

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
ORDINARY ORIGINAL CIVIL JURISDICTION

W.P No. 12515/ 2021

&

W.P No. 13055/2021

Shri T M Krishna

(Petitioner in W.P No. 12515/ 2021)

Digital News Publishers Association (DNPA)  
& Another

(Petitioners in W.P No. 13055/2021)

Vs

Union of India & Ors

Respondents

**COMMON COUNTER AFFIDAVIT ON BEHALF OF  
RESPONDENT No. 2 (MINISTRY OF INFORMATION AND  
BROADCASTING)**

**INDEX**

SL NO.	DESCRIPTION	PAGE No.
1.	Counter Affidavit on behalf of Respondent No. 2 (Ministry of Information and Broadcasting)	1-113
2.	ANNEXURE-R1 : Notification dated 9.11.2020 regarding Amendment in Allocation of Business Rules, 1961	114
3.	ANNEXURE-R2 : Information Technology, Act, 2000 issued vide Notification No. GSR. 139 dated 25.2.2021	115-134
4.	ANNEXURE-R3 : Extracts of Lok Sabha debates on 15.5.2000.	135-146
5.	ANNEXURE-R4 : Extracts of Rajya Sabha debates on 17.5.2000.	148-149

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6.	ANNEXURE-R5 : Information Technology (Intermediary Guidelines) Rules, 2011	150-153
7.	ANNEXURE-R6 : Programme Code under the Cable Television Networks (Regulation) Act, 1995	154-157
8.	ANNEXURE-R7 : Clarification dated 10.6.2021 issued by Ministry of I&B	158-162
9.	ANNEXURE-R8 : Norms of Journalistic Conduct issued by Press Council of India	163-327
10.	ANNEXURE-R9 : Public Notice dated 26.05.2021 requesting digital media publishers to furnish information	328-332

Dated at Chennai on this            day of August, 2021

**Counsel for Respondent No. 2**

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(SPECIAL ORIGINAL JURISDICTION)

W.P No. 12515/ 2021

&

W.P No. 13055/2021

Shri T M Krishna

(Petitioner in W.P No. 12515/ 2021)

Digital News Publishers Association (DNPA)  
& Another

(Petitioners in W.P No. 13055/2021)

Vs

1. Union of India  
Represented by its Secretary  
Ministry of Electronics and Information Technology  
Electronics Niketan, 6 CGO Complex,  
Pragati Vihar, Lodhi Road, New Delhi- 110003
2. Union of India  
Represented by its Secretary  
Ministry of Information and Broadcasting  
A-Wing Shastri Bhavan  
New Delhi- 110001

.....Respondents

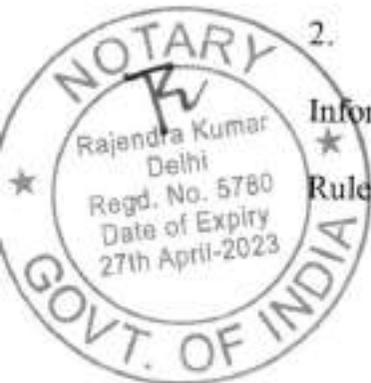
**COMMON COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT  
No. 2 (MINISTRY OF INFORMATION AND BROADCASTING)**

I, Amarendra Singh, s/o Shri Kashi Nath Singh presently working as  
Deputy Secretary to the Government of India in the Ministry of Information &  
Broadcasting, do hereby solemnly affirm and state as under :-

I submit that I am authorized in my official capacity to swear and depose  
to the present affidavit and as such, I am aware of the facts and circumstances  
based on the records of the case.

2. I submit that the petitions pertain to maintainability of the provisions of the  
Information Technology (Intermediary Guidelines and Digital Media Ethics Code)  
Rules, 2021 relating to adherence to the Code of Ethics, prescribed in the Rules,

  
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by the publishers of news and current affairs on digital media vis-a vis the Information Technology Act, 2000 under which these Rules have been framed, and the Constitution of India.

3. I submit that the Government of India had amended the allocation of business of the Ministry of Information and Broadcasting through an amendment in the Allocation of Business Rules, 1961 vide Notification dated 09.11.2020 (ANNEXURE-R1) inter-alia inserting the following entry in the business allocated to the Respondent Ministry:

**“VA. Digital/Online Media**

22A. Films and Audio-Visual Programmes made available by online content providers.

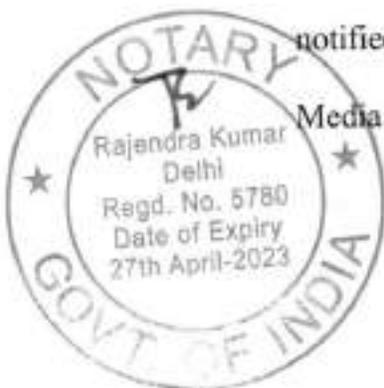
22B. News and current affairs content on online platforms.”

4. I submit that the Government has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (henceforth referred as “IT Rules, 2021”) under the Information Technology, Act, 2000 vide Notification No. GSR. 139 dated 25.2.2021 (ANNEXURE R2) for providing an institutional framework for the publishers of news and current affairs on digital media and publishers of online curated content (Over-the-Top platforms).

5. I submit that the key features IT Rules, 2021 are as under:

5.1. The Ministry of Electronics and Information Technology (MeitY) notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereafter referred to as “IT Rules, 2021”) on

  
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25th February 2021 in the Official Gazette in the exercise of the powers conferred by sub-section (1), and clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (hereafter referred to as "IT Act"), and in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011.

5.2. The IT Rules, 2021 seek to regulate intermediary platforms, publishers of news and current affairs content, and publishers of online curated content from publishing unlawful content. The Rules seek to govern the following three aspects in specific parts:

- i. Part I – This section contains defines the various governing aspects and entities that are covered under the rules;
- ii. Part II – Due diligence by intermediaries and grievance redressal mechanism, being administered by MeitY; and
- iii. Part III – Code of Ethics and Procedure and Safeguards in relation to publishers of news and current affairs content, and publishers of online curated content (OTT platforms) on digital media, being administered by the Ministry of Information & Broadcasting (MIB).

5.3. That Part-III of the IT Rules, 2021 has three broad features:

- i. Code of Ethics for digital news publishers and OTT Platforms
- ii. Three-Tier Grievance Redressal Mechanism as under:
  - a. Level-I: Publisher;
  - b. Level-II: Self-Regulating Body of publishers; and
  - c. Level-III: Oversight Mechanism of Central Government
- iii. Information disclosure.

  
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5.4. The Code of Ethics applicable to the publishers of news and current affairs content requires such publishers to follow the following norms applicable to conventional news media i.e. Print and TV:

- i. Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978;
- ii. Programme Code under section 5 of the Cable Television Networks (Regulation) Act, 1995;
- iii. Content which is prohibited under any law for the time being in force shall not be published or transmitted.

5.5. The Code of Ethics applicable to the OTT platforms provides for the following:

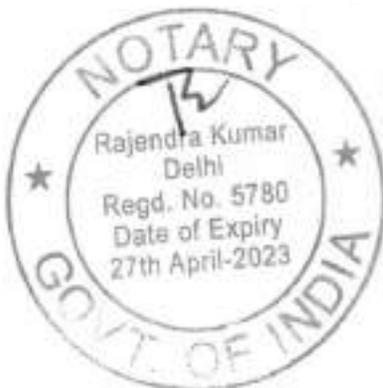
(I) General Principles: The platforms are required to follow the following general principles:

(a) A publisher shall not transmit or publish or exhibit any content which is prohibited under any law for the time being in force or has been prohibited by any court of competent jurisdiction.

(b) A publisher shall take into consideration the following factors, when deciding to feature or transmit or publish or exhibit any content, after duly considering the implications of any content as falling under the following categories, and shall exercise due caution and discretion in relation to the same, namely:—

- (i) content which affects the sovereignty and integrity of India;
- (ii) content which threatens, endangers or jeopardises the security of the State;

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(iii) content which is detrimental to India's friendly relations with foreign countries;

(iv) content which is likely to incite violence or disturb the maintenance of public order.

(c) A publisher shall take into consideration India's multi-racial and multi-religious context and exercise due caution and discretion when featuring the activities, beliefs, practices, or views of any racial or religious group.

(II) Content Classification:

(a) All content transmitted or published or exhibited by a publisher of online curated content shall be classified, based on the nature and type of content, into the following age-based categories:-

Nature of Content (suitable for)	Classification
Unrestricted access, regardless of age, and is family friendly	U
For persons aged 7 years and above, and can be viewed by a person under the age of 7 years with parental guidance	U/A 7+
For persons aged 13 years and above, and can be viewed by a person under the age of 13 years with parental guidance	U/A 13+

  
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For persons aged 16 years and above, and can be viewed by a person under the age of 16 years with parental guidance U/A 16+

Which is restricted to adults

A

(b) The classification of the content by OTT platforms would be based on general guidelines provided in Schedule to the Rules keeping in mind i) Themes and messages; ii) Violence; iii) Nudity; iv) Sex; v) Language; vi) Drug and substance abuse; and (vii) Horror.

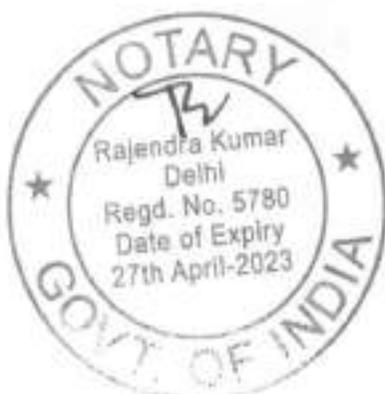
(III) Display of Classification:

(a) The publisher of online curated content shall prominently display the classification rating specific to each content or programme together with a content descriptor informing the user about the nature of the content, and advising on viewer discretion (if applicable) at the beginning of every programme enabling the user to make an informed decision, prior to watching the programme.

(b) The publisher of online curated content making available content that is classified as U/A 13+ or higher shall ensure that access control mechanisms, including parental locks, are made available for such content.

(c) A publisher of online curated content which makes available content or programme that is classified as "A" shall implement a reliable age verification mechanism for viewership of such content.

  
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(d) A publisher of online curated content must strive to include classification rating and consumer advice for their programmes in any print, televised or online promotional or publicity material and prominently display the classification rating specific to each such content.

(IV) Restriction of access to certain curated content by a child: Every publisher of online curated content providing access to online curated content which has an "A" rating shall take all efforts to restrict access to such content by a child through the implementation of appropriate access control measures.

(V) Measures to improve accessibility of online curated content by persons with disabilities: Every publisher of online curated content shall, to the extent feasible, take reasonable efforts to improve the accessibility of online curated content transmitted by it to persons with disabilities through the implementation of appropriate access services

5.6. **Grievance Redressal Mechanism:** That a three-level grievance redressal mechanism has been established under Part-III of the Rules, with two levels of self-regulation- Level I being the publisher, and Level II being the Self-Regulatory Body- and the third level being the Oversight Mechanism under the Ministry of Information & Broadcasting. The Rules provide for an effective grievance redressal mechanism for receipt, processing, and time-bound disposal of public grievances related to the Code of Ethics. The roles and functions assigned to various levels of the Grievance Redressal Mechanism are as

hereunder.

  
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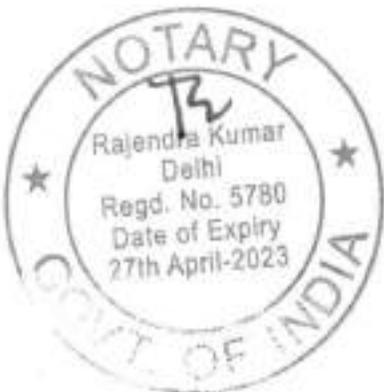
5.7. **Publisher (Level-I):** Every publisher shall establish a grievance redressal mechanism and appoint a Grievance Officer based in India for receiving and redressing grievances in a time-bound manner. In this regard, the publisher should communicate the decision, with respect to a grievance related to the Code of Ethics, to the complainant within 15 days. The details of the grievance redressal mechanism will be displayed by the publisher at an appropriate place on its website or interface. The complainant can appeal against the decision of the publisher to the self-regulating body of which the publisher is a member. Such an appeal can be made within 15 days of receiving the decision. If the publisher does not respond within 15 days, the matter can directly be taken up by the self-regulating body of which the publisher is a member.

5.8. **Self-Regulating Body (Level-II):** Publishers, or their associations, may establish self-regulating bodies as per the provisions of the Rules. These self-regulatory bodies shall be headed by a retired judge of the Supreme Court or High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, etc. It shall have a maximum of six other members who would be experts from these fields.

5.9. The self-regulating body shall perform the following functions:—

- i. Ensure adherence to the Code of Ethics by the publisher;
- ii. Address grievances which have not been resolved by publishers within fifteen days;
- iii. Hear appeals filed by the complainant against the decision of publishers;
- iv. Issue such guidance or advisories to such publishers for ensuring compliance to the Code of Ethics. The self-regulating body while

  
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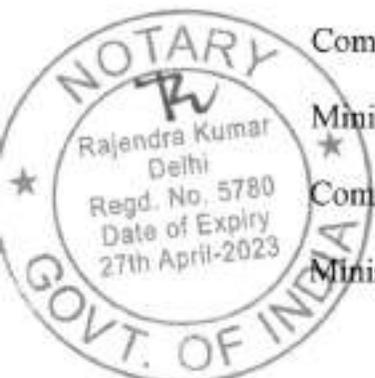
disposing a grievance or an appeal can issue following guidance or advisories to the publishers:—

- a. Warning, censuring, admonishing or reprimanding the publisher; or
- b. Requiring an apology by the publisher; or
- c. Requiring the publisher to include a warning card or a disclaimer; or
- d. In case of online curated content, advise the publisher to,—
  - reclassify ratings of relevant content; or
  - make appropriate modification in the content descriptor, age classification and access control measures; or
  - edit synopsis of relevant content;
- e. in case of any content where it is satisfied that there is a need to delete or modify the content for preventing incitement to the commission of a cognizable offence relating to public order, or in relation to section 69A of the Act, refer such content to the Ministry for consideration by the Oversight Mechanism referred to in rule 13 for appropriate action.

The complainant can appeal against the decision of the self-regulating body to the oversight mechanism within 15 days of receiving the decision.

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5.10. Oversight Mechanism (Level-III): The Ministry of Information Broadcasting, and the Inter-Departmental Committee constituted by the Ministry, shall constitute the Oversight Mechanism. The Inter-Departmental Committee would hear complaints arising out of Level II/I or referred by the Ministry, and make recommendations to the Ministry. The Inter-Departmental Committee would be chaired by the Authorised Officer designated by the Ministry and it would include representatives from other



Ministries/Departments such as the Home Affairs, Electronics and Information Technology, Women and Child Development, Law and Justice, External Affairs, Defence, etc. as well as non-Governmental independent domain experts. For matters referred to the Committee, the publishers would be given an opportunity to be heard and submit their reply and clarifications before the Committee. After examining the matter in light of the Code of Ethics, and considering the response of the publisher, the Committee can make following recommendations to the Ministry:-

- i. Warning, censuring, admonishing or reprimanding such entity; or
- ii. Requiring an apology by such entity; or
- iii. Requiring such entity to include a warning card or a disclaimer; or
- iv. In case of online curated content, direct a publisher to—
  - a. reclassify ratings of relevant content; or
  - b. edit synopsis of relevant content; or
  - c. make appropriate modification in the content descriptor, age classification and parental or access control;
- v. Delete or modify content for preventing incitement to the commission of a cognizable offence relating to public order;
- vi. In case of content where the Committee is satisfied that there is a need for taking action in relation to the reasons enumerated in subsection (1) of section 69A of the Act, it may recommend such action.

  
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5.11. That the Ministry would, after considering the recommendations of the Inter-Departmental Committee, issue appropriate orders/directions. Such a direction can only be issued by the Authorised Officer with the approval of the Secretary, Ministry of Information & Broadcasting. Furthermore, such a direction can only be issued in respect of a specific piece of content or an

enumerated list of content, as the case may be, and cannot require any entity to cease its operations.

5.12. Disclosure of Information: The publishers are required to inform the Ministry about the details of their entity by furnishing information to the Ministry for the purpose of future communication and coordination. Furthermore, the publishers and self-regulating bodies shall disclose, in public domain, the information related to grievances received by them, and the action taken on them, etc. on a monthly basis.

6. I submit that as per the **Coverage of News and Current Affairs Content and Online Curated Content under Information Technology Act, 2000**: with respect to news and current affairs content and online curated content, the Rules provide the following definitions:

**“2. Definitions.—**(1) In these rules, unless the context otherwise requires-

(g) 'content' means the electronic record defined in clause (t) of section 2 of the Act;

(m) 'news and current affairs content' includes newly received or noteworthy content, including analysis, especially about recent events primarily of socio-political, economic or cultural nature, made available over the internet or computer networks, and any digital media shall be news and current affairs content where the context, substance, purpose, import and meaning of such

  
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information is in the nature of news and current affairs content.

