

## Explanatory note to the draft Indian Telecommunication Bill, 2022

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## **Explanatory note to the Indian Telecommunication Bill, 2022**

### **A. Introduction:**

With 117 crore subscribers, India is the world's second largest telecommunication ecosystem. The telecommunication sector employs more than 4 million people and contributes about 8% of the country's GDP.

The existing regulatory framework for the telecommunication sector is based on the Indian Telegraph Act, 1885. The nature of telecommunication, its usage and technologies have undergone a massive change since the era of "telegraph". The world stopped using "telegraph" in 2013.

We now live in the era of new technologies such as 4G and 5G, Internet of Things, Industry 4.0, M2M Communications, Mobile Edge Computing, etc. These technologies are creating newer opportunities for India's socio-economic growth. Therefore, India needs a legal framework attuned to the realities of the 21<sup>st</sup> century.

In the past eight years, the Government has taken several initiatives for the growth of the telecommunication sector. These measures include rationalising the definition of AGR, rationalising bank guarantees and interest rates, allowing for 100% FDI under the automatic route, delicensing of frequency bands, streamlining process of SACFA clearances for mobile towers, etc.

The Government has also committed huge amounts for digital inclusion. Providing high quality connectivity in unconnected areas, revival of BSNL, taking optical fiber to all gram panchayats, developing India's own telecom technology stack, and developing telecom manufacturing ecosystem, demonstrate the government's commitment to digital inclusion.

It is in this context that we have taken up the initiative to restructure the legal and regulatory framework for the telecommunications sector.

### **B. Consultations:**

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. The Consultation Paper highlighted the evolution of telecommunication regulation in other countries.

Comments have been received from various stakeholders and industry associations. The Ministry has examined the comments carefully and the following key themes have emerged:

- 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 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 provision of telecommunication services, so long as the licensee pays all dues; and
- Need for rationalization of penalty framework, providing for specific penalties that are clearly linked with the nature of breach and gravity of the offence.

Many suggestions around procedures, licensing reforms, frequency assignment have come in. These suggestions have been noted for inclusion in future reforms.

Based on the consultations and deliberations, the Ministry of Communications has now prepared a draft Indian Telecommunication Bill, 2022.

While preparing the draft, relevant legislations in Australia, the European Union, United Kingdom, Singapore, Japan and the United States of America have also been examined in detail.

The Bill will replace the existing legal framework governing telecommunication in India, comprising of the Indian Telegraph Act, 1885, the Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950.

### **C. Drafting practices:**

The Bill has been drafted in a plain and simple language so that any citizen is able to understand its provisions. It uses illustrations and contextual definitions where necessary to further clarify the intent of a section. There are no provisos used. Instead, any special situations or exceptions are addressed in separate clauses.

This explanatory note provides a brief overview of the Bill to facilitate further consultations.

### **D. Disclaimer:**

This explanatory note is for informative purpose only. It is not a part of the Bill. The explanatory note shall not be considered for legal interpretation of the provisions of the Bill.

### **E. Chapter-wise Summary of Bill**

#### **Preamble**

1. The preamble of the Bill recognises that telecommunication is a key driver of socio-economic development. It specifies that telecommunication infrastructure and telecommunication network are important parts of public infrastructure. It emphasizes the need to ensure availability of affordable, reliable, secure and universal telecommunication services.
2. It further recognises that spectrum is a valuable and inexhaustible natural resource, which has an element of public good. Therefore, it is vital to ensure efficient use and management of spectrum.

3. In a way, spectrum is similar to *atma*, which is *ajar*, *amar* as described in Shrimad Bhagwad Gita. Like *atma*, spectrum too does not have any physical form, yet it is omnipresent.
4. The Bill aims to consolidate and amend the existing laws governing provision, development, expansion and operation of telecommunication services, telecommunication networks and telecommunication infrastructure and assignment of spectrum.

### **Chapter 1: Short title, extent and commencement**

5. This chapter introduces the title of the Bill as the “Indian Telecommunication Bill, 2022” and provides that the law will extend to the whole of India.

### **Chapter 2: Definitions**

6. The Bill replaces the outdated concepts under the existing framework such as “telegraph”, “telegraph officer”. The new definitions are comprehensive and relevant to present day realities.
7. The term “**telecommunication**” has been defined to mean transmission, emission, or reception of any messages, whether by wire, radio, optical or other electro-magnetic systems.

The term “**telecommunication services**” has been defined to include broadcasting services, electronic mail, voice mail, voice, video and data communication services, audiotex services, videotex services, fixed and mobile services, internet and broadband services, satellite based communication services, internet based communication services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, over-the-top (OTT) communication services which is made available to users by telecommunication.

