COMMENTS ON THE INFORMATION TECHNOLOGY (AMENDMENT) RULES, 2026

BY THE

CENTRE FOR LAW AND TECHNOLOGY, NATIONAL LAW UNIVERSITY JODHPUR.

SUBMITTED TO THE MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY AS PER NOTICE INVITING FEEDBACK/COMMENTS OF STAKEHOLDERS ON THE DRAFT AMENDMENTS TO INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021 (Mar. 30, 2026)

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TANISHI AHUJA

CHIEF ADVISOR

HARSHITA GUPTA

STUDENT AUTHORS

RAM M. SUMANT [3RD YEAR]
HANA MISHRA [3RD YEAR]
SHOURYA SINGH [1ST YEAR]
AKSHAT PAL [2ND YEAR]

EXECUTIVE SUMMARY

In this report, The IT (Amendment) Rules, 2026[1] amending IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[2] ["Principal Rules] were examined on the touchstone of certain established standards stemming from landmark Supreme Court judgements, the Object and Purpose of the IT Act, 2000, the enabling provision of executive rule-making which forms the basis of the IT Rule, i.e, Section 87 of the Information Technology Act ["Act"]. For standards pertaining to judgements, relevant ratios forming instructive standards for the current analysis were identified and have been included in the report as excerpts of actual paragraphs from the judgement. Furthermore, authoritative sources such as the Expert Committee Report were used as guidelines to examine the structural concerns and conformity to the legal regulation regime at large. Lastly, uniformity was verified in light of international standards such as the Budapest Convention, United Nations Convention Against Cyber Crime and relevant provision of content moderation regulations from other jurisdictions. Though said international conventions and comparative regulations are not binding on the rule-making authority, they serve as a relevant repository of principles and operationalised guidelines which are of particular note in the current analysis.

The following questions were sought to be addressed through the standards and principles:

1. Whether the proposed Rules establish clear obligations for intermediaries with consistent and understandable operations satisfying the rule of publication and whether the proposed content moderation regime has a detrimental interplay with Article 19(1)(a) concerning the freedom of speech and expression. This was addressed by the judgement of *Shreya Singhal v Union of India* and *Kunal Kamra v. Union of India* respectively.
2. Whether the rules constitute a valid exercise of delegated legislation. This was addressed using Supreme Court judgements on the ambit and permissibility of delegated legislation, including *Agij Media Pvt. Ltd. v. Union of India* and *Confederation of Ex-Servicemen Associations v. Union of India.*
3. Whether the rules are envisioned in the object and purpose of the Act and the enabling provision for delegated rule-making. This was addressed with reference to the Act itself and particularly, Section 87.
4. Whether the rules are consistent with established standards of IT regulation based on expert opinion taken into account by policymakers. This was addressed with reference to the guidelines taken from the Expert Committee Report.
5. Whether the rules are consistent with global standards of content moderation. If not, how can the global standards be referenced and used so as to uniquely address the necessities and modalities of content moderation in India? This was addressed with reference to the Budapest Convention[3] and the United Nations Convention on Cyber Crime[4] in addition to European Union Digital Services Act[5] and EU Content Moderation[6] Guidelines Accordingly, the following standards were finalized.

[1] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E), Gazette of India, pt. II sec. 3(i) (Feb. 10, 2026).

[2] 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).

[3] Convention on Cybercrime, Nov. 23, 2001, E.T.S. No. 185, 2296 U.N.T.S. 167.

[4] United Nations Convention against Cybercrime, Dec. 24, 2024, 64 I.L.M. 1179.

[5] Council Regulation 2022/2065, on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1.

[6] Steering Comm. for Media and Info. Soc'y (CDMSI), Guidance Note on Best Practices Towards Effective Legal and Procedural Frameworks for Self-Regulatory and Co-Regulatory Mechanisms of Content Moderation, 19th Plenary Mtg., May 19–21, 2021, Council of Europe (June 2021).

STANDARDS AND PRINCIPLES

1. Object & Purpose of the IT Act, 2000

The legislative architecture of IT Act 2000 was influenced by the UNCITRAL Model Law on Electronic Commerce. Legislature recognized that for electronic commerce to thrice, cross-border transactions required a harmonized legal foundation that enforced digital contracts across jurisdictions.

The object and reasons of original Bill and subsequent preamble of the act delineate:[7]

A. Providing a framework for transactions carried out via electronic data interchange and other means of electronic communication, granting them same status as physical commerce.
B. Promoting the electronic filings of documents with government agencies and use of reliable electronic records in public administration.
C. Creating a penal framework to criminalize activities such as hacking, data theft, which were not adequately addressed by other statutes.[8]

The expert committee specifically has three major objectives

A. Recognize electronic commerce and governance by making legal provisions technology neutral. Replacing "digital" with "electronic" throughout, drawing from UNCITRAL Model Law principles.[9]
B. Create a liability framework for intermediaries that incentivises safe harbour while preserving accountability for harmful content.
C. Herein, they revised section 79 (intermediary liability) safe harbour shields intermediaries from liability for third-party content. However, this immunity is not absolute. Under Section 79(2)(c), the intermediary must observe "due diligence" and follow guidelines prescribed by the Central Government.[10] This limits liability to cases where an intermediary fails to act on actual knowledge.

The Information technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and the 2026 amendments derive their legal validity from the specific 'enabling sections' within the IT Act. These sections delegate legislative authority to the executive branch, to frame rules and regulations.

Section 87[11] is the parent enabling provision, it imparts the executive with legislative power. The phrase "to carry out the provision of this Act" acts as a limiting principle. As the rules must remain within the scope and purpose of the Act. They cannot create substantive rights or obligations beyond the act. The relevant text of the provision is as follows:

Section 87 (1): The Central Government may, by notification in the Official Gazette and in the Electronic Gazette make rules to carry out the provisions of this Act.[12]

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[7] PRS LEGISLATIVE RESEARCH, STANDING COMMITTEE REPORT SUMMARY: THE INFORMATION TECHNOLOGY (AMENDMENT) BILL, 2006 (2007), https://prsindia.org/files/bills_acts/bills_parliament/2006/scr1198750551_Information_Technology.pdf.

[8] The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

[9] Gov't Of India, Dep't Of Info. Tech., Report Of The Expert Committee: Proposed Amendments To Information Technology Act 2000 47 (Aug. 2005).

[10] Id.

[11] *Supra* note 6, § 87.

[12] *Supra* note 6, § 87(1).

Section 87(2)(zg): authorizes the government to prescribe the "guidelines to be observed by the intermediaries" under S. 79(2).[13] This Clause is a specific delegation tied to intermediary liability (safe harbour) under S. 79. However, this must remain consistent with S. 79 and not impose disproportionate obligations. This is the direct enabling provision clause for the intermediary guidelines portion of the 2021 and 2026 rules.
Section 87(2)(z): the procedure and safeguards for blocking public access to information under Section 69 (2).[14] It operationalizes state power to restrict access to online content. This is used to sustain the "oversight mechanism".
Section 10: Empowers the central government to make rules regarding the type and manner of electronic signatures.[15] This Section focuses on the technical and procedural compliance with type and manner of electronic signature and recognize valid forms of electronic authentication.

2. Shreya Singhal v Union of India 2017

STANDARD 1 - The Discussion, Advocacy, Incitement Tripartite Framework
"There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause however unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in." - Shreya Singhal, Para 13

STANDARD 2 - Proximate Nexus Requirement (Public Order)
"The anticipated danger should not be remote, conjectural or far-fetched. It should have a proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg'." - S. Rangarajan v. P. Jagjivan[16], at para 45, approved by the Court at para 38

"The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematic or too remote in the chain of its relation with the public order." - Superintendent, Central Prison v. Ram Manohar Lohia[17], at 835–836, approved at para 22

STANDARD 3 - Void for Vagueness & Overbreadth
RATIO DECIDENDI: A law that creates an offence or imposes a restriction in terms that are undefined, open-ended, and subjective - giving no clear guidance to citizens or courts - is void for vagueness and violates both Article 19(1)(a) and Article 14. Paras 52–58.
"Where no reasonable standards are laid down to define guilt in a Section which creates an offence, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a Section which creates an offence and which is vague must be struck down as being arbitrary and

[13] *Supra* note 6, § 87(2)(zg).
[14] *Supra* note 6, § 87(2)(z).
[15] *Supra* note 6, 2000, § 10.
[16] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574 (India).
[17] Superintendent, Central Prison v. Ram Manohar Lohia, (1960) 2 S.C.R. 821

unreasonable." - Shreya Singhal, Para 52 (approving The United States Supreme Court's Decision in Musser v. Utah and Winters v. New York[18])
"The terms deployed in Section 66A are undefined and no standards or principles have been laid down by the statute to guide and control the exercise of such power, either in terms of law enforcement or in terms of justiciability." - Arguments summarised at para 5, accepted by the Court.

STANDARD 4 - The Chilling Effect Doctrine
RATIO DECIDENDI: Any law or regulation that has a CHILLING EFFECT on the exercise of free speech - discouraging speech out of fear of liability or prosecution - is constitutionally suspect even if it does not technically prohibit it. Paras 5, 20, 28.
"The enforcement of [Section 66A] would really be an insidious form of censorship which impairs a core value contained in Article 19(1)(a). In addition, the said Section has a chilling effect on the freedom of speech and expression. Also, the right of viewers is infringed as such chilling effect would not give them the benefit of many shades of grey in terms of various points of view that could be viewed over the internet." - Shreya Singhal, Para 5
"Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error." - Justice Jackson in American Communications Assn v. Douds[19], approved at Para 20

STANDARD 5 - The 'Actual Knowledge' Standard for Intermediary Liability
RATIO DECIDENDI: The BINDING ratio on intermediary liability: 'Actual knowledge' under Section 79(3)(b) means knowledge derived from (a) a court order directing removal, or (b) a notification by the appropriate government or its agency. It does NOT mean private party complaints, automated flags, or ministry advisories. Rule 3(4) of the 2011 Rules was read down identically. Paras 113–118; Operative holding (c).
"Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology 'Intermediary Guidelines' Rules, 2011 are valid subject to Rule 3 Sub-rule (4) being read down in the same manner as indicated in the judgment." - Shreya Singhal, Operative Holding (c).

