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From Platform Immunity to State Enforcer: Reassessing India's Intermediary Liability Regime

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1. Digital Platforms and Safe Harbour

Digital platforms have become central to the circulation of information and expression. Social-media services, search engines and other online intermediaries host vast quantities of third-party material, making content moderation unavoidable. At the same time, placing responsibility for every user-generated post upon the platform would make the intermediary assume the position of a publisher. Indian law therefore developed the concept of conditional “safe harbour” for intermediaries¹

The Information Technology Act 2000 defines an intermediary broadly as a person who, on behalf of another person, receives, stores or transmits electronic records or provides services in relation to them.² Section 79 grants an intermediary exemption from liability for third-party information, subject to prescribed conditions.³ The rationale is practical: an intermediary handling large volumes of user-generated material cannot reasonably determine the legality of every item before it is hosted or transmitted.

The concern, however, is that the conditions attached to safe harbour have expanded over time. Gupta and Srinivasan note that the 2021 regulatory framework has widened the obligations

¹ Riordan J, *The Liability of Internet Intermediaries* (Oxford University Press 2016)

² Information Technology Act 2000, s 2(1)(w)

³ Information Technology Act 2000, s(79)

imposed upon intermediaries while leaving uncertainty regarding the limits of their responsibility.⁴ The issue is therefore no longer merely whether intermediaries should receive protection, but how far they may be required to participate in regulating the speech of others.

2. From Safe Harbour to Executive Content Regulation

The distinction between Sections 79 and 69A of the Information Technology Act is important. Section 79 concerns intermediary liability and its exemption from liability; Section 69A provides a statutory mechanism through which the Central Government or an authorised officer may direct the blocking of public access to information, subject to the conditions prescribed by law.⁵ The two provisions consequently regulate different aspects of the online ecosystem.

The starting point in understanding this relationship is the decision of the Supreme Court in *Shreya Singhal v Union of India*.⁶ The Court read “actual knowledge” under Section 79(3)(b) in the context of a court order or a notification by the appropriate government or its agency.⁷ This was significant because making an intermediary respond to every private complaint could encourage it to remove disputed material simply to avoid liability. The Court was therefore concerned with the possibility of intermediaries becoming “super-censors”.⁸

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 introduced a due diligence framework for intermediaries. Rule 3(1)(d) requires the removal or disabling of unlawful content upon actual knowledge through a court order or a notification by the appropriate Government or its authorised agency.⁹ Subsequent amendments have expanded these compliance obligations, including provisions on synthetically generated information.¹⁰

⁴ Indranath Gupta and Lakshmi Srinivasan, ‘Evolving Scope of Intermediary Liability in India’ (2023) 37(3) *International Review of Law, Computers & Technology* 294–324.”

⁵ Information Technology Act 2000. S 69A and S 79

⁶ *Shreya Singhal v. Union Of India*, AIR 2015 Supreme Court 1523

⁷ *ibid.*

⁸ *ibid.*

⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r(3)(d).

¹⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E), Gazette of India, 25 February 2021.

More importantly for the present issue, MeitY published draft amendments in 2026 dealing with intermediary compliance with ministerial clarifications, advisories and direction.¹¹ Though these remain proposals, they reflect an expanding role for executive instruments in shaping platform compliance. The question is consequently whether the intermediary's moderation decisions are being influenced not only by the illegality of particular content, but also by the regulatory consequences of failing to comply with executive directions.

3. From Intermediary to Private Enforcer

The concern is not that private platforms moderate content. They necessarily do so. The concern is whether regulatory pressure changes the basis upon which moderation occurs.

Kakkar, Mohan and Devadasan identify the tension between safe harbour and content-moderation obligations within India's regulatory framework.¹² Gupta and Srinivasan similarly identify uncertainty surrounding the expanding responsibilities of intermediaries.¹³ Where non-compliance creates legal or regulatory exposure, a platform may prefer to remove disputed material rather than retain it and contest the government's position.

This may lead to over-compliance. Content need not be clearly unlawful for a platform to remove it; uncertainty itself can become an incentive to act cautiously. The effect is particularly significant where the material concerns political criticism, satire or other controversial forms of expression. In such circumstances, the immediate decision is formally made by a private intermediary, but the incentive shaping that decision may originate from the State.

