

Unpacking It Rules: Threat to Digital Rights

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Abstract

"Information Technology rules 2021, guidelines for intermediaries and digital ethics code" were brought on board in February and came into practice by May 25. The more they are decluttered the more cluttered it seems. These guidelines aim at removal of immunity given to intermediaries such as WhatsApp, Koo, and Telegram and OTT platforms such as Amazon, Netflix and Digital News. Non-conformity of the guidelines has buckled the pressure on the intermediaries, while some suing the Indian government on the so-called "soft touch oversight mechanism". Just like demonetization, this too was kept secret and is "arbitrarily made" with consideration to section 79 of the IT Act. While there is a pragmatic outlook about the IT rules, but it holds immense obscurity and predisposition that appear to contradict democracy's fundamental concepts and constitutional values. The regulations pose a potential threat to freedom of expression, right to privacy, sovereignty, and integrity of India. The recommendations are exploitative and will additionally increase cost in the form of tax liability and labor on the platform's behalf. The squabble that social media should be granted a higher degree of protection considering it subsists on the internet or the laws of the land revoke amendments in an indefensible argument. This advocates for a robust data protection law that accentuates on first originator, end to end encryption, data retention period, age verification mechanism, traceability, and code of ethics. The research article aims to explore the uncertainties and the grey areas of the new IT rules with constructive suggestions and solutions.

INTRODUCTION

Information Technology Act was passed in the year 2000 which was restricted to Electronic Documented-signature and digital authentication of records. There were no OTT or social platforms that time. Although internet got introduced in India in the year 1986 but its services were launched in 1995. In the year 2000, internet was only available to education and research sector. In the late 90's, railway ticketing and bookings got associated with the internet. Also, the year 2000, was struck by the arrival of internet cables via which we got introduced to Yahoo, Msn and EBay. Followed by 2006, came the Orkut and Facebook in the year 2006. Subsequently came the smart phones, 2G, 3G, GPRS data, multiple versions of android. China escorted by India are the countries with largest internet users around the world.

Social media and over-the-top podiums are covered by the 'Information Technology Rules 2021.' The government claims a variety of reasons for enacting such regulations.

Monitoring dangerous material on the internet is important as it may have a negative effect on people's mind-sets and even stifle the country's development. Social media podiums, OTT platforms and different news websites will all be governed by the new set of rules and regulations. The Information Technology Act grants it authority under Sections 69A (2), 79(2) (c), and 87. In close collaboration with the Ministries of Electronics and Information Technology and Information and Broadcasting, the Central Government adopted the IT guidelines for 2021.

Although, content shown on OTT platforms have also been condemned by the public, prompting a need for legislation to control and monitor such platforms. Even foreign telecommunications businesses operating in the country, including as Facebook, WhatsApp, Twitter, Netflix, and Amazon, will be expected to respect the established standards and ethics, according to the legislation. The government has attempted to monitor the actions of such intermediaries through this rule, which includes provisions such as the appointment of a "Chief Compliance Officer, a Nodal Contact Person, and a Resident Grievance Officer," as well as active monitoring of harmful content and user verification.

After examining the enormous problem of pornography on social media and its harmful influence on children and society, an Ad-hoc committee of the Rajya Sabha published its report in 2020, asking that the original developer of such materials be recognised. The current IT regulations for 2021 were developed in accordance with all previous decisions and the suggestions of the relevant authorities. According to different sources, regulating material on over-the-top podiums and other social media was motivated by a desire to safeguard women from various crimes perpetrated as a result of such content. Furthermore, it was required to protect youngsters from seeing material that might harm their mental development.

METHODOLOGY

The research has been done using secondary data source. The choices of measure of similarity are based on multidimensional observations. Newspapers, journals and internet has been used for collecting data.

Nuts And Bolts

The following are the key takeaways of 'Intermediary Guidelines and Digital Media Ethics Code) Rules 2021':

- The arbiters of social networks have been divided into two categories: social media intermediates and prominent social media intermediaries.
- If the intermediary aborts' to exert due diligence, the safe harbour rules will be immaterialised.
- Intermediaries must establish a Grievance Officer and make their names and contact details available to the public. Within twenty-four hours of receiving the complaint, the Grievance Officer must recognise it and resolve it within fifteen days.
- Appointment of a 'Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer' in India.
- A monthly compliance report must be submitted, outlining the number of complaints received, measures taken in response to the complaints, and details of items proactively deleted.
- Significant social media intermediaries must be able to identify the first originator of the information.
- An intermediary is required to accept a court order or notice from the government or its agencies, operating via an authorised person, that it will not host or publish any content that is prohibited by law and might jeopardise India's sovereignty and integrity.
- The Online podiums, referred as "publishers of online curated material," would self-classify the content into five groups: U (universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).
- Podiums would be required to give parental locks for content rated U/A 13+ or above, as well as age verification for content rated "A."

