



15 January 2024

To:

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Submission on the draft Broadcasting Services (Regulation) Bill, 2023

We thank the Ministry of Information and Broadcasting (MIB) for the opportunity to submit comments on the draft Broadcasting Services (Regulation) Bill, 2023.

About Access Now

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence and expertise based in over 20 countries across six continents, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights.

Access Now engages with a global community of individuals from over 162 countries in our annual RightsCon summit series, in addition to operating a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We coordinate as part of CiviCERT (Computer Incident Response Center for Civil Society) a Trusted Introducer accredited CERT, and are a member of the global Forum of Incident Response and Security Teams (FiRST). We have special consultative status at the United Nations.¹

In India and globally, Access Now has consistently engaged with stakeholders including governments and regulatory authorities on matters pertaining to digital rights,² including intermediary liability, content governance, cybersecurity, data protection,³ internet

¹ Access Now, *About us*, <https://www.accessnow.org/about-us/>.

² Access Now and Digital Rights Watch, *Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 37th Session Third Cycle for Australia*, <https://www.accessnow.org/wp-content/uploads/2020/09/Australia-UPR-Submission-9-July-2020-1.pdf>.

³ Access Now, *Joint submission on the Bangladesh Draft Data Protection Act 2023*, <https://www.accessnow.org/wp-content/uploads/2023/10/Submission-on-the-Bangladesh-Data-Protection-Act-2023-Access-Now-and-Tech-Global-Institute.pdf>.



shutdowns, surveillance⁴ and digital security.

Submissions on the draft Broadcasting Services (Regulation) Bill, 2023

At the outset, we respectfully submit that the draft Broadcasting Services (Regulation) Bill, 2023 (“the draft Bill”) raises concerns about people’s fundamental rights to free speech and expression, the right to information, and the freedom of the press. The draft Bill contains unreasonable limitations on free expression; enhances government control over online content without independent oversight and safeguards; hampers free flow of information on the internet – the lifeblood of democracy in the digital age; and significantly curbs press freedom, including by making news and current affairs content subject to content regulation measures applicable to other types of content. The draft Bill also leaves several important provisions to be determined through executive rule-making, resulting in uncertainty about its application and granting the executive broad powers to shape the law without parliamentary oversight and consultation with stakeholders.

Below we highlight some of the main issues with the draft Bill and provide our clause-wise comments in the prescribed format.

Internet-based services do not necessitate registration requirements

The draft Bill proposes to mandate registration for and regulate internet-based programmes, including OTT broadcasting services and any person providing news or current affairs programmes through a social media intermediary (for example, YouTube, Sharechat, Vimeo, X/Twitter). These services differ from traditional media broadcasting services and should not be subject to a similar registration or licensing regime.

The rationale for regulating traditional broadcast media is to ensure public access to communications networks using scarce public resources such as radio spectrum, and to ensure the absence of technical issues such as frequency interference. However, internet-based services do not face the same issue of scarcity and so a similar rationale does not exist to regulate them in the same way as traditional radio spectrum transmitted networks.

⁴ Access Now, *Submission to the Federal Trade Commission’s request for comments on the prevalence of commercial surveillance and data security practices that harm consumers* (Commercial Surveillance ANPR, R111004), <https://www.accessnow.org/wp-content/uploads/2022/11/Access-Now-Submission-to-Commercial-Surveillance-ANPR-R111004-.pdf>.



The Centre for Law and Democracy and International Media Support reiterates the relevance of scarcity for regulation, and the distinction between traditional and internet-based services in their Briefing Note Series on Freedom of Expression.⁵

“Without regulatory intervention in assigning frequencies to broadcasters, chaos would reign and interference would render the entire system unworkable. The limited nature of the broadcast spectrum, and the resulting limits on the number of broadcasters, also justifies regulatory interventions to support diversity of content. ... In due course, however, the Internet will essentially defeat scarcity.”

The internet is characterised by its openness, making it easier for individuals to exercise their rights to free speech and expression, to know, and to earn a livelihood. The application of a uniform regulation would undermine the very ease of access and availability of alternatives that people can choose from, that enhance people’s enjoyment of rights and contribute to the rapid growth of the digital economy.

