed, it may promote centrifugal tendencies endangering the unity and integrity of the nation. In the context of the demand of some

States to have their own broadcasting stations, it will be pertinent to quote the views of the Verghese Committee :¹

"The propagation of a national approach to India's problems, creating in every citizen an interest in the affairs, achievements and culture of other regions and helping them to develop a national consensus on issues which concern the country as a whole, is of such supreme importance that any structure which inhibits this cannot be accepted".

We agree with these views. Further, the message of unity and integrity and the basic cultural links of the various parts of the country has to be carried to all, especially to the backward areas of the country so that the impact becomes effective. From a purely economic angle, if other reasons are not conclusive, a devolution to the States to have their own broadcasting and control will help largely the richer States. The poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces. The Verghese Committee has also drawn attention to these difficulties. If autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult. The telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union. For all these reasons and particularly the need to control centrifugal tendencies, we cannot support the demand for either a concurrent or an exclusive power to the States with respect to broadcasting.

19.2.05 Nevertheless, it cannot be forgotten that it is a political party which controls the Union Executive. Lest there be a temptation to use these powerful media wrongly in the party interest and not necessarily in the national interest, 'Ground Rules' of behaviour have to be established and observed meticulously. The need for a watch-dog for both the Union and the States becomes obvious. We shall deal with these aspects in the next section.

3. DEMAND FOR AUTONOMY

19.3.01 Two States have pleaded for autonomy for the Broadcasting system. A number of intellectuals also feel that the systems should have autonomy. The Verghese Committee was also of the view that the Broadcasting system should be put under a Trust, nationally owned and responsible to Parliament and given full autonomy except to the extent that the Union Government may give directives to refrain from broadcasting any matter relating to national security, preservation of public order or any other matter of grave public importance. It may also in the case of any national, regional or local emergency direct the Trust to broadcast any announcement.

19.3.02 We have given careful consideration to these suggestions. These powerful media have to be used in our country in the public interest to further the cause of development with social justice and strengthen the impulses of modernisation. These audio-visual media are of tremendous value in leaping over the

barriers of illiteracy and educating the people. Their immense potential should be exploited to foster national unity and integrity, and to fight effectively the fissiparous tendencies. Keeping in view these objectives and their enormous potential for making India a strong modern nation (or harming it, if improperly used), we are of the view that there can be no total autonomy for such powerful media. They must continue to be under the control of the Union Government, which will be responsible for their proper functioning to Parliament. We have no hesitation in saying that, till national integrity and unity become more firmly rooted than what is obtaining today and the pulls of regionalism, parochialism, casteism and communalism are substantially reduced, it will be premature to consider the grant of uncontrolled functional freedom to these powerful media. We do recognise the need for reasonable decentralisation and freedom in the day-to-day operations of these media in a vast country like ours so rich in diversity. To play an effective role these systems must, in their working, constantly strive for a harmonious adjustment between the imperatives of national interest and the varied needs and aspirations of the States and their inhabitants. We have made certain suggestions in this regard in the later parts of this Chapter.

4. OBJECTIVES OF MASS MEDIA

19.4.01 The purpose of Radio and Television is to entertain, inform and educate. It is possible to divide this role into five basic functions even though there will be grey areas of interplay. These five roles are accepted by all generally. These are :-

1. Entertainment
2. Dissemination of news promptly of important national and State happenings.
3. Specific programmes aimed at national integration, emphasising the basic cultural unity of the country and the close links in the socio-economic structure overriding chauvinistic considerations of caste, community, region and religion.
4. Communication of the policies of the Union and the State Governments.
5. Allowing political parties an access to put across their political philosophies.

19.4.02 It has to be recognised that the bulk of the transmission has to be for entertainment. The system can draw its clientele, who have to invest in the receiving system, only by first tempting them with substantial entertainment to their liking, before they can be made to listen to polemics. Polemics alone, however important, cannot hold the audience. Even street meetings of political parties have to start entertaining before getting a crowd of receptive audience.

19.4.03 It is imperative that the language of the transmission either of Radio or TV is the regional language. Very few citizens in the country are bilingual, let alone trilingual. Whether for entertainment or communication of ideas, unless the language used is one that the listener understands, the transmission does not achieve its objective. In Radio where the communication is audio, this is absolutely vital. In TV, following the example of the "Film World" in the

(1) Report of the Working Group on Autonomy for Akashvani and Doordarshan Vol. para.14 (page 31).

country, programmes where action predominates and very little understanding of language is required to enjoy the entertainment, the language barrier can possibly be overcome. But even in TV, if a specific oral message has to be conveyed, action component alone cannot make up for the ignorance of the language spoken. The message will not reach the listener. Theoretically, nobody can contest this basic requirement of the use of regional language in broadcasts. How far have the two systems achieved this objective?

19.4.04 There is another aspect of language which so far has not been appreciated. One common criticism is that, though vast areas are demarcated as Hindi-speaking in the country, the areas have a large number of dialects, such as, *Braja Bhasha*, *Maithili*, *Avadhi*, *Bhojpuri*, *Khadiboli*, etc.—which may not be understood by people speaking one or the other Hindi dialects. Some observers have pointed out that both Radio and TV, by following a certain uniformity in the Hindi they use in broadcasts, have passed on this colloquial uniformity to all the Hindi-speaking areas thereby creating a uniform language understood by the vast array of listener and viewers. This capacity of the Radio and TV to create a uniform language over vast areas has not been exploited in creating the Hindi that the Constitution-makers contemplated. Similarly, in the non-Hindi speaking States, where each language zone really comprises several dialects, a uniform acceptable version is desirable to avoid dialect chauvinism. The potential of the media to develop such a language has not been explored. Of late, provision has been made for simultaneous translation of the proceedings of major conferences of international agencies.

19.4.05 Article 351 of the Constitution reads as follows :—

“351. Directive for development of the Hindi language—It shall be the duty of the Union to promote the spread of the Hindi Language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.”

It is clear that both the Radio and TV transmission systems in the country have a duty to promote actively the expressed intention of this Article. We recommend that the directive of this Article should be pursued with imagination, vision and tact by the Union Government. Enrichment of the Hindi broadcasts over the media should be sought, on high priority basis, by assimilating common words from Hindustani and the other languages referred to in this Article, so that all people get used gradually to a uniform vocabulary at least for certain common terms all over the country.

19.4.06 To understand the nature of the complaints and assess how far the friction can be eased, it is necessary to examine the present status of the media and

the controls exercised in the interest of fairness between the Union and the States and the objectives of national unity and integrity.

19.4.07 Both the media are owned by the Union and run directly through expert technical staff with separate directorates for Radio and Television. Both are subordinate offices of the Ministry of Information and Broadcasting. The Radio system is known as the All India Radio or Akashvani. In Tamil Nadu alone it is known as “Vanoli” and not “Akashvani”. The T.V. system is known as Doordarshan. As the status of the ‘Art’ and the controls in the two systems are very different, it is desirable to consider each system separately.

