
A LEGAL ANALYSIS OF THE DRAFT INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021, SECOND AMENDMENT RULES, 2026 DATED 30TH MARCH 2026

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INTRODUCTION

Section 79¹ of the Information Technology Act, 2000 protects online intermediaries from legal liability for content posted by their users, as long as they meet certain due diligence requirements. This protection is known as ‘safe harbour’. In the case of *Shreya Singhal v. Union of India*², the Supreme Court read down the conditions under which safe harbour may be lost, holding that an intermediary is only required to remove content on receipt of a court order or a valid direction under Section 69A³ of the Act. In other words, the intermediary is not expected to be the judge of what user content should stay or be removed from their platform.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021⁴ [“IT (IGDM)”] made a few significant changes to the existing regime by introducing a Code of Ethics for digital publishers, a three-tier grievance mechanism, and an Inter-Department Committee [“IDC”] with the power to recommend content-blocking. In the case *Agij Promotions of Nineteenonea v. Union of India*⁵, the Bombay High Court stayed Rule 9, which is the provision that required publishers to comply with the code of ethics, on the view that it was beyond the scope of Section 87⁶ of the IT Act (Rule-making power of central government) and Article 19(1)(a) of the constitution. The Madras High Court in the case of *T.M. Krishna v. Union of India*⁷ confirmed that the Bombay High Court’s stay on Rule 9 applies across India. According to the Internet Freedom Foundation, these and other related challenges

¹ Information Technology Act, 2000, § 79, No. 21 Acts of Parliament, 2000 (India).

² *Shreya Singhal v. Union of India*, MANU/SC/0329/2015.

³ Information Technology Act, 2000, § 69A, No. 21 Acts of Parliament, 2000 (India).

⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, pt. II, sec. 3(i) (Feb. 25, 2021) (India).

⁵ *Agij Promotions of Nineteenonea v. Union of India*, 2021 SCC OnLine Bom 2938.

⁶ Information Technology Act, 2000, § 87, No. 21 Acts of Parliament, 2000 (India).

⁷ *T.M. Krishna v. Union of India*, W.P. No. 12515 of 2021 (Madras H.C. order dtd. Sept. 16, 2021), https://www.foxmandal.in/wp-content/uploads/2025/02/display_pdf.pdf.

remain pending before the Delhi High Court⁸.

On 30th March 2026, the Ministry of Electronics and Information Technology [“MeitY”] released the Draft IT(IGDM) Second Amendment Rules⁹. I focus on three of the proposed changes in this paper:

- The amendment to Rule 8(1) extends the Code of Ethics framework, which was previously only applicable to publishers to current affairs content posted by non-publisher users as well.
- The insertion of Rule 3(4), which ties the safe harbour protection under Section 79 to compliance with any ‘clarification, advisory, order, direction, standard operating procedure, code of practice or guidelines’ issued by MeitY.
- The amendment to Rule 14(2), which allows MeitY to refer matters directly to the IDC, without any complaint for an aggrieved party, and without any requirement that the matter concern a violation of the Code of Ethics.

The paper argues that these changes are legally unsound, and that the three amendments together cannot be reconciled with the parent Act.

PROPOSED AMENDMENT TO RULE 8(1):

In my opinion, the most consequential amendment in the Draft Rules is the substitution of the proviso to Rule 8(1), which seeks to extend the applicability of Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 to news and current affairs content hosted, displayed, uploaded, modified, published, transmitted, stored, updated or shared on the computer resources of the intermediaries by users who are not publishers. While currently, Rule 8(1) makes it such that rules under Part III apply to intermediaries only for the purposes of Rule 15 and 16, the amendment proposes that this be extended to Rule 14 as well. Thereby, bringing intermediaries and the above-specified forms

⁸ Sound the Alarm: IFF's First Read on MeitY's Draft IT Rules Second Amendment, 2026, Internet Freedom Found. (Mar. 30, 2026), <https://internetfreedom.in/sound-the-alarm-iffs-first-read-on-meitys-draft-it-rules-second-amendment-2026/>.

⁹ Ministry of Elecs. & Info. Tech., Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026 (India) (Mar. 30, 2026), <https://www.meity.gov.in/static/uploads/2026/03/30591fc6e322dcbcc9dae84a0f02e9e7.pdf>.

of user-generated content under the jurisdiction of the Inter-Departmental Committee [“IDC”]. My primary objection to this is that this subjects content created by ordinary citizens to the same scrutiny that professional publishers are subject to.

