

# Constitutional Limitation on Intermediaries Liability: Liberty, Right to Free Speech and Expression

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## Abstract

*An intermediary functioning in a tangible world is quite different with regard to its role in a nation than an intermediary functioning in the Intangible world. An Intermediary wasn't held liable for anything that was published or transmitted through it with the help of Safe harbor provisions to save the business models of the intermediaries but the need of the hour has changed and with the rapid increase in the number of crimes in the cyber world and their effect in the tangible world, for ex., pornography and its impact in the rising rates of crimes against women and children there is a need to impose a liability on them. Section 79 of the Information Technology Act,2000 and Section 67 of the Information Technology Act, 2000 have been looked into and have been analyzed with the perspective of privacy and right to free speech and Expression.*

*The Baazee.com case, Shreya Singhal v/s Union of India and the Kamlesh Vaswani v/s Union of India case laws have been examined to have an understanding of the Supreme Court with regard to the same matter. With the recent banning of Child Pornography by the 2019 amendment to the POSCO Act and the new guidelines being provided by the MeitY an analysis have been drawn on the function of the intermediaries as censors. The Information Technology Act addresses all the procedural matters but the difficulty in addressing the technological necessities and difficulties have been highlighted in the research paper.*

**Keywords:** *Intermediaries, Exemption from Liability, Right to Privacy, Right to Free Speech and expression, Child Pornography.*

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## Introduction

An intermediary in a tangible world is compared to a connecting medium between an expressor of an idea and the reader of it. In the tangible world an Intermediary could be a publisher of books, newspapers, magazines etc. and in the Intangible world an intermediary is a network service provider, an internet service provider, an online payment site, online auction site, online marketplaces and many more. Basically, an intermediary is a service provider that provides services online or connects a seller or an expressor of an idea to a buyer or a reader of an idea simultaneously. With the power of the internet intermediaries to publish, transmit and host content that developed with time, an issue with regard to the liability that should be imposed on it with regard to the nature of the content on being offensive or illicit was developing. The intermediaries are basically the medium without which the Internet will collapse and it represents a technological innovation that can be used in both a lawful or unlawful manner so the idea is basically to balance the right of the intermediaries without disrupting the benefits the society if accruing from it. So, there was a need that was felt by the lawmakers that the regulation to be developed regarding the liability of the intermediaries should provide a perfect balance between technological necessity and legal necessity and "section 79 of the Information Technology Act,2000" exactly does so.<sup>1</sup>

In the year 2004, a 17-year-old schoolboy had filmed a sexual act featuring his classmates and himself both of them were minors. The video was circulated within mobile phones for some time and thereafter was listed for sale on Baazee.com. Ravi Raj, a fourth-year student of IIT Kharagpur

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was registered as a seller with Baazee.com since July 2004. He was already using the site for listing different products to be sold online. His email ID was psell@sify.com. On 27th November, 2004 Ravi Raj placed on the website a listing of MMS video clip for sale at Rs.125 per piece. He was registered under the name "Alice electronics" and the clip was registered under the category books and magazines and subcategory e-books. The video was listed with the description "item 2787 7408- DPS girls having fun!!! Full video +Baazee points".

On clicking item description, the listing would be read as:

"DPS girl having fun!!! Do you want to see that video clip which is rock the whole Delhi and now has become a hot point of discussion in the entire nation?

YES, then what are you waiting for!!!

just order for this product and it will be delivered to you within few hours this video is of a girl of DPS RK PURAM which has been filmed by his boyfriend in very sexually explicit condition."

