

**INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES  
AND DIGITAL MEDIA ETHICS CODE) RULES, 2021- A  
REASSESSMENT OF THE CONTOURS AND LIMITS**

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**Abstract**

*Information and Communication Technology (ICT) is currently playing a very crucial role around the globe. The intermediary is one of the most essential stakeholders in the ICT environment. Different countries framed legislations on ICT that include provisions on liability and safe harbour protection of intermediaries. India implemented the Information Technology Act in 2000 as well which primarily deals with the legal framework concerning the liability and exemption of intermediaries from certain liability. This paper will emphasize the intermediary liability and exemption under the Indian statutes with special reference to the Information Technology Act, 2000, and the Copyright Act, 1957 on one hand and the other hand, the paper will critically analyze the current Information Technology (Intermediary Guidelines and Digital Ethics Codes) Rules, 2021(IT Rules, 2021) framed by the Central Government in regulating the intermediary including the social media platform. The author adopted a descriptive and analytical approach while conducting the study. IT Rules, 2021 has created a lot of debates. It has been found that some provisions of the recently framed IT Rule, 2021 violate Article 21 of the Indian Constitution.IT Rules, 2021 is a subordinate piece of legislation. It has been observed that some rules of the IT Rules, 2021 ultra-vires the parent Act i.e. The Information Technology Act, 2000.*

**Keywords:** Information and Communication Technology, Intermediary, Information Technology Act, Copyright Act.

**Introduction**

Information and Communication Technology (ICT) is currently playing a very crucial role around the globe. Without the Internet, it is hardly feasible to accomplish any work. Life revolves around it. The intermediary is one of the most essential stakeholders in the ICT

environment. Different countries developed legislation involving ICT that includes provisions on intermediaries. In the United States of America, Section 230 of the Communication Decency Act, 1996, and Section 512 of the U.S. Copyright Act, 1976 (the provision was inserted by the Digital Millennium Act, 1998 [DMCA]) deal with the safe harbour provisions that protect an intermediary from certain liability. In the European Union, Articles 12, 13, 14 and 15 of the E-Commerce Directive (Directive 2000/31/EC) also deal with the provision of safe harbour. Recently, Article 17 of the newly adopted EU Directive on copyright and related rights in the Digital Single Market includes a new obligation of the intermediary (online content service provider) whereby it has put down the provision of the licensing agreement between the content owner and the online content service provider<sup>1</sup>. India also adopted the Information Technology Act in the year 2000, which likewise covers intermediaries' liability and safe harbour protection. The Central Government also created rules under the Information Technology Act, 2000 governing the intermediary.

There is no single and universally accepted meaning and definition of the term intermediary. The dictionary meaning of the term “intermediary” contemplates that an intermediary is a person who connects two persons to do an agreement.<sup>2</sup> In its inception, the Internet was a static medium that did not enable users to converse with one another. The information could only be read and viewed by users. That Internet environment was referred to as Web 1.0.<sup>3</sup> But now interactivity and collaboration are two important characteristics of the Internet.<sup>4</sup> The current Internet is referred to as Web 2.0<sup>5</sup>. Here, users can interact and post their comments. Web 2.0 consists of applications that facilitate sharing of information and collaboration.<sup>6</sup> Due to Web 2.0's collaborative features, real-world business is shifting towards the digital platform.<sup>7</sup> Organizations and individuals can access, host, and send information from third parties through the Web 2.0 environment, which also makes transactions easier. Intermediaries act as the medium for facilitating interaction in the virtual world.<sup>8</sup>

This paper will focus on the intermediary liability and exemption under the Indian statutes with special reference to the Information Technology Act, 2000, the Copyright Act, 1957, and the

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<sup>1</sup> Council Directive 2019/790, art 17, 2019 O.J. (L 130) 119

<sup>2</sup> *Intermediaries*, OXFORD ENGLISH DICTIONARY (2022)

<sup>3</sup> Rajendra Kumar, et al, *Information Technology Act, 2000 and the Copyright Act, 1957: Searching for the Safest Harbor* 5 NUJS L. REV. 555 (2012).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

current Information Technology (Intermediary Guidelines and Digital Ethics Codes) Rules, 2021 (IT Rules, 2021) framed by the Central Government in regulating the intermediary including the social media platform.

