

PREFACE

This book is about communications law in India. That subject can be broadly described as a collection of statutes, case-law, subordinate legislation, and regulatory requirements that govern the provision of telecom, broadcasting, and cable services. Those services are collectively called ‘communications’ for the purposes of this book. There are, perhaps, few areas of human endeavour that can match the enormous progress achieved in modern communications. Since the industrial revolution began two centuries ago, the rate of scientific and technological advancement in telecommunications and broadcasting has been truly remarkable. As Jawaharlal Nehru put it almost fifty years ago, modern communications have ‘progressively altered the very texture of human life.’

From the time of the East India Company and for several decades after independence, the government exclusively controlled most forms of communications in India. In recent years, however, as a consequence of successive policy and institutional reforms, the government’s role as the principal provider of communications services has gradually weakened. In its place, a multitude of privately owned telecom networks, television channels, and radio stations have emerged. These networks now offer Indian consumers amazingly diverse options for telephony, broadcasting and entertainment, and Internet use. Together with information technology, the communications sector is a key driving force of the Indian economy. It is now widely recognized that a robust and mature legal system is critical to ensuring sustained economic development especially in infrastructure sectors like communications.² In that respect, the prevailing legal and regulatory framework for telecom, broadcasting, and cable services in India is a fairly impressive one. What is most remarkable is that the modern pillars of the framework were erected hardly a decade ago. Those pillars assimilated existing legal structures to create a solid regulatory framework that is without parallel within the Indian legal system. That framework is increasingly the envy of other countries and is hailed as a model for economies in transition to follow.

Yet, despite these noteworthy achievements, the prevailing framework is complex, byzantine, and occasionally bewildering. As discussed in chapter 1 of this book, the framework now comprises several distinct statutes and a multitude of rules and regulations. Those statutes, rules, and regulations are enforced by different regulatory agencies whose jurisdictional boundaries and lines of authority are not always clearly defined. Therefore, this book’s principal objective is to describe and explain the diverse elements of the regulatory framework in a clear, cogent, and inter-related manner. To achieve that objective, I have attempted to summarize the underlying technical concepts and key legal principles associated with each major topic with cross-references and linkages to other relevant topics.

In introducing his seminal treatise on Indian contract law, Sir Fredrick Pollock noted that there is a tendency in our legal system to follow precedents and authorities too literally.³ Unfortunately, even a hundred years later, it is hard to deny that allegation. There are many among us who take judgments of courts and tribunals as unquestionable articles of faith. This

book is a small attempt to change that mindset. Therefore, in discussing key judgments and regulatory rulings, I have tried to explain their significance and meaning and to critically analyze their reasoning and conclusions. I hope that this task has been accomplished without unduly stretching the limits of modesty and decency.

The subject matter of this book is complicated and technical.

Communications law cannot be properly understood without a rudimentary appreciation of the underlying technology and business practices. For that reason, the principal technological and engineering concepts involved in communications are discussed in chapter 2. In addition, a glossary that explains various technical terms can be found at the end of this book. It should be noted, however, that the glossary and the primer on technology in chapter 2 are not meant to be exhaustive.

To provide a historical context to the discussion, chapter 3 traces the origins of modern communications law to the East India Company's foundation of a monopolistic telegraph network. It presents a chronological narrative of important regulatory developments since that time, through the first four decades after independence, and until the advent of economic reforms in the early 1990s. Chapter 4 offers a detailed assessment of the impact of the reforms on the communications sector. It includes a critique of the National Telecom Policy of 1994, the New Telecom Policy of 1999, and the Broadband Policy of 2004. It also covers India's 1996 WTO commitments, the Supreme Court's decision in *Delhi Science Forum*, and the formation of BSNL and the privatization of VSNL.

Chapter 5 is exclusively devoted to the constitutional dimensions of communications law. It discusses such topics as the historical basis for central control over communications, the scope of state and local regulations, the freedom of speech and expression and other fundamental rights, state control over communications, and the principles of administrative law that govern licensing and regulatory decisions. Chapters 6 and 7 undertake a comprehensive appraisal of the legal and institutional foundations of TRAI and TDSAT; their jurisdiction, powers, and responsibilities; and their role and record as independent regulatory agencies in the communications sector. Chapter 8 examines the licensing aspects of communications services including the statutory basis for licenses, licensing rules and exemptions, licensing methods, service areas, standard terms and conditions, and licensing remedies and dispute resolution.