(p) 'on demand' means a system where a user, subscriber or viewer is enabled to access, at a time chosen by such user, any content in electronic form, which is transmitted over a computer resource and is selected by the user;

(q) 'online curated content' means any curated catalogue of audio-visual content, other than news and current affairs content, which is owned by, licensed to or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks, and includes films, audio visual programmes, documentaries, television programmes, serials, podcasts and other such content;"

6.1 That in this regard, the IT Act, 2000 defines various terms relevant in the context of Part III of the Rules. These are as follows:



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**"2. Definitions.—**(1) In this Act, unless the context otherwise requires,—

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a



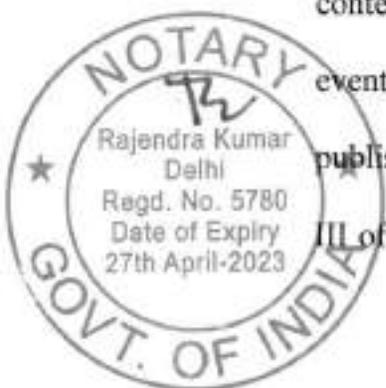
formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(v) "information" includes data, message, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;"

6.2 That the term 'content' used in the Rules means the same as the term "electronic record" as defined by the Act. The terms "electronic record" and "information", as defined under the Act, include all forms of content, irrespective of its nature, purpose, or format. It includes all forms of content viz. text, images, sound, voice, etc. The digital media content associated with Part III of the IT Rules is limited to "news and current affairs content" and "online curated content". In this regard, it is submitted that news and current affairs content on digital media, which is in the nature of information about recent events of general public importance, and their analysis, and can generally be published in the form of text, audio, and/or visual format, as is dealt with by Part III of the IT Rules is narrower and well within the scope of the Act. It is also

  
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submitted that online curated content, such as films, web-series, etc. made available by an OTT platform in audio-visual format is also within the ambit of the Act.

7. I submit that as per the **Coverage of Publishers of News and Current Affairs Content, and Publishers of Online Curated Content under the IT Act**: Part III of the IT Rules, 2021 pertains to publishers of news and current affairs content and publishers of online curated content. In this regard, the definition of the relevant entities as provided by the IT Rules, are hereby reproduced:

“**2. Definitions.**—(1) In these rules, unless the context otherwise requires-

(t) ‘publisher of news and current affairs content’ means an online paper, news portal, news aggregator, news agency and such other entity called by whatever name, which is functionally similar to publishers of news and current affairs content but shall not include newspapers, replica e-papers of the newspaper and any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity;

(u) ‘publisher of online curated content’ means a publisher who, performing a significant role in determining the online curated content being made available, makes available to users a

  
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computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity”

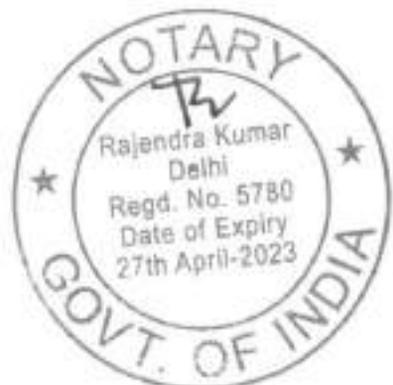
7.1 That with respect to the entities under the ambit of the IT act, the Act provides following definitions:

**“2. Definitions.—**(1) In this Act, unless the context otherwise requires,—

(za) “originator” means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(w) “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites,

  
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online-auction sites, online-market places and cyber cafes;”

7.2 That the IT Act identifies the originator of an electronic message as one being different from an intermediary. The key difference between the originators and intermediaries lies in the control exerted by these entities over the content which is published on digital media. While intermediaries only deal with third party content, originators directly control the content which is being published. In this regard, it is submitted that while the Act, under Section 79, provides safe harbour for the content being published by an intermediary, originators are not entitled to any safe harbour provisions and are mandated to take full responsibility for the content published by them. Furthermore, the term ‘originator’ is a broad term that includes persons generating and transmitting electronic messages, both in the nature of public and private communication irrespective of the nature and purpose of the message. In this regard, it is submitted that publishers of news and current affairs content, and publishers of online curated content, as being different from intermediaries, are originators of electronic messages of the nature of news and current affairs content, and therefore, these entities are well within the scope of the Act.

8. I submit that digital media has enabled wide dissemination of content beyond the original platform where it is published. The Reuters Institute India Digital News Report 2019, while finding that the access of news and current affairs content through social media platforms is significant, states that:

“In our sample of English-speaking online news users, just 35% say they go directly to news websites or apps, and only 18% consider direct

  
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access their main way of accessing news online (compared to 26% in the US and 35% in Brazil). An overwhelming majority of the respondents identify various forms of distributed discovery as their main way of accessing news online. Search (32%) and various kinds of social media (24%) are particularly important. Such side-door access through various intermediaries over which news publishers themselves have limited control is far more important among our Indian respondents than it is for online news users in a market like the US. In fact, a higher proportion of Indian respondents rely on distributed discovery as the main gateway to news than is the case among respondents in other developing markets like Brazil and Turkey.”

8.1. That the Report further adds:

“Facebook and WhatsApp are also the most widely used for news – **52% of our respondents say they get news via Facebook, and 52% say they get news via WhatsApp**, similar figures to those seen in a market like Brazil.

Other social media widely used for news (or where users are often exposed to news while using the platform for other purposes) include Instagram (26%), Twitter (18%), and Facebook’s

  
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Messenger (16%) – whereas, for example, Snapchat is much less widely used (5%).

**Many Indian publishers are investing in social media teams to reach online audiences through these intermediaries, which in turn simultaneously helps them increase their reach but leaves them exposed to sometimes dramatic changes to how ranking algorithms or other platform infrastructures work.”**

(emphasis supplied)

8.2. That similarly, the Reuters Institute Digital News Report 2021 finds that 41% of people pay most attention to mainstream news outlets, mainstream journalists, and emerging digital only news sources when using YouTube for news. The corresponding statistics for Twitter, Facebook, and Instagram are 35%, 37%, and 35% respectively. The various reports with respect to dissemination of news through distributed discovery mechanisms indicate that originators, such as publishers of news and current affairs content, are also users of intermediaries’ platforms (such as social media platforms) for dissemination of content published by them. In this regard, it is submitted that despite there being a clear distinction between an originator and an intermediary established by the IT Act, an important link exists between Part II and Part III of the IT

  
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Rules, 2021 in the form of rule 5, which is reproduced hereunder:

**“5. Additional due diligence to be observed by an intermediary in relation to news and current affairs content.—**In addition to adherence to rules 3 and 4, as may be applicable,



an intermediary shall publish, on an appropriate place on its website, mobile based application or both, as the case may be, a clear and concise statement informing publishers of news and current affairs content that in addition to the common terms of service for all users, such publishers shall furnish the details of their user accounts on the services of such intermediary to the Ministry as may be required under rule 18:

Provided that an intermediary may provide such publishers who have provided information under rule 18 with a demonstrable and visible mark of verification as being publishers, which shall be visible to all users of the service..."

8.3. That in this regard, it is submitted that the Rules not only retain and recognize the difference between an intermediary and an originator, but also identify their inter-linkages on digital media. While Part II of the Rules pertains to due diligence between the intermediaries, Part III relates to publishers of news and current affairs on digital media, which act as originators of the content so published. It is submitted in this regard that no inconsistency exists between the Rules and the Act since the Rules do not club digital media publishers with intermediaries, but treats them separately as is envisaged under the Act.



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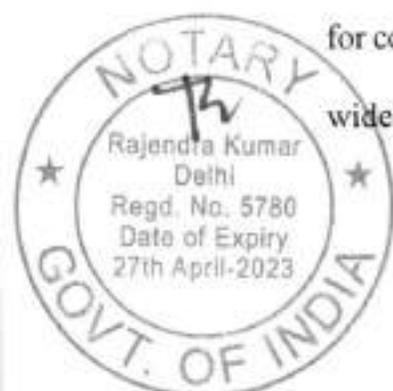
9. I submit that as per the **Regulation of content on online platforms through the IT Act**: the object and the scope of the IT Act, it is mentioned in the **Preamble** of the Act as follows:

“An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of **electronic communication**, commonly referred to as “electronic commerce”, which involve the use of **alternatives to paper-based methods of communication** and storage of **information....**”

(emphasis supplied)

10. I submit that the Preamble of the IT Act indicates that transactions carried out through “electronic communication” are within the scope of the Act. In this regard, the Act neither defines the term “transaction”, nor limits them to be applicable to commercial transactions, agreements or payments only. The internet has enabled and greatly increased the frequency and pace of transactions related to information and media content. These informational transactions may also have commercial dimensions such as business models of subscription or advertising based websites, including OTT and news platforms, as well as websites which provide services/content for free but collect and process data related to the audience/users (through cookies and other means) for commercial gains. Furthermore, the Act, while defining various terms such as “electronic record”, “data”, “information”, etc. has not limited them to be applicable only for commercial transactions or contracts over the internet, but have been defined widely to include various forms of media content which are exchanged over the

  
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internet. The IT Rules, 2021 provide definitions of “publisher of news and current affairs content” and “publisher of online curated content” which are narrowly tailored to exclude any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity. In this regard, it is submitted that the term “transaction”, as used in the Preamble of the IT Act, includes informational transactions happening over the internet through exchange of electronic records which are in the nature of news and current affairs content published by entities in the course of systematic business, professional or commercial activity. It is also submitted that a narrow interpretation of the term “transaction” as being limited to commercial transactions only would not only belie other provisions of the Act, but would also undermine the foresight of the Indian lawmakers with respect to the growth of informational exchange over the internet.

11. I submit that additionally, the Preamble also indicates that the Act applies to cases where alternatives to paper-based methods of communication are used. In this regard, the definition of “publisher of news and current affairs content” also excludes the newspapers and replica e-papers of the newspapers. Therefore, it is submitted that Part III of the IT Rules, 2021, insofar as being applicable to digital news publishers involved in electronic communication, is within the ambit of the Act.



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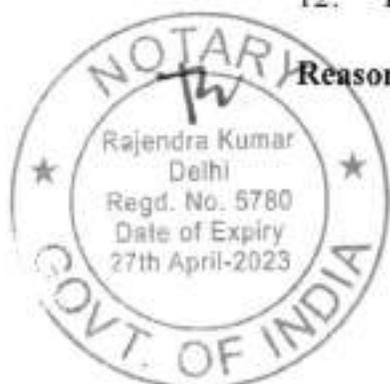
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12. I submit that the objectives of the Act, the **Statement of Objects and Reasons** of the IT Act states that it:

“is proposed to provide for legal recognition of **electronic records** and digital signatures. This



will enable the conclusion of the contracts and the **creation of rights and obligations** through the electronic medium”.

(emphasis supplied)

12.1 That the commercial contracts concluded over the internet are often limited to the use of textual format. Wide definition of the term “electronic record” indicates that the Legislature did not intend to limit the scope of the Act only to electronic records which are commercial in nature but was aware of the convergence of media technologies in the digital space. Therefore, it is submitted that the legislative intent behind the Act includes recognition and institutionalisation of media content in the digital space, and the scope of the Act extends to media content used for electronic communication. Part III of the rules is limited to “news and current affairs content” and “online curated content”, and is therefore well within the scope of the Act.

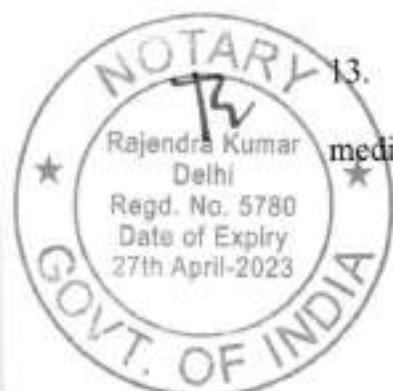
12.2. That the **Statement of Objects and Reasons** further elaborates on the objective sought to be achieved through the IT Act:

“**To prevent the possible misuse** arising out of **transactions and other dealings** concluded over the electronic medium, it is also proposed to create **civil and criminal liabilities** for contravention of the provisions of the proposed legislation.”

(emphasis supplied)

  
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13. I submit that the “transactions and other dealings” over the electronic media include informational transactions. In this regard, the digital media



ecosystem involves publishers of content on one hand while the audience (including subscribers of digital media publishers) on the other, with the State having the positive responsibility to ensure fairness of the dealings between these stakeholders. Since correct information lies at the heart of the democratic discourse, misuse arising out of exchange of information in the digital mediaspace has direct implications for democratic rights of citizens. Disinformation, or simply fake news, on digital media is one of the misuse of electronic records which may lead to violation of other fundamental rights of the audience, e.g. violation of the right to dignity through defamation; violation of the right to privacy through unlawful depiction in the media, violation of the right to life and personal liberty through disturbance of public order, etc. In this regard, it is submitted that while the right to freedom of speech and expression, including the freedom of press, is critical for a vibrant democracy like India, the rights of the audience who believe and act upon misleading news cannot be overlooked as well. The citizens, while being the audience for the information published by the professional publishers of news and current affairs content, cannot be treated as passive consumers without any recourse of participation in the process of accountability with respect to the content being published. In this regard, the Hon'ble Supreme Court, in **Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of**

**Bengal & Anr.** [(1995) 2 SCC 161] held as under:

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. **The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon**



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to express their views. One-sided information, disinformation, misinformation and noninformation, all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has an access to the print media which is not subject to pre-censorship.”

(emphasis supplied)

14. I submit that, the Hon'ble Supreme Court, in **Alakh Alok Srivastava vs. Union of India**, while dealing with the issue related to mass migration of migrant labourers from their workplace to their villages/towns during the COVID-19 pandemic, held that:

“The migration of large number of labourers working in the cities was triggered by panic created by fake news that the lock down would continue for more than three months. Such panic driven migration has caused untold suffering to those who believed and acted on such news. In fact, some have lost their lives in the process. It is therefore not possible for us to

  
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overlook this menace of fake news either by electronic, print or social media...

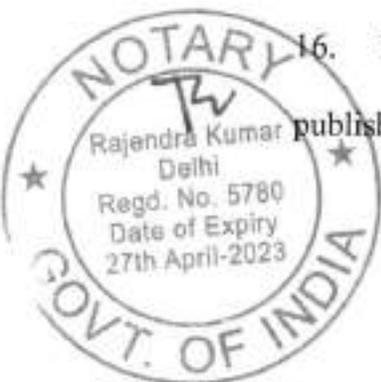
In particular, we expect the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated."

(emphasis supplied)

15. I submit that the IT Rules seek to prevent the misuse of the freedom of press by empowering the audience with a mechanism to raise their grievances related to the content being published by the digital news publishers through a grievance redressal mechanism with an emphasis on the self-regulatory architecture for digital news publishers, and are therefore not only within the ambit of the Act, but also fulfill the object sought to be achieved by the Act. Similarly, with respect to online curated content, the State has a positive obligation under the IT Act to ensure fairness in exchange of content between the OTT platforms and audience. In recent times, there have been several Court cases regarding depiction of allegedly obscene and inflammatory content on OTT platforms. The Hon'ble Supreme Court, is also seized of the issue related

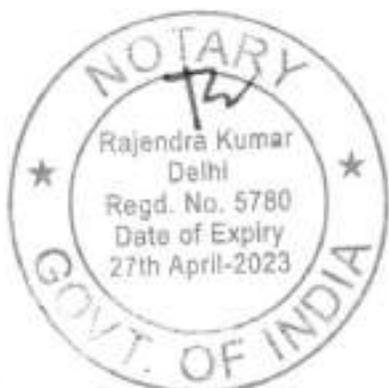
  
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16. I submit that there are several provisions which deal with media content published or transmitted in electronic form. These are as follows:



- i. **Section 11** provides for “Attribution of electronic records.—An electronic record shall be attributed to the originator— (a) if it was sent by the originator himself; (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or (c) by an information system programmed by or on behalf of the originator to operate automatically.”
- ii. **Section 66A** provided for “Punishment for sending offensive messages through communication service, etc.” Even though this Section was declared unconstitutional by the Hon’ble Supreme Court in *Shreya Singhal vs Union of India*, it is submitted that it does not take away the fact that the legislative intent behind the Section was related to regulation of media content over the internet.
- iii. **Section 67** provides for “Punishment for publishing or transmitting obscene material in electronic form.”
- iv. **Section 67A** provides for “Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form.”
- v. **Section 67B** provides for “Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.”
- vi. **Section 69** empowers the Central Government/State Government to issue directions for interception or monitoring or decryption of any information through any computer resources if it is satisfied that it is necessary or expedient to do so in the interest of sovereignty or integrity of India, defence of India, security of the

  
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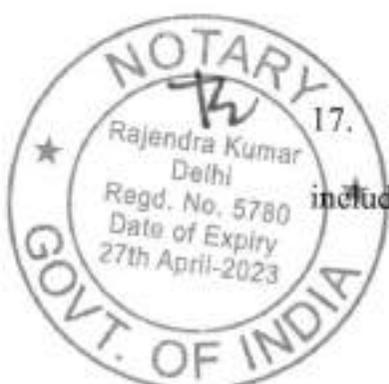
State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to the above or for investigation of any offence.