On the same date the website received information from one of its users that the video was pornographic and obscene in nature which was illegal in India and should be taken down. However, the website took it down on 29th November 2004 stating that 28th was a Sunday and there was no means to actually take it down. In between 27th November 2004 and 29th November, 2004 even after the information was already passed on to the intermediary regarding the obscenity of the video, 8 sales of the same video had taken place. The website had a word and text filter by virtue of which any sexually explicit word offensive in nature could be automatically filtered by the website and the video could be taken down. Also, there was a community watch scheme that was working with the website where in any case if somebody reports a specific video for obscenity, the video would be blocked by the website. The filter set up by the website was grossly inadequate and in spite of the word "sexual" existing in its suspect list the program was not able to detect and block the specific product which was listed with this word. Ravi Raj, the user who uploaded the video and Avnish Bajaj, the Managing Director of the website where arrested and the judgement became one of the prominent considerations of determining intermediary's liability.

In Avnish Bajaj v/s State<sup>2</sup>, it was decided that Baazee India Private Limited will be absolutely liable for the activities that happened in its website under section 292 of Indian Penal Code,1860 and under Section 67 and Section 79 of the Information Technology Act, 2000. However, Avnish Bajaj was not individually liable under Section 292 of the Indian Penal Code,1860 but was held liable under Section 79 of the Information Technology Act, 2000.

Only after this landmark judgement S. 79 of Information Technology Act, 2000 was amended to specifically include the Safe Harbour Provisions as laid down by Digital Millennium Copyright Act,1998 in United States. This case became a classic illustration of the online intermediary liability dilemma as the content under the scanner was the kind of material that ought to be removed quickly from the web as if not removed it would continue to circulate through mobile networks and the internet thanks to the multiple people sharing it. The legal mechanism in India focuses not only on the obligation of the government to remove such content but also on the obligation of the intermediary to facilitate it. However this obligation imposed on the intermediary had a different light that was thrown up on it by the judgement in the case Shreya Singhal v/s Union of India<sup>3</sup> where this obligation was seen as an arbitrary power that was given to the intermediaries to censor content and this concern is exactly what is discussed in this paper.

## Standards of Liability

Prior Amendment: The Information Technology Act, 2000 was enacted to give a growth to the internet, computer and software industry and to regulate it at the same point of time and along with it there was a safe harbour provision enacted with regard to intermediaries which was not equipped enough to protect flourishing the E-Commerce business in India. Section 79 prior to the amendment was read as:

“Section 79: For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, Rules or Regulations made thereunder for any third party information or data made available by him if he proves that the offense or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offense or contravention.”

The very first thing that can be noticed from the above provision is that it only exempts the intermediary from any liability that arises under the Information Technology Act and not under any other statute that was in force in India at that point of time. So, any liability that arises under Indian Penal Code would not be nullified on account of this exemption. Also, the provision mentions only network service providers which can be interpreted only as a subset of the huge number of kinds of intermediaries that function online. So other intermediaries like online payment sites or online auction sites would not derive any benefit under this section. Also, as inferred from the general interpretation of the provision the burden of proof lies on the intermediary to prove that he did not have knowledge of the fact that the content that was made available by him was obscene in nature and had exercised all due diligence in order to prevent the commission of any such act.<sup>4</sup>

*Post Amendment:* Post the Avnish Bajaj v/s State case law the scenario with regard to liability of the intermediaries in India changed, and changed for the betterment of the business models of the e-commerce industry. The new provision lists down a set of specific rules governing intermediaries in which sub-section (1) provides an all-encompassing exemption rule and the sub-section (2) and sub-section (3) provide for the applicability and non-applicability of the exemption rule respectively. The first clause of the provision provides an exemption that is applicable in all scenarios for the intermediaries. It exempts the intermediary from any liability under any law in place thereby placing an important change from the prior law where the exemption was only applicable to the liability that would arise under the Information Technology Act. Also, it lays down that the burden of proof is now not on the Intermediary and moreover it expanded the interpretations attached around the term Intermediary thereby making it an inclusive definition and not excluding it to only Network Service Providers.

