LAW RELATING TO TELECOMMUNICATION LAWS IN INDIA: AN OVERVIEW

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Introduction

"Mr. Watson come here, I want you."

Alexander Graham Bell[1]

This was the first historical sentence on telephone by Alexander to Watson. Once a status symbol, the telephone has now become a necessity at least in bigger towns. Telecommunications is one of the fastest growing areas of technology in the world. Because of its rapid growth, businesses and individuals can access information at electronic speed from almost anywhere in the world. By including telecommunications in their operations, businesses can provide better services and products to their customers. For individuals, telecommunications provides access to worldwide information and services.This is largely due to the rapid growth of trade and commerce, industry and urbanization in the last few decades. More and more people now require faster means of communication. To cater to these needs, modern technology has developed new and more sophisticated services. Many countries opening their telecom markets and privatizing incumbent operators have established independent regulatory authorities and made them responsible for regulating the sector. Before analyzing about settlement of disputes in telecom sector, the concept of telecommunication should be made clear as to what types of services would be included in telecommunication service.

Telecommunications' as an infrastructure sector brings within its ambit the widest range of services under one infrastructure sector. The precise ambit of the infrastructure services falling under the term 'telecommunications' depends not only on the technology being used but also the legal framework regulating the telecom sector. The following services would fall under the 'Telecommunications' sector due to wide and overreaching

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definitions of certain term used in the statues governing the telecommunications sector in India: (i) Land line or fixed network telephone services (basic telecom services); (ii) GSM cellular telephone services (cellular phone services or mobile phone services); (iii) Wireless in local loop mobile services (WLL mobile phone services); (iv) Internet service; (v) electronic mail services; (vi) V Sat communications services; (vii) voice mail services; (viii) data services; (ix)e-commerce; (x) global mobile personal communications services (GMPCS services or satellite communications services); (xi) wireless broad band communications and (xii) broadcasting.[2]

Telecommunications is an infrastructure in which rapid technological advance has been occurring and the risk of obsolesce is comparatively higher than other infrastructural sectors. Telecommunications is also one of the few infrastructure sectors, where facility is never really completed as the telecommunications network that is established has to be either constantly expanded to achieve higher consumer penetration or has to be constantly upgraded to allow the network to provide the latest services possible.[3]

Telecommunications is the communication of information by electronic means usually over some distance. Telecommunication is the transmission and reception of messages over long distances. Visual signaling with flags, lamps or smoke was the earliest form of telecommunication. Today, the term refers to a wide variety of electrical and electronic communication systems used throughout the world. Modern telecommunication systems send and receive sound, printed materials, and visual images in a fraction of a second.

Most telecommunication systems transmit messages by wire, radio or satellite. Many telegraph messages and telephone conversations, as especially local calls, travel over wires that are laid underground in cables. Cables on the sea floor handle such communications that travel overseas. Television and radio broadcast are sent through the air by radio waves. Radio waves called microwaves transmit television signals over extremely long distances. Microwaves are also used in most long distance telephone communication.

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[2] By the Government Notification No.39 dated 09.01.2004[S.O.44(E)] broadcasting is included in 'telecommunication services'.

[3] *See* Joshi Piyush(2001) 'Law Relating to Infrastructure Projects' New Delhi, Butterworths India at page 419.

The definition of 'telecommunication service' is given in section 2(1) K of The Telecommunication Regulatory Authority of India Act, 1997 as telecommunication service means service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services;

[*Provided that* the central government may notify other services to be telecommunication service including broadcasting services.][4]

Absence of proper regulation in the field of Cable and Broadcasting Sectors led the government to issues a notification[5] that "broadcasting" and "cable" services to be "telecommunication services" under TRAI Act, 1997.

Much of the telecom regulation comprises measures designed to open the market to competition or deal with an entrenched lack of competition. In a capital-intensive network industry such as telecom sector, the historic investment and established customer relationships of the incumbent operator often give it a tremendous advantage over new entrants. While the telecom sector is no longer viewed as a "natural monopoly", the cost of telecommunication infrastructure investment is nevertheless high. Resistance to such measures is an obvious way for dominant operators to hold back the tide of open market competition. Such resistance often gives rise to a verity of disputes. These include disputes between operators and consumers, disputes over the use or abuse of frequency spectrum, disputes between regulation operators, as well as disputes under international trade and investment agreements. The success and failure of the sector regulation depends on the way disputes are resolve and handled by the regulators. There is a close relation between regulated matters and disputes arising over the provision of telecom services and infrastructure has led legislatures in many countries to confer a dispute resolution power on the body established to regulate the sector.

Thus effective dispute resolution mechanism is necessary for promoting growth in telecom sector. If disputes are not resolved

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[4] *Inserted vide* Telecom Regulatory Appellate Authority of India (Amendment) Act 2000.

[5] Government Notification No.39 dated 09.01.2004 [S.O.44(E)].

expeditiously, the result will be uncertainty in the sector, which in turn, may affect investment climate. In the light of these compulsions The Telecommunication Regulatory Authority of India was established in 1997 under the Telecommunication Regulatory Authority of India Act, 1997.

The Telecommunication Regulatory Authority of India (TRAI) was first made responsible for hearing dispute in the sector. However the adjudicatory powers of TRAI were challenged before the Delhi high Court on the ground, inter alia, that TRAI did not possess jurisdiction to issue directions to DoT in latter's capacity as Licensor. The Single Judge allowed the challenge, which was subsequently confirmed by a Division Bench of the Delhi High Court. The High Court held, inter alia, that TRAI does not possess the power to issue directions to the Government in the latter's capacity as Licensor[6]. The Legislative amendments created the Telecommunication Disputes Settlement and Appellate Tribunal (TDSAT), giving it the power to hear disputes directly from disputing parties, as well as to hear and dispose of appeals against any direction, decision or order of the Authority (TRAI) as well as the government.[7]

However there are some disputes in telecom sector which does not fall directly under the telecommunication laws and covered under different laws such as disputes relating to infrastructure, investment, trade, liberalization or consumer-related matters etc. Thus it could be said that dispute resolution in telecommunication require various approaches for settlement.

