

# CURBING MISUSE OF SOCIAL MEDIA – UNDERSTANDING THE NEW RULES UNDER THE INFORMATION TECHNOLOGY ACT, 2000\*

## Introduction

With the spread of internet the world has come closer with just a click of mouse. Internet has become a necessity and a basic tool which is empowering common Indians with the power of technology. The extensive spread of mobile phones, Internet etc. has also enabled many social media platforms to expand their footprints in India. Common people are also using these platforms in a very significant way. Some widely used social media platforms in India are WhatsApp, YouTube, Facebook, Instagram and Twitter.

These social platforms have enabled common Indians to show their creativity, ask questions, be informed and freely share their views. Proliferation of social media, on one hand empowers the citizens but on the other hand gives rise to some serious concerns and consequences which have grown manifold in recent years. These concerns have been raised from time to time in various forums including in the Parliament and its committees, judicial orders and in civil society deliberations in different parts of country. Such concerns are also raised all over the world and it is becoming an international issue.

Over the years, the increasing instances of misuse of social media by criminals, anti-national elements have brought new challenges for law enforcement agencies. These include inducement for recruitment of terrorists, circulation of obscene content, spread of disharmony, financial frauds, incitement of violence, public order etc.

It was found that currently there is no robust complaint mechanism wherein the ordinary users of social media and OTT platforms can register their complaint and get it redressed within defined timeline. Lack of transparency and absence of robust grievance redressal mechanism have left the users totally dependent on the whims and fancies of social media platforms. Often it has been seen that a user who has spent his time, energy and money in developing a social media profile is left with no remedies in case that profile is restricted or removed by the platform without giving any opportunity to be heard.

Amidst growing concerns around lack of transparency, accountability and rights of users related to digital media and after elaborate consultation with the public and stakeholders, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were notified on February 25, 2021 under the Information Technology Act, 2000 and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules, 2011. The Rules have been framed keeping in mind the difference between viewership in a theatre and television as compared to watching it on Internet.

\* Akansha Gupta, Executive (Academics), The ICSI

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## Rationale and Justification for New Guidelines

These Rules substantially empower the ordinary users of digital platforms to seek redressal for their grievances and command accountability in case of infringement of their rights. In this direction, the following developments are noteworthy:

- The Supreme Court in *suo-moto* writ petition (Prajawala case) vide order dated 11/12/2018 had observed that the Government of India may frame necessary guidelines to eliminate child pornography, rape and gangrape imageries, videos and sites in content hosting platforms and other applications.
- The Supreme Court vide order dated 24/09/2019 had directed the Ministry of Electronics and Information Technology to apprise the timeline in respect of completing the process of notifying the new rules.
- There was a Calling Attention Motion on the misuse of social media and spread of fake news in the Rajya Sabha and the Minister had conveyed to the house on 26/07/2018, the resolve of the Government to strengthen the legal framework and make the social media platforms accountable under the law. He had conveyed this after repeated demands from the Members of the Parliament to take corrective measures.
- The Ad-hoc committee of the Rajya Sabha laid its report on 03/02/2020 after studying the alarming issue of pornography on social media and its effect on children and society as a whole and recommended for enabling identification of the first originator of such contents.

## Salient Features of New Guidelines

### Guidelines Related to Social Media to Be Administered by Ministry of Electronics and IT:

- **Due Diligence to be followed by Intermediaries:** Intermediaries are entities that store or transmit data on behalf of other persons. Intermediaries include internet or telecom service providers, online market places, and social media platforms. The Rules prescribe due diligence that must be followed by intermediaries, including social media intermediaries. In case, due diligence is not followed by the intermediary, safe harbour provisions under Section 79 of the Information Technology Act will not apply to them.

#### What is Safe Harbour protection of social media intermediaries under Section 79 of the IT Act, 2000?

According to Section 79 of the IT Act, 2000 any intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link made available or hosted on its platform. This protection, the Act says, shall be applicable if the said intermediary does not in any way, initiate the transmission of the message in question, select the receiver of the transmitted message and does not modify any information contained in the transmission.

This means that as long as a platform acts just as the messenger carrying a message from point A to point B, without interfering in any manner, it will be safe from any legal prosecution brought upon due to the message being transmitted.

The protection accorded under Section 79, however, is not granted if the intermediary, despite being informed or notified by the government or its agencies, does not immediately disable access to the material under question. The intermediary must not tamper with any evidence of these messages or content present on its platform, failing which it lose its protection under the Act.