## Applicability of the Exemption rule

The exemption rule has provided that the exemption will be subject to the applicability of the provisions that are mentioned in sub-section (2) and (3) and an intermediary would not be liable for any third-party information data communication link made available or hosted by him. It also identifies the intermediary as not only a publication and transmission medium but also a medium that have the function of storing the information that is provided by the third-party or user in order to make the onward transmission or the transmission more efficient. The provision mentions three tests of applicability of the exemption rule. They are:

1. **TEST I:** The work of the intermediary is merely to provide access to a communication system over which a third party transmits information. The intermediary shall also

temporarily store or host information. The interpretation of the term storage includes storage for the purpose of carrying out transmission that is mere conduit operations and storage for the purpose of making onward transmission more efficient that is proxy caching and storage of information that is provided by a subscriber.

2. **TEST II:** The second test lays down that the intermediaries function is merely to act as a facilitator only plays a passive role in the sense that it does not initiate the transmission, does not select the person who is at the receiving end of the transmission and neither selects or modifies the information that is contained in the transmission.
3. **TEST III:** The intermediary observes due diligence while discharging his duties under the Act.

To adopt due diligence means the intermediary has to take reasonable steps to avoid commission of an offence or contravention that is to determine according to the standards of a reasonable and prudent man whether the information that is being transmitted is unlawful or not. Earlier due diligence was all about self-regulation, but the law makers felt that the role of the intermediaries was very crucial on the internet, so the government laid down guidelines which have to be observed to show that due diligence was adopted.

The "Information Technology (Intermediary Guidelines) Rules, 2009" provided a due diligence framework that was supposed to be observed by the intermediaries. Rule 3 provided eleven sub rules which try to lay down the standards of due diligence framework. It provided an obligation on the intermediary to lay down a privacy policy and a user agreement for access for users. It also says that the information has to be provided to the user by means of terms and conditions to not host, display, upload, modify, publish, transmit or share any information that infringes on someone else's Copyright, Trademark, Patent or any proprietary right or is not grossly harmful or blasphemous or objectionable content which threatens the integrity defence security of sovereignty of India. Subsequently it also provided that the intermediary on whose system the information is stored or hosted or published upon obtaining actual knowledge by itself or been bought to actual knowledge by affected person have to act within 36 hours to take down such information.

There is a new draft regulation on Intermediary Guidelines<sup>5</sup> that has been pending to be approved which is enacted in consonance to the Shreya Singhal v/s Union of India and with regard to the Manilla Principles on Internet Intermediaries.<sup>6</sup> The shield from any third-party Content is tried to be solidified by the new guidelines and it also changes its approach towards the concept of actual knowledge and accordingly changes its approach towards due diligence as will be discussed below.

## **Applicability of the Non- Exemption Rule**

There are two tests for the applicability of the non-exemption rule. The first test is to see if the intermediary has been involved in the criminal act in itself that is if it has conspired or abated or aided or induced the commission of the unlawful act. The second test is to determine if the intermediary has the actual knowledge of the fact that the information that was hosted, transmitted or published by the intermediary was unlawful in nature and the intermediary was notified and even after be notified the intermediary fails to expeditiously remove or take down the material that was hosted by it.<sup>7</sup>

Interpretations around the term "Actual Knowledge": Shreya Singhal v. Union of India

Rule 3 of Information Technology (Intermediary Guidelines) Rules, 2011 laid down about the guidelines for exercising due diligence.

*“ The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes,”<sup>8</sup>*

The provision gave a power of censorship to the intermediary where it could block certain contents under circumstances of obtaining knowledge by itself or by any affected person in writing about the information being obscene, blasphemous or unlawful in nature. Now the question is how you determine whether the information that has been blocked by the intermediary was actually unlawful.

