**COMMON CAUSE**

**A REGISTERED SOCIETY**

**AN ORGANISATION FOR VENTILATING COMMON PROBLEMS OF THE PEOPLE**

COMMON CAUSE HOUSE, 5, Institutional Area,

Nelson Mandela Road, Vasant Kunj, New Delhi –110 070. Phone :  2613-1313, Fax: 45152796

[http://commoncause.in](http://commoncause.in/)    [e-mail:commoncauseindia@gmail.com](mailto:e-mail%3Acommoncauseindia@gmail.com)

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Dear Mr. Minister,

Subject: News Broadcast by Private FM Radio and Community Radio Stations

I write to you on behalf of Common Cause, a civil society organization dedicated to the pursuit of governance reforms and redress of the common problems of the people. In its espousal of public causes over three decades, Common Cause has used the instruments of policy advocacy and public interest litigation to good effect.

We would like to highlight here the iniquity of the extant government policy that bars private radio channels from broadcasting news and current affairs. Such exclusion is not in keeping with the constitutional guarantee of the right to freedom of speech and expression and flies in the face of the ruling of the Supreme Court in Ministry of Information & Broadcasting Vs Cricket Association of Bengal & Anr 1995 AIR 1236 1995 SCC (2) 161, which had made it amply clear that airwaves were public property to be used to promote public good and expressing a plurality of views, opinions and ideas.

India is perhaps the only democratic country in the world where the dissemination of news and current affairs programmes on the radio remains a monopoly of the government-owned broadcaster. The situation is particularly anomalous since non-government entities, such as private companies, cooperative bodies, associations, trusts and registered societies, are allowed to own and operate all other forms of mass communication, including print, television, internet and mobile telecommunications, through which information purporting to be “news” and “current affairs” is disseminated to the public at large. While the definitions of what constitutes “news” and/or “current affairs” remain nebulous, newspapers and periodicals, television channels, internet websites and other mass media are freely allowed to broadcast or disseminate information, which they consider to be news or a commentary on current affairs, provided they adhere to the laws of the country.

Despite public appeals and repeated representations by radio broadcasters, your Ministry has refused to allow any entity other than AIR/Akashvani to broadcast news and programmes on current affairs on the radio. The reasons advanced for continuing the government’s monopoly on radio news, namely the need for ensuring national security and public order, or exercising control on content, are specious, illogical and unreasonable. The continuance of the indefensible state monopoly violates the letter and spirit of Article 19(1)( a) of the Constitution of India, which guarantees freedom of speech and expression as a fundamental right of every citizen subject, of course, to the reasonable restrictions specified in Article 19(2).

There is no reason why news and current affairs programmes on radio should remain a monopoly of the Government of India through All India Radio/Akashvani, The imperatives of equity and freedom of speech and expression demand that privately owned FM radio stations and community radio stations be allowed to broadcast their own news and current affairs programmes (as distinct from disseminating programmes made by All India Radio), subject to the “reasonable restrictions” specified in Article 19(2) of the Constitution of India and other laws of the land.

It will be pertinent here to quote *in extenso* from the landmark judgment of the Supreme Court referred to above.

*“44. We may now summarise the law on the freedom of speech and expression under Article 19 [1] (a) as restricted by Article 19 [2]. The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary for self expression, which is an important means of free conscience and self fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country as well as abroad as impossible to reach.*

*“45. This fundamental right can be limited only by reasonable restrictions under a law made for purpose mentioned in Article 19 [2] of the Constitution.*

*“46. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered.*

*“205. It is absolutely essential, in the interests of public, in the interests of the freedom of speech and expression guaranteed by Article 19(1)(a) and with a view to avoid confusion, uncertainty and consequent litigation that Parliament steps in soon to fill the void by enacting a law or laws, as the case may be, governing the broadcasting media, i.e., both radio and television media.*

*“206. 4. The Indian Telegraph Act, 1885 is totally inadequate to govern an important medium like the radio and television, i.e., broadcasting media. The Act was intended for an altogether different purpose when it was enacted. This is the result of the law in this country not keeping pace with the technological advances in the field of information and communications. While all the leading democratic countries have enacted laws specifically governing the broadcasting media, the law in this country has stood still, rooted in the Telegraph Act of 1885. It is, therefore, imperative that the parliament makes a law placing the broadcasting media in the hands of a public/statutory corporate or the corporations, as the case may be. This is necessary to safeguard the interests of public and the interests of law as also to avoid uncertainty, confusion and consequent litigation.”*

It has been 17 years since the Apex Court order, but this important sector of mass media continues to suffer from the absence of a credible and rational regulatory mechanism. Radio broadcasting was thrown open to the private sector in 1999. There have been three rounds of licensing for FM channels so far. Today, there are 245 private FM channels and 145 community radio stations in the country. But they are prohibited from broadcasting their own news.

The Radio Broadcast Policy Committee headed by Shri Amit Mitra, Secretary General of the Federation of Indian Chambers of Commerce and Industry, had in its report of August 2004 recommended the constitution of an independent broadcast regulator.  The Committee had also suggested that in the interim a non-statutory Committee be set up with Terms of Reference similar to the Regulator’s.

The Telecom Regulatory Authority of India (TRAI) has time and again recommended that the restrictions on news and current affairs programmes be removed. In its recommendations on the 3rd phase of Private FM Radio Broadcasting, the TRAI suggested that FM Radio broadcasters be permitted to broadcast news, taking content from AIR, Doordarshan, authorized TV news channels, United News of India, Press Trust of India and any other authorized news agency without any substantive change in the content. The Government’s response was that in the absence of a Regulatory Authority with a localized presence and any arrangement for monitoring the Private channels and the sensitivities involved, it was not possible to allow complete freedom to Broadcast News even though the content might be sourced from authorized agencies.

The current stalemate can only be broken by expediting the establishment of an independent broadcast regulator. The continuing restriction on news broadcast by private FM radio and community radio is ill-conceived and illogical, because no such curb exists on television and the print media. For the majority of Indians, radio is the most accessible mass media. It is unmatched in its reach and the capacity to disseminate relevant local information. It is high time that the iniquitous anomaly which obtains today is removed by allowing all radio broadcasters in the country to broadcast their own news and current programmes (and not merely outsource these from AIR/Akashvani), subject to their adherence to all other extant laws.

We would also urge you to establish by an Act of Parliament an independent broadcast regulator, representative of all sections and interests in the society, to regulate the use of airwaves.  In the interim, a non- statutory Committee with the same remit and authority may be set up as suggested by the Amit Mitra Committee.

With regards,

Kamal Kant Jaswal,

Director