

THE EMERGENCE OF THE THIRD SECTOR BROADCASTING IN INDIA

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India since its inception has evolved and now stands as one of the powerful countries in the world. As per the economy of India and its current growth, India stands 10th in the world economy and defence. Science has taken a major leap in this country and science has helped this country to achieve the heights where it is sitting now. In the year 1947 when India was born, it was one of the poorest countries in the world with respect to the standard of living and the per capita income. In 1951 when Pt. Jawaharlal Lal Nehru gave the proposal and set up the planning commission it was the new way of hope to see India as a rising star from the horizon. Whatever Pt. Nehru did at that point of time is commendable. India could develop because of the help and support the planning commission gave to the country in general. After the setup of the planning commission in India, the Planning Commission picked up certain sectors that needed development desperately, it was agriculture, *Infrastructure*, education, communications and many more. Pt. Nehru knew and had an idea that how important is education for the growth of a country and hence Pt. Nehru established the first Indian Institute of Technology at Kharagpur in West Bengal for the growth of scientific education India and the development of India. With it came other matters like broadcasting and telecommunication. The framers of the public policy very well knew that for the development of the country they had to develop good amount of connections in the form of roads, railways, telegram for letters and build good number of post office so that the ambit of telecommunication is spread all over the country and the country is condensed and is made reachable to all the people in the country. Broadcasting and telecommunication are the nerves of the country and the government does each and every possible and keeps no stone unturned to increase the connectivity throughout the country. In the era of 1940s till the 1980s it's the biggest era of the increase and impact on the communication systems in India. During that age the BBC Broadcast matter more which was governed by the public and was a public authority in the eyes of the law. The Broadcast of the BBC was officially controlled by the BBC India and Europe after which there are a lot of private and commercial plays came in India to establish their footing in the market in the form of broadcasting and radio waves.

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Before we go on into the depth of the concept of the third sector broadcasting.

In a layman terms, broadcasting is the usage of the air space above the roof, up to a limited extent and not the whole of the air space for broadcasting. In India there has been three types of broadcasting:

- a) The Primary Sector Broadcasting
- b) The Secondary Sector Broadcasting
- c) The third Sector Broadcasting

The primary sector broadcasting is the broadcasting which we have seen since the beginning of the era and the primary sector broadcasting is primarily the broadcasting done by the government or the state government or any type of government institutes. The secondary set of sector broadcasting done by the commercial sector or the private sector for earning revenue. E.g. the Private radio channels. Whatever does not fall under the wordings of the Primary Sector Broadcasting or the secondary sector broadcasting is considered in the ambit of the third sector broadcasting (TSB). The typical examples of the third sector broadcasting may be the broadcasting done by the educational institutes and the institutes of the religious purpose. The institutes of the religious purpose or the institutes coming under the ambit of the education institutes are the institutes which are broadcasting for the non-profit purpose and do not expect any profits from the broadcasting of their channels. The TSB is also termed as non-profit broadcasting; private non-profit; or private non-commercial broadcasting. There has been clash of thought between various analysts while considering the prospects that how to term a broadcasting a TSB when it is broadcasted by an entity that is a public institute and not a non-profit private institute. But it has been agreed to the fact that an entity must be considered for the TSB if they are sufficiently independent from the government control.

If we look at the other radio stations like the non-government one in India, we notice that there is a huge capacity in them in spreading the awareness India lacks in many aspects. India still is considered to be one of the poorest countries in the world when it comes to the development of a person, per capita income, GDP, Urbanisation etc. the community radio stations are neutral and help to spread such messages all across the country through their unit of radio set and station. There are several workshops arranged from the side of the community radio stations with respect to awareness and social issues. The community radio stations specially the radio stations which are organised by various schools or college do a commendable job in spreading the awareness across the country. The Community Radio Station (CR), are the best means to

express the rights, i.e. right to speech and personal liberty, which is restricted up to a certain limit if the community radios stations are not build. There are several workshops and other activities that are promoted, like gender equality.

