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## Mains Practice Questions

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**Q.** The draft Information Technology (Intermediaries Guidelines) Amendment Rules, 2018, have been criticised for expanding the scope for state surveillance. Discuss the need and concerns regarding the rules in view of rising incidence of fake news. (250 words)

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**Approach:**

- Briefly mention the key points from the draft rules.
- Discuss the need for such rules.
- Explain the concerns about the impact of the rules.
- Conclude by balancing the significance and concerns about the rules.

**Introduction**

- The proposed amendment to the Information Technology Act (IT Act), 2000 would make it mandatory for platforms such as WhatsApp, Facebook, Twitter to trace the origins of any 'unlawful' content.
- Other proposed provisions: providing information sought by any govt agency within 72 hours; ensuring originator of information is traceable; taking down content or disabling access to unlawful acts within 24 hours of being notified; having tools to identify and disable access to unlawful content and finally to report cybersecurity-related incidents to the Indian Computer Emergency Response Team (CERT-In).

**Body**

**Need for the rules**

- Recently, India has seen a rise in the number of lynching incidents in 2018 mostly due to fake news being circulated through Whatsapp and other social media sites.
- Social media has brought new challenges for the law enforcement agencies, including inducement for the recruitment of terrorists, circulation of obscene content, the spread of disharmony and incitement to violence.
- Amid concerns raised by the judiciary and civil society about fake news on social media, the government has intervened to trace the origins of such content which misleads or misinforms public opinion.

**Concerns**

- This change would require online platforms to become proactive arbiters of “unlawful” content via technology-based automated tools or appropriate mechanisms. This runs contrary to the Shreya Singhal judgment of SC (2015) that outlawed Section 66 of the Act. It had noted that it would be very difficult for intermediaries like Google, Facebook etc. to judge the legitimacy of the requests when millions of requests are made.
- The proposed change shifts the onus and duty of the state to a private party.

- Without a clear understanding of what speech is 'unlawful', the amendment enables agencies to target groups and individuals based on mere suspicion and without confirming if the content is actually illegal. While Article 19(2) lays down reasonable restrictions on free speech, the understanding of fake news within free speech jurisprudence remains unclear.
- This undermines the opacity of online platforms, especially private chats, allowing the state to demand any content it deems 'unlawful' to be handed over.
- The large-scale implementation of this decision may lead to self-censorship and the suppression of dissent, completely antithetical to democratic practice.
- In the absence of privacy, each component of free speech – conceptualisation, expression, and dissemination – integral to the exchange of ideas is compromised. The amendment may have a chilling effect on freedom of speech and expression.

## **Conclusion**

To protect fundamental liberties such as privacy and to simultaneously weed out fake news, the implementation of the Data Protection Act which clearly defines or characterizes 'unlawful' speech is the need of the hour. Also, in the light of upcoming elections and the recent allegations of vote manipulation by the social media platform Facebook, the government should remain the sole monitoring agency of online content in the country.