Therefore specific attention will have to be given to dispute resolution mechanisms, which should be re-oriented to tackle new and emerging areas of conflict in the sector. Dispute settlement principles must, therefore, find a balance between the interests of various carrier services and customer considerations, which include their perception of quality of service, price, coverage, flexibility and field of choice available to them. There are various common official and approaches to dispute resolution. These range from regulatory adjudication, court adjudication, alternative dispute resolution, negotiation and mediation to arbitration; and have their advantages and disadvantages. Many countries are using use a mix of adjudication by the regulator and adjudication by the courts. The determining principle of regulatory adjudication is to ensure orderly development of the

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6 *Union of India* v. *TRAI* 74(1998) DLT 282.

7 The Telecommunication Regulatory Authority of India (Amendment) Act,2000 amended The Telecommunication Regulatory Authority of India Act,1997.

telecommunication sector by promoting fair competition between the dominant and new service providers through a series of measures like publishing a standard reference interconnect offer, price cap on tariffs, checking predatory pricing and monitoring compliance with licence terms and conditions.

Regulatory adjudication can have the advantages of well-structured channels of decision-making, accountability of official decision-makers, established mechanisms for coordinating decisions among agencies with related responsibilities and availability of the State's enforcement mechanisms. Service providers or consumers also have an option to appeal against the decision of the regulator and have the issue settled through court adjudication. As an approach, court adjudication remains an important final recourse for many types of disputes. It has the advantage of finality and official enforcement mechanisms, but in spite of all the above advantages it has own disadvantages also such as high costs arising from lengthy court procedures and a perceived lack of telecommunication-specific expertise to deal with the many technical disputes causing delays. To cut down the high cost arising out of lengthy court procedure ADR mechanism are being used in order to resolve disputes relating to telecommunications. Negotiation, mediation and arbitration are the most commonly practiced of these less official means of dispute resolution.

The ADR methods that use confidential processes are well-structured, time saving and can help to maintain long-term commercial relationships. In the mediation and arbitration processes, there also can be regulatory oversight which sanctifies such processes. The ADR approach can help to smoothen rough edges in a large number of cases but in certain areas involving substantive issues where the stakes are very high, there may be no escape from taking recourse to judicial intervention. In such situations, judicial and quasi-judicial bodies like specialized tribunals, which also have enforcement powers, become very relevant. In the emerging converged scenario, the dispute settlement mechanism will have to be more flexible and less bureaucratic with the requisite technical expertise to address new conflicts effectively.

Evolution of communication laws

Now we trace the history of development of telecommunication in India. The oldest telecommunication's service in India is the telegraph service, which was introduced in 1851. The British Empire in India realized the advantages of the industry and

devoted much time and capital to the expansion of the telegraph industry. Within four years, 7000 km of telegraph lines were erected, connecting the North and South. With much labor put into the telegraph industry, the network expanded rapidly to provide links to Malaysia, Tibet, and Europe via Iraq and Iran. The telephone industry was introduced in 1882. Unlike the telegraph industry, the development of telephones was entrusted to the private sector and was limited to a few cities. With independence from the British Empire in 1947, India had "321 telephone exchanges, with a capacity of 100,000 lines, 86,000 working connections, 426 long distance voice circuits, 338 long distance public call offices, and 3324 public telegraph offices.[8]"

Telecommunications and information technologies were developed in advanced countries to serve their needs and interests. The new technologies brought about speed, efficiency and a non-polluting environment. As the technologies became chipper with greater volumes of users, business and administration needed fewer and ever fewer workers.

Indian telecommunication industry: An overview

The telecom industry is an important infrastructure industry. The industry is highly capital intensive and the payback period for investments can often be very long. An efficient telecom network is vital for the economic development of a nation. Indian telecom is more than 165 years old, beginning with the commissioning of the first telegraph line between Kolkata and Diamond Harbour in 1839. In 1948, India had 0.1 million telephone connections with a telephone density of about 0.02 telephone per hundred population[9].

The telecom services available in India include basic fixed line services, mobile services (based on both GSM and CDMA technology), national long distance services, international long distance services, internet services and pager services.

Tele-density, which is defined as the number of telephone connections per 100 persons, is used to measure the reach of telecom services. As on 31st October, 2011, India had a tele-density of 76.03 from 75.48 of the previous month. This growth was achieved on account of a stupendous increase in the number

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[8] *See* India: Adopting a Pro-Competitive Policy for Telecommunications by Ashok R. Menon for Telecommunications Alliance dated 12 may, 1999.

[9] Department of Telecommunications "Indian Telecommunication Statistics: Policy Framework, Status and Trends", Economic Research Unit (Statistics Wing), Ministry of Communications, New Delhi.

of GSM cellular subscriptions. The total telecom subscribers' base as of 31st October, 2011 was 914.59 million compared to 6.4 million and 3.6 million at the end of the March of 2002 and 2001 respectively. The total wireless subscribers (GSM, CDMA & WLL(F)) base stood at 881.40 million at the end of 31st October, 2011.

Total Wireless subscriber base increased from 873.61 Million in September 2011 to 881.40 Million at the end of October 2011, registering a growth of 0.89%.[10]

The growth is being led by companies like BSNL, Bharti, Reliance Communication and Vodafone Essar, which together accounts for over 75% of the telecom market share. As of quarter ended March 2008, BSNL leads the pack with a market share of 24.07%, thanks to its near monopoly in the fixed line services.

