



## REGULATION OF BIG TECH

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**(Mains GS2: Important aspects of governance, transparency and accountability)**

### **Context:**

- The government announced The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
- Citing instructions from the Supreme Court and the concerns raised in Parliament about social media abuse, the government on Thursday released guidelines that aim to regulate social media, digital news media, and over-the-top (OTT) content providers.
- Now social media platforms are required to become “more responsible and more accountable” for the content they carry.

### **Background:**

- The Supreme Court had already expressed *the need to regulate social media* to curb disturbing fake news, defamation and trolling
- Rajya Sabha in 2018 and then through a report laid by a committee in 2020 cited the need for coming up with rules to “empower the ordinary users of digital platforms to seek redressal for their grievances and command accountability in case of infringement of their rights”.
- However, the big push came in the form of the violent incidents at the Red Fort on January 26, following which the government and Twitter were embroiled in a spat over the removal of certain accounts from the social media platform.

## **Government's guidelines on social media regulation:**

### **Key points.**

The Government of India has released the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 to regulate social media, digital news media and over-the-top (OTT) content providers.

### **Key Provisions of the Rules:**

**Social media companies and redressal:** concerns have been raised about rampant abuse of social media platforms and the spread of fake news, “There will be two categories of intermediary which can be social media intermediary and significant social media intermediary.” so government wants social media companies to have a mechanism to address complaints from users.

1. **Chief Compliance Officer-** responsible for ensuring compliance with the Act and Rules.
2. **Nodal Contact Person** to ensure 24×7 coordination with law enforcement agencies.
3. **Resident Grievance Officer:** He/she will receive and resolve complaints from users. The grievance officer shall register the grievance within 24 hours and its disposal **in 15 days**. All these officers have to be residents of India.

**Urgent cases:**In urgent cases, the **government will set up an oversight mechanism** at its level to deal with a case where immediate action is required. The committee will reportedly have **representatives from the ministries of Defence, External Affairs, Home, I&B, Law, IT and Women and Child Development.**

**Categories of Content that should not be posted:** The rules lay down categories of content that the social media platform should not host. It includes content that

- Threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states or public order
- Causes incitement to the commission of any cognizable offence or
- Prevents investigation of any offence or is insulting any foreign States
- Content is defamatory, obscene, pornographic, paedophilic, invasive of another’s privacy,
- Related to encouraging money laundering or gambling or is inconsistent with or contrary to the laws of India.

**Removal of these contents:** The rules stipulate that the platforms should remove the content within 36 hours. Duration will count from the receipt of information from a court or the appropriate government agency about the platform hosting

prohibited content.

### **Monthly Compliance Report:**

The platforms will need to publish a monthly compliance report. It should have the details of complaints received and action taken on the complaints.

### **Track Originator of Message:**

- The social media platforms need to disclose the first originator of the objectionable tweet or message if asked either by a court or a government authority.
- This will be required in matters related to the security and sovereignty of India, public order, or with regard to rape or any other sexually explicit material.

### **Self-Classification of Content:**

- The government said **OTT platforms (like Netflix and Amazon Prime Video) would have to self-classify the content into five age-based categories** - U (Universal), U/A 7+ (years), U/A 13+, U/A 16+, and A (Adult).
- Publishers will have to prominently display the classification rating specific to each content or programme together with a content descriptor informing the user about the nature of the content.
- Platforms required implementing parental locks for content classified as U/A 13+ or higher. A reliable age verification mechanisms for content classified as “A” should be placed.

### **Publishing News on Digital Media:**

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.

### **Penalties for Non-Compliance of Rules:**

- In case an intermediary fails to observe the rules, it will be liable for punishment under any law for the time being in force including the provisions of the IT Act and the Indian Penal Code.
- The penal provisions vary from imprisonment for three years to a maximum of seven years, with fines starting from Rs 2 lakh.

### **Need for the regulation of big tech:**

- Governments around the world have found a common adversary: Companies with hundreds of millions and even billions in their thrall have the power to control the three most critical levers of modern times, data, attention and the popular narrative.
- The speed and reach of social media has created many problems like fake news, rumors, incitement of violence, mob lynching etc. This has resulted in serious law and order problems in India.
- Big Tech has seen the writing on the wall. They harms by the “infodemic” of COVID untruths, misinformation during elections and the fallout from the siege of the US Capitol and propagation of incitement of violent activities on republic day.
- However, the social media companies would argue that they are self-regulating. But the problem is that their actions are ad hoc, inconsistent and reactive and seem far too much like they are lining up the sandbags before the antitrust barbarians arrive at their gates.

### **Regulation of free speech on big tech:**

- Argument for government intervention rests on the presumption that it is never in the commercial interest of Big Tech to remove offensive speech as this content goes viral more readily, bringing in more eyeballs, more data and more advertising revenue.
- States are the guardians of the public interest. In democratic societies, governments are elected to represent the will of the people. So if there is a hard choice to be made about curtailing speech or permitting it, it seems only natural to turn to the public guardian.
- Tech industry is itself deeply flawed: There is a lack of sufficient choice of platforms; there are asymmetries in power between the companies and users and Big Tech is amassing data on the citizens and using this information for its own purposes, which makes the disparity even greater. Besides, the industry has been utterly inconsistent in governing what speech is allowed and what ought to be blocked.
- While Governments technically have the only ability to take entire platforms offline within the borders of their countries but these platforms are now so enormous that their users would revolt. This is why we witnessed the audacity, recently, of Google and Facebook, threatening to de-platform Australia.
- In a new era of global diplomacy, It isn't just states butting heads with other states; there are gigantic tech companies that have thrown their hats into the geopolitical ring.

