

Legal Reasoning (CLAT)

Passage 1

For the first time, the government, under the ambit of the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021**, has brought in detailed guidelines for digital content on both digital media and Over The Top (OTT) platforms, while giving overriding powers to the government to step in.

The new rules were unveiled at a joint press conference by Information Technology Minister Ravi Shankar Prasad and Information and Broadcasting Minister Prakash Javadekar.

One will be at the level of each OTT provider. Each complaint will have to be addressed within 20 days. If the complaint is not satisfactorily addressed, then the complainant can scale it up to a self-regulatory body collectively established by the OTTs. This body will be headed by a retired judge of the Supreme Court, a High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights or other relevant fields. This self-regulatory body also has “censuring” powers in case of any incriminating content. The rules say, “In case of any content where it is satisfied that there is a need for taking action to delete or modify the content for preventing incitement to the commission of a cognizable offence relating to public order.”

To top this, at the third tier, the government has equipped itself with overriding powers in the form of “oversight mechanism”. An inter-ministerial committee will perform this function and it will largely have the same powers as the collective self-regulatory body of the OTTs.

Over and above all this, the government has equipped itself with “emergency” powers. The rules state, “in case of emergency nature” the Secretary, Ministry of Information and Broadcasting may, “if he is satisfied that it is necessary or expedient and justifiable” give orders to block public access of any information. The rules state that he or she has to record the reason for doing so in writing and it will be an interim measure. Importantly, such orders can be released “without giving an opportunity of hearing” to the publishing platform.

Both Ministers also clarified that no new law has been framed. And the government already has power to step in in case of an emergency under the existing law.

Mr. Javadekar said that the structure has been created to facilitate “soft touch regulation”. There have been widespread concerns about digital content, especially on OTT platforms, Mr. Javadekar said, with 50 Parliament questions in the recently concluded first part of the Budget session dedicated to it.

The above written text is an excerpt from an article written by Sobhana K.Nair for the Hindu.

- 1) In an upcoming web series ‘Prem Ratan Dhan Payo’, directed by star filmmaker Kalman Khan there is very violent representation of Firozpur District in UP. The depiction has led to widespread protests in the area, and the District Administration is facing tough time in tacking the situation?
 - (a) The people aggrieved by the wrong depiction will have to file a complaint before the OTT, and the grievance redressal mechanism set up by the OTT will take action in 15 days.
 - (b) The matter will straightaway go before the self-regulatory body set up by the OTTs in a joint fashion.
 - (c) Looking at the outburst of people, the situation at hand turns into “case of emergency nature” the Secretary, Ministry of Information and Broadcasting may, “if he is satisfied that it is necessary or expedient and justifiable” give orders to block public access of any information.
 - (d) The District Administration will identify the people who are inciting the protests and will give each of them a headshot.

- 2) Manikram, a devout Hindu is aggrieved by the disturbing depiction of Om Ram Sai Bhagwant in the web series ‘Jai Shri Ram’ directed by Shri Tirith Singh. The web series is streamed through Boot OTT platform. He complaints about his grievance on 22nd Feb, 2020 before the Boot Grievance Cell, but till 8th March he got no response from the other end.
 - (a) Manikram can now approach the self-regulatory body jointly set up by the OTTs.
 - (b) Manikram is aggrieved and is a devout Hindu, so the Secretary can consider it as situation of emergency and take cognizance of the matter.
 - (c) Manikram cannot do anything as of now, as he is the only person aggrieved by the content. Thus, he has no remedy.

- (d) Manikram cannot do anything in this, as the period of 20 days has not expired and therefore, he cannot approach the self-regulatory and avail this remedy.
- 3) Kanshi Singh, had a strong objection against depiction of Child Pornography in a made film directed by Paran Johar. He addressed his problems in a letter written to the OTT grievance redressal cell on 21st April, 2021. He has been anxiously waiting for a response from the OTT's end but still even after 2 months he has not received anything.
- (a) Kanshi Singh can directly approach the inter-ministerial oversight mechanism set up by the Government.
- (b) Kanshi Singh cannot do anything because the fact that he has received no response shows that his grievance is frivolous.
- (c) Kanshi Singh can now take up the matter before the Self-Regulatory body set up jointly by the OTTs as the period of 20 days has expired and he has not received any response from the OTT grievance redressal mechanism.
- (d) None of the Above
- 4) Firozpur, a web series streamed via Ganga Prime Video is problematic and the anger of the people against it has resulted in immediate blocking of the content as per the order given by the Secretary of Ministry of I&B.
- (a) This order by the Secretary of Ministry of I&B is not valid, as principle of Natural Justice is not followed.
- (b) The order of the Secretary of Ministry of I&B is totally valid, because the person issuing such order holds an office has a lot of control and respect. The bureaucrat who holds such office is very senior in position and his/her orders are totally valid.
- (c) The order of the Secretary of Ministry of I&B is totally valid as the situation is of emergency and any interim order in such a case can be released "without giving an opportunity of hearing" to the publishing platform.
- (d) The order is not valid as proper consultations are not made with all the stakeholders before issuing such a permanent order.
- 5) The government, under the ambit of the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021**, has brought in detailed

