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SOCIAL MEDIA INTERMEDIARIES' RULES: THREE SIDES, THREE PERSPECTIVES

Abstract:

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The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 were issued in February 2021. News of social media applications like Twitter, Facebook, WhatsApp, Instagram, Snapchat, etc potentially stopping their operations in India broke out and issues of violation of the fundamental right of freedom of speech and expression as well as the fundamental right to privacy were raised. Keeping this in mind, this research article is written with a view to summarize these rules and analyze these guidelines from the perspectives of the government, the social media intermediaries and the citizens. The article also proposes certain solutions as the middle ground to the problem while accepting that these guidelines do have the potential of securing the interests of the Indian nation if implemented correctly.

Keywords: *Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, social media intermediaries, government, the fundamental right to speech and expression, the fundamental right to privacy, etc.*

Introduction:

On 25th February 2021, the government of India rolled out a notification intimating the public of its new social media intermediaries' rules that were termed as Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 under the Information Technology Act, 2000.¹

These rules created a huge ruckus and ignited a public debate on the right to privacy of Indians and how these rules may act against it. The government had to face a lot of criticism, nevertheless, the rules do exist and like every coin has a tail and heads, these rules also have their own advantages and disadvantages.

Social Media Intermediary-Defined:

The rules identify social media intermediary as a mediator between two or more clients that allows them to connect and use its platform to share, upload, create, modify or access information through the internet. A significant social media intermediary, in this regard, is classified as an intermediary that has more than 50 million registered users in India.

Guidelines as Specified by the Rules- A Summary:

Due Diligence on Part of the Social Media Intermediary-

1. Intermediaries are required to publish the rules and regulations, privacy policy and the user agreement on their websites as well as their mobile applications, however, the case may be. Users should be notified not to indulge in any information that may seem controversial. E.g. information belonging to another person, obscene, pedophilic, defamatory content, etc.
2. Intermediaries are required to periodically inform their users about the modifications in rules and regulations, privacy policy and user agreement and the consequences of non-compliance on part of the users like termination of the user's account.
3. Intermediaries are also prohibited to host, store or publish any unlawful information. In case a user cancels or withdraws their registration, the information collected in regards to the User shall be retained by the intermediary for a period of 180 days.

¹ Ashima Obhan & Shivam Patanjali, *India Tightens the Noose on Intermediaries and Social Media Platforms Part-2*, OBHAN & ASSOCIATES, (Feb 19, 2022 1:54 AM), <https://www.obhanandassociates.com/blog/india-tightens-the-noose-on-intermediaries-and-social-media-platforms-part-2/>

4. Intermediaries are required to furnish information under their control or possession to the government within 72 hours of the inquiry made by the government as well as report cyber security incidents with the Indian Computer Emergency Response Team in accordance to the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013. Intermediaries are also required to ensure not to change the normal course of operation of their platform.²

Grievance Redressal Mechanism to be set up by the Intermediary-

1. Intermediaries are required to appoint a Chief Compliance Officer who will be responsible for ensuring compliance with the rules and regulations of the Act as well as a nodal contact person for 24×7 coordination with law enforcement bodies.
2. Intermediaries are required to appoint a Resident Grievance Officer who shall be responsible for dealing with the grievances received and take a decision regarding the same within 15 days. They are also required to furnish the officer's contact details on their website as well as their mobile-based applications.
3. Intermediaries are required to disable access to content where an individual's private parts may be visible, an individual is shown in partial or complete nudity, shows an individual in any sexual act/ conduct or any other content of the sort within 24 hours of receipt of a complaint in this regard.
4. Intermediaries dealing with messaging are required to enable identification of the first originator as well as verify its users and display their verification mark to the other users.³

Consequences of Non- Compliance of the Rules:

Social media intermediaries have always operated under the protection of section 79 of the Information Technology Act, 2000. Section 79 of the Act provides immunity to social media intermediaries with respect to third party information.⁴

² Bhumika Indulia, *Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021*, SCC ONLINE BLOG, (Feb 20, 2022 1:36 AM), <https://www.sconline.com/blog/post/2021/05/26/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-2/>

³ Bhumika Indulia, *Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021*, SCC ONLINE BLOG, (Feb 20, 2022 1:36 AM), <https://www.sconline.com/blog/post/2021/05/26/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-2/>

The introduction of the Rules made this immunity conditional. If a social media intermediary failed to ensure compliance with the rules, the intermediary would stand to lose the immunity granted under section 79. This means that the intermediary would be held personally liable for the content shared on its platform.

