



## Bombay HC Strikes Down IT Rules 2023

**For Prelims:** [Amended Information Technology Rules, 2023](#), [Fact Check Unit \(FCU\)](#), [Article 14](#), [19 \(freedom of speech and expression\)](#) and [19\(1\)\(g\) \(freedom and right to profession\)](#), [Self-Regulatory Body \(SRB\)](#), [Social media platforms](#), [Section 79 of the IT Act, 2000](#).

**For Mains:** Critically analyse Information Technology Amendment Rules 2023.

[Source: TH](#)

### Why in News?

Recently, The **Bombay High Court** (HC) struck down the [Amended Information Technology Rules, 2023](#) which empowered the Centre to set up a [Fact Check Unit \(FCU\)](#) to identify fake, false and misleading information about the government on social media.

### What was the High Court's Observation Regarding FCU?

- The **Information Technology** (Intermediary Guidelines and Digital Media Ethics Code) Amendment **Rules, 2023**, violated [Article 14](#) (right to equality), [19 \(freedom of speech and expression\)](#) and [19\(1\)\(g\) \(freedom and right to profession\)](#) of the Constitution.
- The **definition of fake or misleading news remains ambiguous**, lacking clarity and precision.
- In the **absence of a legally established "right to the truth,"** the State is not obligated to ensure that citizens are provided solely with information deemed accurate by the Fact Check Unit (FCU).
- Additionally, the **measures fail to meet the [standard of proportionality](#).**

### Key Facts About Fake News

- According to the [National Crime Records Bureau \(NCRB\)](#) data, a total of **1,527 cases of fake news were recorded in 2020**, a 214% increase, against 486 cases in 2019 and 280 cases in 2018.
- The Fact Check Unit of the **PIB** has successfully debunked **1,160 instances of false information since its establishment in November 2019**.

### What is the Fact Check Unit (FCU)?

- **About:** The FCU is an official body to **address and counter the spread of misinformation related to the Indian government**.
  - Its primary function is to identify and verify facts, ensuring the dissemination of accurate information in public discourse.

- **Establishment of FCU:** In April 2023, the MeitY established the **Fact-Check Unit (FCU)** by amending the [Information Technology Rules, 2021](#).
- **Legal Issue:** In March 2024, the SC issued a stay on the establishment of **Fact-Check Unit (FCU)** under the Press Information Bureau.
  - The government defended the FCU, as it aimed to prevent the spread of false information and is the least restrictive measure to combat misinformation.
- **Compliance and Consequences:** FCU will adjudicate content, and failure by intermediaries to comply with its directives could result in action under [Section 79 of the IT Act, 2000](#) for violating **safe harbour provisions**.

## What is the Information Technology Amendment Rules 2023?

- **About:**
  - These rules were established under the powers conferred by **the Information Technology Act, 2000**.
  - The rule **replaced the Information Technology (Intermediaries Guidelines) Rules, 2011**.
- **Due Diligence by Intermediaries:**
  - Intermediaries must prominently display **rules, regulations, privacy policies, and user agreements** on their platforms.
  - Intermediaries should take steps to prevent the publishing of unlawful content, including **obscene, defamatory, or misleading information**.
  - **Grievance Redressal Mechanism** must be established by intermediaries to handle user complaints.
- **Additional Due Diligence for Significant Intermediaries:**
  - **Significant Social Media Intermediaries** must appoint a **Chief Compliance Officer** and a **Grievance Officer**.
  - These intermediaries must report **monthly compliance** including complaints and actions taken.
- **Grievance Redressal Mechanism:**
  - Intermediaries must **acknowledge complaints** within **24 hours** and resolve them within **15 days**.
  - Complaints regarding content that violates privacy or contains harmful material should be addressed within **72 hours**.
- **Code of Ethics for Publishers:**
  - Publishers of news and online content must adhere to a **Code of Ethics**, ensuring content does not affect the **sovereignty of India** or violate any existing laws.
- **Regulation of Online Games:**
  - Online gaming intermediaries must provide detailed policies about **withdrawals, winnings, and user identity verification**.
  - Real-money online games must be **verified by a self-regulatory body**.
    - A **self-regulatory body (SRB)** is defined as an organization established to oversee and enforce compliance with ethical standards, guidelines, and best practices for digital media and intermediaries.

