



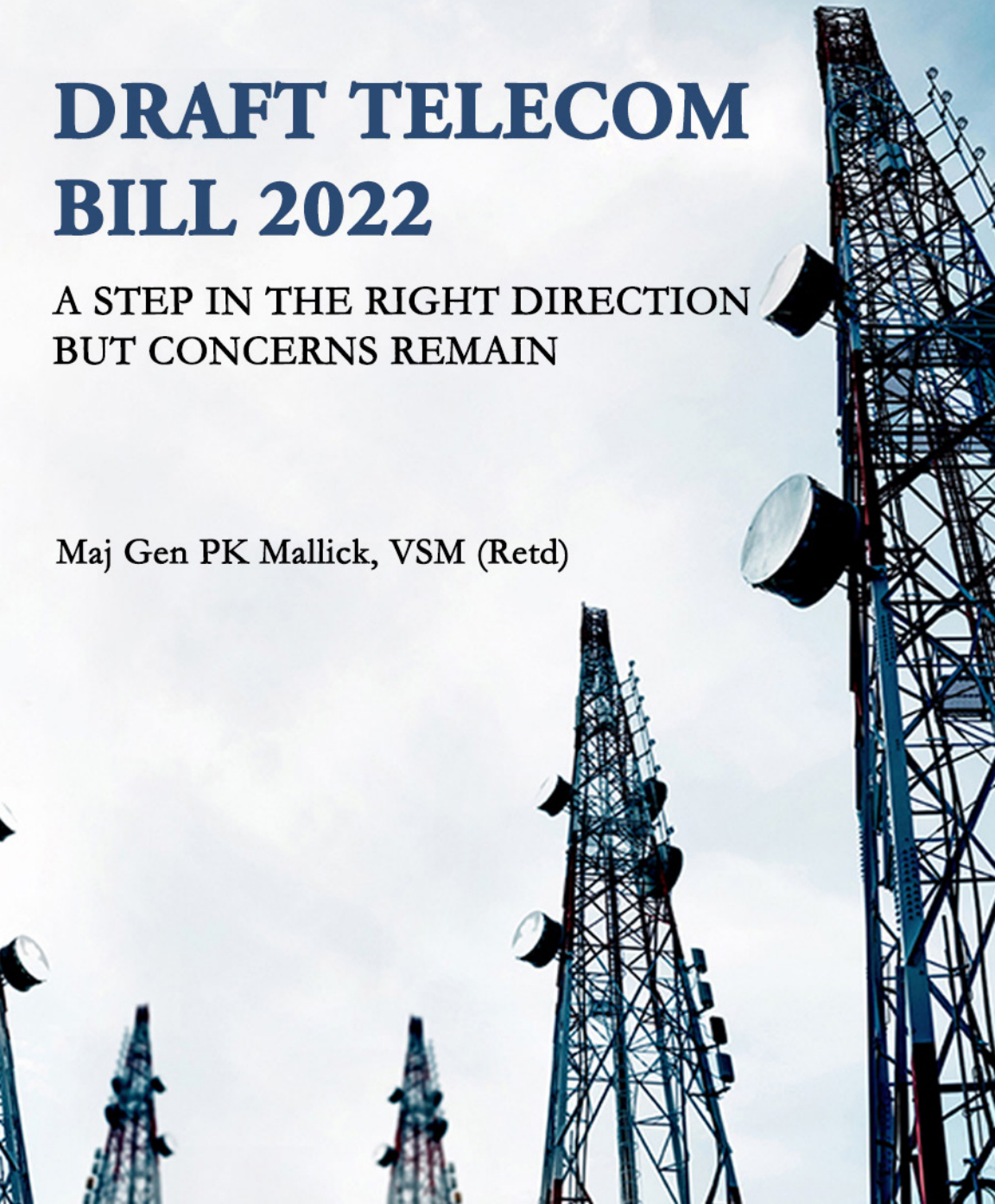
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# DRAFT TELECOM BILL 2022

A STEP IN THE RIGHT DIRECTION  
BUT CONCERNS REMAIN

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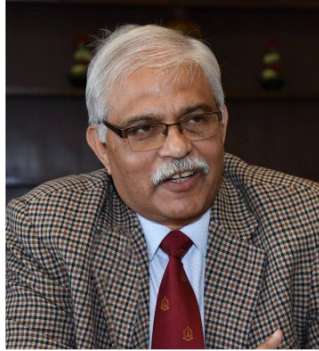
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# Draft Telecom Bill 2022

## A Step in the Right Direction but Concerns Remain

### **Introduction**

India is set to overhaul its telecommunication regulatory framework. The Ministry of Communications, Government of India, has released a 40-page draft of the Indian Telecommunication Bill, 2022, along with an explanatory note for public comments. In the accompanying explanatory note, the objectives are improving digital inclusion, growing the telecommunications sector and creating a future-ready international telecommunications regime. The Ministry of Communications was accepting public comments on the draft bill till end October 2022.

