

Legislative Brief

The Telecommunications Bill, 2023

The Telecommunications Bill, 2023 was introduced in Lok Sabha on December 18, 2023.

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Highlights of the Bill

- ◆ The Bill seeks to replace the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933.
- ◆ Authorisation will be required from the central government to: (i) establish and operate telecommunications networks, (ii) provide telecommunications services, or (iii) possess radio equipment.
- ◆ Spectrum will be allocated through auction, except for specified entities and purposes for which it will be assigned administratively.
- ◆ Telecommunication may be intercepted on specified grounds including security of the state, public order, or prevention of offences. Telecom services may be suspended on similar grounds.
- ◆ The Bill provides a mechanism to exercise the right of way for laying telecom infrastructure in public as well as private property.
- ◆ The central government may provide for measures to protect users such as requiring prior consent to receive specified messages, and creation of a do not disturb register.

Key Issues and Analysis

- ◆ The Bill provides that procedure and safeguards related to interception will be prescribed by the central government. The question is whether these should be provided by the Bill.
- ◆ The Bill may allow mass surveillance; such measures may violate the fundamental right to privacy on the account of proportionality.
- ◆ The Bill does not specify procedural safeguards with respect to powers to search premises and vehicles.
- ◆ The requirement of biometric verification for users may not be proportionate and hence, may infringe upon the fundamental right to privacy.
- ◆ Telecommunication services, as defined under the Bill, may cover internet-based services.
- ◆ The Bill vests several regulatory functions with the central government. This is distinct from sectors such as power and finance, where these functions have been delegated to the regulators.
- ◆ The government may add, modify or remove offences in the Third Schedule to the Bill by a notification. The question is whether such changes should only be through an Act of Parliament.

PART A: HIGHLIGHTS OF THE BILL

Context

The telecom sector in India has been governed under three laws: (i) the Indian Telegraph Act, 1885 providing for licensing of telegraph-related activities and interception of communication, (ii) the Indian Wireless Telegraphy Act, 1933 for regulating the of possession of wireless telegraph apparatus, and (iii) the Telegraph Wires (Unlawful Possession) Act, 1950 for regulating the of possession of telegraph wires.^{1,2,3} The 1950 Act was recently repealed by the Repealing and Amending Act, 2023, which received assent on December 17, 2023.⁴ In addition, the Telecom Regulatory Authority of India (TRAI) Act, 1997 sets up TRAI as the telecom regulator, which regulates tariffs for the telecom sector.⁵ 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.

The 1885 Act regulates telegraph services, which involve sending messages in the form of symbolic codes over wires or radio waves known as telegram (telegraph services were shut down in India in 2013).⁶ Communication technology has since evolved significantly to facilitate real-time transmission of text, voice, images, and video information. These have given rise to a variety of services including voice calling, SMS, radio broadcasting, television, and internet-based communication services for messaging and video calling. All this while, the 1885 Act has continued to be in use for the regulation of telecom services.

Another key development has been the ability to provide similar kinds of services across different technologies. For example, cable television network has been used to provide internet services, and internet can be used to provide access to public broadcasting. The Department of Telecommunications has observed that the nature of telecom, its usage, and technologies have undergone a massive change since the era of the telegraph. Hence, there is a need to restructure the legal and regulatory framework for the telecom sector.⁶

One such attempt was the Communication Convergence Bill introduced in Lok Sabha in 2001.⁷ The Bill sought to replace the three telegraph laws, the TRAI Act, and the Cable Television Networks (Regulation) Act, 1995. The Bill was examined by the Standing Committee on Information Technology.⁷ The Bill lapsed with the dissolution of 13th Lok Sabha. The draft Indian Telecommunications Bill, 2020 was released by the Department of Telecommunications in September 2022 for public feedback.⁸ The Telecommunications Bill, 2023 was introduced in Lok Sabha on December 18, 2023.⁹ The Bill seeks to replace the two telegraph laws and provide a regulatory framework for the telecom sector.

Key Features

- **Authorisation for telecom-related activities:** Prior authorisation from the central government will be required to: (i) provide telecommunication services, (ii) establish, operate, maintain, or expand telecommunications networks, or (iii) possess radio equipment. Existing licences will continue to be valid for the period of their grant, or for five years, where the period is not specified.
- **Assignment of spectrum:** Spectrum will be assigned by auction, except for specified uses, where it will be allocated on an administrative basis. Specified purposes include: (i) national security and defence, (ii) disaster management, (iii) weather forecasting, (iv) transport, (v) satellite services such as DTH and satellite telephony, and (vi) BSNL, MTNL, and public broadcasting services. The central government may re-purpose or re-assign any frequency range. The central government may permit sharing, trading, leasing, and surrender of spectrum.
- **Powers of interception and search:** 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. Telecom services may be suspended on similar grounds. The government may take temporary possession of any telecom infrastructure, network, or services on occurrence of any public emergency or public safety. An officer authorised by the government may search premises or vehicles for possession of unauthorised telecom network or equipment.
- **Protection of users:** The central government may provide for measures to protect users which include: (i) prior consent to receive specified messages such as advertising messages, (ii) creation of Do Not Disturb registers, and (iii) a mechanism to allow users to report malware or specified messages. Entities providing telecom services must establish an online mechanism for registration and redressal of grievances.
- **Right of way:** Entities laying telecommunication infrastructure may seek right of way over public or private property. Right of way must be provided on a non-discriminatory and non-exclusive basis to the extent possible.