5. ALL INDIA RADIO

19.5.01 Every region has its own radio transmission station where programmes are developed and transmitted. The bulk of the transmission is on the Medium Wave and can reach all places in the region and beyond, depending on atmospheric conditions and strength of the receiving set. Transmission in each region is generally in the local language and there are programmes in English and other languages which are prevalent in the region. As radio receiving sets can be tuned to various wave lengths, the listener has the option of listening to the programme he likes. He has only to own a set of the requisite strength, to have a wide choice of language and quality. Thus the language problem is not acute in the radio system.

19.5.02 National programmes and National news broadcasts from Delhi are given specific channels and times in the regional stations for relay of the broadcast to the region. National programmes have both educational and entertainment value. Subjects are of interest to the nation. National news broadcasts cover both international and national news of general interest. It has both English and Hindi versions, except in Tamil Nadu where, instead of Hindi, there is a Tamil news broadcast. This latter is deemed necessary since, in Tamil Nadu, not many follow Hindi. The news is to be understood by as large a population as possible.

19.5.03 As each linguistic region has its own broadcasts on its separate wave length, and sometimes on more than one wave length for separate programmes at the same time, there cannot be much complaint of language difficulty. Each region has its own news broadcasts to satisfy local interest. The listener has a choice of programmes, if he is prepared to invest in a radio set of sufficient strength. The complaint in Radio Broadcast is in regard to the coverage available to the State Governments for communication of their policies and in allowing political parties adequate access to put across their political philosophy. We shall deal with these later.

19.5.04 All the States including small States and Union Territories, excepting the Union Territories of Lakshadweep, Daman and Diu, and Dadra and Nagar Haveli, have independent radio stations. There are 91 radio stations in the entire network. Some stations have more than one transmitting facility of varying strengths. The Proposals of the Ministry of Information and Broadcasting for inter-linking all radio stations through the INSAT link may be

seen at Annexure XIX.1. As the All India Radio has an integrated administration, it will have the competence to select programmes from any station and broadcast them to other stations through INSAT when the chain becomes complete. Thus the planning for the future is fully in accordance with what the country needs. It is necessary that the system becomes fully linked as quickly as possible.

6. TELEVISION

19.6.01 The Television system in the country has many limitations. The transmission is limited to about seven hours a day on week days and 16 hours on Sundays, except when events like cricket, tennis and football matches of international importance are broadcast sometimes, for the entire period of their duration. Creation of the software for even these limited hours of broadcast is an expensive and highly technical problem. So much so, that some of the time is occupied by showing cinematographic films sometimes as old as thirty years. Out of the daily seven hours the period from 8.40 pm to 11.15 pm is known as prime time when it is expected that viewers will be in maximum numbers. Every interest wants to occupy this prime time. There is a lot of controversy on the occupation of prime time by the National Programme and allocations for State programmes in this period. The language controversy is quite acute so far as Television is concerned.

19.6.02 We pointed out to the Ministry of Information and Broadcasting that, basically, Hindi and English are the only principal languages used in the National Programme at present. Since, in many of the States in the South, the people do not understand Hindi and the large rural masses throughout India do not understand English, the Ministry was asked to indicate how the national programme is able to serve the purpose of national unity and integration. The Ministry was also asked whether it was not possible to think in terms of programmes in the regional broadcast in the local languages of the region.

19.6.03 In its response, the Ministry of Information and Broadcasting has observed that Hindi and English are used in the spoken-word related items included in the National Programme because these are undoubtedly the most widely understood languages among the TV viewing population in the country. The Ministry has also stated that the objective of promoting national integration and unity is sought to be achieved through the National Programme by including in it items produced by various regional centres reflecting regional culture, folk art, music, dance, crafts, well known institutions, etc. The developmental activities in different parts of the country are also projected through appropriate items in the National Programme. The reply does not answer the basic criticism that programmes in languages other than the local, fail to convey effectively the message sought to be communicated. It is also pertinent to note that the National Programme occupies 155 minutes out of a total of 345 minutes of prime time viewing. We are of the view that the purpose of promoting national integration can only be served through programmes of national importance conveyed in the local language.

19.6.04 The Ministry of Information and Broadcasting has further stated that schemes have been included in the Seventh Five Year Plan to introduce

a three-tier service. It is envisaged that each major State in the country will have its own primary service in the language of the State, originating from the Doordarshan Kendra at the capital and available throughout the State. It will carry programmes of interest to various sections of the population. A Programme Production Centre at the State capital, linked to transmitters in the State through microwave circuits or satellites, is essential for this purpose. They hope that by the end of the seventh Plan, all States and Union Territories (excluding Lakshadweep, Daman and Diu, and Dadra and Nagar Haveli) will have a Programme Production Centre at the respective capitals. Provision has also been made in the Seventh Plan of Doordarshan for satellite uplinks and additional dedicated microwave links to connect the transmitters in individual States with the Programme Production Centre at the respective capitals of major States. It would thus be seen that efforts are already under way to introduce programme services in respective languages in major States.

No doubt, these efforts have a long way to go, but the direction, in our view, is correct.

19.6.05 Many areas in the country today receive only the programmes broadcast from Delhi. In the non-Hindi speaking areas these programmes in Hindi and English are not understood by the masses who are unlettered. In the Hindi-speaking areas, though programmes in English may pose a difficulty, there is a greater chance of the Hindi programmes being understood particularly if the Hindi used is of the type commonly understood. We would suggest that, in order to get the maximum benefit in as short a time possible, those areas which suffer from the maximum handicap in following Hindi and English broadcasts should be accorded the highest priority in linking them with the regional broadcasts.

19.6.06 The information received from the Ministry of Information and Broadcasting shows that out of sixteen Production Centres, only eight produce programmes in their respective regional languages for a duration of about three hours daily. The remaining eight have, even now, to depend upon the Delhi transmission. Creation of software is apparently proving a problem. In the matter of entertainment this does not appear to have created much difficulty, if sale of TV sets in the country is taken as an indication of viewer participation. The National Programme, at present, occupies the period from 8.40 PM to 11.15 PM. This is in Hindi and English. This contains both entertainment and information. As the information programme is only in Hindi and English, our comment about the language broadcast for national integration becomes specially relevant.

19.6.07 The objective should be to see that every production centre produces sufficient software in the language or languages of the region to occupy all but the time required or accepted as reasonable for English and Hindi broadcast. Propagation of ideas of national integrity and unity will have to be in the regional language if they are to be understood by the targeted audience. National news will have to be translated into the local languages and broadcast simultaneously, if it is our objective to reach the largest number of population. This translation system has yet to evolve. We recommend that early attention

be paid to the setting up of arrangements for simultaneous transmission or dubbing of the broadcasts into regional languages.

19.6.08 The main complaint of the States is about the near monopoly of the National Programme from 8.40 to 11.15 pm which is considered to be the prime time of all transmission. Over and above this, the National Programme is made use by those stations where their own material has not come up to the amount of time available on the transmission. It will be neither correct nor enough to say that the Production Centres will not be able to produce sufficient software in the local or prevailing language of the area for a substantial part of the broadcasting time. If there is any difficulty, this should be solved first. The entire National Programme of nearly 3 hours of broadcast which is mainly in Hindi and English is not of much use to the viewers in the non-Hindi region except, may be, in any entertainment which does not need much of language sensibility. Particularly, news in English or Hindi as we have already pointed out, does not carry much message to a large part of the illiterate and semi-literate population in the non-Hindi speaking States. The plea that the national programmes promote national integration loses its validity if the programme is not in the language which is understood, by the intended viewers.