Access Now’s position paper on respecting and affirming people’s rights while regulating OTTs⁶ lays out the two core principles with which OTT regulation should comply:

- Avoid applying one-size-fits-all telecom-style licensing frameworks onto internet applications or services.
- Shape regulatory intervention of internet applications or services on a foundation that considers human rights and overall public interest.

Content restrictions on news and current affairs programmes

The draft Bill imposes content restrictions, including the Programme Code, on all programmes including news and current affairs programmes. The content restrictions are formulated by the Central Government and are also enforced by the Central Government. This is an infringement on the right to free speech and expression in all cases, and is particularly concerning when applied to news and current affairs programmes.

News and current affairs programmes do not create events to report on and so do not set

⁵ The Center for Law and Democracy and International Media Support, *Briefing note series: Freedom of expression, Briefing Note 7 of 12*,

<https://www.mediasupport.org/publication/briefing-note-series-freedom-expression/>.

⁶ Access Now, *Proposals for Regulating Internet Apps and Services: Understanding the Digital Rights Impact of the Over the Top Debate*,

<https://www.accessnow.org/access-now-position-paper-protecting-digital-rights-ott-debate/>.



the tone or theme for their programmes beyond certain editorial choices. A strict content regulation policy as proposed in the draft Bill is inherently against the nature of news, and will seriously limit the ability of the press to report freely and fairly on important issues, many of which involve government bodies and their functioning.

The application of the draft Bill to online news and current affairs programmes is also concerning because the internet has emerged as a platform for independent news media not owned by corporations or the government. Research has shown that traditional news media in India is dominated by “a small number of companies and conglomerates” and the government (All India Radio) has a “nationwide monopoly on radio news”.⁷ In this context, it is crucial to encourage the growth of independent, people-funded news media which can flourish on the internet because of the lower barriers to entry and direct subscription models encouraging less financial dependence on organisations which may have an interest in their portrayal in the media.

Further, because of the internet, people can choose to view or listen to different types of audio-visual content such as podcasts and video essays or shorter videos. The innovation available on the internet allows news and current affairs programmes to discuss topics in greater detail or from particular nuanced perspectives. This is not the preferred format of traditional media, which caters to a mass audience and operates in a scarcity of resources. With the emergence of such internet-based programmes, people can choose to supplement their traditional news sources with more in-depth coverage of topics of their interest. This has led to an enhancement of the right to free speech. Some concerns which may arise in traditional news media do not apply at all to these forms of internet-based independent news media in light of the fundamental difference that they have “pull” content rather than the “push” content of traditional media like television and radio.

The imposition of content restrictions and onerous regulations on internet-based news providers would therefore seriously limit an important resource for the people to meaningfully exercise their right to free speech and expression and to know.

The Supreme Court in *Madhyamam Broadcasting Limited v. Union of India & Ors.* reiterated the importance of an independent press, holding:

“An independent press is vital for the robust functioning of a democratic republic. Its role in a democratic society is crucial for it shines a light on the functioning of the state. The press has a duty to

⁷ Reporters Without Borders, *Media Ownership Monitor: Who owns the media in India?*, <https://rsf.org/en/media-ownership-monitor-who-owns-media-india>; Data Leads, *Media Ownership Monitor 2018*, <https://india.mom-gmr.org/en/>.

“speak truth to power, and present citizens with hard facts enabling them to make choices that propel democracy in the right direction. The restriction on the freedom of the press compels citizens to think along the same tangent. A homogenised view on issues that range from socio-economic polity to political ideologies would pose grave dangers to democracy.”⁸

In *Madhyamam*, the Court applied the principle that the state can only prohibit the broadcast of news programmes or channels on grounds under Article 19(2), and found that in the case, MIB’s order of non-renewal of a licence to broadcast a news channel on the grounds of its “alleged anti-establishment stance” was an unconstitutional restriction on free speech. Further, the Court found that MIB had not complied with procedural safeguards in the proceedings under the Cable TV Networks Act. This judicial ruling therefore supports the recommendation that the draft Bill cannot include unconstitutional content restrictions on any news or current affairs programmes.

The blanket application of content regulation measures for all types of content without distinction, extensive discretionary powers to the government and lack of predictability and clarity on permissible speech will result in self-censorship by individuals, media outlets, creative content creators and others. In addition to being an egregious violation of free expression, and threat to freedom of the press which serves as an important check against all three branches of the government, including the executive, it will rob the internet and India’s democracy of its diversity and creativity, which are fundamental to any open society and contribute to the global impact of India’s culture, democracy, and people.