The result is a possible shift in function. The intermediary moves from being a facilitator of third-party communication towards becoming a practical enforcer of public regulation. The distinction matters because the removal of speech through a private platform can produce the same practical

¹¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023, GSR 275(E), Gazette of India, 6 April 2023.

¹² Jhalak Mrignayani Kakkar, Shashank Mohan and Vasudev Devadasan, 'Safe Harbor and Content Moderation Regulation in India' in Bhaskar Chakravorti and Joel P Trachtman (Eds), *Defeating Disinformation: Digital Platform Responsibility, Regulation and Content Moderation on the Global Technological Commons* (Cambridge University Press 2025) 60.

¹³ Indranath Gupta and Lakshmi Srinivasan, 'Evolving Scope of Intermediary Liability in India' (2023) 37(3) *International Review of Law, Computers & Technology* 294–324."

consequence for the user as a direct State restriction: the content is no longer available to the public.

The central issue, therefore, is not whether the Government may regulate online harms. It plainly has a legitimate interest in addressing unlawful and harmful material. The harder question is whether executive regulation can be designed in a manner that does not encourage platforms to remove lawful expression merely to minimise regulatory risk.

4. Constitutional Threshold

Executive influence over intermediary moderation inevitably raises questions under the Constitution. Freedom of speech and expression is guaranteed under Article 19(1)(a), while Article 19(2)¹⁴ permits restrictions only on the grounds which are specified therein. Article 14 further requires executive action to be free from arbitrariness.¹⁵

In *Anuradha Bhasin v Union of India*, the Supreme Court recognised that the freedoms guaranteed under Articles 19(1)(a) and 19(1)(g) extend to speech and commercial activity conducted through the medium of the internet. It held that any curtailment of these freedoms must derive its authority from law, fall within the permissible limits prescribed under Articles 19(2) and 19(6), and withstand the constitutional test of proportionality. A restriction that is excessive, arbitrary, or more intrusive than necessary to achieve a legitimate State objective cannot satisfy this standard.¹⁶

The concern is sharper where the Executive itself becomes involved in determining what online information is “fake”, “false” or “misleading”. In *Kunal Kamra v Union of India*, the Bombay High Court considered the constitutional validity of the 2023 amendment concerning the Government's Fact Check Unit. The final majority decision struck down the amendment, including on the grounds that the expressions “fake or false or misleading” were vague and overbroad and that the rule produced a chilling effect on intermediaries.¹⁷

¹⁴ Constitution of India 1950, Arts 19(1)(a) and 19(2).

¹⁵ Constitution of India 1950, Art 14.

¹⁶ *Anuradha Bhasin v. Union Of India*, AIR 2020 Supreme Court 1308

¹⁷ *Kunal Kamra v. Union Of India*, 2024 SCC OnLine Bom 3086

5. Judicial Checks on Executive-led Moderation

In *Shreya Singhal v. Union of India*,¹⁸ the Supreme Court struck down Section 66A of the IT Act¹⁹ for punishing speech on vague grounds of "grossly offensive" or "menacing", and read down Section 79(3)(b)²⁰. The Court stated that platforms lose safe harbour only after receiving "actual knowledge" through a court order or government notification. While the Court upheld Section 69A²¹ because it believed the 2009 Blocking Rules had enough safeguards, real-world practice has shown serious gaps.²²

In *Kunal Kamra v. Union of India*,²³ the Bombay High Court struck down the 2023 Fact Check Unit amendment. The Court held that letting an executive body to unilaterally label content as "fake, false or misleading" forces platforms to delete speech out of fear, violating Articles 14 and 19(1)(a)²⁴ of the Constitution.²⁵ On the other hand, in *X Corp. v. Union of India*,²⁶ the Karnataka High Court supported account-level blocking under Section 69A.²⁷ It stated that the Government can block user accounts without giving prior notice to content creators, moving away from the safeguards in *Shreya Singhal*.²⁸

Major constitutional problems still exist: non-binding executive advisories bypass the actual knowledge requirement under Rule 3(4),²⁹ Rule 16 confidentiality under the 2009 Blocking Rules

