

Bill No. 26 of 2022

THE APP DEVELOPERS (PROTECTION) BILL, 2022

By

SHRI LAVU SRI KRISHNA DEVARAYALU, M.P.

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*to ensure the promotion and protection of app developers against coercive policies
by app regulators with a view to provide a favourable ecosystem for their
growth and for matters connected therewith.*

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

1. (1) This Act may be called the APP Developers (Protection) Act, 2022.

Short title
and
commencement.

5 (2) Save as otherwise provided in this Act, it shall come into force on such
date as the Central Government may, by notification in the Official Gazette, appoint
and different dates may be appointed for different provisions of this Act and any
reference in any such provision to the commencement of this Act shall be construed
as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) ‘app developer’ means Indian businesses and startups involved in software engineering resulting in the creation, testing and programming of apps for mobile phones;

(b) ‘app marketplace’ means an online digital distribution platform listing software applications for mobile devices; 5

(c) ‘app regulator’ means Google’s Play Store and Apple’s App Store;

(d) “Committee” means the National Committee on Regulation of Single Application (App) Marketplaces constituted under section 9;

(e) ‘consumer’ means a person who purchases goods and services for personal use; 10

(f) ‘in-app billing’ means in-app purchases made from directly within a mobile application on Google’s Android and Apple’s IOS platform;

(g) ‘in app purchases’ means buying goods or services from inside an application on a mobile device; 15

(h) ‘single app marketplace’ means Google’s Play Store and Apple’s App Store through which all app developers have to route their payments and applications;

(i) ‘operating system’ means the system software used by Google and Apple to manage hardware and software resources, and provide common services on mobile phones; and 20

(j) “prescribed” means prescribed by rules made under this Act.

Prohibition of in-app billing solely through Google and Apple operating systems.

3. No app regulator shall compel any app developer to route in-app purchases through their operating systems or stores by threatening negative consequences or actions otherwise detrimental to the growth, profitability and expansion of the apps of an app developer. 25

App developers to provide alternative option of payment.

4. It shall be the duty of the app developers to provide alternative payment options to the consumers of their choice for usage of apps developed by them in addition to the existing in-app billing.

Prohibition of unfair delay of evaluation of deletion of apps.

5. No app regulators shall by any means delay the evaluation of or unfairly delete apps from their Play Store or App Store, respectively as a means of retaliation or coercion against app developers. 30

Ten per cent. cap on commission charged by app regulators.

6. (1) No app regulator shall charge commission on app developers exceeding an amount of ten per cent. for each in-app purchase.

(2) The commission charge to be paid to the app developer under sub-section (1) shall be the product of separate negotiations between the app regulator and app developer as opposed to the imposition of a *carte blanche* commission. 35

Regulation of annual fees charged by app regulators.

7. (1) No app regulator shall increase the annual fees taken from app developers to make up for the losses incurred through the cap on commission fees charged to app developers under sub-section (1) of section 6 or for making available alternative payment options for app developers beyond in-app billing systems as provided under section 4: 40

Provided that in case the app regulator intends to increase their annual fees, a proposal shall be submitted to the Committee on the proposed change and the reasons therefor.

8. Any app developer may make an application to the Committee constituted under section 9 regarding abuse by the app regulators in such manner as may be prescribed.

Application by App developer against abuse by the app regulator.

9. (1) The Central Government shall, by notification in the Official Gazette, constitute a Committee to be known as the National Committee on Regulation of Single Application (App) Marketplaces to look into matters pertaining to the development and security of app developers in such manner as may be prescribed.

Constitution of National Committee on Regulation of Single Application (App) Marketplaces.

(2) The Committee shall consist of,—

- (a) Chairman of the Competition Commission of India, Chairperson—*ex-officio*;
- (b) a member of the Competition Commission of India, *ex-officio* member;
- (c) an official of the Ministry of Electronics and Information Technology, not below the rank of Joint Secretary, *ex-officio* member;
- (d) a reputed academic or expert working in the field of technology or app development with sufficient experience in the field, member;
- (e) a reputed academic, businessperson or expert in the field of the growing start-up and app development ecosystem in India, member;
- (f) a legal expert, preferably with specializations or expertise in the field of technological and corporate law, member,

to be appointed by the Central Government in such manner as may prescribed.

(3) The salary and allowances payable to and other terms and conditions of services of members mentioned under clause (d), (e) and (f) of subsection(2) shall be such as may be prescribed.

10. (1) The Committee shall,—

Functions of Committee.

- (a) advise the Central Government, particularly the Union Ministry of Electronics and Information Technology regarding the welfare of app developers and creating an ecosystem for their growth;
- (b) recommend to the Central Government to take effective steps to ensure the protection and promotion of app developers;
- (c) recommend to the Central Government to take effective steps to prevent the coercion of app developers by app regulators with extractive and rent seeking practices;
- (d) look into the impact of specific policies of app regulators and their impact on app developers;
- (e) keep abreast of the international happenings and outcomes concerning app regulators, including but not limited to, specific legislation enacted in other States pertaining to their regulation, specific Court cases and disagreements between app developers in other States and app regulators, to gauge their applicability in the Indian context and determine best practices in this regard;

(f) review applications submitted by app developers under section 8 against abuse by app regulators on account of unfair delay of evaluation or deletion of their apps on the Play Store and App Store, respectively;

(g) recommend to the Central Government the rate of increase in the annual fees charged by the app regulators on the app developers; and

(h) furnish an annual report with recommendations and protections for the promotion of app developers and measures to regulate and curb exploitative practices of app regulators to the Central Government in such manner as may be prescribed.

(2) The Committee may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act.

Penalty.

11. If any app regulator contravenes any of the provisions of—

(a) sections 3, 4 and 5 and is found to be unduly carrying an app developer to route his payment through their operating system *via* in-app billing, such app regulator shall be liable to fine which shall not be less than rupees five lakh or two times the loss ensure by the app developers, whichever is greater;

(b) sections 6 and 7 and is found to be unduly charging commission in excess to what is prescribed, such app regulators shall be liable to a fine which shall not be less than three per cent. of its annual earnings in India or rupees twenty-five crore, whichever is greater.

Power to remove difficulties.

12. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Act not in derogation of other laws.

13. The provisions of this Act shall be in addition to, and not in derogation of the provisions in any other law, for the time being in force, relating to e-Commerce selling.

Power to make rules.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

India has a fast-growing digital ecosystem, with a significant number of startups and nascent businesses who are entering the app-market. The effect of the rent seeking and anti-competition practices of the app regulators harm the developing digital industry not simply by eating into the revenues of the app developers but also by preventing some apps from even reaching the market. This is in direct contravention to the idea of *Aatma Nirbhar Bharat*.

The promotion of the *Standup India* scheme, *Startup India* scheme, *Make in India* scheme and in the recent years, Productivity Linked Scheme (PLS) for various sectors, demonstrate the centrality of indigenous production of goods and services. The drive to cultivate the entrepreneurial spirit and cement it as a part of the Indian ethos is being hampered by the policies of app regulators and necessitates addressing at the earliest.

In order to facilitate the development and promotion of app developers and protect them from coercive policies by app regulators the proposed Regulation of Single Application (App) Marketplaces Bill, 2021, seeks to,—

- (a) ensure that app regulators do not force app developers to route their in-app billing through their operating systems or stores;
- (b) ensure that app developers are free to direct consumers to alternative routes of payment of their choice for app-purchases;
- (c) constitution of the Committee on Regulation of Single Application (App) Marketplaces to serve app developers in the Council;
- (d) ensure the protection and welfare of app developers against coercive, anti-competition and rent seeking practices of app regulators; and
- (e) ensure a ten per cent. cap on the commission fees charges by app regulators for in-app purchases.

The Bill seeks to achieve the above objectives.

NEW DELHI;
November 18, 2021.

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FINANCIAL MEMORANDUM

Clause 9 of the Bill provides for the Central Government to constitute a National Committee on Regulation of Single Application (App) Marketplaces to look into matters pertaining to the development and security of app developers. It also provides for the appointment of members to the Committee. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. However, it is estimated that an expenditure of rupees ten crore per annum would be involved from the Consolidated Fund of India.

A non-recurring expenditure to the tune of rupees four crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (2) of section 10 provides that National Committee on Regulation of Single Application (App) Marketplaces may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act. Clause 14 empowers the Central Government to make rules for carrying out the purpose of this Act. As the matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details only. The delegation of legislative power is, therefore, of a normal character.

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