

THE BROADCASTING BILL, 1997

The bill is to provide for an independent authority to be known as the broadcasting authority of India which is for the purpose of facilitating and regulating broadcasting services in India. The authority will have a perpetual succession and a common seal with powers to enter into a contract and can sue and can be sued in its name .it consists of a chairperson who will be appointed by President of India on recommendation from the Chairman of the states who will be the Chairman of the Committee the I & B minister and the Press council of India. It will also consist of maximum eleven part-time members to be appointed by the central government, a secretary to the government incharge of DOT, a secretary general .The Chairperson will be a whole time member and will hold office for a term of five years. He will be appointed from amongst the persons of eminence with more than fifteen years of experience in administration, law, broadcasting, programming, engineering, journalism etc .The part time members shall hold office for three years and also will be eligible for reappointment for the second term. The authority will hold minimum eight meetings every year. all questions raised or which come up at the meeting will be decided by majority.

The functions of authority will be :

1. To carry out frequency planning of such frequencies or band of frequencies assigned to it by the wireless adviser to the government for the purpose of ing services
2. To grant licences for broadcasting services.
3. To ensure that wide range of broadcasting services are available throughout India.
4. To ensure services of high quality and offer a wide range of programmes to appeal to variety of tastes and interests.
5. To determine the programme code and standard.
6. To take necessary action for violation of code ,violation of condition of licence.
7. To set technical and other quality standards to ensure a reasonable quality of reception.

The authority can appoint a committee of experts to advice on:

1. Practices to be followed in connection with unjust and unfair treatment to any person in programmes, unwarranted infringement of privacy included in programmes.
2. Practices to be followed in connection to portrayal of violence ,sexual conduct in the programmes i.e.,to set standards of decency for programmes. with regards to the attitude fo the public at large.

LICENCES

No person is entitled to provide broadcasting services without obtaining a licence ,after commencement of this act. The authority can grant licences for the following broadcasting services ,namely :-

- 1. TERRESTRIAL RADIO BROADCASTING**
- 2. TERRESTRIAL TELEVISION BROADCASTING**
- 3. SATELLITE RADIO BROADCASTING**
- 4. SATELLITE TELIVISION BROADCASTING**
- 5. DIRECT TO HOME BROADCASTING**
- 6. LOCAL DELIVERY SERVICES**
- 7. Such other services as may be prescribed.**

The Terrestrial broadcasting services can be further categorised into analogue and digital and also into national ,regional , local , restricted local services or any other similar service for the purposes of the licences and prevention of their accumulation.

The licence shall be provided subject to following conditions :-

1. The person granted the licence will ensure that nothing is included in the programmes of the licensee which is likely to encourage crime or lead to disorder or will be offensive to public feeling.
2. The licensee will ensure that news given in the programme will be presented with due accuracy and impartiality.
3. The licensee has to ensure that due impartiality is maintained in respect of social or political issues or matter relating to public policy.
4. The licensee will ensure due responsibility is exercised with respect to religious programmes with a view to avoiding - improper exploitation of religious susceptibilities and offence to the religious views and beliefs of those belonging to a particular religion.
5. The licensee will ensure that due emphasis is given to promote national integration, Indian culture in his programmes.
6. The licensee will have to ensure that time, determined by the Authority ,is earmarked for broadcasting of - children's programmes , educational programmes , programmes of Indian origin , a range of diversity of independent production.
7. The licensee will have to follow the programme codes and standards and codes set by the Authority.
8. The licensee will pay the license fees in the same manner as may be determined by the regulations.
9. The Licensee will not carry out networking of local or regional broadcasting services without prior approval of the authority.
10. The conditions of the license can be changed by the Authority after giving to the licensee a reasonable opportunity of being heard.

The licence granted for Direct -To - Home service or Local Delivery service shall be subject to the following conditions in addition to the conditions referred above :-

1. The licensee will have to provide a tier basic service which may include a number and type of terrestrial broadcasting for every permitted services and also of the public service broadcaster.
2. the licensee will include only licensed services or permitted services in his delivery package for the purpose of distribution and also he will not use more than that no of channels as determined by the Authority out of the total channel capacity of the system for providing his own programming.

