

Submission to MeitY on Part-I and Part-II of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

**with special reference to gender-based cyberviolence
against women**

IT for Change

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In the context of the pervasive violence carried out with impunity on social media platforms, the amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (proposed amendments to the IT Rules, 2021) represent a key milestone in the move towards increased platform accountability.

Much of the focus of the proposed amendments to the IT Rules, 2021 seems to be on stemming the virality of harmful content. This is a timely recognition of the unique harms associated with the spread of hateful, abusive, and violent content on social media. Indeed, what distinguishes social media violence from other forms of offline violence is the circulation logics of online networks. One of the most important findings from our research on online gender-based violence on social media platforms is that the principal issue is not necessarily the harmful content itself, but the ways in which the affordances of amplification are exploited to make such content spread virally. Central to our perspective has been dismantling the notion of platforms as “dumb conduits” that play a mere passive role in relaying content. The Supreme Court of India in *Ajit Mohan v. Legislative Assembly of Delhi*¹ recognized the active contribution of social media platforms in shaping public discourse and stated that it is difficult to accept the assertion of platforms like Facebook that they play no role beyond only hosting third-party content. The judgement goes on to state that a reliance on simplistic models such as these “would amount to shirking of their responsibilities with respect to content regulation on their site”.²

Thus, social media platforms play an active and interventionist role in the way public discourse takes shape, and their scope of liability must be commensurate with this immensely consequential responsibility. Growing out of this perspective, we make specific recommendations with the intent to develop a clear legal basis for platform accountability and their business models of algorithmic virality.

Similarly, another focus area of these proposed amendments to the IT Rules, 2021 is an increased emphasis on grievance redressal, and the formation of a Grievance Appellate Committee. Again, we commend this much-needed move to make social media platforms more responsive to user

¹ Ajit Mohan & Ors. v. Legislative Assembly, National Capital Territory of Delhi & Ors. Writ petition (C) No. 1088 of 2020. https://main.sci.gov.in/supremecourt/2020/20428/20428_2020_37_1501_28386_Judgement_08-Jul-2021.pdf

² *Id* at paragraph 4.

grievances. As the first port of call for aggrieved users, platforms must provide robust, responsive, and expeditious grievance redressal. Once again, when it comes to specifics, we recommend that the law provide a greater degree of clarity, especially regarding the constitution and functioning of the Grievance Appellate Committee.

To reiterate, we support and commend the adoption of the principles of platform accountability as stated in the press note accompanying the text of the proposed amendments to the IT Rules, 2021. However, we believe there are some practical considerations to be borne in mind to ensure that these principles are anchored in the text of the law.

Key Recommendations:

1. Grievance Redressal and the Functioning of the Committee

The Grievance Appellate Committee (Appellate Committee) is a necessity in the age of Big Tech capitalism where there have been several instances of grievance officers of intermediaries not addressing the grievances satisfactorily or fairly. For instance, between April-May 2022, Twitter only received 1,366 grievances related to abuse/harassment, and its transparency report fails to indicate what kind of action was taken except for the total number of URLs actioned against.³ For the Meta ecosystem,⁴ transparency reports suggest that between the period of 1-31 March 2022, 656 reports came through the grievance mechanism system, out of which 67 were for bullying or harassment on Facebook and 19 were for bullying or harassment on Instagram. It is worrisome that in a country like India⁵ where there are over 53 crore WhatsApp users, 44.8 crore YouTube users, 41 crore Facebook users, 21 crore Instagram users, and 1.75 Twitter users, complaints are so few in number.

Unfortunately, even the transparency reports do not instill faith in filing complaints directly with the platform as there is no disclosure about the resolution of complaints and the process followed.

In these circumstances, the creation of the Appellate Committee is certainly a step in the right direction, as it is a forum that protects the rights and interests of users on these Significant Social Media Intermediaries (SSMIs). Creating an oversight system outside of the intermediary's internal grievance redressal forums with the objective to ensure platform accountability is one of the key principles highlighted in the statement of purpose of the proposed amendments to the IT Rules, 2021.

³ Twitter. (2022, June). *Twitter India's Transparency Report: User Grievances and Proactive Monitoring*. <https://cdn.cms-twdigitalassets.com/content/dam/transparency-twitter/country-reports/india/India-ITR-Jun-2022.pdf>

⁴ Meta. (2022, April 29). *India Monthly Report under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*. <https://transparency.fb.com/sr/india-monthly-report-April30-2022/>

⁵ PIB India. *Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021*. <https://pib.gov.in/PressReleasePage.aspx?PRID=1700749>

Further, the 30-day framework for expeditious disposal of appeals is useful keeping in mind the large social media user base in India and the delays that would result from a longer time period.