19.6.09 We recommend that the language of transmission for purposes of national integrity and news dissemination should be the language of the region.

19.6.10 We further recommend that there need not be uniformly rigid earmarking of a particular time period for the national programme in English or Hindi. It should be left to the Stations to decide whether a national or other programme which is locally preferred and understood should be transmitted during the prime time. Such an arrangement will enable local stations to take care of the fact that prime time for urban and rural parts are different and prime time may also vary from region to region. This will answer the various complaints voiced before us about "time-sharing".

19.6.11 In 1984, a Working Group of the Ministry of Information and Broadcasting (Joshi Committee) had drawn attention to the fact that a substantial part of the news coverage was urban-biased. As a result, matters of rural interest and rural development were not particularly brought before the viewers. It is an agreed policy that importance should be given to general development of the country including rural development in news coverage. From the explanation given by the Ministry of Information and Broadcasting, it is seen that, in the Seventh plan, this gap is proposed to be filled by utilising the mobile field units to transmit from the field to the broadcasting stations materials for the general broadcast. It may be examined whether extended use should not be made of this mode of news coverage, particularly when more time will be available for local broadcasting, if our recommendations are accepted. Incidentally, on the Radio, there has been local news broadcasting for the rural areas for quite a long time now. In this context, the fact that the prime time for rural areas is quite different from that in urban areas needs to be kept in view.

7. CODES AND CONTROLS

19.7.01 The main criticism of State Governments in the use of the media by the Union is over-centralisation and lack of facilities for themselves to put across their views. Communication of the policies of the Union and the State Governments is an important aspect of the role of the media. This communication is usually made by the Prime Minister or an important Minister of the Union Government and the Chief Minister or an important Minister of a State Government. A few examples of friction in the matter of State Chief Minister or State Ministers getting access to the media have been brought to our notice. In order to ensure that the media are not used for disruptive purposes, certain Ground Rules have been laid down for observance by All India Radio and the Doordarshan vide Annexure XIX.2.

19.7.02 We reproduce in Annexure XIX.3 the AIR Code, which is also being used by Doordarshan. Whether the user is an individual or a Minister, the nine items specified in the AIR Code are not permissible in the broadcast. This proposition, in our view, seems to be correct. The authority to censor any such broadcast has been delegated to the Station Directors and properly so. As Ministers would like to have prompt access to the media, any delay in approval of the broadcast through a reference to a higher authority, is undesirable. At the same time, the human factor being what it is, the Station Director's authority should not ordinarily be questioned, except where it is palpably incorrect. All concerned should understand the constraints of the situation and help in ensuring that the media is not used against the larger national interest. The cases as quoted to us are few whereas the broadcasts allowed to individuals and Ministers without objection, have been large in number. We do not think that there is any need to amend the existing rules.

19.7.03 Political parties seek the medium of broadcasting to put across their views to the people. They are equally bound by the Ground Rules of Broadcasting prescribed for individuals. They are given specific time on the broadcasting system only at the time of elections. (We have reproduced these Ground Rules in Annexure XIX.2). There have been no complaints about these Ground Rules before us. If necessary, the Inter-Governmental Council (recommended² by us for being established under Article 263) can consider whether any relaxation of the existing 'Ground Rules' for use of the broadcasting system for political purposes should be allowed, and if so, under what conditions.

19.7.04 Some States have asked for a Joint Advisory Council and greater say in the working of the existing system. Programme Advisory Committees are attached to those All India Radio Stations which originate programmes for a duration of not less than 5½ hours every day. There are such Committees in 60 of the 91 stations now broadcasting.

19.7.05 We recommend that all broadcasting stations should have their own Programme Advisory Committees.

2. Chapter IX "Inter-Governmental Council—Article 263"; Paras 9.3.05 and 9.3.06.

19.7.06 Rules relating to the constitution and duties of the Programme Advisory Committees in AIR Stations are given in Annexure XIX.4. Non-Official Members predominate and a quorum requires at least one-third of the non-official members to be present. We have not received any complaints about the composition of the Programme Advisory Committees.

19.7.07 But there will be an advantage if a non-political and competent non-official is made Chairman and the Station Director is made Deputy Chairman of these Committees.

19.7.08 We recommend that a specific rule may be introduced that the State Governments concerned should be consulted about the selection of non-official members and Chairman of the Programme Advisory Committees in their States. Such a provision exists in the Instructions on Doordarshan Committees. These Committees have the right to discuss the programmes and suggest suitable alterations. If any State has got any serious complaints about the use of the media, an approach to the Inter-Governmental Council would be the solution.

19.7.09 There are Programme Advisory Committees attached also to full-fledged Doordarshan Kendras, which originate programmes. (The present instructions are reproduced in Annexure XIX.5). No particular complaint has been voiced before us in regard to the constitution or the working of these Committees. It is a good thing that non-officials predominate in these Committees. But it would be desirable if the system that we have proposed for AIR, is followed in Doordarshan also.

8. RECOMMENDATIONS

19.8.01 (a) De-centralisation to a reasonable extent in the day-to-day operations of Radio and Television is necessary.

(b) The two mass media should constantly strive for a harmonious adjustment between the imperatives of national interest and the varied needs and aspirations of the States and their inhabitants.

(Para 19.3.02)

19.8.02 The directive contained in Article 351 should be pursued with imagination, vision and tact by the Union Government. The Hindi language used in broadcasts over the media should be enriched by assimilating common words from Hindustani and the other languages referred to in the Article, so that all people gradually get used to a uniform vocabulary at least for certain common terms all over the country. Steps towards such enrichment of Hindi should be taken on a high priority basis.

(Para 19.4.05)

19.8.03 The purpose of promoting national integration can only be served through programmes of national importance conveyed in the local languages.

(Paras 19.6.03 & 19.6.09)

19.8.04 In each region, radio programmes are transmitted by the All India Radio in the local language as also in English and in the other languages

of the region. The proposed inter-linking of all radio stations through the INSAT link will enable All India Radio to broadcast programmes of one station to other stations. It is necessary that such linking of radio stations should be made fully operational as quickly as possible.

(Paras 19.5.01 & 19.5.04)

19.8.05 During the Seventh Five Year Plan, Doordarshan proposes to set up, in each State capital, a Programme Production Centre and to link the Centre to the transmitters in the State through microwave circuits or satellites. While implementing this scheme, the highest priority may be accorded to setting up such Centres and linking regional broadcasts from each State capital with those areas in the State which suffer from the maximum handicap in understanding Hindi and English broadcasts.

(Paras 19.6.04 & 19.6.05)

19.8.06 (a) Every Programme Production Centre should produce sufficient software in the language of the region so as to occupy all the time except that which may be reasonably required for English and Hindi broadcasts. Software development should give special attention to propagation in regional languages of ideas of national integrity and unity.

(b) Early arrangements may be made for the translation of national news broadcasts into regional languages or for the dubbing of such news in regional languages, as may be appropriate, and for simultaneous translation/dubbing and transmission.