Broadcasting services must not be subject to vague or overbroad content restrictions

Devoid of the limiting features of traditional broadcasting, the internet enables greater diversity of information, content, and perspectives, and access to and choice among platforms for free speech and expression, ultimately contributing to a vibrant and participative democracy.

The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has described the internet as a “key means” by which people can exercise their right to free speech, highlighting the benefits of global connectivity which permits people to “... access [to] information and knowledge that was

⁸ Supreme Court of India, *Madhyamam Broadcasting Limited v. Union of India & Ors.* Civil Appeal No. 8129 of 2022, Judgement dated 5 April 2023, https://main.sci.gov.in/supremecourt/2022/6825/6825_2022_1_1501_43332_Judgement_05-Apr-2023.pdf.



previously unattainable. This, in turn, contributes to the discovery of the truth and progress of society as a whole.”⁹

Under international human rights law, any restriction on people’s right to free speech and expression must satisfy a three-part test of (i) legality, with predictability and transparency; (ii) legitimacy of purpose; and (iii) necessity and proportionality, that is, it must be necessary to and the least restrictive means required to achieve the stated purpose. The Supreme Court of India has also established that any restriction on the fundamental right to free speech and expression under Article 19(1)(a) of the Indian Constitution must satisfy the test of proportionality.

The draft Bill confers expansive and unchecked powers on the Central Government to restrict content on grounds which are not specified in the Bill but are left to be prescribed through executive rule-making at a later stage. The draft Bill also leaves the monitoring and evaluation of content and the implementation of all restrictions to authorities controlled by the Central Government.

Under the current law, the Cable Television Networks Regulation Act, 1994 (“the Cable TV Networks Act”), a similar provision exists empowering the Central Government to prescribe content restrictions through a “Programme Code” which is laid out in the Rules, 1995 to the Act. The Programme Code in the 1995 Rules contains multiple broad and subjective grounds outside of Article 19(2) on which content on cable television networks may be prohibited. The Programme Code must not be reproduced in any regulation of free speech and is unsuitable for the regulation of online content.

The need for an independent authority to check restrictions on free speech

The draft Bill proposes a three-tier structure to monitor broadcast content. However, the third and final tier of this structure, the proposed Broadcast Advisory Council, will consist of members appointed by the Central Government and five officers of the Central Government. The Central Government may prohibit the broadcast of any programme, or cancel a registration to broadcast a programme or channel on the basis of recommendations from the Council.

The lack of independence undermines the objective of enabling the right to free speech and expression, as it consolidates censorship powers in the Central Government. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed the need for an independent authority

⁹ Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, <https://digitallibrary.un.org/record/706331?ln=en>.



to check restrictions, stating:

“Moreover, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.”¹⁰

The Guidelines for Broadcasting Regulation drafted by Eve Salomon for UNESCO and the Commonwealth Broadcasting Association discuss the various ways in which the independence of any regulatory body should be maintained, commenting that “regulation which is independent of the State is vital to preserve the right to freedom of speech”.¹¹ Regulators must “be able to function free from any interference or pressure from political or economic forces”; all terms relating to their functioning, compensation, and accountability mechanisms must be set out in law; and they should also not have any conflicts of interest in the broadcasting sector.¹²

We further submit that the three-tier structure in the draft Bill replicates the three-tier governance structure contained in the IT Rules of 2021, which are currently facing legal challenges in Indian courts, with application of parts of the Rules having been stayed, including on the ground that they violate fundamental rights. The IT Rules, and the three-tier mechanism, have been widely criticised for the lack of independence, executive overreach, and adverse impact on fundamental rights.¹³

Recommendations

- Access Now respectfully recommends that because of the extremely broad and vague provisions restricting free speech, the need to approach the issue of regulation with clear and valid objectives, and the lack of independence of any body to check these restrictions, the draft Bill must be withdrawn in its entirety.

