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**CALL DROPS MENACE**

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**CALL DROPS MENACE - TRAI'S ROLE AND WHETHER A RUPEE COMPENSATION IS THE ANSWER TO THE PROBLEM**

India's mobile phone subscribers recently crossed the one billion mark. With the cheapest call tariffs in the world, India's mobile user base is expected to contribute to massive growth in data usage and internet accessibility through mobile phones in the near future. However, the Telecom Regulatory Authority of India (TRAI) has a bigger problem on its hands. Although India definitely seems to be shining (it may also outstrip the United States in smartphone users), it cannot be denied that this shining comes with a considerable amount of whining from mobile phone users about the rapidly increasing phenomenon of "call drops".

Call drops can be simply explained as the service provider's ineptitude in maintaining a call between users and providing continued service once a call has been correctly established. Inadequate infrastructure, overloaded networks and fast paced expansion with poor investment by Telecom Service Providers (TSPs) to match the expansion are some of the reasons behind this occurrence. With the Indian Prime Minister stepping in last year and demanding that a solution be found, the problem has obviously not gone unnoticed and is expected to have a direct negative impact on the Digital India program by which the government seeks to convert India into a digitally reliant and empowered economy.

**The Role of TRAI and the New Compensation Regulations**

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Section 11 of the Telecom Regulatory Authority Act, 1997 *inter alia* provides that the function of the TRAI shall be to lay down the quality of standards provided by the service providers and to ensure maintenance of such standards for the quality of service provided. In keeping with its role of watchdog, TRAI laid down the Quality of Service (QoS) Standards for Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service in July, 2000. These standards have been periodically revised. Benchmarks have also been laid down *inter alia* for call drops and circuit switched voice drop. The latest revision pursuant to the Telecom Consumers Protection (Ninth Amendment) Regulations of 16<sup>th</sup> October, 2015 (Regulations) prescribes for the imposition of a financial disincentive on TSPs for failure to meet quality of service benchmarks. Subsequent to a call drop audit in major urban centres such as Mumbai and Delhi, TRAI's issued Regulations ordering telecom operators to pay a compensation of Rs.1 to mobile users for each call drop subject to a maximum of 3 dropped calls per day with effect from 1<sup>st</sup> January, 2016.

Pursuant to the new Regulations, the operator will have to send a message to the consumer within four hours of a dropped call with details of the amount credited to their account. It is estimated that the Regulations may result in TSPs paying out an approximate Rs.150 crores every day. The Association of TSPs and 21 telecom operators have challenged the Regulations before the Hon'ble High Court of Delhi citing the decision to penalize as irrational and without any legal basis. It has been contended by the TSPs that the Regulations are arbitrary and whimsical and interference with a company's tariff structure could be only done by an order and not a regulation.

### **The Bone of Contention**

The question under consideration is whether the policy of compensation to consumers for call drops is a viable decision on the part of TRAI. It has been submitted by TRAI before the Hon'ble Delhi High Court that a technical consultation paper was circulated by TRAI to all TSPs and that the fine of Rs.1 per call drop (limited to 3 calls per day) has been imposed after taking all submissions into account.

The TSPs however contend that call drops are result of sustained resistance from resident welfare associations against installation of towers in residential colonies, sealing of the existing towers and the spectrum crunch due to the high growth of subscribers. TSPs have also alleged that compensation mechanism may result in a plethora of litigation proceedings between TSPs and consumers.

### **Problems with Compensation**

Notwithstanding the fact that there has not been adequate investment by the TSPs to keep pace with usage, the Indian Government and TRAI are now burdened with the onerous responsibility of resolving the issue while

simultaneously ensuring that the threat of hike in tariff rates does not materialize as the same will have a direct impact on subscribers and Digital India.

Although the intention to compensate consumers for the inconvenience caused due to lack of seamless connectivity is a laudable effort, it is imperative that a few issues (that still remain) are resolved by the Government and TRAI before proceeding further. For one thing, TRAI has failed to provide a rationalisation behind the imposition of penalty. No explanation has been given as to how the amount of one Rupee per dropped call (limited to a maximum of three dropped calls per day) has been decided as sufficient compensation, if at all. TRAI has further failed to lay down concrete guidelines to be followed by TSPs for providing compensation, its receipt by consumers and failure to pay. Failure to provide such rationalisation will result in confirmation of the TSPs' contention that the imposition of penalty is irrational and arbitrary.

### **Conclusion**

In December, 2015 the Hon'ble High Court of Delhi recorded the Government's stand that no coercive steps would be taken pursuant to the impugned Regulations during the pendency of the disputes subsequent to which the matter now stands reserved for final orders. It now remains to be seen whether the Regulations are upheld by the Hon'ble High Court or are struck down with a direction to the Government to focus on laying down guidelines for improvement in the quality of services provided by telecom operators. The critical factor after all remains that the ongoing litigation and the opposition by the TSPs against the penalty imposed by TRAI should not waylay the ordinary consumer's right to reasonable quality of telecom service and seamless connectivity.

**Feedback**

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