

**BROADCASTING SERVICES (REGULATION) BILL, 2023- A
PARADIGM SHIFT IN THE BROADCASTING LAW**
Maximum Governance, Minimum Interference

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INTRODUCTION

- ❖ The nodal ministry for supervision, implementation and exercising powers (for and on behalf of the Central Government) under the Broadcasting Bill is the Ministry of Information and Broadcasting (MIB).
- ❖ MIB on 10th November 2023 issued the draft Broadcasting Services (Regulation) Bill, 2023 (Broadcasting Bill), and has invited comments from the stakeholders. The Bill and yet to be placed before the Parliament.
- ❖ The Broadcasting Bill seeks to consolidate the law relating to the Broadcasting, Radio, Internet and Terrestrial broadcasting in India, thereby consolidating:
 - The Cable Television Networks (Regulation) Act of 1995;
 - The Uplinking and Downlinking Guidelines issued by the executive from time to time;

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- Regulation of content under the existing self regulation regime like the Broadcasting Contents Complaints Council (For all channels except News and Current Affairs), News Broadcasting and Digital Standards Association (for News and Current Affairs) and similar self-regulatory bodies existing, including to provide for a two-tier system of regulation of content in broadcasting, providing content standards;
 - Accessibility Guidelines for persons with disabilities
 - Law to regulate over-the-top services;
 - Regulation related to the Radio Broadcasting Networks, Internet Broadcasting Networks, and Terrestrial Broadcasting Networks.
 - Right of way to the Broadcasters
 - Other consequential and ancillary powers.

Need for change in law!

- ❖ The law is fragmented and leads to many interpretations, thereby resulting in confusion;
- ❖ There has been a change in the technology with introduction of Over The Top networks, requiring appropriate regulations;
- ❖ Change in the manner in which content is disseminated in India;
- ❖ With the digitization of the broadcasting sector, especially in cable TV, there is a growing need to streamline the regulatory framework;
- ❖ Frequent disputes between the service providers like the broadcasters, MSOs, DTH, Radio FM players, TV Rating agencies etc.

The Current Regime:

- ❖ General provisions under the Cable Television Network (Regulations) Act, 1995 to regulate the content (Programming Code and the Advertising Code).
- ❖ Restricted definition of “*telecommunication*” as existing in TRAI Act, 1997.
- ❖ Different sectors being governed by different set of rules and regulations, including licensing thereto.
- ❖ No regulation on content for some classes of broadcasting sector.
- ❖ No concept of Pre-censorship on content.
- ❖ No checks and balances on “Self-regulatory framework”.

SALIENT FEATURES OF THE BILL

1. Wide definitions to cater to technological and technical advancements

- ❖ **“Audience Measurement Service”** means service provided by an entity registered under sub-section (3) of section 40.
- ❖ **“Broadcasting”** means one-to-many transmission of audio, visual or audio-visual programmes using a broadcasting network, intended to be received or made available for viewing, by the general public or by subscribers of the broadcasting network, as the case may be, and the expression “broadcasting services” shall be construed accordingly.
- ❖ **“Broadcasting Network”** means a system used for the transmission of programmes, including cable broadcasting networks, satellite broadcasting networks, internet broadcasting networks, radio broadcasting networks and terrestrial broadcasting networks.

❖ **“Broadcasting Network Operator”** means any person who operates a broadcasting network, and has been granted a registration or license or permission or who has provided an intimation as required under this Act, to provide services using a broadcasting network, and includes—

(i) Local Cable Operator; (ii) Multi-System Operator; (iii) Direct To Home operator; (iv) Headend-In-The-Sky operator; (v) Internet Protocol Television operator; (vi) Over-the-top broadcasting service operator; (vii) Radio broadcasting service operator; and (viii) terrestrial broadcasting network operator.

❖ **“Broadcaster”** means a person who provides programming services and has been provided a registration under Section 11 for uplinking or downlinking of programmes, and in relation to Radio, OTT and Terrestrial broadcasting network, means the operator of such service.

