

REGULATION OF TELECOMMUNICATION BILL IN INDIA: PANORAMIC OVERVIEW

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ABSTRACT

Since the invention of the telegraph, the Department of Telecommunications has said, there has been a significant shift in the nature of telecom, its use, and its technologies. Restructuring the legal and regulatory framework for the telecom industry is therefore necessary. A bill was proposed in December 2023 in the parliament for the same. Through the bill, the three laws and acts governing all the things related to the telecom industry were repealed and a new act was introduced that would now prevail. This article provides a comprehensive insight into the major modifications and issues raised in the proposed bill.

Keywords: Telecommunication Bill, Telecom, Telegraph, Privacy, Seize And Seizure.

INTRODUCTION

The Telecommunication Bill has been proposed to provide regulation and related information on means of telecommunications. Telecommunications means communication over a distance by wired (for instance cable) and wireless (for instance mobile phone) communication sources. The Communication Convergence Bill in 2001 was the initial attempt that was presented to the Lok Sabha. The Bill lapsed with the dissolution of the 13th Lok Sabha. The draft Indian Telecommunications Bill, 2020 was released by the Department of Telecommunications in September 2022 for public feedback. The Telecommunications Bill, 2023 was introduced in Lok Sabha on December 18, 2023¹. The telecommunication sector was governed under three laws, they are: (a) The Indian Telegraph Act, 1885². This act provides power to the government to regulate and intercept modes of communication through symbols or messages through telegraph, but as the use of telegraph was draw to a close in 2013, amendments were then made in this act to include regulation and interception in modes of communication through videos,

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¹ The Telecommunication Bill, 2023 (*Home | PRSIndia*)

<https://prsindia.org/files/bills_acts/bills_parliament/2023/The%20Telecommunications%20Bill,%202023.pdf>
accessed 26 January 2024.

² (*India Code: Home*) <www.indiacode.nic.in/bitstream/123456789/13115/1/indiantelegraphact_1885.pdf>
accessed 26 January 2024.

SMS, radio, television, basically all the wired and wireless means of communication within the territory of India. (b) The Indian Wireless Telegraphy Act, 1933³. This act provides terms to regulate the possession of wireless telegraph apparatus meaning it provides the information as to how the communication through wireless telegraphs (radio signals) should be regulated and restricted. (c) The Telegraph Wires Act, 1950⁴. This act provided a regulatory framework for wired telecom. The telecommunication bill passed states that all these three acts have now been repealed by repealing and amending Act 2023 and only one act will further prevail. This new act will provide the entire regulatory framework, grant powers to the government and provide for penalties for offences made by anyone. The Telecom Regulatory Authority of India (TRAI) Act, 1997 sets up TRAI as the telecom regulator, which regulates tariffs for the telecom sector. The TRAI Act has also established the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to adjudicate disputes and dispose of appeals. The power to issue licenses remains with the central government.

MAJOR AMENDMENTS

1. TRAI: The Bill amends the TRAI Act to also allow individuals with: (i) at least 30 years of professional experience to serve as the Chairperson, and (ii) at least 25 years of professional experience to serve as members.
2. Offences and penalties: According to this amendment bill there are certain penalties mentioned in its third schedule which states the following: (a) Any person possessing any wireless telecom (radio for instance) without proper authorisation would be liable to pay fifty thousand rupees for the first offence and two lakh rupees for each such subsequent offence. (b) Any person using more than the excessive number of SIM (subscriber identity modules) would be liable to pay fifty thousand rupees for the first offence and two lakh rupees for each such subsequent offence. (c) Any person who uses telecom without proper required authorisation would be liable to pay up to ten lakh rupees. (d) Any person who contravenes the provisions mentioned in section 28 of this bill would be liable to pay fifty thousand rupees for the first offence and two lakh rupees or suspension of telecom services, or both for each subsequent offence. (e) Any person who contravenes any provision of this

³ (India Code: Home)

<www.indiacode.nic.in/bitstream/123456789/15410/1/the_indian_wireless_telegraphy_act_1933.pdf> accessed 26 January 2024.

⁴ (India Code: Home)

<[www.indiacode.nic.in/bitstream/123456789/15424/1/the_telegraph_wires_\(unlawful_possession\)_act_1950.pdf](http://www.indiacode.nic.in/bitstream/123456789/15424/1/the_telegraph_wires_(unlawful_possession)_act_1950.pdf)> accessed 26 January 2024.

act and the penalty is not mentioned for the same under this act, that person would be liable to pay twenty-five thousand for the first offence and fifty thousand for every day the breach is going on.

3. The provision of funds that was used for telecom services under the name 'The Universal Service Obligation' in the Indian Telegraph Act has been retained but the name of the same has been modified to "Digital Bharat Nidhi".
4. Licenses: After this act comes into force, the entities having the license for telecom services will be valid for the period they have granted previously or for five more years where the period is not specified, after that, they would have to renew it.
5. According to the Bill, telecom service providers are required to utilize any valid biometric-based identification to confirm the identity of their users. This requirement might be out of scale and violate someone's basic right to privacy⁵.

