

# The Fact of the Matter: 'Fact-Check Units' Are Designed To Protect the State

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In the last three years, Prime Minister Narendra Modi has introduced and carried through, with lightning speed and his brute majority in Parliament, a series of legislations that choke or restrict our freedom of expression, information, data and its transmission.

We have reasons to believe that the apparatus of a surveillance State has been grafted, stealthily but surely, into our existing system – to locate and obliterate dissent and creative freedom over all digital media, the internet, telecommunications, OTT, and social media. It sends a chill when its extent is fully comprehended.

So potentially dangerous are these infringements on our liberties that on 21 March, the Supreme Court had to [intervene and stop further depredations](#). It raised questions on the weapon used, ie, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023.

But before we come to why the highest court struck down the notification setting up its '[Fact-Checking Unit](#)' under the IT Amendment Rules, 2023, it may be pertinent to collage other parts of the big picture. Then only can we take a good, rational overview of what this regime is up to.

## A Combo of Menacing Laws

Let us recall how the Telecommunications Bill was rushed through Parliament, in barely two hours, in December 2023. There was no debate (only panegyrics to the supreme ruler), as an unprecedented number of 146 Opposition MPs had been suspended and the rest walked out, in protest. This Telecom Act introduces a licence raj and the government's complete control on every form of media – transmitted, emitted or received – over the wire, the internet or by other means.

Every sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through media comes under this draconian law and every social media application – WhatsApp, Facebook, X, Instagram, etc – is now under its oversight and control. There can be no 'bigger brother' who can asphyxiate our right to free expression, and to keep a vicious eagle's eye watch over citizens – to subjugate, harass, and punish them under the colour of the law.

In December last year, the Press and Registration of Periodicals Act was also passed. It seeks to introduce digitalisation into the cumbersome business of registration of publications. But it focuses, rather ominously, on "the registration of periodicals, which include any publication containing public news or comments on public news". The establishment will surely use it to go after periodicals that air their comments on public affairs much too frankly for the regime to digest.

The new Post Office Bill was also passed in this same cold and bleak Winter Session of Parliament. However innocuous, this law also empowers the government to intercept any physical mail. The plot gets thicker and thicker, as State-operated snooping is made totally legit, and the consequences of speaking the truth become more frightful.

To roll back further, we come to August 2023, when the long-awaited Data Protection Act was finally introduced and hustled through indecently. Though people had long demanded legislation to safeguard them against digital intrusion into their privacy and to prevent misuse of their data by technology companies, what was actually enacted was sorely disappointing and perilously different.

In the name of protecting people and the nation, it arms the State to unabashedly weaponise data. It went the extra mile to abrogate or dilute much of the hitherto-protected (though unclear) rights that citizens had, against data breach.

The government can now do practically whatever it desires with data, in the name of the security and integrity of the country and for public order. A menacing sword has also been strung over the heads of Big Tech companies – obviously to make them ‘cooperate’ in revealing as much of its tightly-held, encrypted data and information as ‘Big State’ may call for. Or else, these ‘intermediaries’ (platforms) would face the government’s wrath.

A few days before, in the same Monsoon session of Parliament, the government pushed through its Cinematograph (Amendment) Act, 2023, which contained provisions against ‘piracy’. But its real target was OTT (over-the-top) technology that brings entertainment and opinions to screens, over the internet, rather than on radio waves or through cinema halls. Voot, Disney+, Netflix, Amazon Prime, and Hotstar are examples of OTT and the government now seeks to enforce prior certification of their films, that were not required earlier.

Through this one powerful thump, the free world of OTT, which was targeted first by the IT Rules of 2021, is now made much more amenable to government control. The total freedom with which OTT ruled over eyes and hearts in India (more so, from the COVID-19 lockdown of 2020) was a constant source of irritation to a megalomaniac state. The genie is now close to being bottled, as it is being reined in by a combo of the IT Rules of 2021, the Telecom Act of 2023, and this amendment to the Cinematograph Act.

What is now being highlighted more is a vague term called ‘hurt’ that some citizens may claim, when any Indian ‘social or religious value’ is questioned or affected. Such ‘hurt’ may now result in action being taken against the ‘offending’ filmmaker and the consequential censorship of OTT would surely stifle artistic freedom and spontaneous expression.