❖ **“Cable Broadcasting Network”** means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to enable the transmission of signals through cables for reception by multiple subscribers, and includes network of LCOs and MSOs.

❖ **“Direct to Home”** or **“DTH”** means re-transmission of signals of television channels by using a satellite system, directly to subscriber’s premises without passing through an intermediary such as LCO or any other broadcasting network operator.

❖ **“Encrypted”** in respect of a signal of any broadcasting network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an appropriate decrypting device or software and the expression "unencrypted" shall be construed accordingly.

❖ **“Headend in the Sky”** or **“HITS”** means the system for the transmission of programmes, including re-transmission of signals of television channels:

(i) To intermediaries like LCOs or MSOs by using a satellite distribution system and not directly to subscribers; or (ii) To the subscribers by using a satellite distribution system and its own cable networks.

❖ **“Internet Broadcasting Network”** means a system for the delivery of broadcasting services and programmes using the internet, over a computer resource, or using Internet Protocol, to subscribers or viewers, and includes IPTV and OTT broadcasting services.

❖ **“News and Current affairs programmes”** means:-

- (i) newly-received or noteworthy audio, visual or audio-visual programmes or live programmes, including analysis, about recent events primarily of socio-political, economic or cultural nature, or
- (ii) any programmes transmitted or retransmitted on broadcasting network , where the context, purpose, import and meaning of such programmes implies so.

❖ **“On demand”** means a system where a user, subscriber or viewer is enabled to access, at a time chosen by such user, any programme which is transmitted using a computer resource and is selected by the user.

❖ **“Over the top broadcasting service”** or “OTT broadcasting service” means a broadcasting service

- (i) made available on-demand or live to subscribers or users in India, and
- (ii) where a curated catalogue of programmes owned by, licensed to, or contracted to be transmitted, over the internet or a computer resource, not being a closed network; and
- (iii) where additional hardware or software or combination thereof including a set-top-box, or dongle and software keys may be required to access content on non-smart televisions or viewing devices,

Provided that OTT broadcasting services shall not include a social media intermediary, or a user of such intermediary, as defined in rules under the Information Technology Act, 2000 (21 of 2000) or such other entities as may be notified by the Central Government;

Explanation: In case of OTT broadcasting services, the person responsible for ensuring compliance with all requirements under this Act shall be the operator who makes available the programme or content and not the network operator or the internet service provider.

❖ **“Platform Service”** means programs, including advertisements transmitted by following Broadcast Network Operators exclusively to their own subscribers and does not include Doordarshan channels, registered television channels or foreign television channels that are not registered in India:

- (i) Multi-System Operator;
- (ii) Direct To Home operator;
- (iii) Headend-In-The-Sky operator;
- (iv) Internet Protocol Television operator;
- (v) Terrestrial broadcasting network operator; and
- (vi) Any other broadcast network operator notified by the Central Government.

❖ **“Subscriber”** means,

- (i) In the context of linear broadcasting services, a person who receives broadcasting services, from broadcasting network operator, at a place indicated by such person without further transmitting it to any other person, and who does not cause the signals of channels to be heard or seen by any person for a specific sum of money to be paid by such person, and each set top box located at such place, for receiving the subscribed broadcasting services, shall constitute one subscriber; and
- (ii) In the context of OTT broadcasting services, a person who has made an account with the provider of such services and who, in accordance with the terms and conditions of the service, is provided access to programmes on such service.

2. Consolidation and Modernization:

- ❖ It addresses a long-standing need of consolidating and updating the regulatory provisions for various broadcasting services under a single legislative framework, thus streamlining the regulatory process, making it more efficient and contemporary.
- ❖ Extends its regulatory purview to encompass broadcasting Over-The-Top (OTT) content and digital news and current affairs currently regulated through IT Act, 2000 and regulations made there under.
- ❖ Requirement of the licensing / permissions for the Broadcasters, Broadcasting Network Operators, Radio Broadcasting Networks, Internet Broadcasting Networks Operators, Terrestrial Broadcasting Networks.
- ❖ Approval of the uplinking or downlinking of programmes or channels by broadcasters, Registration of Cable and Satellite Broadcasting Network Operators, Maintenance of records of subscriber data.

