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NEW GUIDELINES FOR SOCIAL MEDIA, DIGITAL NEWS MEDIA, AND OTT PLATFORMS

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With increasing popularity of social media and OTT (over the top) platforms, the government had been planning to bring in a new set of rules for regulating these platforms since 2018. This idea gained fresh momentum after a dispute between the government and social media platform Twitter on some posts related to farmer's protest.

According to the Information Technology (*Intermediary Guidelines and Digital Media Ethics Code*) Rules 2021 has been drafted and framed for the use of exercise of their powers which is conferred under the provision of Sec. 87 (2) of the IT Act, 2000¹ and, prior to which it supersedes the earlier guidelines Information Technology (*Intermediary Guidelines*) Rules 2011.

These rules have been further divided into three parts. Part I is the Preliminary which provides the name and basic definitions. Part II which deals with 'due diligence by intermediaries' shall be administered by The Ministry of Electronics and IT, while Part-III relating to 'Code of Ethics and

procedure and safeguards in relation to digital media' shall be administered by the Ministry of Information and Broadcasting.

The new guidelines to be followed by the various platforms have been discussed here along with their implications.

FOR SOCIAL MEDIA

Social media platforms have basically been divided into two categories namely:

1. Social media intermediaries
2. Significant social media intermediaries

The major difference lies in the extent of obligations. Social media intermediaries with more than fifty lakh registered users have been classified as 'significant and are subject to additional obligations and compliance under the new IT rules that seek to rapture down the abuse of proper guidelines of using the social media platforms.



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CONTENT MONITORING

Any social media content capable of harming the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order will have to be removed on the government or court orders within 36 hours. Moreover, posts depicting nudity or morphed photos would have to be taken down within 24 hours of receiving a complaint.

DISCLOSURE OF ORIGIN

These networking sites would now be required to disclose the first originator of any mischievous information that undermines the sovereignty of India, security of the state, or public order as and when ordered by the court or the government.

DISPUTE REDRESSAL

The social media platforms are now also required to set up stronger grievance redressal mechanisms and appoint executives to coordinate with law enforcement in India. Complaints filed would be required to be dealt with in 24 hours and redressed within 15 days.

One of the self-statutory authority will always have a major, power to make anyone warn or censure a platform, which will force it to make an

apology or can also include a "warning" or "disclaimer" about various content.

MONTHLY COMPLIANCE REPORTS

Significant social media intermediaries will have to publish a monthly compliance report on the complaints received, the action taken and the redressal for such complaints along with the details of the contents removed proactively.

FOR DIGITAL NEWS MEDIA

Digital news websites such as the Wire, Quint and many others would have to follow the Code of Ethics. This code would apply to:

- a) various publishers of several news and current affairs content; and
- b) several intermediaries which primarily enable the transmission of news and current affairs content, and
- c) publishers of various multi-disciplinary online curated content; and
- d) intermediaries which primarily enable the several transmissions of online curated and regulated content.ⁱⁱ

Publishers of news on digital media would be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television



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Networks Regulation Act aimed at providing a level-playing field between the offline print media and digital media.

FOR OTT PLATFORMS

While all the rules have been framed and notified under the existing Information Technology (IT) Act, the Ministry of Information and Broadcasting has been conferred with the powers to regulate OTT platforms.

GRIEVANCE REDRESSAL MECHANISM FOR OTT PLATFORMS

Three level grievance redressal mechanism must be established by OTT platforms.ⁱⁱⁱ

Level 1 would comprise of the publisher who would be required to employ a chief compliance officer, nodal contact person and a resident grievance officer, all compulsorily residing in India.

Level II would establish a self-statutory led by an efficient and proficient retired judge of the Supreme Court of India or of a High Court of state, or a person of eminence from the relevant area, with the authority to issue advisories to various publisher.

Level III would comprise an oversight body under the Ministry of Information and Broadcasting.

CATEGORISATION OF CONTENT

The OTT platforms have been directed to self-classify the content into five age-based categories-

- a) U (Universal),
- b) U/A 7+,
- c) U/A 13+,
- d) U/A 16+, and
- e) A (Adult).

PARENTAL LOCK AND AGE VERIFICATION

Various OTT platforms would further now also be required to implement various parental locks for several other contents, which is classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as A.

