

# THE TELECOMMUNICATIONS ACT, 2023

(No. 44 of 2023, dt. 24-12-2023)

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An Act to amend and consolidate the law relating to development, expansion and operation of telecommunication services and telecommunication networks; assignment of spectrum; and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

## CHAPTER I PRELIMINARY

### **<sup>1</sup>1. Short title, extent and commencement**

(1) This Act may be called the Telecommunications Act, 2023.

(2) It extends to,—

- (i) the whole of India; and
- (ii) to any offence committed or contravention made outside India by any person, as provided in this Act.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

### **<sup>1</sup>2. Definitions**

In this Act, unless the context otherwise requires,—

- (a) “appointed day” means such date as the Central Government may, by notification appoint under sub-section (3) of section 1;
- (b) “assignment” of a radio frequency or radio frequency channel means the permission for a radio station to use a radio frequency or radio frequency channel under specified conditions;
- (c) “assignee” means a person holding an assignment of a radio frequency or radio frequency channel under section 4;
- (d) “authorisation” means a permission, by whatever name called, granted under this Act for—

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

- (i) providing telecommunication services;
  - (ii) establishing, operating, maintaining or expanding telecommunication networks; or
  - (iii) possessing radio equipment;
- (e) “authorised entity” means a person holding an authorisation under section 3;
- (f) “critical telecommunication infrastructure” means telecommunication networks notified under sub-section (3) of section 22;
- (g) “message” means any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through telecommunication;
- (h) “National Frequency Allocation Plan” means guidelines issued from time to time by the Central Government for the use of the spectrum;
- (i) “notification” means a notification published in the Official Gazette and the expression “notified” shall be construed accordingly;
- (j) “person” shall include an individual, any company or association or body of individuals, whether incorporated or not, by whatsoever name called or referred to;
- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “radio equipment” means telecommunication equipment used or capable of use for telecommunication by means of Hertzian or radio waves;
- (m) “radio waves” means electromagnetic waves of frequencies propagated in space without any artificial guide;
- (n) “Schedule” means a schedule to this Act;
- (o) “spectrum” means the range of frequencies of Hertzian or radio waves;
- (p) “telecommunication” means transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception;
- (q) “telecommunication equipment” means any equipment, appliance, instrument, device, radio station, radio equipment, material, apparatus, or user equipment, that may be or is being used for telecommunication, including software and intelligence integral to such telecommunication equipment; and excludes such equipment as may be notified by the Central Government;

- (r) “telecommunication identifier” means a series of digits, characters and symbols, or a combination thereof, used to identify uniquely a user, a telecommunication service, a telecommunication network, elements of a telecommunication network, telecommunication equipment, or an authorised entity;
- (s) “telecommunication network” means a system or series of systems of telecommunication equipment or infrastructure, including terrestrial or satellite networks or submarine networks, or a combination of such networks, used or intended to be used for providing telecommunication services, but does not include such telecommunication equipment as notified by the Central Government;
- (t) “telecommunication service” means any service for telecommunication;
- (u) “user” means a natural or legal person using or requesting a telecommunication service, but does not include person providing such telecommunication service or telecommunication network.

#### COMMENTS

This section defines the various terms and expressions used in this Act, such as “appointed day”, “assignment”, “assignee”, “authorization”, “critical communication infrastructure”, “message”, “radio waves”, “telecommunication”, “telecommunication network”, etc.

### **CHAPTER II**

#### **POWERS OF AUTHORISATION AND ASSIGNMENT**

#### **3. Authorisation**

- (1) Any person intending to—
  - (a) provide telecommunication services;
  - (b) establish, operate, maintain or expand telecommunication network;  
or
  - (c) possess radio equipment,

shall obtain an authorisation from the Central Government, subject to such terms and conditions, including fees or charges, as may be prescribed.

(2) The Central Government may while making rules under sub-section (1) provide for different terms and conditions of authorisation for different types of telecommunication services, telecommunication network or radio equipment.

(3) The Central Government, if it determines that it is necessary in the public interest so to do, may provide exemption from the requirement of authorisation under sub-section (1), in such manner as may be prescribed.

(4) Any exemption granted prior to the appointed day under the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933) shall continue under this Act, unless otherwise notified by the Central Government.

(5) Any authorised entity may undertake any merger, demerger or acquisition, or other forms of restructuring, subject to any law for the time being in force and any authorised entity that emerges pursuant to such process, shall comply with the terms and conditions, including fees and charges, applicable to the original authorised entity, and such other terms and conditions, as may be prescribed.

(6) A licence, registration, permission, by whatever name called, granted prior to the appointed day under the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933), in respect of provision of telecommunication services or telecommunication network—

- (a) where a definite validity period is given, shall be entitled to continue to operate under the terms and conditions and for the duration as specified under such licence or registration or permission, or to migrate to such terms and conditions of the relevant authorisation, as may be prescribed; or
- (b) where a definite validity period is not given, shall be entitled to continue to operate on the terms and conditions of such licence or registration or permission for a period of five years from the appointed day, or to migrate to such terms and conditions of the relevant authorisation, as may be prescribed.