The period of licence for each category will be for a period not exceeding ten years .The licence is not transferable and it will lapse prior to its normal expiry in case of insolvency or death of the licensee. No person will be given the number of licences for a category of services more than the number prescribed for the category of service. There are restrictions on cross media ownership between the newspaper and the broadcasting service. The government can modify any limit on interest or equity holding in the body corporate or companies by notification in the official gazette.

Grant of licence for satellite broadcasting services.

1. Any person desirous of obtaining a satellite broadcasting licence will have to apply to the Authority.
2. If the Authority is satisfied that the applicant --- a)has acquired transponder on an Indian satellite system or on a foreign satellite system . b) has obtained technical

clearance for transponders from the wireless adviser . c) Has fulfilled all other condition laid down in the Act ;The Authority may grant a licence to such person on payment of fees ; If the Authority refuses to grant a licence it will have to give the applicant an opportunity to be heard. Provide further that such a person providing his broadcasting services immediately before the commencement of the Act may continue to do so without a licence for a period of one month from such commencement.

Grant of licence for Direct - To - Home Service.

The Authority will invite bids for grant of licence and it will be granted to the highest bidder if he fulfils all the conditions for the grant of such licence. The Authority grant such no of licences (not less than two) as may be prescribed.

Special Provisions for Satellite broadcasting and Direct-To-Home services.

The wireless Adviser will give technical clearance for licensing (the clearance can be refused on technical or security reasons. In cases where operations of the services are permitted with foreign satellite system , while giving technical clearance for relicensing or renewal of such services, give priority for their operation with Indian Satellite system.

The licensee shall carry out the up linking of satellite broadcasting services or direct - to - home services from India only up linking of coverage of live events taking place outside India can be permitted as determined by the regulations. The Authority can permit continuance of up linking of satellite broadcasting services from outside India till such time as it is reasonably required for shifting or creating the necessary up linking facility in India.

Grant of licence for terrestrial services

The Authority will invite bids for granting of licence and it will be granted to the highest bidder .The Authority will grant licences to such as may be notified for terrestrial broadcasting services through restricted bids .No institution will be notified unless the object of such institution is to provide education ,community service, Health awareness etc. The wireless adviser will assign to the Authority for the purpose of grant of terrestrial broadcasting service licence such frequencies as it may determine .

Grant of licence for Local Delivery Services.

The authority will grant two licences for Local Delivery Service for each telecom circle as identified by the Central government. The Authority will invite bids and licence will be granted to the highest bidder. The Wireless Adviser shall assign frequencies for MMDS for providing Local Delivery service, wherever it is required.

The Authority may exempt the non-commercial establishments under common ownership from obtaining a licence for the purpose of providing cable television services for the exclusive use of their members.The government can by notification confer upon the licensee of the local delivery services ,such right and obligations as it may consider necessary in respect of placing and maintaining of his cable networks as available to the telegraph authority.

Enforcement of Licences.

The Authority can take any of the following actions in case of breach of any terms of the licence

- 1.Direct licensing to correction or apology or not to repeat a programme;
- 2.To impose a penalty which may extend up to rupees fifty lakhs.
- 3.suspend the licence for a specified period
- 4.curtail the period of the licence.

5. revoke the licence.

Any aggrieved person may prefer an appeal an action of the Authority in High Court having Jurisdiction within thirty days of such action.

The proceeds of the licence fee will be credited to the consolidated Fund of India. The Authority will have its own fund and all receipts of the authority will be credited to the fund and all payments by the Authority will be from them. The Authority will submit a report at the end of each financial year to the central government.