(Para 19.6.07)

19.8.07 Earmarking of a particular time period for the national programme in English or Hindi should not be uniformly rigid. It should be left to each Station/Kendra to take into account the prime times for the urban and the rural areas falling within its broadcasting range and to decide which programmes should be transmitted and at what time.

(Para 19.6.10)

19.8.08 It has been proposed that during the Seventh Five Year Plan mobile field units should transmit to broadcasting stations the material required for general broadcasts. This mode of coverage should be extended to news of interest to rural viewers including news on rural development.

(Para 19.6.11)

19.8.09 The existing restrictions on the broadcasts to be made over the All India Radio and the authority given to the Station Directors to ensure that a proposed broadcast does not contain prohibited items are essential in the larger national interest and should therefore continue.

(Para 19.7.02)

19.8.10 The Inter-Governmental Council recommended to be established under Article 263, may consider whether any relaxation of the existing Group Rules for political use of the broadcasting system should be allowed, and, if so, under what condition.

(Para 19.7.03)

19.8.11 If a State Government has serious complaints about the use of the media, it can approach the Inter-Governmental Council proposed in Chapter IX.

(Para 19.7.08)

19.8.12 (a) A Programme Advisory Committee is attached to each All India Radio Station or a Door-darshan Kendra which originates programmes for a duration of not less than five and a half hours every day. A non-political competent non-official may be made Chairman and the Director in charge of the

Station or Kendra may be made Deputy Chairman of such a Committee.

(b) All broadcasting stations should have their own Programme Advisory Committees.

(c) A specific rule may be introduced that the State Government concerned should be consulted in the selection of non-official members and Chairman of the Programme Advisory Committees in the State.

(Paras 19.7.04 to 19.7.09)

ANNEXURE XIX.1

Proposals of Ministry of Information and Broadcasting for Inter-Linking of AIR Stations through INSAT

The INSAT system is being used for re-broadcast of Radio programmes sent via the uplinks from Delhi, Bombay, Calcutta and Madras by the other Radio Stations in the network. This has resulted in a substantial improvement in the quality of the relayed programmes in comparison to the traditional mode of programme re-distribution and relay like picking up from short wave transmissions and Department of Telecommunication's Physical Long-haul Telephone Circuits.

2. Under the present system, programmes can be sent for being beamed via INSAT only through the uplinks provided at four Centres, namely, Delhi, Bombay, Calcutta and Madras. It is a felt need that All India Radio stations within a State should be able to carry programmes originating from the Radio Stations at the State capitals. Naturally these programmes will

be in the principal language of the State. With this end in view, AIR proposes to set up uplinking facilities at 12 other State capitals co-located with the respective Programmes Production Centres of AIR.

3. There is a growing emphasis on the coverage and transmission of field-based programmes. This is very relevant for programmes meant for farmers and on items of development and social relevance. To get this requirement it is necessary to acquire "Transportable Communication Terminals". These Terminals will be mobile and can be moved quickly from place to place. AIR proposes to acquire initially four such Terminals. This will enable recording of programmes in remote areas which can be directly beamed to the Satellite for reception and re-broadcast by all the transmitters in the network.

ANNEXURE XIX.2

MASS COMMUNICATIONS

(GROUND RULES)

Scheme of Broadcast over Akashvani and Doordarshan by Recognised Political Parties during Elections to the Lok Sabha/State Assemblies

1. Facilities of broadcast on Akashvani and Doordarshan may be given to political parties recognised as 'National' parties and 'State' parties by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.

2. (a) In the case of elections to the Lok Sabha, 'National' and 'State' parties may be given facilities for broadcasting from the principal Akashvani Station and Doordarshan Kendra (where there is one) in every State in which general election to the Lok Sabha is to be held.

(b) Broadcast from the principal station in the state will be radiated from all other Akashvani Stations in the State.

(c) In addition, 'National' parties may be given facilities to have central broadcasts from All India Radio, Delhi and Delhi Doordarshan Kendra which will be relayed from all AIR Stations/Doordarshan Kendra.

(d) In the States where a general election to the Legislative Assembly of the State is held simultaneously with the general election to Lok Sabha, there may not be any need for giving separate time for broadcast/telecast for such Assembly Election.

3. In case a 'State' party recognised by the Election Commission in one or more States under the Election Symbols (Reservation and Allotment) Order 1968, fields a sizeable number of candidates for election in a State in which it is not so recognised, a gist of the election broadcast made by the said 'State' party in any one of the States will be covered in the regional news bulletins of the Radio Stations in that States.

4. Broadcast on Akashvani may be of 30 minutes duration (in two broadcasts of 15 minutes each). Telecast from Doordarshan may be of 15 minutes duration.

5. The dates of radio broadcasts/telecasts will be pre-determined in consultation with the Chief Election Commissioner or his representative, in the case of Central and National Broadcasts/telecasts from Delhi, and the Chief Electoral Officer of the State, in the case of broadcasts/telecasts from the principal Akashvani Stations and Doordarshan Kendras.

6. The order in which and the dates on which the various recognised political parties may broadcast/telecast from Akashvani and Doordarshan will be determined by draw of matching lots by the authorities concerned as mentioned in item 5 above.

7. The time for radio broadcasts and telecasts at the National level will be as follows :—

Broadcasts	Between 9.15 p.m. and 9.45 p.m.
Telecasts	Between 9.20 p.m. and 9.35 p.m.

The time for the radio broadcasts and telecasts at the State level will be between 7.00 p.m. and 9.00 p.m.

8. The actual persons participating in the broadcasts may be chosen by the 'National' or the 'State' parties, as the case may be.

9. The broadcasts on Akashvani/Doordarshan will not permit :

- (i) criticism of friendly countries;
- (ii) attack on religions or communities;
- (iii) anything obscene or defamatory;
- (iv) incitement to violence;
- (v) anything amounting to contempt of court;
- (vi) aspersions against the integrity of the President and judiciary;
- (vii) anything affecting the unity and integrity of the nation;
- (viii) any criticism by name of any person;
- (ix) exhibition of films on or after the date of issue of notification under section 30 of the R.P. Act, 1951 and the date(s) of poll projecting the image of cine actors and actresses who have joined politics;
- (x) Sponsored programmes by political parties to telecast/broadcast during election period;
- (xi) telecast/broadcast of programmes of Prime Minister/Chief Ministers/Ministers having a direct relation or bearing on elections. However, telecast/broadcast of programmes on official activities of the Prime Minister/Chief Ministers/Ministers will be permitted.

Note : "The parties or their representatives shall submit the script of their broadcast in advance."

10. The 'party' broadcasts will be in addition to any panel discussions or other programmes of political education organised in the course of the ordinary functioning of the broadcasting media.

11. The 'party' broadcasts will be made after the notification calling for elections is issued and will be concluded forty eight hours before the end of the first polling date.

12. No 'party' will be allotted time either on Radio or Doordarshan on Sundays.

ANNEXURE XIX. 3 Mass Communication A.I.R. CODE

Broadcasts on All India Radio by individuals will not permit :

- (1) Criticism of friendly countries;
- (2) Attack on religion or communities;
- (3) Anything obscene or defamatory;
- (4) Incitement to violence or anything against maintenance of law and order;
- (5) Anything amounting to contempt of Court;
- (6) Aspersions against the integrity of the President, Governors, and Judiciary;
- (7) Attack on a political party by name;
- (8) Hostile criticism of any State or the Centre;
- (9) Anything showing disrespect to the Constitution or advocating change in the Constitution by violence, but advocating changes in a constitutional way should not be debarred.

ing broadcaster, he will draw the latter's attention to the passages objected to. If intending broadcaster refuses to accept the Station Director's suggestions and modify his script accordingly, the Station Director will be justified in refusing his or her broadcast.

