

GOVERNMENT OF INDIA
MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY
LOK SABHA
UNSTARRED QUESTION No. 835
TO BE ANSWERED ON 07.02.2024

ACCESS TO OBSCENE WEBSITES

835. SHRIMATI VEENA DEVI:

Will the Minister of Electronics and Information Technology be pleased to state:

- (a) the current viewpoint of the Government with regard to adult film and obscene content alongwith the details thereof;
- (b) the details of adequate restrictions/measures taken to regulate the said content;
- (c) whether the internet traffic leading towards the obscene websites has come down in the country and if so, the details thereof, State/UT-wise and if not, the reasons therefor; and
- (d) the corrective measures taken/proposed to betaken by the Government to reduce the said internet traffic during the last three years?

ANSWER

MINISTER OF STATE FOR ELECTRONICS AND INFORMATION TECHNOLOGY
(SHRI RAJEEV CHANDRASEKHAR)

(a) to (d): The policies of the Government are aimed at ensuring that the Internet in India is Open, Safe & Trusted and Accountable to all our Digital Nagriks.

The Internet technology and Internet was seen as force for good, but in recent years, technology is also exploited for causing user harms and criminality. The number of Internet users in India are expected to increase from 85 crores today to 120 crore users by 2026 making India the largest connected democracy on the global Internet. The Government is fully committed to exploit the good of the technologies but is cognizant of the harms, risks and criminalities. The Government intends to ensure the Internet in general and information on it is safe& trusted and takes suitable steps on an ongoing basis to tackle the bad actors.

Government is aware of the need to prescribe the guardrails and increase the accountability of social media platforms and therefore, to meet the need for prescribing adequate regulations and to implement the Government's policy towards ensuring that Internet in India is Open, Safe and Trusted and Accountable for all Digital Nagriks, the Ministry of Electronics and Information Technology ("MeitY") engages with and receives inputs from the public and stakeholders, including in respect of changes required to existing legislation and the need to introduce fresh legislation.

Accordingly, to ensure that Internet in India is Open, Safe and Trusted and Accountable, the Central Government after extensive public consultations with relevant stakeholders has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules, 2021") on 25.02.2021 which was subsequently amended 28.10.2022 and 6.4.2023.

The IT Rules, 2021 cast specific legal obligations on intermediaries, including social media intermediaries and platforms, to ensure their accountability towards safe & trusted Internet including their expeditious action towards removal of the prohibited information which are obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, etc. including any misinformation, patently false information and deepfakes. In case of failure of the intermediaries to observe the legal obligations as provided in the IT Rules, 2021, they lose their safe harbour protection under section 79 of the IT Act and shall be liable for consequential action or prosecution as provided under any law for the time being in force

including the IT Act and the Indian Penal Code (“IPC”) such as undersections 292 and 293 of the IPC.

It is further informed that sections 67, 67A and 67B of the IT Act punish for publishing or transmitting material that is obscene, containing sexually explicit act, etc., and depicting children in sexually explicit act, etc. in electronic form, respectively. Any offence under section 67 is punishable with imprisonment up to three years and with fine up to five lakh rupees on first conviction and five years and with fine up to ten lakh rupees on subsequent conviction and is a cognizable offence, whereas, offences under sections 67A and 67B are punishable with imprisonment up to five years and with fine up to ten lakh rupees on first conviction and seven years and with fine up to ten lakh rupees on subsequent conviction and are cognizable offences.

In addition to the punishment under the IT Act, other laws such as the IPC and the Protection of Children from Sexual Offences Act, 200 (POCSO) also penalise the sale, distribution etc. of obscene books and content. Under Section 292 of the IPC, the sale, distribution, public exhibition, advertisement, etc. of books, pamphlets, papers, writings, drawings, paintings, representations, figures or any objects are punishable on first conviction with imprisonment of up to two years, and with fine of up to two thousand rupees, and, for second or subsequent conviction, with imprisonment of up to five years, and also with fine of up to five thousand rupees. Section 293 of the IPC penalises these acts when the sale, distribution, public exhibition, advertisement, etc. of books, pamphlets, papers, writings, drawings, paintings, representations, figures or any objects to persons below the age of 20 years with imprisonment of up to three years, and with fine of up to two thousand rupees for first conviction and with imprisonment of up to seven years, and fine of up to five thousand rupees for second or subsequent conviction. Under Section 15 of POCSO, storage of child pornographic materials with the intent to publish or share the same is punishable with imprisonment of up to five years and fine.

Further, the Government issues lawful directions for blocking for access of information by public under Section 69A of the IT Act which provides power to government to issue such directions if it is necessary or expedient to do so in the interest of sovereignty and integrity, defence of India, security of the State, friendly relations with foreign States or public order or for inciting cognizable offence relating to above. MeitY follows due process as envisaged in the Information Technology (Procedure and Safeguards for Blocking for Access of Information for Public) Rules, 2009.

Further, the IT Rules, 2021 cast the obligations on the intermediary platforms to not allow hosting, sharing, uploading, transmitting, etc. of any prohibited information under Rule 3(1)(b) that includes information which is obscene, pornographic, paedophilic, invasive of another’s privacy including bodily privacy, etc.