STANDARD 6 - Reasonableness of Restriction: Substantive & Procedural
RATIO DECIDENDI: Reasonableness must be examined both SUBSTANTIVELY (extent and nature of the restriction) and PROCEDURALLY (the manner and circumstances of imposition). Both aspects are subject to judicial review. Para 24 (V.G. Row), Para 26 (Dr. N.B. Khare).
"The court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised... The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict." - State of Madras v. V.G. Row[20], at 606, approved at Para 24

[18] *Musser v. Utah*, 333 U.S. 95 (1948); *Winters v. New York*, 333 U.S. 507 (1948).
[19] Am. Commc'ns Ass'n v. Douds, 339 U.S. 382 (1950).
[20] State of Madras v. V.G. Row, (1952) S.C.R. 597

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates." - Chintaman Rao v. State of MP at 763[21], approved at Para 23

STANDARD 7 - Restrictions Must Be Anchored in Article 19(2) Grounds Exclusively
RATIO DECIDENDI: Freedom of speech can ONLY be curtailed in the interest of one of the eight enumerated grounds in Article 19(2). The State cannot restrict speech for general public interest, convenience, or welfare. Para 17, 21; Sakal Papers approved.
"It is not open to the State to curtail freedom of speech to promote the general public interest... Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." - Sakal Papers v. Union of India at 863[22], approved at Para 21.

STANDARD 8 - The Least Restrictive Means Requirement
RATIO DECIDENDI: A restriction must be narrowly tailored. Courts must consider 'the possibility of achieving the object by imposing a LESS DRASTIC restraint.' Mohd. Faruk, approved at Para 25. Both the US Supreme Court and this Court hold that restrictions must be narrowly tailored to restrict only what is absolutely necessary. Para 17.
"The Court must... attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom... the possibility of achieving the object by imposing a less drastic restraint." - Mohd. Faruk v. State of MP at 161[23], approved at Para 25

STANDARD 9 - Procedural Safeguards for Blocking (Section 69A Standard)
RATIO DECIDENDI: Section 69A was upheld SPECIFICALLY because of its procedural safeguards: (i) reasons must be recorded in writing, (ii) a committee reviews the order, (iii) the originator is heard before blocking. Any parallel or substitute blocking mechanism that circumvents these safeguards is constitutionally infirm. Paras 84–90.
"It is only after these procedural safeguards are met that blocking orders are made and in case there is a certified copy of a court order, only then can such blocking order also be made. It is only an intermediary who finally fails to comply with the directions issued who is punishable under Sub-section (3) of Section 69A." - Shreya Singhal, Section 69A analysis, operative holding.

STANDARD 10 - No Censorship by Private Entities / Delegation
RATIO DECIDENDI: Censorship measures must not be delegated to private entities. Intermediaries should not be forced to act as judges of content legality. The reading down of Section 79 embodies this principle. Paras 112–118; Special Rapporteur observations, Para 32.
"Censorship measures should never be delegated to private entities, and intermediaries should not be held liable for refusing to take action that infringes individuals' human rights. Any requests submitted to intermediaries to prevent access to certain content... should be done through an order issued by a court or a competent body which is independent of any political, commercial or other unwarranted

[21]Chintaman Rao v. State of M.P., (1950) S.C.R. 759
[22]Sakal Papers (P) Ltd. v. Union of India, (1962) 3 S.C.R. 842
[23]Mohd. Faruk v. State of M.P., (1970) 1 S.C.R. 156

influences." - UN Special Rapporteur on Freedom of Expression[24], cited with approval at Para 32 of Shreya Singhal.

STANDARD 11 - Internet Speech Does Not Attract Relaxed Standards
RATIO DECIDENDI: The greater reach or impact of the internet does NOT justify a lower threshold of scrutiny or relaxed standards of reasonableness. Internet speech is still Article 19(1)(a) speech and must pass the same constitutional tests. Para 28.
"We do not find anything in the features outlined by the learned Additional Solicitor General to relax the Court's scrutiny of the curbing of the content of free speech over the internet. While it may be possible to narrowly draw a Section creating a new offence, such as Section 69A for instance, relatable only to speech over the internet, yet the validity of such a law will have to be tested on the touchstone of the tests already indicated above." - Shreya Singhal, Para 28.

STANDARD 12 - Viewer's Right to Receive Information
Freedom of speech under Article 19(1)(a) includes the RIGHT OF VIEWERS/READERS to receive information. Restrictions that chill speech also injure the rights of audiences. Para 5.
"Also, the right of viewers is infringed as such chilling effect would not give them the benefit of many shades of grey in terms of various points of view that could be viewed over the internet." - Shreya Singhal, Para 5

3. Kunal Kamra v. Union of India

STANDARD 1 - The Structural Primacy of Article 19(1) Over Article 19(2)
RATIO DECIDENDI: Articles 19(1)(a) and 19(1)(g) are expansive and have no specified limits. It is the power of curtailment - Articles 19(2) and 19(6) - that is strictly confined and non-expandable. Any restriction on free speech must be *demonstrated* to fall within Article 19(2); it cannot be assumed or implied.
"Articles 19(1)(a) and 19(1)(g) are expansive. They have no specified limits. The restrictions on those rights come under Articles 19(2) and 19(6). It is Articles 19(2) and 19(6) that are strictly confined, i.e., it is the power of curtailment of fundamental rights that is restricted." - Para 24(i)
"It is not the business of the government to keep citizens from falling into error. It is the other way around." - Para 158

STANDARD 2 - The Exhaustiveness of Article 19(2) Grounds
RATIO DECIDENDI: Article 19(2) is an *exhaustive* catalogue of permissible restrictions. The State cannot restrict speech in the interests of 'national security', 'public interest', or 'national interest' unless these fall within the enumerated grounds. Article 19(2) cannot be expanded by legislation, delegated legislation, executive action, or judicial pronouncement - only a Constitutional amendment can do so.
"Free speech cannot be regulated 'in the public interest' because that arena of restriction is not in Article 19(2). It does appear in Articles 19(5) and 19(6), but has been excluded from Article 19(2)." - Para 155 (approving Mr Datar's submission)
Citing Kaushal Kishor[25], Para 33: "any restriction which does not fall within the four corners of Article 19(2) will be unconstitutional."

[24]Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
[25]Kaushal Kishor v. State of Uttar Pradesh, (2023) 4 S.C.C. 1

STANDARD 3 - The Prohibition on Government as Sole Arbiter of Truth

RATIO DECIDENDI: The State cannot coercively classify speech as true or false and compel the non-publication of the latter. The government has an expansive right to *counter* content, but an extremely restricted entitlement to *abridge* the fundamental right. Making the government the sole arbiter of what constitutes 'fake, false or misleading' about its own business - without guidelines, hearings, or judicial oversight - is censorship.

"The State cannot coercively classify speech as true or false and compel the non-publication of the latter. That is nothing but censorship." - Para 160

"Who, after all, is to fact check the fact checker? Who is to say if the view of the FCU is fake, false or misleading? Quis custodiet ipsos custodes?" - Para 206

STANDARD 4 - The 'Chilling Effect' Doctrine (Extended Application)

RATIO DECIDENDI: The chilling effect operates not only through direct censorship but through *indirect* censorship - placing content-control obligations on intermediaries who, faced with loss of safe harbour, will inevitably suppress content to protect their business interests. This constitutes indirect censorship of the original speaker's rights. The Rule need not yet have been applied; its very existence and structure produce the chilling effect.

"Confronting intermediaries with the loss of statutory safe harbour is a form of directing or mandating censorship (or self-interested censorship) of identified online content... An intermediary will do anything to retain safe harbour. It will bend the knee to a government directive regarding content." - Para 81

"The entire discussion in Shreya Singhal on 'the chilling effect' militates against an acceptance of any such submission, for the finding of the Supreme Court is clearly directed towards the anticipated future impact of a rule." - Para 212

STANDARD 5 - The Safe Harbour–Free Speech Nexus

RATIO DECIDENDI: Safe harbour under Section 79 is not merely a commercial protection for intermediaries - it is a structural guarantee of free speech for users. Stripping safe harbour upon FCU identification of content is functionally equivalent to mandating takedown, giving the user only the *illusion* of choice. The Supreme Court's reading-down of Section 79(3)(b) in *Shreya Singhal* was premised on keeping the provision within Article 19(2); any Rule operating under Section 79 must be similarly constrained.

"The safe-harbour provision is therefore not just intermediary-level insulation from liability. It is an explicit recognition of a free speech right. What safe harbour does is to remove the potentiality of indirect censorship." - Para 81

"Loss of safe harbour is immediate if this content is not removed. This is what Mr Seervai calls the illusion of choice." - Para 73

STANDARD 6 - Vagueness and Overbreadth as Independent Grounds of Invalidity

RATIO DECIDENDI: Where key operative terms - 'fake', 'false', 'misleading', 'business of the Central Government' - are undefined and incapable of precise, objective determination, the Rule is void for vagueness. Overbreadth is a separate but related ground: a Rule that sweeps in protected speech (opinion, satire, criticism, counter-narrative) alongside genuinely harmful content is constitutionally infirm. Both grounds apply regardless of whether the provision is penal in the strict sense; loss of safe harbour and exposure to prosecution qualify as penal consequences.

"The lack of definition of these words: business of the government; fake; false; and misleading makes the amendment both vague and overbroad. Anything might be the business of government. Anything could be said to be 'fake'. 'Misleading' is entirely subjective." - Para 202

"I find nothing in Shreya Singhal that overbreadth or vagueness as a ground to hold a statute ultra vires is limited to penal provisions. If anything, it is quite the opposite." - Para 139

STANDARD 7 - Medium-Neutrality/The Print-Digital Parity Test

RATIO DECIDENDI: Content does not become fake, false or misleading by virtue of its medium. A Rule that subjects digital content to FCU identification while leaving identical print content entirely unregulated creates an impermissible internal dichotomy within Article 19, and constitutes class legislation rather than permissible classification. The decisive constitutional test is: if the same content cannot be censored in print, there is no basis to censor it merely because it is also published online.

"Any particular 'information' does not become fake, false or misleading only because it is digital... If this critical material is in print, it cannot be censored - at least not by this Rule. But the very same material only because it is also in digital form is liable to be suppressed as fake, false or misleading." - Para 174

"Republication on social media of material already in print can be taken down: that which cannot be forbidden in print is proscribed in its digital avatar. This impermissibly creates a dichotomy within Article 19." - Para 176

STANDARD 8 - The Proportionality and Least-Restrictive-Means Test

RATIO DECIDENDI: Any restriction on a fundamental right must satisfy a four/five-fold proportionality test: (a) legitimate State aim; (b) rational connection between measure and aim; (c) necessity - no less restrictive alternative; (d) not disproportionate in impact; (e) sufficient safeguards against abuse. Where the PIB already performs the corrective function through counter-speech, the impugned Rule fails the necessity and proportionality tests - the least restrictive alternative already exists.

Citing Anuradha Bhasin and Gujarat Mazdoor Sabha[26], Para 87–88, 192: "only the least restrictive measure can be resorted to by the State, taking into consideration the facts and circumstances."