The community broadcasting will come under the third sector broadcasting and the event started from the year 2002, then there is a petition signed by a person against the government has included you in that group. India, is a very diverse country and there are around 1600 languages all over the country and the territories is divided into 7 union territories and 29 states as of now. There has been a problem with the rampant commercialization of the airwaves that the government will charge each and every radio station then there I'll stay in that place. The airwaves are costly and the rights as per you contend that they are becoming heavy and there can be no possibility in from the choir. It has been imparting that they will be 2 eyes in the month. In the year 1996 there was a group together called the voices to look after such issues of the same indefinite by how is many harm.

In India, radio is shifting from being a government monopoly to a highly-commercialized broadcasting service. Media advocacy groups say the media needs to be "democratized" simultaneously as it moves away from official control. Privatization and total deregulation is not enough if the media becomes irrelevant to the vast majority of Indians. Now, while the policies are being developed, is the time for non-profit groups, educational and research institutions, cooperatives, women's groups, and development organizations to seize the available opportunities created by liberalizing the electronic media⁵⁵⁹.

In September, 1996, in Bangalore, VOICES brought together a group of radio broadcasters, policy planners, media professionals, and non-profit groups to study how community radio could be relevant to India and what policies were needed. Initially, one suggestion was that the approximately 76 local radio stations that make up the state-run monopoly, All India Radio, could allocate an hour of air time each day to community broadcasting. The Bangalore Declaration for a Media Policy on Community Radio was released at the end of the meeting and aimed to shape media policies in India⁵⁶⁰.

The case of the TSB in India is quite different. In 2006 the Indian government made special regulations for the promotion of Third sector broadcasting by framing the Community Radio

⁵⁵⁹ Community Radio Station In India, Cultural Survival, *also available at* <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/india/community-radio-india>, last seen on 27th December 2015, 18:19 Hrs.

⁵⁶⁰ *Supra*, Note 1

Station Rules 2006. After 2006, there were huge number of applications that the Information and Technology Department, Government of India received for setting up a Community Broadcasting Radio Station.

Community radio station plays a major role in the development of masses and people in the world. Since the development of science and technology, communication has played a vital role in the development and spreading the news. Take an example of the recent Nepal earth quake, which shocked and shacked Nepal in April 2015 when a 9.8 Richter scale magnitude shocked Nepal. It was a devastating scene all over and the waves were felt over 2000 km radius where there was a mass destruction. But, what helped, it was the states and the technology. Hours after the devastation Facebook started a new form of communication through their website, where people marked them safe and which made the near and dear ones know that their relatives were alive.

Communication has developed and have reached at a stage where it is no turning back. Communication has evolved itself from telegrams to instant messages and many more.

The third sector broadcasting is also a type of communication where there is neither a government involvement nor there is a motive to make private profits from the operations of such sectors. In India and its laws it is called as Community Radios and it has flourished tremendously after the framework of rules on Community Radio, 2006. With the third sector broadcasting there are also certain issues involved like

- a. A community radio is a non-government organisation and also a non-profit organisation, but if it's handled by an institution like a school/college which is under the state control, that rises the ambiguity.
- b. The Human rights aspect of the Third sector broadcasting in India

THIRD SECTOR BROADCASTING VIS – A – VIS HUMAN RIGHTS

Human rights are those rights that every human should get after the birth of a human. A human should have the basic rights like, shelter food etc. The Human rights concept is mostly attracted to the Part III of the Indian Constitution i.e. the fundamental rights and also the Article 21 of the Indian Constitution. Article 21 of the Indian Constitution guaranteed right to life and personal liberty before the law, which is restricted right and can be taken always by a procedure established by law. This right guaranteed under the Article 21 of the constitution is the basic right which restricts the state from taking away the life of a person by unconstitutional means.

Some of the basic human rights are Right to Freedom of expression; Freedom of Religion; Political Rights; Equality before the law etc. are covered by the basic human rights of the people.