In *Shreya Singhal v. Union of India*<sup>9</sup>, two girls, “Shaheen Dhada” and “Rinu Srinivasan” were arrested after they had shown dismay about a Band brought by “Shiv Sena’s chief Bal Thackrey’s” death in 2012 when they had posted their opinion on Facebook about it. The two girls were released, and all the criminal charges were dropped but it caused a serious fury in the nation regarding the arrest. The constitutionality of section 66A of the information technology act was challenged. The authority under section 66A of the Information Technology Act was decided to be violative of Article 19(1)(a) of Constitution of India which could not be saved under the reasonable restrictions as provided under Article 19(2) of Constitution of India. Also, Section 66A of the Information Technology Act, 2000 had a chilling effect on the fundamental right of speech and expression. Along with it, a very significant judgement was laid down with regard to section 79 of the Information Technology Act with regard to the power of the intermediaries to censor information that is there provided by it or hosted by it in its website. The court significantly narrowed down the applicability of section 79 which had effect on the right to free speech and expression. The supreme court read section 79 to mean that an intermediary will only be held liable if on receiving knowledge from a court order or by being notified from appropriate government regarding the unlawful act it did not expeditiously remove or disable access to such content. The unlawfulness of the above-mentioned content will be determined from the context of Article 19(2) of the Constitution of India.

The 2011 rules with regard to guidelines for the intermediaries laid down a degree of care expected out of the intermediaries. The degree of care was termed as the due diligence that was supposed to be observed by the intermediaries where they could block or eliminate content which is alleged to be objectionable or obscene with the help of technical mechanisms of filters. Also, after receiving notice regarding the alleged content as being illegal the intermediary who was the private party had to decide whether or not to take down the specific content. This power had made the intermediaries proxy censors. However, they could not be held accountable for the decisions to remove the content which was indirectly infringing upon the right to freedom of speech and expression of the third party who had communicated the content using his online forum. The decision in the case of *Shreya Singhal v/s Union of India* removed the arbitrary power that was vested on the intermediary to take down content based on its own judgement.

In the recent judgement of *Christian Louboutin v/s Nakul Bajaj*<sup>10</sup>, a different concept for intermediaries’ liability was taken by the court with regard to E-Commerce players in India. The judgement had a connotation with regard to section 79 of the Information Technology Act which was quite different from the one that is laid down by the *Shreya Singhal v/s Union of India* judgement. The courts decree imposes an obligation upon the web platform to make its own assessment of whether a certain notified product is counterfeit or not after reaching out to

the seller. This places the intermediary in a position of facing legal liability for failing to remove notified post which is contrary to the principle that was laid down in *Shreya Singhal vs Union of India* where intermediary may be required to only take down content if it is notified by a court or a government order to do so.

## **Freedom of Expression and Free Flow of Content**

Human Rights in Physical world persist with the same force in online world. In 2013, United Nations observed that state efforts regarding security of ICTs should go hand in hand with respect for human rights and privacy. "Resolution 68/137 as adopted by the UN General Assembly in December 2013" discussed about privacy being a mechanism for realizing the right to freedom of expression online. It also expressed concerns regarding the negative impact that surveillance of communications of third parties may have had upon human rights. The risk of technologies facilitating these mass surveillances and facilitating human rights violations is on the rise. The fact that digital surveillance can escape governmental controls with the help of new technology in market. Cyber communication has become one of the dominant modes of expression these days where more and more people express their thoughts and viewpoints by tweeting, commenting, posting and blogging online.

Freedom of speech and expression forms one of the essentials of human rights. The right to citizen's speech, expression, thoughts, beliefs is directly linked to his privacy and there is a need to ensure that the public cannot be having his activities and conversations being watched, monitored and questioned in the present age. In *KS Puttaswamy and others v/s Union of India*<sup>11</sup> right to privacy was recognized as a fundamental right and it also includes the right to have one's data protected under its umbrella. The right to respect digital communication is one of the essentials of right to privacy and if any entity infringes the right to privacy the injury spreads far beyond any particular citizen and it might intimidate many other who are involved in such communications. Collection of data and retention of the same amount to infringement of the right to privacy regardless of whether it is been utilized for specific purpose of cyber contravention.

The right based approach looks forward to create a safety zone where citizens can control their data, where consent is mandated for any kind of usage, sharing, and entitlement for removal of the same i.e., "right to be forgotten".<sup>12</sup>

Freedom of expression has never been about an individual speaker or the merits of the speech. There have been instances where publication has been cut off due to aggressive response or the pressure from the citizens and same decision to censor was taken by intermediaries like that of publishers who were the gatekeepers at that point of time and had significant control over the circulation of the specific content and had no accountability for their decision. The intermediaries are private parties who cannot be made accountable for any decision that they take to curb the freedom of expression of the speaker however which requires the attention over here is how do you focus on the relationship between the speech and the audience in a democracy.