"The business of the Central Government... is not as well-defined or limited as Mr Mehta would have it; and second, that the existing - that is to say, the least restrictive - measure of having the PIB put out corrections, clarifications and identifications... is sufficient." - Para 182

STANDARD 9 - Natural Justice: No Hearing, No Reasoned Order, No Disclosure

RATIO DECIDENDI: Where a determination carries serious civil consequences - including loss of constitutional rights under Articles 19(1)(a) and 19(1)(g) - there must be: disclosure of material, opportunity to be heard, and a reasoned order. A mechanism that makes the government a judge in its own cause (the FCU deciding what is fake about the government's own business) is impermissible. Even the grievance redressal mechanism cannot cure this defect, as the grievance officer has no access to the FCU's basis of determination.

"There is no safeguard against bias. There are no guidelines, no procedure for hearing, no opportunity to counter the case that some information is fake, false or misleading... the Rule clearly makes the Central Government a judge in its own cause." - Para 189–190

"There is no disclosure of material relied on against the user's content... There is no requirement for a reasoned order." - Para 191

STANDARD 10 - The Ultra Vires/Parent Statute Constraint

[26]Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637 (India) ; Gujarat Mazdoor Sabha v. State of Gujarat, (2020) 10 S.C.C. 459 (India).

RATIO DECIDENDI: A delegated rule cannot go beyond its parent statute, and no rule-making power can be exercised outside the frame of Article 19(2). The 2023 Amendment, purportedly made under Section 87(2)(zg) read with Section 79(2), creates *substantive law* that neither Section 69A nor Section 79 permits - specifically, a unilateral FCU-driven takedown mechanism without the procedural safeguards that made Section 69A constitutionally valid in *Shreya Singhal*.
"What the impugned Rule does is to create substantive law beyond the parent statute. Nothing in Section 69A or Section 79 permits this targeted unilateralism in relation to digital content." - Para 197
"In any case, no rule-making power can be exercised outside the frame of Article 19(2)." - Para 198

STANDARD 11 - The Article 14 Classification Test (Invalid Class Legislation)
RATIO DECIDENDI: Singling out 'business of the Central Government' as a separate class of content - with its own arbiter and without requiring knowledge or intent - constitutes class legislation, not permissible classification. There is no intelligible differentia: any information on social media may be fake, false or misleading, and the government is not a uniquely vulnerable class requiring preferential protection. The classification also fails the rational nexus test.
"The Government does not ipso facto constitute a class of its own sufficient to justify preferential treatment... I see no reason why deepfakes about the Central Government should enjoy any greater protection than deepfakes about film actors or cricket stars." - Paras 184, 187
"Clearly, this is invidious class legislation not permissible classification." - Para 188

4. Agij Media Pvt. Ltd. v. Union of India[27]

STANDARD 1 - The Ultra Vires Test: Subordinate Legislation Cannot Exceed the Parent Statute
RATIO DECIDENDI: A rule made under delegated authority must sub-serve the provisions of the parent statute and cannot create fresh rights, obligations, or liabilities not traceable to the enabling enactment. Where rules are directly inconsistent with mandatory provisions of the statute under which they are framed, they are liable to be struck down. Neither Section 69A nor Section 87(2)(z) and (zg) of the IT Act confer power to create a substantive content-regulation regime of the kind created by Part III of the 2021 Rules.
"A subordinate legislation is intended to sub-serve the provisions of the principal Act and cannot result in creating fresh rights, obligations and liabilities not traceable in the enactment conferring power to frame rules." - Para 14(I)
"Neither clause (z) nor clause (zg) of sub-section (2) of Section 87 under which the 2021 Rules are framed would confer any power on the Central Government to frame a provision in the nature of Rule 9." - Para 30

STANDARD 2 - The Occupied Field Doctrine: Independent Statutory Regimes Cannot Be Displaced by Subordinate Legislation
RATIO DECIDENDI: Where a field of regulation is already occupied by an independent statute with its own institutional mechanism and sanctions - such as the Press Council Act, 1978 or the Cable Television Networks (Regulation) Act, 1995 - a subordinate legislation under a different parent statute cannot import, incorporate, or make actionable the standards of that separate regime. The violation of moral/professional codes under one statute cannot be converted into enforceable obligations under another through delegated rule-making.

[27] *Agij Media Pvt. Ltd. v. Union of India*, 2021 SCC OnLine SC 1012

"It is prima facie difficult to comprehend as to how such fields which stand occupied by independent legislations can be brought within the purview of the impugned rules and substantive action can be taken for their violation under the impugned rules." - Para 24
"It is, therefore, incomprehensible as to how by a subordinate legislation, contravention of such code laying down standards of moral behaviour, could validly be made a ground for attracting action of the nature specified in Rule 14(5) of the 2021 Rules." - Para 26

STANDARD 3 - The Chilling Effect as an Independent Constitutional Infirmity
RATIO DECIDENDI: A statutory regime that dissuades citizens from exercising their fundamental right under Article 19(1)(a) - by creating fear of penal or adverse action for content that does not transgress the limits in Article 19(2) - constitutes an unreasonable restriction independently actionable as unconstitutional. The indeterminacy and width of operative terms are themselves the source of the chilling effect; a writer/editor/publisher need not actually be prosecuted for the chilling effect to crystallise.
"The indeterminate and wide terms of the Rules bring about a chilling effect qua the right of freedom of speech and expression of writers/editors/publishers because they can be hauled up for anything if such committee so wishes." - Para 28
"Should at least a part of Rule 9 of the 2021 Rules be not interdicted even at the interim stage, it would generate a pernicious effect. People would be starved of the liberty of thought and feel suffocated to exercise their right of freedom of speech and expression, if they are made to live in present times of content regulation on the internet with the Code of Ethics hanging over their head as the Sword of Damocles." - Para 29

STANDARD 4 - Restrictions on Article 19(1)(a) Must Fall Within the Four Corners of Article 19(2)
RATIO DECIDENDI: The IT Act's content-regulation power under Section 69A is explicitly grounded in the restrictions permitted by Article 19(2) - sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, incitement to an offence. Any rule purporting to regulate content that goes beyond these enumerated grounds - including by importing ethical standards from unrelated codes - constitutes an unreasonable restriction not saved by Article 19(2).
"The respondents cannot exercise powers of censorship or scrutiny, in traffic of the messages or information, unless it is falling within the parameters of Article 19(2) of the Constitution." - Para 15
"Blocking of information in case of emergency as provided by Rule 16 is on the grounds traceable in sub-section (1) of Section 69A of the IT Act which is a provision falling in line with the restrictions as imposed by Article 19(2)." - Para 19 (a contrario, confirming that only Article 19(2)-grounded restrictions are valid)

STANDARD 5 - The Presumption of Constitutionality Yields Where Rules Are Ex Facie Ultra Vires or Intrude into Fundamental Rights
RATIO DECIDENDI: While subordinate legislation ordinarily carries a presumption of constitutionality, this presumption does not operate where: (a) the rules are directly inconsistent with the parent statute; (b) the rules lack legislative competence; or (c) the rules manifestly and arbitrarily intrude into constitutionally guaranteed fundamental rights. In such cases courts may grant interim relief without awaiting final adjudication.
"Although there is a presumption in favour of constitutionality or validity of subordinate legislation, it is well recognized that a subordinate legislation can be challenged on the ground of lack of legislative competence... violation of fundamental rights... failure to conform to the statute under which it is

made... and on the ground of manifest arbitrariness/unreasonableness." - Para 32 (citing State of Tamil Nadu v. P. Krishnamurthy[28])
"The operation of the statutory provision cannot be stultified by granting an interim order except when the Court is fully convinced that the parts under enactment or the rules are ex facie unconstitutional and the factors like balance of convenience, irreparable injury and public interest are in favour of passing an interim order." - Para 33 (citing Health for Millions v. Union of India[29])

STANDARD 6 - Democracy Requires Uninhibited Public Criticism: The Dissent Principle
RATIO DECIDENDI: A healthy democracy depends on the freedom to criticise persons in public life. Any regulatory mechanism that, by its breadth and indeterminacy, effectively penalises criticism of public figures - even where such criticism does not amount to defamation or fall within Article 19(2) restrictions - is antithetical to constitutional democracy and manifestly unreasonable. The liberty of thought is a preambular promise of the Constitution.
"Dissent in democracy is vital... For proper administration of the State, it is healthy to invite criticism of all those who are in public service for the nation to have a structured growth but with the 2021 Rules in place, one would have to think twice before criticising any such personality." - Para 28
"A democracy would thrive only if the people of India regulate their conduct in accordance with the preambular promise that they took while giving to themselves the Constitution. Liberty of thought is one of such promises." - Para 29

5. Confederation of Ex-Servicemen Associations v. Union of India[30]

STANDARD 1 - Article 14 Prohibits Class Legislation, Not Reasonable Classification: The Twin-Test
RATIO DECIDENDI: Article 14 prohibits the State from singling out a person or class of persons for discriminatory treatment where they are similarly situated. It does not, however, prohibit classification provided the classification fulfils the twin test: (i) it must be founded on an intelligible differentia distinguishing the grouped class from others; and (ii) that differentia must have a rational nexus to the object sought to be achieved by the legislation. Classification between in-service employees and retirees, and between defence personnel and civil employees, satisfies this test and does not violate Article 14.
"Every classification to be legal, valid and permissible, must fulfil the twin test, namely, (i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and (ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question." - Paras 26 and 30
"Classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees, it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution." - Para 31

STANDARD 2 - Financial Constraints of the State as a Legitimate Ground for Policy Differentiation
RATIO DECIDENDI: The State, as a welfare State with limited financial means, has the constitutional latitude to formulate contributory schemes that extend benefits subject to reasonable one-time contribution, rather than providing the benefit entirely free. A contributory scheme is not

[28]State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 S.C.C. 517
[29]Health for Millions v. Union of India, (2014) 14 S.C.C. 496
[30]Confederation of Ex-Servicemen Associations v. Union of India [2006] 8 SCC 399

rendered illegal, unlawful, or arbitrary solely because it requires payment by the beneficiary, provided the contribution is a reasonable amount in light of available resources. The right to medical aid under Article 21 does not translate into an absolute right to free and full medical facilities.
"In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and by requiring them to make 'one-time payment' which is a reasonable amount, it cannot be said that such action would violate the fundamental rights." - Para 64
"Though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay 'one-time contribution' neither violates Part III nor is it inconsistent with Part IV of the Constitution." - Para 66

STANDARD 3 - The Right to Life Under Article 21 Is Broad But Not Absolute in Welfare Delivery
RATIO DECIDENDI: Article 21 encompasses the right to health and medical aid as part of the quality of life, extending both during service and post-retirement. This right is real and enforceable. However, where the State has formulated a scheme that provides access to medical facilities - even on a contributory basis - and the scheme is reasonable and constitutionally consonant, the Court will not issue directions to "fill gaps" or compel free delivery where the State has already discharged its basic obligation within available means.
"It cannot be gainsaid that the right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. If any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires Part III of the Constitution." - Para 61
"We see no infirmity therein. We, therefore, hold that getting free and full medical facilities is not a part of the fundamental right of ex-servicemen." - Para 67

STANDARD 4 - The Doctrine of Legitimate Expectation: Limits of Applicability
RATIO DECIDENDI: The doctrine of legitimate expectation arises where an administrative authority has made an express promise or followed a consistent practice, such that departure from it without fair procedure would constitute unfair administration. The doctrine does not apply where the petitioner seeks to expand existing benefits rather than protect benefits already enjoyed and then withdrawn. A claim that additional facilities should be provided in the future - not previously enjoyed - cannot ground a legitimate expectation.
"The doctrine of 'legitimate expectation' is the 'latest recruit' to a long list of concepts fashioned by the courts for review of administrative actions... Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue." - Para 33
"In the instant case, the doctrine of legitimate expectation has no application. It is not even the case of the petitioners that certain medical facilities which were enjoyed by them in the past have been withdrawn or revoked." - Para 36

STANDARD 5 - The Court's Power to Issue Directions Is Limited Where the State Has Already Framed a Scheme
RATIO DECIDENDI: Where the State has already framed a scheme addressing the subject matter of the petition - even if imperfectly - the Court's power to issue directions to "fill gaps" in the exercise of plenary powers under Article 32 is substantially circumscribed. Directions may issue in the absence of legislative or executive action governing the field; where such action exists, the court evaluates its constitutional validity rather than substituting its own policy judgment.