The IT Rules, 2021 cast the following legal obligations, among others:

- (i) Rule 3(1)(b) of the IT Rules, 2021 prohibits eleven types of content on the Indian Internet available on the intermediary platform including social media platforms.
- (ii) Platforms are required to ensure that their users do not use their platforms for sharing or transmitting content that violates Rule 3(1)(b) and other laws and that their terms of use expressly restrict use of eleven types of content under the law.
- (iii) Rule 3(1)(b)(ii) of the IT Rules, 2021 prohibits any information that is obscene, pornographic, paedophilic, invasive of another’s privacy including bodily privacy, etc.
- (iv) Rule 3(1)(b)(v) and (vi) of the IT Rules, 2021 prohibits misinformation and patently false information on the Indian Internet or that impersonates another person. Deepfakes are another form of misinformation powered by AI.
- (v) Rule 3(1)(d) of the IT Rules, 2021 mandates the platforms to ensure expeditious action, well within the timeframes stipulated under the IT Rules, 2021, to remove or disable access to information/content that violates the aforesaid provisions of the IT

Rules, 2021, upon receipt of court orders or notification from the Appropriate Government or its authorised agency or on complaint made by the impersonated individual or person authorised by him in this behalf.

- (vi) Rule 4(2) of the IT Rules, 2021 prescribes that the significant social media intermediaries shall cooperate with Law Enforcement Agencies (LEA) for prevention, detection, investigation, prosecution or punishment by enabling identification of the first originator of information related to the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material (CSAM).

The Government has also established Grievance Appellate Committees under the IT Rules, 2021 to allow users and victims to appeal online on www.gac.gov.in against decisions taken by the Grievance Officers of intermediaries in case they are dissatisfied with the decision of the Grievance Officer in case of legal violations including obscenity, vulgarity, misinformation and deepfakes or where the Grievance Officers fails to redress the grievances from users or victims or an individual or any person on his behalf within the timelines prescribed under the IT Rules, 2021.

To prevent the harms caused by misinformation through deepfakes and obscenity, MeitY conducted multiple Digital India Dialogues (“DID”) with leading social media platforms to caution them about their legal obligations and consequences of prosecution under relevant law if any of the prohibited contents is found on their platform including but not limited to deepfakes.

The Government has informed platforms, as part of its zero tolerance policy towards enforcement for 100% compliance, that the terms of use should be completely aligned to Rule 3(1)(b) of the IT Rules, 2021 and their users should be cautioned at log in and at regular intervals about the prohibited content that are not permitted on their platforms to ensure complete awareness amongst their users about what is permissible or not on their platforms under the IT Rules, 2021.

Also, they have been reminded about their obligations of expeditious action under the IT Rules, 2021, to remove or disable access to information/content that violates the aforesaid provisions of the IT Rules, 2021.

While MeitY has been issuing time-to-time advisories to the intermediaries, through its latest such an advisory dated 26th December 2023, MeitY has directed intermediaries for ensuring compliances with the prescribed due diligence and Grievance Reporting Mechanism under the IT Rules, 2021, the failure to observance of which on the part of intermediaries will amount to non-compliance with the IT Rules, 2021 and result in the concerned intermediary automatically losing exemption from liability under section 79 of the IT Act. This advisory includes *inter-alia* the following directions that—

- i. Ensure that users on social media platforms do not violate prohibited content in Rule 3(1)(b) of IT Rules 2021.
- ii. Prohibited content to be expressly informed to the user at the time of first-registration and also as regular reminders, in particular, at every instance of login.
- iii. Users to be made aware of penal provisions under IPC, IT Act and other laws that may be attracted in case of violation of Rule 3(1)(b).
- iv. Terms of service and user agreements must clearly highlight obligation of intermediaries to report legal violations to the law enforcement agencies under the applicable laws;
- v. Intermediaries should identify and remove misinformation or information that impersonates another person, including those created using deepfakes.
- vi. Intermediaries must enable users, victims or any person on their behalf, to also report violations relating to Rule 3(1)(b) or Rule 3(2)(b) in a simple and easily accessible manner, including through in-app user reporting.

- vii. Intermediaries must comply with the orders of the Grievance Appellate Committee within the timeline mentioned in the order and publish a report.
- viii. Intermediaries should take additional measures to not permit any advertisements of illegal loan and betting apps.
- ix. Intermediaries have been warned that non-compliance will lead to loosing exemption from liability provided under section 79(1) of IT Act.

Pursuant to the multiple industry stakeholder consultations through DID, MeitY has issued this advisory for all intermediaries on 26.12.2023 directing them to comply with the obligations under the IT Rules, 2021 so as to expeditiously tackle the emerging issues of obscenity and synthetic media like misinformation & deepfakes and concerns of curbing other harmful content on the Internet.

In addition, the Ministry of Home Affairs operates a National Cyber Crime Reporting Portal (www.cybercrime.gov.in) to enable citizens to report complaints pertaining to all types of cybercrimes, and also operates a toll-free helpline (1930).