Freedom of expression jurisprudence is majorly based on individual autonomy perspective. The role that speech plays in a democracy is an important factor which can be seen from the value that is attached to press freedom in democratic government. The media plays an informational role in a democracy and has a very influential role to play in developing public reasoning and therefore there is a need to acknowledge the role of these intermediaries in a democracy.<sup>13</sup>

## Justifying Censorship on Accounts of Enforcement of Public Morality

A reference will be drawn to the petition filed by Kamlesh Vaswani where a question arose with regard to banning of online pornography and prohibiting private viewing of pornography. The petition also prayed for obligating Intermediaries to ban such content and again the subject matter of Right to speech and expression and right to privacy was brought into the picture.

The Kamlesh Vaswani v/s Union of India<sup>14</sup> sought a complete ban on pornography. The major contention was criminalizing private consumption on pornography as it led to increasing violence against women and children. Vaswani said easy availability of pornography on the internet had fueled pornographic addiction which corrupts India's culture and values and becomes a basis of unequal treatment for women. Another major contention was with regard to striking down of the crucial section that grants immunity to intermediaries against third party content under certain circumstances. For Vaswani the intermediaries that provide us internet access ought to be responsible to stem the inflow of pornographic material. He said that there is a need for the government to draft a national policy and an action plan to address the problems of photography.<sup>15</sup>

Lack of definition of the term also makes it difficult in identification of pornography. The point is when pornography is not defined anywhere and the method is to independently identify it on a case-by-case method, Vaswani's petition asking intermediaries to ban pornographic content seems problematic as you leave it on the hands of the private intermediary to decide on what constitutes pornography. Section 67 of the Information Technology Act,2000 provides that it is punishable to publish and transmit an obscene content in electronic form. It says that whoever causes publication or transmission in electronic form any material lascivious or appealing to the prurient interest of the likely audience to read, see or hear the matter contained or embodied in an electronic form will be punishable. This section does not make knowledge of obscenity an ingredient. Avnish Bajaj v/s Union of India is landmark judgement which made baazee.com prima facie liable for listing an obscene content on its website. It also decided making the website liable on account of causing the publication of obscene material. In Avnish Bajaj v/s Union of India after the payment was made, the Bazeecom would intimate the seller of the same and the seller would finally send the video to the buyer through an email attachment. The video couldn't be viewed on the website. The decision lays down that to decide whether Baazee India Private limited caused the publication or not, it is necessary to attach relevance to the chain of transactions that led to the publication. The chain of transaction involves the buyer getting into the baazee.com, viewing the listing, opting to buy the product and making payment and only when the remaining part is complete then only the product is transmitted through an email attachment and then it can be further transmitted from one person to another. The ultimate transmission of the video clip might be through the seller to the buyer but in a fully automated system. The basis of making Baazee India Private Limited liable is that the entire transaction can't take place unless all the previous steps of registration with the website and making payment take place, so it is a continuous chain and five to six links of the chain are under the direct control of the website and it is only on completion of each step that the final two steps which make the result of actual publication of obscene material ensue. So, it can't be said that the website did not even prima facie cause publication of obscene material. Section 79 post to the amendment after the judgement gave exemptions to the intermediaries where knowledge was made an essential ingredient to hold an intermediary liable. From the language of "Section 67 of the Information Technology Act,2000" and "Section 79 of the Information Technology Act, 2000" it is very difficult to understand the nature of liability that can be imposed on the facilitator of transmission or publication or hosting of obscene content.<sup>16</sup>

Vaswani's petition also looked into whether privacy and free speech provisions are broad enough to protect private viewership and pornography. Two questions arise with regard to it: Firstly, whether the ambit of right to privacy under Article 21 of the Constitution of India includes personal sexual proclivities and Secondly, whether enforcement of public morality constitutes a sufficient interest to justify censorship and criminalization.

