



RSTV BIG PICTURE: RULES FOR SOCIAL MEDIA

CONTEXT:

- Union government informed Parliament that it is in the process of amending rules pertaining to the Information and Technology sector so that social media platforms could be made more responsive and accountable to Indian laws.
- The government stated that the new rules will also ensure digital media platforms adhere to the Code of Ethics.
- **Supreme Court of India had issued notice to the Centre and the Internet and Mobile Association of India, on a petition to regulate OTT platforms** such as Netflix, Amazon Prime etc.
- Government has warned social media sites of tough action if they did not abide by the country's rules and Constitution of India.
- **Government accused social media platforms of “double standards”** in their approach to recent events at the US Capitol Hill and the Red Fort on Republic Day.
- In November last year, the **Centre issued an order that brought online news portals and over the top streaming services under the I&B ministry.**

WHAT IS IN THE RULES?

- The new guidelines regulate social media platforms and make them accountable for the nature of content they host and peddle.
- The new set of directives would mandate amendments to the Information Technology Intermediaries Guidelines Rules of 2011 which are part of Section 79 of the IT Act.
- The hallmark of the new rules would be the **timelines social media platforms would need to follow when asked by the government to take down unlawful content.**
- The **definition of unlawful content is expected to be widened** under the new rules.
- The new rules **would apply not just to social media platforms, but also to over-the-top (OTT) platforms and web-based news portals.**
- The draft provisions speak of a **self-regulatory system with a code of ethics**, as practised by TV channels.
- A **compliance officer to respond to concerns flagged by law enforcement agencies, timely submission of compliance reports by social and digital media players, a grievance redressal structure and powers to bureaucracy to act in emergencies within 48 hours should the platform in question refuse to comply.**
- Social media platforms could be asked to **reveal the origins of unlawful content** – an issue that is expected to create a stir with WhatsApp consistently maintaining that it cannot compromise user privacy.
- Changes to certain sections of the Information Technology (IT) Act to make social media intermediaries, such as Facebook and Twitter, and over-the-top (OTT) platforms, such as Netflix, **more accountable for the content shared through their platforms** are also on the anvil.
- The final rules will distinguish between smaller and bigger social media platforms, placing greater compliance burden on the latter.
- **Bigger companies may also be required to appoint a chief compliance officer and resident grievance officer**, both of whom should reside in India and hold an Indian passport.
- Companies **with over 50 lakh users need to have an office in India and also appoint a nodal officer for liaising with law-enforcement agencies.**



TUSSLE BETWEEN GOVERNMENT AND TWITTER:

- A spat has been going on between Twitter and the Indian government over a suspension list, which contains mention of over 1000 accounts that need to be suspended or at least blocked in India for spreading fake news and hatred on ongoing farmers' protest in the country.
- The social media firm has refused to act against all the accounts mentioned in the list, stating that it will not suspend accounts that belong to the media, journalists and activists to uphold freedom of speech and expression.
- Government announced that it respect social media a lot and Social media has a big role in the Digital India programme. However, if social media is misused to spread fake news and violence, then action will be taken.
- Twitter mentioned that it has initiated multiple enforcement actions, including permanently suspending more than 500 accounts for clear violations of its rules, in response to "legal requests" from the India government.
- However, the social media firm has refused to act against all the accounts mentioned in the list, stating that it will not suspend accounts that belong to the media, journalists and activists to uphold freedom of speech and expression.

AUSTRALIA VS FACEBOOK/GOOGLE:

- Australia had proposed a law called the **News Media and Digital Platforms Mandatory Bargaining Code Bill 2020**.
- It seeks to mandate a bargaining code that aims to **force Google and Facebook to compensate media companies for using their content**.
- Google had threatened to make its search engine unavailable in Australia in response to the legislation, which would create a panel to make pricing decisions on the news.
- Facebook responded by blocking users from accessing and sharing Australian news.
- Other governments also are pressuring Google, Facebook and other internet companies to pay news outlets and other publishers for the material.
- **In Europe, Google had to negotiate with French publishers after a court last year upheld an order saying such agreements were required by a 2019 EU copyright directive.**
- **France is the first government to enforce the rules, but the decision suggests Google, Facebook and other companies will face similar requirements in other parts of the 27-nation trade bloc.**
- **In Spain, Google shut down its news website after a 2014 law required it to pay publishers.**
- Australia's Prime Minister Scott Morrison spoke to Prime Minister Narendra Modi and discussed progress of media platform bill.

