

Telecommunication Law

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Abstract: This paper seeks to highlight the established laws governing the telecom industry of India, which has undergone a tremendous change with the emergence of Jio, a telecom company founded by Mr. Mukesh Ambani, which has been sweeping the entire industry overtaking telecom giants Airtel & Vodafone-Idea. Additionally, the paper also throws light on the Personal Data Protection Bill, 2019 which has garnered lot of relevance following rumors of surveillance by the Indian government on its citizens by means of the Aarogya Setu App, an initiative meant to assess the spread of Covid-19 in the country. Lastly, there is mention of the agencies responsible for creating innovative policies & settling disputes within the industry.

Key Word: TRAI, MTNL, Jio, Aarogya Setu App, Personal Data Protection Bill

Date of Submission: 18-06-2020

Date of Acceptance: 06-07-2020

I. INTRODUCTION

This Chapter outlines the crucial aspects of the legal and regulatory schema for the Indian telecom industry. The services fall under statutes such as the the TRAI Act 1997, the Prasar Bharti Act 1990, etc. These statutes are enforced by numerous governments, quasi-judicial and regulatory agencies. These are DoT, TRAI, TDSAT & the Ministry of I & B, they have unique responsibilities of their own to execute. Their functions involve issuing licenses, creating policies, resolving disputes and representing India at the International Communication Forums.

However, certain features of the regulatory framework are novel & were introduced by the government as part of its market friendly economic reforms in 1991. These reforms changed the telecom, broadcasting and cable network market. Further, they also resulted in creation of new laws and institutions that tremendously changed the existing foundations of the telecom regulatory framework. Despite the introduction of novel elements in the existing framework, certain older statutes, such as the Telegraph Act, are still in play. Thus, one can say that the older elements of the framework, nevertheless, play an important role. Yet, the present layout of the telecom industry is distinct from what it was previously & is also open to transformation in the future, especially with the enforcement of the Personal Data Protection Bill, 2019.

II. GOVERNMENT'S EXCLUSIVE TELEGRAPH PRIVILEGE

According to section 4(1) of the Telegraph Act, the central government has the exclusive privilege of establishing and ensuring the maintenance of telegraphs within India. This enables the government to exercise absolute control over all telegraphs operating within India.

Further, section 3 defines 'Telegraph' as "any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, radio waves or herizian waves, galvanic, electric or magnetic waves."¹

Numerous case laws have stated that the term 'Telegraph' includes telephone, television and even video equipments.² Additionally, it has been stated that the term 'Telegraph' also includes wireless, radio and mobile equipments.³

However, regardless of its exclusive telegraph privilege under section 4(1), the government possesses pre-emptor right to provide any service which utilizes any equipment that has been mentioned under the definition of telegraph in the Telegraph Act.⁴

¹ A herizian wave refers to an electromagnetic wave of frequency lower than 3000 Giga cycles per sound launched into space without an artificial guide.

² Senior Electric Inspector v Laxminarayanan Chopra AIR 1962 SC 159

³ Secretary, Ministry of Information and Broadcasting v Cricket Assocn of Bengal AIR 1996 SC 1236

⁴ Secretary, Ministry of Information and Broadcasting v Cricket Assocn of Bengal AIR 1996 SC 1236

A pre-arrangement to section 4(1) allows the government to relinquish its privilege by furnishing a license to operate a telegraph. This provision forms the legal basis for the government to provide telegraph licenses to private bodies and individuals to carry out telecom services.

In practice, the government furnishes a separate license for different types of communication services. Hence, there exists a different license for fixed services, cellular services, unified access services, national and international long distance services and internet services. Cable networks operators and service providers of communication facilities such as bandwidth, dark fires, and towers, do not require telegraph licenses.

The telegraph license contains detailed information regarding the service for which the license has been granted. The license also includes the terms and conditions based on which the service can be offered along with the license legal and contractual responsibilities.

Generally, most licenses require that the licensee pay an entry fee followed by a recurring annual fee, which is a part of the licensee's revenues, to the government. Also separate charges are applicable for any spectrum that has been allotted to a licensee. In case of disputes arising between the licensor and the licensee, they are brought before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

III. TELEGRAPH AUTHORITY AND TELEGRAPH OFFICER

The Telegraph authority is an essential regulatory office established under the Telegraph Act. Section 3(6) of the Telegraph Act explains the authority as the Director General of Posts and Telegraphy or any officer who has been authorized by the director general to perform the telegraph authority's functions under the statute.

