

Twitter Thread by Internet Freedom Foundation (IFF)

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@internetfreedom



It's done: The IT Rules, 2021, are officially in play. We cannot stress this enough - this fundamentally changes the Indian internet. Please RT this thread on the Rules and how they bring government control over digital media like never before.

<https://t.co/S7K9wnlkvl>

1/n

IT Rules affect social media, OTT, and news platforms. The latter 2 have been brought under the Rules for the first time. The Rules make platforms legally liable for not complying with government regulation, hence making user experience fall in line with the same.

2/n

Social media platforms with 50 lakh+ users will now be regulated as Significant Social Media Intermediaries (SSMIs) with different obligations than Social Media Intermediaries (SMIs). Government discretion in compliance can lead to discrimination which disempowers small SMIs.

3/n

Changes	SSMIs	SIMs
Send users notifications to not do anything "illegal".	✓	✓
Faster cooperation with law enforcement.	✓	✓
Data retention period doubled.	✓	✓
Instate teams to ramp up cooperation with law enforcement.	✓	✗
Offer voluntarily verification.	✓	✗
Information originator traceability.	✓	✗
Deploy tech based measures to identify sexual violence.	✓	✗

The government may require any intermediary to comply with obligations imposed on an SSMI if it satisfies the threshold of "a material risk of harm".

This threshold is vague and enables the government to enforce discriminatory compliances.



SIMs are now more answerable to law enforcement, with lesser breathing space around compliance deadlines.

Content takedown after receiving orders: 36hrs

Providing info to law enforcement: 72hrs

Requests to remove sexual content: 24hrs

Redressal by grievance officers: 15 days

4/n

The data retention period for SIMs has been doubled to 6 months for investigative purposes. Data will be preserved even if accounts are deleted. We are challenging this in the Supreme Court because such data retention in the absence of a data protection law is dangerous.

5/n

SSMIs must allow voluntary verification which can be a slippery slope towards mandatory verification and destroy user anonymity.

Further, web services will now notify you at least once a year not to do anything "illegal" - get ready for lots of spam in your inbox.

6/n

SSMIs must enable tracing originators of info in case of serious offences. See this graphic on why this IS an end-to-end encryption issue despite not being presented as such.

They must also deploy tech to identify sexual violence content, which leads to function creep.

7/n

What is the implication of the IT Rules, 2021 on encryption?

SSMIs must enable tracing of the originator of information on their platform if required by a court or competent authority under Section 69A of the IT Act. While the Rules clarify that a traceability order may only be passed for serious offences, some categories of serious offences are proven to be vague and overbroad.

The Rules clarify that SSMIs will not be required to disclose the contents of any message, other information related to the first originator, or information related to other users. However, the IT Decryption Rules contain powers to make demands for the message content. Used together, the government can break any type of end-to-end encryption to gain knowledge of who sent what message and also get to know its contents.

This requirement will break existing protocols for end-to-end encryption deployment that have been built through rigorous cybersecurity testing over the years!

Moving on to news media and OTT. Such platforms being regulated under the Rules amounts to the executive amending parliamentary legislation and is NOT permissible under the Constitution.

There is excessive delegation of powers - e.g. the government's "oversight committee".

8/n

The Rules are applicable to all 'news and current affairs content' regardless of the size of publication. Due to vague language, the Rules arguably could also seek to regulate all internet users who produce news, analysis, and socio-political commentary on a small scale.

9/n

News and OTT will adhere to a Code of Ethics via a 3-tier regulation mechanism. But the provisions of the Rules are too onerous for self-regulation to effectively happen. Platforms will be forced to self-censor keeping in mind overbroad restrictions.

10/n

Tier 1: In-house grievance redressal mechanism

Platforms must appoint a Grievance Office who will take decisions on every grievance within 15 days. If the complainant does not receive a satisfactory response, they can appeal to Tier 2.

Tier 2: Independent "self-regulating" body

An independent body constituted by publishers will be headed by a retired judge or eminent person from media, human rights or relevant fields. MI&B will "satisfy itself" that this body has been constituted properly. It can warn/censure publishers, require an apology, reclassify ratings, or censor content. In case of failure to comply, the matter can be referred to Tier 3.

Tier 3: Government oversight mechanism

This "Inter-Departmental Committee" consists of representatives from MI&B, MHA, MeitY, etc. The Chairman will be a Joint Secretary of the MI&B. This Committee will hear complaints regarding decisions taken at Levels I and II, and is empowered to delete or modify content for preventing incitement to the commission of a cognisable offence relating to public order.

MI&B will have emergency powers to block OTT and news content without any hearing. Tier 2 and 3 bodies have wide-ranging punitive powers.

The Rules state a loss of immunity with consequences including criminal prosecution in case of non-compliance for all intermediaries.

11/n

We are appealing to you to engage with this issue because the Rules will change the internet as we know it. We invite you to let us know your thoughts, views and any corrections.

Please support us so that we can continue standing up for your rights!

<https://t.co/HYJJBakov>

12/n