

Information Technology to be executable, exercisable or applicable for a productive use in any country, firstly needs to follow the prescribed laws of those countries. It is quite obvious that each and every country in the world have their own laws relating to any matters and so is the case with the matter of Information Technology.

Now, talking about Information Technology (IT), various elements are included within the term, such as Social Media Platforms, Hardware, Software, anything related to computer or technology, or networks, web development etc. We are now majorly dependent upon these technologies as it has made our lives facilitated and much easier. Any information that we require is just a click away.

Also, though lately but many of us are quite familiar with the productive use of social media nowadays. We pass on important and useful information to others in need through these platforms. However, there are certain groups or bunch of people who still keep on forwarding and posting unsolicited messages and information which lack proper authority and recognition.

There are certain elements in the society who indulge in cyber related crimes and as they do not disclose their true personalities or details, it becomes necessary for the country to bring on stringent rules and regulations to curb such crimes and acts because these acts are in violation of natural, moral or legal principles.

The latest IT rules that are in discussion within the country are related to the above-mentioned problem. Thus, it can ensure the minimisation of such unsolicited acts along with the protection of the public at large.

Various Social media platforms such as WhatsApp, Facebook, Signal, Telegram, Koo, LinkedIn and the search engine websites Google, Yahoo, Bing that are widely known to every one in the nation are in the verge of violating or some of them are already violating the legal compliances in India.

The basic intention of introducing these new IT rules by India is to curb out the indecent or offensive content from all these platforms along with the content posted up by any unknown person or whose actual identity cannot be traced and has a continuing history of posting and sharing such contents.

Now let us understand these new rules.

- **WHAT ARE THE NEW IT RULES IN INDIA?**

The Central Government on February 25, 2021 notified “The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021” to the significant social media intermediaries.^[1] This notification demanded information of various applications and websites such as their contact address in India and any other additional information as the Government may ask for from them.

The new rules mandates for the social media platforms and search engines to identify the originator of unlawful or indecent messages as well as taking down such offensive messages from their platforms and the time limit for the same was three months. The notification also stated that in case there is any non-cooperation from any of these intermediaries then the exemption available to these intermediaries under the Information Technology Act under section 79 shall be forfeited by the government.

Sec 79^[2] of the Information Technology Act states that the intermediaries means such organisations or companies or websites that are providing information to a particular person on that person’s request are exempted from any liability from any data, information or communication or any link posted or hosted by a third party^[3]. If any such data when found to be offensive then on the instructions and order of the appropriate authority or government the intermediaries need to take down such data or information posted by the third party on their platform and if they do not do so, these intermediaries become personally liable for the noncompliance of such a provision.

Google’s statement: Google stated that the government has mistakenly identified it as a social media intermediary but it is not the one so the new rules are not applicable to it.

Telegram’s statement: Telegram stated that it had already complied with almost all the new rules.

Koo’s statement: Koo also stated the same as that of Telegram.

WhatsApp on the other hand, in contrast to its parent company Facebook, has sued the Indian Government that these new rules are unconstitutional.^[4] It further stated that the tracing of the people will lead to a disruption in end- to-end encryption i.e. right to privacy and would also violate fundamental right to the freedom of speech and expression.

The Indian Government's statement on WhatsApp's suit: WhatsApp itself violates its end-to-end encryption rule by sharing the personal information and data of its users to its parent company Facebook for marketing and promotional purposes. It also stated that the right to privacy comes with reasonable restrictions as the social media companies would need to give the data of the originator of messages only in some cases and based on the order of the competent court, it does not violate any fundamental rights as such.

- **WHAT IS THE NEED OF SUCH RULES?**

An important question arises regarding the importance of introducing such rules in the country. In any country, when any multinational company is interested in doing business with such a nation, then it has to compulsorily abide by the rules of that country be it stringent or not. All of these social media companies mentioned herewith, already do abide by the rules of various countries they operate in without any denial or refusal.