"In the instant case, however, a scheme providing medical facilities to ex-servicemen has been framed... In the circumstances, the ratio laid down by the Supreme Court in the above cases does not apply and no directions need be issued to the respondents." - Para 37

STANDARD 6 - Locus Standi of Registered Associations to Ventilate Collective Grievances
RATIO DECIDENDI: A registered society or confederation of associations has locus standi to approach the Court under Article 32 to ventilate the grievances of its constituent members - particularly where individual members are unable to approach the court, the cause involves a larger public interest, and the organisation itself is duly registered. Registration under the Societies Registration Act, 1860 is sufficient; recognition by the Government is not a precondition.
"The petitioner Confederation representing those associations which is also registered, can certainly approach this Court by invoking the provisions of Part III of the Constitution. We, therefore, reject the preliminary objection raised by the respondents and hold that the petitioner Confederation has locus standi to file the petition." - Para 23

6. Expert Committee Report

Standard 1 - The Requirement of a technological neutral act (shift from digital to electronic)

In many sections of the IT Act,2000 particularly section 2(g) the term digital has been changed to electrical to ensure a technologically neutral act . This was changed as it was made to bring authorities like the certification practice statement of section 2(h) constituted as an agency towards the issuing of digital signatures and certificates to bring it under the jurisdiction of this act and its amendments. The same has been done in the case of wireless technology. It can be summarized in one single line "**Law must not lock itself into one technology**"

Standard 2 - The Requirement to Conform To UNCITRAL Laws and laws of other nations

Particularly in section 4 of the committee's report on the IT Act and its subsequent amendments the following has been cited: "Explanation is added for defining reliability of Electronic Signatures. This has been done to allow only those technologies, along with this section 19 has also been created to grant foreign authorities the power to issue electronic signature certificates etc which conforms to these conditions in lines with UNCITRAL Model Law of Electronic Commerce" signifying the committee s view to harmonize india s laws with the UNCITRAL Law[31] for instance - 79. Exemption from liability of intermediary in certain cases - This section is revised in lines with the EU Directives on E-Commerce[32].

Standard 3 - Grounded In Commercial Reality
Particularly in section 16 of the Act The Expert committee had modified the section particularly to : (1) For the purpose of secure electronic records or secure electronic signature, the Central Government may prescribe security procedures to be followed, keeping in view the commercial circumstances, nature of transactions and other related matters. (2) The security procedures mentioned in sub-section (1) shall be prescribed after consultation with self-regulatory bodies of the industry, if

[31] UNCITRAL Model Law on Electronic Commerce, G.A. Res. 51/162, U.N. Doc. A/RES/51/162 (Dec. 16, 1996).
[32] Directive 2000/31/EC, of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce), 2000 O.J. (L 178) 1.

any. This can also be seen in section 18(h) where it was stated that there is a need to differentiate between accounts of the company and records relating to electronic signature certificates issued. The accounts of the company should continue to be governed by other laws such as Companies Act, Income Tax etc.

Fee amount omitted as it may change from time to time: (vi) "Sensitive personal data or information" means such personal information, which is prescribed as "sensitive" by the Central Government in consultation with the self-regulatory bodies of the industry, if any. (section 43 6th explanation) A level of flexibility like this ensures that the norms can be changed regularly on the basis of the evolving commercial stage.

Standard 4 - Consumer first
Save as otherwise provided under this Act, if any intermediary who by virtue of any subscriber availing his services has secured access to any material or other information relating to such subscriber, discloses such information or material to any other person, without the consent of such subscriber and with intent to cause injury to him, such intermediary shall be liable to pay damages by way of compensation not exceeding Rs. 25 lakhs to the subscriber so affected. Section 72(2) has been added to protect the privacy of the individual subscribers.

Standard 5 - Respect For Pre-Existing Laws
In Section 1(4) of the Information Technology Act, 2000, as modified by the Expert Committee, certain classes of transactions have been explicitly excluded from the application of the Act, including: Negotiable instruments, Powers of attorney, trusts, Wills,testamentary dispositions and Contracts relating to immovable property
This reflects the Committee's intent to ensure that **digital legal recognition is not extended indiscriminately to all categories of transactions**, particularly those involving high evidentiary risk, formal solemnity, or complex title implications.
Digital validity must operate within clearly defined legal boundaries.

Standard 6 - The Requirement that the State Act as a Facilitator, Not an Operator
The Expert Committee consciously limits the operational role of the State within the digital ecosystem. This is reflected in the deletion/modification of provisions such as Section 20 (Controller acting as repository), where it was noted that maintaining a central repository would:

- Create unnecessary legal obligations
- Duplicate functions of Certifying Authorities
- Deviate from global practices

The framework instead places operational responsibility on **Certifying Authorities and private infrastructure**, with the State retaining a supervisory and regulatory role.

Standard 7 - Layered Liability for All Parties
The Expert Committee, through multiple provisions of the Information Technology Act, 2000, constructs a system wherein liability is not concentrated in a single actor but is distributed across all participants in the digital ecosystem, ensuring that accountability is both identifiable and enforceable. This is reflected in:

- Section 43 – Imposing civil liability for unauthorized access, damage, or misuse of computer resources
- Section 46 – Establishing adjudicating officers for determination of contraventions
- Section 72 and 72(2) – Imposing liability for breach of confidentiality and privacy

- Intermediary framework (Section 2(w) read with liability provisions such as Section 79) – Defining conditional liability and safe harbour
- Certifying Authorities (Sections 17–21) – Holding them accountable for the integrity and issuance of electronic signature certificates

These provisions collectively demonstrate that the Committee intended to create a layered liability structure, where:

- Users are responsible for misuse
- Intermediaries are responsible for due diligence and compliance
- Certifying Authorities are responsible for trust infrastructure
- State authorities are responsible for regulatory oversight

This ensures that no participant in the digital transaction chain operates without accountability, while also preventing overburdening of any single entity.

Standard 8 – Legislative Flexibility to Accommodate Future Needs

The Expert Committee, through the structure of the Information Technology Act, 2000, consciously provides the Central Government with **broad rule-making and regulatory powers** to address evolving technological developments, including those not foreseeable at the time of enactment.

7. International Conventions and Content Moderation Regulations.

A. Budapest Convention

B-1 (Arts. 15 and Preamble) - Proportionality & Human Rights Balance: All surveillance and takedown powers must be proportionate, judicially supervised, limited in scope and duration. Directly challenges the 3-hour mandate, Rule 3(4), and Sahyog's automated notices.

B-2 (Art. 1(c) and Preamble) - Intermediary Liability is Conduct-Based, Not Editorial: Service providers are defined as neutral conduits - not content gatekeepers. SGI due diligence obligations that require platforms to detect and remove AI content transform them into editors, which the Convention's framework rejects.

B-3 (Arts. 2–11) - Criminalisation Must Be Specific, Intentional, and Well-Defined: Every Budapest offence requires intentionality + specific harmful conduct. The SGI definition (content that merely "appears authentic") is far broader. A valid SGI restriction must require intent to deceive for a specific harmful purpose.

B-4 (Art. 9) - CSAM: Mandatory, Narrow, Highest Priority: Budapest mandates CSAM criminalisation including AI-generated realistic images of minors. The Rules should carve out AI-CSAM as its own highest-urgency category, not blend it with generic intimate imagery.

B-5 (Arts. 16–17) - Data Preservation: 90-Day Cap, Court-Ordered, Data-Specific: Rules 3(1)(g)/(h) lack maximum retention periods, judicial authorisation requirements, and data-specificity - all required by Budapest.

B-6 (Arts. 20–21) - Real-Time Surveillance Requires a Serious-Offence Nexus: Content data interception and real-time monitoring must be anchored in specific serious offences defined by law and judicially authorised - not by ministerial advisory.

B-7 (Art. 13) - Sanctions Must Be Proportionate to Gravity: The uniform 7-year penalty and automatic safe harbour withdrawal both fail the effective-proportionate-dissuasive test when applied to minor or advisory-based non-compliance.

B. UN Convention Against Cyber Crime 2024 (8 Standards)

U-1 (Art. 6) - Human Rights Non-Derogation is Operative, Not Precatory: Unlike Budapest's preamble reference, Article 6 is a binding operative provision categorically barring use of the cybercrime framework to suppress free expression, opinion, or conscience.

U-2 (Art. 24) - Right to Effective Remedy is Mandatory: The UN Convention goes further than Budapest by explicitly naming the right to an effective remedy - requiring reasoned explanations, independent review, and restoration mechanisms that the current GAC process does not provide.
U-3 (Art. 16) - NCII Requires Consent, Privacy Expectation & Sexual Nature: The 2-hour takedown under Rule 3(2)(b) is consistent with this standard for actual NCII, but extending it to non-sexual AI-generated images (politically doctored content) overreaches the Convention's definition.
U-4 (Art. 12) - ICT Forgery Requires Dual Intent to Deceive for Legal Purposes: The ICT forgery offence - the closest Convention analogue to deepfakes - requires both intentional creation AND intent that the data be acted upon as legally/officially authentic. Satire, art, and education fall outside this, but inside the SGI definition.
U-5 (Art. 21) - Fair Trial + Gravity-Calibrated Sanctions: Every prosecution for non-compliance with the Rules must afford the right to a fair trial and rights of the defence. Summary Sahyog-based removals that can trigger criminal liability violate this.
U-6 (Art. 36) - Personal Data in Enforcement Must Be Safeguarded: Sahyog data and GAC processes involve processing personal data without a specified protection protocol - Article 36 requires 'effective and appropriate safeguards' in the domestic legal framework.
U-7 (Art. 34) - Victim-Initiated Removal is a Rights Obligation, Not Just a Power: For CSAM and NCII specifically, removal is framed as a victim entitlement, not just a government tool. The Rules must include victim-initiated pathways and compensation/restitution procedures.
U-8 (Art. 25) - Data Preservation: Same 90-Day Cap, Extended to Content & Subscriber Data: Mirrors Budapest but extends to content data and subscriber information - the Rules' open-ended retention provisions fail this standard on all three dimensions.

