

Brief Information Note on
India's Information Technology (Intermediary Guidelines and
Digital Media Ethics Code) Rules, 2021

The Government of India, in exercising its powers under section 87 (2) of the Information Technology Act, 2000, and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules 2011, framed the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('new IT Rules') and notified the same on 25 February, 2021. For the significant intermediaries, the Rules have come into effect from 26 May, 2021. The salient features of the new IT Rules are annexed.

The Rules are designed to empower ordinary users of social media. The victims of abuse at social media platforms shall have a forum for redressal of their grievances.

The enactment of new IT Rules had become necessary due to widespread concerns about issues relating to increased instances of abuse of social media and digital platforms, including inducement for recruitment of terrorists, circulation of obscene content, spread of disharmony, financial frauds, incitement of violence, public order etc.

The Supreme Court of India in two judgements — the Prajwala case of 2018 and Facebook v. Union of India in 2019 — had directed the Government of India to frame necessary guidelines to eliminate child pornography and related contents in online platforms and other applications. In the second case, the Court had said that it was imperative to frame proper regime to find out the persons, institutions, and bodies who were the originators of such content messages. It has become necessary to seek such information from the intermediaries.

The Indian Parliament (Upper House - Rajya Sabha) had repeatedly asked the Govt. of India to strengthen the legal framework and make the social media platforms accountable under the Indian laws.

The Ministry of Electronics and Information Technology and Ministry of Information and Broadcasting undertook broad consultations in 2018 with various stakeholders, including individuals, civil society, industry association and organisations and invited public comments to prepare the draft Rules. Thereafter, an inter-ministerial meeting had discussed in detail the comments received in detail and, accordingly, the Rules were finalized.

On 25 February, 2021, the new IT Rules were notified and the significant intermediaries were given a three-month period to comply. The social media companies are required to appoint India based grievance redressal officer, compliance officer and nodal officer to enable the users of social media, who have a grievance to have a recourse for its redressal. Prior to the notification of the Rules, the users had no opportunity to file a complaint in case of any misuse or abuse of social media platforms.

The role of the Grievance Officer appointed under the new IT Rules is to receive user complaints and thereafter, dispose it off. The number of such complaints received need to be reported to the Government every month.

The concerns alleging potential implications for freedom of expression that the new IT Rules will entail, is highly misplaced [A detailed Press Release on 27 May, 2021 issued by Government of India is enclosed]. India's democratic credentials are well recognized. The right to freedom of speech and expression is guaranteed under the Indian Constitution. The independent judiciary and a robust media are part of India's democratic structure.

On the traceability of the first originator of the information, it may be noted that the new IT Rules seeks only limited information. Only when a message already in public circulation is giving rise to violence, impinging on the unity and integrity of India, depicting a woman in a bad light, or sexual abuse of a child and when no other intrusive options are working, only then the significant social media intermediary will be required to disclose as to who started the message.

The concern that the Rules may be misused deliberately to make a large number of complaints so as to overwhelm the grievance redressal mechanisms created by social media platforms is also misplaced, exaggerated and disingenuous and shows lack of willingness to address the grievances of the users of these media platforms while using their data to earn revenues.

The Government of India fully recognises and respects the right of privacy, as pronounced by the Supreme Court of India in K.S. Puttusamy case. Privacy is the core element of an individual's existence and, in light of this, the new IT Rules seeks information only on a message that is already in circulation that resulted in an offence. The Rules have framed in exercise of the statutory powers of the IT Act, fully taking into account the principles of reasonableness and proportionality.

Annex

Salient features of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules. 2021

Due Diligence to be followed by Intermediaries: 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 will not apply to them.

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 and 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 24 hours and resolve it within fifteen days from its receipt.

Ensuring Online Safety and Dignity of Users, especially for women users: Intermediaries shall remove or disable access within 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 2021 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 Digital Media Ethics Code Relating to Digital Media and OTT Platforms under the Rules, 2021, administered by the Ministry of Information and Broadcasting prescribe the following guidelines:

Self-Classification of Content: The OTT platforms, called as the publishers of online curated content in the Rules, should self-classify the content into five age based categories U (Universal), IJ/A 7+, U/A 13+, IJ/A 16+, and A (Adult) and required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as "A".

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 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.

Level — II: 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 been resolved by the publisher within 15 days.

Level-III: 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.