- vii. **Section 69A** empowers the Central Government “to issue directions for blocking for public access of any information through any computer resource.”
- viii. **Section 69B** provides for the “power to authorise to monitor and collect traffic data or information through any computer resource for cyber security.” This power rests with the Central Government.
- ix. **Section 79(3)(b)** mandates an intermediary to “expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner upon receiving actual knowledge, or on being notified by the appropriate Government or its agency”. This Section has been read down by the Supreme Court in *Shreya Singhal vs Union of India* to mean that “the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79.”

In this regard, it is submitted that regulation of media content in the electronic form, including news and current affairs content and online curated content, is well within the scope of the Act.

17. I submit that the **legislative debates** also indicate that the scope of the Act includes e-communication, including the news publishers on digital media.

  
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During the discussion in Lok Sabha dated 15 May, 2000 (ANNEXURE R3) on the Information Technology Bill, 1999, (Late) Shri Pramod Mahajan, the then Hon'ble Minister for Information & Technology, had said:

“if you ask me as a lay man to define what is Information Technology, I can only say that **Information Technology is the fourth generation of human communication.** When the human society came on the earth the first way of communication between people was through gestures. When somebody smiled we thought that he was happy. Second, the human race had brought up a spoken language. Then we come to written language. Now we have reached towards digital language which is the fourth generation of human communication. It is the faster one. The fastest fifth generation of human communication is mind to mind communication and its intellectual property rights are with the Almighty God; and nobody else has this communication. So, **digital communication is the fourth generation.** So, when we moved from a spoken language to a written language, thousands of textbooks were written. We re-wrote everything. Similarly when we are moving from a written language to a digital language we will have to re-write almost every piece of legislation in this country.”... “this being the fourth

  
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generation of communication, we have brought up the Information Technology Bill.”

(emphasis supplied)

That during the same debate, (Late) Shri Arun Jaitley, the then Hon'ble Minister of State for Information Technology, stated:

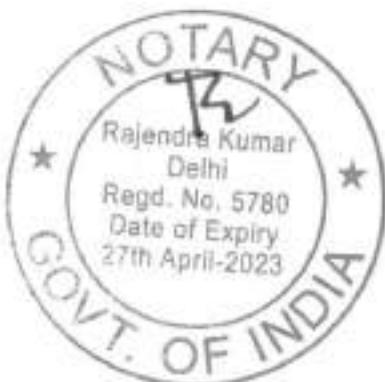
“The first aspect of this law is e-Documentation, e-Commerce, and e-Communication which have become a reality.”

(emphasis supplied)

18. I submit that during the discussion in Rajya Sabha dated 17 May, 2000, Shri Pritish Nandy, then Hon'ble Member of Parliament, had specifically referred to the impact of the bill on digital news entities (ANNEXURE R4) . While expressing his apprehensions about the police powers in the bill, he remarked:

“It [information technology] has opened up a means of communication that has challenged the oligarchy, the monopolies and the vested interests of the traditional media, be it newspapers, magazines or television stations. It has empowered independent journalists and made it virtually impossible to cover up, hide or sabotage truth. It has made the humblest human being capable of fighting back the brute callousness of the State and the corruption of mighty business empires just by opening up a

  
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new, alternative means of free communication...Madam, **the most important role of the internet is not e-commerce. It is not to commit crimes. It is not to have sex chats. It is not even to ensure e-governance, important as it may be. It is to ensure communication between people, communities, nations. It is to educate, inform, heal, teach, support and encourage assisting people.** It is in its formative years, in its adolescence, right now...**While I welcome some degree of regulation,** my request to the Hon. Minister is, please leave the internet alone from prowling policemen with or without warrants."

(emphasis supplied)

In this regard, it is submitted that a civil procedure of grievance redressal with regard to publishers of news and current affairs content on digital media is well within the scope and objects of the IT Act.

19. I submit that the **Consistency of the Rules with the Act:** That the test for rule-making power was laid down by the Hon'ble Supreme Court in *State of Tamil Nadu vs. P. Krishnamurthy & Ors.* (2006) SCC 517, wherein the Court

has held:

"There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who

  
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attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:-

- a) Lack of legislative competence to make the subordinate legislation.
- b) Violation of Fundamental Rights guaranteed under the Constitution of India.
- c) Violation of any provision of the Constitution of India.
- d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- e) Repugnancy to the laws of the land, that is, any enactment.
- f) Manifest arbitrariness/ unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly

  
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inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But **where the contention is that the inconsistency or nonconformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.**"

(emphasis supplied)

20. I submit that the significance of the Preamble, provisions of the Act, Statement of Objects and Reasons, and the Parliamentary debates for determining the objective of an Act has been highlighted by the Hon'ble Supreme Court in multiple cases. (**Kerala State Electricity Board Vs. Indian Aluminium Co [1975] INSC 193; Utkal Contractors & Joinery Private Limited & Ors. vs. State of Orissa & ors. 1987 SCR (3) 317; Baldev Singh Bajwa Vs. Monish Saini [2005(12) SCC 778]; A. Manjula Bhashini & others vs The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another (2009)**). In this regard, it is submitted that both the internal and external aids which can be utilized to appreciate the object and scope of the IT Act indicate that the IT Rules, 2021 are well within the ambit of the Act.

21. I submit that the legislative intent of regulating content on the internet through the Act was also recognized by the Delhi High Court in **Justice for Right Foundation vs Union of India** wherein the petitioner argued for a writ



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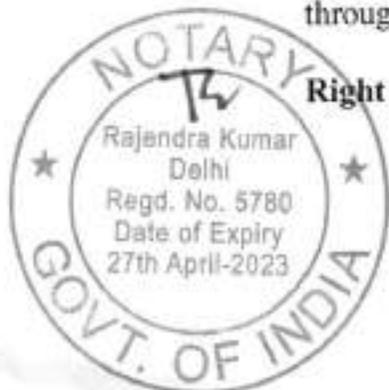
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Min. of Information & Broadcasting

भारत सरकार, नई दिल्ली

Govt. of India, New Delhi



of mandamus for framing of guidelines to regulate online platforms and content published therein. The case was dismissed by the Hon'ble Delhi High Court, vide its order of 8th February 2019, on the grounds that there exist stringent provisions in place under the Information Technology Act for taking action in case of violation of the Act or Rules framed thereunder. The High Court held that:

“we see no reason to issue any Mandamus for bringing in place guidelines or statutory regulations for the said purpose when the **Information Technology Act itself provide for enough procedural safeguards for taking action in the event of any prohibited act being undertaken by the broadcasters or organizations in the internet/online platform.**”

22. I submit that the IT Act is administered by the Ministry of Electronics and Information Technology (MeitY) of the Government of India. The IT Rules have been formulated in exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Act. In this regard, Section 87(1) is the general rule making power relating to the broader scope of the Act, and the Sections 87(2)(z) and 87(2)(zg) are specific rule making powers in relation to blocking of content and the due diligence to be observed by intermediaries respectively. Therefore, considering the wider objective and scope of the Act, the Rules are consistent with the Act. Furthermore, the subjects- “News and current affairs content on online platforms” and “Films and Audio-Visual programmes made available by online content providers” lie



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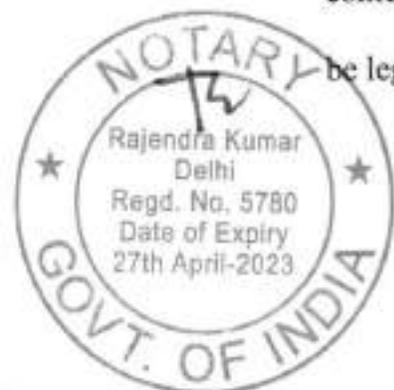
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within the administrative ambit of the Ministry of Information & Broadcasting (MIB). Part III of the Rules is to be administered by MIB utilizing the powers delegated by MeitY for this purpose. In this regard, it is submitted that from the perspective of both scope of the Rules, as well as administration of the Rules, Part III is well within the legislative competence of MeitY to make such subordinate legislation.

23. I submit that within the broader scope of communication, one can make a distinction between public and private communication. While communications such as sending and receipt of email, and conclusion of contracts over the internet are private communications between entities, publishing content on social media platforms, digital news portals and OTT platforms is essentially a public communication. It is submitted that the Information Technology Act recognizes both private and public communication. In respect of intermediaries, the users are the originators of content. Rule 3(2) of the Information Technology (Intermediary Guidelines) Rules, 2011 (ANNEXURE -R5) provided for intermediaries to inform the users not to host, display or upload certain forms of information. The aforementioned rule was upheld by the Hon'ble Supreme Court through the *Shreya Singhal* judgement. Just like ordinary users, publishers on digital media are also involved in public communication, albeit with a relatively much larger impact. Therefore, it is submitted that an argument which claims that the scope of the Information Technology Act includes content published by ordinary users, but does not include content published by well-organized commercially oriented news publishers or OTT platforms, publishing content as a systematic business, professional or commercial activity, may not be legally tenable.

  
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24. I submit that with regard to an institutional mechanism for publishers of news and current affairs content under the IT Act, that despite being within the scope of the Act, lack of institutional mechanism for these entities was due to the ambiguity regarding the Ministry under which such a mechanism was to be administered. This ambiguity was resolved by the Central Government notification dated 09.11.2020, through which the subject "News and current affairs content on online platforms" and "Films and Audio-Visual programmes made available by online content providers" was transferred to the Ministry of Information & Broadcasting. In this regard, it is submitted that Part III of the Rules dealing with public communication by publishers of news and current affairs content, would be administered by the Ministry of Information & Broadcasting utilizing the authority delegated by MeitY under the IT Act.

25. I submit that with respect to the application of the Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978, that The Press Council of India has the mandate to look into various aspects related to content appearing in Print Media. The Press Council has prepared the Norms for Journalistic Conduct for this purpose. Additionally, the Council has the powers to conduct enquiries on the basis of complaints and take suitable action including warning, admonition, censor, etc. Similarly, TV news channels are required to follow the Programme and Advertising Codes laid down under the Cable Television Networks (Regulation) Act, 1995. In this regard, it is submitted that while the Press Council Act, 1978 regulates content appearing in print media (newspapers) through the application of Norms of Journalistic Conduct, and the Cable Television Networks (Regulation) Act regulates the content on television news channels through the Programme Code under Section 5, the news and



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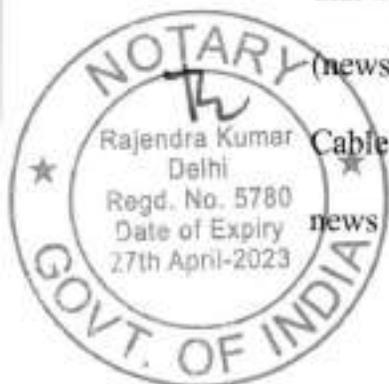
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current affairs content appearing on digital media is covered under the IT Act. Since digital media is format agnostic, and all forms of text, image, audio, video, voice or a combination of these content formats can coexist on digital media. In this regard, it is submitted that inclusion of the Norms of Journalistic Conduct and the Programme Code under the Code of Ethics applicable to news and current affairs content on digital media merely extends the applicable norms for traditional media to the digital media without extending the entire Press Council Act or the Cable Television Networks (Regulation) Act to publishers of news and current affairs content on digital media. Similar harmony between various laws relating to a particular field, regulation of news and current affairs content in this case, already exists in the case of multiple other subject matters, and in no way can be interpreted to go beyond the boundaries of the parent legislation. Furthermore, it is also submitted that in the absence of guidelines for digital media, the existing set of guidelines, which have been time-tested with respect to print and electronic media, are apt to be applicable to news and current affairs content on digital media as well.

26. I submit that the Bombay High Court, in **Nilesh Navalakha vs Union of India**, while adjudicating upon the guidelines for reporting cases of deaths by suicide, held that:

  
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“325. However, keeping in view the holistic purpose that is sought to be achieved by implementation of the guidelines contained in the Press Release dated September 13, 2019, we see no reason as to why apart from the print media, the electronic media may not be guided thereby while reporting on death cases by



suicide. We hold that in the absence of guidelines of a statutory authority formulating similar such standards and putting in place in relation to reporting of deaths by suicide for the electronic media, the norms of journalistic conduct framed by the PCI for the print media ought to be extended to cover the electronic media till such time appropriate guidelines are framed for the electronic media by the appropriate authority. Though the electronic media is not bound by the PCI Act, we are prompted to hold that the electronic media should also be guided by the contents of the guidelines of the PCI on reporting of death cases by suicide for two reasons: first, the said guidelines have a statutory flavour and similar such binding guidelines on reporting cases of death by suicide are non-existent for the electronic media; and secondly, the absence of such guidelines could, and as we have been shown in the present case, lead to the dignity of the dead being breached with impunity. The death of the actor was followed by such crude, indecent and distasteful news reporting by a few of the TV channels that we do not consider it worthy of being referred to here and be a part of this judgment. Nonetheless, **instead of the Court legislating and laying down guidelines on reporting of death cases by suicide, it would be wise**



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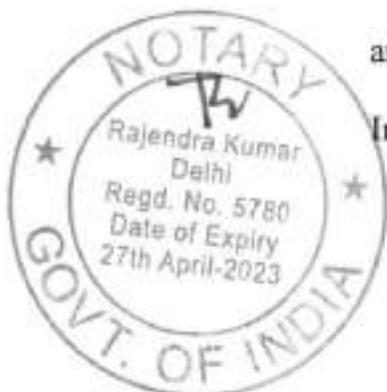
and prudent on our part to give direction for adherence to the guidelines of the PCI in this behalf by the electronic media while it reports cases of death by suicide, which would secure the ends of justice.”

(emphasis supplied)

27. I submit that based on the arguments in the preceding paragraphs, and the precedents established by the Hon’ble Supreme Court through its various rulings, it is submitted that:

- The IT Act is administered by MeitY, and the IT Rules, 2021 lie within the legislative competence of MeitY;
- The scope of the Information Technology Act includes recognition and regulation of electronic records which are in the nature of media content, and therefore, Part III of the IT Rules, 2021 are within the ambit of the objective of the Act;
- The media content sought to be recognized and regulated by the Information Technology Act includes the news and current affairs content published by digital news publishers as recognized by Part III of the IT Rules, 2021;
- Part III of the Rules seeks to establish an institutional mechanism for the digital media in consonance with the objective of the Act as enunciated in the Preamble, and Statement of Objects and Reasons of the Act; and
- No provision of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 violates any provision of the Information Technology Act.

  
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28. I submit that the Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 conform to the legislative authority for subordinate legislation established under Section 87(1) the Information Technology Act, 2000, and is within the scope of the Act.

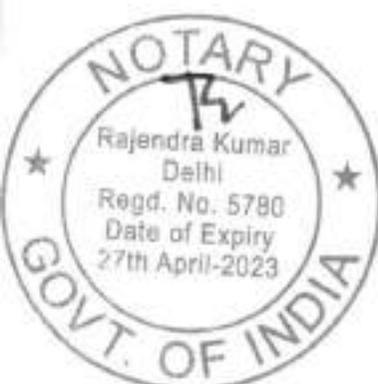
29. I submit that the **Level playing field between traditional and digital media and Article 14:** Part III of IT Rules, 2021 pertains only to digital media publishers. In this regard, digital media involves certain unique aspects as compared to the traditional modes of media dissemination such as print or television media. Some of the differences in this regard are as follows:

- i. The reach of digital media is far wider as compared to traditional media. Content published from one part of the country can be disseminated and shared even in the remotest locations. Using the open internet, a digital media entity can publish news or analysis about happenings in any part of the world. While enabling interactions across the world, the transcontinental nature of digital news also makes it a powerful tool for information campaigns by foreign state and non-state actors to influence public opinion in any nation.
- ii. The audience on digital media is far wider than the audience on traditional print media forms. While the written word can only be accessed by literate persons, internet can be accessed by literate and illiterate both;
- iii. The digital medium has opened up the scope for interactivity between news producers and news consumers. Engaging content is responded to by consumers through likes, shares, "retweets", comments, etc. Online platforms, for commercial reasons, may have a tendency to retain the



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consumer on their platform for a longer period. This results in proliferation and spread of news content that appears to be sensational. The risk of false or misleading information is greater over the internet as the same can be spread rapidly within the society.

iv. Digital media has an element of permanence as different from traditional media. While news on television is momentary with the broadcast happening once through the TV channels, news content in a newspaper also has a short shelf life in terms of being relevant or misused in a different context. Digital media, however, allows sensational content being recirculated in a different context leading to misinterpretation by the audience. The permanence of a false content once made available on the internet raises its potential for being used as fake news.

v. The available avenues for regulation in terms of logistical or infrastructural constraints on digital media are weaker as compared to traditional media. Print media involves various physical requirements such as the newsprint, printing press, distribution network, etc. Similarly, television media requires licensed frequency spectrum, trained personnel, specialised studios and other apparatus, etc. In this regard, regulation of digital media is unique as a common person with a smartphone and an internet connection can act as a publisher of news and current affairs without any requirement of much investment.

vi. Digital media is format agnostic. Print media is limited to dissemination of textual material, radio for audio content, and the television media can only be used for audio-visual content. However, digital media enables publishing of content in any of the above formats.

vii. Digital media enables multiplicity of delivery channels. While traditional media, such as a newspaper or a television news channel, operated



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through a single delivery mechanism such as a physical paper or a television, online news may be accessed through the website/app of the news portal, through notifications sent by a news aggregator, through social media accounts of news portals or even through a friend who has shared the news on his personal social media account. This vast expanse of delivery nodes of digital media makes it unique as compared to a newspaper or a television news channel.