(7) Any authorised entity which provides such telecommunication services as may be notified by the Central Government, shall identify the person to whom it provides telecommunication services through use of any verifiable biometric based identification as may be prescribed.

(8) The Central Government may, subject to such terms and conditions, including fees or charges as may be prescribed, allot telecommunication identifiers for use by authorised entities.

(9) The Central Government may allow use of telecommunication identifiers allotted by international bodies which are recognised by the Central Government from time to time.

#### COMMENTS

This section provides that the authorisation from the Central Government shall be mandatory for any person to provide telecommunication services, establish, operate, maintain or expand telecommunication network, or possess radio equipment subject to such terms and conditions including fees or charges as may be provided by rules. The Central Government, may provide exemptions from requirement of authorisation. The exemptions granted under the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall continue under this Act, unless otherwise notified by the Central Government. Further, this section provides for continuity of any license, registration, permission, by whatever name called, that have been granted prior to the appointed day of this Act and the Central Government may allot telecommunication identifiers for use by authorised entities subject to such terms and conditions including fees or charges as may be provided by rules.

#### 4. Assigment of spectrum

(1) The Central Government, being the owner of the spectrum on behalf of the people, shall assign the spectrum in accordance with this Act, and may notify a National Frequency Allocation Plan from time to time.

(2) Any person intending to use spectrum shall require an assignment from the Central Government.

(3) The Central Government may prescribe such terms and conditions as may be applicable, for such assignment of spectrum, including the frequency range, methodology for pricing, price, fees and charges, payment mechanism, duration and procedure for the same.

(4) The Central Government shall assign spectrum for telecommunication through auction except for entries listed in the First Schedule for which assignment shall be done by administrative process.

*Explanation* : For the purposes of this sub-section,—

- (a) “administrative process” means assignment of spectrum without holding an auction;
  - (b) “auction” means a bid process for assignment of spectrum.
- (5) (a) The Central Government may, by notification, amend the First Schedule for assignment of spectrum—
- (i) in order to serve public interest; or
  - (ii) in order to perform government function; or
  - (iii) in cases where auction of spectrum is not the preferred mode of assignment due to technical or economic reasons.

(b) The notification referred to in clause (a) shall be laid before each House of Parliament.

(6) The Central Government, if it determines that it is necessary in the public interest so to do, may exempt,—

- (a) from the requirement of assignment under sub-section (2), in such manner as may be prescribed; and
- (b) by notification, specific usages within specified frequencies and parameters, from the requirements of sub-section (2).

(7) Any exemption with respect to use of spectrum granted under the Indian Telegraph Act, 1885 (13 of 1885) and the Indian Wireless Telegraphy Act, 1933(17 of 1933) prior to the appointed day, shall continue under this Act, unless otherwise notified by the Central Government.

(8) Any spectrum assigned through the administrative process prior to the appointed day, shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the appointed day, or the date of expiry of such assignment, whichever is earlier.

(9) Any spectrum assigned through auction prior to the appointed day, shall continue to be valid on the terms and conditions on which it had been assigned.

#### COMMENTS

This section provides that the Central Government is the owner of spectrum on behalf of the people and shall assign the spectrum in accordance with this Act, and may notify a National Frequency Allocation Plan from time to time. Any person intending to use spectrum shall require an assignment from the Central Government. Further, the Central Government shall assign

spectrum for telecommunication through auction, except for entries listed in the First Schedule for which assignment shall be done by administrative process. This section further provides for continuity of terms and conditions on which any spectrum was assigned through auction prior to the appointed day of this Act.

#### **5. Re-farming and harmonisation**

The Central Government may, to enable more efficient use of spectrum, re-farm or harmonise any frequency range assigned under section 4, subject to such terms and conditions, as may be prescribed.

*Explanation* : For the purposes of this section,—

- (a) “harmonisation” means rearrangement of a frequency range;
- (b) “re-farming” means repurposing of a frequency range for a different use, other than that for which it is used by an existing assignee.

#### COMMENTS

This section provides that the Central Government may allow re-farming or harmonization of spectrum to enable more efficient use of spectrum subject to such terms and conditions as may be provided by rules.

#### **<sup>1</sup>6. Technologically neutral use of spectrum**

The Central Government may enable the utilisation of the spectrum in a flexible, liberalised and technologically neutral manner, subject to such terms and conditions, including applicable fees and charges, as may be prescribed.

#### COMMENTS

This section provides that the Central Government may enable the utilisation of the spectrum in a flexible, liberalised and technologically neutral manner subject to such terms and conditions including applicable fees and charges as may be provided by rules.

#### **<sup>1</sup>7. Optimal utilisation of spectrum**

(1) The Central Government may, to promote optimal use of the available spectrum, assign a particular part of a spectrum that has already been assigned to an entity, known as the primary assignee, to one or more additional entities, known as the secondary assignees, where such secondary assignment does not cause harmful interference in the use of the relevant part of the spectrum by the primary assignee, subject to such terms and conditions as may be prescribed.