- **Appointments to 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.
- **Digital Bharat Nidhi:** The Universal Service Obligation Fund has been established under the Indian Telegraph Act, 1885 to provide for telecom services in underserved areas. The Bill retains this provision, renames the fund as Digital Bharat Nidhi, and also allows its use for research and development in telecom.
- **Offences and penalties:** The Bill specifies various criminal and civil offences. Providing telecom services without authorisation, or gaining unauthorised access to a telecom network or data, are punishable with imprisonment up to three years, a fine up to two crore rupees, or both. Breaching terms and conditions of authorisation is punishable with a civil penalty of up to five crore rupees. Possessing unauthorised equipment, or using unauthorised network or service, is punishable with a penalty of up to ten lakh rupees.
- **Adjudication process:** The central government will appoint an adjudicating officer to conduct inquiries and pass orders against civil offences under the Bill. The officer must be of the rank of joint secretary and above. Orders of the adjudicating officer may be appealed before the Designated Appeals Committee within 30 days. Members of this Committee will be officers of the rank of at least Additional Secretary. Appeals against the orders of the Committee, in connection to breach of terms and conditions, may be filed with TDSAT within 30 days.

PART B: KEY ISSUES AND ANALYSIS

Interception of communication

Bill: Clause 20(2), (4)

The Bill provides that any message or class of messages between two or more persons may be intercepted, monitored, or blocked on specified grounds. Such grounds include: (i) the interest of the security of the state, (ii) friendly relations with other countries, (iii) public order, or (iv) prevention of incitement of offences. Telecom services may be suspended on similar grounds (e.g., internet shutdown). These actions will be subject to the procedure and safeguards prescribed by the central government. We discuss certain issues with these provisions below.

Whether procedure and safeguards should be provided in the Bill

The procedure and safeguards are to protect the fundamental rights of individuals against the actions of the government.¹⁰ Hence, this raises the question whether they should be specified in the Bill, instead of being delegated to Rules issued by the government. For instance, the safeguards in case of disclosure of identity information and authentication records related to Aadhaar are provided in the Aadhaar Act, 2016.¹¹ The Act specifies details such as: (i) who can issue directions, (ii) the process for review of directions, and (iii) the duration of their applicability.

Whether an independent oversight mechanism should be necessary for interception

Currently, Rules issued under the Indian Telegraph Act, 1885 specify the procedure and safeguards for the interception of communication.¹² The Bill provides that existing Rules will continue to be in force. The Rules under the 1885 Act were framed in line with the directions of the Supreme Court in *PUCL vs Union of India (1996)*.¹⁰ For review of interception orders, these Rules establish a committee consisting exclusively of senior government officials. The question is whether this oversight mechanism is an appropriate safeguard against the actions of the government. This may go against the principle of separation of powers.

In certain cases when a person is aware of an infringement of fundamental rights, he can challenge such infringement before Courts. These instances may include any violation of: (i) the right to life and liberty through illegal arrest, or (ii) the right to freedom of speech and expression through blocking of user-generated content, or suspension of internet. However, in case of interception or monitoring of communication, by the very nature of such orders, the affected person may never be aware of a potential violation of their fundamental rights. Hence, he cannot challenge such orders for potential illegality. It may be argued that in such cases, the procedural safeguards must be stricter.

The question whether judicial oversight should be necessary for interception was discussed in the *PUCL* judgement. The Court had observed that the judicial scrutiny would have to be provided through the statute. While recommending only executive oversight, the Court had referred to the Communications Act, 1985 of the United Kingdom. The 1985 Act of the United Kingdom has since been replaced with a new law which requires the approval of a Judicial Commissioner for such actions.¹³ Similarly, in Australia, judicial authorisation is required for interception.¹⁴

The Bill may allow mass surveillance; such measures may violate the fundamental right to privacy

The Bill provides that any message or class of messages between two or more persons, or relating to any particular subject, may be subject to interception, monitoring, or blocking. These actions will be subject to procedure and safeguards prescribed by the central government. Using these grounds, an order may be made to intercept or monitor all communication where a particular word or set of words is used. Such an order would require all communication of all users to be monitored. Enabling such monitoring may lower the degree of privacy of communication for all users. The Supreme Court (2017) has held that any infringement of the right to privacy should be proportionate to the need for such interference.¹⁵ Such surveillance may be required to prevent incitement of offences. To trace a few messages that may be required for investigative purposes, the degree of privacy of communication of all users of a telecom network will need to be lowered. Hence, this raises the question whether such actions could be considered proportionate to the objective.

