

To,

Shri Sanjiv Shankar,
Joint Secretary (Broadcasting-I) and CVO,
Ministry of Information and Broadcasting, Govt of India,
Email: jsb-moib@gov.in

Subject: Comments on the Draft Broadcasting Services (Regulation) Bill 2023 from Common Cause, a civil society organization working on governance reforms since 1980

Dear Sir,

We sincerely thank you for seeking comments from the general public and/ or any stakeholders to the draft Broadcasting Services (Regulation) Bill, 2023 (the “**Bill**”) through your communication of 10.11.2023.

Our comments are given below first in the form of a very brief overview followed by our detailed comments and concerns in a clause-by-clause format.

Comments:

(1) A key stated objective of the Bill is to address the evolving landscape of the broadcasting industry, particularly in light of the emergence of new technologies. It is apparently designed to cater to the needs of all service providers in the sector, ranging from traditional or conventional broadcasters to those utilizing the latest technological advancements. However, a closer scrutiny reveals that if adopted in the present format this will provide a firm foundation for media censorship and seriously subjugate the freedom of expression and creative and artistic freedom in India. The text of the draft suggests that the Bill may pave the ground for consistent monitoring and discouraging of ostensibly unfavorable (to the powers that be) relay of information, entertainment or artistic material while creating a chilling effect.

(2) The Indian broadcasting industry has emerged as one of the most dynamic and vibrant sectors in the country. It encompasses a wide range of services that cater to the diverse entertainment and information needs of the Indian population. With a rich tapestry of languages, cultures, and traditions, the industry has developed a robust ecosystem to provide a variety of services to its vast subscriber base.

We agree that there indeed is a need to streamline the regulatory and cohesive legal framework to take care of the diverse broadcasting services by laying safeguards against misuse of these services. A streamlined regulatory framework would bring clarity,

consistency, and flexibility , while protecting consumer interests and promoting ease of doing business. It should create a level playing field, foster investment and innovation, adapt to emerging trends, safeguard consumer interests, simplify compliance, and encourage growth and competition.

However, it seems that the Bill in its current form is an attempt to empower the government to control, censor and regulate free speech by extending its scope to the exchange of information on digital platforms as well as seeking recourse to punitive action. The draft Bill presents an excessive scope for delegated legislation by the executive, resulting in uncertainty for the stakeholders and preventing citizens from meaningfully engaging in the consultation process. An excessive delegation in administrative law refers to the granting of sweeping powers to the executive without unambiguous guidance or adequate checks and balances. We are apprehensive that such a provision may lead to arbitrariness and unfair consequences.

(3) The process of consultation, despite giving time for responses, is deeply flawed because it violates the policy of pre-legislative consultation in India. Since artistic freedom concerns everyone across the country there should have been an attempt by the MIB to circulate and publicize such a draft in the regional languages giving adequate time to every citizen and every regional stakeholder to give their responses or suggestions.

(4) Besides broadcasters, media companies and content providers, the draft Bill also applies to any citizen, artist, journalist or creative professional, who may be using the digital platforms to air their views or for artistic expression. This threatens media freedom and journalistic/ artistic quality, besides the freedom of expression. Its extension to the OTT platforms will further create a chilling effect and put an undue burden of compliance on media companies dealing in creative content.

(5) We sincerely believe that the ministry should widen and deepen the process of consultation on this and withdraw the present draft Bill following the letter and spirit of the fundamental rights and freedoms enshrined in the Constitution of India.

Our detailed and clause-wise comments on the Draft Bill are given below:

Sl. No.	Particulars (clause, Sub- Section, Section)	Views/Comments/Suggestions/Remarks/Recommendations
---------	--	--