(2) The Central Government may, notwithstanding anything contained in any other law for the time being in force, after providing a reasonable opportunity of being heard to the assignee concerned, determines that any assigned spectrum has remained unutilised for insufficient reasons for such period as may be prescribed, terminate such assignment, or a part of such assignment, or prescribe further terms and conditions relating to spectrum utilisation.

#### COMMENTS

This section provides that the Central Government may assign, a particular part of a spectrum to promote optimal use of the available spectrum subject to such terms and conditions as may be provided by rules. Further, the Central Government may terminate an assignment to prescribe further terms and conditions, if it determines that the assigned spectrum has remained unutilised without any sufficient reasons.

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<sup>1</sup> W.e.f. 5-7-2024 vide SO 2623(E), dt. 4-7-2024.

**18. Establishment of monitoring and enforcement mechanism**

(1) The Central Government may establish by notification, such monitoring and enforcement mechanism as it may deem fit to ensure adherence to terms and conditions of spectrum utilisation and enable interference-free use of the assigned spectrum.

(2) The Central Government may permit the sharing, trading, leasing and surrender of assigned spectrum, subject to the terms and conditions, including applicable fees or charges, as may be prescribed.

**COMMENTS**

This section provides for monitoring and enforcement mechanism to enable interference-free use of the assigned spectrum.

**9. No refund of fees**

No person shall be entitled to the refund of any fees or charges paid in respect of or under an authorisation or assignment granted under this Act, if such authorisation or assignment is suspended, curtailed, revoked or varied.

**CHAPTER III****RIGHT OF WAY FOR TELECOMMUNICATION NETWORK****<sup>2</sup>10. Definition of terms used in this Chapter**

For the purpose of this Chapter,—

- (a) “facility provider” means the Central Government or any authorised entity, including any contractor or sub-contractor or agent working for the Central Government or authorised entity, and shall include their successor or assignee;
- (b) “public entity” means,—
  - (i) the Central Government;
  - (ii) the State Government;
  - (iii) local authority;
  - (iv) any authority, body, company or institution incorporated or established by the Central Government or the State Government, or under any statute; or
  - (v) any non-government entity vested with the ownership, control or management of any public facility or class of public facilities, as may be notified by the Central Government;
- (c) “public property” means any property, whether movable or immovable including any machinery, which is owned by, or in the possession of, or under the control or management of any public entity.

<sup>1</sup> W.e.f. 5-7-2024 vide SO 2623(E), dt. 4-7-2024.

<sup>2</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

**<sup>1</sup>11. Right of way for telecommunication network in public property**

(1) Any facility provider may submit an application to a public entity under whose ownership, control or management, the public property is vested, to seek permissions for right of way for telecommunication network under, over, along, across, in or upon such public property.

(2) On receipt of an application from a facility provider under sub-section (1), the public entity shall, subject to the provisions of sub-section (4), grant permission for all or any of the following acts, namely:—

- (a) survey such property for the purpose of assessing the feasibility for establishing telecommunication network; or
- (b) enter the property from time to time to establish, operate, maintain, repair, replace, augment, remove or relocate any telecommunication network.

(3) The public entity shall grant permission under sub-section (2) in an expeditious manner and within such timelines as may be prescribed, and subject to such administrative expenses and compensation for right of way, which shall not exceed such amount as may be prescribed.

(4) Any rejection of an application under sub-section (1) shall be based on reasonable grounds to be recorded in writing.

(5) The facility provider shall do as little damage as possible to the public property, and ensure that the functionality and continuity of operations over such public property is not adversely affected, while undertaking any of the activities for which permission has been granted under sub-section (2).

(6) If any damage is caused to the property, the facility provider shall, at the option of the public entity, either,—

- (a) restore such property to its state as existed prior to the undertaking of such activities; or
- (b) pay compensation for such damage as may be mutually agreed.

(7) The provisions of this section shall be applicable to any public property vested for such projects or class of projects as notified by the Central Government, in respect of which, applications under sub-section (1) shall be made to the public entity granting the concession, contract or permission for such projects.

**COMMENTS**

This section provides that a facility provider may submit an application to a public entity to seek permissions for right of way for telecommunication network in public property. This section further provides for obligations of the facility provider if any damage is caused to the property.

**<sup>1</sup>12. Right of way for telecommunication network on property not covered under section 11**

(1) Any facility provider may submit an application to the person under whose ownership, control or management of property not covered under section 11 is vested, to seek right of way for telecommunication network under, over, along, across, in or upon such property.

<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

(2) On receipt of an application from a facility provider, the person receiving the application may enter into an agreement, specifying consideration as mutually agreed, for—

- (a) undertaking surveys as may be required by the facility provider for the purpose of assessing the feasibility for establishing telecommunication network; or
- (b) establishing, operating, maintaining, repairing, replacing, augmenting, removing or relocating any telecommunication network by the facility provider.

(3) The facility provider shall do as little damage as possible to the property when undertaking any of the activities for which permission has been granted under sub-section (2).

(4) In case of any damage to the property, the facility provider shall restore such property to its state as existed prior to the undertaking of such activities, failing which the person granting permission under sub-section (2), shall be entitled to compensation as may be mutually agreed, for any such damage.