Indian Telecom Industry has grown to become the world's second largest market after China. It surpassed the number of connections in US in March2008.It took 25 years, after independence to reach the 1st 1 million mark; today we add almost 9 million phones in a month, the highest monthly additions in the world. The DoT has indicated that it has a target of 500 million telephone connections in India by December 2010. The earlier DoT target of 250 million subscribers by December 2007 was achieved in October 2007 highlighting the rapid growth in tele-density in India[11].

Legal framework

'Telecommunications' falls under the legislative competence of the Union and not the states[12]. Consequently, the legal framework governing the telecommunications sector is within the control of the Union Government and the Parliament.

The legal framework governing the telecommunications sector in India is provided by:

1. The Indian Telegraph Act 1885, and the rules made there under
2. The Wireless Telegraphy Act 1933 ,and the rules made there under

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[10] Telecom regulatory Authority of India, the Press Release57/2011 dated-18December, 2009.

[11] Telecom regulatory Authority of India, Consultation Paper No.17//2008 dated-31 December 2008.

[12] *See* Entry 31,list, Seventh Schedule, Constitution of India.

3. The TelegraphWires (unlawful Possession) Act 1950, and the rules made there under
4. The Cable Television Network (Regulation) Act 1996[13],and the rules made there under
5. The Telecom Regulatory Authority of India Act 1997,and the rules made there under

The control and regulation of the Union government over the telecommunication sector is enshrined in section 4 of the Telegraph Act 1885, read with Section 3 of the Wireless Telegraphy Act 1933.

Section 4(1) of the Telegraph Act 1885 specifically stats that:

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.

This provision has the following effect:

1. The establishing, maintaining and working of 'telegraphs' within India has been clearly stated to be in the nature of a 'privilege'.
2. The Central Government has been vested with the exclusive right of establishing, maintaining and working of telegraphs.
3. The Central Government has the ability to grant a license to any person to either establish or maintain, or work a telegraph in any part within India on such conditions and in consideration of such payments as the Central Government may deem fit.

The Central Government also has been vested with the powers to make rules for governing the establishment, maintaining and working of:

1. Telegraphs other than wireless telegraphs
2. Wireless telegraphs on ships within Indian territorial waters and on air craft within or above India.[14]

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[13] This legislation seeks to regulate the possession of telegraph wires and covers only copper wires as it defines telegraph wires to covers only copper wires.

[14] *See* Second Proviso to Sec. 4(1) of Telegraph Act 1885.

The Central Government also has the specific power to makes rules for the conduct of all or any telegraphs established, maintained or worked by the government or by persons licensed under the Telegraph Act 1885[15].It is also vested with the power to determine the rates at which and the other conditions and restrictions subject to which messages shall be transmitted within India[16] and to any country outside India[17].The Indian Telegraph Act 1885,while providing for the regulation of the establishment, operation and maintenance of a 'telegraph', effectively vests in The Union Government with the Power to regulate the provision of all telecommunication services as each of them involves either the establishment or working, or operation and maintenance of a 'telegraph'.

The Wireless Telegraphy Act 1933, while seeking to regulate the possession of wireless communication apparatus effectively regulates the every aspect relating to wireless communication including the use of frequencies and the place of establishment of wireless equipment in any telecommunication network. The Wireless Telegraphy Act 1933 clearly mandates that unless a person has been exempted by the Union Government from the provisions of this Act; no person shall possess wireless telegraphy apparatus except in accordance with a license issued under the Telegraphy Act 1933.[18] The telegraph authority constituted under the Indian Telegraph Act 1885, has been declared as the competent authority to issue licenses under the Wireless Telegraphy Act 1933,and it is vested with the power to issue these licenses in such manner, on such conditions and subject to such payments may be prescribed[19].

Even though the Telegraph act 1885, and the Wireless Telegraphy Act 1933, do provide for private participation in the establishment, working, operation and maintenance of telegraphs and wireless telegraphy apparatus by providing for the power of the Union Government to grant licenses, the framework created by the Telegraph act 1885,does not provided for the crucial aspect for private participation in the telecommunication sector namely, regulations to provide for a level playing field with the incumbent operator.[20]

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15 *See* Sec.7(1) of Telegraph Act 1885.
16 *See* Sec.7(2)(a) of Telegraph Act 1885.
17 *See* Sec.6A(1) of Telegraph Act 1885.
18 *See* Sec.4 read with Sec. 3, Indian Wireless Telegraphy Act 1933.
19 *See* Sec.5 of Indian Wireless Telegraphy Act 1933.
20 *See* Joshi Piyush (2001) 'Law Relating to Infrastructure Projects', New Delhi, Butterworths India at page 427.

History of telecom in India

Telecom in the real sense means transfer of information between two distant points in space. The popular meaning of telecom always involves electrical signals and nowadays people exclude postal or any other raw telecommunication methods from its meaning. Therefore, the history of Indian telecom can be started with the introduction of telegraph.

Introduction of telegraph

The postal and telecom sectors had a slow and uneasy start in India. In 1850, the first experimental electric telegraph Line was started between Kolkata and Diamond Harbour. In 1851, it was opened for the British East India Company[21]. The Posts and Telegraphs department occupied a small corner of the Public Works Department, at that time. Construction of 4,000 miles (6,400 km) of telegraph lines connecting Kolkata (Calcutta) and Peshawar in the north via Agra, Mumbai (Bombay) through Sindwa Ghats, and Madras (Chennai) in the south, as well as Ootacamund and Bangalore was started in November 1853. Dr. William O'Shaughnessy, who pioneered telegraph and telephone in India, belonged to the Public Works Department. He tried his level best for the development of telecom throughout this period. A separate department was opened in 1854 when telegraph facilities were opened to the public.