The bill has been divided into ten sections. It indicates a need for a new law and a simplified regulatory framework. While the bill discusses specific essential issues that must be addressed in this overhaul, it conspicuously misses important points.

Today, it is the era of new technologies such as 4G and 5G, the Internet of Things (IoT), Industry 4.0, M2M Communications and Mobile Edge Computing. India is the world's second-largest telecommunication market, with a subscriber base of 1.20 billion with an overall teledensity of 85.11 percent (as of July 2022). India has registered strong growth in the past decade and a half. Over the next five years, mobile phone penetration and lower data costs will add 500 million new internet users. The telecommunication sector employs more than four million people and contributes about 8 percent of the country's GDP. India is on its way to becoming the second-largest smartphone market globally by 2025. Internet and broadband penetration in the country is increasing steadily, boosting the Government's Digital India campaign and recently India has joined the race in 5G.

Currently, the three main legislations that govern the telecom sector are:-

- Indian Telegraph Act, 1885;
- Indian Wireless Telegraphy Act, 1933;
- Telegraph Wires (Unlawful) Possession Act, 1950.

It is high time to update the regulatory framework to bring it in tune with the changing times. The Bill, if it becomes law, will replace these and restructure the legal and regulatory framework of the telecom sector. The Bill empowers the Central Government to govern three key aspects of telecom: telecommunication services and networks; telecommunication equipment and infrastructure; and the spectrum including its assignment. The bill applies to any entity that:-

- Provides telecommunication services;
- Operates a telecommunication network;
- Owns telecommunication equipment and infrastructure; and,

- Is assigned or seeks assignment of spectrum.

## **The Process**

The Government is going through a reasonably extensive consultative process preceding its enactment of the bill. The Ministry of Communications initiated a public consultative process to develop a modern and future-ready legal framework. In July 2022, a Consultation Paper on ‘Need for a new legal framework governing Telecommunication in India’ was published, and comments were invited. The Consultation Paper explained the existing legal framework and issues associated with it. It highlighted the evolution of telecommunication regulation in other countries.

Comments were received from various stakeholders and industry associations. Many suggestions regarding procedures, licensing reforms, and frequency assignment had come. While preparing the draft, relevant legislation in Australia, the European Union, the United Kingdom, Singapore, Japan and the United States of America have also been examined in detail. The Ministry examined the comments carefully and the following key themes have emerged:-<sup>1</sup>

- Recognition and acknowledgement of the need for a new legal framework that is future-ready.
- The need for updating the nomenclature and definitions of relevant terms in the telecommunication legal framework.
- The role that a strong legal framework can play in ensuring steady rollout of new telecommunication technologies.
- Need for legal certainty regarding spectrum management including issues relating to the use, allocation, and assignment, based on the

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1 <https://gadgets360.com/telecom/news/draft-telecom-bill-2022-regulation-internet-services-fees-isp-3366621>

underlying principle that spectrum is a natural resource that needs to be assigned in a manner that best subserves the common good.

- Alignment of telecommunication standards with international standards and best practices.
- Importance of cybersecurity, national security and public safety concerns while ensuring constitutional and procedural safeguards.
- Need for a distinctive insolvency framework that allows continuity of the provision of telecommunication services, so long as the licensee pays all dues.
- Need for rationalization of the penalty framework, providing for specific penalties that are clearly linked with the nature of the breach and gravity of the offence.

Based on the consultations and deliberations, the Ministry of Communications has now prepared a draft Indian Telecommunication Bill 2022 and put it in the public domain for stakeholder comments. The final draft would be made based on the consultation process. It will then go through the committee processes of the Parliament to go to the Parliament. As per telecom minister Ashwini Vaishnaw, a timeline of 6-10 months will be required but the Government is not in a hurry.