**Intermediaries' Liability and Exemption under the Information Technology Act, 2000, and the Copyright Act, 1957**

Before proceeding with a detailed analysis of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021 it is necessary to address briefly the statutory provisions on intermediaries under both Information Technology Act, 2000 and the Copyright Act, 1957. Concerning the definition of the intermediaries, section 2(1)(w) of the Information Technology Act, 2000 states that

*“[i]ntermediary, concerning any particular electronic records, means any person who on behalf of another person receives, stores, or transmits that record or provides any service concerning that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes;”<sup>9</sup>*

The definition has broadly mentioned the list of intermediaries. After the 2008 Amendment of the Information Technology Act, 2000, the definition has undergone a drastic change. The definition was very much narrower when the Act came into force compared to the existing one which currently encompasses different types of intermediaries like telecom service providers, network service providers, internet service providers, search engines, e-commerce, etc. The intermediaries are the pathways through which the relationship between the customer and the retailer is established as well as it entails the exchange of different goods and services.<sup>10</sup> Section 79 of the Information Technology deals with the provision of safe harbour for intermediaries. It states that the intermediary shall not be liable for any third-party content put on or made accessible by it through its platform.<sup>11</sup> Its function is limited to providing access only<sup>12</sup>. The intermediary will not participate in the initiation of any transmission, or in selecting the receiver of the same and in modification or selection of the content contained in the transmission<sup>13</sup>.

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<sup>9</sup> The Information Technology Act, 2000, s 2(1)(w)

<sup>10</sup> Karnika Seth, *Liability of Intermediaries in India*, Seth Associates (June 19, 2022), <https://www.sethassociates.com/wp-content/uploads/2019/11/Liability-of-Intermediaries.pdf>

<sup>11</sup> The Information Technology Act, 2000, s. 79

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Section 79(2)(c) also highlights the aspect of due diligence that shall be followed by the intermediary while discharging its duties. Section 79 also states the circumstances under which the safe harbour provisions will not apply to the intermediaries. This purports the intermediary not to participate in certain activities like conspiracy, abetment, etc in the commission of any unlawful act<sup>14</sup>. The section also mentions the aspect of takedown notice whereby the intermediary shall immediately remove or disable access to that content after receiving any complaint from the appropriate Government or its agencies regarding any communication link being used to commit any unlawful act<sup>15</sup>. Section 81 of the Information Technology Act, 2000, empowers the Act to have overriding effect over any other laws despite anything inconsistent is mentioned in other laws for the time being in force. However, the proviso specifies that the Information Technology Act shall not hinder the exercise of any rights under the Indian Copyright or Patent laws<sup>16</sup>.

While discussing the Intermediary liability of the Indian regime, it is very pertinent to state one of the landmark case laws i.e. *Avnish Bajaj vs. State*<sup>17</sup>. It had an immense impact on changing the liability regime of the intermediary after the 2008 amendment of the Information Technology Act, 2000. Avnish Bajaj, the Managing Director of Baze.com was held responsible in the case as the deemed criminal culpability of directors is formally recognized by law (Vide section 67 read with section 85 of the Information Technology Act, 2000)<sup>18</sup>. Even Article 12 of the European Convention on Cyber Crime stipulates the imposition of criminal liability on the legal person that possesses the power of representation, the capacity to take decisions, and the competence to exercise control.<sup>19</sup> In the case of *Shreya Singhal v. Union of India*<sup>20</sup>, it has been stated that the intermediary will remove any inappropriate content if there is a court order or a notification from the Government or its agencies.