Additionally, this amendment is proposed under Section 87(1)¹⁰ of the Information Technology Act, 2000. In the case of *Re: Delhi Laws Act*¹¹, four primary conclusions were arrived at by Justice Saiyad Fazl Ali, which are:

1. The legislature must normally discharge its primary legislative function itself and not through others.
2. It may use outside agencies for ancillary purposes.
3. It cannot abdicate its legislative functions, and must see that such agency acts as a subordinate authority.
4. The legislature should not cross the line beyond which delegation amounts to “abdication and self-effacement”.

The amended Rule 8(1) crosses the line described in conclusion (iii) and (iv), because MeitY, through delegated rule-making, is creating a new regulatory relationship between the state and its citizens.

Section 87 of the Information Technology Act¹² is a provision that delegates legislation, specifically, the power of the central government to make rules. Sub-clause (2) of Section 87 specifies various matters under which the central government may make rules, of which Section 87(2)(zg) provides for making rules on the guidelines to be observed by the intermediaries. The question is whether Section 87(2)(zg) is wide enough to cover what the amended rule 8(1) will. The parliament, as per Section 87(2)(zg), authorised the regulation of intermediaries, it did not authorise the regulation of users who are not publishers. The rule purports to regulate a category of persons that the parent Act never contemplated regulating through this mechanism. Section 87(2) does provide some room for other powers that aren't covered in the illustrative list provided in Section 87(2) by adding the phrase “without prejudice

¹⁰ Information Technology Act, 2000, § 87(1), No. 21 Acts of Parliament, 2000 (India).

¹¹ *Re: Delhi Laws Act, 1912 v. The Part C States*, 1951 AIR 332.

¹² Information Technology Act, 2000, § 87, No. 21 Acts of Parliament, 2000 (India).

to the generality of the foregoing power,” however, it must be kept in mind that Section 87(1) has a qualifying criteria that states that the Central Government may make rules to carry out the provisions of this Act, and no provision to regulate users in such a manner exists.

As per the IT(IGDM) ‘news and current affairs content’ is defined as “*newly received or noteworthy content, including analysis, especially about recent events...*”, this definition encompasses an extraordinarily broad scope as it is, extending this to users who are not publishers could make it such that virtually anything under the sun, such as an Instagram story or a WhatsApp forward, could potentially be characterised as ‘news and current affairs content’. This could bring the entirety of public-interest speech on the internet under the Code of Ethics framework. While it was still workable when limited to publishers, it can function as a license for arbitrary enforcement when extended to users who are not publishers.

The practical consequence of extending part III of the Rules to non-publisher users is that it will have a chilling effect on speech. Ordinary users do not have compliance teams and cannot afford litigation. This would lead to a situation in which they would rather self-censor than risk regulatory scrutiny from the IDC or content-blocking under Rules 15 and 16.

The amendment’s use of the phrase “*hosted, displayed, uploaded, modified, published, transmitted, stored, updated, or shared*” deserves specific scrutiny. This particular formulation is an exhaustive list of any digital act relating to news and current affairs content online. It not only captures the mere act of creating content, but every conceivable action on an online platform, barring perhaps liking a post. For example, sharing a news article or modifying a post by adding a comment could be brought under the regulatory ambit.

In a case in the Bombay HC, *Agij Promotions of Nineteenonea v Union of India*¹³, the Bombay High Court issued an interim stay on Rules 9(1) and 9(3) of the IT(IGDM). The interim stay was issued on the basis that¹⁴:

1. Rule 9 imposes an obligation on publishers to observe the Codes of Ethics alien to the IT Act, which is illegal.

¹³ *Agij Promotions of Nineteenonea v. Union of India*, 2021 SCC OnLine Bom 2938.

¹⁴ Bombay High Court's Interim Stay on Certain Rules of Intermediary Guidelines and Digital Media Ethics Code, AZB & Partners (Sept. 30, 2021), <https://www.azbpartners.com/bank/bombay-high-courts-interim-stay-on-certain-rules-of-intermediary-guidelines-and-digital-media-ethics-code/>.

2. Section 87 of the IT Act, conferring rule-making powers on the Central Government, did not allow for rules to be framed contemplating such restrictions.
3. The Codes of Ethics are framed under different statutory regimes and independent legislations and cannot be appended to the IT Rules.
4. Substantive action cannot be taken for the contravention of the Code of Ethics.
5. Section 69A of the Act allows for censorship of content on grounds of security, interest of sovereignty of India etc., Rule 9 goes beyond the powers laid down in Section 69A; and
6. Rule 9 also infringes upon fundamental rights laid down in Article 19 of the Constitution by imposing restrictions on free speech and expression and bringing about a chilling effect.

The Madras High Court in an order dated 16.09.2021 in the case of *T.M. Krishna v. Union of India*¹⁵, affirmed that the stay granted by the Bombay High Court is to have an all-India effect. According to the Internet Freedom Foundation¹⁶, both these cases, along with other cases challenging various provisions of the 2021 IT Rules, are pending adjudication before the Delhi High Court.