## **What are the Issues?**

### **Broad Definitions**

The term 'telecom' is defined broadly as a means of transmission, emission or reception of any message by wire, radio, optical or other electromagnetic systems. The message is defined as any sign, signal, writing, image, sound, video, data stream or information intended for telecom. The Bill introduces a broad definition of 'telecommunication services'. It has now included internet-based services, in-flight and maritime connectivity, interpersonal

communications services, machine-to-machine communication services, and over-the-top (OTT) based communication services made available to users by telecommunication.<sup>2</sup> Other telecommunication services included in the definition are:-

- Broadcasting services include Direct to Home (DTH) Services (Dish TV, Doordarshan), Community Radio Stations (Radio Udaan, Punjab), FM Radio Broadcasting Services through Private Agencies (Radio Mirchi), Internet Protocol Television (IPTV) Services (MNPL), Downlinking of Television Channels, Uplinking of Television Channels.
- Communication services including electronic mail (gmail), voice mail (Airtel), voice (TSPs such as Vodafone), video communication services (skype), data, audiotex services, videotex services, fixed and mobile services, data communication services, fixed and mobile services (BSNL), internet and broadband services (Act Fibernet), satellite-based communication services (TSPs such as Bharti Airtel), internet-based communication services (ISPs such as Reliance Jio), in-flight and maritime connectivity services (Tatanet), interpersonal communications services (WhatsApp, Signal), machine to machine communication services (smart watch, smart tv), over-the-top (OTT) communication services (Google Meet, Facetime, Jitsi), Internet and broadband services, Satellite-based communication services and any other service notified by the Central Government to be telecommunication services.

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<sup>2</sup> Ikigai Law's summary of the draft Indian Telecommunication Bill, 2022, Ikigai Law 26 September, 2022 available at: <https://www.ikigailaw.com/ikigai-laws-summary-of-the-draft-indian-telecommunication-bill-2022/>



Some services included in the list above might overlap with each other, however, these have been included as a separate category to keep true to the definition provided by the Bill. Since the Draft Bill proposes that a license will be required for providing telecommunication services, this will have wide implications, as many more companies providing the services described above are likely to fall within the ambit of the Bill.

### **Licensing, Registration and Authorization**

Four types of permissions are identified Under the Bill: license, registration, authorization and assignment (only for spectrum). The draft Bill does not differentiate between the four types of permissions. It clarifies that a license is only required for providing telecommunication services or operating telecommunication networks. Registration must be obtained for establishing telecommunication infrastructure and authorisation is essential for possessing wireless equipment<sup>0</sup>. Assignment applies only to spectrum.

### **Know Your Customer (KYC) and Caller Identification (ID) Requirements**

The Bill requires licensed entities to identify the persons to whom they provide telecommunication services through a 'verifiable mode', as prescribed by the government. The licensed entities should incorporate Caller-Id like features to enable receivers of messages to identify the sender. The Bill places an obligation on telecommunication service providers to do this through a 'verifiable mode', as prescribed by the government, and it remains to be prescribed. To ensure that a user provides correct details, there will be Rs50,000 fine for giving wrong identification details and suspending the operation of the specific mobile number or barring the person from using the telecom service for a particular duration.

Commercial communications which are advertising and promotional in nature should be made only with the prior consent of a subscriber. For many years, Know Your Customers (KYC) obligations have been iterated by the Department of Telecommunications (DoT) and telecom operators. However, users may not always want to share their identities with the recipient of each message they send. For example, a user responding to a poll or declining a service may not want their identity revealed/verified. The Bill lays down the duties of users to not furnish false information, suppress material information or impersonate others when proving identity to avail telecommunication services.

### **Right of Way**

Due to variable and complex legal procedures across the states, non-uniformity in levies, and requirement of approvals from the Forest Department, Railways and National Highway Authority etc., the 'Right of Way' has been a contentious issue for the Indian telecoms sector, causing delays. Various planning and rollout processes for towers and fibre across the country have been affected by this delay.

To ensure that Right of Way is exercised in a uniform and non-discriminatory manner, the draft bill establishes a framework to address the formation of telecommunication infrastructure on public property. It creates enabling provisions in respect of the private property. If the telecommunication infrastructure provider/licensee fails to achieve the Right of Way requested, DoT has the right to acquire such Right of Way to maintain telecommunication infrastructure after following due procedure. For rolling out of 5G this will be very critical.

