

# Legislative Brief

## The Draft Broadcasting Services (Regulation) Bill, 2023

The Draft Broadcasting Services (Regulation) Bill, 2023 was released on November 10, 2023 for public feedback.

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### Highlights of the Draft Bill

- ◆ Multiple types of broadcasters and broadcast network operators will be regulated under the draft Bill. The regulation will depend on their type. Television broadcasting networks will have to register with the central government, while OTT platforms must provide an intimation after meeting a certain threshold of subscribers.
- ◆ The draft Bill also seeks to regulate broadcast of news and current affairs programmes (excluding print news). Such programmes will have to comply with the prescribed programme code and advertisement code.
- ◆ The draft Bill provides for a self-regulatory structure to ensure compliance with the programme and advertisement codes. This includes: (i) self-regulation, (ii) constituting self-regulatory organisations, and (iii) establishing a Broadcast Advisory Council.
- ◆ Each broadcaster will have to also set up an internal Content Evaluation Committee (CEC). All broadcast content must be certified by the CEC.

### Key Issues and Analysis

- ◆ The draft Bill regulates online content available on OTT platforms. However, such content may be accessed through other ways on the internet, which is regulated differently.
- ◆ No guidance has been provided on formulating the programme code. This may also lead to self-censorship by broadcasters.
- ◆ The central government will have the powers to pass orders on whether a particular content violates the programme code. This will also apply to news or content critical of the government. This could lead to a conflict of interest. The draft Bill also does not provide an appellate mechanism against orders of the central government.
- ◆ The proposed framework for regulating broadcast news is distinct from the framework for print news. This raises the question whether it is appropriate to have a differential framework for same content based on the medium of dissemination.
- ◆ The draft Bill reintroduces criminal punishment for certain offences which were recently decriminalised.

## PART A: HIGHLIGHTS OF THE DRAFT BILL

### Context

Broadcasting involves transmission of content for wider consumption by the public. This may include audio, visual, or audio-visual content broadcasted over mediums such as television or radio. With evolving technology, the broadcasting sector has evolved and new mediums are used to transmit content. For instance, television has evolved from cable to satellite television and Internet Protocol Television (IPTV). The internet has also allowed for online video streaming. Broadcasting was formerly governed by the Indian Telegraph Act, 1885.<sup>1,2</sup> Currently, different aspects of broadcasting are governed by different sets of regulations (see Table 1).

**Table 1: Regulation of the Broadcasting Sector**

Broadcasting service	Regulation
Television (Content)	Cable Television Networks (Regulation) Act, 1995. <sup>3</sup>
OTT services and digital news (Content)	Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 <sup>4*</sup> under the Information Technology Act, 2000. <sup>5</sup>
Radio (Content)	Permission agreements with radio stations. <sup>6</sup>
Carriage of broadcasting content (except OTT)	Telecom Regulatory Authority of India via: (i) Tariff Orders, (ii) Interconnection Regulations, and (iii) Quality of Service Regulations, issued under the Telecom Regulatory Authority of India Act, 1997. <sup>7,8</sup>
Uplinking and Downlinking of content for television	Uplinking and Downlinking Guidelines of the Ministry of Information and Broadcasting. <sup>9</sup>

Note: \*Various parts of the Rules have been stayed by the High Courts of Bombay, Kerala, and Madras.<sup>10,11,12</sup>

The Ministry of Information and Broadcasting observed that a streamlined and cohesive broadcasting regulatory framework will help bring consistency and clarity to regulations.<sup>13</sup> In 2020, the Ministry had proposed amendments to the 1995 Act.<sup>14</sup> The draft Broadcasting Services (Regulation) Bill, 2023, was released on November 10, 2023 for public comments.<sup>13</sup> It seeks to replace the Cable Television Networks (Regulation) Act, 1995 (CTN Act), and consolidate various regulations governing the broadcasting sector into a single law. In April 2024, the Telecom Regulatory Authority of India (TRAI) released a consultation paper seeking comments on the formulation of a National Broadcasting Policy.<sup>7</sup>

