



FAQs/Dummies Guide on Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (hereinafter 'IT Rules), insofar as they apply to publishers of online news, current affairs and online curated content.

> FAQs/Dummies Guide on Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (hereinafter 'IT Rules'), insofar as they apply to publishers of online news, current affairs and online curated content.

March 2021

This work is licensed under a creative commons Attribution 4.0 International License.



You can modify and build upon document non-commercially, as long as you give credit to the original authors and license your new creation under the identical terms.

Author: Digital Empowerment Foundation

Editor: **Tarun Pratap**

Reviewer: **Osama Manzar & Dushyant**

Design and Layout: **Satish Kumar**

Year of Publication: **2021**

DEF Paper Series/SN-04/2021



You can read the online copy at www.defindia.org/publication-2

Published and Distributed by:

Digital Empowerment Foundation

Email: def@defindia.net | URL: www.defindia.org

FAQs/Dummies Guide on Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (hereinafter 'IT Rules), insofar as they apply to publishers of online news, current affairs and online curated content.

Q. Are there enough laws currently applicable in India which affect/regulate 'speech'-whether published/expressed online or offline? Is there too much freedom of speech?

A. Not an exhaustive list, but Indian Penal Code– 124A Sedition **Section 153.** Wantonly giving provocation, with intent to cause riot—if rioting be committed; if not committed; **S. 153A.** Promoting enmity between different groups on grounds of religion, race, place of birth, residence language, etc., and doing acts prejudicial to maintenance of harmony. Offence committed in place of worship, etc; **S. 153B.** Imputation, assertions prejudicial to national-integration; **S. 171G.** False statement in connection with an election; **S. 177.** Furnishing false information; **S. 182.** False information, with intent to cause public servant to use his lawful power to the injury of another person; **S. 189.** Threat of injury to public servant; **S. 190.** Threat of injury to induce person to refrain from applying for protection to public servant; **S. 203.** Giving false information respecting an offence committed; **S. 209.** Dishonesty making false claim in Court; **S.211.** False charge of offence made with intent to injure; **S. 228.** Intentional insult or interruption to public servant sitting in judicial proceeding; **S. 228A.** Disclosure of identity of the victim of certain offences, etc; **S. 268.** Public nuisance; **S. 269.** Negligent act likely to spread infection of disease dangerous to life. **S. 270.** Malignant act likely to spread infection of disease dangerous to life.; **S. 294.** Obscene acts and songs; **295A.** Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. **S. 296.** Disturbing religious assembly; **S. 298.** Uttering words, etc., with deliberate intent to wound religious feelings; **S. 354A.** Sexual harassment and punishment for sexual harassment; **S.354D.** Stalking; **S. 383** Extortion; **S. 385** Putting person in fear of injury in order to commit extortion. **S. 388** Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc. **S.389** Putting person in fear of accusation of offence, in order to commit extortion; **S. 415** Cheating; **S. 416** Cheating By Personation; **S. 418** Cheating



with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect; **S. 420** Cheating and dishonestly inducing delivery of property. **S. 463** Forgery; **S. 498A** Cruelty; **S. 499** Defamation (Criminal) **S. 500** Printing or engraving matter known to be defamatory; **S. 501** Sale of printed or engraved substance containing defamatory matter; **S. 503**. Criminal intimidation; **S. 504**. Intentional insult with intent to provoke breach of the peace; **S. 505**. Statements conducing to public mischief; **S. 505 (2)** Statements creating or promoting enmity, hatred or ill-will between classes; **S. 507**. Criminal intimidation by an anonymous communication; **S. 508**. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure; **S. 509**. Word, gesture or act intended to insult the modesty of a woman.

Then there are other laws. Again, this is not even close to an exhaustive list.

- 1. The Criminal Procedure Code, 1973;
- 2. The Contempt Of Courts Act, 1971;
- 3. The Unlawful Activities (Prevention) Act,
- 4. The National Security Act, 1980,
- 5. The Cinematograph Act 1952;
- 6. The Press Council Act, 1978;
- 7. The Television Networks (Regulation) Act, 1995,
- 8. The Official Secrets Act,
- 9. The Civil Procedure Code (Remedies such as Civil Defamation, Injunction, etc),
- 10. Intellectual Property Laws
- 11. Consumer Protection Act
- 11. The Information Technology Act, 2000
- 11.a Information Technology (Intermediaries Guidelines) Rules, 2011
- 11.b Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009
- 11.c Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009
- 12. The Telegraph Act
- 13. Press Council Act

Then there are other ways to affect speech-

- Advertisements
- Government advertisements are a chief source of revenue for most if not all newspapers, the government can 'reward' and 'punish' by increasing or decreasing advertisements.

“Government advertisements are a chief source of revenue for most if not all newspapers, the government can 'reward' and 'punish' by increasing or decreasing advertisements.”

- Laws regulating ownership and funding- grant/denial of FCRA licenses, changes in permissible Foreign Direct Investment in a certain sector
- Malicious harassment by state via agencies such as the Enforcement Directorate, Tax authorities.

Illegal/Extra Legal Ways:

- Mass abuse/trolling on social media
- Physical violence with the individuals associated with the expression of speech.
- Threats, Bribery, Surveillance etc.
- Journalists being prevented from reporting in conflict areas.

Is all of the above (and much more) enough to 'regulate' free speech? You can decide that for yourself.

Q. Ok. Wait, why are we talking about laws which affect speech?

A. Because the government of India has decided that we need more laws to control speech and punish speech.

Q. More? Woah. What are these laws and what do they have to do with “publishers of online news, current affairs and online curated content.”