Development of telecommunication in India

In 1880, two telephone companies namely The Oriental Telephone Company Ltd. and the Anglo-Indian Telephone Company Ltd. approached the Government of India to establish telephone exchanges in India. The permission was refused on the grounds that the establishment of telephones was a Government monopoly and that the Government itself would undertake the work. By 1881, the Government changed its earlier decision and a licence was granted to the Oriental Telephone Company Limited of England for opening telephone exchanges at Kolkata, Mumbai, Chennai (Madras) and Ahmedabad. January 28, 1882, is a Red Letter Day in the history of telephone in India. On this day Major E. Baring, Member of the Governor General of India's Council declared open the Telephone Exchange in Kolkata, Chennai and Mumbai. The exchange at Kolkata named "Central Exchange" was opened at third floor of the building at 7, Council House Street.

[21] Dossani, R. (ed.) 2002, *Telecommunications Reform in India*. Quorum Books, at page 22.

The Central Telephone Exchange had 93 numbers of subscribers. Bombay also witnessed the opening of Telephone Exchange in 1882.

The Telegraph Act of 1885 governed the telecommunications sector. Under this Act, the government was in-charge of policymaking and provision of services. Major changes in telecommunications in India began in the 1980s. Under the Seventh Plan (1985-90), 3.6 percent of total outlay was set aside for communications and since 1991, more than 5.5 percent is spent on it . The initial phase of telecom reforms began in 1984 with the creation of Center for Department of Telematics (C-DOT) for developing indigenous technologies and private manufacturing of customer premise equipment. Soon after, the Mahanagar Telephone Nigam Limited (MTNL) and Videsh Sanchar Nigam Limited (VSNL) were set up in 1986. The Telecom Commission was established in 1989.

When telecom reforms were initiated in 1994, there were three incumbents in the fixed service sector, namely DoT (Department of Telecom), MTNL and VSNL. Of these, DoT operated in all parts of the country except Delhi and Mumbai. MTNL operated in Delhi and Mumbai and VSNL provided international telephony.

Given its all-India presence and policy-making powers, the Department of telecommunication (DoT) enjoyed a monopoly in the telecom sector prior to the major telecom reforms. However, subsequent to the second phase of reforms in 1999, which included restructuring the DoT to ensure a level playing field among private operators and the incumbent, the service-providing sector of DoT was split up and called Department of Telecom Services (DTS). DTS was later corporatized and renamed Bharat Sanchar Nigam Limited (BSNL). This meant separation of the incumbent service provider from the policy-maker. Broadly, DoT is now responsible for policy-making, licensing and promotion of private investments in both telecom equipment and manufacture and provision of telecom services. BSNL, a corporate body, is responsible for the provision of services[22].

A crucial aspect of the institutional reform of the Indian telecom sector was setting up of an independent regulatory body in 1997– the Telecom Regulatory Authority of India (TRAI), to assure investors that the sector would be regulated in a balanced and fair manner. TRAI has been vested with powers to ensure its

[22] Raghavan Vikram (2007), Communications Laws in India (Legal Aspects of Telecom, Broadcasting and Cable Services), Lexis Nexis Butterworth at page 34.

independence from the government[23]. The government has retained the licensing function with itself. The main issue with respect to licensing has not been whether it should be with the regulator but that the terms and conditions of licensing should involve consultations with TRAI to ensure transparency in the bidding process Some of the main functions of TRAI include fixing tariffs for telecom services, dispute-settlement between service providers, protecting consumers through monitoring of service quality and ensuring compliance to license conditions, setting service targets and pricing policy for all operators and service providers[24].

Further changes in the regulatory system took place with the TRAI Act of 2000 that aimed at restoring functional clarity and improving regulatory quality. TRAI can frame regulations and can levy fees and charges for telecom services as deemed necessary. The regulatory body also has a separate fund (called the TRAI General Fund) to facilitate its functioning. To fairly adjudicate any dispute between licensor and licensee, between service provider, between service provider and a group of consumers, a separate disputes settlement body was set up called Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

Some administrative and functional aspects of the telecom sector in India are discussed below:

Administration and control

Department of Telecommunications (DoT)

The Telecom Commission set up in April 1989 has the administrative and financial powers of the Government of India to deal with various aspects of telecommunications. The Commission and the Department of Telecommunications (DoT) are responsible, inter alia, for policy formulation, licensing, wireless spectrum management, administrative monitoring and control of the Public Sector Undertakings (PSUs) engaged in telecommunication services, research and development, standardization / validation of equipment, and international relations[25].

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[23] *Id*. at 38.

[24] Ahluwalia, MS. 2001, "State level performance under economic reforms in India" Working Paper No. 96, Center for Research on Economic Development and Policy Reform, Stanford University at page 8.

[25] Business Standard, August 22, 2007.

The Centre for Development of Telematics (C-DOT)

The Centre for Development of Telematics (C-DOT) is an autonomous body established in 1984 with the objective of developing a new generation of digital switching items. It has developed a wide range of switching and transmission products both for rural and urban applications.

Two important wings of DoT are the Telecom Engineering Centre (TEC) and the Wireless Planning and Coordination (WPC) wing. TEC is devoted to product validation and standardization for user agencies. It also provides technical and engineering support to the Telecom Commission and the field units.

The Wireless Planning and Coordination wing deals with the policies of spectrum management, wireless licensing, frequency assignments, international coordination for spectrum management and administration of Indian Telegraph Act, 1885 for radio communication systems and Indian Wireless Telegraphy Act, 1933[26]. In order to administer the use of radio frequencies, the licences/renewals for use of wireless equipment and the frequencies are authorised by WPC. The licences are granted for specific periods on payment of prescribed licence fees and royalty in advance and are renewal on expiry of the validity periods.