WHATSAPP ISSUE:

- WhatsApp unveiled its new privacy policy.
- There are continuing concerns over its **new privacy policy regarding privacy and security**.
- WhatsApp clarified that the policy changes nothing for those messaging friends and family. It also clarified that in some conditions, business messages — "different than messaging with your family or friends" — can be read by Facebook and could be used for marketing purposes.
- It says the new privacy policy pertains to the latter alone and the former remains unchanged.
- Neither WhatsApp nor Facebook can "see private messages or hear calls". Personal messages are protected by end-to-end encryption and will continue to be so.
- While there is data sharing with Facebook even in the European Union, users there get more control. That's because the EU has a different privacy policy on any software product compared to the rest of the world.
- EU's General Data Protection Regulation (GDPR) is one of the strictest in the world and ensures that consumers have the full rights on their data and how that data is processed and can even demand erasure of information.



REGULATORY SCRUTINY FACEBOOK FACES IN THE US AND EU:

- In the US, the **Federal Trade Commission (FTC)** has filed a lawsuit against Facebook over antitrust, anti-competitive policies.
- It has also put Facebook's acquisition of WhatsApp and Instagram under the scanner.
- The **EU is also investigating Facebook over claims that it trampled competition with the help of the vast troves of user data**. The company has resisted EU's demands for several documents and filed a lawsuit against this last year as well.

SOCIAL MEDIA:

- The advent of social media is transforming the way in which people connect with each other and the manner in which information is shared and distributed.
- It is different from traditional media such as print, radio and television in two significant ways – first, the **amount of content that can be generated by the users themselves far exceeds the content generated by news/opinion makers** and second, its **"viral" ability for potential exponential spread of information by word of mouth and interlinking of the various social media platforms**, thereby considerably reducing the control over spread of any such information.

What is Social Media?

- Social Media in recent times has become synonymous with Social Networking sites such as Facebook or Microblogging sites such as Twitter.
- However, very broadly social media can be defined as **any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content**.

Social Media Characteristics

- **Connectedness:** This attribute showcases the media's ability to connect and re- connect like-minded people or people interested in same topics and domains.
- **Collaboration:** The connections achieved on this media, enable people to collaborate and create knowledge. Such collaborations can be either open or closed. Wikipedia is an example of open collaboration while GovLoop is an example of closed collaboration.
- **Community:** Connectedness and collaboration helps create and sustain communities.

Need for Using Social Media

- **Enhanced Outreach:** As the recent world events have demonstrated, social media have emerged as a powerful platform for forming an opinion as well as generating mass support.
- **Real Time engagement:** In recent Libyan crisis, Ministry of External Affairs used social media platforms such as Twitter to assist in locating and evacuating Indian Citizens from Libya.
- **Individual Interaction:** Such an interaction also enables the marginalised to participate in discussions and present their point of view, thereby improving the political position of marginalized or vulnerable groups.
- **Managing Perceptions:** One of the big challenges for government is to avoid propagation of unverified facts and frivolous misleading rumours with respect to government policies. Leveraging these platforms can help to counter such perceptions and present the facts to enable informed opinion making.



Types of Social Media

- Kaplan and Haenlein in 2010 classified social media into six different types: collaborative projects, blogs and microblogs, content communities, social networking sites, virtual game worlds, and virtual social worlds.
- A brief description of some of the most common types of social media is given below:

Social Networking	Social Networking is an online service that enables its users to create virtual networks with likeminded people akin to social networks in real life. It often offers the facilities such as chat, instant messaging, photo sharing, updates, etc. Currently, social networking sites are the most prominent version of social media. Facebook with 800 million users is one of the most well-known social networking site.
Blogs	Blogs are descriptive content pages created and maintained by individual users and may contain text, photos and links to other web sites. The main interactive feature of Blogs is the ability of readers to leave comments and the comment trail can be followed.
Microblogs	Microblogs are similar to Blogs with a typical restriction of 140 characters or less, which allows users to write and share content. Twitter is the most well-known microblogging site.
Vlogs and Video Sharing sites	Video Blogs or Logs are blogging sites that mainly use video as the main form of content supported by text. YouTube is the largest video sharing site.
Wikis	A Wiki is a collaborative website that allows multiple users to create and update pages on particular or interlinked subjects. While single page is referred to as "wiki page" the entire related content on that topic is called

Challenges in Using Social Media

- Why to use social media?
- Which Platforms to use?
- Who will engage?
- How to engage?

