
COMPLIANCE AS CENSORSHIP: HOW INDIA'S AMENDED IT FRAMEWORK WEAPONISES SAFE HARBOUR AGAINST ONLINE SPEECH

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Introduction

Imagine a situation where social media platforms can lose their statutory immunity not for violating laws or non-compliance with a court order, but rather for the reason that they do not comply with an executive recommendation. The Draft Information Technology (Second Amendment) Rules, 2026 appear to be taking India in this direction.

On 30 March 2026, the Ministry of Electronics and Information Technology released the Draft IT (Second Amendment) Rules 2026.¹ For the platforms to get protection under section 79 of the Information and Technology Act, 2000, Rule 3(4) of the amendment makes compliance with government advisories, SOPs, and guidelines necessary.² No legislature passed this requirement. No court authorised it. If platforms fail or refuse to do so, it loses their immunity from liability for all content the user uploads.

The issue is not whether regulation should exist, but to what extent and with what safeguards. Deepfakes, disinformation, and non-consensual material cause real damage but the regulatory mechanism itself should not limit free and democratic speech. In *Shreya Singhal v. Union of India*³⁴, the Supreme Court held that the platforms lose their safe harbour through a court order, not by executive advisory, and that's what Rule 3(4) ignores directly.

This article argues that India's amended IT framework has converted safe harbour from a constitutional protection into an instrument of executive coercion, by achieving censorship

¹ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4).

² Information Technology Act 2000 (India) s 79.

³ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118].

⁴ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4).

without court orders, parliamentary debate, or notice to a single affected speaker. It examines the legislative architecture, three constitutional defects in Rule 3(4), and proposes concrete reforms.

I. The Safe Harbour Framework and the Shreya Singhal Standard

Section 79 of the Information Technology Act, 2000⁵ gives intermediaries immunity from liability for third-party content posts, videos, and links that users upload on their platforms. The protection is not unconditional. According to Section 79(2),⁶ the platforms get immunity only when the intermediary does not initiate the transmission, does not select its receiver, does not alter the content, and also follows due diligence as prescribed by the Central Government.² In Section 79(3) of the law, the Act shows when the platforms lose their immunity. It is clearly shown in Section 79(3)(b), safe harbour is lost when, upon receiving actual knowledge that content is being used to commit an unlawful act, the intermediary fails to expeditiously remove or disable access to it.⁷

What does actual knowledge mean was the central question before the Supreme Court in *Shreya Singhal v Union of India*.⁸ The Court read down Section 79(3)(b) narrowly and held that actual knowledge arises only through a court order of competent jurisdiction or a government notification issued through the section 69A framework,⁹ not through private complaints, not through executive pressure, not through informal directions. This was a deliberate constitutional choice. If the court had used a broader reading it would have forced platforms to make independent judgments about content legality, producing exactly the kind of over-removal and chilling effect which the court intended to prevent.

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁰ started due diligence under Section 79. Rule 3 sets out obligations that must be followed, and Rule 7 makes the consequences clear and exact. If the platform fails to follow these rules Section 79(1) immunity stops to apply.¹¹ Another important thing, the 2021 Rules also contained a protective provision within Rule 3(1)(d) platforms that voluntarily removed content were protected from

⁵ Information Technology Act 2000 (India) s 79.

⁶ Information Technology Act 2000 (India) s 79(2).

⁷ Information Technology Act 2000 (India) s 79(3)(b).

⁸ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

⁹ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; Information Technology Act 2000 (India) s 69A.

¹⁰ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 3.

¹¹ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 7.

losing safe harbour on that basis alone.¹² This protected the exercise of independent editorial judgment.

The 2021 Amendment framework was constitutionally valid, with immunity available to platforms that followed the given rules and the safe harbour was lost only when the unlawful content was identified by the court or government body with defined authority. Each feature that was constitutionally logical is now under strain in the existing amended framework.¹³

II. Building the Architecture of Coercive Compliance

The 2021 Rules introduced a system of conditional compliance, the 2023 memorandum widened these compliance obligations beyond judicial oversight, the 2025 rules removed the Good Samaritan proviso, the SGI Rules then reduced review timelines to the point where effective challenge became impossible, and Rule 3(4) completes the architecture by making informal executive directions legally binding. Together, they constitute a censorship infrastructure designed with minimal transparency and limited institutional accountability.

