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**NYAYAVIMARSHA**

# Yet to be delivered, an Item in Course of Transmission: A Critical Assessment of the Post Office Act, 2023

## Abstract:

The right to privacy is a fundamental right and part and parcel of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The same has been recognized by the Supreme Court of India. Right to privacy is not only limited to personal autonomy but also extends to the information possessed and transmitted by the person in good faith. With the coming into force of Post Office Act, 2023 on June 18, 2024, the question of "inspection of an item in delivery" as violative of right to privacy is pertinent.

## The Post Office Act, 2023

Postal services come under the Entry 30, List-I i.e., Union List of the Seventh Schedule of the Constitution of India. Parliament has exclusive power to make laws with respect to Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication.

The Post Office Bill, 2023 was introduced in the Upper House of Parliament i.e., Rajya Sabha on August 10, 2023 and was passed there on December 04, 2023. The Bill was then considered and passed by the Lower House of the Parliament i.e., Lok Sabha<sup>1</sup> on December 18, 2023 and received the assent of Hon'ble President of India<sup>2</sup> on December 24, 2023 and was published in the Gazette of India on the same day by Ministry of Law & Justice (Legislative Department) for general information to the public. The Post Office Act, 2023 has come into force with effect from the date June 18, 2024 by notification no. S.O. 2352(E) dated June 17, 2024.<sup>3</sup>

<sup>1</sup> In accordance with Article 107 of the Constitution of India.

<sup>2</sup> In accordance with Article 111 of the Constitution of India.

<sup>3</sup> Source Press Information Bureau. See at <https://pib.gov.in/PressReleasePage.aspx?PRID=2026249>

The Post Office Act, 2023 consolidate and amend the law relating to Post Office in India and to provide for matters connected therewith or incidental thereto.<sup>4</sup> It repeals the Indian Post Office Act, 1898.<sup>5</sup>

The purpose of the Post Office Act, 2023 aims to create a simple legislative framework for delivery of citizen centric services, banking services and benefits of Government schemes at the last mile and it does away with provisions such as the exclusive privilege of collecting, processing and delivering of letters, to enhance the ease of doing business and ease of living.<sup>6</sup>

### **Inspection of an Item in Delivery**

Section 9 of the Post Office Act, 2023 gives the power to central government to empower any officer to cause any item in course of transmission by the Post Office to be intercepted, opened or detained any item and may cause any item to be disposed of in such manner as the central government deems appropriate on the grounds of:

- 1) security of the State,
- 2) friendly relations with foreign States,
- 3) public order,
- 4) emergency,
- 5) public safety,
- 6) upon the occurrence of any contravention of any of the provisions of this Act or any other law for the time being in force.

Section 10 of the Post Office Act, 2023 gives exemption from liability. It provides that the Post Office shall not incur any liability and no officer of the Post Office shall incur any liability with regard to a service provided by the Post Office, unless the officer has acted fraudulently or wilfully caused loss, delay or mis-delivery of service.

### **Critical assessment of the Post Office Act, 2023**

The Post Office Act, 2023 does not specify substantive and procedural safeguards for interception of articles transmitted through post office. Lack of safeguarding the substantive

<sup>4</sup> Preamble of the Post office Act, 2023.

<sup>5</sup> Section 16 (1) of the Post Office Act, 2023.

<sup>6</sup> <https://prsindia.org/billtrack/the-post-office-bill-2023>

and procedural rights violate the fundamental right to freedom of speech and expression of a citizen, and right to privacy of the consumers of the Postal Services.

The Post Office Act, 2023 lacks the definition of "in course of transmission by post" which was provided under Section 3 (a) of the repealed Post Office Act, 1898. Section 3 (a) of the Post Office Act, 1898 provides the meaning of "in course of transmission by post" as "a postal article shall be deemed to be in course of transmission by the post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of".

The Post Office Act, 2023 does not specifies the designation of the officer to be appointed by the Central Government for the purpose of intercepting, opening, detaining or disposing any item in course of transmission by the Post office.