1. Freedom of Expression: The right to freedom of expression is a fundamental right under the article 19 of the Indian Constitution, with reasonable restrictions. It is on the person who is residing in India to choose which type of broadcasting is to be used and what wave. Should be used in the context of exercising the rights guaranteed under the part III of the Indian Constitution.⁵⁶¹

Prior to the broadcast and the communication a community radio station has to take up license to carry out the same. Though a license is a legal provision and protects the licensee from any illegal claims regarding the community radio. But still the ECHR⁵⁶² under Article 10 mentions:

Article 10 – Freedom of expression⁵⁶³

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

⁵⁶¹ Fernando Mendex, Why third sector broadcasting is so important: Third sector broadcast and Human rights laws, *also available at* <https://www.cbaa.org.au/article/why-third-sector-broadcasting-important-relationship-between-third-sector-broadcasting-and>

⁵⁶² European Convention of Human Rights

⁵⁶³ Article 10, European Convention on Legal Rights

The above article in a way limits the freedom of expression by expressing about the licence requirement in its provisions. Any provision regarding the licence requirement is an essential requirement and also a restrictive to the freedom of expression as there are procedures to be followed and if the licence isn't granted then the rights are restricted to a certain extent.

Before starting a community radio station there needs a case where in there has to be a license taken by the radio stations. This shows there is already a restriction imposed in the broadcast sector and these types of license will be imposed by the state. But there is always a fair chance at the other end of the sea. The third sector broadcasting sectors should obtain the license and then operate, but it is still justified because of the lack of the spectrum space available to the company, the company wants to hire. Spreading out the message all over the fraternity will lead only a helpful one. Right to Life is an important provision and fulfilling the right is the policy of the state to look into. The fact of competing interest cannot be used here under any possibilities For this reason, the concept of diversity of the media, also called plurality of the media, has moved to the forefront of human rights concern in recent years, receiving significant attention from Intergovernmental Organizations (IGOs) as well as the civil society sector.

2. Right to Information: Right to Information: In India, the Right to Information Act (RTI Act) was enacted in 2005 “*to provide for setting out the practical regime of right to information for citizens*”. Under the RTI Act in India, any person can ask for any information from a state authority⁵⁶⁴, for any information. This information is also at a restriction and the information which is of national importance and which if given out will put the sovereignty and the security of the nation at risk is restricted from being disclosed.

Internationally too, the Right to Information is considered to be a widely accepted doctrine in the international human community. A human has a basic right to ask for the information the person requires. A human when born, takes birth with certain basic rights and these rights. A human has the right to know and ask for an information, may be through radio, television etc. the notion under this concept is right to seek and receive information from the person who is willing to share the information. This should not be confused with the ‘Right to the petition of Information’. The latter means a person

⁵⁶⁴ Article 13, Constitution of India

requesting the State to furnish some information. India, being so vast and culturally diverse nation, it's not always possible for the Public sector or the commercial sector broadcasters to look into the fulfilment of the right to information of the people of the country

3. Freedom of Religion: The right to religion is the basic right guaranteed by the Constitution. The Right to profess religion is given under Article 25. This is a basic right and will come to you if mentioned in the constitution of the country. In the world there are many sister states that use the airwaves, provide the airwaves to the other organisations. In the concept of balancing of the access, the scarcity of the spectrum is difficult to manage. Likewise, balancing access to the radio waves for groups supporting religious and fundamental positions with those supporting non-religious positions such as non-belief and scepticism which are equally protected under Freedom of Religion may be much difficult.

The right to religion give the right to an individual to profess, propagate his/her religion at all levels⁵⁶⁵. The person has a right to choose the religion he believes and has been given autonomy under the constitution to profess it. India, being the largest democracy in the world is a secular country and does not discriminate between two religions and considers all the religions at the same equating level. A person professing or spreading the word/ believes of his religion can use any medium to do so. Even a community radio in this case. Can be used to propagate the religious believers and spreading it over the entire community. If we restrict the usage and don't give proper radio spectrum then the State will directly violate the freedom of religion, freedom of expression of these community.

4. Right to Equality before the Law: The third sector broadcasting serves as a means to induce inequality in the broadcasting sector of a country. Third sector broadcasting is a non-profit sector and tries to induce the people who are deprived and are marginally deprived of the society. In the other sectors of broadcasting it is usually lot of money involved hence the vice of those sectors like the commercial sectors is also very glamorous but sectors like the third sector looks after the unequal in the society equally and people may come together and form a third sector broadcasting community radio where each and every individual can voice out the concern of them and of the society.