Now, if Rule 9, which is the provision that mandates a publisher to ensure adherence to the code of ethics, is itself stayed by the constitutional courts of this country as prima facie ultra vires and violative of Article 19¹⁷, then what purpose does extending Rule 14 to intermediaries and non-publisher users under the amended Rule 8(1) serve? The IDC constituted under Rule 14 exists to oversee compliance with the Code of Ethics framework under Part III. If the substantive compliance obligation under Rule 9 is judicially stayed because of the court's reasoning that Rule 9 imposes an obligation on publishers to observe the Codes of Ethics, which are alien to the IT Act, which is illegal, then the IDC has no operative standard against which to review content. Extending the IDC's jurisdiction when the framework it administers

¹⁵ *T.M. Krishna v. Union of India*, W.P. No. 12515 of 2021 (Madras H.C. order dtd. Sept. 16, 2021), https://www.foxmandal.in/wp-content/uploads/2025/02/display_pdf.pdf.

¹⁶ Sound the Alarm: IFF's First Read on MeitY's Draft IT Rules Second Amendment, 2026, Internet Freedom Found. (Mar. 30, 2026), <https://internetfreedom.in/sound-the-alarm-iffs-first-read-on-meitys-draft-it-rules-second-amendment-2026/>.

¹⁷ INDIA CONST. art. 19.

is sub judice is a serious concern.

PROPOSED ADDITION OF RULE 3(4):

The proposed Rule 3(4) mandates that intermediaries “*shall comply with and give effect to any clarification, advisory, order, direction, standard operating procedure, code of practice or guidelines issued by the Ministry*” as part of their due diligence obligations under Section 79 of the IT Act. Section 79(2)(c)¹⁸ of the Information Technology Act essentially states that an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him, ONLY IF the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf. Therefore, the consequence of not following the proposed Rule 3(4) would strip intermediaries of the safe harbour protection under Section 79 of the IT Act.

Section 79(3)(b) of the Information Technology Act states that the protection under section 79(1) shall not apply if upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Famously, in the case of *Shreya Singhal v. Union of India*¹⁹, the court read down Section 79(3)(b) to mean that the intermediary, upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material, must then fail to expeditiously remove or disable access to that material. The reasoning behind this was that otherwise it would be very difficult for the intermediaries, like Google, Facebook, etc., to act when millions of such requests are made, and then they must judge whether they are legitimate or not. Additionally, the court clarified that unlawful acts that are beyond Article 19(2) obviously cannot form a part of Section 79.

Additionally, the court in the case also held Section 69A of the Act to be valid as Section 69A blocking can only be resorted to if the central government believes it is necessary to do so, and

¹⁸ Information Technology Act, 2000, § 79, No. 21 Acts of Parliament, 2000 (India).

¹⁹ *Shreya Singhal v. Union of India*, MANU/SC/0329/2015.

such necessity is related to some of the subjects set out in Article 19(2).

It can be summarised that as part of the *Shreya Singhal* framework, an intermediary is not supposed to be the decision maker; they are supposed to comply only when there is a court order or through the Section 69A process, which has its own checks.

The proposed Rule 3(4), on the other hand, mandates that an intermediary comply with every clarification, advisory, order, direction, or standard operating procedure, code of practice, or guideline issued by the ministry and that it shall form a part of the due diligence obligation of the intermediary under Section 79 of the Act. This is completely inconsistent with the *Shreya Singhal* framework and seems likely to bypass the protections established in the case.

When the safe harbour protection provided by Section 79 is made contingent on compliance with vaguely defined executive instruments, the rational commercial response for every intermediary would be over-compliance. Platforms will err on the side of removing content, restricting accounts rather than losing their legal protection. This could again have a chilling effect on speech.

PROPOSED AMENDMENT TO RULE 14(2):

Rule 14(2) of the IT(IGDM) currently requires the IDC to hear complaints regarding violations or contraventions of the Code of Ethics. The amended version, however, does away with this requirement and allows the committee to hear matters that are:

1. Arising out of the grievances related to the violation of the Code of Ethics by the publisher, in respect of the decisions taken at Level I or II, including cases where no such decision is taken within the time specified in the grievance redressal mechanism [Proposed Rule 14(2)(a)]
2. Referred to it by the ministry [proposed Rule 14(2)(b)]

This fundamentally alters the character of the IDC. There is no requirement that the matter originate from a complaint by an aggrieved party, and there is no requirement that it relate to a contravention of the Code of Ethics or any other defined standard. There is no requirement that the person whose content is the subject of the referral be notified or heard before the referral is made. The ministry, on its own initiative, may refer any matter to the IDC.

