Broadcasting Services (Regulation) Bill, 2023

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Why is in news?

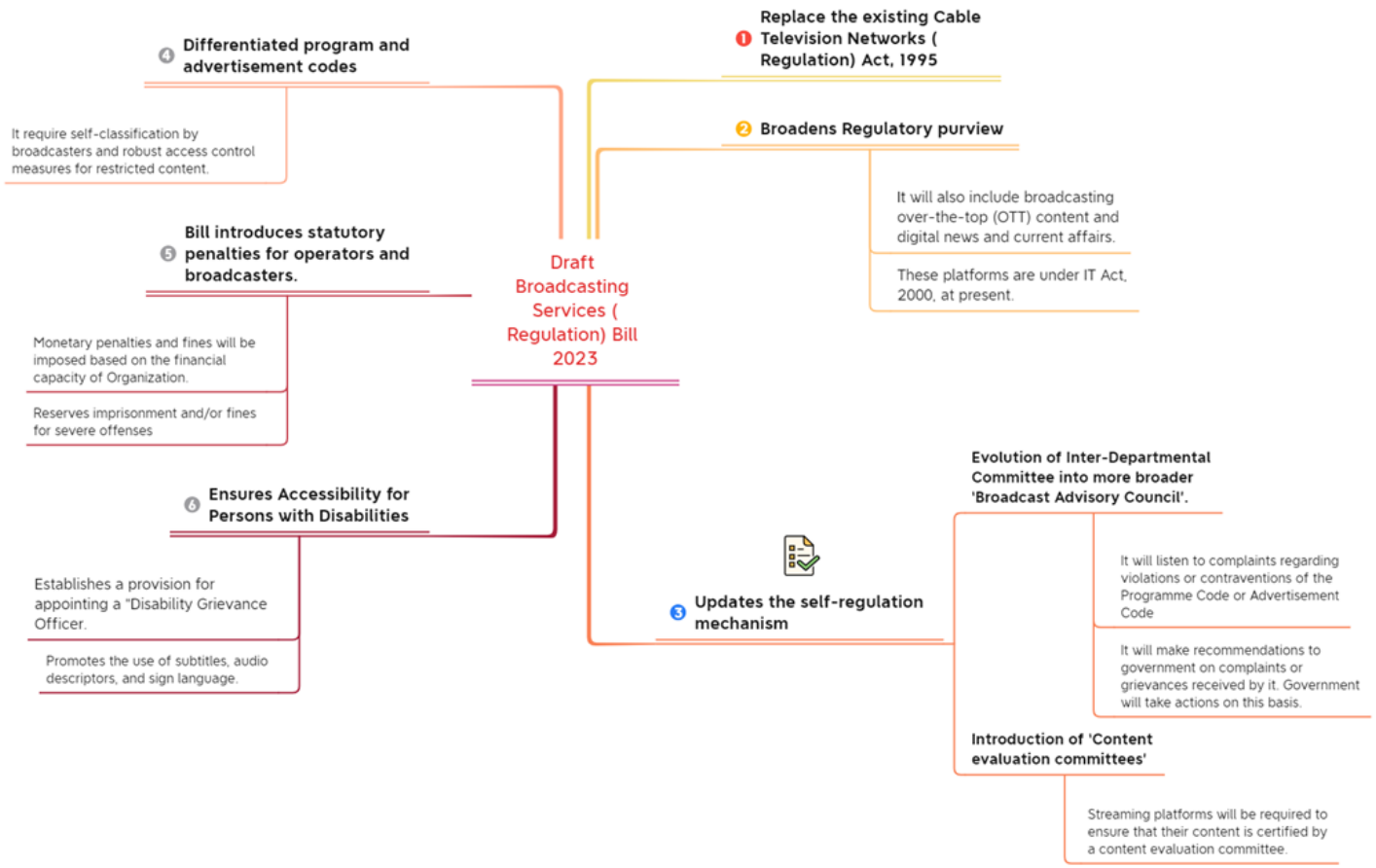
The broad scope of the Union government's draft Broadcasting Services (Regulation) Bill for traditional broadcasters has drawn a mixed response from legal experts and advocates.

About the Bill:

The new Broadcasting Services (Regulation) Bill, 2023, **expands regulatory oversight** to **include OTT platforms and digital content**.

