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Draft Indian Telecommunication Bill, 2022

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Why is in news? A difference of opinion has emerged between the Information Technology Ministry and the Department of Telecommunications over the inclusion of internet-based communication services such as WhatsApp and Google Meet in the upcoming Telecommunications Bill.

A draft copy of the Telecommunication Bill was sent to an inter-ministerial group for consultations in May.

Internet communication service:

Internet communication refers to communicating with people over the internet. It could be in any form: messages, voice, or video calls.

One of the major advantages of internet communication tools over traditional communication is cost savings. In addition, many free tools make internet communication easier, such as WhatsApp, Skype, Google Meet, and Messenger.

Even businesses can communicate with overseas customers at pocket-friendly prices using the internet.

About the bill:

Recently, in the first draft of the Bill, the DoT had proposed regulating communication services including **voice, video, and data offered by platforms** such as **Whatsapp as telecom services**, requiring them to obtain a licence from the government just like other telecom operators.

WhatsApp and other similar services were mentioned as telecom services under the first version of the draft, addressing a long-standing demand by telecom operators which have on several occasions called for a level playing field.

At present, while **telecom companies need a licence to offer services, OTT platforms do not.**

MeitY believes that under the **Allocation of Business Rules**, internet-based communication services are **not part** of DoT's jurisdiction.

In July this year, almost three years after it first recommended against creating a specific regulatory framework for such platforms, the Telecom Regulatory Authority of India (TRAI) commenced fresh consultations on how OTT services can be regulated.

Highlights of the Bill:

The Draft Bill seeks to **replace the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950.**

Operating telecom network and providing telecom services will be licensed activities. Telecom services will also include broadcasting, OTT, M2M, and data communication services.

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Spectrum may be allocated through auction, administrative process, or other mechanisms decided by the central government.

The central government may intercept, monitor, or block messages or a class of messages between two or more persons. Such action may be taken if it is necessary or expedient in the event of a public emergency or threat to public safety, and is in the interest of the security of the state, public order, or prevention of offence. Telecom services may be suspended on similar grounds.

The Bill provides a mechanism to exercise the **right of way for laying telecom infrastructure**.

Key Issues and Analysis:

The Bill has **not incorporated procedural safeguards** mandated by the Supreme Court to **safeguard the right to privacy in case of interception of communication**. The Bill may violate requirements for periodic review and authorisation by a high-ranking official.

The Bill may **enable mass surveillance**. Such measures may **violate the fundamental right to privacy**.

The central government will have the **power to issue licenses for telecom network as well as services**. The considerations for regulation of network and services may be different. This raises the question **whether they should be regulated similarly**.

As per the Bill, **TRAI may not have any role in matters of licensing** in the telecom sector. The question is whether this is appropriate.

In case of **offences by companies**, the Bill **does not provide protection to employees** on account of lack of knowledge or if they have exercised due diligence. It also does not hold the director, manager, or other officers liable for connivance or neglect.

Some definitions may need a re-look. For example, mobile phones would fall under the definition of wireless equipment. This would imply prior authorisation is required for possessing a mobile phone.

OTT platforms:

One of the key changes is **inclusion of new-age over-the-top communication services** like WhatsApp, Signal and Telegram in the definition of telecommunication services.

As per the draft law, **providers of telecommunication services will be covered under the licensing regime**, and will be **subjected to similar rules as other telecom operators**.

This issue has been under contention for several years now with telecom service providers seeking a level-playing field with OTT apps over communication services such as voice calls, messages, etc. where operators had to incur high costs of licences and spectrum, while OTT players rode on their infrastructure to offer free service.

Indian Telegraph Act, 1885:

It governs the **use of wired and wireless telegraphy, telephones, teletype, radio communications and digital data communications**.

It gives the Government of India exclusive jurisdiction and privileges for establishing, maintaining, operating, licensing and oversight of all forms of wired and wireless communications within Indian territory.

It also authorizes government law enforcement agencies to monitor/intercept communications and tap phone lines under conditions defined within the Indian Constitution.

Section 5(2) of the act allows central and state governments to prevent the transmission of messaging during a “public emergency or in the interest of public safety”, or “in the interests of the sovereignty and integrity of India, the security of the state”.

Indian Wireless Telegraphy Act, 1933:

The main objective of the Indian Wireless Telegraphy Act, 1933 is ‘to regulate the **possession of wireless telegraphy apparatus**’.

One of the major sources of revenue for the Indian State Broadcasting Service was revenue from the licence fee from working of wireless apparatus under the Indian Telegraph Act, 1885.

The Indian State Broadcasting Service was losing revenue due to lack of legislation for prosecuting persons using unlicensed wireless apparatus as it was difficult to trace them at the first place and then prove that such instrument has been installed, worked and maintained without licence.

Therefore, the current legislation was proposed, in order to prohibit possession of wireless telegraphy apparatus without licence.

Current state of the Indian telecom industry:

With 1.17 billion subscribers as of 2022, India has the **second-largest telecom industry globally**. The overall teledensity in India is 85.11%.

The industry's rapid expansion over the past few years has been primarily fuelled by low prices, increased accessibility, the introduction of Mobile Number Portability (MNP), expanding 3G and 4G coverage, and changing subscriber usage patterns.

The **third-largest industry in terms of foreign direct investment (FDI) inflows**, the telecom sector supports 2.2 million jobs directly and 1.8 million jobs indirectly.

The amount of FDI entering the telecom sector between 2014 and 2021 increased by 150% to USD 20.72 billion from USD 8.32 billion between 2002 and 2014.

In the telecom industry, **100% Foreign Direct Investment (FDI)** is currently permitted **via the automatic method**.

India is predicted to have 920 million unique mobile customers by 2025, including 88 million 5G connections, making it the second-largest smartphone market in the world behind the United States. India now has about 1 billion installed smartphones.

Conclusion:

The Draft Telecommunication Bill 2022 addresses challenges like maintaining a sufficient spectrum and adopting new technologies and techniques to serve customers with better and feature-rich service. The draft Bill appears to be open for discussion which is an indication that it will lead to a comprehensive policy framework.