- Any government including India, that believes it can force these companies to do their bidding arbitrarily must reckon with new dynamic of bargaining power between Big Government and Big Tech. e.g. Twitter has power to deprive Prime Minister Narendra Modi instantaneously from his 66 million followers on the platform.

### **Arguments in favour of free speech regulated by big tech:**

- After new guidelines, even if your post is not outright fake news, pornography or celebrates Greta Thunberg, you may be kicked off the platform if your post threatens “the unity, integrity, defence, security or Sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any cognizable offence or prevents investigation of any offence or is insulting any foreign States”.
- Big Tech proponents would contend that the companies are getting smarter about the risks of allowing such content on their systems and will inevitably find it in their self-interest to pre-emptively kill it.
- Even democratically elected governments are far from perfect in representing the will of people. According to The Economist Intelligence Unit’s Democracy Index, both India (ranked 53rd) and the US (ranked 25th) are “flawed democracies”. This imparts a question that how reliable a guardian a government can be under such circumstances.
- An implication of this is that reliable a guardian a government can be under such circumstances.
- To make matters worse, a government’s agenda is set by prominent personalities, many with large social media followings — so they have too much power to create their own viral narratives while shutting down competing ones.
- The argument for Big Tech to be the upholder of the public interest could rest on the theory that well-functioning markets are superior to flawed democracies in optimizing social welfare. In such market settings, there is “voting” with one’s wallet and one’s attention.

### **The level playing field:**

- The policy has tried to create the much-needed level-playing field between online news platforms and print media on the one hand and online and television news media on the other.
- It has also tried to bring online news portals within the ambit of the code of ethics that governs print media.
- These include the norms of journalistic conduct drawn up by the Press Council Act and the Cable Television Networks (Regulation) Rules, 1994.
- This was long overdue because of the recklessness and irresponsibility that is on display on some of these platforms.

- While the cinema industry has a film certification agency with oversight responsibilities, OTT platforms have none.
- However, in order to ensure artistic freedom, the government has proposed self-regulation and has said that the OTT entities should get together, evolve a code and come up with content classification so that a mechanism is evolved to preclude non-adults from viewing adult content.
- Online platforms are wary of rules that seek verification of accounts, access control etc, but these issues need to be resolved within the framework of India's laws.
- For example, while mainstream media is conscious of provisions in the Indian Penal Code (IPC) that deal with the promotion of violence, enmity among communities, defamation etc, the content on online platforms seems to be oblivious of all this.

### **Lessons from other countries:**

The Indian digital and OTT players can draw lessons from the concerted action taken by digital companies in Australia, which have come together and drawn up a code to deal with fake news and disinformation.

### **THE AUSTRALIAN EXAMPLE:**

- The Australian Code of Practice on Disinformation and Misinformation was released only recently by the Digital Industry Group.
- The Australian Communications and Media Authority (ACMA) has welcomed the initiative and said that more than two-thirds of Australians were concerned about “what is real or fake on the internet”.
- In response, the ACMA says that **digital platforms agreed to a self-regulatory code** “to provide safeguards against serious harms arising from the spread of dis- and misinformation”.
- Some of the actions promised by the digital platforms include **disabling accounts and removal of content**.

### **THE UNITED KINGDOM EXAMPLE:**

- In the UK, the government is all set to bring in a law to **make online companies responsible for harmful content** and also to punish companies that fail to remove such content.
- The aim of the proposed “Online Safety Bill” is to **protect internet users and deal firmly** with platforms that promote violence, terrorist material, child abuse, cyber bullying, etc.
- Digital Secretary Oliver Dowden was quoted as saying, “I’m unabashedly pro-tech but that **can’t mean a tech free-for-all**”. This, in a sense, sums up the current mood on this issue across democracies.

- In the UK, **self-regulation governs print media and private television** and radio are regulated by the Independent Television Commission and the Radio Authority as provided by a statute.

### Conclusion:

- In recent times, **Twitter has tried to define freedom of expression** and even claimed that it seeks to protect the freedom of expression of Indians.
- “Freedom of expression” is embedded in the chapter on fundamental rights in our Constitution and it is circumscribed by what are called “**reasonable restrictions**”.
- These are in place because India is a vibrant democracy and the most diverse society in the world with **many social, political and economic complexities**.
- That is why India’s founding fathers had, with great intuition and foresight, introduced a caveat vis-à-vis freedom of expression, so that **constitutional rights promote internal peace and harmony**.
- **What these freedoms are and what these restrictions are have been defined by our Supreme Court** in innumerable cases and the law as laid down by India’s apex court is the law of the land.
- Thus, country need not to allow some private international companies to **assume the role of some supra courts** and put their own spin on our Constitution.

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