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THE TELECOMMUNICATIONS ACT, 2023: REFORM OR REGULATION?

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“Technology is neutral, but governance is an exercise of values.”

—Brad Smith (President of Microsoft)

1. INTRODUCTION

The passing of the Telecommunications Act, 2023 marks a watershed moment in the Indian digital governance landscape. India’s telecom network was run under archaic colonial laws for almost one and a half centuries, most notably the *Indian Telegraph Act, 1885*, the *Wireless Telegraphy Act, 1933* and the *Telegraph Wires (Unlawful Possession) Act, 1950*. While these statutory structures served their historic purpose, they were inherently ill-suited to address the complexity of the 21st century digital economy, with 5G networks, satellite broadband and internet-enabled communications. The 2023 Act was introduced with the great promise of changing the regulatory architecture, spurring innovation, safeguarding national security and ensuring smooth connectivity across the sub-continent. But as the law comes into force, legal experts and industry players are split on whether the legislation is progressive regulatory reform or an extension of state control. The Telecommunications Act, 2023 arrives as a double-edged sword, promising seamless connectivity while holding a master key to state oversight.

2. KEY STATUTORY REFORMS

One of the most significant structural shifts introduced by the Telecommunications Act, 2023 is the modernization of spectrum allocation mechanisms. Historically, spectrum assignment was plagued by policy ambiguity, contentious legal battles, and inefficient administrative procedures. The 2023 Act firmly establishes auctioning as the primary and default route for allocating radio spectrum for commercial services, thereby enforcing transparency and economic efficiency. Crucially, the legislation also provides a statutory framework for

administrative allocation in specific public interest sectors, such as national security, disaster management, public transport, and satellite communications. This hybrid approach provides long-overdue clarity for satellite communication service providers.¹

Furthermore, the Act addresses long-standing operational hurdles in telecom infrastructure development by introducing robust *Right of Way (RoW)* provisions. Under *Section 11* of the Act, telecommunication network providers are granted non-discriminatory RoW on public properties. Public authorities are mandated to provide timely permissions, and private property owners are protected through clear rules on compensation and dispute resolution. By legalizing protection for telecom infrastructure against arbitrary removal or damage, the statute aims to accelerate nationwide 5G deployment and bridge the rural-urban digital divide.

3. REGULATORY OVERREACH AND SURVEILLANCE CONCERNS

Despite its progressive provisions, the Act has drawn severe criticism from civil liberties advocates and privacy scholars due to its expansive regulatory scope and potent state powers. Central to this debate are the broad interception and surveillance mandates encapsulated in *Section 20*. The provision empowers the Central Government or State Governments to intercept, detain, or disclose messages, as well as suspend telecommunication services, on grounds such as public emergency, public safety, sovereignty, and public order. Legal experts note that the statute lacks robust procedural safeguards, independent judicial oversight, or explicit reference to the proportionality standards established by the Supreme Court of India in *KS Puttaswamy v. Union of India AIR 2018 SC (SUPP) 1841*.

Moreover, the ambiguous statutory definition of ‘telecommunication services’ initially sparked intense debate regarding the inclusion of *Over-The-Top (OTT) communication* platforms like WhatsApp, Signal, and Telegram. Although legislative clarifications suggested that digital platforms remain under the purview of the Information Technology Act, 2000, the statutory ambiguity creates compliance risk for tech firms. The power granted to the government to take control of telecommunication networks during public emergencies further accentuates fears of statutory overreach and routine internet shutdowns.²

¹ Anoushka Soni Arun Prabhu, The Telecommunications Act, 2023 India Corporate Law (2024), <https://corporate.cyrilamarchandblogs.com/2024/01/the-indian-telecommunications-bill-2023/> (last visited Sep 13, 2026).

² Gautam Saha & Punita Gupta, Telecommunications Act, 2023 – An Overview of Key Changes and their Impact TTA.IN – Advocates & Solicitors (2024), <https://tta.in/telecommunications-act-2023-an-overview-of-key-changes-and-their-impact/> (last visited Sep 13, 2026).

4. IMPACT ON REGULATORY AUTONOMY AND MARKET COMPETITION

Another contentious dimension of the Telecommunications Act, 2023 is the recalibration of the *Telecom Regulatory Authority of India's (TRAI)* institutional powers. Under previous frameworks, the Central Government was required to seek TRAI's recommendations prior to granting licenses or introducing regulatory shifts. The 2023 Act dilutes this mandatory consultative requirement, allowing the executive branch greater autonomy in licensing and policy decisions. Critics contend that weakening TRAI's advisory mandate undermines regulatory independence and risks creating policy instability for private investors.

On the operational front, the Act replaces the legacy licensing regime with an authorized framework, simplifying entry barriers for new market participants. Additionally, the creation of the *Digital Bharat Nidhi*, replacing the *Universal Service Obligation Fund (USOF)*, expands the scope of funding to include research, development, and advanced digital services in underserved regions. While these measures support market growth, the centralization of executive powers raises questions regarding the long-term balance between market competition and state discretion.

5. CONCLUSION

As *Justice Louis D. Brandeis* enduringly observed, "*the right to be let alone is the most comprehensive of rights and the right most valued by civilized men.*" The Telecommunications Act, 2023 marks a monumental leap forward, replacing archaic colonial statutes with a dynamic, future-ready framework. Through administrative streamlining, modernized spectrum allocation, and robust infrastructure support, the Act provides the structural foundation necessary to power a digital-first economy.

Yet, this progress is shadowed by significant regulatory overreach most notably through expanded executive surveillance powers, potential encroachments on digital privacy, and the dilution of independent regulatory oversight. For the legislation to serve as a true catalyst for democratic digital growth, its subordinate rules must embed strict procedural safeguards, statutory transparency, and meaningful judicial checks.

Ultimately, India's telecommunications trajectory cannot rely solely on high-speed networks and market efficiency; it hinges on striking a harmonious balance between state security, commercial innovation, and fundamental liberties. In the words of *former Chief Justice of*

India D.Y. Chandrachud, "civil liberties are non-negotiable elements of human existence",
a principle that must remain the bedrock of India's digital future.³

³ Dialogue Editor, Analysis- unpacking the Telecommunications Act, 2023: Insights and implications The Dialogue (2023), <https://thedialogue.org.in/analysis-unpacking-the-telecommunications-act-2023-insights-and-implications/> (last visited Sep 13, 2026).

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