



Information Technology Rules, 2021 of India in dock! A Critical evaluation of the 'Guidelines for Intermediaries and Digital Media Ethics Code

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Abstract

When rules are challenged in courts, it becomes necessary to examine them critically. This review article tries to evaluate the guidelines and provisions the new Information Technology rules 2021 provide against objectionable user-generated content. From the value and trustworthiness perspective, the study evaluates whether these rules intend to bring government control or rather regulate the social media and digital news platforms or they make users and the tech giants more responsible in these changing times. This study also evaluates the worthiness of doubts raised on the alleged unconstitutionality of some of its provisions related to rights of free expression and privacy for millions of internet users in India. Based on the secondary data and sourced interview of the involved parties, this study tries to find out the relevance of these rules and also the reasons which compelled the Indian government to come out with this social media ethics code at this juncture and what are the ways ahead for the intermediaries operating in India.

Keywords: Social media; Digital media; Intermediary rules; User Generated content; Ethics; Critical appraisal

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Introduction

The 19-year girl Dananeer Mobin from Pakistan, who posted the sensational 5 seconds 'Pawri' video, was not aware that she would be mimicked by film stars like Ranvier Singh and politicians like India's Ruling Bharatiya Janata Party's chief JP Nadda but it was the power of social media that had done this too among many impossible it has done. There is little doubt that the said video was created for fun and thousands of its versions were also created for entertainment purposes only. The strength of social media platforms not only likes Instagram in this case but also intermediaries like Facebook, Twitter, Whatsapp, and Share Chat, etc., is celebrated by users all around the world. The problem, on the other hand starts only when obscene, derogatory, controversial, provocative, and defaming videos are posted and such mischievous content goes viral and disturbs the social order [1].

Social Media platforms especially Twitter was extensively used by some of the banned Khalistani organisations in India like Sikhs for Justice and Poetic Justice Foundations in inciting violence during the farmers' protest in India. Delhi Police is investigating the Toolkit case related to Republic Day violence in New Delhi

in 2021. The Bengaluru violence case of August 2020 is not very old, when a derogatory message was posted on Facebook to insult & provoke Hindu community and the riots ensued had shocked the otherwise peaceful city. NIA on February 2021 filed a charge sheet in this matter. Similarly the Gurugram's 'Bois Locker Room case' of May 2020 had generated massive headlines after a schoolgirl on social media alleged that she was sexually harassed by her classmate. After the girl shared the post in the Instagram friend group, the 17-year-old boy was abused and harassed. The boy had committed suicide the same evening after jumping from his Gurugram apartment. The police on March 2021 filed a charge sheet against the girl and her friend. The girl would face abetment to suicide trial in a juvenile court [2].

For governments the issue is not of the use of social media, the issue is of abuse and misuse of social media. The above were some of the examples of the misuse of social media platforms. Not only videos or pictures but the proliferation of any kind of misinformation builds a big problem for the governments and they use all the possible weaponry to curb it. According to the government of India, the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021,

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are also a tool against the propagation of misinformation by these social media platforms. Not only India, according to the International press institute, 17 countries including Singapore, Russia, and France have made laws against misinformation and fake news in the last 8 months of the year 2020. Moreover, these rules have come at a time when the US, the UK, and Australia are pushing Facebook, Whatsapp, Twitter, Instagram, and their likes to take responsibility for the content on their platforms. The rules notified in India on 25th February and implemented on 26th May 2021 are in three parts; first part provides for the definitions in the Rules; second part provides for due diligence by intermediaries; and third part provides for the Code of Ethics and Procedure and Safeguards in relation to digital/online media. In this study, which is based only on the secondary data, the researcher is critically looking at the second part i.e. the intermediaries or various social media platforms and the ethics code for them [3].

Internet Intermediaries: Definitions in the new rules

Intermediary- This definition was introduced by the Information Technology (Amendment) Act, 2008 ("Amendment Act"). "Who on behalf of another person receives stores or transmits that message or provides any service with respect to that message". **Digital Media-** "digitized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited or processed by-an intermediary; or a publisher of news and current affairs content or a publisher of online curated content [4].

Social media intermediary- "an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services, significant social media intermediary- "a social media intermediary having number of registered users in India, above such threshold as notified by the Central Government." **User-** "any person who accesses or avails any computer resource of an intermediary or a publisher for the purpose of hosting, publishing, sharing, transacting, viewing, displaying, downloading or uploading information and includes other persons jointly participating in using such computer resource and addressee and originator."

