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**STANDING COMMITTEE ON  
INFORMATION TECHNOLOGY  
(2008-2009)**

**FOURTEENTH LOK SABHA**

**MINISTRY OF COMMUNICATIONS AND  
INFORMATION TECHNOLOGY  
(DEPARTMENT OF TELECOMMUNICATIONS)**

**THE TELECOM REGULATORY AUTHORITY OF  
INDIA (AMENDMENT) BILL, 2008**

**SIXTY-EIGHTH REPORT**



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

*February, 2009/Magha, 1930 (Saka)*

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(DEPARTMENT OF TELECOMMUNICATIONS)

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INDIA (AMENDMENT) BILL, 2008

*Presented to Lok Sabha on 17 February, 2009  
Laid on the Table of Rajya Sabha on 16 February, 2009*



LOK SABHA SECRETARIAT  
NEW DELHI

*February, 2009/Magha, 1930 (Saka)*

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COMPOSITION OF THE STANDING COMMITTEE ON  
INFORMATION TECHNOLOGY (2008-2009)

Shri Nikhil Kumar — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Abdullakutty
3. Shri Nikhil Kumar Choudhary
4. Shri Sanjay Shamrao Dhotre
5. Shri Ramesh Dube
6. Smt. Jayaprada
7. Shri Narahari Mahato
8. Shri Bhubneshwar Prasad Mehta
9. Shri Harish Nagpal
10. Shri G. Nizamuddin
11. Shri Sohan Potai
12. Shri Lalmani Prasad
- \*13. Vacant
14. Shri Tufani Saroj
15. Shri Tathagata Satpathy
16. Smt. Rubab Sayeda
17. Shri K.V. Thangkabalu

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\* *Vice* Shri Badiga Ramakrishna, M.P. ceased to be a member of the Committee. *w.e.f.* 26 August, 2008.

18. Shri P.C. Thomas
19. Shri Kinjarapu Yerrannaidu
- \*\*20. Shri Errabelli Dayakar Rao
21. Vacant

*Rajya Sabha*

22. Shri Praveen Rashtrapal
23. Shri Gireesh Kumar Sanghi
24. Shri Ravi Shankar Prasad
25. Shri Dara Singh
26. Dr. C.P. Thakur
27. Shri A. Vijayaraghavan
28. Shri N.R. Govindraj
29. Shri Rajkumar Dhoot
30. Shri Rajeev Chandrasekhar
31. Shri Shyam Benegal

SECRETARIAT

1. Shri Ashok Sarin — *Joint Secretary*
2. Smt. Sudesh Luthra — *Director*
3. Shri P.C. Koul — *Deputy Secretary*
4. Shri D.R. Mohanty — *Under Secretary*

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\*\* Nominated *w.e.f.* 6 October, 2008.

## INTRODUCTION

I, the Chairman, Standing Committee on Information Technology (2008-2009), having been authorized by the Committee to submit the Report on their behalf, present this Sixty-eighth Report on 'The Telecom Regulatory Authority of India (Amendment) Bill, 2008' relating to the Ministry of Communications and Information Technology (Department of Telecommunications).

2. The Bill was introduced in Rajya Sabha on 15 December, 2008 and referred to the Committee by the Hon'ble Speaker in consultation with the Hon'ble Chairman, Rajya Sabha, for examination and report by 31 January, 2009. The Committee obtained the background note and detailed written replies from the Department of Telecommunications. They also received suggestions from the Telecom Regulatory Authority of India. The Committee took oral evidence of the representatives of the Telecom Regulatory Authority of India and the Department of Telecommunications on 12 January, 2009. During the course of oral evidence, the representatives of the Department on being informed about certain infirmities in the proposed Bill, agreed to get them reexamined by the Ministry of Law & Justice. As the necessary clarification from the Ministry of Law & Justice was not forwarded by the Department of Telecommunications to the Lok Sabha Secretariat in time, the Committee had to seek extension of time upto 18 February, 2009 for the finalisation and presentation of the Report. The Hon'ble Speaker was kind enough to grant extension of time upto 16 February, 2009 for presentation of the Report.

3. The Report was considered and adopted by the Committee at their sitting held on 9 February, 2009.

4. The Committee wish to express their thanks to the representatives of the Department of Telecommunications & Telecom Regulatory Authority of India for appearing before the Committee and furnishing the information in connection with the examination of the subject.

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold in Part-II of the Report.

NEW DELHI;  
12 February, 2009  
23 Magha, 1930 (Saka)

NIKHIL KUMAR,  
Chairman,  
Standing Committee on  
Information Technology.

## REPORT

### I. Introductory

The Telecom Regulatory Authority of India (TRAI) is a statutory body set up by the Government of India under Section 3 of the Telecom Regulatory Authority of India Act, 1997. The Authority consists of a Chairperson and not more than two full time members and not more than two part time members. Section 4 of the TRAI Act, 1997 deals with the qualifications prescribed for the appointment of the Chairperson and other members of TRAI. The existing Section 4 of the TRAI Act states as follows:—

“The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs.

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.”

2. The proposed Telecom Regulatory Authority of India (Amendment) Bill, 2008 relates to the amendment of the proviso of Section 4 of the TRAI Act, 1997. The Bill was introduced in Rajya Sabha on 15 December, 2008 and referred to the Committee for examination and report. The Committee, in the process of examination of the Bill called for preliminary materials and written replies from the Ministry of Communications and Information Technology (Department of Telecommunications) and the Telecom Regulatory Authority of India. The Committee also took evidence and heard the views of the representatives of the Department and TRAI. Having examined the Bill in detail and after broaching upon the proposed amendment, the Committee have given their considered opinion on several facets of the proposed amendment.



## II. Justification/Urgency of the Amendment

3. As stated earlier the existing proviso under Section 4 of the TRAI Act, 1997 says as follows:—

“Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years”.

4. The Government now propose to reword the proviso under Section 4 as follows:—

“Provided that a person, who is in the service of the Government or has retired from such service on attaining the age of superannuation, shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government, for a period of not less than three years”.

5. DoT have further stated that earlier during the course of selection of member, TRAI, a person selected by the Selection Committee constituted for the purpose was not considered to be eligible as the person had resigned from the Government service at a distant point of time and was not holding the post of Secretary or Additional Secretary, etc., as per the qualifications prescribed for the post. The matter was, therefore, examined by the Government of India and it was observed that it would be unreasonable to expect that a candidate who has served the Central Government at a distant point of time in the past, even for short durations, would be ineligible only for the reason of his not having held the post at the appropriate levels at the Centre. This would place him at a disadvantage *vis-à-vis* other candidates who might not be equally well endowed in the matter of qualifications and experience, but at the same time did not have the disability by reason merely of having served the Government. In case, the provisions in the Act, inflicted a disability which could be considered as unreasonable and having no nexus with the object of finding an appropriate person to be appointed to the post in question, it was considered best that the provision of the Act was amended appropriately. The Government, therefore, felt the need to amend the proviso in the existing Section 4 of the TRAI Act, 1997 in order to remove the inconsistency or anomaly in the qualifications of the Chairperson and other members of TRAI.