The term “**telecommunication network**” means a system or series of systems of telecommunication equipment, or telecommunication infrastructure, or both, including terrestrial or satellite networks or submarine networks, or a combination

of such networks, used or intended to be used for providing telecommunication services, but shall not include customer equipment.

### **Chapter 3: Licensing, Registration, Authorization and Assignment**

8. The Bill recognizes the globally established principle of exclusive privilege of the Central Government in relation to telecommunication services, telecommunication network, telecommunication infrastructure and spectrum.
9. The Bill further provides the structure for the Government to exercise this privilege through the grant of:
  - (a) licenses for telecommunication services or telecommunication networks;
  - (b) registrations for establishing telecommunication infrastructure;
  - (c) authorization for the possession of wireless equipment; and
  - (d) assignment of spectrum.
10. **License:** For provision of Telecommunication Services and Telecommunication Networks, an entity shall have to obtain a license.

To ensure that there is no disruption in the sector, an entity providing telecommunication services or telecommunication network under current law shall be entitled to continue to operate under its existing terms and conditions till it migrates to a set of new terms and conditions.

11. **Registration:** For providing telecommunication infrastructure, an entity shall have to obtain only a registration, not a license. This will simplify the setting up of infrastructure.

Telecommunication infrastructure includes telecommunication lines, posts, telecommunication towers, ducts, conduits, cable corridors, or any civil, electrical, or mechanical infrastructure used or capable for use for telecommunication as notified by the Central Government. A list of such telecommunication infrastructure is provided in Schedule 5.

An entity providing telecommunication infrastructure under existing laws shall be entitled to continue to operate under existing terms and conditions for five years or optimally migrate to a set of new terms and conditions.

12. **Authorization:** For possession of wireless equipment, an entity shall have to obtain an authorization.

Wireless equipment refers to any telecommunication equipment used or capable of use in wireless communication, including any wireless transmitter that is capable of use for broadcasting or emission of wireless communication.

13. The possession and use of any equipment (such as jammers) that blocks telecommunication or is likely to disrupt law and order, shall be prohibited unless its use is authorized by the Central Government.
14. The Bill provides that the Central Government may prescribe rules for the grant of license, registration, authorization or assignment, their terms and conditions and payments. It has been ensured that subordinate legislation is within the limits set by main legislation.
15. The Bill also provides that the terms and conditions of a license, registration, authorisation, or assignment, as the case may be, will not be modified with retrospective effect to the detriment of the relevant entity. This will remove any uncertainty in the minds of existing stakeholders.
16. As brought out above, the Bill provides adequate provisions to ensure regulatory certainty. It provides for continuity of licenses and authorizations under the old regime. To avoid any possible disruption, the Bill provides that rules, guidelines and administrative orders issued under the existing laws will continue until they are superseded by rules under the new law.
17. The Bill provides that any entity that has been granted license under this Act shall identify the persons to whom it provides the services through a verifiable mode of identification. The Bill also provides that the identity of the person sending a message shall be available to a user. This provision is important to prevent cyber frauds.

## Spectrum Management

18. Spectrum is a scarce natural resource. It is not merely an economic good but also a public good and its efficient use is in public interest. At present, spectrum assignment in India is done through a combination of government policies and judicial decisions.
19. The Bill lays down explicit statutory framework and regulatory clarity for the Central Government to undertake spectrum assignment. The underlying philosophy of the Bill is that spectrum assignment should serve the common good and ensure widespread access to telecommunication services.
20. The Bill provides for assignment of spectrum primarily through auction. For certain specified functions relating to government and public interest like defence, transportation, research, etc. the Bill provides an enabling framework for assignment of spectrum through administrative process.
21. The Bill provides for an enabling framework for optimal utilization of spectrum. These include the following provisions:
  - (a) **Technology agnostic use:** To enable the utilization of the spectrum in a liberalized and technologically neutral manner, a spectrum assignee may deploy new technologies within its spectrum.
  - (b) **Re-farming and re-purposing:** To enable repurposing of any frequency range for a different use, re-arrangement of the frequency range is often required. Therefore, the Bill provides for re-farming and harmonization of frequency range.
  - (c) **Sharing, trading, leasing, and surrender:** To enable effective utilization of spectrum, the bill enables sharing, trading, leasing and surrender of spectrum assigned, subject to prescribed terms and conditions.
  - (d) **Returning unused spectrum:** To ensure efficient utilization of spectrum, the Bill provide a process of return of unutilized spectrum.