Offence and Punishments:- A person who provides ,distributes or receives any broadcasting service which is neither a licensed service nor a permitted service or abets or assists transmission of such service in any manner which may include collection of subscription for his principal ,issuing of advertisements to such service, dealing in or distribution of decoders or dish antennas, shall be guilty of committing an offence of illegal broadcasting and on conviction , shall be punishable with imprisonment which may extend up to five years ,or with fine which may extend up to rupees ten lakhs and in subsequent offence such fine may extend to rupees fifty lakhs, or with both.

Special provisions for certain foreign satellite broadcasting services.

The authority after receiving a request in this regard ,may grant permission for reception of an unlicensed foriegn satellite brosdcasting service in India , if such broadcasting is service --

1. Is free to Air broadcasting service;
2. Does not carry any Advertisements;or carries advertisements for the duration as amy be fixed by the Authority.and the service is evoted solely to sports or international news and current affairs
3. Fulfils the programme standard with respect to permitted service. Provided that the Authority may revoke such permission ,if it feels that the service has contravened any of the above conditions.

Prohibition of exclusive rights for live broadcasting of certain events.

No licensee shall carry a live broadcast of any sporting or other event of national or internatinal interest held in India ,without the consent of the Authority unless the public service broadcasters have also been given the broadcasting right for carrying the same.

Procedure and powers of the Authority

1. The Authority will be guided by principles off natural justice and subject to the other provisions of this act and of any rules , the Authority will have powers to regulate its own procedure including the fixing of places and times of its inquiry.
2. The Authority will have for the purpose of discharging its functions under this Act,the same powers as are vested in a civil court under the code of Civil Procedure,while trying a suit , in respect of the following matters ,namely :-
 - a) summoning and enforcing the attendance of any peron and examining him on oath;
 - b) receiving evidence on affidavits;
 - c) Issuing commissions for the examination of witnesses or documents;
 - d) Any other matter which may be prescibed.

In event of any war or a natural calamity of national magnitude , the central government may , in public interest,take over the control and management of any broadcasting service or any facility connected therewith,suspend its operation or entrust the public service broadcaster to manage it i the manner directed by the

government for such period as it deems fit. The government, if it considers necessary or expedient to do so, may, in public interest, at any time require the Authority to Direct any licensee to --

1. Transmit in his broadcasting service such announcement in such a manner as may be considered necessary;
2. stop any broadcasting service which is considered prejudicial to friendly relations with a foreign country, public order, security of state, or communal harmony. The central government may in public interest, issue such other directions, to the Authority, from time to time as considered necessary.

Powers of the Authority to seek information conduct enquires, take evidence, etc. 1. The licensee will have start his service within the period specified by the Authority and maintain documentary records and transmission schedules as may be specified and allow inspection of such records to the Authority.

2. The Authority can call for information from the licensee which it considers in the public interest and necessary for the transparency and ascertaining the true ownership of the licensee. The Authority will have all the powers of an inspecting officer. If the licensee defaults with any conditions the Authority can cancel the licence. The application of this law is in addition to and not in derogation of the provisions of any other law.

POWER TO MAKE RULES:

Central government can by notification make rules for carrying out provisions of this Act. The Rules will provide for all or any of the following matter.

1. Provide for circumstances for communication.
2. salaries and allowances payable to the Chairperson and other part time members.
3. The functions to be performed by the Authority.
4. No of licences more than which can't be given.

POWER TO MAKE REGULATIONS.

The Authority can make regulations and rules made their under by notification. The rules will provide for all or any of the following matter.

1. The time and place of the meetings, the procedure of transaction of business.
2. The manner of appointment of officers and employees and their salary.
3. The quality of reception and the programme code and standard.
4. The manner in which licence fee should be paid by the licensee and the conditions of granting licence.
5. The minimum no and type of ing service of public service broadcaster and of terrestrial broadcasting services for every permitted service.
6. The no. of channels to be used and the period of licence to the licensee.
7. The criteria subject to which the uplinking from outside India will be permitted in respect of these services for coverage of live events taking place outside India.
8. Restricted area under which permission may be granted.
9. Any sporting or other event of national or international interest of which live telecast shall be carried out without Authority's permission
10. The documentary record and transmission schedule to be maintained.