### Key Features

- **Registration of broadcasting services:** Broadcasters and broadcasting network operators must register, with each having a different registration process. For instance, cable or satellite broadcasting networks will have to apply for registration. OTT platforms will have to intimate the central government after crossing a specific threshold.
- **Regulation of news and current affairs programmes:** News and current affairs programmes will be required to comply with the prescribed programme code and advertisement code. Such programmes are defined as newly-received or noteworthy audio, visual or audio-visual programmes or live programmes. This includes analysis about recent events primarily of socio-political, economic, or cultural nature.
- **Content evaluation:** Every broadcaster or broadcasting network operator must constitute at least one internal Content Evaluation Committee (CEC). The CEC will comprise eminent persons from various social groups such as women, child welfare, and Scheduled Castes. Programmes will be broadcast only after certification by the CEC. Broadcasting network operators that do not provide platform services (programmes transmitted exclusively for subscribers) will not be required to set up a CEC.
- **Self-regulation:** The draft Bill provides for a self-regulatory structure for complying with the programme and advertisement codes which will be prescribed by the central government. Broadcasting network operators not providing platform services will be exempt from the regulatory structure. The first tier of the structure is self-regulation by broadcasters and broadcasting network operators. This requires the appointment of a grievance redressal officer by the broadcaster/broadcasting network operator. The second tier is self-regulatory organisations (SROs), to which broadcasters/broadcasting network operators will be affiliated. SROs will address grievances not addressed by the broadcasters/broadcasting network operators, and issue guidance and advisories for compliance with the programme code and the advertisement code.
- **Broadcast Advisory Council:** The Broadcast Advisory Council (BAC) is the third tier of regulation. It will hear complaints: (i) arising from appeals against decisions of SROs or (ii) referred to it by the central government. The central government will take action based on the recommendations of the BAC. The BAC shall consist of: (i) a chairperson with at least 25 years of experience in media, broadcasting, and other relevant fields, (ii) five officers nominated by the central government from different ministries, and (iii) five eminent individuals nominated by the central government with experience in various fields.
- **Offences and penalties:** The draft Bill specifies various offences and penalties. For instance, operating a broadcasting network without a valid registration is punishable with a fine up to Rs 10 lakh or imprisonment up to two years, or both. Subsequent offences will attract a fine up to Rs 50 lakh or

imprisonment up to five years, or both. Penalties against registered entities will be based on their size, which will be determined as per their turnover and investment.

## PART B: KEY ISSUES AND ANALYSIS

### Purpose of the draft Bill

*Draft Bill:*  
Clauses 16,  
19, 24(2)

The intent of the 1995 CTN Act was to safeguard public interests and prevent the transmission of content that is against national interest.<sup>15</sup> According to the Ministry of Information and Broadcasting, a key concern is the differential treatment of content aired over different platforms.<sup>15</sup> The draft Bill seeks to regulate all current forms of broadcast by regulating the broadcasters and broadcasting network operators. These include content aired on radio, cable television as well as OTT platforms. However, due to the nature of the internet, content on the internet can be easily accessed in several ways which may fall outside the purview of the draft Bill. This raises the question on how such content will be regulated. The ease of accessing content over the internet, and fast advances in technology making such content available in various ways, also raises the question of the feasibility of such regulation.

The draft Bill places certain obligations on the platforms regulated under it. For instance, OTT platforms must intimate the central government once their subscribers / viewers cross a certain threshold. Content broadcast by such entities would have to abide by the programme and advertisement codes notified by the central government. However, the same content may be available on other intermediary platforms and websites (which do not have to adhere to the programme code). While intermediaries are regulated under the Information Technology Act, 2000 (IT Act), the manner in which such online content gets regulated would vary.<sup>5</sup> This defeats the purpose of regulating all TV programmes in a similar manner.

