



CENTRE FOR COMMUNICATION GOVERNANCE AT  
NATIONAL LAW UNIVERSITY DELHI

## CCG NLUD's Written Submission: Proposed Amendments (2026) to the IT Intermediary Guidelines Rules, 2021<sup>1</sup>

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The Centre for Communication Governance at National Law University Delhi is a leading academic research centre working on information law, technology policy, and digital governance in India. The Centre engages with key subject areas such as privacy, artificial intelligence, and Internet governance, while promoting research-driven public discourse.

The work at CCG is designed to build capacity and enhance the quality of discourse on issues of privacy, equality, discrimination, and inclusion and access in the digital age. Its research and policy outputs aim to contribute to informed public debate and effective, research-led policymaking.

## I. Introduction

The Centre for Communication Governance at National Law University Delhi<sup>2</sup> (CCG) welcomes the opportunity to submit comments on the proposed 2026 amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules)<sup>3</sup>. This submission is part of CCG's ongoing engagement with the evolution of India's intermediary liability framework, which spans over a decade of academic research, policy inputs, and capacity building on questions of platform governance, freedom of speech and expression, data protection, the right to privacy and regulation of emerging technologies such as artificial intelligence.

Over the last fifteen years, CCG has engaged with many significant iterations of this regulatory framework. In 2022, CCG submitted detailed comments<sup>4</sup> to the Ministry of Electronics and Information Technology (MeitY) on the proposed amendments to the 2021 IT Rules<sup>5</sup>. CCG raised concerns about the constitutionality of obligations that compelled intermediaries to proactively monitor and moderate content, the institutional design of the Grievance Appellate Committees,<sup>6</sup> and the structural tension between heightened due diligence requirements and the safe harbour protection under Section 79 of the Information Technology Act, 2000 (IT Act).

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<sup>2</sup> [CCG Website](#)

<sup>3</sup> [Inviting feedback/comments of stakeholders on the Draft amendments to Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021 in relation to strengthening intermediary compliance with clarifications, advisories and directions issued by the Ministry and digital media oversight- reg. Dated: 30th March, 2026](#)

<sup>4</sup> Vasudev Devadasan and Archit Lohani, 'Comments to MeitY on the Draft Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021' (Centre for Communication Governance at National Law University Delhi, January 2023) <<https://ccgdelhi.s3.ap-south-1.amazonaws.com/uploads/ccgnlud-comments-on-it-rules-jan-23-368.pdf>> accessed 7 May 2026.

<sup>5</sup> [Inviting feedback/comments of stakeholders on the Draft amendments to Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021 in relation to strengthening intermediary compliance with clarifications, advisories and directions issued by the Ministry and digital media oversight- reg. Dated: 30th March, 2026](#)

<sup>6</sup> [The Grievance Appellate Committee \(GAC\)](#)

CCG's 2023 Report on Intermediary Liability in India<sup>7</sup> further documented the absence of judicial consistency in the application of secondary liability principles and the risks of regulatory overreach in the absence of amendments to the parent Act itself among other key issues.

In continuation with CCG's sustained engagement with India's intermediary liability framework, CCG observes that the recent amendments to the IT Rules highlight significant risks to the digital media landscape in India.

CCG observes that the proposed Rule 3(4) is ultra vires the IT Act on both substantive grounds (it exceeds the rule-making power delegated under Section 87) and procedural grounds (it bypasses the mandatory parliamentary laying requirement for tabling rules and regulations by granting executive advisories and circulars the binding effect of formal Rules). Additionally, the requirement that intermediaries treat the implementation of advisories and clarifications as mandatory due diligence conditions for safe harbour under section 79, heightens overcompliance, confers overbroad executive power on MeitY without judicial oversight, and creates structural incentives for preemptive content removal. Taken together, these amendments raise interconnected concerns described in the detailed inputs presented below.

CCG remains committed to a digital regulatory framework that is in line with constitutional principles and safeguards and submits these comments in the spirit of constructive engagement. While the current submission is confined to comments on Rule 3(4), CCG notes that some of the other proposed amendments to rules 8 and 14 raise distinct and serious concerns for digital media freedom as well.

## II. Proposed Rule 3(4)

### Ultra Vires the Parent Act

Basic principles of administrative law hold that a delegated legislation must not only fall within constitutional limits but also within the limits of the parent legislation.<sup>8</sup> This draws from the core democratic principle that the power to create rights and obligations must rest with Parliament, and any delegation to the executive thus must conform to the limits laid down by the legislature.