C. EU Digital Services Act and Council of Europe Content Moderation Guidelines

Standard 1 - Orders Against Illegal Content: Procedural Requirements
Governmental orders directed to intermediaries to act against illegal content must meet minimum procedural conditions: they must contain a legal basis, a statement of reasons explaining why specific content is illegal by reference to specific provisions, identification of the issuing authority, clear information enabling identification of the content, information on redress mechanisms, and must be limited in territorial scope to what is strictly necessary to achieve the objective. DSA Article 9.

"Upon the receipt of an order to act against one or more specific items of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union law or national law in compliance with Union law, providers of intermediary services shall inform the authority issuing the order, or any other authority specified in the order, of any effect given to the order without undue delay, specifying if and when effect was given to the order."
- DSA, Article 9(1)
"that order contains the following elements: (i) a reference to the legal basis under Union or national law for the order; (ii) a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions of Union law or national law in compliance with Union law; … (v) information about redress mechanisms available to the provider of intermediary services and to the recipient of the service who provided the content; … (b) the territorial scope of that order … is limited to what is strictly necessary to achieve its objective."
- DSA, Article 9(2).

STANDARD 2 - Orders to Provide Information: Proportionality & Data Minimisation

Governmental orders requiring intermediaries to provide information must include a statement of reasons explaining why the information is required and why it is necessary and proportionate. Such orders may only require information already collected for the purposes of providing the service and within the provider's control. DSA Article 10.

"a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union law or national law in compliance with Union law … that order only requires the provider to provide information already collected for the purposes of providing the service and which lies within its control."
- DSA, Article 10(2)(a)(iv), (b)

STANDARD 3 - Prohibition on Delegation of Censorship to Private Entities
Censorship measures must never be delegated to private entities. State pressure on intermediaries - whether direct or indirect - that effectively converts private platforms into instruments of content suppression constitutes an impermissible delegation of censorship authority. CoE Guidance, para 70.

"Censorship measures should never be delegated to a private entity. [The UN Special Rapporteur] gave one example of a 'quasi-state and quasi-private entity tasked to regulate online content' as an example of this kind of delegation of power. Such delegation does sometimes happen through direct or indirect pressure by states on internet intermediaries."
- Council of Europe Content Moderation Guidance, para 70 (quoting UN Special Rapporteur Frank La Rue)

STANDARD 4 - Predictability, Legal Clarity, and Defined Knowledge Triggers for Liability
States must ensure a legal framework that is predictable for all concerned. Where intermediaries are held liable for failing to remove illegal content, the rules concerning 'knowledge' triggering that liability must be clear and proportionate. Legal obligations, operational roles, and accountability requirements must all be clearly defined. CoE Guidance, paras 23–24.

"It is incumbent on the state to ensure a legal framework that is predictable for all concerned. If internet intermediaries are to be held liable for failing to remove illegal content, the rules concerning 'knowledge' triggering that liability must be clear and proportionate, as must the rules prohibiting the content in question. States should ensure that in all cases legal obligations and responsibilities, as well as operational roles and accountability requirements are clearly defined."
- CoE Guidance, paras 23–24

STANDARD 5 - State Involvement in Content Moderation and Human Rights Obligations
The extent of state implication in content moderation decision-making by intermediaries directly expands the scope of the state's own human rights obligations. States must be mindful that co-regulatory frameworks, including ministerial pressure and directive authority, bring the state within the ambit of human rights accountability for moderation outcomes. CoE Guidance, para 35.

"Decision-making by internet intermediaries in relation to content moderation can happen on a wide continuum, from decisions taken fully independently to decisions taken as a direct result of pressure by non-legal means from states … States should be mindful of and recognise that the extent of their implication in decision-making by internet intermediaries influences the scope of their related human rights obligations."

- CoE Guidance, para 35

STANDARD 6 - Requirements for Co-Regulatory Frameworks: Clarity, Independence, and Oversight
Where states engage in co-regulation with intermediaries, they must use clear language and definitions, establish transparent targets and benchmarks, ensure mandatory public reporting, require independent appraisal and audits, impose appropriate sanctions for non-compliance, and maintain ongoing independent oversight. Co-regulatory arrangements lacking these features fail the conditions for legitimacy. CoE Guidance, paras 36–37.

"When engaging in co-regulation, States should use clear language and definitions regarding the nature of cooperation with internet intermediaries, its goals and targets, the responsibilities and obligations of all parties involved."
- CoE Guidance, para 36
"Research on the characteristics of successful self-regulation in other fields, which can also be applied to co-regulation, has identified several key traits: a. Transparency, particularly with regard to targets, balance of power and independence; b. Having clear, independently verified, objective benchmarks and targets; c. Mandatory public reporting and independent appraisal and audits of adherence to codes and on progress towards goals being achieved, and the imposition of appropriate sanctions where non-compliance is identified; d. Ongoing independent oversight."
- CoE Guidance, para 37

STANDARD 7 - Data Retention Must Be Calibrated, Transparent, and Law-Enforcement Linked
Any co-regulatory obligation requiring data preservation, especially in relation to serious crime, must include explicit reference to the expected engagement with law enforcement and other relevant state authorities. Such measures must aim for maximum transparency and must be carefully calibrated to avoid unintended consequences for privacy and other human rights, and to prevent abuse of power by state authorities. CoE Guidance, para 18.

"It is crucial that any self- or co-regulatory obligation to fight serious crime … include obligations for states to take all necessary measures to address the offline component of the crime. It should never be possible to adopt a self- or co-regulatory approach in relation to such content without explicit reference to the expected engagement with law enforcement and other relevant state authorities. Such measures should aim for maximum transparency and need to be calibrated very carefully in order to avoid unintended consequences for privacy and other human rights, as well as prevention of abuse of power by state authorities."
- CoE Guidance, para 18

STANDARD 8 - Statement of Reasons: Mandatory Elements for Content Restrictions
Providers of hosting services must give affected users a clear and specific statement of reasons for any content restriction. The statement must include: the nature and territorial scope of the decision, the facts and circumstances relied upon, whether automated means were used, the legal ground and explanation of why the content is illegal, and clear information on redress possibilities. DSA Article 17.

"Providers of hosting services shall provide a clear and specific statement of reasons to any affected recipients of the service for any of the following restrictions imposed on the ground that the information provided by the recipient of the service is illegal content or incompatible with their terms and conditions."

- DSA, Article 17(1)
"The statement of reasons referred to in paragraph 1 shall at least contain the following information: (a) … the territorial scope of the decision and its duration; (b) the facts and circumstances relied on in taking the decision …; (c) where applicable, information on the use made of automated means in taking the decision …; (d) where the decision concerns allegedly illegal content, a reference to the legal ground relied on and explanations as to why the information is considered to be illegal content on that ground …; (f) clear and user-friendly information on the possibilities for redress available to the recipient of the service in respect of the decision."
- DSA, Article 17(3)
"The right to effective remedy requires that individuals be informed precisely of the basis on which their content was removed or why their complaint did not lead to content being removed. It requires the right to accessible adjudication."
- CoE Guidance, para 32 (Explanatory Memorandum, para 128(b))

STANDARD 9 - Internal Complaint-Handling: User Right and Mandatory Reversal Obligation
Providers of online platforms must offer users a free internal complaint-handling system covering decisions to remove, disable, restrict, or suspend access to content or accounts. Where a complaint demonstrates sufficient grounds to question the legality or proportionality of a restriction, the provider must reverse its decision without undue delay. Complaint-handling must be timely, non-discriminatory, diligent, and non-arbitrary. DSA Article 20.

"Providers of online platforms shall provide recipients of the service with access to an internal complaint-handling system that enables recipients to lodge complaints, electronically and free of charge, against the following: (a) a provider's decision whether or not to remove or disable access to specific items of information provided by the recipients …"
- DSA, Article 20(1)
"Where a complaint contains sufficient grounds for the provider of the online platform to consider that the information to which the complaint relates, is not illegal or incompatible with its terms and conditions, or that the complaint contains information indicating that the complainant's conduct does not warrant the measure taken, the provider shall reverse its decision referred to in paragraph 1 without undue delay."
- DSA, Article 20(3)
"When content is removed, it is also important that transparency measures make clear the specific reasons why the content was removed as, without this, it is difficult for individuals to know if an appeal is worthwhile or possible. The right to a timely, accessible, and fair appeals process should always be accorded."
- CoE Guidance, para 128(b) (Explanatory Memorandum)

STANDARD 10 - No General Monitoring Obligation: Intermediary Immunity Framework
Providers of intermediary services must not be subjected to general monitoring obligations or active fact-finding obligations regarding illegal content. Liability immunity attaches where providers act expeditiously upon obtaining actual knowledge of illegal content. Regulatory frameworks imposing category-based monitoring or proactive surveillance obligations violate the structural basis of intermediary immunity. DSA Articles 6 and 8.

"Providers of hosting services shall not be liable for information stored at the request of a recipient of the service on condition that the provider: (a) does not have actual knowledge of illegal activity or

illegal content …; or (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content."
- DSA, Article 6(1)
"No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers."
- DSA, Article 8
"States must ensure an appropriate balance of incentives for internet intermediaries and avoid regulation incentivising them to impose disproportionate restrictions. This can happen, for example, as a result of intermediary liability rules that are either too stringent or too vague."
- CoE Guidance, para 28
"In an environment where an internet intermediary can be held liable when failing to remove content or services that might constitute an infringement, but has few counterbalancing incentives to keep content online, it seems inevitable that internet intermediaries will restrict content that falls in the 'grey zone' … ideas, explicitly protected by the European Convention on Human Rights, such as those 'that offend, shock or disturb the State or any sector of the population,' have little chance of being protected in practice."
- CoE Guidance, para 89 (Explanatory Memorandum)

STANDARD 11 - Transparency Reporting: Mandatory Disclosure of Content Moderation Activity
Intermediaries must publish annual transparency reports covering: governmental orders received (categorised by type and Member State), notices received and actions taken, proactive content moderation activity including use of automated means, and internal complaint outcomes including reversal rates. Enhanced transparency obligations apply to online platforms. The absence of transparency for ministerial directives is structurally incompatible with this standard. DSA Articles 15 and 24.

