Draft IT Amendment Rules, 2018 – II

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What is the background?

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- India has seen the maximum number of Internet shutdowns in the world since 2016.
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- Hence, there has been a bid to streamline online interactions.
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- The government was planning to bring in new rules to help it battle fake news and social media interactions.
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- Accordingly, the centre recently framed draft IT rules, 2018 to regulate Internet intermediaries and to ensure that unlawful content does not feed back into social unrest.
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What are the concerns?

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- **Operational restructuring** - All platforms with more than five million users will be required to have a registered entity in India under the Companies Act.
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- This will make them subject to higher taxes and hence these companies will have to undertake tax and operations restructuring.
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- Also, this provision tends to exclude a large number of online platforms that may have lower user base.
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- **Definition** - The term "unlawful information or content" has not been defined in the draft rules and hence becomes open to interpretation.

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- Also, the draft inserts a monthly requirement to inform users about the legal requirements such as terms and conditions and privacy policy.
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- But this provision would make the intermediaries to constantly remind the people that they are under the watch of the government.
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- **Surveillance** - The requirement for online platforms to proactively take down content will lead to censorship of speech.
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- Also, since there is no provision for the government order getting subject to judicial review, it will enable unrestricted surveillance of citizens.
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- **Monitoring** - The online platforms are required to monitor unlawful content via technology-based automated tools or appropriate mechanisms.
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- However, this runs contrary to the **Shreya Singhal judgment** in 2015.
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- The judgement noted that it would be very difficult for intermediaries like Google, Facebook etc. to check the legitimate request out of millions of requests to remove unlawful content that they receive.
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- Also, the proposed change shifts the onus and duty of the state to a private party.
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- **Traceability** - Online platforms are required to help law enforcement agencies to trace the source of messages, especially those that provoke violence.
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- However, this would undermine end-to-end encryption and its private nature, creating potential for serious misuse.
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- Also, the costs of monitoring every content as required under law will be high for the smaller platforms, which will deter them from fair competition in the sector.
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- **Freedom of association** - Online platforms such as WhatsApp groups chats provide a safe harbour for people to virtually assemble at one place and express themselves.
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- Undermining end-to-end encryption can lead to further marginalisation, thereby hindering people from mobilising on groups by intruding into their personal space.
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- **Data retention** - The proposal increases the period for which data has to be retained, from 90 to 180 days.
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- It also provides for further retention on the discretion of government agencies without any justification.
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- **Compliance** - The draft includes state governments under the definition of appropriate government that have powers to enforce compliance on intermediaries.
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- Thus, intermediaries are now subject to law making/orders issued by any of the state governments in addition to the Centre.
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What should be done?

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- Though the IT Act contain few safeguards against intrusion, the Act itself relies on the ordinary Criminal Procedure for its enforcement.
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- Thus, the need of the hour is the implementation of the Draft Data Protection Bill to ensure a balance between the right to privacy and the security of the state.
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Source: The Indian Express, Economic Times

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