Salient Features of Digital Media Ethics code (related to intermediaries):

1. The three-level grievance redressed mechanism established for self-regulation to enforce the Code of Ethics: a grievance officer shall register the grievance within 24 hours and disposal in 15 days

Level-I: Self-regulation by publishers

Level-II: Self-regulation by the self-regulating bodies of the publishers like Chief Compliance Officer, Nodal Contact Person and a Resident Grievance Officer

Level-III: Oversight mechanism at government's level

2. Content involving nudity and morphed pictures of women will have to be removed in 24 hours.

3. Social media platforms will be required to disclose the first originator of mischievous tweet or message as the case may be within 72 hours when asked by the investigating and the cyber security agencies. This should be in relation to the sovereignty of India, the security of the state, relations with foreign states, rape etc.,

4. In urgent cases, the government will set up an oversight mechanism at its level to deal with a case where immediate action is required.

5. Publishers of news on digital media will be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act.

6. Social media platforms must have a provision for the voluntary verification mechanism of the users.

7. The Ministry of Information and Broadcasting will also publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.

Perspectives of Stakeholders on Intermediary Rules

Ravi Shankar Prasad, Ex-Information Technology minister, India

Ex Information Technology minister of India Ravi Shankar Prasad in his Interview in the Business Journal of March 20, 2021 said "Our government also appreciates the role of social media in empowering citizens. But, we have to protect the rights of users and so we have imposed four obligations on them. First, monthly reporting of resolution of grievances. Second, in case of "significant" platforms, a mechanism for voluntary verification of users. Third, removal of content within 24 hours, which impinge on national security, have morphed images of women, revenge porn being shown by jilted lover, etc. [5]. Last, if there is an issue concerning national security, sovereignty of India, projection of rape victim or defaming of women, and in some other defined categories, then you will have to disclose "khurafaat kisne shuru ki" (who started the mischief). We don't wish to see the content. I have to be upholder of the freedom of an individual, but I also have to be concerned about the dignity of India's women."

Prakash Javdekar, Ex-I&B minister, India

India's Ex I&B minister Prakash Javdekar, talking to ABP News on February 26, 2021 said "We have not placed any restrictions. There is Program Code and self-regulation for TV channels, we have asked OTT platforms to implement the same. We have not made any new law. OTTs new inventions and they did not have any system as of now. We are asking them to follow same systems of the TV channels. Similarly we have asked the digital news media to follow same ethics code which the newspapers are following. And the social media platforms like Facebook, Twitter and Whatsapp or others have to follow the grievance redressed system like others. There are many countries where all social media is banned, but we are allowing all and we are not putting any new restriction."

Will Cathcart, Head, Whatsapp

Whatsapp Head Will Cathcart while talking to journalist Alex Kantrowitz on March 05, 2021 during a podcast said "We have court cases in India fighting on encryption. So, we've explained this to the government. We've explained why we have concerns about it, we'll stand up, and continue to explain those concerns. Our hope is that we can find a way to end up with solutions that don't touch encryption," he said. The idea of traceability, he said, largely comes due to "concerns over misinformation".

Jack Dorsey, CEO, Twitter

Twitter CEO Jack Dorsey on February 26, 2021 stated "We agree many people don't trust us. Never has this been more pronounced than the last few years... And we aren't alone: every institution is experiencing a significant trust deficit, owning our mistakes and correcting, and reliability by following published principles and not wavering".

Ajit Mohan, India MD, Facebook

Facebook MD Ajit Mohan's statement published in The Times of India on March 23, 2021 says "We are absolutely respectful of local laws. For me, it is not either-or. The fact that we respect local laws is a given, and is non-negotiable,"

We are constantly trying to raise the bar in terms of making sure that we address the concerns, including those we have heard from governments from around the world and India, on the kind of content that is on our platforms. We want to limit and eliminate content linked to violence, or content linked to hate speech, or content that calls for violence on the ground. Our agenda is aligned."

"Both (free speech and safety) are important agendas for a company like ours, and a country like ours. We want to make sure that the canvas of free speech is as expansive as possible; including what is outlined in the Indian constitution. At the same time, there will be places where there are limits to that speech, for example when it comes to hate speech."

