

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL ORIGINAL JURISDICTION)**

Writ Petition (Civil) No. _____ of 2021

IN THE MATTER OF:

QUINT DIGITAL MEDIA LIMITED & ANR.

...Petitioners

Versus

UNION OF INDIA & ANR

...Respondents

COURT-FEES

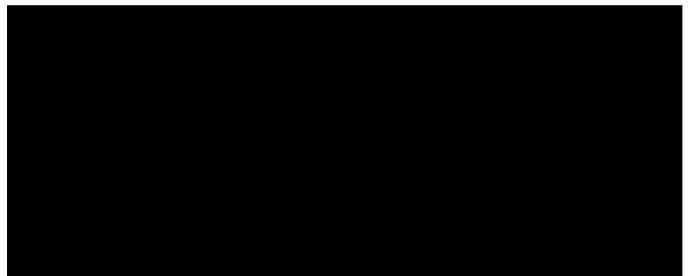
FILED BY: -

Filed on:- 16.03.2021

Place: - New Delhi

**PRASANNA S & VINOOTHNA VINJAM
ADVOCATES FOR PETITIONERS**

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NOTICE OF MOTION

Dear Sir/Madam,

Kindly take notice that the accompanying Writ Petition is being filed today before the Hon'ble High Court and is likely to be listed on 18.03.2021 or thereafter.

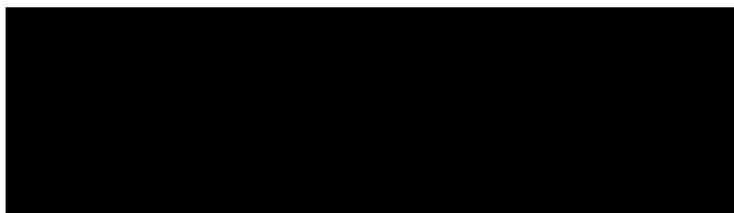
Yours sincerely,

FILED BY: -

filed on:- 16.03.2021

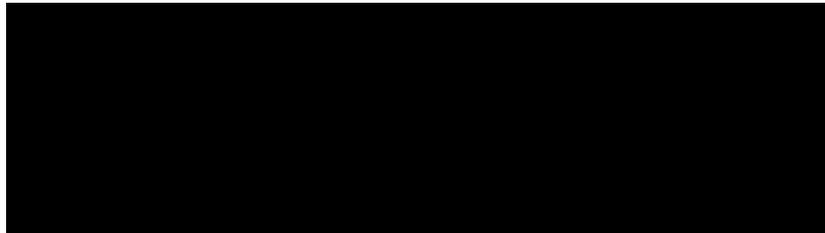
Place: - New Delhi

**PRASANNA S & VINOOTHNA VINJAM
ADVOCATES FOR PETITIONERS**



PROOF OF ADVANCE SERVICE ON R-1 & R-2

(Both R-1 & R-2 served through central agency service)



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LETTER OF URGENCY

To:

The Registrar,
High Court
of Delhi,
New Delhi

Sir/Madam,

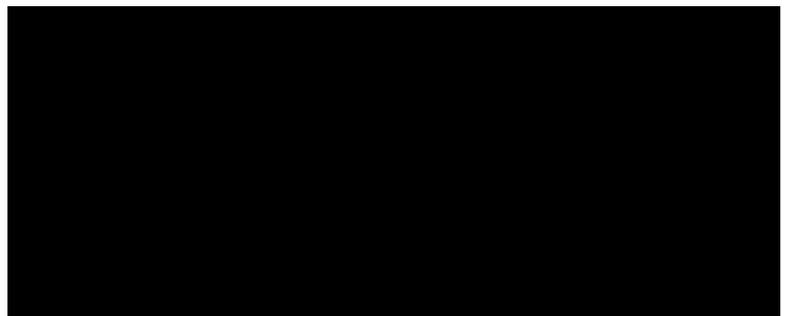
Kindly treat the accompanying fresh Writ Petition as an urgent one for listing before the Hon'ble Court. The new IT Rules issued last month on 25.02.2021 are palpably illegal in seeking control and regulate digital news media when the parent statute nowhere provides for such a remit. The same has profound and serious harms for digital news media such as the Petitioners and destructive of their rights. Kindly therefore treat the accompanying WP and the Applications as being one of extreme urgency and list before the Hon'ble Court at the earliest.

FILED BY: -

filed on:- 16.03.2021

Place: - New Delhi

PRASANNA S & VINOOTHNA VINJAM



IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. _____ of 2021

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MEMO OF PARTIES

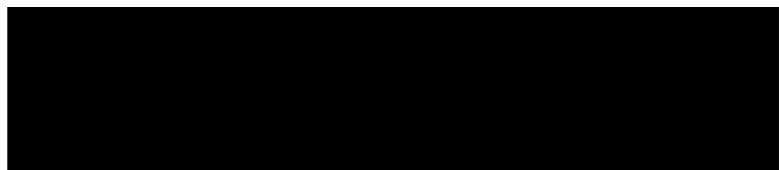
<p>1. Quint Digital Media Ltd. Through its Director & Co-founder of 'The Quint'</p> <div style="background-color: black; width: 100%; height: 20px; margin-bottom: 5px;"></div> <p>2. Ms. Ritu Kapur</p> <div style="background-color: black; width: 100%; height: 20px; margin-bottom: 5px;"></div> <p>Director & Co-founder of 'The Quint'</p> <div style="background-color: black; width: 100%; height: 20px;"></div>	<p>...Petitioners</p>
Versus	
<p>1. Union Of India Through The Secretary (MEITY) Ministry Of Electronics And Information Technology, Electronics Niketan, 6, Cgo Complex, Lodhi Road, New Delhi – 110003 E-mail - secretary@meity.gov.in</p> <p>2. Secretary, Ministry Of Information & Broadcasting Shastri Bhavan New Delhi – 110001 E-mail – secy.inb@nic.in</p>	<p>...Respondents</p>

FILED BY: -

Filed on:- 16.03.2021

Place: - New Delhi

PRASANNA S & VINOOTHNA VINJAM



SYNOPSIS AND LIST OF DATES

The present Petition challenges the constitutional validity of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules, 2021**” or “**Impugned Rules**”) under the provisions of Information Technology Act, 2000 (“**IT Act**”), inasmuch as they purport to apply to ‘publishers of news and current affairs content’ (“**digital news portals**”) as part of digital media, and consequently regulate these entities under Part III of the Rules (“**Impugned Part**”) by imposing Government oversight and a ‘Code of Ethics’ which stipulates such vague conditions as ‘good taste’, ‘decency’, prohibition of ‘half-truths’ etc. - matters nowhere within the contemplation of the IT Act; and draconian consequences for perceived non-compliance, including blocking, modification and deletion of content, compulsory publication of apology, which may be ordered and enforced by Central Government officials.

The Petitioners bring out a wholly digital news and current affairs publication called ‘The Quint.’ They are directly impacted by the IT Rules, 2021, which is also an overreach by subordinate legislation. The Petitioners’ digital news portal publishes news and views, as distinct from curated content. The present Petition challenges the IT Rules, 2021 only in so far as they affect digital news portals, and is not with reference to ‘publishers of online curated content’, i.e., OTT media platforms or any other entities sought to be regulated by the Impugned Rules.