- viii. News on online media is also characterised by having the potential for being rapidly transmitted through the above mentioned multiple delivery channels. While the traditional media operated on news cycles with the newspaper being delivered in the morning/evening, and TV news bulletins transmitted as per pre-defined schedules, digital news is produced, transmitted and consumed on a 24X7 basis. This feature not only calls for greater sense of responsibility on producers of digital news media content, but also greater media literacy among the audience.
- ix. In case of print media or medium of television, whatever is truly recorded can only be published or broadcasted (televised) viewed. In the case of digital media, morphing of images, change of voices and many other technologically advance methods to create serious potential social disorder can be applied.
- x. News on online platforms has transformed the consumer into a “prosumer” i.e. Producer + Consumer. Digital forms of media allow the audiences to not only consume content, but also produce content. The “gatekeeping” function performed by the traditional news outlets has considerably diluted due to the emergence of user generated content. With easy access to a smartphone, cheap internet data and a social media account, users not only share stories which directly impact them but also



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views and opinions which shape the democratic discourse. Individuals or groups can use digital media with very low barriers of entry or regulation to disseminate false, sensationalist or misleading news over the internet, which can then be rapidly transmitted among the people.

- xi. In the case of other mediums like newspapers or television, the approach is always an institutionalized approach governed by industry specific ethical norms of self regulation. Before the notification of the Rules, the use of internet was solely based upon the individualistic approach without any existing check, balance or regulatory ethical norms for exercising freedom of speech and expression under Article 19(1)(a).

30. I submit that a substantial intelligible differentia between the traditional media (print and TV) and digital media, and any contention that digital news publishers are similar to newspapers is flawed and superfluous. In this regard, the judgement of the Hon'ble Supreme Court in **Shreya Singhal vs. Union of India** held that:

“The intelligible differentia is clear – the internet gives any individual a platform which requires very little or no payment through which to air his views. The learned Additional Solicitor General has correctly said that something posted on a site or website travels like lightning and can reach millions of persons all over the world. If the petitioners were right, this Article 14 argument would apply equally to all other offences created by the Information Technology Act which are not



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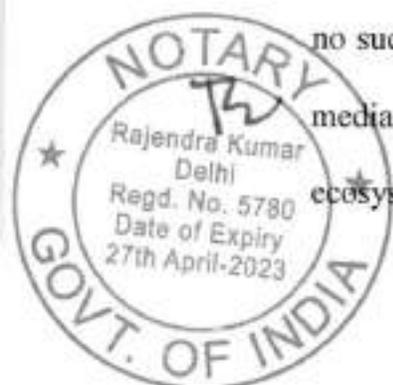
the subject matter of challenge in these petitions.

We make it clear that **there is an intelligible differentia between speech on the internet and other mediums of communication** for which separate offences can certainly be created by legislation. We find, therefore, that the challenge on the ground of Article 14 must fail.

Based on the intelligible differentia between the speech on digital media and traditional media, it is submitted that a separate institutional mechanism for dealing with media content on the internet is not violative of Article 14 of the Constitution.

31. I submit that before the notification of the Rules, digital news media was largely unregulated. In respect of Print Media, the Press and Registration of Books Act, 1867 provides for registration of publications, including newspapers. The Press Council of India, under the Press Council Act, 1978, has the mandate to look into various aspects related to content appearing in Print Media. The Press Council has prepared the Norms for Journalistic Conduct for this purpose. Additionally, the Council has the powers to conduct enquiries on the basis of complaints and take suitable action including warning, admonition, censor, etc. Similarly, TV news channels are required to follow the Programme and Advertising Codes laid down under the Cable Television Networks (Regulation) Act, 1995. In this regard, it is submitted that before the notification of the Rules, no such mechanism was currently in operation with regard to news on digital media, thereby leading to a discriminatory imbalance within the news media ecosystem with respect to content on traditional media.

  
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32. I submit that the digital news publishers, like traditional media entities, operate in an environment of cut-throat competition. With rapid expansion of the internet penetration and cheap data, India has witnessed mushrooming of publishers operating on digital media. In this regard, “*Journalism, Fake News and Disinformation*” (2018), UNESCO’s handbook for journalism education and training, brings out the impact of digital transformation of newsrooms and storytelling as follows:

- **Media convergence:** many journalists are now tasked to produce content for multiple platforms concurrently (from mobile to print), further depleting time available for proactive reportage, as distinct from reactive modes such as reproducing public relations content without adequate scrutiny
- **Reporters are increasingly required to sub-edit and publish their own content without appropriate review**
- **Digital-first deadlines are always \*now\*;** heightening the risk of errors
- **Social-first publishing is commonplace,** with reporters posting their stories to their individual social media accounts and/or those of their publishers to meet audience demand for real-time news. **Practices include ‘live tweeting’, ‘Facebook Live’ videos, and other journalistic**



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acts which do not necessarily involve editorial oversight (akin to live broadcasting), potentially resulting in a ‘publish first, check later’ mindset

- Reliance on rudimentary data analytics that focus on the number of article clicks and unique website visitors instead of ‘attention minutes’ and ‘time spent’ (more useful markers for long-form and quality journalism) used to justify higher prices for increasingly scarce and low-rate digital advertising
- **Clickbait practices (understood as the use of misleading headlines to entice readers to click on links under false pretences) designed to drive traffic but which have been associated with erosion of trust in professional journalism**
- **Pursuit of virality at the expense of quality and accuracy.** This is a problem likely to be exacerbated by ‘machine learning’
- The rise of fact-checking units within newsrooms, and as outputs of media development projects”

(emphasis supplied)



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33. I submit that the economic environment marked by competition for eyeballs and regulatory vacuum with respect to the content on digital media has led to spread of fake news and other potentially harmful content without any

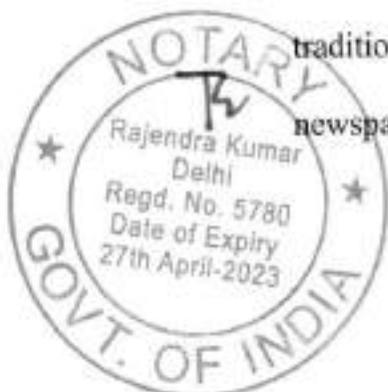
accountability of digital news publishers. In this regard, the Supreme Court, in *Alakh Alok Srivastava vs Union of India*, observed that:

“In particular, we expect the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that **unverified news capable of causing panic is not disseminated**. A daily bulletin by the Government of India through all media avenues including social media and forums to clear the doubts of people would be made active within a period of 24 hours as submitted by the Solicitor General of India. **We do not intend to interfere with the free discussion about the pandemic, but direct the media refer to and publish the official version about the developments.**”

34. I submit that traditional news entities, disseminating news through newspapers and/or TV, have also adopted the digital medium. Reuters Digital News Report 2021, in respect of India, also states that mainstream news outlets receive higher levels of attention as compared to smaller or alternative sources of news on social media. The unique features of digital media, as mentioned in paragraph 29, and the associated benefits and risks, are identical for traditional news publishers which also publish content on digital media, and standalone digital publishers. In this regard, it is submitted that may not be true that the traditional media entities have remained in the business of publishing newspapers or broadcasting content through television channels. In this regard,

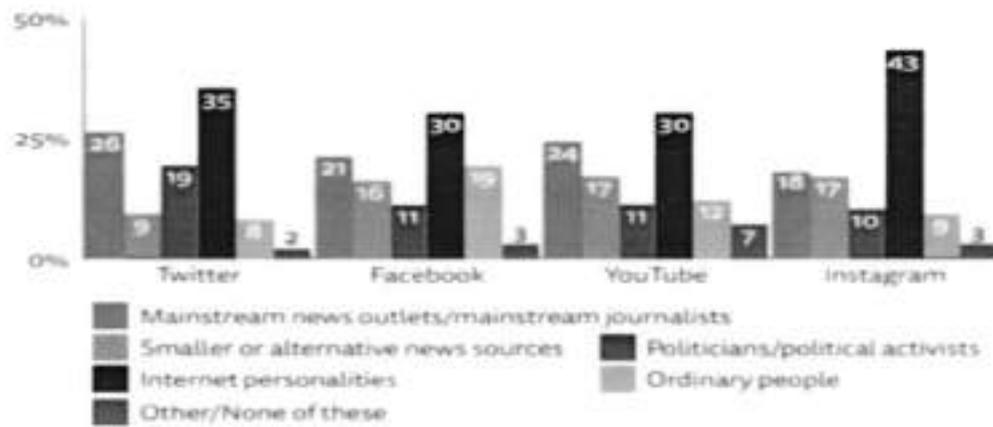
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making any exception of the nature proposed will be discriminatory to the digital news publishers who do not have a traditional TV/print platform and violative

#### WHO PEOPLE PAY MOST ATTENTION TO WHEN USING EACH SOCIAL NETWORK FOR NEWS - INDIA



Q12\_Social\_sources. You said that you use < social platforms > for news ... When it comes to news on < social platforms > which of these do you generally pay most attention to? Base: Randomly selected Twitter/Facebook/YouTube/Instagram news users: 1/2/16/6/16/2/20

of Article 14 of the Constitution.

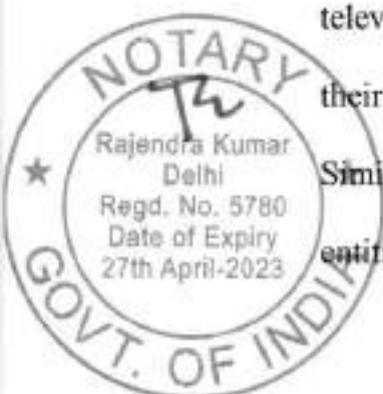
(Source: Reuters Digital News Report 2021)

35. I submit that there is a difference in the content published/broadcast by traditional media entities on newspaper/television and the content published by their digital media arms. Digital medium is format agnostic. This feature has been used by digital news entities of both newspapers as well as television news channels. Digital platforms of many newspapers conduct panel discussions in the audio-visual format. These are not possible to be published in the newspaper but are made available on digital media in the form of videos or podcasts.

Similarly, digital media platforms of many television news channels publish textual reports and editorial/opinion articles, which are not broadcast on television. Traditional print media outlets often share pictures and graphics on their website and social media handles which do not make it to the print version.

Similarly, the text, headline, short description or image used by traditional media entities for content on digital media is, in many cases, different from those used

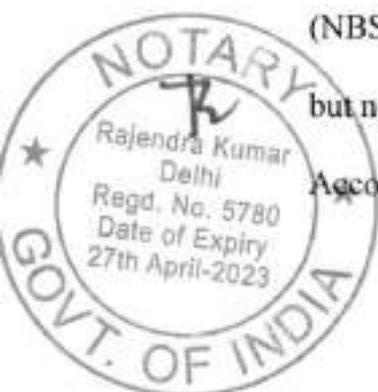
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in the newspaper or television. Many traditional newspapers often run a live page of breaking news stories on their apps and website. These pages have minute-by-minute updates of a breaking news story. All such updates in the feed may not necessarily make it to the printed newspaper. Digital media provides the facility for regional classification of news stories. Some traditional media entities use multiple separate sections on their website or multiple social media accounts dedicated to specific regions. Such regional classification targeted to the audience of a certain region is not necessarily available in the newspaper or the broadcast news on television. It is submitted that in these respects, the digital media arms of traditional news publishers are similar to digital standalone news publishers, and making any exception of the nature proposed by Digital News Publishers Association through its various representations would be discriminatory to the digital news publishers who do not have a traditional TV/print platform, and violative of Article 14 of the Constitution.

36. I submit that while the Press Council Act covers newspapers (including a replica e-version of a newspaper), the news portals/websites are not covered under that Act. Similarly, with regard to traditional TV news entities, while content appearing on a traditional TV channel is covered under the content regulations framed under the Cable Television Networks (Regulation) Act (Programme Code, etc) read along with the Uplinking and Downlinking Guidelines for private TV channels (2011), the digital news portals/websites of these traditional TV organizations are not covered under that Act/Guidelines. As a case in point, in a recent decision, the News Broadcasters Standards Authority (NBSA) held that a news which appears only on the website of an organization but not its traditional TV platform would be outside the scope of its jurisdiction. Accordingly, it is submitted that news portals/websites even of the organizations

  
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having newspapers or television news channels will be covered under the IT Rules, 2021.

37. I submit that television news media entities, News Broadcasters Association (NBA), an association of television news broadcasters, had already submitted that its members adhere to the Programme Code under the Cable Television Networks (Regulation) Act, 1995 (ANNEXURE R6). In this regard, it is submitted that extending the well established and time-tested norms of ethical journalism to digital media content published by these entities is no new or additional compliance.

38. I submit that the above mentioned aspects (as mentioned in paragraphs 34 to 37) with respect to traditional media entities have already been clarified by the Ministry vide communication dated 10.06.2021 (ANNEXURE R7). In this regard, it is submitted that similar treatment of digital media portals of traditional media entities with the standalone digital news media entities is in consonance with Article 14 of the Constitution.

39. I submit that the Norms of Journalistic Conduct are professional standards of media ethics that have been formulated by the Press Council of India. The norms formulated by the Council are updated from time-to-time and have statutory force in the field of print media. In this regard, the relevant provisions of the Press Council Act are hereby reproduced:

**13. Objects and functions of the Council—(1)**

The objects of the Council shall be to preserve the freedom of the Press and to maintain and improve



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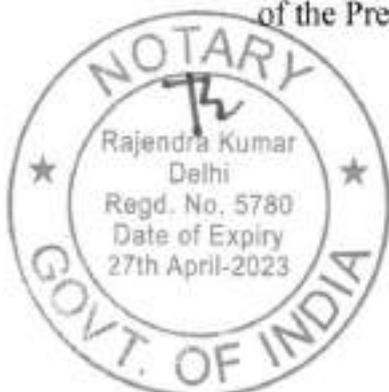
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Govt. of India, New Delhi



the standards of newspapers and news agencies in India.

(2) The Council may, in furtherance of its objects, perform the following functions, namely:—

(a) to help newspapers and news agencies to maintain their independence;

(b) to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;....

**14. Power to censure.**—(1) Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards or journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be:

  
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Govt. of India, New Delhi



Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry..."

(emphasis supplied)

40. I submit that the Press Council of India has conducted several inquiries based on complaints pertaining to the alleged violation of the Norms of Journalistic Conduct, and passed multiple adjudications utilizing the legal force of the above Norms under the Sections 13 and 14 of the Press Council of Act. This fact has also been recognized by the latest (2019) version of the Norms of Journalistic Conduct (**ANNEXURE R8**), the preface of which is written by Hon'ble Justice Chandramauli Kumar Prasad, Chairman, Press Council of India, and is reproduced hereunder:

*" Journalists are to keep their personal feeling out of their reporting, they should write, what they know not what they think and give all sides a chance to be heard. Five Ws. Who, What, When, Where and Why should guide them. The Press is held as the fourth state but its potentiality as the fourth pillar of democracy was realised only after independence.*

*The Press is a mass communicator, representative of the people and voice of the voiceless which has achieved the position of a natural ally of the society for its existence, projection and well-being.*

  
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*In pursuit of its role, however, the journalists have to follow a code of conduct and it is the obligation of the Press Council of India to build up a code of conduct in accordance with its high professional standard. To achieve this, the 2019 edition of Norms of Journalistic Conduct based on the adjudications by the council is being presented with the hope that it shall guide all those who are involved in the dissemination of news.*

I hope and trust the readers will find this 2019 edition of Norms of Journalistic Conduct as useful and informative.”

(emphasis supplied)

41. I submit that the Programme Code under the Cable Television Network Regulation Act is the well established and time-tested standard for electronic media, mostly dealing with audio-visual content. In this regard, relevant provisions under the CTN Act are hereby reproduced:

  
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“5. **Programme code.**—No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

19. **Power to prohibit transmission of certain programmes in public interest.**—Where any



authorised officer, thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any programme or channel if, it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.

**20. Power to prohibit operation of cable television network in public interest.—(3)**

Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme.”

  
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42. I submit that the Digital media is format agnostic, and all forms of text, image, audio, video, voice or a combination of these content formats can coexist on digital media. In this regard, it is submitted that with the inclusion of the

Norms of Journalistic Conduct and the Programme Code, both already having statutory force in respect of print and television news media respectively, within the Code of Ethics under the IT Rules, 2021, these norms would guide the digital news publishers with respect to production of all formats of news and current affairs content, and create a level playing field between the traditional media entities and the digital news publishers while bringing a sense of professionalism as well as responsibility for sustainable growth of the digital news industry.

