IT Rules, 2021 - Concerns and Opportunities

What is the issue?

- The central government recently released the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Click here to know more.
- In this context, here is a look at the opportunities it offers and the concerns it has raised.

How do the Rules benefit?

- The need for the IT Rules can hardly be disputed.
- They make accountable the "significant" internet platforms (those above 5 million users) such as Facebook, Google and WhatsApp.
- These have so far enjoyed immunity under Section 79 of the Information Technology Act under the 'safe harbour' clause.
- The world over, these tech giants have been associated with breach of data, national security and individual privacy.
- Besides, they have hosted incendiary stuff that can disrupt peace and harmony.
- Secondly, the OTT platforms such as Amazon Prime, Netflix and Hotstar, which carry curated content without certification can no longer continue in this manner.
- In a positive move, they will have to grade their content under various types of adult and child viewing.
- They will also have to adhere to the grievance redressal mechanisms.
- These checks and balances are necessary and go a long way in streamlining the content.

What are the concerns?

- **Free speech** - The rules force digital news publishers and OTT services to adhere to a cumbersome three-tier structure of regulation.
- It comes with a government committee at its apex.
- This, in itself, is unprecedented in a country where the news media have been given the space all along to self-regulate.
- This has been in place based on the understanding that any government presence could have an effect on free speech and conversations.

- The rules might have serious implications for freedom of expression and right to information of online news publishers and intermediaries.

- **Regulation** - Any person having a grievance regarding content published by a publisher in relation to the Code of Ethics may furnish his/her grievance.
- The grievance mechanism established by the publisher will receive them.
- So, literally anyone could force a digital platform to take up any issue.
- To note, many of the digital publishers are small entities.
- The regulations thus impose a compliance burden on such entities.
- Moreover, the Rules allow government to influence the appointment of panel members in the higher level regulatory bodies.
- All these leaves way for all kinds of interventions, and the potential for misuse is enormous.
- **Social media platforms** - The new rules have increased the compliance burden for social media platforms too.
- Such platforms in the messaging space will have to "enable the identification of the first originator of the information on its computer resource" based on a judicial order.
- Thus, the rules require messaging apps such as WhatsApp and Signal to trace problematic messages to the originator.
- The triggers for a judicial order that require such an identification are serious offences.
- Nevertheless, it raises concerns as these apps have their messages encrypted end-to-end.

- **Classification** - Digital news media has been unfairly and arbitrarily clubbed with OTT platforms and subjected to the same set of rules.
- Moreover, the purview of the IT Act, 2000, has been expanded to bring digital news media under its regulatory ambit without legislative action.
- This combination does not correspond with the provisions of the IT Act, and opens itself to legal challenge.
- Also, the new rules pertain only to digital news media, and not to the whole of the news media.
- This raises concerns as the former is increasingly becoming a prime source of news and views.

What are the likely implications?

- Some amount of tightening of policy is inevitable given the new challenges.
- But the government tries to implant itself in the grievance redress process.
- It otherwise expects the platforms to share more information.
- Both of these could prove counterproductive in a country where there is still no data privacy law.

    - The citizens do not have ways to guard themselves against excesses committed by any party.
- On the other hand, the laws to combat unlawful content are already in place.
- What is required is their uniform application.
- Instead, the tight regulatory mechanism could only cost creativity and freedom of expression.

Source: The Hindu, Business Line