ISSUES RAISED

1. **Offences and Penalties:** There is a lot of space for ambiguity as the offences and penalties are mentioned in a limited sense and the penalties for the offences which are not specifically given in this act but according to the court will still amount to some offence, the penalty imposed on that will be in the discretion of the court. The discretion left to the court to decide the penalties in certain cases can work in favour of our legal system if the court gives the judgment for the betterment of society and in the interest of the public.

This act has a clause that states that if a person uses excess SIM cards, he/she would be liable to pay certain fines for doing so. There have been a lot of cases of fraud and misrepresentation and such things with the use of different SIM numbers and cards, so therefore the regulation put on the usage of multiple cards is in a way for the protection of interest of the general public.

2. Privacy: According to the telecommunication bill, 2023 Messages or a class of messages between two or more persons may be intercepted, monitored, or blocked on certain grounds. Such actions must be necessary or expedient in the interest of public safety or public emergency and must be in the interest of specified grounds which include: (i) security of the state, (ii) prevention of incitement of offences, or (iii) public order. These actions will be subject to procedure, safeguards, and duration as may be prescribed.

⁵ The Telecommunications Bill, 2023' (PRS Legislative Research) <<https://prsindia.org/billtrack/the-telecommunication-bill-2023>> accessed 26 January 2024.

Telecom services may be suspended on similar grounds. The government may take temporary possession of any telecom infrastructure, network, or services in the occurrence of any public emergency or public safety. An officer authorised by the government may search premises or vehicles for possession of unauthorised telecom networks or equipment. Here the issue is whether Individuals' fundamental right i.e., the right to privacy is protected against government actions by the framework's rules and safety measures as Messages or an ensemble of messages of social media platform users may be intercepted, watched over, or restricted by the government for specific reasons which violates right to privacy which is specified in Article 21 of Indian constitution. But at the same time, reasonable restrictions are provided in Article 19(2) of the Indian constitution. Article 19(2) of the Constitution allows for restrictions in the interests of the security and sovereignty of India, friendly relations with Foreign States, public order, decency or morality in relation to contempt of court, defamation or incitement to an offence⁶. Finding a balance between the need to deal with libellous content and the right to privacy can be challenging, but there are ways to effectively safeguard both rights. Reasonable restrictions need to be imposed on the freedom of users of all social media platforms because if unrestricted freedom is given it may result in other social problems like defamation, abuse, online harassment, cyberbullying etc. when it comes to needing biometric information though it is sensitive personal information but biometric-based identification is proportionate to this aim.

3. **Oversight:** The term oversight describes keeping a close eye on something. The PUCL judgement addressed the issue of whether or not interception should require court supervision. The Court had noted that the Act would need to be used to provide judicial scrutiny. The UK's Communications Act, of 1985 was cited by the Court, even though it simply recommended executive monitoring. Since then, a new statute has superseded the United Kingdom's 1985 Act, requiring the consent of a Judicial Commissioner before taking any such action. Similar to this, interception in Australia requires judicial authorization.⁷
4. **Seize and Seizure:** The officers involved in the seize and seizure of devices, that cause rupture of telecommunication through unlawful means or for unlawful motive, have full

⁶ Article 19(2) and 'Public Order' (Vidhi Centre for Legal Policy) <<https://vidhilegalpolicy.in/blog/article-192-and-public-order/#:~:text='Reasonable%20restrictions'%20as%20outlined%20in,or%20incitement%20to%20an%20offence>> accessed 25 January 2024

⁷ The Telecommunications Bill, 2023' (PRS Legislative Research) <<https://prsindia.org/billtrack/the-telecommunication-bill-2023>> accessed 26 January 2024.

freedom to investigate and search wherever they want without any restriction if they doubt the person on the specific grounds mentioned in this act. There is no specific provision mentioned as to how the public involved in this can be safeguarded. The problem is that the public can argue that their right to privacy is being infringed. But in a way, a solution to this is also there. Seize and Seizure is a very arbitrary work, so the rules regarding this should be the same across every act. The rules that are followed in seize and Seizure in various laws and acts (mentioned in CrPC) are – (a) The officer involved in seize and seizure should have a proper warrant to do so. (b) The officer has to make a written list of everything that is being seized and has to get the signatures of the people whose things are being seized. (c) The officer has to allow two individuals to witness the process of seize and seizure. These procedures have been made to provide safeguards to individuals and these are to be followed by the officer strictly under this act too⁸.

5. **The power given to central government (sections 56 and 57)⁹:** The central government has the power to amend anything in this act, the only conditions mentioned are that the amount of fine or penalty shouldn't exceed ten crore and the amendment shouldn't be inconsistent with this act. The central government, just with a notification, can amend, delete, add or modify any provision of this act. As soon as the central government decides to amend any of the provisions the same has to be presented before both the houses and if both the houses give their approval, then only the amendment will officially take place. Now the issue here is that is it necessary that this amendment should be approached and proposed to the houses only by the central government. The same can be done by any party member or private member as well and they should be able to do so as they have the right for the same too.

CONCLUSION

The reforms made possible by the Telecommunications Bill of 2023 are a step in the right direction and were highly necessary. These government-taken actions are crucial to addressing the issues facing the telecom industry and are quite well-structured in light of its improvements. It makes sense that the three separate acts that had been regulating communications in an antiquated manner have now been repealed and that a new bill has been submitted to address current demands while also taking future considerations into account.

⁸ Ibid

⁹ Telecommunications Bill, Sections 56 and 57