



Post Office Act, 2023: Replacing Colonial Legislation

This editorial is based on “[Post Office Act, its unbridled powers of interception](#)” which was published in The Hindu on 22/01/2024. The article examines the recent approval of the Post Office Act, 2023 by the Parliament which will replace the colonial-era Indian Post Office Act, 1898; delving into various profound changes and also deficiencies within the legislation, particularly regarding the extensive powers granted to the central government.

For Prelims: [Post Office Act, 1898](#), [Public Order](#), [Emergency](#), [Public Safety](#), [Land Revenue](#), [Freedom of Speech and Expression](#), [Right to Privacy](#)

For Mains: Significance of The Post Office Act, 2023 and its shortcomings.

The [Parliament's](#) approval of the Post Office Act, 2023 presents various advantages but also triggers concerns regarding unchecked interception powers given to post office authorities. Issues include the undefined term 'emergency' and the absence of procedural safeguards, posing risks of arbitrary use and potential misuse of interception powers by authorities.

What are the Key Highlights of the Post Office Act, 2023?

▪ Director General of Postal Services:

- The recently passed Act grants the Director General of Postal Services the authority to make regulations pertaining to activities essential for offering various additional services as may be prescribed by the central government, as well as for fixing charges for these services.
 - This is significant because it eliminates the need for parliamentary approval while revising the set charges for any services provided by post offices, including traditional mail services.

▪ Interception of Shipments:

- The Act professes that the Central Government, “may, by notification, empower any officer to cause any item in course of transmission by the Post Office to be intercepted, opened or detained in the interest of:
 - The security of the State,
 - Friendly relations with foreign states,
 - [Public order](#), [Emergency](#), or [Public Safety](#) or
 - The occurrence of any contravention of any of the provisions of this Act.
- The new Act includes a broader provision that aims to prevent smuggling and the illegal transmission of drugs and prohibited items via postal packages.
 - The Central Government through a notification will empower an officer who may carry out an interception.

▪ Identifiers and Post Codes:

- Section 5 Sub-section 1 of the Act states that “The Central Government may prescribe

standards for addressing on the items, address identifiers and usage of postcodes”.

- This provision will replace physical addresses with digital codes based on geographical coordinates for precise identification of a premise.
- While digital addressing is a forward-looking concept, it could simplify the sorting process and enhance the accuracy of mail and parcel deliveries.

▪ **Removal of Offences and Penalties:**

- The Act does not contain the punishment for theft, misappropriation or destruction of postal articles by an officer of the Post Office which was part of the [original Act of 1898](#).

▪ **Penalty under Section 7:**

- Every person who avails a service provided by the Post Office shall be liable to pay the charges in respect of such service.
- If any person refuses or neglects to pay the charges referred to in Sub-section (1), such amount shall be recoverable as if it were arrears of [land revenue](#) due from him.

▪ **Removes Centre's Exclusivity:**

- The present Act has removed Section 4 of the 1898 Act, which allowed the Centre the exclusive privilege of conveying all letters by post.
 - However, courier services have been bypassing the Act of 1898 by simply calling their couriers “documents” and “parcels”, rather than “letters”.

Indian Post Office Act, 1898

- It came into force on 1st July 1898 with the objective to consolidate and amend the law relating to the Post Offices in India.
- It provides for the regulation of the postal services offered by the central government.
- It grants the Central government exclusive privilege over conveying letters and establishes a monopoly of the Central government over conveying letters.

What are the Deficiencies in the Post Office Act, 2023?

▪ **Regulation of Postal Services different from Courier Services:**

- Currently, there are distinct frameworks for regulation of similar postal services by public and private sectors.
- Private courier services are currently not regulated under any specific legislation. This leads to certain key differences.
 - For instance, the 1898 Act provided a framework for interception of articles transmitted through India Post. There is no such provision for private courier services. The present Act retains this provision.
- Another key difference is in the application of the consumer protection framework.
 - The [Consumer Protection Act, 2019](#) does not apply to services by India Post, but it applies to private courier services. The Post Office Act, 2023, seeking to replace the 1898 Act, retains these provisions.

