

**Press Information Bureau
Government of India
Ministry of Communications & Information Technology**

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Clarification on Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 under section 43A of the Information Technology Act, 2000

PRESS NOTE

The Department of Information Technology had notified Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 under section 43A of the Information Technology Act, 2000 on 11.4.2011 vide notification no. G.S.R. 313(E).

These rules are regarding sensitive personal data or information and are applicable to the body corporate or any person located within India. Any such body corporate providing services relating to collection, storage, dealing or handling of sensitive personal data or information under contractual obligation with any legal entity located within or outside India is not subject to the requirement of Rules 5 & 6. Body corporate, providing services to the provider of information under a contractual obligation directly with them, as the case may be, however, is subject to Rules 5 & 6. Providers of information, as referred to in these Rules, are those natural persons who provide sensitive personal data or information to a body corporate. It is also clarified that privacy policy, as prescribed in Rule 4, relates to the body corporate and is not with respect to any particular obligation under any contract. Further, in Rule 5(1) consent includes consent given by any mode of electronic communication.



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**Exemption from Liability for Hosting Third Party Information:
Diligence to be Observed under Intermediary Guidelines Rules**

The attention of Government has been drawn to news items in a section of media on certain aspects of the Rules notified under Section 79 pertaining to liability of intermediaries under the Information Technology Act, 2000. These items have raised two broad issues. One is that words used in Rules for objectionable content are broad and could be interpreted subjectively. Secondly, there is an apprehension that the Rules enable the Government to regulate content in a highly subjective and possibly arbitrary manner.

The Department of Information Technology (DIT), Ministry of Communications & IT has clarified that the Intermediaries Guidelines Rules, 2011 prescribe that due diligence need to be observed by the Intermediaries to enjoy exemption from liability for hosting any third party information under Section 79 of the Information Technology Act, 2000. These due diligence practices are the best practices followed internationally by well-known mega corporations operating on the Internet.

The terms specified in the Rules are in accordance with the terms used by most of the Intermediaries as part of their existing practices, policies and terms of service which they have published on their website. In case any issue arises concerning the interpretation of the terms used by the Intermediary, which is not agreed to by the user or affected person, the same can only be adjudicated by a Court of Law. The Government or any of its agencies have no power to intervene or even interpret. DIT has reiterated that there is no intention of the Government to acquire regulatory jurisdiction over content under these Rules. It has categorically said that these rules do not provide for any regulation or control of content by the Government.

The Government adopted a very transparent process for formulation of the Rules under the Information Technology Act. The draft Rules were published on the Department of Information Technology website for comments and were widely covered by the media. None of the Industry Associations and other stakeholders objected to the formulation which is now being cited in some section of media.

The Government has been forward looking to create a conducive environment for the Internet medium to catapult itself onto a different plane with the evolution of the Internet. The Government remains fully committed to freedom of speech and expression and the citizen's rights in this regard.

SP/AS

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Access to Sensitive Personal Information under New IT Rules Only with Checks and Balances: Clarifies DIT

The attention of Government has been drawn to news items appearing in a section of media which have commented on some aspects of the Rules framed under section 43A of the Information Technology Act, 2000.

The Department of Information Technology, Ministry of Communications & IT has clarified the position in this regard that these Rules do not provide free access to sensitive personal information. The nature and applicability of these Rules have been clearly specified. The Intent of Rules is to protect sensitive personal information and does not give any undue powers to Government agencies for free access of sensitive personal information. Wide public consultations were held before finalizing the Rules and the Rules have been duly endorsed by the Industry Association.

The Rules under section 43A cast onus on the body corporate to provide policy for privacy and disclosure of information. Any such disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information. The Rules provide for inherent checks-and-balances in the form: (a) that the Government agencies must have been mandated under the law to obtain such information for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution and punishment of offences and (b) that any such agency receiving such information has to give an undertaking that the information so obtained shall not be published or shared with any other person. The Government Agencies are required to follow lawful process and procedures.

SP/AS