

TELECOM LAW UPGRADES FOR A DIGITAL AUTHORITARIAN STATE

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'The Telecom Bill is a system upgrade of colonial laws for a digital authoritarian state' | Photo Credit: SPECIAL ARRANGEMENT

The tweet by the Union Minister for Communications, Ashwini Vaishnav, "Bharat moves on...", on Thursday evening, December 21, 7.58 p.m., announced the parliamentary passage of the Telecommunications Bill, 2023 and the repeal of The Indian Telegraph Act, 1885. under the, "vision of the PM @naredramodi Ji". Notice the intentional use of the word "Bharat" in isolation, and the omission of, "India". Similarly, crediting the Prime Minister's individual "vision" is by design. Similarly, crediting the Prime Minister's individual "vision" is by design. This is not peculiar to the Telecom Bill, 2023 and draws from a common brand kit used for claiming credit for any, and every event by the Union Government. Put together, they are a clever call of cultural nativism for Indians, finally realising their manifest destiny under the leadership of one man. It programmes us to believe that we finally have a Union government that represents the interests of the masses in tarpaulin covered chaupals rather than those of the sniggering urban elites sipping chai lattes. This facade and diversion have successfully cloaked scrutiny of the Telecom Bill which is a system upgrade of colonial laws for a digital authoritarian state.

Let us start by looking at the unique "bharatiya" provisions of the Telecom Bill. Even at the time of public consultation, the explanatory memorandum to the draft compared spectrum to a human soul as described in the Bhagavad Gita. Indic influence has found its way in the Telecom Bill with the renaming of the Universal Services Obligation Fund (USOF) as the "Digital Bharat Nidhi". The USOF, which is a levy on telecom service providers (Reliance Jio or Airtel), funds projects such as rural connectivity, has seen little structural change from the way it was designed under the Telegraph Act, 1885. The mere change in name does little to address the challenges of a persisting digital divide that have recently become worse. As in reports by the Telecom Regulatory Authority of India, the growth of new telecom users has sharply stagnated and research reports from the International Data Corporation show a contraction of smartphone sales for the second consecutive year. Here, with nationalistic chest beating, the Telecom Bill distracts us from its failure to present any fresh ideas or solutions. Will renaming the USOF magically lead to millions of Indians gaining Internet access?

Editorial | [Incoming call: On the Telecommunications Bill, 2023](#)

Innovation, when present, increases the discretionary power of the government to pick and choose private firms as “national champions”. For instance take the provisions for the allocation of satellite spectrum without the need for auctions that are listed in the First Schedule of the Telecom Bill. This is likely to benefit the market entry of select private firms as questioned by Member of Parliament in the Rajya Sabha, Priyanka Chaturvedi. She said, “[g]uess who will soon step into Mobile Satellite Services from India?” while linking to an article dated August 5, 2023, titled “ISRO Transfers Satellite Bus Technology To Adani Group’s Alpha Design Technologies”. Even provisions for “regulatory sandboxes” and online dispute resolution systems are likely to benefit large corporations rather than Indian users due to the prevailing oligopoly in the telecom sector.

State control is present throughout the Telecom Act without any change made to the colonial architecture. Changes within it are a clever rewording of phrases. For instance, “licensing” has been changed to “authorisation” while making it more severe. This has been achieved by a studied definitional vagueness of “telecommunication” and “telecommunication services” that will include “transmission... of any messages”. Read together, this will allow the Union government to license Over-The-Top (OTT) messaging applications such as WhatsApp or email services such as Gmail. This power will, in the coming years, be used alongside other regulations to break the security and confidentiality enjoyed by Indians by using encryption-based messaging.

The same pattern is repeated for the interception and surveillance powers, or Internet shutdowns, in which language from the Telegraph Bill has been plagiarised without safeguards. Insertions, when present, such as a fresh provision on “national security”, expand the ability of the Union government to use, prescribe standards, suspend and take over any telecommunication service. Here, just like before, the phrase “national security” has not been defined. To ensure the web of a surveillance state is complete, the law requires any telecommunications service provider, that may include WhatsApp or Signal, to identify the user by “any verifiable biometric based identification as may be prescribed”. To further ensure that every Indian complies, a standard “kartavya kaal” clause has been added in which there is a legal penalty of 25,000 for providing “any false particulars, suppress any material information”, and, “fail to share information as required by this Act”. Many of these concerns were raised to the Speaker of the Lok Sabha by Member of Parliament Gaurav Gogoi where in a brief one page letter, dated December 19, 2023, he called for “sending it to a Standing Committee”. Instead, the Telecom Bill was passed in haste through both Houses of Parliament.

Neither Ms. Chaturvedi or Mr. Gogoi could raise their objections in Parliament or cast their votes. They could not even raise symbolic cries of “shame, shame, shame” as they along with at least two thirds of their fellow Members of the Opposition benches have been suspended. Commenting on the parliamentary session, Pratap Bhanu Mehta states in an article, “this formal language of democracy serves increasingly to provide a constitutional veneer to what is in effect, an unconstitutional concentration of power....” His lament is justified, for as Milan W. Svobik has empirically demonstrated in *The Politics of Authoritarian Rule*, 80% of dictatorial countries surveyed from 1946-2008 held elections for legislatures to “facilitate power-sharing among a regime’s elite”.

Now, where does this leave the ordinary Indian, or should we say *bharatwasis*? We are being regularly reminded not to ponder over these disturbing questions and instead maintain health and sanity with a diet full of millets and a daily yoga practice. After all, we are undergoing a transformation of a colony to a *rashtra*, where the rule under the Constitution of India is being replaced to governance by scripture under the divine vision of the Prime Minister. As the Telecom Bill shows, India has indeed moved on, however it is far from democracy.

Apar Gupta is an advocate and technology policy professional. The views expressed are

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