

Ministry of Information and Broadcasting
Shastri Bhawan, New Delhi

Comments on the Draft “Broadcasting Services (Regulation) Bill, 2023”

Thank you for the opportunity to comment on the November 2023 draft of the “Broadcasting Services (Regulation) Bill, 2023”¹. I am a doctoral student studying computer security, especially as it relates to public policy.

I’m writing to share my concern about parts of the draft bill that threaten freedom of expression and press freedom in India. These values are central to the proper functioning of any democracy, and especially one as diverse as India. The bill grants the central government broad, overreaching powers to limit the dissemination of content, and without adequate safeguards to prevent misuse of these powers. The scope of the “broadcasters” affected by the bill is broad and vague, potentially allowing the central government to regulate all speech by Indians on the internet. The proposed regulatory structure and sanctions inherently disincentivise bold content, instead encouraging self-censorship. Additionally, I am concerned that the compliance requirements proposed by the bill may be a large barrier for new entrants into broadcasting markets. This could cause concentration of power and stifling of innovation in these markets. I elaborate on these concerns and offer other comments below.

No.	Particulars	Comments
1.	§5	Expenses arising from the new responsibilities placed upon broadcasters and broadcast network operators (hereby “broadcasters”) may reduce the ability of new players to enter broadcasting markets. This would hurt the robustness and diversity of the broadcasting and media ecosystems by concentrating power in the hands of just a few well-resourced entities. New requirements should be drafted such that they do not make it prohibitively expensive for new broadcasters to compete with established ones.
2.	§13 (2)	This is an important provision because it prevents the risk of “vendor lock-in” whereby users wouldn’t be free to switch broadcasting networks without having to also replace their receiver hardware.
3.	§14 (1)	It’s unclear what the extent of the scope of “subscriber data” is. If it is prescribed to include names, channels viewed, and other personally identifiable information about subscribers, this may lead to large-scale surveillance of the media consumption habits of people.

¹https://mib.gov.in/sites/default/files/Public%20Notice_0.pdf [archive from 12th November, 2023]

4. §20 I am concerned that the scope of “broadcasters” described in this section is overly broad. By including “[a]ny person who broadcasts news and current affairs programs” through a variety of mediums including websites and social media intermediaries, this potentially subjects a bulk of online speech of all Indians to the Programme Code and Advertisement Code. This poses a grave threat of censorship of blog posts, online videos, and even social media posts. In particular, it gives the central government immense power to control the expression of news, satire, political commentary, and more. Chapter V of the bill also describes stringent punishments for violation of the codes, which may lead to a *chilling effect*, where people self-censor the expression of their ideas on the internet. This would be an unhealthy state of affairs for a democracy like our own.
5. §23 Promoting media accessibility for people with disabilities is an important goal and a praiseworthy consideration. As with all other new requirements, and as suggested earlier, these guidelines should be drafted such that they avoid introducing major compliance expenses, lest they entrench the market domination of established broadcasters.
6. §24 (1) The multi-tiered regulatory structure embeds a tendency to self-censor and to steer clear of subjects that may be remotely controversial. This would result in an environment that’s hostile to any work that challenges the status quo. This could be anything from a corruption-exposing investigative piece to thought-provoking political satire. As one might imagine, this would stifle work that may be of great public or artistic value. This also runs counters to the principles of liberty of thought and expression that India was founded upon.
7. §24 (2) (c) I am concerned that requiring the names of the members of the Content Evaluation Committee to be public may expose them to the threat of harassment. This may additionally interfere with their ability to impartially perform their duties.
8. §27 (1) Since the Broadcast Advisory Council (BAC) is appointed by the central government, it cannot—by itself—be an effective means of holding the government accountable. This also means that there is a risk of the BAC not being impartial in its decisions, and there may be an appearance of a conflict of interest when the BAC sides with the central government.
9. §28 It’s worth highlighting that according to the draft of the bill, the deliberations of the BAC will be mere “recommendations”. The final decision to exercise the broad, overreaching powers ascribed to the central government by the bill will be made by the government itself.
10. §30–§31 The additional threat of unannounced inspections and equipment confiscation further incentivises self-censorship by broadcasters. Ideally, broadcasters—and especially the press—would be able to hold the government accountable through their content. However, the broadcasting bill in its current form would contribute to the inversion of that dynamic.

11. §35 (1)–(4) These clauses give the central government immense powers to control the function of all broadcasters. In addition, there are no meaningful checks on these wide-ranging powers. This poses a serious threat to the freedom of the press, and thus, to the health of our democracy.
 12. §35 (1) (c)–(d) The ability of the central government to compel broadcasters to issue apologies stands out in the list that would already be alarming without it. One can imagine a news broadcaster being compelled to apologize for news coverage that the government doesn't take kindly to. The central government could effectively force broadcasters to disavow their reporting, satire, and any other kind of content, so long as its censure can be justified under the broad framework of the bill. This is clearly an affront to press freedom due to the threat of punishment for coverage unfavourable to the government, regardless of its veracity. Such provisions would severely shrink the range of acceptable expression and discourse, resulting in a chilling effect across all mediums covered by the bill.
 13. §36 Like section 35, this section also grants the central government and any “authorised officer” the power to prohibit the transmission of any programme or channel for any reason that can be said to “likely disturb the public tranquillity”. This is a disturbing, broad power with the potential to limit the coverage of any kind that may be deemed controversial. This could be interpreted to cover anything from subversive works of fiction to news coverage of communal violence and criticism of domestic or foreign governments.
-

I hope the Ministry finds these comments valuable and considers making major changes to address the threats to press freedom, digital freedom of speech, and democracy at large.

Sincerely,

Shreyas Minocha
PhD Student, Georgia Institute of Technology
shreyas@shreyasminocha.me