

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

written by Nivetha George | February 27, 2021



The inception of online media and the mere scope of its extended reach has proven to be a boon in today's fast paced digitally interconnected environment. It is indisputable that the content made available online has narrowed the transmission gap of communication and knowledge sharing globally, and has provided a wide reach for communities worldwide to interconnect and collaborate.

However, over the past few years, the cost of its misuse has posed severe threats, challenges to regulatory agencies internationally. In an effort to curb untoward and unaccounted practices in the Indian digital sphere, the Government of India, on February 25, 2021, paced into action and brought digital media platforms under a stringent regulatory net, by releasing its Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 ("Digital Media Ethics Code" or "Code")^[1].

Digital Media Ethics Code

The Code defines "Digital Media" as "digitised content that can be transmitted over the internet or computer networks". The Government's new Digital Media Ethics Code shook up the technology regulation space as it brings under its purview all OTT streaming services, digital news outlets, and social media platforms including social media giants such as Facebook, Instagram and Twitter. Social media, content steaming and OTT platforms' are now mandated to have a regulatory provision that includes voluntary verification of its users on the content shared or displayed online and mandates intermediaries to exercise "due caution and discretion" in relation to general principles surrounding online curated content.

The Code also mandates the appointment of compliance officers, round-the-clock nodal point of contact personnel and resident grievance officers, in order to offer immediate assistance or clarification to regulatory authorities. These rules are strengthened and read in parallel with other regulatory conditions imposed on the content provider. Applicability of the Code:

The Code applies to entities, wherein if such entity (a) operates in the territory of India, (b) conducts the systematic business activity of making its content available in India, which is targeted at Indian users. As per the new Code, the digital media platforms will now have to reveal the information

of the originator of any inappropriate message or tweet as the case may be. If the originator is based outside India, the platforms will be asked to share the information of the person who started/ shared it within India. This move challenges the end-to-end encryption assurance given by online messaging platforms like WhatsApp.

"An applicable entity shall take into consideration the following factors, when deciding to feature or transmit/publish/exhibit any content, after duly considering the implications of any content as falling under the following categories, and shall exercise due caution and discretion in relation to the same, content which affects the sovereignty and integrity of India, content which threatens, endangers or jeopardises the security of the State, content which is detrimental to India's friendly relations with foreign countries."

The Code cautions online content platforms, to exercise diligence in the content portrayed in such platforms, and to ensure that there is a stringent filter towards content that impacts India's sovereignty and integrity.

The Code states that "An intermediary, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the appropriate Government or its agency under clause (b) of subsection (3) of section 79 of the IT Act, shall not host, store or publish any information prohibited by any law in relation to the interests of the sovereignty and integrity of India: the security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence, or information which violates any law for the time being in force."

Any content uploaded on any social media against the dignity of a user, content involving nudity, im-personification, etc, must be removed within 24 hours of the complaint being raised. The platforms are further asked to formulate a grievance redressal mechanism to ease the process of complaints by a user. Any grievance raised by a user must be registered within 24 hours and should be disposed of in 15 days. Significant Social Media Intermediaries will be required to employ a Chief Compliance Officer, a Nodal Contact Person for 24x7 coordination, and a Resident Grievance Officer.

The Code further imposes regulations and states that, "The rules and regulations, privacy policy or user agreement of the intermediary shall inform the user of computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that (i) belongs to another person and to which the user does not have any right,

(ii) is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws of India,

(iii) is harmful to minors, (iv) infringes any patent, trademark, copyright or other proprietary rights,

(v) violates any law for the time being in force, (vi) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact,

(vii) impersonates another person, (viii) threatens the unity, integrity, defence, security or Sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any

cognisable offence or prevents investigation of any offence or is insulting any foreign States,

(ix) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource, (x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person."

By the introduction of this language, the Code prompts a strong regulatory view towards broadly covering and bringing into its ambit a wide array of misuses currently prevalent in such online content. It is essential to note here that the

Code comes as a welcome gesture to clarify and structure previously untouched grey-areas of the prevailing social media culture.

Along with other applicable regulations, the Code also provides users whose content has been flagged and removed an adequate opportunity to be heard and be informed of the cause for removal of such unlawful content.

With regard to OTT platforms, they will be required to implement a self-classification of age-related content. Censor Board would regulate the content to be broadcasted on various OTT platforms while parental locks must be in place ensuring that children do not see inappropriate content. A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation.

Level-I: Self-regulation by the publishers;

Level-II: Self-regulation by the self-regulating bodies of the publishers;

Level-III: Oversight mechanism.

The self regulatory body must be headed by a retired High Court or Supreme Court judge. If the content in question is believed to be inappropriate by this body, the same shall be sent to a government committee for further actions.

"Social media is welcome to do business in India... they have got good business. They have got a good number of users and also empowered ordinary Indians. But users must also be given a proper forum for resolution of their grievances in a time-bound manner against abuse and misuse of social media," IT minister Ravi Shankar Prasad in a press conference.

Effect: The Rules will come in effect from the date of their publication in the gazette, except for the additional due diligence for significant social media intermediaries, which shall come in effect 3 months after publication of these Rules.

While on one hand, the recent amendments may aid in the control and regulation of the spread of fake news, inappropriate content and misuse of information across digital media platforms and put a stop to the circulation of indecent representation of women and children, the restrictions put on the publishers of digital content, may also impose a strong contradiction towards the Right to Freedom of Speech provided under Article 19. The Indian Constitution doesn't allow the executive bodies to decide upon the suitability of content published by media.

The Code will be construed as a game changer to the mode and manner in which India has viewed its online content. The cause and effect of this Code would be a welcome educator in better understanding and regulating the digital space.

Contributed By- Nivetha George, Associate - Corporate

& Vartika Dixit - Editor

King Stubb & Kasiva,

Advocates & Attorneys

Click Here to Get in Touch

New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi

Tel: +91 11 41032969 | Email: info@ksandk.com

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