



drishti

Information Technology Rules, 2021

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This article is based on **“Nine-pin bowling aimed at free speech, privacy”** which was published in The Hindu on 28/05/2021. It talks about the challenges associated with the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021.

The Government of India had framed the **Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021**, in February this year. These rules require the social media intermediaries/ platforms to adhere to a vastly tighter set of rules within three months, which ended on May 25.

Till now almost all major social media intermediaries have not adhered to all the requirements.

But non-compliance can only make things worse, especially in a situation in which the relationship between some platforms such as Twitter and the Government seems to have broken down.

While there are positive aspects about the said guidelines, there are, equally, glaring ambiguities and susceptibilities that appear to be in conflict with the basic tenets of democracy and constitutional values.

Positives of The Rules

The Rules must be credited for they mandate duties such as:

- Removal of non-consensual intimate pictures within 24 hours,
- Publication of compliance reports to increase transparency,
- Setting up a dispute resolution mechanism for content removal,
- Adding a label to information for users to know whether content is advertised, owned, sponsored or exclusively controlled.

Associated Issues With the Rules

- **Rules Ultra-vires to the IT Act:** It is of significant concern that the purview of the IT Act, 2000, has been expanded to bring digital news media under its regulatory ambit without legislative action.

There has been criticism about bringing in a plethora of new rules that ought to be normally triggered only via legislative action.
- **Depriving of Fair Recourse:** An intermediary is now supposed to take down content within 36 hours upon receiving orders from the Government.

This deprives the intermediary of a fair recourse in the event that it disagrees with the Government's order due to a strict timeline.
- **Undermining Free Speech:** The rules place fetters upon free speech by fixing the Government as the ultimate adjudicator of objectionable speech online.
- **Traceability Issue:** Till now social media platforms have the immunity that users received from end-to-end encryption was that intermediaries did not have access to the contents of their messages.
 - Imposing this mandatory requirement of traceability will break this immunity, thereby weakening the security of the privacy of these conversations.
 - The threat here is not only one of privacy but to the extent of invasion and deprivation from a safe space.
- **Counterproductive in Absence of Data Privacy Law:** It could prove counterproductive in a country where the citizens still do not have a data privacy law to guard themselves against excesses committed by any party.
- **Compliance Burden:** The Rules create futile additional operational costs for intermediaries by requiring them to have Indian resident nodal officers, compliance officers and grievance officers.

This may not be in favour of many small digital entities and may open the floodgates for all kinds of interventions.

Way Forward

- **Uniform Application of Law:** Regulation has an important place in the scheme of things, and no one advocates giving a free pass to digital platforms.

Further, the laws to combat unlawful content are already in place. What is required is their uniform application.
- **Deliberating with Stakeholders:** There are indeed many problems with the new rules, but the major issue was that these were introduced without much public consultation.

The solution to ongoing criticism about these rules is to start afresh with the publication of a white paper.
- **Statutory Backing:** After that, if regulation is still deemed to be necessary, then it must be implemented through legislation that is debated in Parliament instead of relying upon executive rule-making powers.

- **Expediting Data Protection Law:** Making platforms share more information could prove counterproductive in a country where the citizens still do not have a data privacy law to guard themselves against excesses committed by any party.

In this context, there is a need to expedite the passing of the **personal data protection bill, 2019**.

Conclusion

The Supreme Court, in the case of Life Insurance Corpn. Of India vs Prof. Manubhai D. Shah (1992) had elevated 'the freedom to circulate one's views as the lifeline of any democratic institution'.

In this context, five industry bodies, including the CII, FICCI and the U.S.-India Business Council have sought an extension of 6-12 months for compliance. This is an opportunity for the Government to hear out the industry, and also shed its high-handed way of rule-making.

Drishti Mains Question

While there are positive aspects about the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, there are, equally, glaring ambiguities and susceptibilities. Discuss.