But while abiding by the rules stated by Indian Government these companies face a lot of objections and excuses. It is just because India has the largest democracy in the whole world and thus the laws in India are quite liberal and lenient when compared to other nations, such multinational corporations feel free to take the complete advantage of this situation and keep violating the law in some or the other way.

It can be due to loopholes in the system or law, corruption or the extra lenient opportunities and rights granted to every person or organisation with minimum obligations. These rules are very much necessary as it is for the protection of the people at large. Such rules can lead to identification of the cyber criminals attacking innocent people and can curb the cyber related crime. Also, not to forget, crimes related to Information Technology is a worldwide issue and not just of any particular country.

Children, elderly and other persons are prone to such cyber-attacks. These crimes are really serious as it includes theft of confidential information relating to any person, property, finance etc. So, in my opinion such rules should have been framed quite earlier by the government.

- **HOW THESE INTERMEDIARIES MISUSE USER'S DATA:**

These intermediaries who often assure and promise their users that their data would be completely secured and encrypted with them, are the first ones to breach such a promise made. They usually tend to sell their user's data to various agencies for marketing purposes. Important data include user's contact details, residential details, history, live location tracking, user's browsing history, the device and model used by their users, monthly data usage statistics and what not without the knowledge of the users. To name a few companies, such as Facebook, Instagram, LinkedIn can be termed to be the riskiest places for the users to store or provide any of their data as per a study conducted.^[5] Also, many false news on such medias are quite common which incite riot like or mob-lynching situations.

However certain companies such as Signal, Telegram, Netflix, Microsoft Teams, Google Classroom and Zoom are termed to be a safe and secure place and can prove to be a good alternative to the companies that breach data.

- **NEW IT RULES FOR OVER THE TOP (OTT) PLATFORMS:**

The notification stated above in the article also included new rules for OTT platforms as well. Since the rising use of OTT platforms, the government found it important to regulate the content on such platforms as well. The notification stated that any information or content that is flagged by any of the authorities must be removed within 36 hours. Netflix, Amazon Prime, Sony Liv, Zee5 are some of examples of OTT platforms that are very familiar and in huge public demand.

Was This Necessary?

This was necessary as even these platforms are used for communication or publishing of indecent and offensive contents and it was important to regulate such acts.

• **WHAT ARE THE SALIENT FEATURES OF THE NEW IT RULES [6] ?:**

1. Intermediaries will need to remove the inappropriate contents containing nudity, sexual act, morphed images within 24 hours of receipt of any complaint.
2. A grievance Redressal cell has to be appointed by the intermediaries and the grievance redressal officer needs to deal with the complaints and resolve it in 15 days of receipt of grievance.
3. The significant social media intermediaries would need to publish a monthly compliance report.
4. These intermediaries would need to have a physical contact address in India which needs to be published on their application or website.
5. In case any intermediary removes the content on its platform then it has to provide prior information to the user with the reasons for the same.
6. Intermediaries should provide assistance to the authorised government agencies
7. Noncompliance would lead to forfeiture of the exemption granted to them under section 79 of Information Technology Act and the employees of the company would be criminally liable.
8. Talking about Over The Top (OTT) platforms, the OTT and digital Media norms would be administered by Information and Broadcasting Ministry.
9. Proper Code of Ethics would be prescribed for OTT platforms, online news and digital media companies.
10. OTT platforms need to classify the content on the basis of five categories that are U, U/A7, U/A13, U/A16, A.
11. Publisher of digital news would be required to abide by the rules of Journalistic Conduct of the Press Council of India.

