

Amendments to IT Rules, 2021

November 4, 2022

Manifest Pedagogy:

The Ministry of Electronics and Information Technology (MeitY) has notified amendments to the Information Technology Rules, 2021, which proposes the creation of government-appointed appeal committees that will be able to veto content-moderation decisions taken by social media intermediaries like Facebook, Twitter and YouTube. The amendments will ensure that “Constitutional rights of Indian citizens are not contravened by any big tech platform by ensuring new accountability standards. The proposal to set up government-appointed committees has triggered concerns about the government overriding social media platforms’ content decisions. The concerns are genuine and the government must ensure these are adequately addressed.

In News: The Ministry of Electronics and IT (MeitY) has notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) on October 28.

Placing it in the Syllabus: Polity and Governance

Static Dimensions

- Background to the IT Rules, 2021

Current Dimensions

- More on news
- Need to amend the IT Rules, 2021
- Changes proposed in new amendment
- Significance of the amendments
- Issues with the amendments

Content

More on news

- The Ministry of Electronics and IT (MeitY) has notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) on October 28.
- In June 2022, MeitY had put out a draft of the amendments and solicited feedback from the relevant stakeholders.
- The draft generated considerable discussion and comment on the regulation of social media in India.
- World over, governments are grappling with the issue of regulating social media intermediaries (SMIs).
- Given the multitudinous nature of the problem – the centrality of SMIs in shaping public discourse, the impact of their governance on the right to freedom of speech and expression, the magnitude of information they host and the constant technological innovations that impact their governance – it is important for governments to update their regulatory framework to face emergent challenges.
- In a bid to keep up with these issues, India in 2021, replaced its decade old regulations on SMIs with the IT Rules, 2021 that were primarily aimed at placing obligations on SMIs to ensure an open, safe and trusted internet.

Background to the IT Rules, 2021

- The IT Act exempts intermediaries from liability for user-generated content on their platform provided they meet certain due diligence requirements.
- Intermediaries are entities that store or transmit data on behalf of other persons and include telecom and internet service providers, online marketplaces, search engines, and social media sites.
- IT Rules specify the due diligence requirements for the intermediaries. These include:

- Informing users about rules and regulations, privacy policy, and terms and conditions for usage of its services, including types of content which are prohibited.
- Exeditiously taking down content upon an order from the government or courts.
- Providing a grievance redressal mechanism to resolve complaints from users about violation of Rules.
- Enabling identification of the first originator of the information on its platform under certain conditions.
- It also specifies a framework for content regulation of online publishers of news and current affairs and curated audio-visual content

Need to amend the IT Rules, 2021

- There was a need to ensure that the interests and constitutional rights of netizens are not being contravened by big tech platforms.
- Enforcement- It will ensure “actual enforcement of requirements in IT Rules, 2021 in letter and spirit.
- To strengthen the grievance redressal framework in the Rules.
- Compliance with these should not impact early stage Indian start-ups.
- This translated into a set of proposed amendments that can be broadly classified into two categories.
 - The first category involved placing additional obligations on the SMIs to ensure better protection of user interests
 - The second category involved the institution of an appellate mechanism for grievance redressal.
- Increasing Digital Crimes: Radicalisation, Terrorist recruitment, Digital hacking, Child pornography and other heinous crimes, etc are increasing.

- Double Standards as per Country and Government: In the past, social media has shown differential treatment for Europe and Asian Countries.
 - Further, event based bias was also seen in a few cases.

Changes proposed in new amendment

- The original IT Rules, 2021 obligated the SMIs to merely inform its users of the “rules and regulations, privacy policy and user agreement” that governed its platforms along with the categories of content that users are prohibited from hosting, displaying, sharing etc. on the platform.
 - This obligation on the SMIs has now been extended to ensuring that its users are in compliance with the relevant rules of the platform.
 - Further, SMIs are required to “make reasonable” efforts to prevent prohibited content being hosted on its platform by the users.
 - To a large extent, this enhances the responsibility and concomitantly the power of SMIs to police and moderate content on their platforms.
- Social media companies with more than 50 lakh registered users will be considered ‘significant social media intermediaries’, as per the new norms.
- Obligation on SMIs to “respect all the rights accorded to the citizens under the Constitution, including in the **articles 14, 19 and 21**”.
- SMIs are now obligated to remove information or a communication link in relation to the six prohibited categories of content as and when a complaint arises.
 - They have to remove such information within **72 hours** of the complaint being made.
- Amendments to the **Rule 3**:
 - The grounds in subclause 1 of rule 3 (rule 3(1)(b)(ii)) have been rationalised by removing

the words 'defamatory' and 'libellous'.