¹⁰ *Id.*

¹¹ Second Edition, 2014,

<https://www.cba.org.uk/wp-content/uploads/2012/04/RegulatoryGuidelines.pdf>

¹² *Id.*

¹³ Access Now, *Civil society calls on Indian government to withdraw amendments to IT Rules*,

<https://www.accessnow.org/press-release/india-it-rules-amendments-joint-submission/>; Times of India, *UN report: India's IT rules don't conform to global rights norms*,

<https://timesofindia.indiatimes.com/business/india-business/un-report-indias-it-rules-dont-conform-to-global-rights-norms/articleshow/83676962.cms>; Electronic Frontier Foundation, *India's Strict Rules For Online Intermediaries Undermine Freedom of Expression*,

<https://www.eff.org/deeplinks/2021/04/indias-strict-rules-online-intermediaries-undermine-freedom-expression>.

<https://www.eff.org/deeplinks/2021/04/indias-strict-rules-online-intermediaries-undermine-freedom-expression>.



- Access Now further recommends that meaningful, multi-stakeholder consultations be held to discuss the purposes of regulation of broadcasting services, the objectives sought to be achieved, and evolve a reasonable and rights-respecting policy in line with global best practices and principles of international and domestic human rights law.

Clause-wise comments

S. No.	Particulars (clause, Sub-Section, Section)	Comments
	Chapter I	
	Cl.2(y)	This clause specifically provides that “OTT broadcasting services shall not include a social media intermediary, or a user of such intermediary”. This appears to contradict Cl.20, which applies the Programme Code and all “provisions of this Act as applicable to OTT broadcasting network operators” to the users of social media intermediaries, leading to uncertainty of application, and potentially self-censorship.
	Chapter II: Regulation of Broadcasting Services	
	Cl.3	This clause does not mention users of social media intermediaries who are mentioned as being covered by the draft law in Cl.20, leading to uncertainty of application and damage to free expression.
	Cl.4(1)	It is unclear whether the requirement of registration under 4(1) applies to OTT broadcasting services. If they are included, it implies that under Cl.20 all persons broadcasting news & current affairs also have to register, which is an onerous and overbroad requirement, and out of touch with current realities of news sharing in that the internet has democratised the information exchange and independent individuals and groups can share news/information, who do not have the same resources of those of



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		established media organisations and agencies.
	Cl.4(2) and Cl.4(4)	<p>Cl.4(2) acts as a restriction on broadcasting, while Cl.4(4) allows the Central Government to lift this restriction at its own discretion.</p> <p>Read together, clauses 4(2) and 4(4) grant the Central Government a discretionary power to permit registration as a broadcaster for itself, its departments, companies, undertakings, joint ventures, or other entities funded by it, while prohibiting any state government or entity owned or controlled by a state government, local government, public authority, an officer of the central government or a state or local government or a public authority, a political party, or “any other body” as may be notified, to register as a broadcaster.</p> <p>Permission to broadcast by any of the entities in Clause 4(2) may be granted only by the Central Government for “the fulfilment of such social objectives, as may be prescribed”. This is a vague and unclear ground. The clauses essentially restrict broadcasting by these entities for any object <i>other</i> than the undefined “social objectives”, which is an unconstitutional restriction on free speech and severely restricts the right to access information and the right to know.</p> <p>The Central Government should not be the sole arbiter of whether an entity may or may not register as a broadcaster, and should not have the discretion to notify “any body” as ineligible to register as a broadcaster.</p> <p>There is no valid ground under Article 19(2) for the blanket restriction on broadcasting and the subjective, discretionary regime sought to be instituted by the draft Bill. The proposed framework will significantly affect the free flow of ideas and information in India, which is important not only for democratic processes and to ensure accountable, representative government, but for fulfilment and</p>



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		enjoyment of the right to free speech and expression as well as the right to livelihood.
	Cl.5	<p>The terms and conditions in Cl.5(1)(a) have been left to be prescribed through rules, which undermines the public consultation on the law and places excessive control in the hands of the government.</p> <p>The imposition of a programme code could unlawfully restrict free speech and the lack of predictability also undercuts the ease of doing business. Further comments on the Programme Code are in the comment to Cl.19.</p> <p>Further, the power to seek information in Cl.5(f) is extremely broad and not limited by any reasonableness, purpose or privacy limitations.</p>
	Cl.16(2)	<p>The requirement for OTT broadcasting services to intimate the Central Government of its operations would apply to persons broadcasting news and current affairs through Cl.20, but this is not explicitly mentioned in Cl.3 or Cl.16. The applicability of the provisions is highly vague, causes confusion in interpretation, and avenues for misinterpretation and penalisation of broadcasters.</p>
	Cl.17	<p>The discretion to relax obligations on OTT broadcasting services not meeting the threshold of subscribers or active users prescribed under 16(2) is not linked to any purpose and brings a lack of clarity as to the applicability of provisions to such services. It would allow the Central Government to remove legal requirements for entities it favours while forcing everyone else through onerous obligations, with no checks or balances on the exercise of such discretionary powers by the government.</p>
	Cl.19	<p>The imposition of a binding Programme Code on any broadcast content including news and current affairs, where such Code is to be prescribed through rules and is not subject to the present consultation</p>