It aims to **replace the Cable Television Networks (Regulation) Act**, proposing mandatory registration, content evaluation committees for self-regulation, and a three-tier regulatory system.

The government claims it will **modernise regulations and enhance business ease** but the move raises **concerns over potential censorship and impacts on freedom of speech** due to increased scrutiny of digital media for "obscene and vulgar" content.



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Highlights:

No person or broadcasting company can provide services or run a network without formal registration or intimation to the government, with the **exception of a few authorised bodies** like Prasar Bharati or Parliament channels.

In line with the provisions of the Cable Television Networks (Regulation) Act of 1995, all cable and satellite broadcasting network operators **must register to operate**, while broadcasters **should get approval from the registering authority** for transmitting programmes. They are also required to **maintain subscriber data**.

Similar provisions apply to **terrestrial and radio broadcasting networks**. Different rules can be made for different types of broadcasters and network operators, allowing for tailored regulations based on the nature of their operations.

The draft **further expands the purview of broadcasting rules** to networks that use the internet to broadcast services and programmes, such as **Internet Protocol Television (IPTV) and OTT broadcasting services** (classified as broadcasting network operators in the draft) if they have the **required number of subscribers or viewers**. The Bill **leaves it to the Union government** to prescribe limits later.

Under the Act, OTT broadcasting services will, however, not include a social media intermediary or a user of such intermediary, as defined under the Information Technology Act, 2000.

Content quality and accessibility:

Any programme or advertisement broadcasted through TV, radio, or other broadcasting services **must adhere to the Programme Code and Advertisement Code**, which are **yet to be defined**.

These Codes will **also apply to individuals and organisations broadcasting news and current affairs programmes** online through e-newspapers, news portals, websites and other similar social media platforms that operate as a “systematic business” or “professional” entity.

Digital copies of newspapers and publishers of commercial newspapers, however, **will be exempted**.

Broadcasters will have to **classify their programmes into different categories** based on context, theme, tone, impact and target audience.

The classification must be prominently displayed at the beginning of the show so that viewers can make “informed decisions”.

The Bill requires network operators to **implement access control measures** for shows that are classified for restricted viewing, such as those with adult content.

Additionally, the Bill provides **accessibility guidelines** to address the needs of persons with disabilities, calling for broadcasting network operators and broadcasters to make their platform, equipment and programmes more accessible.

Suggested measures include audio descriptions for the blind, sign language translations, adding subtitles in different fonts, sizes and colours, and using accessible applications.

It further asks broadcasters to **make a certain percentage of content accessible within a specified period** in accordance with the accessibility guidelines.

A **disability grievance redressal officer** will be appointed by the Centre to address complaints pertaining to the accessibility guidelines, and a broadcaster or broadcasting network operator could be penalised in case of a violation.

Self-regulation:

One of the highlights of the draft is a **proposed self-regulation regime** to ensure compliance with the programme and advertisement codes and to address other complaints.

Every broadcaster or broadcasting network operator **must establish a Content Evaluation Committee** (CEC) with members from various social groups, including women, child welfare, Scheduled Castes, Scheduled Tribes, and minorities.

Broadcasters will be **allowed to air only those programmes certified by the CEC**, except for specific shows exempted by the government.

The **Centre**, meanwhile, will have the authority to define the size, quorum, and other operational details of the committee.

The details of the committee members, including their names and credentials, should be published by the broadcaster or network operator on their website.

The **three-tier broad regulatory structure** prescribed in the draft has the following components:

Self-regulation by operators:

Broadcasters and broadcasting network operators will have to **establish and maintain mechanisms** for the **filing and redressal of complaints.**

A **grievance redressal officer** will be appointed to handle complaints related to content and contravention of the programme and advertisement codes.

In case the official is unable to decide in the prescribed period or the complainant is not satisfied with their decision, it can approach the self-regulatory organisation.

Self-regulatory organisations:

It is a proposed body of broadcasters, broadcasting network operators or their associations, which will guide their members to **ensure compliance with the broadcasting rules** and **deal with grievances related to content violations** not resolved within a specific time frame.

They can also **take up appeals** against the decisions of broadcasters or network operators.