Analysis of the Rules:

1. The Government's Perspective:

The government through these rules aims to track false information, rumors, hate speech capable of igniting violence, inducing riots and creating public unrest. The government aims to track such content and disable access to such content in a controlled manner as quickly as possible to prevent riots or public unrest from happening. The government also aims to track information related to potential terrorist attacks and internal security threats and create surveillance over it and neutralize such threats before they can actually happen. The government also tries to protect vulnerable groups like children, tribal societies, etc by regulating and supervising the content spread on social media and the internet about them and removing any controversial content before actual damage can happen.

2. The Social Media Intermediary's Perspective:

Social media intermediaries are flagging concerns over the need to break the privacy clause that they guarantee to their users. Many social media intermediaries, including WhatsApp, have raised this issue. In the case of WhatsApp, its primary feature is end-to-end encryption that it guarantees to every user, meaning that the messages users send through their platform are safely encoded and only the users that send and receive the said message have access to it. This particular feature is a unique selling point of WhatsApp and it has raised its concern over the need to break such encryption to enable identification of the first originator in its petition to the Delhi High Court. Social media intermediaries also have to incur huge compliance costs to ensure compliance with these rules. In case of non-compliance with these rules, intermediaries will lose legal immunity provided to them under section 79 of the Information Technology Act, 2000, meaning that they will be liable for the content shared on their platforms along with the person who shares controversial content. The

⁴ Information Technology Act, 2000 § 79, No. 21, Acts of Parliament, 2000 (India)

intermediaries do not have any recourse in a case where they disagree with the government

3. The Citizens' Perspective:

The major issue faced by the citizens due to these rules is the violation of fundamental rights. These rules violate the fundamental right of privacy as well as the right to freedom of speech and expression. These rules place the government in a bad light as they seem extremely arbitrary. These rules also undermine the *principle of open and accessible internet*.⁵ Also, many citizens have raised concerns over the way these rules were made with no parliamentary approval and granted immense powers to the executive. There is also a risk of citizen profiling through which the government may track a particular citizen's political interests and may try to incline the citizen's political interest towards their own party by targeting them through various social media posts, as happened back in 2016 when Russia interfered with the U.S.A. presidential elections by creating content to promote Donald Trump and decrease support towards Hillary Clinton.

Solutions- The Middle Ground to the Problem:

However controversial and arbitrary these rules may seem, it cannot be denied that these rules may prove to be useful if implemented correctly and within the reasonable boundaries of power. To ensure that the organs of the government function properly and do not overstep their powers, the Constitution of India grants a check and balance machinery by giving certain powers to the three organs of the government, namely the legislature, the executive and the judiciary. This principle should be revived in the implementation of the Social Media Intermediaries Guidelines to ensure the proper operation of these guidelines. There is a need to establish a tribunal with sufficient jurisdiction to oversee the implementation of these guidelines and to ensure that the executive does not overstep its boundaries.

It is also advised to give users control of the content they share whenever possible. Content regulation should be dealt with on a case-to-case basis and whenever it is possible to give the user the option to self-regulate the content within 24 hours along with a warning of the consequences of the same happening again in the future, it may be done so.

⁵ *The Big Picture: Social Media- New Rules & Implications*, DRISHTI IAS, (Feb 21, 2022 1:22 PM), <https://www.drishtiiias.com/loksabha-rajyasabha-discussions/the-big-picture-social-media-new-rules-implications>

It should also be noted that there is no data protection law in India. This need to be reversed as soon as possible and the Data Protection Bill, 2019 should be passed with due consultation from all the stakeholders.

Conclusion:

From the above analysis, it can be concluded that the Social Media Intermediaries Rules have the purpose of managing security threats and protecting and safeguarding the interests of vulnerable groups like children, women, tribal groups, etc. There is, however, a responsibility on the government to give due consideration to the perspectives of the other stakeholders. It must be ensured that these rules do not transgress the privacy rights as well as the right of freedom of speech and expression of the citizens. The ease of doing business for social media intermediaries also need to be considered and maintained. Hence, due consideration of all perspectives is necessary.

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