Scheme of the IT Rules, 2021

The IT Rules, 2021 are purportedly made under Section 87(1) of the IT Act, more particularly, Section 87(2)(z) & (zg) which enable Rules to

be framed on:- “the procedure and safeguards for blocking access by the public under Section 69-A(2)” and “guidelines to be observed by the intermediaries under Section 79(2)”, respectively.

Relevant Definitions in the IT Rules 2021

‘**Digital media**’ is defined by **Rule 2(1)(i)** as content carried by either an intermediary or a ‘publisher’. Note that the two are mutually exclusive terms. News and analysis of current affairs, which when made available over the internet and computer networks is defined as ‘**news and current affairs content**’ by **Rule 2(1) (m)**, but when this is published as loosely folded sheets with newsprint it would be ‘**newspaper**’ defined by **Rule 2(1)(n)**. ‘Newspaper’ is not covered by the IT Rules, 2021, but ‘news and current affairs content’ is. ‘**Publisher of news and current affairs content**’ is separately defined in **Rule 2(1)(t)** as follows:

‘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;

It will be seen that a physical newspaper in the paper format, and its exact replica online edition are not covered by the Rules. However all editions and publications of ‘news and current affairs’ in the digital form (even if done by a media group which brings out physical newspapers) will be covered by the Rules as ‘digital media’ and treated as a digital news portal. Significantly, none of these definitions are found in the IT Act and are all brought in by the IT Rules, 2021 with the express purpose of regulating their content.

Regulation

Subject Entities

The IT Rules, 2021 purport to regulate publishers and intermediaries. The manner of regulation is in two parts: *one*, due diligence norms to be followed by ‘intermediaries’ (Part II of the Rules); *two*, Code of Ethics to be followed by ‘publishers’ (Part III of the Rules i.e. the Impugned Part).

Code of Ethics for publishers

A Code of Ethics is laid down, as per the Appendix referred to in Rule 9. The Code of Ethics for ‘publishers of news and current affairs content’ consists of the Programme Code under the Cable Television Networks (Regulation) Act, 1995 (“**Cable TV Act**”); Journalistic Norms under the Press Council Act, 1978 (“**Press Council Act**”); and a blanket prohibition against content that is prohibited by any law.

Regime to supervise news content

Rule 9 sets up a three-tier structure to ensure ‘observance and adherence’ to the Code of Ethics.

Level 1: ‘*Self-regulation*’ by the publisher - Grievance redressal officer to be set up by the publisher to take up a complaint by “any person having a grievance regarding content” (Rules 10,11)

Level 2: ‘*Self-regulating*’ body/bodies (actually a misnomer) of an appellate nature constituted by publishers or their associations, of independent persons, but subject to the Ministry’s approval. This Level 2 body has the power to warn or censure, require the publisher to apologize or display a warning/disclaimer. Note that their procedure is bound hand and foot by the Rules which obligate Level

2 bodies to refer matters of non-compliance, and a certain class of content to Level 3 for deletion or modification of the same. (Rule 12)

Level 3: '*Oversight mechanism*' by the Central Government. This is an Inter-Departmental Committee, headed by an Authorised Officer of the Government of India, consisting chiefly of serving officials from various Ministries. The Committee can directly take complaints referred to it by the Ministry of I&B. It also operates as a second appellate forum over decisions of Levels 1 and 2. In addition to the power to recommend to the Ministry of I&B, to issue various binding directions for perceived non-compliance, such as publication of apology, displaying a warning/disclaimer, etc., the Committee also has the power to recommend to the Ministry, draconian measures such as ordering the blocking, modification or deletion of content on certain perceived dangers. Such drastic orders are subject only to approval from the Secretary of the Ministry of I&B. (Rules 13-15)

Emergency Power

In addition to all of the above, there is an 'emergency power' reserved with the Secretary of Ministry of I&B to pass interim orders blocking any content without even giving an opportunity of hearing. (Rule 16)

Reporting Obligations

Further, Rule 19 mandates a full disclosure of every complaint received and action taken, thereby providing for an abiding policing by the State.

Ultra vires the Constitution

Executive power to virtually dictate content to digital news portals would squarely violate Articles 14 and 19(1)(a) of the Constitution. The IT Rules, 2021 introduce digital portals with ‘news and current affairs content’ as a specific and targeted class to be subject to regulation by a loose-ranging ‘Code of Ethics’ and to be consummately overseen by Central Government officers. Upon the merest complaint or even without any, space has been created for the State to enter and control news and views by way of deletion, modification or blocking, censure, compelled apology and more. Clubbing online news portals with social media as distinct from the print news media is unfair and irrational classification.

The Rules, in effect, set up an adjudicatory mechanism parallel to Courts of law, heavily impinging on freedom of speech and expression. Content shall inexorably be led to an assessment by a Central Government Committee and its dictates, or of the Ministry, upon the slightest incident of ‘any person’ having a grievance about published content. Even if there is no complaint, the Ministry of I&B itself may refer content to the Central Government Committee for orders. Additionally, independent emergency powers to block content without as much as a hearing exist with the Secretary, Ministry of I&B.

Although the Journalistic Norms under the Press Council Act have been incorporated, the rationale of self-regulation, that is, that the State should be kept out, and that such supervision be merely recommendatory, has been flouted by the Rules. The Cable TV Act applies to a purely visual medium and is not on par with the written content of news portals. Conditionalities for cable channels flow from licenses the State grants for the use of airwaves whereas neither newspapers nor digital news publishers require licenses from the government, and do not use any public resource.

In any case, the constitutionality of the provisions of the Cable TV Act and the rules thereunder are open to question and therefore offer no justification for the Impugned Part of the Rules.

Other democratic countries like the UK and Australia class online news with print news, to be self-regulated, free of State control.

Ultra vires the IT Act, 2000

The parent IT Act is limited to providing legal recognition, authentication and facilitation of interchange of electronic data and electronic communication, and its receipt as evidence. It does not does not envisage regulation of news media.

Importantly, an offence under Section 66-A penalising content which is ‘offensive’ or causes ‘annoyance’ was struck down on the ground of vagueness, in *Shreya Singhal*. Therefore, these Rules bring back some elements of Section 66-A and go far beyond it, by way of prescription, to be administered, adjudicated upon and supervised by the executive. Thus, they not only exceed the IT Act, but also contravene the Supreme Court’s ruling, and therefore will not be saved by any general rule-making power under Section 87(1) that is limited to carrying out the provisions of the IT Act, 2000.

The scope of the IT Act is limited to providing for recognition of electronic data and it refers to entities and content in very generic terms. It contemplates regulation of content only by creating a select set of offences, to be prosecuted and judicially assessed. (Offences relating to sexually explicit material etc. are generally not applicable to news and current affairs publications) Only intermediaries, who are immune from prosecution of offences under Section 79, are subject to a Government action of blocking. The IT Rules, 2021, however, introduce a distinct category of entities, purely on the strength of their being publishers of news

and current affairs content, to be subjected to an adjudicatory mechanism parallel to courts of law, on a range of grounds which are not even offences under the IT Act.

