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PROPOSED DIGITAL INDIA ACT

A. Introduction

The Union Ministry of Electronics and Information Technology (**MeitY**) has proposed the Digital India Act, 2023 (**DIA**), by way of a public consultation on March 9, 2023, and has subsequently released a ‘Presentation’ on its website (**Presentation**).¹

The Presentation, at the outset, states that global developments and India’s ‘digital revolution’ has rendered the current information technology (**IT**) regulatory landscape ‘dated’. For this reason, the DIA has been proposed to improve the current framework to adhere to international standards of IT regulation.

B. Salient Features

The Presentation:

1. summarises the shortcomings and limitations² in the current regulatory framework *i.e.*, the Information Technology Act, 2000 (**ITA**) and the rules framed under it.³
2. introduces the ‘Digital India Goals 2026’ to improve standards of digital products, platforms, solutions, data processing, management, and protection.
3. highlights certain limitations of the ITA, including its lack of comprehensive provisions on user rights and safety, and its limited recognition of the newer forms of cybercrimes, without institutional mechanisms in place for improving awareness.
4. recognises that digital laws should be ‘*evolvable*’ and ‘*consistent with changing market trends [...] and development in international jurisprudence*’.
5. lists DIA’s key aspects including:
 - a. Open Internet
 - i. Certain provisions of the Competition Act, 2002, may need to be updated in line with the DIA’s proposition to improve competition within the IT industry.
 - ii. The Presentation also states that ‘*Big Tech is often gaming the system*’ citing news headlines on their monopoly in the market.

¹ The Presentation is accessible on the MeitY website [here](#).

² Refer ‘Annexure I’ to the Presentation.

³ The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, the Information Technology (the Indian Computer Emergency Response Team and the Manner of Performing Functions and Duties) Rules, 2013, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

b. Online Safety and Trust

Per the Presentation, the DIA proposes to:

- i. protect users' rights by recognising the 'right to be forgotten', the right to digital inheritance, right against discrimination, *etc.*
- ii. introduce 'age-gating' to protect minors' data safety and privacy.
- iii. introduce 'discretionary moderation of fake news' by social media platforms.
- iv. define and regulate 'hi-risk AI systems through legal, institutional quality testing framework to examine regulatory models, algorithmic accountability, zero-day threat & vulnerability assessment, examine AI based ad-targeting, content moderation *etc.*'
- v. regulate privacy-invasive devices prior to their entry into the market.

c. Accountable Internet

The Presentation:

- i. discusses the need for appropriate adjudicatory and appellate mechanisms for digital operators, and also periodic risk assessments of 'digital entities'.
- ii. emphasises the importance of a unified and coordinated architecture, by way of an inquiry agency and a specialised dispute resolution framework.

d. Intermediaries

The Presentation:

- i. recognises the need for separate rules for each class of intermediaries.
- ii. lists the type of intermediaries,⁴ the DIA may potentially be concerned with.

C. Conclusion

The Minister of State for MeitY stated: "The law will be principle-based but the rules will be prescriptive. For example, if there are 10 types of platforms, and we classify them into 10 categories, for each category, there will be a set of law rules that will be very clear and precise and prescriptive: thou shalt not do this, thou shalt do this."⁵

Certain media reports also seem to commend MeitY's proposal. The editorial in *The Hindu Businessline* said: ⁶ "Without adequate guardrails in place, the Centre's vision of a \$1 trillion digital economy by 2030, could get derailed. In this context, the proposed Act will cover potential misuse of Artificial Intelligence, deep fakes, cybercrime, and competition issues among internet platforms." It concluded: "In a highly digitised world where individuals, machines, financial establishments, enterprises and government agencies are being connected on a single network, the importance of laws governing digital applications, and those that protect personal data can never be overemphasised."

The draft Digital India Bill, 2023 is proposed to be released for public and expert consultations following MeitY's comparative study of all relevant global laws. No timeline is proposed for the same.

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⁴ eCommerce, digital media, social media, Artificial Intelligence (AI), Over-the-Top media platforms (OTT), *etc.*

⁵ In a [news report](#) in *Moneycontrol* dated March 9, 2023.

⁶ In the [editorial](#) of March 17, 2023, titled 'The new Digital India Act needs to be expedited'.