⁵⁶⁵ Pannalal Bansilal Pitti & Others vs. State of Andhra Pradesh and Others (1996 AIR 1023)

Third Sector Broadcasting has also been up with socially excluded humans like, gays, refugees, minorities, indigenous groups etc. People like them are also humans and should be given an equal opportunity to voice out the concerns and it is possible through the community radios and the third sector broadcasting.

SHOULD COMMUNITY RADIO INITIATIVES BE PROVIDED WITH SPECIAL REGULATION IN INDIA?

Third Sector Broadcasting is a propounding term used for the reference of TSB is various forms of broadcasting which do not fit within the two categories described above. A term commonly associated with third sector broadcasting is "community broadcasting." Some use the label to refer to all forms of third sector broadcasting. The use of terminologies such as indigenous, ethnic educational and religious are sometimes used to show that the TSB do not follow up a participatory model which is highly linked with the community broadcasting and radio under a narrow definition.

The third sector broadcasting is also called at times a private and a non-profit broadcasting and there is a need of such broadcasting sources in India which is completely pro for the human rights and upholding their rights of speech and expression. The TSB is also considered as a organisation which is not directly owned by the State per se, and which is not inclined towards the profits and do not have a profit motive as their main purpose. The license to the TSB agencies is generally issued to the societies and NGOs that want to spread awareness of a kind and do not have intentions of profit. Apart from NGOs, license for TSB is obtained by religious institutions, LGBT community, ethnic groups, student representative bodies etc. Being said so we can conclude that how important TSB is in India and the need of the TSB in India, but unfortunately TSB in India suffers from a need of legal recognition. TSB is often included as a part of the primary and the secondary sector broadcasting in India and not a part of the third sector broadcasting because of which the importance the recognition which it should have got is not much till date and this is a major bone of contention for the development of the TSB in India.

RATIONALES FOR SPECIAL REGULATION OF THIRD SECTOR BROADCASTING OR COMMUNITY BROADCASTING

Stopping Unfair Profits: The first rationale for applying special regulation to TSB is to prevent license-holders from deriving unfair gain from their licenses. If Community Broadcasting licensees are favoured with free access to spectrums or with a much lesser onerous process of licensing because of their declared social and non-profit purpose, then it is a legitimate goal to prevent Community Broadcasting licenses from being used as a backdoor for commercial activity and profit-seeking. However, preventing more favourable regulation from being abused is one of the objectives most commonly pursued through the general regulation of non-profit organizations. If Community Broadcasting licenses are restricted to non-profit organisations, distributing profits to members, then it is not clear whether the additional regulations imposed will be necessary for the Community Broadcasting licensees from deriving unfair gains.⁵⁶⁶

Protect the Commercial Broadcasters from Unfair Competition in field: Another rationale for the special regulation of Community Broadcasting is to give protection to the commercial broadcasters i.e. the broadcasting agencies that charge for their content for being broadcasted and protecting them from partial competition from Community Broadcasting licensees. In the absence of special restrictions, community broadcasting may end up in direct competition with commercial broadcasters for audiences and advertisers. If community broadcasting licenses are issued under less onerous conditions than commercial ones, then community broadcasters could be measured to have a partial benefit over commercial broadcasters. Community broadcasters are often subject to restrictions on the kinds of content the broadcasters can broadcast, and on the airing of advertisements with a view to protect the commercial broadcasters present⁵⁶⁷.

Competition between third sector and commercial actors is not unique to broadcasting. Non-profit organizations may also compete with commercial ones in delivering services in other fields such as health and education; non-profit organizations' ancillary trading activities for the purpose of fundraising and it may lead to a competitive environment with other commercial entities. If there are specific policies aimed at supporting Third Sector Broadcasting, then these

⁵⁶⁶ Fernando Powell, 'Special Regulation for Third Sector Broadcasting', also available at http://www.icnl.org/research/journal/vol15iss2/art_1.htm, last seen on 27th December 2015, 16:25 Hrs.