Every rules and regulations are to be laid before the parliament. The central government can make provisions in the Act within three years of commencement of this bill and not after that, to remove any difficulties that arise.

REPEAL AND SAVING

The cable television networks (regulation) Act 1995 is repealed. The cable operators registered under this Act can make an application to the Authority for grant of

licence within six months of commencement of this Act. The Authority may grant or refuse the licence to the operator. No licence will be granted to any cable TV network which provides such service to more than five thousand households and from more than one location. No refusal can be made unless the Applicant has a chance to present the case. The Authority will authorise a District Magistrate to look in to the complaints of the public. give notice to the operators make inquires and take necessary action.

RESTRICTIONS ON THE HOLDING OF LICENCES

PART -- I

A Disqualification for holding of licences

The following persons will be disqualified for the purpose of grant of licence :-

General Disqualification :

- (a). An individual who is not an Indian national.
- (b). A partnership firm all of whose partners are not citizens of India.
- (c). Companies not incorporated in India.
- (d). Companies incorporated in India but with: (a) Foreign equity in case of terrestrial broadcasting services. (b) Foreign equity exceeding 49% in case of other services not mentioned in (i) above and management control not with Indian shareholders.
- (e). Governments and local authorities.
- (f). Any person convicted of an offence under this Act or convicted under Representation of the peoples Act or declared as insolvent.
- (g). A body, which is controlled by a person, referred to in any of clause (a) to (e) above.
- (h) A body corporate, in which a body referred to in clause (g) above, is a participant with more than a 5 percent interest.

Foreign equity for this part will be notified to the government. from time to time.

Disqualification of religious bodies.

1. A body which is or is controlled by a body or controls a body whose objectives are wholly or mainly of a religious nature.
2. A body corporate in which the body referred above is a participant with more than five percent interest.
3. A person who is an officer of the body.

Disqualification of political bodies.

1. A body which is or affiliated to or is a participant with more than five percent interest to a body whose objects are or mainly of political nature.
2. An individual who is an officer of the body.

Disqualification of publicly funded bodies.

1. A body (other than a local Authority) which has in its last financial year received more than half its income from public funds.
2. A body which is controlled or a corporate which has more than five percent interest in the above mentioned body.

Disqualification of advertising agencies.

1. An Advertising Agency, its associate or a body corporate having more than five percent interest in a ad agency.

PART - I I

Restriction To Prevent Accumulation of interest in licensed Services.

1. A person will be allowed to hold licences in only one of the following category of services: --

- [a] Terrestrial Radio Broadcasting .
- [b] Terrestrial Television Broadcasting .
- [c] Satellite Television or Radio Broadcasting .
- [d] Direct - To - Home Broadcasting .
- [e] Local Delivery Services .
- [f] Any other category of services which may be notified by the central government.

2. Any restriction on participation imposed as above on the holder of a licence shall apply to him as if he and every person connected with hi were one person.

PART - III

Restrictions On Controlling Interest in Both Newspapers and licensed services.

1. No proprietor of a newspaper will either be a participant with more than twenty percent interest in or control a body corporate which is the holder of a licence to provide a licensed service under this Act.
2. No proprietor of a newspaper who is a participant with more than five percent but less than twenty percent interest in a body corporate and not controlling such a body corporate ,holding a licence will be a participant with more than five percent interest in any other such body corporate.
3. No person who is the holder of a licence to provide licensed service under this Act will be either a participant with more than twenty per cent. interest in or control a body corporate which controls a newspaper.
4. No person who is the holder of a licence and is a participant with more than five percent but less than twenty percent interest in a body corporate and not controlling such a body corporate which runs a national newspaper , shall be a participant with more than five percent interest in any other such corporate .
5. For the purpose of this part ,a person controls a newspaper if--
 - [a] He is the proprietor of such newspaper; or
 - [b] He controls a body which is the proprietor of such newspaper.
6. Any restriction on participation imposed as above on the proprietor of any newspaper or on the holder of licence shall apply to him as of he and every person connected with him were one person.