Regulatory control

The entry of private service providers in 1992 brought with it the inevitable need for independent regulation. The Telecom Regulatory Authority of India (TRAI) was thus established with effect from 20 February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services, which were earlier vested in the DoT[27]. The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI. TDSAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI. The 2000 Amendment took

[26] Dossani, R. (Ed.) 2002, *Telecommunications reform in India,* Quorom Books at pages 18-19.

[27] Raghavan Vikram (2007), *Communications Laws in India (Legal Aspects of Telecom, Broadcasting and Cable Services)*, Lexis Nexis Butterworth, at pages 12-15.

away the TRAI's dispute resolution function and entrusted the same to the Telecom Disputes Settlement Tribunal (TDSAT). Following structure gives a cursory glance of the present regulatory structure in the telecom sector of India in brief.

Regulatory structure of the Indian telecom sector

Regulatory body	**Functions**	**Comment**
DOT – Department of Telecom	Licensing, license fee, frequency management of telecom sector	Policymaking and enforcing body
Telecom Commission	Executive and policy making function of ministry	Part of DOT
WPC- Wireless Planning Commission	The national radio regulatory authority responsible for spectrum management, including licensing. Caters for the needs of all wireless users in the country, government or private, security or non-security.	Country's spectrum management
GOTIT-(Group on Telecom and IT)	Decides on ad hoc issues depending on the immediate needs	Prime Minister's council
TRAI –Telecom Regulatory of India	Regulating, issuing directions and settlement of disputes between various service providers. Mandatory for DOT to seek recommendation of TRAI in respect of specified matters and then setting up separate dispute settlement mechanism. Also has the power to call for any information, conduct investigations and to issue directions (directives)	Day to day management of sector
TDSAT-Telecom	To adjudicate any dispute:	Dispute

Dispute Settlement Appellate Tribunal	(1) between a licensor and a Licensee (2) between two or more service providers (3) between a service provider and a group of consumers	settlement body

Pre-reform period and telecommunications in India

Before 1990's Telecommunication services in India were complete government monopoly i.e. the Department of Telecommunication (DoT). Government also retained the rights for manufacturing of Telecommunication equipment. MTNL and VSNL were created in the year 1986.Early 1990's saw initial attempts to attract private investment. Telecommunication equipment manufacturing was delicensed in the year 1991.[28]

A notable revolution has occurred in the telecom sector. In the pre reforms era, this was entirely in the hands of the central government and due to lack of competition, the call charges were quite high. Further, due to lack of funds with the government, the government could never meet the demand for telephones. In fact, a person seeking a telephone connection had to wait for years before he could get a telephone connection. The service rendered by the government monopoly was also very poor. Wrong billing, telephones lying dead for many days continuously due to slackness on the part of the telecom staff to attend to complaints, cross connections due to faulty/ill maintained telephone lines, obsolete instruments and machinery in the telephone department were the order of the day in the pre reforms era.

Today, there are many players in the telecom sector. The ultimate beneficiary has been the consumer. Prices of services in this sector have fallen drastically.

Telephone connections are today affordable to everyone and are also easily available. Gone are the days, when one had to wait for years to get a telephone connection. The number of telephone connections which was only 2.15 million (fixed lines) in 1981 increased to 5.07 million(fixed lines) in 1991. Today (as in 2003), there are 54.62 million telephone connections of which 41.33 million are fixed line telephone connections, 12.69 million are cellular mobiles and the remaining 0.60 million are WLL telephones1. Wireless in Local Loop (WLL) telephones and cellular

[28] "That old Gandhi magic", The Economist, November 27, 1997.

mobile telephones were unknown in India a few years ago. Cell phones charges have come down so much that today one can see even a common man going around with a cell phone in his hand. The private companies are giving various incentives to attract customers, a situation which is entirely opposite to the conditions prevailing in the pre reforms era when one had to wait for years to get a telephone connection[29].

The first step toward deregulation and beginning of liberalization and private sector participation was the announcement of National Telecom Policy 1994.NTP 1994, for the first time, allowed private/foreign players to enter the 'basic' and the 'new cellular mobile section. Foreign Direct Investment (FDI) up to 49% of total equity was also allowed in these sectors. The policy allowed one private service provider to compete in basic services with the incumbent Department of telecommunication (DoT) in each DoT internal circle. It allowed duopoly in cellular mobile services in each circle. As part of the implementation of the National Telecom Policy(NTP) 1994, licenses were issued against license fees through a bidding process. This policy initiated the setting up of an independent regulator–the Telecom Regulatory Authority of India (TRAI), which was established in 1997. The main objective of TRAI is to provide an effective regulatory framework to ensure fair competition while, at the same time, protecting the interest of the consumers.

Liberalization and reforms in telecom sector: A review

1991-92

1. On 24th July 1991, Government announced the New Economic Policy.
2. Telecom Manufacturing Equipment license was delicensed in 1991.
3. Automatic foreign collaboration was permitted with 51 per cent equity by the collaborator.

1992-93

Value added services were opened for private and foreign players on franchise or license basis. These included cellular mobile phones, radio paging, electronic mail, voice mail, audiotex services, videotex services, data services using VSAT's, and video conferencing.

[29] Panagariya, Arvind (2004). "India in the 1980s and 1990s: A Triumph of Reforms", at page 25.

1994-95

1. The Government announced a National Telecom Policy 1994 in September 1994. It opened basic telecom services to private participation including foreign investments.
2. Foreign equity participation up to 49 per cent was allowed in basic telecom services, radio paging and cellular mobile. For value added services the foreign equity cap was fixed at 51 per cent.
3. Eight cellular licenses for four metros were finalized.

