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## INDIA: New guidelines for intermediaries and code of ethics for digital media

On February 25, 2021, the Indian government decided to regulate through new Guidelines for Intermediaries and a Code of Ethics for Digital Media content on social media, especially for sites with the largest number of users, such as Facebook, WhatsApp and Twitter and Ott (Over The Top) platforms. Highlights of the regulation include a requirement to establish a redress and resolution mechanism in response to user complaints, and a number of additional obligations for "significant social media intermediaries" (by number of users).

The regulations, titled *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021*, are the work of the Ministry of Electronics and Information Technology and the Ministry of Information and Broadcasting, replace the 2011 regulation, and are framed under the *Information Technology Act* of 2000 (Section 87-2).

The proposed framework places special emphasis on protecting women against the progression of sex crimes on social media and emphasizes the need for social media intermediaries and online content providers, whether for entertainment or informational purposes, to strictly abide by the Constitution and national laws, putting India on par with international regimes on digital media regulation.

The new rules will be in force from the date of publication in the Official Gazette, with the exception of those for "significant" intermediaries, which will come into force three months later.

The Rules are broadly divided into two categories:

- I. **Regulation of intermediaries:** These general guidelines extend their scope to all intermediaries, including social media intermediaries. They require that intermediaries conduct extensive due diligence in fulfilling their duties: they must post on their website and/or mobile application the regulation, regulation, privacy policy, and user agreement for any

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person to access or use their information technology resource. Material so posted must make explicit the user's responsibility not to "*host, display, upload, modify, publish, transmit, store, update or share*" any form of information that:

- i. Belongs to another person
- ii. Is defamatory, obscene, pornographic, pedophilic, invasive of one's privacy, libelous, or inconsistent to the laws of the land
- iii. Is dangerous for minors
- iv. Results in the infringement of any intellectual property right
- v. Is deceiving or misleading regarding the origin of the message
- vi. Impersonates another person
- vii. Hampers the integrity, defense, security or sovereignty of the country, friendly relations with foreign states, public order or results in the incitement of any cognizable offence
- viii. Contains any software virus or any program designed to corrupt or interrupt the functionality of any computer resource
- ix. Or is patently false and untrue, regardless of its form is published or in order to mislead or harass a person

In addition to simply posting these obligations, the intermediary must inform the user that failure to comply with the above may result in termination of his or her access or use rights. A staff member must be appointed for this purpose, who will take complaints within 24 hours of submission and offer a resolution within 15 days. Specifically, within 24 hours of receiving a complaint from or on behalf of the individual, content, including altered images, that exposes private areas, nudity, or sexual acts must be "removed or access disabled."

- II. **Code of Ethics for Digital Platforms:** A distinctive feature of the Rules is the distinction created between "social media intermediaries" and "significant social media intermediaries"; the first is defined as an intermediary that primarily or exclusively enables online interaction

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between two or more users and allows them to create, upload, share, disseminate, modify, or access information using its services. The significant social media intermediary on the other hand is defined in the Rules as a social media intermediary with a number of registered users in India above the threshold notified by the central government. The level of due diligence performed by the intermediary depends on the entity classification hierarchy. For example, significant social media intermediaries, in addition to the diligence requirements noted above, must do the following within three months of notification of the Regulations:

- i. Appointment of a Chief Compliance Officer, with responsibility for ensuring compliance with and oversight of the functions of significant intermediaries
- ii. Appointment of a nodal contact person, who would serve as a law enforcement liaison
- iii. Appointment of a Complaints Officer residing in India.
- iv. Publication of compliance report on a monthly basis, containing details and content of complaints handled and information removed or discontinued by intermediaries in pursuit of their monitoring activities.

The regulation then establishes a self-regulatory architecture, a Code of Ethics, and a complaint redress mechanism for news publishers, Ott platforms, and digital media.

Specifically, there are three levels:

- I. Self-regulation of publishers, their organs and oversight mechanism formulated by the Ministry of Information and Broadcasting.
- II. For Ott platforms, there is a classification based on their target audience, assigning:
  - ◇ U" rating for content suitable for children and people of all ages

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- ◇ "U / A 7+" for content that can be viewed by a person under the age of 7 only with parental guidance
- ◇ "U / A 13+" requiring parental guidance for viewers under the age of 13 years old;
- ◇ "U/A 16+" for viewers under the age of 16 requiring parental guidance
- ◇ "A" for content restricted to adult viewing only

III. On a level playing field with other media outlets, news publishers on digital media were required to comply with the Journalistic Conduct Rules of the Press Council of India and the *Programme Code under the Cable Television Networks Regulation Act*.

References:

[https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

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