### **Powers of the Central Government**

In the event of a public emergency or in interest of public safety, the Bill

provides wide-ranging powers for the Central and State Governments. These powers include taking temporary possession of any telecommunication services, networks or infrastructure from a licensee or registered entity or providing for a priority call routing scheme. The Bill also provides for the suspension of transmission in cases of public emergency. The government can also mandate interception, detainment, disclosure of messages, and suspension of communications, or otherwise transmit specific public safety and national security announcements.

The threshold for public safety or public emergency has not been defined. It is left to the subjective interpretation of the executive. Using terms like 'public safety', 'emergency', the absence of judicial oversight and accountability on surveillance powers may also open the Bill to scrutiny. Further, while the Bill provides that an appeal may be preferred, it does not disclose any details of the appellate authority.

### **Standard Setting by the Central Government**

For improving the quality and reliability of telecommunication, the Bill empowers the Central Government to prescribe standards for telecommunication equipment, services, network and infrastructure, specific standards for manufacturers, importers and distributors of telecommunication equipment and reliability of telecommunication services to the public.

### **Regulatory Sandbox**

The Central Government is empowered to create a regulatory sandbox for the telecommunications sector. This will allow the testing of new technology under controlled conditions, bolstering innovation and technology development.

## **Insolvency and Restructuring**

The Bill simplifies the procedure for mergers, demergers, acquisitions and other forms of corporate restructuring. It lays down that the entity undergoing corporate restructuring needs to ensure compliance with applicable law and provide an intimation of the same to the DoT only.

## **Retrospective Effect**

The Bill provides that the terms and conditions of license, registration, authorisation and assignment will not be modified with retrospective effect to the detriment of the applicants. The Bill provides that retrospective modifications may be made in the event of public emergency and national security.

## **Contentious Issues**

There are several contentious issues which are being hotly debated. This bill will hugely benefit two agencies: the Union government and the major telecom operators—Reliance Jio, Airtel, and Vodafone Idea, the major internet service providers. Is the Government discarding net neutrality, which was evident in the Facebook case and increasing the bargaining power of major telecom service providers?

## **License Raj**

When there has been so much effort to open and end license raj, it seems the license raj will come back in the telecom sector. A licensing regime will apply to mobile and internet services and software platforms that operate using internet bandwidth, extending from calling and messaging applications to services that transmit content, such as software updates to machines. Licensing for software is never heard of.

For in-building infrastructure like communications within the premises or peering of traffic between customers who are co-located at the same data centres, these activities do not use any public telecom network. There is hardly any benefit in licensing this sort of activity.

## **Monopoly in Telecom**

As of December 2021, three private companies accounted for 89.91 per cent of the total subscriber base (Reliance Jio 36, Airtel 30.81 and Vodafone-Idea 23 per cent). The public sector BSNL accounted for only 9.90 per cent and MTNL 0.28 per cent for providing mobile telephony services from 2G to 4G.<sup>3</sup>

The issue is not about market share alone. More important is the point of curbing high monopoly prices in the interest of consumers due to a very high threshold of investment into 4G and 5G services and the long gestation period before the companies see returns. Monopoly is an unavoidable reality in India, and the central challenge is how to safeguard consumers' interests where only three corporate houses dominate the market. There is no explicit recognition of this danger in the Bill, and it contains no provisions to adopt any additional method to curb monopoly. The Telecom Regulatory Authority of India (TRAI) was mandated to curb monopoly practices in the telecom sector.

## **Over The Top (OTT) services**

Over-the-Top platforms (OTT) are audio and video hosting and streaming services such as Netflix, Amazon Prime Video, Hotstar etc., which started as content hosting platforms but soon branched out into the production

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3 B Sivaraman, New Telecom Bill is flawed; it overlooks monopolies, allows surveillance, October 7, 2022 available at: <https://thefederal.com/analysis/new-telecom-bill-is-flawed-it-overlooks-monopolies-allows-surveillance/>

and release of short movies, feature films, documentaries and web series themselves.

The bill intends to widen the definition of ‘telecommunication services’ to include OTT communication services to bring OTT communication/messaging platforms such as Whatsapp, Telegram, Signal, Zoom etc., within the fold of the Bill. This has been the demand of the Indian telecommunications lobby. However, the proposed definition of telecommunication services means any service provided through telecommunication, i.e., the transmission, emission or reception of any messages through the wire, radio, optical or other electromagnetic systems. This definition is general, all-encompassing and potentially covers a wide range of digital platforms.

