RATIONALISING ARCHITECTURAL CENSORSHIP: EXAMINING TRAI'S RECOMMENDATIONS ON CROSS OWNERSHIP OF MEDIA

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When analysed from an economic perspective, ownership concentration in the media market is a natural phenomenon. Such concentration, when aided by convergence in technology and the digitisation of the media, has had a negative effect on the plurality of opinion available in the market-place of ideas. This problem has been compounded by decreasing editorial independence, issues of paid news, emergence of private treaties and advertorials. The recent Recommendations on 'Cross Ownership of Media' by the Telecom Regulatory Authority of India have tried to tackle the problem of media concentration by placing structural restrictions on ownership. These recommendations have, inter alia, sought to establish an independent 'media regulator' which would have jurisdiction over both print and television segments of the media. However, these recommendations have faced opposition from various stakeholders on the ground that they violate their freedom of speech and expression and right to work. They also reason that the concentrative effect of the media is nullified by the growing popularity of the Internet. In this article, we debunk these oppositions to argue that a free market approach to the media market would lend disproportionate power to media houses and would be detrimental to the democratic setup of the country. Thereafter, while specifically scrutinising the recommendations, we provide a limited critique and alternatives to two recommendations- the organisational structure of the media regulator and the use of the HHI for measuring concentration.

I. INTRODUCTION

In October, 2008, the Ministry of Information and Broadcasting ('MIB') commissioned the preparation of an independent research report to the Administrative Staff College of India, Hyderabad ('ASCIH') on media

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concentration in India.[1] Thereafter, ASCIH submitted a report titled 'Study on Cross Media Ownership in India' ('ASCIH Report') in July, 2009, which sought to determine the extent of cross media ownership, the existing regulatory framework, and international standards for cross media restrictions.[2] Most importantly, in its recommendations, the ASCIH Report noted the urgent need to impose cross media restrictions in the media industry.[3] In February, 2009, the Telecom Regulatory Authority of India ('TRAI') submitted its recommendations on issues concerning horizontal and vertical integration in the media industry,[4] wherein it sought to limit the number of licences provided to a single media entity. At this time, however, the TRAI did not favour restrictions on an entity owning many media organisations of different media segments.[5]

While the TRAI's findings were made public, the ASCIH Report was initially not published by the MIB. It was released only after an order was passed in a parallel proceeding on paid news by the Parliamentary Standing Committee on Information and Technology ('Standing Committee on IT') in 2012. The Standing Committee on IT specifically criticised the government for its inaction in preventing media concentration in the country.[6] It identified the rampant corporatisation of media and cross media ownership as the main reasons for the incidence of paid news.[7] Thereafter, in May, 2012, the MIB requested the TRAI to re-examine the issues concerning vertical integration in the broadcasting sector, as well as cross media holdings in television, print and radio sectors.[8]

In February, 2013, the TRAI released the 'Consultation Paper on Issues relating to Media Ownership' ('TRAI Consultation Paper'),[9] which was followed up by 'Recommendations on Issues Relating to Media Ownership'

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1 *See generally* Administrative Staff College of India, *ASCI's Response to Comments made by Star India on the ASCI Report in Star India's Submissions on TRAI Consultation Paper on Issues Relating to Media Ownership'*, April 29, 2013, available at http://www.trai.gov.in/WriteReadData/ConsultationPaper/Document/201305080305142594586Comments%20on%20Star%20Report.pdf (Last visited on December 20, 2014).

2 *Id*.

3 ASCIH Report, *supra* note 1, 157.

4 *See generally* Telecom Regulatory Authority of India, *Recommendations on Issues Relating to Media Ownership*, August 12, 2014, available at http://trai.gov.in/WriteReadData/Recommendation/Documents/Recommendations%20on%20Media%20Ownership.pdf (Last visited on December 24, 2014).

5 *Id*. 3-4.

6 Paranjoy Guha Thakurta, The Hoot *Media ownership trends in India*, July 3, 2012, available at http://www.thehoot.org/web/home/story.php?storyid=6053 (Last visited on December 24, 2014).

7 Standing Committee on Information Technology, Fifteenth Lok Sabha, *Issues Related to Paid News*, Fourty Seventh Report, November 15, 2013, ¶1.3, available at http://164.100.47.134/lsscommittee/Information%20Technology/15_Information_Technology_47.pdf (Last visited on December 21, 2014).

8 *Id*., 24, ¶1.72.

9 TRAI Recommendations, *supra* note 4, 4.

('TRAI Recommendations') in August, 2014. Further, in September, 2014 the Law Commission of India ('LCI') held a national consultation on media law where the issue of media ownership was discussed at length.[10]

This article focuses on investigating the need for imposition of cross-media restrictions. It is a response to both the TRAI Recommendations and the criticisms that it has received. Since the TRAI Recommendations have limited their investigation to the news media in the print and television sector, we will limit our analysis to the same. The article has broadly been divided into two parts. The first part (Part A) explores the theoretical aspects of media concentration. It scrutinises the efficacy gains that a media entity derives from concentration and the detrimental effect it has on plurality of opinion. Through an analysis of the available empirical data, we reason that media concentration is a market reality which must be regulated through an effective framework. We examine how the existing competition law framework, in light of recent mergers and acquisitions in the media market, has been ineffective in preventing market concentration. Subsequently, we counter the criticisms to the TRAI Recommendations received from the media houses.

In the second part (Part B), we specifically deal with the TRAI Recommendations. We broadly map the recommendations in order to gain clarity on the framework that TRAI seeks to establish. Further, we critically analyse recommendations on the structure of media regulator and employment of the HHI. With respect to the organisational structure of the media regulator, we argue that content-neutral and content-specific restrictions should be imposed and regulated by distinctly empowered bodies within the same regulator. Thereafter, we point out the shortcomings of the HHI specific to the media market. As an alternative, we suggest other indices that can overcome the specific shortcomings.

PART A

II. CONCENTRATION OF MEDIA

Traditionally, media markets have been oligopolistic, wherein a few firms dominate the market.[11] More recently, however, due to the convergence in broadcasting and telecommunication technology, the industry is

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[10] *See generally* LAW COMMISSION OF INDIA, *Consultation Paper on Media Law*, May 2014 available at https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBwQFjAAahUKEwjb79Oaj4HIAhUCj44KHXWrDZM&url=http%3A%2F%2Fwww.lawcommissionofindia.nic.in%2Fviews%2FConsultation%2520paper%2520on%2520media%2520law.doc&usg=AFQjCNGzmZdlCkOZkFtuq3h8w_L74Dsv8w&sig2=Xo8gquUYrwgKEUVxUNJLMw&cad=rja (Last visited December 30, 2014).

[11] John Dimmick, *Media Competition and Level of Analysis* in HANDBOOK OF MEDIA MANAGEMENT AND ECONOMICS 354 (2005).

increasingly being controlled by fewer individuals, which has resulted in ownership concentration in the market. This has resulted in the domination of the market by a small number of large firms. The number of such large firms is progressively decreasing due to the conglomeration of media entities.[12] This has resulted in media markets moving towards a monopoly model. Such a shift in the market arrangement finds its genesis in the economics of running a media organisation.

The study of media concentration and competitive economic strategies by media entities comes under the ambit of media economics.[13] While this niche field of study generated much academic attention in the 1980s, such discussion was limited to liberalised markets. Due to the closed economy and minimal private investment, such economic analysis of media did not take place in India.

In the 1990s, when the technological and digital revolution started affecting the media industry around the world, it had a transformative effect on ownership patterns.[14] In India, this event coincided with the liberalisation of the markets, which accelerated this transformation and increased private investment in media entities. Like most post-liberalisation consumer markets that started consolidating to protect themselves from increased competition, the Indian media market too showed a similar trend.

A. CURRENT MARKET CONCENTRATION

The analysis of the current market concentration in the media industry can best be examined through competition law, which also forms the basis for media economics. Competition law envisages two types of industry agreements which result in ownership concentration: horizontal[15] and vertical agreements.[16] Additionally, the media industry also experiences cross or diagonal ownership concentration which is a concept *sui generis* to the media industry.

Horizontal integration is defined as the integration of business infrastructure at the same level of production.[17] Under this, the same media entity owns similar types of media in the same market.[18] This is particularly prevalent

[12] John B. Thompson, Books in the Digital Age 55 (2005).

[13] Gillian Doyle, Understanding Media Economics 2 (2012).

[14] Gillian Doyle, Media Ownership: The Economics and Politics of Convergence and Concentration in the UK and European Media 1 (2002).

[15] Competition Act, 2002, §3(3).

[16] Competition Act, 2002, §3(4).

[17] Alfonso Sanchez Tabernero, *Issues in Media Globalisation* in Handbook of Media Management and Economics 485 (2005).