"Providers of intermediary services shall make publicly available, in a clear, easily comprehensible and detailed manner, at least once a year, information on any content moderation that they engaged in during the relevant period. That information shall include, as applicable: (a) information on the number of orders received from Member States' authorities, categorised by the type of alleged illegal content concerned … (c) information on content moderation engaged in at the providers' own initiative, including by means of automated means … (d) the number of complaints received through internal complaint-handling systems … and the number of instances where those decisions were reversed."
- DSA, Article 15(1)
"Transparency is essential for content moderation to respect human rights and to achieve its goals. It is needed: to be clear about the nature of the content moderation … to be clear about the problem being addressed and its targets … to identify and eliminate mistakes that lead to legitimate content being removed or illegitimate content being left online."
- CoE Guidance, para 40
"The key benefit of self-regulation and co-regulation is their flexibility … States and internet intermediaries should be mindful of and acknowledge that without meaningful transparency, society loses this benefit of self- and co-regulation, while still incurring a reduction in accountability and democratic legitimacy that come as their cost."
- CoE Guidance, para 39

STANDARD 12 - Metrics Must Reflect Rights Protection, Not Speed of Removal

Regulatory and co-regulatory frameworks must not measure effectiveness solely by the speed or quantity of content removed. Metrics must be oriented towards efficiency that is indicative of progress towards concrete public policy objectives. Frameworks that incentivise high-speed removal without corresponding accuracy or rights-protection obligations structurally produce over-removal. CoE Guidance, para 42.

"States should be mindful that the speed and quantity of deleted content items do not necessarily indicate the efficiency of measures. Metrics should be oriented towards efficiency that is indicative of the progress made in achieving concrete public policy objectives."

- CoE Guidance, para 42

CONTENTS OF THE AMENDED RULES

The meaning and implications of the proposed rules must be examined before analysing the potential lacunae and scope for further amendment.

Rule 1: Short Title and Commencement.

Rule 2: Amending Rule 3(1)(g) and 3(1)(h) of the IT Rules, 2021:

Rule 2(a) inserts, before the operative text of Rule 3(1)(g), the prefatory clause[33]: "without prejudice to any requirement relating to the preservation or retention of information applicable to intermediaries under the Act or any other law for the time being in force." Rule 2(b) affects the identical insertion into Rule 3(1)(h). The operative text of neither clause is disturbed.

Rule 3(1)(g), before amendment, required an intermediary - upon receiving actual knowledge under clause (d), voluntarily on violation of clause (b), or based on grievances under sub-rule (2) - to preserve, without vitiating evidence, any information that had been removed or disabled, together with associated records, for 180 days for investigation purposes, or for such longer period as may be required by a court or by lawfully authorised Government agencies[34]. Rule 3(1)(h), before amendment, required an intermediary that collected registration information from a user to retain it for 180 days after cancellation or withdrawal of registration[35].

The Amendment does not touch the 180-day baseline or the extension mechanism already present in both clauses. What it does is prepend to both a without-prejudice saving clause, the effect of which is to subordinate the self-contained data management regime in Rules 3(1)(g) and (h) to an indeterminate and unstated external body of preservation obligations. Those obligations are not identified. The laws imposing them are not listed. Their scope, duration, triggering conditions, and safeguards are not prescribed. The clause functions as a gateway into a legal landscape the Amendment itself declines to map.

Rule 3: Amending Rule 3(4) of the IT Rules, 2021

Rule 3(4), inserted by the February 2026 Amendment, creates a framework compelling intermediaries to comply with any "clarification, advisory, order, direction, standard operating procedure, code of practice or guideline" issued by the Ministry of Electronics and Information Technology in writing. Clause (b) imposes four procedural conditions on such instruments: written form, specification of legal basis, specification of scope, and consistency with the Act and Rules. Clause (c) is the operative

[33] *Supra* note 2, Rule 3(1)(g), 3(1)(h), as amended by *Supra* note 2 [Amendment Rules].

[34] *Supra* note 2, r 3(1)(g) (pre-amendment).

[35] *Supra* note 2, r 3(1)(h) (pre-amendment).

sting, it converts compliance into a **due diligence obligation under Section 79**, meaning non-compliance potentially forfeits safe harbour.

Before examining its tensions, it is appropriate to acknowledge that Rule 3(4)(b) represents a genuine, if partial, step towards structured executive accountability. The requirements that every ministerial instrument must be in writing, must cite its statutory basis, must define its scope, and must be internally consistent with the parent Act, are not cosmetic. They mirror, to a limited degree, the Council of Europe (CoE) Guidance's call for "clear language and definitions regarding the nature of cooperation with internet intermediaries, its goals and targets". An unstructured directive power without these conditions would be considerably worse. The provision, read charitably, represents a move away from informal pressure and towards written, traceable executive action.

Rule 4: Amending Rule 8 of the IT Rules, 2021

Rule 8(1) as amended governs the scope of application of Part III of the IT Rules, 2021[36]. The original proviso to Rule 8(1) restricted the application of Rules 14, 15, and 16 exclusively to *publishers* of news and current affairs content and online curated content.

The Second Amendment Rules, 2026 substitute that proviso with an expanded one, extending the application of Rules 14, 15, and 16 to two categories: Intermediaries, as well as News and current affairs content hosted, displayed, uploaded, modified, published, transmitted, stored, updated or shared on the computer resources of intermediaries by users who are not publishers[37].

In effect, the amendment brings intermediaries directly within the regulatory ambit of the oversight and grievance mechanism (Rules 14–16), which previously applied only to publishers.It also extends content-level obligations to user-generated news and current affairs content on intermediary platforms, even where the user is not a publisher in the formal sense creating a category of quasi-publisher liability for ordinary users posting news-adjacent content.

Rule 5: Amending Rule 14 of the Principal Rules

Rule 14 of the Principal Rules constitutes the Inter-Departmental Committee (hereinafter "the Committee") as a multi-Ministry body, with the Authorised Officer under Rule 13(2) as its chairperson, charged with hearing Level III complaints under the Code of Ethics[38]. In its pre-amendment form, the Committee's jurisdiction under sub-rule (2) was expressly limited to *"complaints regarding violation or contravention of the Code of Ethics by the entities referred to in Rule 8,"* arising either from grievances about Level I/II decisions or from failures to decide within the prescribed time[39].

Rule 5 of the Amendment Rules 2026 affects two surgical but structurally transformative modifications. First, Rule 5(a) substitutes sub-rule (2) in its entirety, replacing the complaint-and-Code-of-Ethics jurisdictional formula with a two-limb provision under which the Committee shall hear: (a) matters arising out of grievances relating to Code of Ethics violations by publishers in respect of Level I/II decisions or failures to decide within time; and (b) **"matters referred to it by the Ministry[40]."** Second, Rule 5(b) amends sub-rule (5) by substituting the words "complaints or grievances, and may either accept or allow such complaint or grievance, and make the following recommendations to the Ministry" with the truncated formulation **"the matter and make the following recommendations to the Ministry[41]."**

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[36] *Supra* note 2, Rule 8(1)
[37] *Supra* note 2, Rule 8(1)
Supra note 2, Rule 14(1).
Supra note 2, 2021 Rule 14(2).
[40] *Supra* note 1 Rule 5(a).
[41] *Supra* note 1, Rule 5(b)

The remaining sub-rules, sub-rule (3) (written referral and numbering), sub-rule (4) (identification and notice to publisher), sub-rule (5)(a)–(f) (menu of recommendations), and sub-rule (6) (Secretary-level approval before Ministry orders), are unamended[42]. The operative effect of the amendment, read as a whole, is to empower the Ministry to initiate proceedings before the Committee as an original complainant, without any user grievance, without any predicate finding of Code of Ethics violation, and without satisfying the threshold test of "accepting or allowing" a complaint as well-founded before proceeding to recommendations.

Sr. No	**Rule No.**	**Concerns vis-a-vis comparable standards**	**Reasoning**	**Recommendation(s)**
1.	3(1)(g) and 3(1)(h) of the Amended Rules	A. **The Bypass Problem:** Actual Knowledge Threshold Circumvented The most structurally significant difficulty is that the without-prejudice clause activates compliance obligations through an unlimited external legal universe, entirely bypassing the two-source model of actual knowledge that the Supreme Court established as constitutionally mandatory.	A mere reference to "any other law for the time being in force" does not constitute a court order and cannot qualify as a formal government notification under Section 79(3)(b) as read down in *Shreya Singhal v. Union of India*. Yet the without-prejudice clause makes non-compliance with whatever that external law requires equally consequential to non-compliance with a formal court direction. By attaching safe harbour consequences to obligations sourced in indeterminate external legislation, Rules 3(1)(g) and (h) create a structural incentive for intermediaries to retain everything indefinitely - this is the over-compliance dynamic that *Shreya Singhal* was specifically designed to prevent.	Data retention beyond 180 days by intermediaries cannot be automatic and must be specifically approved by a judicial authority on a case-by-case basis. It requires a formal request by investigating agencies, ensures that retention is necessary, proportionate, and time-bound, mandates periodic judicial review, and obligates deletion or anonymisation of data once the approved period expires unless further authorised.
		B. **The Vagueness Problem:** No Ascertainable Standard The without-prejudice clause refers to "any	As established through the standards defined, where key operative terms are undefined and incapable of precise determination, a	

[42] *Supra* note 2, Rule 14(6)

		requirement relating to the preservation or retention of information applicable to intermediaries under the Act or any other law for the time being in force." No intermediary or user can determine from the face of the amended rule which laws are activated, what categories of data they capture, for how long, or on whose authority.	provision is void for vagueness and overbreadth is an independent ground of invalidity regardless of whether the consequences are penal in the strict sense - loss of safe harbour qualifies. The phrase "any other law" is at maximum indeterminacy. To conform to the certainty requirements that the constitutional framework demands, the class of laws capable of activating retention obligations must be narrowed to specific, identified statutes with defined triggers, durations, and safeguards - not a blanket reference to the entire body of Indian law in force at any moment.	
		C. **Proximate Nexus and Least Restrictive Means:** No Demonstrated Connection to Harm Rules 3(1)(g) and (h) impose a generalised, automatically-triggered retention obligation across all users and all data categories without requiring that the retained data be relevant to any specific identified investigation or that any particular harm be imminent.	As established through the standards defined, the anticipated harm justifying a restriction must have a proximate and direct nexus with the expression - remote, conjectural, or speculative causal reasoning fails this standard. Retention justified purely by the possibility that data may become useful at some undetermined future point does not satisfy the nexus requirement. Further, the least restrictive means standard requires that where a narrower instrument achieves the same objective, the broader one fails. Case-specific judicial preservation orders achieve the identical investigative purpose while	

