

Draft Indian Telecommunication Bill 2022

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Manifest Pedagogy:

The draft Bill consolidates three separate acts which currently govern the telecommunication sector. The new telecom bill propose to ease merger and acquisition norms and licence conditions and review existing penal provisions and ways of allocating backhaul spectrum and certain bands. The bill is also likely to address policies relevant to the sector's structure and would aim to enhance the ease of doing business. But there are genuine concerns associated with the draft bill which needs to be addressed, which will ensure the bill give's a new ray of hope to the already struggling Telecom sector in the country.

In News: the Department of Telecommunications (DoT) released the draft Indian Telecommunications 2022 Bill to regulate Internet-based OTT (Over-The-Top) telecom services.

Placing it in the Syllabus: Economy-Infrastructure.

Static Dimensions

- Present status of the Telecom Industry

Current Dimensions

- Why has the government issued a draft Telecommunication Bill?
- Key amendments to existing telecom laws
- Significance of new Bill
- Issues with the draft Bill

Content

In a bid to do away with British-era laws governing the telecom sector, the Department of Telecommunications (DoT) issued the draft Indian Telecommunication Bill, 2022. The proposed Bill aims to bring in sweeping changes to how the telecom sector is governed, primarily by giving the Centre more powers in several areas to do so.

Present status of the Telecom Industry

- The Telecom industry in India is the second largest in the world with a subscriber base of **1.17 billion as of 2022**. India has an overall teledensity of **85.11%**.
- **100% Foreign Direct Investment (FDI)** has now been allowed in the Telecom sector under the automatic route.
 - **The Telecom sector is the 3rd largest sector** in terms of FDI inflows.
- Contributes **directly to 2.2 million employment and indirectly to 1.8 million jobs**.
- India is on its way to becoming the **second-largest smartphone market** globally by 2025

Why has the government issued a draft Telecommunication Bill?

- The Centre aims to consolidate and amend the existing laws governing the provision, development, expansion and operation of telecommunication services, telecom networks and infrastructure, in addition to assignment of spectrum.
- The draft Bill consolidates three separate acts that govern the telecommunications sector – **Indian Telegraph Act 1885, Indian Wireless Telegraphy Act 1933, and The Telegraph Wires, (Unlawful Protection) Act 1950**.

Key amendments to existing telecom laws

- **OTT regulation**-The govt has enlarged the definition of telecommunication services to bring – over-the-top (OTT) services, satellite-based communication services, internet-based communication services, in-flight and

maritime connectivity services, interpersonal communications services, and machine-to-machine communication services – under the ambit of the proposed law.

- The draft Bill mandates OTT platforms such as Whatsapp to obtain a licence from the government.
- **Default in payment by licensees**-In the event of payment default, and in extraordinary circumstances, including financial stress, consumer interest, maintaining competition in the sector, or reliability and continued supply of telecommunication services, the govt can defer the payment of such amounts, convert a part or all of the amounts payable into shares, write-off payable amounts or provide relief from payment.
- **In case of insolvency**-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.
 - So far, in insolvency proceedings, there has been a lack of clarity on whether the spectrum owned by a defaulting operator belongs to the Centre, or whether banks can take control of it.
- **Telecommunication Development Fund (TDF)**-It also proposes to replace the Universal Service Obligation Fund (USOF) with the Telecommunication Development Fund (TDF).
 - USOF is the pool of funds generated by the **5 per cent Universal Service Levy** that is charged upon all telecom fund operators on their Adjusted Gross Revenue.
 - The USOF has largely been used to aid rural connectivity. However, with the TDF, the objective is also to boost connectivity in underserved urban areas, R&D, skill development, etc.
- **Provision of Refund**-The telecom ministry has proposed a provision for refund of fees in case a telecom or internet provider surrenders his licence.