(ii) Cases of unresolved differences of opinion between a Minister of a State Govt. and the Station Director about the interpretation of the code with respect to a talk to be broadcast by the former will be referred to the Minister of Information and Broadcasting, Govt. of India, who will decide finally whether or not any change in the text of the talk was necessary in order to avoid violation of the code.

Authoritative interpretation of the Code issued in February, 1968.

"This code applies to criticism in the nature of Personal tirade either of a friendly Government or of a political party or of the Central Government or any State Government. But it does not debar reference to and/or dispassionate discussion of policies pursued by any of them."

FOOT NOTE :

(i) If a Station Director finds that the above Code has not been respected in any particular or particulars by an intend-

ANNEXURE XIX. 4

Rules Relating to the Constitution of the Programme Advisory Committees Attached to All India Radio Stations.

1. There shall be one Programme Advisory Committee attached to each All India Radio Station.

Composition

The Committee will have a Chairman and official and non-official members as indicated below :—

A—Chairman

The Station Director of the Station.

B—Members (non-official)

The number of Non-official members shall ordinarily not exceed fifteen. The members shall be representative of Cultural, Linguistic and Social interests of the listening area which the Station covers. Members of State Legislature and Members of Parliament shall be eligible for membership in their personal capacity.

C—Ex-Official Members

- (a) Director General, All India Radio or his representative.
- (b) The Station Engineer of the AIR Station to which the Committee is attached.
- (c) The Director of Information/Publicity of the State/ Union Territory concerned.
- (d) The News Editor/Asstt. News Editor of the AIR Station to which the Committee is attached.

D—Secretary

The Assistant Station Director of the AIR Station to which the Committee is attached.

2. Tenure

The non-official members whose tenure will be two years will be nominated by the Minister of Information and Broadcasting.

3. The Committee will meet twice a year but in addition the Chairman may call a meeting at any time considered necessary.

4. The meetings of the Committee will be presided by the Chairman and in his absence by a nominee of the Directorate General, All India Radio.

5. The agenda for each item will be prepared by the Secretary of the Committee and submitted to the Chairman for approval. Before preparing the agenda, the Secretary will also invite suggestions from members. After approval by the Chairman, the agenda along with intimation of the date of meeting will be communicated to members at least 14 days in advance.

6. One third of the effective strength of the non-official members of the Committee will form the quorum. If there is no quorum at any time, it will be treated as an informal meeting and such items of agenda as may be considered necessary will be informally discussed by members present.

7. The Committee will review the programme broadcast since the last meeting and discuss the programme plans for the ensuing period. The Committee will also make suggestions for the improvement of programmes and advise on such other matters concerning the planning and presentation of programmes of the Station as are referred to the Committee.

ANNEXURE XIX.4.(concl'd).

8. Questions relating to individual members of the staff or individual artists or other matters concerning personnel or of purely administrative nature will not be discussed by the Committee.

9. For attending meetings of the Committee, non-official members will be entitled to travelling allowance admissible under the normal rules.

10. The non-official members will, in addition to the travelling allowance admissible under the normal rules, be entitled to a fee of Rs. 65/- each per diem as consultation fee for attending meetings of the Committees.

Names of AIR Stations to which Programme Advisory Committees are attached.

Sl. No.	Name of Station	Sl. No.	Name of Station
1.	Agartala	10.	Calcutta
2.	Ahmedabad	11.	Coimbatore
3.	Aurangabad	12.	Delhi
4.	Allahabad	13.	Dibrugarh
5.	Aizawl	14.	Dharwad
6.	Bangalore	15.	Gauhati
7.	Bombay	16.	Hyderabad
8.	Cuttack	17.	Indore
9.	Calicut	18.	Imphal

Sl. No.	Name of Station	Sl. No.	Name of Station
19.	Jaipur	40.	Simla
20.	Jullundur	41.	Tiruchirapally
21.	Jalgaon	42.	Trivandrum
22.	Jagdalpur	43.	Trichur
23.	Jeypore	44.	Vijayawada
24.	Kurseong	45.	Visakhapatnam
25.	Lucknow	46.	Ambikapur
26.	Madras	47.	Bhopal
27.	Mathura	48.	Bhuj
28.	Mangalore	49.	Chhatarpur
29.	Nagpur	50.	Gorakhpur
30.	Najibabad.	51.	Jammu
31.	Patna	52.	Kohima
32.	Pondicherry	53.	Leh
33.	Panaji	54.	Pune
34.	Rewa	55.	Port Blair
35.	Ratnagiri	56.	Rampur
36.	Ranchi	57.	Rajkot
37.	Rohtak	58.	Shillong
38.	Raipur	59.	Srinagar
39.	Silchar	60.	Udaipur.

ANNEXURE XIX. 5

Rules Relating to the Constitution of the Programme Advisory Committee Attached to Doordarshan/Upgraha Doordarshan Kendras

I. General

There shall be one Programme Advisory Committee attached to each Doordarshan Kendra, other than INSAT Kendras.

II. Composition

The Committee will have a Chairman and official and non-official members as given below :

(a) *Chairman* : Director of the Kendra concerned.

(b) *Members* : (i) *Non-Officials* :—The number of non-official members will be restricted to 15. These Members will be at least one each from the following disciplines/interest groups.

(a) dance (b) folk art and culture (c) Women's and Children's welfare (d) youth welfare (e) Social Welfare (f) science (g) humour (h) film/theatre (i) sports (j) literature (k) scheduled caste/tribe (l) linguistic minorities (with reference to language of programme production by the Kendras.)

The members of the state legislature and Members of Parliament shall be eligible for Membership in their personal capacity.

(ii) *Ex-Officio Members* :

(a) Senior-most ASD/PEX of the Kendra will be Secretary to the Programme Advisory Committee.

(b) Engineering Head of the Doordarshan Kendra/Upgraha Doordarshan Kendra to which the Committee is attached.

(c) The Director of Information/Publicity of the State/Union Territory concerned.

III. Procedure for nomination of Non-official Members :

(i) The Director of the concerned Doordarshan Kendras will propose atleast 3 names of non-official members for each of the above disciplines/interest groups as mentioned in para II(b) above. The State Government concerned will also be consulted through its information & Publicity Wing to give a list of non-official members. In case no list is received within one month, it will be presumed that State Government have no views on this subject. The non-officials should be selected from within the coverage zone of the Kendra in the State in which it is located.

(ii) The recommendations of the officers in this regard will be forwarded by Directorate General, Doordarshan to the Ministry with clear recommendations in respect of upto 15 non-officials. Separate proposals should be sent in respect of each Kendra.

(iii) The non-official members will be nominated by the Ministry of Information & Broadcasting.

(iv) The Orders for the Constitution of the Committee will be issued by the Directorate General, Doordarshan.

