Laws for Checking Online Abuse

Why in news?

- Following criticism, the Kerala government has decided to withdraw an Ordinance.
  - The ordinance gives unrestrained powers to the police to arrest anyone expressing or disseminating any matter that it deems defamatory.
- The move necessitates an assessment of existing laws to deal with social media abuse and online content in general.

Why did Kerala government bring such a law?

- The Supreme Court, in 2015, struck down Section 66A of the Information Technology (IT) Act.
- The principal argument by Kerala was that the Central government had not brought in any legislation yet to replace the revoked Section 66A.
- This places limits in police effectively dealing with social media abuse and cyber crime.
- Many state governments feel that the existing laws are inadequate.
  - Chhattisgarh too recently brought in an amendment to criminalise sexual harassment online.
- [But the fact is that the existing laws are adequate.]

What are the existing laws in this regard?

- The **Indian Penal Code** (IPC) criminalises speech that is obscene, defamatory, that insults the modesty of women and intrudes upon her privacy.
  - It punishes anonymous criminal intimidation, voyeurism, digitally enabled stalking, hate speech, and even non-consensual sharing of sexual images online.
- In addition to that is the **Information Technology Act** of 2000 that punishes speech that is obscene.
  - It also places obligations on intermediaries, where intermediaries have a duty of due diligence.
  - Intermediaries have to take down content based on a request by the government or a court order.
  - This obligation is actually very broadly worded.

    - It covers any information that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, hateful, or racially or ethnically objectionable, libellous, invasive of another's privacy, disparaging, etc.
- **Hate speech** - Undoubtedly, there is a problem with hate speech in the online space.
- Discussions at various levels of government have been in place for a while in this regard.
- In 2017, the Law Commission of India recommended that two new provisions be introduced to the IPC to specifically deal with online hate speech.
- The Central government has also initiated consultations on amendments to the IT Act.
    - One of the issues being taken up in this context is likely to be the scope of offences under the Act.
    - In particular, there is discussion on whether Section 66A needs to be replaced with a better drafted provision.

What should the states focus on?

- A key problem is that enforcement and implementation of existing laws is not very good.
- In the Kerala example, rather than rush into making a new law, it could have actually outlined the specific problem.
- The government should have conducted more transparent consultations with the stakeholders involved, to try and figure out solutions.
- State governments, in general, must also be focused on improving the criminal justice system.
- This is to make it easier for victims to access the system to make complaints, and for the police to be able to prosecute the complaints properly.
- As widely known, it is generally not very easy for victims or individuals to file and proceed with complaints.
    - Given the massive usage of the Internet in India and the huge amounts of hate speech online, there is really a low number of cyber crimes as per the NCRB data.
    - E.g. In 2017, there were only about 21,000 cases in India, which is a huge jump from the 12,000 odd cases in 2016. But that still appears to be a fairly low number in the Indian context.

How is content regulation done currently?

- Clearly, there is absence of any changes in the legislative structure after the striking down of Sec 66A.
- So, courts and governments have largely resorted to blocking content or

forcing intermediaries to take steps to limit the spread of illegal content.

- The government from time to time issues directions.
- Most recently, in the context of WhatsApp, they have been asked to take certain steps pertaining to illegal content on their platform.
- There are also independent regulators, like the Election Commission, which has taken some steps in the context of electorally sensitive content.
- While legislative efforts are on, the priority now is enforcement and implementation of existing laws.

Source: The Hindu

