

THE ANALYSIS AND IMPLICATIONS OF THE RECENT INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES IN INDIA

Bondu Vaagdevi*

ABSTRACT

The adoption of Information Technology (Intermediary guidelines and Digital Media Ethics code) Rules by the Union of India has resulted in significant challenges and disagreements within the industries of technology and media. The guidelines attempt to govern digital media platforms, over-the-top (OTT) platforms, and social media intermediaries in order to create a framework for the reliable posting of content on social networks like Instagram, Facebook, and Twitter etc. and include provisions related to user-generated content, identification of the first originator of misleading information. This rule also aims to curb the fake news or false or misleading information spread by the user through the mechanism of fact check unit failing which would make the social media intermediaries liable. Several amendments were made to the Intermediary Guidelines and Digital Media Ethics Code to control and curb the unjustifiable detrimental effects left by online gaming on users. At the same time to combat the growing threat of online advertisements of betting targeting Indian consumers of the Internet. The present research assesses the validity of concerns raised about the purported illegality of a few of its provisions concerning the rights to free speech and expression and privacy of millions of consumers of the Internet web in India.

Keywords: Social Media Intermediaries, OTT Platforms, User-Generated Content, First Originator, Fact Check Unit, Online Gaming, Privacy.

INTRODUCTION

There is no doubt in saying that some videos or content are created purely for entertainment purposes but it is the power of social media which makes it more viral and may impact the users sometimes positively and sometimes negatively. It gives rise to issues only when content or videos that are obscene, disparaging, contentious, provocative, and defamatory are uploaded and such malign content catches on like wildfire on a social network, upsetting the social order.

*BA LLB, SECOND YEAR, SRI PADMAVATHI MAHILA VISVAVIDYALAYAM, TIRUPATI.

A disparaging comment was posted on Facebook to insult and agitate the Hindu population in Bengaluru in August 2020, and the riots that followed stunned the tranquil and placid city followed by NIA filing a charge sheet in February 2021. Similar to the above case, Gurugram's "Bois Locker Room case," made national headlines in May 2020, where a student alleged by sharing a photo in her friend's group on social media that a classmate had abused her sexually. The girl who forwarded the image to a group of her friends through Instagram triggered harassment against the minor male (aged 17 years) which resulted in the death of a child by suicide. ¹The video of the recent horrific sexual assault, which depicts a wild mob of men making two naked women walk on the road touching them along the way, went viral and attracted the attention of people around the world, which results in the victims of the assault being defamed and degraded.²

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, according to the Union of India, serves as a tool to combat the transmission of incorrect information through various social networking platforms.

BACKGROUND OF FRAMING OF THE CODE RULES

The draft Information Technology (Intermediary Guideline) Rules, 2018, were made available for public assessment in December 2018 by MeitY and was assessed in comparison to the 2011 Information Technology (Intermediary Rules) regulations. Before announcing the IT Rules, 2021, MeitY and MIB did not, however, seek any consultation. By avoiding taking into account any scrutiny from stakeholder groups by skipping the required minimum 30-day time, MeitY and MIB disregarded the pre-legislative consultative policy established by the Ministry of Law and Justice back in 2014. In the year 2020, to grant MIB control over the regulation of OTT platforms and online news media, the Government of India (Allocation of Business) Rules, 1961 were revised.³

¹ Amit Kumar and Dr. Amaresh Jha, 'Information Technology Rules, 2021 of India in the dock! A Critical evaluation of the 'Guidelines for Intermediaries and Digital Media Ethics Code' (2022) 20(48) Global Media Journal <<https://www.globalmediajournal.com/open-access/why-so-much-fuss-around-indias-new-social-media-rules-a-critical-review.php?aid=90976>> accessed 08 August 2023

² Arshad R. Zargar, 'Viral sexual assault video prompts police in India to act more than 2 months later' (CBS NEWS, 24 July 2023) <<https://www.cbsnews.com/news/viral-sexual-assault-video-india-police-action-ethnic-violence-manipur/>> accessed 08 August 2023

