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IT Rules 2021: How Online News And Current Affairs Commentators Will Be Impacted



By **Advait Palepu** Published 6 hours ago



Social media companies and other online intermediaries are now responsible to monitor ‘news and current affairs’ content on their



other commentator. As a result online commentators like Faye D'Souza, Akash Banerjee (DeshBhakt), Dhruv Rathee, Amit Varma (SeenandtheUnseen) and even standup comedians now fall under the government's new regulatory framework.

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Last week, the government [notified](#) the [Intermediary Liability and Digital Media Ethics Code Rules, 2021](#) which

introduced a new a regulatory oversight

-  Mechanism under the ambit of the Ministry of Information and
-  Broadcasting (MIB) for news and current affairs/curated content on the internet.
-  Legal experts told MediaNama that the rules clearly spell out various
-  responsibilities placed on social media platforms when it comes to any and all online 'news and curated content', regardless of whether it is published by individuals or established news organisations.

The government has made social media intermediaries accountable in enforcing the digital media rules under proviso under Rule 18 of Part III of the rules which state that all the “rules made under this Part shall apply to intermediaries for the purposes of rules 15 and 16”, explained Avimukt Dar, Partner, IndusLaw.



current affairs content and publishers of online curated content. However, **social media intermediaries have to exercise due diligence in relation to what is published as well as what is publishable. In fact, significant social media intermediaries are even required to develop automated tools to continuously trawl for prohibited content.** In that sense, they too are entrusted with limited regulatory responsibility for Part III as first responders”— Avimukt Dar, Partner, IndusLaw



bit of context: The new intermediary rules mandate that social media companies operating in India have to follow specific due-diligence norms and set up a grievance redressal mechanism, which will be administered by the Ministry of Electronics and Information Technology (MEITY). While for digital media publishers, the government has awarded powers to the MIB to enforce a self-regulatory mechanism and grievance redressal system. Under the redressal system, the government can issue orders under Section 69A of the IT Act instructing either social media companies and digital media entities to

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explaining the new IT rules for [social media](#) and [digital media](#) entities under the IT Act.

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Why this matters: Earlier, the government had powers under Section 69A to instruct online intermediaries, as defined under the IT Act, to block or modify content in the interest of “sovereignty, integrity, defence of India and security of the State or preventing a cognisable offence”. Under these rules,

-  The government's has expanded its powers under Section 69A to include
-  social media companies and digital media publishers. News organisations
-  using social media channels to broadcast, share or publish news and
-  current affairs will be beholden to the platform operators since the government has made Twitter, Facebook and YouTube, for example, responsible for what is shared, transmitted or published.





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Who will this impact: The mechanism created under the rules effectively allows the government to issue directions against news organisations and independent journalists – any individual or news organisation uploading and streaming videos online, publishing and distributing articles via social media and the internet – as well as independent commentators, standup comics, satirists and individuals who may air views that are related to ‘news and current affairs’. This means that podcast creators and platforms supporting such a medium would also fall under the ambit of these rules.


Google and Facebook have not responded to queries sent last week. A spokesperson for Twitter reiterated the company’s stance stating that they are studying the updated guidelines and



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Curbing news content and speech

Akash Banerjee, a satirist who founded and heads Chatterbox told MediaNama

-  at its heart, these rules ensure that the government can reprimand content creators, regardless of the facts of the case, since social media companies should directly be held accountable to comply with modification or blocking orders. “While I understand why news should be regulated, how can ‘commentary’ be regulated? We do not do breaking news, we only depend on published information, it is unprecedented for any functioning democracy to have rules like these,” he said.

“In the last few years a lot of resources, manpower and money, were deployed whether to create troll armies, bolster mainstream media, control print media, control advertising money and many other



makers do not make a noise. **The intent of these rules is not to curb the spread of fake news, but to curb the spread of conversations, to control the narrative and to ensure embarrassing information and data is not further propagated.**

When you say that online content can be brought down on the grounds and pretext of ‘public order’, which is a widely misused term, anything can qualify as detrimental to public order”— Akash Banerjee, satirist, founder and head of Chatterbox



the end of the day, social media

companies are here to make money, Banerjee said. “So if the number of complaints become very high, they may just suppress the channel,” he added.

