

Whose convergence is it anyway?

Commentary by Lawrence Liang

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While there has been a media buzz about the proposed Communication Convergence Bill ('the bill') to be passed by the parliament, public debate surrounding the bill has been minimal. This could be for a number of reasons, the chief being the fact that it is perceived as a technical legislation requiring specialised knowledge to understand. This article seeks to provide an introductory framework to the bill and some of the concerns that participants in civil and political society process may have.

There are of course a number of technical issues within the bill, which should be discussed, but the present paper will only focus on the larger public policy issues emerging from the new regime being proposed. The brief argument of this paper is that in the postcolonial context, mass media and communications have been one of the important sites for the formation and contestation of forms of the nation state.

In the context of liberalisation, technological advancements and the entry of numerous private players in India, media and communications as a site of the public sphere are undergoing a radical transformation. There is therefore a need to understand the new modes of regulation aimed at new media in the political, economic and social contexts of liberalisation.

What is convergence and how does it affect current media legislations?

The word convergence in the legal context normally conjures up an image of a complicated moment in the information technology age that needs to be regulated. In reality, we see convergence happening all around us. The Optical Fibre Cable (OFC) project, being undertaken in all major cities at the moment, is an attempt to provide the necessary infrastructure to allow for the provision of high bandwidth Internet services, etc.

There is therefore a telecommunications infrastructure which has largely included terrestrial and satellite. The OFC project will increase the ability for information to be carried across different media with greater bandwidth. Some of the common examples of convergence include:

1. Telephone, cable companies, satellite operators, etc., offering broadband Internet access services.
2. Cable companies offering local telephone services, and telephone companies offering multi-channel video programming services.
3. Broadcasters offering interactive content over the Internet, and Internet companies broadcasting video content.

Convergence can therefore be defined simply as the various processes through which formerly distinct and autonomous media, or communication services such as audio, video and data services, are coming together under the same industry or under the same set of services provided. There are two aspects to this definition. The first aspect is the market element, which refers to the process within the industry in which service providers, who were earlier providing previously different services, will now converge into a single digital marketplace.

Secondly, there is the legal dimension. While earlier there were different regulatory authorities dealing with the different media, it now implies the creation of a single regulatory authority, which will be responsible for this convergence in the media. The Convergence Bill is therefore an attempt made by the government to create a single regulatory authority to handle the convergence of existing and emerging media, and communication forms.

There are currently different laws as well as authorities for dealing with different services like basic telecom, cellular, the Internet, satellite television, etc. The effect of the Convergence bill is that it will create a single regulatory authority. It will also repeal The Indian Telegraph Bill, 1885, The Indian Wireless Telegraphy Bill, 1933, Telegraph Wire Unlawful Possession Bill, 1950, and the Telecom Regulatory Authority of India Bill, 1997.

Some of the challenges posed to traditional media law by convergence include:

1. The increase in the forms in which information can be made available (e.g., multiple TV channels) reveals the lacunae in existing media and communication laws, which were drafted keeping single modes of access and household usage.
2. The most important electronic constituent of the public sphere, Doordarshan, has lost its significance, giving rise to a marketplace of competing ideologies in the form of private channels. At the same time, this calls into question the policies are required for a national public broadcast service.
3. Content regulation has traditionally been directed at mass media alone. But with the emergence of individualised media (e.g. the Internet), existing modes of content regulation become inapplicable.

The Communication Convergence Bill 2000: Context and content

With liberalisation and privatisation being ushered in from 1992, there is a discernible change in the role of the media in the creation of the public sphere. The monopoly of air waves by Doordarshan was challenged by a private satellite network in secretary, ministry of information and broadcasting, versus Cricket Association Of Bengal. The Supreme Court held that air-waves were public property, but because it was a limited commodity, the use of air-waves had to be restricted only to activities, which benefit the general public, and hence had to be regulated.

An interesting aspect of the case was the manner in which the debate over privatisation was constructed over the realm of freedom of information in the public sphere. The decision of the government to open out the telecommunications sector, and the recognition that our traditional media and communication laws did not adequately deal with the advancements in information technology, necessitated the creation of a single regulatory authority as envisaged under the Convergence bill.

The bill, when it becomes law, will create a single statutory authority namely the Communications Commission of India (CCI), which will be responsible for a whole range of activities from the grant of licenses to monitoring changes in the mediascape, to balancing between public and private interests in the converging media. The bill will be applicable to the following technologies:

1. Network infrastructure facilities (e.g. earth stations, fixed links and cables, public payphone facilities, radio-communications transmitters and links, satellite hubs, towers, poles, ducts and pits used in relation with other network facilities).
2. Network services (e.g. bandwidth services, broadcasting distribution services, cellular mobile services, customer access services, mobile satellite services).
3. Application services (e.g. Public cellular telephony services, IP telephony, public payphone service, Public switched data service).
4. Content application services (like satellite broadcasting, subscription broadcasting, terrestrial free to air TV broadcasting, terrestrial radio broadcasting).

