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Critical Analysis of Proposed Digital Media Ethics Code and Governance with Reference to Data Protection Bill

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ABSTRACT: The paper critically examines the digital media and governance codes of ethics in light of the Data Protection Bill 2019.

This research focuses on the Government of India's recent proposal of Personal Data Protection Bill (yet to be drafted as law) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Amendment to Information Technology Act, 2000 and Information Technology (Intermediaries Guidelines) Rules, 2011).

The emergence of digital media platforms has visibly delegated power to users, who can now engage with a mass audience and exert degrees of influence over democratic processes and governance practises. However, people are now having a dilemma about technological advancement and digitization due to increased concerns about personal data breach, its protection, and privacy policy. There is less credibility over the source of information been published on digital media.

In order to protect the right to privacy and to maintain authenticity, it is necessary to comprehend the concept of a digital media ethics code and intermediary norms. As a result, this paper will explore the perspectives on the frameworks put in place by the Government in order to maintain due diligence over digital media platforms.

KEYWORDS : Digital media ethics code, data protection and privacy bill, information technology rules, governance and intermediary guidelines.

I. INTRODUCTION

Media has always played an important role in disseminating the required information from various sources to its audience. With the advent of technology, media has also gone through the dynamic shift in market realities. This robust change in the consumer behaviour while consuming the content has transformed traditional media into the digital media. ¹Digital media means a content which is digitised and communicated over the internet or computer networks which involves contents received, stored, transmitted, edited or processed by (i) an Intermediary or (ii) a news and current affairs content publisher, or a publisher of online created content.

In a fast paced world where local has become global and everyone has got the accessibility to make and deliver their own content, the gatekeeper are now facing a tough time in maintaining the intricacies of right to freedom of speech and expression. But as mentioned under the of Constitution of India that the fundamental rights are not absolute because they can be controlled and are subject to reasonable restrictions for the protection of state security, public morality, decency and friendly international relations. The Government of India can curtail or repel them through a constitutional amendment act, thus to prevent the citizen from the misuse of these rights. The recent changes in the privacy policy of Whatsapp, to the Pegasus spyware has raised the concerns over privacy of the people and demands for immediate remedy to these threats. Due to which Government of India has recently proposed 'Data Protection Bill 2021' and 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021'.

Objective of Study:

1. To examine the concept of Digital Media
2. To explore knowledge about Digital Media ethics code

¹ Notification released by Ministry of Electronics and Information Technology in Gazette of India for proposed IT Act 2021, amendment of IT Act 2011. Part I – Definitions (i) Digital media.



3. To understand the implications of Governance in Digital media
4. To understand the provisions of Data Protection frameworks

Methodology:

The descriptive research methodology is used for this study. The secondary data is collected from books, journals, articles, websites and research papers.

II. LITERATURE REVIEW

According to Geetali Tilak (2020) Media Ethics is depended on the behaviour of the moral media person. Media ethics is pertinent for right type of broadcasting, reducing the disinformation and to avoid the conflict of point of views. The researcher talks about the values, morals, faith and believe of various cultures and how media should follow the path of authenticity and accountability while publishing any news. The researcher however does not discussed about the credibility of information being conveyed on digital platform and further suggest framing of laws, rules and regulations on media ethics.

Yatindra Choudhary (2021) debates that IT Rules 2021 proposals lacks constitutionality and will encroach the free expression and privacy of internet user in India. According to him it is not possible to implement these rules in wide and critical areas such as Whatsapp and Twitter. The researcher has inhibitions that it will violate the encrypted privacy of the user as we are still inefficient in technology that deals with automated censorship. According to him formulation of these rules will be overregulating the freedom of speech and freedom of expression.

Noorita Karnik (2021) discuss about how the code of ethics in the field of digitalization is the need of the hour and did a comparison study with various other countries regulations and formulation of digital media ethics code to have a broader perspective globally.

Anirudh Burman (2020) in his paper “Will India’s proposed data protection law protect privacy and promote growth” argues that Data Protection bill does not correctly address privacy – related issues in the data economy in India. He examines that this bill will significantly give more powers to state’s role in data economy and will weaken the property rights in data.

Paolomi Sen (2021) has done a comparative study of data protection bill with European Union’s General Data Protection Bill (GDPR) . She expressed that the draft bill is highly influenced by GDPR and California Consumer Protection Act (CCPA).

According to Rajat Mishra and Rajat Grover (2020) the contract for web describes how data should be protected worldwide in its article 3 and 5. Thus the researchers has done an in depth analysis and had explored the history of data protection laws in India.