Generally, only voice and data services are recognised in telecommunications. Telecom services involve direct voice transmission over wires/ radio or the data sent over the internet broken into data packets to be reassemble into voice, image or data on the other end. What is inside the data packets is not the domain of telecommunication.

Traditional Telecom Service Providers (TSPs) have been demanding the creation of a licensing regime for providers of OTT communication services for the following reasons:-

- There should be a level playing field of ‘same service, same rule’. OTT services have become a substitute for the services provided by the TSPs. This has led them to suffer from revenue loss due to market share loss.
- TSPs pay fees and buy spectrum at auction to provide voice and messaging services, while OTT platforms run on their infrastructure and pay nothing.

- Need for law enforcement agencies to be able to monitor illegal activities taking place through OTT platforms. Most online financial scams happen through OTT calls. It was impossible to apprehend the culprits due to untraceability and non-availability of data.

Mobile phone companies are understandably happy with the "reformative" draft Indian Telecommunications Bill. Cellular Operators Association of India (COAI) represents India's three private operators - Reliance Jio, Bharti Airtel and Vodafone Idea. Lt Gen SP Kochhar (Retd), Director General of COAI said in a statement, "In keeping with the recent trend of reformative policy making by the Government, this draft Indian Telecommunication Bill is another milestone step to develop a modern and future-ready legal framework in telecommunication. We are studying the newly drafted Bill and will share our comments with the Government in due course of time."<sup>4</sup>

OTT operators have a different view. Some of these are:-

- There are inherent structural differences between telecom and OTT communication service providers.
- OTT offers multiple functionalities, including voice calling and instant messaging, though their primary function may be social networking. With WebRTC applications, a library is available that provides the same functionality. The WebRTC project is open-source (<https://webrtc.googleusercontent.com/src/>) and supported by Apple, Google, Microsoft and Mozilla, amongst others. Almost all browser-based content and mobile applications can have a communications layer that supports messages, voice and video.

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<sup>4</sup> <https://economictimes.indiatimes.com/industry/telecom/telecom-policy/coai-terms-draft-telecom-bill-reformative/articleshow/94369753.cms>

Will such services also be brought within the regulatory ambit?<sup>5</sup>

- OTT Apps are the backbone of the Digital Economy. Subjecting them to licensing could stifle the entire socio-economic ecosystem, kill innovation that relies on the internet and hamper the GDP growth. Existing monopolies would strengthen, and only large companies would provide commercial internet services.
- The type of regulation of OTTs should be different from that of the Mobile Network Operators (MNOs), which span data and privacy protection, consumer protection, content moderation, etc.
- Telecom operators control the broadband access infrastructure and are the gatekeepers to broadband internet access. OTT services do not have these controls.
- The video content distribution part of the OTT services has been left out.

That the OTT platforms do not pay anything may not be entirely true. Between 2014–2017, OTT players invested approximately \$75 billion per year in network infrastructure worldwide, including data centres, submarine cables and servers for data transport, delivery and hosting. Almost 20 per cent of the world’s fibre is in the hands of four major non-telcom operators. Between 2015 and 2019, US\$8 billion was invested in new sub-sea cables. Similarly, there is the data centre industry. The primary big technology players, including Meta, Apple, Amazon, Netflix and Google have consolidated a hegemony over their domain. These big tech giants arm-twist elected governments, bypass the laws of the land and push their biased agendas and marketing ill-practices. Thus have raised the demand to regulate them for national security and free and competitive open market practices.

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5 <https://internetfreedom.in/the-draft-indian-telecommunication-bill/>



After the announcement of the Draft Telecom Bill, it has been announced that the DoT would regulate only the communication apps such as WhatsApp and Telegram to ensure right national security perspective, and has no plans to control other aspects of the business.

## **The Spectrum**

The Draft Telecom Bill says, “In a way, spectrum is similar to *Atma*, which is *ajar-amar*, as described in Bhagwad Gita. Like *Atma*, spectrum too does not have any physical form, yet it is omnipresent.” The bill correctly identifies the spectrum as a “scarce natural resource” and proposes that it be allocated only through auction. However, the spectrum can be assigned through the administrative process for defence, transportation, research, etc. The DoT has also proposed that if a telecom entity in possession of spectrum goes through bankruptcy or insolvency, the assigned spectrum will revert to the control of the Centre.<sup>6</sup> More clarity is required for the mode of assignment of shared spectrum for satellite communications applications, unlicensed spectrum for public Wi-Fi use or usage of unlicensed spectrum for innovative applications.

