Why media regulation matters to citizens

The title of my presentation in the programme prepared by UNESCO is derived from a publication I put together for them a few years ago,1 arguing for citizens to be recognised – and to recognise themselves – as stakeholders in the media. Today perhaps we need to focus more directly on why citizens need to care about media regulation.

Since we are at the WSIS Forum I think it may be appropriate for me to begin with an ongoing controversy about Internet regulation in India, where I come from. I wonder if the issue came up during the two events related to India listed in the Draft Agenda, both unfortunately scheduled for the 16th, before I got here.

This relates to the “Rules” recently introduced by the Government of India to activate the country’s Information Technology Amendment Act, passed in 2008. The amendment was initiated in the wake of the terrorist attacks in Mumbai, with little public discussion preceding the new legislation. The new Rules (officially titled “Information Technology [Reasonable security practices and procedures and sensitive personal data or information] Rules, 2011) were not only drafted and introduced with no prior public discussion but the document was brought in so quietly that it took some time even for the ever-alert Indian cyber and civil liberties activists to become aware that they were already applicable.

Activists, bloggers, lawyers and others in India have been criticising the new Rules on the grounds that they threaten free speech. Some commentators have pointed out that the new regulations give the government the power to obtain sensitive personal information about individuals from various institutions, including private companies, without a warrant or the concerned person’s consent. And that the Rules will make it difficult for people who do not own computers to access the Internet through the cyber cafes that currently offer them such access.

Apart from the stealth tactics and the absence of public discussion mentioned earlier, the new IT Rules suffer from familiar infirmities. For example, the list of “objectionable” content in the Rules is sweeping, including anything that “threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states or public order.” The Rules also restrict Web content that, among other things, can be considered “disparaging,” “harassing,” “blasphemous” or “hateful.” According to lawyer friends, words like “blasphemous” are not even part of the criminal law in India.

I’m sure most people here will agree that it is unwise, to say the least, to use terms that are open to wide variations in interpretation in any document relating to regulation – especially regulation pertaining to fundamental rights such as freedom of expression, which are invariably involved in any regulation of the multiple forms of media that connect the information society we live in today.

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The criticism has obviously hit home because the government recently issued an official response to charges that the words used in the Rules for objectionable content are so broad that they could be interpreted subjectively and that the Rules enable the government to regulate content in a subjective and possibly arbitrary manner. Denying such allegations, the press release claims that the government remains “fully committed to freedom of speech and expression and the citizen’s rights in this regard.”

I don’t want to go into the details of the claims and counter-claims here, especially because this is not an area in which I have any expertise. I have flagged this development in this session mainly to make the point that the current controversy over the new IT Rules is a fairly typical example of the way India tends to deal with media and related regulation. I am fairly confident that India is not alone in dealing with media regulation in this ham-handed way. So I hope the Indian example will bring up issues that are relevant in other contexts, too.

To me it is astonishing and unacceptable that a country like India should still be in such a state of infancy – to put it mildly – when it comes to drafting laws and rules, certainly as applicable to media. And, of course, that a nation widely recognised as the second largest and most populous democracy in the world has yet to evolve systems that enable public participation in debates relating to policy and legislation, including media regulation, which is such an integral part of a democratic society.

Whether the issue concerns what is known in India as “foreign direct investment” in media companies or regulation of the burgeoning broadcast sector in the country, public debate is conspicuous by its absence. I think it is significant that neither the government nor the media industry seems inclined to encourage public discussion about media matters, despite the fact that the media now constitute an integral part of people’s daily lives and have a major impact on contemporary society. The government’s frequent references to “stakeholders” appear to exclude citizens.

This is despite the fact that a landmark judgment of the Supreme Court of India in 1995 provides legitimacy to the notion that the primary purpose of all broadcasting is to serve the public interest. The apex court made it clear that “the airwaves or frequencies are a public property” (implying that they belong neither to the State nor to private entities) and that “their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights”.

This is a potentially powerful tool that has, so far, not been sufficiently highlighted, let alone effectively used. In the resulting vacuum, the judgment has been narrowly interpreted to promote private participation in broadcasting. Only a small group of media advocates has used the judgment to press home the imperative of community media – and, thanks to their efforts, community radio is slowly but surely becoming a reality in different parts of the country at long last.
While the entry of private players has certainly broadened the broadcast field, and while the long-awaited dawn of community media is certainly to be welcomed, what is equally significant about the judgment is that it represents a sound basis for citizens to get involved in matters concerning broadcasting. Such involvement is necessary to secure people's right to diverse as well as independent media, which are essential if the public sphere so vital for democracy is to be truly public.