[18] *Id.*, 484.

in the print and television news industry wherein a single media entity either owns multiple newspapers or television channels in the same market.[19]

For a media company, the primary economic benefit of horizontal integration lies in the securing of economies of scale.[20] The gain arising out of economies of scale depends on the relationship between the size and efficiency of the media entity. Under this, when marginal cost of production of media content is lesser than average cost, then a horizontally integrated industry gets benefits of economies of scale.[21] This is because the total cost of production gets distributed among a larger consumer base, which reduces the average cost. In the media market, while the initial cost of content production is high, the marginal distribution cost is low.[22] Therefore, increased viewership results in increased marginal returns, thereby reducing per viewership cost of production.[23] Achieving initial benefits of scale economies has a multiplicative effect on other gains, such as higher levels of gross investment, faster adaptation to technology, better personnel and cost reduction through elimination of overlapping excess capacity.[24] Other benefits include experienced management personnel, easier penetration of new media markets and reduction in acquisition of raw materials (newsprint, information from news agencies, etc.).[25]

Conversely, the biggest consequence of a horizontally integrated media industry is a reduction in viewpoint plurality due to a lack of diverse sources.[26] Lack of viewpoint plurality creates a bottleneck in the distribution of information. Due to horizontal integration, a media entity can increase its market share without increasing its overall costs. This is due to resource and information sharing between outlets. However, while horizontal integration is detrimental to the market diversity of content, it does not create market barriers, like other types of integrations. This has been explained in the following paragraphs.

Vertical integration occurs when the same company owns the supply chain relevant to a particular business.[27] It controls the production and commercialisation phases of the business and is not dependant on other business entities for continuation of their business.[28] In the media industry, vertical

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19 Part III-B gives the examples of such horizontally integrated media entities in India.

20 Douglas Ferguson, *The Broadcast Television Networks* in MEDIA ECONOMICS-THEORY AND PRACTICE 151 (2003).

21 DOYLE, *supra* note 14, 38 (Marginal cost is the change in the total cost that arises when the quantity produced has an increment by unit. Average cost is equal to sum of average variable costs plus average fixed costs).

22 JONATHAN HARDY, CRITICAL POLITICAL ECONOMY OF THE MEDIA-AN INTRODUCTION 89 (2014).

23 *Id*.

24 DOYLE, *supra* note 14, 38.

25 Tabernero, *supra* note 17, 485.

26 JAMES WATSON & ANNE HILL, DICTIONARY OF MEDIA COMMUNICATION STUDIES 64 (2012).

27 DOYLE, *supra* note 14, 13.

28 Tabernero, *supra* note 17, 482.

integration would take place when a single owner controls the creation of media content along with its distribution systems. Vertical integration can be of two types – upstream or downstream.[29] In upstream integration, the owner of distribution and broadcasting phase acquires the production phase, whereas in downstream integration the *vice-versa* takes place.[30]

The major benefits of a vertically integrated media market are derived from Coasean economic theory of a firm.[31] Under this, most of the business transactions relevant to the functioning of a media entity are internalised, reducing inter-firm contractual problems, thereby reducing transaction cost and increasing efficiency.[32] It also ensures that the firm has control over market conditions which provides security of business operations to the investor.[33] This helps secure essential distribution channels which are crucial for gaining market access.

However, such integration, if successful, could impose entry barriers for new firms to enter the market. For instance, in the television industry, a broadcaster could impose high carrier charges or could refuse to carry the channel at their discretion.[34] Such exclusionary market power concentrated with a few media firms that dominate the viewership statistics would be detrimental to the aim of increasing diversity of content and outlets in the media market.

Cross-ownership of media is the joint ownership of more than one type of media segment within a market.[35] Also known as diagonal integration, such concentration, unlike horizontal and vertical integration, is outside the ambit of the traditional competition law jurisprudence in India. It has been defined as the "[s]trategic acquisition, alliance and information partnership between companies in order to improve access to consumers [...]".[36]

Gains in efficiency in a diagonally integrated media market depend upon the media segments that are subject to integration. For instance, the efficiency gains arising out of a merger between a newspaper and television

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29 Suzanne Rab & Alison Sprague, Media Ownership and Control- Law, Economics and Policy in an Indian and International Context 89 (2014).

30 Tabernero, *supra* note 17, 484.

31 *See* R.H. Coase, *The Nature of the Firm*, 4 Economica 386 (1937); *See also* Doyle, *supra* note 13, 51; Christopher Yoo, *Vertical Integration and Media Regulation in New Economy*, 19 Yale J. on Reg. 193 (2002).

32 Yoo, *Id*.

33 Doyle, *supra* note 13, 49.

34 *See generally* M/s Media Pro Enterprises India Private Limited, *Noida Software Technology* Park Ltd. v. Union of India, Petition No. 166 (C) of 2013; *See also* Star Den Media Services Ltd. v. Dish TV India Ltd., Petition No. 176 (C) of 2008.

35 Nicholas Johnson & James M. Hoak Jr., *Media Concentration: Some Observations on the United States' Experience*, 56 Iowa. L. Rev. 268 (1970-1971).

36 Daniel Chandler & Rod Munday, A Dictionary of Media and Communication 99 (2011).

entity would be different from a merger between a radio and a television entity. But whatever may be the permutation of the diagonal integration, the companies that indulge in it do achieve some commercial and strategic advantage over their competitors, even if pecuniary advantages do not arise in the short run.[37] The immediate efficiency gains that can be reaped from a diagonal integration are content specialisation and common distribution channels which form the core operational requirements for a media firm.[38]

The motivation behind such market integration is the derivation of cost reduction through the economies of scale and economies of scope.[39] The efficiency gains achieved from scale economies are similar as under horizontal integration. On the other hand, economies of scope are an economic stratagem distinctive to diagonal integration. Scope economies occur when the media entity is able to produce multiple media products from expert opinions that are reused due to the 'public good' characteristic of information.[40] For example, a documentary about an earthquake can be televised at the first instance and can then be re-edited and reformatted in the form of newsprint in the second instance. Thus, multiple products are created from the same information which reduces cost, increases output and market share. Such a diagonally integrated media market is capable of creating insurmountable market barriers which inadvertently pre-empts opinion from entering the public domain.

B. EMPIRICAL STUDY OF MEDIA CONCENTRATION

The ASCIH Report was the first empirical study that sought to broadly map media concentration in the country. This report is significant as it laid the foundation for the subsequent TRAI Consultation Paper, the TRAI Recommendations and various academic and public debates on the subject.[41] The Report begins by focusing on the cross media holdings of the major players in the media market in three segments: newsprint, television and radio. In order to determine the extent and nature of this cross media ownership, the Report studies the *de facto* and *de jure* control exercised by these media entities.[42]

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[37] Doyle, *supra* note 13, 46-47.

[38] Doyle, *supra* note 13, 45.

[39] Robert G. Picard et al, The Internet and the Mass Media 133 (2008); Chandler & Munday, *supra* note 36, 116.

[40] Doyle, *supra* note 14, 51.

[41] *See generally* Rab & Sprague, *supra* note 29, 63-67; Vanita Kohli-Khandekar, The Indian Media Business 60 (2003); Pradip Thomas, *The Ambivalent State and the Media in India*, 8 International Journal of Communication 466 (2014); Paranjoy Guha Thakurta, *Curbing Media Monopolies*, 48 (16) EPW 10 (2013); Paranjoy Guha Thakurta & Subi Chaturvedi, *Corporatisation of the Media: Implications of the RIL-Network18-Eenadu Deal*, 47 (7) EPW 10 (2012); Anonymous, '*Grave Danger' in Cross-Media Ownership*, The Hindu, July 28, 2012; The Hoot, *India needs cross-media restrictions*, June 10, 2012, available at http://thehoot.org/web/Indianeedscrossmediarestrictions/6005-1-1-4-true.html (Last visited on December 20, 2014); Sashi Kumar, *Cross media currents*, The Frontline, March 2, 2013.

[42] ASCIH Report, *supra* note 1, 48.

Using competition law tools, it narrows down the 'relevant market' for measuring media concentration on the basis of language.[43] It then delves into language-specific analysis of the geographic market. The Report specifically takes note of horizontal, vertical and cross media holdings across media markets in India.

The findings of the Report have been summarised in the Table 1. The table clearly provides for vertical integration and cross media holdings by the various companies. It however, does not provide for horizontal integration.

S. No.	**Group of Companies**	**Print**	**Broadcasting**		**Distribution Platform**	
	-	Daily News-paper	TV Cha-nnels	FM Radio Station	DTH (Direct to Home)	MSO (Multi-system opera-tor)
1.	Sun TV	√	√	√	√	√
2.	Essel Group	√	√	√	√	√
3.	Star India		√	√	√	√
4.	Ushodaya (Eenadu)	√	√	√		
5.	India Today	√	√	√		
6.	The Times Group	√	√	√		
7.	HT Media	√		√		
8.	ABP Group	√	√	√		
9.	Bhaskar Group	√	√	√		
10.	Jagran Prakashan	√	√	√		
11.	Sakkal Media	√	√			
12.	Malayala Manorama Group	√	√	√		
13.	D.B. Corporation Group	√		√		
14.	Anil Dhirubhai Ambani Group	√	√	√	√	
15.	Asianet Communica tions		√	√		
Table showing vertical integration and cross media holdings of various media houses						

[43] The Report limited itself to English, Hindi, Tamil, Malayalam, and Telugu. However, it does not rule out a more detailed future empirical study where more regional languages are studied before restrictions are imposed.

