

Legislative Brief

The Post Office Bill, 2023

The Post Office Bill was introduced in Rajya Sabha on August 10, 2023.

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September 20, 2023

Highlights of the Bill

- ◆ The Bill replaces the Indian Post Office Act, 1898. The Act regulates India Post, a departmental undertaking of the central government.
- ◆ The government will not have exclusive privilege over conveying letters. Services to be provided by India Post will be prescribed under Rules.
- ◆ The Director General of Postal Services will be appointed to head India Post. He will have powers to make regulations on various matters including tariffs for services and supply of postage stamps.
- ◆ The government may intercept an article transmitted through India Post on specified grounds, including security of the state and public order.
- ◆ India Post will not incur any liability with regard to its services, except any liability prescribed through Rules.

Key Issues and Analysis

- ◆ The Bill does not specify procedural safeguards for interception of articles transmitted through India Post. Lack of safeguards may violate freedom of speech and expression, and right to privacy of individuals.
- ◆ The grounds for interception include 'emergency', which may be beyond reasonable restrictions under the Constitution.
- ◆ The Bill exempts India Post from liability for lapses in postal services. Liability may be prescribed through Rules by the central government, which also administers India Post. This may lead to conflict of interest.
- ◆ The Bill does not specify any offences and penalties. For instance, there are no consequences for unauthorised opening of postal articles by a postal officer. This may have adverse implications for the right to privacy of consumers.

PART A: HIGHLIGHTS OF THE BILL

Context

Postal services come under the Union List of the Constitution. The Indian Post Office Act, 1898 regulates the postal services offered by the central government.¹ It grants the central government exclusive privilege over conveying of letters. Postal services are offered through India Post, a departmental undertaking.

On certain previous occasions, significant amendments to the 1898 Act were proposed, however, they did not come into force.^{2,3,4,5} A Bill passed by Parliament in 1986 sought to align the grounds for interception of an article being transmitted through post with the reasonable restrictions on the fundamental rights under the Constitution. The Bill did not receive the assent of the President and was later withdrawn. A Bill was introduced and referred to a Standing Committee in 2002, which included amendments to regulate private courier services under the Act.⁵ The Bill eventually lapsed. In 2006 and 2011, draft Bills were released, which

also proposed amendments to regulate private courier services under the Act.^{3,4} However, the corresponding Bills were not introduced in Parliament.

In 2017, the Act was amended to delegate the power to decide tariffs to the central government.⁶ Earlier, this power rested with Parliament. Recently, the Jan Vishwas (Amendment of Provisions) Act, 2023 removed all offences and penalties under the Act.⁷ In August 2023, the Post Office Bill, 2023 was introduced in Rajya Sabha. It replaces the 1898 Act and aims to simplify legislative framework to facilitate evolution of India Post into a citizen-centric service network.

Key Features

- **Exclusive privileges of the central government:** The Act provides that wherever the central government establishes posts, it will have the exclusive privilege of conveying letters by post, as well as incidental services such as receiving, collecting, sending, and delivering letters. The Bill does not provide for such privileges. The Act provides for the issuance of postage stamps as per the prescribed Rules. The Bill also states that India Post will have the exclusive privilege over issuing postage stamps.
- **Services to be prescribed:** The Act specifies the services provided by India Post to include: (i) delivery of postal articles including letters, postcards, and parcels, and (ii) money orders. The Bill provides that India Post will provide services, as may be prescribed by the central government.
- **Director General to make regulations regarding services:** The Act, as well as the Bill, provides for the appointment of the Director General of Postal Services. Under the Act, the Director General has powers to decide the time and manner of delivery of postal services. The Bill provides that the Director General may make regulations regarding any activity necessary to provide postal services. He may also make regulations regarding charges for services, and supply and sale of postage stamps and postal stationery.
- **Powers to intercept postal articles:** The Act allows interception of an article being transmitted through post on certain grounds. An interception may be carried out on the occurrence of any public emergency, or in the interest of public safety or tranquillity. Such interceptions may be carried out by the central government, state governments, or any officer specially authorised by them. An intercepted shipment can be detained or disposed of by the officer in charge. The officer also has powers to open, detain, or destroy shipments carrying items prohibited under the Act or any other law.
- The Bill instead provides that interception of an article being transmitted through post may be carried out on the following grounds: (i) the security of the state, (ii) friendly relations with foreign states, (iii) public order, (iv) emergency, (v) public safety, or (vi) contravention of the provisions of the Bill or any other laws. An officer empowered by the central government through a notification may carry out interception.
- **Examination of postal articles prohibited under law or liable for duty:** Under the Act, an officer in charge may examine a postal article if he suspects that it contains goods which are prohibited, or are liable to be paid duty upon. The Bill removes the powers of examination. It instead provides that in such cases, the central government may empower an officer of India Post to deliver the postal article to the customs authority or any other specified authority. The authority will then deal with the item in question.
- **Exemptions from liability:** The Act exempts the government from any liability related to the loss, mis-delivery, delay, or damage to a postal article. This does not apply where the liability is undertaken by the central government in express terms. Officers are also exempt from such liability unless they have acted fraudulently or wilfully. The Bill retains these exemptions. It also provides that the central government may prescribe liability with regard to services by India Post under the Rules.
- **Removal of offences and penalties:** The Act specified various offences and penalties, all of which were removed by the Jan Vishwas (Amendment of Provisions) Act, 2023. For instance, theft, misappropriation, or destruction of postal articles by an officer of the Post Office was punishable with imprisonment up to seven years and a fine. Sending certain prohibited items through post was punishable with imprisonment up to one year, a fine, or both. The Bill does not provide for any offences or consequences, except one. Amounts not paid by a user will be recoverable as arrears of land revenue.