(5) The Central Government may by rules provide for the procedure to be followed by a facility provider to enter, survey, establish, operate, maintain, repair, replace or relocate the telecommunication network, including the notice period, the manner of issuance of notice, the framework governing objections by owner or occupier of the property, the manner in which such objections would be resolved, and matters relating to the compensation payable for any damage.

(6) If the person under sub-section (2) fails to provide the right of way requested, and the Central Government determines that it is necessary so to do in the public interest, it may, either by itself or through any other authority designated by the Central Government for this purpose, determine that such facility provider shall be permitted the right of way to establish, operate, maintain such telecommunication network, subject to such terms and conditions, including charges for the right of way, and compensation for damage to the property, if any, to be payable to such person as may be prescribed.

#### COMMENTS

This section provides for application process for right of way on property other than public property. A facility provider in such a case is required to submit an application for right of way for telecommunication network to the person under whose ownership, control or management of such property is vested. This section further provides for obligations of the facility provider in case of any damage to the property. The Central Government may, when the person fails to provide the right of way requested, in the public interest, determine that such facility provider shall be permitted the right of way to establish, operate, maintain such telecommunication network, subject to prescribed terms and conditions.

**<sup>1</sup>13. Non-discriminatory and non-exclusive grant of right of way**

Any person providing right of way under section 11 or section 12, shall ensure grant of right of way to the facility providers in a non-discriminatory manner and, as far as practicable, on a non-exclusive basis.

**<sup>1</sup>14. Telecommunication network distinct from property on which it is installed**

(1) A facility provider shall not have any right, title or interest in the property on which telecommunication network is established, except the right to use the property as provided under section 11 or section 12.

(2) The telecommunication network installed on any property, shall not be subject to any claims, encumbrances, liquidation or the like, relating to such property.

(3) The telecommunication network installed on any property, shall not be considered as part of such property, including for the purposes of any transaction related to that property, or any property tax, levy, cess, fees or duties as may be applicable on that property.

(4) Notwithstanding anything contained in any other law for the time being in force, no public entity, except with the permission of an officer authorised by the Central Government for this purpose, shall have the authority to take any coercive action, such as sealing, preventing access, or forcible shutdown of the telecommunication network established by an authorised entity, except where such actions may be necessary to deal with any natural disaster or public emergency.

**COMMENTS**

This section provides that the telecommunication network installed on any property, shall not be subject to any claims, encumbrances, liquidation or the like, relating to property on which telecommunication network is established. No public entity shall take coercive actions such as sealing, preventing access, or forcible shutdown of the telecommunication network, unless permission of an officer authorised by the Central Government has been obtained for this purpose.

**<sup>1</sup>15. Power of Central Government to establish common ducts and cable corridors**

(1) The Central Government may notify infrastructure projects or class of infrastructure projects, whether being developed by a public entity by itself, through a public private partnership or by any other person, that may require establishment of common ducts or conduits or cable corridors, for installation of telecommunication network.

(2) The telecommunication network referred to in sub-section (1) shall be made available on open access basis to facility providers, subject to such terms and conditions, including fees and charges, as may be prescribed.

**COMMENTS**

This section empowers the Central Government to notify infrastructure projects that are mandated to establish common ducts or conduits or cable corridors, for installation of telecommunication network, which shall be made available on open access basis to facility providers, subject to such terms and conditions including fees and charges as may be provided by rules.

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

**16. Removal, relocation or alteration of telecommunication network**

(1) Where, under section 11 or section 12, telecommunication network has been placed by the facility provider, under, over, along, across, in or upon any property, and any person entitled to do so desires to deal with that property in such a manner so as to render it necessary or convenient that the telecommunication network should be removed or relocated to another part thereof or to a higher or lower level or altered in form, he may require the facility provider to remove, relocate or alter the telecommunication network accordingly.

(2) If compensation has been paid under sub-section (6) of section 11, or sub-section (4) of section 12, such person shall, when making the requisition under sub-section (1), tender to the facility provider the amount requisite to defray the expense of the removal, relocation or alteration on such terms as may be mutually agreed.

(3) If any dispute arises under this Chapter, the matter shall be determined by the authority referred to in sub-section (2) of section 18.

(4) If the facility provider omits to comply with the requisition, the person making such requisition, may apply to the District Magistrate within whose jurisdiction the property is situated, to order the relocation or alteration.

(5) The District Magistrate receiving the application may, at its discretion and for reasons to be recorded in writing, approve or reject such relocation or alteration, subject to such conditions as it determines fit, including the relocation of the telecommunication network to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final.

**COMMENTS**

This section deals with situations when telecommunication network may need to be relocated or altered, pursuant to the interests of the person entitled to deal with the underlying property where the telecommunication network has been placed. Such person may request the facility provider to undertake the relocation or alteration.

**17. Notice to facility provider**

(1) Any person desiring to exercise his right to deal with his property in such a manner as is likely to cause damage or to interrupt or interfere with the telecommunication network established under the provisions of this Act, or to interrupt or interfere with telecommunication services, shall give prior notice of such duration and in such manner, as may be prescribed, to the facility provider, the Central Government or to any authority that may be notified by the Central Government.