Safeguards with regard to the power of search and seizure not specified

Bill: Clause 43

The Bill allows any officer authorised by the central government to search a premise or vehicle on specified grounds. The officer must have reason to believe that unauthorised telecommunications equipment or network used to commit an offence is kept or concealed. The officer may also take possession of such equipment or network. The Bill neither specifies the procedure and safeguards against such actions, nor provides that such safeguards will be prescribed.

The Supreme Court (1959) has observed that since a search is exceedingly arbitrary in nature, hence, stringent statutory conditions are imposed on its nature.¹⁶ Thus, laws such as Code of Criminal Procedure, 1973 (CrPC) specify certain procedural safeguards.¹⁷ These include requiring the officer conducting the search to: (i) produce the warrant authorising the search, and (ii) allow two independent individuals to witness the search. The CrPC also requires the officer to: (i) make a list of all items seized and (ii) obtain the signature of witnesses on this list. Occupants of the premise have a right to attend the search and obtain a copy of the list of items seized. Other laws such as the Food Safety and Standards Act, 2006 and the Bureau of Indian Standards Act, 2016 also provide for powers to search and specify that the procedure under CrPC will be applicable.^{18,19}

Need for biometric verification

Bill: Clause 3(7)

The Bill provides that telecom service providers must verify the identity of their users through any verifiable biometric-based identification. This requirement may not be proportionate, and may infringe upon the fundamental right to privacy.

Biometric information is personal data and its collection and use are protected by the fundamental right to privacy. Biometric data is also regarded as sensitive personal data given its nature.²⁰ The Supreme Court (2017) has held that any measure infringing upon the right to privacy must satisfy certain tests. It must have a legitimate aim and the measure must be proportionate to the aim.²¹ Identity verification at the time of provisioning of services may be considered necessary to identify concerned persons if an offence is committed. The question is whether requiring a biometric based identification is proportionate to this aim. It may be argued that less intrusive means exist to establish identity for the issuance of a SIM card. For instance, currently, regulations allow a SIM card to be procured using government identities such as a PAN card or Voter ID card.²²

In case of linking Aadhaar (which is a biometric-based ID) with mobile numbers, the Supreme Court (2018) held that the measure is disproportionate and an unreasonable state compulsion.¹⁵ The Court noted that “for the misuse of such SIM cards by a handful of persons, the entire population cannot be subjected to intrusion into their private lives”.¹⁵

Telecommunication services may cover internet-based services

Bill: Clause 2(p), (s), (t), 3(1)(a)

The Bill requires authorisation by the central government to establish and operate telecommunication networks, as well as to provide telecommunication services. Telecommunication has been defined as transmission, emission, or reception of any message by wire, radio, optical, or other electro-magnetic systems. Under the Bill, message means any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through telecommunication. Thus, telecommunication services may cover a wide range of services provided using internet such as messaging, calling, and video conferencing. These also involve transmission of text, audio, or video by wire, radio, or optical fiber. The Bill does not explicitly exclude such services from its purview; these are already covered under the Information Technology Act, 2000.²³

Telegraph Act of 1885: Section 3 (1AA), 4, 7

The approach in the Bill is distinct from the Indian Telegraph Act, 1885.¹ The 1885 Act requires a license for establishing, maintaining, and working telegraphs. It defines a telegraph as an appliance, instrument, material, or apparatus used for transmission of messages. Thus, the 1885 Act restricts the requirement of licensing to the carriage of communication.¹ It does not cover the content communicated. It empowers the central government to regulate prices for services provided by the operators of telegraph.

Delegation of regulatory functions

Bill: Clause 32, 35, 36, 59(d)(ii)

The Bill provides that the central government will provide authorisation for telecom-related activities and assign spectrum. Secretaries of the central government will conduct inquiries and hear complaints regarding breach of terms and conditions of authorisation or assignment (appeals will lie before TDSAT set up under the TRAI Act, 1997). The central government may also specify various standards and conformity assessments for telecom equipment, network, and services. Thus, several regulatory functions will be performed by the central government. This approach is distinct from sectors such as power and finance, where similar functions have been delegated to the respective regulators CERC and SEBI.^{24,25}