Section 69-A of the IT Act, under which the Impugned Part has been framed, provides for blocking *intermediaries* when required in the interests as aforesaid. The IT Rules, 2021, however, go on to impose upon the *non-intermediary digital news media* a three-tier regulatory system to administer a loose-ranging Code of Ethics that contains wide and vague terms as ‘half-truths’, ‘good taste’, ‘decency’, ‘suggestive innuendos’, etc. They also prescribe censure, warning, requiring an apology etc. in this regard as also on counts of ‘defamation’ etc.

Creating a differential classification by way of subordinate legislation, when not contemplated by the parent IT Act is an overreach by itself and this has been done to specifically target digital news portals, by subjecting them to an unprecedented regulatory burden and State interference, which no other form of news publication is subject to. This overreach is aggravated by a virtual legislation by reference, inasmuch as the Rules incorporate the Journalistic Norms under the Press Council Act, the Programme Code under the Cable TV Act, and vest draconian powers and control in the State.

Therefore this Petition seeks striking down of the Impugned Part of IT the Rules, 2021 on the grounds *inter alia* that it: violates Article 19(1)(a) and 19(1)(g) creating a chilling effect on media freedom; violates Article 14 of the Constitution by creating an unreasonable classification and by setting up a parallel adjudicatory mechanism to be overseen by the officials of the executive; and is *ultra vires* the IT Act, 2000.

Hence this Petition.

LIST OF DATES

17.10.2000	Information Technology Act, 2000 enacted by Parliament was brought into force.
27.10.2009	An amendment was brought in, which, among other things, added Section 66-A to the Information Technology Act, 2000.
27.10.2009	The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 were issued under Section 69-A of the Information Technology Act, 2000.
11.04.2011	The Information Technology (Intermediary Guidelines), Rules, 2011 were issued under Section 79(2) of the Information Technology Act, 2000.
24.03.2015	<i>Shreya Singhal v Union of India</i> (2015) 5 SCC 1 was decided, wherein, <i>inter alia</i> , Section 66-A of the IT Act, which constituted as an offence, transmitting offensive, annoying, menacing electronic material, was struck down in its entirety, for being vague and over-broad, and therefore violative under Article 19(1)(a).
25.02.2021	The Impugned Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021, were issued under Sections 69-A(2) and 79(2), and in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011. The IT Rules, 2021, <i>inter alia</i> , seek to regulate digital news portals under Part III by imposing Government oversight

	and a 'Code of Ethics' on them, and therefore, go far beyond the object and scope of the IT Act.
26.02.2021	DigiPub News India Foundation, an association of digital news media organizations, registered under Section 8 of the Companies Act, and of which Petitioner No.1's publication is a founding member, sent a representation to the Ministry of Electronics and Information Technology, and the Ministry of Information and Broadcasting, <i>inter alia</i> , asking for a repeal of the IT Rules, 2021. No response has been received till date.
01.03.2021	Executive action seeking to enforce compliance in respect of the Impugned Rules has already commenced. For instance, Mr. Paojel Chaoba, a senior journalist who is the executive editor of "The Frontier Manipur" was served with a notice dated 01.03.2021, issued by the jurisdictional District Magistrate, to report compliance with the Impugned Rules. It was later reported in the press that the said notice was withdrawn.
09.03.2021	This Hon'ble Court issued notice to the Respondents in a Writ Petition preferred by the Foundation for Independent Journalism and others, numbered as WP(C) 3125 of 2021, challenging the validity of the Impugned Part of the Rules on 09.03.2021.
10.03.2021	The Hon'ble High Court of Kerala issued notice to the Respondents in a Writ Petition preferred by LiveLaw Media Pvt Ltd. and others (numbered as WP(C) 6272 of 2021)

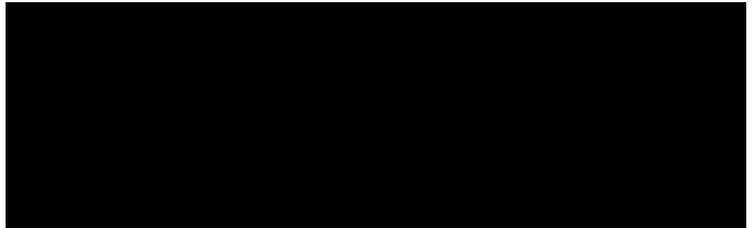
	challenging the Impugned Part of the Rules on 10.03.2021. The Court further directed the Respondents against coercive steps against the Petitioners therein.
11.03.2021	The editor of 'The Quint', the digital news and current affairs publication run by the Petitioners, received an e-mail on 11.03.2021 from the Respondent No.2, Ministry of Information and Broadcasting informing the Petitioners that Part III of the Impugned Rules have come into force and that the communication is for information and necessary compliance.
16.03.2021	Hence this Petition.

FILED BY: -

Filed on:- 16.03.2021

Place: - New Delhi

PRASANNA S & VINOOTHNA VINJAM



**IN THE HIGH COURT OF DELHI AT NEW DELHI
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Writ Petition (Civil) No. _____ of 2021

IN THE MATTER OF:

QUINT DIGITAL MEDIA LIMITED & ANR. **...Petitioners**

Versus

UNION OF INDIA & ANR **...Respondents**

WRIT PETITION PRAYING FOR THE ISSUANCE OF A WRIT OF DECLARATION OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING PART III OF THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES & DIGITAL MEDIA ETHICS CODE) RULES, 2021 AS VOID AND INOPERATIVE FOR BEING VIOLATIVE ARTICLES 14, 19(1)(a), 19(1)(g) OF THE CONSTITUTION

AND

WRIT PETITION PRAYING FOR THE ISSUANCE OF A WRIT OF DECLARATION OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING PART III OF THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES & DIGITAL MEDIA ETHICS CODE) RULES, 2021 AS VOID AND INOPERATIVE FOR BEING ULTRA VIRES THE INFORMATION TECHNOLOGY ACT, 2000

To

HON'BLE THE CHIEF JUSTICE AND

HIS COMPANION JUSTICES OF THE HIGH COURT OF DELHI AT NEW DELHI

MOST RESPECTFULLY SHOWETH THAT :-

1. This Writ Petition challenges the constitutionality and substantive *vires* of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules, 2021**” or

“**Impugned Rules**”) in so far as the said Rules purport to apply to publishers of news and current affairs and, consequently, regulate them by Part III (“**Impugned Part**”) of the same, on the grounds that the Impugned Rules violate Articles 14, 19(1)(a), and 19(1)(g) of the Constitution, and go far beyond the remit of the Information Technology Act, 2000 (“**IT Act**”).

2. The IT Rules, 2021 have been notified and published in the Official Gazette on 25th February, 2021 and have come into effect from that date. A true copy of the IT Rules, 2021 issued on 25.02.2021 is annexed herewith and marked as **ANNEXURE-P-1**. The Impugned Rules enable the Government to virtually dictate content to digital news portals, and squarely violate media freedom. They introduce digital portals with ‘news and current affairs content’ as a specific and targeted class to be subject to regulation by a loose-ranging ‘Code of Ethics’, and to be consummately overseen by Central Government officers, all of which is violative of Articles 14, 19(1)(a), and 19(1)(g) of the Constitution, and goes beyond the object and scope of the IT Act.