A. IT Rules 2021

This was the first step in building a censorship system. In 2021, the rules changed the nature of safe harbour from a statutory protection to a condition based on compliance under section 79(1).¹⁴ Rule 7 provided that intermediaries failing to comply with the required due diligence obligations will lose their immunity.¹⁵

B. The Sahyog portal and the 2023 memorandum

Under section 79(3)(b)¹⁶ through 2023 memorandum Meity¹⁷ gave powers to thousands of state police and district officials, bypassing the section 69A¹⁸ which mandated approval by senior

¹² IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 3(1)(d), proviso 3 (before substitution by GSR 775(E), dated 22 October 2025, w.e.f. 15 November 2025).

¹³ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 7.

¹⁴ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 7; Information Technology Act 2000 (India) s 79(1).

¹⁵ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 7.

¹⁶ Information Technology Act 2000 (India) s 79(3)(b); Ministry of Electronics and Information Technology, Office Memorandum No 1(4)/2020-CLES-1 (31 October 2023).

¹⁷ Ministry of Electronics and Information Technology, Office Memorandum No 1(4)/2020-CLES-1 (31 October 2023).

¹⁸ Information Technology Act 2000 (India) s 69A; Ministry of Electronics and Information Technology, Office Memorandum No 1(4)/2020-CLES-1 (31 October 2023); Shreya Singhal v Union of India (2015) 5 SCC 1 [118].

officers, written reasons and oversight by a review committee. Any of these officers can issue takedown notices to platforms through the Sahyog portal, gradually diluting the Shreya Singhal¹⁹ ruling.

C. 2025 amendment regulations

As given in Rule 3(1)(d) of IT Rules 2021, intermediaries get immunity from liability when they will remove restricted information using the Good Samaritan provision rule 3(1)(d) voluntarily. But after the Intermediary Guidelines and Digital Media Ethics Code Amendment Rules 2025, this provision is not valid.²⁰ This shift reflects more government regulation taking away the option of platforms voluntarily removing content.

D. SGI Rules February 2026

The IT Amendment Rules 2026 reduced the takedown time to three hours from thirty-six hours for all unlawful content falling under Rule 3(1)(d).²¹ This is pre-censorship by reducing the time for any possible meaningful human review and resulting in automatic takedowns based on compliance.

E. Draft Second Amendment Rules, 2026

The draft second amendment rules released on March 30, 2026²² inserted rule 3(4). This completes the censorship architecture by making any advisories SOPs or guidelines issued by MeitY to be part of the due diligence obligations under Section 79.²³ Any non-compliance or failure by intermediaries will directly result in the loss of safe harbour on the basis of mere executive directions without any oversight or parliamentary laws. Rule 3(4)(c) explicitly states that compliance with such instruments shall form part of due diligence obligations under Section 79.²⁴ This makes informal executive advice into law or rules having a legal coercive

¹⁹ IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2025, GSR 775(E) (22 October 2025, w.e.f. 15 November 2025).

²⁰ IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026, GSR 120(E) (10 February 2026, w.e.f. 20 February 2026) r 3(1)(d).

²¹ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4).

²² Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (30 March 2026) r 3(4)(c).

²³ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4).

²⁴ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4)(c).

effect. Every step is acting like a building block towards completing the construction of censorship architecture and crushing free space in a democracy. It makes the state the regulator and controller of free speech and circumvents court orders.²⁵

III. Three Constitutional defects in Rule 3(4)

i. Rule 3(4) Does Not Comply With Shreya Singhal Standard

In the landmark case *Shreya Singhal v. Union of India*, the Supreme Court interpreted Section 79(3)(b) strictly and held that actual knowledge would exist only when an order of the court or a notification from the government is made pursuant to Section 69A.²⁶ The safe harbour is lost when having this actual knowledge platform refuses to obey it or fails to take the necessary action. The logic behind the ruling was well thought out. A more generalised approach would lead platforms to think whether the content is legal or illegal, and in order to protect itself legally platforms would delete lots of content, and this was exactly what the court wanted to avoid.²⁷ Rule 3(4)(c) of the Draft Second Amendment Rules 2026 is contrary to this²⁸, it makes MeitY advisories, SOPs and guidelines into conditions for safe harbour, which do not come under judicial sanction and do not even reach the section 69A threshold. Constitutional standards cannot override any rule, but Rule 3(4) widens it and makes it unconstitutional.

ii. Advisories Are Not the "Law" Under Article 19(2)

Freedom of speech is guaranteed under Article 19(1)(a)²⁹ of the Constitution, and any restriction on it must be imposed by a "law" within the meaning of Article 19(2)³⁰. Current amendments with executive advisories, SOPs, and codes of practice are not law. Parliament does not pass them, they are not gazetted, and they carry no democratic mandate. In *Kunal Kamra v Union of India*³¹, the Bombay High Court dealt with this exactly the same defect, holding that conditioning safe harbour on compliance with a non-judicial body's determinations constitutes a restriction on speech through a mechanism that lacks the status of "law" under

²⁵ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (30 March 2026) r 3(4)(c).