guidelines for digital content on both digital media and Over The Top (OTT) platforms, while giving overriding powers to the government to step in. The regulations are announced by the government without the parliament duly ratifying the rules imposing such regulations on it. Decide whether the guidelines are valid or not.

- (a) The guidelines are invalid as parliament has not passed by the law and proper consultations are not conducted amongst the stakeholders.
- (b) The guidelines are valid because there are concerns raised by the Civil Society on the issue of regulating the content of OTTs and therefore any such action by the government is valid because in a democracy the government has to act upon the will of the people.
- (c) The guidelines are valid because it has been clarified that no new law has been framed and the government already has power to step in in case of an emergency under the existing law.
- (d) The guidelines are invalid because the regulation stands in violation with the Fundamental Rights given to the us by the Constitution of India.

Passage 2

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “Intermediary Rules”) fundamentally change the way the internet will be experienced in India. We provide you with an overview of its contents, the “safeguards” it seeks to establish, how they affect your internet usage experience, and your fundamental rights. Most notably, the Rules now will bring government control rather than regulation over digital news platforms and OTT video content providers. Several requirements under them suffer from unconstitutionality and undermine the free expression and privacy for millions of internet users in India.

While Part I of the Intermediary Rules mainly lays down the definitions of terms, Part II and Part III contain the actual compliances and requirements. Part II deals with the regulation of intermediaries, including social media intermediaries. Social media intermediaries include messaging-related intermediaries, such as WhatsApp, Signal and Telegram, and media-related intermediaries, such as Facebook, Instagram and Twitter. This part is administered by the Ministry of Electronics and Information Technology or MeitY.

Part III deals with the regulation of digital news media (though there is a lack of clarity on exactly which news media these Rules apply to) and OTT platforms, such as Netflix, Amazon Prime and Disney+Hotstar. Part III is administered by the Ministry of Information and Broadcasting.

Fresh classes have been created including, “social media intermediary” [Rule 2(w)] and “significant social media intermediary” [Rule 2(v)]. The threshold for social media intermediary to be considered and regulated as a “significant social media intermediary” was notified on February 26, 2021, as 50,000 registered users. These categories bring a high level of government discretion in determining which platforms need to comply with what regulations. Such power is further reinforced by Rule 6, as per which the government may, by order, require *any intermediary* to comply with obligations imposed on a “significant social media intermediary” under Rule 4. To do so, it must satisfy the threshold of “a material risk of harm”. This threshold is vague, and it enables the Central government to enforce discriminatory compliances.

This passage has been written by members of Internet Freedom Foundation for the Scroll and has been duly edited for the purpose of this test.

(6) Bumble is an online dating app with 4 lakh users in India, the users are registered and the messaging app is gaining popularity amongst the youth of the country.

(a) The Government can put restrictions and impose regulation on Bumble as a “significant social media intermediary” because it has 0.4 million users in India.

(b) The Government cannot put restrictions and impose regulation on Bumble as a “significant social media intermediary” because it is a dating site and not a social media platform.

(c) The Government cannot put any restriction and impose regulation on Bumble because it is very popular amongst the youth.

(d) The Government can put restrictions and impose regulation on Bumble because the government has the power to have an oversight mechanism on every website throughout the country.

(7) Kinder, is a very famous Gaming/Dating/Professional Networking application active in India. It has 70,000 users but only 35,000 are duly registered as per the process required. Decide.

(a) The Government cannot regulate Kinder and its functioning in India because it does not satisfy the threshold of becoming ‘significant social media intermediary’.

(b) The Government cannot regulate Kinder because it is a new platform, and regulation by government as a nascent stage will have a huge bearing on the competitiveness of the Application.

(c) The Government can regulate Kinder because as per Rule 6 of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “Intermediary Rules”) the government may, by order, require *any intermediary* to comply with obligations imposed on a “significant social media intermediary”.