Incidentally, Hinduism has always been a rather tolerant and relaxed religion (to accommodate diversity and contradictions over several millennia) and has no provision for ‘blasphemy’. This single term has historically empowered extremists and bigots in the Abrahamic religions to wield, quite mercilessly, their bludgeon over contrary opinions or expressions. This ‘religious hurt’ clause is now being legitimised in Hinduism through such provisions, obviously to intimidate free speech and expression in the world’s most magnanimous religion – perhaps, for the first time ever.

We may now analyse the machinations of the primary culprit, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021, that introduced ‘a sense of hurt’ to control two challenging Davids – digital or online news and the OTT. It introduced registration and moved its claws menacingly towards digital publishers – the only section of the media that is largely not in the thrall of the government or the great leader. This group is quite unlike the tame and subjugated print and television media and is, therefore, a cause for heartburn in the very-Soviet Ministry of Information and Broadcasting.

These Rules of 2021 empower the ministry to crack its whip over the recalcitrant digital publishing industry and the OTT world.

It ensures that the players comply with rules and set up internal and supervisory mechanisms to

attend to citizens who may be 'hurt' by their publication or transmission. If that mechanism fails to make them more 'Bharatiya' or to fall in line with the regime's overt and covert desires, a second layer was introduced, to judge. Finally, at the top, a committee of bureaucrats is to sit in judgment, with due intimidation, over a topic totally alien to them, called creative freedom.

## Some Relief (For Now)

Many of these provisions are under legal scrutiny and challenge. But even so, the government brought in an amendment to these Rules in 2023 to introduce 'Fact Checking Units' (FCUs). Though, ostensibly, FCUs are meant to control 'fake news', they are directed only against adverse news and views against itself – not to protect the ordinary man. This brings us so perilously close to George Orwell's 'Ministry of Truth', as social media intermediaries like 'X', Facebook or Instagram' are now compelled to take down any content as soon as the government's 'fact-checking' declares it to be 'fake' or 'misleading'. Or, it has to add a disclaimer.

The government decided to completely ignore the several independent, transparent, and professional fact-checking units that already exist and have developed an expertise and reputation, through many years of toil and neutrality.

The problem is they could cut both ways. The list includes *Boom Live*, *Alt News*, *Newsmobile*, *News Checker*, and *Fact Cresando*. The Ministry of Information also decided to turn a deaf ear to a proposal put forth by the Misinformation Combat Alliance (MCA). This organisation had got together several of these well-regarding fact-checkers and media channels like *Vishwas News*, *India Today*, and *The Quint*.

The MCA specifically proposed that it could provide fact-checking services to social media platforms. Instead, the government insisted on its own subordinate publicity body, the Press Information Bureau (PIB). It is to decide what is fake or objectionable and, thereafter, the government can force platforms to expunge undesirable news or stymie forms of expression like satire.

This is when political satirist Kunal Kamra, the Association of Indian Magazines, the News Broadcasters & Digital Association, and the Editors' Guild of India decided to challenge the government's new fact-checking rule before the Bombay High Court. After a protracted hearing, one judge of the division bench upheld the government's new powers while the other ruled against it.

Even before a third judge could hear the issue properly and pronounce his ruling, the government formally notified the PIB as the one and only FCU. Kamra and the petitioners moved the Supreme Court, which has 'stayed' the government's notification appointing the PIB as the FCU.

But, contrary to what some think, the Court did not declare the Rule to be unsustainable and, instead, sent the matter back to the 3-judges' bench of the Bombay High Court – to decide on "the impact of the provision on the fundamental rights to free speech and expression."

The relief is, thus, only temporary but it offers a quick glimpse of the 'mood' of the bench headed by the chief justice of India. All these matters are also specifically confined to whether the 2023 Amendment to the IT Rules of 2021 are valid or not. But the wider issue of the validity or otherwise of the IT Rules of 2021 is yet to be decided.

Even so, it is a major step that will protect, at least for now, one legal provision among the several that the regime has rammed through to regulate, contain, or expunge any media item that is critical of the government. The encroachments made on fundamental and civil rights in the last few years

and the government's colourable assumption of draconian powers to intercept, remove, and punish adverse media items would require much more – to push back, even by a few metres.

In the meantime, India has slipped 11 notches in just one year in the Press Freedom Index Index compiled by 'Reporters Without Borders'. Its rank is currently 161 among 180 countries and is internationally adjudged to be authoritarian. The tragedy is that, except for a well-informed and highly-conscious minority, other Indians are not even aware of the silent coup. They may, thus, be quite alarmed when jackboots kick doors open at midnight to yank out those who exercised free speech or communication and dissent.

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