22. The Bill provides policy continuity through the following provisions:
- (a) Existing spectrum assigned through auction will continue till the duration of such assignment.
  - (b) Existing spectrum assigned through the administrative process shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the day the Bill comes into force, or the date of expiry of such assignment, whichever is earlier.
  - (c) Exemptions relating to spectrum usages at the date of enactment of the new law would also continue. The Bill provides flexibility for any exemptions that the Central Government may grant on spectrum usage, in the public interest.

For example, with effect from 28.01.2005, the Central Government has done away with the requirement of a license for use of low power wireless equipment in the frequency band 2400 MHz to 2483.5 MHz. This and other existing exemptions, will continue unless otherwise notified.

#### Breach of Terms and Conditions of License, Registration, Authorization or Assignment

23. In case of the breach of terms and conditions of a license, registration, authorization or assignment granted, Central Government should be able to impose penalties.
24. The Bill provides the punitive actions that Central Government can take in case of breach of terms and conditions. Such actions include suspension, revocation, curtailment of the duration of the license, imposition of financial penalties, giving directions to the entity, etc.

The penalties shall be commensurate with the severity of the breach of terms and conditions.

25. For judicious use of the powers, the Bill provides that the punitive action shall be taken after considering all the relevant factors, such as nature and gravity of the

breach, its repetitive nature, the revenue loss caused, as well as any other mitigating or aggravating factors.

26. The Bill recognizes that there is no one-size-fits-all approach, and the intent and willingness of the licensee, assignee or registered entity to remedy any breach, should be adequately considered before taking punitive actions.

#### Voluntary undertaking

27. The Bill lays down a framework for “voluntary undertakings”. It is a mechanism through which a licensee, registered entity, or assignee may submit an undertaking to address any breach of terms and conditions.

This innovative approach towards remedying breaches will bring in significant relief for the entire telecom ecosystem.

28. Such an undertaking may include an undertaking to take specified remedial actions or refrain from taking some actions in a timebound manner.
29. If such a voluntary undertaking is accepted by the Central Government, then no proceedings shall be taken against the licensee, registered entity or assignee for such breach. However, any failure to comply with any such voluntary undertaking accepted by the Central Government, will result in penalties as specified.

#### Dispute resolution

30. The Bill provides for the right of appeal before the appellate authority. It also creates an enabling provision for the Central Government to set up an alternate dispute resolution mechanism such as arbitration, mediation or other process of dispute resolution.

### **Chapter 4: Right of Way for Telecommunication Infrastructure**

31. Right of Way is a pre-requisite for establishing telecommunication networks and improvement of telecommunication services. The existing regulatory framework, based on Right of Way Rules, 2016, has had a limited impact in addressing bottlenecks in rapid expansion of telecommunication infrastructure.

32. Effective mechanism for obtaining RoW will be essential for rapid roll-out of newer technologies such as 5G. The Bill provides for a robust regulatory framework within the federal structure, to obtain RoW in a uniform, non-discriminatory manner, for establishment of telecommunication infrastructure.
33. The Bill seeks to remove the limitations by providing an enabling framework that facilitates RoW for laying or building telecommunication infrastructure by any facility provider.

The term “facility provider” includes any licensee or registered entity, including any contractor or sub-contractor or agent working for the Central Government or licensee or a registered entity.

34. The Bill provides for a uniform and non-discriminatory regulatory framework governing:
  - (a) establishment of telecommunication infrastructure on public property; and
  - (b) enabling provisions in respect of private property.
35. Any public entity that receives an application from a facility provider is required to grant permission in an expeditious manner. Rejection of an application can only be for limited substantive grounds.

This provision also applies to any public property vested for infrastructure projects (example: infrastructure developed in PPP mode) where applications for RoW are made to the public entity granting the concession or contract for such projects.

36. With regard to RoW over private property, the Bill recognizes the importance of negotiation and mutual agreement. Any facility provider may submit an application seeking RoW, to a person under whose ownership, control, or management a private property is vested.

Rules in this regard may be expected to provide the overarching framework such as the procedure for making such application and timelines, framework

governing objections by owner or occupier of the property, and the manner in which objections will be resolved.

37. Only in exceptional circumstances, where the owner or occupier does not provide the RoW requested, the Central Government may step in to acquire the RoW in public interest.
38. Any grant of RoW, whether on public property and private property, is also required to be on a non-discriminatory and non-exclusive basis. This is with a view to ensuring a level-playing field to service providers, choice to consumers, and improved quality of telecommunication service.
39. In line with the vision of PM Gati Shakti initiative, the Bill provides for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure.
40. The Bill also contains an enabling provision to create a specific dispute resolution framework relating to Right of Way.