³ Noorita Karnik, 'Analysis of Intermediary Guidelines and Digital Media Ethics Code, 2021' (2021) 4(4) International Journal of Law Management & Humanities <<https://www.ijlmh.com/paper/analysis-of-intermediary-guidelines-and-digital-media-ethics-code-2021/>> accessed 09 August 2023

The Government of India in its press release relating IT Act, 2021 said that “the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 has been framed, after a thorough and prolonged discussion with the general public and with stakeholders, in the exercise of powers under section 87(2) of the Information Technology Act, 2000 and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules 2011 as a result of an increase in concerns like accountability, rights of the people making use of digital media and opacity. It also added that social media's widespread use simultaneously empowers people while also causing some major issues and effects, which have multiplied in recent years. Numerous media platforms have to develop fact-checking procedures as a result of the dissemination of fake news. The dignity of women has frequently been threatened by the widespread exploitation of social media posts morphed photographs of women and content connected to revenge porn. Due to a lack of transparency and the absence of a grievance redressal mechanism, social media consumers were left with no option but to rely on social media platforms.⁴

JUSTIFICATIONS OF THE CODE (ROOTS OF THE CODE)

The first in this quest may be dated back to July 26, 2018, when a Calling Attention Motion was presented in the Rajya Sabha on the abuse of social media and the dissemination of fake news. The government's intention to strengthen the current legal system and make social media networks accountable was made public at that time by the Ministry of Electronics and Information Technology. The Rajya Sabha Ad-hoc committee produced its report on March 2, 2020, after looking into the widespread problem of pornography on social media and its detrimental impact on kids and society at large and recommended letting the initial author i.e. first originator of such content be determined. The Government's legal justification for these new rules is the recent Prajwala Case,⁵ in which suo moto cognizance was taken by Apex Court of India, where it remarked the need to frame and develop required rules and guidelines to curb child pornography, images of gang rape on content hosting platforms and other.^{6 7}

⁴ Ministry of Electronics and IT 'Government notifies Information Technology (Intermediary Guidelines and Digital Ethics code) Rules 2021' (Press Information Bureau Delhi 1700749, 2021) paras 1-9

⁵ *Prajwala v Union of India and Ors* WP (CrI) 3/2015

⁶ Ministry of Electronics and IT 'Government notifies Information Technology (Intermediary Guidelines and Digital Ethics code) Rules 2021' (Press Information Bureau Delhi 1700749, 2021) para 11

⁷ Ayushi Srivastava and Kalyani Roy, 'IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 Critical Analysis' (*S&D Legal Associates*, 04 August 2021) <<https://www.sndlegalassociates.com/post/it-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-critical-analysis>> accessed 09 August 2023

INTERMEDIARY GUIDELINES AND DIGITAL ETHICS CODE RULES, 2021

Evolution of Intermediary Liability in India:

In order to comprehend and interpret the 2021 Rules, we must first look into the development of intermediary liability from the time that the IT Act simply exempted network service providers from liability. When the CEO of the e-auction website Baze.com was tried for violating the IT Act as a result of an obscene film uploaded on the Internet, the necessity to broaden the scope of the provision of safe harbor became apparent in 2008.⁸ The IT Act eventually underwent modifications to shield intermediaries—which just served as venues for the transfer of information—from being held accountable for acts committed without their knowledge. Following the 2008 amendment, two factors—actual knowledge of the unlawful act and adherence to the required due diligence obligations—were necessary for an intermediary to qualify for immunity of safe harbor. An intermediary was expected to delete illegal content from its platform under the Information Technology (Intermediaries Guidelines) Rules, 2011 immediately after it realises about the content either on its own or from a person who had been the victim of the content. Notably, the Supreme Court narrowed the definition of "actual knowledge" in *Shreya Singh v. Union of India* ruling that an intermediary can only be considered to have actual knowledge of illegal content on its platform if it receives a court order or a notification from the proper government agency.⁹

IT ACT, 2021

Definitions:

Digital Media (Rule 2(1)(i)): *“Digital media means digitized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited or processed by*