Though not explicitly mentioned in the Table, the ASCIH Report indicates instances of horizontal integration in the various media segments. For example, in the Telegu print market, Eenadu (Ushodaya) controls 37% of the Telegu daily newspaper market while Telegu Jaatiya Dina Patrika Vaartha owns the major share.[44] Together, the two media houses control more than 50% of the Telegu newspaper market.[45] In the television segment, the Sun Network controls 43% of the Telegu televised news market while Eenadu Group owns 16% of the market share.[46] Similarly, if we take the example of the Malayalam news market we find similar trends. Asianet Communications, which owns Asianet and Asianet News, has the largest market share of 40%, closely followed by Sun Network which has a share of 28%.[47] Similarly, on examination of pan-Indian English newspaper distribution statistics, it has been found that out of 201 daily newspapers, the top three newspapers, The Times of India, The Hindustan Times, and The Hindu, have a cumulative market share of 50%.[48]

The biggest setback to media pluralism was probably the Reliance-Network 18 merger. This acquisition brought 13 Television news channels, 22 entertainment channels, 18 websites and 3 magazines in 11 languages under the control of a single entity, i.e. Reliance.[49] As a result of this merger, Reliance acquired 100% stakes in the regional ETV news channels operating in Uttar Pradesh, Madhya Pradesh and Bihar.[50] Further, Reliance advanced money to Network 18 which acquired shares in the Eenadu network, thus establishing its presence in Andhra Pradesh as well.[51]

It is evident from the Table provided above and other studies[52] that almost all the large media companies have cross media holding. Companies like Ushodaya (Eenadu), India Today, Times Group, ABP Group, Bhaskar Group, Jagran Prakashan and Malayala Manorama Group own shares of all the three media segments, *i.e.*, print, television and radio. Star India, HT Media, Sakkal Media, D.B. Corporation Group and Asianet Communications have a considerable control over at least two media segments. Other large media groups like Sun TV, Essel Group, Star India and Anil Dhirubai Ambani Group not only have shares in all the media segments, they also own significant distribution platforms.

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[44] ASCIH Report, *supra* note 1, 51.
[45] ASCIH Report, *supra* note 1, 51.
[46] ASCIH Report, *supra* note 1, 53.
[47] ASCIH Report, *supra* note 1, 55.
[48] ASCIH Report, *supra* note 1, 63.
[49] In the matter of Reliance and Network18, Combination Registration No. C-2012/03/47.
[50] Thakurta & Chaturvedi, *supra* note 41.
[51] Anuradha Raman, *Big ED in the Chair*, The Outlook, July 14, 2014 (Reliance's acquisition in the Eenadu Group was strategically planned to counter the hostile pressure from the government on many of its gas projects).
[52] *See generally* Kohli-Khandekar, *supra* note 41, xx (A similar chart was presented with the cross-media holdings of the leading Indian companies).

The aforementioned conglomerate holdings depict only a small proportion of the overall diagonal integration in the media market in India. The purpose of illustrating the various types of integration was to highlight the existence of a concentrated media market. The inference that one draws is that mergers and acquisitions in the media market, have until now, taken place in an unrestricted manner.

C. CURRENT REGULATORY FRAMEWORK

The Press Council of India ('PCI'), News Broadcasting Standards Authority ('NBSA'), Broadcasting Content Complaints Council ('BCCC'),[53] the TRAI and the Competition Commission of India ('CCI') are the five institutions constituting the present regulatory framework. Among these, the PCI, NBSA, and BCCC are the content regulators,[54] while the TRAI and CCI are non-content or content-neutral regulators.

The regulation of content can be differentiated into news and non-news sector.[55] The BCCC regulates the channels in the non-news sector,[56] while the PCI and NBSA regulate the news and current affairs sector.[57] The PCI's jurisdiction is limited to print media while the NBSA covers broadcasting.[58]

The PCI is an independent regulator of print media.[59] It is statutorily empowered to take *sou moto* cognisance and entertain complaints against newspapers and journalists[60] accused of illegal or unethical conduct. However, the efficacy of such a framework is called into question due to the lack of punitive powers vested with the PCI.[61] It has no prerogative to levy fines or place errant journalists behind bars in cases of paid news.[62] It can, at the most, censure the publication or direct the Editor to publish a rejoinder or an apology.[63] Importantly, it does not have jurisdiction to impose ownership restrictions.

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53 Prashant Jha, *Statutory, Mandatory Self-Regulation emerging as consensus model for media*, The Hindu, August 6, 2013.

54 LCI Consultation Paper, *supra* note 10, 6-7.

55 LCI Consultation Paper, *supra* note 10, 6, ¶3.5.

56 Analysis of the non-news sector is beyond the scope of our paper.

57 LCI Consultation Paper, *supra* note 10, 6, ¶3.5.

58 *See generally* The Press Council Act, 1978; News Broadcasting Association, *About Us*, available at http://www.nbanewdelhi.com/index.asp (Last visited on December 4, 2014), LCI Consultation Paper, *supra* note 10, 7, ¶3.7.

59 The Press Council Act, 1978.

60 The Press Council Act, 1978, §14(1), §14(1); LCI Consultation Paper, *supra* note 10, 7, ¶3.10.

61 LCI Consultation Paper, *supra* note 10, 7, ¶3.10; The PRS Blog, *Paid News in the Spotlight*, June 3, 2013 available at http://www.prsindia.org/theprsblog/?tag=press-council-of-india (Last visited on December 4, 2014).

62 TRAI Recommendations, *supra* note 4, 67, ¶5.58.

63 The Press Council Act, 1978, §14.

The NBSA has been established to enforce the News Broadcasting Association's Code of Ethics[64] and adjudicate upon complaints in violation of the same. Unlike the PCI, the NBSA has punitive powers to fine any broadcaster in violation of content up to a sum of one lakh rupees.[65] However, the jurisdiction of the NBSA is restricted only to the broadcasters that voluntarily submit to its jurisdiction.[66] Moreover, the NBSA lacks the mandate to regulate ownership concentration in the media industry.

Both these content regulators are mostly powerless and ineffective in dealing with the issues that plague the media industry. This was illustrated in the proceedings between M/s Jindal Steel Power Ltd. and M/s Zee News Ltd., where both the PCI and NBSA took cognisance in light of allegations of paid news and extortion.[67] However, both bodies failed to give any relief due to their institutional incapacity to handle cases which require thorough investigation and enforcement.

On the other hand, the content-neutral regulators, *i.e.*, the TRAI and CCI, have proposed some effective guidelines and orders, but they too have been mostly unsuccessful in regulating ownership concentration. The TRAI has correctly admitted that under its current mandate it does not have jurisdiction to impose any ownership restrictions in the media industry.

Arguably, the mandate to impose ownership restrictions rests with the CCI, which is the antitrust regulator of the country. As a response to the TRAI Consultation Paper, many stakeholders voiced the opinion that since market competition is the principal concern, the same should come under the purview of the CCI.[68] However, the CCI, too, has been largely unsuccessful in this objective. The CCI is empowered to watch over the markets for goods and services, to ensure that competition in these markets is not adversely affected and market dominance is not abused.[69] Paradoxically, the CCI has time and again approved the horizontal and vertical consolidation in the media industry, disregarding the fact that such approvals go against the very notion of diversity and plurality of opinion in a media market. This was exemplified in the case of the acquisition of Network18 media house by the Reliance Group. While investigating the matter, the CCI noted that the combination would not have any "appreciable adverse effect on competition in India."[70] The CCI reasoned that starting a new media enterprise in India is quite uncomplicated and there was "sufficient scope for innovation and competition, both in terms of technology

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64 TRAI Recommendations, *supra* note 4, 67, ¶5.59.

65 The News Broadcasting Standards Regulations, 2008, Regulation No. 7.1; LCI Consultation Paper, *supra* note 10, 7, ¶ 3.8.

66 News Broadcasting Association, *supra* note 59; LCI Consultation Paper, *supra* note 10, 7, ¶3.7.

67 Standing Committee on IT, *supra* note 7, 41.

68 Standing Committee on IT, *supra* note 7, 5, ¶1.12.

69 Standing Committee on IT, *supra* note 7, 5, ¶1.12.

70 In the matter of Reliance and Network18, Combination Registration No. C-2012/03/47, ¶42.

and content."[71] Citing this, the CCI refused to delineate the specific product and geographic market, thereby discontinuing its investigation in the combination.[72] Similarly, the CCI endorsed the UTV Software Communications merger with Walt Disney which led to one of the largest vertical integrations in the media industry.[73] In both the cases, the CCI failed to discern the possible detrimental affect such mergers and acquisitions would have on overall plurality in the media industry.

However, the media market being a 'marketplace of ideas' is quite different from the general market of 'commodities and services' that the CCI inspects. The CCI is accustomed to deal with products of the nature of private goods, whereas the product in media market, news and information, are of the nature of public goods. Thus, the current competition law jurisprudence is not equipped to deal with such goods.[74]

Essentially, the current regulatory system is deficient insofar as it fails to envisage concentration of opinion stemming from concentration of ownership. The minimal regulatory procedures for ensuring competition in the media markets are scattered in various legislations, with no single body empowered to effectively regulate the industry, both at a micro and macro level. This has led to mergers and acquisitions in the media market going unnoticed with virtually no regulatory oversight.

III. UNDERSTANDING THE CONCEPT OF ARCHITECTURAL CENSORSHIP

In common parlance, the term 'censorship' is mostly associated with direct State-sponsored regulation of content.[75] On the other hand, there are instances where the State-sponsored regulation may not target specific content, but may still have an adverse effect on the "quantity, quality and diversity" of content.[76] The regulations of the latter kind include ownership restriction, which is often termed as structural regulations. Christopher Yoo terms such structural regulation as 'architectural censorship'.[77] In his analysis, Yoo reasons that, whether viewed from the perspective of an individual or any media

71 *Id.*, ¶29.

72 *Id.*, ¶30.

73 In the matter of The Walt Disney Company (Southeast Asia) Pvt. Ltd. and UTV Software Communications Limited, Combination Registration No. C-2011/08/02.