## **Chapter 5: Restructuring, Defaults in Payment and Insolvency**

### Mergers, Demergers, Acquisitions

41. The Bill seeks to simplify the framework for mergers, demergers and acquisitions, or other forms of restructuring, by only requiring intimation to the licensing authority.
42. In other words, any licensee or registered entity will simply be required to comply with the scheme for restructuring as provided under the Companies Act, 2013, and inform the Department of Telecommunications, as required.
43. The entity that emerges pursuant to such restructuring, would need to comply with the terms and conditions, including fees and charges, applicable to the licensee or registered entity.

## Insolvency

44. Unlike many other natural resources, spectrum is completely reusable. It has no physical form. It remains in existence whether it is used or not. Other natural resources like minerals and oil get consumed when used. Buildings get deteriorated when in use. Machines need maintenance when in use. Unlike all such asset classes, spectrum neither gets permanently consumed, nor does it require maintenance when used.

In view of this uniqueness of spectrum, the Bill addresses situations where spectrum is not being put to use due to insolvency.

45. The proposed provision on insolvency aims to ensure continuity of telecommunication services. This provision builds upon the existing framework under the IBC 2016. It seeks to balance due utilization of spectrum and realization of the value of the spectrum for the larger public good.
46. The Bill provides that a licensee or assignee undergoing insolvency proceedings can continue to operate if:
- (a) it continues to provide the telecommunication service,
  - (b) does not default on the payment of any dues under the license or assignment, and
  - (c) complies with any additional or modified terms and conditions of license.

If such licensee or assignee is unable to comply with these requirements, then the assigned spectrum will revert to the control of the Central Government.

47. This section also seeks to create disincentive for acquiring spectrum at a value lower than auction-determined price. In that sense, this provision aims to retain the value of the public good in the hands of the government.

## Special framework to address defaults in payment by licensee, registered entity, or assignee

48. The Bill provides an enabling framework for the Central Government to address defaults in payment by a licensee, registered entity, or assignee. If the Central

Government determines that there exist extraordinary circumstances, it may take the following measures:

- (a) Deferral of the payment of such amounts or a part thereof;
- (b) Conversion of a part or all of the amounts into shares in the licensee, registered entity or assignee;
- (c) Write-off of such amounts or a part; or
- (d) Relief from payment of such amounts or a part.

## **Chapter 6: Standards, Public Safety and National Security**

### Standards

- 49. The Bill empowers the Central Government to prescribe standards in order to ensure quality and reliability of telecommunication. Such standards may apply to telecommunication services, or to telecommunication equipment, telecommunication network and telecommunication infrastructure.
- 50. The aim is to ensure public safety. This is all the more crucial given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis.

### Public Emergency, Public Safety, National Security

- 51. The Bill provides an enabling framework for the Central Government to address any situations of public emergency, public safety, or national security concerns. These provisions provide for time-bound limited suspension of transmission of messages, or of provision of telecommunication networks or services, while ensuring the rights of the citizens of India.
- 52. The Central Government has also been empowered to direct any licensee to transmit in its telecommunication services or telecommunication network, specific announcements.

## **Chapter 7: Telecommunications Development Fund**

- 53. The Universal Service Obligation Fund (“**USOF**”) was established under the Telegraph Act, to meet the “universal service obligation” which was to provide

telegraph access to people in rural and remote areas at affordable and reasonable prices.

54. Under the Bill, the USOF is sought to be expanded into the “Telecommunication Development Fund” (“**TDF**”), by adding further objectives of underserved urban areas, R&D, skill development, etc.
55. The payments made, if any, for the grant of a license, registration or assignment shall include a sum attributable to the TDF, as determined by the Central Government.

All amounts payable towards the USOF under licenses granted prior to the date of the new Bill, shall be deemed to mean amounts payable towards the TDF. The sums shall be first credited to the Consolidated Fund of India, which shall then be utilised by the Central Government for the purposes of the TDF.

56. This can address the larger public purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities.
57. This provision will enable India to emerge as a leader in telecom technology. It will enable development of telecom technologies and generate new employment.

## **Chapter 8: Innovation and Technology Development**

58. Chapter 8 provides for an enabling framework for a “Regulatory Sandbox” to facilitate innovation and technological development in telecommunication. It will enable any person to conduct tests and collect evidence relating to new telecommunication innovations under a suitably flexible framework.
59. Such framework will provide for monitoring provisions, special terms and conditions, and exemptions from terms and conditions of any license, assignment, registration or authorization.

