

New Social Media Rules: Crossed Swords between State and Intermediaries

The data privacy affair has hiked up to a fever blast amidst the clash between the government and the social media giants, WhatsApp and Twitter. Twitter has forthrightly criticised the government's attempt to enforce the Intermediary Guidelines and Digital Media Ethics Code 2021, quoting it to be against the spirit of 'free speech and 'fair communication'. Meanwhile, WhatsApp has moved to the Delhi High court referring that the government's new rules are a breach of privacy rights in the constitution. While the Centre in its strong counterargument said that the right to free speech cannot be unrestricted.

The new rules introduced in February by the Ministry of Electronics and Information shall consider social media companies with more than 50 lakh register uses as 'significant social media intermediaries'.

The IT Rules makes it mandatory for all the social media platforms to constitute grievance redressal and compliance mechanism with the appointment of a grievance officer, chief compliance officer and a nodal contact person to ensure that the rules are followed and to co-ordinate with the Indian law enforcement agencies. The social media players will also be required to submit a monthly report on complaints received from users and subsequent action taken. Instant messaging platforms like WhatsApp are now required to make provisions to trace the 'first originator of information' in case of an objectionable message. The non-compliance with any of the provisions of the new IT Rule shall take away the protection provided to the social media intermediaries under section 79 of the Information Technology Act.

Section 79 was introduced in the IT act, following a case in November 2004 where, an IIT student posted a pornographic video clip for sale on the auction website, baazi.com. The crime branch of Delhi police at that time along with arresting the student also arrested the then chief executive officer of the website, Avinash Bajaj and the manager, Sharat Digumarti.

The officials of the website were later released from the jail, following which Bajaj filed a case arguing that the transaction was between the buyer and the seller without any intervention from the website. The Delhi High court in 2005 held Bajaj and his website liable under section 85 of the IT Act, which says that when a company commits an offence under the IT act, all executive in charge then should be held liable and proceeded against. However, this decision was reserved by the supreme court in 2012 stating that the officials or the website could not be held liable since they were not directly involved in the aforesaid transaction. This decision formed the base for amending the IT Act to introduce section 79.

India with close to 700 million internet users is among the top three markets and its digital policy is being closely followed by the global community. Countries like Australia are now forcing companies such as Facebook and Google to share the revenue generated with news publishers. Following the new rules, messaging apps will have to dilute end to end encryption to track down the first originator of flagged messages. Platforms like Facebook will likely have to create a new user interface that will give users the choice to verify users through authorised KYC processes and exhibit a verification tag for those who look for it. WhatsApp will have to plan means of conveying the verification tag and Twitter will have to uprise the verified blue tick feature for anyone who wants it. Significant social media intermediaries will also have to hire large employees in India to fulfil the directive of removing the content in 24 hours in case of users and 36 hours from government agencies along with altering the technological architecture to build in automated tools to set apart obscene content.

However, experts like Justice BN Srikrishna retired Supreme Court judge and head of the expert committee on

data protection constituted by the Ministry of Electronics and Information Technology in 2017, consider such heavy restrictions not legal unless backed by legislation passed by parliament. Moreover, it will be like 'inroads into the fundamental rights of privacy which cannot be snuck in via ministry guidelines.

The latest dead lock between the government and Twitter over the latter tagging certain posts by BJP spokesman as manipulated media forced IT and Law Minister, Ravi Shankar Prasad to explicitly clear the intention of the government that social media companies are free to earn profit and do business in India but they cannot be allowed to skip the accountability arising from Indian laws and Constitution and following Laws of America in Indian is unacceptable. The present IT rules will strengthen the cyber sovereignty of India and will help strengthen National interest by allowing the government better control over data privacy and usage of their citizens.



(Prof Mahima Birla)

Editor in Chief