

Intermediaries Guidelines (Amendment) Rules, 2018

Why in news?

The government recently published suggestions and comments received on the Intermediaries Guidelines (Amendment) Rules issued in 2018.

What are the rules on?

- Ministry of Electronics and Information Technology proposes to amend Information Technology (Intermediaries Guidelines) Rules under Section 79 of the Information Technology Act.
- Intermediaries are entities that store or transmit data on behalf of other persons.
- They include internet or telecom service providers, and online market places.
- The Rules could have a far-reaching impact on the way social media websites, and the Internet as a whole, operate in India.

What are the key provisions?

- **Monitoring** - The Rules make 'intermediaries' such as Facebook, Google, WhatsApp, and others responsible for actively monitoring the content they host.
- All intermediary companies will have to deploy technology based automated tools or mechanisms for this purpose.
- This should help in proactively identifying and removing or disabling public access to unlawful information or content.
- **Tracing** - On issue of a lawful order, the intermediary shall, within 72 hours of communication, provide such information or assistance as asked for by any government agency.
- The lawful order could be in matters of state security, cyber security, or investigation of any offence.
- For many companies, the provision could mean choosing between breaking their end-to-end encryption in India and stopping the service in the country altogether.
- **Content** - Earlier, it was only content that is grossly harmful, defamatory, obscene, etc that was to be filtered.
- But now, in addition, intermediaries must also filter content that -

- i. threatens public health or safety
 - ii. promotes cigarettes or any other tobacco products or consumption of intoxicant including alcohol
 - iii. promotes Electronic Nicotine Delivery System (ENDS) and like products that enable nicotine delivery
- Any content which threatens critical information infrastructure is also not allowed under the new Rules.
 - **Non-compliance** - Companies will have to inform their users at least once every month that in case of non-compliance, their accounts and content would be removed.
 - However, companies are uncertain as to how exactly this would be achieved.
 - **Registrations** - All players with more than 5 million users in India have to be incorporated under The Companies Act.
 - The companies will need to have a permanent registered office in India with a physical address.
 - Besides the 5 million-plus firms, the provision can be extended to any intermediary, which is specifically notified by the Government.

What are the limitations?

- **Tracing** - End-to-end encryption ensures that no one can read the messages shared between two users.
- This includes government, third-party, cyber criminals, and the company itself.
- For global end-to-end encrypted products like WhatsApp or Signal, tracing could create problems, besides forcing them to go against the core of what their product stands for.
- The tracing rules could amount to making it impossible for these firms to work in India in their current nature.
- **Monitoring** - For many startups in India, monitoring and removing content might not always be viable or possible, given the resources that would be required.
- Open-source companies like Wikipedia, GitHub, and Mozilla have formally protested, especially for the guidelines on monitoring.
- GitHub is an online repository of code, Wikipedia content is generated, edited, and moderated by users, and Mozilla's Firefox is a popular open source browser.
- They have argued that it would not be possible for them to employ automated tools to monitor "unlawful" content.
- **Registration** - The 5 million-users specification is unclear whether they

mean monthly active users or daily active users.

- Notably, these are the key metrics that Internet companies use to define their user base.
- A service that has 5 million monthly active users in India - users who log in once a month - might not see the sense in having an office in the country.
- Given the limitations, there is widespread opposition to the rules from the telecom industry.

Source: Indian Express

