



Somanna Kalappa
Principal Associate

KEY ATTRIBUTES OF THE TELECOMMUNICATIONS ACT, 2023

A. Introduction.

The Telecommunications Act, 2023 (“**the Act**”)¹ received the assent of the President of India² to regulate the development, expansion and operation of telecommunication (“**telecom**”) services and networks; assignment of spectrum and for connected matters.

The telecom sector hitherto was regulated by the Indian Telegraph Act, 1885 (“**ITA**”) and the Indian Wireless Telegraphy Act, 1933 (“**IWTA**”), which will be repealed by the Act, on its being brought into force.

B. Salient Attributes of the Act.

1. Extent and Definitions.

The Act:

- a. extends to the whole of India and also “*to any offence committed or contravention made outside India by any person, as provided in the Act,*”³
- b. employs the expression *authorisation*⁴ as opposed to license for the purpose of grant of permission under the Act *inter alia* for providing telecom services or establishing, possessing radio equipment;
- c. defines the expressions *telecommunication*,⁵ *telecommunication equipment*,⁶ *telecommunication network*,⁷ and *telecommunication service*;⁸ and
- d. defines a *user*⁹ to mean “*a natural or legal person using or requesting a telecommunication service, but does not include person providing such telecommunication service or telecommunication network.*”

2. Spectrum Assignment.

It defines *spectrum*¹⁰ and assignment of spectrum will be the Central Government (“**CG**”) and envisages formulation of a National Frequency Allocation Plan. Assignment of spectrum will be by auction except for national security, defence *etc.*¹¹

¹ Text of the Act available [here](#).

² 24th December, 2023 and it will come into force on a date to be notified by the Government of India (Sec. 1(3) of the Act).

³ See Section 1(2)(ii) of the Act (as well as the below footnotes).

⁴ See Section 2(d).

⁵ See Section 2(p).

⁶ See Section 2(q).

⁷ See Section 2(s).

⁸ See Section 2(t).

⁹ See Section 2(u).

¹⁰ See Section 2(o).

¹¹ See First Schedule.

3. Right of Way.

It provides *inter alia* for mode and manner by which a *facility provider*¹² (a “telco”) may seek the right of way for telecom network in public property and in property other than public property.

4. Powers During Public Emergency.

The CG or the State Government is vested¹³ with extraordinary powers in respect of telecom equipment, services and networks during a public emergency or in the interest of public safety or in the interest of national security.

5. User Protection Provisions.

Receipt of messages by users offering advertising or promoting goods, services, interest in property, business opportunity, employment opportunity or investment opportunity is only permitted on seeking prior consent of users. It also mandates a mechanism to enable users to report any malware *etc.*¹⁴

6. Dispute Resolution Mechanism.

An online dispute mechanism¹⁵ is envisaged for resolution of disputes between users and authorised entities providing telecom services. This is in addition to the remedy available to users under the Consumer Protection Act, 2019.

7. Offences.

Offences such as unlawful interception of messages or gaining or attempts to gain unauthorised access to a telecom network or to data of an authorised entity or transfers data of an authorised entity is punishable with imprisonment for a term which may extend to three years, or with fine which may extend up to two crore rupees, or with both.¹⁶

8. Formulation of Rules.

The CG is empowered under the Act to formulate rules¹⁷ providing for a host of aspects such as measures to protect and ensure cyber security of telecom networks and services; measures for protection of users *etc.*

C. Closing.

1. The Act addresses a regulatory vacuum in the regulation of the telecommunication sector. It empowers the CG and telcos on establishing, expanding and maintaining telecom networks. However, the key to its effectiveness will only emerge from a reading of the rules formulated by the CG providing for the implementation of critical aspects.

¹² See Section 10(a).

¹³ See Sections 20 to 21.

¹⁴ See Section 28.

¹⁵ See Section 30.

¹⁶ See Section 42(2).

¹⁷ See Section 56(2).

2. To ensure continuity, the rules or orders, made under ITA or IWTA, will continue to apply insofar as they relate to matters for which provision is made in the Act and are not inconsistent to the Act.¹⁸

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¹⁸ See Section 61.