"It's not in our interests for that kind of content to float around on our platforms. And we want to make sure that the internet remains a safe platform for doing business while still reducing or eliminating the minority of users and behaviours that violate local laws or violate community standards."

Intermediary Liability Models throughout the World

The concept of intermediary liability has surfaced due to the distinctive and vast architecture of the internet. There are different viewpoints and approaches worldwide concerning the extent to which an intermediary should be held liable for the unlawful content generated by the users. Theoretically, these could be summarized in the form of three models namely –

1. Strict liability model: In the strict liability model, the intermediaries are held unconditionally & vicariously liable for all its user-generated content. Since it may be difficult to trace the actual perpetrators and to curb the instantaneous circulation of

unlawful content, many countries have found it convenient and effective to impose strict liability on intermediaries, which host, transmit and locate such information. Therefore, it is imperative that they monitor the content and ensure its compliance with the law [6].

2. Broad immunity model: While it is acceptable to argue that the architecture of the internet necessitates intermediary liability for control of unlawful activity, legislations have to accommodate the fact that they also play an indispensable function in ensuring free flow of ideas in information on the internet, and thus, requires some protection from liability. In the broad immunity model, they are given comprehensive, sometimes conditional, immunity from liability with respect to user-generated content. In this model, they are not required by the law to monitor the user-generated data for unlawful content.

3. Safe harbour model: In the safe-harbour model, the intermediaries are granted conditional immunity provided they fulfil some requirements as specified by the law. This model includes "notice-and-takedown" processes, which are procedures regarding the processing of content takedown requests to be followed by the intermediaries. The intermediaries may be instructed to have content filters in place so as to avoid hosting or transmission of unlawful content. The safe-harbour model of intermediary regulation is followed by the EU e-commerce directive, US Digital Millennium Copyright Act and the Indian Information Technology Act [7]. However, irrespective of the liability model followed, they are obliged to take down any unlawful content when instructed, via legal procedures.

Objectives

This Critical Review of the New Intermediary Rules intends:

1. To find the relevance of the new intermediary rules or to understand the circumstances which led to the new digital media policy?
2. To understand the value of these rules or the results that the government wants to achieve from the IT Rules 2021.
3. To understand why questions related to freedom of speech and expression being asked with respect to these ethics code.
4. To find out what are the ways ahead for the social media giants like Twitter, Facebook and YouTube after accepting the policy conditions.

Review of Literature

The Background and the Relevance of the study

The year 2021 started with the US Capitol Hill siege. By the time social media companies took action against users and groups spurring on the siege of Capitol Hill, culminating in the suspension of then U.S. President Donald Trump's accounts, it was too little too late. People of the US had to see what they had not seen since the year 1814. The government of India took note of the actions taken by Facebook and Twitter during and after the Capitol Hill incident. India was also going through one of the longest protests by Farmers around the capital New Delhi. So much was being discussed on social media platforms on these

protests. Twenty days after the Capitol Hill incident in the US, similar visuals were seen in New Delhi also when some protesters attacked the Red Fort situated at the heart of the national capital. New Delhi had seen violence once again after the CAA-related combustion in February last year. These violent visuals clouded the social media platforms ruining the image of the country. Based on the investigations by the Delhi Police, the Prime Minister of India had blamed international conspiracy behind the violence. On the other hand, despite the ten rounds of talks and agreeing to suspend the three farm laws for 18 months, the protesters were not ready to relent. The government and the ruling party raised questions about the identity of the protesters as not being farmers. Many new digital news channels were covering the whole issue extensively. After the arrest of Bengaluru-based activist Disha Ravi in the toolkit sharing with Environment Activist Greta Thunberg case, there was a debate on the freedom of speech and expression going on in the country. These protests had already resulted in the loss of more than 70 thousand crores to the economy. During the same time government of India had asked Twitter to first block 257 tweets and accounts and second ban additional 1178 accounts for alleged Khalistani and Pakistani links. Twitter initially on the grounds of freedom of expression resisted doing so but after the government's pressure, it relented to the demand. During the same time government was also under pressure to act on the OTT platforms also as a case was filed against the makers of the web series "Tandav" for "promoting enmity on grounds of religion". It was all happening on the backdrop of the many rounds of discussions which were going on at the government level for 2-3 years on regulations on social media and a policy like this was expected anytime soon but the toolkit case in farmer's protest and 'Tandav' web series case catalysed the new ethics code.