A broad, residual interpretation was attached to the term personal liberty under Article 21 in *Gobind v. State of M.P.*<sup>17</sup>, where though the court was reluctant in giving an expansive interpretation to liberty but eventually had explored its wide ambit. The court held that privacy in its ambit includes personal intimacies of the home, family, marriages, motherhood, procreation and child rearing. Personal liberty at its core has recognized all aspects of romantic relationships and peripherals in it. At its core it recognizes the right of the individual and personal liberty to choose whom to enter into romantic relationship, whom to have sex with how to have sex and weather in pursuit of sexual pleasure pornography or erotica is it to be a welcome companion. In the *Naz Foundation v/s Government of NCT of Delhi*<sup>18</sup> the court affirmed that the heart of the liberty is a right to define one's own concept of existence of the meaning and mysteries of human life because the definition of personhood can't be under composition of state. Though the case was overturned by a latter judgement, but the aspects of Privacy was not disputed. Article 21 guarantees the freedom of personal liberty and privacy to choose all matters of sexual pleasure free from government impositions and this would also include the choice to privately enjoy pornography.

So by *Govind* decision it can be inferred that constitutionally protected liberties of individuals his personality and all things stamped with his personality are free of official interference in the absence of a reasonable basis for intrusion and by protecting personal intricacies of the home and by extension, sexual preferences Article 21 of the Constitution of India is in the favor of a liberty of private, consensual consumption of pornography.

## Conclusion

Intermediaries facilitate free flow of information in the intangible media. So, it enjoys a different kind of power in the Cyberspace where it acts as a medium connecting every entity that functions in that sovereign state. Interpreting Section 79 of the Information Technology Act, 2000 as a right bestowed on these Intermediaries to function without any difficulty, this paper tries to attach a duty alongside it. If we refer to the Cyberlibertarians school of thought which states that cyberspace is a totally independent sovereign state then we can interpret Intermediaries as one of the important entities or nationals of that sovereign state that function there and according to the Hohfeld's theory of Jural Relations every right or power for that matter comes in with a duty and a liability. As has been suggested at various intervals that intermediaries can become private censors who will be monitoring activities of individuals over internet if a liability and an obligation is imposed on them, we need to also understand the fact that these intermediaries are the only connecting medias that can help curb the different types of cyber offences that get committed online.

With the judgement in *Kamlesh Vaswani v/s Union of India and The Protection of Children from Sexual Offences (amendment) bill, 2019*<sup>19</sup> Child Pornography has been banned. The new bill defines Child Pornography as an aggravated form of sexual assault and obscenity but what remains unexplained is with the presence of Section 79 of the Information Technology Act, 2000 and the constitutional limitations in the form of Right to free speech and expression and residual interpretation around the term liberty how will Indian legislators ban such pornographic



Content absolutely on the Internet. There are still proxy websites like VPN (Virtual Private Network), extensions, Tor browser working on which an individual can easily bypass censorship of government and access contents that are banned in India even without getting their Internet Protocol addresses revealed thereby maintaining absolute anonymity and for that matter even Child Pornography can be viewed using this. India has been facing absolute crisis with rapid increase in violence against woman and children and at this time there is a need to stop everything that facilitates the same. The network engineers and network administrators working for the intermediaries are the only ones that can stop such bypassing of censorship and can help the government in imposing a complete ban. However, without governments imposing such duty on the intermediaries and with the contentions of violations of privacy such rigidity is difficult to avail in the online environment. The MeitY (Ministry of Electronics and Information Technology) has proposed a new draft rule with regard to filtering out child pornographic content with the help of automated technology tools.<sup>20</sup> It has been articulated that Internet Service Providers must bear the liability in detecting and thereafter blocking websites featuring Child Pornography and search engines must ensure that such websites are blocked. This cannot be achieved unless Section 79 of the Information Technology Act,2000 is amended according to the current needs. Though with regard to cyber contraventions of civil nature the provision seems apt as this is necessary for functioning of the e-commerce business models but with regard to such serious offences like that of Pornography there needs to be some liability imposed on Intermediaries.

