



### THE CURIOUS CASE OF SILICON VALUES IN INDIA: SOCIAL MEDIA REGULATIONS GONE AWRY

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One of the core promises of the internet is to provide extraordinary freedom to common people, without the control of money and politics. However, India has recently announced new rules for social media platforms under the “Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021<sup>1</sup> posing a direct challenge to this promise. These guidelines cater to social media platforms, messaging services and numerous other online portals. The main agenda is to monitor harmful content, to counter the spread of fake news, and to curb the abuse of social media, to settle personal or corporate rivalries by way of sharing morphed images of women.

These new regulations will be implemented from mid-May 2021.<sup>2</sup> The new rules will directly affect silicon giants like Facebook, Google and their subsidiaries (Facebook owned WhatsApp and Google owned YouTube, Twitter etc.), and other corporate giants like Amazon, Netflix etc. working in India.

The regulations will be applicable on significant intermediaries based on the number of users. Any digital platform with more than 5 million registered users will be considered as significant

<sup>1</sup> "Information Technology (intermediary Guidelines and Digital Media Ethics Code), Rules, 2021," April 21, 2021, [https://www.india.org.pk/adminpart/Backgrounder\\_DM.pdf](https://www.india.org.pk/adminpart/Backgrounder_DM.pdf).

<sup>2</sup> Tanu Banerjee, Ishan Johri, and Garima Kedia, "India's New Rules for Facebook, WhatsApp and Other Social Media Platforms Explained in Five Points," *Business Insider*, March 2, 2021, <https://www.businessinsider.in/policy/news/indias-new-rules-for-facebook-whatsapp-and-other-social-media-platforms-explained-in-five-points/articleshow/81285658.cms>

intermediary under the new rules. Currently, WhatsApp has 530 million users in India, followed by 448 million users of YouTube, 410 million Facebook profiles, 210 million Instagram handles and 17.5 million users on Twitter.<sup>3</sup> According to India's IT Minister Ravi Shankar Prasad, the new rules are to ensure "soft touch oversight"<sup>4</sup> on the digital platforms in order to battle the "economic imperialism by few companies."<sup>5</sup>

Although, the rules seem fair on the surface, a closer look into their design unravels their draconian tendencies to snip any content that presents a critique of the government. For example, the new rules bar any publisher to create or transmit information:

- a. Affecting the sovereignty of India.
- b. Posing a threat to the security of the state.
- c. Inciting violence or disturbing the maintenance of public order.<sup>6</sup>

This becomes the classic case of curbing any dissenting voice in India for almost everything that goes against the wishes of the government can qualify as a threat to either state sovereignty, security, or public order. It poses serious threat to the freedom of expression and speech, which is the foundational building block of all digital platforms.

The new rules also create robust operational and implementational problems for these platforms. According to the recent guidelines, the online content will be monitored through government appointed officials, (mainly of Indian origin)<sup>7</sup> for redressal of complaints about the content. For this purpose, each intermediary must appoint a "Resident Grievance Officer", a "Nodal Contact Person" and a "Chief Compliance Officer." Once a complaint is launched, these officers are required to register the complaint within 24 hours and to take action within 15 days.<sup>8</sup> However, it must be noted here that there is no mechanism identified for the accountability of these officers. For example, the

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<sup>3</sup> Ankita Chakravati, "Government Reveals Stats on Social Media Users, WhatsApp Leads While YouTube Beats Facebook, Instagram," *India Today*, last modified February 25, 2021, <https://www.indiatoday.in/technology/news/story/government-reveals-stats-on-social-media-users-whatsapp-leads-while-youtube-beats-facebook-instagram-1773021-2021-02-25>.

<sup>4</sup> Special Correspondent, "Govt Announces New Social Media Rules to Curb Its Misuse," *The Hindu*, February 25, 2021, <https://www.thehindu.com/news/national/govt-announces-new-social-media-rules/article33931290.ece>.

<sup>5</sup> Pankaj Doval and Sidharta, "Govt Will Have a Soft-touch Oversight Mechanism: Ravi Shankar Prasad," *The Economic Times*, 13 March 2021, <https://economictimes.indiatimes.com/tech/technology/govt-will-have-a-soft-touch-oversight-mechanism-ravi-shankar-prasad/articleshow/81478741.cms>.

