The IT Rules Fail the Test of Constitutionality

What is the issue?

There have been more than 18 petitions challenging the constitutionality of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in various high courts with interim orders emerging in three cases.

What are the key provisions in the rules?

- 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.

To know more about IT Rules, click here

What are the recent interim orders of high courts?

- The Kerala High Court in its order effectively stayed a regulation framed by the central government and restrained any action against the petitioner.
- The High Court of Bombay has stayed two core provisions of the IT Rules that govern online news media platforms.
    - The order made the sub-rules (1) and (3) of Rule 9 that required compliance with a code of ethics ineffective citing the lack of force of law or a distinct statutory framework.
    - The court also observed that the code of ethics deprives the liberty of thought and hampers the right of freedom of speech and expression.
- The Madras High Court confirmed the pan-India effect of the earlier

decision by the High Court of Bombay.
    - The court urged additional remedies for users of social media platforms classified as intermediaries.

Why do these orders hold significance?

- These three interim orders is an expression of judicial consensus regarding the concerns of the rules.
- The IT Rules conflict with our constitutional freedoms in two ways.
    1. They lack statutory backing
    2. They harm the **freedom of speech and expression** of users of the internet
- Hence, today the IT Rules are broadly inapplicable to digital news media outlets and there is a possibility that a similar finding may emerge with respect to social media platforms.
- There is an urgent need to look beyond litigation to rights-led and rights-based policy determinations.

Source: the Indian Express