(2) The facility provider shall respond to such notice with details of such telecommunication network and precautionary measures to be undertaken, within such timelines as may be prescribed.

(3) Where a person referred to in sub-section (1) gives a notice of his exercise of the right relating to his property with the *bona fide* intention of averting imminent danger of personal injury to himself or any other person, such person shall be deemed to have complied with the provisions of the said sub-section.

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1 W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

(4) Any person who fails to comply with the provisions of sub-section (1), or deals with any property in such a manner as is likely to cause, or causes, damage to any telecommunication network, or is likely to interrupt or interfere, or interrupts or interferes with telecommunication services, a District Magistrate may, on the application of the facility provider, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the District Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(5) If any dispute arises relating to damages, the matter shall be determined by the authority referred to under sub-section (2) of section 18.

#### COMMENTS

This section provides for the procedure to be followed if a person is desirous to deal with his property in a manner likely to cause damage to or interrupt or interfere with the telecommunication network established on such property or with telecommunication services. This section further, provides the procedure when a person fails to comply with the requirement of giving notice or deals with the property in a manner that is likely to cause or causes damage to the telecommunication network or interrupts or interferes with it.

#### **18. Dispute resolution relating to this Chapter**

(1) The District Magistrate, or any other authority as notified by the Central Government, within whose jurisdiction the property is situated, shall have the exclusive powers to resolve any disputes under this Chapter, except for disputes referred to under sub-section (2) of this section.

(2) If any dispute arises relating to compensation under sub-section (6) of section 11, sub-section (2) and sub-section (4) of section 12, and sub-section (5) of section 17, it shall, on an application made for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situated, be determined by him.

(3) Every determination of a dispute by a District Magistrate or District Judge under this section, shall be final.

(4) Nothing in sub-section (3) shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the facility provider, from the person who has received the same.

#### COMMENTS

This section empowers the District Magistrate or any other authority as notified by the Central Government to solve any disputes.

### **CHAPTER IV STANDARDS, PUBLIC SAFETY, NATIONAL SECURITY AND PROTECTION OF TELECOMMUNICATION NETWORKS**

#### **19. Power to notify standards**

The Central Government may notify standards and conformity assessment measures in respect of—

- (a) telecommunication equipment, telecommunication identifiers and telecommunication network;
- (b) telecommunication services, in consonance with any regulations notified by the Telecom Regulatory Authority of India from time to time;
- (c) manufacture, import, distribution and sale of telecommunication equipment;
- (d) telecommunication security, including identification, analysis and prevention of intrusion in telecommunication services and telecommunication networks;
- (e) cyber security for telecommunication services and telecommunication networks; and
- (f) encryption and data processing in telecommunication.

#### COMMENTS

This section empowers the Central Government to notify standards and conformity assessment measures in respect of telecommunication services, telecommunication network, telecommunication equipment, or telecommunication identifiers.

#### **<sup>1</sup>20. Provisions for public emergency or public safety**

(1) On the occurrence of any public emergency, including disaster management, or in the interest of public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government, if satisfied that it is necessary or expedient so to do, by notification—

- (a) take temporary possession of any telecommunication service or telecommunication network from an authorised entity; or
- (b) provide for appropriate mechanism to ensure that messages of a user or group of users authorised for response and recovery during public emergency are routed on priority.

(2) On the occurrence of any public emergency or in the interest of public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government, may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty and integrity of India, defence and security of the State, friendly relations with foreign States, public order, or for preventing incitement to the commission of any offence, subject to such procedure and safeguards as may be prescribed, and for reasons to be recorded in writing, by order—

- (a) direct that any message or class of messages, to or from any person or class of persons, to or from any telecommunication equipment or class of telecommunication equipment, or relating to any particular subject, brought for transmission by, or transmitted or received by any telecommunication service or telecommunication network, shall not be transmitted, or shall be intercepted or detained, or shall be

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

disclosed in intelligible format to the officer mentioned in such order; or

- (b) direct that any telecommunication service or class of telecommunication services to or from any person or class of persons, to or from any telecommunication equipment or class of telecommunication equipment, or relating to any particular subject, transmitted or received by any telecommunication service or telecommunication network, shall be suspended.

(3) The press messages, intended to be published in India, of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under clause (a) of sub-section (2).

(4) The action specified under sub-section (1), sub-section (2) and sub-section (3) shall be for such duration and in such manner as may be prescribed.

#### COMMENTS

This section empowers the Central Government or State Government in relation to temporary possession of any telecommunication services or telecommunication network, and appropriate mechanism for priority routing of messages, upon occurrence of any public emergency, or for disaster management, or in the interest of public safety, where the Central Government, or a State Government, is satisfied that it is necessary or expedient to do so, in the interest of the sovereignty and integrity of India, defence and security of the State, friendly relations with foreign States, public order, or for preventing incitement to the commission of any offence.