IV. Tenure :

The nomination of non-official members on the Programme Advisory Committee will be valid for 2 years from the date of issue of the orders for the constitution of the Committee.

V. Meeting :

(i) The meeting of the Committee will be held atleast once in 6 months. However, the Chairman may call a meeting at any time, if considered necessary, in addition to this.

(ii) The meeting of the Committee will be presided over by the Chairman and in his absence, by a nominee of the Directorate General, Doordarshan.

(iii) One third of the effective strength of the non-official members of the Committee will form the quorum. If there is no quorum at any time, it will be treated as an informal meeting and such items of agenda as may be considered necessary will be informally discussed by the members present.

VI. Functions of the Committee :

(i) The agenda for each item will be prepared by the Secretary of the Committee. Secretary will also invite suggestions from members before preparing the agenda. Any member wishing to raise a point should intimate to the Secretary 3 weeks in advance of meeting. The agenda will be approved by the Chairman and will be circulated atleast 15 days in advance.

(ii) The Committee will review the programmes broadcast since the last meeting and discuss the programme plans for the ensuing period. The Committee will also make suggestions for the improvement of programmes and advise on such matters concerning the planning and presentation of the programmes of the Kendra to which it is attached.

(iii) No question relating to individual members of the staff or individual staff artists or other matters concerning personnel or purely administrative matters shall form a part of the agenda.

VII. Travelling Allowance/Dearness Allowance/Fee :

(i) Non-official members will be entitled to Travelling Allowance admissible under normal rules.

(ii) The non-official members, in addition to the Travelling Allowance admissible under the normal rules, will be entitled to a fee of Rs. 65/- each per diem as consultation fee for agenda meeting of the Committee.

VIII. Directorate General, Doordarshan shall ensure that the meetings of the Programme Advisory Committees are held in time. Report to this effect should be included in annual report of Doordarshan.

Annexure H: Text of the Citizenship Act, 1955

THE CITIZENSHIP ACT, 1955

(57 of 1955)

[30th December, 1955]

An Act to provide for the acquisition and determination of Indian citizenship.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Citizenship Act, 1955.

2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

- (a) “a Government in India” means the Central Government or a State Government;
- ¹[(b) “illegal migrant” means a foreigner who has entered into India—
 - (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
 - (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]
- (d) “Indian consulate” means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;
- (e) “minor” means a person who has not attained the age of eighteen years;
- ²[(ee) “overseas citizen of India” means a person registered as an overseas citizen of India by the Central Government under section 7A;]
- (f) “person” does not include any company or association or body of individuals, whether incorporated or not;
- (g) “prescribed” means prescribed by rules made under this Act;
- ³[(h) “undivided India” means India as defined in the Government of India Act, 1935, as originally enacted.

STATEMENT OF OBJECTS AND REASONS [The Citizenship (Amendment) Act, 2005]

To expand the scope of grant of Overseas Citizenship of India to Persons of Indian Origin of all countries except Pakistan and Bangladesh.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any

1. Subs. by Act 6 of 2004, sec. 2, for clauses (b) and (c) and the proviso to clause (c) (w.e.f. 3-12-2004). (See Annexe 1)
2. Subs. by Act 32 of 2005, sec. 2 (w.r.e.f. 28-6-2005), for clause “(ee) “overseas citizen of India” means a person who—
 - (i) is of Indian origin being a citizen of a specified country, or
 - (ii) was a citizen of India immediately before becoming a citizen of a specified country, and is registered as an overseas citizen of India by the Central Government under sub-section (1) of section 7A;
3. Clause (gg) omitted by Act 32 of 2005, sec. 2 (w.r.e.f. 28-6-2005).
Clause (gg) prior to its omission stood as:
“(gg) “specified country” means a country specified in the Fourth Schedule:
Provided that the Central Government may, by notification in the Official Gazette, amend the said Schedule by way of addition or omission of any entry therein:
Provided further that every notification issued under this clause shall, as soon as may be, after it is made, be laid before each House of Parliament”.

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country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

COMMENTS

(i) The Citizenship Act and the Constitution are completely exhaustive of the citizenship of this country and these citizens can only be natural persons, the fact that corporations may be nationals of the country for purposes of International laws will not make them citizens of this country for purposes of Municipal Law or the Constitution; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811.

(ii) Nationality and Citizenship are not interchangeable terms; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811.

(iii) "Citizenship" has nothing to do with a juristic person. "Person" means a natural person and not any legal entity; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811.

ACQUISITION OF CITIZENSHIP

¹[3. **Citizenship by birth.**—(1) Except as provided in sub-section (2), every person born in India,—

- (a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
- (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
- (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—
 - (i) both of his parents are citizens of India; or
 - (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

- (a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

1. Subs. by Act 6 of 2004, sec. 3, for section 3 (w.e.f. 3-12-2004). (See Annexe 1)

- (b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.]

4. Citizenship by descent.—¹[(1) A person born outside India shall be a citizen of India by descent,—

- (a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or
- (b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

- (a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or
- (b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

- (a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or
- (b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

- (i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or
- (ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of his section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

1. Subs. by Act 6 of 2004, sec. 4, for sub-section (1) (w.e.f. 3-12-2004). (See Annexe 1)

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any ¹[person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.—²[(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

- (a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- (d) minor children of persons who are citizens of India;
- (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;
- (f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- (g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for ³[one year] before making an application for registration.

STATEMENT OF OBJECTS AND REASONS [The Citizenship (Amendment) Act, 2005]

To reduce the period of residence in India from two years to one year for the persons registered as Overseas Citizens of India to acquire Indian citizenship.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

- (i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and
- (ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

1. Subs. by Act 39 of 1992, sec. 2, for "any male person" (w.e.f. 10-12-1992).

2. Subs. by Act 6 of 2004, sec. 5, for sub-section (1) (w.e.f. 3-12-2004). (See Annexe 1)

3. Subs. by Act 32 of 2005, sec. 3, for "two years", (w.r.e.f. 28-6-2005).

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause(b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

¹[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.]

COMMENTS

If a person satisfies the requirements of this section, he/she can be registered as a citizen of India. This section can be invoked by persons who are not citizens of India but are seeking citizenship by registration; *National Human Rights Commission v. State of Arunachal Pradesh*, AIR 1996 SC 1234: (1996) 1 SCC 742.

6. Citizenship by naturalisation.—(1) Where an application is made in the prescribed manner by any person of full age and capacity ²[not being an illegal migrant] for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

³**[6A. Special provisions as to citizenship of persons covered by the Assam Accord.**—(1) For the purposes of this section—

1. Ins. by Act 6 of 2004, sec. 5 (w.e.f. 3-12-2004).

2. Subs. by Act 6 of 2004, sec. 6, for "who is not a citizen of a country specified in the First Schedule (w.e.f. 3-12-2004).

3. Ins. by Act 65 of 1985, sec. 2 (w.e.f. 7-12-1985).

- (a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;
- (c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (d) a person shall be deemed to be of Indian origin, if he, or either of his parents for any of his grandparents was born in undivided India;
- (e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

- (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
- (b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and
- (c) has been detected to be a foreigner,

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,—

- (i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;
- (ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the

said Order hang jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8,—

- (a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;
- (b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

- (a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India;
- (b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.]