After the notification and then implementation of these rules, the government and the ruling party of the country are favouring it but experts say these rules infringe upon freedom of expression and privacy. The critics also say that these rules give the information and broadcasting ministry emergency powers to summarily take down content from digital platforms, including news websites, without giving a hearing to the publisher. The opposition too is raising questions of curbing the users' right to free speech. The freedom of speech and expression activists too are protesting the rules. On the other hand Editors' guild of India says that these rules have the potential to seriously undermine media freedom in India. The Delhi High Court on one hand issued notices to related ministries and on the other hand, Supreme Court said that these rules were mere guidelines and it lacked the teeth to punish violators of screening offensive content on OTT platforms. Social media giants too in the name of free speech and expression are critical about these rules. The digital news media say that they are following the ethics code, why are they being involved in these rules. Many also talk about the ambiguous conditions imposed or broad terms like 'public order' used in these guidelines create a scope for the government to entangle the digital news platforms. But the government has only one answer for all such questions that these rules will provide a level playing field to all the players.

Rules, Present Scenario and the Relevance

The Delhi police investigation on the Republic day Tractor rally violence says that the banned outfit Sikh for Justice (SFJ) joined hands with London-based Poetic Justice Foundation (PJF) to spread unrest in the country.

Not only the Republic Day Tractor rally violence investigations, other catalyst incidents like the Disha Ravi toolkit case and 'Tandav' web series case, which led to these new rules are under the jurisdiction of the courts. The farmers continued their protests against the three farm laws beyond 6 months days of blocking the borders. The government of India has kept a stern view on the social media giants because of what it says 'their double standards.' The Information-Technology minister Ravi Shankar Prasad said, "You support the police action in case of violence on the Capitol Hill in the US. We appreciate that. But when it comes to our pride, Red Fort, you have double standards, you stand with the aggressors. This double standard is simply unacceptable. You have to appreciate India's democracy and that means India's Constitution and the laws of India."

The encryption Vs Originator issue related to the Whatsapp, government's stand is also very clear. The IT minister says "Technology is changing so fast. Are we talking of rocket science? Moreover, I am not seeking to know the content; I only want to know the originator in case a post has become viral and is causing trouble."

On the freedom of speech and expression debate, the minister talks about reasonable restrictions which are part of Article 19(2) of the Constitution. "The Supreme Court has said that internet is integral to the right to free speech as provided in Article 19(1), therefore 19(2), with reasonable restrictions. They have been in place for over 70 years and there are several judgments on the sovereignty and integrity of India. We have only added the dignity of women to it because it has become a challenge in the age of social media. And no, we are not saying something vague. We respect people's right to speech, but they can't be oblivious to Article 19(2), which talks of reasonable restrictions."

On the risk of turning into a police state on social media, the IT minister says, "We only seek to stop a hash tag if it's causing trouble, and not to bring down an account. Those propagating against India, through fictitious accounts and hash tags, must pay for it because we cannot ignore any threat to India's security from terrorists."

According to The Times of India of March 5, 2021, the Congress and the Left parties on the other hand slammed the idea of 'government communication' to rein in criticism. Lashing out at the nine-member Group of Ministers' report to amplify the center's policies, programs, and achievements, AICC Spokesperson Supraja Shrinath alleged that this panel discussed the ways to control the media by 'giving something to the media' and 'color-coding the journalists' CPM chief Sitaram Yechury said, "So much focus on managing headlines, spin and PR, all this in the middle of a global pandemic, record and growing unemployment and economic collapse." The TOI report says that deliberations of this GoM began on June 14, 2020, and were intensified in the aftermath of the June 15 Galwan Valley clashes between

Indian and Chinese troops in the Leh-Ladakh region. Based on the report, the TOI wrote that the focus of the report identifying 10 big narratives of the government, disseminating factual news, curbing fake news, and projecting India's international image. The report was compiled following six meetings of the GoM and the ministerial interactions between media, industry chambers, and eminent personalities, contained recommendations including a proposal to identify a "strategy to neutralize people who are writing against the government without facts and set false narratives/spread fake news."