Despite the judgment, however, media policy in India – with far-reaching implications – is still being formulated without the knowledge, let alone the participation, of even the cognoscenti among media professionals and users, not to mention the ever-growing number of citizens who are consumers in the burgeoning media market. In the absence of people’s participation it is hardly surprising that it is, primarily, the broadcast industry that engages with the government on the wide range of issues relating to the electronic media. This is so despite the lip service paid to public consultation by the government.

Take, for example, the controversial draft Broadcasting Services Regulation Bill, 2007, floated by the Union Ministry of Information and Broadcasting in July that year – in its latest, so far unsuccessful attempt to regulate the broadcast sector. The draft Bill finally gave legislative form, among other things, to a regulatory body meant to oversee the broadcast industry. However, the Broadcasting Regulatory Authority of India (BRAI), as described in the Bill, bears little resemblance to an independent and autonomous public authority, in view of the overarching influence of the government over almost every aspect of it – from its constitution and composition to its powers and functions.

Equally importantly, in my view, the draft Bill did not make any provision for public involvement in the regulatory framework. So the 2007 Bill – which is now in cold storage – perpetuated a problem that has dogged all efforts towards media regulation in India: the virtual absence of public consultation and discussion.

Such lack of transparency and dialogue is clearly a fundamental flaw, especially since media regulatory authorities are meant to be public institutions, accountable above all to citizens.

In a democracy the need for media regulation cannot be used as a fig leaf to mask the promotion of state control over media. At the same time the need for media regulation cannot be denied in the name of freedom of the press since the rule of the market does not necessarily ensure freedom of expression.

The first step towards media regulation in the public interest in a democratic society must necessarily be the setting up of a properly constituted, independent public authority empowered with a clear mandate, guaranteed autonomy and public representation. This is the kind of authority, envisioned by the Supreme Court, that has yet to be established in the country.
Meanwhile, the rapid growth in the number and popularity of private television channels in multiple languages and genres (good, bad, indifferent or even ugly) – and their aggressive self-promotion – has, in many ways, eclipsed the state/public broadcaster. This is despite the fact Doordarshan and All India Radio still retain respectable audiences, thanks primarily to their reach even in areas not yet served by satellite/cable or direct-to-home TV services or FM radio services.

Although the setting up of the Prasar Bharati (the Broadcasting Corporation of India) in the late 1990s is supposed to have granted DD and AIR autonomy from state control, not everyone is convinced that the transition from state to public broadcaster is complete and successful. But, judging by the absence of public debate on the issue, no one seems to care any more. This may be because of the faulty notion that the advent of private television and radio has provided citizens with alternatives. In India today anyone who continues to champion the cause of real public service broadcasting tends to be viewed as an irrelevant relic of the past.

A growing number of people in different parts of the world are becoming aware of the need for citizens to critically engage with the media, not just in terms of programming, but also with regard to various determinants of policy, such as institutional structure, funding and regulation. Broadcast audiences, long presumed to be passive consumers, are beginning to turn active in many countries, increasingly seeking recognition as stakeholders who have a right to be heard on all issues relating to the media.

Unfortunately, in India, even sections of civil society that are vigorous and vocal on a wide range of important issues have yet to intervene actively in media matters.

One reason why it is difficult even for those who wish to engage with media issues to do so is the confusion that prevails in the realm of media policy and legislation, especially with respect to the broadcast sector. This situation is aided and abetted by the paucity and fragmented nature of publicly available information in this area.

Media regulation in India is currently a maze, with multiple agencies involved in formulating and implementing policy, drafting and enforcing legislation. To make matters worse, they often appear to be unaware of each other’s interventions and seem at times to work at cross purposes.

I believe it is time for citizens in India and elsewhere to become more proactive on media matters. As P V Satheesh of the Deccan Development Society, Andhra Pradesh – a pioneer in community media in India – says, media sovereignty is as critical as sovereignty in food, natural resources, seeds and markets: for all citizens, including and especially for the most socially, economically and politically disadvantaged sections of the population.

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