(d) None of the Above

(8) The Wire, a digital portal that invites commentaries on social, political, economic issues of academic interest by the people. The portal is a regular publisher of articles having contemporary relevance.

(a) The portal is an academic blog that is used by people having inclination towards the issues and contributors write on contemporary relevant issues therefore the Part III with the regulation of digital news media will not apply.

(b) The portal will not be covered under the ambit of the Part III with the regulation of digital news media as the portal is involved in publishing op-ed pieces and not news.

(c) The portal will be regulated under the ambit of Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “Intermediary Rules”) because the term ‘Digital Media News Portal’ is quite wide and the nature of the blog and its readership suggests that people perceive it as a News Portal and therefore should be regulated.

(d) The Wire is a Blog involved in publishing articles against the government policies and should be strictly regulated under the new IT rules.

Passage 3

Online video streaming platforms have marked a new dawn for the Indian entertainment industry, providing choices beyond soap operas and formulaic storylines characteristic of traditional mediums like cinema and television that were designed for more public and family-oriented forms of consumption. However, the spectre of government regulation and criminalisation haunts this fledgling industry which has been fighting off attacks to its creative freedom on multiple fronts.

The grievances range from wounded religious sentiments to moral outrage against depictions of sexuality but the common thread that unites them is a desire to control what other citizens may watch in the privacy of their homes. Public interest litigation, which was a tool meant to protect the rights of the marginalised and vulnerable, has been weaponised by self-appointed defenders of social, cultural and religious values to curtail artistic expression and viewer choice.

The imposition of any kind of criminal liability under the IT Rules 2021 would far exceed the central government's rule-making power under Section 69A of the IT Act, and the existing three-tier regulatory mechanism and content classification system prescribed under the rules are also unconstitutional for the same reason. To understand why this is so, let us compare the provisions of the IT Rules 2021 with its parent legislation, Section 69A of the IT Act. Some of the objections presented below have been raised in petitions filed by digital news media portals before the Delhi High Court and the Kerala High Court but online video streaming platforms, which are also subject to Part III of the IT Rules 2021, have not challenged the Rules yet.

First, the powers under Section 69A can be exercised only 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 preventing incitement to the commission of any cognisable offence relating to above." While "decency or morality" is a ground available under Article 19(2) of the Constitution to impose reasonable restrictions upon free speech, it has been deliberately omitted from the text of Section 69A. The implication is that the powers under Section 69A cannot be used to regulate online content which may be obscene or sexually explicit. Despite this, the IT Rules 2021 require classification of online content based on nudity, sex, expletive

language and substance abuse and also mandate access control and age verification mechanisms to prevent viewing of such content.

Second, Section 69A states that the central government may direct “any agency of the Government or intermediary” to block access to online content but online video streaming platforms do not fall into either of these two categories. Companies like Netflix and Amazon Prime commission or license the films and shows available on their platforms, and they are not an “intermediary” under the IT Act because unlike social media platforms such as [Facebook](#) and Twitter, they do not allow users to post whatever they wish without any pre-selection. The penal provision under Section 69A (3) also prescribes imprisonment or fine only for an “intermediary” who fails to comply with blocking directions issued by the central government. Therefore, in its present form, Section 69A does not impose any obligations or liability upon publishers of content such as online video streaming platforms.

Third, Section 69A only grants the central government the power 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.” However, the range of powers granted under the IT Rules 2021 is much broader and includes requiring an apology or disclaimer, re-classification of content and deletion or modification of content. As a result, the IT Rules 2021 significantly expand the scope of powers available under Section 69A and facilitate subtler forms of censorship which are reminiscent of the model followed by the CBFC which is notorious for requiring modifications to films before certifying them for release.

The three-tier regulatory framework created under the rules suffers from the substantive problem of lack of independence. The third tier, which is the Inter-Ministerial Committee, comprises entirely of bureaucrats and there is no guaranteed representation from the judiciary or civil society. The Review Committee constituted under Rule 419A of the Indian Telegraph Rules, 1951 also solely consists of officials belonging to the executive branch. The ability of the Review Committee to serve as an adequate procedural safeguard is questionable because of its lack of independence and its volume of work.

Many of the changes that the central government seeks to implement through the IT Rules 2021 may be well-intentioned and desirable. However, constitutional due process cannot be sacrificed at the altar of expediency. The solution is to start afresh with publication of a white paper which clearly outlines the harms that are sought to be addressed through regulation of online video streaming platforms and meaningful public consultation which is not limited to industry representatives. After that, if regulation is still deemed to be necessary, then it must

be implemented through legislation which is debated in Parliament instead of relying upon executive rule-making powers under Section 69A of the IT Act which never contemplated the creation of such an elaborate regulatory framework and suffers from flaws of its own.