¹⁸ *Shreya Singhal v. Union of India* AIR 2015 SC 1523

¹⁹ Information Technology Act 2000, ss 66A

²⁰ Information Technology Act 2000, ss 79

²¹ Information Technology Act 2000, ss 69A

²² Sachin Dhawan, 'Karnataka High Court Ruling on Content Blocking: A Setback for User Rights' (2024) 11 Indian J Const L 110

²³ *Kunal Kamra v Union of India* (2024:BHC-OS:14750-DB)

²⁴ Constitution of India 1950, arts 14, 19

²⁵ Kartik Kalra, 'Absolute Truths and Absolutist Control: On India's "Fact Check Unit" over Social Media' (*VerfBlog*, 14 February 2024)

²⁶ *X Corp v Union of India* (2023) WP 13710 of 2022

²⁷ Information Technology Act 2000, ss 69A

²⁸ Sachin Dhawan, 'Karnataka High Court Ruling on Content Blocking: A Setback for User Rights' (2024) 11 Indian J Const L 110

²⁹ Arnab Chanda, 'From Safe Harbour to Algorithmic Camp: India's IT Rules and the Normalisation of Digital Exception' (2026) 12(1) International Journal of Research 99

stops judicial review under Article 226,³⁰ and strict takedown rules along with mandatory verification of Synthetically Generated Information (SGI) encourage too much blocking.³¹

6. Identifying India's Regulatory Gaps

- India has no independent regulatory authority. Instead, rule-making, enforcement, and appeals are all handled directly by government ministries.³²
- Rule 16 of the Blocking Rules forces all blocking orders to remain secret, denying citizens written reasons and hurting their basic right to know.³³
- Tight takedown timelines and government portals skip prior notice and hearings, giving creators no chance to defend their posts.³⁴
- Linking safe harbour to vague due diligence rules makes platforms censor lawful speech just to avoid legal trouble.³⁵
- State-appointed Grievance Appellate Committees lack judicial independence and fail to provide real remedies or restitution for wrongful censorship.³⁶
- Applying one single content rule to every platform ignores how different tech works, from encrypted chats to public algorithmic feeds.³⁷

7. Comparative Lessons

³⁰ Sachin Dhawan, 'Karnataka High Court Ruling on Content Blocking: A Setback for User Rights' (2024) 11 Indian J Const L 110

³¹ Padmini Majhi, 'Transitioning from Passive Safe Harbours to Active Sentinels: A Critical Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026' (2026) 1(1) The Legalis IP Quarterly 56

³² Arnab Chanda, 'From Safe Harbour to Algorithmic Camp: India's IT Rules and the Normalisation of Digital Exception' (2026) 12(1) International Journal of Research 99

³³ Jhalak M Kakkar, Shashank Mohan and Vasudev Devadasan, *Safe Harbour and Content Moderation Regulation in India* (Defeating Disinformation Report, The Fletcher School at Tufts University 2022) 5

³⁴ Arnab Chanda, 'From Safe Harbour to Algorithmic Camp: India's IT Rules and the Normalisation of Digital Exception' (2026) 12(1) International Journal of Research 99

³⁵ Jhalak M Kakkar, Shashank Mohan and Vasudev Devadasan, *Safe Harbour and Content Moderation Regulation in India* (Defeating Disinformation Report, The Fletcher School at Tufts University 2022) 5

³⁶ Jhalak M Kakkar, Shashank Mohan and Vasudev Devadasan, *Safe Harbour and Content Moderation Regulation in India* (Defeating Disinformation Report, The Fletcher School at Tufts University 2022) 5

³⁷ Tania Chatterjee, Agam Gupta and Pradip Ninan System, 'One Size Doesn't Fit All: Understanding Social Media Platform Regulation in India' (In press) 58 Communications of the Association for Information Systems

The European Union's Digital Services Act separates platform accountability from civil liability. It sets up duties for risk checks, transparency, and out-of-court dispute settlement without removing basic safe harbour protections.³⁸ For AI, the EU AI Act divides duties across the supply chain, requiring watermarks on synthetic media while protecting creative, satirical, and news content.³⁹

The United States uses Section 230⁴⁰ immunity and views content moderation as editorial choice protected by the First Amendment. Recent US rulings stop states from forcing platforms to be neutral in their views while setting limits against hidden government pressure.⁴¹