According to the Doctrine of *ultra vires*, a delegated legislation can be challenged on grounds of being substantively ultra vires as well as for being procedurally ultra vires.<sup>9</sup> Substantive ultra vires arises where the content of a rule exceeds the permissible subject matter of the delegation, and procedural ultra vires arises when the manner of making the rule departs from mandatory procedural requirements prescribed by the parent statute.

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<sup>7</sup> Devadasan and Lohani (n 4).

<sup>8</sup> Indian Express Newspapers v. Union of India 1985 (1) SCC 641

<sup>9</sup> MP Jain and SN Jain, *Principles of Administrative Law* (9th edn, LexisNexis 2021) 99.

CCG submits that as per the jurisprudence developed by the Supreme Court, the proposed Rule 3(4) would be ultra vires on both grounds.

## II. (A) Substantive ultra vires

The Supreme Court has held that where a rule goes beyond the purpose and policy of the Act, or is repugnant to the Act, or purports to authorise what the Act has not sanctioned, it is ultra vires.<sup>10</sup> The provisions of a delegated legislation cannot "travel beyond the Act"<sup>11</sup> and must fall within the "object and purpose of the Act".<sup>12</sup>

Section 87(1) of the IT Act empowers the Central Government to create rules for the "carry[ing] out the provisions" of the legislation. The rule making capacity delegated to the executive is clearly limited to operationalizing the rights and obligations created by the IT Act. Section 87(2)(z) and (zg) authorise rules about the content of intermediary due diligence under Section 79 of the Act; and that means steps which an intermediary must take in order to fulfil its due diligence obligations. The proposed Rule 3(4) instead creates a mechanism to declare all future executive directions *a priori* binding and part of the due diligence required from intermediaries to preserve safe harbour protections. This goes beyond the ambit of rule-making power delegated to the Executive. In the context of the Fact Check Unit, which created similar substantive obligations for intermediaries, the Bombay High Court<sup>13</sup> found it beyond the powers delegated by Section 87. Similarly, in 2021, the Bombay High Court held in *Agij Promotion of Nineteenonea Media Pvt. Ltd.*<sup>14</sup> that Rule 9 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which established a three-tier censorship mechanism for publishers, was ultra vires the IT Act.

## II. (B) Procedural Ultra Vires

The Supreme Court has held that where a statute prescribes that a particular procedure must be followed before making subordinate legislation, non-compliance with that procedure renders the subordinate legislation invalid if the procedure is mandatory.<sup>15</sup> One such major procedural requirement is the laying down of Rules before the Parliament. In *Kerala State Electricity Board v. Indian Aluminium Co.*<sup>16</sup>, the Supreme Court clarified that the laying requirements are how Parliament retains oversight of executive legislation, and thus cannot be treated merely as formality. While discussing the 2023 Amendment to the IT Rules 2021 which created the 'fact checking unit', the Bombay High Court noted that it is procedurally ultra vires because the

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<sup>10</sup> Harishankar Bagla v. State of Madhya Pradesh AIR 1954 SC 465

<sup>11</sup> Kunj Behari Lal Butail v. State of H.P. (2000) 3 SCC 40

<sup>12</sup> Indian Express v. UoI; State of Tamil Nadu v. P. Krishnamurthy (2006) 4 SCC 517

<sup>13</sup> Kunal Kamra v Union of India, 2024 SCC OnLine Bom 3025

<sup>14</sup> Agij Promotion of Nineteenonea Media Pvt. Ltd., Writ Petition (L.) No.14172 of 2021

<sup>15</sup> Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur AIR 1965 SC 895

<sup>16</sup> Kerala State Electricity Board v. Indian Aluminium Co., AIR 1976 SC 1031

Amendment was not laid before the Parliament, thus highlighting the necessity of a laying requirement in a comparable legal question<sup>17</sup>. So it stands to reason that the Executive is not permitted to bypass this requirement by creating instruments which *functionally* act as Rules but are formally Executive circulars.

Section 87(3) of the IT Act requires every rule made under the section to be laid before each House of Parliament. The proposed Rule 3(4) bypasses this requirement by giving other government notifications the same effective power as Rules, but without the parliamentary oversight of these notifications having to be laid before Parliament. This makes the proposed Rule 3(4) procedurally ultra vires the IT Act.

## **II. (C) The nature of the requirement**

Rule 3(4) in the proposed Rules requires intermediaries to now comply with “*any clarification, advisory, order, direction, standard operating procedure, code of practice or guideline*” issued by MeitY, in pursuance of “*implementation, interpretation or operationalisation of the requirements*” prescribed under Part II of the rules. Such compliance is further conceptualised to be part of the wider due diligence obligations that intermediaries must observe to retain their safe harbour under section 79.