PART IV

1. (1) For the purpose of this schedule,

"Advertising Agency" means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an advertising agency includes a reference to an individual who-

- a) is a director or officer of any body corporate who carries on such a business, or
- b) is employed by any person who carries on such a business.

"Associate" -

- a) in relation to a body corporate, means a directorof that body corporate or a body corporate interconnected with that body corporate.

- b) in relation to the partner of the firm, means a relative of such partner and includes any other person of such firm;
- c) in relation to the trustee of a trust, means any other trustee of such trust; and
- d) in relation to an individual, shall be construed in accordance with subclause (3);
- e) where a person or a body corporate is an associate of another person or body corporate, the latter shall also be deemed to be an associate of the former.

"Control" -

- a) in relation to the body corporate, shall be construed in accordance with subclause (3); and
- b) in relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body, that the affairs of the first mentioned body are conducted in accordance with the wishes of that person, and would include control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

"Newspaper" means as defined under the Press and Registration Act, 1867 (25 of 1867).

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this schedule, the following persons shall be regarded as associates of each other, namely :-

- a). any individual and that individual's husband or wife of a relative, of that individual or of that individual's husband or wife;
- b) any individual or any body corporate of which that individual is a director;
- c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor and grantor;
- d) persons carrying on business in partnership and the husband or wife and relatives of any of them;
- e) any two or more persons acting together to secure or exercise control of body corporate or any other associates or to secure control of any enterprise or assets; and in this sub-paragraph "relative" means as defined under the Companies Act, 1956.

(3) A person controls a body corporate if -

- a) he has a controlling interest in the body, or
- b) (although not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or
- c) he has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the body are so conducted, and for this purpose, in the absence of proof to the contrary, a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, more than twenty per cent, of the voting power in it.

(4) it is hereby declared that a person may be regarded as controlling a body corporate by virtue of clause (b) of sub-clause (3) despite the fact that-

- a) he does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or
- b) any such other body corporate does not have a controlling interest in the body in question, or

c) he and any such body corporate together do not have a controlling interest in that body.

(5) For the purpose of any provision of this schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) and sub-paragraph (3) unless they are acting together in concert.

(6) In this Schedule any reference to a participant with more than a five per cent, or, as the case may be, twenty per cent interest in a body corporate is a reference to a person who-

a) holds or is beneficially entitled to more than five or, as the case may be, twenty percent of the shares in that body or,

b) possesses more than five or, as the case may be, twenty per cent of the voting power in that body, and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraph shall have effect in relation to it's subject to the necessary modifications.

2. (1) Any reference in paragraph 1 to a person-

a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or

b) possessing voting power, or any amount of the voting power, in a body corporate, is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

(2) "Inter connected Undertakings or Corporate Bodies" shall have the same meaning as assigned in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

3. For the purpose of this Schedule, the following persons are connected with each other in relation to a particular license, namely :-

a) the license holder;

b) a person who controls the holder;

c) an associate of the license holder or of a person referred to in clause (b), and

d) a body which is controlled by the license holder or by an associate of the license holder.

STATEMENT OF OBJECTS AND REASONS

1. The broadcasting scenario, especially in the realm of satellite broadcasting, has undergone a revolution during the last few years. A large number of satellite television channels have been beaming their programmes through the Indian skies to our people. All these channels are foreign entities and their programmes are uplinked from outside the country without any regulation through the law of our land, while Indian entrepreneurs and Indian companies are not at present permitted to own either Radio or Television stations.

2. Concern has been voiced both inside Parliament and outside about the implications of these unregulated television programmes and the denial of level playing field to Indian entities. The only legal instrument available in the Indian Telegraph Act, 1885, which is considered totally inadequate to govern modern broadcasting media. All leading democratic countries have enacted laws specifically regarding broadcasting media. The introduction of the Broadcasting Bill is a step in this

direction.