(i) *an intermediary; or*

⁸ *Avnish Bajaj v State (NCT) of Delhi* (2008) 105 DRJ 721

⁹ Ankoosh Mehta et al., ‘From Harbour to Hardships? Understanding the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 – Part I’ (Cyril Amarchand Mangaldas, 15 April 2021) <https://corporate.cyrilamarchandblogs.com/2021/04/from-harbour-to-hardships-understanding-the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-part-i/#_ftn4> accessed 12 August 2023

(ii) *a publisher of news and current affairs content or a publisher of online curated content.*¹⁰

Newspaper (Rule 2(1)(n)): *“Newspaper means a periodical of loosely folded sheets usually printed on newsprint and brought out daily or at least once in a week, containing information on current events, public news or comments on public news.”*¹¹

News Aggregator (Rule 2(1)(o)): *“News aggregator means an entity who, performing a significant role in determining the news and current affairs content being made available, makes available to users a computer resource that enables such users to access the news and current affairs content which is aggregated, curated and presented by such entity”*¹²

Publisher of News and Current affairs Content (Rule 2(1)(t)): *“Publisher of news and current affairs content means an online paper, news portal, news aggregator, news agency and such other entity called by whatever name, which is functionally similar to publishers of news and current affairs content but shall not include newspapers, replica e-papers of the newspaper and any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity.”*¹³

Published of Online Curated Content (Rule 2(1)(u)): *“Publisher of online curated content’ means a publisher who, performing a significant role in determining the online curated content being made available, makes available to users a computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity.”*¹⁴

Significant Social Media Intermediary (Rule 2(1)(v)): *“Significant social media intermediary means a social media intermediary having number of registered users in India above such threshold as notified by the Central Government.”*¹⁵

¹⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(i)

¹¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(n)

¹² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(o)

¹³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(t)

¹⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(u)

¹⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(v)

Social Media Intermediary: “*Social media intermediary means an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services.*”¹⁶

A distinction has been made between "Social Media Intermediaries" and "Significant Social Media Intermediaries" in accordance with the new regulations regarding intermediaries. The second group i.e., SSMI'S will include all social media intermediaries with more than 50 lakh users, making them most vulnerable to the effects of the new regulations.

DUE DILIGENCE BY INTERMEDIARIES

Social media and significant social media intermediaries are obligated to follow the aforementioned due diligence while carrying out their obligations under Rule 3(1) of the Intermediary Guidelines and Digital Media Ethics Code, 2021.

- The terms and conditions, privacy statement, and user agreement for any person's access to the intermediary's computer resource must be clearly displayed on the intermediary's website, mobile application, or both, as appropriate. (Rule 3(1)(a)).¹⁷
- The intermediary's terms and conditions, privacy statement, or user agreement must warn the people making use of its computer resources not to host, exhibit, publish, alter, disseminate, store, revamp, or pass on any content that is libelous, invades the privacy of other, is concluded to be hazardous to the kids, violates any patent, trademark, copyright, or other proprietary rights, breaks any currently in effect laws, or poses an imminent risk to the unity, integrity, defence, security, or sovereignty of the nation or contains any virus or file which interrupts, limits or destroys the functionality of the computer. (Rule 3(1)(b)).¹⁸
- An intermediary has a duty to periodically notify its users, at least once a year, that in the event of non-adherence with the terms and conditions governing access to or use of the intermediary's computer resource, privacy statement or user agreement, the intermediary has the authority to cease the user's access to usage of the computer resource, or to remove any non-compliant content, or to take either or both of these

¹⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 2(1)(w)

¹⁷ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(a)

¹⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(b)

actions (Rule 3(1)(c))¹⁹ and it must also inform its users about the rules, user agreement and change in rules if any. Rule 3(1)(f)²⁰

