Intermediary Guidelines and Digital Media Ethics Code

Why in news?

The new rules in India for social media platforms and digital news outlets, called the Intermediary Guidelines and Digital Media Ethics Code, came into effect.

What are the key provisions in the Guidelines?

- The guidelines had asked all social media platforms to set up a grievances redressal and compliance mechanism.
- This includes appointing a resident grievance officer, chief compliance officer (CCO) and a nodal contact person.
- The Ministry of Electronics & Information Technology had also asked these platforms to submit monthly reports.
- It should have details on complaints received from users and action taken.
- A third requirement is for instant messaging apps to make provisions for tracking the first originator of a message.
- Failure to comply with any one of these requirements would take away the indemnity provided to social media intermediaries under Section 79 of the Information Technology Act.

What protection does Section 79 of the IT Act offer?

- Section 79 says any intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link made available or hosted on its platform.
- This protection shall be applicable if the said intermediary does not in any way, -
    i. initiate the transmission of the message in question
    ii. select the receiver of the transmitted message
    iii. modify any information contained in the transmission
- So the platform should act just as the messenger carrying a message from point A to point B, without interfering in any manner.
- If this is ensured, it will be safe from any legal prosecution brought upon due to the message being transmitted.
- The protection, however, is not granted if the intermediary, despite being

notified by the government, does not immediately disable access to the material under question.
- The intermediary must also not tamper with any evidence of these messages or content present on its platform.
- Failing this, it will lose its protection under the Act.
- [In the U.S., Section 230 of the 1996 Communications Decency Act provides Internet companies a similar safe harbour from any content users post of internet platforms.
- It was this provision that enabled companies such as Facebook, Twitter, and Google to become global conglomerates.]

What is the concern now?

- Social media intermediaries such as Twitter, Facebook, and Instagram have so far not appointed personnel as required under the new rules in India.
- They have also failed to submit monthly reports on action taken on grievances and complaints submitted to them by users.
- Thus, protection under Section 79 of the IT Act will not hold for them.

What happens if the protection is withdrawn?

- Nothing changes overnight, and social media intermediaries will continue to function as they were.
- People will also be able to post and share content on their pages without any disturbance.
- But, if a tweet, a Facebook post or a post on Instagram violates the local laws, the law enforcement agency can book not only the person sharing the content, but the executives of these companies as well.
- Reading the provisions of the IT Rules in consonance with Section 69(a) of the IT Act suggests that this liability can even be criminal in nature.
- In other words, the CCO (chief compliance officer) can be made to serve a prison term of up to 7 years.
- The absence of the umbrella protection of Section 79 could also lead to situations where employees of the platform may be held liable for no fault on their part.

Source: The Indian Express



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