To generate revenue auction of the spectrum is a highly lucrative option for the Government. Since the frequency band availability is limited, different stakeholders are jostling for the same resource. Efforts are also on to auction satellite spectrum. Broadcasting and Direct to Home (DTH) services, which serve 200 million households, employ millions, and generate sizable tax revenues for the Government, have raised their concerns.

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6 Spectrum Is Like Atma, License For Whatsapp, Zoom: Takeaways From The Draft Telecom Bill, Outlook Business Team, 23 September 2022 available at: <https://www.outlookindia.com/business/spectrum-is-like-atma-license-for-whatsapp-zoom-takeaways-from-the-draft-telecom-bill-2022-news-225318>

Satellite broadband will be the most practical way to bring broadband to remote and hilly regions. Bharti Global-backed OneWeb, Reliance Jio's JV with Luxembourg-based SES, Amazon's Project Kuiper, Viasat, Elon Musk's Starlink and the Tata-Telesat combine are among those trying to enter India's relatively nascent fast broadband-from-space services segment.<sup>7</sup>

Satellite operators all over the world use spectrum bands such as Ka-band (28 GHz: 27.5-31.0 GHz). Lt Gen AK Bhatt, Director General Indian Space Association (ISpA), has raised his concern stating, "There has been a surge in interest in satellite communications in India. It has recommended to the TRAI that spectrum from 27.5-28.5 GHz should be excluded from the auction for IMT/5G and should be reserved for space. However, the final decision on spectrum allocation is still awaited. Gen AK Bhatt has commented on the Draft Telecom Bill, "As space industry, our request to the Government is that spectrum should be allocated administratively as it is being done worldwide."

### **Concerns of Defence Services**

There are serious concerns regarding national security due to the auction of frequency bands, including bands kept specifically for the armed forces. Since the armed forces do not express their apprehensions in the open domain, this extremely critical issue never gets the attention it deserves. Armed forces lost very important frequency spectrum in the earlier auction of spectrum.

The logic generally given is that the frequency bands are unused and, when the time comes, it will be reverted. This logic does not stand to the realities

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<sup>7</sup> <https://government.economictimes.indiatimes.com/news/technology/satcom-body-isp-a-urges-govt-to-administratively-allocate-spectrum-for-space-services/94777527>

of modern warfare. Today war is won or lost in the electromagnetic domain. Communication (HF, VHF, UHF, Microwave, Satellite), surveillance, radars of various types, electronic warfare, drones, missiles, and electromagnetic weapon systems depend on the frequency spectrum. Most of the frequency spectrum are not used during peace time to avoid giving up our resources. These will only open up during operations. You cannot get back the spectrum during that time as they would be heavily used for commercial purposes. Non-availability of frequency spectrum will make us totally vulnerable and is a sure-shot recipe for disaster.

Important aspects of Defence Band and the defence interest zone should be included in the telecom bill.

### **Role of Regulators**

The TRAI is a body set up to act as an independent regulator of telecom services and frame policies. The Regulator plays a crucial role in shaping the digital communication landscape of the country. It has done a remarkable job as the Regulator of this dynamic, technologically advanced sector for the past 25 years.

The draft Telecom Bill significantly reduces the role of the independent sector regulator, the TRAI, and the Telecom Dispute Settlement and Dispute Tribunal (TDSAT). The Bill seeks to do away with provisions for referencing and back-referencing recommendations between the DoT and TRAI. It gives more power to the DoT to undertake policy-facing decisions, without the statutory requirement of consulting TRAI. This will give DoT more control over policymaking, dilute the role of TRAI and at the same time, remove the mechanism of checks and balances between the policymaker (TRAI) and the licensor (DoT). TRAI will be allowed to make recommendations only when requested by the Telecom Department. Effectively, DoT will take over both the roles of Regulator

and policymaking, TRAI will do only what the Government tells it.

