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Information Technology Rules, 2021

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This article is based on “**The new media rules are a tightening noose**” which was published in The Hindu on 13/03/2021. It talks about the issues related to recently notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Recently, the Ministry of Electronics and Information Technology has notified **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**. These new rules broadly deal with the regulation of social media and over-the-top (OTT) platforms and digital news.

These rules seek to provide compliance of law and a grievance redressal mechanism for users of social media platforms, messaging applications, streaming services as also digital news publishers.

The government envisages controlling hate speech which gets proliferated through these platforms and threatens national security. However, critics pointed that the question of stricter regulation of digital media will lead to restriction of free speech and undermining of democracy.

Need for Digital Media Regulation

- **Ensuring Compliance to Domestic Laws:** Major digital media platforms operating in India are of foreign origin.
The rules emphasize the need for these social media intermediaries and online content providers, whether for entertainment or informative purposes, to strictly comply with the Constitution and domestic laws of India.
- **Setting Accountability:** It extends its approach to instill a sense of accountability against misuse and abuse by social media users and is the first of its kind to bring social media use under the regulatory framework of the Information Technology Act.
- **Bringing Uniformity:** There are many laws to combat unlawful content that are already in place. The recent rules envisage bringing their uniform application.

- **Social Imperative:** It lays a special emphasis on the protection of women against the progression of sexual offenses on social media. It also envisages checking the proliferation of fake news and hate speech.

Associated Issues with the Rules

Distortion of the Idea of Self-regulation: For digital publishers of news and current affairs as well as video streaming services, a three-tier structure for grievance redressal has been mandated.

- With an inter-ministerial committee of government officials in effect becoming an appellate authority over the self-regulatory exercise.
- This would be self-regulation by the media organization and the industry at the government's pleasure.

Three-Tier Redressal Mechanism

The notified rules set out an elaborate time-bound three-tier process whereby each and every such grievance:

- First handled at the level of the portal itself by its own grievance officer.
- If not satisfactorily settled, it passes on to the self-regulatory body of the sector or industry.
- If yet not resolved, moves further up to an inter-ministerial oversight committee of the central government.
- **Compliance Burden:** The sheer process of such grievance handling can impede the operations of a relatively smaller digital venture in the news and current affairs space.
A measure like this, moreover, jeopardizes the very sustenance of the already financially straitened and functionally beleaguered digital news media.
- **Potential Misuse:** Apart from imposing a compliance burden on digital publishers, this also opens the floodgates for all kinds of interventions.
 - Any criticism of the ruling party or government could trigger an orchestrated avalanche of grievances.
 - This is more worrisome in the already vitiated climate of political and religious majoritarianism.
- **Arbitrary Powers:** The notification gives the Secretary, Ministry of Information and Broadcasting, ad hoc emergency powers to block any content the government considers problematic even without such token procedure.
Also, a negative list of content that shall not be published would be encountered under law as reasonable restrictions to free speech.

- **Eroding Pillars of Democracy:** The freedom of the press is an implicitly prescribed fundamental right in the Articles 19(1)(a) of the Indian Constitution. It gives every citizen the right to free speech and expression.
 - These freedoms have in practice become constitutive and definitive of the fourth estate in the country.
 - As any government presence could have a chilling effect on free speech and conversations, these rules weaken the dynamic relationship of checks and balances vis-à-vis the Media and other three pillars: the executive, the legislature, and the judiciary.
- **Problems in Tracking the First Originator:** The rules require messaging apps such as WhatsApp and Signal to trace problematic messages to the originator. However, it raises uneasy questions about how such apps will be able to adhere to such orders, as their messages are encrypted end-to-end.

Way Forward

- **Deliberating with Stakeholders:** The solution to ongoing criticism about these rules is to start afresh with the publication of a white paper.

The white paper should clearly outline the harms that are sought to be addressed through regulation of online video streaming platforms and meaningful public consultation which is not limited to industry representatives.
- **Statutory Backing:** After that, if regulation is still deemed to be necessary, then it must be implemented through legislation that is debated in Parliament instead of relying upon executive rule-making powers under Section 69A of the IT Act.
- **Expediting Data Protection Law:** Making platforms share more information could prove counterproductive in a country where the citizens still do not have a data privacy law to guard themselves against excesses committed by any party.

In this context, there is a need to expedite the passing of the personal data protection bill, 2019.

Conclusion

Regulation has an important place in a liberal democracy. However, given an environment where people are sensitive to content, the regulatory mechanism with a scope of strong government intervention could become an operational nightmare and hamper creativity & freedom of expression.

Drishti Mains Question

The question of stricter regulation of digital media will lead to restriction of free speech and undermining of democracy. Analyze the statement in light of recently notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
