

February 2024

TECHNOLOGY INSIGHT

Fact Checking Units - Bombay High Court delivers split judgment in Kunal
Kamra v. Union of India & Connected matters



ANIMESH SINHA & PARTNERS
ADVOCATES & SOLICITORS

Fact Checking Units - Bombay High Court delivers split judgment in Kunal Kamra v. Union of India & Connected matters

In the recent case of Kunal Kamra v. Union of India & Connected matters, Writ Petition 9792 of 2023 the Bombay High Court delivered a split verdict and referred the question of constitutional validity of the Fact Checking Units (FCU), which are to be notified by the Government to identify the veracity or otherwise of 'information' introduced through the recent amendment to Rule 3(1)(b)(v) of the IT Rules, 2021 to a third judge.

In this case, the petitioners have filed the writ petitions under Article 226 challenging the constitutional validity of the amendment to the IT Rules as being violative of Articles 14, 19(1)(a) and (g) and 21 of the Constitution of India and Section 79 and Section 87(2)(z) and (zg) of the IT Act. The Petitioners have criticized the rule's provision to label content as 'fake, false, or misleading' without due process and the creation of a FCU run by government appointees by asserting that this unfairly impedes media freedom and could lead to censorship. The respondents on the other hand asserted that the impugned amendment is necessary to regulate the wide-reaching impact of the medium, which poses risks to public order and national security and have argued that false and misleading information should not be constitutionally protected.

Neela Gokhale, J., upheld the legality of the FCU, arguing that it doesn't exceed scope of section 79 and doesn't violate Article 14 as no authority to take down the information is granted to FCU. Further the provision provides a redressal mechanism for intermediaries and users. Neela Gokhale, J., asserted that the amendment targets misinformation, not legitimate speech and held the amendment proportional, linking it directly to addressing misinformation and safeguarding democracy. There is a direct nexus between the impugned amendment and the mischief that it seeks to address being the object, thereby validating the same.

However, taking a different view, G.S. Patel, J., criticized the amendment, viewing it as shifting content responsibility unfairly onto intermediaries and empowering the government's FCU excessively. Patel, J., held that the amendment oversteps Article 19(2), and lacks clarity as the words: business of the government; fake; false; and misleading makes the amendment both vague and over-broad and violates several constitutional provisions, including the Article 14 of the Constitution. The judge questioned the preferential treatment of government-related information as it creates a class legislation, not a rational or permissible classification and highlighted the inconsistency in content regulation between print and online platforms. Following the split-judgement, the Chief Justice of the Hon'ble Bombay High Court will assign a third judge to resolve the controversy.



D106 SF Defence Colony
New Delhi - 110024



asp@sinhapartners.com
www.sinhapartners.com



+91 11 41 046 911
+91 11 40 536 008