Parties

3. **Petitioner No.1** is Quint Digital Media Limited, and publishes the digital news portal ‘The Quint’. **Petitioner No. 2** is Ms. Ritu Kapur is a Director at the Petitioner No.1 company and co-founder of ‘The Quint’, a digital publisher of news and current-affairs content. The Petitioners are therefore directly impacted by the operation of the Impugned Part of the IT Rules, 2021. Further, the Petitioners operate within the territory of India and conduct ‘systematic business

activity’ making their content available in India, and therefore fall within the purview of the IT Rules, 2021, under Rule 8.

4. **Respondent No.1** is the Union of India through the Secretary, Ministry of Electronics and Information Technology, through whom the Impugned Rules have been issued. **Respondent No.2** is the Secretary, Ministry of Information and Broadcasting who also exercises powers under the Impugned Rules. Both Respondents are in New Delhi.

Scheme of the Information Technology Act, 2000

5. The purpose and the purport of the IT Act is 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, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Banker’s Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto”.

6. Thus, the IT Act was introduced to facilitate, recognise and ratify electronic commerce, including electronic transactions, electronic communication, electronic data/record, etc. and to enable as evidence, such electronic record and material, as provisions hitherto had not accommodated such material.
7. Pursuant to the above purpose, the entities of which the IT Act took cognizance, were all generic users of information technology. Significantly, news media was neither recognised as a separate

entity, nor news and current affairs as distinct content. Ethical regulation of the news media was entirely extraneous to the Act.

8. The content to be regulated by the IT Act, as offences, was limited to sexually explicit material, child pornography, showing private parts of individuals, cyber terrorism, etc. to be prosecuted and tried by normal courts. The Supreme Court in *Shreya Singhal v Union of India* (2015) 5 SCC 1 struck down, on the ground of vagueness, Section 66-A, which constituted as an offence, transmitting offensive, annoying, menacing electronic material. The Impugned Rules intend to regulate content on vague and subjective standards as provided in the Code of Ethics, such as 'half-truths', 'good taste', 'decency', etc.
9. Even when such a Section was contemplated by the IT Act, the Supreme Court struck it down as being unconstitutional under Article 19(1)(a). Now, without any statutory peg, similar grounds are sought to be brought in by the Impugned Rules, which not only goes beyond even what is contemplated by Section 69-A, in terms of which the Impugned Part purports to be made, but also undoes *Shreya Singhal*.
10. Save and except for providing against a narrow band of content by way of offences and blocking public access by way of a direction to intermediaries, again, on limited grounds, the IT Act does not contemplate any regulation of content, but the Impugned Rules do. Any attempt to bring in such regulatory provisions, through subordinate/delegated legislation would clearly be outside the scope of the IT Act, and in excess of the rule-making power delegated under Section 87 of the IT Act.
11. Specifically, the IT Rules, 2021, state as a source of their power, Section 87(2)(z) and (zg). Section 87(2)(zg) is relatable to Section

79, which, in view of the immunity from prosecution, allows for a special dispensation with respect to intermediaries, and is limited to intermediaries. The definition of intermediaries in the IT Act and the scheme of the IT Rules, 2021 make it clear that publishers are distinct from intermediaries. Note that a publisher is not even defined or dealt with in the IT Act. Therefore, Section 79 does not concern any *non-intermediary news media platform*, and the Impugned Part cannot be sourced to Section 87(2)(zg). On the other hand, Section 87(2)(z) is relatable to Section 69-A, again limited to issuing a direction to an intermediary or any Government agency, and does not contemplate regulating news media at all. Most of the matters in the Code of Ethics are beyond Section 69-A even otherwise.

12. Regulation of any one category of business or practice is not contemplated under the Act except insofar as it relates to “intermediaries”. Section 79 of the Act provides a safe harbour provision for intermediaries from being liable for any content created by an “originator” which the intermediary merely transmits and while doing so, the provision is observant of the guidelines issued as part of the Rules made by the Central Government in exercise of powers under Section 87(2)(zg). Until the Impugned Rules came into force, the Information Technology (Intermediary Guidelines) Rules, 2011 held the field. Any attempt to smuggle in such regulatory provisions (substantive or procedural) through subordinate, delegated legislation would clearly be outside the scope of the Act.
13. The Petitioner, being in the business and/or practice of news and journalism is not an intermediary. Intermediaries are immunised from the consequences of the content hosted by them, and hence they

may need to be separately regulated. The Act therefore contemplated a set of rules in this regard. The Petitioner seeks no safe harbour and is not entitled to any safe harbour provisions for the content that it hosts and publishes and it takes full responsibility for the content it publishes. Being a publisher of news and views, all the civil and criminal laws including those under the IT Act, 2000 relating to media are applicable to the Petitioner and it is completely incorrect to say that the digital news medium is unregulated. Other democratic countries like the UK and Australia class online news outlets with the print medium, subject only to self-regulation by a voluntary body of peers, without any role or space to the State.

Scheme of IT Rules, 2021

14. The IT Rules, 2021 introduce two distinct sets of regulations: *one*, due diligence norms to be followed by ‘intermediaries’ (Part II of the Rules); *two*, Code of Ethics ought to be adhered to by ‘publishers’, along with a three-tier compliance mechanism (Part III of the Rules).
15. While Part II pertains to intermediaries, an entity recognised and regulated by the IT Act (and not the subject of challenge in the present petition), Part III of the IT Rules, 2021, i.e., the Impugned Part, pertains to two distinct sets of ‘publishers’:
 - (i) publishers of news and current affairs content
 - (ii) publishers of online curated content
16. It is important to note that these two entities have been newly introduced in the IT Rules, 2021 and the terms ‘publisher’ and ‘publisher of news and current affairs content’ are defined as follows:

(s) 'publisher' means a publisher of news and current affairs content or a publisher of online curated content;

(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;

17. Further, the terms 'content' and 'news and current affairs content' are defined as follows:

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

Code of Ethics

18. Rule 9 of the IT Rules, 2021 (read with the Appendix) lays down a separate Code of Ethics for the two kinds of publishers. The Code of Ethics, in case of publishers of news and current affairs content (which includes the Petitioners) is as follows:

- i. Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978 ("**Press Council Act**"). A true copy of the Norms of Journalistic Conduct, 2020 is annexed herewith and marked as **ANNEXURE-P-2**
- ii. Programme Code under Section 5 of the Cable Television Networks (Regulation) Act, 1995 ("**Cable TV Act**"). A true

copy of the Programme Code is annexed herewith and marked as **ANNEXURE-P-3**).

- iii. Content which is prohibited under any law for the time being in force shall not be published or transmitted.

19. It is pertinent to note that the Norms of Journalistic Conduct under the Press Council Act and the Programme Code under the Cable TV Act are extremely broad in their sweep, covering within their ambit things like ‘good taste’ and ‘decency’, which by their nature are subjective. Thus, the IT Rules, 2021, by incorporating these by reference, and making them part of the regulatory mechanism, have stepped outside the remit of Section 69-A of the IT Act, which was upheld noting its narrow scope and the manner of operation of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. A true copy of the 2009 Rules is annexed herewith and marked as **ANNEXURE-P-4**.

