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TECHNOLOGY INSIGHT

The Hon'ble Bombay High Court Struck down provisions of Information Technology

rules as Unconstitutional.



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The Hon'ble Bombay High Court in the case of Kunal Kamra vs. Union of India (Writ Petition(L) No.9792 of 2023) examined the validity of Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules 2021, amended on 06.04.2023. The case saw a divergence of opinion between Justice Gokhale and Justice Patel, while Justice Chandurkar delivered the final decision on the matter, outlining nine points of difference.

The Hon'ble High Court focused on interpreting freedoms enshrined under Articles 19(1)(a) and 19(2) of the Constitution, especially in the context of internet regulation and intermediary guidelines. Hon'ble Justice Patel highlighted that freedom of speech does not entail a "right to the truth," and the government cannot restrict speech solely based on how it perceives truth or false unless it falls under specific restrictions listed in Article 19(2). Therefore, banning speech solely because it is false is impermissible. In support, he referred to landmark judgments such as Shreya Singhal and Anuradha Bhasin, establishing that any restriction must strictly conform to Article 19(2) and cannot be arbitrary or overbroad.

In contrast, Hon'ble Dr. Justice Gokhale upheld the challenged rule, asserting it aligned with Section 69A of the IT Act and the Shreya Singhal ruling, which only allows restrictions based on Article 19(2). He stated that the rule remained within the Act's bounds, restricting only what Article 19(2) permits. Referring to Sakal Papers Pvt. Ltd. and Cricket Association of Bengal, he emphasized that restrictions cannot extend beyond Article 19(2). In Kaushal Kishor, it was reiterated that any restriction outside Article 19(2)'s scope is unconstitutional.

Hon'ble Justice Chandurkar concurred with Justice Patel's view, finding that the 2023 amendment to Rule 3(1)(b)(v) is unconstitutional as it restricts free speech beyond Article 19(2)'s boundaries, which cannot be altered through delegated legislation.

The violation of A.19(1)(g) read with A.19(6) arises particularly regarding different treatments of information in print and digital media. Justice Patel pointed out that while print media information related to the government is not scrutinized, digital platforms face rigorous checks under Rule 3(1)(b)(v) of the 2021 Rules, leading to an unjustified discrepancy that infringes on Article 19(1)(g). Justice Chandurkar agreed with this view, affirming that applying different standards to print and digital media under Rule 3(1)(b)(v) unjustly violates the right to conduct business under Article 19(1)(g).

Further, Justice Chandurkar noted that the absence of guidelines for determining fake, false, or misleading information renders these terms vague and overly broad, making them liable to being struck down.

Hon'ble Justice Chandurkar held that rule 3(1)(b)(v) of the 2021 Rules, as amended in 2023, is struck down as violative of Article 14 and 19 of the constitution of India



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