- **CASE LAW:**

1] Christian Louboutin SAS v. Nakul Bajaj and Ors (2018)[7] :

Plaintiff: Christian Louboutin SAS

Defendant: Nakul Bajaj and Ors

Court: High court of Delhi

Decided on: November 2, 2018

Bench: Justice Pratibha Singh

Facts:

The plaintiff manufactured luxury shoes and had authorised very few distributors in India to sell their products. the plaintiff claimed that the defendant had sold various products on defendant's website bearing the brand name of plaintiff's products without any authority and thus infringed the trademark of the plaintiff. The court had given interim relief to the plaintiff before by restraining the defendants from selling, offering to sell, advertising any product bearing registered trademark of plaintiff through the defendant's e-commerce website.

A written statement was then filed by the defendant wherein they claimed that they did not sell goods but only enable booking of the orders through their online platform.

Issue:

The issue here was to determine whether the defendant was liable as an intermediary under section 79 of the IT Act 2000 and should the exemption granted under this section be revoked?

Decision:

The bench held that the defendant was not an intermediary under section 79 of the IT Act 2000 as the details and identity of the sellers dealing with the defendant were unknown. So, the court ordered the

defendant to disclose complete information of all its sellers, their contact details. The court also ordered the defendant to remove all the meta-tags and details containing plaintiff's mark. Thus, the defendant was not held to be liable for trademark infringement.

Thus, as seen in the case law above even the e-commerce websites form part of the term intermediary if they provide any information on their own or provided by the third parties on their websites and if while doing so, due diligence is not maintained or any infringement is done by such companies, then the immunity granted to them under section 79 of the IT Act 2000 is withdrawn and their employees or owners becomes personally liable for any criminal or civil consequences.

This proves that even the E-commerce websites are governed under the IT Act and need to abide by its provisions. It includes provisions relating to publishing of truthful data and information or source of information, keeping a check on the content posted by third parties and taking down any unsolicited and indecent information posted by such a third party, protecting the privacy, passwords and personal data of all its users, withdrawing up of any infringed or duplicate content from their portals, abiding by the amended laws or rules and also with the orders of appropriate authorities in the related matters.

FURTHER MEASURES THAT CAN BE TAKEN BY THE GOVERNMENT:

1. Before allowing any intermediary to operate in India, a complete audit of that company's procedure can be done along with the audit of its safety and privacy procedures.
2. Preparing Indian alternatives against such companies who do not intend to abide by the Indian laws and regulations and thus revoking their license to operate in India.
3. Keeping a timely check on the intermediary's functions and reporting and taking actions against any malpractices if found.
4. Mandating the use of a firewall or any kind of a similar anti-virus software in the websites or applications offered by intermediaries for user's data protection.
5. Before letting the intermediaries actually operate in the country, a mock drill or trials of the websites and applications offered by them can be done so as to ensure the safety.

- **CONCLUSION:**

From this study it becomes quite clear that the provisions and rules relating to the information technology need to be regularly updated as per the requirements of current situations and circumstances in any country. Digital media, IT have a strong power to influence the world in a positive way and we must understand its importance and also not use it for any improper conducts or just for unethical monetary gains.

We saw that the intermediaries such as Facebook, WhatsApp, Instagram etc sell away the important data of its users to different agencies just for gaining monetary benefits and apart from that they time and again tend to unfollow the regulations framed under various acts governing their operations. These unethical practices should be strictly condemned. A stricter punishment accordingly must be imposed on such companies, be it monetary punishments or criminal or civil punishments.

Apart from that, other similar applications or websites need to be created or invited for operation in the country which can give a strong competition to such companies. Such a competition would build a great pressure on the non-complying companies for better performance and their monopolies would be reduced to a great extent after which it would become necessary for them to abide by the IT rules of the nation or compromise with their survival in India. No intermediary would like to compromise with their survival and especially in the country like India where there is a huge market for firms offering products and services to gain profits.

Thus, it can be stated that these new IT rules are a boon for the users like us who are completely dependent upon such applications in our day to day lives as these rules ensures protection of our data's privacy and security. It would also help to curb the uninvited messages from unknown persons whose main motive is promoting riots, hatred and fake news in the minds of people at large.