6. Justifying the intentions/need of the amendment, the Secretary, DoT submitted during the oral evidence on 12 January, 2009:—

“Sir, this particular amendment has a very specific intention. Its specific intention being that for somebody who has not been in the Government service, there is no problem. His selection will depend on his professional qualification and experience in law, finance, accountancy, telecommunication, management, whatever it is. However, if I had been a Government servant and supposing after ten years of service, I have left the Government service and then become sort of a Professor in an Indian Institute of Management, I cannot become eligible for consideration because I was in the Government and not attained this position of Additional Secretary or Secretary. But now with this amendment I will become eligible. It is only to facilitate”.

7. Asked to elucidate further, the witness stated:—

“Actually we are making it more liberal. Now, these days there have been young officers who have been joining the IAS for five or six years and then decide to leave it and now-a-days unlike our times a lot of management and engineering graduates are getting into the Service and many of them are professionally qualified than people at our times, when most of the people had done B.A. or M.A. and used to get in. So, they have relatively more opportunities to work outside the Government as they may at some point of time decide to go and do a Ph.D in Harvard and then come back and become a professor. So, he becomes ineligible, if he wants to join”.

8. He further added:—

“.....In order to make such people eligible, we are making this amendment. If, in future, such people get interested and come forward and if they are found eligible and selected, they should not be debarred only because they have left Government service at some point of time and have excelled somewhere else”.

9. The Committee then desired to be apprised of the number of persons who were selected by the Selection Committee but were not considered eligible for appointment as Chairperson and members of TRAI under the existing Section 4 since the inception of the TRAI Act, 1997 for which the Government intended to bring in the proposed amendment. In reply, it was stated by DoT that only one such person selected by the Selection Committee was not considered eligible under the existing Section 4 since the inception of the TRAI Act.

10. The Committee asked about the circumstances that led to the non-appointment of the person in question even after being selected by the Selection Committee. The Committee further queried whether the proposed amendment was justified just because one person was denied appointment as Chairperson/member of TRAI in last more than one decade. In reply, it was stated by DoT that the person in question was an ITS Officer who served the Government of India as Deputy Director General, a Joint Secretary level post from June 1996 to September, 1998. After leaving the Government Service, he joined a Public Sector Undertaking, became the CMD of a Telecom PSU from November, 2002 to February, 2007 and retired from that organization in 2007. He applied for the post of member, TRAI and was selected by the Selection Committee three years back in 2006 taking his experience in the telecommunications field into account. He could not, however, be appointed due to the ambiguity in the qualifications for selection to the post of member, TRAI as per the requirement under the proviso to Section 4 of the TRAI Act, 1997. This was examined by the Government and it was felt that the existing proviso to Section 4 of the TRAI Act, 1997 inflicted a disability which could be considered as unreasonable having no nexus with the object of finding an appropriate person to be appointed to the said post. The proposed amendment was, therefore, necessary so that other eligible persons would not be denied the opportunity.

11. Justifying the proposed amendment notwithstanding the number of persons denied appointment in the last decade, the Secretary, DoT submitted in evidence:—

“There may not be too many cases like that who have left the Government Service. Now of course too many people leave the Government Service and then join other professions and get interested in a job like this.....”

12. When the Committee desired to know whether any consultation was made with the Telecom Regulatory Authority of India before the Government brought the proposed amendment, the Authority submitted that the subject matter of the reference related to the qualification, etc. for appointment of the Authority itself, was based on the Amendment Bill introduced by the Department of Telecommunications and no consultation was made with the TRAI earlier.

13. Asked to state categorically whether the amendment was required at all, the Chairman, TRAI submitted during oral evidence on 12th January, 2009:—

“This is required if we can improve upon it”.

14. In the same context, the Chairman, TRAI further stated:—

“.....We have sent a proposal for comprehensive amendment of the TRAI Act in 2006.....At least let our proposal be examined.....”

15. When the Committee desired to know from the Department of Telecommunications the status of the amendments to the TRAI Act, 1997 proposed by the Authority in 2006, it was replied that the Chairman, TRAI had sent a comprehensive proposal of various amendments to TRAI Act in July 2006 to address various issues relating mainly to more operational freedom to TRAI and administration of broadcasting services. The proposal was examined in the Department of Telecommunications (DoT) and the Ministry of Information and Broadcasting and Department of Expenditure (DoE) in the Ministry of Finance were requested to provide their comments in September 2006.

16. Before the Department received any comments from the Ministry of I&B and DoE, the Chairman, TRAI sent a revised proposal for amendment of TRAI Act in February, 2007. The revised proposal included new amendments as well as modification of previously suggested amendments. The revised proposal was examined afresh in the Department and sent for comments of the Ministry of I&B, DoE and the Ministry of Law once again in June, 2007. The concerned Ministries/ Departments sought information/clarification on the proposal and the same were provided to them.

17. In the meantime, the Chairman, TRAI sent further revised comprehensive proposals in March, 2008 for amendments of the TRAI Act based on the experience of the recent past. The proposals were again examined in the Department. The Committee were further informed that the Department pursued vigorously for comments of the concerned Ministries/Departments. The proposals have been considered *vis-à-vis* the comments of the concerned Ministries/Departments and a draft cabinet note for consideration of the proposal for various amendments of TRAI Act was being prepared and likely to be circulated by the month end (January, 2009).

### **III. Rewording of the existing Proviso**

18. After a scrutiny of the proposed amendment, the Committee desired to be apprised of the exact difference that the intended rewording of the line “who is in the service of Government or has retired from such service on attaining the age of superannuation” would make to the existing line “who is or has been in the service of Government”. In reply, the DoT stated that as per the existing provisions, once any candidate had served

the Government, he would be ineligible for the post unless he had held the post of Additional Secretary or Secretary or Additional Secretary and Secretary for a period of not less than three years. In the proposed amendment the rewording would restrict the condition only in case of that candidate who is in the service or who has retired from such service on attaining the age of superannuation. The restriction would, however, not be applicable to those Government servants who had retired or resigned from service prior to attaining the age of superannuation.

19. Asked to indicate the extent to which it would facilitate induction of more suitable personnel and also augment the impartial functioning of the Authority, the DoT replied that the proposed amendment was expected to remove the anomaly and inconsistency in the qualifications of the Chairperson and other members of TRAI as it would remove a disability of not being eligible for the post of such candidate who had served the Government at a distant point of time in the past, even for short durations, for reason of his not having held the post at the appropriate levels in the Government but later on while being in the Government Service or after leaving the Government Service had excelled in the field of telecommunication, industry, finance, law, etc. As such, the Selection Committee would have wider choice to find more suitable personnel for the post of Chairperson and other members of TRAI. The DoT further stated that this should have the effect of augmenting the impartial functioning of the Authority.

20. During evidence, the Committee asked the representatives of the DoT to explain how the rewording of the existing proviso under Section 4 of the TRAI Act would address the existing ambiguities. In reply, the Secretary, DoT stated that if somebody had left the Government service before attaining the age of superannuation, then he would not be eligible as per the extant provision. The proposed amendment addressed that infirmity and would render him eligible.

