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THE INFORMATION TECHNOLOGY RULES 2021

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Your social media platforms like Facebook, Twitter, etc., messaging apps like WhatsApp, Signal, Telegram, etc., OTT platforms like Netflix, Amazon Prime, etc. and also digital news might go through significant and drastic changes as the government has passed new IT rules that have been very controversial.

What exactly are these IT rules?

How will they affect you?

Why they have been subject to such controversy?

What are the solutions?

All these questions will be answered in this blog.

These rules exactly have been called the **Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021¹** which have been brought by amending the Information Technology Act, 2000. Basically, they focus on intermediaries. A third party that enables the execution of a deal between two parties is an intermediary. Social media platforms like Facebook through which you can talk with your friends is thus an intermediary. Legally, the intermediaries have some immunities. To further understand this, let us see a famous case law.

Avnish Bajaj v. State (NCT) of Delhi: (29th May, 2008)²

¹ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Available at <https://mib.gov.in/sites/default/files/IT%20Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf> (Accessed on 25/12/2021)

² <https://indiankanoon.org/doc/309722/> (last visited Jan. 5, 2022)

In this case, an IIT student had put an obscene MMS on sale on Baaze.com. From the outside, it was not apparent that it was an MMS video. One could see it only on clicking on it. When someone pointed out the same, Baaze.com removed it from its website. But, the crime branch of the Delhi Police took cognizance on the matter and in addition to filing a charge-sheet against that IIT student who listed the video on the website they also filed another charge-sheet against the owner of Baaze.com.

In this case, was it right to blame the website? According to me, the answer is no because the website owner did not even know that it was an objectionable content and when the website authorities found out the same, they removed it. Regardless of this, the website was considered an accused by the police.

When the matter was taken to the Delhi High Court, it held that the owner of baazi.com cannot be blamed and it was unfair to arrest him.

For this reason, the intermediaries have some immunities as it is not the fault of the intermediate platform if a user puts some objectionable content on its website and the intermediaries cannot be held liable for the wrong conduct of their users.

Now, if we talk about the new social media rules which the government has passed recently. So, according to these rules, the immunities of their intermediaries has been removed to quite an extent. Let us see how by looking at the main provisions of these rules.

The government has issued the IT Rules, 2021³ by publishing them in the Official Gazette and they are divided into three parts:

1. **Part 1 is the 'Preliminary'** consisting of definitions and terms of these Intermediary Rules.

³ Available at <https://www.meity.gov.in/content/notification-dated-25th-february-2021-gsr-139e-information-technology-intermediary> (Accessed on 05/01/2022)

2. **Part 2 is ‘Due Diligence by Intermediaries and Grievance Redressal Mechanism’** which focuses on social media platforms and messaging apps.
3. **Part 3 is ‘Code of Ethics and Procedure and Safeguards in Relation to Digital/Online Media’** focused on OTT platforms and digital news.

Starting with the social media platforms and messaging apps, the Government gave three months (starting from 25th February, 2021) to these sites which include WhatsApp, Twitter, Signal, Telegram, etc. to appoint a:

1. **Chief Compliance Officer** who shall be responsible for ensuring compliance with the Act and rules made thereunder and shall be liable for any proceedings relating to any relevant third-party information, data or communication link made available or hosted by that intermediary where he fails to ensure that such intermediary observes due diligence while discharging its duties under the Act and rules made thereunder⁴.
2. **Nodal person of contact** for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.
3. **Resident Grievance Officer** who shall be responsible for taking the users’ complaints concerning these rules which should be acknowledged within 24 hours and resolved within a reduced timeline of 15 days.

All these three persons should be employees of a social media intermediary who shall be resident in India holding a valid Indian passport.

Some experts believe that because of these requirements, the tax liability of these social media platforms will increase as a result of which many small innovative platforms will be discouraged to continue in India.

Further, according to these new rules, every year, these intermediaries will have to send **reminders to the users** at least once, that if they do anything illegal, their account will be

⁴ Available at <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> (Accessed on 05/01/2022)

deleted. In addition to this, these intermediaries will have to publish a **monthly compliance report** enumerating the number of complaints received and also the content of those on which actions were taken.

The data retention period has been doubled to 6 months for “investigative purposes”. This means that if you make an account on any social media platform and thereafter delete it, then also, the social media platform will keep your data for the next 6 months because the government is permitting them to do so. In fact, the government is telling them to do so. Don’t forget that in our country till date, there is no robust data protection law.