The major categories of communications services are each discussed in separate chapters of this book. The services covered include unified access services (chapter 9); fixed and limited-mobility services (chapter 10); cellular services (chapter 11); value-added and satellite-based services (chapter 12); national and international long-distance services (chapter 13); Internet services and Internet telephony (chapter 14); terrestrial and satellite broadcasting (chapter 15), and cable television (chapter 16).

There are separate chapters focussing on content restrictions in broadcasting and cable services (chapter 17); interconnection arrangements (chapter 18); communications tariffs, charges, and rates (chapter 19); and consumer protection and competition policy (chapter 22). Other chapters

discuss the legal framework for installing and maintaining communications equipment and spectrum management (chapter 20); universal service obligations and public call offices (chapter 21); and communications privacy and monitoring and surveillance activities (chapter 23).

Readers must keep in mind two important qualifications. First, this book is about the law and regulation of *both* telecom and broadcasting services. The traditional boundaries between telecom and broadcasting services are fast disappearing due to convergence in technology. Previously distinct telecom and broadcast elements are being increasingly mixed and bundled together to create new networks, devices, and applications. These converged networks, devices, and applications blur the traditional distinctions between telecom and broadcasting services. They, in turn, raise new legal questions and challenges that the prevailing framework must confront.

At this time, however, it is still necessary to maintain a formal distinction between telecom and broadcasting services because convergence has not completely broken down the regulatory and commercial walls that separate the two services. Moreover, telecom and broadcasting companies still operate in different spheres with distinct markets and operational and business practices. In fact, TRAI, which is now the common independent regulator for both telecom and broadcasting services, has acknowledged the need for separate regulation between the two services on certain key issues.⁵

The second caveat involves the scope of this book. This book is principally about the framework that regulates the *provision* of communication services. It does not deal with infrastructure-finance or general corporate-law issues that arise from offering these services. Those issues are extensively analyzed in other specialized books and treatises.⁶ Similarly, this book is also not a treatise on information technology. It is true that the telecom and information-technology industries in India have close links, synergies, and overlapping concerns. But the focus of this book is on the provision of telecom, broadcasting, and cable services—not information technology. Accordingly, this book does not discuss topics such as computer-database protection, domain-name litigation, electronic signatures, e-commerce rules, encryption rules and intellectual-property protection. There are now specialized book covering those topics in great detail.

Before concluding, I must make three important points. First, this book is far from perfect in its treatment of the subject matter. Deficiencies, inaccuracies, and errors in analysis are bound to exist. In future editions, I will make every effort to correct any mistakes or omissions brought to my notice. Therefore, I invite you to e-mail me at communicationslaw@gmail.com with any suggestions, criticism, comments, advice, or concerns. Second, I have written this book in my personal capacity. Any views, analysis, and statements made here are entirely mine. They do not represent the World Bank Group's position on any issue.

Finally, there is an enormous deficit of critical writing and scholarship on the legal aspects of communications in India. It is in stark comparison to the rich store of research and analysis on the economic, business, and

public-policy dimensions of the subject.⁸ Alas, a single book or treatise cannot fill that inexcusable void. It would take an entire tribe of dedicated scholars who can provide meaningful analysis and thoughtful commentaries on communications. Law schools must offer advanced courses and specialized seminars on the subject. More graduate and doctoral scholars should be encouraged to do research in it. And we need a well-trained cadre of transactional and adversarial lawyers who focus exclusively on representing clients engaged in telecom, broadcasting, and cable services. Thus, while this book attempts to identify and survey the principal issues in communications law, it is, by not means, a comprehensive commentary on the entire field. At this stage, it only offers a basic map of a new and relatively un-chartered terrain. A lot more territory is waiting to be explored and more explorers must volunteer for the task.