Safe Harbour for Social Media

> Mains Syllabus: GS II - Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

Why in the News?

Union Ministry of Information and Broadcasting is reconsidering the concept of safe harbour for social media platforms, to combat the issue of "fake news" online.

What is safe harbour?

- **Safe harbour** – It is a legal concept that protects individual websites that allow third party users to share content from legal liability for any unlawful posts.
- Safe harbour protects sites, by default, from any criminal action for content hosted by them.
- **Objective** - The concept was put in place in the early years of the internet as a key safeguard to encourage innovation online and prevent website owners from being unfairly hounded for content they had no hand in publishing.
- **Intermediary liability** - The concept of a middleman being responsible for third party content is known as intermediary liability.
- **Safe Harbour in US** - It is enshrined in Section 230 of the Communications Act of 1934, inserted into the decades-old law in 1996.
- **Safe Harbour in India** – Section 79 of the Information Technology Act, 2000, grants intermediaries similar protections.
- **Conditional liability** - In India, if an intermediary receives "actual knowledge" of illegal content on their website, they lose liability protections under Section 79 if they don't work to take the content down within a certain time period.
- The Supreme Court has read down "actual knowledge" to mean a court order or government notification.
- **Effect of liability** - Without safe harbour protections, online intermediaries could face tremendous consequences for illegal content.
- For instance, in 2004, the then head of the website eBay in India was arrested because of a user listing of a disk containing child sex abuse material for sale.

How are intermediary liability protections regulated in India?

- **IT Rules Condition** - The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 has put in place additional conditions for platforms to retain protection from intermediary liability.
- **Grievance Redressal Mechanism** - Social media firms need to have a nodal officer, a grievance officer resident in India.

- **Periodic Reporting** – Social media firms need to periodically submit reports of complaints they receive on content, and action taken against them for this.
- **Fake News** - IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, provides for removal of safe harbour from sites for content that has been notified as "fake news" by the Press Information Bureau's fact check unit.

What is the need for amending the safe harbour clause?

- **Prevent Violation of Laws** - The government has accused foreign social media platforms of flouting Indian laws and acting too slowly on takedown notices.
- X platform had public confrontations with the Union government regarding orders to hide users' content.
- **Resistance to Remove Contents** – Platforms have been fighting the government's right to issue blocking and takedown orders without notice to users.
- **Proactive Governance** - To get platforms to be more proactive in governing their sites, not just for what they deem to be misinformation, but for AI-generated deepfakes, cyberfrauds and so on.
- **Prevent Evasion of Responsibility** - Safe harbour clause allows social media platforms to evade accountability for harmful or illegal content, including misinformation, hate speech, and explicit material
- **Insufficient Grievance Redressal** - There are concerns that platforms have not been effective in addressing user grievances related to objectionable or harmful content.
- These issues prompts the government to consider stricter oversight and the formation of grievance appellate committees.

What are the potential consequences of repealing safe harbour clause?

- **Increased Legal Liability** - Without safe harbour protection, social media platforms would face direct civil and criminal liability for any unlawful or problematic content posted by users.
- **Mass Censorship** - To avoid legal risk, platforms would likely over-censor content, removing or restricting posts pre-emptively even those that are lawful or merely controversial15.
- This could lead to a chilling effect on free expression and undermine the open, participatory nature of the internet
- **Threat to Platform Viability** - If repealed, the operational and legal risks could be so high that many platforms may find it unsustainable to operate in India or would drastically curtail their services
- **Impediments to Innovation** - The fear of liability would discourage investment and innovation in the digital ecosystem, as new entrants and startups may not have the resources to manage the legal risks associated with hosting user content.
- **Burden of Content Moderation** - Platforms would be forced to monitor and vet every piece of content before publication, an impossible task at scale, leading to delays, errors, and increased operational costs.
- **Risk of Government Overreach** - In the absence of safe harbour, governments could exert more control over what content is allowed online, potentially leading to arbitrary censorship and suppression of dissenting voices

What lies ahead?

- Safe harbour laws are essential for the functioning and openness of social media platforms, supporting free speech and innovation.
- However, they require careful regulation and periodic updating to ensure platforms do not evade responsibility for harmful content.
- A balanced approach-retaining safe harbour with clear, enforceable obligations for content moderation and transparency-is widely seen as the most effective way forward.

Reference

The Hindu | Safe Harbour Laws

To Practice Mains Question, Click Here.