India's model run by the executive lacks Europe's independent setup and America's legal clarity. To fix this gap, India needs to replace direct ministry control with an independent regulator, public risk checks, and clear, narrow statutory rules.⁴²

8. A Proposed Framework for Rights-Compatible Content Moderation

1. India must replace rules made by the executive with a comprehensive Digital Platform Accountability Act passed by the Parliament.⁴³
2. Mistakes in procedures should lead to fines instead of taking away safe harbour protection completely.⁴⁴
3. Platform oversight should move from government ministries to an independent Digital Platform Accountability Commission (DPAC) with civil society and technical experts.⁴⁵

³⁸ Martin Husovec, 'Rising above Liability: The Digital Services Act as a Blueprint for the Second Generation of Global Internet Rules' (2025) 115 Trademark Rep 1104

³⁹ Padmini Majhi, 'Transitioning from Passive Safe Harbours to Active Sentinels: A Critical Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026' (2026) 1(1) The Legalis IP Quarterly 56

⁴⁰ Communications Decency Act of 1996, 47 USC § 230

⁴¹ Evelyn Mary Aswad, 'The First Amendment, Global Corporate Responsibility Standards, & the Quest for Online "Speech Nirvana"' (2025) 76 UC Law Journal 1659

⁴² Anubhav Chakraborty and Anil Philip, 'Regulating broadcasting in the digital age: A critical comparative analysis of India's framework against global democratic approaches' (2026) 2(1) The Journal of Social Media a8

⁴³ Prashant Kumar Chauhan, 'Platform Accountability in the Age of AI in India: Reconciling Corporate Autonomy with Digital Human Rights Under the UNGPS Framework' (2025) 4(1) Your Voice Magazine 19

⁴⁴ Martin Husovec, 'Rising above Liability: The Digital Services Act as a Blueprint for the Second Generation of Global Internet Rules' (2025) 115 Trademark Rep 1104

⁴⁵ Prashant Kumar Chauhan, 'Platform Accountability in the Age of AI in India: Reconciling Corporate Autonomy with Digital Human Rights Under the UNGPS Framework' (2025) 4(1) Your Voice Magazine 19

4. Blocking orders must include written reasons, and Rule 16 secrecy must be repealed so orders can be challenged in court.⁴⁶
5. Quick takedowns must apply to court orders or clear, urgent harms like non-consensual intimate imagery and child abuse content.⁴⁷
6. Set up certified -governmental dispute groups to offer users cheap easy appeals without creating a private court system.⁴⁸
7. Creators must get notice and a fair hearing before their accounts or posts are permanently blocked.⁴⁹
8. Platforms should face checks of their recommendation algorithms and reports should separate automated removals from user complaints.⁵⁰
9. Blocking orders should automatically expire after sixty days unless renewed, and users facing wrongful bans should get civil damages.⁵¹

9. Conclusion

Controlling speech is no longer a technical puzzle about content moderation; it's about who has the power, what rules apply and how decisions are checked. India is in a crisis: government control over speech has increased, while basic legal protections have weakened. Fixing this means moving from ministry control and creating an independent shared system. Real digital governance needs rules, open processes and respect for human rights making sure the state acts as a fair protector of the public space rather than an unchecked censor.

⁴⁶ Pranesh Prakash, 'Internet blocking and shutdowns in India and international human rights law' (2024) 5(3) Indian Public Policy Review 38

⁴⁷ Giancarlo Frosio and Christophe Geiger, 'Taking fundamental rights seriously in the Digital Services Act's platform liability regime' (2023) 29(1–2) European Law Journal 31

⁴⁸ Hannah Ruschemeier and João Quintais, 'Fundamental Rights in Out-of-Court Dispute Settlement under the Digital Services Act' (2025) SSRN Electronic Journal 1

⁴⁹ Pranesh Prakash, 'Internet blocking and shutdowns in India and international human rights law' (2024) 5(3) Indian Public Policy Review 38

⁵⁰ Tania Chatterjee, Agam Gupta and Pradip Ninan System, 'One Size Doesn't Fit All: Understanding Social Media Platform Regulation in India' (In press) 58 Communications of the Association for Information Systems

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