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## New broadcast bill may also cover those who put up news content online

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The proposed Broadcasting Services (Regulation) Bill, 2023, seeks to directly regulate streaming platforms such as Netflix, Amazon Prime Video, Disney+Hotstar

India's new broadcast bill could cover even individuals putting up news and current affairs content online, including on platforms such as YouTube, and also WhatsApp and Telegram channels.



India's new broadcast bill could cover even individuals putting up news on platforms such as YouTube. (REUTERS/Representative Image)

The proposed [Broadcasting Services \(Regulation\) Bill, 2023](#), seeks to directly regulate streaming platforms such as Netflix, Amazon Prime Video and Disney+Hotstar as over-the-top, or OTT, broadcasting services, but under the Bill, anybody who broadcasts news and current affairs programmes online is liable to attract the same obligations as OTT streaming services. That means certain accounts and users on social media platforms can also be treated as OTT broadcasters unto themselves.

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According to Gowree Gokhale, partner at Nishith Desai Associates, and Nikhil Narendran, partner at Trilegal, the move will bring streaming platforms and online news organisations, who were recognised as publishers till now, under the category of broadcasters. "This will bring them solely under the domain of MIB," Narendran said.

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Thus far, Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, was governing streaming platforms and online publishers of news and current affairs.

"Part III [of the IT Rules] will have to go," Gokhale said. In the savings and repeal clause, the Broadcasting Bill does not mention repealing Part III of the IT Rules. "That is not required because an act, or a section of an act, must be repealed through another act. Parts of subordinate legislation, as in the case of IT Rules, can be repealed through a simple government notification," Narendran said.

# Decoding the legislation



## WHAT IS THE BROADCASTING BILL?

- The proposed Broadcasting Services (Regulation) Bill, 2023, seeks to directly regulate streaming platforms such as Netflix, Amazon Prime Video and Disney+Hotstar as over-the-top broadcaster, in addition to regulating terrestrial channels, radio, local cable operators, etc.
- Anybody who broadcasts news and current affairs programmes online as a "systematic business, professional or commercial activity" is liable to attract the same obligations as OTT streaming services

## WHO IS EXCLUDED?

- A physical newspaper and its e-replica
- Online users who occasionally post news are excluded. For instance, a civilian who decides to stream a riot live will not be covered

There is no change in the status of how online news publishers are governed. If they are governed under the IT Rules, they [textual news websites] will continue to be governed here.

— a senior govt official familiar with the matter

Clause 20 of the bill says "any person who broadcasts news and current affairs programs through an online paper, news portal, website, social media intermediary, or other similar medium but excluding publishers of newspapers and replica e-papers of such newspapers, as part of a systematic business, professional, or commercial activity shall adhere to the Programme Code and Advertisement code referred to in Section 19".

Although the definition of an OTT broadcasting service excludes social media intermediaries and users of such social media intermediaries, experts say clause 20 allows them to be included if they broadcast news and current affairs programmes, including through a social media intermediary.

Clause 20 taken with the definitions of "programme" and "news and current affairs programmes" mean that independent journalists who have their own YouTube channels and Instagram accounts, where they post news content as a professional activity, will attract the same obligations as that of an OTT broadcaster.

Citizen journalists could be covered if they post news content as "a systematic business, professional or commercial activity". This means that someone who occasionally posts public interest content would not be covered. Nor will a civilian who decides to stream a riot live will not be covered.

"Professional activity here would include professional journalists who are employed or engaged as consultants by news organisations. That is easier to determine than systematic business or commercial activity," Gokhale said.

To be sure, it is not clear whether the Twitter account of a journalist featuring tweets about news could attract the obligations of an OTT broadcaster. "You could get included but that will be determined by how they notify the threshold for OTT platforms and

if they will have a lower one for journalists,” Gokhale added. Under the Bill, OTT broadcasters have to intimate to MIB of their operations on meeting an undetermined threshold of Indian subscribers or viewers. The bill also empowers the central government to relax the provisions for OTT broadcasters who don’t meet the threshold.

“They may do something completely different for journalists as well. They ultimately want to control the virality of content. If there is a random individual posting things and earning money through it but has very few followers, the government may not want to go after such de minimus activity,” Gokhale said.

Experts say differentiating between news content and user-generated content on social media is already a vexed task. The former is regulated by MIB while the latter is regulated by MeitY. Despite that, even under the IT Rules, MIB has issued blocking orders against non-journalists while MeitY has issued Section 69A blocking orders against news content posted by individuals.

Monetisation through YouTube or Instagram ads would be considered a commercial activity, both Gokhale and Nikhil Narendran, partner at Trilegal, said. Even financial influencers could attract the obligations of an OTT broadcaster.

“But in my mind, the threshold for this will remain very high. Regular people should not be affected,” Gokhale said.

It also means that YouTube will not be required to comply with the Act as it is a social media intermediary. However, the paid version of YouTube, YouTube Premium, would qualify as an OTT broadcasting service.

A combination of section 20, and the definitions in the Bill mean that a news website which has a fair mix of textual and audio-visual content, would attract obligations as an OTT broadcaster, as per Narendran.

On the other hand, a physical newspaper and its e-replica, will be exempted. “A newspaper publisher will be excluded in its entirety because clause 20 excludes ‘publishers’ of newspapers, not just the newspapers themselves,” Narendran said.

Experts disagreed on whether news websites that are textual in nature would attract obligations of an OTT broadcaster. Gokhale believes they will be, since “writing” is included in the definition of a “programme”, and “news and current affairs programmes” are defined as “newly received or noteworthy audio, visual or audio-visual programmes or live programmes”.

Narendran differs. “The definition of ‘broadcasting’ is limited to the transmission of audio, visual and audio-visual programmes that are meant for ‘viewing’, not ‘reading’. So textual news websites should not be covered here. This reading also aligns with the exemption for websites of newspapers,” he said.

A senior government official familiar with the matter said: “There is no change in the status of how online news publishers are governed. If they are governed under the IT Rules, they [textual news websites] will continue to be governed here.”

The IT Rules cover all kinds of news and current affairs content online, not just audio, visual or audio-visual. Under the IT Rules, independent journalists also registered with self-regulatory bodies.

Asked if the new rules would cover newsletters, the official added: “Newsletters will be covered if they are released as a part of a professional, systematic or commercial activity.”

WhatsApp channels, Telegram channels, and other such similar features on social media platforms allow for only one-way, one-to-many communication. A lot of the content on these channels is visual (images) or audio-visual (video) in nature. This meets the definition of “broadcasting” under the bill. When a public official uses such a broadcasting medium, everything posted there is news. Thus, when a public official who uses a broadcast medium such as WhatsApp channels, he or she could attract the obligations of an OTT broadcaster under the Bill.

Clause 4 of the Bill constrains central government, state governments and its officers from registering as a broadcaster. However, they are not restricted from applying to be OTT broadcasters.

“Under this Bill, even the prime minister’s WhatsApp channel could attract the same obligations as Netflix and Amazon Prime Video,” Narendran said. The prime minister’s WhatsApp channel currently has 11.4 million subscribers.

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