In Indian Copyright Act, Section 52(1)(b) and Section 52(1)(c) state the provisions that safeguard the intermediary in case of online copyright infringement. In case of copyright infringement, the copyright holder can bring up the issue in the form of a complaint to the concerned intermediary, the intermediary shall stop giving access to the content<sup>21</sup>. After

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> (2005) 3 CompLJ 364 Del

<sup>18</sup> Vivek Kumar Verma, *Avnish Bajaj vs. State (DPS MMS Scandal Case)*, Indian Case Law ( June 22, 2022), <https://indiancaselaw.in/avnish-bajaj-vs-state-dps-mms-scandal-case/>

<sup>19</sup> *Id.*

<sup>20</sup> AIR 2015 SC 1523

<sup>21</sup> The Copyright Act 1957, s 52

stopping access to the particular content based on the complaint, the complainant or the copyright holder needs to bring a court order within 21 days.<sup>22</sup> If he fails to bring the same, the intermediary will again allow the content on their website. Rule 75 of the Copyright Rules, 2013 deals with the procedural framework concerning the “Storage of Transient and Incidental Copies of Works”. It has mentioned in great detail the procedure of filing the complaint by the copyright holder and the duty of the intermediary after receiving the complaint<sup>23</sup>.

One case law is to be noted while discussing online copyright infringement *i.e. Super Cassettes Industries Ltd vs. My Space Inc.*<sup>24</sup> The case is of immense importance because for the first time the issue relating to the interplay of both the Information Technology Act, 2000 and the Copyright Act, 1957 came into the picture. The single bench of the Delhi High Court stated that Information Technology Act, 2000 and Copyright Act, 1957 are standalone legislations. In the single bench, Justice Manmohan Singh stated that Information Technology Act, 2000 is not applicable in case of copyright infringement. The case was appealed to the Division Bench of Delhi High Court which consisted of Justice Ravindra Bhat and Justice Deepa Sharma. Justice Ravindra Bhat made a harmonious construction of the two statutes- The Information Technology Act, 2000 and the Copyright Act, 1957, whereby it has been stated that the Information Technology Act, 2000 is applicable in case of copyright infringement<sup>25</sup>.

While discussing the copyright infringement aspect, it is also indispensable to mention a recent case of intermediary liability concerning trademark infringement. *Christian Louboutin v. Nakul Bajaj & Ors*<sup>26</sup> is one of the crucial cases concerning the sale of counterfeited products on a website (that means through an intermediary). Here, the court highlighted the importance of due diligence. The Court stated that performing due diligence is required before hosting a sale by an intermediary.

### **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021- An overview**

Before beginning the discussion on Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021, it is necessary to discuss the backdrop of the origin of the IT Rule, 2021. The government felt the need for robust legislation concerning the regulation

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<sup>22</sup> The Copyright Rules, 2013, Rule 75

<sup>23</sup> *Supra note 20*

<sup>24</sup> (2011) 47 PTC 49 (Del.)

<sup>25</sup> *My Space Inc. v. Super Cassettes Industries Ltd.* Delhi (DB), (2017) 69 PTC 1 (DEL)

<sup>26</sup> CS(COMM) 344/2018.

of intermediaries including the social media intermediary. In this 21<sup>st</sup> century, the usage of social media platforms has proliferated. With the advent of Facebook, WhatsApp, Instagram, and other social media platforms, people are getting more involved with the virtual world in sharing their content with the outside world in the form of written posts, photos, videos, and audio. These social media platforms have now become messaging platforms that not only help in connecting with dear ones but also in the dissemination of various important information. Despite all these merits, these social media is also facilitating the unlawful acts of the users in the form of circulating fake news, harassing women, spreading communalism, disrespecting national and religious sentiments, etc.<sup>27</sup> The Supreme Court of India in *Tehseen S. Poonawalla v. Union of India*<sup>28</sup> instructed the Government to take action so that the spreading of fake messages can be stopped. In the year 2018, the Supreme Court of India in the case of *Prajawala v. Union of India and Others*<sup>29</sup> stated that “the Government of India may frame necessary guidelines to eliminate child pornography, rape, and gangrape imageries, videos and sites in content hosting platforms and other applications”. To make it possible to identify the original originator of pornographic content, the Ad-hoc Committee of the Rajya Sabha presented its recommendation on 03.02.2020.<sup>30</sup> The Information Technology (Intermediary Guidelines and Digital Ethics Code) Rules, 2021 was notified on the 25<sup>th</sup> of February, 2021.<sup>31</sup> This is a secondary piece of legislation that was framed under section 87 of the Information Technology Act, 2000 in which the Central Government has been empowered to make rules concerning the Intermediaries and the IT Rules, 2021 superseded the Information Technology (Intermediaries Guidelines) Rules, 2011.<sup>32</sup> The guidelines are not only concerned with the intermediary but also encompass other entities like the News aggregator, Publisher of news and current affairs content, Publisher of online curated content, Significant social media intermediary, and social media intermediary.<sup>33</sup> The Guideline is divided into three parts Part I- Deals with the definitional aspect, Part II- Due Diligence requirements that are to be followed by the intermediary as well as the Grievance Redressal Mechanism, Part III- Deals with the code of ethics and procedure and safeguards about digital media ( OTT platforms and online