1996-97

1. TRAI was set up as an autonomous body to separate the regulatory functions from policy formulations and operational functions.
2. Coverage of the term "infrastructure" expanded to include telecom to enable the sector to avail of fiscal incentives such as tax holiday and concessional duties.
3. An agreement between Department of Telecommunication (DoT) and financial institutions to facilitate funding of cellular and basic telecom projects.
4. External Commercial Borrowing (ECB) limits on telecom projects made flexible with an increased share from 35 per cent to 50 per cent of total project cost.
5. Internet Policy was finalized.

1998-99

FDI up to 49 per cent of total equity, subject to license, permitted in companies providing Global Mobile Personal Communication (GMPC) by satellite services.

1999-00

1. National Telecom Policy 1999 was announced which allowed multiple fixed Services operators and opened long distance services to private operators.
2. TRAI reconstituted: clear distinction was made between the recommendatory and regulatory functions of the Authority.
3. DOT/MTNL was permitted to start cellular mobile telephone service.
4. To separate service providing functions from policy and licensing functions, Department of Telecom Services was set up.
5. A package for migration from fixed license fee to revenue sharing offered to existing cellular and basic service providers.

6. First phase of re-balancing of tariff structure started. STD and ISD charges were reduced by 23 per cent on an average.
7. Voice and data segment was opened to full competition and foreign ownership increased to 100 per cent from 49 per cent previously[30].

2000-01

1. TRAI Act was amended. The Amendment clarified and strengthened the recommendatory power of TRAI, especially with respect to the need and timing of introduction of new services provider, and in terms of licenses to a services provider.
2. Department of Telecom Services and Department of Telecom operations corporatized by creating Bharat Sanchar Nigam Limited.
3. Domestic long distance services opened up without any restriction on the number of operators.
4. Second phase of tariff rationalization started with further reductions in the long distance STD rates by an average of 13 per cent for different distance slabs and ISD rates by 17 per cent.
5. Internet Service Providers were given approval for setting up of International Gateways for Internet using satellite as a medium in March 2000.
6. In August 2000, private players were allowed to set up international gateways via the submarine cable route.
7. The termination of monopoly of VSNL in International Long Distance services was antedated to March 31, 2002 from March 31, 2004[31].

2001-02

1. Communication Convergence Bill, 2001 was introduced in August 2001.
2. Competition was introduced in all services segments. TRAI recommended opening up of market to full competition and introduction of new services in the telecom sector. The licensing terms and conditions for Cellular Mobile were

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[30] Department of Telecommunications "Indian Telecommunication Statistics: Policy Framework, Status and Trends", Economic Research Unit (Statistics Wing), Ministry of Communications, New Delhi.

[31] Economic Survey, Annual Reports(2001-2003) of the Department of Telecommunications, Ministry of Communications and Technology and the Telecom Regulatory Authority of India (TRAI)–various issues.

simplified to encourage entry for operators in areas without effective competition.

3. Usage of Voice over Internet Protocol permitted for international telephony service.
4. The five-year tax holiday and 30 per cent deduction for the next five years available to the telecommunication sector till 31st March 2000 was reintroduced for the units commencing their operations on or before 31st March 2003. These concessions were also extended to internet services providers and broadband networks.
5. Thirteen ISP's were given clearance for commissioning of international gateways for Internet using satellite medium for 29 gateways.
6. License conditions for Global Mobile Personal Communications by Satellite finalized in November 2001.
7. National Long Distance Service was opened up for unrestricted entry with the announcement of guidelines for licensing NLD operators. Four companies were issued Letter of Intent (LOI) for National Long Distance Service of which three licenses have been signed.
8. The basic services were also opened up for competition. 33 Basic Service licenses (31 private and one each to MTNL and BSNL) were issued up to 31stDecember 2001.
9. Four cellular operators, one each in four metros and thirteen were permitted with 17 fresh licenses issued to private companies in September/October 2001. The cell phone providers were given freedom to provide, within their area of operation, all types of mobile services equipment, including circuit and/or package switches that meet the relevant International Telecommunication Union (ITU)/ Telecom Engineering Centre (TEC) standards.
10. Wireless in Local Loop (WLL) was introduced for providing telephone connection in urban, semi-urban and rural areas.
11. Disinvestment of PSU's in the telecom sector was also undertaken during the year. In February 2002, the disinvestment of VSNL was completed by bringing down the government equity to 26 per cent and the management of the company was transferred to Tata Group, a strategic partner. During the year, HTL was also disinvested.
12. Government allowed CDMA (Code Division Multiple Access) technology to enter the Indian market.
13. Reliance, MTNL and Tata were issued licenses to provide the CDMA(Code Division Multiple Access) based services in the country.

14. TRAI recommended deregulating regulatory intervention in cellular tariffs, which meant that operators need no longer have prior approval of the regulator for implementing tariff plans except under certain conditions.

2002-03

1. International long distance business opened for unrestricted entry.
2. Telephony on internet permitted in April 2002.
3. TRAI finalized the System of Accounting Separation (SAS) providing detailed accounting and financial system to be maintained by telecom service providers[32].

2003-04

1. Unified Access Service Licenses regime for basic and cellular services was introduced in October 2003. This regime enabled services providers to offer fixed and mobile services under one license. Consequently 27 licenses out of 31 licenses converted to Unified Access Service Licenses.
2. Interconnection Usage Charge regime was introduced with the view of providing termination charge for cellular services and enable introduction of Calling Party Pays regime in voice telephony segment.
3. The Telecommunication Interconnection Usage Charges Regulation 2003 was introduced on 29th October 2003 which covered arrangements among service providers for payment of Interconnection Usage Charges for Telecommunication Services and covered Basic Service that includes WLL (M) services, Cellular Mobile Services, and Long Distance Services (STD/ISD) throughout the territory of India.
4. The Universal Service Obligation fund was introduced as a mechanism for transparent cross subsidization of universal access in telecom sector. The fund was to be collected through a 5 per cent levy on the adjusted gross revenue of all telecom operators[33].
5. Broadcasting notified as Telecommunication services under Section 2(i)(k) of TRAI Act.