S. No.	Particulars (clause, Sub-Section, Section)	Comments
		<p>process, leaves a lot to the discretion of the government and could be an overbroad restriction on free speech.</p> <p>Internet based services have enabled a wide diversity of creative content to thrive. Regulation akin to that for traditional broadcasting services will essentially homogenise content and deprive people of choice, agency and the rights to information and free expression.</p> <p>Further, news and current affairs content is fundamentally distinct in nature, process, function and role in a democracy as a crucial check against all branches of government, and ought not to be made subject to the same regulations that are applicable to all types of content. This would strike press freedom at the very core, and endanger independent journalism.</p> <p>The existing Programme Code under the 1995 Rules provides grounds for censorship that are vague and overbroad, and limit artistic creativity, democratic debate and discussion.</p> <p>The grounds include offending against “good taste or decency”, promoting “anti-national attitudes”, or showing a “snobbish” or “ironical” attitude in portrayals of ethnic, linguistic, or regional groups, or content that “criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country”.</p> <p>For the reasons outlined in our detailed comments, this Programme Code, or anything like it, must not apply to internet based services, in order to protect fundamental rights and to enable a diversity of platforms to thrive.</p>
	<p>Cl.20 Regulating content of “news and current affairs programs” broadcast by “any person” through</p>	<p>Cl.20 applies content regulations including the vague and unlawful Programme Code determined by the executive to news and current affairs programmes. This will result in censorship of news and negatively affect people’s right to free speech as well as their</p>



S. No.	Particulars (clause, Sub-Section, Section)	Comments
	<p>a. Online paper b. News portal c. Website d. Social media intermediary e. Other similar medium</p> <p><i>Not including Publishers of newspapers and replica e-papers of such newspapers as part of a systematic business, professional, or commercial activity</i></p>	<p>right to know, which is crucial in a democracy. Expanding the scope of the law to individuals and non-cable news organisations limits free speech and expression, restricts the availability and variety of news and current affairs programmes for people. Cl.20(2) seems to contradict Cl.2(y) in its applicability. Cl.20(2) is also extremely broad, providing unlimited rule-making powers to the government.</p> <p>It may also be noted that the application of a code to censor free speech on social media has been stayed by the Bombay High Court¹⁴ which noted: “The various ‘do’s’ and ‘don’ts’ of the Programme Code may be relevant for a programme carried in the cable service but per se cannot bind writers/ editor/ publishers of content on the internet to express views which may be against good taste or even may not be decent. If a writer/ editor/ publisher has to adhere to or observe the Programme Code in toto, he would necessarily be precluded from criticising an individual in respect of his public life [see: Rule 6(1)(i)].”</p>
	Cl.21	<p>Cl.21 requiring self-classification, based on guidelines formulated by the government, does not state any objective basis for classification and contains various vague terms which make self-classification an uncertain task. The purpose of classification appears to be the application of “access control measures” and restricting the reach of programmes, rather than merely giving people information. Restrictions on free speech must be based on grounds contained in Article 19(2) and for valid purposes. Broadcasters of news and current affairs programmes</p>

¹⁴Bombay High Court, *Agij Promotion of Nineteenonea Media Pvt. Ltd. & Ors.* WP (L.) NO.14172/2021, Order dated 14 August 2021,

<https://bombayhighcourt.nic.in/generatenewauth.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9vcmlnaW5hbC8yMDIxLyZmbmFtZT1GMjY2ODAwMTQyMDQyMDIxXzYucGRmJnNtZmxhZz10JnJgdWRkYXRIPSz1cGxvYWRkdD0xNC8wOC8yMDIxJnNwYXNzcGhyYXNlPTMxMDgyMzE4NTk1NCZuY2I0YXRpb249JnNtY2I0YXRpb249JmRpZ2NlcnRmbGc9WSZpbmRlcmZhY2U9>



