

**Consultation Paper on
'Need for a new legal framework governing Telecommunication in India'**

Introduction

1. Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "*Aatma Nirbhar Bharat*". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of "*antyodaya*".
2. The criticality of telecommunication was underlined during the COVID-19 pandemic. Telecommunication emerged as a lifeline for the economy by enabling digital economy to function. Interactions that form the core of a well-functioning economy migrated from physical mode to digital mode. Particularly, remote working and online education gained popularity and societal acceptance. Telecommunication helped sustain demand for services and enabled people to remain connected.
3. The number of telecom subscribers in India has grown from 1.5 Cr in 1997 to more than 117 Cr today. This represents a phenomenal 19% CAGR over a period of 25 years. India is today the second largest telecom market in the world.
4. Telegraph was first installed in India in the year 1851 and telephone exchanges were set up in the early 1880s. In light of these developments, the Indian Telegraph Act, 1885 ("Telegraph Act") came into force on 1st October 1885. To regulate the possession of wireless telegraphy apparatus, the Indian Wireless Telegraphy Act, 1933 ("Wireless Telegraphy Act") was passed and it came into effect on 1st January 1934. Similarly, to regulate the possession of telegraph wires the Telegraph Wires (Unlawful Possession) Act, 1950 ("Telegraph Wires Act") was passed and it came into effect on 1st April 1951.

5. The technology and the nature of telecommunication have undergone a massive change since these laws came into effect. To keep pace with emerging technologies, telecommunication legislation has evolved with time in most jurisdictions. These include United States (1996), Australia (1979), United Kingdom (2003), Singapore (1999), South Africa (2000) and Brazil (1997).
6. Emergence of new technologies such as 5G, Internet of Things, etc. among others offer many opportunities to transform the lives of millions of Indians. It is important to have a modern and future-ready legal framework which addresses the realities of telecommunication in 21st century India. '*Azadi ka Amrit Mahotsav*' is an opportune time for reimagining India's telecommunication legal framework. India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication.

What a new law needs to address?

7. A new law on telecommunication needs to aim at establishing an enabling future-ready framework for the development of telecommunication sector and deployment of new technologies. Such a law needs to consolidate the existing laws governing telecommunication sector, while keeping in view global best practices. For this, a careful review of laws and best practices in other jurisdictions, will also be needed.
8. Comprehensibility of law for citizens is a desirable goal. Any new telecommunication law needs to be drafted in a plain and simple language so that any citizen, who is reasonably aware of the telecommunication sector, is able to understand the contents of the Bill.

Simplification of the regulatory framework

9. The existing regulatory framework for the telecommunication sector is based to a large extent on Section 4 of the Telegraph Act which grants the Central Government the exclusive privilege to establish, maintain and work telegraphs. It further provides that the Central Government may grant a license on such

conditions as it thinks fit, to establish, maintain and work telegraphs. Similarly, Section 5 of Wireless Telegraphy Act provides for licenses to possess wireless telegraphy apparatus.

10. There have been rapid advances in telecommunication technology and corresponding proliferation of licenses, registrations, authorizations, permissions etc. in the telecommunication sector. The exclusive privilege of the Government to do things necessary in the context of telecommunication to provide telecommunication services, establish and maintain telecommunication network and infrastructure, is well recognized under laws of various jurisdictions. A new law needs to build upon this framework.
11. Such a new law also needs to provide adequate provisions to ensure regulatory certainty and promote investment. This would mean continuity of licenses and authorizations under the old regime. To minimize policy disruption, such a law needs to provide for continuation of rules, guidelines, administrative orders issued under the existing regime until superseded by new rules.
12. Furthermore, a new law needs to ensure that the terms and conditions will not be modified with retrospective effect to the detriment of the relevant entity.
13. To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc.

Spectrum Management

14. Spectrum is a scarce natural resource. Its efficient use is in public interest. In fact, the International Telecommunication Union (ITU) has stated that spectrum “*must be managed in the interests of the national community as a whole.*” Covid pandemic has shown that spectrum must be seen as a public good.
15. At present, spectrum assignment is done through a combination of policies and court orders. A new law needs to bring in regulatory clarity and lay down specific

legal framework. The principle needs to be that spectrum will be assigned to best serve the common good and enable wide-spread access to telecommunication services.

16. Such a legal framework for Spectrum needs to:
 - a) Enable the utilization of the spectrum in a liberalized and technologically neutral manner, and allow a spectrum assignee to deploy new technologies.
 - b) Maintain policy continuity, allowing the existing spectrum (and exemptions) assigned at present to continue for a specified time period.
 - c) Ensure flexibility to the Central Government for spectrum usage in public interest.

17. To enable more efficient use of spectrum, repurposing of a frequency range for a different use and re-arrangement of a frequency range is often required. Therefore, the law needs to contain provisions for re-farming and harmonization of frequency range. Further, it needs to provide that the Central Government may permit the sharing, trading, leasing and surrender of spectrum assigned, subject to prescribed terms and conditions, including applicable fees or charges.

Right of Way

18. Despite the widespread availability of telecommunication in our country, tremendous improvement is required to ensure continuity of connectivity. As we move on to better technologies such as the deployment of 5G, their full value can be achieved only with smooth connectivity. Effective right of way is a pre-requisite to achieve this to enable expansion of telecommunication network and improvement of telecommunication services.

19. A new law needs to provide a robust regulatory framework to obtain Right of Way in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure. Such a law also needs provisions to create an effective dispute resolution framework relating to Right of Way.

20. In line with the vision of PM Gati Shakti initiative, the new framework needs to incorporate provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure.

Framework for mergers, acquisitions etc.

21. With a view to simplifying the framework for mergers, demergers and acquisitions, or other forms of restructuring, a new law needs to allow for any licensee or registered entity to comply with the scheme for restructuring as provided under the Companies Act, 2013, and simply inform the Department of Telecommunications, as required. This process needs to be simplified.

Provisions pertaining to Insolvency

22. A new law needs to address insolvency related issues in telecom sector with a focus on continuity of service. There is a need to ensure that insolvency proceedings should not lead to suspension or termination of the license/authorization/assignment as long as: (a) telecommunication services continue to be provided and (b) there is no default in payment of dues in relation to the telecom license or use of spectrum. This crucial balance between continuity of service and safeguarding public interests needs to be addressed under a new framework.
23. Unlike many other natural resources, spectrum is completely reusable. It has no physical form. It comes into existence only when it is used. It has no value if it is not used. Therefore, considering the uniqueness of spectrum as a natural resource, the new law needs to provide for situations where spectrum is not being put to use due to insolvency.

Expanding the scope of the USOF

24. The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund with the wider concept of a "Telecommunication Development Fund". This can address the larger public

purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities. This can enable the growth of indigenous companies in the technology space.

Penalties

25. Penalties should be proportionate to offences. With this in view, a new law needs to consolidate and update the various provisions on penalties and offences.

Standards, Public safety and national security

26. A new law needs to have appropriate provisions for addressing situations of public emergency, public safety and for taking measures in the interests of national security
27. Such a law needs to provide enabling framework for the Central Government to prescribe relevant standards for telecommunication equipment, telecommunication services, telecommunication network, telecommunication infrastructure. The aim is to ensure public safety. This is all the more crucial given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis.
