**MPGA Issue Brief: Broadcast Bill**

# **Introduction**

Introduced by India's Ministry of Information and Broadcasting, the Draft Broadcasting Services Regulation Bill, 2023, aims to establish a new regulatory framework for broadcasting services, replacing the Cable Television Networks (Regulation) Act, 1995. It extends regulatory control over various media platforms including television, radio, and online platforms like YouTube and Netflix. It is the concern of citizens that the bill could act as a censorship tool, particularly affecting small, independent digital content creators and potentially suppressing dissent. Furthermore, the bill grants extensive powers to the central government, including the authority to modify or delete broadcasts and to temporarily suspend channels.[[1]](#footnote-0)

# **Objectives and Key Features**

The stated objective of the bill is to create a unified regulatory structure that encompasses “all” forms of broadcasting. The bill proposes a registration regime wherin all broadcasters and network operators must register with the government. It empowers the central government to pass a specified program and advertisement code that broadcasters must adhere to. Finally, it establishes a multi-tiered self-regulatory structure including individual broadcasters, Self-Regulatory Organizations (SROs), and a Broadcast Advisory Council (BAC). The BAC can recommend penalties for broadcasters that violate the regulation, which will be implemented by the central government.[[2]](#footnote-1)

# **Concerns and Criticisms**

We, as concerned citizens, argue that the bill could lead to increased governmental control over media, potentially stifling freedom of speech and increasing censorship further:

* The government can order modifications to or removal of content deemed non-compliant with the codes, raising concerns about potential misuse for political gains. It has power to determine if particular content violates the programme code. There is no mechanism to appeal these decisions.[[3]](#footnote-2)
* There is no clear appellate mechanism against the decisions of the central government, which might lead to unchecked executive power.
* The bill provides broad definitions and powers that could be misinterpreted or misused to restrict content deemed uncomfortable or undesirable under ambiguous grounds of 'public interest.' The definition of a “broadcaster” is ambiguous as well.

# **Comparative Analysis**

The proposed regulatory framework contrasts with international practices where an independent body typically oversees broadcasting standards to prevent government overreach. For instance, the UK's Ofcom operates independently of governmental control, providing a more balanced approach to regulation and freedom of expression. The Ofcom board is composed of civil servants, respected broadcasters, and other voices from the industry. India is already slipping on the press freedom index[[4]](#footnote-3), and this Bill threatens to quicken that slide.

# **Recommendations**

The Broadcast Bill weakens democratic values, providing unprecedented power to the Central Government to control information in the country. The need of the hour is to establish institutions that empower citizens, strengthen the broadcasting sector while protecting democratic values. Ideally, this Bill should be withdrawn in its current state. If not, extensive stakeholder consultation needs to be organised in order to:

* Establish an independent regulator: An independent body, free of the yoke of the Central Government, should oversee broadcasting standards, similar to the UK's Ofcom.
* Clarify definitions: Specific and narrow definitions should be used for terms like 'public interest' to prevent abuse.
* Institute an appellate body: Introduce an appellate mechanism similar to the Telecom Disputes Settlement and Appellate Tribunal or Securities Appellate Tribunal for transparency and fairness.[[5]](#footnote-4)

# **Conclusion**

The Draft Broadcasting Services Regulation Bill, 2023, has elicited significant concern among various journalist bodies and media associations. These groups, including the National Alliance of Journalists and the Delhi Union of Journalists, have labelled the bill as a potential gateway to increased censorship. They argue that the bill's broad powers might allow the government to exercise undue control over the media landscape, affecting everything from television to digital platforms like YouTube and social media. The bill's approach to regulating both traditional and online media under the same framework is seen as particularly troubling, as it could lead to a homogenization of content and a reduction in the diverse viewpoints that are vital for a healthy democracy.

While the Draft Broadcasting Services Regulation Bill, 2023 aims to modernize and streamline broadcasting regulations, it is crucial to balance these goals with the protection of freedom of expression. In its current form, it does not do that. Therefore, we demand that it be withdrawn and a fresh bill be presented after intensive stakeholder consultations, especially involving content creators in India.

**Suggested Questions**

Will the Minister of Information and Broadcasting be pleased to state:

(a) Whether the Government has received any representations, and conducted any discussions with media organizations and civil society groups expressing concerns over potential over-censorship due to the Broadcasting Bill;

(b) If so, the details thereof and the response of the Government;

(c) Whether an OTT platform such as Netflix India, SonyLiv, and other such platforms shall be considered a ‘Broadcaster’ or ‘Broadcasting Network Operators’;

(d) Whether a private citizen with a presence on a public platform, engaging in content creation or community outreach shall be considered a ‘Broadcaster’.

(e) Whether the provision to prohibit the operation of broadcasting services or broadcasting network operators in ‘public interest’ is in violation of The Supreme Court (1995) decision to uphold the right to disseminate information is a part of the fundamental right to freedom of expression.

