Fact Checking Unit

Why in news?

The IT Rules of 2023, which allow the government's Fact Check Unit, were contested in the Bombay High Court.

Fact Check Unit (FCU)
• The Centre has decided to create an FCU to track fake and misleading news related to the government on online platforms such as Facebook and Twitter. • **Amended IT rules 2021-** It allows Ministry of Electronics and Information Technology to appoint a fact-checking body that will take a call on whether online information related to the Union government is accurate. • **Appointment-** The members of the proposed new entity will be made by the Union government. • **Composition**- FCU comprises of a representative from the Union Ministry of Information and Broadcasting, one from the Union Ministry of Statistics and Programme Implementation, a media expert, and a legal expert. • **Safe harbour protection**-The online intermediaries will have to take down the content labelled as fake by the FCU or lose their legal immunity against third-party content online. • **Online intermediary**- Including social media platforms such as Twitter, Facebook, and YouTube and internet service providers such as Airtel, Jio and Vodafone Idea should make "reasonable efforts" to not host content related to the central government that is "identified as fake or misleading" by an FCU. • If any piece of information is marked as fake by the FCU, social media sites will have to take down such posts, and internet service providers will have to block URLs of such content.

What is the issue?

- Earlier, online intermediaries were only required to "inform" users of their obligation to not upload or share any "patently false or misleading information.
- **Reasonable efforts provision**- It specifically requires intermediaries to make "reasonable efforts" to ensure that its users do not upload or transmit any content that has been identified as "fake or false or misleading" by the Centre's FCU. Such flagged content would have to be taken down if the intermediaries want to retain their "safe harbour" protection.
- **Ambiguity**-The amendment does not define the term 'any business of the Central government'.
- **Role of government**-The amendment allows the government to be a prosecutor, the judge, and in that loose sense, the executioner" of what constitutes the 'truth' online, thereby violating the cardinal principles of natural justice.
- **Against right to be heard**-The rules do not provide users with an opportunity to be heard before a decision is made on the "fake, false, or misleading" nature of content.

- Several parties challenged the FCU's authority and the amendment's validity in the High Court.
- **Government's stand**- It defends the regulations, stating that the FCU only informs intermediaries of content being fake, false, or misleading.
- The government argues that the notice is advisory and users can approach a court of law if they are aggrieved by the intermediary's decision.

What is Bombay High Court's split verdict on Centre's Fact-Check Unit?

For FCU

- Justice Neela Gokhale was of the opinion that it did not prohibit any critical opinion of the government and was therefore not a disproportionate measure.
- **Proper regulation**-The regulation is necessary to regulate online content in the era of 'infodemic'.
- **Proper access to information**-The amendment would protect the concept of democracy by ensuring citizens have access to 'authentic information'.
- **Not disproportionate**-The amendment was not excessive, as it only targeted misinformation that was shared with bad intentions
- The government appointees were not necessarily biased.
- **Access court-**The FCU's details were unclear, but the users could challenge its decisions in court if needed.
- **Amendment is valid**- It could not be invalidated based on hypothetical abuse.

Against FCU

- Justice G.S. Patel observed that the amendment promoted censorship and violated a host of fundamental rights.
- **Against Article 19**- The amendment "takes the form of censorship of user content" and does not fall within the ambit of reasonable restrictions permitted under Article 19(2) of the Constitution.
- **Role of government**-The government cannot be the sole judge of what is fake or misleading, as some statements are subjective or debatable.
- The government cannot claim special status for its own information, and that citizens have the right to question and criticize it.
- **Business of the government**- "It is not the business of the government to keep citizens from falling into error". It is the other way around. For it is very much business and should be the duty of every citizen to prevent the government from falling into error.
- **Need of new regulator**- It was questioned, as the Public Information Bureau already has a role in disseminating government information.
- **Inconsistent Standards-** FCU amendment unfairly restricts online media more than print media, he argued that the same content should not be treated differently based on the medium of publication.
- **Lack of safeguard**- FCU lacks safeguard against bias due to lack of guidelines and hearing procedures.
- **Arbitrary power**- The government has too much power to decide what is a fake content, without any checks and balances.

- **Online criticism**- The government is not vulnerable to online criticism as it has the means and power to rebut any criticism and defend its actions.
- **Double standard approach**- FCU amendment creates a double standard for different types of complaints, because it allowed the government to flag and remove any content related to its business, without following the same procedure as other complaints, such as those involving pornography, child abuse, or intellectual property violations

What lies ahead?

- The Bombay High Court had two judges with opposing views on the validity of the FCU amendment to the IT Rules, 2021, the Chief Justice appointed a third judge to break the tie and decide on the fate of the FCU.
- The Internet Freedom Foundation said they would challenge the FCU amendment in the Supreme Court if the third judge upheld it.
- The outcome of the Bombay High Court case would affect the legality of similar FCUs in other states (Tamil Nadu, Karnataka, and Uttarakhand)

References

The Hindu- Centre fact check unit explained