43. I submit that the Level-II of the grievance redressal framework, it is submitted that self-regulation by associations of news publishers is already in vogue in respect of the television news media. The traditional TV media organizations have formed various associations to adjudicate grievances relating to violation of Programme Code under the Cable Television Network Act, 1995 and their internal codes/guidelines. News Broadcasters Standards Authority is one such body. With respect to the print media, the Press Council of India serves as the statutory self-regulatory body under the Press Council Act, 1978. The requirement of the Level II under the IT Rules, 2021 is only an extension of an existing institutional practice. Furthermore, as claimed by the traditional media entities, the Government recognizes that the digital version/digital publication of the organizations having traditional news platforms (TV and Print) may be following internal guidelines of the self-regulating bodies. Accordingly, it has been clarified vide a clarification dated 10.06.2021 that if the traditional media organizations so desire, they can request the same self-regulatory bodies to serve as the Level II of the self-regulatory mechanism, after ensuring consistency with the IT Rules, 2021. In this regard, it is submitted that the Rules carry forward the principle of self-regulation which is already functioning in respect of



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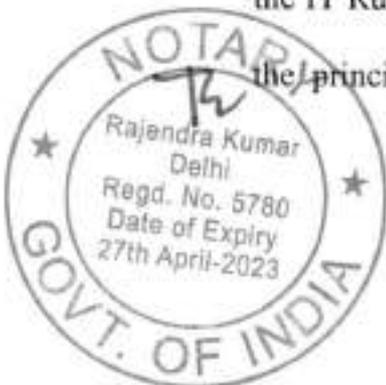
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traditional media and creates a level playing field between online and offline media.

44. I submit that the **Oversight Mechanism and the role of the Central Government**, it is pointed out that even at present, in respect of traditional TV channels, there is an oversight mechanism in the Government by way of an Inter-Ministerial Committee (IMC) which looks at certain grievances relating to the violation of the Programme Code, a mechanism which is in existence since 2005. Over the last over 15 years, the IMC has given recommendations by way of Advisories, Warnings, etc in respect of a large number of cases involving content of both news and non-news channels in relation to the Programme Codes and in almost every such case, the TV channels have accepted the recommendations of this Committee. The IMC mechanism has stood the test of time. The concept of Inter Departmental Committee (IDC) is similar and does not lead to any interference or control of the central Government in the functioning of the digital media publishers. Furthermore, the oversight mechanism at Level III is visualized as a residual level, insofar as the grievances which do not get redressed at the first and second levels would go to the oversight mechanism.

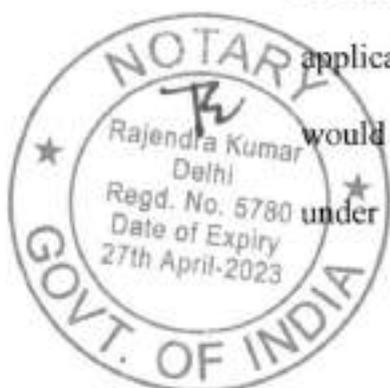


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45. I submit that the **Furnishing of information**: the newspapers published in India are mandated to obtain title verification from the Registrar of Newspapers for India under the Press and Registration of Books Act 1867. The application for registration requires basic information about the entity which would be registered as a publisher. Similarly, licensing of television channels under the Cable Television Networks (Regulation) Act, 1994 requires the



applicant to provide basic details about the broadcaster's entity. In this regard, it may be mentioned that on digital media, no such prior registration or licensing is mandatory. Furthermore, given the low barriers to entry, multiple entities as well as individuals have entered into the domain of publishing news and current affairs content on digital media. Under the IT Rules, 2021, publishers are required to inform the Ministry about the details of their entity by furnishing information to the Ministry for the purpose of future communication and coordination. Such a provision not only ensures identification of the entities which publish news on digital media, but also enables the Ministry to transfer the grievances received from the general public to the concerned publisher.

46. I submit that Part III of the IT Rules is applicable to news and current affairs content, and online curated content. These terms are specifically defined under the Rules. Furthermore, the Rules apply only to entities which publish news and current affairs content and online curated content as a systematic business activity. The definitions of 'publisher of news and current affairs content' and 'publisher of online curated content' expressly exclude any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity. The Hon'ble Supreme Court, in the Shreya Singhal judgement, held the Section 66A of IT Act to be unconstitutional on the ground that it casts the net very wide – "all information" disseminated over the internet was included within its reach. In this regard, it is submitted that Part III of the IT Rules is limited in scope, not directly pertaining to the freedom of speech of common citizens, but in the form of a normative standard for the commercial entities engaged in professional production and



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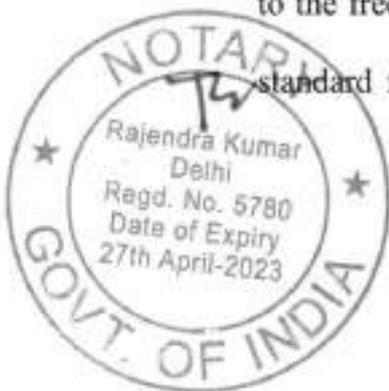
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dissemination of content on digital media. The Rules are intended to ensure accountability of such entities towards the audience they serve.

47. I submit that the Norms of Journalistic Conduct of the Press Council of India are an acceptable and well-established ethical standard for the print news media. Similarly, the Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995, is the standard for the television news media. These standards have also been recognized by the Courts, for example, in **Courts On Its Own Motion vs The Publisher**, while dealing with a suo-motu petition regarding media reporting on sub-judice matters, the Hon'ble High Court of Punjab and Haryana observed that:

“Press Council has issued Norms of Journalistic Conduct in 2010. It is noticed that the fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased and decent manner and language. The media today has assumed the foremost importance in society and governance. It is noticed that such is the influence of media that it can make or unmake any individual, institution or any thought. All pervasive and all powerful is the impact of media today on the society. This being the nature of power, the media cannot loose sight of its privileges, duties and obligations. **Media is mandated to follow**

  
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certain ethics in collecting and disseminating the information that is to ensure authenticity of news, use of restrained and socially acceptable language for ensuring objectivity and fairness in reporting and keeping in mind its cascading effect on the society and on the individuals and institutions.”

The Court further stated:

“As has been pointed out before me, it is not a case of lack of norms, but it is lack of compliance and lack of enforceability, due to absence of effective statutory powers and mechanism to enforce the norms. Lack of deterrent consequences is another reason for which the errant Journalists have on occasion been breaching the norms, which morally they are required to follow.”

The Court also observed that:

“Before concluding, I would wish to express that all the Publishers, Journalists and other media people ought to comply with the requirement, so as to avoid uncomfortable situation. Any violation of such norms may expose them to reliability of proceedings under the Contempt of Courts Act.”

  
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Similarly, in **Nilesh Navlakha vs. Union of India**, the Bombay High Court, while stating the guidelines to be followed by the press/media with respect to reporting of matters related to suicide, held that:

“350. These are not intended to be exhaustive but indicative, and **any report carried by the print media or a programme telecast by a TV channel, live or recorded, ought to be such so as to conform to the Programme Code, the norms of journalistic standards and the Code of Ethics and Broadcasting Regulations; in default thereof, apart from action that could be taken under the prevailing regulatory mechanism, the erring media house could make itself liable to face an action in contempt, i.e. criminal contempt within the meaning of section 2(c) of the CoC Act which, as and when initiated, would obviously have to be decided by the competent court on its own merits and in accordance with law.**”

(emphasis supplied)

  
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48. I submit that since digital news publishers publish content in textual as well as audio-visual format, the Code of Ethics under the Rules merely extends the existing standards and norms of traditional news media to apply for digital news publishers, without providing for any new restrictions or regulations. It is further submitted that such application of existing time-tested legal norms to be followed by digital media would not constitute an intrusion into the fundamental right to freedom of speech and expression of the digital news publishers.

49. I submit that the Norms for Journalistic Conduct of the Press Council of India, have a broad scope and pertain not only to the news and current affairs content which is published by the newspapers, but also other aspects such as editors' discretion, pricing of newspapers, professional rivalries, internal disputes within the media organization, etc. Similarly, a common Programme Code has been provided under the CTN Act for news and non-news content. Some provisions of the Programme Code do not deal with news and current affairs content, but can only be related to cable service providers or entertainment programmes. Since the Code of Ethics under the IT Rules, 2021 pertains specifically to the news and current affairs content on digital media, and does not regulate other aspects of the functioning of digital media publishers, it is submitted that only those mandatory provisions of the Norms of Journalistic Conduct which relate to the nature of news and current affairs content being published, are required to be mandatorily adhered to by the publishers in respect of the Code of Ethics for digital news publishers under the IT Rules, 2021. Similarly, the digital news publishers are required to observe the provisions of the Programme Code, which are related to news and current affairs content, as adherence to the Code of Ethics under the Rules. In this regard, it is stated and submitted that the Code of Ethics as applicable to the digital news publishers is strictly in accordance with the reasonable restrictions on the right to freedom of speech and expression under Article 19(2) of the Constitution. Furthermore, it is also submitted that the meaning of the various terms used in these norms has sufficiently evolved and narrowed down through the pronouncements of the Press Council of India under the Press Council Act.



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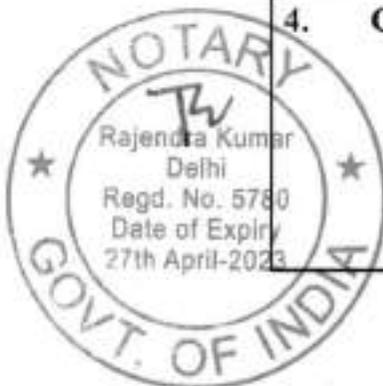
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Mandatory provision of the Norms of Journalistic	Relatable
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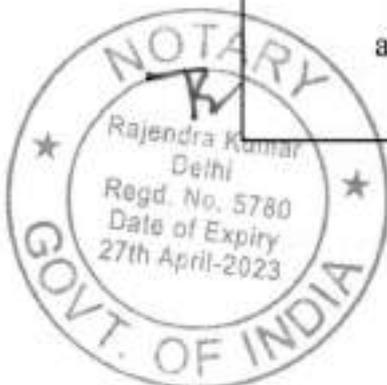
Conduct	Constitutional Ground
<p><b><u>Part A: Principles and Ethics</u></b></p> <p><b>1. Accuracy and Fairness</b></p> <p>i) The Press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material.</p> <p>v) Whenever any news is published on the basis of an FIR and is critical of the reputation of any person or body, the newspaper/journals must clearly state in the same news report that the report was only on the basis of the FIR and that veracity of the version of the FIR has got to be decided by the Court.</p> <p>xii) Freedom of speech does not give right to newspapers to write about an institution or individual untrue facts even in a lighter note.</p> <p>xiii) An error attributing historically incorrect remarks of grave nature to an individual(s) shall not be made.</p>	<p>Citizens right to correct information under 19(1)</p>
<p><b>4. Caste, Religion or Community References</b></p> <p>ii) Newspapers are advised against the use of word 'Harijan' which has been objected to by</p>	<p>Public order, decency, morality</p>

  
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<p>some, and shall use the word Schedule Caste as per Article 341. (Modified keeping in view of provision of Constitution of India, 1950)</p> <p>iii). An accused or a victim shall not be described by his caste or community when the same does not have anything to do with the offence or the crime and plays no part either in the identification of any accused or proceeding, if there be any.</p> <p>xvi) The word/expression "Dalit" shall not be used to provoke or demean a community.</p>	under 19(2)
<p><b>5. Caution Against Defamatory Writings</b></p> <p>ii) Truth is no defence for publishing derogatory, scurrilous and defamatory material against a private citizen where no public interest is involved.</p> <p>v) The Press shall not rely on objectionable past behaviour of a citizen to provide the background for adverse comments with reference to fresh action of that person. If public good requires such reference, the Press should make prepublication inquiries from the authorities concerned about the follow up action, if any, in regard to earlier adverse actions.</p>	Defamation under 19(2)

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vi) Where the impugned publication is manifestly injurious to the reputation of the complainant, the onus shall be on the respondent to show that it was true or to establish that it constituted fair comment made in good faith and for public good.

vii) Newspapers cannot claim privilege or licence to malign a person or body claiming special protection or immunity on the plea of having published the item as a satire under special columns such as '*gossip*', '*parody*' etc.

viii) Publication of defamatory news by one paper does not give licence to others to publish news/ information reproducing or repeating the same. The fact of publication of similar report by another publication does not bestow the status of accuracy on the charges.

xiv) **Locus Standi**: In cases involving personal allegations /criticism, only the concerned person enjoying the *locus standi* can move the plaint or claim right to reply. However, a representative organisation of persons attached to an organisation or a sect / group has the *locus standi* to move complaints against a publication directly criticising the conduct of a leader.

  
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<p><b>6. a) Caution in Criticising Judicial Acts</b></p> <p>i) Excepting where the court sits 'in-camera' or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in a fair, accurate and reasonable manner. But it shall not publish anything:-</p> <ul style="list-style-type: none"> <li>• which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; or</li> <li>• is in the nature of a running commentary or debate, or records the paper's own findings conjectures, reflection or comments on issues, sub-judice and which may amount to abrogation to the newspaper the functions of the court; or</li> <li>• regarding the personal character of the accused standing trial on a charge of committing a crime.</li> </ul> <p>ii) Newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when, after the accused is arrested and charged, the court becomes seized of the case: Nor should they reveal,</p>	<p>Contempt of Court under 19(2)</p>
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comment upon or evaluate a confession allegedly made by the accused.

iii) While newspapers may, in the public interest, make reasonable criticism of a judicial act or the judgement of a court for public good; they shall not cast scurrilous aspersions on, or impute improper motives, or personal bias to the judge. Nor shall they scandalise the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

iv) Newspaper shall, as a matter of caution, avoid unfair and unwarranted criticism which, by innuendo, attributes to a judge extraneous consideration for performing an act in due course of his/her judicial functions, even if such criticism does not strictly amount to criminal Contempt of Court.

**9. Corrections**

i) When any factual error or mistake is detected or confirmed, the newspaper should suo-motu publish the correction promptly with due prominence and with apology or expression of regrets in a case of serious lapse.

Citizens right to correct information under 19(1)

  
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<p>ii) The correction and apology or expression of regrets shall be published in the same edition of newspapers with due prominence.</p>	
<p><b>10. Covering Communal Disputes/Clashes</b></p> <p>i) News, views or comments relating to communal or religious disputes/clashes shall be published after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to communal harmony, amity and peace. Sensational, provocative and alarming headlines are to be avoided. Acts of communal violence or vandalism shall be reported in a manner as may not undermine the people's confidence in the law and order machinery of the State. Giving community-wise figures of the victims of communal riot, or writing about the incident in a style which is likely to inflame passions, aggravate the tension, or accentuate the strained relations between the communities/religious groups concerned, or which has a potential to exacerbate the trouble, shall be avoided.</p>	<p>Public order, incitement to offence under 19(2)</p>

  
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<p><b>16. Glorification/Encouragement of Social Evils to be Eschewed</b></p> <p>Newspapers shall not allow their columns to be misused for writings which have a tendency to encourage or glorify social evils like Sati Pratha or ostentatious celebrations</p>	<p>Decency, Morality, incitement to offence under 19(2)</p>
<p><b>19. Illegal Reproduction</b></p> <p>i) The Press shall not reproduce in any form offending portions or excerpts from a proscribed book.</p>	<p>Proscription of the book already on grounds covered under 19(2)</p>
<p><b>28. Obscenity and Vulgarity to be Eschewed</b></p> <p>i) Newspapers/journalists shall not publish anything which is obscene, vulgar or offensive to public good taste.</p> <p>ii) Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was a commercial commodity for sale.</p> <p>iii) Whether a picture is obscene or not, is to be judged in relation to three tests; namely</p>	<p>Morality, decency under 19(2)</p>

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<p>a. Is it vulgar and indecent?</p> <p>b. Is it a piece of mere pornography?</p> <p>c. Is its publication meant merely to make money by titillating the sex feelings of adolescents and among whom it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain. Other relevant considerations are whether the picture is relevant to the subject matter of the magazine. That is to say, whether its publication serves any preponderating social or public purpose, in relation to art, painting, medicine, research or reform of sex.</p>	
<p><b>30. Parameters of Right of Press to Comment on Profession</b></p> <p>No newspaper(s)/columnist(s) shall abuse any profession, under the garb of freedom of speech/expression which is guaranteed under the Indian Constitution, since freedom of speech is not absolute.</p>	<p>Morality, decency, public order under 19(2)</p>

  
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<p><b>31. Parameters of the Right of the Press to Comment on the Acts and Conduct of Public Officials</b></p> <p>iv) The Official Secrets Act, 1923 or any other similar enactment or provision having the force of law equally bind the press or media though there is no law empowering the state or its officials to prohibit, or to impose a prior restraint upon the Press/Media.</p>	<p>Official Secrets Act already based on grounds such as sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, etc.</p>
<p><b>32. Paramount National Interest</b></p> <p>i) Newspapers shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the State and society, or the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the Constitution of India.</p>	<p>Sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, etc. under 19(2)</p>

  
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<p>ii) Publication of wrong/incorrect map is a very serious offence. It adversely affects the territorial integrity of the country and warrants prompt and prominent retraction with regrets.</p> <p>iii) Though the sources normally used are not to be disclosed, however, in case of serious allegations where matter is related to national interest and security it is incumbent/imperative/mandatory on part of the press to establish the authenticity of information given by the source.</p>	
<p><b>38. Recording Interviews and Phone Conversation</b></p> <p>ii) The Press shall, prior to publication, delete offensive epithets used during such conversation.</p>	<p>Decency, morality under 19(2)</p>
<p><b>39. Reporting on Natural Calamities</b></p> <p>(i) Facts and data relating to spread of epidemics or natural calamities shall be checked up thoroughly from authentic sources and then published with due restraint in a manner bereft of sensationalism, exaggeration, surmises or unverified facts.</p>	<p>Public order under 19(2)</p>
<p><b>42. Right to Privacy</b></p>	<p>Decency, morality</p>

  
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i) The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the Media, among others.