Content uploaded by an OTT platform will be subject to scrutiny before it is uploaded; however, the content producer can upload it to a video hosting website or intermediary. Such an intermediary may have to take action only if the content is reported.<sup>4</sup> An intermediary is protected by a safe harbour, while the OTT has to self-regulate, even if the content on both platforms is the same.<sup>16</sup> Safe harbour refers to the protection that intermediaries have from responsibilities under the IT Act, 2000 if their role is limited to providing access to a system over which third parties can transmit or host information. Thus, there could be content which may not be allowed or require editing if aired on an OTT platform, but could be aired on an intermediary platform.

There have been attempts to regulate the transmission of content over the internet in other jurisdictions. For instance, a Bill to regulate aspects of public broadcasting, on-demand programming, and radio was tabled in the Parliament of the United Kingdom in November 2023 and has been passed by the House of Commons.<sup>17,18</sup> The Bill seeks to regulate video-on-demand services (including OTT platforms) by enacting a code which would subject them to editorial standards similar to the those applicable for television broadcasts.<sup>19</sup>

### Definition of programme code

*Draft Bill:*  
Clauses 19  
and 35

The draft Bill provides that any programme transmitted as a broadcasting service must be in conformity with the programme code. This code will be prescribed by the central government. The code may be differentiated for various types of broadcasting services such as linear, on-demand, and radio broadcasting. However, the draft Bill does not provide any guidance on the formulation of the programme code. This could lead to issues discussed below.

#### Principles to determine programme code not specified

Contravening the programme code may lead to measures such as: (i) deletion or modification of the programme, (ii) compliance with an advisory, censure, or warning, (iii) taking the channel off-air for certain number of hours or days, and/or (iv) imposition of a monetary penalty. It may be argued that the parent law should provide for some guiding principles for defining the programme code. This will allow Parliament to decide the grounds on which a programme can be censored. For instance, standard objectives for the programme and advertisement code in the UK are in the Communications Act, 2003.<sup>20</sup>

The Cinematograph Act, 1952 prohibits the exhibition of films that fall under the restricted grounds specified in Article 19(2) of the Constitution.<sup>21</sup> The Supreme Court (1995) has held that broadcasting is a means of communication and is therefore a medium of speech and expression.<sup>22</sup> It can be restricted only on the grounds specified in Article 19(2) which include security of the state, public order, decency or morality, defamation, or incitement to an offence.<sup>23</sup>

The CTN Act, 1995 also does not provide any guidance on the programme code. Restrictions prescribed under the current programme code include: (i) offending good taste or decency, and (ii) false and suggestive innuendos and half-truths.<sup>24</sup> Some of these restrictions such as false and suggestive innuendos and half-truths may not be in line with Article 19(2).

## Not defining programme code may lead to self-censorship by broadcasters

The absence of clear standards for regulating content may lead to self-censorship by the broadcasters. This may lead to a ‘chilling effect’ on their freedom of speech and expression. The Bombay High Court had observed that if a writer, editor or publisher must adhere to the current programme code, he would be prevented from criticising an individual in respect of his public life.<sup>10</sup>

## Regulation of content by the central government

*Draft Bill:*  
Clauses 27,  
28 and 35

The draft Bill creates a three-tier regulatory mechanism to ensure that broadcasters comply with the programme code and advertisement code. The first tier comprises self-regulation by individual broadcasters and broadcasting network operators. The second includes forming self-regulatory organisations (SROs) of broadcasters and broadcasting network operators. The third tier involves a Broadcast Advisory Council (BAC) that will hear complaints of violations of the codes, arising out of appeals against the SROs. Penalty for not adhering to the codes will be imposed by the central government, based on the recommendation of the BAC.

### Regulation of content by the central government may lead to conflict of interest

As per the draft Bill, the central government will have powers to pass orders on whether a particular content violates the programme code. This will also apply to content or news which may be critical of the government. Thus, it may involve a conflict of interest.