74 *See* discussion *infra* Part VI B.

75 Robert McKenzie, Comparing the Media Around the World 74 (2006).

76 Christopher Yoo, *Architectural Censorship and the FCC*, 78 S. Cal. L. Rev. 678 (2005).

77 Lawrence Lessig used the term 'architectural censorship' much before Yoo to analye the censorship of speech due to technological convergence. *See* Lawrence Lessig, *The Censorships of Television*, (Mar. 8, 1999) (unpublished) (on file with author). However, admittedly Yoo says that his analysis is similar to Professor Lessig's insofar that they both seek to examine elements that censor speech albeit through different analytical tools. *See id.*, 674.

house in general, the structural regulations reduce opportunities for exercising freedom of speech and expression.[78] Nonetheless, despite providing an extensive critique to the existing regulatory restrictions in US, Yoo does not explicitly rule out the effect of media concentration on the diversity of content.[79]

The term 'architectural censorship' may be considered to be suggestive of content regulation as a corollary objective to the policies regulating ownership.[80] Arguably, this corollary objective, goes against the constitutional protection provided under the free speech clause. Consequently, it assumes that regulatory restrictions will compulsorily represent a threat to free speech.[81] This assumption, though not unreasonable, that any governmental regulation of media must be viewed with scepticism, does not always hold true. The rationale behind endowing the press with the stature of the "fourth estate" was to ensure that State functionaries do not enjoy concentrated unhindered power.[82] The profession of journalism and employment in the news media industry was seen as a 'public service'. Lately, however, news media has turned into a business with corporations expanding horizontally, vertically, and diagonally.[83] Today, media conglomerates possess enormous unobstructed power to influence public opinion. The TRAI, in its recommendations, notes that unrestricted ownership concentration is the root cause for paid news, self-censorship, deteriorating editorial independence and invasion of privacy *inter alia*.[84]

Censorship is not limited to direct censorship, wherein content is not allowed to enter the public domain. It also includes situations where one media entity has such an overarching proportion of viewership that, in effect, it censors the other voices that enter the public domain.[85] Such inter-firm censorship could happen even in situations where firms consciously refrain from carrying out unethical practices. Conversely, if we consider a firm that indulges in unethical practices, it opens up a number of ways through which a media entity could preclude another from entering into the market. These can either be done tacitly among the existing media entities or through imposition of market barriers.[86]

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78 Yoo, *supra* note 77, 713.

79 C. Edwin Baker, *Media Structure, Ownership Policy, and the First Amendment*, 78 S. Cal. L. Rev. 740 (2005).

80 Yoo, *supra* note 77, 685.

81 *See* Yoo, *supra* note 77, 674.

82 Julianne Schultz, Reviving the Fourth Estate: Democracy, Accountability and the Media 49 (1998); *See also* TRAI Recommendations, *Supra* note 4, 1, ¶1.1.

83 *See generally* ASCIH Report, *supra* note 1, 157.

84 TRAI Recommendations, *supra* note 4, 69, ¶5.64.

85 Examples of such domination have already been provided in Part IIIB.

86 Robert G. Picard, The Economics of Media Companies 201 (2002).

Despite tangible evidence of unethical practices[87] in the media industry stemming from ownership concentration, free market advocates continue to argue that the best way forward must be devoid of State intervention, and can at most be through self-regulation.[88] They essentially fall back on the theory of 'market place of ideas' and seek unrestricted flow of information. It is argued that for upholding democratic principles there must be unadulterated public discourse and the exchange of ideas should take place in an unrestricted marketplace. The burden is then placed on the rational consumer to ascertain the veracity and falsehood of an idea or expression. It is argued that the inbuilt socialisation process of a society, where consumers interact with one another acts as a regulator in the free market. Opinions are accepted or rejected on the basis of their veracity and this helps create competition among the existing news providers. This argument has been incorporated from the famous dissent of Holmes J. in *Abrams* v. *United States*[89] in 1919, which established the 'market place of ideas' theory. The dissent juxtaposed the economic doctrine of *laissez faire* and constitutional principles of free speech to hold that "the best test of truth is the power of the thought to get itself accepted in the competition of the market"[90]. However, the market place of ideas theory is itself prone to market failure.[91]

These market failures, attributable to the media entities, underline the imperfect nature of the markets which tilts towards dominance. The tendency of media entities to concentrate power through vertical and diagonal mergers is itself an instance of market failure as the assumption of free flow of information, which is the basic premise behind *laissez faire* approach, is nullified.[92] Concentration of media leads to a monopoly of certain media entities over information dissemination which underscores the market failure in the media market. However, although this market failure does affect the overall content entering the market, the failure itself is not content-specific. Nonetheless, there may be instances where the content itself leads to market failure. For instance, content that promotes violence, misrepresents political debates and paid news are negative externalities of news production and contribute to content-specific market failures.[93] To argue that self regulation[94] is a panacea to both content-specific and content-neutral market failures has already proven to be unsuccessful in the case of the PCI and NBA.

87 *See generally* Standing Committee on IT, *supra* note 7; Naveen Jindal & Anr. v. Zee Media Corporation Ltd. & Ors., C.S (OS) No. 881/2014.

88 Leah A. Lievrouw & Sonia Livingstone, Handbook of New Media 341 (2006).

89 Abrams v. United States, 63 L Ed 1173 : 250 U.S. 616 (1919).

90 *Id.*

91 Paul H. Brietzke, *How and Why Marketplace of Ideas Fails*, 31 (3) Val. U.L. Rev (1997).

92 Des Freedman, The Politics of Media Policy 8 (2013).

93 *Id.*

94 *See generally* Campbell, Angela J., *Self-Regulation and the Media*, 51(3) Fed. Comm. L.J. (1999).

In such a scenario, it is our submission, that the term 'architectural censorship' also has a significant positive connotation. Here, our assumptive premise is that censorship is not only State-sponsored, but can also include soft censorship,[95] private censorship[96] and inter-firm censorship. Media organisations have the liberty, and rightly so, to decide the content that they seek to put forth in the public domain. However, unlike government-sponsored censorship which can be subjected to constitutional inspection, the private media houses do not have any regulatory mechanism to check either unscrupulous censorship of content or ownership concentration.[97] This limitation of non-governmental censorship was discussed in *Ministry of Information & Broadcasting, Govt. of India* v. *Cricket Assn. of Bengal*[98] ('Cricket Association'), wherein the Supreme Court noted that "[...] [t]here is a far greater likelihood of these private broadcasters indulging in misinformation, disinformation and manipulation of news and views than the government – controlled media, which is at least subject to public and parliamentary scrutiny"[99].

This caveat by the Supreme Court formed part of the judgement which led to the emergence of private broadcasters in the media industry. However, the caveat was largely ignored while the broadcasting sector was opened up to private entities without establishing a regulator. The root cause for such problems, as noted by the TRAI, is the ownership concentration that plagues the media industry today.

Therefore, imposition of structural regulations on the media industry acts as a 'balance of power', which seeks a democratic distribution of media ownership. It rarely associates itself with content censorship. Rather, its objective is greater diversity of content in the public domain. This democratic distribution of media ownership will arguably lead to a proportionate viewership pattern with no single media entity dominating the viewership pattern. Even if viewership patterns are dominated by a single entity, the domination itself is not due to the unavailability of content, rather it is due to the veracity of the content being made available by the dominating entity. This shift in viewership pattern, in our opinion, is the positive connotation to 'architectural censorship'. The term 'censorship' is used to signify the censoring of unscrupulous content providers whose viewership reduces due to the imposition of structural regulations.

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95 *See* Florian Schneider, Visual Political Communication in Popular Chinese Television Series 157 (2012); *see also* World Association of Newspapers and News Publishers, *Soft Censorship: Strangling Serbia's Media*, 2013, available at http://swbplus.bsz-bw.de/bsz372585787inh.pdf;jsessionid=3D3DAF51FDEDBF2`18D5F951573C3C3C4D?1400220786699 (Last visited on December 22, 2014).

96 *See* Philip Cook & Conrad Heilmann, *Censorship and Two Types of Self-Censorship*, 2 (London School of Economics Choice Group, Paper No. 2, Vol. 6, 2010).

97 *See* Ministry of Information & Broadcasting v. Cricket Association, AIR 1995 SC 1236.

98 *Id*.

99 *Id*.

Such restrictions merely seek to enhance competition between media houses to an extent that the negative externalities arising from news production by one media entity are neutralised by another media entity.[100] This creates a situation wherein even if one entity censors an idea, the institutional goal of the press to inform the citizens would be achieved, as not every entity would censor the idea in a competitive market. This 'corrective intervention' by the State functionaries by enforcing structural regulations is merely an attempt to counter the market failures which are mostly attributable to the concentrative tendencies that any corporation may exert in a given market.[101] Such interventions merely seek to re-establish the equilibrium in the previously failed marketplace of ideas.

IV. COUNTERING ARGUMENTS AGAINST STRUCTURAL REGULATIONS

The underlying argument for enforcing structural restrictions is precise and unambiguous. It holds that due to the inbuilt mechanism of a profit seeking entity, media companies tend to concentrate in order to reap efficiency gains. This concentrative tendency must be corrected either by self-regulation or through State intervention. Having previously tried self-regulation, which we opine has proved to be largely unsuccessful, the government should intervene and impose structural restrictions in order to protect the larger 'public interest'.

