

Draft Information Technology [Intermediaries Guidelines (Amendment)] Rules

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Manifest pedagogy: The issue of Privacy and Data has been making waves with the judgement on Privacy and also the Aadhaar judgement. It can be asked in many subjects but very specifically Polity and Internal Security dimensions are important which an aspirant is expected to know in depth.

In news: The Centre recently informed the Madras High Court that deliberations on the Draft IT Rules, 2018, has been completed.

Placing it in syllabus: Role of media and social networking sites in internal security challenges

Static dimensions: Draft IT Amendment Rules

Current dimensions:

- What is the issue about?
- What do the guidelines say?
- Concerns
- What can be done?

Content:

What is the issue about?

The Tamil Nadu government told the Supreme Court recently that social media profiles of users should be linked with their Aadhaar numbers to keep a check on the spread of fake news, pornographic and anti-national content. The government is

seeking Aadhaar-social media linking after two private citizens, filed PILs for authentication of identity, due to the rise of **hate content, fake news and cyberbullying.**

Facebook, however, has been resisting the move to link user profile with Aadhaar as it feels this would **violate the privacy policy of the user.** Facebook has also defended itself, saying that it cannot share the 12-digit Aadhaar number on WhatsApp as it is end-to-end encrypted, even for Facebook.

Madras High Court had dismissed the plea made by the PIL petitioners, as it violated the Supreme Court judgement on Aadhaar usage. It had told the petitioners that, **“Aadhaar is a government accord used only for social welfare schemes and cannot have the government linking it with social media.”**

There are conflicting opinions about this at different High Courts. Hence Senior advocates Mukul Rohatgi and Kapil Sibal who are representing social media platforms have moved the Supreme Court to make a final decision that would apply uniformly across India.

Rohatgi has been arguing by informing the SC bench of Facebook's transfer petition. He said that the petition was filed for **several similar matters that are going on in three high courts.** The transfer petition was filed under **Article 139A** of the Indian Constitution.

Given that the Supreme Court is hearing Facebook's transfer petition, the Madras HC, on August 21,2019 adjourned the hearing on WhatsApp traceability case until September 19.

Attorney General KK Venugopal has appeared for the Tamil Nadu government in the Supreme Court to stress the need for Aadhaar-social media linking. He also referred to the **Blue Whale game,** the online suicide challenge that has reportedly claimed hundreds of deaths in countries like Russia and India where the government found it hard to trace the originator of the online content.

The Supreme Court recently said that there is a need to find a **balance between the right to online privacy and the right of the state to trace the origins of hateful messages** and fake news. It has asked the government to file an affidavit within three weeks, updating it of the progress in framing the intermediary guidelines.

What do the guidelines say?

- The draft guidelines are an update of rules that were originally notified in April 2011 under **Section 79 of the Information Technology Act, 2000** and deal with technology companies' responsibility in curbing misuse of social media.
- The term '**intermediary**' refers to all tech companies that are hosting user data or are providing users with a platform for communication. This brings all internet, social media, telecom companies in its ambit.
- The draft amendment proposes that intermediaries will have to hand over to government agencies any information that might be related to cyber security, national security and related with the investigation, prosecution or prevention of an offence, within 72 hours.
- They will have to disable content considered defamatory or against national security under **Article 19 (2)** of the Constitution within 24 hours of being notified by the appropriate government or its agency.
- They should use automated tools to identify, remove and trace the origin of such content.
- Intermediaries with over 55 lakh users will be required to have a permanent registered office with physical address and a senior official who would be available for coordination with law enforcement agencies.



Concerns over recent draft guidelines:

The government has been asking the Facebook-owned Whatsapp to help in **traceability of messages that cause law and order problems**, but WhatsApp has been rejecting it, arguing that the platform provides end-to-end encryption. Experts believe that it isn't possible to trace the origin of messages without lowering encryption standards or building a backdoor to access encrypted communications.

According to the guidelines, intermediaries are required to prohibit publication of **"content that threatens public health or safety"**. This may violate the right to **free speech under Article 19(1)**. The SC in its previous judgements has stated that any restrictions placed on the freedom of speech must relate to the grounds specified under **Article 19(2)**.

If the apex court rules in favour of Aadhaar linking with social media accounts it would result in users' messages and posts being traceable. This would end private communications and experts believe this could also allow the **government to use social media platforms as surveillance tools**.

Intermediaries are required to **deploy automated tools for removing access to unlawful content**. In 2015, related to **Section 79(3)(b) of the Information Technology Act, 2000** the SC stated that it would be difficult for intermediaries to judge the legitimacy of each item given high volumes of content.

Intermediaries with more than fifty lakh users must incorporate a company in India. It is unclear as to how this number will be calculated. For example, the number of users of an intermediary may be calculated through different methods such as the number of registered users on the intermediary's platform, the number of daily active users, or the number of installations.

What can be done?

In **2015 judgement**, SC had stated that the content needs to be

removed or disabled only if: (i) it is done on the basis of the order of a court or government, and (ii) the order relates to one of the restrictions under Article 19(2) of the Constitution. Hence the **vague terms used in guidelines needs to be corrected.**

Experts feel that the **focus should be on the perpetrators of the crime rather than the intermediaries.**

The Centre for Internet and Society (CIS) has pointed out that existing laws provide enough teeth to the Indian agencies to act. E.g. **Section 505 of the IPC** has provisions to penalise disinformation while **Sections 290 and 153A of the IPC** have provisions if the disinformation is being used to create communal strife. As the term 'unlawful' is not clearly defined in the guidelines, CIS has asked for proper interpretation.

Amnesty International has proposed that **governments can legitimately use electronic surveillance** to protect people from crime.