Concept of Digital media

New Media: The Media which utilises ICT, internet and digital technology is termed as New Media. New media contains all forms of medium in the digital world, which includes electronic media, video games, the Internet, and social media. They are instantly available , free of cost and can be communicated in large number of people at a very short interval of time . The term new media is specifically associated to digital media which includes Social media sites such as Facebook, Twitter, Instagram etc. The advantage of new media is quick, empowering consumers to find out anything and everything with just one click, this way the response is immediate which prompts more interaction among the users.

Internet: Internet has given a new and holistic change to the communication. Internet has taken over the lives of the people in the form of digital banking, online shopping, infotainment, etc

Social Media: Social Media is a type of digital media used for social interaction over internet. It include blogs, vlogs, social networking sites, and websites where you can share your videos, audios and opinions like Star maker, Tik Tok, Spotify and LinkedIn. The continuous distribution of news, discussions on various perceptions on a single event on a single platform , and the ability to interact with the global audiences are advantages of Social media. There are also virtual communities formed under the similarity of shared thought process, values and believes.



Digital Media: it is a diversified channel of communication networks, broadcasting and podcasting through which news, entertainment, education, government schemes, national and international happenings can be published and distributed among the people. This form of media can be created, viewed, modified and distributed via electronic devices.

Concept of Code of Ethics

Ethics are the inner decent moralities, ideologies and opinions that people use to interpret a situation and according to their own understanding behave in a certain way. Jay Black and Chris Robert in their book "Doing Ethics in Media", states that Ethics comes from many words one of them is Greek "Ethos" means character or what does it have a good character. The philosophy of right or wrong and good or bad are the moral values that lead to human conduct in the society. It delivers principles which have confidentiality, integrity and professional competence that together combine to form code of ethics.

Concept of Digital Media Ethics Code

The Digital Media Ethics Code, which are included in IT Rules 2021, is aimed to convey the grievances of the people facing indecent and derogatory incidents which hamper their image on digital platforms and to improve stakeholder understanding of Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The main aim of Digital Media Ethics Code is to stop the dissemination of content which is objectionable and inappropriate to women or harmful to children. Presence of a regulatory body can keep an eye and curb the transmission of fake news as well as make the publishers accountable. There are content regulators like Press Council of India for Newspapers, Cable TV Network Act, 1995 for broadcasting news on TV and Central board of film certification for Indian film making industry but there has been no such regulation for producing, publishing and hosting the content on digital platforms.

Prominent takeaways of IT Rules 2021

- Social media intermediaries, having a registered accounts in India above certain numbers have been classified as significant social media intermediaries (SSMIs). SSMIs should consider few additional due diligence such as appointing compliance official, establishing identification of the first originator of the data on its platform under enabled conditions, and install technology-based measures to identify certain types of content.
- These IT Rules propose a framework to regulate the content produced by online publishers of news and current affairs content, and modified audio-visual content.
- In addition to this all intermediaries are expected to provide a grievance redressal mechanism to settle the complaints from users or victims.

Issues persisting in IT Rules 2021

- Grounds for restricting online content are overbroad and may affect freedom of speech, since there is no limit set as to which extent the content may hamper the ethics and values of a state.
- The law enforcement agencies have been crippled by the present rules because there are no procedural safeguards provided in the present rules which may help the law enforcement agencies in extracting the information from the possession of the intermediaries.
- Privacy of individuals may get affected adversely on the basis of acquiring the information of first originator by the intermediaries.

Salient Features of IT Rules 2021

- **Due diligence to be considered by intermediaries:** An intermediary is not responsible for the third-party details that it may convey. However in order to be exempted from such claim, it must stick to the due diligence requirements under the IT Act and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (which replace the earlier 2011 Rules). Under the 2011 Rules, the requirements included: (i) specifically categorising the content that users are not allowed to upload or share, (ii) removing content within 36 hours of receiving a court or government order, (iii) cooperating with law enforcement agencies, (iv) retention of blocked content and similar records for 90 days, and (v) imparting a grievance redressal mechanism for users and victims, and



(vi) appointing a grievance officer. Hence 2021 Rules retain these requirements, while modified the categories of content and decreased the timelines for the above requirements².

- **Significant social media intermediaries:** The 2021 Rules define social media intermediaries as intermediaries which allows online interaction between two or more users. The additional due diligence to be observed by these SSIMs include:

Personnel: An SSIM must deploy (i) a chief compliance officer to adhere with the regulation of the Rules (ii) a nodal officer who will coordinate with law enforcement agencies, and (iii) a grievance officer.