#### **<sup>1</sup>21. Measures for national security, etc.**

The Central Government may, if satisfied that it is necessary or expedient so to do, in the interest of national security, friendly relations with foreign States, or in the event of war, by notification take such measures as are necessary in the circumstances of the case, including issuing directions in respect of the following, namely:—

- (a) use of telecommunication equipment, telecommunication services, telecommunication network and telecommunication identifiers;
- (b) standards applicable to manufacture, import and distribution of telecommunication equipment;
- (c) standards to be adopted by authorised entities or assignees;
- (d) procurement of telecommunication equipment and telecommunication services only from trusted sources;
- (e) suspension, removal or prohibition of the use of specified telecommunication equipment and telecommunication services from countries or person as may be notified; or
- (f) taking over the control and management of, or suspending the operation of, or entrusting any authority of the Central Government to manage any or all of any telecommunication services, or any telecommunication network or part thereof, connected with such telecommunication services.

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

**<sup>1</sup>22. Protection of telecommunication network and telecommunication services**

(1) The Central Government may by rules provide for the measures to protect and ensure cyber security of telecommunication networks and telecommunication services.

(2) The measures may include collection, analysis and dissemination of traffic data that is generated, transmitted, received or stored in telecommunication networks.

*Explanation* : For the purposes of this sub-section, the expression “traffic data” means any data generated, transmitted, received or stored in telecommunication networks including data relating to the type, routing, duration or time of a telecommunication.

(3) The Central Government may, by notification in the Official Gazette, declare any telecommunication network, or part thereof, as Critical Telecommunication Infrastructure, disruption of which shall have debilitating impact on national security, economy, public health or safety.

(4) The Central Government may by rules provide for the standards, security practices, upgradation requirements and procedures to be implemented for such Critical Telecommunication Infrastructure.

**COMMENTS**

This section provides that the Central Government may by rules provide for the standards, security practices and upgradation requirements for such Critical Telecommunication Infrastructure.

**<sup>1</sup>23. Power to give directions**

If it appears necessary or expedient so to do in the public interest, the Central Government may direct any authorised entity to transmit in its telecommunication services or telecommunication network, specific messages, in such manner as may be specified.

**CHAPTER V****DIGITAL BHARAT NIDHI****<sup>1</sup>24. Establishment of Digital Bharat Nidhi**

(1) The Universal Service Obligation Fund created under the Indian Telegraph Act, 1885 (13 of 1885), shall, from the appointed day, be the “Digital Bharat Nidhi”, under the control of the Central Government, and shall be used to discharge functions as set forth in this Act.

(2) Any sums of money attributable to the Digital Bharat Nidhi that is paid pursuant to an authorisation under section 3, shall be credited to the Digital Bharat Nidhi.

(3) The balance to the credit of the Digital Bharat Nidhi shall not lapse at the end of the financial year.

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

(4) All amounts payable under licences granted prior to the appointed day towards the Universal Service Obligation, shall be deemed to be the amounts payable towards the Digital *Bharat Nidhi*.

#### COMMENTS

This section provides that the Universal Service Obligation Fund created under the Indian Telegraph Act, 1885 shall be the Digital *Bharat Nidhi* under this Act. This section further provides that all amounts payable under licenses granted prior to the appointed day towards the Universal Service Obligation Fund shall be deemed to be amounts payable towards the Digital *Bharat Nidhi*.

#### **<sup>1</sup>25. Crediting of sum to Consolidated Fund of India**

The sums of money received towards the Digital *Bharat Nidhi* under section 24, shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Digital *Bharat Nidhi* from time to time for being utilised exclusively to meet any or all of the following objectives, namely:—

- (a) support universal service through promoting access to and delivery of telecommunication services in underserved rural, remote and urban areas;
- (b) support research and development of telecommunication services, technologies, and products;
- (c) support pilot projects, consultancy assistance and advisory support towards provision of service under clause (a) of this section;
- (d) support introduction of telecommunication services, technologies, and products.

#### COMMENTS

This section provides for the mechanism for crediting of sums of money received towards the Digital *Bharat Nidhi*, and the objectives of the Digital *Bharat Nidhi*.

#### **<sup>1</sup>26. Administration of Digital *Bharat Nidhi***

The Digital *Bharat Nidhi* shall be administered in a manner, as may be prescribed.

### CHAPTER VI

#### INNOVATION AND TECHNOLOGY DEVELOPMENT

#### **<sup>1</sup>27. Regulatory sandbox**

The Central Government may, for the purposes of encouraging and facilitating innovation and technological development in telecommunication, create one or more regulatory sandboxes, in such manner, and for such duration, as may be prescribed.

*Explanation* : For the purposes of this section, the expression “regulatory sandbox” refers to a live testing environment where new products, services, processes and business models which may be deployed, on a limited set of users, for a specified period of time, with certain relaxations from the provisions of this Act.

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<sup>1</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.

**CHAPTER VII**  
**PROTECTION OF USERS**

**<sup>1</sup>28. Measures for protection of users**

(1) For the purposes of this section, “specified message” means any message offering, advertising or promoting goods, services, interest in property, business opportunity, employment opportunity or investment opportunity, whether or not—

- (a) the goods, services, interest, or opportunity are real; or
- (b) it is lawful to acquire such goods, services, property, interest or take up the opportunity.