20. Moreover, a sweeping Governmental oversight has been introduced in all such matters, by way of a three-tier compliance mechanism, which is as follows:

Level 1 (Rules 10,11): ‘*Self-regulation*’ by the publisher - Grievance redressal officer to be set up by the publisher to take up a complaint by “any person having a grievance regarding content”

Level 2 (Rule 12): ‘*Self-regulation*’ by ‘*self-regulating bodies*’ of the publishers - A self-regulating body of an appellate nature, constituted by publishers or their associations, of independent persons, but subject to Government approval. This body has the power to warn or censure, require the publisher to apologize, or display a warning/disclaimer. Their procedure is bound hand and

foot by the Rules which obligate Level 2 bodies to refer matters of non-compliance, and a certain class of content to Level 3 for deletion or modification of the same.

Level 3 (Rules 13-15): *Oversight mechanism by the Central Government* - An Inter-Departmental Committee, headed by an Authorised Officer of the Government of India, and composed of representatives from various Ministries (and domain experts, if added). The Committee has the power to take up complaints referred to it by the Level 2 body or even directly by the Ministry of I&B. In addition to the power to recommend to the Ministry of I&B to issue various binding directions for perceived non-compliance, such as publication of an apology, displaying a warning/disclaimer, etc., the Committee also has the power to recommend to the Ministry, draconian measures such as ordering the modification, deletion or blocking of content. Such drastic orders are subject only to approval of the Secretary of the Ministry of I&B. The grounds on which such deletion or modification may be made are:

1. To prevent incitement to the commission of a cognisable offence relating to public order (Rule 14(5)(e))
2. Grounds enumerated under Section 69-A, that is, sovereignty and integrity of India, security of State, defence of India, friendly relations with foreign States, public order or to prevent incitement to the commission of any cognizable offence relating to the above. (Rule 14(5)(f))

In addition to all of the above, there is an ‘emergency power’ reserved with the Secretary of Ministry of I&B, to pass interim

orders blocking any content without even giving the publishers an opportunity of hearing. (Rule 16)

21. DigiPub News India Foundation, an association of digital news media organizations, registered under Section 8 of the Companies Act, and of which Petitioner No.1 is a member, sent a representation to the Ministry of Electronics and Information Technology, and the Ministry of Information and Broadcasting, *inter alia*, asking for a repeal of the IT Rules, 2021. No response has been received till date. A true copy of the representation dated 26.02.21 is annexed herewith and marked as **ANNEXURE-P-5**.
22. It is submitted that Executive action seeking to enforce compliance in respect of the Impugned Rules has already commenced. For instance, Mr. Paojel Chaoba, a senior journalist who is the executive editor of “The Frontier Manipur” was served with a notice dated 01.03.2021, issued by the jurisdictional District Magistrate, to report compliance with the Impugned Rules. It was later reported in the press that the said notice was withdrawn.
23. This Hon’ble Court issued notice to the Respondents in a Writ Petition preferred by the Foundation for Independent Journalism and others challenging the validity of the Impugned Part of the Rules on 09.03.2021. A true copy of the Order dt. 09.03.2021 is annexed herewith and marked as **ANNEXURE-P-6**.
24. The Hon’ble High Court of Kerala issued notice to the Respondents in a Writ Petition preferred by LiveLaw Media Pvt Ltd. and others challenging the Impugned Part of the Rules on 10.03.2021. The Court further directed the Respondents against coercive steps against the Petitioners therein. A true copy of the Order dt. 10.03.2021 is annexed herewith and marked as **ANNEXURE-P-7**.

25. The editor of 'The Quint', the digital news and current affairs publication run by the Petitioners, received an e-mail on 11.03.2021 from the Respondent No.2, Ministry of Information and Broadcasting informing the Petitioners that Part III of the Impugned Rules have come into force and that the communication is for information and necessary compliance. A true copy of the e-mail dt. 11.03.2021 is annexed herewith and marked as **ANNEXURE-P-8**.

GROUND

26. The reliefs prayed for in this Writ Petition are claimed on the following grounds, each of which is taken both alternatively and cumulatively and without prejudice to each other. The Petitioners crave liberty to urge additional grounds at a later stage during these proceedings.

- A.** The regulations are frontally offensive to Article 19(1)(a) and Article 14. A restriction on the Fundamental Right to free speech and expression can only be to the extent strictly necessary for the stated interests in Article 19(2). Digital news portals such as the Quint, published by the Petitioners, are already subject to all the civil and criminal laws enacted for those interests. Therefore, the IT Rules, 2021 cannot be in the interest of Article 19(2). They are only meant to be a ruse for the State to enter and directly control the content of digital news portals.
- B.** To club online news portals with other online platforms is itself irrational and unfair. Digital news portals are similar to print newspapers in terms of content, and ought to be treated on par with them. Written material on current affairs, when in print or online, is not fundamentally different, so as to warrant differential treatment.

Other jurisdictions

C. Australia treats online news portals on par with newspapers, both of which are covered by the voluntary, newspaper funded Press Council, while broadcasting including digital broadcasting is, under the Broadcasting Services Act 1992, governed by the Australian Communication and Media Authority (ACMA), an autonomous statutory body.

D. UK has consciously exempted online news media from the proposed law to regulate “Online Harms”. The Government’s response on concerns about the new law affecting journalistic freedom, dated 15 December 2020, is as follows:

“22. Stakeholders raised concerns during the consultation about how the legislation will impact journalistic content online and the importance of upholding media freedom. Content published by a news publisher on its own site (e.g. on a newspaper or broadcaster’s website) will not be in scope of the regulatory framework and user comments on that content will be exempted.

23. In order to protect media freedom, legislation will include robust protections for journalistic content shared on in-scope services. The government is committed to defending the invaluable role of a free media and is clear that online safety measures must do this. The government will continue to engage with a range of stakeholders to develop our proposals.”

E. A law that affects Fundamental Rights must also be reasonable, fair and just under Article 14. The IT Rules, 2021 are manifestly unjust, in as much as they create a parallel and extra-legal adjudicatory

mechanism, which has at its apex, the Central Government. This also violates the principle of separation of powers.

- F.** It must be noted that the regulatory mechanism as provided for by the Impugned Rules is no ‘self-regulatory’ mechanism with moral authority, but is one bound at every stage by a Government diktat and subject to the Government’s final orders - digital news portals remain vulnerable to the normal civil and criminal liabilities while also being at the mercy of this so called ‘self-regulatory’ mechanism where the final word shall be that of the Central Government.
- G.** Wide dissemination of news and views is not just the right of the publisher, but also the citizen’s right to be informed of a variety of viewpoints, as has been held often by the Supreme Court. Criticism of the State is integral to a democracy and therefore, giving the State any power at all to regulate content is directly against public interest - more so, when the control is so pervasive as under the IT Rules, 2021.
- H.** The publisher is constrained to attend to any and each complaint and also to report them all with action taken. Thus, the media is cast with a reporting duty which the State can review. Then, Level 2 is given the power to issue binding directions, which, if not followed shall automatically be escalated to the Level 3 of Government officials. This is therefore not ‘self-regulation’. Further, the Code to be administered includes terms as vague as ‘good taste’ and ‘decency’. For example, if the odd line in an editorial or a news report is seen as not being in ‘good taste’ by any person, an entire adjudicatory mechanism shall be triggered, and an enforced apology or censure may follow. Unlike the normal legal process, where such grievances are not justiciable, and even when justiciable, impose a certain rigour upon the complainant because of the inherent filters in the judicial

process, the IT Rules, 2021 effectively invite a free for all. Someone or the other is bound to dislike some or the other content as not being in good taste, and the publisher's time and energy shall all be spent in negotiating the three tiers. This will be the most chilling effect.