⁵⁶⁷ *Supra*

may give Third sector broadcasters an additional competitive advantage over their commercial counterparts, in comparison to those non-profit organizations trading in other fields may have over, their commercial broadcasting organisations. Accordingly, some specific regulation for the protection of the profit making broadcasters may be justified, but if only, Third sector broadcasters are also favoured by special policies.

It is assumed that, as non-profit services, Third Sector Broadcasters are naturally inclined to broadcast content that is not normally found on commercial radio stations. If this assumption is valid, then Third Sector Broadcasters will not represent a threat to the commercial and profit making broadcasters even in the absence of special and procedural restrictions.

Protecting the Independence of Third Sector Broadcasters: Third Sector Broadcasters should be independent from government. It is a serious risk that less than well-intentioned governments would establish outlets for broadcasting specifically under their control and try to present them in public sector as independent Third Sector Broadcasting outlets in order to increase their credibility. In this sense, special regulation may be necessary to protect Third Sector Broadcasters from government influence. Measures designed to secure independence from government are sometimes found in general regulations applied to non-profit organizations. However, the influential nature of the broadcasting activity and overwhelming fact that the broadcast is done using a public source like a radio spectrum may justify additional care being taken for protecting third sector broadcasters from government influence.

In addition to being independent from the government, third sector broadcasters are expected to be independent from other third parties⁵⁶⁸. Restricting licenses to non-profit organizations should guarantee that third sector broadcasting outlets will not have owners. However, third parties entities that give and provide financial and monetary support to third sector broadcasters may be able to exercise influence over them. This risk is not unique to third sector broadcasters, of course; any type of non-profit organization may be undesirably influenced by donors, especially if it relies to a large degree on a single donor. Regulations sometimes protect non-profit organizations in general from undue influence from financial contributors, be they government or private

Securing the Distinctiveness of the Third Sector Output: In international human rights law it has been recognized that persons have a right to receive diverse information and that States

⁵⁶⁸ Buckley, Steve, "Community Broadcasting: Good Practice in Policy, Law and Regulation" (paper presented at the UNESCO World Press Freedom Day, 2008)

have a positive obligation to implement policies conducive to securing the availability of such information. It has been proven that developing a third sector of broadcasting can contribute greatly to the diversity of content and information available to the population. Because they pursue different goals and are different in nature from commercial or State broadcasters, third sector broadcasters normally provide content that is neglected by the other two sectors. However, regulation sometimes directly requires them to provide such distinct content. The distinctiveness of the content can be brought out by the imposition of the positive content and obstructing the negative contents. The negative content must have restrictions. But the most debatable topic today is how do we validate this scenario⁵⁶⁹?

Each and every individual in this country has a right to express their individual will and freedom today and has a guaranteed freedom of speech and expression, even if the expression is found in duplicate in both the commercial broadcast and the broadcast the State sector is providing, then it would not seem suitable to bound TSB to broadcasting content neglected by the other sectors. However, if a State decides to provide financial or technical assistance to third sector broadcasters with the goal of improving the multiplicity of information, then there may be some explanation for requiring uniqueness of output from TSBs⁵⁷⁰.

HOW SPECIAL REGULATION CAN AID THE DEVELOPMENT OF THIRD SECTOR BROADCASTING OR COMMUNITY BROADCASTING?

Despite the dangers of overregulation, special regulation is not invariably detrimental to the development of the sector, nor should it be seen as evil to be withstood by third sector broadcasters as a quid pro quo for government support. Well-crafted regulation can actually aid the development of the sector⁵⁷¹. Financial and governance regulation, for example, can improve the credibility and image of the sector as a whole by ensuring that Third Sector Broadcasting licenses are not used for improper purposes; as a result, Third Sector Broadcasters may be more likely to receive support from governments and communities. In addition, regulations can clarify society's expectations for community broadcasting. If these expectations are pre-established, funding systems can be implemented to provide government financial support to community broadcasters automatically if they comply with the applicable

⁵⁶⁹ *Supra*

⁵⁷⁰ Buckley, Steve, "Community Broadcasting: Good Practice in Policy, Law and Regulation" (paper presented at the UNESCO World Press Freedom Day, 2008)

⁵⁷¹ Fernando Powell, 'Special Regulation for Third Sector Broadcasting', *also available at* http://www.icnl.org/research/journal/vol15iss2/art_1.htm, last seen on 27th December 2015, 16:25 Hrs.

regulations and their license conditions. This can benefit community broadcasters greatly. If their funding is not dependent on an assessment of their social contribution made under unclear criteria, they can engage in longer-term planning.