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- ❖ Appropriate content regulation by prescribing a Programme and Advertisement Code for News and Current Affairs Programmes and channels other than News and Current Affairs Programmes.
 - ❖ Self Classification by broadcasters of programmes under Section 21 of the Broadcasting Bill.
 - ❖ Accessibility Guidelines for persons with disabilities under Section 23 of the Broadcasting Bill.
 - ❖ Self Regulation by Broadcasters under Section 25, self regulatory organisations under Section 26 and the Broadcasting Advisory Council under Section 27 of the Broadcasting Bill.
 - ❖ Sharing of infrastructure under Section 37 and Right of Way under Section 38 of the Broadcasting Bill.
 - ❖ Recognition and regulation of measurement agencies for Television Ratings under Section 40 of the Broadcasting Bill.

3. Applicability of the Bill

❖ **Broadcasters**

❖ **Cable Broadcasting Networks:-** Includes network of LCOs and MSOs.

❖ **Satellite Broadcasting Networks:-** Includes DTH and HITS

❖ **Radio Broadcasting Networks:-** means the transmission of programmes by a system for the transmission or retransmission of audio programmes using electromagnetic waves on specified frequencies, satellite systems or terrestrial networks, so as to make it available for access by multiple users by connecting their receiving devices to the transmission network.

❖ **Internet Broadcasting Networks:-** Includes IPTV and OTT broadcasting services..

❖ **Terrestrial Broadcasting Networks:-** means a broadcasting network transmitting signals over-the-air through terrestrial frequency bands in analogue or digital format, from terrestrial transmitter intended for direct reception by multiple users.

4. Strengthening of the Regulatory Mechanism for registration

- ❖ Consolidated legal framework for the entire broadcasting sector, including to delineate functions of the Central Government, the Telecom Regulatory Authority of India, and other existing authorities;
- ❖ Interplay of IT Act and applicable Rules with the proposed Bill in relation to online content broadcasters;
- ❖ Introduction of robust mechanism to ensure compliances with applicable rules and Regulations, by providing punishments, and right to inspect and seize equipments and premises;
- ❖ Promotion of technology by granting the broadcasting networks the liberty to curate their content, with minimum interference and maximum self-regulation.

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- ❖ Ensures parity in terms of accessibility and content for all classes of consumers.
 - ❖ To keep pace with the evolving technologies and services, the bill introduces comprehensive definitions for contemporary broadcasting terms and incorporates provisions for emerging broadcasting technologies.
 - ❖ Different registration procedures, eligibility criteria, verification procedures and terms and conditions for different type of broadcasting network operators.
 - ❖ Different set of obligations prescribed for different set to ensure compliances with applicable Rules and Regulations to be prescribed.

5. Strengthens the Self-Regulation Regime: A Three-Tier Model

I. Appointment of Grievance Redressal Officer [GRO]

- Every broadcaster or broadcasting network operator to appoint GRO to look into the complaints relating to violation of Programme Code and Advertising Code.
- The GRO to become a member of Self Regulatory Organisation [SRO], formed by broadcasters and network operators or their associations.
- SRO to hear complaints against the decisions of GRO and to pass directions for compliance of the applicable rules and regulations by the broadcaster or broadcasting network operator.

II. Introduction of Content Evaluation Committees [CEC]

- CEC A group of eminent individuals representing different social groups, child welfare organisations, scheduled tribes, scheduled castes, minorities and women, to be appointed by broadcaster.
- CEC to certify the contents of the broadcasters prior to their telecast. Broadcasters to ensure that contents duly certified by CEC are telecasted. In other words, the concept of “*pre-censorship*” introduced.

