

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

March 2, 2021

A new set of rules notified by the central government mandates online media as well as OTT platforms to follow the existing content codes meant for television and print media, and to set up a grievance redressal structure that will look at any violation of the rules. The rules, which seek to regulate digital news media and video streaming platforms, borrow heavily from the existing regulations and the structure governing the television media, including the content codes and the grievance redressal structure.

In news: Govt Notifies New OTT Rules And Code For Digital, Social Media Apps

Placing it in syllabus: Law & Policy

Dimensions

- What are these rules?
- Provisions on OTT
- Provisions on intermediaries
- Importance
- Criticisms

Content:

What are these rules?

- Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 mandates online media as well as OTT platforms to follow the existing

content codes meant for television and print media, and to set up a grievance redressal structure that will look at any violation of the rules.

- The Rules have been framed in exercise of powers under section 87 (2) of the Information Technology Act, 2000 and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules 2011.
- Part- II of these Rules shall be administered by the Ministry of Electronics and IT, while Part-III relating to Code of Ethics and procedure and safeguards in relation to digital media shall be administered by the Ministry of Information and Broadcasting.

Provisions on OTT

- The OTT platforms will be required to follow the basic laws of the land while streaming content.
- They will also have to set up the same three-tier grievance redressal mechanism like the digital media platforms.
- The self-regulatory bodies in case of online curated content can direct the publisher to reclassify ratings of relevant content, make appropriate modification in the content descriptor, age classification and access control measures, and edit synopsis of the relevant content.
- The rules mandate OTT platforms to classify their **content into five age-based categories** – U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult), and implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as “A”.
- According to the rules, the platforms will have to put in place other access control mechanisms, prominently display the classification rating specific to each content or programme – together with a content descriptor informing the user about the nature of the

content.

- Both **digital news media and OTTs operating in India will have to inform the I&B Ministry about the details of their entity**, and also publish periodic compliance reports every month mentioning the details of grievances received and action taken, the rules stated.

3-tier 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 resolving complaints from the users or victims.

Level 1 – Self Regulating Mechanism at the company level itself

- Any complaint regarding any violation will first be attempted to be addressed at the company level itself.
- Every digital news company to set up a grievance redressal mechanism and appoint a ‘Grievance Officer’ based in India.
- The organisations will have to ensure that this officer takes a decision on every grievance received by it within 15 days, and communicate the same to the complainant within the specified time.

Level 2 – Self Regulating Mechanism for Appeals

- If the complainant is not satisfied with the response of the company, the complaint can be escalated to an **appellate tier**, which would be a **self-regulatory body**.
- The rules stated there may be one or more self-regulatory bodies.
- This body will be an **independent body constituted by publishers or their associations**.
- It will address grievances, which have not been resolved by the publisher within the specified period of 15 days.

- the self-regulatory body will be **headed by a retired judge of the Supreme Court, or a high court, or an independent eminent person** from the field of media, broadcasting, entertainment, child rights, human rights or similar other relevant fields.
- The body – with a **total of six members** – will have to register itself with the I&B Ministry within 30 days of its constitution.
- It will be empowered to issue warning, censuring, admonishing or reprimanding the publisher or ask the publisher to issue an apology, requiring the publisher to include a warning card or a disclaimer.

Level 3 – Oversight Mechanism

- In case of any content where the Level 2 self regulatory body is satisfied that there is a need for taking action to delete or modify the content to prevent incitement to the commission of a cognisable offence relating to public order, or others, it can refer such content to the ministry for consideration by the **oversight mechanism for action.**
- The oversight mechanism will **include an inter-ministerial committee formed by the government**, and this will be the third and last tier of the grievance redressal structure.
- In case a publisher fails to comply with the guidance or advisories of the self-regulating body within the specified time, the latter is empowered to refer the matter to the oversight mechanism of the government within 15 days after the specified date.
- **Under the third tier or the oversight mechanism, the ministry will also publish a charter for self-regulating bodies, including Code of Practices.**
- The inter-ministerial committee can warn, censure, admonish or reprimand a publisher or such entity; or requiring an apology by such entity, delete or modify

content to prevent incitement to the commission of a cognisable offence relating to public order or recommend action such as blocking a specific piece of content.