WHY HAVE THESE RULES BEEN INTRODUCED?

The major reasoning given by the government for the enactment of these new guidelines has been the concern related to the spread of fake news. The Modi government claims that these



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guidelines are aimed at empowering the users by giving them the right to redress in case of any fake, defamatory, or derogatory news being spread.

The need has also fueled after the dispute between the government and Twitter authorities in relation to some posts related to inciting violence in the farmers protests.

Although, there have been concerns regarding the aim behind these rules as has been elaborated further.

IMPACT ON USERS

As far as I can understand, these guidelines have the potential to have a mixed impact on the users of social media and OTT platforms. The real deal would lie in how these rules are implemented and used by the citizens as well as the concerned authorities.

On one hand, the grievance redressal mechanism empowers ordinary users of social media, embodying a mechanism for redressal against any kind of exploitation they might face.

But on the other hand, serious concerns are being raised regarding users' privacy and right to freedom of speech and expression.

Also, what about the end-to-end encryption provided by messenger applications like Whatsapp?

The rules have given the governments and the courts the authority to trace back the originator of any content or message being shared on these platforms, hence endangering the very concept of end-to-end encryption aimed at providing complete privacy to the users.

CONSEQUENCES OF NON-COMPLIANCE BY THE PLATFORMS

What happens in cases where these platforms fail to comply with the new guidelines?

“safe harbour provisions” will not be applicable to them.

Defined under Section 79 of the IT Act^{iv}, safe harbor provisions protect social media intermediaries by giving them immunity from legal prosecution for any content posted on their platforms.

The various protection that shall be taken away if the government moreover simply notifies that the intermediary of “any form of information, data or communication link residing in or connected to a computer resource controlled by the



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intermediary is being used to commit the unlawful act” and further the platform even fails out to expeditiously remove or disable access to that signified material.

WHY ARE THE NEW GUIDELINES WORRISOME?

Whereas, the major fine print of the rule, which is yet to be made public, by some of the experts, who further commented on the said regulation of OTT and other news media platforms through proxy which is grossly unconstitutional and unconventional. Further, the purview of the Information Technology Act, 2000 does not extend to all the news media platforms, and so the guidelines hereby, do not have the legislative backing to regulate such platforms.

MISUSE FOR SUPPRESSION OF GENUINE CRITICISM

Although called by the government as a step towards empowering social media and OTT users, the timing at which these new guidelines have come into picture is controversial. At a time when social media platforms are actively being used to criticize the actions of the government and the actual print media and TV news channels have fallen prey to the TRP game, the rules of the

government are being seen as a tactic to deal with and maybe even suppress any voices being raised against the government.

GOODBYE TO END-TO-END ENCRYPTION

It is prudent to assume that with the advent of the new policies, end to end encryption would have to be broken by the messaging apps as and when ordered by the government. This means they would have access to all our personal conversations on these platforms. This raises some grave privacy concerns and is in violation of our basic rights.

LACK OF FREEDOM OF SPEECH AND EXPRESSION

Internet freedom analysts too have expressed concerns over the Indian government's regulations which are imposing a regulation on free speech and privacy without any backing of law and are trying to control content on these platforms according to its own whims and wishes.

LACK OF CHOICE IN ENTERTAINMENT

The new regulations for the OTT platforms will significantly restrict the choice of the viewers. In



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a more pragmatic sense, even though we will be provided with entertainment, we would not actually be the ones deciding its source. In an era of technological and sociological advancements, these kinds of curbs are really not required and actually must be avoided as far as possible.

CITIZEN JOURNALISM WILL BE SHUNNED OUT

As a lot of digital news platforms, operating on minimal funds, provide citizens with the opportunities to air their political views and opinions, the need for registration and application of 'code of ethics' would create financial and existential difficulties for these small-scale news platforms which have become a quintessential of the society due to the depleting conditions of mainstream media.

In conclusion, I would like to point out that though regulation of each sector is important for the development of a nation, it should be on the basis of sound public policy and evidence and not because some government wants to control a sector.

ⁱ Sec. 87(2), The Information Technology Act, 2000

ⁱⁱ Sec. 7(1), Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021

ⁱⁱⁱ Sec. 8(3), Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021

^{iv} Sec. 87(2), The Information Technology Act, 2000