COMMENTS

Under sub-section (2) of section 6A two conditions are required to be satisfied—(i) persons who are of Indian origin (undivided India) came before 1-1-1966 to Assam from the specified territory, and (ii) have been “ordinarily resident” in Assam as it existed in 1985 since the date of entry in Assam; *State of Arunachal Pradesh v. Khudiram Chakma*, AIR 1994 SC 1961.

7. Citizenship by incorporation of territory.—If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

¹[OVERSEAS CITIZENSHIP]

²[7A. Registration of overseas citizens of India.—(1) The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register any person as an overseas citizen of India—

- (a) any person of full age and capacity,—
 - (i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or
 - (ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
 - (iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or
 - (iv) who is a child or a grand-child of such a citizen; or
 - (b) a person, who is a minor child of a person mentioned in clause (a):
- Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.]

COMMENTS

The Central Government has specified the following rights to which the persons registered as Overseas Citizens of India under section 7A of the Act shall be entitled, namely:—

1. Ins. by Act 6 of 2004, sec. 7 (w.e.f. 3-12-2004).
2. Subs. by Act 32 of 2005, sec. 4 (w.r.e.f. 28-6-2005), for section "7A. Registration of overseas citizens.—(1) The Central Government may, subject to such conditions and restrictions including the condition of reciprocity as may be prescribed, on an application made in this behalf, register any person as an overseas citizen of India if—
 - (a) that person is of Indian origin of full age and capacity who is a citizen of a specified country; or
 - (b) that person is of full age and capacity who has obtained the citizenship of a specified country on or after the commencement of the Citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement; or
 - (c) that person is a minor of a person mentioned in clause (a) or clause (b).
 (2) The person registered as an overseas citizen of India under sub-section (1) shall be an overseas citizen of India as from the date on which he is so registered.
 (3) No person who has been deprived of his Indian citizenship under this Act shall be registered as an overseas citizen of India under sub-section (1) except by an order of the Central Government.
 Explanation.—For the purposes of this section and sections 7B, 7C and 7D, the expression "person of Indian origin" shall mean a citizen of another country who—
 - (i) was eligible to become a citizen of India at the time of the commencement of the Constitution;
 - (ii) belonged to a territory that became part of India after the 15th day of August, 1947; and
 - (iii) the children and grand-children of a person covered under clauses (i) and (ii), but does not include a person who is or had been at any time a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify."

- (a) grant of multiple entry lifelong visa for visiting India for any purpose;
- (b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and
- (c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

[Vide S.O. 542 (E), dated 11th April, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 11th April, 2005.]

¹[7B. **Conferment of rights on overseas citizens of India.**—(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India—

- (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
- (b) under article 58 of the Constitution for election as President;
- (c) under article 66 of the Constitution for election of Vice-President;
- (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
- (e) under article 217 of the Constitution for appointment as a Judge of the High Court;
- (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;
- (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;
- (h) under sections 5, 5A and 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;
- (i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.]

COMMENTS

The Central Government has specified (*vide* S.O. 542 (E), dated 11th April, 2005) the following rights to which the persons registered as Overseas Citizens of India under section 7A of the Act shall be entitled, namely:—

- (a) grant of multiple entry lifelong visa for visiting India for any purpose;
- (b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and
- (c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

¹ Inc by Art 6 of 2004, sec. 7 (w.e.f. 3-12-2004).

¹[7C. **Renunciation of overseas citizenship.**—(1) If any overseas citizen of India of full age and capacity makes in the prescribed manner a declaration renouncing his overseas citizenship of India, the declaration shall be registered by the Central Government, and; upon such registration, that person shall cease to be an overseas citizen of India.

(2) Where a person ceases to be an overseas citizen of India under sub-section (1), every minor child of that person registered as an overseas citizen of India, shall thereupon cease to be an overseas citizen of India.]

¹[7D. **Cancellation of registration as overseas citizen of India.**—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A if it is satisfied that—

- (a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or
- (b) the overseas citizen of India has shown disaffection towards the Constitution of India as by law established; or
- (c) the overseas citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or
- (d) the overseas citizen of India has, within five years after registration under sub-section (1) of section 7A has been sentenced to imprisonment for a term of not less than two years; or
- (e) it is necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.]

TERMINATION OF CITIZENSHIP

8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity, ²[***] makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where ³[a person] ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration ⁴[in the prescribed form and manner] that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

⁵[***]

COMMENTS

A person who gives up his claim to Indian citizenship cannot claim right of residence on the basis of his domicile; *A.H. Magermans v. S.K. Ghose*, AIR 1966 Cal 552.

1. Ins. by Act 6 of 2004, sec. 7 (w.e.f. 3-12-2004).

2. The words "who is also a citizen or national of another country", omitted by Act 6 of 2004, sec. 8 (w.e.f. 3-12-2004).

3. Subs. by Act 39 of 1992, sec. 3, for "a male person" (w.e.f. 10-12-1992).

4. Ins. by Act 6 of 2004, sec. 8 (w.e.f. 3-12-2004).

5. Sub-section (3) omitted by Act 6 of 2004, sec. 8 (w.e.f. 3-12-2004).

9. Termination of citizenship.—(1) Any citizen of India who by naturalisation, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any '[citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

COMMENTS

Section 9 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country; *Blagivati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*, AIR 1986 SC 1534.

10. Deprivation of citizenship.—(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that—

- (a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or
- (b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or
- (c) that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
- (d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or
- (e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

1. Subs. by Act 6 of 2004, sec. 9, for "person" (w.e.f. 3-12-2004).

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefor in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

COMMENTS

Certificate of Registration cannot be cancelled unless fraud, false, representation or suppression of material fact exists; *Fazal Dad v. State of Madhya Pradesh*, AIR 1964 MP 272.

SUPPLEMENTAL

11. Commonwealth citizenship.—[Rep. by the Citizenship (Amendment) Act, 2003 (6 of 2004), sec. 10.]

12. Power to confer rights of Indian citizen or citizens of certain countries.—[Rep. by the Citizenship (Amendment) Act, 2003 (6 of 2004), sec. 10.]

13. Certificate of Citizenship in case of doubt.—The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

14. Disposal of application under ¹[sections 5, 6 and 7A].—(1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under ²[section 5, 6 or section 7A] and shall not be required to assign any reasons for such grant or refusal.

1. Subs. by Act 6 of 2004, sec. 11, for "sections 5 and 6" (w.e.f. 3-12-2004).

2. Subs. by Act 6 of 2004, sec. 11, for "section 5 or section 6" (w.e.f. 3-12-2004). Ed. section 11 of the Act 6 of 2004, states that for the words and figures "sections 5 and 6", the words, figures and letter "sections 5, 6 and 7A" shall be substituted. The words "sections 5 and 6" appear in the heading and not in the body, but in the body the text has been changed according to its construction.

(2) Subject to the provisions of section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

¹[14A. Issue of national identity cards.—(1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

(2) The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.

(4) The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.

(5) The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.]

15. Revision.—(1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for revision of that order:

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

²[15A. Review.—(1) Any person aggrieved by an order made by the Central Government, may within thirty days from the date of such order, make an application for review of such order:

Provided that the Central Government may entertain application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that an application for a review of an order passed in terms of the provisions of section 14A shall be disposed of in the manner provided for in the procedure as may be laid down under clause (ia) of sub-section (2) of section 18.