Other programming like films and news are currently regulated by statutory bodies. Under the Cinematograph Act, 1952, films are certified by the Board of Film Certification.<sup>25</sup> The Act originally gave the central government powers to decide on appeals involving certifications. The Supreme Court (1970) had observed that in such matters, a quasi-judicial body will inspire more confidence than a government secretary.<sup>26</sup> The 1952 Act was amended in 1981 to provide for an appellate tribunal (subsequently changed to the High Court in 2021).<sup>27,28</sup>

The Press Council Act, 1978 establishes the Press Council of India, which is responsible for maintaining independence of newspapers and news agencies along with regulating journalistic conduct.<sup>29</sup> In the United Kingdom, Ofcom, which is an independent statutory body, regulates broadcast content.<sup>30</sup>

### The draft Bill does not provide for a mechanism to appeal against orders of the central government

The BAC will hear appeals against the decision of self-regulatory organisations and matters referred to it by the central government. However, it will only have powers to make recommendations. The final decision based on the recommendation will be taken by the central government. The draft Bill does not specify whether the recommendation of the BAC will be binding on the central government. Also, the draft Bill does not provide for a mechanism to appeal against decisions of the central government. Powers of the central government include: (i) deleting or modifying the programme or advertisement, and/or (ii) directing the channel to be off-air for a specified number of hours or days.

In case of other regulators, the mechanism to appeal against the regulator’s orders is specified in the law. For instance, the Securities Appellate Tribunal has been set up under the SEBI Act, 1992 to adjudicate appeals.<sup>31</sup> The Telecommunications Act, 2023 provides for appeals to be filed before the Telecom Disputes Settlement and Appellate Tribunal or civil courts depending on the nature of the offence.<sup>32</sup>

## Differential framework for news based on medium of dissemination

*Draft Bill:*  
Clauses  
2(1)(v) and  
20

The draft Bill provides a framework for regulating broadcast news, which is distinct from the framework for print news. The question is whether the same content should be regulated differently based on the medium of dissemination. The draft Bill provides for regulating news and current affairs programmes that are broadcast through online papers, news portals, or websites, and carried out as a business, professional, or commercial activity. The definition of news and current affairs includes newly-received or noteworthy audio, visual, or audio-visual programmes. News entities covered under the ambit of the draft Bill will also have to setup CECs, be a part of SROs, and adhere to the programme and advertisement codes. Newspapers and their replica e-papers will not be subject to such compliances under the draft Bill.

Newspapers and news agencies are regulated under the Press Council Act, 1978.<sup>29</sup> The Act establishes the Press Council of India to maintain press freedom and regulate journalistic conduct.

The draft Bill also does not differentiate between the size of the entity producing the news and the regulation applied to the entity. For instance, a single individual may be subject to regulations such as setting up a CEC and joining an SRO if their videos get a lot of views or if they have a certain number of subscribers.

## Grounds for prohibiting broadcasting services may be too broad

*Draft Bill:*  
Clause 36(2)

The draft Bill allows the central government to prohibit the operation of broadcasting services or broadcasting network operators in ‘public interest’. Prohibiting broadcasting services may involve placing restrictions on the freedom of speech and expression. The Supreme Court (1995) has held that the right to disseminate information

is a part of the fundamental right to freedom of expression.<sup>22</sup> This right is subject to only the restrictions as provided under Article 19(2) of the Constitution.<sup>22</sup> These restrictions do not include public interest.

## Whether it is appropriate to designate all OTT platforms as broadcasters

*Draft Bill:*  
Clauses  
2(1)(g), (h),  
(i) and 24(3)

The draft Bill recognises broadcasters and broadcasting network operators as separate entities. Broadcasters provide programming services, while broadcasting network operators are involved in the transmission of the programmes. For instance, a television channel is a broadcaster while a cable operator is a broadcasting network operator. Thus, it distinguishes between entities based on whether they are generating content or only providing carriage for the content. However, such distinction is not made for radio, OTT, and terrestrial broadcasting platforms. They are defined as broadcasters, irrespective of whether they are producing content or merely acting as broadcasting network operators. Certain OTT platforms may provide access to content, which may be live or recorded, produced by television channels. Note that broadcasting network operators not producing content or offering platform services are exempt from compliances such as setting up CECs under the draft Bill. Such an exemption will not be available to OTT platforms even if they are only providing carriage for content produced by other broadcasters.