- The I&B secretary will take a final call on the decision of the panel, based on which an authorised officer will direct the publisher to delete or modify or block the content concerned.

Provisions on intermediaries

Two Categories of Social Media Intermediaries:

- the Rules make a distinction between social media intermediaries and significant social media intermediaries
- According to the rules, this has been done to encourage innovations and enable growth of new social media intermediaries without subjecting smaller platforms to significant compliance requirements.
- This distinction is based on the number of users on the social media platform.
- Government is empowered to notify the threshold of the 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.

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.

Ensuring Online Safety and Dignity of Users, Specially 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.

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 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 marks of verification.

Giving Users An Opportunity to Be Heard:

- In cases where significant social media intermediaries remove or disable 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 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.

Importance:

- The Digital India programme has now become a movement which is empowering common Indians with the power of technology.
- The extensive spread of mobile phones, Internet etc. has also enabled many social media platforms to expand their footprints in India.
- These social platforms have enabled common Indians to show their creativity, ask questions, be informed and freely share their views, including criticism of the Government and its functionaries.
- Proliferation of social media, on one hand empowers the citizens then on the other hand gives rise to some serious concerns and consequences which have grown manifold in recent years.
- These concerns have been raised from time to time in various forums including in the Parliament and its

committees, judicial orders and in civil society deliberations in different parts of the country.

In recent times some very disturbing developments are observed on the social media platforms. They include:

- Persistent spread of fake news has compelled many media platforms to create fact-check mechanisms.
- Rampant abuse of social media to share morphed images of women and contents related to revenge porn have often threatened the dignity of women.
- Misuse of social media for settling corporate rivalries in blatantly unethical manner has become a major concern for businesses.
- Instances of use of abusive language, defamatory and obscene contents and blatant disrespect to religious sentiments through platforms are growing.
- the increasing instances of misuse of social media by criminals, anti-national elements have brought new challenges for law enforcement agencies.
- These include inducement for recruitment of terrorists, circulation of obscene content, spread of disharmony, financial frauds, incitement of violence, public order etc.

It was found that currently there is no robust complaint mechanism wherein the ordinary users of social media and OTT platforms can register their complaint and get it redressed within a defined timeline.

Lack of transparency and absence of robust grievance redressal mechanisms have left the users totally dependent on the whims and fancies of social media platforms.

The rules address the growing concerns around lack of transparency, accountability and rights of users related to digital media

Criticisms:

Stifle Freedom of Expression:

- Experts fear this will lead to a 'big brother' situation which will stifle not just creativity, but freedom of expression.
- virtually all content available on the internet, not just web serials but news and opinions, now come under government monitoring.

Social Media: Fears of Over Censorship:

- The new Rules do is provide stricter and wide-ranging obligations on intermediaries for proactive monitoring of content.
- The fear of legal liability or action could lead to over-censorship of content.

Social Media: Unproven AI to Monitor Content

- The news rules require social media to "deploy technology-based measures, including automated tools" to filter out objectionable content like child sexual abuse.
- However, as history has shown, such tools not only suffer from major accuracy problems but also can lead to function creep.
- Coding biases in the development of AI often lead to discrimination, inaccuracies, and a lack of accountability and transparency.
- Automated forms of censorship and surveillance could disproportionately impact users' freedom of speech and expression.

Messaging App: End-to-End Encryption at Risk

- The rules also have a "traceability" requirement which mandates significant social media intermediaries like WhatsApp to "enable the identification of the first

originator of the information on its computer resource.”

- This requirement constitutes a direct attack on the privacy of users by requiring encryption to be broken by messaging platforms such as WhatsApp.
- Encryption becomes even more important now as more of personal data being aggregated and analysed at a scale that was never possible before.

Gag on online news Media:

- Online news media, especially independent and smaller publications, has anyway come under intense scrutiny of the State in one form or the other.
- The rules open the way for increased scrutiny as well as increased costs of compliance and may lead to gagging of free and unhindered news reporting.

Mould your thought: Critically evaluate the provisions of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ***Approach to the answer:***

- Introduction
- Write the main provisions of the rules briefly
- Discuss their importance
- Mention the criticisms
- Conclusion