- Whether any content is defamatory or libellous will be determined through judicial review.
- Some of the content categories in subclause 1 of rule 3 (rule 3(1)(b)) have been rephrased to deal particularly with misinformation, and content that could incite violence between different religious/caste groups.
- To “take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency”.
- The amendments also mandate that “rules and regulations, privacy policy and user agreement” of the platform should be made available in all languages listed in the eighth schedule of the Constitution.
- Amendments propose an alternative mechanism for appeals.
 - A **Grievance Appellate Committee** will be formed by the central government to hear appeals against the decisions of grievance officers.
 - The Committee will consist of a chairperson and other members appointed by the central government through a notification.
 - The Committee is required to dispose of such appeals within 30 days from the date of receipt.
 - The concerned intermediary must comply with the order passed by the Committee.

Significance of the amendments

- Given the importance of SMIs in public discourse and the implications of their actions on the fundamental rights of citizens, the horizontal application of fundamental rights is laudable.
- Given the virality with which content spreads, removal of information or a communication link in relation to

the six prohibited categories is an important step to contain the spread of the content.

- The obligation to ensure accessibility of its services is meant to strengthen inclusion in the SMI ecosystem such as allowing for participation by persons with disabilities and diverse linguistic backgrounds.

Issues with the amendments

- **Users are in compliance with the relevant rules of the platform**-This has been met with scepticism by both the platforms and the users given the subjective nature of speech and the magnitude of the information hosted by these platforms.
 - While the SMIs are unclear of the extent of measures they are now expected to undertake, users are apprehensive that the increased power of the SMIs would allow them to trample on freedom of speech and expression.
- Respect all the rights accorded to the citizens under the Constitution- the wide interpretation to which this obligation is open to by different courts, could translate to disparate duties on the SMIs.
 - Frequent alterations to design and practices of the platform, that may result from a case-to-case based application of this obligation, could result in heavy compliance costs for them
- There are concerns that ensuring “accessibility” may obligate SMIs to provide services at a scale that they are not equipped to.
- **Grievance Appellate Committee**-it is unclear whether this is a compulsory tier of appeal or not, that is will the user have to approach the grievance appellate committee before approaching the court.
 - Appointments being made by the central government could lead to apprehensions of bias in content moderation.

- The IT Rules, 2021 do not provide any explicit power to the GAC to enforce its orders.
- If users can approach both the courts and the GAC parallelly, it could lead to conflicting decisions often undermining the impartiality and merit of one institution or the other.
- In a nation where there is still no data privacy regulation to protect citizens from abuses by any party, encouraging platforms to disclose more information may backfire.
- It has also been alleged that the rules will be more misused than for real regulation.

Wayforward

- There is a need to expedite the passing of the personal data protection bill, 2019 to protect the user data from being compromised.
- The Independent Authority may be appointed in consultation with the Leader of Opposition and Judiciary to ensure a neutral person for regulating the content.
- Judicial Commission to decide the definitions: The definitions should be precisely defined to avoid any controversy in future
- In the event that regulation is still thought to be essential, it must be enacted through legislation that is discussed in Parliament as opposed to relying on executive rule-making authority under Section 69A of the IT Act.

Mould your thoughts

1. Amendments to IT rules 2021 will ensure that “Constitutional rights of Indian citizens are not contravened by any big tech platform by ensuring new accountability standards. Critically Discuss. (250 words)

Approach to the answer.

- About IT rules 2021 relevance
- Amendments to the rules
- Need for amendment
- Significance of amendment
- Issues with the amendment
- Suggestions
- Wayforward and Conclusion.