- any information that is termed as unlawful and prohibited under any law for the time being upon being notified by the Appropriate Government or its agency or upon receiving an order or notice from the court of competent jurisdiction under clause (b) of sub-section (3) of section 79 of the IT Act, must not be stored or exhibited by the intermediary and if hosted or published, users must be disabled access to such information or it must be removed before 36 hours by intermediary upon actual knowledge i.e., from the receipt of an order from a court or the appropriate government or its agency. (Rule 3(1)(d))²¹
- When an intermediary obtains user information in order for the user to register on a computer resource, the intermediary must keep the user's information for 180 days following the user's cancellation or withdrawal of registration, as applicable. (Rule 3(1)(h))²²
- The intermediary shall provide information under its supervision or possession, or assistance to the government agency that is legally authorised for investigative or defensive, or cyber security activities, as promptly as possible but certainly not later than 72 hours after receiving a notice, in order to verify identity, prevent, detect, investigate, or prosecute violations of any laws currently in effect, or for cyber security purposes. (Rule 3(1)(j))²³

ADDITIONAL DUE DILIGENCE TO BE FOLLOWED BY SIGNIFICANT SOCIAL MEDIA INTERMEDIARIES

The prominent social media intermediary shall, in addition to the due diligence observed under rule 3, mandatorily follow the extra due diligence while fulfilling its obligations as per rule 4(1) within not more than three months of obtaining notification that the threshold under clause (v) of sub-rule (1) of rule 2. These are what they are:

Rule 4(1)(a): Appoint a Chief Compliance Officer to oversee the adherence to the Act and its rules, and hold him accountable in any legal actions relating to any relevant third-party

¹⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(c)

²⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(f)

²¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(d)

²² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(h)

²³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(1)(j)

information, data, or communication link made readily accessible or hosted by that intermediary if he fails to ensure that intermediary maintains due diligence in meeting its obligations under the Act and its regulations. It is also stated that no accountability under the Act or rules may be placed on such a prominent social media intermediary unless they are given an opportunity to be heard (*Audi Alteram Partem*).²⁴

Rule 4(1)(b): To ensure that the instructions or recommendations are followed in line with existing laws or regulations, a nodal contact person must be designated for 24x7 cooperation with law enforcement agencies and officials.²⁵

Rule 4(1)(c): A Resident Grievance Officer must be designated, and they should be responsible for carrying out the duties outlined in Rule 3's Sub-Rule 2, which specifies about Grievance Redressal Mechanism.²⁶

Rule 4(2): The initial source i.e., the first originator of the information must be located by a significant social media intermediary that offers services primarily in the nature of messaging such as Whatsapp, etc.²⁷

CODE OF ETHICS

Classification of Content:

Every piece of information transmitted and displayed by a publisher of online curated content must be categorised in accordance with the nature and kind of the material as

- i. U (Universal)
- ii. U/A (7+)
- iii. U/A (13+)
- iv. U/A (16+)
- v. A (Adult)

There shall be a three-tier structure as follows to ensure that publishers operating in the Indian subcontinent observe and abide by the Code of Ethics and to address complaints filed regarding publishers under Part III

²⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(1)(a)

²⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(1)(b)

²⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(1)(b)

²⁷ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(2)

- (a) Level I: Self-regulation by the publishers;
- (b) Level II: Self-regulation by the publishers' self-regulatory organisations;
- (c) Level III: Central Government oversight mechanism.²⁸

ANALYSIS OF IT ACT 2021

Prior to the IT Act of 2021, in the case of *Swami Ramdev v Facebook*,²⁹ which was a lawsuit filed against intermediaries like Facebook, Google, YouTube, and Twitter, among others, asking for the global takedown of all libelous video content that users of these intermediary platforms have uploaded, published, and shared. It was held by the court that a competent court in India may force online intermediary platforms to take down objectionable content from the worldwide services that were posted from the Indian IP Address or may ask to disable access to such content in India if published by some other nation. Since there is simple-to-use software that allows users to get around geo-blocking and render the take-down order ineffective, it was discovered that comprehensive removal is required. Therefore, the only solution that works is to remove the information globally.³⁰

The Intermediary Guidelines and Digital Media Ethics Code have been the subject to several petitions, which claim that they are in contravention of the Indian Constitution's Golden Triangle (Articles 14, 19, and 21)

Arguments of Live Law in Live Law Media Private Limited and others v Union of India and another regarding IT Act, 2021:^{31 32}

It is argued by the petitioner that along with increasing the range of obligations envisioned by the parent legislation in an inappropriate way, Rule 4(2) was also inserted without exerting the powers under section 69 read with section 87(2)(y).

²⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 9(3)

²⁹ *Swami Ramdev and Anr v Facebook, Inc and Ors* CS (OS) 27/2019

³⁰ Aryan Babele, 'Delhi HC's order in *Swami Ramdev v Facebook*: A hasty attempt to win the 'Hare and Tortoise' Race' (*Tech Law Forum @ NALSAR*, 06 January 2020) <<https://techlawforum.nalsar.ac.in/delhi-hcs-order-in-swami-ramdev-v-facebook-a-hasty-attempt-to-win-the-hare-and-tortoise-race/>> accessed 18 August 2023

³¹ *Live Law Media Private Limited and Ors v Union of India and Anr* WP (C) 6272/2021

³² 'Challenging the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021 and seeking a direction that such rules are ultra vires the parent act (Information Technology Act, 2000) and in violation of Articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution of India' (*Live Law*) <https://www.livelaw.in/pdf_upload/wpc-live-law-media-pvt-ltd-vs-union-of-india-kerhc-390340.pdf> accessed 18 August 2023

Rule 4(2) reads “*A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009*”³³

It is also contended that the control of digital news media is outside the ambit of Sections 69-A and 79 of the IT Act of 2000, and, therefore, it goes beyond the parent act. The setting up of a grievance redressal mechanism through the Inter-Departmental Committee established under Rule 14 is not foreseen by the Parent Act and constitutes an unjustified restriction on the right to free expression protected by Article 19(1)(a).

It is said that the three-tiered complaints-and adjudication framework of grievance redressal mechanism is illegal on publishers, which made the executive both the complainant and the judicial authority (against the natural justice principle called *Nemo iudex in causa sua*) concerning the blocking and removal of online content. The separation of powers and the rule of law are violated by this arbitrary action, which is made worse by the fact that publishers who are not happy with the decision cannot challenge the ruling of the Inter-Departmental Committee.

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It continued by stating that by extending and broadening the list of circumstances in which intermediaries may forfeit their "safe harbour" immunity under Section 79 of the IT Act³⁴ and be vulnerable to legal action, Part II of the challenged Rules also seeks to overturn the Hon'ble Supreme Court's decision in the case of *Shreya Singhal v. Union of India*.³⁵ Additionally, Part II requires intermediaries to address complaints from unsatisfied users.

Petitioners also contended that the contested Rules disproportionately infringe on internet users' fundamental right to privacy by requiring messaging intermediaries to modify their technical design in order to "fingerprint" each message widely so that each and every user can locate the message's original sender, contradicting the decision made by the Hon'ble Apex Court of India in the case of *K.S. Puttaswamy v Union of India*³⁶

³³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(2)

³⁴ Information Technology Act 2000, s 79

³⁵ *Shreya Singhal v Union of India* WP (CrI) 167/2012

³⁶ *Justice K.S. Puttaswamy (Retd) And Anr v Union of India and Ors* WP (C) 494/2012

WHATSAPP MOVED DELHI HIGH COURT CHALLENGING RULE 4(2) OF IT ACT, 2021

The petitioner contends that the traceability, or the capacity to identify the first source of origin, compels WhatsApp to violate end-to-end encryption on its messaging service, violating the fundamental right to privacy and free speech of those who utilize the aforementioned intermediary. Additionally, it is forced to violate the fundamental privacy rules that guide the intermediary. It continues by stating that Rule 4(2), which is being challenged, deals with identifying the original originator, violates the terms of the parent act, and must therefore be ruled ultra vires and unconstitutional. Additionally, it demands that no one be subject to criminal prosecution for failing to comply with contested Rule 4(2) and that any effort to do so must be treated as unlawful.³⁷

AMENDMENTS TO IT RULES, 2021

Amendments made in the year 2022:^{38 39}

Establishment of Grievance Appellate Committee: The proposed changes would introduce the Grievance Appellate Committee as a second forum for appealing the judgements of the Grievance Officers chosen in accordance with the IT Rules, in addition to the legal system. Within 30 days of receiving the Grievance Officer's judgement, anyone who is dissatisfied with it may file an appeal with the appropriate committee having jurisdiction. Such appeals must be resolved within 30 days from the date of receipt of the appeal.