The licensing requirements under the convergence bill provide that no person is allowed to use any part of the spectrum (defined as 'a continuous range of continuous electromagnetic wave frequencies up to and including a frequency of 3000 giga hertz'), without assignment from the central government or the commission. It further provides that no person is allowed to own or provide any network infrastructure facility, or provide any network service, application service or content application service without a licence granted under the bill.

In addition, no person is permitted to possess any wireless equipment without obtaining a licence under the bill. Some of the important objectives for the regulation of convergence according to the bill include:

- Establishing a modern and effective communication infrastructure taking into account the convergence of information technology, media, telecom and consumer electronics.
- Ensuring that the communications sector is developed in a competitive environment and that market dominance is suitably regulated. To ensure that communication services are made available at an affordable cost to uncovered areas like rural, remote, hilly and tribal areas.
- To ensure that there is increasing access to information for greater empowerment of citizens and towards economic development.
 - To make sure that quality, plurality, diversity and choice of services are promoted.
- To protect the security interests of the country.
- To facilitate the introduction of new technologies, investment in services and infrastructure, and the maximisation of communications facilities and services (including telephone density).
- To ensure equitable and non-discriminatory interconnection across various networks.
- To ensure that licensing criteria are transparent and to provide for an open licensing policy.
- To provide for a level playing field for all operators serving consumer interest.

It is clear from a reading of the objectives of the bill that the power given then to any authority created under the proposed bill would be extremely wide. At a political level, while the convergence bill is apparently about new technologies of communication, they do not go into what these new technologies mean in the context of liberalisation and the re-composition of a public sphere, which has largely been centralised so far.

The stakeholders, as defined by the objectives, are pitted against the interests of private players and sections of political society, as defined by the nation state, as opposed to a broader understanding of the various stakeholders engaging with different forms of media in an attempt to expand democracy. An immediate example that comes to mind is the recent effort by a few groups at developing community radios in rural areas, which could radically

question what we know to be the public sphere.

Political and cultural economy of the convergence bill

There are essentially two areas which the convergence bill seeks to regulate:

a. Carriage of communications

b. Content of communications

The first clearly deals with the political economy of communication in terms of the kind of infrastructure that will have been coming into place to accelerate the pace of convergence. This of course has great significance for questions of access, equality of information, modes of ownership and control of this infrastructure. The second aspect clearly deals with the cultural question of who regulates content, how it is regulated, what are the various kinds of information which may be deemed as objectionable, etc.

The single body that will be created to monitor both the carriage and content of communication is the Communications Commission of India. A few of the specific tasks of this commission include:

- Carrying out management, planning and monitoring of the spectrum for commercial usage.
- Granting licences, determining and enforcing licence conditions and fees.
- Determining appropriate tariffs and rates for licensed services.
- Ensuring that there is competition in the market, and that some service providers do not become dominant players to the detriment of other service providers or consumers.
- Promoting competition and efficiency in the operation of communication services and network infrastructure facilities.
- Formulating and determining conditions for fair, equitable and non-discriminatory access to a network infrastructure facility or network service such other related matters in respect thereof.
- Taking measures to protect consumer interests and to enforce universal service obligations.
- Formulating and laying down programme and advertising codes in respect of content application services.
- Formulating and laying down commercial codes in respect of communication services and network infrastructure facilities.
- Taking steps to regulate or curtail the harmful and illegal content on the Internet and other communication services.
- Formulating and laying down codes, technical standards and norms to ensure quality and interoperability of services and network infrastructure facilities.
- Carrying out studies on matters of importance to the consumers, service providers and the communications industry.
- Institutionalising appropriate mechanisms to interact on a continual basis with all sectors of industry and consumers.
- Making recommendations on matters that the central government asks it to.

Clause 24 (1) of the bill also proposes a spectrum management committee (SMC), whose responsibility will be to allocate available spectrum for strategic and non-strategic / commercial purposes. The SMC will also coordinate with international agencies matters relating to overall spectrum planning, use and management; carry out spectrum planning;

assign frequencies to the central government and to state governments to meet their vital needs, including defence and national security amongst other functions.

There is however a serious lacuna in what can be construed as non-commercial purposes, as it seems to imply only state activities such as defence, security, etc. It is in the interest of civil society organisations working in the area of media to press for an inclusion of non-commercial activities such as community radio, rural broadcast, etc. In the strictest sense there is very little that is radical about the communications commission of India, and at first sight, it seems like a standard statutory body created for implementing the bill.

