

# Reasons Why Media Monopolies Flourish in India

## **1. There is no law regulating horizontal monopolies specific to the media industry.**

We have media laws in the country which will get you arrested for a Facebook post. We have competition laws in the country which regulate specific markets for competition. But we have no laws regulating media firms specifically to ensure diversity in media ownership. Horizontal monopolies (i.e. monopolies in the same segment of media, eg. monopoly in TV channels, monopoly in newspapers etc.) have very visibly appeared in TV news channels. A handful of people control the entire gamut of English news we watch on TV. True, competition law exists to promote competition in all kinds of markets including media markets, but it is a general law which cannot take into account the particular problem of media monopolies, or the integral role which media plays in politics. Competition law has hardly been sufficient to prevent the rise of media monopolies in the country: The Reliance-Network18 takeover, while a major threat to media pluralism, fell well within legality of competition law simply because competition regulations are general in nature, which serve to ensure low entry barriers for new firms in market. Competition law does not serve the special purpose of addressing the pluralism of news and views, which concerns the media industry over and above the general concern about low entry barriers. Like TRAI says, “Media cannot, and should not, be bracketed with general commodities and services. The market for ideas is very different from that for, say, shoes or biscuits. The media serves a higher purpose and needs separate consideration.” Media serves the valuable task of shaping public opinion. Competition in media markets then, while necessary, is just not a sufficient enough condition to ensure diversity of media ownership. We need more media-specific regulatory mechanisms which can prevent horizontal media monopolies across languages, states, and varying kinds of content, and prevent rise of horizontal monopolies.

## **2. There is no law regulating cross-media ownership and vertical integration in the media.**

Cross-media ownership (ownership of media in different segments, eg. ownership of a newspaper, a TV channel, and an internet news website), and vertical integration (ownership of media at different levels of production, eg. control over news channel content as well as the DTH network which supplies that news channel) are two other sub-problems giving rise to the big media monopolies problem in India. Cable operators also often act as local monopolies in distribution, while consistently under-reporting their subscriber base. There are no regulations in place currently to prevent either cross-media ownership or vertical integration. Competition law is not applicable in these cases because it seeks to prevent monopolies within a single market, but cross-media ownership and vertical integration by their very definition concern monopolies across multiple markets.

What this has resulted in is a situation where your DTH provider can control or at least seduce

you (through attractive pricing plans) to subscribe to only a particular bunch of TV channels owned by the same guy who owns your DTH service. Accessing content from varied sources becomes harder when your distributor has a stake in the profits made from a certain section of content in the market. Elsewhere, the news you watch on TV, read in a newspaper, or access on the Internet, while parading to be different sources, might actually all be owned by the same person: A single owner merely speaking in different disguises. Thankfully, earlier this year in August, TRAI came up with a set of recommendations (which though has its problems) takes the remarkably brave first step of recommending regulations covering cross-media monopolies and vertical integration. Less thankfully, the existence of these TRAI recommendations seems to have been forgotten by most popular media as well as our much esteemed legislators. (some I-scratch-your-back-you-scratch-mine going on there? Radia Tapes provide enough evidence to not dismiss that possibility for a conspiracy theory). Where is the raging public debate on the TRAI recommendations? Nobody knows, and certainly not that news channel you are playing in the background.

### **3. There are actual laws preventing widespread community ownership and use of the media.**

Ever heard of community radio? Maybe? But ever heard community radio? Bet not. Honestly, how would you? Because community radio constitutes small, local media. And while the top-down, big-profit media scene in this country is free from all regulation, the bottom-up, less-and non-commercial media sector is abuzz with the regulatory bees. Which means for all practicality, a common woman in India is very unlikely to actually start a media concern of her own to air her or her communities' views.

Community radio is a prime example of this kind of excessive regulation. Community radio functions on certain frequencies which can provide broadcast coverage for small local areas of about a 10 km radius. The process for acquiring license to start community radio stations covering such small areas is however are mired in bureaucracy, which involves multiple application submissions and personal appearances in multiple ministries in Delhi. As a result, the average time period for grant of license is a crazy 2 years for voluntary communities. Funding and lack of public structures to support funding of community radio stations also remains a constant problem. Consequently, there are less than 100 community radios on air for a country 3,287,590 square kilometre in area.

If all this were not enough to ensure that bottom-up media does not prevail in India, Central Government actually bans coverage of news and current affairs on community radio, which on the face of it, strikes quite unconstitutional. This, in spite of a Supreme Court judgment which declares broadcast airwaves to be public property to be allocated only in public interest. Concerns of security, insurgency, and terrorism are cited, especially in the hinterland to justify such a ban. Perhaps security, insurgency and terrorism would not be such paralysing concerns if only the powerful chose to listen to the common people (which is what community radio allows for), rather than telling them what to listen to (which is exemplified by newsmaking in popular media). In effect the ban means that even if you want to hear news from small, local sources, you cannot—unless it is gathered, processed and presented to you in a hierarchical

manner by the big media. As of today, the community ownership (read: public interest) of TV channels also stands prohibited—they maybe owned only by companies (read: commercial interests). This trust of law of private for-profit interests and blatant mistrust of the people of India speaks volumes about what needs to change if media monopolies are to be shattered and democratic media to take its place. Other countries do not necessarily mistrust their own citizens like our motherland with colonial continuities does. Netherlands, for example, has an excellent legal framework which allows for all sorts of non-profit social and economic communities to own and broadcast on their media alongside commercial and political media, thus promoting large diversity in media ownership.