3. It is felt that the public service broadcaster alone will not be able to meet the needs and urges of the people in terms of variety and plurality of programmes required in different regions by different sections of society in our vast country. Keeping in view our great democratic traditions, it is imperative that our citizens are all informed and given wider choice in matters of information, education and entertainment. This can be provided by facilitating private broadcasting in the country.

4. The Bill needs to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies, apart from becoming a catalyst for social change, promotion of values of Indian culture and shaping of a modern vision. It will also curb monopolistic trends in this sensitive field, so that people are provided with a wide range of news and views.

The Bill seeks to achieve the said objectives.

NEW DELHI;

The 12th May, 1997.

S. JAIPAL REDDY.

NOTES ON CLAUSES

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment of the Broadcasting Authority of India.

Clause 4 provides that the President may on the grounds provided under article 317 of the Constitution may remove or suspend the Chairperson and Members.

Clause 5 provides detailed provisions regarding the conduct of the meetings of the Authority.

Clause 6 provides procedure for appointment of Secretary-General of Authority and empowers the Authority to appoint other officers.

Clause 7 provides function of the Authority and empowers the Authority to appoint committees of experts to advise on matters considered necessary.

Clause 8 provides prohibition on broadcasting service without license by any person.

Clause 9 specifies the different services for which licenses may be granted by the Authority.

Clause 10 specifies the conditions for granting licences for broadcasting services licences.

Clause 11 provides for the period of broadcasting licence and other conditions.

Clause 12 specifies the eligibility and restrictions for licences to be granted by the Authority.

Clause 13 gives procedure for grant of licence for satellite broadcasting services.

Clause 14 provides procedure for grant of licence for Direct-to-Home services.

Clause 15 provides for special provisions for satellite broadcasting and Direct-to-Home services.

Clause 16 provides procedure for grant of licence for terrestrial broadcasting services.

Clause 17 provides procedure for grant of licence for local delivery services by the Authority.

Clause 18 gives the details of actions which can be taken by the Authority for enforcement of licences.

Clause 29 provides that licence fee shall be credited to the Consolidated Fund of India and also specifies the maintainance of the accounts, budget and audit by the Comptroller-Auditor-General of India by the Authority.

Clause 20 provides for furnishing of the Annual report to the Central Government which shall be laid before the Parliament.,

Clause 21 prescribes offence and punishment.

Clause 22 provides special provisions for certain foreign satellite broadcasting services.

Clause 23 empowers the Authority to refuse licence for live broadcasting of certain events of national and international importance.

Clause 24 enumerates the procedure and powers of the Authority.

Clause 25 specifies the powers of the Central Government in event of war or natural calamities.

Clause 26 provides powers of the Authority to seek information, conduct enquires, take evidence, for operation and regulation licences and also empowers the Authority to give directions to licences.

Clause 27 provides that the Chairperson and Members of the Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 28 provides for usual provisions relating to the protection of action taken in good faith by the Authority or Chairperson or Members or officers and other employees of the Authority.

Clause 29 provides for delegation of powers to the Authority to Chairperson or other

Member or other officers.

Clause 30 provides that application of other laws are not barred and in case of an offence committed under this Act and also under another Act, and also under another Act, the offender shall be punished under this Act.

Clause 31 confers on the Central Government powers to make rules for carrying out the provisions of the Bill.

Clause 32 confers on the Authority the powers to make regulation consistent with provision of this Bill and rules made by the Central Government thereunder before each House of Parliament.

Clause 33 provides laying of the rules and regulations before Parliament.

Clause 34 empowers the Central Government to remove difficulties which may arise in giving effect to the provisions of the Bill.

Clause 35 provides for repeal of the Cable Television Networks (Regulation) Act, 1995 and for licencing and regulations of cable networks registered under that Act on the date of commencement of this Act.

LOK SABHA

A BILL to provide for the establishment of an independent authority to be known as the Broadcasting Authority of India, for the powers of developing, promoting, facilitating and regulating broadcasting services in India and to provide for matters connected therewith or incidental thereto.