

FACT CHECK UNIT

Why in News?

THE BOMBAY High Court on Friday struck down as unconstitutional a key provision of the amended **Information Technology (IT) Rules, 2021** which empowered the government to identify “fake news” on social media platforms through a “**Fact Check Unit**” (FCU).

- Friday’s ruling will have a larger impact on FCUs that even some states such as Karnataka and Tamil Nadu have established.

About PIB Fact Check Unit



- **In November 2019, PIB established a Fact Check Unit (FCU)** with the purpose of tackling the issue of fake news pertaining to the Government of India, its various ministries, Departments, Public Sector Undertakings, and other Central Government organizations.
- The unit verifies claims about government policies, regulations, announcements and measures. Through an established rigorous fact-checking procedure, the PIB Fact Check Unit helps in dispelling myths, rumours and false claims, and provides accurate and reliable information to the public.

What is the law in question?

- In April 2022, the **Ministry of Electronics and Information Technology (MEiTY)** promulgated the **IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (2023 Rules)**, which amended the Information Technology Rules, 2021.

- The amendment to Rule 3 (1) (b) (v) of the IT Rules, 2021 expanded the general term “**fake news**” to include “**government business**”
- Under the Rules, if the FCU comes across or is informed about any posts that are “**fake**”, “**false**”, or contain “**misleading**” facts pertaining to the business of the government, it would flag it to the social media intermediaries concerned.
- The online intermediaries would then have to take down such content if they wanted to retain their “**safe harbour**”, that is, legal immunity with regard to third-party content published by them.
- The FCUs allowed the government to be the “**only arbiter**” of truth in respect of business concerning itself.

LEGAL TEETH FOR FACT-CHECK UNIT UNDER PIB

A FACT-CHECKING UNIT has been in existence in the Press Information Bureau (PIB) under the Ministry of I&B since November 2019.

THE IT Amendment Rules 2023 introduced a “Fact Check Unit” (FCU) under the PIB as a legal mechanism to fact-check online content pertaining to “any business of the Central Government”.

THE FCU was notified on March 20, but was stayed by the Supreme Court until the Bombay High Court arrived at a final decision in the present case.

THE NOTIFICATION was intended to give the FCU legal status and teeth, and impose a legal obligation on online platforms such as Facebook and Twitter to take down any content that the FCU branded as “fake”.

EXISTING UNIT has so far “fact-checked” thousands of WhatsApp forwards, YouTube videos, and newspaper and digital media articles. Then I&B Minister Anurag Thakur told Rajya Sabha in July 2023 that the FCU took action in 28,380 instances involving “fake news” on digital platforms between November 2020 and June 2023.

SUCH CONTENT is prominently stamped as “fake”, and the decision is publicised through the unit’s social media handles — @PIBFactCheck on X, /PIBFactCheck on Instagram and Facebook, etc.

HOWEVER, BEYOND such branding, the PIB’s fact-checking unit cannot do much. The proposed FCU is intended to change this situation.

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What were the arguments before the HC?

- **Petitioner’s views:** Petitioner challenged the constitutional validity of the Rules, terming them arbitrary, unconstitutional, and in violation of fundamental rights.

- **Centre's opinion:** The Centre said the Rules were not against any opinion, criticism, satire, or humour targeting the government, and were meant to only proscribe or prohibit the peddling of fake, false, and misleading facts on social media related to “government business”.

On what grounds HC strike down the Rules?

- HC held that the amended Rule 3 (1)(b)(v) was **violative of Articles 14 (equality before law), 19(1)(a)(freedom of speech and expression) and 19(1)(g)(right to practice a profession or trade)** of the Constitution.
- The impugned Rule curtailed the fundamental rights of citizens **beyond the reasonable restrictions prescribed under Article 19 (2)**, which was “impermissible through the mode of delegated legislation”.
- The judge held that the expressions “fake, false or misleading” in the Rule are “vague and overbroad”, and **under the right to freedom of speech and expression, there is no further “right to the truth”**.
- It was “not a responsibility of the state to ensure that the citizens are entitled only to ‘information’ that was not fake, false or misleading as identified by FCU”.
- The impugned Rule resulted in a **“chilling effect” on the intermediary** due to the “threat of losing safe harbour”, and also on the freedom of speech— and was therefore liable to be struck down.

What happens in this matter now?

- Justice Chandurkar’s opinion has settled the matter in favour of the petitioners by a 2-1 majority.
- Among the key provisions are mandates for social media platforms to setup a **grievance redressal and compliance mechanism**, which include appointing a resident grievance officer, chief compliance officer, and a nodal contact person