However, after the release of the TRAI Consultation Paper, the established media entities argued against the imposition of ownership restrictions not by specifically challenging the empirical evidence reproduced, but by citing the following arguments. Primarily, they placed reliance on the constitutional protection that the media entities enjoy under Article 19(1)(a).[102] As a corollary, it was also argued that the regulations violate the freedom of trade and profession under Article 19(1)(g). Lastly, from a sociological standpoint it was reasoned that the Internet has created an unrestricted public sphere which can counter and overcome any detriment that the concentrative effect has on the traditional media.[103]

However, these arguments are inherently fallacious and on closer examination of the available literature, one can conclude the contrary.

[100] Freedman, *supra* note 92, 9.

[101] *See id.*; *see generally* Edwin C. Baker, Media, Markets and Democracy (2002).

[102] Entertainment Network India Limited and Times Internet Ltd. (Internet subsidy of Times of India Group) took this line of argument.

[103] Network18, Bennett Coleman & Company Limited, Entertainment Network India Limited, Reliance, The Times of India Group, Zee Network presented such arguments.

A. ARTICLE 19(1)(A) CONCERNS

The foremost argument against structural regulations is based on the constitutional protection provided under Article 19(1)(a). It is argued that structural regulations indirectly trample upon the free speech right enjoyed by the media entities. It has been rightly argued that the right to free speech of media entities has been affirmed by the Supreme Court in a number of judgements.[104]

Nevertheless, this argument is based on an erroneous understanding of the right under Article 19(1)(a). Primarily, there are three counter-arguments for a wholesome explanation of this right.

First, the objective of the TRAI's proposed ownership restrictions is to enhance the content that is made available to the citizens. These restrictions seek to improve the quality and quantity of information made available to the citizens. It must be understood that the right to information of the citizen has been held to be a part of their right to speech and expression.[105] Therefore, the free speech right of the media entities has to be juxtaposed with the right to information of the citizens which also comes under the ambit of free speech. The Supreme Court has clearly laid down that, "from the standpoint of Article 19(1)(a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster, whether the broadcaster is the State, public corporation or a private individual or body"[106]. Therefore, from an Article 19(1)(a) perspective, the right of the citizens to receive information supersedes the right of the broadcasting media houses to disseminate information. Since the presence of an impartial and unprejudiced media is crucial for imparting information to the citizens,[107] it is imperative that these regulations that enhance media plurality are imposed.

Second, the media houses are established with the objective to inform the citizens. However, if while fulfilling this objective, any entity tries to monopolise or dominate the public sphere, it is an obligation of the State to break this monopoly.[108] It is without doubt that the "monopolization and domination [...] [by a media entity is] prejudicial to the freedom of speech and expression of the public in general"[109]. While highlighting the importance of

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[104] *See e.g.*, Sakal Newspaper v. Union of India, AIR 1962 SC 305; Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788; Indian Express Newspapers v. Union of India, (1985) 1 SCC 641.

[105] *See e.g.*, Romesh Thappar v. State of Madras, AIR 1950 SC 124: 1950 SCR 594 ¶68; Indian Express Newspapers (Bombay) Private Ltd. and Anr. v. Union of India, (1985) 1 SCC 641 ¶32; Ministry of Information & Broadcasting v. Cricket Association, AIR 1995 SC 1236, 161, ¶36.

[106] Ministry of Information & Broadcasting v. Cricket Association, AIR 1995 SC 1236.

[107] *Id.*

[108] *Id.*

[109] *Id.*

diversity of broadcasters, the Supreme Court in Cricket Association held it to be a part of right to freedom of speech and expression under Article 19(1)(a).[110] The media ownership regulations aim at enhancing the plurality of news providers by breaking such monopoly.

Third, the TRAI's proposed restrictions by means of structural regulations are content-neutral. Previously, in *Sakal Papers (P) Ltd.* v. *Union of India*,[111] the Supreme Court held that the regulation of matters incidental to running of a media organisation can also be in direct conflict of Article 19(1)(a).[112] However, for establishing this, it must be demonstrated that although incidental matters were being controlled, the underlying objective of the TRAI Recommendations was content-specific wherein they directly sought to censor particular content in order to control speech. On a closer examination of TRAI Recommendations, one can reason that the objective is enhancement of content by restricting monopoly. In such a case, considering the change in Supreme Court's position post Cricket Association case, it would be hard to show that Article 19(1)(a) right is infringed without proving that the objective was to control content. Therefore, any constitutional challenge based on Article 19(1)(a) right would not hold much ground before the courts.

B. ARTICLE 19(1)(G) CONCERNS

The secondary constitutional argument against structural regulation is based on the freedom of trade and occupation that the media entities enjoy under Article 19(1)(g).[113] However, this right can be reasonably restricted "in the interest of general public" under Article 19(6). For determining the reasonableness of the restriction, reliance is placed upon the underlying purpose of the restriction, the extent and urgency of the remedy, the proportion of imposition[114] and prevailing conditions of time in the trade or business.[115] Moreover, the Supreme Court has, in a catena of cases, held that the reasonableness of the restrictions imposed should be viewed from the standpoint of the general public and not the person on whom the restrictions is being imposed on.[116] In *ABP (P) Ltd.* v. *Union of India*,[117] the Supreme Court rejected the contention of the petitioners that the regulation on the services and wages of the journalists and newspaper employees violated Article 19(1)(g).[118] The Court held that

[110] *Id.*

[111] Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305.

[112] *Id.*

[113] TIMES Internet Limited argued infringement of Article 19(1)(*g*) rights by the imposition of cross-media ownership restrictions.

[114] *See* Krishnan Kakkanth v. State of Kerela, AIR 1997 SC 128; Sivani v. State of Maharasthra, AIR 1995 SC 1770; *see also* Chintaman Rao v. State of M.P., AIR 1951 SC 118.

[115] *See id.*

[116] *See e.g.*, State of Orissa v. Radheyshyam Meher, AIR 1995 SC 855.

[117] ABP Pvt. Ltd. & Anr. v. Union of India, Writ Petition (Civil) No. 246 of 2011.

[118] *Id.*

such a restriction was reasonable as it served the interest of the general public. Similarly, in Cricket Association,[119] it was observed that any step in furtherance of the obligation of the State to break monopoly and provide greater diversity, could be justified as being in interest of the society.

It is undisputed that the media has an overarching influence over the opinion of the people. It also acts as a watchdog of the three organs of governance in the country. Thus, the public interest vests in the independence of the media and plurality of viewpoints. In light of the present media concentration, regulation of media ownership will serve the public interest since it will have a direct impact on the plurality of news.

C. THE FLAW IN THE INTERNET ARGUMENT

Finally, media proprietors argued that the Internet contributes immensely to the concept of plurality in the media market. It is reasoned that the Internet would gradually substitute the traditional forms of media, which would inadvertently make the cross-media ownership restrictions redundant.[120] This assertion, while may appear to be *prima facie* true, is highly utopian and inherently flawed.

Many media houses have an online presence as an extension of their existing traditional media services.[121] These media houses are merely deriving benefit of scope economies, where the same information is remodelled and published on the Internet. Since this does not increase plurality of opinions, to consider the Internet as a separate source or content generator, would not be correct.[122]

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119 Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161: AIR 1995 SC 1236.

120 Compaine & Douglas Gomery, Who Owns The Media?: Competition And Concentration in the Mass Media Industry 579 (2000); *see also* Network Ten 2002, *Submission by Network Ten- Broadcasting Services Amendment (Media Ownership) Bill 2002*, April 7, 2006, available at http://www.aph.gov.au/senate/committee/ecita_ctte/completed_inquiries/200204/media_ownership/submissions/sub08.doc (Last visited on December 12, 2014).

121 *See e.g.*, DNA, Economic Times, Free News Posting Website India, The Hindu, Hindustan Times, The Indian Express, The New Indian Express, Online Indian News, Punjab Newsline, The Telegraph, The Times of India, The Free Press Journal, The Sen Times Online Newspaper for Bureaucrats, The Samay Express Online News Portal are some of the English newspapers which have their websites online; *see generally* ASCIH Report, *supra* note 1, 45; *see also* Prometheus Radio Project v. Federal Communications Commission, FCC, 373 F 3d 372 at 405.

122 C. Edwin Baker, *Media Concentration: Giving up on Democracy*, 54 Fla L. Rev. 896 (2002); *see* Nic Newman, William H. Dutton & Grant Blank, *Social Media in the Changing Ecology of News: The Fourth and Fifth Estates in Britain*, 7(1) International Journal of Internet Science 6-22 (2012); John Dimmick, Yan Chen & Zhan Li, *Competition between the Internet and Traditional News Media: The (Gratification-Opportunities Niche Dimension*, J. Media Econ 17(1) 21 (2004).

Contrary to the popular argument that the Internet is highly pluralistic, in reality it is a fairly concentrated platform.[123] Information transfer over Internet is the prime example of minimal supply side distribution costs.[124] Online proprietors are incentivised to transfer resources to create specialised media content for attracting a larger audience.[125] This reduces the possibility of independent content creators gaining commercial success, which results in domination of virtual space by a few portals.[126] Additionally, many search engines direct the users to sites which have paid for greater visibility in the virtual space.[127] This too is dominated by established media houses that have the monetary strength to outbid independent content portals.[128]

Further, it must be noted that the Internet penetration in India is quite low.[129] Within the proportion of people who have access to the Internet, the ones who subscribe to online news are even smaller.[130] Even when consumers access information on the Internet, they heavily rely on the websites that are generally controlled by traditional media outlets.[131] The views and opinions expressed on blogs and social media are not always perceived to be trustworthy or accurate, as these aggregators generally lack resources to produce credible data.[132]

Therefore, it would be wrong to place reliance on the Internet to argue against cross-ownership restriction. For this very reason the TRAI also does not consider the Internet as relevant market.[133]

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[123] Mark Cooper, Media Ownership and Democracy in the Digital Information Age 166 (2003); Baker, *Id.*, 897.