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32 *See* Telecom Sector Report prepared by VishwaDoshifor way2wealth Securities Pvt. Ltd. *available at* http://www.way2wealth.com.

33 *See* Department of Telecommunications, Annual Report 2002-2003, Ministry of Communication and Information Technology, New Delhi.

2004-05

1. Budget 2004-05 proposed to lift the ceiling from the existing 49 per cent to 74 per cent as an incentive to the cellular operators to fall in line with the new unified licensing norm.
2. 'Last Mile' linkages permitted in April 2004 within the local area for ISP's for establishing their own last mile to their customers.
3. Indoor use of low power equipments in 2.4 GHz band de-licensed from August 2004.
4. Broadband Policy announced on 14th October 2004. In this policy, broadband had been defined as an "always-on" data connection supporting interactive services including internet access with minimum download speed of 256 kbps per subscriber.
5. The Telecommunications (Broadcasting and Cable Services) Interconnection Regulation 2004 was introduced on 10th December 2004.
6. BSNL and MTNL launched broadband services on 14th January 2005.
7. TRAI announced the reduction of Access Deficit Charge (ADC) by 41 per cent on ISD calls and by 61 per cent on STD calls which were applicable from 1st February 2005[34].

2005-2006

1. Budget 2005-2006 cleared a hike in Foreign Direct Investment(FDI) ceiling to 74 per cent from the earlier limit of 49 per cent. 100 per cent FDI was permitted in the area of telecom equipment manufacturing and provision of IT enabled services.
2. Annual license fee for National Long Distance (NLD) as well as International Long Distance (ILD) licenses reduced to 6 per cent of Adjusted Gross Revenue (AGR) with effect from 1st January 2006.
3. BSNL and MTNL launched the 'One-India Plan' with effect from 1st March 2006 which enable the customers of BSNL and MTNL to call from one end of India to other at the cost of Rs. 1 per minute, any time of the day to phone.
4. TRAI fixed Ceiling Tariff for International Bandwidth, Ceiling Tariff for higher capacities reduced by about 70 per cent and for lower capacity by 35 per cent.

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[34] *See*Telecommunication Services and Economic Growth: Evidence from India *available at*http://www.e.u-tokyo.ac.jp/cirje/research/03research02dp.html.

5. Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services 2005 introduced on 1st July 2005.
6. BSNL announced 33 per cent reduction in call charges for all the countries for international calls.
7. Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation 2006 introduced on 21st March 2006[35].

11th plan (2007-20012)

Foreign Direct Investment (FDI) in Telecom sector has increased in recent years with value of 81.62 billion with share of 10% in total inflow during January 2000 to June 2005. This is mainly in telecom services and not in telecom manufacturing sector. Therefore, it is essential to enhance the prospect for inflow of increased funds. The National Telecom policy (NTP) 1999 sought to promote exports of telecom equipments and services. But till date export of telecom equipment remains minimal. Most of the state-of-the-art telecom equipments including mobile phones are imported from abroad. There is thus immense potential for indigenous manufacturing in India. Certain measures like financial packages, formation of a telecom export promotion council, creation of integrated facilities for telecom equipment through Special Economic Zones (SEZ) and encouraging overseas vendors to set up facilities in India, are required for making India a hub for telecom equipment manufacturing and attract FDI. The telecom sector has shown robust growth during the past few years. It has also undergone a substantial change in terms of mobile versus fixed phones and public versus private participation. The following discussions from the report of the working report on the telecom sector for the 11th plan (2007-2012) will show the growth of telecom sector since 2003.[36]

Conclusion

We are today living in an information age, where technology revolution is continuing at a pace unabated throughout the world. Today everybody is dependent on telecommunication in day-to-day life. In fact, Information Communication Technology has really resulted in shrinking the distance and transformed the world into a small global village. Telecom is the growth engine

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[35] Ahluwalia, MS (2007), "State level performance under economic reforms in India" Working Paper No. 96, Center for Research on Economic Development and Policy Reform, Stanford University.

[36] TRAI (March 20, 2006), Recommendations on Issues relating to Broadcasting and Distribution of TV channels.

which results in the development of economy and also enhances the standing of the nation at the international level. Today we are going in for convergence of technology and the communication is network centric and it will not be wrong to say that these networks are basically intended for satisfaction customer/consumer and the industry is constantly driving to improve the quality of service and consumers are also aware of the value additions and their rights.

The opening of this sector to private operators in 1999, industry has made very fast progress. Starting with 47,000 telephones in 1947 and about 8 million about a decade back, today, we have 452.91million telecom subscribers[37]. Government has come out with the policy on wide-band, wherein we have to achieve 40 million internet connections and 20 million broadband connections by 2010. In the multi-operator scenario, where networks are to be connected and traffic of one operator has to pass on the other, there are problems inherent about interconnection, revenue sharing, spectrum allocation and usage and licensing etc. This resulted in an increase of number of disputes in the telecom industry. In the broadcast and cable industry today we have almost 300 channels all over India and approximately 50 more are expected. There are different rates being charged by cable operators even in their neighbour. The frequent disputes result from under-declaration of subscribers by cable operators, different rates being charged, demand of broad castors to place channels in prime bands, threats of disconnection, lack of transparency etc., happening due to lack of effective regulation[38].

In the context of the newly liberalised regulatory environment, disputes will probably arise more frequently between incumbent operators and new entrants, between the new entrants themselves, and between operators and regulators both on national and international level. Additionally, the nature of conflicts is changing as the market develops, and the National Regulatory Authority has to regulate interconnection in an uncertain environment. Ongoing institutional changes, technological developments, and digital convergence make the developments of the market environment uncertain to predict, and the information needed in order to detect opportunistic behaviour might be limited or difficult to collect. The value of transactions

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37 *See* Telecom Regulatory authority of India, Press Release 56/2009 dated 19 June 2009.