21. Not satisfied, the Committee queried whether the proposed amendment could be reworded properly to foster transparency as well as to avoid litigations. In reply, the Secretary, DoT stated:—

“We will consult the Law Department again.....I would request the Law Secretary to put somebody more responsible. We will rectify it.....I will get it examined by the Law Ministry once again”.

22. The Secretary, DoT further assured that after having obtained the opinion of the Ministry of Law and Justice, the DoT would intimate the Committee accordingly. After persistent follow up, the Department reverted back to the Committee stating that the Ministry of Law and

Justice (Legislative Department) have examined the issue and indicated that the said Bill has been properly drafted taking care of the administrative policy of this Ministry to remove the disability pointed out. Therefore, it appears that the language of clause 2 of the Bill does not require any modification. The Department have further stated that according to the Ministry of Law and Justice (Legislative Department) the Statement of Objects and Reasons states the existing inconsistency/disability arising out of the existing proviso to Section 4 of the said Act. The said proviso is being substituted in the said Bill to remove the said inconsistency/disability. Accordingly, para 3 of the Statement of Objects and Reasons is in consonance with the provisions of the said Bill.

#### **IV. Possible Misuse of the Amendment**

23. Giving his opinion on the justification of the proposed amendment and its likely misuse, the Chairman, TRAI while tendering evidence before the Committee, stated:—

“.....Let us take a situation where a person has worked in Government for two years, and then he has gone abroad and got education and become a great expert, he can not be selected by the present Section because he has held the post in Government. Since he has held the post in Government, he will not be considered. Now, by this amendment the Government has tried to do away with that. But the way it has been done, it has opened up a little bit of floodgates for likely misuse in future”.

24. Asked to state the way the proposed amendment could be misused, the Chairman, TRAI submitted:—

“.....in the process we feel that a bigger problem has been given to the posterity because now it could be that a person who may have been Under Secretary-if I want to help him, I can say that no disqualification for this Under Secretary and I will consider him in that category of expert and I will select him. Now he becomes let us say Chairman or member. There is a possibility of misuse.....”

25. On being asked to suggest ways and means to avoid the possible misuse of the proposed amendment, the Chairman, TRAI stated that in order to avoid possible misuse, the qualifications for the post of Chairman of the Authority should be a Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or from amongst persons who have special knowledge of and professional experience in the fields of

telecommunications, industry, finance, law etc. For the post of members of the Authority, he suggested that they should have been Secretary or Additional Secretary or Additional Secretary and Secretary for a period of not less than two years or experts in the above mentioned fields.

## V. Interpretation of the Amendment

26. Pointing out the rewording of the line, “.....unless such person has held the post of Secretary or Additional Secretary.....” in place of the corresponding existing line “.....unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary.....”, the Committee asked whether an Additional Secretary, serving or retired could become the Chairperson of TRAI who is of Cabinet Secretary rank. In reply, the Department of Telecommunications stated that an Additional Secretary with not less than three years of service in the grade, serving or retired could become the Chairperson/member of TRAI as per the proposed amendment as well as the existing provision.

27. In such an event, the Committee asked whether there would not be discontentment amongst the eligible Secretary and equivalent level Officers. In reply, it was stated that experience showed that no such situation had been faced by the Government.

28. Drawing the attention of the Department to their reply that the restriction *i.e.* not less than three years of service in the post of Additional Secretary or Secretary would not be applicable to those Government servants who have retired or resigned from service prior to attaining the age of superannuation, the Committee queried whether the restriction would not be applicable even to the Officers of the rank of Under Secretary/ Deputy Secretary/Director/Joint Secretary who have taken voluntary retirement or resigned from the Government service. The Department replied in the affirmative and stated that theoretically such a situation regarding consideration of Officers below the rank of Additional Secretary would be possible. The Department further stated that, the Search Committee would, however, be relied upon to select the persons of appropriate stature and experience so that the above situation would not arise.

29. During evidence, the Secretary, DoT throwing more light on the three years service in Secretary/Additional Secretary grades restriction imposed through the proviso, stated:—

“It is only for the Government service, so that Joint Secretary or Director level Officers are not considered”.

30. Asked to state the rationale for not considering the Joint Secretary/Director level Officers who might otherwise be competent/expert in the fields of telecommunication, finance, law etc., he replied:—

“There needs to be some criteria for the Selection Committee to consider from the applications. The number of applications will become in thousands. It is because these are senior level appointments”.

## VI. Qualifications prescribed for other Regulatory Bodies

31. When the Committee desired to know about the details of qualifications prescribed for appointment of Chairperson and members of other Regulatory Bodies, the following information was furnished:—

Sl. No	Name of Regulatory Body	Name of the Post/ Constitution of the Regulatory Body	Qualifications for appointment
1	2	3	4
1.	Securities and Exchange Board of India (SEBI)	Chairman and two other members (shall be appointed by the Central Government)	Persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.
		Two members (shall be nominated by the Central Government)	From amongst the officials of the Ministries of the Central Government dealing with Finance and Law.
		One member (shall be nominated by the Reserve Bank of India)	From amongst the officials of the Reserve Bank of India.
2.	Insurance Regulatory and Development Authority (IRDA)	Chairperson and members (shall be appointed by the Central Government)	From amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law,



1	2	3	4
			<p>accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority.</p> <p>Provided that the Central Government shall, while appointing the Chairperson and the whole time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.</p>
3.	Central Electricity Regulatory Commission (CERC)	Chairperson and members (shall be appointed by the Central Government)	<p>From amongst persons of ability, integrity and standing who have knowledge of, and adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one member shall be appointed from each of the following categories, namely:—</p> <p>(a) Engineering with specialization in design, construction, operation and maintenance of generating stations;</p> <p>(b) Engineering with specialization in transmission and supply of electricity;</p> <p>(c) Applied research in the field of electricity;</p> <p>(d) Applied economics, accounting, commerce or finance.</p>
4.	Competition Commission of India (CCI)	Chairperson and not less than two and not more than six other Members (shall be appointed by the Central Government)	<p>Persons of ability, integrity and standing and who have special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of Central Government may be useful to the Commission.</p>

1	2	3	4
5.	Petroleum and Natural Gas Regulatory Board (PNGRB)	Chairperson, a Member (Legal) and three other members (shall be appointed by the Central Government)	<p>From amongst persons of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs:</p> <p>Provided that no person shall be appointed as Member (Legal) unless he-</p> <ul style="list-style-type: none"> <li>(a) is qualified to be a Judge of High Court; or</li> <li>(b) has been a member of the India Legal Service and has held a post in grade I of that Service for at least three years.</li> </ul>
6.	Coastal Aquaculture Authority (CAA)	Chairperson and ten other members (shall be appointed by the Central Government)	<ul style="list-style-type: none"> <li>(a) Chairperson who is, or has been, a Judge of a High Court;</li> <li>(b) One member who is an expert in the field of coastal aquaculture;</li> <li>(c) One member who is an expert in the field of coastal ecology nominated by the Department of Ocean Development of the Central Government;</li> <li>(d) One member who is an expert in the field of environment protection or pollution control nominated by the Ministry of Environment and Forests of the Central Government;</li> <li>(e) One member to represent the Ministry of Agriculture of the Central Government;</li> <li>(f) One member to represent the Ministry of Commerce of the Central Government;</li> <li>(g) Four members to represent the coastal States on rotation basis;</li> <li>(h) One member –Secretary</li> </ul>
7.	Forward Markets Commission (FMC)	Not less than two (but not exceeding four) members (one of them being nominated by the Central Government to be the Chairman thereof)	Persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.

