

Information Technology Rules, 2021

The Central Government enacted the Information Technology (Guidelines For Intermediaries And Digital Media Ethics Code) Rules, 2021 in February 2021. The Rules largely cover OTT platforms and social media. In this article, you can read all about the new Information Technology Rules, 2021, which is an important topic for the [UPSC exam](#).

New Information Technology Rules

The new Rules have been passed under Sections 69A(2), 79(2)(c) and 87 of the [Information Technology Act, 2000](#). These new rules supersede the previously enacted Information Technology (Intermediary Guidelines) Rules 2011.

- The Rules aim to provide a robust complaint mechanism for the users of social media and over-the-top (OTT) platforms to address their grievances.
- They place special emphasis on the protection of women and children from sexual offences on social media.
- The rules stress the point that online content publishers and social media intermediaries should follow the Constitution of the country and subject themselves to domestic laws.
- With these rules, India joins other international regimes that have provisions for digital media regulation and provides a comprehensive mechanism for the protection of digital media consumers.

IT Rules Background

In 2018, the Supreme Court had observed that the Indian Government may frame necessary guidelines to eradicate child pornography, rape and gangrape imageries, videos and sites in content hosting platforms and other applications.

- In 2020, an Ad-hoc committee of the Rajya Sabha submitted its report on the issue of social media pornography and its effect on children and society as a whole. The report recommended tracing the originator of such content.
- In 2020, the GOI also brought OTT platforms under the ambit of the Information and Broadcasting Ministry.

New Guidelines for Social Media Intermediaries

The new rules classify social media intermediaries into two categories:

1. Social media intermediaries
2. Significant social media intermediaries

The above classification is based on the user size and once it has been defined through the notification of the Government, it would act as the threshold between the two. This is because there are additional compliance measures for significant social media intermediaries given the large number of users and the volume of content they process.

What are internet intermediaries?

Internet intermediaries can be described as entities that facilitate access to the internet or services on the internet (Association Progressive Communications 2014). For example, internet service providers, social media networks, search engines, etc. Generally, the intermediaries adopt a passive approach to the content they provide or host (unlike book publishers). Since they generally do not have editorial control over the content, countries are encouraged to enact safe harbour protections which offer immunity to intermediaries from criminal liability. In India, the safe harbour provisions have been defined under Section 79 of the IT Act.

- Due diligence to be followed by intermediaries under the new rules
 - According to the new rules, in case due diligence is not followed by the intermediary, the safe harbour provisions would not apply to them.
- Mandatory grievance redressal mechanism
 - Intermediaries shall appoint a Grievance Officer to deal with complaints and share the name and contact details of such officers.
 - This officer should acknowledge the complaint received within 24 hours and resolve the issue within 15 days.
- Ensuring online safety and dignity of users
 - Intermediaries should remove or disable, within 24 hours of the complaint received, content that displays partial or full nudity, sexual act, morphed images, etc.
 - Complaints of such nature can be filed either by individuals or any person on behalf of the individuals.
- Additional due diligence for significant social media intermediaries
 - They have to appoint a Chief Compliance Officer, a Nodal Contact Person and a Resident Grievance Officer, and all these officers should be Indian residents.
 - They should publish a monthly compliance report detailing the complaints received.
 - Establishing the identity of the originator of the message/content
 - Such intermediaries offering services chiefly in the nature of messaging shall enable identification of the first originator of the information.
 - The purpose of this identification is for the 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 in relation to rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.
 - Here, the social media intermediaries offering messaging services will have the responsibility to help law enforcement agencies identify and track the first originator of any contentious or problematic information.
 - This can only be executed through an order of a competent court or the Competent Authority under Section 69 of the Act and must only be employed as a measure of last resort.
- Unlawful information removal
 - 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.

New Guidelines for OTT Platforms, News Publishers & Digital Media

Over-the-top (OTT) Platforms

- The new rules call OTT platforms ‘publishers of online curated content’.
- They would have to self-classify the content into five categories based on age.
 - U (Universal)
 - U/A 7+
 - U/A 13+
 - U/A 16+
 - A (Adult)
- OTT platforms would be required to provide parental lock systems for content classified U/A 13+ or higher, and have age verification mechanism for content classified as ‘Adult’.
- The rating for the content should be prominently displayed before the programme starts so that users can make informed decisions based on suitability. Along with the rating, the content’s description should also be provided with a viewer discretion message if applicable.

News Publishers

- Publishers of news on digital media should observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act 1995 in order to provide a level playing field between the offline (Print, TV) and digital media.

Grievance redressal mechanism

- A three-level grievance redressal mechanism has been mandated with different levels of self-regulation. They are:
- **Level-I: Self-regulation by the publishers**
 - Publisher should appoint a Grievance Redressal Officer who is a resident of India.
 - This officer should take his/her decision on complaints within 15 days.
- **Level-II: Self-regulation by the self-regulating bodies of the publishers**
 - The self-regulating bodies of the publishers should register themselves with the Ministry of Information & Broadcasting.
 - One publisher can have more than one self-regulating bodies.
 - Such bodies would be headed by a retired judge of the Supreme Court, a High Court, or an eminent independent person and shall not have more than six members.
 - This body should oversee that the publisher adheres to the Code of Ethics.
 - The body will also address grievances that are not resolved within 15 days by the publisher.
- **Level-III: Oversight mechanism**
 - An oversight mechanism will be framed by the Information and Broadcasting Ministry.
 - It shall publish a charter for self-regulating bodies, including Codes of Practices.
 - It shall also establish an Inter-Departmental Committee for hearing grievances.

New IT Rules Concerns

Some of the concerns expressed about these new Rules are mentioned below.

- Some people say that instead of soft-touch monitoring, the government has opted for predatory new rules.

- The mandate that social media intermediaries should help authorities trace the first originator of contentious messages can be problematic, experts opine. Tracking the first originator would entail storing sensitive information or breaking end-to-end encryption protocol, moves that could weaken overall security. Here, the users' right to privacy could be potentially violated. The issue gets even more complicated if the message originator is outside India.
 - While many laud the steps to mitigate and penalise child sexual abuse online, some worry that the lack of nuanced automated tools to filter material could have a deleterious effect on free speech.
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