The government had cleared its stand in the parliament also when IT and law minister Ravi Shankar Prasad said that if the social media giants would not respect the Indian constitution then they will not be allowed to function. Resignations of the Public policy heads of the two biggest social media platforms, Facebook and Twitter are being viewed in this light only. These officials Ankhi Das and Mahima Kaul respectively had resigned in October 2020 and February 2021. These new rules provide the government with enough weapons to force Twitter like platforms to act as per their wish. But, the Government Vs. Twitter row in February 2021 raised three basic issues. First, the lack of transparency from the government in issuing orders of blocking tweets and handles. Second, the ability of big tech to refuse compliance citing international laws. And Third, an intermediary's liability if it fails to comply with the government's orders.

Although Twitter blocked 97% of the asked accounts citing that the action against these content, tweets, and accounts was taken according to the Twitter policy, the downloads of its indigenous option, Koo has surged during this row. More than 60 Lakh people have joined this app in India including Prime Minister Narendra Modi.

Twitter had to relent after it faced the possible arrest of its top executives and a financial penalty. The other action that the government took after the Republic day Delhi violence was to block the internet around the borders of Delhi. According to a new report by Access Now, a global non-profit that works on digital rights and online freedom, says that nearly 70% of cases of internet shutdowns globally happened in India in 2020. Although the government has rejected the annual report of Freedom House, an American watchdog on democracy that rated India as 'partly free', but the debate over the freedom of speech and expression has become hot in India. The most common rationale for a shutdown during 2020 was "precautionary measure" followed by a threat to national security, to curtail the spread of misinformation, among others. Internet restrictions are not an issue in India only. When it comes to curbing dissent and freedom of expression, some governments take the drastic step of shutting down the internet. They generally occur when a government or the power in control, intentionally disrupts the internet or mobile apps to control what people do or say. In many countries, flicking the off switch on the internet is a pre-emptive or reactive measure in response to mass or potential unrest. Myanmar's army also banned the internet and social media after the protests erupted on the fallout of the February 1st coup. Ukraine also took the help of the net shutdown against foreign propaganda. Ghana took this measure for crowd control

and Ethiopia for curbing cheating during examinations. According to Access Now, a total of 29 countries shut down the internet in 2020 of which six are from the Asia Pacific region, ten from Africa, eight from the MENA region, three from the Caribbean, and two are from Europe. Cuba, Tanzania, and Kenya are three countries that had not shut down the internet previously but joined the list in 2020 (Table 1).

Rules, Past Happenings and the Trustworthiness

In India, social media platforms come under the purview of the Information Technology (IT) Act. Before these new IT rules, the 'intermediaries guidelines' were last notified under the IT Act in 2011 and the Indian Penal Code. But these guidelines could not stop the misuse of social media and so SC had also directed the Indian government in September 2019 for further regulation of social media.

The 2020 violent clashes in Bengaluru were sparked by a Facebook post laced with communal remarks.

The 2020 Delhi riots where a vandalized Ashok Nagar mosque was circulated saying a flag was hoisted on a mosque of Ashok Vihar area in New Delhi.

The 2019 Mass shooting in New Zealand was live-streamed by the gunman on Facebook.

The 2017 mob attacks and lynching of innocent people in India were spurred by online accusations of child abductions.

The 2013 Muzzaffarnagar riots in India, which left over 60 dead and thousands displaced, were triggered by a fake video from a Gulf country circulating on social media, which was rumoured to depict a Muslim mob brutally murdering a Hindu youth.

The misuse of social media in these incidents shows that India's new social media rules, notified in February 2021, were long-awaited. The Supreme Court of India had been expressing the need to regulate social media to curb fake news, defamation, and trolling. It had also asked the Union government to come up with guidelines to prevent misuse of social media while protecting users' privacy. The government of India had reiterated the need to make rules for social media and discussions regarding this were on for the last three years.

The researcher looked for some of the old statements of the IT

Table 1: Net Shutdown: Top 10 countries.

