

GOVERNMENT OF INDIA
MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY
LOK SABHA
UNSTARRED QUESTION No. 3323
TO BE ANSWERED ON 09.08.2023

ACCESS OF MATURE CONTENTS BY MINORS

3323. SHRI RAJA AMARESHWARA NAIK:
DR. SUKANTA MAJUMDAR:
SHRI RAJVEER SINGH (RAJU BHAIYA):

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

- (a) whether the Government is aware that despite the provisions of the Indian Contract Act, 1872, a vast number of minors continue to access content and contract on websites meant for mature audiences;
- (b) if so, the details thereof along with the Government's reaction thereto;
- (c) whether the present legislative framework does not effectively provide for methods to determine the age demography of users and thus a new and improvised mechanism must be created and recommended;
- (d) if so, the details thereof along with the Government's reaction thereto; and
- (e) whether the Government is in the process of issuing guidelines to address the aforementioned issues, directing websites to undertake stricter methods to protect and limit involvement of minors and if so, the details thereof?

ANSWER

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

(a) to (e): The policies of the Government are aimed at ensuring a Safe and Trusted and Accountable Internet for all its users. Publication or transmission of obscene material in electronic form, is cybercrime. The Information Technology Act, 2000 ("IT Act") and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules, 2021"), provides for penalty and punishment for such act and also casts an obligations on the intermediaries, including social media intermediaries, to observe due diligence as per rule 3(1)(b). In case of failure to follow diligence as provided in the IT Rules, 2021, by intermediaries, they shall lose their safe harbour protection under section 79 of the IT Act and shall be liable for consequential action as provided in such law.

The Information Technology Act, 2000 ("IT Act") penalises publishing or transmission of material containing sexually explicit act in electronic form (section 67A and 67B) and publishing or transmitting of obscene material in electronic form (section 67), and makes them punishable with imprisonment for a period that may extend to three and five years respectively, and as per section 77B such cybercrimes are cognizable offences. As per the provisions of the Code of Criminal Procedure, 1973, prevention and investigation of cognizable offences is to be done by the police, and as per the Seventh Schedule to the Constitution, 'Police' is a State subject. As such, States are primarily responsible for the prevention, investigation etc. of such cybercrimes through the State police departments, which take preventive and penal action as per law, including in respect of the said cybercrimes pertaining to publishing or transmitting of material containing sexually explicit act or obscene material in electronic form.

The Information Technology Act, 2000 ("IT Act") and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules, 2021"), together, have made a framework which cast obligations on the intermediaries, including

social media intermediaries, to observe due diligence and provide that if they fail to observe such due diligence, they shall no longer be exempt from their liability under law for third-party information or data or communication link hosted by them. Such due diligence includes the following:

- (i) To make reasonable efforts to cause the users not to host, display, upload, modify, publish, transmit, store, update or share, information which is harmful to child, or obscene, or invasive of another's bodily privacy, or violates any law;
- (ii) On a voluntary basis on violation of the above, and on actual knowledge upon receipt of a grievance or court order or notice from the appropriate government or its agency, to not host, store or publish unlawful information prohibited under law for the time being in force in relation to the interest of decency or morality or defamation;
- (iii) Upon receipt of an order from a lawfully authorised government agency, to provide information or assistance for prevention, detection, investigation or prosecution under law in a time bound manner within 72 hours;
- (iv) To have in place a grievance redressal machinery, and resolve complaints of violation of the rules within 72 hours of being reported and, in case of a complaint by an individual or her/his authorised representative, remove within 24 hours any content which prima facie exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct; further, the rules have been amended on 28.10.2022 to provide for the establishment of one or more Grievance Appellate Committee(s) to allow users to appeal against decisions taken by Grievance Officers on such complaints;
- (v) In case an intermediary is a significant social media intermediary (i.e., an intermediary having more than 50 lakh registered users in India), to additionally observe due diligence in terms of appointing a Chief Compliance Officer, a nodal contact person for 24x7 coordination with law enforcement agencies and a Resident Grievance Officer, and to endeavour to deploy technology-based measures, including automated tools or other mechanisms, to proactively identify information that depicts any act or simulation in any form depicting child sexual abuse or conduct.
- (vi) In case a significant social media intermediary is providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to rape, sexually explicit material or child sexual abuse material.

Keeping in view complaints regarding action or inaction, on the part of the social media intermediaries and other intermediaries on user grievances regarding objectionable content or suspension of their accounts, the Central Government has also established three Grievance Appellate Committees (GACs), as provided for in the said IT Rules, 2021 to enable users to appeal against the decisions taken by Grievance Officer of intermediaries on user complaints. In addition, under the Code of Ethics prescribed in the Part III of IT Rules, 2021, publishers of an online content curator are required to classify all content transmitted or published or exhibited by them, based on the nature and type of content, into various rating categories, including content suitable for children, content suitable for persons aged 7 years or 13 years or 16 years and above or persons under the said ages with parental guidance, and to display such classification. They are further required to restrict access to certain curated content by a child through implementation of appropriate access control measures.