³⁷ Suchita Shukla, 'Del Hc| Whatsapp Challenges Intermediary Rules, Says Traceability Will Break End-To-End Encryption, Breach Privacy; Union Of India Says No Fundamental Right Is Absolute' (*SCC Online*, 27 May 2021) <<https://www.scconline.com/blog/post/2021/05/27/del-hc-whatsapp-challenges-intermediary-rules-says-traceability-will-break-end-to-end-encryption-breach-privacy-union-of-india-says-no-fundamental-right-is-absolute/>> accessed 18 August 2023

³⁸ Sumit Ghoshal et al., 'Overview of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022' (*Azb & Partners*, 03 November 2022) <<https://www.azbpartners.com/bank/amendments-to-the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021/#:~:text=The%20new%20grievance%20redressal%20mechanism,of%20receipt%20of%20such%20order>> accessed 18 August 2023

³⁹ Shashwat Tiwari, 'India: Proposed IT Amendment Rules 2022 — Putting The Interests Of Digital Indians First!' (*mondaq*, 21 June 2022) <<https://www.mondaq.com/india/social-media/1203832/proposed-it-amendment-rules-2022--putting-the-interests-of-digital-indians-first>> accessed 18 August 2023

CHANGES IN GRIEVANCE REDRESSAL MECHANISM

The Grievance Officer, who was mandatorily appointed by the intermediary under Rule 3(2)(a)(i), was required, prior to the modification, to recognize and acknowledge the complaints within 24 hours of receipt and resolve them within 15 days. While the Amendment Rules 2022 continue to require intermediaries to notify complaints within 24 hours and to resolve them within 15 days of the date of receipt, they are now required to respond to complaints about content that fits into one of the categories listed in Rule 3(1)(b), with the exception of subclauses (i), (iv), and (ix), within 72 hours of receiving the complaint. A provision of the Amendment Rules requires intermediaries to create safeguards to curb the abuse of grievance redressal mechanisms.

INTERMEDIARIES ENSURE ACCESSIBILITY

In accordance with a newly introduced Rule 3(1)(m) of the Intermediary Rules, intermediaries are now accountable for making sure that users may access their services and have a reasonable expectation of privacy and due diligence.

INTERMEDIARIES MUST RESPECT CONSTITUTIONAL RIGHTS

The recently introduced Rule 3(1)(n) of the Intermediary Rules mandates that intermediaries defend the rights guaranteed by the Indian Constitution, namely Article 14 (equality before the law), Article 19 (freedom of speech and expression), and Article 21 (protection of life and personal liberty).

CHANGES IN PROHIBITED CONTENT

Previously, Intermediaries were obligated under Rule 3(1)(b)(ii) to ensure that "defamatory" and "libellous" content was not published on their platform. According to the Amended Rules, the phrases "defamatory" and "libellous" have been erased from the clause. The goal of this amendment is to make this section more logical by removing the burden for an intermediary to evaluate whether the material is defamatory or libellous, as judicial review should be utilised to reach this determination. Anything that might incite violence between certain religious or caste groups is now included on the list of prohibited content that an intermediary is not allowed to transmit or broadcast.

REASONABLE EFFORTS HAVE TO BE MADE TO MAKE THE USERS COMPLY

Before the revision of the IT Rules 2021, intermediaries were only needed to warn users of their terms and conditions, and privacy policy, and not to host, display, upload, change, publish, transmit, store, or exchange any information with other parties as stated in Rule 3(1)(b). According to the Amendment Rules, intermediaries must now take all necessary precautions to prevent users from hosting, displaying, uploading, changing, publishing, transmitting, storing, updating, or sharing any content that is, among other things, obscene, unlawful, etc. The intermediary must notify users of these restrictions in English or any other language included in the Indian Constitution's Eighth Schedule, depending on the user's preference.