<sup>6</sup> Yash Bajaj, "India's 'soft-touch' Politics over Digital News & Social Media," *Madras Courier*, April 8, 2021, <https://madrascourier.com/policy/indias-soft-touch-politics-over-digital-news-social-media/>.

<sup>7</sup> "Information Technology Rules"

<sup>8</sup> *Ibid.*

grievance officer is not answerable or bound to provide any justification for actions taken by them. This provides the officer immense power without any impunity.

These rules also include the “first originator” element, where the government wants the social media platforms to allow the government to track the initiator of the post. “This first originator is not about the content, it’s about who began the instigation,” explained Minister Prasad. “If it started outside of India, they will have to track down who started the mischief within India.”<sup>9</sup> This is especially problematic for WhatsApp because their chats are ‘end to end encrypted,’ which means that only users involved in the conversation can read the messages. In its app, WhatsApp clearly states, “Privacy and security is in our DNA, which is why we built end-to-end encryption into our app.”<sup>10</sup> Breaking end-to-end encryption will be a breach of their contract and trust with their users.

Furthermore, the new rules also call for a physical contact address for all the digital platforms working in India. This might include setting up infrastructure, taxation, and deployment of resources by these tech giants in India. The rules call for human oversight over content with explicit connotations and ‘fake news’. The new rules also want the users to verify themselves, mainly through mobile numbers. Though this verification is voluntary, it is still a disincentive to user privacy. Usually, users do not have much choice but to consent to the privacy policy of such platforms. If users’ mobile numbers and data associated with it are claimed by these platforms, this new information will also become a part of the platform’s privacy policy. Afterwards, the platform would be entitled to use and collect it, however they may please. This opens rooms for data leak and theft by providing huge chunk of data to these platforms without any reassurance that it will be protected. It was only recently, that a low-level hacking forum has leaked the personal information of over 500 million Facebook users<sup>11</sup> online. This includes six million people from India whose phone number, full names, Facebook IDs, locations, email address and birthdates were shared on the website publicly.<sup>12</sup> It is ironic that India’s new regulations which are bound to protect users, will expose them to greater risks.

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<sup>9</sup> Parabhjote Gill, "Facebook and Twitter Have a Ton of New Rules to Abide by in India — WhatsApp May Find Itself in the Toughest Spot of All," *Business Insider*, February 25, 2021, <https://www.businessinsider.in/tech/news/facebook-and-twitter-have-a-ton-of-new-rules-to-abide-by-in-india-whatsapp-may-find-itself-in-the-toughest-spot-of-all/articleshow/81208643.cms>.

<sup>10</sup> "WhatsApp FAQ - End-to-end Encryption," WhatsApp.com, accessed April 22, 2021, <https://faq.whatsapp.com/general/security-and-privacy/end-to-end-encryption/?lang=en>.

<sup>11</sup> Aaron Holmes, "533 Million Facebook Users' Phone Numbers and Personal Data Have Been Leaked Online," *Business Insider*, April 4, 2021, <https://www.businessinsider.in/tech/news/533-million-facebook-users-phone-numbers-and-personal-data-have-been-leaked-online/articleshow/81889315.cms>.

<sup>12</sup> Ibid.

These rules also erode the protection granted to intermediaries under Section 79 of the IT Act.<sup>13</sup> By doing so it jeopardizes the security offered by its own constitution. Moreover, it also undermines the principles like freedom of expression and speech and the principle of open and accessible internet, enshrined by its own Constitution. Also, the condition of having five million users to be called a “significant intermediary” is not final. At any time, the government can change this number and include more platforms under the ambit of new regulations. Moreover, the tech companies are only given three months to comply with these regulations. Reportedly, written threats have been dispatched by the current administration to jail the Facebook and Twitter’s India based employees if they fail to comply.<sup>14</sup>

Ushering an era of digital authoritarianism in the country, the new rules will strengthen government’s grip on how social media platforms generate and regulate their content. It empowers the government to blur the lines between political speech, hate speech and misinformation, thus providing space for policing the netizens and limiting their ability to communicate.

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<sup>13</sup> "Govt Announces New Social."

<sup>14</sup> Jeff Horwitz and Newley Purnell, "India Threatens Jail for Facebook, WhatsApp and Twitter Employees," *The Wall Street Journal*, March 5, 2021, <https://www.wsj.com/articles/india-threatens-jail-for-facebook-whatsapp-and-twitter-employees-11614964542>