32. Indicating the similarity and difference between the qualifications prescribed for the Chairperson and members of TRAI and that of the above cited other Regulatory Bodies, the Department stated that the qualifications for appointment of the Chairperson and members of TRAI provide for special knowledge of or experience in particular fields similar to that required for such posts in other Regulatory Bodies in their respective fields. However, the pre-requisite for holding the post of Additional Secretary or Secretary or both for not less than three years in the Government for those candidates, who are or have been, in the service of Government, as provided in the proviso clause of Section 4 of the TRAI Act, is not specifically given in the qualifications for appointment to such posts in other Regulatory Bodies like SEBI, IRDA and CERC.

33. Drawing the attention of the Department to the fact that the pre-requisite of holding the post of certain levels (Additional Secretary/ Secretary) for not less than three years for the candidates from the Government sector has been a peculiar condition in the TRAI Act whereas no such clauses have been prescribed for appointment to similar posts in other Regulatory Bodies like SEBI, IRDA and CERC, the Committee queried whether it would not be prudent to modify/remove the restrictive clause for inducting the best talent and effectively addressing the disability. In reply, the Department stated that it might not be appropriate to altogether do away with the requirement of the level or status of Government officers being included in the field of selection for the post of Chairperson/member, TRAI. The Department further stated that the level/status was being insisted only in the case of a person working in Government or who had superannuated from the Government in order to ensure that a person in senior level in the Government only, applied for the post, considering the position of the member in TRAI. However, this condition was not being put in the case of others, including professionals so that the best talent outside the Government could also apply for the post.

34. The Committee then asked whether the qualifications prescribed for appointment of Chairperson/members in other Regulatory Bodies *vis-à-vis* that of TRAI were more suited for attracting the best talent. In reply, the Department stated that since the establishment of TRAI in 1997, the telecom sector had opened up to the private service providers and had progressed by leaps and bounds not only in the urban areas but also in the rural areas. The Department further stated that taking into consideration the past experience and the progress in the sector, there was no sufficient ground at the extant stage to effect any change in the qualifications prescribed for the appointment of the Chairperson and other members of TRAI except the amendment as proposed now.

## VII. Need for separate qualifications for the Chairperson *vis-à-vis* the member of TRAI as in TDSAT

35. The provisions for the appointment of the Chairperson/member of TDSAT as stipulated in Section 14 C of the TRAI Act read as under:—

“A person shall not be qualified for appointment as the Chairperson or a member of the Appellate Tribunal unless he:—

- (a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;
- (b) in the case of a member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration”.

36. The Telecom Regulatory Authority of India, in a written note submitted to the Committee, stated that the eligibility provision for the appointment of the Chairperson/members of the Authority should be in sync with the provisions for the appointment of members of TDSAT.

37. Accordingly, TRAI suggested that the provision for appointment of the Chairperson/members of the Authority could be considered in the following lines:—

“ A person shall not be qualified for appointment as the Chairperson or a member of the Authority unless he:—

- (a) In case of Chairperson, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs;
- (b) In case of member, has held the post of Secretary to the Government of India, or Additional Secretary to the Government of India, or the post of Additional Secretary and Secretary to the Government of India or any equivalent posts in the Central Government or State Government for a period not less than two years, or from amongst person who have special knowledge of, and professional experience in,

telecommunication, industry, finance, accountancy, law, management or consumer affairs”.

38. The Chairman, TRAI while tendering evidence before the Committee stated:—

“.....So, we have just in our humble way tried to improve the draft so that there is no possibility of misuse to the extent we can think of”.

39. In the above context, the Committee desired to know from the Department of Telecommunications the basis for prescribing minimum service of three years as Secretary/Additional Secretary for the candidates from the Government sector for appointment as Chairperson/Member in TRAI whereas in TDSAT the minimum number of service for appointment of members has been kept at two years. In reply, it was stated that in the case of a member of TDSAT, he should have held the post of Secretary or an equivalent post in the Central Government or the State Government for a period of not less than two years, whereas in the case of TRAI a person should have held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary for a period of not less than three years. Hence, in the case of appointment of member, TRAI, an Additional Secretary with three years of service would be eligible whereas in the case of member, TDSAT, only Secretary level officers would be eligible. The Department further stated that the qualifications for the post of member, TDSAT, it being an Appellate Tribunal and considered at higher pedestal *vis-à-vis* TRAI, were more stringent than that of TRAI.

40. Having noted that TRAI was of the view of having separate qualifications for the posts of Chairperson and the members for the candidates from the Government Sector, the Committee desired to know the rationale behind TRAI's proposal. Justifying the need for prescription of separate qualifications for the Chairperson *vis-à-vis* the members of TRAI, the Chairman TRAI while tendering evidence before the Committee stated:—

“The first thing is that, as very rightly asked, whether the Chairman has been given different rank than the members and therefore is there perhaps a need for making some kind of distinction in the process of selection/qualifications. This has become compulsive as the Pay Commission also has given two sets of scales-one for the Chairman and the other for the members. That was also in this background.

But even more important than that, we thought that as there is provision for TDSAT, which is the super watchdog body of the TRAI Act, they have one provision for Chairman and the other for members. So, accordingly we have suggested here that the Chairman's qualifications would entail, apart from the open market which of course would seek people of eminence, that he should be in the rank of Secretary to the Government. That is because the Chairman is of Cabinet Secretary's rank. So, a minimum of two years has been suggested (by TRAI). And in the case of Members, we have suggested that he could either be a Secretary or an Additional Secretary with combined period of two years, additionally again from the open market where the eminence criterion would be the guiding factor. So, we have (proposed) two sets-one for the Chairman and the other for the Member. Additionally, we have tried to follow what is also provided in other Regulatory Bodies that if some kind of expertise is necessary, minimum one technical representation must be ensured....."

41. In the above context, the Committee desired to know from the Department of Telecommunications whether it would not be prudent to prescribe different qualifications for the posts of Chairperson and the members of TRAI for the candidates from the Government sector. In their post-evidence reply, it was stated that the Department of Legal Affairs had opined on 13 January, 2009 that the proviso to Section 4 of the TRAI Act would not be applicable in the case of the Chairperson. Thus, the qualifications for appointment of the Chairperson and the members, TRAI would not be the same as per the opinion of the Ministry of Law.

42. During the course of the examination of the Bill, TRAI suggested that as the Authority has been entrusted with the onerous mandate of regulating the ever dynamic and technology oriented telecom sector, one Member of TRAI may be an expert from the telecom sector, in line with the provisions for appointment of members in Insurance Regulatory Development Authority and Central Electricity Regulatory Commission established under their respective Acts.

43. The Chairman, TRAI, justifying the proposal stated in evidence:—

".....Given that the telecom is one such authority where technology is supreme, we have suggested that one member of the two should be at least a telecom specialist".

44. When the Committee asked whether it would be appropriate to appoint an expert in any of the prescribed fields as a member if the

Chairperson had already similar expertise, the Chairman, TRAI responded:—

“.....But you are very right. Of the three, if a situation arises where the Chairman himself is an expert, perhaps there may not be a need to have one more member from that same field”.

45. Commenting on the mandatory requirement of appointing at least one expert in the field of telecommunication as member of TRAI, the Department of Telecommunications stated that the preamble to TRAI Act, 1997 provided for the establishment of Telecom Regulatory Authority of India to regulate the telecommunication services and for matters connected therewith or incidental thereto. The DoT further stated that as the past experience showed, it had invariably been ensured by the Selection Committee that at least one member of TRAI was drawn from the telecom sector.

## PART II

### OBSERVATIONS/RECOMMENDATIONS

#### I. Introductory

1. Section 4 of the Telecom Regulatory Authority of India Act, 1997 prescribes the qualifications for the appointment of the Chairperson and members of the Authority. The proviso to Section 4 reads "Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary or Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years". According to the Department of Telecommunications (DoT), the Government felt the need to amend the above said proviso in order to remove the inconsistency or anomaly in the qualifications of the Chairperson and other members of the Telecom Regulatory Authority of India (TRAI). The Government accordingly intend to reword the existing proviso as "Provided that a person, who is in the service of Government or has retired from such service on attaining the age of superannuation, shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government for a period of not less than three years". The Committee during the course of their examination have incidentally come to know that the tenure of the present Chairperson of the Authority is going to end on 21 March, 2009. The Committee's examination of the proposed amendment has, however, revealed several infirmities and inconsistencies in the existing proviso to Section 4 and its rewording which have been highlighted in the succeeding paragraphs.

#### II. Justification/Urgency of the Amendment

2. According to the Department, the urgency in proposing the amendment is justified as it would be unreasonable to expect that a candidate who has served the Central Government at a distant point of time in the past, even for short durations, would be ineligible for the post of Chairperson/member of TRAI for the reason of his not having held the post at the appropriate levels in the Government. In the Department's opinion, this would place such a person at a



disadvantage *vis-à-vis* other candidates who may not be equally well endowed in the matter of qualifications and experience, but at the same time do not have the disability by reason merely of having served the Government at the appropriate levels. But the Committee find that since the inception of the TRAI Act in 1997, only one person has been rendered ineligible due to the restrictions in the proviso. The individual happened to be a Joint Secretary level Indian Telecom Service officer in the Central Government who left Government service to head a Telecom Public Sector Undertaking. He was selected by the Selection Committee for the appointment as member, TRAI, in 2006 but as per the Department he was not considered eligible under the existing proviso to Section 4 of the TRAI Act due to the ambiguity in the qualification prescribed for the candidates from the Government Sector. The Committee would like to point out that although such ambiguity in the proviso to Section 4 has been existing since more than a decade, the Department thought it prudent to propose an amendment only in December, 2008 after one person was denied appointment more than two years back in 2006 for the reason of his not having held the Government post at the appropriate levels. Needless to say, there was ample time to foresee such a scenario and the alacrity which the Government have now shown could have been resorted to much earlier. Although the Committee are convinced with the Department's argument that they are making the provision more liberal so that those persons who leave the Government Service without holding the posts of Secretary or Additional Secretary and acquire excellence in the prescribed fields elsewhere are not debarred for appointment as Chairperson/member of TRAI, yet they feel that the manner in which the proposed amendment has been drafted may lead to further ambiguity and open floodgates for litigation, as discussed subsequently, nullifying thereby the tearing urgency in and justifications for bringing the amendment.

3. The Committee find that no consultation was made with the Telecom Regulatory Authority of India prior to the introduction of the proposed amendment. The Committee are aware that the Government are under no obligation to consult the Regulatory Authority on the proposed amendment. But when the Authority is entrusted with the onerous and multifarious mandate of regulating the ever dynamic telecom sector, there should not be any reservations on the part of the Government to involve the Authority in the consultation process while going for any amendment to the TRAI Act, 1997, more so when it pertains to the appointment of the Chairperson and members of the Regulatory Body. Besides, the Department could have been benefited from the advice of the Authority gained by it through practical day to day experience. Such consultation assumes greater significance in view of the fact that the Chairman, TRAI had already sent

comprehensive proposals to DoT for various amendments of the TRAI Act in July, 2006, revised proposals in February, 2007 and further revised proposals in March, 2008. As reported to the Committee, the proposals of TRAI required inter-Ministerial consultations, which have been completed by DoT. Furthermore, the proposals have been considered by the Department of Telecommunications *vis-à-vis* the comments received from the concerned Ministries/Departments and a draft Cabinet Note for consideration of TRAI's proposal is stated to be under preparation. The Committee hope that the DoT would consider the proposals of TRAI in the right earnest before the Cabinet note is circulated so that any future proposals for the amendment of the TRAI Act are unambiguous, foster greater transparency and are fully justifiable.

### III. Rewording of the existing Proviso

4. The Committee note that the intention of the Government behind amending the proviso to Section 4 is to remove the anomaly and inconsistency in the qualifications of the Chairperson and members of TRAI by doing away with the disability of not being eligible for the post on such candidate who has served the Government at a distant point of time in the past, even for short durations, for reason of his not having held the post at the appropriate levels in the Government but who while being in the Government service or after leaving such service has excelled in the field of telecommunication, industry, finance, law, etc.. In short, if somebody has left the Government service before holding the post of Secretary or Additional Secretary for at least three years and before attaining the age of superannuation, he is not eligible for the post of Chairperson or member of TRAI as per the extant provision. According to the Department, the proposed amendment will remove that anomaly and as such the Selection Committee will have wider choice to find more suitable personnel. Notwithstanding the intention of the Government in proposing the amendment, the Committee have serious reservations on the efficacy of the proposed amendment in removing the inconsistency/anomaly in the existing proviso to Section 4. Because the Committee feel that the way the proposed amendment has been reworded, it will open floodgates for litigations as it is now unjustly restrictive to persons in Government service who may not be in the grades of Secretary/Additional Secretary but be excelling in their respective fields quite like the person who left Government service, and for whom the Department is proposing the amendment. The amendment in fact goes against the assertion of the Secretary of the Department before the Committee that the intention behind the amendment was to make the existing proviso more liberal. The Committee's apprehension was further reinforced when the

Secretary, DoT, on being confronted during evidence with the lacunae in the proposal, readily agreed to get the proposed amendment re-examined by the Ministry of Law and Justice. After persistent follow-up the Department finally furnished the opinion of the Ministry of Law and Justice (Legislative Department) on the reference made at the behest of the Committee. The Legislative Department have, according to DoT, examined the issue and indicated that the Bill has been properly drafted taking care of the administrative policy of the Ministry to remove the disability pointed out. It, therefore, appears to the Legislative Department, that the language of Clause 2 of the Bill does not require any modification. The Legislative Department have also certified that para 3 of the Statement of Objects and Reasons is in consonance with the provisions of the said Bill. The Committee are at the least perplexed with such a casual response of the Legislative Department on a legislative proposal. It seems that the Department have dealt with the reference by the Committee in a very perfunctory manner. The Committee find it inexplicable as to how can every thing be in order in the proposed Amendment and the Statement of Objects and Reasons when the Legislative Department have deemed it applicable for appointment of, both the Chairperson and the members of Authority but their sister Department *i.e.* the Department of Legal Affairs have opined as recently as 13 January, 2009 that the proviso, extant or amended was not applicable in the case of Chairperson. The Committee expect the Ministry of Law and Justice to be more vigilant on the matters pertaining to the Parliamentary Committees. The Committee would also like to apportion a major share of the blame for this mix-up on DoT, as being the nodal Department they are duty bound to carefully consider and synchronize the opinions of Department of Legislative Affairs and the Legislative Department rather than routinely passing them on to the Committee.

