



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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