(2) The Central Government may by rules provide for measures for protection of users, in consonance with any regulations notified by the Telecom Regulatory Authority of India from time to time, including measures such as—

- (a) the prior consent of users for receiving certain specified messages or class of specified messages;
- (b) the preparation and maintenance of one or more registers, to be called as “Do Not Disturb” register, to ensure that users do not receive specified messages or class of specified messages without prior consent; or
- (c) the mechanism to enable users to report any malware or specified messages received in contravention of this section.

(3) An authorised entity providing telecommunication services shall establish an online mechanism to enable users to register any grievance pertaining to the telecommunication service, and redressal of such grievances, in such manner as may be prescribed.

COMMENTS

This section provides that the Central Government, may make rules to provide for measures for protection of users in consonance with any regulations notified by the Telecom Regulatory Authority of India. An authorised entity providing telecommunication services shall establish an online mechanism for redressal of user grievances in such manner as may be provided by rules.

**<sup>1</sup>29. Duty of users**

No user shall—

- (a) furnish any false particulars, suppress any material information, or impersonate another person, while establishing his identity for availing of telecommunication services; or
- (b) fail to share information as required under this Act.

**<sup>1</sup>30. Dispute resolution mechanism to redress user grievances**

(1) The Central Government may establish or approve one or more online dispute resolution mechanisms for the resolution of disputes between users and authorised entities providing telecommunication services.

(2) Every authorised entity providing telecommunication services shall participate in the dispute resolution mechanism established under sub-section (1), and shall comply with such terms and conditions of participation in such mechanism as may be prescribed.

(3) This section shall not affect the rights of consumers under the Consumer Protection Act, 2019 (35 of 2019).

#### COMMENTS

This section provides that the Central Government may establish or approve one or more online dispute resolution mechanisms for resolution of disputes between users and authorised entities. Every authorised entity providing telecommunication services shall participate in the dispute resolution mechanism.

### **CHAPTER VIII**

#### **ADJUDICATION OF CERTAIN CONTRAVENTIONS**

#### **31. Definitions of terms used in this Chapter**

For the purposes of this Chapter,—

- (a) “Adjudicating Officer” means an officer appointed under section 35; and
- (b) “Designated Appeals Committee” means the committee appointed under section 36.

#### **32. Breach of terms and conditions of authorization or assignment**

(1) In case of breach of any of the terms and conditions of authorisation or assignment granted under this Act, the Adjudicating Officer shall, pursuant to an inquiry under the provisions of this Chapter—

- (a) pass an order in writing in respect of one or both of the following, namely:—
  - (i) direct such authorised entity, or assignee to do or abstain from doing any act or thing to prevent such breach or for such compliance;
  - (ii) impose civil penalties as specified in the Second Schedule; and
- (b) make recommendations for the consideration of the Central Government regarding suspension, revocation, or curtailment of the duration of the authorisation or assignment.

(2) The Central Government may, after due consideration of the recommendations of the Adjudicating Officer under clause (b) of sub-section (1), suspend, curtail or revoke the authorisation or assignment, as the case may be, which may be reversed if the substantial violation is remedied to the satisfaction of the Central Government.

(3) While imposing penalties specified in the Second Schedule under this section and section 33, the Adjudicating Officer shall have due regard to the following factors, namely:—

- (a) nature, gravity and duration of the contravention, taking into account the scope of the contravention;
- (b) number of persons affected by such contravention, and the level of harm suffered by them;
- (c) intentional or negligent character of the contravention;
- (d) repetitive nature of the contravention;
- (e) action taken by the concerned person to mitigate the contravention, including by providing a voluntary undertaking under sub-section (1) or sub-section (2) of section 34;
- (f) revenue loss caused to the Central Government;
- (g) any aggravating factors relevant to the circumstances of the case, such as the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the contravention; and
- (h) any mitigating factors relevant to the circumstances of the case, such as the timely rectification of the contravention, or steps taken for the avoidance of loss as a result of the contravention.

#### COMMENTS

This section empowers Adjudicating Officer with reference to breach of any terms and conditions of authorisation or assignment granted under this Act. The Adjudicating Officer would need to consider while imposing penalties as specified under the Second Schedule of the Act.

### **33. Contraventions of Act**

(1) The Adjudicating Officer shall, upon receipt of a complaint in such form, manner and accompanied by such fees as may be prescribed, relating to contravention of this Act as specified in the Third Schedule, or *suo motu*, conduct an inquiry under the provisions of this Chapter, pass an order in writing specifying the civil penalty up to an amount as specified in the Third Schedule, payable by the person committing such contravention.

(2) The provisions of the Third Schedule shall apply to the abetment of, or attempt to commit, or conspiracy to commit such contravention, as they apply to such contravention.