But, the scariest thing in these rules is that these intermediaries will have to **enable tracing of the originator of information** on their respective platforms if required by the court of competent jurisdiction or competent authority. It means that when the government wants, these platforms will have to provide information of the first originator. For instance, if there is a widely spread WhatsApp forward, then who first wrote that particular WhatsApp forward (where it originated from), this information will have to be given by the social media platform

i.e. WhatsApp in this case to the government if the government asks for it. The same will be the case with Facebook posts and Twitter posts.

Technically, this is not possible to be done on WhatsApp and Signal because these messaging apps have **end-to-end encryption**. They themselves don’t know the content and origin of the messages circulated on their apps.

So, if the new rules have to be complied with apps like WhatsApp and Signal, these platforms will have to breach their end-to-end encryption which is a threat to your privacy because it is only by the help of end-to-end encryption that third parties cannot read your messages. If the end-to-end encryption is removed, it becomes very easy for any third party to read your personal messages.

Earlier there was a controversy related to the new privacy policy of WhatsApp. In my opinion, bringing the new IT rules is 10 times more dangerous for your privacy than the new privacy policy that WhatsApp was bringing.

Various reasons have been given in these new IT Rules of 2021 which the government may use to enforce action from the social media platforms⁵. Some reasons are very obvious like content related to sexual abuse, child abuse, etc., is being posted. But one ground for demanding such action mentioned is that if some content is against '**public order**'. Public order is such a broad term that, for instance, if the government declares that showing farmers' protest is against public order or criticizing the government is against public order, then the social media platforms will have to take action. Thus, using broad terms like these means that the new rules can easily be misused by the government.

Some months ago, the government had asked microblogging site Twitter to ban some accounts from its site in India. Twitter banned some of them but refused to ban the others because there wasn't any legit reason behind the same. Only that could be seen from those accounts that they were criticizing the government and were supporting the farmers' protest which is why the government wanted those accounts to be banned. But, Twitter refused to do so.

Some experts even believe that the reason that the government has brought these new IT rules is to force companies like Twitter into taking action. If in today's date, Twitter will refuse to ban these accounts, it will have to face legal consequences brought by the government.

Next, if we talk about digital news and OTT platforms, then some points are good in the new IT rules such as the OTT platforms have been told to self-classify their content into 5 age categories as U, 7+, 13+, 16+ and A category. Parental locks and age verification mechanism has also been introduced. Further, the OTT and digital news platforms have been told to follow the **Code of Ethics** as per which they cannot put up any content which:

1. Affects the sovereignty and integrity of India
2. Threatens, endangers or jeopardises the security of the State
3. Is detrimental to India's friendly relations with foreign countries

⁵ Dhruv Rathee, *Will Facebook, Twitter, Instagram be banned in India? | OTT Rules 2021* | <https://youtu.be/b7Fv3vQZvNw> (last visited Jan. 5, 2022)

4. Is likely to incite violence or disturb the maintenance of **public order**

Here, thus, again comes the problematic part. What is this public order will be determined by the government. Whatever the government will think is justified will be labelled as disturbing public order and again can be easily misused.

The Code of Ethics also states that ‘the OTT and digital news platforms must take into consideration India’s multi-racial and multi-religious context and exercise due caution and discretion while featuring activities, practices, views or beliefs of any racial or religious group’. We all know how people get offended about every little thing in the content of movies or web series as seen in the case of the ‘Padmavat’ and ‘Tandav’.

Lastly, another dangerous point in the new rules is the ‘**Emergency Blocking Power**’ given to the Ministry of Information and Broadcasting in those cases in which “no delay is acceptable’. Which cases are these in which no delay is acceptable is not defined under the Rules. Thus, it rests at the decision of the government.

In my opinion, these new IT Rules will destroy the foundation of democracy in our country as pointed by many experts also. It is because, to decide which content is wrong and which is right, which goes against any religion or which incites violence is the duty of the third pillar of our democratic system i.e. the Judiciary and not of the Executive. If anyone has an issue with these things, if they think that any content really incites violence or so, then they can easily approach the courts for that matter.

So, there was no need for the government to interfere by labelling themselves as the competent authority to decide which content is acceptable and which is not. If such is the matter then what is the use of courts?

The government is made up of political parties and political parties are always biased. They do not let the rules to be applied fairly. That is why courts exist and an independent judiciary exists so that fair and impartial justice can be delivered and a system of checks and balances is maintained.

To talk about solutions, then, the ideal solution would be that the court declare these new rules null and void because they are against democracy, against the Constitution of India.

