



SC Halts Implementation of Amended IT Rules

For Prelims: [Supreme Court](#), [Information Technology \(IT\) Rules, 2023](#), [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#), **Fact Checking Unit**, [Information Technology Act 2000](#)

For Mains: Issues Related to Fake News, Social Media regulation in India.

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Why in News?

The [Supreme Court](#) of India has placed a temporary hold on the central government's notification establishing a **Fact Check Unit (FCU)**.

- This comes after an appeal was filed in Bombay High Court challenging the **amended [Information Technology \(IT\) Rules, 2023](#)**, which empowered the government to identify **fake news** on social media platforms.

Does the Judiciary have Power to Hold a Law before Declaring it Unconstitutional?

- Laws made by Parliament are presumed **constitutional**. While it is subject to [judicial review](#), the burden lies with the petitioners in the court to prove it unconstitutional.
 - Courts tend to avoid suspending laws until they determine their constitutionality, balancing judicial review and Parliament's legislative authority.
 - However, the IT Rules in question are not legislative acts but are formulated by the MeitY under powers delegated by Parliament, affecting the presumption of constitutionality.
 - The Supreme Court leans towards the opinion that it fulfils the requirements for an **"explicit finding of unconstitutionality"** resulting in a temporary stay.
- Previous cases, such as the [Maratha reservation law in Maharashtra 2020](#) and the **farm laws of 2021** (which were later repealed), were temporarily suspended by the Supreme Court.

What is the Fact Checking Unit and Amended IT Rules 2023?

- **Fact Checking Unit:** The **Ministry of Electronics and Information Technology**, designated the FCU as a statutory body under the **Press Information Bureau (PIB)** as per the amendment made to [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#) in 2023.
 - FCU has been tasked with **flagging content deemed to be false information** related to the central government and its agencies on social media platforms.
- **Key Provisions of IT Rules, 2023 Regarding Fake News:**

- Online intermediaries, such as social media platforms like **Facebook, YouTube, and Twitter**, along with internet service providers like Airtel, Jio, and Vodafone Idea, are required to ensure they **do not disseminate inaccurate information about the Government of India**.
 - Additionally, these platforms must make reasonable attempts to avoid hosting content related to the Central Government that **has been flagged as false or misleading by a fact-checking unit**.
- If the fact-checking unit identifies any information as false, **online intermediaries will be obligated to remove it**.
 - Failing to do so could result in the loss of their safe harbour protection, which shields them from legal action regarding **third-party content**.

What are the Exemptions to Intermediaries Regarding Third-party Information Liability?

- **About: Section 2(1)(w) of the [Information Technology Act 2000](#)** defines an intermediary as a person who receives, stores or transmits any electronic record and provides any service relating to such record on the behalf of another person.
 - Intermediary includes network service providers, telecom service providers, internet service providers, search engines, web-hosting service providers, online-auction sites, online payment sites, online-marketplaces and cyber cafes.
- **Criteria for Exemptions: Section 79(1) of the IT Act, 2000** grants intermediaries exemption from liability for third-party information, subject to certain conditions:
 - The intermediary's role is limited to providing access to a communication system through which third-party information is **transmitted, hosted, or stored**.
 - The intermediary does not initiate or control the transmission, recipient selection, or content modification.
- **Conditions for Intermediary Liability:** Under Section 79(3) of the IT Act, intermediaries can be held liable for third-party content in specific situations:
 - If they are involved in unlawful acts like **conspiracy, abetting, aiding, or inducing**.
 - If they fail to promptly remove or disable access to unlawful material upon receiving actual knowledge or notification from the government without tampering with evidence.

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

- **Potential Arbitrary Enforcement:** There are concerns about the arbitrary nature of how the FCU determines what constitutes false information related to the central government.
 - This could lead to subjective judgments and selective targeting of certain viewpoints or individuals.
 - Critics argue that these rules specifically the amendment to Rule 3(1)(b)(v) of the IT Rules 2021 as being violative of [Article 14](#), [Article 19\(1\)\(a\) and \(g\)](#), [Article 21 of the Constitution](#).
 - The Supreme Court in [Shreya Singhal vs Union of India \(2015\)](#), held that a law that limits speech can neither be vague nor over-broad.
 - The amendment to Rule 3(1)(b)(v) of the IT Rules 2021 expanded the definition of "fake news" to include fake news involving government business which can lead to potential arbitrary enforcement.
- **Impact on Intermediaries:** The rules place significant responsibilities on online intermediaries to monitor and remove content flagged by the FCU.
 - This could create a burden for these intermediaries and potentially lead to **over-censorship to avoid legal repercussions**.
- **Potential for Misuse:** There are concerns that these rules could be misused by the government to **suppress dissenting opinions or criticism**, particularly against government policies or officials.
 - The lack of robust safeguards against such misuse raises apprehensions about the rules' overall impact on democratic discourse and transparency.

Way Forward

- **Ensuring Transparency and Accountability:** The government should ensure transparency in the operations of the FCU, including clearly defining the criteria and procedures used to identify false information.
 - Additionally, **mechanisms for oversight and accountability** should be established to prevent misuse or arbitrary enforcement.
- **Clear Guidelines and Due Process:** Developing clear guidelines and due process mechanisms for intermediaries to follow when dealing with content flagged by the FCU.
 - This includes **providing avenues for content creators to appeal decisions** and ensuring that removals are based on objective criteria and evidence.
- **Legal Safeguards:** Ensure that any regulatory measures comply with constitutional principles and international human rights standards, particularly regarding **freedom of speech and expression**.
 - Legal safeguards should be in place to prevent overreach and **protect individuals' rights to express diverse opinions**.

Drishti Mains Question:

1. How is the Indian government regulating social media platforms, and what are the key challenges associated with this regulatory approach?
2. What are the concerns related to amended Information Technology Rules, 2023, particularly regarding the role of Fact Checking Unit?

UPSC Civil Services Examination, Previous Year Question:

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