III. More participative and broader **Broadcast Advisory Council [BAC]**.

➤ BAC to hear appeals:

- against the appeals filed by complainants against the decision of the self-regulating organisations
- in cases where there is absence of any self-regulating organisation, to hear complaints/appeals which would ordinarily lie before such self-regulating organisations;
- matters referred to it by the Central Government.

➤ Appointment of Review panel by the BAC to assist them assist with its functions.

➤ Review panels to be assigned specific cases or appeals and provide their recommendations, which are considered as recommendations of the BAC.

6. Differentiated Programme Code and Advertisement Code:

- ❖ It allows for a differentiated approach to Programme and Advertisement Codes across various services;
- ❖ Programming Code and Advertising Code to be made applicable to News and Current Affairs Programmes;
- ❖ Require self-classification by broadcasters, under the categories specified, having regard to the context, theme, tone, impact and target audience of such content, with the relevant rating for such categories based on an assessment of the relevant content descriptors specified in such guidelines;
- ❖ Robust access control measures for restricted content.

7. **Accessibility Guidelines for Persons with Disabilities:**

- ❖ The bill addresses the specific needs of persons with disabilities by providing for enabling provisions for issue of comprehensive accessibility guidelines.
- ❖ General Considerations:
 - Ensuring entitlement of Person with disability to access programmes, platforms and equipment of broadcasting services
 - Obligating broadcasting network operator and broadcaster to make their programmes, platform, and equipment accessible for persons with disabilities; and
 - Mandating broadcasters or broadcasting network operators to comply with mandatory measures under the Accessibility Guidelines
- ❖ Delhi High Court is currently considering a plea concerning grievances related to accessibility of online content to disabled community (hearing and visually impaired) [*Akshat Baldwa & Ors. Vs. Yash Raj Films & Ors.* (W.P.(C) No. 445 of 2023)]

8. Statutory Penalties and Fines:

- ❖ The draft Bill introduces statutory penalties for operators and broadcasters, such as:
 - advisory,
 - warning,
 - censure, or
 - monetary penalties.
- ❖ Provision for imprisonment and/or fines remains, but only for very serious offenses, ensuring a balanced approach to regulation.
- ❖ The members of Self-Regulatory Organisations also to be subjected to punishments:
 - expulsion from membership;
 - suspension from membership for a specified period;
 - any other penalty of the nature of advisory, censure, warning;
 - monetary penalty
- ❖ **Equitable Penalties:** Monetary penalties and fines are linked to the financial capacity of the entity, taking into account their investment and turnover to ensure fairness and equity.

9. Infrastructure Sharing, Platform Services and Right of Way:

- ❖ The bill also includes provisions for infrastructure sharing among broadcasting network operators and carriage of platform services.
- ❖ Prior permission from Central Government required for sharing infrastructure.
- ❖ Agreement for the sharing of infrastructure and equipment for the purpose of providing last mile access to Access service providers or Internet Service Providers in a fair, transparent and non-discriminatory manner for proliferation of broadband services
- ❖ Further, it streamlines the Right of Way section to address relocation and alterations more efficiently, and establishes a structured dispute resolution mechanism .

10. Ensuring Smooth Transition:

- ❖ Any person to whom a registration or license or permission or approval has been granted to provide a broadcasting service referred to in the Bill, under different sets of Guidelines shall be deemed to have been registered, approved or provided as required under the proposed Act.
- ❖ All earlier rules made or notifications issued under the Cable Television Network (Regulation) Act, 1995 in so far as they relate to matters for which provision is made in the proposed Act be deemed to have been made or issued under the proposed Act, unless and until they are superseded by any rules made or notifications issued under this proposed Act.
- ❖ The Cable Television Network (Regulation) Act, 1995 shall stand repealed, on such date as may be notified by the Central Government.

THANK YOU