Another potential benefit exists as well. If special regulations stipulate that third sector broadcasters must be non-profit in nature, then access to third sector broadcasting licenses can be separated from the requirement of incorporating as a non-profit legal person. Although third sector broadcasting licenses are generally limited to registered non-profit legal entities, some governments, such as Uruguay and Ireland, allow groups of persons with non-profit purposes to apply for TSB licenses without a legal incorporation requirement. It is an unfortunate reality that the procedures for creating a non-profit entity are often unduly burdensome. In these cases, allowing persons to establish third sector broadcasting stations without going through such procedures can greatly aid the development of the sector⁵⁷².

CONCLUSION

Special regulation of third sector broadcasters can be justifiable and even advisable in certain contexts, even if the concerns are addressed by the regulations that are applied already to all non-profit entities. Indeed, well-crafted regulation can actually aid the sector. However, excessive or unnecessary regulation can infringe upon non-profit actors' freedom of speech and expression and deprive the community from broadcasting services and information that could be of great value to each and every individual in the society. Before applying any policies that may restrict the activities of third sector broadcasters, accordingly, the potential effect needs to be carefully considered, including whether any less restrictive measures could be equally effective in pursuing the same goals. Since different types of third sector broadcasters operate under very different realities, even within the same jurisdiction, one should also consider whether any regulations could prove too burdensome for a type of third sector broadcaster and whether exempting them from the general rules could advance the public interest. Community radio is looked at as a tool for empowerment, an appropriate technology that builds capacities of communities to become active participants in development.

In the real sense, community radio plays a pivotal role in making the masses aware about their basic rights and duties. Not only limited to solving problems which a common man faces in his day-to-day life, community radio provides him a strong platform from where he can freely

⁵⁷² *Supra*

disseminate his ideas among his community members in the best possible manner. Thus, community radio becomes one of the important instrument in strengthening our 'Right to Freedom of Speech and Expression'⁵⁷³. Besides solving social problems as well as entertaining local people, community radio also acts as an intermediary between the Government and the local masses. This is the place from where local people can air their grievances to the Government as well as get the solutions to their problems too. Needless to say, community radio has played a major role in bridging the communication gap between the Government and the local people⁵⁷⁴. As, the community radio is still evolving it might be possible that in the near future, we will witness its various new forms which will be technologically more superior as well as user friendly. Well whatever the case may be, community radio has proved to be one of the best medium of communication at the grass-root⁵⁷⁵.

The Third Sector Broadcasting is very unique and important for India. It is a new discipline that is evolving year by year and is giving basic rights to the people in this country. Broadcasting may seem to be a technical term in philosophical aspect of the law but when it comes to the rights that need to be distributed by the way of broadcasting then it is a major concern. Too many constraints come in between a freedom and expressing that freedom. We need to remove the barricades of these freedoms and exercise it freely. Hence, Third Sector Broadcasting is an important concept when it comes to upholding the human rights of the society and the people.

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⁵⁷³ Dr. Arpita Sharma and Dr. PP Patel, 'Community Radio: An Information Communication Medium to Strengthen Grass root Voices', *also available at* http://www.uasb.in/yahoo_site_admin/assets/docs/016.35284534.pdf, last seen on 27th December 2015, 13:14 Hrs.

⁵⁷⁴ Saad Ullah Khan, 'Role of Community Radio in Rural Development', *also available at* http://www.caluniv.ac.in/global-mdia-journal/student_research-june-2010/s%20u%20khan%20amu.pdf, last accessed on 27th December 2015, 14:09 Hrs.

⁵⁷⁵ *Supra*.