**Explanation:** Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest.

ii) **Caution against Identification:** While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars directly or indirectly\* leading to their identity shall not be published.

iii) Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

under 19(2)

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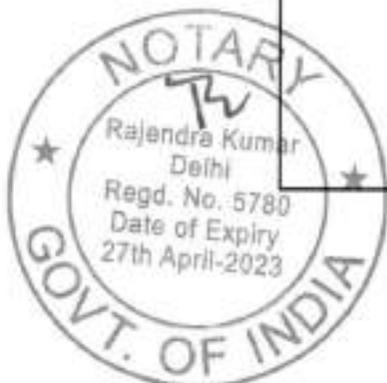
<p>vii) Publishing person's address in a newspaper which has no direct relevance to the news report, is a violation of his right to privacy.</p> <p>viii) Publishing photograph of police constable resting in barrack after duty hours, to portray his shirking from duty not only constitute invasion of his privacy but also unethical.</p>	
<p><b><u>Part B : Guidelines on Specific Issues</u></b></p> <p><b>e) Election Reporting-1996</b></p> <p>ii) Guidelines on 'Pre-poll' and 'Exit-polls' Survey-1996</p> <p>1. In the event of staggered poll dates, the media is seen to carry exit-poll surveys of the polls already held. This is likely to influence the voters where the polling is yet to commence. With a view to ensure that the electoral process is kept pure and the voters' minds are not influenced by any external factors, it is necessary that the media does not publish the exit poll surveys till the last poll is held.</p> <p>2. The Press Council, therefore, requests the Press to abide by the following guideline in respect of the exit polls:</p>	<p>Public order under 19(2)</p>

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<p><b>Guideline:</b></p> <p>No newspaper shall publish exit-poll surveys, however, genuine they may be, till the last of the polls is over.</p>	
<p><b>k) Guidelines for Protection of Child Rights:</b></p> <ul style="list-style-type: none"> <li>• Always provide an accurate context for the child's story or image.</li> <li>• Always change the name and obscure the visual identity of any child who is identified as:             <ol style="list-style-type: none"> <li>i. A victim of sexual abuse or exploitation,</li> <li>ii. A perpetrator of physical or sexual abuse,</li> <li>iii. HIV positive, or living with AIDS, unless the child, a parent or a guardian gives fully informed consent,</li> <li>iv. Charged or convicted of a crime.</li> </ol> <p>In certain circumstances of risk or potential risk of harm or retribution, change the name and obscure the visual identity of any child who is identified as:</p> <ol style="list-style-type: none"> <li>i. A current or former child combatant,</li> </ol> </li> </ul>	<p>Decency, morality under 19(2)</p>

  
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- ii. An asylum seeker, a refugee or an internal displaced person,

**o) Reporting on Information regarding Mental Health Patients**

The media shall not publish photograph or any other information in respect of person undergoing treatment at mental health establishment without the consent of the person with mental illness.

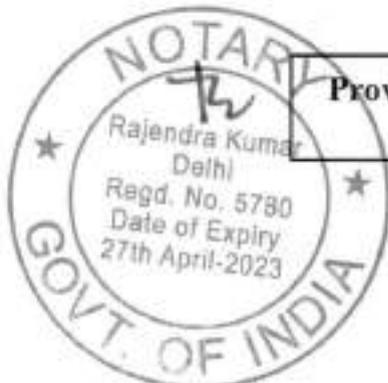
**p) Reporting on Suicide:** Newspapers and news agencies while reporting on suicide cases shall not:

1. Publish stories about suicide prominently and unduly repeat such stories;
2. use language which sensationalize or normalizes suicide, or presents it as a constructive solution to problems;
3. explicitly describe the method used;
4. provide details about the site/location;
5. use sensational headlines;
6. use photographs, video footage or social media links.

  
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Provisions of Programme Code as applicable to news

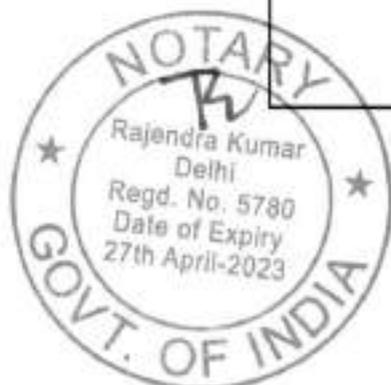
Relatable



and current affairs content	Constitutional Ground
<p><b>Rule- 6. Programme Code.</b> – (1) No programme should be carried in the cable service which:-</p> <p>(b) Contains criticism of friendly countries;</p>	<p>Friendly relations with foreign States under 19(2)</p>
<p>(c) Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;</p>	<p>public order, decency, morality under 19(2)</p>
<p>(d) Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;</p>	<p>Decency, morality under 19(2)</p>
<p>(e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes;</p>	<p>Public order, incitement to offence under 19(2)</p>
<p>(f) Contains anything amounting to contempt of court;</p>	<p>Contempt of Court under 19(2)</p>

*(Handwritten signature)*

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<p>(g) Contains aspersions against the integrity of the President and Judiciary;</p> <p>(h) Contains anything affecting the integrity of the Nation</p>	<p>Contempt of Court, sovereignty and integrity of India, under 19(2)</p>
<p>(i) Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;</p>	<p>Defamation under 19(2)</p>
<p>(j) Encourages superstition or blind belief</p>	<p>public order, decency, morality under 19(2)</p>
<p>(k) Denigrates women through the depiction in any manner of the figure of a women, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;</p> <p>(l) Denigrates children;</p>	<p>decency, morality under 19(2)</p>



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50. I submit that the Programme Code under the Cable Television Networks (Regulation) Act, 1994 pertains to audio-visual content. While the Courts, in recent times, have pointed out in several cases that the impact of sensationalism



of television news can be harmful for a democratic society, the risk is further accentuated on the digital media due to the factors such as permanence on the internet, and the potential of the content to be shared at a rapid pace. A higher impact of audio-visual content on the minds of the audience was also recognized by the Hon'ble Supreme Court in **K. A. Abbas vs The Union of India** whereby the Court, while deciding on the subject of pre-censorship in films, held that owing to the effects of audio-visual content, its treatment must be different from other forms of free speech. In this regard, the Court stated that:

**“censorship of films including prior restraint is justified under the Constitution. It has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression.”**

The Court, in the above case, further held that:

**“The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or/ imitate what they have seen. Therefore, classification of films into two categories of 'U' films and 'A' films is a reasonable classification. It is also for this reason that motion pictures must be regarded**

  
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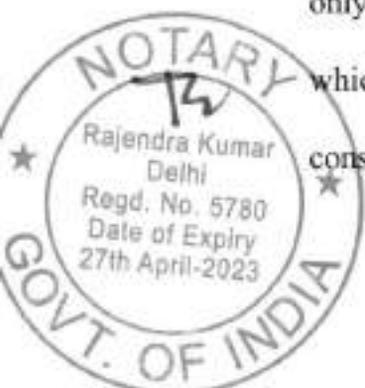


**differently from other forms of speech and expression.** A person reading a book or other writing or bearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore the treatment of the latter on a different footing is also a valid classification.”

(emphasis supplied)

51. I submit that the impact of news content on the minds of the viewer is even higher than that of fictional content as in the case of films. The news content deals with presentation of real world instances which can be more intimately related to by the audience. The persuasive effect of a content, when presented in the form of news, is several fold higher than when it is in the form of a fictional film. Therefore, even greater care may be required in case of handling the sensitive news content. The consequences of fake and misleading audio-visual news on digital media has in the recent past led to deaths of innocent people on false pretexts such as in the case of rumours of child lifters, loss of lives of innocent migrant workers during the pandemic induced lockdown, risk of social strife and communal tensions in the society due to sensationalist reportage of religious congregations in the context of the pandemic, etc. Therefore, it is submitted that the standards for testing audio-visual news content on the touchstone of right to freedom of speech and expression may be different from those for other forms of free speech. The rules only empower the audience to bring to the notice of the publishers such content which may be violative of the Code of Ethics. Even in such situations, any consequent action is possible only under stringent grounds and as per established

  
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procedure. Hence, it is respectfully submitted that the Programme Code under Cable TV Networks Act is specific enough to pass muster under the test of reasonableness.

52. I submit that the **Presence of Experts in the Grievance Redressal Mechanism**: That at both second and third tiers of the grievance redressal mechanism, the rules provide for involvement of experts from the field of media. The self-regulating body is headed by a retired judge of the Supreme Court or the High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights, etc, and consists of six other experts from such fields. The Inter-Departmental Committee at the third tier involves domain experts along with the representatives from Ministries/Departments and other organizations. The significance of experts was highlighted by the Hon'ble Supreme Court in **K. A. Abbas vs The Union Of India** in the context of guidelines for film certification. The Supreme Court held:

“It is clear that expressions like 'seduction', 'immoral traffic in women', soliciting, prostitution or, procurement', 'indelicate sexual situation' and scenes suggestive of immorality', 'traffic and use of drugs', 'class hatred', 'blackmail associated with immorality' are **within the understanding of the average men and more so of persons who are likely to be the panel for purposes of censorship. Any more definiteness is not only not expected but is not possible.**”

(emphasis supplied)

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53. I submit that the terms used in the mandatory norms provided under the Norms of Journalistic Conduct, and the applicable provisions of the Programme Code are definite enough to be understood and appropriately interpreted both by the self-regulating body and the Inter-Departmental Committee having membership of the experts within their composition, and do not impinge upon the right to freedom of speech and expression of the digital news publishers.

54. I submit that the dissemination of news and current affairs over the internet is essentially public communication. In this regard, it is unique and different from private communication in its impact on the wider society. The unique features of the internet, such as enabling rapid sharing of information within the society and permanence of the content once published, further increase the risk posed by problematic content over the internet to the maintenance of public order. The difference between mass dissemination and private communication has already been recognized by the Hon'ble Supreme Court in the *Shreya Singhal* judgement:

"We have to ask ourselves the question: does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed? Going by this test, it is clear that Section 66A is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66A. It will be immediately noticed that

  
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the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this Section is concerned. (Save and except where under sub-clause (c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. **The Section makes no distinction between mass dissemination and dissemination to one person. Further, the Section does not require that such message should have a clear tendency to disrupt public order. Such message need not have any potential which could disturb the community at large.**"

(emphasis supplied)

55. I submit that there have been past incidents of disinformation on digital media leading to disturbance of public order. In this regard, attention is again drawn to the observations of the Hon'ble Supreme Court in **Alakh Alok Srivastava vs. Union of India** highlighting the panic caused among migrant workers during the COVID-19 pandemic as a result of factually incorrect reporting. Similar situations have previously also occurred during reporting of communal clashes, terrorist attacks, etc. In this regard, Article 19(2) of the Constitution provides for reasonable restrictions on free speech in the interest of

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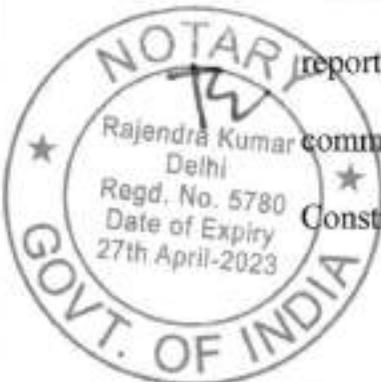
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the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. With respect to the linkage between fake news and mob violence, the Hon'ble Supreme Court, in **Tehseen S Poonawala vs. Union of India**, held that:

24. **Lynching and mob violence are creeping threats that may gradually take the shape of a Typhon-like monster as evidenced in the wake of the rising wave of incidents of recurring patterns by frenzied mobs across the country instigated by intolerance and misinformed by circulation of fake news and false stories.** There has been an unfortunate litany of spiralling mob violence and agonized horror presenting a grim and gruesome picture that compels us to reflect whether the populace of a great Republic like ours has lost the values of tolerance to sustain a diverse culture. Besides, bystander apathy, numbness of the mute spectators of the scene of the crime, inertia of the law enforcing machinery to prevent such crimes and nip them in the bud and grandstanding of the incident by the perpetrators of the crimes including in the social media aggravates the entire problem. One must constantly remind oneself that an attitude of morbid intolerance is absolutely intolerable and agonizingly painful.

(emphasis supplied)

  
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56. I submit that in line with the reasonable restrictions and the principle of balancing of rights, several types of speech have been restricted under various laws of the country. Some examples in this regard are as follows:

- i. The Indian Penal Code, 1860
  - a. Section 124A: Sedition
  - b. Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony
  - c. Section 295A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs
  - d. Section 505: Statements conducing to public mischief
  - e. Section 292: Sale, etc., of obscene books, etc.
  - f. Section 293: Sale, etc., of obscene objects to young person
  - g. Section 228A: Disclosure of identity of the victim of certain offences etc
  - h. Section 499: Defamation

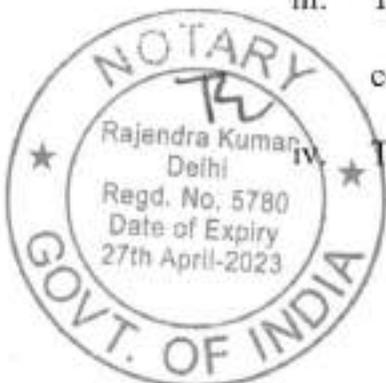
- ii. The Indecent Representation of Women (Prohibition) Act, 1986:

- a. Section 3: Prohibition of advertisements containing indecent representation of women
- b. Section 4: Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women

- iii. The Copyright Act, 1957: Section 51(1)(a)(ii) related to infringement of copyright

The Contempt of Courts Act, 1971

  
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- v. The Representation of the People Act, 1951: Section 126A related to restriction on publication and dissemination of results of exit polls, etc.
- vi. Prevention of Insults to National Honour Act, 1971: Section 2 related to insults to Indian National Flag and Constitution of India
- vii. The Official Secrets Act, 1923: Section 5 related to Wrongful communication, etc. of information
- viii. The Criminal Law Amendment Act, 1961: Section 2 dealing with speech questioning the territorial integrity or frontiers of India in a manner prejudicial to the interests of safety and security of India
- ix. The Emblems and Names (Prevention of Improper Use) Act, 1950: Section 3 pertaining to prohibition of improper use of certain emblems and names
- x. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Section 3 related to punishments for offences of atrocities
- xi. The Protection of Civil Rights Act, 1955: Section 7(1)(c) related to punishment for other offences arising out of "untouchability"
- xii. Protection of Children from Sexual Offences Act, 2012:
  - a. Section 13: Use of child for pornographic purposes
  - b. Section 14: Punishment for using child for pornographic purposes
  - c. Section 15: Punishment for storage of pornographic material involving child

57. I submit that the aforementioned laws of the land apply to all individuals and legal entities, including the publishers on digital media. In this regard, the Code of Ethics does not apply any new restrictions but only reiterates that the content which has already been prohibited under any law for the time being in force not to be published on digital media. In this regard, it is submitted that

  
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many of the above laws have been upheld by various Courts of law, including the Hon'ble Supreme Court, and a mere repetition of the same by the Code of Ethics is not an infringement into the right to freedom of speech and expression of the publishers on digital media.

58. I submit that the provisions similar to the above mentioned laws also exist in the Norms of Journalistic Conduct, and the Programme Code which constitute the Code of Ethics under the IT Rules. These provisions are intended to safeguard the rights of the persons who are reported about in news; rights of the audience which reads, views or shares the content; while simultaneously being sensitive to the wider society, with a special emphasis on the concerns related to the vulnerable sections. Some illustrative examples from the Norms of Journalistic Conduct, 2019 in this regard are as follows:

“

- An accused or a victim shall not be described by his caste or community when the same does not have anything to do with the offence or the crime and plays no part either in the identification of any accused or proceeding, if there be any.
- The word/expression “Dalit” shall not be used to provoke or demean a community.
- Truth is no defence for publishing derogatory, scurrilous and defamatory material against a private citizen where no public interest is involved.