Problems Posed By Social Media

- Pornography and Obscenity
- Fake news and Hate Speech
- Identity Theft: social media websites generate revenue with targeted advertising, based on personal information; they encourage their users to provide maximum personal/professional information.
- Intellectual Property Issues: Trademark infringement and dilution, Copyright infringement, Trade secret disclosure
- Defamation
- Privacy Violation
- Cyber Bullying and Harassment
- Freedom of Speech and Expression
- Mostly the overseas players do not follow the jurisdiction of the law of the land and many of them even do not exist in India.
- Ability of digital/social Media to Reach, Scale and size is huge compare to print and other media.



MEDIA REGULATION IN INDIA:

- **Press Council of India** under the PCI Act of 1978: for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.
- For screening films including short films, documentaries, television shows and advertisements in theaters or broadcasting via television the **Central Board of Film Certification** sanction is required.
- Program and Advertisement Codes for regulating content broadcast on the television, are issued under the **Cable Television Networks (Regulation) Act, 1995**.
- News channels are governed by mechanisms of self-regulation. One such mechanism has been created by the **News Broadcasters Association (NBA)**.
- The NBA has devised a Code of Ethics to regulate television content.
- Another such organization is the **Broadcast Editors' Association**.
- The **Advertising Standards Council of India** has also drawn up guidelines on content of advertisements. These groups govern through agreements and do not have any statutory powers.
- Therefore, the News Broadcasters Association (NBA) represents the news channels, the Press Council of India regulates the print media, and the Central Board of Film Certification (CBFC) monitors film, while the Advertising Standards Council of India regulates advertising.

Governing laws:

A. The Information Technology Act, 2000

- **Section 66A** of the IT Act has been widely for social media offences. However, this provision has been held unconstitutional by the Supreme Court.
- **Section 66C** of the IT Act provides punishment for identity theft.
- **Section 66D**: Punishment for cheating by personation by using computer resource
- **Section 66E**: Privacy violation of a person without his consent
- Cyber terrorism has also been made punishable by **Section 66-F** of the Act.
- **Section 67**: makes it punishable to transmit or publish any obscene material.
- **Section 69** of the Act confers on the Central and State governments the power to issue directions "to intercept, monitor or decrypt...any information generated, transmitted, received or stored in any computer resource". The grounds on which these powers may be exercised are: in the interest of the sovereignty or integrity of India, defence of India, security of the state, friendly relations with foreign states, public order, or for preventing incitement to the commission of any cognizable offence relating to these, or for investigating any offence.
- **Section 69A**, for similar reasons and grounds on which it can intercept or monitor information, enables the Centre to ask any agency of the government, or any intermediary, to block access to the public of any information generated, transmitted, received or stored or hosted on any computer resource.
- **Section 70B** provides for an agency of the Government to be appointed by the Central Government called the Indian Computer Emergency Response Team, which shall serve as the national agency for performing functions relating to cyber security.
- One of the major changes being looked at in the proposed rules is to amend Section 79 to make online companies "proactively trace, detect and prevent" unlawful content from being shared on their platforms.
- **Section 79** protects social media intermediaries by giving them immunity from legal prosecution for any content posted on their platforms.
- However, the protection provided fails if the government notifies the intermediary that if "any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act and the intermediary fails to expeditiously remove or disable access to that material".
- The term 'intermediaries' includes providers of telecom service, network service, Internet service and web hosting, besides search engines, online payment and auction sites, online marketplaces and cyber cafes. It includes any person



who, on behalf of another, “receives, stores or transmits” any electronic record. Social media platforms would fall under this definition.

The Central Government has also **enacted rules to give effect to various provisions of this Act which are as follows:**

- The Information Technology (Procedure and Safeguards of Interception, Monitoring and Decryption of Information) Rules, 2009
- The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009
- The Information Technology (Intermediaries Guidelines) Rules, 2011

B. **Indian Penal Code, 1860:** penalizes the promotion of class hatred, insults to religion and to religious beliefs, defamation, obscenity etc.