*Firstly*, the language of section 79 makes it clear that the remit of the provision is limited to providing legal immunity to intermediaries for “*any third party information, data, or communication link made available or hosted*”. And, on “*being notified by the appropriate Government or its agency*” about any such information, data or communication link being used to commit an unlawful act, the intermediary is expected to remove such content expeditiously. The architecture of this section makes it clear that the nature of communication that exists between an intermediary and the government needs to be specific, that is, it must delineate the exact nature of the impugned content, and targeted, which means it has to be a direct communication with the intermediary.

In contrast, Executive instruments such as advisories and clarifications have no requirement to be either specific, because the language of proposed Rule 3(4) allows such communication to be towards *any* implementation, interpretation or operationalisation of Part II, going beyond the original requirement for removing unlawful content. Similarly, it is also not targeted, since such instruments can be targeted even at a “class of intermediaries”. This gives the government a wide ambit to implement directions that go beyond the original design of the law, and therefore stands to be manifestly arbitrary and thus unconstitutional.

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<sup>17</sup> Kunal Kamra v Union of India, 2024 SCC OnLine Bom 3025

*Secondly*, as per the Supreme Court’s landmark judgment in *Shreya Singhal v Union of India*,<sup>18</sup> an intermediary’s obligation to respond to government and court interventions, in lieu of its due diligence obligation, must come in the form of a ‘notification’, or a court order (strictly adhering to the remit of article 19(2) of the Constitution). A ‘notification’, as per Article 13(3)(a) of the Indian Constitution, specifically falls within the definition of ‘law’, and therefore, represents a specific branch of lawmaking that sits in consonance with other legislative and Executive instruments such as ordinances, rules, and regulations.

In contrast, Executive instruments such as clarifications and advisories by their very nature, are non-binding guidelines that do not immediately have the similar thrust of constitutional legitimacy as a ‘notification’. The proposed Rule 3(4) erroneously elevates these instruments to the level of mandatory due diligence under law. Additionally, by making compliance with such advisories a condition for safe harbour, the government has essentially equipped itself with a tool for “*regulation by advisory/clarification*”. Under this regime, if a platform fails to follow a specific ministry advisory, such as an SOP on tackling deepfakes or a guideline on misinformation, it risks losing its legal immunity for that particular content.

Ultimately, these amendments represent a transition from a rule-based system to a more Executive-led model of governance, that empowers MeitY with significant discretionary power to issue binding advisories and clarifications, and obligate intermediaries to be responsive to such instruments in real-time. This shift might also heighten risks of overcompliance where platforms may preemptively remove content to satisfy legal obligations. This in turn, will negatively impact the proliferation of online speech — even when such speech may have been otherwise legitimate.<sup>19</sup>

*Thirdly*, the remit of what such instruments may contain — “*implementation, interpretation or operationalisation of the requirements*” in Part II — is also overbroad, giving MeitY wide discretion to frame these aforementioned Executive instruments. The term ‘interpretation’, in particular, is critical, since this amendment seems to enable the relevant authority to offer its own interpretation of relevant provisions within Part II of the IT Rules, without any immediate judicial oversight of such interpretations.

This is also tied to *fourthly*, while proposed Rule 3(4)(b) requires these instruments to be written and rooted in specific statutory basis, there is no requirement for such instruments to be made public. This means that such discretionary power can also potentially side-step any necessity for

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<sup>18</sup> *Shreya Singhal v Union of India*, 2015 AIR SC 1523

<sup>19</sup> Soumyarendra Barik, ‘In first year of Sahyog, average of 6 content block orders a day, most in WhatsApp’ (*The Indian Express*, 15 December 2025) <<https://indianexpress.com/article/business/in-first-year-of-sahyog-average-of-6-content-block-orders-a-day-most-in-whatsapp-10420543/>> accessed 7 May 2026; Ritu Sarin, ‘Centre’s online content blocking orders double to 24,000 in a year, over half on X’ (*The Indian Express*, 28 April 2026) <<https://indianexpress.com/article/india/govts-online-content-blocking-orders-double-to-24000-in-a-year-over-half-on-x-10657258/>> accessed 7 May 2026

democratic accountability, and enable the government to simply issue advisories and clarifications without any judicial or independent oversight, as well as absence of public scrutiny.

### III. Conclusion

In conclusion, Rule 3(4) of the proposed Amendment is substantively and procedurally ultra vires the IT Act, as well expands the remit of an intermediary's liability beyond constitutionally recognised limits.