Identifying the first originator of information: An SSIM, should also enable the identification of the first originator of information within India on its platform. This is done in order to prevent/ protect/ investigate the security and integrity of a nation. Such orders will be issued by a court/competent authority on specific grounds like child pornography, sexual offence and violence against women.

Technology-based measures: Such measures must be aligned to the interests of free speech and privacy of users and be reviewed periodically by the respective competent authority.

User-centric requirements: SSIMs must provide users with: (i) a voluntary identity verification mechanism, (ii) it is a mechanism to check the status of grievances, (iii) a user can demand for explanation if no action takes place (iv) a notice where the SSIM can block the user's content on its own will with a dispute resolution mechanism³

- **Digital Media Publishers:** The 2021 Rules recommends certain requirements for online publishers for news and current affairs content involves online papers, news portals, aggregators and agencies; and curated audio-visual content which is defined as a carefully created an audio-video content which is owned, licensed or given on contracts to be disseminated by publishers and is made available on demand. The Rules constitute of three-tier structure to adhere to the regulations (i) self-regulation by publishers, (ii) self-regulation by associations of publishers, and (iii) proper governance mechanism.

- **Grievance redressal:** Any person who is not happy or satisfied by the content of a publisher may file a complaint against the publisher. A publisher needs to address the complaint within 15 days from the day of filing the complaint. The person may escalate the complaint to the association of publishers, if the action doesn't takes place by the publisher.

- **Oversight Body:** The Ministry of Information and Broadcasting will: (i) publish a charter for self-regulating bodies, including Codes of Practices, (ii) issue appropriate advisories and orders to publishers; (iii) have powers to block content on an emergency basis (subject to review by the inter-departmental committee)

Implication of Governance in Digital Media under the proposed IT Act 2021

1. Contradictory responsibilities of online intermediaries

Intermediaries includes a broader entities who observe the flow of data on internet; these are telecom service providers, internet service providers, search engines, E-marketplaces, payment sites, cyber cafes and social media sites. While some intermediaries are just a storage providers, where they are unaware of the content being proliferated or stored on their platform, other intermediaries may be aware of the user-generated content on their platform. This raises the question that to what extent intermediaries should be held liable for the user-generated content on their platform.

Many online platforms had broaden their role of responsibility from mere hosts of information to that of bodies governing how content is displayed and shared online and had taken certain aforementioned action according to the conflicts. There are growing concerns around misuse of these platforms for the transmitting of illegal or harmful content such as child sex abuse material, unethical content which is not supported in that particular nation like provoking potential terrorism, misinformation, hatred speech, change in public opinion and playing with the voter's mindset. This has raised questions on the role and responsibility of platforms in preventing, diffusion, detection, and subsequent removal of such content.

Some online platforms have been self-regulating the publication of sensitive and provocative content, where they initially ask for a viewer discrete. However, this has raised concerns about non-justifiable actions taken by these platforms which could affect freedom of speech and expression like blocking the accounts which re-post such content or deleting the post from their platform in order to prevent the national morality and ethics⁴.

² "Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021", Press Information Bureau, Ministry of Electronics and Information Technology, February 25, 2021.

³ https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021#_edn5

⁴ "Liability of online platforms", European Parliamentary Research Service, February 2021



2. Regulation of the rules may curb certain grounds of freedom of speech

The IT Act prohibits uploading or sharing content which is obscene, sexually explicit, or violates a person's privacy⁵. The 2021 Rules states certain restrictions on the types of information users of online platforms can create, modify, upload, or share. These include: (i) "harmful to child", (ii) "gender-sensitive", and (iii) "knowingly and intentionally transmitted any information which is targeted to hurt the sentiments and misleading in nature but perceived as a fact". Some of these prohibitions are enigmatic, and may curtail the freedom of speech and expression of users of online platforms who are actually posting the spread the awareness. This may also lead to over-compliance from intermediaries as their exemption from liability is depended on the due diligence observed by the ministry.

3. Enabling traceability is completely baffling in respect to right to privacy

The Rules require significant social media intermediaries, which provide services primarily in the nature of messaging, enable to trace the originator of the information may lacks certain transparency and clarity in IT Rules 2021. The loopholes which remain unanswered in the Intermediaries guidelines and digital media ethics code has been touched and discussed in the draft data protection bill. The regulatory frameworks of both are intertwined to each other based on the grounds of Right to privacy. Right to privacy is the case led by Justice K.S. Puttaswamy which opened various acknowledged pathways interlinking the digital media ethics code and data protection frameworks.