The passage is an edited version of the piece written by Devadatta Mukhopadhyay for the Indian Express.

(9) Arush Shourie, respected journalist has published an article which is very indecent and problematic against a particular sect of the country. The article was published on his personal blog. The Government took cognizance of the matter and asked him to remove the article.

(a) Arush Shourie refused to remove the blog, arguing that he has freedom of speech and expression, protected as his fundamental right under 19(a) of the Constitution.

(b) Arush Shourie's blog will be removed because the government can impose reasonable restrictions on grounds of decency and morality under 19(2) of the Constitution.

(c) Arush Shourie can refuse to remove the article, as the article has been published on his personal blog, which has a very limited readership. Thus, even if the article remains nothing disastrous will happen.

(d) Arush Shourie blog will be removed because the Government has a lot of persuasive value and Arush Shourie will accept the request of the Government in a respectful manner.

(10) The three-tier mechanism set up under the new IT rules is problematic, specially concerns have been raised against the Inter-Ministerial Oversight Mechanism of the Government.

(a) The Inter-Ministerial Oversight Committee will consist of Executive Officials, who are prone to corruption and malpractices. Therefore, the Committee will not be able to function properly.

(b) The Inter-Ministerial Oversight Mechanism will lead to too much involvement of the Government in case of regulation and thus will lead to restriction in creative freedom of the artists, writers, professionals etc. involved.

(c) The Inter-Ministerial Oversight Mechanism is problematic because there is no visible representation from the members of the Civil Society and Judiciary, therefore, the limited participation of the Executive branch in the Committee will lead to lack of independence.

(d) There are no legitimate concerns raised against the Inter-Ministerial Oversight Mechanism and therefore the matter should not be discussed at all.

Passage 4

The new rules require OTT platforms to set up a robust three-tier grievance redressal mechanism. The first level will comprise regulation by the OTT Platform itself through a grievance officer. The second level will be an institutional self-regulatory body formed by publishers of content and their associations. This self-regulatory body will comprise industry experts headed by a retired Supreme Court/ High Court judge /eminent personality in the relevant field. At the third level is an inter-department committee constituted by the MIB that will provide oversight and hear appeals for decisions taken at level two or if a complaint is referred to the inter-department committee by MIB.

The code of ethics introduced under the Rules set out guidelines for classification of content based on viewer's age, themes, content, tone and impact, and target audience; and requires OTT platforms to give due consideration to sovereignty, security, friendly relations of India, etc.

Content rating categories are divided into "U" (suitable for all ages), U/A 7+ (suitable for person aged 7 years and above), U/A 13+ (suitable for persons aged 13 and above), U/A 16+ (suitable for persons aged 16 and above) and 'A' (restricted to adults). OTT Platforms must deploy access control mechanisms for content classified as U/A 13+ or higher.

These content classifications are, in fact, not new and existed as part of the Cinematograph Act 1952 and are also similar to the rating criteria proposed under the self-regulatory codes released by the Internet and Mobile Association of India. However, classification of content based on subjective yardsticks will be a challenge given such classification would, in practice, be based on the sensibilities of personnel of each OTT platform.

While upfront content ratings will encourage viewers to make informed choices, can a viewer who continues to watch a film, series, or show despite the warnings and ratings, still register grievances under the grievance redressal mechanism? The rules do not provide for specific grounds on which complaints can be made, and given the subjective nature of the content and diverse sensibilities of viewers, there are likely to be a multitude of complaints. The challenge for OTT Platforms will be to balance grievances from different viewers with varied social sensibilities and the demand for different types of content on their "on-demand" service models from a wide audience base.

Manifestly, the oversight mechanism of the MIB will act as an appellate body for all decisions from the second level and allow the central government to exercise some control on the programming of platforms. While the rules do seek to maintain a balance between self-regulation and government control, two key provisions are tilting the balance in favour of government oversight: first, registration of the self-regulatory body is subject to MIB's satisfaction; and second, the inter-department committee at level three may hear complaints referred to it by the MIB, thus skipping the first two levels of self-regulation.

What needs to be seen is the way the government practically implements the rules, and if it decides to be stringent or allows sufficient independence to OTT platforms. As in the past, content of all kinds may continue to be created despite the classifications or rating mechanisms or takedowns due to grievances. Besides, given the blurred territorial divisions in the digital era and demand for foreign content from different jurisdictions amongst the next-gen in India, an overly restrictive regime – while battling some social evils, will end up curtailing distribution of certain content through legitimate means, which may, in turn, lead to a surge in content piracy. Further, the code of ethics introduced under the rules may lead to content creators and OTT platforms revisiting their strategies and ideas of developing content.

