



Objections to New IT Rules

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Why in News

The latest norms for **social media intermediaries** in the **New IT Rules 2021** have drawn objections from privacy experts and lawyers.

The **Supreme Court** (SC) had in 2015 struck down **Section 66A** of the Information Technology Act finding it contrary to both **Articles 19** (free speech) and **Article 21** (right to life) of the Constitution.

Key Points

- **Suspecting Everyone:**

Asking ‘significant social media intermediaries’ to have **automated tools to proactively track certain words** is akin to “**active hunting**”, and will “**make suspects out of people**”.

For example: For track words like **interfaith marriage or love jihad**, its like criminalising an entire population **as most of the people must be using these words in their normal discussions**. This way, an entire citizenry is being made a suspect.

- **Against Right to Privacy:**

According to the New IT Rules of 2021, significant social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information.

- This provision would **end up weakening overall security, harm privacy and contradict the principles of data minimisation** endorsed in the IT Ministry’s **Draft Data Protection Bill 2019**.
- Identification of the first originator will **require end to end encryption to be broken**, thereby compromising the fundamental technology on which most apps are based on.
- Moreover, owing to the volume of data, encryption has become more important now as more personal data is being aggregated and analysed at a scale that was never possible before.

Data Minimisation

Data Minimisation is a principle that states that **data collected and processed should not be held or further used unless this is essential for reasons that were clearly stated in advance** to support data privacy.

It will “**undermine the principles of open and accessible internet and the fundamental right of privacy** enshrined in the Constitution, particularly in the **absence of robust data protection law.**

- **For Example:**
 - It contains a provision **requiring significant intermediaries to provide the option for users to voluntarily verify their identities.**
 - This would likely entail users **sharing phone numbers or sending photos of government issued IDs to the companies.**
 - This provision will **incentivize the collection of sensitive personal data** that are submitted for this verification, which can then be also used to profile and target users
- **Right to Privacy:**
 - The **SC** described privacy and its importance in the landmark decision of **K.S. Puttaswamy v. Union of India in 2017** as a **fundamental and inalienable right** and attaches to the person covering all information about that person and the choices that he/ she makes.
 - The **right to privacy** is protected as an intrinsic part of the right to life and personal liberty under **Article 21** and as a part of the freedoms guaranteed by Part III of the Constitution.
- **Against Freedom of Expression:**

Automated forms of censorship and surveillance could **disproportionately impact users’ freedom of speech and expression**, suppressing creativity.

Article 19(1)(a) of the Indian constitution guarantees the **freedom of speech and expression.**
- **Over Censorship:**
 - The new rules provide stricter and wide-ranging obligations on intermediaries for **proactive monitoring of content.**
 - The **fear of legal liability** or action could **lead to over-censorship of content.**

- **Lack of Accountability and Transparency:**

- The news rules require social media to “deploy technology-based measures, including **automated tools (Artificial Intelligence (AI)) to filter out objectionable content** like child sexual abuse.
- However, as history has shown, **such tools not only suffer from major accuracy problems but also can lead to function creep.**

Earlier in 2020 an AI-powered tool **Genderify** designed to identify a person’s gender by analyzing their name, username or email address was shut down just a week after launch after it was blamed to be **biased**.

- **Coding biases** in the development of **AI** often **lead to discrimination, inaccuracies, and a lack of accountability and transparency.**

- **Gag on Online News Media:**

The rules open the way for **increased scrutiny as well as increased costs of compliance and may lead to gagging** of free and unhindered news reporting.

Source:IE