Provision of Data Protection Frameworks

Objectives of data protection

The preamble of a Legislation is often acknowledged as the very heart and soul of the legislation which gives the reader a brief idea about the string of thought the legislation is going to contain within itself. Similarly the amendment made in the preamble of the draft data protection bill gives a peek into the ideology behind the introduction of amended bill of 2021.

"to ensure the interest and security of the State"

The introduction of the recent draft data protection bill 2021, on the recommendation made by the Joint Parliament Committee, which incorporates the large parts of the 2019 bill, clearly makes an indication that the latest bill is more inclined to ensure the interest and security of the state, and therefore, undermining the primacy of the individual's privacy.

From "The Personal Data Protection bill" to "The Data Protection Bill":

The Change in name of the latest bill on recommendation of the JPC Report clearly suggests that under new bill the regulatory ambit is going to be expanded as the draft law will also regulate the "non personal data". This follows from the definition provided by Clause 3(28), as, "data other than personal data" which is essentially data that is not identifiable with an individual.

The expected implication of the aforementioned changes can be followed as, the central government can and may without providing any legal justifications, can introduce certain legislation or guidelines in these relatable subjects that may come in conflict with the Draft Data Protection Bill, 2021.

Consent or no Consent?

The Part -III of Constitution of India which specifically deals with the sacrosanct nature of fundamental rights is based upon the very foundation of inherent rights of an individual. The inherent rights are those rights which have been bestowed upon us by Mother Nature, the existence of which is dependent upon the shackles free existence of the very individual. The "consent" is sine qua non for exercising the inherent rights.

After keeping in mind the importance of concept of consent, it has been clearly mentioned in the report submitted by JPC and the Data Protection Bill, 2021 that even if an individual exercises his consent to not to provide personal data / Information, then, such individual shall not be denied a service or the enjoyment of any legal rights.

It is pertinent to mention herein that there may be some certain situations and concerning realities in which the authority has been provided to the appropriate agencies to have an exemption from the principle of consent after fulfilling the qualifying Conditions. The Hon'ble Supreme Court in its Right to Privacy Judgement has defined certain conditions under which the limitations can be imposed upon the right to privacy of an individual. However, Clause 12 of The Personal Data Protection Bill 2019 stipulates that personal data can be processed without consent 'when such processing is necessary'.

⁵ Section 67, 67A, and 67B, [The Information Technology Act, 2000](#)



Here, the Draft Data Protection Bill 2021 also fails to insert the additional safeguards of, “legitimate purpose” and, “proportionality” rather makes the exemption even broader, by adding “quasi-judicial authorities” as entities that can process personal data without consent.

Enfeeble user rights

The Draft Data Protection bill, 2021, in consonance with the earlier version of the PDPB (Private Data Protection Bill) ensures the user with certain rights such as the right to confirmation and access (clause-17), the right to correction and erasure (Clause 18), the right to data Portability (Clause 19), and the right to be forgotten (Clause 20).

It is pertinent to mention herein that sub-clause (4) is being added to Clause 17 which includes rights that can be exercised in the event of the cessation of the data principle primarily for the objective of the nomination of legal heirs and representatives. Though it is a constructive addition, it does not negate the fact that there are several provisions from the earlier version of the Data Protection Bill which are still continuing to undermine the rights of the users.

One welcome change is within Clause 62 which provides for the ability of ordinary citizens who are data subjects to avail remedies by filing a complaint with the Data Protection Authority. This Clause also provides for compensation. But the consequence of such change is that it increases the capability of government departments and entities to hold on to personal data.

Data Breach and security at stake?

It is a noticeable fact that reporting of data breach and security has not been dealt adequately in draft data protection bill. This means there is no provision of protection provided to the whistleblowers.

IV. CONCLUSION

Thus this paper recommends that frameworks of Data Protection Bill should be regulated in consonance with Social Media Intermediaries as laid down by IT Rules 2021 in a holistic way so as to give broad horizon of transparency to data fiduciary and data principal. Apart from national security, the state should have a justifiable reasons for the collection and storage of data, they must clearly specify the time period of storing the personal data being processed without consent. The balance between data regulation and privacy of an individual raises a complex issues which requires a delicate equilibrium to be drawn between the legitimate concerns of the State on one hand and individual interest in the protection of privacy on the other⁶. Hence pragmatic approach can be followed by the Government to maintain the integrity and essence of right to privacy.

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