#### **4. There is no comprehensive framework of disclosure norms for media ownership.**

Who owns the media in India? This is a question which keeps constantly coming up in public debates with few indicative answers. Most media firms are private companies, and the corporate disclosure norms for private companies are not as stringent as public companies—private companies are not mandated to make minutes of their Board meetings, relevant Board decisions and related party transactions public. Also annual reports and financial statements of private companies are available only upon the payment of a fee with the Ministry of Corporate Affairs and the concerned Registrar of Companies. Corporate disclosures for private and public companies are also made in different formats thus leading to simple unavailability of comparable information. There is a lack of uniformity in the content of publicly available data: Data under the Companies Act is disclosed on the basis of different parameters and levels of aggregation, thus making this data unusable for comparisons and studies regarding the extent and method of media concentration and monopolies. Additionally media firms are owned through convoluted chains of ownership involving multiple subsidiaries, control mechanisms or are part of large business chains. Which means the break-ups of total revenue into, say, advertisement, subscription & syndication revenue, or details of types of foreign shareholding, are unavailable for many media companies. As a result we have only very little usable information about the media ownership patterns in the country. Taking a regulatory decision in this environment of black boxed information becomes a wild guessing game. So whenever the issue of regulation is brought up, big media pipes up saying, “How can you regulate when you don’t understand how we work!” Which is quite legit. Thankfully once again, TRAI’s Recommendations on Media Ownership come to the rescue to recommend detailed disclosure norms for all media companies. But as pointed earlier, that’s been mostly forgotten. Apart from having comprehensive media disclosure norms, we also need to have a mechanism for the enforcement of actual disclosures. This could be built into the broadcast licenses granted to the media companies, so that non-disclosure or false disclosure leads to the revocation of license and other penalties.

#### **5. The lack of media monopolies is not typically linked with issues of freedom of speech and access to media.**

Here is a basic question: Why are media monopolies bad? Because they limit the choice of the consumer. True, but that’s the reason why all monopolies are bad. Why are media monopolies in particular, worse? Because the restriction of the choice of the consumer in media has a graver implication—the restriction on freedom of speech and expression and the right to information,

both of which are protected as Fundamental Rights under our Constitution. Can a citizen have free speech if what he says and thinks cannot be heard by most people in the country? Can a citizen have right to information if he gets all his news and opinions from just a handful of sources? Can a citizen have freedom of speech if he cannot even access radio where he lives? The short answer is no, but all these circumstances do occur in the existence of a media monopoly, or multiple media monopolies, viz. oligopolies.

Monopolies, oligopolies (either of private media or the public broadcaster) and the lack of diversity in the media ownership or content are issues which are directly linked to questions of freedom of speech and access to media. But our Courts have often failed to make this linkage. When in the *Sakal Newspapers* case in 1961 the Government sought to bring a regulation to rein in newspaper monopolies, the Court declared that such regulation was in violation of freedom of speech since it interfered with speech of private individuals viz. newspapers. This, while failing to appreciate that newspaper monopolies in creating limited sources of news were themselves in violation of freedom of speech and right to information of its citizens. The Supreme Court then envisioned an idea of freedom of speech which was divorced from the presence of media diversity and right to access the media. Later in the 1995 *Cricket Association* case, the Supreme Court revised its stance to at least acknowledge that media diversity and pluralism were an essential part of the right to freedom of speech and expression. But unfortunately, this has not successfully translated into practical measures concerning institutional structures like reforms in public broadcasting and private broadcast licensee obligations.

In other jurisdictions, pluralism in media content, composition and ownership is seen as an integral part of the freedom of speech and expression. In Europe Union for example, freedom of speech includes pluralism in ownership of media as well as the content. At the level of each EU member, this is enforced by ensuring that private broadcasters include diverse issues and peoples as part of their programming as part of their broadcasting license obligations. In case they fail to comply with these diversity obligations, the license to broadcast can be revoked. At the same time, the European Court has ruled that freedom of speech is also threatened by the monopoly of even the public broadcaster. Unlike the way Indian courts have thought about it, the regulation for preventing media monopolies then need not necessarily mean the dominance of public broadcasting. Only a legal understanding of freedom of speech which includes freedom from interference, right to access, and right to access diverse choices as three related values, can solve the problems that Indian media poses for the common citizen today. If not, any attempt to regulate media monopolies will keep being perceived as a threat to media freedoms.