### **What are the global norms on safe harbour protection for social media intermediaries?**

As most of the bigger social media intermediaries have their headquarters in the US, it comes under the ambit of Section 230 of the 1996 Communications Decency Act, which provides Internet companies a safe harbour from any content users post of these platforms. It is believed that this provision in the US law has enabled companies such as Facebook, Twitter, and Google to become global conglomerates.

Like Section 79 of India's IT Act, Section 230 of the Communications Decency Act states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider".

- **Grievance Redressal Mechanism:** The Rules seek to empower the users by mandating the intermediaries, including social media intermediaries, to establish a grievance redressal mechanism for receiving resolving complaints from the users or victims. Intermediaries shall appoint a Grievance Officer to deal with such complaints and share the name and contact details of such officer. Grievance Officer shall acknowledge the complaint within twenty four hours and resolve it within fifteen days from its receipt.
- **Ensuring Online Safety and Dignity of Users, Specially Women Users:** Intermediaries shall remove or disable access withing 24 hours of receipt of complaints of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc. Such a complaint can be filed either by the individual or by any other person on his/her behalf.
- **Two Categories of Social Media Intermediaries:** To encourage innovations and enable growth of new social media intermediaries without subjecting smaller platforms to significant compliance requirement, the Rules make a distinction between social media intermediaries and significant social media intermediaries. This distinction is based on the number of users on the social media platform. Government is empowered to notify the threshold of user base that will distinguish between social media intermediaries and significant social media intermediaries. The Rules require the significant social media intermediaries to follow certain additional due diligence.
- **Additional Due Diligence to be followed by Significant Social Media Intermediary:**
  - Appoint a **Chief Compliance Officer** who shall be responsible for ensuring compliance with the Act and Rules. Such a person should be a resident in India.
  - Appoint a **Nodal Contact Person** for 24x7 coordination with law enforcement agencies. Such a person shall be a resident in India.

- Appoint a **Resident Grievance Officer** who shall perform the functions mentioned under Grievance Redressal Mechanism. Such a person shall be a resident in India.
- Publish a **monthly compliance report** mentioning the details of complaints received and action taken on the complaints as well as details of contents removed proactively by the significant social media intermediary.
- Significant social media intermediaries providing services primarily in the nature of messaging shall enable **identification of the first originator of the information** that is required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years. **Intermediary shall not be required to disclose the contents of any message** or any other information to the first originator.
- Significant social media intermediary shall have a physical contact address in India published on its website or mobile app or both.
- **Voluntary User Verification Mechanism:** Users who wish to verify their accounts voluntarily shall be provided an appropriate mechanism to verify their accounts and provided with demonstrable and visible mark of verification.
- **Giving Users an Opportunity to be Heard:** In cases where significant social media intermediaries removes or disables access to any information on their own accord, then a prior intimation for the same shall be communicated to the user who has shared that information with a notice explaining the grounds and reasons for such action. Users must be provided an adequate and reasonable opportunity to dispute the action taken by the intermediary.
- **Removal of Unlawful Information:** An intermediary upon receiving actual knowledge in the form of an order by a court or being notified by the Appropriate Govt. or its agencies through authorized officer should not host or publish any information which is prohibited under any law in relation to the interest of the sovereignty and integrity of India, public order, friendly relations with foreign countries etc.
- The Rules will come in effect from the date of their publication in the gazette (i.e. 25<sup>th</sup> February, except for the **additional due diligence for significant social media intermediaries**, which shall **come in effect 3 months after** publication of these Rules.

## Digital Media Ethics Code relating to Digital Media and OTT Platforms to be administered by Ministry of Information and Broadcasting

Notified under section 87 of Information Technology Act, these Rules empower the Ministry of Information and Broadcasting to implement Part-III of the Rules which prescribe the following:

- **Code of Ethics for online news, OTT platforms and digital media** : This Code of Ethics prescribe the guidelines to be followed by OTT platforms and online news and digital media entities.
- **Self-Classification of Content** : The OTT platforms, called as the publishers of online curated content in the rules, would **self-classify the content into five age based categories**- U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). Platforms would be required to implement **parental locks for content classified as U/A 13+ or higher**, and **reliable age verification mechanisms for content classified as “A”**. The publisher of online curated content shall prominently **display the classification rating** specific to each content or programme together with a content descriptor informing the user about the nature of the content, and advising on viewer description (if applicable) at the beginning of every programme enabling the user to make an informed decision, prior to watching the programme.
- 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 Networks Regulation Act** thereby providing a **level playing field between the offline (Print, TV) and digital media**.
- A **three-level grievance redressal mechanism** has been established under the rules **with different levels of self-regulation**.
  - Level-I: Self-regulation by the publishers;
  - Level-II: Self-regulation by the self-regulating bodies of the publishers;
  - Level-III: Oversight mechanism.
- **Self-regulation by the Publisher** : Publisher shall appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received by it. The officer shall take decision on every grievance received by it within 15 days.
- **Self-Regulatory Body** : There may be one or more self-regulatory bodies of publishers. Such a body shall be headed by a retired judge of the Supreme Court, a High Court or independent eminent person and have not more than six members. Such a body will have to register with the Ministry of Information and Broadcasting. This body will oversee the adherence by the publisher to the Code of Ethics and address grievances that have not be been resolved by the publisher within 15 days.
- **Oversight Mechanism** : Ministry of Information and Broadcasting shall formulate an oversight mechanism. It shall publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.

## Compliance with the new IT Guidelines

The social media intermediaries are no longer limited to playing the role of pure intermediary and often they become publishers. These Rules are a fine blend of liberal touch with gentle self-regulatory framework. It works on the existing laws and statues of the country which are applicable to content whether online or offline. In respect of news and current affairs publishers are expected to follow the journalistic conduct of Press Council of India and the Programme Code under the Cable Television Network Act, which are already applicable to print and TV. Hence, only a level playing field has been proposed.

All the significant social media intermediaries (SSMIs) -- who have over 50 lakh registered users in the country, have to share the details of compliance with the new guidelines that came into effect on May 25<sup>th</sup>, 2021 (3 months after publication of these Rules), with the Ministry of Electronics and Information Technology (MeitY). The Ministry has sought confirmation and details, including contact details of the chief compliance officer, nodal contact person and resident grievance officer, from these SSMIs.

Due to non-compliance of these laws, the SSMIs could lose the 'safe harbour' protection that currently gives them protection against liability (civil as well as criminal) for content posted on their platform by third party users.

### Take of SSMIs on the new Rules

The guidelines require companies such as Twitter, WhatsApp, and Facebook to change how they regulate content, appoint nodal officers for compliance and grievance redressal, and adopt features such as traceability of messages and voluntary user verification.

SSMIs like Google, WhatsApp and Facebook have shared the details of the officers with the government. The new Rules also require the SSMIs to publish monthly compliance reports which will include details of complaints received by them against content posted on their respective platforms and action taken by them. Google, Facebook and Instagram have already published their first compliance reports on voluntary removal of offensive posts.

The new rules have been contested by several parties, including WhatsApp which has argued that the traceability provision mandated in the guidelines would violate end to end encryption.

The microblogging platform, Twitter had lost its safe harbor protection under section 79 of the Information Technology Act, 2000 as it didn't fully comply with the new IT Rules, 2021 and made any immediate appointments of key personnel, mandated under the new guidelines.

In response, Twitter has submitted that in compliance with the Rules it had appointed a Resident Grievance Officer and made details of the same available on the website by May 29, however, the appointed officer withdrew his candidature on June 21 before the same could be finalized. After this, Twitter's new Grievance Officer was listed as Jeremy Kessel who is the Global Legal Policy Director of Twitter but not resident in India which was against the new IT Rules. Recently, Twitter appointed Mr. Vinay Prakash as its new resident grievance officer and shared a way to contact him as required by new IT Rules. Twitter has also published its transparency report in accordance with the new IT Rules. It published the data it received via its grievance officer between May 26, 2021, and June 25, 2021, that included

content on Twitter. It also includes complaints received from individual users with accompanying court orders.

Twitter and the government have had disagreements over content takedown orders and the company's actions against the Government for violation of its terms of use. Against this backdrop, the new IT rules has hardened the stand-off, with Twitter raising concerns over the "core elements" of the norms, and flagging potential threats to the safety of its employees.

### **Conclusion**

With the enactment of these Rules, the Government has made clear that Social media platforms are welcome to do business in India and can certainly be used for asking questions and criticize but they need to follow the Constitution and laws of India. They have certainly empowered the ordinary users but they need accountability against its misuse and abuse. The new Rules empower ordinary users of social media, embodying a mechanism for redressal and timely resolution of their grievance. The Rules about digital media and OTT focuses more on in house and self-regulation mechanism whereby a robust grievance redressal mechanism has been provided while upholding journalistic and creative freedom. The proposed framework is progressive, liberal and contemporaneous. It seeks to address peoples' varied concerns while removing any misapprehension about curbing creativity and freedom of speech and expression.

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