### Note:

- **Intermediaries:** Intermediaries are entities that **facilitate the transmission or hosting of content or services** on the internet. They act as **conduits between users and the internet**, allowing the exchange of information. For Example:
  - Social media platforms (e.g., Facebook, Twitter)
  - E-commerce websites (e.g., Amazon, Flipkart)
  - Search engines (e.g., Google)
  - Internet service providers (ISPs)
  - Cloud service providers
- **Significant Intermediaries:** These are a **subset of intermediaries**, defined by their large user base and greater influence on public discourse.
  - Under [IT Rules, 2021](#), intermediaries over 5 million users in India are classified as significant intermediaries. Due to their larger reach, significant intermediaries are subject

to additional regulatory requirements.

## What are the Major Concerns Related to the Amended IT Rules, 2023?

- **Censorship and Freedom of Expression:** The rules are perceived to potentially infringe upon the **fundamental right to freedom of speech and expression** by enabling the government to dictate the removal of content deemed fake, false, or misleading.
- **Ambiguity and Lack of Clarity:** The terms fake, **false**, and **misleading remain poorly defined**, leading to concerns about arbitrary interpretation and enforcement, which could stifle legitimate discourse and dissent.
- **Excessive Government Control:** The establishment of the FCU under the PIB raises **fears of excessive government oversight** in the domain of information dissemination, undermining the **role of independent media and civil society**.
- **Impact on Intermediaries:** Social media platforms and internet service providers may face **undue pressure to comply with government directives**, risking their safe harbour status if they fail to remove content as mandated, which **could lead to self-censorship**.
- **Erosion of Accountability:** The rules may **diminish accountability mechanisms for the government**, as the FCU could serve as a tool for **silencing criticism rather than providing transparent fact-checking**.
- **Chilling Effect on Content Creators:** Content creators may exercise self-censorship due to fears of **repercussions from the government**, thereby inhibiting creativity and open dialogue.
- **Lack of Judicial Oversight:** The absence of a clear and **independent judicial review** process for decisions made by the FCU may lead to **unchecked authority and abuse of power**.

## Way Forward

- **Strengthening Independent Oversight:** Introduce an independent regulatory body to oversee the operations of the FCU, ensuring accountability and reducing the potential for governmental overreach.
- **Judicial Review Mechanisms:** Implement **robust judicial review processes** for decisions made by the FCU, allowing **individuals and organizations to challenge content removal orders** in a fair and timely manner.
- **Protection of Freedom of Expression:** Reaffirm the **commitment to uphold the right to free speech** by ensuring that any regulations pertaining to content moderation are balanced and **do not infringe upon fundamental freedoms**.
- **Engagement with Stakeholders:** Foster a collaborative dialogue with stakeholders, including **digital rights organizations, media entities**, and civil society, to develop regulations that protect both the public interest and individual rights.
- **Periodic Review and Adaptation:** Establish a framework for the periodic review of the IT Rules to **adapt to evolving digital landscapes and address emerging challenges** in misinformation and digital rights.
- **Focus on Digital Rights Protection:** Integrate digital rights protection measures into the broader legal framework, ensuring that regulations enhance user rights rather than undermine them in the context of digital communication.

### **Drishti Mains Question:**

Critically evaluate the implications of the Amended IT Rules, 2023, on digital rights and freedom of expression in India.

## UPSC Civil Services Examination, Previous Year Question (PYQ)

### **Prelims:**

**Q. In India, it is legally mandatory for which of the following to report on cyber security**

**incidents? (2017)**

1. Service providers
2. Data centres
3. Body corporate

**Select the correct answer using the code given below:**

- (a) 1 only
- (b) 1 and 2 only
- (c) 3 only
- (d) 1, 2 and 3

**Ans: (d)**

**Mains:**

**Q.** What is CyberDome Project? Explain how it can be useful in controlling internet crimes in India. **(2019)**

**Q.** What do you understand by 'probity' in public life? What are the difficulties in practicing it in the present times? How can these difficulties be overcome? **(2014)**

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