- Specific content or programme should contain description informing the audience about the essence of the content.
- Digital news publishers must adhere to the Press Council of India’s Standards of Journalistic Conduct and the Cable Television Networks Regulation Act 1995’s Program Code, ensuring that offline and online media are treated equally.
- The regulations established a three-tiered grievance resolution system with various degrees of self-regulation.

There Is Only One Catch And That Is Catch-22!

Any democracy’s essential premise is freedom of expression and speech. On the other hand, no freedom is absolute or completely unconstrained. Since the foundation of the Constitution, the task of striking the best balance between fundamental rights and evaluating the rationale of a restriction has been an ongoing fight. The issue has finally made its way into the digital sphere. Any control of India’s OTT video streaming market might be extremely detrimental to both individual and national interests. India has evolved from a consumer to a creator of original content that employs and entertains people in India and around the world.

The development of artificial intelligence (AI)-based censorship technologies presents a variety of concerns, including AI’s current state-of-the-art and flawed nature. A censorship system is being developed, and AI “learns” by analysing massive volumes of data. Artificial intelligence will require



Figure 1: Source: Author’s Compilation

social media intermediaries to store and examine massive amounts of user-generated content unrelated to the content sought to be blocked. Furthermore, coding biases frequently lead to prejudice, as well as a lack of accountability and transparency, when AI is built. This is particularly troubling because AI is seeking to manage and monitor a user’s fundamental right to free expression and speech. The question of whether AI should be allowed to rule over people’s fundamental rights is crucial. This monitoring agency is being created without substantial legal backing, and it will gradually take on responsibilities equivalent to those of the Ministry of Information and Broadcasting.

The Intermediaries Rules of 2021 expressly state that immunity has been lost and the severity of the consequences.

Figure 1 explains the issues or problems with the Intermediaries Rules, 2021. The government has the authority to decrypt any kind of end-to-end encryption and identify who transmitted and what it contained. Furthermore, this requirement would disrupt end-to-end encryption, which has been developed over time via extensive cybersecurity testing.

Additionally, users must be able to “voluntarily” authenticate their accounts using any way acceptable to them, including their current Indian mobile phone. A visible and verifiable label indicating such verification must also be provided by the major social media intermediary [Rule 4(7)]. It’s possible that the optional will become mandatory as a result of this. Worse, without data protection legislation, social media companies would be free to gather information from our government IDs without being subjected to review by a regulating body, such as a data protection authority, to guarantee that it is only used for verification. Intermediaries must now store data for 180 days (six months) after a user’s account has been deleted for investigation purposes [Rule 3(1) (h)].

The regulations restrict freedom of expression by designating the government as the final arbiter of offensive internet communication. The ideals of an open and accessible Internet are likewise undercut by these rules. There has been some criticism of

enacting a slew of new regulations that should usually only be activated by legislation. These new regulations were “arbitrarily established” under Section 79 of the IT Act without any legislative approval. In addition, there was little public input. The regulations, at all levels, necessitate more costs and labour on the platforms’ behalf. After obtaining instructions from the government, an intermediary is now required to remove material within 36 hours. This deprives the intermediary of a just remedy if it disagrees with the government’s order owing to a tight deadline.

Such regulations may do more damage than good in a nation where people are still without a Data Protection Law to protect them from any party’s abuses. If any inappropriate material is posted, the social media sites do not hold themselves responsible. On their platforms, however, they often alter, promote, and ban material. Considering that some platforms have over 50 million Indian users and reach out to even the most remote parts of the country, the rules will assist in keeping these platforms responsible for guaranteeing the prevention of any crime. The Personal Data Protection Bill, 2019, must be passed quickly in order to protect people’ right to privacy and to ensure that IT regulations fulfil their intended purpose. The new regulations have several flaws, but the most serious one is that they were implemented without much public input.

CONCLUSION

Although the term “shadow regulation” is new, the phenomenon has been growing for several years. To protect our Internet, we must be aware of the intrusion of these secretive, exclusive agreements and challenge them when they threaten our digital rights and democracy. Continue reading Deep links this week to learn more about Shadow Regulation and how industry-wide agreements, if they must exist at all, can be made in a more inclusive, balanced, and accountable manner. Although content regulation is necessary, granting full authority to delete any material and invading the privacy of the public is unacceptable. The government has the power to restrict and block websites that may be

harmful to society, but total control of the internet is a breach of the fundamental right to free speech and expression, and such issues must be addressed as soon as possible.

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