While the intent of the rules appears to be to curtail problematic content, empower viewers to make more informed choices, and create a level playing field for various mediums, at this juncture, the rules appear to be a speed breaker in the fast-paced OTT industry.

As the digital space and technology for the distribution of content evolves, the regulatory framework for the digital industry will also continue to evolve. In order to ensure fine-tuning of any significant bottlenecks, implementation challenges, and prevent possible misuse of the regulations, policymakers and stakeholders should continue to engage with each other to put in place a regulatory framework that is effective and balanced.

11) Catflix, a famous OTT platform has batted from appointing Sachin Tendulkar as one member in the self-regulatory committee which has to be set up jointly by the OTTs.

a) Sachin Tendulkar can be appointed as a member in the committee, as he is an eminent personality and everybody knows about him.

b) Sachin Tendulkar is a famous cricketer and has also served as Rajya Sabha MP. Therefore, he is the right person to be on the committee

(c) Sachin Tendulkar cannot be appointed as a member of the committee, because he has no relevant experience in the industry. Therefore, he is not a fit person to be considered for this purpose.

(d) None of the Above

12) A self-regulatory body consisting of industry experts headed by a retired SC Judge has been made by the OTTs active in India. The MIB has some reservations regarding the retired SC Judge being appointed as head because while serving as SC Judge he gave some decisions which struck down some legislations of the current government.

(a) MIB will not be able to get the SC Judge removed as creating the self-regulatory body is entirely a prerogative of the OTTs and MIB does not have any controlling mechanism.

(b) MIB should not intervene in this matter, even though the SC Judge is not favourable to the government. MIB intervention in this is morally not correct.

(c) MIB can intervene in this matter because the new IT Rules give the power to MIB for registration of such self-regulatory body, and according to the rules the MIB can refuse to give registration to the body.

(d) MIB should intervene and it can do anything because it has unlimited and unfettered powers.

13) RamLaxmi, a woman living in Rajasthan Thar Desert due a mental health issue is very scared of water and therefore tries to stay away from water bodies. She watches a film Blue, starring Sanjay Dutt. This film has scenes of Underwater Diving. She gets shocked to see this visual.

(a) She will not be able to file a complaint against the film because her mental condition is such that she suffered from a shock.

(b) She will not be able to file a complaint because the ground is frivolous and there is no locus standi.

© RamLaxmi will be able to register a complaint against the OTT before the grievance redressal cell because, the rules do not provide for specific grounds on which complaints can be made.

(d) RamLaxmi, can file complaint because she is a citizen of the country and Sanjay Dutt should have been careful while doing that particular scene.

14) A movie on Indian Independence movement starring Sahil Khan and brothers, depicts the involvement of Japan in a very bad light during the course of Indian Independence Movement. The people of Japan got agitated to know that such false content is being circulated in India.

a) The movie will be blocked for public access because it violates the Code of Ethics issued under the introduced under the Rules requires OTT platforms to give due consideration to sovereignty, security, friendly relations of India, etc.

b) The movie will not be blocked because filmmakers have freedom of expression and they can depict anything because of the creative freedom they exercise.

© The movie will not be blocked because it has inspired people and a spirit of nationalism has been invoked in the minds of the people because of this movie.

(d) MIB will block this movie, because this can tarnish image of Japan due to which the Bullet Train Technology will not be shared with India.

15) 'Azaadi' is a short film made by Director Sambit Naatra, who graduated from RSS University situated in Nagaur. The movie depicts the wrong map of India which uses the term 'Azad Kashmir' for the area that has been occupied by Kashmir. MIB wants to block this film for public access. Decide.

(a) MIB can block this film for public access because it violates the Code of Ethics issued under the introduced under the Rules requires OTT platforms to give due consideration to sovereignty, security, friendly relations of India, etc.

(b) MIB cannot do this because the director of the film is a very famous personality and has a lot of influence and international support.

© MIB cannot do this because there is nothing objectionable in the movie.

(d) MIB cannot do this because no complaint has been filed against the wrong depiction of Indian Map before the grievance redressal body.

Answer Key

1	(c)
2	(d)
3	©
4	©
5	©
6	(a)
7	(C)
8	(c)
9	(b)
10	(c)
11	(c)
12	(c)
13	(c)
14	(a)
15	(a)