[124] Baker, *supra* note 122, 898.

[125] Baker, *supra* note 122, 898.

[126] Baker, *supra* note 122, 898.

[127] Cooper, *supra* note 123, 107.

[128] Christa Corrine McLintock, *The Destruction of Media Diversity, or: How the FCC Learned to Stop Regulating and Love Corporate Dominated Media*, 22 J. Marshall J. Computer & Info. L. 604-605 (2004).

[129] *See* TRAI Recommendations, *supra* note 4, 8 (TRAI notes that only 20% of the people have access to Internet while only 5% subscribe to broadband).

[130] *Id.* Christian Downie & Andrew Macintoch, *New Media or More of the Same? The Cross-Media Ownership Debate*, May 2006, 1, available at http://www.tai.org.au/documents/downloads/WP86.pdf (Last visited on December 12, 2014).

[131] Prometheus Radio Project v. Federal Communications Commission, 373 F 3d 372 at 405; *See* Downie & Macintoch, *Id.*; ASCIH Report, *supra* note 1, 46.

[132] TRAI Recommendations, *supra* note 4, 8.

[133] TRAI Recommendations, *supra* note 4, 135.

PART B

V. SPECIFIC REGULATORY MECHANISM PROPOSED BY TRAI

The TRAI Recommendations can broadly be divided into six major categories: *first*, defining ownership and control; *second*, transparency and confidential disclosures by media entities; *third*, use of the HHI; *fourth*, cross and vertical restrictions; *fifth*, establishment of an independent media regulator; and *sixth*, curbing unethical practices.

The TRAI has proposed comprehensive definitions of 'control' and 'ownership'. These definitions form the basis on which the cross and vertical ownership restrictions are to be imposed on the media entities. It has rightly been pointed out that 'control' over a media outlet can be exercised in numerous ways, making it imperative to clearly define what constitutes ownership and/ or control of a media owning entity.[134]

Ownership implies a pure economic interest in the form of equity or the value of shares held in a company, whereas 'control' implies the ability to influence decision-making in the company.[135] Control plays a significant role as those who exercise control over management and operations of the media company, also *inter alia* control the content.[136] Although 'ownership restriction' is the term generally used by the TRAI, what is essentially sought to be restricted is the control over the media entities. Explaining this concept through an illustration, the TRAI recommends that an Entity 1 ('E1')[137] is said to 'control' another Entity 2 ('E2') and the business decisions thereby taken, if E1, directly or indirectly through associate companies,[138] subsidiaries[139] and/ or relatives[140] owns at least 20% of total share capital of E2.[141] Importantly, the TRAI has used the expanded definition of 'associate' as under Income Tax Act, 1961,[142] to include control through loan as well as debt instruments.[143] Therefore, if E1 has advanced a loan to E2 wherein the quantum of loan is not less than 50% of the book value of the total assets of E2, then E1 is deemed to exercise control over E2.[144]

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134 TRAI Recommendations, *supra* note 4, 8, ¶2.1.
135 TRAI Recommendations, *supra* note 4, 9, ¶2.5.
136 TRAI Recommendations, *supra* note 4, 9, ¶2.5.
137 TRAI Recommendations, *supra* note 4, 9, ¶2.5 ('Entity' is defined as individuals, group of individuals, companies, firms, trusts, societies and undertakings).
138 The Companies Act, 2013, §2(6).
139 The Companies Act, 2013, §(87).
140 The Companies Act, 2013, §2 (77).
141 TRAI Recommendations, *supra* note 4, 12-13, ¶2.13.
142 The Income Tax Act, 1961, §92A 2 (c).
143 TRAI Recommendations, *supra* note 4, 11-12, ¶2.7, ¶2.10.
144 TRAI Recommendations, *supra* note 4, 13, ¶2.13.

Further, the extent of indirect ownership has to be calculated using the multiplicative rule.[145] Thus, for instance, if E1 owns 30% equity in a company which in turns owns 20% equity in a media company, then the entity's indirect holding in the latter company would be calculated by the multiplication of the two equities which would amount to 6%.[146]

The TRAI Recommendations put the onus on the media entities to make certain public disclosures on an annual basis.[147] It is recommended that such disclosures include shareholding pattern of the entity; FDI pattern of the entity; its direct or indirect interest in other media entities; direct and indirect interest of the shareholders having shareholding beyond 5%, in other media entities; shareholder, loan or any contract agreement; details of key executives and Board of Directors; details of loans made by and to the entity; the language of registration and operation of all news channels owned/operated by the entity.[148] The confidential disclosures must include the subscription and advertisement revenue, advertisement rate and top ten advertisers of each outlet of the entity.[149]

It has been recommended that the Herfindahl Hirschman Index ('HHI') be adopted for the purpose of measuring market concentration.[150] HHI is measured by squaring the market share of each media entity, and then summing the resultant numbers.[151] For instance, if the market shares of E1 = 10%, E2= 20% and E3= 30% and E4= 40%, then the HHI for this would be:

$$= 10^2 + 20^2 + 30^2 + 40^2$$

$$= 100 + 400 + 900 + 1600$$

$$= 3000$$

Taking into consideration the HHI concentration levels, it is recommended that a market whose HHI is less than 1000 would be treated as a competitive market, while an HHI between 1000-1800 would be treated as a moderately concentrated, and one above 1800 would be treated as a highly concentrated.[152] Therefore, if the aforementioned example were to be considered, on application of the mentioned standard one could conclude that the market is highly concentrated.

145 TRAI Recommendations, *supra* note 4, 13, ¶2.13.
146 TRAI Recommendations, *supra* note 4, 13, ¶2.13.
147 TRAI Recommendations, *supra* note 4, 82, ¶6.13.
148 TRAI Recommendations, *supra* note 4, 82, ¶6.13 A.
149 TRAI Recommendations, *supra* note 4, 82, ¶6.13 B.
150 TRAI Recommendations, *supra* note 4, 81, ¶6.9.
151 TRAI Recommendations, *supra* note 4, 26, ¶3.40.
152 TRAI Recommendations, *supra* note 4, 81, ¶6.10.

TRAI recommends that cross-ownership rules be devised for News and Current Affairs genre,[153] the relevant geographic market for which has been narrowed down on the basis of language.[154] Within this specific genre, the product market has been narrowed down to print and television.[155] For measuring market shares, a combination of reach and volume metric of consumption has been recommended for the television segment,[156] while reach metric has been recommended for the print segment.[157] Importantly, on the operational front, it was recommended that if a media house contributes more than 1000 to the HHI of a particular segment, say print, then it cannot contribute more than 1000 towards the HHI in the television segment as well.[158] If this rule is violated for two consecutive years, then the entity would have to dilute its control in one of the two segments.[159] For regulating vertical concentration, the TRAI Recommendations seek to directly incorporate its previous the Recommendations on Issues related to New DTH Licenses.[160] Under this, a number of non-discriminatory clauses have been recommended to pre-empt abuse by vertically integrated broadcasters.[161] Also, limits on vertical integration are placed depending upon the type of broadcasting unit and their market share.[162]

The most important recommendation made by the TRAI is regarding the establishment of an 'independent media regulator' in the form of a Commission,[163] which would have regulatory authority over both print and television segment.[164] The regulatory body would be manned by "eminent persons from different walks of life, including the media", though mostly "non-media persons" would run the institution.[165] Unlike the previous bodies that regulated media, it has been recommended that the new media regulator would have punitive powers.[166]

TRAI notes the existence of three types of "private treaties": advertising in exchange of equity, advertising in exchange of favourable coverage

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153 TRAI Recommendations, *supra* note 4, 79, ¶6.3.
154 TRAI Recommendations, *supra* note 4, 79-80, ¶6.5.
155 TRAI Recommendations, *supra* note 4, 79, ¶6.4.
156 TRAI Recommendations, *supra* note 4, 80, ¶6.6.
157 TRAI Recommendations, *supra* note 4, 80, ¶6.6.
158 TRAI Recommendations, *supra* note 4, 81, ¶6.10.
159 TRAI Recommendations, *supra* note 4, 81, ¶6.10.
160 Telecom Regulatory Authority of India, *Recommendations on Issues Related to New DTH Licenses*, July 23, 2014, available at http://www.trai.gov.in/WriteReadData/Recommendation/Documents/DTH%20Reco%20(New%20Licensing%20Regime)%20as%20uploaded.pdf (Last visited on December 24, 2014).
161 *Id*., 42, ¶3.28.
162 *Id*., 42, ¶3.27.
163 *Id*., 76, ¶5.82.
164 *Id*., 76, ¶5.81(b).
165 *Id*., 76, ¶5.81.
166 *Id*., 85, ¶6.22.

and exclusive advertising rights in exchange of favourable coverage.[167] It also notes the existence of "advertorials" and instances of paid news during elections.[168] The TRAI recommends that all such content related unethical practices must be controlled by the media regulator.[169] The jurisdiction of the media regulator has also been extended to ensure editorial independence of media entities and to reduce the influence of the owners.[170] Insofar as the independence of the government run media house, Prasar Bharti, is concerned, t he TRAI recommends that the current 'arms-length relationship' must be strengthened.[171]

VI. ANALYSIS

The TRAI Recommendations mark the beginning of a State-sponsored deliberation surrounding market regulation in the media industry. On its part, the TRAI conducted the consultations in a transparent manner by soliciting responses from various stakeholders.[172] We agree with majority of the recommendations made by the TRAI, especially the ones concerning disclosure norms, definitions of ownership and control and its attempt to curb content related unethical practices. We also agree with the proposal to appoint a separate Commission to intricately examine cross media restrictions. However, we feel that there are two areas where the TRAI Recommendations were lacking, as they failed to fully comprehend the problem faced due to media concentration. These two areas have been analysed in this Part of the paper.