## Reintroduction of criminal penalties for recently decriminalised offences

*Draft Bill:*  
Clause 33  
and Third  
Schedule

Under the draft Bill, offences such as operating broadcasting networks without registration, obtaining registration by misrepresentation, and furnishing incorrect information are punishable with a fine, imprisonment, or both. The term of imprisonment can extend from up to two years for first offence to up to five years for subsequent offences. The draft Bill replaces the CTN Act, 1995. Similar offences in the 1995 Act were decriminalised by the Jan Vishwas (Amendment of Provisions) Act, 2023. The Jan Vishwas Act replaced criminal provisions under the 1995 Act with advisory, censure, warning, or imposition of monetary penalty.<sup>33</sup> The draft Bill re-introduces offences that were previously decriminalised.

## Drafting error

*Draft Bill:*  
Clause  
38(7)(b)

Clause 38(7)(b) refers to compensation provided under clauses 37(2)(d), 37(3)(b), and 37(3)(d). However, 37(2) and 37(3) do not contain any sub-clauses, and they do not provide for compensation.

1. [The Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal and Another](#), Supreme Court of India, February 9, 1995.
2. AIR 1993 RAJ 197, Shiv Cable TV System vs The State of Rajasthan and Others, Rajasthan High Court, May 10, 1993.
3. [The Cable Television Networks \(Regulation\) Act, 1995](#).
4. [The Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#), Ministry of Electronics and Information Technology, February 25, 2021.
5. [The Information Technology Act, 2000](#).
6. [Draft Grant of Permission Agreement for operating FM Radio Broadcasting Service](#), Ministry of Information and Broadcasting.
7. [Consultation Paper on Inputs for Formulation of National Broadcasting Policy - 2024](#), Telecom Regulatory Authority of India, April 2, 2024.
8. [The Telecom Regulatory Act of India, 1997](#).
9. [Policy Guidelines for Uplinking and Downlinking of Television Channels](#), Ministry of Information and Broadcasting, November 9, 2022.
10. [Writ Petition \(L.\) No. 14172 of 2021, Agji Promotion of Nineteenonea Media Private Limited and Others. versus Union of India and Another](#), Bombay High Court, August 14, 2021.
11. [Writ Petition \(Civil\) No. 6272 of 2021, Live Law Media Private Limited vs Union of India](#), Kerala High Court, March 10, 2021.
12. [Writ Petition \(Civil\) No. 13055 of 2021, Digital News Publishers Association and Another vs Union of India](#), Madras High Court, September 16, 2021.
13. [Draft Broadcasting Services \(Regulation\) Bill, 2023](#).
14. [Draft Cable Television Networks \(Regulation\) Amendment Bill, 2020](#).
15. [Report No. 56: Regulation of Cable Television in India](#), Standing Committee on Communications and Information Technology, February 8, 2024.
16. Section 79, [The Information Technology Act, 2000](#).
17. [Media Bill](#), HL Bill 44, UK Parliament.
18. [Bill Passage](#), UK Parliament, as accessed on April 3, 2024.
19. “[What is the Media Bill and what does it mean for Ofcom?](#)”, Ofcom, as accessed on April 4, 2024.
20. Section 319, [The Communications Act 2003](#).
21. Section 5B, [The Cinematograph Act, 1952](#).
22. [The Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal and Another](#), Supreme Court of India, February 9, 1995.



23. Article 19(2), [The Constitution of India](#).
24. [The Cable Television Networks Rules, 1994](#).
25. Section 5C, [The Cinematograph Act, 1952](#).
26. [K. A. Abbas vs The Union of India and Another](#), Supreme Court of India, September 24, 1970.
27. Section 8, [The Cinematograph \(Amendment\) Act, 1981](#).
28. Section 9, [The Tribunal Reforms Act, 2021](#).
29. [The Press Council Act, 1978](#).
30. [Ofcom](#), as accessed on March 21, 2024.
31. Section 15K, [The Securities and Exchange Board of India Act, 1992](#).
32. Section 39, [The Telecommunications Act, 2023](#).
33. Serial No. 29, The Schedule, [The Jan Vishwas \(Amendment of Provisions\), Act, 2023](#).

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