A. This is the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*.

Q. Aren't publishers of online news, current affairs and online curated content also governed by Defamation (Civil and Criminal), Sedition, Obscenity Laws, UAPA, NSA, Obscenity Laws, and many many others?

A. Yes they are.

Q. But we need even more laws? And what does the IT Act, 2000 have to do with news and current affairs?

A. *silence*

Q. Alright, so what does this law say now?

A. In summary: 1. It wants every non-newspaper news website and/or blog/youtube channel/newsletter/podcast to appoint a 'grievance officer' who will have to 'acknowledge' to every grievance anyone has about anything on their platform in less than 24 hours and then 'resolve' it within 15 days. **(RULE 11)** What is the problem with this you may ask. Imagine this- lakhs of workers of a political party/corporate/film actor/spiritual baba get upset about a news item critical of the subject of their worship. They send lakhs of grievances. How in the world will a person running a newsletter about law/media/science or even a news website or a weekly podcast respond to all of this?

2. It then wants groups of publishers to establish a self-regulation body which will be headed by a retired High Court or Supreme Court Judge “or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights or such other relevant field and

“Imagine this- lakhs of workers of a political party/corporate/film actor/spiritual baba get upset about a news item critical of the subject of their worship. They send lakhs of grievances. How in the world will a person running a newsletter about law/media/science or even a news website or a weekly podcast respond to all of this?”

have other members, not exceeding six, being experts from the field of media, broadcasting, entertainment, child rights, human rights and such other relevant fields.” **(RULE 12)**

It wants this self-regulation body to register itself with the government. Now comes the clincher- the government will have the final say on the composition of these bodies, if it doesn't like someone, that person won't be able to become a member.

What does this mean? It means expect these bodies to be staffed only by people who are sympathetic to the political party in power. There is of course, no shortage of such people.

If all those laws this paper started with were not enough, if this additional law on top of all of them was not enough, the government will then “publish a charter for self-regulating bodies, including Codes of Practices for such bodies”; “issue appropriate guidance and advisories to publishers;” “issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.”

This self-regulatory body is supposed to be the body to which appeals from the original grievance officer will go.

3. Finally comes the top body. **“Inter-Departmental Committee.—** (1) The Ministry shall constitute an Inter- Departmental Committee, called the Committee, consisting of representatives from the Ministry of Information and Broadcasting, Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of Home Affairs, Ministry of Electronics and Information Technology, Ministry of External Affairs, Ministry of Defence, and such other Ministries and Organisations, including domain experts, that it may decide to include in the Committee” **(RULE 14)**

So a body of bureaucrats from multiple ministries will spend their time resolving ‘grievances’ people have with news websites, youtube videos, podcasts and what not. This body has been given the power to ask any publisher to delete any content it doesn't like. This is not all. It will do this without hearing the publisher of the content.

4. Now comes the nuclear option against publishers. With these rules, the government has also given itself the power to ‘delete’ or block any content it doesn't like. **(RULE 16)**. Again, without hearing the publisher. So what will likely happen is, out lakhs of grievances sent to a publisher about that article, many remain unresolved. These complaints then go to Self-Regulatory Bodies and are also missed by them. A judge and six other people find it challenging to handle a few thousand cases in a court how do you expect them to deal with lakhs of offended people? So some will be missed here also. These will then go to the Central Government, which has the power to either order the publisher to delete or itself get content deleted by simply asking the ISP or the social media intermediary (Twitter, Youtube, Facebook) for instance to delete it. So basically publishers will suddenly be waking up to some content getting deleted from their website/podcast/newsletter every other day.

“With these rules, the government has also given itself the power to ‘delete’ or block any content it doesn't like. (RULE 16). Again, without hearing the publisher.”

“In a hearing unrelated to these rules, the Supreme Court has said that what these rules lack is “teeth”. However, the Delhi High Court and the Kerala High court have issued notices after petitions challenging these rules were filed.”

Q. There must be some option at some point in the grievance mechanism which enables the publisher to go to court?

A. No. None. Zilch. Zero. Rule 17 talks of a ‘review’ committee which will be people from the government of India itself, which is supposed to meet once in 2 months. Even this review committee will not hear the publisher. According to the rules, even this sham of a ‘review’ doesn’t have to be done for at least 59 days- meaning that for 59 days after the first blocking even this self review by the government will not happen.

The government will pass the blocking order without hearing the publisher. Then the government will review its own order once again without hearing the publisher. No provision for any other remedy.

Q. Anything else?

A. Yes, the rules also want publishers to ‘classify’ all content- with no stipulation of a date-all content, present, past and future according to age, and many other categories.

Conclusion -

This isn’t exaggeration- these rules mean the death of any and a large amount of content on the internet that is critical of or not appreciated by the government.

Q. If it is as bad as you say it is, won’t the Supreme Court of India quash these rules?

A. In a hearing unrelated to these rules, the Supreme Court has said that what these rules lack is “teeth”. However, the Delhi High Court and the Kerala High court have issued notices after petitions challenging these rules were filed. The Kerala High Court has even granted the petitioner-LiveLaw.in protection against these rules for the time being.



Further Readings:

- The judgment of the Supreme Court of India in [Shreya Singhal Vs. Union of India](#)
- [Report](#) of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye
- [Petition](#) before the High Court of Kerala challenging the IT Rules, 2021.
- [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#)



Digital Empowerment Foundation
House No. 44, 2nd & 3rd Floor (Next to Naraina IIT Academy)
Kalu Sarai, (Near IIT Flyover), New Delhi – 110016

Tel: 91-11-26532786 / Fax: 91-11-26532787
Email: def@defindia.net | URL: www.defindia.org