²⁶ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118].

²⁷ *ibid*

²⁸ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (30 March 2026) r 3(4)(c).

²⁹ Constitution of India art 19(1)(a).

³⁰ Constitution of India art 19(2).

³¹ *Kunal Kamra v Union of India* WP(L) 9792/2023; 2024:BHC-OS:14750-DB (Bombay High Court, 26 September 2024).

Article 19(2). Rule 3(4) of the amendment replicates this defect. The Fact Check Unit governs the government-related content, but Rule 3(4) governs all content. It is FCU restructured in a broader, more permanent form, carrying the same constitutional infirmity.³²

iii. Rule 3(4) Is Ultra Vires to the IT Act

Section 87(1) of the IT Act confines rule-making power to carrying out the provisions of the Act³³Section 87(2) specifies the subjects on which rules can be made, and making compliance with informal executive advisories a condition for statutory immunity is not among them.³⁴The Internet Freedom Foundation has correctly identified that Rule 3(4) is not properly aligned with the IT Act, 2000.”³⁵As affirmed in *Indian Express Newspapers v Union of India*³⁶ and *Confederation of Ex-Servicemen Associations v Union of India*³⁷, the settled principle that delegated legislation must remain within the four corners of the parent statute foreclosed Rule 3(4) entirely. It creates new duties that section 87 does not really permit, and hence these rules go beyond the power granted, making it ultra vires and void.

Rule 3(4) fails the constitutional test on three independent grounds and each of it is sufficient to make the provision legally invalid.³⁸

IV. The Consequences of This Structure: Over-Removals on Platforms and Freedom of Expression's Demise

The end result of the IT Rules framework is the creation of a system where platforms are structurally incentivised to over-remove content, leading to a kind of privatised state censorship

³² Kunal Kamra v Union of India WP(L) 9792/2023; 2024:BHC-OS:14750-DB (Bombay High Court, 26 September 2024); Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4)(c); Constitution of India arts 19(1)(a), 19(2).

³³ Information Technology Act 2000 (India) s 87(1).

³⁴ *Information Technology Act 2000 (India) s 87(2)*.

³⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; Internet Freedom Foundation, „Sound the Alarm: IFF’s First Read on MeitY’s Draft IT Rules Second Amendment 2026“ (30 March 2026) <<https://internetfreedom.in/sound-the-alarm-iffs-first-read-on-meitys-draft-it-rules-second-amendment-2026/>> (accessed May 2026).

³⁶ *Indian Express Newspapers (Bombay) Pvt Ltd v Union of India* (1985) 1 SCC 641 : (1985) 2 SCR 287, 345–346 (Venkataramiah J) (holding that subordinate legislation does not carry the same degree of immunity as a statute passed by a competent legislature and may be questioned if it goes beyond the parent statute or is manifestly arbitrary).

³⁷ *Confederation of Ex-Servicemen Associations v Union of India* (2006) 8 SCC 399, [22]–[24] (reaffirming that delegated legislation which exceeds the scope of the parent statute is void and liable to be struck down).

³⁸ See Parts III(i)–(iii) above; Information Technology Act 2000 (India) ss 79(3)(b), 87; Constitution of India arts 19(1)(a), 19(2); *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118].

that negatively impacts free speech in practice.³⁹

First, the removal of the “Good Samaritan” provision creates a double vulnerability for intermediaries. Previously, platforms were protected from liability when they removed harmful content in good faith. The 2025 Amendment Rules take away this comfort and make proactive action itself risky unless backed by a government order. However, if the platforms work independently it will lose the safe harbour. The same punishment is given if non-compliance is seen with any of the directive rules, so the role of the state cannot be overseen since it decides whether the content is acceptable or not. The 2026 Second Amendment Rules go further to make SOPs and executive directions binding, thus extending censorship through the executive directives, not through clear legislative safeguards.⁴⁰

Second, there is a clear asymmetry in liability. The cost of refusing a takedown order is very high. It can lead to loss of safe harbour immunity, possible criminal liability for employees, and exposure to liability risks for millions of user-generated posts. On the other hand, there is almost no cost or penalty for wrongly removing lawful speech or content. This naturally turns platforms preferring to comply even when the legality of an order is unclear, making over-removal the safer option.⁴¹

The short compliance window, such as three hours, makes this even more extreme. There is barely enough time to review and legally evaluate the validity of the issued takedown orders. In practice, it forces quick automated takedowns rather than careful judgment under such time pressure.⁴²

In effect or ultimately, the State indirectly, through intermediaries, does that which it may not

³⁹ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; Internet Freedom Foundation, „Sound the Alarm: IFF’s First Read on MeitY’s Draft IT Rules Second Amendment 2026” (30 March 2026) <<https://internetfreedom.in/sound-the-alarm-iffs-first-read-on-meitys-draft-it-rules-second-amendment-2026/>> (accessed May 2026).