#### IV. Possible Misuse of the Amendment

5. According to TRAI, the way the amendment has been proposed, a bigger problem has been given to the posterity as it has opened up a little bit of floodgates for likely misuse in future. The Committee also feel that the amendment does leave scope for misuse as even an officer of the rank of Under Secretary or lower rank who leaves the Government service, say, just before attaining the age of superannuation can become Chairperson or member of TRAI which are of Cabinet Secretary and Secretary rank respectively. Needless to say, such a situation would lead to allegations of favouritism, etc. regardless of the proficiency or expertise of such an candidate in any of the prescribed fields. The proposed amendment, therefore, does not find favour with the Committee as it would be difficult for the Government to absolve

themselves of charges of bias or partisan attitude if they appoint a person, who has left the Government service at any rank below Secretary/Additional Secretary (with three years service) but has otherwise excelled in the fields of telecommunication, law, finance etc., to the post of Chairperson or member, TRAI.

## V. Interpretation of the Amendment

6. The Committee note that as per the proposed amendment as well as the existing provision, a Government Officer of the rank of Secretary/Additional Secretary, serving or retired after attaining the age of superannuation, with not less than three years of service in the grade, can be considered for appointment as Chairperson/member of TRAI. The Committee find that the restrictive clause *i.e.* "not less than three years of service in the post of Additional Secretary or Secretary" will not be applicable to those Government servants who have retired or resigned from service prior to attaining the age of superannuation and have acquired excellence/expertise in the various prescribed fields. It implies that the restriction will not be applicable even to the officers of any rank upto Joint Secretary who have taken voluntary retirement or resigned from the Government service. The Department of Telecommunications have also agreed that theoretically such a situation regarding consideration of officers below the rank of Additional Secretary to the post of Chairman/member of TRAI is possible. The Committee feel that there is an apparent contradiction in the provisions. On one hand a restriction is being imposed upon those Government servants who have retired on attaining the age of superannuation before serving as Secretary/Additional Secretary for at least three years whereas on the other hand such restriction is not applicable to an officer even of the rank of Under Secretary or even lower who has retired/resigned from the Government service before attaining the age of superannuation. As stated earlier, a situation may arise where an officer below the rank of Additional Secretary resigns from Government service a few days before attaining the age of superannuation and he will be considered for appointment to the post of Chairman/member of TRAI if he finds favour with the Government whereas if an officer of the rank of Secretary/Additional Secretary retires from the Government service on attaining the age of superannuation and before completing three years of service in that grade, he will be denied such an opportunity. The Department's reasoning that the Search Committee can be relied upon to select the persons of appropriate stature and experience in order to avoid the above situation does not convince the Committee simply because law should be explicitly clear and things should not be left at the discretion of a Search Committee or a Selection Committee. The Department's logic of thousands of applications coming

from Joint Secretary or Director level officers for the post of Chairperson/member of TRAI and hence not considering them for these senior level posts is equally unacceptable to the Committee. They feel that if somebody can acquire expertise by leaving the Government service, he can also excel in the prescribed fields by remaining within the Government service as excellence acquired through experience can not be undermined. The proposed amendment, therefore, while removing a disability enjoined upon by the extant proviso on a miniscule number of individuals imposes a greater disability on a far large number of equally capable individuals who are in Government service for quite a number of years but are not yet in the grades of Secretary/Additional Secretary. By imposing such an unjust and uncalled for restriction, the Department instead of being liberal and interested in getting the best talent has ended up as being selective and biased. The Committee's brief is that TRAI with its multifaceted responsibilities of regulating an ever evolving and dynamic telecom sector should be reinforced with the best possible talent from both the open market as well as the Government Sector. The proposed amendment which seeks to liberalise recruitment condition for a very select few while ignoring the surfeit of talent available in Government Sector does not come upto such expectations of the Committee. The Committee, therefore, impress upon the Department to make the qualifications for the posts of Chairperson and member of TRAI uniform to all by removing the restrictive clause altogether so that deserving persons from within the Government Sector are considered for the said posts at par with the best in the open market and the intake to the Regulatory Body is not compromised just because of status quoist mindsets.

## VI. Qualifications prescribed for other Regulatory Bodies

7. The Committee note that the qualifications for appointment of the Chairperson and members of TRAI include special knowledge of or experience in relevant fields similar to those required for such posts in other Regulatory Bodies like Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority (IRDA), Central Electricity Regulatory Commission (CERC), etc. But the Committee find that the conditionality of holding the post of Additional Secretary or Secretary or both for not less than three years in the Government for those candidates, who are or have been, in the service of Government, prescribed in the proviso to Section 4 of the TRAI Act is peculiar to the TRAI Act and does not find a mention in the qualifications for appointment to similar posts in other Regulatory Bodies as prescribed in their respective Acts. In the opinion of the Department, the level/status was being insisted upon in order to ensure

that a person in senior level in the Government only, applied for the post, considering the position of the member in TRAI. Based on this logic they have further stated that it may not be appropriate to altogether do away with the requirement of the level or status of Government officials being included in the field of selection for the post of Chairperson/member, TRAI. While the Committee acknowledge the requirement of considering Government officials for the post of Chairperson/member of TRAI, they do not agree with the Department's contention that there is no sufficient ground at the present stage, taking into consideration the past experience and the tremendous progress in the telecom sector, to effect any change in the qualifications prescribed for the appointment of the Chairperson and members of TRAI except the amendment as proposed by the Government. The Committee feel that the opening up of the telecom sector to the private service providers and the stupendous growth of the telecom services in the Country are neither a cause nor an effect of the qualifications prescribed for the post of Chairperson/member of TRAI. The Government are constitutionally bound to prescribe such appropriate qualifications for the post of Chairperson/member, TRAI, that would facilitate effective regulation of the telecom sector. But while doing so, the Government should be receptive to the dynamism of the sector instead of relying only upon the past experience. On one hand the requirement of the Government servants for being considered to the post of Chairperson/member is being justified by the Department while on the other hand the level/status is being insisted only in the case of a person working in Government or who has superannuated from the Government service. The Committee, therefore, recommend that such dichotomy needs to be reconciled by offering a level playing field to all in the interest of the effective functioning of the Authority ensuring thereby proper regulation of the telecom sector.