			limiting retention to relevant data for a defined period under judicial supervision - the availability of this targeted alternative is fatal to the amendment as drafted.	
		D.**Procedural Safeguards:** No Notice, No Challenge, No Defined Limit The clause operates without procedural architecture. There is no requirement to notify the user that data is being retained under an external law, no disclosure of the authority requiring it, no mechanism to challenge the retention, no obligation to specify the purpose, and no outer time limit on how long the data may be held. E. Delegation and Layered Liability: Intermediaries as State Evidence Repositories The amendment concentrates the entire preservation burden on intermediaries without corresponding safeguards, compensation mechanisms, or limitation of liability. Users generate the data. The State asserts the investigative interest. Intermediaries bear the full cost, the full legal risk of non-compliance with an indeterminate set of external	As established through the standards defined, comparable international frameworks treat preservation as a case-specific, authority-driven, time-limited measure - typically capped at 90 days - directed at identified data relevant to a particular investigation. The UN Convention 2024 treats the right to an effective remedy, including notice, independent review, and deletion mechanisms, as a binding non-derogation obligation. The absence of any of these protections in the amended rule creates a rights deficit that finds no support in any comparable framework. As established through the standards defined, the framework was designed to distribute liability across all participants so that no single actor bears a disproportionate burden, with the State retaining a supervisory rather than operational role. The without-prejudice clause converts neutral conduits into permanent State evidence depositories - not by explicit legislative design, but by the open-ended operation of a saving clause	

		obligations, and the full liability for any error in identifying what those obligations require.	that declines to specify what it saves, on whose authority, or at whose cost. This is not layered liability. It is concentrated burden, and it is inconsistent with the foundational design the framework was built around.	
2.	Rule 8(1) – Proviso (as substituted by 2026 Amendment)	The amended proviso expands the scope of Rules 14–16 to intermediaries and user-generated "news and current affairs content," thereby collapsing the distinction between publishers and intermediaries. It creates quasi-publisher liability for users and imposes publisher-style obligations on intermediaries without editorial control. The provision is vague, overbroad, and structurally incompatible with the intermediary framework. It also fails to define thresholds for applicability and provides no procedural safeguards for affected users.	The amendment raises concerns vis-à-vis foundational principles established in Shreya Singhal v. Union of India (paras 52, 113–118), which prohibit vague restrictions and delegation of censorship to intermediaries. By extending Rules 14–16 (designed for publishers) to intermediaries, it contradicts the layered liability framework under Section 79 IT Act and the Expert Committee's distinction between originators and conduits. Further, absence of clarity on "news and current affairs content" for users renders the rule void for vagueness (Shreya Singhal, para 52; Kunal Kamra v. Union of India, paras 139, 202). The rule is also ultra vires Section 87(2)(zg), which only permits due diligence guidelines-not substantive content regulation (see Agij Promotion of Nineteenonea Media Pvt. Ltd. v. Union of India, paras 14, 24, 30). International standards (Budapest Convention; UN Cybercrime Convention 2024, Arts. 6 & 24) further	The proviso must be restructured into a bifurcated framework: (a) retain application of Rules 14–16 to publishers only; (b) create a separate, limited compliance regime for intermediaries, restricting obligations to notice-and-takedown and grievance redressal based on court orders or Section 69A directions. The user-generated content limb should either be deleted or limited to users meeting objective thresholds (reach, regularity, intent). Additionally, an explicit clause must preserve Section 79 safe harbour, and procedural safeguards (notice, hearing, remedy) must be incorporated.

			require proportionality and protection of intermediary neutrality.	
3.	Rule 3 of the Amendment rules (Rule 3(4) of the Incorporated Rules, 2026)	A. **The Category Problem of Equating Soft and Hard Instruments:** The most structurally significant difficulty is that clause (a) collapses instruments of fundamentally different legal weight, "clarification," "advisory," "standard operating procedure," "code of practice," and "order", into a single compliance obligation, all of which, under clause (c), carry identical safe harbour consequences.	"clarification" on the meaning of a term does not carry the same legal force as a binding "order," yet Rule 3(4)(c) makes non-compliance with either equally consequential. This concern was squarely addressed in Kunal Kamra v. Union of India, where the Bombay High Court held: "Confronting intermediaries with the loss of statutory safe harbour is a form of directing or mandating censorship... An intermediary will do anything to retain safe harbour. It will bend the knee to a government directive regarding content." (Para 81, Standards, Kunal Kamra, Standard 4). The Court further held that the safe harbour provision is "an explicit recognition of a free speech right" and that "loss of safe harbour is immediate" upon non-compliance, creating only "the illusion of choice" (Para 73, 81, Standards, Kunal Kamra, Standard 5). By attaching safe harbour consequences to instruments as informal as "advisories" and "clarifications," Rule 3(4)(c) creates a structural incentive for intermediaries to over-comply with soft executive guidance, suppressing content that may never have	

			warranted removal, this is the "indirect censorship" dynamic the Bombay High Court specifically condemned.	
		B.**The Actual Knowledge Problem:** Rule 3(4)(c) creates a parallel pathway for generating "due diligence" obligations, distinct from the two-source model of "actual knowledge" established as binding constitutional reading in Shreya Singhal v. Union of India.	Shreya Singhal v. Union of India holds that "Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency..." (Operative Holding (c), Standards, Shreya Singhal, Standard 5). A mere "advisory" or "clarification" under Rule 3(4) is not a "court order" and may not constitute a formal "notification" under Section 79(3)(b) as that expression was read down in Shreya Singhal. Attaching due diligence consequences to instruments that fall below this threshold risks circumventing the constitutional floor established by the Supreme Court.	This is not to say that all ministerial directions are impermissible, it is to say that the undifferentiated bundling of formal orders with informal advisories under one compliance umbrella strains the *Shreya Singhal* framework. To operationalise this rule in a manner that conforms to the certainty requirements in *Shreya Singhal,* a narrowing of the class of missives which require mandatory action from the intermediaries is necessary. The current overbroad list must be narrowed down to binding directions issued by the ministry with the specific objective of removing particular content as per the relevant provision and must not include any and all publications by the executive. Furthermore, this direction must be targeted and must serve adequate notice requirements to qualify the "actual knowledge" threshold.
		C. **Procedural Safeguards: Absence of Hearing and Reasoned Determination:** Rule 3(4)(b) requires the Ministry to specify the legal basis and scope of a directive. It does not require the Ministry to explain *why* a particular intermediary or class of	This is the natural justice deficit identified in Kunal Kamra in a cognate context: "There is no disclosure of material relied on against the user's content... There is no requirement for a reasoned order... The Rule clearly makes the Central Government a judge in its own cause." (Paras 189–191, Standards, Kunal Kamra,	Comparatively, considering European Union Regulations as a source of rectification, DSA Article 9 requires orders directed at intermediaries to include not merely a legal citation, but "a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions," and critically, "information about

		intermediaries must take a specific action, nor does it provide any mechanism for the intermediary or affected users to represent before a directive is issued or takes effect.	Standard 9). While Rule 3(4) operates in a different regulatory context, the structural concern is transferable: a directive that carries safe harbour consequences but requires no substantive reasoning and provides no pre-issuance hearing fails the procedural reasonableness test articulated in State of Madras v. V.G. Row, [1952] SCR 597 at 606, approved in Shreya Singhal at Para 24, Standards, Shreya Singhal, Standard 6.	redress mechanisms available to the provider of intermediary services and to the recipient of the service." (DSA Art. 9(2)(a)(ii), (v), *Standards, EU DSA/CoE section, Part I.B*). Rule 3(4) satisfies the first element partially (legal basis citation) but omits entirely the substantive reasoning requirement and the redress notification obligation.
		D. **Absence of Independent Oversight:** Rule 3(4) vests both directive authority and implementation oversight in the same Ministry.	The CoE Guidance expressly identifies "ongoing independent oversight" as a key trait of successful co-regulatory approaches (CoE Guidance, para. 37(d), *Standards, EU DSA/CoE section, Part I.C*). By contrast, Section 69A, the constitutionally validated blocking mechanism in *Shreya Singhal*, was upheld *specifically* because it embedded independent committee review, written reasons, and a hearing mechanism: *"It is only after these procedural safeguards are met that blocking orders are made..."* (Shreya Singhal, Section 69A analysis, *Standards, Shreya Singhal, Standard 9*). Rule 3(4) achieves functionally comparable content-regulation outcomes, compelling intermediary action in relation to content, through a mechanism with	

			considerably fewer checks. This asymmetry is difficult to justify structurally.	
		E. Ultra Vires Risk: Soft Instruments as Binding Law: Converting ministerial advisories and clarifications, instruments not ordinarily regarded as having the force of law, into statutory due diligence obligations through delegated rulemaking exceeds the permissible limit of delegation as per Section 87.	The enabling provision, Section 87(2)(zg), authorizes "guidelines to be observed by the intermediaries" under Section 79(2). It is arguable that converting ministerial advisories and clarifications, instruments not ordinarily regarded as having the force of law, into statutory due diligence obligations through delegated rulemaking exceeds this delegation. The principle in *Agij Media Pvt. Ltd. v. Union of India* is apposite: *"A subordinate legislation is intended to sub-serve the provisions of the principal Act and cannot result in creating fresh rights, obligations and liabilities not traceable in the enactment conferring power to frame rules."* (Para 14(I), *Standards, Agij Promotion, Standard 1*). Whether Section 87(2)(zg) authorizes the elevation of soft executive instruments to the status of Section 79 due diligence obligations is a question that warrants careful constitutional scrutiny.	The Expert Committee designing the IT Act envisaged the State as "a supervisory and regulatory role", a facilitator rather than an operator, with the "operational responsibility on... private infrastructure." (Expert Committee Standard 6, *Standards, Expert Committee section*). Rule 3(4)'s ministerial directive architecture moves incrementally towards operational control, which sits in some tension with the Committee's foundational design choice. Hence, reduction in ministerial discretion or a counterbalance with corresponding limiting and appellate provisions is necessary to balance this provision.
4.	Rule 5 (2026 Amendment) amending Rule 14(2)	**A. Structural Bypass of Tiered Grievance Framework**: The amended Rule 14(2)(b) introduces "matters referred by the Ministry," thereby creating a parallel executive-triggered pathway to the Inter-	The original Rules were designed as a complaint-driven, sequential framework ensuring accountability at each stage. The amendment alters this by enabling executive initiation independent of user grievance or prior adjudication. This affects	The provision should be restructured to retain Ministry referral as an exceptional mechanism, requiring recorded written reasons demonstrating failure, delay, or urgency within the existing grievance tiers, and preserving the primacy of Level I and II adjudication.