  
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- The Press shall not rely on objectionable past behaviour of a citizen to provide the background for adverse comments with reference to fresh action of that person.
- Newspapers cannot claim privilege or licence to malign a person or body claiming special protection or immunity on the plea of having published the item as a satire under special columns such as 'gossip', 'parody' etc.
- Excepting where the court sits 'in-camera' or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in a fair, accurate and reasonable manner. But it shall not publish anything:-
  - which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; or
  - is in the nature of a running commentary or debate, or records the paper's own findings conjectures, reflection or comments on issues, sub-judice and which may amount to abrogation to the newspaper the functions of the court; or
  - regarding the personal character of the accused standing trial on a charge of committing a crime.

  
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- Corrections:
  - When any factual error or mistake is detected or confirmed, the newspaper should suo-motu publish the correction promptly with due prominence and with apology or expression of regrets in a case of serious lapse.
  - The correction and apology or expression of regrets shall be published in the same edition of newspapers with due prominence.”

59. I submit that the illustrative examples from the Programme Code under Cable Television Networks (Regulation) Act are as follows:

“Rule- 6. Programme Code. – (1) No programme should be carried in the cable service which:- provides that no programme should be carried which:-

- contains criticism of friendly countries;
- contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;
- contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;

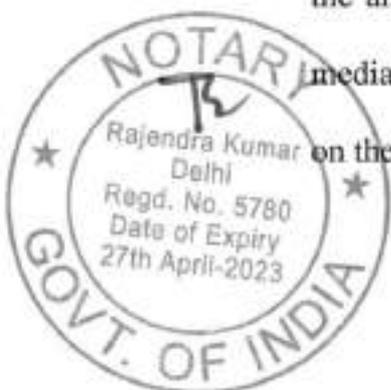
  
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- is likely to encourage or incite violence or contains anything against maintenance of law and order;
- contains anything amounting to contempt of court;
- contains aspersions against the integrity of the President and Judiciary;
- contains anything affecting the integrity of the Nation;
- criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;
- encourages superstition or blind belief;

60. I submit that the IT Rules, 2021 establish a civil mechanism of grievance redressal related to the Code of Ethics. Such a mechanism is bereft of any police powers. The entire grievance redressal procedure is civil in nature, and any decision regarding violation of the Code of Ethics does not lead to any criminal punishment. The decision on whether a particular content is violative of the Code of Ethics is a deliberative one involving the publisher, their representative self-regulating bodies, and the Government. The publisher has the opportunity to express and defend itself at all the three levels of the grievance redressal mechanism. In this regard, it is respectfully submitted that the Rules establish a soft-touch co-regulatory mechanism for redressal of public grievances related to the alleged violation of the Code of Ethics, protect the publishers on digital media from criminal proceedings, and therefore do not lead to any chilling effect on the freedom of speech of the publishers.

  
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61. I submit that the petitions have argued that the IT Rules would lead to a situation of over-regulation due to the onerous obligation of responding to many complaints thereby leading to diversion of resources and an adverse impact on the production of content. It has also been argued by petitioners that the requirement of the publisher defending itself before multiple levels would lead to self-censoring and a chilling effect on free speech. In this regard, it is submitted that no such evidence has yet been placed before the Government showing that the Rules have led to a large number of grievances being filed and subsequently appealed by the audience. Multiple grievances related to a particular content can be clubbed together and redressed through a single decision. In this regard, an analysis was also done with regard to the content produced by some news publishers over a 30-day period before and after the notification of the rules, and another recent 30-day period from 9th June 2021 to 8th July 2021, shows that there has not been any significant change in the production of content by some of its members due to the alleged grievances. The details in this regard are placed hereunder:

Content Pages Created on the Website of News Publishers

Sl. No.	TV Channel (website)	27 Jan, 2021- 25 Feb, 2021	26 Feb, 2021- 27 Mar, 2021	9 June 2021 - 8 July 2021
1.	Times Now <a href="https://www.timesnownews.com/">https://www.timesnownews.com/</a>	10.7 K	10.7 K	12.2 K



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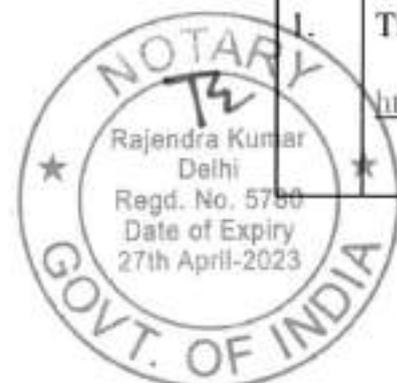
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Min. of Information & Broadcasting

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Govt. of India, New Delhi.



2.	AajTak <a href="https://www.aajtak.in/">https://www.aajtak.in/</a>	10.5 K	10.6 K	10.5 K
3.	NDTV <a href="https://www.ndtv.com/">https://www.ndtv.com/</a>	4.73 K	4.79 K	5.08 K
4.	News 18 <a href="https://www.news18.com">https://www.news18.com</a>	17.5 K	13.4 K	16.6 K
5.	Zee News <a href="https://zeenews.india.com/">https://zeenews.india.com/</a>	7.29 K	7.14 K	17.6 K
6.	India Today <a href="https://www.indiatoday.in/">https://www.indiatoday.in/</a>	8.76 K	12.4 K	11.7 K
7.	Mathrubhumi <a href="https://www.mathrubhumi.com/">https://www.mathrubhumi.com/</a>	11.1 K	11.1 K	11.4 K

62. I submit that an analysis of the number of tweets posted by the above mentioned entities on social media platform Twitter for the purpose of dissemination of news content, during the same period, is placed hereunder:

Tweets (Approx. number) Posted by Twitter Accounts of News Publishers

Sl. No.	TV Channel (Twitter account)	27 Jan, 2021- 25 Feb, 2021	26 Feb, 2021- 27 Mar, 2021	9 June 2021 - 8 July 2021
	Times Now	10.6 K	13.1 K	11.1 K

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Govt. of India, New Delhi



	<a href="https://twitter.com/TimesNow">https://twitter.com/TimesNow</a>			
2.	AajTak <a href="https://twitter.com/aajtak">https://twitter.com/aajtak</a>	19.7 K	22.1 K	20.1 K
3.	NDTV <a href="https://twitter.com/ndtv">https://twitter.com/ndtv</a>	26.3 K	25.8 K	29.6 K
4.	News 18 <a href="https://twitter.com/CNNnews18">https://twitter.com/CNNnews18</a>	6.87 K	7.03 K	6.2 K
5.	Zee News <a href="https://twitter.com/ZeeNewsEnglish">https://twitter.com/ZeeNewsEnglish</a>	3.56 K	3.52 K	3.97 K
6.	India Today <a href="https://twitter.com/IndiaToday">https://twitter.com/IndiaToday</a>	8.8 K	9.21 K	9.61 K
7.	Mathrubhumi <a href="https://twitter.com/mathrubhumi">https://twitter.com/mathrubhumi</a>	4.8 K	5.15 K	4.02 K

63. I submit that the above analysis indicates that there has been no discernible impact on the production of content by these entities even after the notification of the Rules. In fact, in the case of many entities, the production of content has increased. In this regard, it is submitted that the obligations under the Rules are reasonable and there exists no factual evidence to indicate that the obligations require any significant diversion of resources by the publishers that may have impacted production of news and current affairs content by the news publishers.



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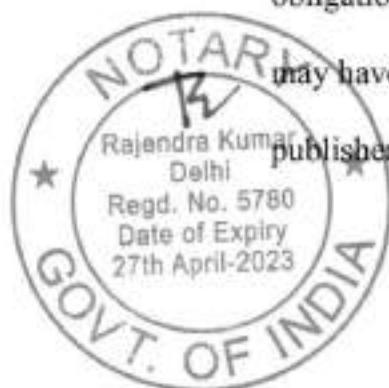
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Min. of Information & Broadcasting

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Govt. of India, New Delhi



64. I submit that 1,800 digital media publishers, over 97% of them being publishers of news and current affairs content, have appointed a Grievance Redressal Officer (Level-I), and furnished their information to the Ministry. None of these publishers, who have been able to establish communication with the Ministry, have expressed any difficulty arising out of the number of grievances which are being received/redressed by them. Additionally, the publishers have the liberty to appoint any of their existing employees as the Grievance Redressal Officer for the purpose of the Rules. Moreover, in relation to Level II of the grievance redressal mechanism, many publishers have also expressed their willingness to constitute their self-regulatory bodies. In this regard, Hon'ble Supreme Court, in **Anuradha Bhasin vs Union of India (2020)**, has held that:

“...to say that the aforesaid restrictions were unconstitutional because it has a chilling effect on the freedom of press generally is to say virtually nothing at all or is saying something that is purely speculative, unless evidence is brought before the Court to enable it to give a clear finding, which has not been placed on record in the present case. [refer to *Clapper v Amnesty Int'l, USA*, 568 U.S. 113 (2013)]

151. In this context, one possible test of chilling effect is comparative harm. In this framework, the Court is required to see whether the impugned restrictions, due to their broadbased nature, have had a restrictive

  
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**effect on similarly placed individuals** during the period. It is the contention of the Petitioner that she was not able to publish her newspaper from 06.08.2019 to 11.10.2019. However, no evidence was put forth to establish that such other individuals were also restricted in publishing newspapers in the area. **Without such evidence having been placed on record, it would be impossible to distinguish a legitimate claim of chilling effect from a mere emotive argument for a self-serving purpose.”**

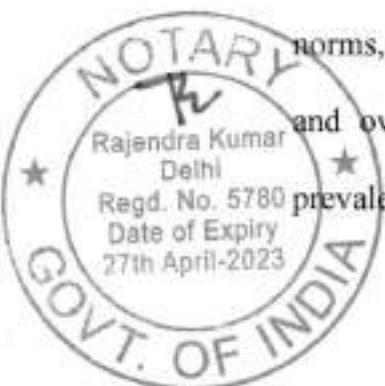
(emphasis supplied)

65. I submit that based on the statistics related to content production and dissemination by the news publishers, and lack of any factual evidence related to overwhelming of publishes with grievances, it is submitted that the argument of chilling effect on freedom of the press or an adverse impact on the right to conduct business due to allegedly onerous obligations under the Rules is largely an emotive appeal, and is not legally tenable.



66. I submit that Norms of Journalistic Conduct as well as the Programme Code have been traditionally observed by the print and television media respectively since over a quarter of a century. With the observance of these norms, today India has a rich plural media with thousands of daily newspapers and over 400 television news channels. Furthermore, studies suggest that prevalence of fake news on digital media is far greater than in the traditional

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print and television media. In this regard, it is submitted that application of these norms to digital news publishers does not intrude into the freedom of speech and expression of the digital news publishers, but only provides for a mechanism of accountability.

67. I submit that the **Need for grievance Redressal Mechanism:** That the digital news publishers conduct the profession of dissemination of news and current affairs content. In this regard, the content produced by them, though protected by the right to freedom of speech under Article 19, can not be deemed to be beyond any realm of challenge or question. The commercial dimension of the digital media platforms, in the form of subscription or advertising revenues or in the form of processing of data of the audience, and even in the form of donations, is, among other factors, related to the credibility, truthfulness, presentation and timeliness of the content. The significance of a feedback mechanism for corrective action by the news publisher is even more critical due to the sensitive nature and potentially large impact of such content on the society. In this regard, the Rules establish such a mechanism by empowering the audience, whether a subscriber or a user, to be able to report specific aspects which may be violative of the Code of Ethics in relation to the content published by the publishers. The significance of a complaint redressal mechanism has been recognized by the Hon'ble Supreme Court in **Common Cause vs. Union of India**, whereby the Court held that:

“10. Having given our thoughtful consideration, to the submissions advanced at the hands of the learned counsel for the rival parties, we are satisfied in concluding that **there is indeed an**



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Govt. of India, New Delhi



**existing mechanism, as has been referred to by the learned counsel representing the Union of India.** However, the above mechanism, is not known to the general public. We are therefore of the view, that the same needs adequate publication. **We, therefore, hereby direct the Union of India, to publish the mechanism, which has been brought to our notice, and is partly extracted hereinabove. This would enable complainants, to air their grievances, before the appropriate forum and to obtain a determination thereof, at the hands of the concerned Competent Authority, in the Ministry of Information and Broadcasting.**

Furthermore, the Court also recommended that a formal mechanism for redressal of complaints may be established. In this regard, the Court observed:

11. Even though we have concluded in the manner recorded hereinabove, **we are of the view, that the Central Government, having framed Rules in the nature of Cable Television Networks Rules, 1994, would be well advised, to frame similar Rules, in exercise of the power vested with it under Section 22 of the Cable Television Networks (Regulation) Act, 1995, to formalize the complaint redressal mechanism, including the period of limitation**

  
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**within which a complaint can be filed, and the concerned statutory authority which shall adjudicate upon the same, including the appellate and other redressal mechanisms, leading to a final conclusive determination....”**

(emphasis supplied)

68. I submit that in the spirit of the recommendation from the Hon'ble Supreme Court, and while considering the unique nature of digital media, the IT Rules establish a formal mechanism for complaint redressal related to content published on digital media.

69. I submit that the provisions related to the grievance redressal mechanism are in consonance with the spirit of the **public's right to know** under the right to free speech and expression. Firstly, the Rules do not provide for any pre-censorship for content. Therefore, news content generally having a short shelf-life, is not impacted by the Rules, which establish a three-tier grievance redressal mechanism for redressal of grievances related to the violation of Code of Ethics. On the other hand, the mechanism of civil resolution of grievances enhances the public's right to know. The consumers of professionally produced content would be able to learn more about the content producers' perspective regarding the content published by them. Furthermore, the provisions do not impact the production of news and current affairs content. The provisions under the Code of Ethics for news and current affairs content are the same as existing practices which are in vogue for the print and television news media. The Rules do not provide any additional restrictions apart from what is already prohibited by



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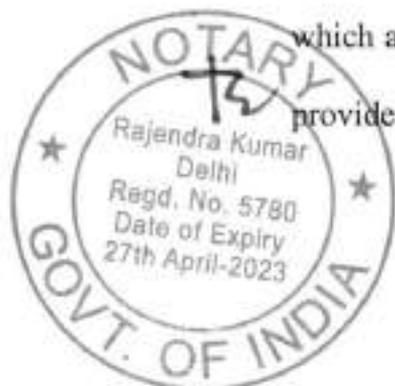
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Govt. of India, New Delhi



existing statutes. In fact, these ethical norms have not only ensured widespread growth of traditional news media in India, but also ensured that the traditional media still remains the most credible and trustworthy in the eyes of the audience. Therefore, it is submitted that application of similar norms to digital news publishers neither impacts the freedom of speech and expression of the publishers, nor the right to know of the audience.

70. I submit that **Monitoring:** That the IT Rules, 2021 contain no provision for monitoring of content of the digital media publishers by the Government or any other body. The institutional framework established through Part III deals with publicly published content and therefore, the question of surveillance does not arise. In this regard, there is no control of the Government of the day over the content published by the news media.

71. I submit that **Pre-registration:** That there is no requirement for prior registration of digital media publishers with the Ministry. Rule 18 instead provides for furnishing of certain information by the digital media publishers to the Ministry. This position was also clarified by the Ministry through the Public Notice dated 26.05.2021 (ANNEXURE-R9), through which information was sought from the digital media publishers. In this regard, it is submitted that there is no control of the Government with respect to an individual or an entity starting a digital news platform.



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Govt. of India, New Delhi

72. I submit that the **Furnishing of basic Information about the entity:** That the general public often writes to the Government regarding grievances related to content on digital media. Rule 18(1) of the IT Rules provides that the digital



media publishers shall inform the Government about the details of its entity by furnishing information along with such documents as may be specified, for the purpose of enabling communication and coordination. In accordance with the said rule, basic information has been sought from the publishers vide Public Notice dated 26.05.2021. The information sought is very basic to the entity, and in many cases already published by the entity in the public domain. For matters related to violation of the Code of Ethics, the rules provide a mechanism for redressal of such grievances for which coordination is required with the publishers, whereby the Government may transfer such grievances received to the concerned publisher for their suitable redressal. In this regard, the Government has no role in the manner of redressal of such grievances once they have been transferred to the publisher. Therefore, it is submitted that mere furnishing of information to the Government for explicitly laid out purposes, does not imply interference or control of the Government over the functioning of the news media entity.

73. I submit that the **Reporting**: That the Rules do not provide any mechanism for the publishers to report to the Government in any respect. In this regard, Rule 18(3) and Rule 19(1) provide for publishing of a monthly compliance report by the publishers, and are reproduced hereunder:

  
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“18(3). The publisher of news and current affairs content and the publisher of online curated content shall **publish periodic compliance report** every month mentioning the details of grievances received and action taken thereon.



19. **Disclosure of Information.**— (1) A publisher and a self-regulating body, shall make true and full disclosure of all grievances received by it, the manner in which the grievances are disposed of, the action taken on the grievance, the reply sent to the complainant, the orders or directions received by it under these rules and action taken on such orders or directions.”

In this regard, the disclosure, by the digital media publishers, of the grievances and action taken thereto is to be done in public domain on the website/interface of the publisher. It is submitted that such disclosure is in the interest of transparency and does not entail any control of the Government.