Currently, TRAI is the regulatory body for the telecom sector. Its functions include: (i) regulating tariff for telecommunication services, (ii) providing recommendations to the central government on issues such as timing and introduction of new service providers and terms and conditions of licensing, and (iii) specifying standards of quality of service. The TRAI Act, 1997 also establishes TDSAT. It hears appeals against the directions of TRAI, and also adjudicates certain disputes including those between a licensor and a licensee, and the telegraph authority and any other person. Note that the Communication Convergence Bill, 2001 had sought to empower the Communications Commission of India (which would have replaced TRAI) to issue licenses, adjudicate disputes, and specify technical standards of network infrastructure facilities.⁷

Offences and penalties

Bill: Chapter IX, Second Schedule, Third Schedule, Clause 57(1)(b)

Whether powers to modify offences through notification is appropriate

The Bill specifies certain civil offences and penalties in the Third Schedule to the Bill. The Bill empowers the central government to amend the Schedule. It further specifies that penalty in the Schedule will not exceed Rs 10 crore. Hence, the Bill allows the central government to add, modify or delete offences in the Schedule through a notification. The question is whether such changes should only be done through an Act of Parliament.

Whether offence of using SIM cards in excess of the number notified is appropriate

One of the civil offences in the Bill is the use of Subscriber Identity Modules (SIM cards) in excess of the number notified. The penalty for this offence is up to Rs 50,000 for the first offence and up to two lakh rupees for each subsequent offence. This raises the question whether there should be a legal limit on the number of SIM cards a person may use.

Drafting issues

The Bill contains certain drafting issues as enumerated in Table 1 below.

Table 1: Drafting issues in the Telecommunications Bill, 2023

Clauses	Issue
39, 59(d)(ii)	The clause amending the TRAI Act states that TDSAT may adjudicate appeals against the decisions of the Adjudicating Officer or the Designated Appeals Committee. At the same time, the Bill provides that appeals against the decisions of the Adjudicating Officer will lie before the Designated Appeals Committee.
20(2), 21, 22(3), 42(4)	The Bill uses the terms 'national security' and 'security of the state' interchangeably. The Constitution uses the term 'security of the state'.
18(1), 18(3)	The clause on dispute resolution with respect to right of way allows the government to appoint any other authority apart from the District Magistrate to have exclusive powers to resolve the dispute. However, the clause stating that the determination of the dispute by the Magistrate shall be final does not reference any other such authority.

Source: The Telecommunications Bill, 2023 as introduced in Lok Sabha on December 18, 2023.

- [The Indian Telegraph Act, 1885.](#)
- [The Indian Wireless Telegraphy Act, 1933.](#)
- [The Telegraph Wires \(Unlawful Possession\) Act, 1950.](#)
- The First Schedule, [The Repealing and Amending Act, 2023.](#)
- Section 11, [The Telecom Regulatory Authority of India Act, 1997.](#)
- "[Explanatory note](#) to the Draft Indian Telecommunication Bill, 2022", Department of Telecommunications, September 21, 2022.
- [Report](#) of the Standing Committee on Information Technology on the Communication Convergence Bill, 2001.
- [Draft Indian Telecommunication Bill, 2022.](#) Department of Telecommunications, September 21, 2022.
- [The Telecommunications Bill, 2023.](#)
- [People's Union for Civil Liberties vs The Union of India](#), WP (Civil) 105 of 2004, Supreme Court, December 18, 1996.
- Section 33, [The Aadhaar Act, 2016.](#)
- Rule 419A, [The Indian Telegraph Rules, 1951.](#)

13. Part-2: Lawful Interception of Communications, [Investigatory Powers Act, 2016](#), United Kingdom.
14. [Telecommunications \(Interception and Access\) Act 1979](#), Australia; [Telecommunications Act, 1997](#), Australia.
15. [Justice K.S. Puttaswamy \(Retd\) vs Union of India](#), W.P.(Civil) No 494 of 2012, Supreme Court of India, September 26, 2018.
16. The State of Rajasthan vs Rehma, Criminal Appeal No. 39 of 1958, Supreme Court, October 14, 1959.
17. Section 100, [The Code of Criminal Procedure, 1973](#).
18. Section 38, [The Food Safety and Standards Authority of India Act, 2006](#).
19. Section 28, [The Bureau of Indian Standards Act, 2016](#).
20. [Article 9, General Data Protection Regulation](#).
21. [Justice K.S. Puttaswamy \(Retd\) vs. Union of India](#), W.P. (Civil) No 494 of 2012, Supreme Court of India, August 24, 2017.
22. [List of Acceptable Documents as Proof of Identity and Proof of Address](#), Department of Telecommunications, October, 2016.
23. Section 2, [The Information Technology Act, 2000](#).
24. Section 79, [The Electricity Act, 2003](#).
25. Section 11, [The Securities and Exchange Board Act, 1992](#).

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