▪ **Lack of Procedural Safeguards Violates Fundamental Rights:**

- 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](#) in [People's Union for Civil Liberties \(PUCL\) vs Union of India, 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).

▪ **The Ground of 'Emergency' is Beyond the Reasonable Restrictions:**

- 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 is also retained in the present Act.
 - 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.

▪ **Exemption from Liability for Lapses in Services:**

- The framework under the Act 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.
 - These include grievances such as loss, damage, or non-delivery of goods, and refund of fares or freight.

▪ **Removal of all Offenses and Penalties:**

- Under the Act, 1898, 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 penalized for opening a mail bag.
 - In contrast, there will be no consequence against such actions under the 2023 Act. 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 \(IPC\)](#).

▪ **Lack of Clarity on Consequences in Certain Cases:**

- The Act 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 Act does not specify what consequences would follow if an officer commits such acts.
 - Prior to the amendment under the [Jan Vishwas Act, 2023](#) under the 1898 Act, these offenses were punishable with imprisonment of up to two years, a fine, or both.

What Should be the Way Forward?

▪ **Incorporate Robust Procedural Safeguards:**

- Introduce clear and comprehensive procedural safeguards for the interception of articles transmitted through India Post.
- This should include oversight mechanisms, judicial warrants, and adherence to constitutional principles to protect the freedom of speech, expression, and the right to privacy of individuals.
 - In [Justice K.S. Puttaswamy \(Retd.\) & Anr. vs Union of India & Ors. \(2017\)](#), the right to communication has been held to be a part of the right to privacy and thus protected under Article 21 of the Constitution.

▪ **Define the Grounds for Interception:**

- Refine and clearly define the grounds for interception, especially the term 'emergency,' to ensure it aligns with reasonable restrictions under the Constitution.
 - Limit the exercise of emergency powers to prevent potential misuse and uphold individual rights.
- The Supreme Court in **Distt. Registrar & Collector, Hyderabad & Anr vs Canara Bank (2005)** held that the right to privacy is not lost as a result of confidential documents or information being parted with by the customer to the custody of a bank.
 - Therefore, the right to privacy is not lost if some personal items are entrusted to the post office for correspondence.
 - The Court has also held in many judgments that the right to privacy imposes a requirement of a written recording of reasons before a search and seizure could be carried out.

▪ **Balanced Liability Framework:**

- Ensure the Post Office's accountability by setting clear rules for liability without jeopardizing its independence and efficiency.
- Address concerns about potential misuse and prevent conflicts of interest, especially with regards to formulating different service charges.
- The competent authority needs to be held accountable for any wilful misuse of interception powers, without the 'good faith' clause coming to their rescue.

- Otherwise, in case of infringement of the right to privacy under these statutes, relief (including compensation) could only be sought from the constitutional courts.

▪ **Addressing Unauthorized Opening:**

- Reintroduce specific offenses and penalties within the Act, addressing unauthorised opening of postal articles by postal officers.
- Establish a legal framework that holds individuals accountable for misconduct, fraud, theft, and other offenses to safeguard the right to privacy of consumers.
 - Article 17 of the **International Covenant on Civil and Political Rights, 1966**, to which India is a party, says that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honor and reputation’.

Conclusion

While legislative amendments are crucial for addressing contemporary challenges, a balance must be struck between security imperatives and individual rights. The evolving legal landscape requires careful consideration to ensure that the interception provisions align with constitutional principles, international obligations, and the imperative of safeguarding individual privacy.

Proactive steps, including the formulation of clear procedural safeguards, accountability measures, and adherence to international standards, are essential to prevent constitutional challenges in the future.

Drishti Mains Question:

Examine the implications of the Post Office Act, 2023, on individual privacy, considering the absence of procedural safeguards and accountability measures in interception provisions.

UPSC Civil Services Examination Previous Year Question (PYQ)

Q. ‘Right to Privacy’ is protected under which Article of the Constitution of India?

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

Ans: (c)