S. No.	Particulars (clause, Sub-Section, Section)	Comments
		<p>in particular should not be required to “classify” their programmes.</p> <p>Classification implies restrictions on the viewing of certain programmes based on the themes and topics being discussed in the programme. Forcing news and current affairs broadcasters to classify their programmes would restrict the types of news and current affairs they can talk about, the reach of their content, and negatively affect the free flow of information and sharing of ideas.</p>
	Cl.22	Cl.22 implements restrictions on the availability of programmes without any stated objective for restrictions within permissible restrictions on free speech.
	Cl.23(3)	<p>The endeavour to improve accessibility of programmes for persons with disabilities furthers the right to free speech and expression and to information and is a positive step.</p> <p>However, the clause is generally applicable to all broadcasting services without reference to the capacity of broadcasters to implement such measures.</p> <p>The penalty clause should not be applied in a uniform manner without reference to the capacity of broadcasters.</p> <p>Exemptions or tiered penalty structures are needed to allow for differences in resources between organisations and to not unduly penalise smaller organisations and individuals.</p>
	Chapter IV: Regulatory Structure	
	Cl.24	The lack of independence in the three-tiered regulatory structure and the vesting of ultimate authority in the Central Government endangers the right to free speech and expression, the right to information and freedom of the press.



S. No.	Particulars (clause, Sub-Section, Section)	Comments
		<p>The application of a similar three-tiered regulatory structure under the IT Rules has been stayed by the Bombay High Court and the Madras High Court owing to the threat to the fundamental right to free expression.¹⁵</p> <p>No other major democracy in the world places such unchecked power on the government to decide what stays online.</p>
	Cl.27	<p>The Broadcast Advisory Council lacks any independence from the Central Government in its terms and conditions of appointment, selection, tenure and “manner of performance of [its] functions”. Further, most of these details are left to be prescribed by the Government through rule-making by the executive, bypassing parliamentary oversight at this stage. The Council’s power to co-opt members is also limited as such members can vote only if the Central Government approves. The Council is not an adequately independent body which meets international best practices to implement regulations on broadcasting services.</p>
	Cl.28	<p>The Council’s functioning is advisory, and not binding, on the Central Government. This further dilutes the potential for independent regulation.</p>
	Cl.29	<p>The Council does not have the power to determine how it will carry out its own functions of reviewing appeals or referrals. Cl.29 provides that hearings may be held by “panels” to be prescribed. This increases the risk of arbitrary decision-making if the whole Council is not required to hear/ make and vote on recommendations.</p>
	Chapter V: Inspections and penalties	<p>Penalties and other powers can be used to shut down, intimidate, or otherwise coerce broadcasting</p>

¹⁵ Bombay High Court, *Agij Promotion of Nineteenonea Media Pvt. Ltd. & Ors.* WP (L.) NO.14172/2021, Order dated 14 August 2021, <https://indiankanoon.org/doc/89846076/>; Madras High Court, *Digital News Publishers Association & Mukund Padmanabhan v. Union of India* W.P.No.13055/2021, Order dated 16 September 2021.



S. No.	Particulars (clause, Sub-Section, Section)	Comments
		<p>services, ultimately affecting the free flow of ideas and information and the people’s right to speech. The Bill is silent on the potential harms which are sought to be prevented or addressed through the penalties and other powers. Broadcasting services provide crucial outlets for exercise of fundamental rights in a democracy. Independent oversight and reasonable limitations are necessary to prevent misuse of powers.</p>
	Cl.30	<p>Cl.30 provides a power of inspection which permits “lawful interception or continuous monitoring” of broadcast services by the government or any authorised officer. This constitutes a grave violation of not only free speech and expression but privacy and the right to carry on one’s business or profession. There is no mention of clear grounds on and circumstances under which such inspection can be ordered; no requirement of a written notice and timeline; and no prescription of safeguards and limitations to prevent abuse and misuse. This requirement is inherently unreasonable and contrary to necessity and proportionality and could be used as a tool to intimate and silence.</p>
	Cl.31	<p>The power to seize and confiscate equipment is available in case of any contravention of the draft Bill without regard to the seriousness of the contravention or the frequency. Further, Cl.31 does not specify which grounds under Article 19(2) must be satisfied before such power is exercised to restrict the right to free speech. There is no requirement of recording reasons in writing or of any oversight by an independent authority. Cl.31 also affects the right to carry on one’s business of profession.</p>
	Cl.32	<p>The proviso permitting seizure of equipment for 10 days without notice is an unreasonable violation of</p>