The Government encroaches upon the powers of the Regulator and the appellate tribunal in three main areas: tariffs, quality of service standards and dispute resolution mechanisms. Any tariff order issued by the TRAI will have to be suitably amended if the Government takes a stance opposite to that of the Regulator. This would make the Government a licensor, an operator (it owns BSNL/MTNL), as well as a regulator. The only additional power that has been given to TRAI is the checking of predatory pricing in telecommunications, which is an anti-trust action and should be in the Competition Commission of India's (SCCI) ambit and not the TRAI.

Next, the powers of the TDSAT for resolution of disputes get redundant. TDSAT is the first body that looks into any dispute between two telecom operators, telecom operators and the government, and between operators, the government and the Regulator. Once the TDSAT has passed orders on such disputes can they be appealed at the Supreme Court. The Draft Bill changes this by empowering the government to develop alternate dispute resolution mechanisms.<sup>8</sup> The bill could weaken the regulatory environment, lead to greater government interference in policymaking, hurt consumer interests and lead to a decline in the quality of telecom services.

Regulation of OTT services has been a bone of contention ever since the idea was first floated in 2015. In September 2020, TRAI directed that there was no need to regulate OTT services. In August 2022, TRAI was asked to start another consultation process to examine the virtues of OTT regulation. The Draft Telecom Bill could render the ongoing consultation

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<sup>8</sup> Rishi Raj, Draft telecom Bill: Trai to dial PMO over dilution of powers, The Indian Express, October 17, 2022 available at: <https://indianexpress.com/article/business/economy/draft-telecom-bill-trai-to-dial-pmo-over-dilution-of-powers-8212768/>

process irrelevant. The Draft Bill clearly states that OTT services will be subject to licensing unless the Government decides to grant exemption. Diminution of TRAI's role means that the Government will not be obliged to consider the Regulator's recommendations.

## **Legal Issues**

The Draft Indian Telecommunication Bill, 2022, is a step in the right direction for updating the legal framework concerning telecommunication. However, there are some areas in which the proposed legislation has not emphasised enough. There is a need for tweaking and addressing critical issues that will make the law more robust in future.

India doesn't have a dedicated law on cyber security. It becomes crucial to address the issues concerning cyber security in the telecom sector. No parameters have been stipulated for protecting and preserving the security of telecommunication, its infrastructure, network and services. The liability of service providers in the context of cyber security breaches has not been specifically addressed.<sup>9</sup>

The Bill has been given the status of a special law. It supersedes anything inconsistent contained in any other law in force. This could directly conflict with India's mother legislation on electronic format, the Information Technology Act 2000. In case of a contradiction between these two laws, which would prevail? As per judicial precedent, if there are two special laws, the law enacted at a later date prevails if it contains a clause giving it an overriding effect. It seems that the Telecom Bill would prevail over the IT Act as the former will be enacted later.

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<sup>9</sup> Pavan Duggal, Gaps in telecom draft, The Tribune, September 28, 2022 available at: <https://www.tribuneindia.com/news/comment/gaps-in-telecom-draft-435948>

Rajeev Chandrasekhar, Minister of State for Electronics and IT, said that India would replace the IT Act with a Digital India Act, which will comprise a modern framework of rules and laws acting as catalysts for innovation and protecting citizens' rights. He also said that a series of new legislation will be brought out in the next few months such as a revised bill on data protection and a data governance framework. The Minister added, "These new laws will supersede current rules. If there are any contradictions with earlier laws, they will be amended or repealed." This law will deal with a lawful interception and other matters related to the governance of digital communications applications. In this case, the Digital India Act would override the telecom bill.

Efforts must be made to ensure that there is no conflict between the various laws.

### **Security Issues**

Relationship of telecommunications with national security is critical. The Bill states that licensed telecom service providers must provide law enforcement authorities access to their networks and intercept messages during investigations. Encryption used by most digital communications apps hinders investigative efforts as it becomes difficult to ascertain user identity on these platforms and stop crime and mischief. The implication is that digital communications apps would have to break encryption and create meaningful pathways for the surveillance of their services, making the platforms less secure for users.

Under Section 69 of the IT Act, the Central or State Governments can carry out lawful interception and monitoring of messages sent through digital communications applications to preserve national security and public order. While this rule has been challenged, it has not been stayed by any court, meaning that digital communications apps must comply with it.

Media reports suggest that DoT would only regulate the communication apps such as WhatsApp and Telegram and has no plans to control other aspects of the business.