⁴⁰ IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2025, GSR 775(E) (22 October 2025, w.e.f. 15 November 2025) (removing proviso to r 3(1)(d)); Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (30 March 2026) r 3(4)(c); Information Technology Act 2000 (India) s 79.

⁴¹ Information Technology Act 2000 (India) s 79(3); IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 7; *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118].

⁴² IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026, GSR 120(E) (10 February 2026, w.e.f. 20 February 2026) r 3(1)(d); Internet Freedom Foundation, „Sound the Alarm: IFF’s First Read on MeitY’s Draft IT Rules Second Amendment 2026” (30 March 2026) <<https://internetfreedom.in/sound-the-alarmiffs-first-read-on-meitys-draft-it-rules-second-amendment-2026/>> (accessed May 2026).

do directly in the same manner without any law passed in the parliament. Platforms become the operational agents of censorship, filtering dissent, satire, criticism and unpopular opinions. Often, the users or speakers affected are not notified, no reasons are given, and there is no proper appeal option, no clear record of deletion. Over time, this creates a chilling effect and weakens the space for free expression.⁴³

V. Reforms/ Recommendations

First, Rule 3(4) must be withdrawn because advisories and SOPs may inform the platform, but cannot determine statutory immunity; immunity should only be withdrawn through court orders authorised by law and not by mere executive advisories.⁴⁴

Second, loss of safe harbour must be restored to the constitutional standard set out in *Shreya Singhal v Union of India*, a court order or a direction under section 69A.⁴⁵ The legal status of government advisories and guidelines should also be clearly defined to prevent informal executive directions from becoming obligatory grounds for loss of immunity.⁴⁶

Third, decisions affecting online speech should be subject to independent or judicial oversight to prevent removal of lawful speech through arbitrary censorship.⁴⁷

Fourth, content regulation should follow the constitutional principles of proportionality and natural justice, ensuring that measures against harmful content do not unnecessarily restrict lawful speech and expression.⁴⁸

Further, any major changes to intermediary liability and digital governance should be enacted through Parliament rather than legitimised through delegated rule-making.⁴⁹

Lastly, on procedure, orders that infringe freedom of speech must be made public, reasoned,

⁴³ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [110]–[118]; *Kunal Kamra v Union of India* WP(L) 9792/2023; 2024:BHC-OS:14750-DB; Constitution of India arts 19(1)(a), 19(2).

⁴⁴ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; Information Technology Act 2000 (India) s 79(3)(b).

⁴⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; Information Technology Act 2000 (India) s 69A.

⁴⁶ Draft IT (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules 2026 (Ministry of Electronics and Information Technology, 30 March 2026) r 3(4)(c).

⁴⁷ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118]; *Kunal Kamra v Union of India* WP(L) 9792/2023; 2024:BHC-OS:14750-DB (Bombay High Court, 26 September 2024).

⁴⁸ Constitution of India art 19(1)(a); Constitution of India art 19(2); *K S Puttaswamy v Union of India* (2017) 10 SCC 1 [325]–[328] (Chandrachud J).

⁴⁹ Information Technology Act 2000 (India) s 87; *Indian Express Newspapers (Bombay) Pvt Ltd v Union of India* (1985) 1 SCC 641, 345–346 (Venkataramiah J); *Confederation of Ex-Servicemen Associations v Union of India* (2006) 8 SCC 399 [22]–[24].

and challengeable, as held in *Anuradha Bhasin v Union of India*.⁵⁰ Speakers affected must be informed, and transparency reports must be mandatory.⁵¹

These reforms would help strike a balance between addressing online harms and the constitutional guarantee of free expression.⁵²

VI. Conclusion

India's newly amended IT framework has quietly handed the executive a tool it was never meant to have the power to control online speech without going through Parliament or a court. It is true that what Rule 3(4) does is not so much revise safe harbor but rather render it void. What Singhal did remarkably was differentiate between the judiciary's authority and the executive's convenience, and here this amendment crosses it. If India is serious about free expression, it needs to restore the standard the Supreme Court actually set.

⁵⁰ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637 [152]–[153]; Constitution of India art 19(1)(a).

⁵¹ *ibid* [152]–[153]; IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E) (25 February 2021) r 4(1)(d).

⁵² Constitution of India art 19(1)(a); art 19(2); *Shreya Singhal v Union of India* (2015) 5 SCC 1 [118].