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		the rights under Article 19(1)(a) and 19(1)(g). There is no explanation in the draft Bill as to why this proviso is required. Further, Cl.32(5) limits judicial remedies for violations of fundamental rights, which is impermissible.
	Cl.33(1) Punishment	Imprisonment is not a proportional punishment for contravention of a law which is meant to “streamline” broadcasting services. The Cable TV Networks Act was recently amended to remove imprisonment as a potential punishment for contravention of provisions of the Act, but this is not reflected in the draft Bill. ¹⁶ Such penalty will only serve to intimidate creators and broadcasters, and result in self-censorship.
	Cl.33(2)(a)	Persons working at companies cannot be made liable in their personal capacity for contraventions of the provisions of draft Bill as this will have a chilling effect on the broadcast programme creators. Without imprisonment as a punishment, there is no need for such a provision. Further, the proviso reversing the burden of proof is disproportionately onerous.
	Cl.35	Since the Programme Code is an overbroad restriction on free speech, Cl.35 is an unreasonable provision. It also gives the Central Government direct control over free speech and expression, and compelling speech by providing for a direction to issue an apology. The power to direct blocking of a programme is not a proportionate restriction on free speech.
	Cl.36	The Programme Code cannot be a ground to prohibit free speech as it does not fall within permissible restrictions on free speech under Article 19(2).
	Chapter VI: Misc	

¹⁶ Economic Times, *Govt notifies amendments to decriminalise Cable TV law*, <https://economictimes.indiatimes.com/industry/media/entertainment/govt-notifies-amendments-to-decriminalise-cable-tv-law/articleshow/104194642.cms>.



S. No.	Particulars (clause, Sub-Section, Section)	Comments
	Cl.39	The draft Bill cannot be made applicable to “emerging” or “future” technologies through a notification. The purpose of regulation is linked to the specific activity which is being regulated and its particular needs. Internet-based broadcasting services should not be brought within the same regulation as traditional media and Cl.39 cannot authorise any further expansion of regulatory powers through executive action. Any such future regulation ought to be separate, with its own process of extensive public consultation and parliamentary scrutiny.
	Cl.43	The draft Bill empowers the executive to determine the operation and implementation of the Bill through the broad rule-making powers, evading parliamentary scrutiny and public consultation.
	Second Schedule list of operators from whom equipment can be seized/ confiscated under Cl.31	Additions to this list of categories of operators should not be left to executive rule-making, because seizure and confiscation is a substantive limitation on free speech and the right to business.
	Third Schedule Offences and Punishments	There should be no imprisonment for any of these activities. Imprisonment does not serve any valid purpose and is prone to misuse and intimidation.

Conclusion

Any regulation of content on internet based services and free speech must protect fundamental rights and satisfy the principles of necessity and proportionality. Any potential restrictions must be specifically and exhaustively specified in the law itself and must be within the permissible restrictions on free speech under Article 19(2) of the Indian Constitution and under international law frameworks including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Further, any penalties or restrictions must be the least restrictive measure available and the process of regulation must follow a lawful procedure including notice, written reasons, and



independent oversight. Freedom of the press is of paramount importance in a democracy, and the internet is a crucial platform for such freedom, diversity and independence to be exercised in the digital age – this must be protected. In its current form, **the draft Bill does not satisfy these conditions.**

Recommendations

- Access Now respectfully recommends that because of the extremely broad and vague provisions restricting free speech and press freedom, the need to approach the issue of regulation with clear and valid objectives, and the lack of independence of anybody to check these restrictions, the draft Bill must be withdrawn in its entirety.
- Access Now further recommends that meaningful, multi-stakeholder consultations be held to discuss the purposes of regulation of broadcasting services, the objectives sought to be achieved, and evolve a reasonable and rights-respecting policy in line with global best practices and principles of international and domestic human rights law.

We thank you for the opportunity to participate in this consultation. We remain available for any clarification or queries in relation to this feedback, and hope to be of further assistance in this important process.

Yours sincerely,

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