74. I submit that the **Level I** of the grievance redressal mechanism requires a digital publisher to redress the grievances relating to the Code of Ethics within a certain time frame. Such a mechanism is in line with the judgement of the Hon'ble Supreme Court in **Common Cause vs Union of India**, and is appropriate from the viewpoint of providing a forum for citizens who may flag concerns related to the content published, and hence ensure speedy clarification, updation or correction by the publisher itself. Rules explicitly mention that only grievances on content relating to Code of Ethics (and not of any other nature) need be addressed. The publisher can at its level decide whether or not such grievance is in fact a violation of Code of Ethics and convey the same to the complainant. The Grievance Redressal Officer appointed by the publisher is completely free from any Government interference. Furthermore, there is no requirement for the publisher to report any or all grievances to the Government.

  
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In this regard, it is submitted that this level is completely outside any interference or control of the Government.

75. I submit that at **Level II of the grievance redressal mechanism**, the self-regulatory bodies would be voluntarily formed by the publishers or their associations. The composition of the self-regulating body would be decided entirely by the publishers and the Government has no role to play in this regard. The requirement of registration of such bodies with the Government is only to ensure that the composition is in accordance with the Rules and the body undertakes to perform the functions laid down under the Rules. Such a provision is also required for practical purposes of coordination and communication between the publishers, the self-regulatory bodies, and the Government in matters related to the public grievances. In this regard, it is submitted that there is no scope for the Government to either interfere or obstruct the formation of the self-regulating body including its composition.

76. I submit that the manner of **functioning of the self-regulatory bodies** would also be determined by the publishers. In this regard, the Government is mandated to issue a Charter, including a Code of Practices in accordance with rule 13 of the IT Rules. In this regard, the Charter would broadly mention the functions and role of the self-regulatory bodies, and provide a set of suggestive practices that may be adopted/adapted by the self-regulatory bodies with regard to their functioning, processing of complaints, and support to the publishers. The publishers, or their association, are expected to lay down a Standard Operating Procedure (SOP) with regard to the overall functioning, management and administration of the self-regulating body. In this regard, it is submitted that

  
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there is no interference or control of the Government in the functioning of the self-regulating bodies.

77. I submit that the Oversight mechanism established under the Rules provides for constitution of an Inter-Departmental Committee (IDC), which is a multiple member committee, chaired by an officer of the Ministry of Information & Broadcasting not below the rank of Joint Secretary, and comprising of representatives from the Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of Defence, Ministry of External Affairs, Ministry of Electronics and Information Technology, Ministry of Home Affairs and such other Ministries and Organisations, including domain experts. The Committee would hear the appeals arising out of the grievances in respect of the decisions taken at the Level I or II, including the cases where no such decision is taken within the time specified in the grievance redressal mechanism. In this regard, it is submitted that a multi-member committee, having non-Governmental domain experts as well, acts as procedural safeguard in respect of making recommendations to the Ministry. The IDC under Part III of the IT Rules not only consists of representatives from the Government, but also of independent experts. In this regard, it is submitted that the presence of independent domain experts would act as an additional procedural safeguard with respect to recommendations being made by the IDC.



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Govt. of India, New Delhi

78. I submit that the Rules provide for an opportunity for the publisher to be heard before the Committee. In this regard, Rule 14(4) provides that:

“14(4). The Ministry shall make all reasonable efforts to identify the entity...and where it is able to identify such entity, it shall issue a **duly signed**



notice to such entity to appear and submit their reply and clarifications, if any, before the Committee.”

Furthermore, the rules provide for furnishing of information by the publisher to the Ministry. Rule 18(1) states

“18. Furnishing of information.— (1) A publisher of news and current affairs content and a publisher of online curated content operating in the territory of India, shall inform the Ministry about the details of its entity by furnishing information along with such documents as may be specified, for the purpose of enabling communication and coordination.”

Reading the above rules together, it is submitted that any publisher who has furnished information could be easily contacted, and would surely have an opportunity to be heard before the Committee. Even in other cases, the rules require the Ministry to make best efforts to identify and afford such an opportunity to the publisher before the Committee examines the grievance and makes any recommendations.



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Govt. of India, New Delhi

79. I submit that the **Procedure for issue of direction:** Rule 14(6) provides for issue of appropriate orders to issued by the Ministry on the basis of the recommendations by the Committee:

“14(6). The Ministry may, after taking into consideration the recommendations of the



Committee, issue appropriate orders and directions for compliance by the publisher.

**Provided that no such order shall be issued without the approval of the Secretary, Ministry of Information and Broadcasting, Government of India (hereinafter referred to as the —Secretary, Ministry of Information and Broadcasting)."**

In this regard, it is submitted that after the consideration by the multi-member IDC, any direction can only be issued with the approval of the Secretary, Ministry of Information and Broadcasting. Therefore, it is submitted that the oversight mechanism has a dual safeguard- the IDC, as well as the senior most officer of the Ministry i.e. Secretary, Ministry of Information & Broadcasting to prevent any arbitrary decision-making.

80. I submit that with regard to blocking of content, the Inter-Departmental Committee can recommend blocking of content on the grounds as mentioned in Section 69A of the IT Act, which is reproduced hereunder:

"69A. Power to issue directions for blocking for public access of any information through any computer resource.—(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the **interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for**

  
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Govt. of India, New Delhi



preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

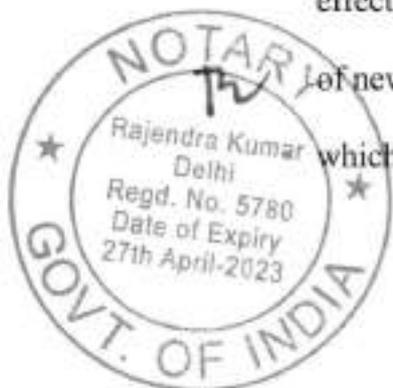
(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.”

In this regard, it is submitted that blocking of content under the Rules is limited to the same grounds as provided under 69A, and upheld by the Hon'ble Supreme Court in **Shreya Singhal vs. Union of India**.

  
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81. I submit that that the IDC can give recommendations regarding deletion, modification or blocking of content. The procedure for issue of directions to this effect has been provided for in the Part III of the Rules pertaining to publishers of news and current affairs and publishers of online curated content. Rule 15(2), which is applicable in this regard, is reproduced hereunder:



“The Authorised Officer shall, on approval of the decision by the Secretary, Ministry of Information and Broadcasting, **direct the publisher, any agency of the Government or any intermediary, as the case may be to delete or modify or block the relevant content** and information generated, transmitted, received, stored or hosted in their computer resource for public access within the time limit specified in the direction:

Provided that in case the recommendation of the Authorised Officer is not approved by the Secretary, Ministry of Information and Broadcasting, the Authorised Officer shall convey the same to the Committee.”

Both the dual safeguard of a multi-member committee and approval of the Secretary, MIB exists in respect of all directions to be issued by the Ministry, including the rare situations which may require modification, deletion or blocking of content.



(अमरेंद्र सिंह)

(AMARENDRA SINGH) 82.

I submit that Rule 15(3) under the IT Rules, relating to procedure for issue of directions related to deletion, modification or blocking of content, states that:

“A direction under this rule may be issued only in respect of a specific piece of content or an enumerated list of content, as the case may be,



and shall **not require any entity to cease its operations.**”

83. I submit that with respect to blocking of content, the Hon’ble Supreme Court, in the *Shreya Singhal* judgement, upheld Section 69A of the IT Act and the and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009, based on the several procedural safeguards associated with its operation. In this regard, the Court stated:

“109. It will be noticed that **Section 69A unlike Section 66A is a narrowly drawn provision with several safeguards.** First and foremost, blocking can only be resorted to where the Central Government is satisfied that it is necessary so to do. Secondly, such necessity is **relatable only to some of the subjects set out in Article 19(2).** Thirdly, **reasons have to be recorded in writing** in such blocking order so that they may be assailed in a writ petition under Article 226 of the Constitution.

110. The Rules further provide for a **hearing before the Committee set up** - which Committee then looks into whether or not it is necessary to block such information. It is only when the Committee finds that there is such a necessity that a blocking order is made. It is also clear from an examination of Rule 8 that **it is not**

  
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merely the intermediary who may be heard. If the “person” i.e. the originator is identified he is also to be heard before a blocking order is passed. Above all, it is only after these procedural safeguards are met that blocking orders are made and in case there is a certified copy of a court order, only then can such blocking order also be made.”

84. I submit that **all the safeguards highlighted by the Hon’ble Supreme Court in the Shreya Singhal judgement have been retained** in the provisions related to blocking as well as deletion/modification of content in Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. In addition, it is submitted that the overall functioning of a publisher is not impacted by any action taken under the provisions of Part III since the directions issued in this regard are limited to the specific content deemed to be fit for blocking in accordance with the reasons mentioned in Section 69A of the Act and the procedure laid out in the Rules.



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85. I submit that it has been argued by the petitioners that blocking of content under Section 69A of the Act is only limited to intermediaries and does not apply to publishers on digital media. In this regard, there may be a need to elaborate on the difference between direct access and distributed discovery of content over the internet. While direct access involves access to content through websites/mobile apps of the originators, distributed discovery involves use of social media intermediaries for the same. In this regard, Section 11 of the Act



identifies and recognizes distributed discovery, while simultaneously attributing electronic records as published by the intermediary on behalf of the originator, to the originator itself:

“11. **Attribution of electronic records.**—An electronic record shall be attributed to the originator—

(a) if it was sent by the originator himself;

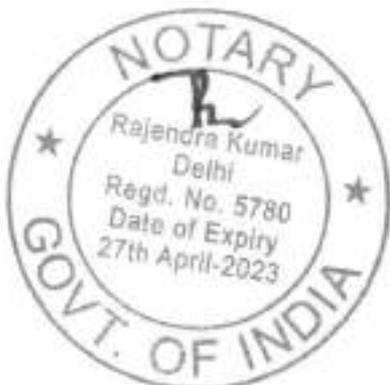
(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.”

86. I submit that the significance of distributed discovery of news and current affairs content in India has also been highlighted by the Reuters’ India Digital News Report 2019 which states that:

“India has emerged as a large market for social media giants like Facebook, LinkedIn, Instagram, and Twitter, and our survey demonstrates how these **digital intermediaries** have become absolutely central to online news distribution, providing publishers with competition for attention and advertising, but

  
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**also new opportunities to reach wider online audiences.**

Among our respondents, direct discovery of news (where users go directly to a news organisation's website or app) is seen as far less important than various forms of distributed discovery (where users discover and access news through a variety of digital platforms). **Search is an important gateway for many users, and as audiences have embraced social media like Facebook and Twitter, publishers have begun sharing breaking news and features on these platforms.** At the same time, messaging apps like WhatsApp are now being used by millions to get online news, and by publishers sending news directly to subscribers.

In our sample of English-speaking online news users, just 35% say they go directly to news websites or apps, and **only 18% consider direct access their main way of accessing news online**(compared to 26% in the US and 35% in Brazil). An overwhelming majority of the respondents identify various forms of distributed discovery as their main way of accessing news online. Search (32%) and various kinds of social media (24%) are particularly important. **Such**

  
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side-door access through various intermediaries over which news publishers themselves have limited control is far more important among our Indian respondents than it is for online news users in a market like the US.”

87. I submit that as per the IT Act, the term “intermediary” is not only limited to social media platforms, but also extends to other intermediaries such as internet service providers, web-hosting service providers, etc. Within the scope of Section 69A of the IT Act, while distributed discovery of content can be blocked by issuing appropriate directions to the social media intermediaries, direct access can also be blocked by issuing such directions to intermediaries such as internet service providers and web-hosting service providers. In the past, orders for blocking access to content have been issued, by the Courts as well as the Government, not just with respect to objectionable content on social media platforms, but also with respect to content on other websites, including news publishers. Therefore, it is submitted that the provision regarding blocking of content published by a publisher of news and current affairs content, whether on social media platforms or on its own interface such as the website or an app, is not a new provision, and is well within the scope of the Act. For the past eleven years, since 2009, the provision has been exercised by the Secretary, Ministry of Electronics and IT under the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. Under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, this provision, with respect to the publishers of news and current affairs content and publishers of online curated content, has only been replaced with Secretary, Ministry of I&B because Part III of these rules

  
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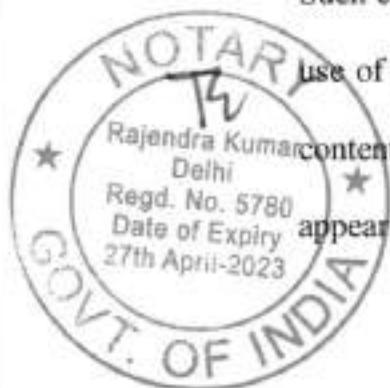


would be administered by the Ministry of Information & Broadcasting. There has been no change in the grounds for blocking of content, or the procedure required to be followed for issue of orders for blocking of access to content. A clarification in this regard was also issued by the Ministry of Information & Broadcasting on 27.02.2021.

88. I submit that the Rules provide for deletion of content by the publisher itself. In this regard, there may be a need to recognize the difference between blocking and deletion of content. While blocking of content is done by an entity which is not the original publisher of content, deletion of the same pertains to the entity which has published the content in the first place. Therefore, directions for blocking of content can be issued to the intermediaries, while the directions for deletion of the same can be issued only to the originators of content. While both the processes lead to the same outcome of disabling access to the content, blocking is generally resorted to in situations where the originator of the content is either unidentified, incommunicable or could not be trusted for deletion of content. In this regard, the provision for blocking of content is a rather extreme measure utilized in rare circumstances. On the other hand, publishers, under Rule 18, are mandated to furnish information to the Ministry for communication and coordination. The publishers also have the opportunity to be heard before the Inter-Departmental Committee. Furthermore, with respect to news and current affairs content and online curated content, it is possible that instead of the entire content, a part of the content may be in violation of the Code of Ethics. Such cases may include unintentional errors in cases of breaking news reports,

use of specific prohibited terms in particular scenes in case of online curated content, etc. In such cases, it is submitted that blocking of the entire content may appear to be an extreme measure, and deletion or modification of a part thereof

  
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is relatively more reasonable. Furthermore, it is also submitted that the provision for directions to the publisher regarding deletion/modification of content is in the interest of transparency, and allows the publishers to challenge such orders before the courts of law, thereby acting as a further safeguard in the interest of freedom of speech.

89. I submit that Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is within the legislative competence of the Ministry of Electronics & Information Technology to make the subordinate legislation, does not violate any of the Fundamental Rights guaranteed under the Constitution of India, does not violate any provision of the Constitution of India, conforms to the Information Technology Act and does not violate any of the provisions of the Act, does not violate any other Act of the Parliament, provides for sufficient safeguards to be reasonable for the publishers, and is limited to the objects sought to be achieved by the Legislature through the Information Technology Act. In this regard, it is submitted that Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, passes the test for subordinate legislation laid down by the Hon'ble Supreme Court in State of Tamil Nadu vs. P. Krishnamurthy & Ors. (2006) SCC 517.



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(AMARENDRA SINGH)

उप सचिव/Deputy Secretary

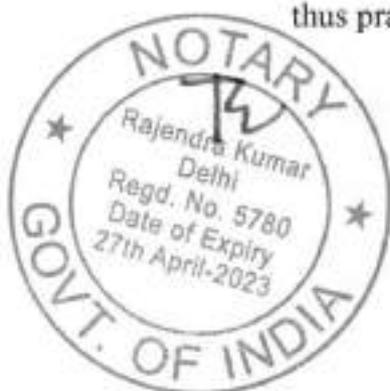
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90. I further submit that grounds put forth in the Writ Petitions challenging the maintainability of the IT Rules, 2021 in terms of the IT Act, 2000 and Article 19 of Constitutions of India are fallacious and are not based on facts and it is thus prayed that the Writ Petitions be dismissed.



It is therefore, prayed that this Hon'ble Court maybe pleased to dismiss the above Petition and thus render justice.

**DEPONENT**

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**VERIFICATION**

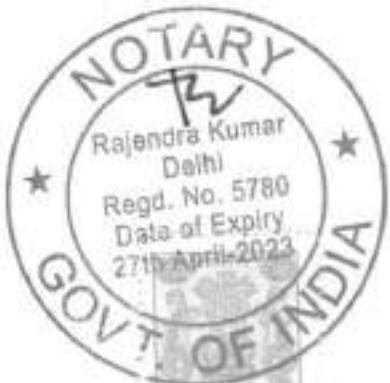
I, the deponent above named, do hereby verify that the contents of paragraphs 1 to 90 of the affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on August, 2021.

26 AUG 2021

**DEPONENT**

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Govt. of India, New Delhi



BEFORE ME *Rajendra Kumar*  
RAJENDRA KUMAR  
NOTARY, DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No. *6077*  
Mobile No.: 9899446209  
26 AUG 2021

26 AUG 2021  
CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 26/08/2021. IDENTIFY THE EXECUTANT / DEPONENT WHO HAS SIGNED IN MY PRESENCE.

*R.K. Sharma*  
*J-788/89*  
*Adv.*

(अजयेन्द्र सिंह)  
(AJAYENDRA SINGH)  
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