C. **Criminal Procedure Code, 1973**

Governing Authorities

- Regulatory authorities governing social media can be broadly divided under two heads
 1. Statutory/State authorities: Ministry of IT, Cyber cells, CERT etc
 2. Non statutory authorities: Internet Service Providers, Social Media Agencies

Recent developments:

- In **Shreya Singhal vs U.O.I (2015)**, the Supreme Court read down the provision to mean that the **intermediaries ought to act only “upon receiving actual knowledge that a court order has been passed, asking [them] to expeditiously remove or disable access to certain material”**.
- In **2018**, changes to the Intermediaries Guidelines Rules, 2011, were announced **“to make intermediaries more liable towards the content that is published, transmitted, etc. on their platform”**.
- Government had **advised social media platforms to curb false news/misinformation with regard to corona virus**.
- Government noticed that the “Right to Freedom of Speech and Expression” was being used recklessly and carelessly by the citizens, the Government’s primary concern pointed out the rise in hate speech, fake news and so-called anti-national activities online through defamatory social media platforms.
- Social media use has become more common in India because of “lower internet tariffs, availability of smart devices and last-mile connectivity”.
- Social Media as potent tool to cause **“unimaginable disruption to the democratic polity”**.
- The **Supreme Court, in the Whatsapp traceability case**, had expressed the need to regulate media to curb fake news, defamation and trolling



Social Media Framework & Guidelines for Government Organisations

The Social Media Framework for the Government of India has been created to enable government agencies to use these platforms more effectively and reach out to their stakeholders and understand their concerns and hear their voices.

ARGUMENTS AGAINST SOCIAL MEDIA REGULATION:

- **Breach of fundamental rights** but also reveals a **complex relationship between the government and large platforms** on the understanding of the Constitution of India.
- **Undermines the public's right to receive information.**
- Many allege that **too much government interference is an anti-democratic practice that results in an unchecked growth of irrational censorship but also leads to speculation that fractures trust.**
- More often than not actions taken are **contrary to the principles of natural justice.**
- **Vagueness and the design faults** in the process of how directions such as under Section 69A are issued.
- When it comes to regulating digital news content, new regulations may end up facilitating more governmental interference and censorship.
- Digital platforms were till now able to openly create the movies/videos on politically sensitive subjects, now they have to **bow down to the political pressures.**
- If the government is providing any legislation to regulate the social/digital media then the wider/free for all media houses and persons **might face a number of allegations which leads to a huge inflow of cases to the judiciary which is already overburdened.**
- There are **too many laws and no real independent regulator, except the overloaded judiciary.**

INTERNATIONAL SCENARIO:

- US aims to **strip social media platforms' legal protection from liability whenever users post any contents on their sites** if they engage in existing or potential political conduct or censorship.
- Germany has **The Network Enforcement Act** which has required social network owners to combat fake news but is now planning a law aimed at hate speech and other criminal posts.
- The **EU Digital Services Act** is going to obligate digital service providers to be more responsible for fair and equitable content and behavior.

WAY FORWARD:

- There is a **strong need to protect the freedom of expression.**
- There is a **need to enact a law covering the rights, duties & responsibilities of social media agencies/users/ISPs.** The law should also make harmony with the existing laws which are presently governing the various issues of social media in India.
- There is a need to have a **designated body which is totally devoted to regulate the functioning of social media.**
- **Social media labs**, which have been established in few Indian cities, can be a viable option to monitor the online activities.
- A **legal, moral and ethical code** should be devised for social media application developers and there should be a body for grating approval to properly devised social media applications.
- The **organizations such as International Network against Cyber Hate (INACH)** and Governments across the world should unite to work against cyber hate.
- To meet extra territorial challenges the **global system of laws has to develop new legal concepts and devise techniques for eliminating cross-border conflicts.**



- An international committee could be created with the sole purpose of implementing universal standards created by the Treaty designed to bring order to and create jurisdictional rules for the social media
- There is necessity that India should sign Mutual Legal Assistance Treaties (MLTs) with more number of countries till necessary amendments are made in the Criminal Procedure Code.
- Concept of net neutrality should receive an international legal recognition.
- Principle of 'right to be forgotten' should also be implemented worldwide in order to protect the privacy of the users.

It is important to conclude by highlighting what the Supreme Court recently stressed: the need to find a balance between the right to online privacy and the right of the state to detect people who use the web to spread panic and commit crimes.

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