- I. The recent past has witnessed a proliferation of First Information Reports against even the most factual of reports causing much consternation among right thinking persons. An additional mechanism to vent intolerance will undoubtedly cause a chilling effect.
- J. The development of the law, leading to the setting up of the Press Council will show that the key intent was that the written news medium should regulate itself without any interference from the State. While the Press Council Act has a Code of Conduct (Norms of Journalistic Conduct), these are moral objectives with no state action or any coercive action possible. Therefore, the importing of the Press Council Regulations, *dehors* the essential attribute and aspect of self-regulation is perverse, especially as digital news portals are essentially a written news medium.
- K. The Programme Code under the Cable TV Act and the consequential power to prohibit transmission would itself be of doubtful constitutionality, which has never been tested. Also, there are important *differentia*. The Cable TV broadcast medium is visual and the greater part of the digital news medium is written, the essential difference between the visual and written medium has been noted from the early years of our jurisprudence, and too well settled to miss as the IT Rules 2021 have done. Furthermore the Cable TV channels are all licensees of the Government, with conditions attached to the licence, a feature strikingly absent with digital news portals or even newspapers. Therefore the equation made in the Rules and the

official claim of creating a ‘level playing field’ across all media is untenable. To the extent that digital portals may use multimedia, existing safeguards in the law suffice.

- L. Fundamental Rights must be protected from both substantive and procedural infractions. The procedure envisaged by the three tier mechanism is draconian and unjust. First, appellate powers to overrule the digital portal have been provided to extraneous bodies, which are not impartial courts. Moreover, the ultimate power to overrule and coerce exists with the executive State. Even the discretion of the Level 2 body is curtailed because it is obligated to report cases of non-compliance with its decisions to the Government Committee and to refer content for deletion/modification. It is also enabled to invite Central Government’s interference in other decisions. Importantly, its very constitution is subject to Central Government approval.
- M. The Supreme Court upheld the vires of Section 69-A of the IT Act solely upon its narrow scope and specificity in the procedure as the Rules 2011 specified. Then too it applies only to ‘intermediaries’ who are otherwise immune from substantive offences and prosecutions for the same. The IT Rules, 2021 diversify and amplify that limited reading beyond all recognition, to allow for impermissible State dictation and interference with the news media, the life breath of democracy.
- N. The Rules have been brought through the side door without even the debate that would have occurred if it had been brought in as legislation passed by elected representatives. This is not to say that if brought in as an Act of Parliament, it would have been constitutional. It would not. The point is to emphasize that these Rules have come without the slightest independent scrutiny, and

without any consultation with the most affected and important stakeholder, the digital news portals. Further, the Rules have not even been laid before the Houses of Parliament for deliberation and passage.

- O.** Parliament is the first bulwark against infraction of Fundamental Rights. Particularly in measures that both intend to and impact media freedom, this Court ought not to countenance this act of the Respondents in giving a pre-promulgation parliamentary process a go by and hold the Rules to be unconstitutional for mal-exercise of discretion bringing the Rules to force before the Parliament. Furthermore, the Rules have also been promulgated without prior consultation with stakeholders and affected entities such as the Petitioner and as such they ought to be struck down as a manifestly arbitrary exercise of power for non-application of mind and violating the rule of *audi alteram partem*.

Ultra Vires the IT Act, 2000

- P.** It is well-settled in law that there is no unlimited right of delegation, and that subordinate legislation cannot go beyond the object and the scope of the parent Act. Any Rule or Regulation made in exercise of delegated power has to be in consonance with the parent Act, and if such Rule or Regulation goes beyond what the parent Act contemplates, then it becomes *ultra vires* the parent Act. A 3-judge bench of the Hon'ble Supreme Court, in ***Ajoy Kumar Banerjee v Union of India*** (1984) 3 SCC 127 held that a Scheme introduced by the Ministry of Finance was *ultra vires* the parent Act, the General Insurance Business (Nationalisation) Act, 1972, as the said Scheme

was not related to and went beyond the object envisaged in the parent Act. The Court held as follows:

“26. ... it is evident that the scheme of 1980 impugned in these petitions is not related to the object envisaged in sub-section (2) of Section 16 of the Act. In order to be warranted by the object of delegated legislation as explained in the memorandum to the Bill which incorporated Section 16 of the Act, read with the preamble of the Act, unless it can be said that the scheme is related to sub-section (2) of Section 16 of the Act, it would be an exercise of power beyond delegation. The duty of the Court in interpreting or construing a provision is to read the section, and understand its meaning in the context. Interpretation of a provision or statute is not a mere exercise in semantics but an attempt to find out the meaning of the legislation from the words used, understand the context and the purpose of the expressions used and then to construe the expressions sensibly.”

Q. Similarly, in *Assam Co. Ltd. v. State of Assam*, (2001) 4 SCC 202 at page 208, it was held:

“It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such an Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the rule goes beyond what the Act contemplates, the rule becomes in excess of the power delegated under the Act, and if it does any of the above, the rule becomes ultra vires the Act.”

R. In the present case, though the parent IT Act deals with electronic data/record, the object and purpose of the IT Act, is primarily to provide for legal recognition of such electronic data/record, recognise means of electronic communication, authenticate and

establish conditions in which electronic data/record could be considered as evidence, and to recognise offences committed through the use of computer resources. The object is not to regulate content beyond this, except in so far as intermediaries, who are separately immunised. Therefore, the IT Act does not recognise digital news media as a separate category of entities and does not seek to subject them or their content to any set of special regulations. The Impugned Part of the Rules, to the extent that it seeks to achieve such special regulation or control of digital media including online news platforms, is manifestly *ultra vires* the IT Act.

- S. Allowing a regulatory regime to be established in respect of the digital media industry is like allowing power looms to be regulated under the Electricity Act merely because they employ and use electric power in the course of their business; or allowing the practice and profession of plumbing to be regulated under the Water Act.
- T. Section 69-A is a limited and specific emergent power as described by the Supreme Court in *Shreya Singhal*. The Impugned Rules cannot therefore purport to regulate digital news portals by requiring them to abide by the Code of Ethics. In doing so, the Rules essentially extend the application of two legislations: the Cable TV Act and the Press Council Act to digital news media, to the extent of the Programme Code and the Norms of Journalistic Conduct stipulated under these legislations respectively.
- U. It is noteworthy that both under the Press Council Act and the Cable TV Act, the journalistic norms and the programme code are expressly provided for under the plenary legislations. The Press Council Act is a statute with express provisions to regulate newspapers, without Government interference, wherein Section

13(2)(b) expressly specifies it as a function of the Council to ‘build up a code of conduct’. Similarly, under the Cable TV Act, there is power under Section 5, read with Section 19, to impose a programme code on cable television operators, to be regulated by the Government. By contrast, the IT Act neither intends nor provides for the imposition of a programme code, or regulation of news portals in any manner. Yet, this is sought to be done through subordinate legislation, the IT Rules, 2021.