Similarly, under the existing Rule 14(5), the IDC is required to examine ‘complaints and grievances’ and ‘may either accept or allow such complaint or grievance, and make the following recommendations to the ministry.’ The proposed amendments substitute this with the IDC examining ‘the matter’ and making the ‘following recommendations to the ministry’, removing both the reference to complaints and grievances as the subject of examination, and the requirement that the IDC accept or allow a specific complaint before making recommendations.

Read alongside the proposed amendment to Rule 8(1), which extends the IDC’s jurisdiction to news and current affairs content posted by non-publisher users, the effect will be that the ministry can identify content posted by a non-publisher user, refer it to the IDC without a complaint, and the IDC can examine it and recommend action, including directions or blocking orders under Rules 15 and 16.

It is also to be noted that the existing three-tier grievance mechanism under Rule 9(3), 11, 12, and 13, is the procedural pathway through which complaints would ordinarily reach the IDC. This is significant because Rule 9(3), which prescribes said procedural pathway, is stayed by the Bombay HC in *Agij Promotions of Nineteenonea v Union of India*²⁰ and affirmed to be applicable pan-India by the Madras High Court in *T.M. Krishna v. Union of India*.²¹

By enabling the ministry to refer matters directly to the IDC under the amended Rule 14(2)(b), the proposed amendment creates an alternative pathway to the IDC that bypasses the stayed three-tier mechanism. Whether intentional or not, this gives the impression of circumventing the interim protections granted by the constitutional courts.

CONCLUSION & RECOMMENDATIONS:

The three proposed amendments discussed in this paper are not isolated technical changes. Each one relaxes a specific constraint on the executive, and together they reshape the relationship between the Ministry, intermediaries, and users in a way that the parent Act does not authorise.

The amendment to Rule 8(1) expands who is being regulated. The Code of Ethics framework

²⁰ *Agij Promotions of Nineteenonea v. Union of India*, 2021 SCC OnLine Bom 2938.

²¹ *T.M. Krishna v. Union of India*, W.P. No. 12515 of 2021 (Madras H.C. order dtd. Sept. 16, 2021), https://www.foxmandal.in/wp-content/uploads/2025/02/display_pdf.pdf.

is extended to current-affairs content posted by non-publisher users. Section 87(2)(zg) of the IT Act authorises the Central Government to make rules for intermediaries. It does not authorise the regulation of users through the intermediary rules, and the act itself does not have any provision governing the same.

The addition of Rule 3(4) changes the requirement by which intermediaries lose their safe harbour protection. Under the *Shreya Singhal* framework, an intermediary is stripped of the protection of Section 79 only on receipt of a court order or valid direction under Section 69A of the IT Act. The proposed Rule 3(4) replaces this with compliance with any ‘clarification, advisory, order, direction, standard operating procedure, code of practice, or guidelines’ prescribed by the Ministry. This lacks the procedural safeguards defined in *Shreya Singhal*. The rational response for any intermediary will be to over-comply.

The amendment to Rule 14(2) fundamentally changes how matters are referred to the IDC. The existing Rule required a complaint alleging a violation of the Code of Ethics framework. The amended rule allows the ministry to directly refer matters to the IDC without a complaint. Currently, matters would reach the IDC through the existing three-tier mechanism under Rule 9(3), which has been stayed. Due to this stay, the practical effect of this amendment is a new pathway by which matters can reach the IDC, and blocking orders under Rule 15 or 16 can be obtained.

Taken together, the three amendments produce a framework with three linked features, the standard for compliance is set by the ministry through Rule 3(4), matters can be referred to the IDC at the ministry’s discretion under Rule 14(2), and the consequence of non-compliance with directions is the loss of the safe harbour protection provided by Section 79 of the IT Act. Finally, the subject of this framework is no longer limited to publishers but has also been extended to non-publisher users.

On the basis of the aforementioned analysis, I make the following recommendations.

1. The proposed amendment to Rule 8(1) should be withdrawn. The extension of Part III of the IT(IGDM) rules to news and current affairs content posted by non-publisher users exceeds the rule making power delegated under Section 87 of the IT Act.
2. Safe harbour under Section 79 of the IT Act must not be made contingent on compliance

with directions of the kind contemplated by the proposed Rule 3(4).

3. IDC's jurisdiction must be restricted to complaint-based matters.
4. Any framework governing intermediary obligations must remain consistent with the standard established in *Shreya Singhal v. Union of India*²².
5. Await judicial determination of pending challenges before expanding the scope of the Rules that are sub judice.

²² *Shreya Singhal v. Union of India*, MANU/SC/0329/2015.