The telegraph authority is in charge of carrying out several functions under this Act, these include the power to issue telegraph licenses under section 4(1). However, one must keep in mind the fact that the Telegraph authority is not same as the government.⁵ An example of the same is section 19B of Telegraph Act, which permits the government to grant a private licensee the telegraph authority's power to install and preserve telegraph equipment on private property.⁶

IV. TELEGRAPH RULES AND OTHER REGULATIONS

Section 7(1) of the Telegraph Act grants the central government the power to frame rules for telegraphs that have been established, maintained or is being operated under the statute. These rules lay down the rates and tariffs, the restrictions regarding the functioning of telegraph lines and equipments and the interception of telegraphic messages. In accordance with this section, in 1951 the government issued the Indian Telegraphic Rules.

These rules provided detailed instructions on various aspects, such as telephone allotment and disconnection procedures, telex services and telephone directories.

These Telegraph Rules are essential for government telecom services such as the Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL), as the rules give detailed guidance regarding the manner in which these companies must offer different kinds of telecom services.

Further, section 7(1) state that the Telegraph Rules are applicable to telegraphs operated by the government and the bodies operating under telegraph licenses. The reason behind this is that many rules were written particularly for the government's telegraph and telephone services.⁷

V. STATUTORY OFFENCES AND PENALTIES

The telegraph Act mentions a number of offences for illegal conduct involving telegraphs. These include illegal operation of an unlicensed telegraph, trespassing telegraph offices, illegal interception or alteration of telegraphic messages, fraudulent sending of messages without paying for it, misconduct by a telegraph officer, transmission of fabricated messages, retaining messages delivered in error and bribing of a telegraph officer.

VI. TELECOM REGULATORY AUTHORITY OF INDIA ACT 1997

The Telecom Regulatory Authority of India Act 1997 is another important Act that monitors the regulatory framework for Indian communication. This Act elaborates the Telegraph Act's basic legal framework.

Its main objective was to form an independent regulatory system for communication licensees and to protect the consumer interests. For this reason, the TRAI makes the Authority the principal regulatory agency for communications and lays down its functions, roles and responsibilities.

⁵ Orissa Vegetable Oil v Union of India AIR 1990 Ori 51

⁶ Statutes expand the Telegraph Act's definition of telegraph authority to incorporate private licenses for taxation purposes. See the Finance Act, 1994, section 65(17)

⁷ The Telegraph Rules 1951

The Act was amended in 2000. The amendment made the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) the only dispute resolution forum for communication disputes.

Applying the statutory powers allotted to it under the TRAI Act, the Authority issued numerous instruments which included orders, directions, regulations and recommendations; and this has, to a large extent, enhanced the statutory and legal framework for communication.

Likewise, the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has handed out numerous decisions and rulings regarding many issues pertaining to communication. These in turn, have resulted in the unfolding of distinct statutes and laws concerning telecom in India.

VII. THE WIRELESS TELEGRAPHY ACT 1933

The Indian Wireless Telegraphy Act is a short statute. The Act demands users of wireless equipment, such as transmitters, cellular phones and radios to secure a license. However, the government may leave out various groups of items from this statute's licensing requirements.

VIII. TELEGRAPH WIRES (UNLAWFUL POSSESSION) ACT 1950

The Telegraph Wires (Unlawful Possession) Act 1950 is a penal statute aimed at reducing the amount of theft of copper wires that's used in operation of telegraph and telephone services.⁸

This law is exclusively applicable to only copper wires, and does not cover any other physical medium such as the fiber optic cable.

IX. PRASAR BHARTI ACT 1990

The Prasar Bharti Act 1990, constituted a legal framework for public broadcasting in India. The Act led to the formation of the Prasar Bharti Corporation which became the principal public broadcasting agency.

X. CABLE NETWORK ACT 1995

The Cable Television Networks Act 1995 monitors the operation of cable television networks in India.

The Act provides that all cable network operators must be registered with the proper authorities prior to transmission of any programme through their respective cable services. In accordance with this Act, the central government issued a programme code and advertisement code to regulate the content aired by the cable network operators. The law also allowed the government to prohibit transmission of certain programmes in public interest.

This Act was amended in 2003; the amended act, now required cable operators to utilize 'addressable systems' also known as 'conditional access systems' which is commonly referred to as "set-top boxes", if they wanted to provide premium or pay channels to cable subscribers.

XI. CONVERGENCE BILL

A legislative plan has been pending in parliament since 2001, known as the Communication Convergence Bill. This bill seeks to create a single regulatory and licensing authority for all telecom, broadcasting and cable services. Further, this bill seeks to replace the existing statutes such as the Indian Telegraph Act 1885, The Indian Wireless Telegraph Act 1931, the Telegraph Wires (Unlawful Possession) Act 1950, the TRAI act 1987 and the Cable Television Networks Act 1995.