38 *See* summary of International Seminar at New Delhi-11th&12th September,2003 organized by TDSAT *available at* http://www.tdsat.nic.in.

related information might complicate the necessary assembling of required information. It is therefore of importance to ensure the transparency of processes and the possibility for the National Regulatory Authority to assemble the information necessary for an appropriate resolution of upcoming disputes. The public access to information concerning a dispute process and its resolution is also of great importance.

This implies the need for well-defined dispute resolution processes in order to resolve these more frequently arising and increasingly complex disputes efficiently. The national procedures have also to adapt global/regional trends and the national dispute resolution settlement procedures has to be complemented with definite procedures on a regional and a global scale.

In conclusion, when considering dispute prevention it is important to keep in mind that legislation and the dispute settlement procedure are not the only issues that have to be addressed. The enforcement of the dispute settlement resolutions and the means of tracking abuses of market power and anti-competitive behaviour, or abuse of consumer rights should also be taken into account.

"There is no need to reinvent any wheels with respect to dispute resolution procedures and techniques. The real challenge for policymakers in the public sector and for private sector experts in dispute resolution is, we firmly believe, how best to adapt the wealth of experience with private dispute resolution to issues of public importance and concern and how to create new and more effective incentives for cooperative behaviour among market participants."[39]

Since the inception of the TDSAT, it has rendered a number of decisions and has strived create an authoritative body of law to help guide the players in the industry in their future operation with minimal legal hurdles. This has brought a measure of stability and consistency in the industry. The issues agitated before the Tribunal, upon which with as adjudicated, have ranged from interconnectivity, interpretation of interconnect agreements, levy of licence fees and interest, computation of licence fees and interest after `migration' from a fixed licence fee regime to a revenue sharing regime.

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39 Discussion Paper on the Issue of Alternative dispute Resolution Techniques in the Telecom Sector. Document 12, ITU-D Global Symposium for Regulators, 7-8 December 2002, Hong Kong China.

The Act enjoins upon the TDSAT to deal with all matters before it as expeditiously as possible and make endeavour to dispose of these within 90 days from the date of filing of application/appeal. TDSAT has all the powers of a Civil Court. It is, however, not bound by strict rules of procedures as applicable to a Civil Court. TDSAT has however, to observe the rules of natural Justice. Lawyer and other professionals such as chartered Accountants, Cost Accountants, Company Secretaries are welcomed to appear and present their cases before the Tribunal[40]. It, in fact, helps the Tribunal in arriving at its decision by taking into consideration all the angles of the issues involved. Principles of natural justice are the guiding force for the decision making and adjudicatory process of the TDSAT.

Central Government issued a notification on 9th of January 2004 {No. S.O. 44 (E)} notifying "Broadcasting and Cable services" to be the "telecommunication services" under Clause (k) of sub-section (i)of Section 2 of the TRAI Act, 1997, thus bringing within the purview of TDSAT disputes arising under these laws. This step has opened up a whole plethora of cases before the TDSAT pertaining to disputes between Broadcasters, Cable Operators and Consumers on supply of signals, individual pricing of channels versus price of bouquet of channels, interpretation of TRAI's Broadcasting and Cable tariff order etc. TRAI Act is a unique legislation creating TDSAT, well equipped to address the transition from the State monopoly to market competition from land line/mobile phone to digital convergence and from a high tariff low subscriber base regime to low tariff and high subscriber base. It is equally geared to deal with complexities, changing dynamics of telecom environment and provides a forum for resolving the conflict of multiple groups.

TDSAT is a unique institution in more than one sense. In most of the countries there appears to be no finality about the regulator's decision and contentious cases generally land in Courts with the appeal process involving various layers. This, to my mind, is not conducive to speedy decision in this fast changing sector. As compared to the regimen obtaining in many countries a step forward has been taken in India through distancing the function of regulation from adjudication and reposing adjudicatory function in a specialized appellate mechanism called TDSAT. This has brought about a focused approach towards speedier resolution of telecom disputes and reduced the load on judiciary.

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40 *See* section 17 of The TRAI Act, 1997.

It also inspires confidence among the service providers, investors and consumers at large.

Dispute resolution consumes resources. It is expensive, takes time and requires the expertise qualified lawyers, economists, engineers and policy advisors among others. The telecom, cable and broadcasting industry, and the Government has to ensure that the dispute resolution system promotes the welfare of the individual consumer. In the context of an ever-changing telecommunication environment, the distinguishing principles of dispute resolution should be efficiency and speed.

Regulatory and appellate bodies can become strong and credible institutions and play an effective role in dispute resolution only if the attributes of a truly independent body with requisite enforcement powers are embedded in the legislation responsible for their creation. Justice Lahoti on 'Dispute resolution scenario in the telecom sector:[41]

> "Settlement of disputes in the realm such as telecom disputes involves not merely interpretation of laws alone but consideration of policy, reading the mind of the legislators and giving effect to the intention of the parties to agreements."

New and innovative methods for dispute settlement mechanism must be in a position to cope with the fast changing nature of network and services developing in the telecom sector. It is submitted that there is not one common dispute resolution procedure and that the dispute settlement mechanism must be responsive to current realities. It is also submitted that the changes, which the industry is generating, and there is the need for introducing changes in procedure for dealing with disputes. It is also stressed that time management of dispute resolution is of critical importance and there is need for bringing about an environment of compliance and development of self-regulation as also the need to devise arbitration procedure designed for a mix of public and private disputes.

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[41] International Seminar at New Delhi 11th&12th September 2003 organized by TDSAT.

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