S. No.	Country	No. of Shutdowns
1	India	109
2	Yemen	6
3	Ethiopia	4
4	Jordan	3
5	Pakistan Venezuela, Chad, Belarus, Kenya, Guinea, Sudan, Togo	2
6	Bangladesh, Kyrgyzstan, Myanmar, Vietnam, Cuba, Ecuador, Azerbaijan, Burundi, Mali, Tanzania, Uganda, Algeria, Egypt, Iran, Iraq, Syria, Turkey	1
Source- accessnow.org 2020		

minister Ravi Shankar Prasad and found that the government was planning to come up with such an ethics code. In July 2018 following a spate of lynching incidents purportedly triggered by provocative messages circulating on Whatsapp, Prasad said, "If in any state, any part, on a particular subject, if there is a movement of large volumes of messages on Whatsapp, it is not rocket science that can't be discovered by application of technology,". After any such case involving social media, the government called for "necessary remedial measures" and "immediate action" to stem the flow of misinformation. The IT ministry had written to Whatsapp twice in 2018, asking it to come out with effective solutions to bring in accountability and facilitate law enforcement. In August 2018 also, the IT minister said, "It does not take rocket science to locate a message being circulated in hundreds and thousands... You must have a mechanism to find a solution." In 2019, the chief executive officer (CEO) of Whatsapp, Chris Daniels, flew down to New Delhi and told the government it would work out a technological solution to trace the origin of fake messages. These old statements are very much in line with the current statements of the IT minister and it shows that the government of India's views about the social media giants are consistent in the last three years.

In 2019 after India started pushing for traceability of messages to curb fake news, US attorney general, UK home secretary, and Australia's minister for home affairs wrote a joint letter to Facebook chief Mark Zuckerberg asking Facebook not to proceed with end-to-end encryption without ensuring a means for lawful access to protect the citizens. But India is continuously saying it doesn't want to know the content, it only wants to know the originator of the viral message. Now when these rules are notified in India, they could be emulated by other countries such as the above-mentioned, the US, the UK, and Australia. These countries have been pressing social networks to take responsibility for the content on their platforms besides wanting tighter data-handling practices. The US had passed an executive order to revisit a law that gave absolute immunity to social media platforms. Australian Parliament had passed a law that could require technology companies to compensate news organizations for their content. As per the UK's new Online Safety Bill, social media sites, websites, apps, and other services which host user-generated content or allow people to talk to others online that fail to remove and limit the spread of such harmful content will face fines of up to \$24 million or ten percent of their annual global turnover. Now, these Indian rules act as a logical corollary to the event happening globally.

There are many points in the government of India's views that make these guidelines trustworthy.

1. The government is consistently putting its views that it is only concerned about the misuse of social media.
2. In the changed circumstances of cheap internet and smartphones and increasing number of users, the guidelines looked a genuine attempt to limit the spread of misinformation, and make the users behave responsibly on social media.
3. Not only the government, various sociologists, thinkers, and courts have also expressed the need for strict guidelines for social media platforms.

4. In the past, many incidents have taken place which established that social media platforms played a major role in spreading misinformation that led to social unrest.

5. The social media platforms have also expressed their views agreeing to the need for 'legitimate scrutiny.'

6. The tech giants have also said that for the sake of stopping misinformation they 'would work out a technological solution to trace the origin of fake messages.'

7. The government of India about Freedom of Speech quotes the Supreme Court where it has said "internet is integral to the right to free speech as provided in Article 19(1), therefore 19(2), with reasonable restrictions. We respect people's right to speech, but they can't be oblivious to Article 19(2), which talks of reasonable restrictions."

8. On the Digital media issue, the government has consistently said that it wants to give a level playing field to all the players.

9. The government has also put its point very clearly that it wants all the platforms to work in India but these platforms have to follow the law of the land.

10. The restrictions on social media giants in countries like China, Myanmar establishes trust in the government of India's stand that it has not made any new rules, it has only asked all players to follow the same guidelines and has tried to provide a level playing field to all.

Freedom of Speech and Expression & Right to dissent

According to Legal Service India E-Journal, Article 19(1) (a) of the Constitution of India 1949 states that all citizens shall have the right to freedom of speech and expression. The Preamble to the Constitution of India promises liberty of thought, expression, belief, faith, and worship. Clauses (a) to (c) of Article 19(1) promise:-

- Freedom of speech and expression;
- Freedom to assemble peaceably and without arms;
- And the freedom to form associations or unions;

These three freedoms are vehicles through which dissent can be expressed. The right of freedom of opinion and the right of freedom of conscience by themselves include the extremely important right to disagree. The right to disagree, the right to dissent, and the right to take another point of view would inhere inherently in every citizen of the country.

Dissent is essential in a democracy. If a country has to grow in a holistic manner where not only the economic rights but also the civil rights of the citizen are to be protected, dissent and disagreement have to be permitted, and in fact, should be encouraged. It is only if there are discussion, disagreement, and dialogue that we can arrive at better ways to run the country.