VII. Need for separate qualifications for the Chairperson *vis-à-vis* the members of TRAI as in TDSAT

8. The Committee note that Section 14 C of the TRAI Act, 1997 prescribes separate qualifications for the Chairperson of the Telecom Disputes Settlement & Appellate Tribunal (TDSAT) *vis-à-vis* its members, albeit, the Chairperson is a judicial officer since the Tribunal is a *quasi-judicial* body. In the case of member, TDSAT, a person should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or he should be well versed in the fields of technology, telecommunication, industry, commerce or administration. According to TRAI, the eligibility provision for the appointment of the Chairperson/members of the Authority should be in sync with the

provisions for the appointment of members of TDSAT. But according to DoT, the qualifications prescribed for the post of a member, TDSAT are more stringent than that of TRAI as the Appellate Tribunal is considered at higher pedestal *vis-à-vis* TRAI. The Committee appreciate the opinion expressed by TRAI. They are, however, not convinced by the logic extended by the Department as it is not factually correct. While an Officer of the rank of Secretary to the Government of India or equivalent with two years service is eligible for the post of member, TDSAT purportedly a higher body, for the post of Chairperson/member, TRAI amongst others, an Officer of the rank of Secretary to Government of India or equivalent with not less than three years service is eligible. On what grounds the Department have come to the conclusion about TDSAT being on a high pedestal *vis-à-vis* TRAI is a moot question. What further concerns the Committee is that although both TRAI and TDSAT are governed by one Act, yet there is a prescription of separate qualifications for the Chairperson, TDSAT *vis-à-vis* its members whereas in case of TRAI, the qualifications prescribed for the Chairperson and members are one and the same. According to TRAI, the need for making some kind of distinction in the process of selection/qualifications of the Chairperson, TRAI *vis-à-vis* its members has become compulsive as the Sixth Pay Commission has given two different sets of scales, one for the Chairperson and the other for the members of the Authority and more importantly, as mentioned earlier, there is one provision for the Chairperson, TDSAT and another for the members of the Tribunal. The Department, responding to the need for separate qualifications for the Chairperson *vis-à-vis* the members of TRAI, have stated in a post-evidence reply that according to the Ministry of Law and Justice the proviso to Section 4 of the TRAI Act will not be applicable in the case of the Chairperson which necessarily implies that the qualifications for appointment of the Chairperson and the members will not be the same. The Committee are really surprised to note the opinion of the Ministry of Law and Justice and its endorsement by the DoT that the proviso to Section 4 of the TRAI Act will not be applicable to the Chairperson, TRAI when nowhere in the Act nor in the amending Bill any distinction has been made in the qualifications for the appointment of the Chairperson, TRAI *vis-à-vis* the members. The Committee have a feeling that it is just a post-evidence afterthought on the part of the Department when they realized the follies of prescribing similar qualifications for appointment of two posts of different stature. Such apprehension of the Committee is corroborated by the fact that in the documents furnished to them in connection with the examination of the Bill, the Department of Telecommunications have invariably stated "the Chairperson and other members of TRAI" which implies that they tend to treat the Chairperson, TRAI as one of the members in utter disregard to his clearly different stature. Prudence requires prescription of different qualifications for the

Chairperson, TRAI *vis-à-vis* the members for two simple reasons *i.e.* the stature of the Chairperson, TRAI is indisputably higher than that of a member and more importantly, contrary to the provisions in other constitutional bodies like the Election Commission, where an Election Commissioner becomes Chief Election Commissioner, members of the Authority do not graduate to become Chairperson. The Committee, therefore, exhort upon the Department to rectify the *hitherto* committed mistakes and unambiguously spell out different qualifications for the appointment of Chairperson, TRAI in the Act itself instead of just relying upon the casual opinion of the Ministry of Law and Justice who have not even bothered to have a look at clause 2 (f) of the TRAI Act where it has been clearly stated that “Member” includes the Chairperson and the Vice-Chairperson before proffering their comment, which is bereft of any legislative support, to the highest law making body of the land.

9. The Committee agree with the suggestion of TRAI that as the Authority has been entrusted with the onerous mandate of regulating the ever dynamic and technology oriented telecom sector, one member of TRAI should be an expert from the telecom sector, in line with the provisions for appointment of members in IRDA, CERC, etc.. The Committee also appreciate to note the reply of the Department that it has invariably been ensured by the Selection Committee that at least one member of TRAI is drawn from the telecom sector. But the Committee feel that if the Chairperson, TRAI is himself an expert in a particular prescribed field, say telecom, then perhaps it may not be appropriate to appoint a member who holds similar expertise. Rather, in the fitness of things, a person who is a specialist in any other field, as prescribed under the law, should be accorded preference for better and effective functioning of the Authority.

10. The Committee have arrived at definite conclusions in the Report after exhaustive examination of several issues involved with the amendment proposed in the Bill in the light of various documents procured and consultations held with the Department of Telecommunications and the Telecom Regulatory Authority of India. The Committee strongly recommend that various infirmities and inconsistencies as pointed out in the Report should be given due attention before the amending Bill is taken up for consideration by the Parliament.

NEW DELHI;  
12 February, 2009  

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23 Magha, 1930 (Saka)

NIKHIL KUMAR,  
Chairman,  
Standing Committee on  
Information Technology.



ANNEXURE

AS INTRODUCED IN THE RAJYA SABHA

**Bill No. LXVIII of 2008**

THE TELECOM REGULATORY AUTHORITY  
OF (AMENDMENT) BILL, 2008

A

BILL

*further to amend the Telecom Regulatory Authority of India Act, 1997.*

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

1. (1) This Act may be called the Telecom Regulatory Authority of India (Amendment) Act, 2008. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

24 of 1997

2. In the Telecom Regulatory Authority of India Act, 1997, in section 4, for the proviso, the following proviso shall be substituted, namely:— Amendment of Section 4.

“Provided that a person, who is in the service of the Government or has retired from such service on attaining the age of superannuation, shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government, for a period of not less than three years”.

## STATEMENT OF OBJECTS AND REASONS

The Telecom Regulatory Authority of India (hereinafter referred to as TRAI) is a statutory body set up by the Government of India under section 3 of the Telecom Regulatory Authority of India Act, 1997. It consists of a Chairperson and not more than two full-time members and not more than two part-time members.

2. The qualifications for the appointment of the Chairperson and other members of the TRAI are provided in section 4 of the said Act. In terms of this section, the Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs. The proviso of the said section further provides that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.

3. The provisions of the proviso of the said section has been considered as unreasonable, inconsistent and having no nexus with the object of finding an appropriate person to be appointed as Chairperson or Member of the TRAI as it inflicts a disability in cases where a person who has served the Government, even for short duration, in one or other capacity and while being in the Government or after leaving the Government has excelled in the field of telecommunication or other relevant field. In these cases, such a person would not be eligible under section 4 of the said Act only for the reason for his not having held the post of Secretary or Additional Secretary or equivalent post in the Central Government or the State Government for a period of three years.

4. In order to remove the said inconsistency in the qualifications of the Chairperson or other members of TRAI, the amendment to the proviso of section 4 of the said Act has been proposed to provide that a person, who is in the service of Government or has retired from , such service on attaining the age of superannuation, shall not be appointed

as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government, for a period of not less than three years.