Intercepting, opening, detaining or disposing any item is a quasi-judicial function for which a Senior Officer of the Post Office not below the rank of Senior Superintendent of the Post Office must be designated in that behalf and after a due examination of the item the reasons for intercepting, opening, detaining or disposing the item, each separately, must be recorded in writing by him and the same should be communicated to the consumer of Postal Services and reported to the Director General of Postal Services.

The grounds of (1) security of the State, (2) friendly relations with foreign States and (3) public order are same as provided under Article 19 (2) of the Constitution of India which puts reasonable restrictions on the fundamental right to freedom of speech and expression guaranteed under Article 19 (1) (a). Which have been held constitutionally valid<sup>7</sup>. However, it must be kept in mind that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature.

The grounds of (4) emergency is not defined under the Post Office Act, 2023 and Constitution of India does not authorise the Governments to put restriction on the freedom of speech and expression on the ground of emergency. The ground (5) public safety is reasonable however the Post Office Act, 2023 does not define the word public safety. A reference can be made here from Section 26 of the Post Office Act, 1898 which provides that

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<sup>7</sup> Bishambhar Dayal Chandra Mohan v. State of U.P. (1982) 1 SCC 39.

on the occurrence of any public emergency, or in the interest of the public safety, the Central Government..... may, by order in writing direct that any postal item in course of transmission by post shall be intercepted or detained or shall be disposed, and if any doubt arises as to the existence of a public emergency or public safety a certificate of the Central Government.....shall be conclusive proof on the point.

For amounting to "upon the occurrence of any contravention of any of the provisions of this Act" as mentioned in ground (6) no substantive provisions were mentioned whose violation would amount to the contravention of the Post Office Act, 2023. Substantive provisions should have been mentioned whose contravention authorises the designated person the interception, opening, detaining or disposing any item in course of transmission. A reference can be made from Section 19<sup>8</sup>, 19A<sup>9</sup>, 20<sup>10</sup>, 21<sup>11</sup>, 22<sup>12</sup>, 27A<sup>13</sup> and 27B<sup>14</sup> of Post Office Act, 1898.

### **Inconvenience is Not Regrated**

On the one hand Section 9 gives excessive power to the officer of the Post Office, on the other hand Section 10 (1) exempts Post Office from incurring any liability except such liability as may be prescribed with regard to a service provided by the Post Office and Section 10 (2) exempts the officer of Post Office from incurring any liability for lapses in postal services unless the officer has acted fraudulently or wilfully caused loss, delay or mis-delivery of service. The fraudulent or wilful conduct of the officer of the Post Office is hard to establish to the consumer of the postal service. Even in cases where the officer of the Post Office has acted fraudulently or wilfully caused loss to the consumer of the Postal Services no specific liability is prescribed under the Post Office Act, 2023.

No penal provisions, which specifies offences and penalties, have been prescribed under the Post Office Act, 2023. There should be penal consequences for unauthorised opening of

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<sup>8</sup> Section 19: Transmission by post of anything injurious prohibited.

<sup>9</sup> Section 19A: Transmission by post of tickets, proposals, etc., relating to unauthorised lotteries prohibited.

<sup>10</sup> Section 20. Transmission by post of anything indecent, etc., prohibited.

<sup>11</sup> Section 21. Power to make rules as to transmission by post of postal articles.

<sup>12</sup> Section 22. Power to postpone dispatch or delivery of certain postal articles.

<sup>13</sup> Section 27A. Prohibition of transmission by post of certain newspapers.

<sup>14</sup> Section 27B. Power to detain newspapers and other articles being transmitted by post.

items in course of transmission by an officer of the Post Office otherwise it may have adverse implications for the right to privacy of the consumers of Postal Services.

## **Conclusion**

Fundamental right to freedom of speech and expression and right to privacy are sacrosanct, no unreasonable or arbitrary restrictions should limit the citizens to enjoys these constitutional guarantees. Parliament is required to strengthen the Post Office Act, 2023 by exercising the rules making power conferred upon it under Sections 12 of the Post Office Act, 2023 in this regard.

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