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Positive and Negative Aspects about the Information Technology Guidelines 2021: An Analysis

Introduction

In addition, the rules 2021 for the exercise of competences provided for in section 87(2) of the Information Technology Act, 2000 and in the supersession of the Digital Media Act have been framed in the midst of increasing concerns over lack of transparency, responsibility and rights of digital media users as well as after elaborate consultations with the public and stakeholders.

During the completion of these Rules, the Ministries of Electronics, IT, and the Ministry of Information and Broadcasting both held extensive consultations with each other to ensure a harmonious, soft-touch monitoring mechanism for social media, digital media and OTT platforms etc.

The Ministry of Electronics and IT administers Part-III of this Regulation, while the Minister of Information and Broadcasting administers Part-III of these Regulations relating to the Code of Ethics and procedures and safeguards in relation to digital media.

Background:

Digital India is now a movement that empowers the power of technology for common Indians. Many social media platforms have also expanded their footprint in India thanks to the extensive spread of mobile phones, the Internet etc. Common people also make very important use of these platforms. Some portals, which publish analysis about social media platforms and which

have not been disputed, have reported the following numbers as user base of major social media platforms in India:¹

- WhatsApp users: 53 Crore
- YouTube users: 44.8 Crore
- Facebook users: 41 Crore
- Instagram users: 21 Crore
- Twitter users: 1.75 Crore

These social platforms have enabled common Indians to demonstrate their creativity, to pose questions, to be informed and to freely share their points of view. As a key element of democracy, the government recognises and respects all Indians' right to criticise and disagree. The government welcomes social media companies to operate and do business in India and earn profits. Indian society is the world's biggest open Internet society. Nevertheless, they must be responsible for India's Constitution and laws.

Proliferation of social information gives citizens authority, on the one hand, and has led to major concerns and effects in recent years, on the other. These concerns have been expressed from time to time in different forums in different parts of the country, including in Parliament and its committees, the judicial authorities and civil society debates. These concerns are also raised throughout the world and become a global issue

Late developments on social media platforms have been highly disturbing. Many media platforms were constantly spreading false news to create mechanism of fact-checking. Rampant abuse of social media by sharing morphic images of females and porn content has often jeopardised women's dignity. Misuse of social media in an undeniable way to settle corporate rivalry has become a major concern for companies. There are growing instances of abusive use of language, diffamation and obscene contents and blatant disrespect for religious feelings.

Therefore The Ministry of Electronics and Information Technology, accordingly made a detailed statement of the "resolve of the Government to strengthen the legal framework and make the social media platforms accountable under the law". MeitY then prepared the draft Information Technology (Intermediary Guidelines) Rules 2018 to replace the 2011 rules.²

¹ <https://pib.gov.in>

² "Comments / suggestions invited on Draft of "The Information Technology [Intermediary Guidelines (Amendment) Rules] 2018"

Nevertheless this amendment was not found to be as effective as it should have been, therefore In relation to the [Prajawala](#)³ case, on 11 December 2018, the Supreme Court of India observed that "the Government of India may frame the necessary Guidelines / SOP and implement them within two weeks so as to eliminate child pornography, rape and gang rape imageries, videos and sites in content hosting platforms and other applications."

Consultations:

Draft Rules were prepared by the Minister of Electronics and Information Technology (MEITY), and public comment was requested on 24/12/2018. MEITY has received 171 comments from individuals, civil society, industry and organisations. Comments There have also been 80 counter comments to those comments. These remarks were analysed in detail and there was also an inter-ministry meeting and these Rules were finalized accordingly.

POSITIVES OF THE RULES:

The Rules of Procedure must be credited for duties such as:

- Removal of intimate images within 24 hours of non-consensual use,
- Reports of compliance published to improve transparency,
- Development of a content deletion dispute resolution mechanism,
- Add a label to user information to see whether content is advertised, owned, sponsored or controlled exclusively.

Associated Issues with the Rules

- **From: Rules Ultra-vires to the IT Act.** The IT Act 2000 has been extended to cover digital news media under the regulatory field without legislative action; it has to be taken with great concern.
 - A plethora of new regulations that should normally only be triggered via legislation have been criticised.
- **Depriving fair recourse:** an intermediary should now receive orders from the government to declare contents in 36 hours.

³ Prajwala, vs Union Of India, Rep. By Its ... on 20 November, 2018

- In the event it disagrees with the Government order because of a strict timeline it deprives the intermediary of the fair recourse.
- **Free speech: the Rules** put freedom of speech under pressure by establishing the government as the ultimate adjudicator for objectionable online speech.
- **The issue of Traceability.** Until then the social media platforms were immune to the intermediary's failure to access the content of their messages by users receiving from end-to-end encryption.
 - This mandatory traceability requirement will break the immunity and weaken the privacy security of these discussions.
 - The threat here is not just privacy, but also the extent to which the security of space is deprived
- **Counterproductive in the absence of the Privacy Act:** in any country where people do not yet have the data protection law to take care of excesses committed by any party, the data could be counter-productive.
- **Compliance Burden:** The rules establish for the intermediaries, in order to obtain the Indian resident nodal officers, compliance officials and complaint officers, futile additional operational costs. This could not favour many small digital organisations and could open the doors to all sorts of intervention.

Way Forward

- **Uniform law enforcement:** Regulations are important to the scheme and nobody advocates free access to digital platforms.
 - In addition, there are already laws in place to combat illegal content. Your uniform application is what is required.
- **Deliberating with stakeholders:** The new rules do indeed have a lot of problems, but the main issue was that without much public consultation they have been introduced.
 - A new publication of the White Paper is the solution to continuing criticism of these Regulations.

- **Statutory backing:** If regulation is still considered necessary after that it must, instead of relying on executive powers, have to be implemented via legislation that is debated in Parliament.
- **Data Protection Law:** Sharing platforms could prove counterproductive in a country where the citizens do not yet have privacy law to protect themselves against any party's excesses.

Conclusion

The Supreme Court had raised 'the freedom to circulate our views as the lifeblood of all democratic institutions' in the case of Life Insurance Corpn. From India to Prof. Manubhai D. Shah (1992). In this context, the CII, FICCI, and the US-India Business Council have sought a 6-12-month extension of compliance. This offers the Government an opportunity to listen to the industry and also to throw out the rule-making system.