The bill aims at establishing the communications commission of India as the supposed 'super-regulator' of Indian communications. The Commission would possess regulatory and licensing functions; and its functions would include granting of license or communication services based on a layered system wherein, licenses are granted for each layer of a communication system, rather than for specific services.

The proposed bill also seeks to create a communications appellate tribunal that would hear appeals from the communication commission's decisions. The tribunal would be headed by a sitting or retired Supreme Court judge and it would possess the civil court's powers to hear and decide cases. However, this bill is yet to be passed.

XII. BROADCASTING BILL

The first Broadcast Bill was introduced in 1997; another one was introduced in 2006. The second bill introduced in 2006 seeks to establish a broadcasting regulatory authority to help assist in the regulation of broadcasting and cable services.

⁸ Krishanla Shridharani, *Story of the Indian Telegraph: A century of Progress*, Posts and Telegraph Department, 1953

The broadcasting authority will perform certain functions which are managed by the Ministry of Information and Broadcasting. Also, the bill would require cable network operators to secure license, and this proposed bill would repeal the Cable Networks Act. Further, the bill also includes rules regarding cross-media ownership, content based requirements for TV channels and restrictions on advertising content. However, the bill is yet to be enacted by the parliament.

XIII. PERSONAL DATA PROTECTION BILL, 2019

It aims to safeguard the confidential info of Indian citizens by ensuring that its being utilized for lawful purpose only. Additionally, the bill also recommends setting up of a new body, i.e. Data Protection Authority of India.

The bill also covers foreign companies, handling data of Indian citizens.

While the bill proposes seeking consent of individual for disclosure of their private info, however, one of the provisions of the Bill will permit the State to exempt any of its branches from applying the said recommendations, which in turn would bestow them with sweeping powers to gather confidential info of citizens.⁹

Justice B.N. Krishna has explained that the State can gain any confidential info under the guise of public order, which would prove fatal for the citizens.¹⁰

At present, the bill is under scrutiny, being weighed for its pros & cons. In the present context of the pandemic, this bill has garnered lot of attention following rumors of State authorized surveillance by means of the Aarogya Setu App.

The bill is still queued, however, there are speculations as to whether the Indian government will turn into “Big brother”.

XIV. CONCLUSION

The telecom industry, throughout the years has seen noteworthy development and improvement. The opening up of the Indian economy prompted the deregulation of the sector which increased the contention among its different players.

The impact of the same has been felt in the declining tariffs, arrangement of various, inventive tariff plans which have been fashioned for various segments, celebrity endorsements.

Further, various establishments have been always trying to adjust their vision and authoritative structures with the dynamic and ever changing business condition. Jio, Airtel and Vodafone, which are the main telecom administrators in the Indian market, fill in as ideal instances of associations overseeing change effectively throughout the years.

The telecom industry in the coming years is anticipated to become more competitive and aggressive with the coming of newer technology.

Looking at the development graph of the Telecom Sector in India, it has undergone a major metamorphosis in terms of its growth, technological context and market structure owing to the policy reforms that were put in place by the Indian government.

The sector has undergone a drastic change; initially, this sector was a monopoly of the government and now, it has transformed into a competitive field, wherein numerous private players have entered and have started handing out services to the customers.

The combined effort of government and private players, has given considerable boost to the industry. Active involvement of the private companies, foreign direct investment, the reform measures launched by the government and the wireless technology, all played an important role in boosting the growth of this industry.

It has become an essential service, and the growth of numerous other industries is dependent on this sector, now.

However, the telecom sector still needs to work upon improvement of its infrastructure. With the rise in complication of interconnection between the telecom and internet, the information and communication technologies can be misused which also has to be taken care of.

Next aspect that needs to be worked upon is the Telecom Regulatory Authority of India (TRAI). The regulators are expected to be transparent and answerable to customers; also it is the duty of the regulator to defend and promote the consumer’s choices and standards.

However, in this aspect, there still exists inadequacy in the spectrum for existing operators. There still prevails a region of perplexity in the segment of market for the network. Also, going through the convergence

⁹ <https://telecom.economicstimes.indiatimes.com/news/industry-bodies-concerned-over-data-protection-bill-say-it-compromises-on-privacy/72500324>

¹⁰ <https://economicstimes.indiatimes.com/news/economy/policy/personal-data-protection-bill-can-turn-india-into-orwellian-state-justice-bn-srikrishna/articleshow/72483355.cms>

bill which aims at the establishment and independence of the Communications Commission of India (CCI) & the Personal Data Protection Bill, they call for careful examination by experts.

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Donna Xavier. "Telecommunication Law." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(7), 2020, pp. 43-47.