A. ORGANISATIONAL STRUCTURE OF THE 'MEDIA REGULATOR'

The strength and enforcement capacity of any regulatory authority is contingent on its organisational structure. The robustness of an organisation's structure is in turn determined by the professional expertise and the non-partisan role of the individuals constituting the body. The TRAI Recommendations have failed to concretely define the organisational structure of the media regulator. The recommendations merely declare that the authority would be consisting of "eminent persons from different walks of life", which would include media as well as non-media personnel.[173] The only other revelation about the regulator is the acceptance of the long-standing demand to bring

[167] *Id*., 83-84, ¶6.17.

[168] *Id*., 84, ¶6.18.

[169] *Id*., 85, ¶6.22.

[170] *Id*., 84, ¶6.

[171] *Id*., 83, ¶6.15.

[172] Telecom Regulatory Authority of India, *Consultation Paper on Issues Relating to Media Ownership*, 2, February 5, 2013 available at http://www.trai.gov.in/WriteReadData/ConsultationPaper/Document/CP_on_Cross_media_%2015-02-2013.pdf (Last visited on January 6, 2015).

[173] TRAI Recommendations, *supra* note 4, 76, ¶ 5.81.

the print and television sectors under the jurisdiction of the same regulator.[174] The first shortcoming of the TRAI Recommendations lies in its silence or inability to effectively narrow down an organisational structure. A corollary concern, which can be attributed to this shortcoming, is the failure to distinguish and effectively distribute power to impose content-related and content-neutral restrictions. In this sub-part, we would examine the effect of these shortcomings and attempt to overcome them.

It is important to note that one of the foremost reasons for the failure of self-regulatory bodies such as the PCI and NBSA is the organisational structure and composition. The PCI is headed by a retired Supreme Court judge and its membership consists of journalists, publishers and editors from the print industry along with nominated political appointees.[175] Similarly, the NBSA, a private regulator, is headed by a retired Supreme Court judge and its membership consists of representatives of television editors and eminent persons which includes people from the academia and bureaucracy.[176] Within the organisational setup of both these regulators, there is hardly any discernible division of authority and responsibility of the individuals constituting the body. Consequently, their effectiveness as a regulator, within their limited jurisdiction, is deplorable. Substantial issues like the Sub-Committee Report on Paid News authored by Paranjoy Guha Thakurta and Kalimekolam Sreenivas Reddy under the aegis of the PCI are concealed from the public[177] with no accountability. Likewise, for the NBSA, the current Chairperson, Justice R.V. Raveendran, has admitted that even though the NBSA does impose nominal punitive damages on the errant broadcaster, its efficacy as a regulator is limited due to the voluntary nature of jurisdiction.[178] Despite the presence of eminent persons from the fields of academia, journalism, bureaucracy and judiciary, these regulators have been largely unsuccessful in attaining their objective. Therefore, although eminence of individuals can be a criterion for selection of the officials of the media regulator, it certainly should not be the sole criteria.

Another reason why the organisational setup becomes crucial is the nature of the recommendation made by the TRAI. Unlike the PCI and NBA where simple norms and guidelines are to be enforced, the TRAI Recommendations suggest that the regulatory body deal with complicated legal and economic issues. These include regulation of large scale corporate mergers

[174] TRAI Recommendations, *supra* note 4, 76, ¶5.81(b).

[175] *See* Govt. of India, Ministry of Information and Broadcasting, F. No. M-22011/1/2014 (October 10, 2014).

[176] *See* Press Release, News Broadcasters Association, September 24, 2014, available at http://www.nbanewdelhi.com/images/uploadfile/55_PRESS%20RELEASE_24-9-14.pdf (Last visited on January 6, 2015).

[177] J. Balaji, *PCI sidelines Sub-Committee Report on "Paid News"*, The Hindu, July 30, 2010.

[178] Observer Research Foundation, *Media Regulation: Is Status Quo the Answer?*, August 6, 2013 available at http://www.orfonline.org/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=46982&mmacmaid=46983 (Last visited on January 6, 2015).

and acquisitions, imposition of a strict concentration standard, measurement of market shares, enforcing competition law standards, ensuring conformation with disclosure norms etc. These issues are be dealt not only at the national level (Hindi and English news), but also in the various indeterminate and overlapping regions (vernacular). The underlying objective of establishing a media regulator is not only to decrease the current concentration levels, but also sustain and progressively increase the levels of plurality. Media concentration policies, as recommended by TRAI, are to be reviewed every three years.[179] However, for dealing with such myriad issues of policy formulation and implementation, the recommendations hint at a composition similar to the PCI and NBSA. Further, from a plain reading of the TRAI Recommendations one can infer that the members would not have full-time appointments; rather they would convene meeting much like the PCI and NBSA. The personnel sought to be appointed are closer to being in the category of representatives of the media and the non-media sector (arguably this could also include the corporate owners). The perils of having such a structure and composition of a regulatory body is highlighted by the fact that the maximum attendance of the PCI meeting was when the members outvoted the publication of the Sub-Committee Report on Paid News!

In our opinion, a more suitable organisational setup would be similar to the one followed by the CCI. The CCI has specific divisions dealing with intricate matters of competition policy and enforcement. Amongst others, these include the Legal Division, Anti-trust Division, Combination Division, Economic Division and Investigation Division.[180] With such a setup manned by professionals from the competition law sphere, the CCI has, in a short span of time, proven to be highly effective as a market regulator. At this point, we opine that it is necessary to place a caveat insofar that we only advocate incorporation of a similar structure and not similar policy. Further, media regulators in other jurisdictions like UK (Ofcom)[181] and US (FCC)[182] also have a near similar structure where there is a clear separation of enforcement, investigation, and policy formulation. The established media regulators in India do not have any such division of responsibility and this has been one of the major reasons for their failure.

However, we recognise that media freedom forms the very essence of a democracy. Therefore, while such content-neutral restrictions on ownership can be dealt by a structure akin to the CCI, there must be room for self-regulation insofar as content-specific restrictions. Content related

179 TRAI Recommendations, *supra* note 4, 81, ¶6.11.

180 Competition Commission of India, *Organogram*, May 6, 2014 available at http://www.cci.gov.in/May2011/Organogram/Organogram6May2014.pdf (Last visited on January 6, 2015).

181 OfCom, *Competition Group*, October 2014, available at http://www.ofcom.org.uk/content/about/how-ofcom-is-run/org-charts/Competiton_Group.pdf (Last visited on January 6, 2015).

182 Federal Communications Commission, *Bureaus and Offices*, November 2013, available at http://transition.fcc.gov/images/fccorg-november2013.pdf (Last visited on January 6, 2015).

restrictions bring under their ambit all issues concerning internal plurality of media. These include advertorials, issues of paid news, private treaties, privacy related concerns etc. Recently, the Leveson Committee Report of UK, while looking at the issue of media regulation recommended an "independent self-regulatory regime".[183] In its recommendation, the composition of the body is similar to the body of eminent persons, as recommended by the TRAI. The Leveson Committee Report suggested that the body must be selected in a fair and transparent manner; majority composition must be independent of press; must include experienced former editors and academics; exclusion of any serving editors; and must be devoid of legislative oversight.[184] For content-related restrictions, such a body would be ideal as it would have limited influence both from the government and the media.

B. HHI

A prerequisite to the application of ownership restrictions is an accurate measurement of market concentration. The TRAI Recommendations propose that for measuring concentration in the media market, the regulator must use the HHI.[185] This Index is widely accepted in the field of competition law, both in India as well as foreign jurisdictions. By using such economic tools, the TRAI has remained true to its objective of importation of a competition law-based analysis of media markets. However, while importing a technical concept such as the HHI, the TRAI has failed to effectively mould it to suit applicability in the media market.

The TRAI cites the fact that the US Anti-Trust Division of the Department of Justice uses the HHI to approbate its selection.[186] Though the TRAI does not specifically mention this, in India, the CCI also uses the HHI for measuring market concentration. The HHI has been in use for a number of decades, and over time it has been criticised for numerous reasons. For instance, it has been argued that the HHI is too ambiguous;[187] it has an arbitrary threshold level;[188] that its analysis is limited to the number of firms and market share distribution;[189] it does not take into account industry specific requirements

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183 The Leveson Enquiry, *An enquiry into the culture, practices and ethics of the press- Executive Summary and Recommendations*, November 29, 2012 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf (Last visited on January 16, 2015).

184 *Id.*

185 TRAI Recommendations, *supra* note 4, 81, ¶6.9.

186 TRAI Consultation Paper, *supra* note 173, 58.

187 Neil B. Cohen & Charles A. Sullivan, *The Herfindahl-Hirschman Index and the New Antitrust Merger Guidelines: Concentrating on Concentration*, 62 Tex. L. Rev. 490 (1983-1984).