PART B: KEY ISSUES AND ANALYSIS

Regulation of postal services different from courier services

Currently, there are distinct frameworks for regulation of similar postal services by public and private sectors. The Indian Post Office Act, 1898 establishes monopoly of the central government over conveying letters. Private courier services are currently not regulated under any specific legislation.⁸ This leads to certain key differences. For instance, the 1898 Act provides a framework for interception of articles transmitted through India Post. There is no such provision for private courier services. Another key difference is in the application of the consumer protection framework. The 1898 Act exempts the government from liability for any lapses in

the services, except where such liability is undertaken in express terms. The Consumer Protection Act, 2019 does not apply to services by India Post, but it applies to private courier services.⁹ The Post Office Bill, 2023, seeking to replace the 1898 Act, retains these provisions. We discuss certain issues with these provisions below.

Interception of articles transmitted through India Post

Act: Section 26

The Bill empowers the government to intercept an article transmitted through post on following grounds: (i) security of the state, (ii) friendly relations with foreign states, (iii) public order, (iv) emergency, (v) public safety, or (vi) contravention of provisions of the Bill or any other laws. We discuss two related issues below.

Bill: Clause 9

Lack of procedural safeguards may violate fundamental rights of individuals

The Bill does not specify any procedural safeguards against the interception of postal articles. This may violate the right to privacy, and the freedom of speech and expression. In the case of interception of telecommunications, the Supreme Court (1996) held that a just and fair procedure to regulate the power of interception must exist. Otherwise, it is not possible to safeguard the rights of citizens under Article 19(1)(a) (freedom of speech and expression) and Article 21 (right to privacy as a part of the right to life and liberty).¹⁰ To address this, the Court had mandated several safeguards including: (i) establishing necessity for interception, (ii) limiting the validity of interception orders, (iii) authorisation by high-ranking officials, and (iv) interception orders to be examined by a review committee headed by senior government functionaries.¹⁰

A similar clause was introduced in the Indian Post Office (Amendment) Bill, 1986.¹¹ The Bill was passed by both Houses of Parliament and sent to the President for his assent in December 1986. However, President Zail Singh neither assented nor returned the Bill to Parliament until he demitted office in July 1987. Later, President Venkataraman returned it to Parliament in January 1990 for reconsideration, and the Bill was withdrawn by the Vajpayee government in 2002.^{5,12}

The ground of ‘emergency’ may be beyond the reasonable restrictions permitted under the Constitution

The Bill allows interception of postal articles on the ground of ‘emergency’. The 1898 Act has a similar ground of ‘public emergency’ for interception. The Law Commission (1968), while examining the 1898 Act, had observed that the term emergency is not explicitly defined, and thus gives a very wide ground for interception. It also observed that interception of postal articles may infringe upon the freedom of speech and expression in certain cases, such as where it contains letters, books, postcards, and newspapers.¹³ It added that a public emergency cannot be a constitutionally permissible ground for interception, if it does not affect the security of the state, public order, or any other grounds specified in the Constitution. The Supreme Court (2015) has held that arbitrary grounds for restricting freedom of speech and expression are unconstitutional.¹⁴

Exemption from liability for lapses in services

Act: Section 6

The Bill states that notwithstanding any other law in force, India Post will not incur any liability with regard to a service provided by India Post. However, the central government may prescribe liability with regard to a service through Rules. The question is whether the Bill itself should provide for liability.