## **Chapter 9: Protection of Users**

60. Today telecom service is the entry point of digital world. Increasingly, digital services are accessed through telecom services. Therefore, user protection has emerged as an important policy objective for the government.
61. Chapter 9 provides an enabling framework for the Central Government to prescribe measures to ensure protection of telecommunication users.
62. Every telecom user wishes to know who is calling. This will help in preventing cyber-frauds done using telecom services. Therefore, provisions related to identity have been included in the Bill at relevant places.
63. Users also need protection from calls that they want to avoid. The Bill enables a legal framework for preventing harassment of users from unsolicited calls and messages.

### Duty of users:

64. Rights and duties go hand in hand. If duties are done, then rights get automatically implemented. Our Constitution also recognizes both rights and duties.
65. In today's world, telecommunication offers possibilities that were unknown to mankind. From connecting families to creating newer economic opportunities, the potential is limitless. Therefore, it is a civic duty of every individual to use telecommunication responsibly.
66. Therefore, in the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order, or preventing incitement to an offence it shall be a duty of every citizen not to furnish any false particulars, suppress any material information or impersonate another person while establishing identity for availing telecommunication services.

## **Chapter 10: Miscellaneous**

Chapter 10 provides for miscellaneous provisions that addresses various aspects.



67. The Bill provides an enabling framework for creating the security interest that a licensee or a registered entity can provide lenders financing such entities to provide regulatory certainty to lenders. This will facilitate greater capital flows in the telecommunication sector.
68. It deals with the power of the Central Government to certify persons for operation of wireless equipment on a shipping vessel or aircraft.
69. It provides a framework governing certification of persons seeking to engage in amateur services. "Amateur services" is defined as radiocommunication services for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, i.e., by duly authorized persons interested in radio technique solely with a personal aim and without any pecuniary interest.
70. The Bill also provides for an enabling framework to notify relevant rules. It is envisaged that a comprehensive and consolidated set of rules will be notified in this regard.

## **Chapter 11: Offences**

71. The Bill consolidates and updates the various provisions on penalties and offences under the existing law. Taking into consideration the developments in criminology and penal jurisprudence, the Bill has kept the penalty of imprisonment or heavy fines only for a small set of critical offences.
72. Gradation of certain penalties has been introduced for violation of the provisions of the law. The penalties under the Bill focus on compliance to the provisions of the law, rather than on imprisonment and punishment.
73. For most of the offences, the Bill specifies fines, and also provides for compounding the same. The decriminalization of certain offences by removing imprisonment, and levying only fines, as well as compounding of multiple offences, will help in development of telecom ecosystem.
74. The Bill also seeks to eliminate the obsolete and redundant penalties for many offences under existing laws. Examples are: penalty for opposing establishment

of telegraphs on railway land; intrusion into signal-room; trespass in telegraph office or obstruction; telegraph officer fraudulently sending messages without payment; etc.

75. Schedule 3 provides a tabulation of penalties for violation of specific provisions of the Bill. Offences for which imprisonment and fine are prescribed include:

- (a) providing telecommunication service or establishing networks, without a license;
- (b) gaining unlawful access to telecommunication network, or unlawfully intercepting any message;
- (c) contravention detrimental to national security;
- (d) possessing equipment that blocks telecommunication;
- (e) wilful tampering, removing or damaging telecommunication infrastructure or telecommunication network;
- (f) use unauthorised telecommunication service, network or infrastructure, knowingly;
- (g) impersonating authorized personnel of licensee, registered entity or assignee to perpetuate fraud; and
- (h) misrepresentation of identity required for availing telecommunication services.

76. All other offences, such as causing damage through negligence to telecommunication infrastructure or networks, possessing wireless equipment without license, contravention of provisions relating to protection of users, such as violation of Do Not Disturb, or not taking prior consent of telecommunication users before sending specified messages etc. have only prescribed fine and not imprisonment.

These offences are non-cognizable, i.e. an offence in which a police officer has no authority to arrest without warrant.

77. All offences under the Bill are bailable. Furthermore, compounding (i.e., settlement in lieu of criminal proceedings), is allowed in respect of most offences, except the ones such as providing telecommunication services without valid license, unlawful interception, etc.

## **Chapter 12: Repeal and Savings**

78. The Bill seeks to replace three laws: the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950.
  
79. However, with a view to ensuring smooth transition to the new framework, and avoid any possible disruption, it provides for continuity of actions taken under the repealed laws. It also provides that rules under the repealed laws would continue, till such time that new rules are formulated.

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