(f) Whether the Government plans to establish a grievance redressal system for appeals against the decisions of The Broadcast Advisory Council, or the Central Government.

**Recent Developments**

**Correspondence between the MIB and Stakeholders:**

Despite multiple requests and an RTI to make the consultation process transparent, and stakeholder comments public, the MIB, since the publishing of the draft bill in November 2023, has remained vague and dubious, refusing to communicate with agencies like the Internet Freedom Foundation.

**July 9th, 2024: Closed door meetings with big-pocketed stakeholders**

The MIB holds a meeting with stakeholders like Netflix and Hotstar, streaming platforms like Spotify, social media companies with the likes of Google and Meta, and industry associations including FICCI, NBA, and IAMAI. The Ministry has also requested feedback and comments within three weeks (by July 31) on the latest version of the bill.

The draft proposed the formation of individual content evaluation committees with members from various social groups who will review and sign off on shows before they are released. It is to be noted that all films in Indian cinemas are reviewed and certified by a government-appointed board, whereas streamed content is not.

Storyboard18 earlier reported that according to internal reports and industry sources, the government is now also mulling a significant new proposal to include User Generated Content on social media platforms, when such content is put out by "professionals". The content generated by "professional creators" on social media will be regulated under the proposed Broadcast Services (Regulation) Bill, 2023.

To be sure, under the existing IT rules content regulation on social media platforms lies with the Ministry of Electronics and Information Technology (MeitY). However, under the new proposal, when passed, such content created by creator "professionals" on social media platforms like YouTube will be regulated by both the MIB and MeitY.

Ambiguities regarding the role and responsibilities of platforms like Google and Meta, definitions of who or what constitutes professional creators and content, and scope and scale of the regulation that would potentially require millions of creators to be registered under the BSR act, have raised concerns among stakeholders.

**July 26th, 2024: Hindustan Times reviews the second draft of the Broadcasting Bill 2024**

Individuals who routinely upload videos to social media, make podcasts or write about current affairs online could be classified as digital news broadcasters, according to the new draft of the broadcasting bill that the government shared with stakeholders.

When the Bill was first released for public consultation in November 2023, it was unclear whether or not news content creators online can attract obligations imposed on streaming platforms (‘OTT broadcasting services’). The 2024 version proposes to bring them under the ambit of the law by introducing the new category called digital news broadcasters.

It attempts to address the ambiguity created by the first draft on this aspect by defining “professional” as a person engaged in an occupation or vocation, and “systematic activity” as “any structured or organised activity that involves an element of planning, method, continuity or persistence” – basically covering any influencers who touch on topics of social, political relevance. To be sure, the bill is still in the public feedback stage, and all changes will have to go through the Union Cabinet before it is tabled in Parliament.

The definition of OTT broadcasting service has also been revised due to which not only Netflix and Amazon Prime Video , but also content creators who regularly upload their content to social media can arguably be OTT broadcasting services.

For instance, a chartered accountant who posts videos on YouTube and Instagram about how to file IT returns is a ‘professional’ under the Bill and can attract provisions of the Bill if they have enough followers/subscribers. A journalist who tweets regularly is covered by it too.

The new Bill also allows the government to prescribe different due diligence guidelines for social media platforms and online advertisement intermediaries, and requires all intermediaries to “provide appropriate information, including information pertaining to the OTT broadcasters and Digital News Broadcasters on its platform” to the central government to ensure compliance with the act.

If the intermediary does not comply with the government’s directions, it stands to lose its safe harbour (exemption from liability for third party content) and can attract penal provisions under the Bharatiya Nyaya Sanhita, 2023, the Bill says.

The bill also clarifies that if an OTT broadcasting service or a digital news broadcaster is a user on a social media platform, the two broadcasters will be responsible for complying with the act, not the social media company.

**ABOUT US**Make Parliament Great Again (#MPGA) is a citizen’s initiative that aims to raise citizen issues with Parliamentarians from across the political spectrum with the objective of reclaiming the Parliament as the House of the People.

1. Damani, P., & Chakrabarty, T. (2024). *The Draft Broadcasting Services (Regulation) Bill, 2023* (Legislative Brief). PRS Legislative Research. https://prsindia.org/billtrack/prs-products/prs-legislative-brief-1713951499 [↑](#footnote-ref-0)
2. ibid. [↑](#footnote-ref-1)
3. ibid. [↑](#footnote-ref-2)
4. *India | rsf*. (2024, July 12). Reporters Without Borders. https://rsf.org/en/country/india [↑](#footnote-ref-3)
5. Damani, P., & Chakrabarty, T. (2024). *The Draft Broadcasting Services (Regulation) Bill, 2023* (Legislative Brief). PRS Legislative Research. https://prsindia.org/billtrack/prs-products/prs-legislative-brief-1713951499 [↑](#footnote-ref-4)