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<sup>27</sup> Pooja Gautam, *Critical Analysis of Intermediary Guidelines and Digital Media Ethics Code, 2021*, Pen Acclaims (June 21, 2023) <http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

<sup>28</sup> (2018) 9 SCC 501

<sup>29</sup> Writ Petition (C) No. 56 of 2004

<sup>30</sup> Ministry of Electronics & IT, *Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021* PIB, Govt. of India (June 22, 2023) <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1700749>

<sup>31</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

news portal).<sup>34</sup>Rule 2 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021 deal with definitional aspect. Notably, some of the definitions are of immense significance. The Rule mentioned the definition of the social media intermediary and significant social media intermediary which have been distinguished in terms of the number of users which will be notified by the Central Government<sup>35</sup>. On one hand, in the case of a significant social media intermediary, the number of users is more than 50 lacs and on the other hand, in the case of social media intermediaries, the number of users is less than 50 lacs.<sup>36</sup> In Rule 3 certain due diligence requirements are mentioned which are to be observed by the intermediary. As per the rule, it is the duty of the intermediary to publish rules and regulations, privacy policy and user agreement for the users.<sup>37</sup> Rule 3 has elaborately discussed the contents that should be informed by the intermediaries through the regulation, policy and user agreement. The rule states that if the user does not abide by the regulation and clauses of the agreement, then the intermediary will stop giving access to that particular user. Rule 3(1)(d) mentions the Content takedown matter. It states that the intermediary will remove any information which is prohibited by law about the interest of the sovereignty and integrity of India, security of the State, etc. within thirty-six hours through a Court order or being notified by a government agency. This rule is in consonance with the *Shreya Singhal v. Union of India*<sup>38</sup>. The guidelines mention the Grievance Redressal Mechanism, where the grievance officer has to take action within twenty-four hours of the problem and dispose of the problems within fifteen days. The intermediary has to make necessary arrangements for receipt of this complaint and also where the complainant can give the details of the complaint or communication link.<sup>39</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in the Due Diligence provisions, mention the appointment of Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer<sup>40</sup>. The IT Rules, 2021 contain the requirement of the Compliance Report every month where the intermediary will publish the details of the actions they have taken after receiving any complaint<sup>41</sup>. Even there is a requirement to identify the first originator of any message in the case of Significant social media, which provides messaging services<sup>42</sup>. Even the provision of automated filtering is also

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Supra* note 19.