188 Jay Greenfield, *Beyond Herfindahl: Non-Structural Elements of Merger Analysis*, 53 Antitrust L.J. 233 (1984-1985).

189 Tony Roberts, *When Bigger is Better: A critique of the Herfindahl: Hirschman Index's Use to Evaluate Mergers in Network Industries*, 34(2) Pace L. Rev. 915 (2014).

etc.[190] Nonetheless, despite such criticisms, economists have either not been able to give an alternate to the HHI or that the alternate itself suffers from far greater deficiencies.

However, despite taking into account the general criticisms of the HHI, there is also a specific media market criticism. The HHI has traditionally been used under the competition law framework. The competition law framework is equipped to measure market concentration in markets where private goods are consumed. On the other hand, media markets deal in public goods. The underlying difference between the two is that private goods are rivalrous, *i.e.*, if they are consumed by one person they cannot be consumed by another; and excludable, *i.e.*, if a person chooses to purchase a good, they can preclude another from enjoying benefits from the same. Conversely, a public good is non-rivalrous and non-excludable, which is *vice-versa* to the features exhibited by a private good. Now hypothetically, if through the HHI one were to examine the concentration levels in a private good market, say the shoe market, one can easily narrow down the consumption and market share of each entity to come out with the HHI of the shoe market. For instance, if there are five producers, each having a 20% share in the market, the HHI for the shoe market would be 2000 ($20^2 + 20^2 + 20^2 + 20^2 + 20^2$). Further, it must be noted that the existence of a substitute brands does not have drastically reduce the concentration level of the market. For instance, if a sixth producer were to emerge having a 5% share (deducting 1% each from the previous producers), the HHI would be 1830.

However, if we consider the media market with exactly the same set of figures, it is the emergence of the extra source which gives rise to the concept of pluralism. As long as the extra source is not controlled by any of the established media entity, one can assume the shift of the media market towards a more plural form. If the extra source is controlled (keeping in mind the previous differentiation with ownership) by an existing media entity, it can easily use the public good characteristic of news to remodel the same information and publish it without contributing to the number of viewpoints in a democracy.

It is here that the major criticism to the HHI's application in the media market lies the ignorance of the concept of pluralism. It is the ignorance of the number of voices, which is essentially the availability of viewpoints in the public sphere which is being disregarded by the use of HHI.[191]

Any index that is selected for measuring market concentration must be able to take into account the concept of pluralism. Nonetheless, one must accept that every analytical tool brings with itself certain limitations which have to be accounted for the HHI too suffers from such limitations.[192]

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[190] *Id.*, 920.

[191] Eli Noam, Media Ownership and Concentration in America 413 (2009).

[192] *Id.*, 413.

Keeping in mind this particular limitation, the HHI has been altered over time, in order to overcome the abovementioned criticisms. It is at this juncture that we recommend that the TRAI looks at alternative indices for measuring concentration which takes into account the availability of the number of voices in the market for measuring concentration.

1. Diversity Index

The Diversity Index ('DI') was designed by the FCC as a response to the shortcomings of the HHI. Though at its foundation the DI also uses the HHI,[193] the differentiation rests in the manner of calculation of market shares. This differentiation takes into account the specific criticism of ignoring pluralism. For this purpose, the FCC first narrows down the media type which it wants to include for the purpose of its calculations.[194] Thereafter, each outlet is assigned a relative weight.[195] During its study, the FCC assigned the following relative weights- broadcast television (33.8%), daily newspapers (20.2%), weekly newspapers (8.6%), radio (24.9%), cable Internet (2.3%) and internet sources (10.2%).[196] Then the FCC calculates the number of outlets in the market for each media type and assigns it an equal market share.[197] For example, if the broadcast television media type has 25 news channels existing in region X, each would be assigned an equal market share of 4%. It then multiplies the relative weight with the assigned market share to calculate the weighted market share for the particular owner in that media type.[198] Thereafter, similar weighted market share for other media types is calculated. The FCC then obtains weighted ownership shares of all media outlets owned by an entity as of the entire weighted market share.

For example, for Entity 1, on a hypothetical allocation of market share, the ownership share would be 3.85%. Similarly, this can also be calculated for various other entities in the market.

Media Type	**Relative weight**	**Number of outlets**	**Assigned Market share**	**Weighted Market Share for each media**
Broadcast television	33.8 %	25	4%	.338 x 4% = 1.35 %
Daily newspaper	20.2 %	30	3.33%	.202 x 3.33% = .67 %

193 Brian C. Hill, *Measuring Media Market Diversity: Concentration, Importance and Pluralism*, 58(1) Fed. Comm. L.J. 172 (2006).
194 *Id.*
195 *Id.*
196 *Id.*
197 *Id.*
198 *Id.*

Weekly newspaper	8.6 %	10	10%	.086 x 10% = .86 %
Radio	24.9 %	15	6.67%	.249 x 6.67% = 1.66 %
Cable Internet	2.3 %	8	12.5%	.023 x 12.5% = .29 %
Internet Sources	10.2 %	20	5	.102 x 5% = .51 %
Total weighted ownership share of an Entity				3.85%

Once the weighted ownership share of each entity is calculated, the HHI is derived in order to obtain the DI. The DI is also represented by $\Sigma (w^2)$, wherein 'w' is the weighted ownership share of each entity.

The benefit of using the DI is that it brings all the media concentration under one ratio. However, the major criticism to the DI is the arbitrary nature of calculation of relative weight. This was one of the reasons why the DI was rejected by the TRAI. Nonetheless, unlike the USA, where more than six media types are considered, in India, the TRAI has recommended that only daily newspapers and television channels are to be considered. This makes the process of calculation of relative weight much easier. Despite this, the TRAI has simply ignored the DI due to its inability to assign relative weight. It has not attempted to overcome the problem of assigning relative weight despite looking at only a limited number of media types. We advocate that before an outright rejection of the DI, based on want of adequate relative weight, the TRAI must attempt to assign relative weight. It is only based on comparative analysis of the results, should any index be rejected. However, the fact that the TRAI has limited its investigation to two media types, assigning relative weight and comparisons should not be a problem.

2. Media Ownership Concentration and Diversity Index (MOCDI)

To counter the criticism that the HHI does not take into account the number of voices in a market to factor in pluralism, Professor Eli Noam has formulated the MOCDI.[199] Similar to the DI, this also uses the HHI for the purpose of its calculation. The MOCDI equals HHI/V, where V is the square root of the number of voices in the market.[200] The denominator 'V' which is the voice count in the market equals [(Broadcasting + Newspaper/.8) – Jointly owned voices. For instance, if there are four television and two newspapers, with one of them jointly owned, the voice count would be calculated as [(4+2)/.8) – 2] = 5.5. Here, the .8 factor is the percentage of news market which uses newspaper

[199] Noam, *supra* note 191, 415.
[200] Noam, *supra* note 191, 415.

and television. The specific example using .8 as the percentage value is used FCC's weight of different media. This can vary depending on the market where it is employed. Specifically looking at the Indian media market, this would be altered based on the 'language market' as differentiated by the TRAI.

It is argued that the MOCDI takes into account the market share as well as market participation and it practically superior to the HHI. More importantly, it takes in account the number of voices in the media market. The value of the MOCDI would always be lesser than the HHI; therefore the thresholds used for the HHI would not be applicable to it.

The purpose of giving such options as alternatives to the HHI (which is fairly basic) is that they take into account the major media market specific criticisms to the HHI. Due to deficiency in availability of data we could not test each index to give specific results in the market. Nevertheless, considering that the TRAI or the media regulator would collect specific datasets before any restrictions are imposed, the proposed alternatives are a window of opportunity to get more accurate concentration levels before restrictions are imposed.

VII. CONCLUSION

The TRAI Recommendations have brought the issue of media concentration at the forefront of public policy discussion in the country. It is important to understand that media entities, like any other business vehicle, would seek to increase efficiency gains and industry integration is a direct consequence of the same. For this very reason, the free market approach and self-regulatory initiatives which were previously operating have failed to dilute the ownership concentration in the industry.

The recommendations have faced stiff challenges from various stakeholders on the grounds that it violates their free speech right and right to freely practice trade and business. Further, it has been pointed out that the Internet, which is increasingly gaining prominence as news dissemination platform, invalidates any argument of media concentration. However, such challenges do not provide a wholesome review of literature and have been cherry-picked to favour their cause. On a comprehensive examination of literature and facts each of the challenges has been invalidated.

The TRAI Recommendations regarding the definition of 'ownership' and 'control', transparency and confidential disclosures by media entities, cross and vertical restrictions and the establishment of independent media regulator are well-founded. However, the TRAI has failed to exhaustively examine the organisational structure of the media regulator and the rationale behind using the HHI as a measure of concentration. In this paper, we assert that the criterion of having eminent persons as members of the media regulator is flawed. We propose the incorporation of an organisational setup with separate divisions manned with professionals for dealing with matters of competition, enforcement and investigation. We further propose the constitution of an independent and separate body within the media regulator for the examination of content related restrictions.

The HHI as a measure of concentration fails when applied to the media due to its failure to account for the number of voices in the media market. The TRAI has not only failed to take this shortcoming into account, but it also ignored adequate analysis of alternate concentration indices. Hence, we propose that the TRAI should examine alternative indices like the DI and the MOCDI and employ the best measure of concentration in the Indian media market. Admittedly, any imposition of structural restrictions on ownership in the media market would need broader discussions keeping in mind the specifics of a media market.