## Footnotes

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- <sup>2</sup> Avnish Bajaj v. State (NCT of Delhi), (2005) 116 DLT 427; (2005) 79 DRJ 576.
- <sup>3</sup> Shreya Singhal v. Union of India, (2013) 12 SCC 73.
- <sup>4</sup> Rajendra Kumar and Latha R Nair, 'Information Technology Act, 2000 And The Copyright Act, 1957: Searching For The Safest Harbor?' NUJSLAWREVIEW.ORG, 2012 (Mar. 16, 2020, 10:04 AM), [http://nujlawreview.org/wp-content/uploads/2016/12/03\\_latha.pdf](http://nujlawreview.org/wp-content/uploads/2016/12/03_latha.pdf).
- <sup>5</sup> Draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018
- <sup>6</sup> 'The Manila Principles And Intermediary Liability Protections In India - SFLC.In - Medianama'MEDIANAMA(Mar. 16, 2020, 12:30 PM), <https://www.medianama.com/2019/03/223-the-manila-principles-and-intermediary-liability-protections-in-india-sflc-in/>
- <sup>7</sup> VAKUL SHARMA, INFORMATION TECHNOLOGY LAW AND PRACTICE 210-213(5th edn, LexisNexis 2017).
- <sup>8</sup> Rule 3(4), Information Technology (intermediary guidelines) rules 2011.
- <sup>9</sup> Shreya Singhal v. Union of India, (2013) 12 SCC 73.
- <sup>10</sup> Christian Louboutin v. Nakul Bajaj, CS COMM--344/2018
- <sup>11</sup> Justice K S Puttaswamy and Ors v Union of India and Ors, MANU/SC/1044/2017
- <sup>12</sup> 'Public Comments on DRAFT INTERMEDIARY GUIDELINES RULES, 2018 Published by Ministry of Electronics & IT Government of India Addendum1' MEITY.GOV.IN(Mar. 16, 2020, 7:30 PM) [https://meity.gov.in/writereaddata/files/Addendum1\\_Public\\_comments\\_on\\_draft\\_intermediary\\_guidelines.pdf](https://meity.gov.in/writereaddata/files/Addendum1_Public_comments_on_draft_intermediary_guidelines.pdf).
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- <sup>14</sup> Kamlesh Vaswani v. Union of India, (2014) 6 SCC 705
- <sup>15</sup> Sarvjeet Singh, 'What's Problematic With Porn Ban?',THE CCG BLOG(Mar 20, 2020, 10:30 AM) <https://ccgnludeli.wordpress.com/2014/05/03/whats-problematic-with-porn-ban/>.
- <sup>16</sup> Geetha Hariharan, 'Our Unchained Sexual Selves: The Case For The Liberty To Enjoy Pornography Privately - NUJS Law Review',NUJSLAWREVIEW ( Mar. 21, 2020, 12:30 PM) <http://nujlawreview.org/2016/12/04/our-unchained-sexual-selves-the-case-for-the-liberty-to-enjoy-pornography-privately/>
- <sup>17</sup> Gobind v. State of M.P., AIR 1975 SC 1378.
- <sup>18</sup> Naz Foundation v. Govt. of NCT of Delhi, (2009) 160 DLT 277
- <sup>19</sup> 'The Protection of Children from Sexual Offences (Amendment) Bill, 2019', PRSINDIA.ORG (Mar. 25, 2020, 12:30 PM) [https://www.prsindia.org/sites/default/files/bill\\_files/Protection%20of%20children%20from%20sexual%20offences%20%28A%29%20bill%2C%202019.pdf](https://www.prsindia.org/sites/default/files/bill_files/Protection%20of%20children%20from%20sexual%20offences%20%28A%29%20bill%2C%202019.pdf).
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