### **34. Voluntary undertaking for contraventions**

(1) Any authorised entity or assignee committing the contravention as provided under section 32 or under serial No. 4 of the Third Schedule may, prior to any notice or initiation of process of determination of such contravention, submit a voluntary undertaking to the Adjudicating Officer, disclosing such contravention and measures taken or to be taken to mitigate such contravention.

(2) The acceptance of voluntary undertaking given under sub-section (1), subject to the provisions of sub-section (6), shall constitute a bar on proceedings under this Chapter.

(3) Where the Adjudicating Officer has reasonable grounds to believe that a contravention as provided under section 32 or under serial No. 4 of the Third Schedule may have occurred, then it shall serve a notice to the authorised entity or assignee concerned under the relevant section.

(4) At any time during the process of hearing under sub-section (3), the authorised entity or assignee, may, submit a voluntary undertaking specifying the mitigation measures it proposes to take in respect of such contravention.

(5) The acceptance of the voluntary undertaking submitted under sub-section (4), subject to the provisions of sub-section (6), shall be construed as a mitigation measure and shall be duly considered for the purpose of determination of civil penalties under clause (a) of sub-section (1) of section 32, or under serial No. 4 of the Third Schedule.

(6) The voluntary undertaking under sub-section (1) or sub-section (4) of this section, may include an undertaking to take a specified action within a specified time; an undertaking to refrain from taking a specified action; and an undertaking to publicise the voluntary undertaking.

(7) The Adjudicating Officer may accept the voluntary undertaking under sub-section (1) or sub-section (4), or with the agreement of the authorised entity or assignee providing the voluntary undertaking, vary the terms included in such voluntary undertaking.

(8) When the authorised entity or assignee providing a voluntary undertaking fails to comply with any terms of such undertaking, the Adjudicating Officer may, after giving such authorised entity or assignee a reasonable opportunity of being heard, proceed with imposition of civil penalties specified under the Second Schedule or the Third Schedule, as applicable.

#### COMMENTS

This section provides for voluntary undertaking which may be submitted by an authorized entity or assignee upon breach of terms and conditions of authorisation or assignment or specific contraventions listed in the Third Schedule of the Act.

### **35. Adjudicating Officer**

(1) For the purposes of this Chapter, the Central Government shall, by an order published in the Official Gazette, appoint any officer of the Central Government not below the rank of Joint Secretary as one or more Adjudicating Officers for holding an inquiry in such manner as may be prescribed.

(2) The Adjudicating Officer may, upon the holding of such inquiry, pass such order as he deems fit in accordance with the provisions of section 32 or section 33.

### **36. Designated Appeals Committee**

(1) The Central Government may, by an order published in the Official Gazette, appoint officers of the Central Government not below the rank of Additional Secretary, as members of one or more Designated Appeals Committee to which any person aggrieved by an order made by the Adjudicating Officer under sub-section (1) of section 32 or under section 33, may prefer an appeal.

(2) Every appeal under sub-section (1) shall be filed within a period of thirty days from the date on which the copy of the order made by the Adjudicating Officer is received by the aggrieved person, and shall be in such form, manner and be accompanied by such fees as may be prescribed.

**37. Process to be followed by Adjudicating Officer and Designated Appeals Committee**

(1) The functioning of the Adjudicating Officer and the Designated Appeals Committee shall, as far as possible, be digital by design and they shall function as digital offices and deploy such techno-legal measures as may be prescribed, to enable online process for their functioning.

(2) The Adjudicating Officer and Designated Appeals Committee shall have the same powers as a civil court, and all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860)<sup>1</sup>.

**38. Enforcement**

Any order made by the Adjudicating Officer or the Designated Appeals Committee shall be executable in the same manner as if it were a decree of civil court; and such orders shall be deemed to be final decrees under this section on the expiry of the period allowed for preferring an appeal against such orders as provided in section 36 and section 39.

**39. Appeals on matters relating to section 32**

Any person aggrieved by an order of the Designated Appeals Committee under section 36, insofar as it pertains to matters under sub-section (1) of section 32, or an order of the Central Government under sub-section (2) of section 32, may prefer an appeal to the Telecom Disputes Settlement and Appellate Tribunal constituted under section 14 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), within a period of thirty days from the date on which a copy of the order is received by such authorised entity or assignee.

**40. Appeals on matters relating to section 33**

Any person aggrieved by an order of the Designated Appeals Committee under section 36, insofar as it pertains to matters under section 33, may prefer an appeal to any civil court having jurisdiction over the matter.

**41. Jurisdiction of civil court barred**

No civil court shall have jurisdiction in respect of any matter which the Adjudicating Officer, the Designated Appeals Committee, the Central Government or the Telecom Disputes Settlement and Appellate Tribunal are empowered by or under this Chapter to determine.

**CHAPTER IX  
OFFENCES****<sup>2</sup>42. General provisions relating to offences**

(1) Whoever provides telecommunication services or establishes telecommunication network without authorisation under sub-section (1) of section 3, or causes damage to critical telecommunication infrastructure shall be 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.

<sup>1</sup> Now refer sections 229 and 267 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023).

<sup>2</sup> W.e.f. 26-6-2024 vide SO 2408(E), dt. 21-6-2024.