V. The IT Rules, 2021 expand the scope of the IT Act even further by providing for a Code of Ethics and a three-tier regulatory system to administer a loose-ranging Code of Ethics, that contains wide and vague terms as ‘half-truths’, ‘good taste’, ‘decency’. Therefore, such an oversight includes and extends far beyond categories of content as provided for under Section 66-A, which was struck-down in *Shreya Singhal*. Furthermore, the three-tier regulatory system also has the power to censure, warn, require an apology, etc. in this regard, as also on counts of ‘defamation’ etc. As stated above, this is contrary to the Supreme Court judgment in *Shreya Singhal* that struck down Section 66-A.

W. Simply put, in three fundamental ways the IT Rules, 2021 are *ultra vires* the IT Act:

- i. They purport to virtually legislate on the conduct of entities, not even within the ken of the IT Act.
- ii. They travel beyond the specific enabling Sections and introduce new concepts and regulations.
- iii. They attempt to proscribe content on the basis of vague and subjective grounds which the Supreme Court has already voided when it struck down Section 66-A of the IT Act in *Shreya Singhal*.

- X. The IT Rules, 2021 have been issued under S. 87(2)(z) and (zg). The rule-making power under S. 87(2)(zg) is with respect to guidelines for intermediaries, therefore, the Impugned Part cannot be sourced to S. 87(2)(zg), since the Impugned Part applies only to non-intermediaries such as ‘publishers of news and current affairs content’ and ‘publishers of curated content’, which are both distinct from ‘intermediary’ as defined and understood in the IT Act. This distinction is also evident from the scheme of the IT Rules, 2021.
- Y. On the other hand, Section 87(2)(z) is geared to the procedure and safeguards for blocking public access to information on a computer, by way of direction to intermediaries, or any Government agency, and not to any other entity such as a publisher of news and current affairs content. Further, even intermediaries can only be given directions on limited grounds. Section 69-A, to the extent relevant, reads as follows:

“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 preventing incitement to the commission of any cognizable offence relating to above, it may, ... 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.”

Section 69-A refers to blocking of information on the internet, that can only be done on extraordinary grounds such as in the interest of national security, etc., and it does not at all purport to generally regulate or censor news media. The Government implements its power to block information under Section 69-A by directing intermediaries, such as social media intermediaries and Internet

Service Providers to delete social media posts or to block access to certain pages/URLs. But in no manner does the parent Section empower the Government to direct publishers to delete content, make changes, or publish apologies. The Rules cannot therefore regulate digital news media by requiring them to abide by the Code of Ethics, by extending other legislations and Rules to digital news media. Therefore, the IT Rules, 2021 go completely beyond the object and scope of Section 69-A of the IT Act. There is a difference between emergent power under Section 69-A with respect to blocking by way of a direction to intermediaries, and a mechanism to routinely assess, edit and modify content of news publications, therefore, the IT Rules, 2021 cannot be countenanced.

- Z.** Further, the IT Rules, 2021 provide for an oversight mechanism in the Impugned Part, including the setting up of an Inter-Departmental Committee which has the power to hear grievances regarding compliance with the said Code of Ethics, as well as the power to recommend to the Ministry of I&B, draconian measures such as ordering the deletion, modification of content or blocking the same. The Rules framed under the IT Act cannot set up an adjudicatory mechanism parallel to Courts of law, which is completely beyond the object and scope of the IT Act.
- AA.** The enabling provision in the IT Act conferring Rule making power on the Central Government in the instant case is Section 87(1) wherein such power is “to carry out the provisions of [the] Act”. Even the specific provisions under Section 87(2) are relatable to one or more express provisions of the IT Act. It is submitted that the purpose of the Impugned Part of the IT Rules, 2021 is regulation of

digital news media entities which is not contemplated under any of the provisions of the Act or its objects.

BB. It is well-settled that Rules made *dehors* a ‘statutory peg’ are invalid and have no effect in law. In *V. Sudeer v. Bar Council of India*, (1999) 3 SCC 176, the Supreme Court, while striking down provisions in the Bar Council of India Rules that imposed conditions for enrolment as an advocate, held as follows:

“20. We may now refer to Section 49 of the Act, which deals with the general power of the Bar Council of India to make rules. Sub-section (1) thereof lays down that the Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe on various topics as enumerated therein from clauses (a) to (j). **A mere look at the aforesaid provision makes it clear that the rule-making power entrusted to the Bar Council of India by the legislature is an ancillary power for fructifying and effectively discharging its statutory functions laid down by the Act.** Consequently, rules to be framed under Section 49(1) **must have a statutory peg on which to hang. If there is no such statutory peg, the rule which is sought to be enacted dehors such a peg will have no foothold and will become stillborn.** The statutory functions entrusted by the legislature to the Bar Council of India under the Act so far as relevant for our present purpose and which could be relied upon by Shri Rao, learned Senior Counsel for the respondent-Bar Council of India, are Section 7(1)(h) and Section 24(3)(d). **We have seen earlier that neither of these statutory provisions entitles the Bar Council of India to provide for the disqualification or a disability or an additional condition for enrolment of a person who is otherwise eligible to be enrolled as an advocate under Section 24(1). Once that conclusion is reached, the very foundation for supporting the impugned Rules gets knocked off.** Consequently, if any such rule is framed, supposedly by exercise of the rule-making power as enumerated in Section 49(1)(af), (ag) or (ah) on which also reliance was placed by Shri Rao, the said rule having not been made for discharging any of the statutory functions of the Bar Council of India in this connection must necessarily fail as it would be ultra vires the

statutory functions of the Bar Council of India. Any rule framed by the rule-making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law. Consequently, the valiant attempt made by Shri Rao for sustaining the Rules under Section 49(1)(af), (ag) and (ah) would remain abortive only on this short ground.”

(Emphasis supplied)

CC. Whenever a substantive burden of duties and obligations is to be cast upon any person, the same must have express statutory sanction. For instance, in the case of taxation powers, which similarly place burdens on the persons subject to the statute, it is settled law that the power to levy tax must have express statutory backing. For instance, in *Bimal Chandra Banerjee v. State of M.P.* (1970) 2 SCC 467, the Hon’ble Court struck down as *ultra vires*, rules providing for a levy on liquor that was not lifted by the contractors even though the statutory rule-making power was couched in broad and general terms, on the following grounds:

“13. Neither Section 25 nor Section 26 nor Section 27 nor Section 62(1) or clauses (d) and (h) of Section 62(2) empower the rule-making authority viz. the State Government to levy tax on excisable articles which have not been either imported, exported, transported, manufactured, cultivated or collected under any licence granted under Section 13 or manufactured in any distillery established or any distillery or brewery licensed under the Act. **The Legislature has levied excise duty only on those articles which come within the scope of Section 25. The rule-making authority has not been conferred with any power to levy duty on any articles which do not fall within the scope of Section 25.** Therefore it is not necessary to consider whether any such power can be conferred on that authority. **Quite clearly the State Government purported to levy duty on liquor which the contractors failed to lift. In so doing it was attempting to exercise a power which it did not possess.**

14. No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule-making authority has no plenary power. It has to act within the limits of the power granted to it.”