If a broadcaster is **found guilty of any wrongdoing**, the self-regulatory organisation to which it belongs has the authority to **expel, suspend, or impose penalties** in the form of advisories, censures, warnings, or monetary fines, not exceeding ?5 lakh for each violation.

Broadcast Advisory Council:

The Centre will establish an advisory council, consisting of **independent experts and government representatives**, to oversee the implementation of the regulations.

It will **hear content violations complaints** and accordingly make recommendations to the government.

The government will then, after due consideration, issue appropriate orders and directions. The Council can also form review panels to assist with its functions.

These panels **are assigned specific cases or appeals** and provide their recommendations, considered as recommendations of the Broadcast Advisory Council as per the text of the Bill.

Provision for inspection, seizure of equipment:

The Broadcasting Services (Regulation) Bill allows inspections by the government **without prior notice**.

Operators must facilitate monitoring at their own cost and can face equipment seizure if violations are suspected. **Companies are liable** unless they prove a lack of knowledge or due diligence.

The Bill says "The equipment seized shall be **liable to confiscation** unless the operator of broadcasting network or broadcasting services demonstrates compliance with the provisions of the rules or guidelines, **within 30 days from the date of seizure of the said equipment**".

There is, however, a provision of **a written notice** to the operator informing it of the grounds for such confiscation to provide the opportunity of making a representation. In case **no such notice is given within 10 days** from the date of the seizure of the equipment, it has to be **returned to the operator**.

Penalties for non-compliance:

The Bill includes provisions for penalties such as removal of objectionable shows, orders, apologies, off-air periods, or even cancellation of registration in case of non-compliance with the programme and advertisement codes.

The Centre may **prohibit the transmission of a programme**, or **operation of broadcaster or broadcasting network** by citing public interest or national security reasons.

If the programme or channel is "likely to promote disharmony or feelings of enmity, hatred, or ill-will between different religious, racial, linguistic, or regional groups or castes or communities or if it is likely to disturb public tranquillity on grounds of religion, race, language, caste, or community," then it can be prohibited by order, the draft reads.

"Where the Central Government thinks it necessary or expedient so to do in the **interest of the**— (i) sovereignty or integrity of India; or (ii) security of India; or (iii) friendly relations of India with any foreign State; or (iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or re-transmission of any Television Channel or programme," it says.

In addition, the Bill **provides for monetary penalties and imprisonment** for certain "serious offences." The amount of the penalty will depend on the financial capacity of the company or individual.

The maximum penalty for unregistered entities and major categories is 100%, while the penalty for medium, small and micro categories is 50%, 5% and 2%, respectively.

Main concerns:

The broad scope of the Bill for **traditional broadcasters**, such as cable TV, and the evolving OTT space, which essentially has a **different business model and content delivery mechanism**, has drawn a **mixed response** from legal experts and advocates for digital freedom.

Digital rights organisation Internet Freedom Foundation (IFF) has called for a cautious examination of the Bill due to the proposed codes' similarity to the **Code applicable to cable TV** and the **increased censorship of TV programmes** as a consequence.

"This may **affect the publisher's** online free speech, freedom of journalistic expression and artistic creativity, & the citizen's right to access differing points of view because publishers will be compelled to only produce content which is palatable to the Union Government," it says.

The group claims that **exerting executive control over OTT content** will lead to "**over-compliance and self-censorship"** because platforms would aim to avoid the government's broad discretion when it comes to punishments.

The IFF further notes that the Bill has **left several provisions to be determined later by the Centre**, arguing that such excessive delegation of rule-making would create uncertainty for stakeholders.

"Spanning over 70 pages, the Bill includes 60 instances of "**as may be prescribed**" and 17 instances of "**as notified by the [Union] Government**." While we recognise that in some instances specificity is needed to be or must be left to future rulemaking, these must be accompanied by relevant safeguards to protect against arbitrary rule-making," the IFF says.

On the potential impact of the legislation on digital platforms, technology policy expert Shruti Shreya of think-tank The Dialogue believes that the requirement for all online content creators to adhere to a programme code requires careful consideration. "

Conclusion:

The Broadcasting Regulation is not just about compliance but about creating an environment that encourages growth, innovation, and equitable access to communication services. By finding the optimal equilibrium between regulatory supervision and industry autonomy, India can strategically position itself for long-term success in the swiftly advancing telecommunications sector.