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# Amendment to the Information Technology (Intermediaries Guidelines & Digital Media Ethics Code) Rules, 2021 – Central Government’s Step to Protect Digital Rights of its Citizens & Tighten the Social Media Regulation

### Introduction

On 28th October 2022, the Ministry of Electronics & Information Technology (“MEITY”) released the Amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (“Amendment 2022”). The aim of the Amendment 2022 was to meet the vision of the Government of providing the Open, Safe, Trusted, & Accountable Internet to the Digital Nagrik of India. The Hon’ble MoS Shri Rajeev Chandrasekhar while addressing media on the Amendment 2022 quoted that “*There Rules mark new partnership between the Government & intermediaries in making & keeping the internet safe & trusted for all Indians. India is the trustee of rights of its citizens & digital Nagriks.*” The amendments are made to Part II of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (“IT Rules 2021”) by introducing few additional and greater due diligence requirements to be complied by the intermediaries to protect digital rights of the citizens and ensuring accountability of the intermediaries toward its users. Through the Amendment 2022, the government itself has kicked in to play an active role to provide easy and early justice and dispute resolution to the citizens and to not sit as a mere spectator watching digital citizens struggling to get recourse to their complaints.

### Analysis of the Key Changes by the Amendment 2022 -

1. *Intermediaries to ensure compliance of their terms of use by their users* – Under the IT Rules 2021, the intermediaries were only required to inform users about not uploading certain categories of harmful/unlawful content. The Amendment 2022 imposes a legal obligation on intermediaries to take reasonable efforts to prevent users from uploading such content. The intermediary shall ensure that the intermediary’s obligation is not a

mere formality and users have to strictly adhere to it. [Rule 3(1)(a) of Amended IT Rules 2021]

2. *Intermediaries agreements in English or any other regional language* – For effective communication of the privacy, policy, terms of use and other rules and regulations of the intermediary, it has to publish these agreements in English or in any preferred local language provided under the Eighth Schedule of the Indian Constitution. This obligation is added with a view that the communication should be done in regional Indian languages as well. Though by plain reading of the text of the provision, it doesn’t oblige the intermediaries to publish the agreements in English and any other regional language as the word ‘OR’ is used which gives any option to the intermediary either to publish in English or any other regional language as provided under the Eighth Schedule. [Rule 3(1)(a) of the Amended IT Rules 2021]
3. *Addition & deletion in the list of objectionable content* – The intermediaries now will be expected to ensure that there is no uploading of content that intentionally communicates any misinformation or information that is patently false or untrue, and content that could incite violence between different religious/caste group and hence entrusting an important responsibility on intermediaries. Looking at the growing misuse of the intermediaries for spreading fake news, misleading information, and hate speech, it was a much needed steps to protect the users from being manipulated or mislead by such content. Also, the grounds in rule 3(1)(b)(ii) have been rationalized by removing the words ‘defamatory’ and ‘libellous’. Whether any content is defamatory or libellous will be determined through judicial review. [Rule 3(1)(b)(ii) of the Amended IT Rules 2021]
4. *Intermediaries to respect the fundamental rights under Article 14, 19 & 21* – The Amendment 2022 have also made it explicit for the intermediary to respect the rights accorded to the citizens of India under the Articles 14, 19 and 21 of the Indian Constitution, including



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a reasonable expectation of due diligence, privacy and transparency. This is the highly talked about provision as claimed by the stakeholders that fundamental rights can only be enforceable against the state. This provision obliges the intermediaries that as they are running their business in India, they have to abide by the law of land and the respect fundamental rights therein. This provision poses a doubt in our minds that what steps may be expected to be taken by the intermediaries in this regard as the implementation of this rule looks blurry and there are high chances that this may be challenged in the court of law as constitutional rights are enforced only against the state and not private entity. [Rule 3(1)(n) of Amended IT Rules, 2021]

5. *Obligation to resolve a content related complaint within 72 hours* – The intermediaries now have to resolve any complaint they have received regarding the harmful or illegal content laid down under rule 3(1)(b) of the IT Rules, 2021 within 72 hours of receiving the complaint with an exception to content related to Intellectual property rights, proprietary or content in general violating any law for the time being in force. The timeline has been shortened against the backdrop of complaints regarding the action/inaction on the part of the intermediaries on user grievances regarding objectionable content or suspension of their accounts. There are high chances that the removal of the unlawful content within 72 hours may lead to over-censorship on part of the intermediaries into the content of its users and it may end up removing maximum of the content complained of and hit the freedom of speech & expression of the digital citizens. [Rule 3(2)(a)(i) of Amended IT Rules, 2021]
6. *Grievance Appellate Committee(s) (GAC)* – A new regulatory body has been established for hearing appeals against the decision of the grievance officers of the intermediaries in case the aggrieved user is dissatisfied and wants to further challenge the decision. Before, the aggrieved user had the only option to approach high court in such situation, which was not financially, physically and mentally feasible for every user to approach high court for matters like removal of content, de-platforming, blocking etc. due to which many aggrieved and dissatisfied users were left with the binding decision of the intermediaries. This called for a need of a mid-layer between the intermediary and the high court to resolve such issues and challenge the arbitrary decisions of the intermediaries. This will also save time of the user and the high court as well and achieve the speedy

justice to all. GAC will be constituted within 3 months of the notification of the Amendment 2022. It will constitute of one chairperson and two independent members, appointed by the central government. However, users will always have the right to approach courts for any remedy. It is an alternative remedy for the user. However, the establishment & composition of the GAC leaves behind lots of ambiguities such as whether a committee like GAC can be established through rules or the rules have bypassed the role of the Parliament. Also, the GAC must have a judicial member along with other three members regarding which nothing has been said in the rules as for analysing whether a content that is been challenged to be objectionable under rules 3(1)(b) of the Amended IT Rules 2021 involves ground like trademark infringement, hate speech, misinformation & disinformation, sexually explicit material to name a few. A judicial authority has the sense of analysing & understanding such issues as similar thing are there in the other Indian laws which are unlawful and illegal and the complaint against such content is dealt by a judicial officer Hence without a judicial member, the decision may vary and come out wrongly analysed. [Rule 3A of the Amended IT Rules 2021]

## Conclusion

The Amendment 2022 is a welcoming step by the government for the building an open, safe, trusted, and accountable internet for its citizen. It is a quick initiative by the government to overcome the gaps and infirmities in the IT Rules 2021. The present government is highly active and responsive towards its citizens and strive to resolve the muddles faced by citizens while using services of the intermediaries and harden the role of the intermediaries to protect the digital rights of its citizens. With this move, the government has acted as watchdog into the activities of the intermediaries and how these intermediaries perform its duties towards its user and government. Though we still have to wait for the implementation of these new rules and its effects thereto.