1.	Clause 2(1)(f); Clause 2(1)(g) and Clause 2(1)(h)	<p>The Broadcasting Bill expands the regulatory coverage of the Cable Act to include “OTT” content & digital news media under the ambit of the regulation. To capture emerging technologies, the Bill extends the application to “internet broadcasting networks”, which, as per its definition includes Internet Protocol Television (“IPTV”) and “OTT” broadcasting services. The Broadcasting Bill defines “broadcasting” as “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 an extension of this definition, ‘OTT broadcasting service operators’ such as Netflix, Disney Hotstar, Jio Cinema, etc. are classified as “Broadcasting network operator”. It clarifies that an “OTT” broadcasting service would not include a social media intermediary, or a user of such intermediary, as defined in rules under the Information Technology (IT) Act, 2000.</p> <p>“OTT” broadcasting services make on-demand or curated programmes available over the internet or a computer resource, which is consumed by a subscriber who makes an account with the provider. While “OTT” broadcasting services provide access to a range of content on its platform to several of its subscribers, viewers retain the autonomy to not consume a programme if they wish to do so. This, in principle, is a direct contradiction to the nature of cable TV or radio services, wherein consumers cannot choose to stop the airing of a programme (even if they may be able to switch channels). Applying stringent rules and codes to “OTT” broadcasting services may increase financial and compliance burden for such broadcasters, negatively impact user experience, choice, and even costs borne by the users. Thus, our considered suggestion is to completely avoid bringing “OTT” broadcasting services under regulation and at par with terrestrial, cable, and radio broadcasting services.</p>
----	--	--

2.	Clause 4(4)	<p>The clause states that the Central Government, may, <i>for the fulfilment of such social objectives, as may be prescribed</i>, allow registration or intimation as a broadcaster or broadcasting network operator, as the case may be, under this Act, with such terms and conditions, as may be prescribed, to the entities referred in clause (b), (d) and (g) of sub-section (2) of this section.</p> <p>In the absence of clarification or explanation on these ‘social objectives’, it becomes problematic to understand on what basis or reasoning have the traditional broadcasting rules and codes been applied to “OTT” broadcasting services. Regulatory homogenization of the cable TV and “OTT” content may stifle innovation and growth in the online curated content industry.</p>
3.	Clause 5(1)(f)	<p>This clause gives the executive unchecked and unaccountable, powers over the broadcasters. In the absence of adequate safeguards, such provisions may deepen the power imbalance between the broadcasting community and the executive, nurturing an environment of restricted freedoms, self-censorship, and chilling effect.</p>
4.	Clause 19: Programme Code and Advertising Code.	<p>However, these codes have not been defined/spelt out in the Bill.</p>
5.	Clause 20: News and Current Affairs Programmes.	<p>The provision under Clause 20 titled 'News and Current Affairs Programmes' may have wide-ranging consequences for independent journalists who rely on digital platforms such as social media to publish news that may typically be viewed as unpalatable to the executive/ government of the day. This broad provision will apply to not only journalists, but even to individuals who choose to share news through online blogs or platforms. This may affect online free speech as well as the freedom of journalistic/ artistic expression of a news</p>

		broadcaster/ artist or an independent news disseminator, whether in an organizational or individual capacity.
6.	Clause 24 (2)(d): Every broadcaster or broadcasting network operator shall broadcast only those programmes which are duly certified by the CEC:	The Government has the power to prescribe the size, quorum and other operational details of the content evaluation committees established by every broadcasting platform, which can result in significant and unwarranted control over these bodies. All these powers in the hands of the executive/ Government of the day will give it unbridled authority to impose censorship.
7.	Clause 26: Self-regulatory organisations of broadcasters and broadcasting network operators.	Self-regulatory organisations (SROs) are often funded by their members, which can lead to conflicts of interest and a lack of independence in decision-making.
8.	Clause 27: Broadcast Advisory Council.	The constitution of this advisory council will compromise the independence of its decision-making power.
9.	Clause 30: Power of Inspection.	This clause provides unlimited powers to the executive/ government of the day to control/ stifle free speech and to create a chilling effect contrary to democratic principles and constitutional freedoms.
10.	Clause 31: Power to seize and confiscate equipment.	These are unnecessary, counter-productive and possibly draconian powers which may be exercised to curb free speech and create an atmosphere of fear.

11.	Clause 35: Penalty and measures for contraventions of Programme code and Advertisement Code.	This clause provides unlimited powers to the government of the day to control free speech and may be used in an arbitrary manner to the detriment of stakeholders.
12.	Clause 36: Power to prohibit transmission of programme or operation of broadcaster or broadcasting network.	This clause provides unlimited powers to the executive/ government of the day to control free speech and create chilling effect.



RADHIKA JHA

Occupation: Project Lead (Rule of Law),

Common Cause

Address: 5, Institutional Area, Nelson
Mandela Marg, Vasant Kunj,

New Delhi-110070

Phone No: 011-45152796, 011-2613-1313

Email: commoncauseindia@gmail.com