Justice D.Y. Chandrachud in his speech put the matter very succinctly. He said:

"The blanket labelling of dissent as anti-national or anti-

democratic strikes at the heart of our commitment to protect constitutional values and the promotion of deliberative democracy”.

The exercise of this right Article 19(1) Clauses (a) to (c) is, however, subject to reasonable restrictions for certain purposes being imposed under Article 19(2) of the Constitution of India.

The main elements of the right to freedom of speech and expression are as follows:

1. The right is available to a citizen of India and not to foreign nationals.
2. The freedom of speech under Article 19(1) (a) includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, pictures, film, movie, etc.
3. The right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency and morality, and contempt of court, defamation, and incitement of violence.
4. The restriction on freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1) (a)

Rules, Future Possibilities and the Value

The past decade has seen the emergence of new social movements. In India, the years 2019 and 2020 were marred by a couple of big social unrest incidents on CAA, lockdown, and Farmer's issue. The protests by farmers are still going on at the time of writing this article. The CAA-NRC issue is still alive. The representatives of the ruling party have expressed the Uniform Civil Code and the Population Control agenda. The continuing social movements are powered by the ability to share and receive information in almost real-time, surpassing physical barriers and connecting between countries, among social classes, and with different sectarian groups, to create grassroots movements and encourage dissent. To tackle these social movements, governments not only take help of net shutdown but also make laws like the new rules made for social media. These net shutdown actions not only bring criticism for the governments but also lead to billions of dollars of economic loss. Of the 21 countries that curbed Web access last year, as per a report by the UK-based privacy and security research firm Top10VPN, the economic impact seen in India was more than double the combined cost for the next 20 countries in the list. India lost \$2.8 bn in 2020 to Internet shutdowns. So, other than the internet ban, the government of India is planning to take a range of other measures to maintain the law and order situation, curb the spread of misinformation, fake news, violence-inciting, misleading, and hateful content online.

According to Dainik Bhaskar's report of March 21, 2021, the Indian government has in the year 2020, requested information related

to more than 57,000 social media accounts in comparison to just above 4,000 accounts in the year 2013. This shows that cases of government sneaking into our accounts have increased ten times in seven years. It is also interesting to know that objectionable content on social media platforms has also increased by 5 times in only one year. So far the action of blocking is concerned, according to a reply by the ministry of information technology in the lower house of the parliament of India, in the last four years blocked content had increased by seven times. In the year 2017, the action was taken in 1,385 cases while in 2020, actions were taken in 9,849 cases. It is clear for a country that gives the maximum number of users to Facebook in the world,

Table 2: Queries about Social Media Accounts.

S.No.	Year	No. of Queries about Accounts
1.	2013	More than 4000
2.	2015	More than 15000
3.	2019	More than 33000
4.	2020	More than 57000

Source- Facebook

Table 3: Actions of Blocking.

S.No.	Year	Actions
1	2017	1385
2	2018	2799
3	2019	3603
4	2020	9849

Source: IT Min. Reply in Lok Sabha

policy changes have to be done as per changing circumstances but it is also correct that any step taken towards curbing freedom of speech should also be stopped. This is important for India because Facebook's report says in the first six months of 2020, of the total net shutdown cases of the world, India's share was 83 percent (**Tables 2 and 3**).

Facebook, Twitter, and Whatsapp since their establishment in the years 2004, 2005, and 2009 respectively, have only earned billions of active users. These tech giants have also earned millions of dollars by showing secondary news content on their platforms. Keeping their bases in the US, they are operating in nearly all the nations of the world. Many times in the past they were alleged of using the users' data illegitimately. Instead of many known controversies, there had been little impact on the net worth and popularity. It is for the first time after the 2016 US elections that they are facing such a challenge when they are being asked to behave responsibly about the content that they show on their platforms. Now they will have to publish monthly compliance report and remind the users at least once in a year that their accounts can be deleted if they would post anything objectionable. In the lights of the present situation the researcher analyses the value of these rules and enumerates the following possibilities:

1. The rules would be helpful for the government in establishing better coordination with the social media platforms.
2. The new Intermediary Liability Rules mandate social media companies with over 5 million users in India to not just enable traceability of end-to-end encrypted messages, but

also establish local offices with senior officials to deal with law enforcement and user grievances. This will help these tech giants to behave more responsibly.