What will be of significance however, when the bill comes into operation, is whether the body will be a government body, which is symbolic of the decline of state monopoly in favour of private interest. It is therefore precariously placed as the balancer between the continuing need of the state to define what constitutes public interest on the one hand, and a state increasingly committed to participating in the private economy.

Political implications of convergence

The coming into being of the convergence bill certainly heralds a new era of regulation in the changed economy of India. There are a few issues which participants in the civil and political process of India will need to address in the future, in terms of the various conflicting interests that will have to be balanced by the convergence bill. These include:

a. The digital divide

There exists a serious digital divide in terms of the haves and have-nots of the beneficiaries of the technological developments. What does the entry of private players in areas of communications and media mean in terms of creating a great access for the vast majority of people in India. For instance, thus far it was the exclusive right of the government to place telecom facilities (cables, towers, posts, wires, etc.) on public and private properties, but after this it will be open to licensed companies as well.

Will this mean an increase in the digital divide as private companies may be less inclined to invest in public infrastructure which does not have a high rate or return on investment? Chowdary, for instance, is of the opinion that the bill should provide for the creation of a National Telecommunications and Information Services Development Fund (NTISDF) to be administered by the CCI.

This fund should then be used to provide universal access (defined as minimum availability of telephone and Internet to at least every village). The analogy that he draws from is the experience of countries like France, Chile and Peru, which have privatised their telecommunication, but used proceeds of the fund to invest in public infrastructure. The analogy is a little baffling in its underlying economics as well as the experience of privatisation that we have had thus far.

b. Freedom of speech and expression

The authority given to the CCI is probably broader in scope than any other statutory body. The CCI has all the powers to regulate content in any form and media. Content has been defined as 'Any sound, text, data, picture -- still or moving, other audio-visual representation, signal or intelligence of any nature or any combination thereof, which is capable of being created, processed, stored, retrieved or communicated electronically.'

The standards that it lays out betray a lack of imagination, based on the abstract axes of national culture and morality. For instance, in India, the Internet has been responsible for the creation of sub-cultural practices like the Indian online gay community, for the very reason that the Internet has largely escaped the all-encompassing arm of the law. But with the passing of the information technology bill and the convergence bill, there will be a replication of all the existing standards onto online practices as well.

The bill lays down some of the standards to be followed in clause 21. Clause 21 reads: The Commission shall by regulations from time to time specify programme codes and standards which may include inter alia practices:

(i) To ensure that nothing is contained in any programme which is prejudicial to the interests of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order or which may constitute contempt of court, defamation or incitement to an offence,

(ii) To ensure fairness and impartiality in presentation of news and other programmes,

(iii) To ensure emphasis on promotion of Indian culture, values of national integration, religious and communal harmony, and a scientific temper,

(iv) To ensure in all programmes decency in portrayal of women, and restraint in portrayal of violence and sexual conduct,

(v) To enhance general standards of good taste, decency and morality.

In the context of the prevailing appropriation of notions of Indian culture by sections of the political society, there is clearly a danger posed to various forms of speech and expression.

c. Implications for alternate media

One of the problems with the existing legal framework for media has been its inability to legislate for alternate media like community radio, etc., since telecommunications has always been the sole domain of the state. With the move towards privatisation, there should be a change in the definition of the stakeholders to include civil society organisations involved with media.

While there is no doubt that the bill will make it easier for most cities to have more FM radios, it remains to be seen whether people seeking limited licences for educational and non-commercial purposes will receive the same benefits.

d. Regulation of competition

A number of countries which have a privatised media and telecommunications infrastructure, have felt the need to fight the creation of media monopolies. After Chomsky, it is almost redundant to say that excessive media concentration can lead to distortion of democracy. A serious implication of convergence is the possibility of an increase in media holdings, which may have several adverse consequences on competition within media markets.

Media monopoly could significantly affect the kind of information flows that a free media makes possible. In the US, there have been serious anti trust concerns expressed over the kinds of mergers and acquisitions that have taken place in the media.

e. The public sphere

Last but not least, what are the implications of convergence in the realm of the public sphere? While there may have been a number of problems with state monopoly over mass media, it is also a fact that historically, some of the most significant programmes dealing with serious social problems were produced by the state. In comparison, the post-liberalisation period has

seen the fall in standards of programming, where the only images available are largely the soppy tales of upper class families.

It has been suggested that there should be a rule which makes it mandatory for all private broadcasters to have a minimum of 30 per cent of their time devoted to public service broadcasts. But in the absence of a strong consumer-class audience interest, the proposition will not be too lucrative for the broadcasters or the advertisers. In such an event, what is the future of the media as one of the important public spheres in which democratic debate takes place?

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