<sup>39</sup> *Supra* note 30

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

there<sup>43</sup>. Other important provisions mentioned in the guidelines are the verification of the users, and an obligation to publish a notice on its website about the requirement of furnishing user account details by the publishers of news and online current affairs content to the Ministry<sup>44</sup>. If the intermediary fails to comply with all of these, it will not get a safe harbour defence under Section 79 of the Information Technology Act, 2000<sup>45</sup>. The IT Rules, 2021 contain the Digital Media Ethics Code, Part III of the IT Rules, 2021 classifies its subject into Publisher of news and current content affairs and Publisher of online curated content. It mentions the Grievance Redressal Mechanism (Rule 10), Disclosure of information by the publisher (Rule 19), and provision of Compliance report (Rule 18). As per Rule 10 of IT Rules, 2021, If anyone wants to file a grievance under the Grievance Redressal Mechanism, they must first go to the grievance platform set up by the Publisher. If the complainant is not pleased with the publisher's grievance cell's decision. He has a right of appeal with the publishers' self-regulating bodies (governed by Rules 11 and 12 of IT Rules, 2021). Finally, if the individual is dissatisfied with the self-regulating bodies' decision, he or she may file an appeal with the Inter-Departmental Committee established by the Ministry of Information and Broadcasting as per rule 14 of the IT Rules, 2021 and after that, the matter will be presented to the Secretary of the Ministry of Information and Broadcasting by the chairperson of the committee (the authorised person) for taking the decision. The Code of Ethics and Guidelines that are to be followed by the OTT are mentioned in the Appendix and schedule of IT Rule, 2021.

Thus, it is seen that the IT Rule, 2021 is a comprehensive piece of secondary piece of legislation dealing with the intermediary including the social media platforms. Also, the Rule has provided detailed guidelines concerning OTT platforms and online news portals. The merits and demerits of the IT Rules, 2021 will be analysed later in the paper.

### ***Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023***

Recently, the IT Rules, 2021 has been amended [Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023] to accommodate the regulations concerning online gaming and online real money games. The primary purpose of the amendment is to increase online gaming innovation and to safeguard citizens from illicit online betting and wagering.<sup>46</sup> Now the Due-diligence requirements that are followed by an online intermediary have to be

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<sup>43</sup> *Id*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023



observed by the online gaming intermediary.<sup>47</sup> Certain rules like 4A, 4B, and 4C were added that deal with the “verification of online real money games”, “the Applicability of certain obligations after an initial period”, and “Obligations about online games other than online real money games”.

### **Critical analysis of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021**

After studying the rules, it can be said that some provisions like removal of non-consensual content, taking down any content within thirty-six hours following an order by a government agency or the Court, taking action within twenty-four and disposing the matter within fifteen days are the affirmative steps that have been taken through the IT Rules, 2021.<sup>48</sup> One of the most important positive features of the IT Rules, 2021 is that it has elaborately mentioned the code of ethics and guidelines that need to be followed by the OTT platform. The most commendable aspect is the distinction of the viewer's age in relation to the content so that the children are prevented from watching inappropriate adult content. But there are certain provisions like identifying the first originator of any message would violate the end-to-end encryption protocol, which would ultimately lead to an invasion of privacy.<sup>49</sup> The right to Privacy is considered as one of the Fundamental Rights under the Constitution of India after *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.*<sup>50</sup> In *WhatsApp LLC v. Union of India*, the petitioner has highlighted the point in the petition that Rule 4(2) of IT Rules, 2021 is violating the Fundamental Right which includes both the right to privacy as well as the right to free speech and education. Also, the petitioner mentioned in its petition that rule 4(2) of the IT Act, 2021 ultra vires the Parent Act i.e. the Information Technology Act, 2000. The automated filtering measure sometimes does not work well.<sup>51</sup> Though it is not possible to track every communication made by any third party. Even there are chances that legal content may be deleted by these automated filtering<sup>52</sup>. For instance, if the word "rape" has been used in any content, the content will be immediately filtered out from the website. There could be videos depicting acts of rape, or there could be videos explaining the legal framework of the offence

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<sup>47</sup> *Id.*

<sup>48</sup> Analysis of The Information Technology (Intermediary Guidelines And Digital Media Ethics Code) Rules, 2021 (June 22, 2023), <https://sflc.in/analysis-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021/>