3. They also have to alter their interface to clearly distinguish verified users from others, apart from setting up automated tools for content filtration and informing users if their accounts have been blocked with explanations.
4. Rules, like the present ones, help strengthen national interest and cyber sovereignty of countries, give governments much more control over how the data of their citizens are handled, apart from giving them a way to govern companies that are generating revenues from users from the country by having an establishment there and a grievance redressed mechanism.
5. Messaging apps such as Whatsapp or Signal will likely have to dilute end-to-end encryption to trace the "first originator" of flagged messages.
6. Platforms like Facebook will also have to create a new interface for India, which will give users the option to verify users through authorized know-your-customer (KYC) processes and display a verification tag for those who seek this.
7. While Whatsapp will have to devise a means of showing the verification tag, Twitter will have to roll out the verified blue tick feature for everyone who wants it.
8. After all the social media giant agreeing to follow new rules, now they will have a three-level grievance redressed mechanism for self-regulation
9. A grievance officer in these tech companies shall register the grievance within 24 hours and disposal in 15 days content involving nudity and morphed pictures of women will have to be removed in 24 hours.
10. In urgent cases, the government will set up an oversight mechanism at its level to deal with a case where immediate action is required.
11. Publishers of news on digital media will be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act.
12. Social media platforms must have a provision for the voluntary verification mechanism of the users.
13. The Ministry of Information and Broadcasting will also publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.
14. Instead of the net shutdown, the government can slow down some selected IP addresses with the help of internet providers.
15. The government is also mulling to use the latest geo-blocking tools as an experiment. This will help in getting the location of users and ultimately block the internet selectively.

16. Counter speech narrative can be prepared with the help of police and home ministry against fake news and rumours.
17. The government is also promoting Desi apps like Koo, Sandes, and Map my India as a replacement for Twitter, Whatsapp, and Google Map respectively. Tooter is another micro blogging platform modelled after Twitter.
18. The government is also promoting these Apps in two ways. First, Prime Minister, Home Minister, and other big leaders are opening their accounts on these apps, and second, by posting any government information first on these desi apps and then on apps like Twitter and Facebook after minutes later.
19. Other than these some other impacts could also happen like, these big tech companies can wrap up operations because of the cost involved in following these rules. Whatsapp has taken the matter in court also.
20. Will Whatsapp end the encryption system favouring the privacy of the messages? If it could not relent on disclosing the first originator condition, it will have to pay the price.
21. If Twitter doesn't take action in 24 hours on sensitive posts, it will have to face the brunt.
22. Various state police units like in New Delhi are making a team of professionals to scan online content 24x7.
23. Social media Vigilance cell is created in New Delhi. Many other states can follow the same.
24. These rules can also complicate the issue as there are apprehensions that fake complaints can also reach these platforms.
25. These rules may help in sensitizing the users against sharing fake content.

Related Theories of Social Media

According to McLuhan Media Theory, media itself, rather than the actual content of the media, will transform people and society. In the case of social media's impact in the propagation of derogatory, malicious, aggressive, or objectionable content, this theory stands justified. More than the content, the features of social media also help spread the message to millions of people in one go. The speed, scale, targeted reach, availability, flexibility, ease, and cost-effectiveness of social media help spread the message as it is required by the creator or sharer.

Buckner's (1965) theory on rumour transmission indicates the accuracy and speed of rumour passing were affected by the structure of the network and the mental sets of individual actors in the network. This is the reason social media and the users' attitude play an important role in an unrest situation. So, with the help of these 3 layer rules government of India is trying to tackle the tech giants and the mischievous users.

Agenda setting theory also applies to this study. According to this theory, the influence of media affects the presentation of the reports and issues made in the news that affects the public mind. The users, actors through these platforms, and many times the government too use social media to fulfil an agenda.

Conclusion

According to Dainik Bhaskar report on 10th June 2021, Twitter couldn't hire enough Hindi fact checkers because of low advertising revenue resulting in the increase in Covid's treatment related fake news on the platform. Moreover, keeping in view the

day to day increase in the number of internet and social media users, decrease in smartphone prices and internet subscription charges, and decreasing complexities in using such platforms, there is no doubt that such an ethics code was required for social media usage in a complex country like India.

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