(Emphasis supplied)

DD. A Division Bench of the Delhi High Court in *Durga Chand Kaushish v. Union of India*, 1979 SCC OnLine Del 103, ILR (1979) 2 Del 730 struck down as *ultra vires* the Cinematograph Act, 1952, a statutory order by the L-G that imposed price restriction on cinema admissions – on the grounds *inter alia* that firstly, there was not even a whisper of price control powers to be within the scope and ambit of the Cinematograph Act, although it dealt with cinematograph films and their exhibition in general; secondly, that price control powers have traditionally been expressly and specifically provided for under plenary enactments and not as subordinate legislation, and held as follows:

“11. From a perusal and careful scrutiny of these provisions we do not find any provision which provides for price control either as purpose or as a means to achieve a stated purpose. The only purpose of Part III of the Act is to ensure safety of persons attending exhibition of films as emphasised by Section 12. ...

12. We have examined the provisions of the 1952 Act to find out if the same disclose, “either apparently or otherwise”, a policy guiding the exercise of power claimed to be derived from the enactment. With this in mind, we may re-examine the concluding words of sub-section (2) of Section 12 “.....on such terms and conditions and subject to such restrictions as it may determine”. These words may appear wide and unrestricted

but it cannot be emphasised enough that they have to be read in the context in which they appear and must be understood to mean only such conditions and restrictions as pertain to the purpose of Part III which is set out in sub-section (1) of Section 12.

13. We have, therefore, no hesitation in coming to the conclusion that regulation of the rates of admission to cinema auditoriums is not a policy stated in the 1952 Act. It is neither a purpose sought to be achieved by the said Act nor a means to achieving any other purpose stated in the Act.

17. The history of legislation on the subject is referred to in the Statement of Objects and reasons of the Cinematograph Act, 1918. The 1918 act was followed by the present Act. In the statement of Objects and Reasons of this Act, it is recalled that the 1918 Act dealt with “two separate matters, namely, (a) examination and certification of films as suitable for public exhibition and (b) regulation of cinemas including their licensing”.

20. It is, thus, clear that the 1918 Act did not contain even a whisper about the control of the rates of admission to cinema auditoriums...

22. This makes it clear that neither the 1918 Act nor the 1952 Act seek to achieve the purpose of controlling the rates of admission to cinema auditoriums or any purpose akin thereto.. It was only by a notification dated 6th May, 1965 that rule 45 was amended by introducing sub-rule (xiii) and by introducing condition 8A in Schedule 2 to the said Rules. By doing so, the rule-making authority sought to introduce a wholly new dimension to the purposes of the legislation on the subject after nearly 47 years by a mere executive fiat.”

(Emphasis supplied)

Essential Legislative Function

EE. It is well-settled that the essential legislative function, which includes declaring the legislative policy and laying down the

standard that is to be enacted into a rule of law, cannot be delegated. In *Ajoy Kumar Banerjee v Union of India* (1984) 3 SCC 127, it was held as follows:

“The Legislature must retain in its own hand the essential legislative function which consists in declaring the legislative policy and lay down the standard which is to be enacted into a rule of law, and what can be delegated in the task of subordinate legislation which by very nature is ancillary to the statute which delegates the power to make it effective provided the legislative policy is enunciated with sufficient clearness or a standard laid down... we must bear in mind the observations of Mukherjee, J. in *In re the Delhi Laws Act, 1912* case to the following effect:

“The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the Legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out of the details within the framework of that policy.”

FF. Regulation of digital or online news media is an essential legislative function. To the extent that the rule-making power is read to sanction an entire regulatory scheme, it amounts to delegation of essential legislative function, which cannot be countenanced.

Subordinate Legislation & Fundamental Rights

GG. Not only is it impermissible for subordinate legislation to go beyond the purpose of the parent Act, it is far worse that it does so in a manner that affects Fundamental Rights vitally. This is precisely what the IT Rules, 2021 do.

HH. No reading of the rule-making power will allow for such a regulatory regime for digital news media entities without express statutory sanction, for that will run the danger of adversely affecting Fundamental Rights, especially the right to free speech under Article 19(1)(a). Given such grave consequences, rule-making power has to be read strictly.

II. The right to freely criticise the government is an essential and an inalienable part of the right to practice news journalism and a regulatory mechanism with the government at its apex is a manifestly unreasonable interference with the said right, especially if subjective and vague criteria like ‘good taste’ and ‘decency’ can be invoked to lead to Government interference. Therefore, the Impugned Rules are also in violation of Article 19(1)(g) insofar as they place unreasonable restrictions on carrying on the business and practice of online news journalism. It is therefore imperative that this Hon’ble Court supplies a constitutionally sound reading of the rule-making power under the Act and strikes down the Impugned Part of the Rules for being both *ultra vires* the rule-making power under the IT Act, and for being violative of Articles 14, 19(1)(a), 19(1)(g) of the Constitution.

Untenability of the Respondents’ Press Statements

JJ. By way of various press releases, the Respondents have made a specious argument that emergency powers under Rule 16 is only an existing power under Section 69-A(2) to block an intermediary that has been incorporated in the Rules and that no new assault has been made on media freedom. However, Section 69-A(2) has been amplified and diversified in a myriad of ways by the entire Part III of the Rules which go far beyond the grounds under Section 69-A,

and expanding the occasion for the use of the powers to block. On remote moral grounds, and grounds far beyond the contemplation of Section 69-A(2), a rigorous regime to be adjudicated upon by a parallel mechanism with the government at the apex has been set up. Section 69-A(2) was upheld by the Supreme Court only because of the limitations contained therein which have been breached by the Impugned Rules.

27. The Petitioners have not filed any Petition or proceeding seeking similar reliefs before this Hon'ble Court, the Hon'ble Supreme Court or any other Court or Tribunal.

28. The Writ Petition is *bona fide* and in the interests of justice.

PRAYERS

29. In the premises, this Hon'ble Court may be pleased to issue appropriate declarations, writs, orders and directions as set out below:

- a. Pass a Writ of *Declaration* or any other appropriate writ, order or direction, declaring the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as void and inoperative in so far as they define and apply to publishers of news and current affairs content, and Part III of the Rules, in so far as it regulates publishers of news and current affairs content, for being violative of Articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution; and
- b. Pass a Writ of *Declaration* or any other appropriate writ, order or direction, declaring the Information Technology (Intermediary

Guidelines and Digital Media Ethics Code) Rules, 2021 as void and inoperative in so far as they define and apply to publishers of news and current affairs content, and Part III of the Rules, in so far as it regulates publishers of news and current affairs content, for being *ultra vires* the Information Technology Act, 2000;

- c. Pass any other order or direction that this Hon'ble Court may deem just and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL, AS IS DUTY BOUND EVER PRAY

Filed on:- 16.03.2021

Place: - New Delhi

**PRASANNA S &
VINOOTHNA VINJAM
ADVOCATES FOR THE PETITIONERS**