Equal responsibility to enforce rules

Under the digital media rules, the government has authorised the MIB to set up an Inter-Departmental Committee



news and current affairs content under Section 69A of the IT Act. The Committee draws its powers from Rule 15 of the intermediary rules which states that it can issue an order 'warning, censuring, admonishing, reprimanding, demanding an apology, require a warning card or disclaimer and delete or modify content' directly to the news or curated content publisher. This would be based on grievances filed with the publisher, a self-regulatory organisation directly with the Ministry itself. The B, in tandem with the Committee, to have emergency powers under Rule to modify or block news or curated content.

According to Chandrima Mitra, Partner, DSK Legal, while traditional news media has to follow the Press Council of India's guidelines and the television broadcasters have to adhere to the Programme Code under the Cable Television Networks Act, many do not.

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“Despite guidelines and restrictions, many news channels broadcast absolutely objectionable and defamatory content. Now the situation has come to a stage where these restrictions are not being adhered to by a lot of news channels. That’s why parties are approaching the courts to enforce the reasonable restrictions provided by law or to enforce the programme code. **The IT Rules are meant to ensure that all intermediaries and news publishers are made accountable for their content.**” — Chandrima Mitra, Partner, DSK Legal



Compliance responsibilities on social media platforms

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The government has also tasked social media companies with ensuring that news and current affairs/curated

-  Content publishers comply with the government's diktat to furnish
-  Information to the MIB on their user counts. As the per Rule 5,
-  Intermediaries need to publish a guideline for news and current affairs
-  Publishers to furnish information on the user accounts accessing the intermediaries' service. Under Rule 18, both news and curated content publishers will need to furnish the details of their user accounts.

According to Shahana Chatterji, Partner, Shardul Amarchand Mangaldas, while Part III of the rules squarely apply to digital media companies and not to social media platforms, that enable user interactions, since some certain platforms have integrated elements of being a social media platform and a publisher, there is the possibility that



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“Section 69A states that the blocking must be in the interest of the given 6 grounds and that the reasons for the blocking must be recorded in writing. Therefore, this provision provides certain due process requirements for the exercise of the blocking power by the Government. **It does not however provide any opportunity to the intermediary to appeal against a blocking order and the use of the emergency blocking powers under the Blocking Rules also remain wide and discretionary.**


Finally, the blocking process under Section 69A appears to be distinct from that under the rules on intermediaries and digital media notified recently.”—Shahana Chatterji, Partner, Shardul Amarchand Mangaldas

Under these rules, the government has directed social media intermediaries would need to mark verified ‘news and content creators’ if they comply with the platforms terms of service and Rule 18 of the intermediary rules. According to Dar of IndusLaw social media and

affairs content.

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“There is a kind of accreditation mechanism in place now. Under Rule 18, publishers of news and current affairs as well as curated content need to furnish their credentials (along with any other information as called for) to the Ministry within thirty days. They will also become part of self

 regulatory bodies to effectively participate in the three-tier oversight mechanism contemplated by the Rules. **The comprehensive due diligence and monitoring mechanism contemplated by the rules will reduce the free flowing speech on the internet and (hopefully) lead to less hate speech and fake news**—Avimukt Dar, Partner, IndusLaw





Heavy compliance burden

Under the rules, social media entities and other intermediaries have to set up



responded to in 24 hours and then disposed off within 15 days. Significant social media entities have to go a step further and appoint a chief compliance officer, a nodal contact person for 24×7 coordination with law enforcement agencies and a grievance officer within three months.

According to Supratim Chakraborty, Partner, Khaitan & Co, till now there was some leg room for intermediaries to

-  mply with any government order. “But w under these rules, the timelines are
-  ry strict and there is no wriggle room. e have to think about this from a
-  man capital standpoint as well as, ice intermediaries have to employ a
-  rson of repute to actually do the job and ensure that norms are being followed,” he said.


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“The Rules define online intermediaries, social media intermediaries and digital media publishers in separate buckets based on their activities and information, as opposed to organisation specific categorisation. This categorisation has created a lot of confusion among companies. But I do not think that the intent of the government is to choke companies

will need to marry different parts of the rules, as part of their grievance redressal mechanism, depending on the exact pocket they operate in—Supratim Chakraborty, Partner, Khaitan & Co

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The implications of not following the guidelines is that company will fall out of the definition of an intermediary,

 rich means that they become liable for anything a third-party has done on their platform, said Mathew Chacko, Partner, Spice Route Legal



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“This appears *prima facie* unfair and might have a chilling effect on the mushrooming small and



local intermediaries may lose the “safe harbour” protection and be exposed to compliance and supervisory requirements that may be fairly heavy”—Mathew Chacko, Partner, Spice Route Legal

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