Source : www.thehindu.com Date : 2021-03-01

MORE ABOUT BIG GOVERNMENT THAN BIG TECH

Relevant for: Science & Technology | Topic: IT, Internet and Communications

Last week, the Union Government issued a set of rules under the Information Technology Act, noting that it was superseding rules issued under Section 79 of that statute in 2011. Those earlier rules had specified the due diligence obligations that Internet intermediaries had to follow in order to qualify for the limited immunity for legal liability regarding user content, which Parliament had strengthened in 2008 when it amended that law.

The notification of these new rules, however, do not merely represent the executive branch superseding previous subordinate rules under a law with newer regulation. They represent a dramatic, dangerous move by the Union Government towards cementing increased censorship of Internet content and mandating compliance with government demands regarding user data collection and policing of online services in India. This has happened in the absence of open and public discussion of the full swathe of regulatory powers the government has sought to exercise, and without any parliamentary study and scrutiny.

Editorial | A wolf in watchdog's clothing: On govt's move to regulate digital media

Indeed, these rules at the outset appear unlawful even with respect to whether they could have been issued under the Information Technology Act in the manner chosen by the government, leave alone their constitutionality with respect to fundamental rights. The Union Government has chosen to pass these rules under the requirement to outline the due diligence that Internet intermediaries — ranging from telecom providers, search engines, Internet platforms hosting user generated content to cloud providers — have to follow in order to be able to claim their qualified legal immunity under Section 79 of the IT Act.

The government's gazette notification has further claimed that the rules were also issued under the legal authority to specific procedure for blocking web content under Section 69A of the IT Act. This is curious, given that rules overseeing government web content blocking powers have already been issued for that section in 2009, and not superseded. Indeed, they form the core of the increasing number of web content censorship orders issued by the Union Government in recent years, including the most recent controversial stand-off with Twitter following the farmer protests.

The ability to issue rules under a statute — i.e. to frame subordinate legislation — is by its nature a limited, constrained power. When the Union Government issues subordinate rules, it is limited to the substantive provisions laid out by Parliament in the original act passed by the latter — the executive branch is subordinate to what Parliament has permitted it and cannot use its rule-making power to seek to issue primary legislation by itself.

Also read | Provision for blocking content under new IT rules not new: Centre

Unfortunately, with the present Internet content and social media rules, the Union Government has done precisely that. Instead of specifying the basic due diligence requirements intermediaries had to perform in order to make use of the Section 79 safe harbour provision, the executive branch has created new rules that apply only to "significant social media intermediaries" — a term that appears nowhere in the Information Technology Act.

It has included mandates for retention of user data by such intermediaries for use by government agencies and clauses on how popular messaging services have to enable the

tracing of the original creator of a message (which is regarded as not possible for end-to-end encrypted messaging services without introducing flaws in their systems) even though the sections in the law cited by the government do not give them that power.

In Focus Podcast | Twitter, the IT Act, and the blocking saga explained

The rules have grown to include a chapter on how digital news sites have to be registered before the Ministry of Information and Broadcasting, and further laid out a mechanism by which streaming video sites featuring original content (which are generally not regarded as intermediaries for the purposes of Internet law) have to agree to a government-supervised "self regulatory system". This, even though digital news service registration is not required under the IT Act and streaming video content has not been included under the ambit of the Cinematograph Act. In any other situation, the package contained in this gazette notification last week would be instead included in a bill sent to Parliament for its consideration — and which would be regarded as ambitious and controversial for any administration.

Why has the Union Government created this legally uncertain, sprawling house-of-cards-like regulatory instrument? To understand these new Internet content control rules — for that is what they essentially are — you need to not only see what they directly give to the government, but what the government is seeking to get done behind a shadow of regulatory pressure. It appears that the government wants to send a message to all Internet ecosystem players that they desire compliance with their desires — formal or informal — regarding what content should be taken down, along with a removal of any push back against over broad demands for user data and other surveillance orders by government agencies.

Comment | Should governments regulate online platforms?

The Government of India already has significant legal powers, with practically no institutionalised oversight or true checks and balances, to force censorship and surveillance on Internet platforms and other web services in India.

However, the increasing public discussion of concerns regarding the usage of these powers and challenges being made by firms and impacted individuals against their abuse is something that the Union Government would like to avoid. Why issue direct formal orders when one can instead force compliance in less visible, more institutionalised ways? Indicating that the government has made up its mind to force these mandates by notifying them, even with doubtful legal validity, is a key signalling effect to Internet ecosystem players, especially firms keen to avoid public battles and smaller entities who do not have the resources or political position to be able to contest overboard government directives.

In Focus podcast | Will regulation of digital media lead to an era of government censorship?

The Union Government, when issuing these rules, made reference to increased global interest in regulating Big Tech. However, in advancing Internet content control interests and increased requirements around government demands for user data, while not advancing surveillance law reform or enacting a strong statutory data protection framework, it appears that the interest is more in advancing Big Government and trying to force technologists to fall in line, no matter the cost to our fundamental rights in our Internet age.

Raman Jit Singh Chima is Senior International Counsel and Asia Pacific Policy Director, Global Cybersecurity Lead, Access Now

This story is available exclusively to The Hindu subscribers only.

Already have an account ? Sign in

Start your 14 days free trial. Sign Up

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading as many articles as you wish without any limitations.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

*Our Digital Subscription plans do not currently include the e-paper, crossword and print.

Dear reader,

We have been keeping you up-to-date with information on the developments in India and the world that have a bearing on our health and wellbeing, our lives and livelihoods, during these difficult times. To enable wide dissemination of news that is in public interest, we have increased the number of articles that can be read free, and extended free trial periods. However, we have a request for those who can afford to subscribe: please do. As we fight disinformation and misinformation, and keep apace with the happenings, we need to commit greater resources to news gathering operations. We promise to deliver quality journalism that stays away from vested interest and political propaganda.

Dear subscriber,

Thank you!

Your support for our journalism is invaluable. It’s a support for truth and fairness in journalism. It has helped us keep apace with events and happenings.

The Hindu has always stood for journalism that is in the public interest. At this difficult time, it becomes even more important that we have access to information that has a bearing on our health and well-being, our lives, and livelihoods. As a subscriber, you are not only a beneficiary of our work but also its enabler.

We also reiterate here the promise that our team of reporters, copy editors, fact-checkers, designers, and photographers will deliver quality journalism that stays away from vested interest and political propaganda.

Suresh Nambath

Please enter a valid email address.

You can support quality journalism by turning off ad blocker or purchase a subscription for unlimited access to The Hindu.

Sign up for a 30 day free trial.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

crackIAS.com