- **Dilution of powers**-The Centre is also looking to amend the Telecom Regulatory Authority of India Act (TRAI Act) to dilute the sectoral watchdog's function of being a recommendatory body.
 - The current TRAI Act mandates the telecom department to seek the regulator's views before issuing a new licence to a service provider.
 - The proposed Bill does away with this provision. It has also removed the provision that empowered TRAI to request the government to furnish information or documents necessary to make this recommendation.
 - Additionally, the new Bill also proposes to remove the provision where if the DoT cannot accept TRAI's recommendations or needs modification, it had to refer back the recommendation for reconsideration by TRAI.
- **Interception exemption**-The bill proposes to exempt "press messages that are intended to be published in India" of correspondents accredited to the central or state government from interception.
 - The exemption will not be granted in case of any public emergency or in the interest of the public safety, sovereignty, integrity or security of India, friendly relations with foreign states, public order, or to prevent incitement to an offence, according to the draft.
- **Right of Way (ROW):** The Bill tries to achieve through law a 'right of way' (ROW) enforceable at the state- and at the municipal-corporation level.
 - It lays down a framework in which a public entity that owns the land has to grant 'right of way' permission expeditiously unless it gives a substantive ground for refusal
- **Spectrum Auction**-Spectrum should primarily be given through auction. For specific functions related to the government and public interest, like defence,

transportation and research, the Bill proposes assignment through the administrative process.

- **Waiver**-The department of telecom (DoT) has suggested for the first time a mechanism to waive telecom dues in extraordinary circumstances.
- **Penal provisions** for breach of licence conditions have been relaxed and categorised by level of severity and penalties vary from written warning to a maximum of **₹5 crore**.

Significance of new Bill

- The new bill will provide legal backing to Right of Way actions, providing an enabling framework for reducing timelines for approvals and mooted remedies for damage to fibres and towers.
- The framework for mergers and acquisitions will be simplified and relief, write-off or deferment of dues may be allowed in cases of payment default in extraordinary circumstances.
- OTT, communication apps such as Whatsapp, Signal, Telegram and others that may provide voice or video calling would fall under the ambit of the draft telecom bill but through a light-touch regulation.
 - OTT players would have to take licences, share revenue with the government and be treated to the same rules as telecom service providers.
- The focus is on the effective use of spectrum. It has been given legal backing now.
- Enables a legal framework for preventing harassment of users from unsolicited calls and messages, a move that is set to provide massive relief to millions of mobile phone users that get spam calls or messages on a daily basis.
- 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.

- The Bill has put in provisions which will create disincentives 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.

Issues with the draft Bill

- Experts indicate the Centre cannot take coercive action against states or municipal corporations to impose 'right of way' rules, as land is a state subject.
- More clarity is required as to how the government plans to regulate OTT communication services under this Bill.
- Analysts also worry that the Bill will adversely impact the consultative role of TRAI, weakening its position. It excludes the obligation of the government to consult TRAI on licensing issues.
- **The Internet Freedom Foundation said**, "The draft telecom bill contains provisions on suspension of services (internet shutdowns) & interception of messages (surveillance), without meaningful reform and even increases government powers under vague grounds.
- **Breach of Privacy**-OTT services will have to let the government intercept messages in the event of "any public emergency or in the interest of the public safety" and also provide the government immunity against any lawsuit.
- The all-encompassing definition of telecom services for licensing purposes goes against global best practices of not regulating internet-based applications and services.

Wayforward

- The Bill places emphasis on the development of telecom infrastructure while covering new-age services to keep

up with the times.

- The proposed legal framework seeks to be future-ready, provides certainty regarding spectrum management and reserves the penalty of imprisonment or heavy fines only for a small set of critical offences.
- The telecom sector in India has to deal with various challenges like maintaining a sufficient spectrum and adopting new technologies faster to be able to use the new features and techniques to serve the customers with better and feature-rich service.
- Industry to come up with solutions to reduce power consumption and carbon footprint in towers, and find more sustainable, green solutions, including using green hydrogen.

Mould your thoughts

Q.The New telecom bill 2022 aims to bring the next wave of reforms on licensing. Critically analyse the provisions of the bill and how it will impact the Telecom sector in India.(250 words)

Approach to the answer.

- Introduction about aims of the bill
- Present situation of Telcos and need for such a bill
- Strengths/ Significance of the bill.
- Shortcomings of the Bill
- Impact the bill can have
- Wayforward and conclusion.