<sup>49</sup> *Id.*

<sup>50</sup> (2017) 10 SCC 1

<sup>51</sup> WP(C) 7284/2021

<sup>52</sup> *Supra* note 47

of rape in India. It's possible that automated filtering will remove both videos. When using automated filtering, it is impossible to have any understanding of the differences between content that is lawful and content that is prohibited. Even there is a provision on copyright and patent infringement. Though *My Space Inc. v. Super Cassettes Industries Ltd.*<sup>53</sup> made a harmonious construction between the Copyright Act and the Information Technology Act, 2000 stating that the Information Technology Act is applicable in case of copyright infringement. Still, the proviso to section 81 of the Information Technology Act contains “nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act 1957 or the Patents Act 1970.” So, being a subordinate legislation whether IT Rules, 2021 ultra vires the Parent Act i.e. Information Technology Act, 2000 is a serious question. Another doubt that arises here is that in the case of copyright infringement, a copyright holder can directly file a complaint as per rule 75 of the Copyright Rules, 2013 but in the case of IT Rule, 2021, it is stated that the order will come from court or notification from government or its agencies. Therefore, here also confusion arises on the part of the right holder over the legal action they would pursue if their works get infringed.

Many petitions were filed challenging the IT rule, 2021 in different High Courts of India. Some of them are as follows: -

A writ petition was filed against the Ministry of Electronics and Information Technology in *News Broadcasters Association v. Ministry of Electronics and Information Technology*<sup>54</sup> because the Part III of the IT Rules, 2021 violates Articles 14 and 19(1)(g) of the Indian Constitution and frequently go beyond the bounds of the Information Technology Act, 2000, which they are intended to replace. In the event that Part III of the IT Rule, 2021 is not followed, the Kerala High Court has advised the government to desist from taking any coercive action against the petitioner.

The Bombay High Court in *The Leaflet (Nineteenone Media Private Limited) & Anr v. Union of India* and *Nikhil Wagle vs Union of India*<sup>55</sup> gave interim order staying the operation of Rule 9(1) and Rule 9(3) of the IT Rules, 2021.

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<sup>53</sup> *Supra* note 23

<sup>54</sup> WP(C) 13675/2021

<sup>55</sup> WPL/14172/2021

The Madras High Court ruled in the case of *Indian Broadcasting & Digital Foundation v. Ministry of Electronics and Information Technology & Ors*<sup>56</sup> that any coercive action against the respondent under Part III of the IT Rules requires the court's approval.

Thus, it can be seen that the IT Rules, 2021 have been challenged in various High Courts concerning the constitutionality of the different provisions framed under it. Also, it is seen that some of the provisions ultra vires the Parent Act i.e. the Information Technology Act, 2000.

### **Conclusion**

The Information Technology (Intermediary Guidelines and Digital Media Ethics) Code, 2021 plays a very important role in addressing the regulation of the social media platform so that the dissemination of fake news, and illegal content can be stopped. But many rules prescribed under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have been challenged in the court of law on the grounds of violating the Fundamental Rights prescribed under the Constitution of India. Also, the most crucial observation that has been made in many petitions is whether the IT Rules, 2021 being subordinate legislation ultra vires the parent Act i.e. the Information Technology Act, 2000. Even, it has been observed that the IT Rules, 2021 has given excessive power to the hands of the government in regulating the OTT platform and online news publisher in the form of an oversight mechanism constituted by the Ministry. The provision of intellectual property law concerning patents and copyright only (excluding trademarks) in the IT Rules, 2021 is highly doubtful. Since, the Information Technology Act, 2000 does not include patent or copyright violations as per the proviso to section 81. Then, how IT Rules, 2021 made rules concerning patent and copyright infringement is highly questionable. Though *My Space Inc. v. Super Cassettes Industries Ltd.*<sup>57</sup> made a harmonious construction between the two statutes (The Information Technology Act, 2000 and the Copyright Act, 1957), still it is a Delhi High Court case limited to the jurisdiction of Delhi only. The Apex Court has not made any observation concerning the interplay of the two statutes. Thus, there is a need for the amendment of the IT Rules, 2021 to remove the ambiguity. Also, the importance of intermediaries including social media is increasing day by day, so there should be standalone legislation concerning the same.

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<sup>56</sup> WP/25619/2021

<sup>57</sup> *Supra* note 23