		Departmental Committee that collapses the structured three-tier grievance architecture. The provision permits direct escalation without exhaustion of Level I and II, rendering the layered mechanism discretionary rather than mandatory and undermining predictability in regulatory application.	foreseeability and structured regulation, contrary to Shreya Singhal v. Union of India where *"restrictions must be clearly defined and not left to subjective satisfaction"* (para 52). It also departs from Expert Committee standards emphasising layered escalation and accountability.	
	Rule 14(2)(b)	**B. Vagueness and Overbreadth:** The phrase "matters referred by the Ministry" is undefined, creating an open-ended and overbroad jurisdiction untethered from the Code of Ethics or statutory thresholds. The absence of definitional limits renders the scope of executive intervention indeterminate and susceptible to subjective application.	Even when read in conjunction with Rule 14, the provision lacks clear parameters governing the nature, scope, or threshold of "matters." This creates legal uncertainty and risks arbitrary enforcement, falling within the vice identified in Shreya Singhal (paras 52, 113–118), where *"vague laws… confer arbitrary and uncanalised powers."* Similarly, Kunal Kamra v. Union of India recognises that *uncertain regulatory standards in content moderation frameworks enable subjective and inconsistent enforcement* (paras 139, 202).	The rule must define "matters" through objective criteria, explicitly linking referral to identifiable violations of the Code of Ethics or clearly specified statutory grounds, thereby ensuring clarity and limiting discretion.
	Rule 14(2)(b) read with Rule 3(4) and Rule 14(6)	**C. Ultra Vires Risk**: The amendment creates a de facto enforcement pathway whereby executive referrals, followed by Committee recommendations and Ministry orders, operate as a parallel content regulation mechanism outside the statutory architecture. This risks	As reflected in the amended structure, Ministry-referred matters may result in recommendations for content modification or removal without invoking the formal procedures under Sections 69A or 79. Under Agij Media Pvt. Ltd. v. Union of India, delegated legislation cannot create substantive regulatory	The provision should be expressly limited to operating within the statutory framework, clarifying that referrals cannot function as independent enforcement mechanisms and must remain ancillary to existing statutory processes.

		converting informal executive initiation into substantively binding outcomes without adherence to the safeguards embedded in the parent Act.	frameworks beyond the parent statute (*paras 14, 24, 30*). The absence of clear statutory anchoring raises concerns under Section 87 of the Information Technology Act, 2000, which limits rule-making to carrying out the provisions of the Act.	
	Rule 14(5) (as amended)	**D. Procedural Dilution:** The substitution of "complaints or grievances… accept or allow" with "the matter" removes the threshold adjudicatory standard that previously required the Committee to determine merit before issuing recommendations, thereby diluting procedural safeguards and increasing discretion at the decision-making stage.	The pre-amendment formulation imposed a clear gatekeeping function, ensuring that only substantiated complaints proceeded to recommendation. Its removal permits recommendations without an express finding of merit, reducing procedural discipline. This contributes to uncertainty and unstructured discretion, which Shreya Singhal cautions against where *"discretion is left unguided"* (para 52). While other procedural elements remain, the absence of a threshold standard weakens internal consistency.	The rule should be amended to reintroduce a requirement of prima facie satisfaction or threshold determination of violation prior to the issuance of recommendations.
	Rule 5 (2026 Amendment) overall	**E. Excessive Delegation and Chilling Effect:** The amendment confers broad, unguided executive discretion in initiating proceedings, which, when combined with downstream enforcement consequences, creates regulatory uncertainty and risks indirect chilling of lawful speech. The absence of	Under Confederation of Ex-Servicemen Associations v. Union of India, delegated legislation must not confer *"uncontrolled or unguided discretion."* The indeterminate scope of referral, coupled with potential compliance pressures, may incentivise intermediaries to over-moderate content. As recognised in Kunal Kamra, *regulatory structures can indirectly influence speech outcomes through compliance incentives* (paras	The amendment should incorporate guiding principles governing referral power, including defined thresholds, proportionality requirements, and transparency obligations such as publication of referral data and reasons.

		clear limits or guiding principles raises concerns of excessive delegation and misalignment with proportionality-based regulatory standards.	139, 202). Global standards (Budapest Convention; UN Cybercrime Convention 2024, Arts. 6 & 24) emphasise proportionality, necessity, and clearly defined triggers, which are insufficiently reflected here.	

Accordingly, the various recommendations lead to the following proposed rules.

FINAL AMENDMENT RULES AS PROPOSED AFTER INCORPORATION OF COMMENTS

Proposed insertions are in **bold**; proposed deletions are in ~~strikethrough.~~

Amendment inserted as per notification dated as per to Rule 3(3)(a)(ii): No particular comment or change has been suggested.

Amendment Rule 2: Rule 3(1)(g) and 3(1)(h)

in clause (g), before the words, brackets and letter "where upon receiving actual knowledge under clause (d)", the words and punctuation ~~"without prejudice to any~~ requirement relating to the preservation or retention of information applicable to intermediaries under the Act or any other law for the time being in force,"

in clause (h), before the words "where an intermediary collects information from a user for registration on the computer resource", the words and punctuation "~~without~~ prejudice to any requirement relating to the preservation or retention of information applicable to intermediaries under the Act or any other law for the time being in ~~force,~~" Insert Any application to request an intermediary to retain data shall be determined on a case-by-case basis by a competent judicial authority then only shall a request be granted provided:

(a) Any request for extended retention shall be made by the investigating authority through a formal application specifying the nature of the offence, relevance of the data, and necessity of continued preservation;

(b) The competent judicial authority may, upon being satisfied that such retention is necessary and proportionate to an investigation into a cognisable offence, issue a reasoned order specifying the scope, duration, and purpose of retention;

(c) No blanket or automatic extension of retention shall be permitted, and all retention beyond one hundred and eighty days shall be subject to periodic judicial review;

(d) Upon expiry of the judicially sanctioned period, the intermediary shall securely delete or anonymise the data unless further retention is authorised by a subsequent judicial order." shall be inserted.

Amendment Rule 3: Rule 3(4): Compliance with Directions and Advisories issued by the Ministry

"(a) An intermediary shall comply with and give effect to any ~~clarification, advisory,~~ order or direction issued by the Ministry, **by an officer not below the rank of Joint Secretary**, by order in writing, in relation to the implementation, interpretation or operationalisation of the requirements prescribed under this Part;

Provided that clarifications, advisories, standard operating procedures, codes of practice, and guidelines issued by the Ministry shall be treated as guidance instruments and shall

not of themselves constitute a due diligence obligation under clause (c), but shall be taken into account by intermediaries in assessing compliance with these rules.
(b) Every ~~clarification, advisory,~~ order or direction referred to in clause (a) shall,
(i) be issued in writing;
(ii) clearly specify the statutory provision or legal basis under which it is issued;
(ii-a) contain substantive reasons explaining why the specific action required is necessary and proportionate to the objective sought to be achieved;
(iii) specify the scope, applicability, **duration**, and compliance requirements in respect of the intermediary or class of intermediaries to whom it applies;
(iii-a) specify the redress mechanism available to the intermediary or to any user whose content or account is affected by action taken pursuant to such order or direction;
(iv) be consistent with the provisions of the Act and these rules; **and**
(v) be subject to periodic review by an officer not below the rank of Secretary to the Government of India at least once every six months, to ensure continued necessity and proportionality.
(c) Compliance with any order or direction **satisfying the conditions in clause (b)** clarification, advisory, order, direction, standard operating procedure, code of practice or guideline issued under clause (a) shall form part of the due diligence obligations of the intermediary under section 79 of the Act.
(d) Before issuing any order or direction under clause (a) that requires an intermediary to take specific action with respect to identified content, data, or user accounts, the Ministry shall, except in cases of emergency where delay would be prejudicial to a ground specified in Article 19(2) of the Constitution, provide the affected user and/or intermediary with reasonable opportunity to submit its representation within 24 hours, and shall consider such representation before issuing the final direction.
(e) Any order or direction issued under this rule shall be subject to review by the Grievance Appellate Committee or a court of competent jurisdiction, and the intermediary or any person aggrieved by action taken pursuant to such order or direction shall have the right to seek such review."

Amendment Rule 4: Proposed Substitute Proviso for Rule 8(1):

"Provided that for the purposes of rules 14, 15 and 16-
(a) rules 14(1), 14(2)(a), 15, and 16 shall apply to publishers of news and current affairs content as defined under rule 2(1)(m), read with rule 2(1)(t);
(b) rules 14(2)(b) and 14(5) shall apply to intermediaries only to the extent of processing grievances referred to them by a court of competent jurisdiction or the appropriate Government under Section 69A of the Act, and shall not be construed to impose editorial obligations on the intermediary in respect of third-party content;
(c) no obligation under rules 14, 15, or 16 shall be imposed on users who are not publishers unless they satisfy the threshold criteria notified by the Central Government by way of a published notification specifying minimum reach, regularity, and intent criteria;
(d) compliance by an intermediary with any direction issued pursuant to this rule shall not, by reason of such compliance alone, be deemed to constitute editorial control for the purposes of section 79(2)(c) of the Act."

Amendment Rule 5: Rule 14(5)

"14(5) In the hearing, the Committee shall examine the complaint, grievance, or referred matter and shall, before proceeding to recommendations, record a threshold finding that,
(a) the content in question constitutes a prima facie violation of the Code of Ethics or falls within the grounds recorded by the Ministry under sub-rule (2)(b); and
(b) the affected publisher or intermediary has been afforded a reasonable opportunity of being heard.
Where the Committee is satisfied that both conditions are met, it may make the following recommendations to the Ministry, namely:,
(a) warning, censuring, admonishing or reprimanding such entity; or
(b) requiring an apology by such entity; or
(c) requiring such entity to include a warning card or a disclaimer; or
(d) in case of online curated content, directing a publisher to,
(i) reclassify ratings of relevant content; or
(ii) edit synopsis of relevant content; or
(iii) make appropriate modification in the content descriptor, age classification and parental or access control;
(e) delete or modify content for preventing incitement to the commission of a cognisable offence relating to public order;
(f) in case of content where the Committee is satisfied, on the basis of written reasons to be recorded, that there is a need for taking action in relation to the reasons enumerated in sub-section (1) of section 69A of the Act, it may recommend such action, whereupon the procedure prescribed under the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 shall apply."

Amendment to Rule 14(2):

"14(2) The Committee shall meet periodically and hear the matters-
(a) arising out of the grievances relating to violation of the Code of Ethics by the publishers, in respect of the decisions taken at the Level I or II, including the cases where no such decision is taken within the time specified in the grievance redressal mechanism; or
(b)referred to it by the Ministry, subject to the Ministry recording in writing the reasons for such referral, including the specific provision of the Code of Ethics or applicable law implicated, and demonstrating that such referral is necessary due to failure, delay, or inadequacy of resolution at Level I or Level II or due to exceptional circumstances requiring immediate consideration."

Amendment to Rule 14(5):

"(5) The Committee shall ~~examine the matter and make the following recommendations to the Ministry~~ examine the complaint, grievance, or referred matter and, upon recording a prima facie satisfaction that such matter discloses a violation of the Code of Ethics or applicable legal provisions, make the following recommendations to the Ministry, namely-
"

Insertion of Rule 14(2A):

"(2A) The Ministry shall maintain a record of all referrals made under sub-rule (2)(b), including the reasons recorded, and shall publish periodic reports containing aggregated data on such referrals in such manner as may be specified."