Bill: Clause 10

While examining the application of the 1898 Act, the National Consumer Dispute Redressal Commission (2023) had held that the Consumer Protection Act, 2019 does not apply to postal services offered by the government.⁹ The Bill retains the provisions regarding liability under the 1898 Act. This implies that rights of consumers of postal services from India Post may not be adequately protected. Liability may be prescribed through Rules by the central government, which also administers India Post. This may lead to a conflict of interest.

The framework under the Bill is in contrast with the law applicable in the case of Railways, which is also a commercial service provided by the central government. The Railway Claims Tribunal Act, 1987 establishes tribunals for disposing of complaints against the Indian Railways for lapses in services.¹⁵ These include grievances such as loss, damage, or non-delivery of goods, and refund of fares or freight.

Removal of all offences and penalties

Act: Chapter X

The Jan Vishwas (Amendment of Provisions) Act, 2023 removed all offences and penalties under the 1898 Act.⁷ These included various offences committed by officers of the post office. The Bill retains this position, i.e., it does not provide for any offences and penalties. The question is whether this is appropriate.

Under the Act, illegal opening of postal articles by a postal officer was punishable with imprisonment up to two years, a fine, or both. Persons other than postal officers were also penalised for opening a mail bag. In contrast, there will be no consequence against such actions under the Bill. This may have adverse implications for the right to privacy of individuals. Violations specific to postal services are not covered under other laws such as the Indian Penal Code (IPC). The IPC only punishes such offences when accompanied by theft or misappropriation (Section 403 and 461).¹⁶

Lack of clarity on consequences in certain cases

Act:
Section 53

Bill:
Clause 10
(2)

The Bill states that no officer will incur any liability with regard to a service provided by India Post. This exemption does not apply where the officer has acted fraudulently or wilfully caused loss, delay, or mis-delivery of service. However, the Bill does not specify what consequences would follow if an officer commits such acts. Prior to the amendment under the Jan Vishwas Act, under the 1898 Act, these offences were punishable with imprisonment of up to two years, a fine, or both.

Financial support to India Post

The Financial Memorandum to the Bill states that enacting the Bill would incur no recurring or non-recurring expenditure from the Consolidated Fund of India. However, India Post has consistently been in deficit, which has been covered by the Consolidated Fund of India. Table 1 shows the budgetary support to the Department of Posts over the last five years.

Table 1: Budgetary support to the Department of Posts

Year	Budgetary Support (Rs crore)
2019-20	15,544
2020-21	18,593
2021-22	19,746
2022-23 (Revised Estimate)	23,656
2023-24 (Budget Estimate)	25,814

Source: Union Budget Documents of various years; PRS.

- [The Indian Post Office Act, 1898](#).
- Clause 16, [The Indian Post Office \(Amendment\) Bill, 1986](#).
- [Draft of the Indian Post Office \(Amendment\) Bill, 2006](#).
- Highlights of the Draft 2011 Bill, India Post.
- [Fiftieth Report of the Standing Committee on Information Technology on the Indian Post Office \(Amendment\) Bill, 2002](#), July 23, 2003.
- Section 133, [The Finance Act, 2017](#).
- Section 2, [The Jan Vishwas \(Amendment of Provisions\) Act, 2023](#).
- [Lok Sabha Unstarred Question No. 3963](#), Ministry of Communications, July 17, 2019.
- [Yogesh Kumar vs Superintendent, Indian Postal Department](#), Revision Petition 3246 Of 2016, National Consumer Disputes Redressal Commission, March 9, 2023.
- [People's Union for Civil Liberties vs The Union of India](#), WP (Civil) 105 of 2004, Supreme Court, December 18, 1996.
- [The Indian Post Office \(Amendment\) Bill, 1986](#) replaced Section 26 with the following: "26. The Central Government or the State Government or any officer specially authorised in this behalf by the Central or the State Government, may, if satisfied that it is necessary or expedient so to do in the interests of public safety or tranquillity, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any offence, or on the occurrence of any public emergency, by order in writing, direct that any postal article or class or description of postal articles in the course of transmission by post, shall be intercepted or detained or shall be disposed of in such manner as the authority issuing the order, may direct."
- ["No, Mr President"](#), AG Noorani, Hindustan Times, July 26, 2006.
- [Thirty Eighth Report on The Indian Post Office Act, 1898](#), Law Commission of India (1968).
- [Shreya Singhal vs The Union of India](#), WP (Criminal) 167 of 2012, Supreme Court, March 24, 2015.
- [The Railway Claims Tribunal Act, 1987](#).
- Sections 403 and 461, [The Indian Penal Code, 1860](#).

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