The Civil Society has raised the following concerns:-

- The Bill empowers the Central and State Governments to intercept messages in the interest of public safety and emergency without accompanying checks and balances.
- The term, 'national security' is left undefined.
- Since the power to intercept messages transmitted through a 'computer resource' already exists under Section 69 of the Information Technology Act, 2000, what was the requirement to include the same in the proposed Bill.
- Details regarding sanctions and penalties in the Bill for deviating from service providers' conduct should be prescribed.

This are sensitive issues. However, one must understand that the 'Big Brother' today is no longer the state. The technical giants have taken that position, who misuse privacy protections based on their own politically driven algorithms rather than submitting themselves to the government's due process. Recent data shows that government's requests to access user data are growing worldwide.

The challenge for both social media platforms and government agencies is to devise mechanisms and implement regulations that make accounts linked to terrorist groups accessible to law enforcement agencies in real-time. Protecting communications between traffickers and terrorists should not be taken as privacy. Platforms know these people and can see what they are posting, even if it lies behind privacy settings.

Owners of social media must understand that freedom and privacy are not all-or-nothing issues. A balance has to be struck as our safety depends on it. The Government also has to assure the people that law enforcement agencies will not misuse this right for political or other reasons. Some oversight, preferably parliamentary, should be ensured.

## **Conclusion**

The Government must be complimented for taking the initiative to make the Draft Telecom Bill. The process being followed by putting it in the open domain asking for comments and recommendations from all, and then finalising the Bill after taking cognisance of the concerns of different stakeholders is praiseworthy. Since the issues are quite complex and often contradictory, it will not be possible to satisfy everybody. As long as an honest effort is made to enable the legislation to be more effective, relevant and topical, it should be acceptable to all.

Telecommunication plays a vital role in accessing the Internet and cyberspace. It is being directly impacted by newly emerging technologies like AI, the IoT and Blockchains. Telecom is within the boundaries of India. However, digital applications are beyond India's territory. Bringing some of these under telecom is an issue which will be difficult. As India is assuredly progressing to the future, the proposed law should have futuristic, broad, generic provisions relevant to the arrival of new technologies.

For India's cyber sovereignty, Telecommunication as critical information infrastructure plays an important part. In the absence of dedicated legal provisions on Indian cyber sovereignty, now is the time to specify parameters to ensure the protection of Indian security, sovereignty and integrity in telecommunications and cyber sovereignty domains. Cybersecurity aspects need to be covered in detail. The critical infrastructure of telecommunication would be under massive attacks by state and non-state actors. This aspect



should be kept in mind while drafting the Bill.

MeitY has managed the digital sphere effectively for the last two decades. It also has expertise in emerging technologies. Involving the DoT to now govern digital communications applications may be a disruption - with possibly unintended and unforeseen consequences with no guarantee of desired policy outcomes.

The national security and privacy of citizens are equally important. One cannot be traded for other. An independent body must regulate the arbitrary power of surveillance under the parliament which will seek transparency and accountability from law enforcement authorities.

The requirements of armed forces in telecom services, telecom infrastructure and frequency spectrum for national security must be clearly stated and due provisions made.

The reach and power of big technology companies, strongly backed by the U.S. Government should not be underestimated. While we must leverage market potentials to protect our national security concerns, we must be aware of how much we can push the envelope. There will be push-backs. Can we do without G Mail or Twitter, or Whats App?

## **About the VIVEKANANDA INTERNATIONAL FOUNDATION**

The Vivekananda International Foundation is an independent non-partisan institution that conducts research and analysis on domestic and international issues, and offers a platform for dialogue and conflict resolution. Some of India's leading practitioners from the fields of security, military, diplomacy, government, academia and media have come together to generate ideas and stimulate action on national security issues.

The defining feature of VIF lies in its provision of core institutional support which enables the organisation to be flexible in its approach and proactive in changing circumstances, with a long-term focus on India's strategic, developmental and civilisational interests. The VIF aims to channelise fresh insights and decades of experience harnessed from its faculty into fostering actionable ideas for the nation's stakeholders.

Since its inception, VIF has pursued quality research and scholarship and made efforts to highlight issues in governance, and strengthen national security. This is being actualised through numerous activities like seminars, round tables, interactive dialogues, Vimarsh (public discourse), conferences and briefings. The publications of VIF form lasting deliverables of VIF's aspiration to impact on the prevailing discourse on issues concerning India's national interest.



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