Misinformation: Rule 3(1)(b)(vi) has been expanded to include the term “misinformation”. An intermediary is not permitted to intentionally communicate any misinformation to its users.

AMENDMENTS MADE IN 2023⁴⁰

- According to the revised regulations, intermediaries must make a good faith attempt not to host, publish, or transmit any online game that might harm users or that hasn't been certified by a self-regulatory body recognised as a legal online game by the Central Government. The intermediary must make sure that no unapproved online gaming advertisements or promotions are hosted on its platform.
- The revised laws also place more obligations on online gaming intermediaries with regard to online games that involve real money. These consist of displaying a seal of approval, or mark of verification, from the self-regulatory body on such games, informing their users of the policies such as the process of calculation and distribution of winnings, refusal of credit extension, or allowing other parties to finance the users.
- The updated guidelines require intermediaries to refrain from publishing, disseminating, or hosting fictitious, inaccurate, or misleading information regarding any activity of the Union of India. The Central Government's Fact Check Unit will identify any fake, inaccurate, or misleading information. It should be highlighted that the intermediaries were already compelled by the current IT regulations to take

⁴⁰ Ministry of Electronics and IT, 'Government Notifies Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics code) rules, 2021 for an Open, Safe & Trusted and Accountable Internet' (Press Information Bureau Delhi 1914358, 2023) points 1-6

reasonable precautions not to host, publish, or share any information that was obviously patently incorrect, inaccurate, or deceptive in nature.

It is said by a Minister named Anurag Thakur, Ministry of Information and Broadcasting that the government fact-checking unit has taken action against 28,000 posts that contained fake news and he also added that since December 2021, it has disabled access to over 635 URLs, 10 websites and 5 applications under IT Rules, 2021.⁴¹

NGO MOVES DELHI HIGH COURT CHALLENGING THE VALIDITY OF IT RULES, 2023

Social Organization for Creating Humanity (SOCH) v. Union of India: The plea of the NGO reads as *“the adoption of the Rules by Union Government has resulted in “regulatory confusion and a dual set of laws relating to online gaming. Online gaming platforms are erroneously described as “intermediaries” by the contested regulations, which go beyond their intended meaning and purview exceeding the rule-making authority assigned to them by the parent statute, i.e. the IT Act 2000. Online gaming firms, whom the challenged legislation tries to govern as “intermediaries,” choose the content or games that will be made available through their platforms on purpose. Online gaming firms cannot be viewed as intermediaries because they are content publishers.”*⁴²

Global Perspective: 78 nations adopted legislation between 2011 and 2022 to regulate the dissemination of fraudulent or deceptive material on social media content at their own discretion.⁴³

⁴¹ ‘BJP Government Blocked Access to 635 URLs, 10 Websites Under IT Rules, 2021’: Anurag Thakur’ (*The Wire*, 28 July 2023) <<https://thewire.in/government/bjp-government-blocked-access-to-635-urls-10-websites-under-it-rules-2021-anurag-thakur>> accessed 18 August 2023

⁴² Nupur Thapliyal, ‘Online Gaming: NGO Moves Delhi High Court Challenging Validity Of Information Technology Rules 2023’ (*Live Law*, 07 July 2023) <<https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-ngo-information-technology-rules-2023-online-gaming-232151>> accessed 19 August 2023

⁴³ Gabrielle Lim and Samantha Bradshaw, ‘Chilling Legislation: Tracking the Impact of “Fake News” Laws on Press Freedom Internationally’ (*CIMA*, 19 July 2023) <<https://www.cima.ned.org/publication/chilling-legislation/>> accessed 19 August 2023

CONCLUSION

Although the IT laws were adopted to control social media platforms and OTT Platforms with proper vigilance about the material on their platforms, it is clear that such laws infringe on the fundamental rights of individuals, endangering democracy.