5. The Bill seeks to achieve the above objective.

NEW DELHI;  
*The 29th October, 2008.*

A. RAJA

## ANNEXURE

EXTRACT FROM THE TELECOM REGULATORY  
AUTHORITY OF INDIA ACT, 1997  
(24 OF 1997)

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4. The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs:

Qualifications  
for  
appointment  
of  
Chairperson  
and other  
members.

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.

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RAJYA SABHA

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BILL

*further to amend the Telecom Regulatory Authority of India Act, 1997.*

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*(Shri A. Raja, Communication and Information Technology)*

## APPENDIX I

### STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2008-2009)

#### MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE

The Committee sat on Monday, the 12th January, 2009 from 1520 hours to 1625 hours in Room No. G-074, Parliament Library Building, New Delhi.

#### PRESENT

Shri Nikhil Kumar – *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Abdullakutty
3. Shri Nikhil Kumar Choudhary
4. Shri Sanjay Shamrao Dhotre
5. Shri Bhubaneshwar Prasad Mehta
6. Shri G. Nizammuddin
7. Shri Sohan Potai
8. Shri Lalmani Prasad
9. Shri Tufani Saroj
10. Shri Tathagata Satpathy
11. Shri K.V. Thangka Balu
12. Shri P.C. Thomas

##### *Rajya Sabha*

13. Shri Praveen Rashtrapal
14. Shri Gireesh Kumar Sanghi

15. Shri Ravi Shankar Prasad
16. Dr. C.P. Thakur
17. Shri A. Vijayaraghavan
18. Shri N.R. Govindarajar

SECRETARIAT

1. Shri Ashok Sarin — *Joint Secretary*
2. Smt. Sudesh Luthra — *Director*
3. Shri P.C. Koul — *Deputy Secretary*
4. Shri D.R. Mohanty — *Under Secretary*

WITNESSES

TELECOM REGULATORY AUTHORITY OF INDIA

1. Shri Nripendra Mishra — *Chairman*
2. Shri A.K. Sawhney — *Member*
3. Shri R.N. Prabhakar — *Member*
4. Shri R.K. Arnold — *Secretary*

2. At the outset, the Chairman welcomed the members of the Committee and the representatives of the Telecom Regulatory Authority of India (TRAI) to the sitting. The Committee, then, took up 'The Telecom Regulatory Authority of India (Amendment) Bill, 2008' for examination. Accordingly, the representatives of TRAI gave their views/suggestions on the proposed Amendment of Section 4 (proviso) of the TRAI Act, 1997. The members sought certain clarifications on various issues relating to the proposed Amendment and the representatives of TRAI responded to the same.

3. The Chairman thanked the witnesses for appearing before the Committee and for furnishing valuable information that the Committee desired in connection with the examination of the Bill.

*The witnesses, then, withdrew.*

*A verbatim record of the proceedings has been kept.*

*The Committee, then, adjourned.*

## APPENDIX II

### STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2008-2009)

#### MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE

The Committee sat on Monday, the 12th January, 2009 from 1630 hours to 1730 hours in Room No. G-074, Parliament Library Building, New Delhi.

#### PRESENT

Shri Nikhil Kumar — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Abdullakutty
3. Shri Nikhil Kumar Choudhary
4. Shri Sanjay Shamrao Dhotre
5. Shri Bhubaneshwar Prasad Mehta
6. Shri G. Nizammuddin
7. Shri Sohan Potai
8. Shri Lalmani Prasad
9. Shri Tufani Saroj
10. Shri Tathagata Satpathy
11. Shri K.V. Thangka Balu
12. Shri P.C. Thomas

##### *Rajya Sabha*

13. Shri Praveen Rashtrapal
14. Shri Gireesh Kumar Sanghi



15. Shri Ravi Shankar Prasad
16. Dr. C.P. Thakur
17. Shri A. Vijayaraghavan
18. Shri N.R. Govindarajar

SECRETARIAT

1. Shri Ashok Sarin — *Joint Secretary*
2. Smt. Sudesh Luthra — *Director*
3. Shri P.C. Koul — *Deputy Secretary*
4. Shri D.R. Mohanty — *Under Secretary*

WITNESSES

DEPARTMENT OF TELECOMMUNICATIONS

1. Shri Siddharth Behura — Chairman, Telecom Commission & Secretary, DoT
2. Shri Subodh Kumar — Secretary, Telecom Commission & Additional Secretary, DoT
3. Shri Kirthy Kumar — DDG (C&A), DoT

2. At the outset, the Chairman welcomed the members of the Committee and the representatives of the Department of Telecommunications (DoT) to the sitting. The Committee, then, took up the 'Telecom Regulatory Authority of India (Amendment) Bill, 2008' for examination. Accordingly, the representatives of DoT briefed the Committee on the proposed Amendment of Section 4 (proviso) of the TRAI Act, 1997. The members sought certain clarifications on various issues relating to the proposed Amendment and the representatives of DoT responded to the same. The Secretary, DoT also assured to furnish information on a later date to some other points raised by the members.

3. The Chairman thanked the witnesses for appearing before the Committee and for furnishing valuable information that the Committee desired in connection with the examination of the Bill.

*The witnesses, then, withdrew.*

*A verbatim record of the proceedings has been kept.*

*The Committee, then, adjourned.*

## APPENDIX III

### STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2008-2009)

#### MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE

The Committee sat on Monday, the 9th February, 2009 from 1500 hours to 1630 hours in Room No. G-074, Parliament Library Building, New Delhi.

#### PRESENT

Shri Nikhil Kumar — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Abdullakutty
3. Shri Nikhil Kumar Choudhary
4. Shri Sanjay Shamrao Dhotre
5. Shri Ramesh Dube
6. Shri Narahari Mahato
7. Shri G. Nizammuddin
8. Shri Tufani Saroj
9. Shri P.C. Thomas

##### *Rajya Sabha*

10. Shri Praveen Rashtrapal
11. Shri Dara Singh

SECRETARIAT

1. Smt. Sudesh Luthra — *Director*
2. Shri P.C. Koul — *Deputy Secretary*
3. Shri D.R. Mohanty — *Under Secretary*

WITNESSES

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY  
(DEPARTMENT OF TELECOMMUNICATIONS)

1. Shri Siddharth Behura — Chairman, Telecom  
Commission & Secretary, DoT
2. Shri K. Sridhara — Member (T)
3. Dr. Ashok Chandra — Wireless Advisor
4. Shri J.S. Deepak — Joint Secretary
5. Shri A.K. Srivastava — DDG

2. At the outset, the Chairman welcomed the members of the Committee and the representatives of the Ministry of Communications and Information Technology (Department of Telecommunications) to the sitting.

3. \*\*\*\*
4. \*\*\*\*

*The witnesses, then, withdrew.*

*A verbatim record of the proceedings has been kept.*

5. The Committee then took up the Draft Report on 'The Telecom Regulatory Authority of India (Amendment) Bill, 2008' for consideration and adopted the same.

6. The Committee authorised the Chairman to finalise the above Draft Report in light of the factual verifications of the Department and present the same to the House on a date convenient to him.

*The Committee, then, adjourned.*

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\*\*\* Matter not related to this Report.