(2) On receipt of an application under sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.]

1. Ins. by Act 6 of 2004, sec. 12 (w.e.f. 3-12-2004).

2. Ins. by Act 6 of 2004, sec. 13 (w.e.f. 3-12-2004).

16. Delegation of power.—The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Offences.—Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to ¹[five years], or ²[with fine which may extend to fifty thousand rupees], or with both.

18. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;
- ³[(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;]
- (b) the forms to be used and the registers to be maintained under this Act;
- (c) the administration and taking of oaths of allegiance under this Act and the time within which, and the manner in which, such oaths shall be taken and recorded;
- (d) the giving of any notice required or authorized to be given by any person under this Act;
- (e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;
- ⁴[(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (b) of section 6A shall be submitted and other matters connected with such declarations;]
- (f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;
- (g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

1. Subs. by Act 6 of 2004, sec. 14, for "six months" (w.e.f. 3-12-2004).

2. Subs. by Act 6 of 2004, sec. 14, for "with fine" (w.e.f. 3-12-2004).

3. Ins. by Act 6 of 2004, sec. 15 (w.e.f. 3-12-2004).

4. Ins. by Act 65 of 1985, sec. 3 (w.e.f. 7-12-1985).

- (h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;
- (i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil court;
- ¹[(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14A;]
- (j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and
- (k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that breach thereof shall be punishable with fine which may extend to one thousand rupees:

²[Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.]

³[(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, 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; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

19. Repeals.—[Repealed by the Repealing and Amending Act, 1960 (Act 58 of 1960), sec. 2 and the First Schedule (w.e.f. 26-10-1960).]

⁴[***]

⁵[THE SECOND SCHEDULE

[See sections 5(2) and 6(2)]

OATH OF ALLEGIANCE

I, A/B.....do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as a citizen of India.]

1. Ins. by Act 65 of 1985, sec. 3 (w.e.f. 7-12-1985).

2. Ins. by Act 6 of 2004, sec. 15 (w.e.f. 3-12-2004).

3. Subs. by Act 4 of 1986, sec. 2 and Sch. (w.e.f. 15-5-1986).

4. The First Schedule omitted by Act 6 of 2004, sec. 16 (w.e.f. 3-12-2004).

5. Subs. by Act 6 of 2004, sec. 17, for the Second Schedule (w.e.f. 3-12-2004).

THE THIRD SCHEDULE

[See section 6(1)]

QUALIFICATIONS FOR NATURALISATION

The qualifications for naturalisation of a person ¹[***] are—

- (a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;
- (b) that, if he is a citizen of any country, ²[he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted];
- (c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;
- (d) that during the ³[fourteen years] immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than ⁴[eleven years];
- (e) that he is of good character;
- (f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and
- (g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit,—

- (i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;
- (ii) allow periods of residence or service earlier than ⁵[fifteen years] before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.

1. The words "who is not a citizen of a country specified in the First Schedule" omitted by Act 6 of 2004, sec. 18 (w.e.f. 3-12-2004).

2. Subs. by Act 6 of 2004, sec. 18, for "he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government" (w.e.f. 3-12-2004).

3. Subs. by Act 6 of 2004, sec. 18, for "twelve years" (w.e.f. 3-12-2004).

4. Subs. by Act 6 of 2004, sec. 18, for "nine years" (w.e.f. 3-12-2004).

5. Subs. by Act 6 of 2004, sec. 18, for "thirteen years" (w.e.f. 3-12-2004).

¹[***]

-
1. Ins. by Act 6 of 2004, sec. 19 (w.e.f. 3-12-2004) and omitted by Act 32 of 2005, sec. 5 (w.e.f. 28-6-2005).

Prior to omission it stood as: "THE FOURTH SCHEDULE

[See section 2(1)(gg)]

1. Australia
2. Canada
3. Finland
4. France
5. Greece
6. Ireland
7. Israel
8. Italy
9. Netherlands
10. New Zealand
11. Portugal
12. Republic of Cyprus
13. Sweden
14. Switzerland
15. United Kingdom
16. United States of America."

Annexure I: Terms of Reference of the Commission on Centre-State Relations

**(ABRIDGED VERSION)
THE GAZETTE OF INDIA
EXTRAORDINARY
PART I- SECTION 1
PUBLISHED BY AUTHORITY
NEW DELHI, FRIDAY, 30th SEPTEMBER, 2005/ASVINA 8, 1927.
MINISTRY OF HOME AFFAIRS
NOTIFICATION**

No.IV/12013/9/2004-CSR - Whereas the Common Minimum Programme (CMP) of the Government of India has made a solemn pledge to the people of India to provide a government that is corruption free, transparent and accountable at all times and to provide an administration that is responsible and responsive at all times;

2. And whereas one of the commitments of the Government in the CMP under the heading 'Regional Development, Centre-State Relations' is to set up a new Commission to look into the issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago;

3. Now, therefore, in fulfillment of that pledge, the Union Government hereby resolves to set up a Commission, which will be known as the Commission on Centre-State Relations.

4. The terms of reference of the Commission will be as follows:

(i) The Commission will examine and review the working of the existing arrangements between the Union and States as per the Constitution of India, the healthy precedents being followed, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions, sharing of resources; including inter-state river water and recommend such changes or other measures as may be appropriate keeping in view the practical difficulties.

(ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years particularly over the last two decades and have due regard to the scheme and framework of the Constitution. Such recommendations would also need to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the

unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.

(iii) While examining and making its recommendations on the above, the Commission shall have particular regard, but not limit its mandate to the following:-

(a) The role, responsibility and jurisdiction of the Centre vis-à-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence.

(b) The role, responsibility and jurisdiction of the Centre vis-à-vis States in the planning and implementation of the mega projects like the inter-linking of rivers, that would normally take 15-20 years for completion and hinge vitally on the support of the States.

(c) The role, responsibility and jurisdiction of the Centre vis-à-vis States in promoting effective devolution of powers and autonomy to Panchayati Raj Institutions and Local Bodies including the Autonomous Bodies under the 6th Schedule of the Constitution within a specified period of time.

(d) The role, responsibility and jurisdiction of the Center vis-à-vis States in promoting the concept and practice of independent planning and budgeting at the District level.

(e) The role, responsibility and jurisdiction of the Centre vis-à-vis States in linking Central assistance of various kinds with the performance of the States.

(f) The role, responsibility and jurisdiction of the Centre in adopting approaches and policies based on positive discrimination in favour of backward States.

(g) The impact of the recommendations made by the 8th to 12th Finance Commissions on the fiscal relations between the Centre and the States, especially the greater dependence of the States on devolution of funds from the Centre.

(h) The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime.

(i) The need for freeing inter-State trade in order to establish a unified and integrated domestic market as also in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission's recommendation in chapter XVIII of its report.

(j) The need for setting up a Central Law Enforcement Agency empowered to take up suo moto investigation of crimes having inter-State and/or international ramifications with serious implications on national security.

(k) The feasibility of a supporting legislation under Article 355 for the purpose of suo moto deployment of Central forces in the States if and when the situation so demands.
