

## ERGO

Analysing developments impacting business

INTERNET INTERMEDIARIES' RULES AMENDED |  
SIGNIFICANT CHANGES MADE

3 November 2022 On 28 October 2022, the Ministry of Electronics and Information Technology (MEITY) amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (IT Rules 2021) by way of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2022 (Amendment).<sup>1</sup> The key changes brought about by the Amendment and our analysis on the same are set out below.

### Compliance Requirements

1. **Ensuring Compliance:** Rule 3(1)(a) and Rule 3(1)(b) of the IT Rules 2021 have been amended to require intermediaries to 'ensure compliance' of rules and regulations, privacy policies and user agreements of the intermediary (Policies) and 'take reasonable efforts to prevent its users from sharing information which is prohibited under the IT Rules 2021'.

The amendment is unclear on the actual method to be adopted by intermediaries to 'ensure compliance' of Policies by users. In the absence of any prescribed methodology, intermediaries may have to proactively filter and moderate content.

2. **Restricted Content:**

Rule 3(1)(b) of the IT Rules 2021 which requires intermediaries to set out in their Policies, activities that users are prohibited from undertaking, has been amended in the following manner (key amendments only):

- (a) Information that "*promotes enmity between different groups on the grounds of religion or caste with the intent to incite violence*" has been included as a prohibited category of information. It appears that this has been introduced specifically to deal with hate speech and fake news.
- (b) 'Misinformation' has now been categorized as a restricted information, though the term misinformation has not been defined. In the absence of a specific definition, this could have a sweeping effect if widely interpreted by regulators or judicial bodies.

3. **Language of Policies:** The Amendment has revised Rules 3(1)(a), 3(1)(b) and 3(1)(f) of the IT Rules 2021 (which requires intermediaries to publish, and inform users periodically and at least once in a year of Policies or any change thereof) - to state that intermediaries are required to publish / inform users of the Policies in English or any language specified in the Eighth Schedule of the Constitution of India for access or usage of its computer resource by any person in the language of his choice.

<sup>1</sup>[https://www.meity.gov.in/writereaddata/files/Gazette%20notification\\_IT%20Rules%20Amendment%202022\\_28Oct2022.pdf](https://www.meity.gov.in/writereaddata/files/Gazette%20notification_IT%20Rules%20Amendment%202022_28Oct2022.pdf)

The intent of MEITY appears to be to facilitate access of Policies in regional languages.

4. **Accessibility of Platform:** Rule 3(1)m of the Amendment requires intermediaries to take all "reasonable measures" to ensure accessibility of its services to users along with "reasonable expectation of due diligence, privacy and transparency".

While the term 'accessibility' as used in this Rule is ambiguous - in the public consultation held by MEITY on 23 June 2022, it was suggested that 'accessibility' refers to uptime and uninterrupted availability of services to the users.

5. **Constitutional Rights:** The Amendment has introduced Rule 3(1)(n) which requires intermediaries to respect all constitutional rights of Indian citizens including Articles 14 (right to equality), 19 (right to freedom of speech and expression) and 21 (right to life and personal liberty).

Given that all constitutional rights of citizens may not be enforceable against non-state entities (unless such entity is performing a public duty), as such, constitutional rights that may in fact be invoked against an intermediary will need to be decided on a case-to-case basis.

### Grievance Redressal

1. Pursuant to the Amendment, intermediaries are now required to resolve all complaints in the nature of removal of information that is violative of the IT Rules 2021 within 72 hours of reporting, except complaints relating to (x) unauthorised use of information belonging to another person, (y) infringement of intellectual property, and (z) information that violates any law.

Though this shorter timeline appears to be aimed at public order and user wellbeing, it is likely to be operationally challenging especially for smaller intermediaries (such as start-ups) who currently may not have dedicated resources for such compliance.

2. The Amendment has introduced a proviso to Rule 3(2)(i) of the IT Rules 2021 requiring intermediaries to develop appropriate safeguards to avoid any misuse by users.

In its press note dated 6 June 2022,<sup>2</sup> MEITY had indicated that this proviso is intended for intermediaries to safeguard themselves from inappropriate, trivial, or inauthentic complaints from users; however, the language of the proviso itself does not clarify such intent.

3. **Grievance Appellate Committee (GAC):** The Central Government is now empowered to establish one or more GACs within 3 months from the effective date of the Amendment. The GAC will include 1 chairperson and 2 whole-time members appointed by the Central Government, of which one member will be *ex-officio* and 2 members would be independent. The resolution of disputes by the GAC will be done entirely online. Intermediaries are further required to publish a compliance-report on its website, reporting compliance with the orders of GAC.

### Comment

The Amendment seems to be governed by the intention of empowering users and restricting unlawful content such as fake news and hate speech. However, it considerably increases the compliance burden of intermediaries. While the establishment of GACs may lead to a reduction of judicial burden arising from content related disputes, however, it will be interesting to see how internal dispute resolution structures, timelines, and policies of intermediaries will work in tandem with the GACs.

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<sup>2</sup><https://www.meity.gov.in/writereaddata/files/Press%20Note%20dated%2006%20June%202022%20and%20Proposed%20draft%20Amendment%20to%20IT%20Rules%202021.pdf>