

# Telecommunications Bill, 2023: Of the State, By the State, and For the State

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The unseemly haste and rough manner in which Prime Minister Modi and his Communications Ministry [rushed](#) through the [Telecommunications Bill](#) in the Lok Sabha and the Rajya Sabha not only reveals their muscular, majoritarian psyche but also the regime's apathy towards (or fear of) debate.

The government first ensured that almost the entire Opposition (attending parliament) was [suspended](#) and then pushed this Bill with lightning speed and no criticism or debate. So impatient was the government to ensure that it got through whatever it wanted that it enfeebled the Rajya Sabha's powers to examine it.

It declared, quite unreasonably, that this is a Money Bill which would be decided, de facto and de jure, by the lower house.

## What Does the New Bill Do?

The draft Bill was hardly ever put out for serious public consultation. There are phrases inserted in clauses like number 4, under which this government may strike financial deals with multinationals and big corporates, granting them precious national resources like spectrum directly.

By not going in for free and fair price realisation auctions, this clause militates against the letter and spirit of the Supreme Court's orders.

One had expected sensitive sections like clauses 20 to 23 in the new law (that refer to invasion of privacy) to be discussed more freely in the public domain and then be taken in both Houses of Parliament.

Such optimism was misplaced as balance, vision, and broadminded worldviews are usually conferred by a certain degree of education and exposure, which are not evident in the ruling duo.

They neither understand these requirements nor care for democratic procedures.

## Past, Present and Future of the New Bill

The new Bill replaces the Indian Telegraph Act of 1885, the Indian Wireless Telegraphy Act of 1933, and The Telegraph Wires (Unlawful Possession) Act of 1950. The 1885 Act has undergone the test of time and its terms were constantly re-adapted to meet current exigences – with band-aid and chewing gum. But that is no reason to kill a 138-year-old trusted horse with one *jhatka* (blow).

In any case, the powers of interception and internet shutdown were there in the old Act also, but with typical 'fair play' boundaries.

Ignoring these, this muscular regime has the reputation of purchasing atrociously-priced Pegasus telecom-piercing software to hack into the communications of

journalists and democratic dissenters. It got away, thanks to a broken legal system.

This Bill says that telecom also covers a wide range of services that use the internet such as messaging, calling, and video conferencing. These would obviously involve the transmission of text, audio, or video by wire, radio, or optical fibre.

The Ministry of Information and Broadcasting would like to define radio transmission rather broadly – as something that is over and beyond towers and satellites and covers the internet. It is interesting that everyone wants to grab internet services and the lucrative OTT (over-the-top) sector.

The Ministry of Information Technology governs it under the IT Act, but in 2020, it had to frame rules that empowered the Ministry of Information and Broadcasting to take over a critical part of its kingdom that relates to digital and social media transmission.

That Ministry is now coming up with a [Broadcasting Bill](#) that would authorise it to control an even larger swathe of the internet and OTT. So, we shall now have three ministries (two under the same minister) that will fight for the same internet and for controlling OTT.

## **The Bill Empowers the Government To Control Public Communication**

This Bill intends to put several curbs on public communication that may effectively intimidate citizens. The ministry comes with freshly strengthened powers to shut down internet services quite arbitrarily and to intrude upon privacy and free speech.

As a whole, this legislation reeks of state hegemony and seeks to create a dystopian atmosphere of dominance, by going one step ahead of the existing colonial law, which itself was so imperiously pro-state.

The Bill legitimises and enhances the government's almost unchecked powers to intercept communication. It also undermines the existing protection offered by some social media platforms with their end-to-end encryption and the state may soon rampage through the ecosystem.

With the government now empowering itself to intercept or block messages, the first target would obviously be the few free, non-asphyxiating spaces available like WhatsApp or Signal.

Thus, henceforth, cautious citizens would have to bottle up their grievances ("Big Brother is watching!"), while gutter-level rabid propagandists would flood these media with vitriol against minorities and dissenters, and continue to reign supreme on social media.

These depredations would also be under the cover of righteous phrases, like "the interest of public safety or public emergency", "security of the state" and "prevention of incitement of offences."

Telecom services may also be suspended on such grounds and social, political, and economic intercourse will be shattered in a polity that calls itself the mother of democracies, without any remedies or compensation.

## **A Statist Bill That Violates Citizens' Privacy**

India, incidentally, holds the world record for the largest number of suspensions of telecom services. Police officers do not appear to be sensitive at all to appreciate that the free telecommunications which they choke so frequently actually constitutes a fundamental right of

citizens. Any complaint of economic losses on account of shutdowns falls on deaf ears and this Bill further strengthens such irresponsible hegemonic actions of the state.

Though the Bill touches upon some protection against tele-snooping and call interception, it has not laid down the procedure upfront. All it says is that these details will be prescribed by the central government through rules.

This gives the Executive a free hand to torment citizens, especially those who stand up to the regime. The Bill effectively allows for mass surveillance and empowers the government to violate our fundamental right to privacy.

One of the most dangerous provisions of the Bill is that it permits any officer authorised by the central government to search a premise or vehicle on some specified grounds, but such power without due process of law constitutes an invitation to bullying and corruption. It provides theoretical protection but neither specifies the procedure and safeguards against such actions nor provides that such safeguards will be prescribed.

This really tilts the scale against citizens. Even biometric or face verification of users may not be quite proportionate and are likely to encroach upon the fundamental right to privacy.

In fact, unlike in the finance, banking and power sectors, where independent or quasi-judicial regulators decide a lot of critical issues through open public consultation, the government is actually moving the telecom sector out of such transparency. The Bill says it is the government and its minions who will perform regulatory functions through rules that the government will determine, quite unilaterally.

## Gaps in the Bill Pose a Grave Threat

Offences listed in the Third Schedule of the Bill would be modified at will – added, deleted, modified – by the almighty government and its technocrats and bureaucrats. There is a Memorandum at the end of the Bill that lists 35 items on which rules would be made by officials, which means that throughout the year, ministry *babus* would be making and remaking rules under an omnibus that screams that a hundred devils are lurking in its details.

Clause 28 of the Bill makes a mockery of the government's duty to protect users from annoying messages that offer, advertise, or promote goods, services and hawks property, businesses, employment or investment.

It comes up with an unworkable 'do not disturb' mechanism that brings in consent in theory only. There are other provisions that are unabashedly pro-state, like those under Chapter III that define 'right of way' as one that extends itself over every category or property – private, public or social.

Telecommunication is surely an essential public service that has historically been a source of unimaginable profits for Big Tech and telecom oligopolies, but this Bill is so statist that it forgets that the end-users who pay and suffer are hapless citizens.

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