However, to ensure the independent functioning of this Committee, it must be given quasi-judicial powers for effective adjudication. Otherwise, it runs the risk of becoming a toothless body with all its redressal orders/directions resulting in massive appeals to the already burdened judicial systems in India. To compare, even the adjudicating officer, created under Section 46(1) of the Information Technology Act, 2000, has powers to make a person or an entity liable to pay penalty or compensation and has the power to hold an inquiry to adjudge upon the complaints being filed. This post has been given powers of a civil court under the Code of Civil procedure, 1908, under Sub-section (5) of Section 46, thereby giving multiple effective ways to hear and dispose of an incident.⁶ These powers ensure effective adjudication of complaints with a clear mandate by the adjudication officer, and similar clarity must be provided for the powers of the Appellate Committee as well. There must be clear guidelines or steps to ensure that the redressal mechanisms for complaints follow due process of law.⁷ This includes details such as timeline for complaints, nature of orders, manner of filing complaints, powers of the Appellate Committee, right for both parties to be heard, etc.

To achieve an effective and independent committee, there are several clarifications required, including:

- Who will constitute the Appellate Committee?
- What kinds of appeals will be accepted by the Appellate Committee, and will any request or information denied by a platform be appealable? How will intermediaries comply with the ruling of the Appellate Committee and what happens in cases of non-compliance?
- Are the orders or directions passed by the Appellate Committee mandatorily enforceable?
- Are there going to be more timelines in place while deciding the process for filing appeals? This includes a timeline for filing an appeal itself.
- How does the Committee function? Will it provide hearings, will it accept complaints online, what forms of evidence must be submitted, and how will takedown and reinstatement orders be mandated?
- Will appeals be taken for incidents that took place before the proposed amendments to the IT Rules, 2021 are notified and the Committee is formed?

⁶ The powers include summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents or other electronic records, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents, and reviewing its decisions, etc.

⁷ Shreya Singhal v. Union of India AIR 2015 SC 1523; Writ Petition (Criminal) No. 167 OF 2012 (Para 57, 65).
<https://indiankanoon.org/doc/110813550/>

Without clarity on the functioning of the Appellate Committee, the objective of speedy redress for users affected by content harms will not be met.

2. Threshold of Virality

Harmful content that violates women's human rights, such as non-consensually distributed intimate images or gendered hate, tends to gather a lot of traction on social media platforms, whose business model is predicated on leveraging user engagement through algorithmic click-baiting. A recent study showed that Facebook privileges incendiary content as the quest for user click maximization for market monopolization, and it is prioritized by dominant social media platforms over the normative goals of safety and inclusiveness.⁸ Relentlessly leveraging algorithmic virality for profiting from user attention is the *sine qua non* of the social media business model, which means that user engagement with content is often the product of intentional techno-design choices made by platform owners. The traditional approach to internet intermediary regulation is outdated and cannot deal with platform accountability for virality, as it anachronistically views social media platforms as “dumb conduits” that carry no responsibility for the content they host. In order to effectively hold social media platforms accountable for content harms, we need to recognize their responsibility for ensuring their algorithmic environments do not lead to individual or collective harms for their user base.

Virality is identified as one of the key principles that underpin the proposed amendments. However, the proposed amendments to the IT Rules, 2021 stop short of expressly recognizing virality as a reason for the quick turnaround of complaints envisaged under Rule 3(1)(b). It is imperative to formally incorporate the need to hold platforms responsible for their techno-design intent that gamify algorithmic virality, as the rationale for the 72-hour window. A recognition within the Rules, and the law as such, would ensure that virality is no more merely an ephemeral concept, but one that is firmly established in the legal framework of platform governance in India.

Further, it needs to be reconsidered whether stemming virality of online content can be effectively realized if the focus is solely on requiring the platforms to expeditiously remove content. Since messages can spread rapidly on the internet, platform removal of content within 72 hours may mostly come as a post-facto measure. Therefore, it is necessary that the law also expressly acknowledges and addresses how the platform architecture and operation contribute to virality in the first place.

It is necessary that the Rules clarify what constitutes virality on the platform of social media intermediaries, how virality is defined based on the type of intermediary on which content becomes

⁸ Munn, L. (2020). *Angry by design: toxic communication and technical architectures*. *Humanit Soc Sci Commun* 7, 53. <https://doi.org/10.1057/s41599-020-00550-7>

viral, and a quantitative threshold for SSIMs, specifically. The following research studies offer ways to tackle this issue of defining virality, that may be taken forward and moulded to the Indian context:

- Valdovinos Kaye, quoting van Dijck and Poell,⁹ says virality is commonly understood as “The process by which content circulates rapidly and ‘spill[s] over into other social platforms and mainstream media’.”¹⁰
- According to Bruni, Francalanci, and Giacomazzi, “Virality has both a volume and a time speed dimension.”¹¹ This means that virality of a content needs to be determined not only in terms of the width of its spread, but also the time speed of its spread. For instance, a dense network that consists of a limited number of members who are mostly known to each other, such as WhatsApp, may lead to the spread of messages to a smaller extent, but their transmission may be rapid¹², which can contribute to the virality of the content.
- Researchers have used metrics like number of retweets/shares, and even the likelihood of retweets/shares (not the actual number of shares/retweets) to measure the virality of content. These criteria will differ depending upon the design of the internet intermediary. For instance, in the case of a video sharing platform like YouTube, the number of views that a video receives may be a useful indicator of the virality of the content.¹³
- Research suggests that apart from the content of the communication, the characteristics of the creator of the content, such as their trustworthiness, expertise, and attractiveness, have an effect on “the message’s diffusion and the likelihood of it going viral”.¹⁴ This suggests that content by public and other influential figures may have a higher propensity of becoming viral. Therefore, it may be useful if the law imposes additional obligation on the platforms with respect to content by public or influential figures.

⁹ Dijck, J., & Poell, T. (2013, August). *Understanding Social Media Logic*. Media and Communication, Vol 1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2309065

¹⁰ Kaye, D.B.V. (2020, September). *Flow Journal. Make This Go Viral: Building Musical Careers through Accidental Virality on TikTok*. <https://www.flowjournal.org/2020/09/make-this-go-viral/>

¹¹ Bruni, L., Francalanci, C., & Giacomazzi, P. (2012). *The Role of Multimedia Content in Determining the Virality of Social Media Information*. <https://www.mdpi.com/2078-2489/3/3/278/html>

¹² Arjona-Martín, J., Méndiz-Noguero, A., & Victoria-Mas, J. (2020). Virality as a Paradigm of Digital Communication: Review of the Concept and Update of the Theoretical Framework. *El Profesional de la Información*, Vol 29. <https://go.gale.com/ps/i.do?p=IFME&u=googlescholar&id=GALE|A649350400&v=2.1&it=r&sid=googleScholar&asid=a0bc5bb9>; Also see, Boase, J., & Wellman, B. (2001). *A Plague of Viruses: Biological, Computer and Marketing*. *Current Sociology*, Vol. 49. <https://doi.org/10.1177/0011392101496006>

¹³ Hoang, T., Lim, E., & Achananuparp, P. (2011). *On Modeling Virality of Twitter Content*. https://www.researchgate.net/publication/220705790_On_Modeling_Virality_of_Twitter_Content

¹⁴ Han, Y., Lappas, T., & Sabnis, G. (2020). The Importance of Interactions Between Content Characteristics and Creator Characteristics for Studying Virality in Social Media. *Information Systems Research*. <https://pubsonline.informs.org/doi/10.1287/isre.2019.0903>

3. Obligations of Platform Intermediaries Towards Citizens

Under the proposed amended Rule 3(1)(n), the intermediary “shall respect the rights accorded to the citizens under the Constitution of India”. Within the constitutional scheme, these are the fundamental rights guaranteed to citizens under Part III. While this requirement from private companies is welcome, especially in light of the global presence of a lot of Big Tech social media intermediaries, it is imperative that the nature of fundamental rights under the Indian Constitution is understood.

Fundamental rights, including the right to equality (Article 14), freedom of speech and expression (Article 19), and right to life and personal liberty (Article 21), are enforceable against the state. Article 12 of the Indian Constitution clarifies that state refers to central or state governments and authorities under their control. This excludes private companies from the scope of enforcing fundamental rights. In the absence of an enforcement mechanism, such an inclusion does not achieve the proposed goals of holding intermediaries accountable for upholding these rights.

Rule 3(1)(n) would be a value addition only with the inclusion of express action on the part of social media intermediaries towards upholding human rights. In this regard, a leaf can be taken out of the Guiding Principles on Business and Human Rights, laid down by the Office of the United Nations High Commissioner for Human Rights,¹⁵ that outlines the obligations of businesses, including in their extraterritorial operations, towards respecting human rights. These Guiding Principles go on to add specific responsibilities that businesses need to meet, including avoiding causing or contributing to adverse human rights impacts through their own activities, or preventing/mitigating adverse human rights impacts that are directly linked to their operations, or conducting human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights. They also posit remediation mechanisms for businesses that identify adverse impact on human rights.

Even though the Guiding Principles for Business and Human Rights is only soft law and not strictly enforceable, the Government of India can consider drawing from these principles to enable businesses, especially social media intermediaries, to set up these processes for enforcement of human rights obligations, and adopt a human rights due diligence perspective for governing the actions of platform actors.

¹⁵ United Nations. (2011). *Guiding Principles for Business and Human Rights*. Office of the High Commissioner for Human Rights. https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf